Highlights

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trees and limbs, regardless of whether the defendant had actual or constructive knowledge of the defective condition, Restatement § 363(1). (Note that the Restatement rule provides for a notable exception to this rule for injuries to users of public highways.)

A right of first refusal for the purchase of a lot, executed in connection with the purchase of an adjoining lot, is a private contractual right that terminates upon the death of the grantee and does not pass to the grantee's heirs (at least in the absence of language referring to succession), even if the right was assignable and was recorded on the land records. *Montanaro v. Ciliberto*, 64 CLR 67 (Arnold, Richard E., J.).

A failure to include a warning of a real estate broker's listing lien in a commercial real estate listing agreement does not render the agreement unenforceable against a sophisticated property owner. *Cushman & Wakefield v. 12 CDT*, LLC, 64 CLR 276 (Krumeich, Edward T., J.). The opinion also holds that an evaluation of whether a real estate listing agreement "substantially complies" with the seven specific disclosure statements which must be provided by the broker, and therefore whether a commission is enforceable under the agreement, Conn. Gen. Stat. § 52-225a(d)(1), does not require "substantial compliance" with each of the seven statutory requirements but rather only "substantial compliance" with the requirements viewed as a whole.

State and Local Government Law

Weinstein v. Hansen, 64 CLR 272 (Vitale, Elpedio N., J.), holds that the statute authorizing voting in town elections by any citizen of the United States over the age of 18 who "is liable to the town, district or subdivision for taxes," Conn. Gen. Stat. § 7-6, authorizes voting by trustees of trusts that contain real property, because a trustee technically owns the trust property, pays the property tax, and is personally responsible for the tax. The town officials who are contesting this mandamus action unsuccessfully argued that a trust rather than a trustee owns the property in trust, and, alternatively, that only natural persons may vote. The trustees in this case are natural persons.

It is clear that the immunity provisions of the Civil Preparedness, Emergency Management & Homeland Security Act, Conn. Gen. Stat. § 28-13 (providing immunity from liability for personal injury and property damage claims for the state, all municipalities and all members of the "civil preparedness forces" during a formally declared "major disaster or emergency"), commences upon the formal declaration of a disaster or emergency by the governor. However, it is not clear from the Act when the immunity period *terminates*. This opinion holds that the terminating event is not necessarily the entry of a formal declaration that a declared emergency has ceased (an official act that is often delayed well beyond the resumption of normal activities). The matter involves a claim against an ambulance service for negligently failing to promptly transport a patient to a hospital during the early part of a declared emergency resulting in the patient's death. The snow storm which prompted the emergency declaration had ceased when the ambulance arrived but roads had not yet been fully cleared. The emergency was not formally terminated until approximately a month later. *Sena v. American Medical Response of Connecticut, Inc.*, 64 CLR 107 (Kamp, Michael P., J.).

Sifuentes v. Norwalk Parking Authority, 63 CLR 291 (Radcliffe, Dale W., J.), holds that the broad grant of powers to municipal parking authorities under Conn. Gen. Stat. § 7-204 includes the implied power to sue and the capacity to be sued.

The defense of governmental immunity for claims based on discretionary acts by municipal employees does not apply to nuisance claims. *Gabrysch v. Stonington*, 64 CLR 314 (Bates, Timothy D., J.).

Zoning

Rooney v. Madison ZBA, 64 CLR 390 (Ecker, Steven D., J.), holds that an adjustment to the boundary between two adjoining lots must be counted for purposes of determining whether any further division will constitute a "subdivision" (defined, in part, as a "division of a tract or parcel of land *into three or more parts or lots*"), thereby requiring planning commission approval, only if the adjustment was made "*for the purpose* . . . of sale or building development," Conn. Gen. Stat. § 8-18. The opinion holds that modest lot line adjustments between one larger lot and two adjoining lots owned by members of the same family, made to make beach rights held by the larger lot available to the other two lots, did not constitute a "subdivision" because the adjustments were for a purpose other than "sale or building development." Therefore the construction of a home on the larger lot several years later did not require subdivision approval from the zoning commission. The opinion also holds that the portion of a lot relied on to satisfy a zoning ordinance's minimum "frontage" requirement need not include the driveway relied on for entry to the lot; it is only necessary that the lot have sufficient frontage and that access be available somewhere on the lot. **CL**