

---

## Week of September 19

*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](mailto:emccreery@pullcom.com) I hope the reader finds these summaries helpful. – Edward P. McCreery*

Posted December 7, 2015

### Appellate Court Advance Release Opinions: Released after 11:30 a.m.

- AC36320 - [Valencis v. Nyberg](#)

This decision upheld the granting of a PJR for ~ \$1.5 million in favor of the plaintiff property owner when the defendant coaxed the owner to make a substantial up-front payment on an oral renovation contract, the job, however, went twice over budget and many subcontractors were left unpaid. The PJR award included a trebling of damages for theft. but did not include potential punitives as the defendant invoked the fifth. The decision reviews the standard of “probable cause” and the “clear error standard of review.” Yes, a Trial Court has to take into account the defenses asserted, but here the Trial Court said it did, and the Appellate Court’s review is limited to the plain error doctrine. There was no plain error. The Appellate Court does not have to decide the veracity of the defenses in order to uphold the PJR award granted by the Trial Court. Failure of the defendant to disclose he was acting for one of his corporations can make him personally liable. Sending emails that he pays subs upfront to hold down costs when he actually did not do so can be the basis for holding him liable for misrepresentation claims. Taking the 5th when asked about invoicing can lead to an adverse inference. Demands for return of property (or money) do not have to be specific when knowledge of what was taken is primarily in the possession of the taker. Assuring the customer that up-front payments were needed to pay subs and then failing to actually pay them can be evidence of an improper intent.

---

**[pullcom.com](http://pullcom.com)**  [@pullmancomley](https://twitter.com/pullmancomley)

**BRIDGEPORT**  
203.330.2000

**HARTFORD**  
860.424.4300

**SPRINGFIELD**  
413.314.6160

**WAKEFIELD**  
401-360-1533

**WATERBURY**  
203.573.9700

**WESTPORT**  
203.254.5000

**WHITE PLAINS**  
914.705.5355

## Week of September 19

---

Pleading the fifth can also allow an inference for a finding of improper intent.

- AC37034 - [Tavani v. Riley](#)

CT resident had a justiciable issue entitling him to bring a declaratory judgment action that he no longer owed child support payments and had paid his obligations in full under a MA decree when the ex-spouse, now a NH resident, kept trying to bring enforcement actions in other forums.

- AC36360 - [Brown v. Hartford](#)

A municipality has a right to enter upon private premises and declare the need for immediate demolition when a danger to health and safety is apparent, without the need for a pre-taking notice and hearing. A municipal building code allowing for such a procedure is constitutional and does not violate due process rights. The City inspector here had a right to declare a collapsing porch unsafe and directed it to be torn down immediately. This case also held that RPC 1.11, not 1.9, applies to the homeowner's DQ motion when the homeowner's prior counsel went to work for the City Attorney's office. The disqualification of the prior counsel is not imputed to fellow governmental lawyers under 1.11, the way it would to a lawyer moving to another private law firm under 1.9.

- AC36307 - [Wood v. Wood](#)

Congratulations to our own Campbell Barrett on this victory. This decision upheld the award of a \$750,000 payment to the wife along with partial payment of her attorney fees. The decision rejected multiple challenges to the award by the ex-husband. The Appellate Court held that the Trial Court could rely upon the valuations the husband himself had put in his financial affidavit of assets owned by his LLC to, in turn, determine a value of his LLC. Expert testimony was not required in that situation. The husband's membership interest in the LLC was deemed to be a marital asset to be divided. When the LLC's assets are principally real estate, a proposed sales contract for the real estate can be evidence of its value and thus the value of the membership in the LLC. The ex-husband could not claim he was entitled to a larger share of the marital estate just because of his prior inheritance. Pre-divorce inheritances do not automatically get assigned to the beneficiary in a subsequent divorce. Finally, it does not matter that the ex-husband did not have cash on hand to comply with the court's payment order. He had assets worth over \$2 million and it was up to him to come up with the money. It is not the duty of a Trial Court to figure out what assets a spouse must dispose of to comply with the court's decrees.

- AC36772 - [Petaway v. Commissioner of Correction](#)
- AC36578 - [State v. Acker](#)
- AC36716 - [Kumah v. Brown](#)

## Week of September 19

---

Upheld the Appellate Court which had upheld a jury verdict in favor of Greenwich. Plaintiff crashed into fire truck on I-95 that was stopped at an accident scene with cones out and flashers on. The jury concluded that the City had been negligent but that the decision how to park the truck at the scene was a discretionary act that barred the negligence claim due to immunity. The jury also concluded the placement of the truck did not create a nuisance. Verdict for the defendant was sustained.

- AC36962 - [People's United Bank v. Sarno](#)

In this foreclosure of a waterfront home, the plaintiff's appraiser set the value at ~\$900,000 with an ~\$800,000 debt. The Trial Court ordered a foreclosure by sale. But then along came Hurricane Sandy and knocked down the house. The Committee then had the ocean front lot appraised at only \$700,000 without the house. The Court refused the plaintiff's request to covert the foreclosure to a strict. The property sold at a rescheduled auction for ~\$350,000. The owner objected to the approval of the sale pointing out that even the bank's post-hurricane appraisal put the lot at ~\$450,000. This decision upheld the approval of the sale and in a footnote said that while there is no bottom percentage below which an auction will have to be reheld, they have upheld percentages as low as 43% of fair market value and this is well above that percentage, especially when compared to the Bank's updated appraisal.

- AC36629 - [Couture v. Commissioner of Correction](#)

---

*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. Copyright 2015 Pullman & Comley, LLC. All Rights Reserved.*

---

The factual summary, or even the legal conclusions, of any case may be summarized, redacted, paraphrased or altered at the author's discretion for ease of reading. Accuracy of the summary cannot be guaranteed and the viewer is referred to the actual case for an exact reading. The Docket number should be a link to the full decision.