Appellate Notes

PULLMAN & COMLEY

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Week of June 18, 2018

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Welcome to our Supreme and Appellate Court summaries webpage. On this page, I provide abbreviated summaries of decisions from the Connecticut Appellate Courts which highlight important issues and developments in Connecticut law, and provide practical practice pointers to litigants. I have been summarizing these court decisions internally for our firm for more than 10 years, and providing relevant highlights to my municipal and insurance practice clients for almost as long. It was suggested that a wider audience might appreciate brief summaries of recent rulings that condense often long and confusing decisions down to their basic elements. These summaries are limited to the civil litigation decisions. I may from time to time add commentary, and may even criticize a decision's reasoning. Such commentary is solely my own personal opinion. Pullman & Comley's Appellate Practice Group of which I am a member includes experienced appellate advocates in almost every area of the law. Should you have a need to consult about a potential appeal, please email me at emccreery@pullcom.com. I hope the reader finds these summaries helpful. – Edward P. McCreery

Posted June 25, 2018

Appellate Court Advance Release Opinions:

SC20088 - Arciniega v. Feliciano

One slate of petitioning candidates for a town committee election sued to have several signatures on the competing slate declared invalid. The competing slate intervened and filed a counterclaim asserting a plaintiff-candidate did not live at the address on her petition and argued her name should be stricken. The intervening defendant had no standing to assert the counterclaim as it was being asserted for the first time in court, and thus was not a "ruling of an election official" which could be appealed to the court.

AC39366 - Nichols v. Oxford

Lack of maintenance or repair to a roadway by the town for more than 25 years was evidence of an intent to abandon by the town, such that the plaintiff could not seek a court order to force the town to maintain the road per CGS 13a-103.

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AC39559 - Peters v. United Community & Family Services, Inc.

Dental malpractice action was properly dismissed for lack of jurisdiction due to the failure of the affidavit of a similar health care provider to state that the affiant was also board certified in the same field as the defendant. The plaintiff tried to fix the deficiency with a new affidavit by the doctor stating that he always was certified in the field. That was deemed *too little, too late*. The proper way to fix such a deficiency is by way of a Request to Amend Pleading, and it must be filed before the statute of limitation expires. Here, even the new affidavit was filed long after the statute of limitations lapsed.

AC39940 - Lyons v. Citron

Oh good grief. Landlord issued a notice to quit for nonpayment and then started an eviction action. The landlord then texted the tenant to demand the rent. Tenant moved to dismiss the eviction claiming the text conflicted with the notice to quit and made it equivocal. Nervous, the landlord withdrew the eviction action and served a new notice to quit the same day and then started a new eviction action. The second eviction was then
dismissed for lack of jurisdiction because upon the withdrawal of the first lawsuit, the lease was deemed restored, and that triggered a new 9 day grace period to pay the rent per 47a-15a, and the landlord did not wait the 9 days before the new notice to quit for non-payment went out.

AC38834 - Hall v. Hall

When husband and wife finally reach a settlement, it was agreed husband could file a motion to reopen and dismiss an earlier contempt finding so as to not impair his employment prospects. This decision upheld the trial court's refusal to do that on the grounds that there was no real evidence it would hurt his employment chances. And, his new motion claimed reliance upon advice of counsel for his conduct, whereas he never claimed that during the contempt hearing. Also, a party cannot be allowed a "second bite at the apple" to challenge an earlier contempt finding.

AC40896 - Sikorsky Financial Credit Union, Inc. v. Pineda

Since the promissory note in this action provided that interest shall accrue until the debt was paid, the trial court had no discretion but to award post-judgment interest. The award is only discretionary if the note is silent on interest continuing to accrue post-judgment. If the note fails to set the post-judgment interest rate, the court should fall back on the default rate set forth in the statute. It also does not matter that the plaintiff did not ask for post-judgment interest in its prayer for relief.