Highlights | Recent Superior Court Decisions

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Arbitration

330 Railroad Avenue, LLC v. JCS Construction Group, Inc., 68 CLR 807 (Mottolese, A. William, J.T.R.), holds that an arbitration clause of a construction contract that provides for the application of the rules established by a particular arbitration organization, here the American Arbitration Association, while expressly providing that the arbitration shall *not be heard* by the designated organization in violation of the organization's rule prohibiting the use of its rules in arbitrations it does not administer, does not defeat the clause even though compliance is seemingly impossible and may be illegal.

Bankruptcy and Foreclosure

LBI, Inc. v. Sparks, 68 CLR 620 (Calmar, Harry E., J.), holds that the exception to the permanent bankruptcy injunction against suits against a discharged debtor, for claims brought solely in aid of the prosecution of a claim against a third party, applies only to actions to enforce subrogation rights against insurers and contractual rights against guarantors and not to actions to enforce contractual indemnification rights. The opinion reasons that in subrogation actions and actions against guarantors relief is being sought on an obligation directly owed by the third party to the creditor so that relief is available without entry of a judgment against the discharged debtor, whereas a contractual right to indemnification arises only after a debtor has incurred an out-of-pocket expense and therefore cannot be enforced without the entry of a judgment against the debtor.

In a mortgage foreclosure action a dispute over the proper description of the property securing the obligation bars entry of summary judgment as to liability, both because there is an unresolved issue of fact (the identification of the property subject to the mortgage), and because judicial efficiency would be served by resolving the dispute before entry of summary judgment. A title search has revealed that a portion of the property described in the mortgage deed infringed on an adjoining neighbor's land to an as yet undetermined extent. *Wells Fargo Bank, N.A. v. El-Sharnouby*, 68 CLR 891 (Taylor, Mark H., J.).

Civil Procedure

A public school district is an entity existing independent of the district's board of education. Therefore the only statutory authorization for service of process against a school district is Conn. Get. Stat. § 52-57(b)(4) which authorizes service "upon its clerk or one of its committee." Service upon any other town department or official, including the town clerk, would be insufficient. *Mulvihill v. Danbury Public Schools*, 68 CLR 849 (D'Andrea, Robert A., J.).

Contracts

A general contractor's imposition of a mandatory job site safety program and monitoring of subcontractors for compliance do not establish sufficient control to impose liability for injuries at areas under subcontractor control. *Bustamante v. FIP Construction, Inc.*, 68 CLR 765 (Budzik, Matthew J., J.).

The statute prohibiting the commencement of an action to recover a real estate commission by a person not holding a valid real estate license, Conn. Get. Stat. § 20-325a(a), does not impose a subject-matter jurisdictional requirement. Therefore a person relying on the statute to defend an action to enforce a commission must assert the statute as a special defense. This opinion denies a motion to dismiss a complaint for a commission brought by an unlicensed person, sought on the grounds that the statute deprived the plaintiff of standing because no special defense had been filed. *Connecticut Building Solutions, LLC v. Boliakis*, 68 CLR 609.

Allegations that the defendant, a managing member of a limited liability company, negligently misrepresented the LLC's capabilities as a construction contractor and negligently supervised the performance of a construction contract between the plaintiff and the LLC, are sufficient to state claims against the defendant individually for negligent misrepresentation and a violation of CUTPA. However, the allegations are insufficient to state a claim against the defendant individually for negligent supervision of the LLC's performance of the contract. *Bibb v. Modern Construction, LLC*, 68 CLR 903 (Shaban, Dan, J.).

Environmental Law

Blue Bird Prestige, Inc. v. Stratford IWC, 68 CLR 727 (Radcliffe, Dale W., J.), holds that the statutory extension of the jurisdiction of inland wetlands commissions to include activities in upland review areas, Conn. Get. Stat. § 22a-42a(f) (authorizing jurisdiction over any activity in an upland area "likely to impact or affect wetlands or watercourses"), does not authorize IWC

regulation of any activity in such an area but rather only activities that are "likely to impact or affect wetlands or watercourses." This matter involves a commission decision to deny a wetland application on grounds that there is an available alternate use for the upland review area which would pose a reduced risk of impacting an adjacent wetland area. The opinion holds that the absence of any evidence that the proposed activity is likely to have an effect on the wetland area deprives the commission of any authority to deny the application, or even to exercise its authority to impose a "feasible and prudent alternative" to the proposed application, Conn. Get. Stat. § 22a-41.

Immigration Law

In a civil action for injuries incurred in a motor vehicle accident brought by a foreign alien, the alien may not be questioned concerning immigration status because such questioning may interfere with the state and federal constitutional right of all foreign aliens to access to the civil courts of this state regardless of immigration status, unless the alien is seeking damages for a loss of future wages (because the likelihood that such a claimant will leave the country is relative to an evaluation of future income). *De Lantigua v. Shaw*, 68 CLR 871 (Krumeich, Edward T., J.). The opinion also makes the broader holding that the status of an alien defendant's operator's license is inadmissible in an action for personal injuries from a motor vehicle accident, other than, perhaps, in an action for negligent entrustment.

State and Local Government Law

Tierinni v. Noonan, 68 CLR 906 (Sferrazza, Samuel J., J.T.R.), holds that State marshals are "state officers or employees" within the definition of that phrase contained in the Claims Against the State Act, Conn. Get. Stat. § 4-141(5). Therefore any claim against a state marshal arising out of the performance of service of process duties must be first presented to the Claims Commissioner pursuant to the Claims Act.

Only the Superior Court, and not a Probate Court, has authority to appoint directors for an inactive and dysfunctional nonstock corporation that owns a cemetery which has fallen into a state of disrepair. The court's authority is established by the Nonstock Corporation Act, Conn. Get. Stat. § 33-1091a, and not by a statute specifically applicable to cemeteries. The opinion notes the lack of judicial precedent governing the management of deteriorating cemeteries. *Bridgeport Probate Court v. Park Cemetery Association, Inc.*, 68 CLR 791 (Arnold, Richard E., J.T.R.).

Unemployment Compensation

JCC of Greater New Haven, Inc. v. Administrator, Unemployment Compensation Act, 68 CLR 872 (Richards, Sybil V., J.), holds that in an appeal from a decision of the Employment Security Appeals Division Board of Review, the granting by the Board of the appellant's motion to correct a finding does not authorize the court to question the board's credibility determinations in light of the corrections, because a court on appeal from the Board may only consider "evidence certified to it by the board and then for the limited purpose of determining whether the finding should be corrected," P.B. § 9-2(a). The opinion also holds that an unsworn statement of an applicant's co-worker is admissible as evidence in an unemployment compensation proceeding.

Zoning

B. Metcalf Asphalt Paving, Inc. v. North Canaan PZC, 69 CLR 24 (Shaban, Dan, J.), holds that an automatic approval caused by a zoning agency's failure to take timely action on a site plan application may not be enforced through a zoning appeal but rather only through a plenary action such as a mandamus action. A right to automatic approval may not be enforced through a zoning appeal because the Zoning Appeal Statute authorizes appeals only from agency "decisions," Conn. Get. Stat. § 8-8(b).

Renovations to a single-family, ranch style home to accommodate five unrelated elderly adults does not convert the home into a "boarding house" under a zoning ordinance that defines a permitted "single-family dwelling" as a structure housing either individuals who are all related by blood or marriage or up to five unrelated individuals, and defines a "boarding or rooming house" as a structure housing not more than 20 persons "where meals may be provided." The structure is to be used as a group home for five unrelated elderly persons who will be serviced daily by a licensed home-care business that will provide assistants working in shifts to help cook meals and assist residents with other daily chores. The opinion distinguishes a "board home" from a "single-family residence" primarily on the grounds that the residents of a boarding house generally do not engage in communal living, do not consider the premises to be their permanent residence, and do not share a common characteristic (as, for example, all being "elderly"). *7 Forest Hill Road, LLC v. Norwalk ZBA*, 69 CLR 41 (Mottolese, A. William, J.T.R.). ■