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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 based on my own particular field of practice, so you will not find distillations of the many criminal and matrimonial law decisions on this page. I may from time to time add commentary, and may even criticize a decision's reasoning. Such commentary is solely my opinion . . . and when mistakes of trial counsel are highlighted because they triggered a particular outcome, I will try to be mindful of the adage . . . "There but for the grace of God . . .." I hope the reader finds these summaries helpful. – Edward P. McCreery

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- SC19175 - Haynes v. Middletown
- SC19175 Concurrence - Haynes v. Middletown

[Note: This case alters the test for the identifiable victim exception to govt. immunity.] Mother sued on behalf of her son when he was pushed into the jagged edge of a locker at high school that had existed for a long period of time despite knowledge of the school of the sharp edge and that horseplay was taking place from time to time in the locker room. The municipality raised a special defense that it was immune from liability under C.G.S. § 52-557(n)(a)(2)(B). The jury returned a verdict in favor of the plaintiffs. The Trial Court then set aside the verdict and rendered judgment for the municipality on the grounds of governmental immunity, which the Appellate Court affirmed. The issue on appeal was whether or not plaintiff had proven at the Trial Court level the identifiable person, imminent harm exception to governmental immunity. The Supreme Court noted that since the dangerous condition had existed for a long period of time, that it was possible the jury might have concluded the identifiable harm exception existed.

In holding this, the Court noted that it was overruling prior precedent that required the risk of harm to be limited in time and significant and unforeseeable. Imminent harm means a situation where the public officials duty to act is so clear and unequivocal that there is no discretion involved. To satisfy the exception, the imminent harm no longer has to be a harm that can only happen in the immediate future. Therefore, it was up

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to the jury to decide whether or not the plaintiff had proven an exception to the immunity special defense raised by the town.

The plaintiff insisted the town had waived its special defense by not asking for a jury instruction. Throwing its hands up in the air, the Supreme Court seemed to complain that the Trial Court let the issue get out of control by never ruling on the defendant's motion for a directed verdict and also declined to instruct the jury on the defense, when it did not believe there was sufficient evidence to support the imminent harm exception. If the Trial Court had believed there was insufficient evidence to support the imminent harm exception, it never should have submitted the case to the jury in the first place.

Further, there was an argument that since the plaintiff conceded it needed to prove the imminent harm exception, the burden arguably was on the plaintiff to ask for a jury instruction that it proved the exception. The defendant, however, never claimed the plaintiff had waived the exception by not asking for a jury instruction. Thus, the Supreme Court blamed the plaintiff, the defendant and the Trial Judge for messing the whole thing up, and determined the fairest course was simply to have a re-trial with a proper jury instruction.

Justice Everleigh concurred, due to the unusual circumstances of the case, but complained that the law surrounding the identifiable person and imminent harm exceptions to municipal immunity has now been made even more unnecessarily ambiguous.

- SC19099 - Hartford v. McKeever
- SC19099 Dissent - Hartford v. McKeever

Is there an equitable exception to the general rule that an assignee of a note does not take the instrument subject to affirmative claims of the obligor against the original assignor? Community Development Corporation made loans to defendant to improve his rental property, and took back notes and mortgages. At least one note and mortgage was eventually assigned to the City of Hartford. When the City brought a foreclosure action, the defendant filed a counterclaim asserting claims he had against the City's assignor. The City agreed to withdraw its foreclosure action, but the property owner proceeded to trial on the counterclaim, and obtained a judgment for $200,000. The majority of the Appellate Court threw out the judgment, holding that an assignee was not liable for affirmative claims against the assignor. The Dissent argued there ought to be an equitable exception to that rule, where, as here, it can be argued that the assignee had been involved in the loan process from the beginning and should have been aware of the situation that gave rise to those claims.

On appeal, the Supreme Court reviewed the Trial Court's opinion, and concluded that there never were any factual findings that the City was aware of the potential claims against the assignor so there would be no basis upon which to impose an equitable exception to the general rule. The judgment of the Trial Court was based solely on an incorrect conclusion that claims against an assignor may be asserted against an assignee.

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Finally, the Supreme Court noted that the Trial Court had found that the original note was overpaid by $50,000. Thus, at a minimum, the City owed the overpayment back to the obligor, and remanded the matter to the Trial Court, to enter that order and decide whether attorney's fees to the original obligor were in order.

The Dissent argued that they would have found the City liable for being unjustly enriched by the conduct of the assignor. The Dissent would have also found the assignee under the facts of this case that there is an exception to the general rule and it applied in this case. The majority responded in a footnote that there was nowhere in the Record proof that the equitable exception argument was even made to the Trial Court.

The next Footnote criticizes the Dissent for suggesting there should be liability to the assignee, because it was involved in the loans from the get-go because, once again, there must be some evidence that the assignee knew of the overpayments and some legal analysis of those facts presented to the Trial Court by the obligor who was making the claim.

Another Footnote states that the Supreme Court may take up the issue of the amount owed by the assignee for the overpayments it received, even though the assignee did not cross-appeal on this issue. The Court notes they can rule on an unpreserved claim, when the party raising it cannot have any chance of winning.

The final Footnote notes that the Trial Court still has jurisdiction to entertain a request for attorney's fees, even though it never acted upon the motion. Contrary to the plaintiff's position, the Court said there was no authority for the proposition that an unexplained failure of the Trial Court to rule on a request for attorney's fees or interest after trial, constitutes a denial of those requests.

• SC19084 - One Country, LLC v. Johnson

Plaintiffs were interested in buying their neighbor's house for investment purposes, renovating it, and flipping it for a profit. They formed an LLC with a friend and a general contractor, and the three contributed various amounts of capital. The plaintiff and his wife contributed $200,000 through a separate LLC they owned, and the contractor and the friend each contributed $50,000. The LLC then bought the property subject to a $1 million loan. Only the plaintiff husband signed the lender's guaranty. The plaintiff husband, was an in-house attorney and so he drafted a "back stop guaranty," to make the other members of the LLC indemnify him for their share of the guaranty.

The LLC was unable to complete renovations of the property, and defaulted on the mortgage loan. The bank brought a strict foreclosure, and then sought a deficiency judgment against the plaintiff husband on his guaranty, which was settled for $300,000. The plaintiff husband then personally sued his wife, his friends and the contractor to enforce the back-stop guaranty, even though he had listed the $300,000 as a business loss on his LLC's tax return.

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The defendant's claimed the husband no longer "owned" the claim and thus he lacked standing to sue them. The Trial Court found that while otherwise enforceable, the back-stop guaranty agreement was rendered unenforceable due to the plaintiff's tax treatment of his settlement, by treating it as an equity investment in his LLC, rather than satisfying a debt owed by him to the mortgage lender.

In a split decision, the Appellate Court reversed - and a majority of that Court concluded - that what was important was that he settled the debt with the bank, and how he treated it for tax purposes was irrelevant. The Dissent in the Appellate Court disagreed, concluding that, by virtue of his tax treatment, the plaintiff husband had essentially assigned to his personal LLC, his interest in the back-stop agreements, and therefore, he lacked standing to bring a claim enforcing them.

On further appeal to the Supreme Court, they that: (1) the back-stop agreements ran personally to the plaintiff; (2) there was no document ever assigning those rights to the plaintiff's personal LLC; and (3) an assignment cannot be found by virtue of the tax treatment of a debt. To find that an "assignment" has occurred, there must be a manifest intent to transfer a right from one person to another without further action. There must be some words that fairly indicate an intention to make the assignee the owner of the claim. There never was an actual capital contribution by the plaintiff to his personal LLC, because he never transferred $300,000 to it before paying it to the lender. The $300,000 went directly from him to the mortgage lender. Thus, just because a plaintiff claimed a potential improper tax deduction for a loss, did not preclude him from seeking recovery from the parties indebted to him for the loss.

Bottom line = The plaintiff's tax treatment of his payment is irrelevant to the defendants' liability to pay the debt. Equally irrelevant are the LLC statutory provisions on capital contributions.

- SC19146 - General Accident Ins. Co. v. Mortara

This case noted that appellate review of arbitration decisions which are compelled by statute differs from arbitration decisions that result from voluntary contractual provisions. In the former, the appellate court may conduct a de-novo review of some of the arbitrators' decision. Here the arbitration panel incorrectly applied "tort based" choice of law analysis to determine that NJ law, not CT law, applied to an insurance coverage dispute. In fact, "contract based" choice of law analysis always applies to coverage disputes. Had the arbitration panel applied the correct choice of law analysis they would have seen that CT law applied to the dispute, and under CT law, the plaintiff could not prevail. The decision sustains the Trial Courts judgment overturning the arbitration award. The case has an extensive discussion of the application of the contract choice of law analysis.

- AC36640 - Brody v. Brody

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While this was a dissolution case which I normally would not summarize, it does establish a rule applicable to all civil litigation. Previously CT decisions have held that there is no authority for a trial court to allow post-judgment discovery just because a party has filed a Motion to Reopen the Judgment based upon pre-judgment fraudulent conduct that was discovered post-judgment. The judgment must be first reopened upon a finding of probable cause that fraud occurred before discovery will be allowed.

This decision distinguished that line of authority from an effort to seek post-judgment discovery after the filing of a Motion for Contempt based upon the discovery of post-judgment fraudulent conduct. Since a trial court has inherent and continuing jurisdiction to see that its orders are enforced, it has inherent authority to allow a party to conduct post-judgment discovery to show a party is fraudulently evading its orders.

In this case the defendant-husband's employer (a hedge fund run by his sister) was accused of hiding his income so the husband could claim he could not pay the court ordered alimony. A subpoena duces tecum against the employer for all records concerning the husband could proceed.

- SC18904 - Byrne v. Avery Center for Obstetrics & Gynecology, P.C.
- SC18904 Concurrence - Byrne v. Avery Center for Obstetrics & Gynecology, P.C.

Plaintiff broke up with her boyfriend while pregnant and in anticipation of a paternity claim, sent instructions to her OBGYN doctor's office not to release her medical records to the boyfriend. That office had issued a standard disclosure to her that it would respect the confidentiality of her records but may have to make disclosures per a court order or subpoena. Later, when the doctor's office was served with the boyfriend's attorney's subpoena duces tecum to appear in court with her records, the doctor's office just mailed her records to the court without appearing or informing the patient of the record demand. The plaintiff sued for negligence and negligent infliction of emotional distress when the boyfriend tried to make extortionate demands after his review of those records and sued her and her family members in multiple lawsuits.

The trial court dismissed certain counts on the basis of HIPAA's provision that it preempts any contrary state laws and does not recognize a private cause of action. On appeal, the CT Supreme Court concluded that not only does HIPAA **not** preclude State common law causes of action for breaching a patient's right to confidentiality of their medical records, but also, the regulations adopted under HIPAA can form the basis for the standard of care required. The decision concluded that HIPAA only precludes a State from imposing either more stringent record keeping rules, or imposing its own penalties.

The Court noted it was not deciding in this appeal whether there is a cause of action against a medical care provider under these circumstance. That will have to be decided on another day, but the dismissal had to be reversed. The Court also declined to make a ruling that the doctor's mere compliance with a subpoena's instructions precluded liability, noting that this too will have to await proceedings below. (The doctors claimed the fault lied with the court clerk for not sealing the records upon receipt.)

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The Court did note however that compliance with federal regulations [45 C.F.R.§ 164.512 [e]] may very require a health care provider to seek a protective order if there is no court order, or an authorization from the patient, or proof that the patient was aware of the demand and had an opportunity to object.

Justices Zarella and Rogers dissented over the refusal of the majority to definitely state that there is no cause of action for a violation of 52-146o. The majority said they did not have to reach that issue because while the claim was included in a count, it was not the basis for the cause of action asserted. The dissent argued to the contrary that the sentence in the complaint unequivocally claimed the statute was violated and the majority were being overly technical.

The facts and holdings of any case may be redacted, paraphrased or condensed for ease of reading. No summary can be an exact rendering of any decision, however, so interested readers are referred to the full decisions. The docket number of each case is a hyperlink to the Connecticut Judicial Department online slip opinion.