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BUSINESS LITIGATION: 2025 IN REVIEW

By William J. O'Sullivan[1]

In 2025, Connecticut's appellate courts decided numerous cases of interest to business litigators. The following is a summary of the year's most noteworthy decisions.

I. Contracts

A. *Release agreement bars claim against third party asserting indemnity claim against releasee*

In *Bogda v. Bochenek*,[2] the Appellate Court found that a releasor under a broadly phrased release agreement, which included the release of "direct and indirect" claims, may breach the agreement by maintaining a claim against a third party who in turn brings an indemnity claim against the releasee.

The plaintiff was the daughter of the late Barbara Uterstaedt (decedent). The defendant was the decedent's nephew, and the sole beneficiary under her will. Shortly before the decedent's death, the decedent signed a document making the daughter a joint owner of a brokerage account.

In an earlier case commenced in 2020, nephew sued daughter, alleging undue influence. That case settled, with the daughter paying the nephew half the value of the brokerage account. The nephew and the daughter signed a settlement agreement in which they released each other from "any and all manner of action and actions, cause and causes of action ... liabilities of every kind and character, direct and indirect, known and unknown, of whatever kind or nature ... including but not limited to any claims related to or concerning the [brokerage] account ...."[3]

The nephew then commenced an arbitration proceeding against the brokerage, which in turn brought an indemnity

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[1] Of the Hartford Bar.

[2] 236 Conn. App. 412, 348 A.3d 476 (2025), *cert. granted* 354 Conn. 917, 351 A.3d 412 (2026).

[3] *Id.* at 424.

claim against the daughter. The brokerage and the daughter prevailed in the arbitration proceeding. The daughter then sued the nephew, alleging breach of the settlement agreement, breach of the implied covenant of good faith and fair dealing, and vexatious litigation. The trial court granted the nephew's motion for summary judgment, noting that the nephew had commenced the arbitration only against the brokerage, not the daughter.

The Appellate Court reversed. The court noted that the parties' "use of the broad words 'any and all manner' and additional use of the expansive words 'every kind and character ... known and unknown, of whatever kind or nature' to modify, inter alia, the words 'actions' and 'liabilities' give those terms all-encompassing meanings. … Although [the brokerage] brought the third-party indemnification claim against [daughter], that claim was dependent on and derivative of [nephew's] arbitration action. … Such an action was prohibited by the broad language of the settlement agreement in which the parties released each other from 'any and all manner of action ... of every kind and character, direct and indirect ... of whatever kind or nature' relating to the [brokerage] account and the 2020 action."[4]

B. *Trial judge, not jury, must decide whether a contract contains an ambiguity.*

In *Clinton v. Aspinwall*,[5] the Connecticut Supreme Court held that it was error for the trial court to submit to the jury the threshold question of whether a provision in a limited liability company's operating agreement was ambiguous, before then deciding what the parties intended.

"Instead of instructing the jury to decide whether the pertinent provisions were ambiguous and to consider extrinsic evidence only if they were, the trial court should have undertaken its own independent pretrial analysis of the operative provisions as a threshold matter because the question of

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[4] *Id*. at 425, 426, 427.
[5] 352 Conn. 597, 338 A.3d 1103 (2025).

whether a contract provision is ambiguous is a question of law and, therefore, a question that must be decided by the trial court, not the jury…"[6]

"With respect to the provisions of the agreement that were clear and unambiguous, it was the trial court's duty to instruct the jury as to the correct interpretation of those provisions… With respect to any provision that it concluded was ambiguous, the court was obligated to instruct the jury that the provision *was* ambiguous, as opposed to letting the jury decide *whether* it was ambiguous, and to explain the jury's task in resolving that ambiguity…"[7]

C. *LLC member had apparent authority to bind LLC to a contract, even contrary to the operating agreement.*

The Appellate Court's decision in *Hadji v. Snow*[8] provides useful guidance on the doctrine of apparent authority as applied to a business entity.

The plaintiff brought claims against, among others, a limited liability company called Finishers Court, LLC (Finishers Court), for nonpayment of money owing to him under a written agreement. The plaintiff dealt exclusively with one of Finishers Court's two members, Patrick Snow, who signed the agreement on behalf of Finishers Court as its manager.

Unknown to the plaintiff, Finishers Court's operating agreement authorized Snow to bind Finishers Court to contracts only with the consent of the other member, a silent partner named Radler. Snow never obtained Radler's consent to the contract at issue. The plaintiff asserted that Snow nevertheless had apparent authority to bind the LLC to the contract. The trial court agreed with the plaintiff.

The Appellate Court noted that under the doctrine of apparent authority, "it must appear from the principal's conduct that the principal held the agent out as possessing suf-

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[6] *Id*. at 619.

[7] *Id*. at 620.

[8] 232 Conn. App. 829, 339 A.3d 1168, *cert. denied* 353 Conn. 902, 341 A.3d 958 (2025).

ficient authority to embrace the act in question, or knowingly permitted [the agent] to act as having such authority."[9] An agent's apparent authority "is to be determined by the acts of the principal and not by the acts of the agent."[10]

But the "general rule governing apparent authority becomes more complicated when, as in the present case, the principal is a company/organization – Finishers Court – rather than a person. In such circumstances, we must be mindful that Finishers Court, as a limited liability company, can act only through its agents…. When the principal is an individual, the matter of authorizing an agent is fairly straight-forward. When the principal is an entity, however, an additional wrinkle is added – the delegation of authority is subject to constitutional rules, embodied in acts or articles of incorporation, corporate charters and the like, as well as processes that are duly-adopted, in such forms as by-laws or board rules."[11]

Drawing heavily on the Restatement (Second and Third editions) of Agency, the court then examined the doctrine of apparent authority, as applied when the principal is a business entity, in greater detail. "[M]anifestations of apparent authority must take the form of conduct by a person, observable by others, that expresses meaning. Such conduct, however, is not limited to spoken or written words .... Silence may constitute a manifestation when, in light of all the circumstances, a reasonable person would express dissent to the inference that other persons will draw from silence. Failure then to express dissent will be taken as a manifestation of affirmance."[12]

Along similar lines, "apparent authority can be created by appointing a person to a position ... which carries with it generally recognized duties to do the things ordinarily entrusted to one occupying such a position .... [A] principal may make a manifestation by placing an agent in a defined position in

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[9] *Id*. at 842 (citations and internal punctuation omitted).
[10] *Id*.
[11] *Id*. at 843, 844 (citations and internal punctuation omitted).
[12] *Id*. at 845 (citations and internal punctuation omitted).

an organization or by placing an agent in charge of a transaction or situation. Third parties who interact with the principal through the agent will naturally and reasonably assume that the agent has authority to do acts consistent with the agent's position or role unless they have notice of facts suggesting that this may not be so."[13] A person dealing with such an agent has no duty to affirmatively investigate the company's governing documents. "[I]f a principal has given an agent general authority to engage in a class of transactions, subject to limits known only to the agent and the principal, third parties may reasonably believe the agent to be authorized to conduct such transactions and need not inquire into the existence of undisclosed limits on the agent's authority."[14]

Applying these principles to the record before it, the Appellate Court concluded that it was not clearly erroneous for the trial court to determine, as it did, that Snow had apparent authority to bind Finishers Court to its contract with the plaintiff.

D. *Trust language gave trustee broad discretion to dispose of property.*

The Appellate Court's decision in *Spinnato v. Boyd*[15] concerned a family trust, with a house as the *res*, which required the trust property to be "liquidated and distributed" to the settlor's children upon her death.

The plaintiff trustee-beneficiary wished to acquire the house for herself, and sought to discharge her trust duties by buying out the interests of the other beneficiaries at their portion of the property's fair market value. One of the defendant beneficiaries objected, asserting that the "liquidated and distributed" provision required the house to be sold in the open market.

The Appellate Court agreed with the trustee that she had the flexibility to proceed as she wished. The court noted that

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[13] *Id*. at 845 (citations and internal punctuation omitted).
[14] *Id*. at 849 (citations and internal punctuation omitted).
[15] 231 Conn. App. 460, 333 A.3d 818 (2025).

the word "liquidate" and its variations, as defined in Black's Law Dictionary and Merriam-Webster's Collegiate Dictionary, included settling a debt or obligation by payment. Accordingly, the court "[did] not agree with the defendant's argument that … the words 'liquidated and distributed' reflect[] an intent by the decedent that the trust property be sold."[16]

II. Remedies and Defenses

A. *Fraudulent concealment causes tolling of statutes of limitations.*

In *Curto v. Hartmann*,[17] the Appellate Court affirmed the trial court's finding that the defendants had fraudulently concealed the facts supporting the plaintiff's claims of fraud and unfair trade practice, causing the statutes of limitations on those claims to be tolled.

In 2016, the plaintiff loaned $100,000 to the defendants, Robert Hartmann and his company, HSGCHG Investments, LLC, to finance a concert. The written loan agreement provided for repayment of the full principal plus one third of the net proceeds from ticket sales for the concert. The concert was cancelled due to inclement weather.

Hartmann told the plaintiff that all the loan proceeds had been spent on expenses related to the concert, but assured the plaintiff that he would file a claim against an insurance policy that he had obtained for the concert, which would provide the funds needed for payment. He later also told the plaintiff that the concert would be rescheduled to 2017, and that the plaintiff would be paid from the proceeds of that event. The concert was never rescheduled, however, and the defendants never provided evidence of an insurance policy.

In April of 2018, the plaintiff obtained a copy of a bank statement showing that Hartmann had spent the great majority of the $100,000 in loan proceeds on personal expenses unrelated to the concert. In February of 2020, the plaintiff

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[16] *Id*. at 474.

[17] 235 Conn. App. 40, 344 A.3d 1244 (2025).

sued the defendants, alleging, among other things, fraud on the part of Hartmann and violations of the Connecticut Unfair Trade Practices Act, General Statutes Sections 42-110a *et seq*. (CUTPA), on the part of both defendants.

The defendants asserted that these claims were time-barred by the three-year limitations period stated in, respectively, General Statutes Section 52-577 and General Statutes Section 42-110g(f). The plaintiff countered that the defendants had fraudulently concealed these causes of action until April of 2018, when he obtained the bank statement showing the diversion of most of the funds.

The trial court entered judgment for the plaintiff on both of these claims, expressly crediting his assertion that the statutes of limitations had been tolled by the defendants' fraudulent concealment. The trial court found that the "'plaintiff repeatedly reached out to the defendants regarding the status of his repayment,' and '[t]he defendants knew ... that Hartmann [had] spent the [funds] on matters unrelated to the [concert],' but the defendants 'intentionally concealed this fact from the plaintiff by making false representations that Hartmann [had] spent the money [on expenses] for the [canceled] concert' and that 'the defendants would reimburse the plaintiff from an insurance policy payout ... [or] proceeds from a subsequent [concert]'."[18]

Based on those findings, the trial court concluded that the plaintiff first became aware of his claims for fraud and CUTPA violations in April of 2018, when he obtained the bank statement showing Hartmann's diversion of the funds. Applying the "clear, precise, and unequivocal evidence" standard of proof, the court found, pursuant to General Statutes Section 52-595,[19] that the limitations period had been tolled due to fraudulent concealment on the part of the defendants.

The Appellate Court found that the trial court's findings

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[18] *Id*. at 52.

[19] The statute provides: "If any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable therefor at the time when the person entitled to sue thereon first discovers its existence."

of fact were not clearly erroneous, and affirmed the judgment below.

B. *Arbitrator has broad discretion to impose constructive trust.*

In *Evexia Holdings, Inc. v. Geurts*,[20] the Appellate Court approved an arbitrator's imposition of a constructive trust upon stock in a closely held business, even though ownership of those shares was not directly at issue in the case.

The parties had entered into an agreement by which the defendant would provide consulting services in exchange for a ten percent equity stake in plaintiff Evexia Holdings, Inc. (Evexia) and monthly dividends based on the previous month's gross revenue. The relationship broke down, and the plaintiffs withheld payments.

In an ensuing arbitration, the defendant asserted claims of, among other things, breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, and violations of the Connecticut Unfair Trade Practices Act, General Statutes Sections 42-110a *et seq*. The arbitrator awarded the defendant compensatory damages in the amount of $1,838,000, punitive damages and interest.

The arbitrator also imposed a constructive trust, for the benefit of the defendant, upon the Evexia stock owned by its majority owner and president, co-plaintiff Kevin Bodling. That trust was to remain in place until the award was paid in full. In response to the defendant's ensuing application to the Superior Court to confirm the award, the plaintiffs objected to "the imposition of a constructive trust on property [that] is indisputably owned by [Bodling] and over which [the defendant] has made no claim."[21]

The trial court confirmed the award, noting various factors relied upon by the arbitrator supporting the imposition of a constructive trust:

> The arbitrator found that the plaintiffs misappropriated corporate assets that were to be distributed to [the defen-

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[20] 236 Conn. App. 742, 350 A.3d 620 (2025).
[21] *Id*. at 747, 748.

> dant] as dividends. These assets were, instead, diverted by the plaintiffs for Bodling's personal benefit, including the formation of new entities and the leveraging of income and stock to the exclusion of [the defendant] in violation of their fiduciary duties.... The arbitrator cited the wrongful creation of Evexia related entities by Bodling as an effort to deprive [the defendant] of the benefit of his bargain, as well as ongoing bad faith conduct, as a sufficient basis to support equitable relief and to find violations of [CUTPA].[22]

On appeal, the plaintiffs asserted that "the arbitrator manifestly disregarded the law by imposing a constructive trust on shares of stock owned by Bodling that, according to the plaintiffs, were not directly at issue in the arbitration."[23] The defendant countered that this relief was "appropriate and justified on the basis of the arbitrator's findings that the plaintiffs had diverted assets that should have been distributed to the defendant as dividends, including through the formation of new corporate entities and by impermissibly leveraging Evexia stock."[24]

The Appellate Court affirmed, determining that the arbitrator, "confronted with the facts and circumstances before him, reasonably could have concluded that, in order to ensure the defendant was able to receive the benefits to which he was entitled under the parties' agreement, a constructive trust on Bodling's Evexia and Evexia related stock was justified."[25] The arbitrator's award of that relief was not "legal error, let alone the type of obvious and indisputable error that would warrant vacating an arbitration award."[26]

The general test for imposing a constructive trust is "whether a party has committed actual or constructive fraud or whether he or she has been unjustly enriched."[27] In this case, the claimant did not assert a fraud claim, and his claim for unjust enrichment was denied because he prevailed on

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[22] *Id*. at 750.
[23] *Id*.
[24] *Id*. at 750, 751.
[25] *Id*. at 758.
[26] *Id*. at 754.
[27] *Id*. at 749, 750.

his claim for breach of contract, which is alternative to, not concurrent with, a claim for unjust enrichment. It is thus apparent that these twin touchstones of "actual or constructive fraud" and "unjust enrichment" refer to the flavor of the underlying facts, not the labels attached to the causes of action.

C. *Reaffirmation of debt tolls statute of limitations in collection case.*

In *Game Aviation (Management), Inc. v. Senbahar*,[28] an action by a note holder against a guarantor of the debt, the Appellate Court affirmed the trial court's entry of summary judgment for the plaintiff, notwithstanding the defendant's statute of limitations defense.

The plaintiff commenced suit in 2021, more than seven years after the date of default, which was in December of 2013. The applicable statute of limitations for breach of contract, General Statutes Section 52-576, imposes a six-year limitations period. The trial court, however, found that certain communications by the defendant constituted reaffirmations of the debt, thus re-setting the limitations clock.

The Appellate Court noted that a statute of limitations defense "can be lost by an unequivocal acknowledgment of the debt, such as a new promise, an unqualified recognition of the debt, or a payment on account."[29] Here, in January of 2019, within the limitations period, the defendant had emailed to the plaintiff's president, "I am working on a $250,000 payment. I anticipate [thirty] to [forty-five] days for the first installment." The defendant delivered two similar emails three years later, in January of 2022, and confirmed the substance of all three communications at his deposition.

The Appellate Court affirmed the judgment below. The court observed, "[i]n his emails, the defendant never indicated that he would not pay the debt. Rather, he repeatedly stated that he intended to make payments on the debt in installments, the first of which he planned to make within

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[28] 231 Conn. App. 483, 333 A.3d 128, *cert. denied* 351 Conn. 931, 334 A.3d 483, 484 (2025).

[29] *Id.* at 490. (Citation and internal punctuation omitted.)

thirty to forty-five days. In his deposition testimony, the defendant confirmed that the payment to which he was referring in these email communications pertained to the debt he owed under the guaranty agreement…"[30]

Although relying on the defendant's emails, plural, the court did not acknowledge that only the first email of the three had been sent within the limitations period; the second and third were sent after the limitations period had run, and indeed after suit had been commenced. Thus, by implication, this decision arguably supports the proposition that a debt reaffirmation can not only reset the limitations clock before it has run, but also reactivate a debt that is already time-barred.

D. *Creditor permitted to attach property not yet distributed out of probate estate.*

In *Maefair Health Care Center, Inc. v. Noka*,[31] an appeal from the denial of an application for prejudgment remedies, the Appellate Court held that a plaintiff could attach a defendant's interest, as an heir, in property that had not yet been distributed from her late mother's probate estate.

The plaintiff filed an application for prejudgment remedies against the conservator of Patricia Erts (Patricia) for unpaid services rendered. Patricia was the sole heir of Marguerite Erts (Marguerite), who had died four years earlier. Marguerite's probate estate, which remained pending, included a parcel of real property (property) that had not yet been distributed. The plaintiff sought to attach Patricia's interest in the property, but the trial court denied the application, noting that Patricia could "not transfer, encumber, or pledge the real property ... so long as that real estate is part of the estate of Marguerite Erts. The property is not under her control, and will not be under her control, unless it is transferred into the name of [Patricia] via a certificate of devise issued by the Probate Court."[32]

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[30] *Id.* at 491.
[31] 236 Conn. App. 1, 346 A.3d 1044 (2025).
[32] *Id.* at 5.

The Appellate Court reversed. The court noted that General Statutes Section 52-278a(e), part of the statutory scheme for prejudgment remedies broadly defines "property" as "any present or future interest in real or personal property, goods, chattels or choses in action, whether such is vested or contingent." The court also noted that under previous caselaw, "[i]t is well settled that 'a person's right of inheritance vests at the moment of the decedent's death ... and that although distribution occurs a considerable time thereafter, it relates back to the date of the death as the time when the right of the beneficiary became fixed'."[33]

The court acknowledged that "an heir's title during the administration of a testator's estate is 'subject to being defeated should it be necessary for the administration of the estate that it be sold by order of the court, and subject to the right of the administrator to have possession, care and control of it during the settlement of the estate, unless the [P]robate [C]ourt shall otherwise order."[34] But "[t]he fact that an heir's title may be contingent on the administration of a testator's estate, however, does not mean the heir does not have a vested interest in the property upon the death of the testator."[35] The statutory definition of "property" "does not require that a property interest be 'absolute…. [F]or purposes of attachment at the prejudgment remedy stage, property includes vested and/or contingent interests."[36]

E. *In suit by law firm against former client, court denies punitive damages for malicious breach of contract.*

In *McCarter & English, LLP v. Jarrow Formulas, Inc.*,[37] a law firm brought suit in the United States District Court against its former client, claiming breach of contract based on the client's nonpayment of more than $2 million in fees and

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[33] *Id.* at 7, quoting Bartlett v. Bartlett, 220 Conn. 372, 279, 599 A.2d. 14 (1991).

[34] *Id.* at 8, quoting O'Connor v. Chiascione, 130 Conn. 304, 306, 33 A.2d 336 (1943).

[35] *Id.* at 8.

[36] *Id.* at 9, 10.

[37] 351 Conn. 186, 329 A.3d 898 (2025).

expenses. The law firm sought an award of punitive damages on its contract claim, asserting that the client's breach had been wilful and wanton. The client asserted various counterclaims, including legal malpractice.

Following a jury trial, the court rendered judgment for the law firm on all claims and counterclaims. The jury found that the client's conduct in refusing to pay its legal bills had been wilful and malicious. Based on that finding, the district court certified to the Connecticut Supreme Court the question: "Can a law firm recover common-law punitive damages, i.e., litigation costs including attorney's fees, for its client's wilful and malicious breach of an agreement to compensate the law firm for legal services?"[38]

The law firm relied on the Connecticut Supreme Court's decision in a 1966 case, *Triangle Sheet Metal Works, Inc. v. Silver*,[39] in which the court had noted that punitive damages are not "ordinarily" recoverable for breach of contract, seemingly allowing for the possibility of such an award, and the Appellate Court's decision in a 1986 case, *L.F. Pace & Sons, Inc. v. Travelers Indemnity Co.*,[40] approving punitive damages against a surety company that had breached an implied contract to act as surety on certain construction performance and payment bonds.[41] The client countered with citations to the Appellate Court's decision in a 1996 case, *Barry v. Posi-Seal International, Inc.*,[42] in which the court noted that *L.F. Pace* was "[t]he single reported case in which an award of punitive damages for breach of contract was upheld," and that "the principles announced in [Triangle Sheet Metal Works] have been followed only in [regard] to insurance."[43]

The Connecticut Supreme Court addressed the certified question narrowly, holding that "a law firm may not recover

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[38] *Id.* at 192.

[39] 154 Conn. 116, 222 A.2d 220 (1966).

[40] 9 Conn. App. 30, 514 A.2d 766, *cert. denied*, 201 Conn. 811, 516 A.2d 886 (1986).

[41] 351 Conn. at 194, 196.

[42] 40 Conn. App. 577, 672 A.2d 514, *cert. denied*, 237 Conn. 917, 676 A.2d 1373 (1996).

[43] 351 Conn. at 197, 198, quoting Barry, 40 Conn. App. at 584, 588 n. 12.

common-law punitive damages for its client's breach of contract unless it pleads and proves the existence of an independent tort for which punitive damages are recoverable."[44] The court did "not disturb case law in this state that has allowed the recovery of punitive damages in certain breach of contract actions brought against the insurer or surety in the insurance and surety contexts," and "[left] for another day the determination of whether Connecticut will recognize additional exceptions to the majority rule" beyond those contexts.[45]

F. *Appellate Court reverses discharge of mechanic's lien.*

In *Pittu v. Bugaj Contractors Company, LLC*,[46] the Appellate Court reversed an order of the trial court discharging the defendant's mechanic's lien on the plaintiff's property.

The trial court found that the contractor had breached the parties' home-improvement contract, which provided that the issuance of a temporary certificate of occupancy shall be deemed substantial completion. That milestone was not achieved before the contractor stopped work. The trial court found that this breach "definitively established that the lien was not valid."[47]

The Appellate Court disagreed, holding that the trial court "incorrectly concluded that the defendant's breach was dispositive of whether the lien was valid."[48] The lack of substantial performance does not "preclude[] the contractor from asserting *any* lien amount. Rather, …in such a case, the lien may be sustained on the value of the services and/or materials rendered."[49]

G. *Contract claim against town not barred by sovereign immunity.*

In *Ready v. New Canaan*,[50] the plaintiff homeowners

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44 *Id*. at 211.
45 *Id*. at 211 fn. 8.
46 234 Conn. App. 28, 343 A.3d 808 (2025).
47 *Id*. at 39.
48 *Id*. at 44.
49 *Id*. at 42, 43.
50 232 Conn. App. 487, 336 A.3d 1252 (2025).

sued their town for flood damage to their property caused by the town's allegedly inadequate, and inadequately maintained, storm water system. The Town had entered into a right-of-way agreement with the plaintiffs' predecessor in title in 1950, by which the Town agreed to "use due care in constructing and maintaining the said public storm sewer…" The plaintiffs alleged that the Town had breached this obligation in various ways.

The Town moved for summary judgment on the grounds that the plaintiffs' claim was barred by sovereign immunity. The trial court granted the motion, holding that the plaintiffs had "simply recast their tort claims as a contract claim in an attempt to circumvent well settled Connecticut case law, which provides governmental immunity to municipalities and [their] employees for discretionary acts."[51]

The Appellate Court disagreed. "Because the plaintiffs' claim arises directly out of the defendant's alleged breach of a specific contractual provision contained within the right-of-way agreement, the plaintiffs' claim sounds in breach of contract rather than in tort."[52] The court reversed the judgment below and remanded the case for further proceedings.

H. *Foreclosure defendants could not pursue counterclaims against bank that they had failed to identify in their bankruptcy schedules.*

The Appellate Court's decision in *U.S. Bank Trust, N.A. v. Shuey*[53] illustrates the importance of a litigant knowing its adversary's bankruptcy history.

In *Shuey*, a residential foreclosure case commenced in 2015, the defendants asserted a counterclaim against the bank, alleging it had violated the Connecticut Unfair Trade Practices Act[54] by engaging in "fraudulent predatory real estate lending practices … issuing a loan with reckless disre-

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[51] *Id*. at 492.

[52] *Id*. at 497.

[53] 232 Conn. App. 618, 338 A.3d 353, *cert. denied* 353 Conn. 903, 341 A.3d 903 (2025).

[54] General Statutes Section 42-110a *et seq*.

gard of the risk of foreclosure…"[55]

While preparing for trial, counsel for the bank discovered that the defendants had filed for Chapter 7 bankruptcy protection in 2012, and had obtained a discharge that year. In the Schedule B accompanying the bankruptcy petition, which required the debtor-defendants to disclose "[o]ther contingent and unliquidated claims of every nature, including ... counterclaims of the debtor[s], and rights to setoff claims," they had checked "none."

The bank thereupon moved to dismiss the counterclaim based on lack of subject-matter jurisdiction. The bank argued that "because the defendants had not scheduled their counterclaim in their bankruptcy filings, the claims belonged to the bankruptcy estate, and the defendants did not have standing to pursue them."[56] The trial court granted the motion, and the Appellate Court affirmed.

I. *Treble damages and punitive damages, under separate statutes, held recoverable in the same case.*

White v. FCW Law Offices,[57] the Connecticut Supreme Court held that the plaintiff, a victim of identity theft, could recover treble damages under the identity theft statute, General Statutes Section 52-571h, as well as punitive damages under the Connecticut Unfair Trade Practices Act, General Statutes Sections 42-110a *et seq*. The court reversed the Appellate Court, which had held that relief under both statutes would constitute an impermissible double recovery based on the same transaction, occurrence or event.[58]

The court observed, "[j]ust as our criminal statutes authorize multiple punishments for conduct occurring in the same transaction when the statutes in question are intended to protect separate and distinct interests of society, so, too, the law sometimes provides a civil claimant multiple, cumu-

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[55] 232 Conn. App. at 641.
[56] *Id*. at 627.
[57] 352 Conn. 718, 338 A.3d 1128 (2025).
[58] The Appellate Court decision is reported at White v. FCW Law Offices, 228 Conn. App. 1, 323 A.3d 406 (2024).

lative remedies to redress different or distinctive types of harm, even if precipitated by a single incident."[59] The court further noted, "[t]here is nothing in CUTPA or § 52-571h (b) suggesting that the respective remedies provided thereunder are intended to be exclusive or in lieu of any other remedies."[60]

Indeed, the two statutory schemes may work in harmony. The court pointed out that trebled damages under the identity theft statute may be "relatively small in comparison to the systemic harm resulting from those schemes,"[61] while "the prospect of an award of punitive damages [under CUTPA] may encourage individuals to pursue claims that otherwise would not be filed."[62]

III. Choice of Law

A. *In case applying foreign law on the merits, local law held applicable to demand for attorneys' fees.*

In *Deutsche Bank AG v. Sebastian Holdings, Inc.*,[63] a case decided on the merits under the law of Turks and Caicos Islands (TCI), the Appellate Court agreed with the trial court that Connecticut law nevertheless applied to a post-trial motion for an award of attorneys' fees.

The plaintiff sued Sebastian Holdings, Inc. (SHI), a corporation organized under the laws of TCI, and Alexander Vik, its sole shareholder and director, to enforce a $243 million judgment that the plaintiff had obtained against SHI in the courts of England. In the Connecticut action, the plaintiff sought to pierce SHI's corporate veil and hold Vik personally liable for the judgment. The plaintiff argued that the court should apply the law of either Connecticut or New York; the defendants countered that the court should apply the law of TCI.

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[59] 352 Conn. at 727 (citation and internal punctuation omitted).
[60] *Id.* at 728.
[61] *Id.* at 735.
[62] *Id.*
[63] 236 Conn. App. 330, 347 A.3d 970 (2025).

Following a bench trial, the trial court, applying TCI law, entered judgment for the defendants, finding the plaintiff's veil-piercing claim to be without merit. The Connecticut Supreme Court affirmed that judgment,[64] expressly declining to decide whether the trial court had ruled correctly on the choice of law issue; the court determined, "the trial court's factual findings foreclose [the plaintiff's] claim under New York, Connecticut, and TCI law, and, therefore, any error in the trial court's choice of law analysis or application of TCI law was harmless."[65]

The defendants filed a motion in the trial court for an award of attorneys' fees, which by the conclusion of the appeal amounted to some $11.5 million. They argued that "their entitlement to attorney's fees was governed by TCI law and that TCI law follows the so-called 'English rule,' pursuant to which a prevailing party generally is entitled to its litigation expenses, including attorney's fees."[66] The plaintiff countered that "under Connecticut choice of law rules, the issue of attorney's fees was a procedural matter governed by Connecticut law [and] because Connecticut follows the 'American rule,' pursuant to which each party is responsible for its own attorney's fees unless a statute or contract provides otherwise … the defendants were not entitled to attorney's fees as prevailing parties."[67] The trial court agreed with the plaintiff, and denied the defendants' motion.

The Appellate Court affirmed. "The ordinary rule is that where a cause of action arising in another [jurisdiction] is asserted in our courts, we look to the laws of that [jurisdiction] to determine all matters of substance involved in it, but that matters of procedure are governed by our own law .... Procedural statutes have been traditionally viewed as affecting remedies, not substantive rights ... While there is no precise definition of either [substantive or procedural law], it is generally agreed that a substantive law creates, defines and

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64 The decision is reported at 346 Conn. 564, 294 A.3d 1 (2023).
65 *Id*. at 592.
66 236 Conn. App. at 333.
67 *Id*. at 333, 334.

regulates rights while a procedural law prescribes the methods of enforcing such rights or obtaining redress."[68]

The court then turned to the issue of whether the defendants' motion should be classified as substantive or procedural. The court noted that "the TCI rule allowing for the recovery of attorney's fees by a prevailing party is not specific to the cause of action at issue in this case but applies generally to all civil actions."[69] The issue raised by the motion was unrelated to the merits of the case. "[A] determination of the defendants' entitlement to such fees is unrelated to the substantive law governing the plaintiff's veil piercing claim… [A]n award of prevailing party attorney's fees does not require a substantive examination of the claims and defenses or a finding that the losing party acted wrongfully in connection with the events underlying the cause of action."[70] Under this standard, the defendants' motion for attorney fees was a procedural matter, to be decided under local law.

This holding, specific to a motion for attorneys' fees under the "English Rule," would not necessarily apply to motions for attorneys' fees on other grounds. For example, under Connecticut law, a motion for attorneys' fees on the grounds of bad faith requires proof that the adverse party's claims were "entirely without color and that the litigant acted in bad faith," the first prong of which "focuses on the merits of the claim."[71] That is, a request for attorneys' fees on that basis is bound up with the merits of the case, and thus has elements of both substantive law and procedural law. If the case was brought under foreign law, arguably that law should apply to a motion for bad-faith attorneys' fees. Similarly, this decision seems inapplicable to a suit based on a foreign statute that includes an attorneys' fees provision.

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[68] *Id*. at 336, 337.
[69] *Id*. at 341.
[70] *Id*.
[71] Lederle v. Spivey, 332 Conn. 837, 844, 845, 213 A.3d 481 (2019).

B. *Appellate Court examines interplay between secular law and ecclesiastical law.*

The Appellate Court's decision in *Foundation for the Advancement of Catholic Schools, Inc. v. Blair*,[72] implicated the authority of secular courts to resolve issues about the governance of a non-profit organization whose Board of Trustees is appointed by the Archbishop of Hartford.

The plaintiff (FACS) promotes Catholic education by raising funds and providing scholarships to students who wish to attend an Archdiocese of Hartford school. Pursuant to FACS's bylaws, the corporation is governed by a Board of Trustees. The bylaws provide for a Governance Committee tasked with nominating "'a slate of qualified candidates' for vacant or soon to be vacant board positions, 'for submission to the Archbishop who shall make appointments to the board ....'"[73]

The case arose from a dispute over whether the Archbishop could appoint board members other than those nominated by the Governance Committee. FACS brought a declaratory judgment action against the Archbishop and five such appointees, seeking a determination that the appointments were void, by operation of the corporation's bylaws.

The trial court dismissed the case for lack of subject matter jurisdiction, concluding that "exercising jurisdiction over the action would violate the free exercise and establishment clauses of the first amendment to the United States constitution because adjudicating the dispute would result in the excessive entanglement of government and religion."[74] The court feared that adjudicating the plaintiff's claims "would entangle it in 'matters of religious doctrine, religious practices and church polity,' namely, 'the religious context in which the archbishop appoints members to the board of a religious organization ....'"

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[72] 230 Conn. App. 793, 332 A.3d 990, *cert. denied* 351 Conn. 927, 333 A.3d 1108 (2025).

[73] *Id.* at 809.

[74] *Id.* at 794.

The Appellate Court reversed. The court found, "the relevant language in the bylaws concerning the procedure for appointments to the board is entirely secular and cannot reasonably be interpreted as implicating issues of religious doctrine or practice or of church government, policy or administration. Put another way, nothing in the pertinent bylaw provision indicates that an analysis of the claims raised by the plaintiffs would require a court to go beyond the secular legal principles governing corporations and the interpretation of bylaws and to resolve impermissible ecclesiastical issues."[75]

IV. Foreclosure

A. *Appellate Court provides guidance on resetting of law days after denial of motion to open judgment.*

In *U.S. Bank National Association v. Melcon*,[76] a foreclosure case, the Appellate Court addressed the issue of how the law days are reset after a defendant unsuccessfully moves to open a judgment of strict foreclosure.

The trial court's foreclosure judgment set a law day of May 1, 2023, with title to vest in the plaintiff two days later. On that day, the defendants moved to open the judgment and extend the law day. That motion was denied on the same day. Because the denial order was an appealable event, the order triggered the 20-day appellate stay, during which the law days could not run. The defendants did not appeal from that order, and no party moved to reset the law days.

The defendants then filed a second motion to open, on August 21, 2023. The trial court denied that motion, on the grounds that it lacked jurisdiction to do so because title had already passed to the plaintiff. In an articulation, the court explained:

> This court's denial of the defendants' motion to open on May 1, 2023, created an appellate stay of twenty days that expired on May 21, 2023. As a matter of law, therefore, no

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[75] *Id.* at 810, 811.

[76] 234 Conn. App. 667, 344 A.3d 967 (2025).

> law day set within that period would be valid, and once the appellate stay expired, a new law day would be effective. …. While the court might have set a new law day when it denied the [first] motion to open, it was not required to do so. In the absence of such an order, the first law day, for the holder of the equity of redemption, was the first Monday after the expiration of the appellate stay, that is, May 22, 2023. The defendants and a junior lienholder having failed to redeem, title vested in the plaintiff on May 24, 2023."[77]

But the Appellate Court disagreed, holding that "law days do not automatically reset after the conclusion of an appeal period in which no appeal is filed…. [A] law day cannot pass silently, without all parties having proper notice"[78] The court remanded the case to the trial court, to make a new finding as to the amount of the debt and to reset the law days.

B. *Hearsay rule bars testimony about would-be party admissions by unidentified bank employees.*

In *Hudson City Savings Bank v. Hellman*,[79] a foreclosure case, the defendant Charles Hellman sought to testify about telephone conversations he allegedly had with unnamed representatives of the plaintiff's loan servicer, Bank of America, N.A. (BANA). The trial court sustained the bank's hearsay objections, rejecting the defendant's contention that the communications constituted party admissions. The Appellate Court agreed.

The court noted, "[p]arty opponent admissions … do not fall within [the] exception to the prohibition against hearsay statements when the declarant is unidentifiable."[80] This is because "[b]efore evidence can be admitted to show what an agent said, it must be established that the agent was authorized by the principal to make an admission."[81]

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[77] *Id*. at 673.
[78] *Id*. at 685.
[79] 234 Conn. App. 45, 343 A.3d 781, *cert. denied* 353 Conn. 920, 345 A.3d 809 (2025).
[80] *Id*. at 73.
[81] *Id*.

The defendants' inability to identify the speakers rendered them unable to meet that obligation. "Here, the defendants failed to establish the scope of the authority or the identity of the purported agents of BANA, sufficient to justify admitting Charles' proffered hearsay testimony. Given that Charles could not identify who these 'representatives' were, or the scope of their authority, the court was well within its discretion in determining that the statements offered by Charles were inadmissible hearsay."[82]

[82] *Id*. at 74.