Highlights | Recent Superior Court Decisions

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Administrative Law

New Section-Glen Oaks Condominium Association v. Glen Oaks Condominium Association, 68 CLR 157 (Shapiro, Robert B., J.T.R.), holds that the special "small board" rules to govern meetings of boards with 12 or fewer members, now available under Roberts' Rules of Order, apply to condominium association board of director meetings, including the rule dispensing with the traditional requirement that all motions be seconded.

Under the Administrative Procedure Act the oral entry of an agency decision immediately commences the running of the 45-day period to appeal the decision to the superior court, even if a written decision is later issued. *Raffalo v. Board of Firearms Permit Examiners*, 68 CLR 145 (Cohn, Henry S., J.T.R.). This opinion dismisses a late appeal from an oral decision by the Board of Firearms Permit Examiners to deny a permit, even though the appeal was filed within 45 days of receipt of a subsequently issued written decision.

Arbitration Law

Gallagher v. Merville, 67 CLR 783 (Wilson, Robin L., J.), holds that the Practice Book and statutory provision limiting the right to a trial *de novo* under the judiciary's mandatory arbitration program to parties who "appeared" at the arbitration, Practice Book § 23-66(c) and Conn. Gen. Stat. § 52-459z(c), is satisfied by an appearance by the requesting party's counsel only, at least with respect to requests by defendants, as is the situation in this case. The opinion broadly states the rule as allowing a trial *de novo* by either a nonappearing *plaintiff* or nonappearing *defendant*, but the rationale primarily addresses factors relevant only to requests from defendants.

Whether multiple disputes between two insurers, arising out of claims under multiple liability policies issued pursuant to a single reinsurance treaty that contains a general arbitration clause, should be consolidated for arbitration, presents a procedural issue which should be resolved by an initial arbitration panel rather than by the court. *Employers Insurance Co. of Wausau v. Hartford*, 67 CLR 806 (Shapiro, Robert B., J.T.R.).

Contracts

A contract authorizing a prevailing party to recover trial attorney fees without expressly referencing appellate fees, is presumed to include appellate as well as trial fees, unless the agreement expressly provides otherwise. *Rocco v. Shaikh*, 68 CLR 192 (Tanzer, Lois, J.T.R.). The opinion also holds that a request for fees by a prevailing party is subject to less judicial scrutiny as to amount and reasonableness with respect to claims made pursuant to a *contractual* right to fees, than for a claim for *statutory* fees, because statutory fees are imposed to advance a public purpose and therefore require enhanced judicial oversight.

A contractor's failure to comply with the statutory minimum requirements of the Home Improvement Act, Conn. Gen. Stat. § 20-418 et seq., may be asserted by a homeowner, not only defensively as a bar to the contractor's breach of contract claim, but also affirmatively in support of an application to discharge a mechanic's lien filed by such a contractor to secure payment on the invalid agreement. The opinion notes that there is no appellate precedent on the issue. *Tanius v. Villwell Builders*, LLC, 68 CLR 194 (Shaban, Dan, J.).

The Home Improvement Act applies to the construction of a sophisticated tree house behind a residence with substantial beams to carry the weight of the tree house, traditional house framing, flooring, a loft, and roof rafters. This opinion holds that an unlicensed carpenter hired by a homeowner to build a tree house cannot recover under an oral contract after a dispute arose due to the amount and timing of progress payments. *Reyes v. Vivona*, 68 CLR 198 (Genuario, Robert L., J.).

Law of Lawyering

An attorney's litigation privilege extends to claims of fraudulent misrepresentation of the value of a client's cause of action against a third party being offered as an assignment in exchange for a release of the plaintiff's claim against the client, even though the representations are only indirectly related to the matter in which they were made. *Ghio v. Liberty Insurance Underwriters, Inc.*, 68 CLR 219 (Moukawsher, Thomas G., J.). This opinion dismisses a complaint alleging that the defendant/attorney falsely misrepresented the strength of a client's cause of action against a liability insurer for coverage of the plaintiff's claim, in connection with negotiations for the assignment of the cause in exchange for a release in favor of the attorney's client.

Pensions and Other Employee Benefit Plans

Welsh v. Martinez, 68 CLR 1 (Schuman, Carl J., J.), holds that although retirement

accounts are generally exempt from execution to satisfy a creditor claim, such accounts may be taken into consideration for purposes of determining whether a debtor has the financial ability to pay a fine imposed as a sanction for civil contempt of court. The opinion reasons that (a) a sanction order is not directed at the retirement funds but rather merely relies on those funds in making an evaluation as to whether it is equitable to deny the debtor's request for a stay, and (b) application of the exemption statutes is limited to orders issued "for the purpose of *debt collection*," Conn. Gen. Stat. § 52-352a(c).

Real Property Law

An owner of property in joint tenancy or a co-tenancy with one or more other owners has an absolute right to have the property partitioned among the owners, either by a partition in kind or a sale and a distribution of the proceeds, regardless of inconvenience to the other owners or to tenants, except under unusual circumstances making a partition impractical. The opinion presents a brief and useful review of the law of partition. *Da Foz, LLC v. Dos Santos*, 68 CLR 86 (Kowalski, Ronald E., J.).

The statute authorizing the recovery by a consumer who successfully prosecutes or defends an action on an agreement providing for the recovery of fees by the commercial party does not apply to an action by a condominium association for the recovery of association fees because such an association is not a "commercial party." *West Farms Condominium Association No. 1, Inc. v. Amaio*, 68 CLR 241 (Aurigemma, Julia L., J.).

Social Services

Although boy scout officials are not mandated reporters under the Mandated Reporter Statute because they are not included in the statutory list of "mandated reporters," Conn. Gen. Stat. § 17a-101(b), such officials are protected by the statute's grant of immunity from liability from claims arising out of the reporting of suspected child abuse, as agents of an "institution [or] agency which, in good faith, makes a report pursuant to [the Statute]," Conn. Gen. Stat. § 17a-101e(b). *Day v. Dodge*, 67 CLR 750 (Knox, Kimberly Ann, J.).

Tax Law

American Tax Funding, LLC v. First Eagle Corp., 67 CLR 763 (Cobb, Susan Quinn, J.), holds that a strict foreclosure of any municipal tax lien by an assignee of multiple liens securing tax obligations on the same parcel but for multiple years, will preclude any further recovery on the remaining tax obligations, because pursuant to Conn. Gen. Stat. § 12-195h, the assignee is subject to the same tax enforcement limitations as a municipality including, in particular, (a) a lack of authority to seek a deficiency judgment following the strict foreclosure of a tax lien, and (b) the automatic discharge of all remaining tax liens on the same parcel following a strict foreclosure.

The time limit by which an owner of rental real property must "annually *submit* to the assessor" a form disclosing income and expense information for use in establishing a tax appraisal value, "not later than the first day of June," after which a ten percent penalty is authorized, Conn. Gen. Stat. § 12-63c(a), is satisfied only by the physical delivery of the form to the assessor on or before the required date. A form deposited with the US Postal Service but not physically delivered to the assessor by that date, is not timely and therefore exposes a taxpayer to the ten percent penalty for a late submission. *Seramonte Associates, LLC v. Hamden*, 67 CLR 862 (Richards, Sybil V., J.).

Torts

Derby v. Tails of Courage, Inc., 68 CLR 154 (Bentivegna, James M., J.), holds that the Dog Bite Statute's imposition of strict liability on "the owner or keeper" of a dog, Conn. Gen. Stat. § 22-357, imposes liability on either the owner or the keeper but not both. The opinion holds that a parent who took temporary possession of a dog from a kennel owner for an overnight trial visit before "adopting" the dog cannot prosecute a claim under the Act on behalf of the child for an attack while driving home from the kennel, because the only person liable under the Act is the parent as the dog's "keeper."

Connecticut does not recognize a civil cause of action for "harassment." *Crossen v. Diehl*, 68 CLR 162 (Sicilian, James, J.). The opinion dismisses a count of a complaint alleging that the defendant committed a tort of "harassment" by yelling and directing obscene gestures at a neighbor.

The dismissal of an apportionment plaintiff from a civil action does not require dismissal of the apportionment defendant, because the Apportionment Impleader Statute expressly provides that any impleaded apportionment defendant "*shall be a party [to the action] for all purposes*," Conn. Gen. Stat. § 52-102b. *Pitner v. Danbury Mall, LLC*, 68 CLR 115 (Krumeich, Edward T., J.).

The public benefit of encouraging family members to include a troubled family member within the family circle for therapeutic purposes, as by permitting an adult child with a known propensity toward violence to reside with the child's parents, provides a public policy justification for construing tort law as relieving such parents of liability for injuries inflicted on a third party by an adult child while on the parent's premises. *Lewis v. Natal*, 68 CLR 126 (Blue, Jon C., J.T.R.).

In wrongful death actions brought pursuant to Conn. Gen. Stat. § 52-555, the plaintiff's damages for "*death itself*"—as opposed to pre-death losses such as pain and suffering, medical expenses, and damage to personal property—include not only damages for the loss of future earnings, but also for loss of the capacity to carry on and enjoy *non-work* activities such as raising children, engaging in hobbies, and participating in athletic activities. *Myrick v. Jack A. Halprin, Inc.*, 67 CLR 308 (Wilson, Robin L., J.).

Trusts and Estates

An unconditional waiver of a claim by the Commissioner of Administrative Services against a decedent's estate for medical assistance payments to the decedent, issued in response to the receipt of an "Affidavit in Lieu of Probation" as authorized for small estates by Conn. Gen. Stat. § 45a-273, cannot be revoked upon the discovery of additional estate assets, provided there was no fraud in the issuance of the

Continued on page 40 →

President's Message

Continued from page 5

fice, and watch him figure out how to get on YouTube on my cellphone, as he spins around in my office chair, I realize that this is not the end of the story. This is simply the beginning of another chapter. To survive in this fast-changing world, we must learn from the past, and continue to adapt and progress as a profession that recognizes current market trends. We must leave our old predispositions and refrain from blindly following the practices of law that were relevant almost three decades ago. That world no longer exists. The time for meaningful change is now. The work must begin today.

As the president of the CBA, I pledge to ensure we continue to transform the organization to ensure we are serving the needs of our members and addressing the market trends. I also look forward to working to help improve the viability of law firms and ensure our community members can access justice. If you are interested in joining the CBA on this historic journey to protect the rule of law, please reach out to us at msc@ctbar.org to discuss how you can get more involved. ■

NOTES

1. Berners-Lee, Tim (March 1989). "Information Management: A Proposal". World Wide Web Consortium. Retrieved July 11, 2019, from https://govbooktalk.gpo.gov/tag/history-of-the-world-wide-web.
2. Cambridge University Press. (2008). Cambridge online dictionary, Cambridge Dictionary online. Retrieved July 11, 2019, from https://dictionary.cambridge.org/dictionary/english/tablet.
3. Henderson, Bill (January 2018). Legal Services and the Consumer Price Index (CPI). Retrieved July 11, 2019, from www.legalevolution.org/2018/01/legal-services-consumer-price-index-cpi-cost-going-up-wallet-share-going-down-042.
4. *Id.*
5. *Id.*
6. *Id.*; Law and More (May 2012). "Solo Practices: Your competition is DIY, e.g. LegalZoom, not other law firms." Retrieved July 11, 2019 from lawandmore.typepad.com/law_and_more/2012/05/solo-practices-your-competition-is-diy-eg-legalzoom.html.
7. National Center for State Courts (2015). "the Landscape of Civil Litigation in State Courts." Retrieved July 11, 2019 from www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx.
8. *Id.*
9. *Id.*
10. *Id.*
11. Georgetown Law Center for the Study of the Legal Profession (2018). "Report on the State of the Legal Market." p. 14. Retrieved July 11, 2019 from www.legalexecutiveinstitute.com/wp-content/uploads/2018/01/2018-Report-on-the-State-of-the-Legal-Market.pdf.
12. *Id.*
13. *Id.* at p.3
14. *Id.*
15. *Id.* at p. 14.
16. *Id.* at p.15
17. *Id.* at p.15.
18. Storm, Roy (December 2017). "Big Law Looks On as 'New Law' Gets Closer to Clients," The Am Law Daily. Retrieved July 11, 2019 from www.law.com/americanlawyer/sites/americanlawyer/2017/12/07/big-law-looks-on-as-new-law-gets-closer-to-clients.
19. Koch, Adrienne B. (February 2019). "The case for bar associations: Why they matter." Retrieved July 11, 2019 from www.abajournal.com/voice/article/the-case-for-bar-associations.
20. *Id.*
21. *Id.*
22. *Id.*

Informal Opinions

Continued from page 14

the witness's testimony, and is being made solely for the purpose of compensating the witness for the time the witness has lost in order to give testimony in litigation in which the witness is not a party … such payments do not violate the Model Rules."); CBA Informal Opinion 92-30, *Payment to Attorney as Fact Witness* ("Compensation for income lost in order to be a witness is permitted for both payor and payee, as long as the payment neither affects nor is intended to affect the content of the testimony.").

The financial inducement at issue in the facts presented here is not described as payment for a witness's time and expenses, nor may it reasonably be characterized as such.

2. Along similar lines, Conn. Gen. Stat. § 53a-150 makes it a Class C felony to "solicit[], accept[] or agree[] to accept any benefit from another person upon an agreement or understanding that such benefit will influence his testimony or conduct in, or in relation to, any official proceeding."
3. On the surface, Rule 3.4(2) would appear not to apply where it is the witness demanding the inducement, rather than the lawyer *offering* the inducement. But of course, if the lawyer were to agree to the witness's demand, the lawyer would then be in the position of offering an inducement.

Highlights

Continued from page 37

affidavit. *Commissioner of Administrative Services v. Mulcahy*, 67 CLR 274 (Noble, Cesar A., J.).

■ Workers' Compensation Law

Fuller v. Western Connecticut Health Network, Inc., 67 CLR 802 (Krumeich, Edward T., J.), holds that the provision of the Connecticut Workers' Compensation Act that authorizes an employer to intervene in an employee's personal injury action against a third party tortfeasor arising out of a work-related accident to recover paid workers' compensation benefits from the employee's recovery, Conn. Gen. Stat. § 31-293, applies only to benefits paid under the *Connecticut* Compensation Act and not to benefits paid under the compensation laws of any other state. Therefore, an employer who has paid benefits pursuant to another state's compensation laws cannot intervene as a matter of right in an action brought by an employee in Connecticut.

An employer's lack of workers' compensation insurance causes the loss not only of the employer's immunity from common-law liability for injuries to employees, but also (a) loss by the employer's employees of immunity from common-law liability claims by co-employees, and (b) loss of the employer's immunity from loss of consortium claims by employee spouses. *Wilson v. Hopkins*, 67 CLR 766 (Moukawsher, Thomas G., J.).

■ Zoning

188 Westmont Lot B, LLC v. West Hartford PZC, 68 CLR 208 (Berger, Marshall K., J.T.R.), holds that alternate proposals for IWC applications that *preserve* existing wetlands should be given preference over alternatives that *modify*, *enhance*, or *create wetlands*. The opinion vacates a commission decision to approve an application to locate a home directly over an existing wetland while authorizing the creation of a larger wetland area on another portion of the lot. ■