Highlights | Recent Superior Court Decisions

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Arbitration

A court's authority under the Arbitration Act to "to protect the rights of the parties," Conn. Gen. Stat. § 52-422, includes the authority to stay an ongoing arbitration proceeding following the arbitrator's refusal to reschedule hearings to accommodate the movant's need to travel to Europe to attend to unrelated business matters. The opinion denies the request for lack of evidence as to the nature of the business requirements and the availability of electronic means for the defendant to participate in the arbitration hearings. *Hammond v. Mantz Construction, LLC*, 69 CLR 481 (Krumeich, Edward T., J.).

Related agreements should be construed together to determine whether an arbitration clause in one agreement applies to another agreement not containing such a clause, provided the agreements contain cross references, relate to the same subject matter and involve the same parties. *Thurston v. Thurston Associates, LLC*, 68 CLR 746 (Wilson, Robin L., J.).

Civil Procedure

Abode service of process at an address incorrectly stated by an agent of the defendant in a statutorily required filing with a state agency is invalid unless the plaintiff is able to establish that the error was made with an intent to avoid service. *York Hill Trap Rock Quarry Co. v. Pavement Maintenance Services, Inc.*, 69 CLR 249 (Young, Robert E., J.).

A plaintiff's statutory right to voluntarily withdraw a complaint, Conn. Gen. Stat. § 52-80, is not defeated by pending motions to intervene filed by nonparties. *Rigdon v. Pilla*, 69 CLR 53 (Kowalski, Ronald E., J.).

Service of process in an action against any municipal "board, commission, department or agency" may be made only on a town clerk; service on an assistant town clerk is inadequate. *Foster v. Greenwich Board of Education*, 69 CLR 434 (Sommer, Mary E., J.).

A public school district exists as an entity independent of the district's board of education. Therefore the only statutory authorization for service of process against a school district is Conn. Gen. Stat. § 52-57(b)(4) which requires 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.).

The Offer of Compromise Statute, Conn. Gen. Stat. § 52-192a, applies to class actions, even though there may be some unique procedural difficulties such as obtaining class approval for the acceptance of an offer and the right of class members to opt out of the class. *Paetzold v. Metropolitan District Commission*, 69 CLR 436 (Moukawsher, Thomas B., J.).

Criminal Law and Procedure

A petition for a new trial on a criminal conviction is a civil proceeding and therefore there is no statutory or constitutional requirement for appointment of counsel for the prosecution of such a petition by an indigent criminal defendant. *Khuth v. State*, 69 CLR 384 (D'Andrea, Robert A., J.) (*Khuth I*).

Scientific evidence relied on to justify recent rulings that long sentences for crimes committed while a defendant was under the age of majority are unconstitutional is no longer "new" and therefore may not be relied on to satisfy the "newly discovered evidence" exception to the three-year limitations period to seek a new trial for sentences imposed for crimes allegedly committed at an older age. *Khuth v. State*, 69 CLR 427 (D'Andrea, Robert A., J.) (*Khuth II*). The opinion acknowledges that the 17-year cut-off age for recognizing delayed brain development when imposing long criminal sentences is somewhat arbitrary, but reasons that the body of relevant knowledge concerning brain development has not significantly evolved since 2004, the date of the crime involved in this case.

The 2018 amendments forbidding the imposition of special parole for drug-rated offenses, with an effective date of October 1, 2018, Conn. Gen. Stat. § 54-125e, do not apply retroactively to sentences entered before that date. *State v. Peterkin*, 69 CLR 432 (Droney, Nuala E., J.).

Employment Law

Arbitration and choice of law clauses in an online, electronic job application are enforceable provided the form is reasonably designed. *Edmundson v. Bridgeport Board of Education*, 69 CLR 270 (Welch, Thomas J., J.). The opinion holds enforceable as an employment contract an online application which required that each clause be accepted by checking a box following the clause, and that provided clear descriptions of the contractual undertakings, even though the application was signed before the job was formally offered.

A choice of law provision of an employment contract that would defeat relief comparable to that available under the Connecticut wage laws is unenforceable as a violation of Connecticut public policy. *Farrell v. Capula Investment U.S., LP*, 69 CLR 486 (Sommer, Mary E., J.). The opinion holds that a choice of law clause in an employment agreement between a limited partnership organized under Delaware law and an employee working at the LP's principal place of business in this state is unenforceable, because Delaware does not recognize wage claims for services provided out of state. The opinion also holds: (1) A forum selection clause of an employment contract is unenforceable if a shorter limitations period in the foreign jurisdiction would defeat an employee's claim for wages; and (2) the same forum selection clause is unenforceable if the agreement was entered without an opportunity for the employee to negotiate due to the employer's superior bargaining power.

Insurance Law

An automobile insurer that extends basic coverage to rental cars must also extend the policy's UIM coverage to rented vehicles. *Lollar v. Progressive Direct Insurance Co.*, 69 CLR 437 (Taylor, Mark H., J.). This opinion holds that a passenger of a rental vehicle who has coverage under a policy covering a vehicle owned by the lessee/operator that extends to rental vehicles is entitled to UIM coverage, even though the operator's policy purports to exclude UIM coverage of rental vehicles.

A motor scooter (with a seat height of less than 26" and piston capacity of less the 50 cc's) is not a "motor vehicle" within the meaning of the motor vehicle statutes, Conn. Gen. Stat. § 14-1(58). *Hernandez v. Progressive Direct Insurance Co.*, 69 CLR 379 (Wilson, Robin L., J.).

Law of Lawyering

Communications during a pre-representation interview between an attorney and a potential client in the presence of the client's long-term live-in companion are protected by the attorney/client privilege both with respect to the client and the companion, even though no representation of the companion was under consideration. Furthermore, communications between counsel and the companion in preparation for and during the companion's deposition concerning the client's claim are also privileged. *Marino v. Urological Associates of Bridgeport, P.C.*, 69 CLR 318 (Stewart, Elizabeth, J.).

Photos of an accident scene taken by an attorney representing one of the parties are not protected under the attorney work product privilege. In this personal injury action for a fall at a clothing store, the defendant's attorney is required to comply with a request for the production of photos taken of the accident area shortly after the plaintiff's fall. *Tapia v. Gap, Inc.*, 69 CLR 359 (D'Andrea, Robert A., J.).

Real Property

Bridgeport Park Apartments, Inc. v. Kolesnikov, 69 CLR 236 (Spader, Walter M., J.), holds that the Supreme Court's 2019 ruling in *U.S. Bank v. Blowers* expanding the special defenses that may be asserted in a foreclosure action does not apply to foreclosures of condominium common charge liens.

A trial court's postjudgment jurisdiction to enforce a final judgment in favor of an original plaintiff who prevailed in an action for trespass and the overburdening of an easement includes the authority to substitute as plaintiff a successor to the original plaintiff's interests, and to rule on the substituted plaintiff's motion for a permanent injunction and for civil contempt. Furthermore, such action may be taken without opening the judgment. *FirstLight Hydro Generating Co. v. Stewart*, 69 CLR 399 (Brazzel-Massaro, Barbara, J.).

A restrictive covenant of a deed reciting that neither of two adjoining property owners may "erect or maintain any division fences or hedges other than a stone fence, brick fence or hedge … over five feet in height," creates a view easement restricting the height of any fence; however, the covenant cannot be construed as creating a view easement that encompasses landscaping performed on other portions of the properties. *Freidheim v. McLaughlin*, 69 CLR 461 (Hernandez, Alex V., J.).

Trusts and Estates

Cook v. Purtill, 68 CLR 866 (Sferrazza, Samuel J., J.T.R.), holds that a failure to comply with the statutory requirement for the commencement of a probate appeal that, in addition to "*service*" of a copy of the complaint on "each *interested party*," Conn. Gen. Stat. § 45a-186(b), a copy of the complaint be mailed "to the Probate Court that rendered [the ruling]," Conn. Gen. Stat. § 45a-186(c), is not a jurisdictional defect. However, a failure to mail a copy to the Probate Court must be cured because it is the mailed copy that initiates the Probate Court's duty to prepare and deliver to the Superior Court a transcription of the probate proceedings.

Probate court approval of a sale of real property owned by a decedent's estate does not bar a civil action challenging the transaction brought by a party claiming to have an earlier contract with the administrator for the sale of the same property. *Mandell v. Dolloff*, 69 CLR 49 (Shapiro, Robert B., J.T.R.). The opinion holds that while the probate court has jurisdiction over the breach of contract claim pursuant to its statutory authority to "determine title or rights of possession and use in and to any real, tangible or intangible property" that is part of a decedent's estate, Conn. Gen. Stat. § 45a-98, the Superior Court has concurrent jurisdiction over the same claim, pursuant to the same statute, and *exclusive* jurisdiction with respect to the remaining claims of intentional misrepresentation, unjust enrichment and tortious interference.

The general rule that an appeal may only be taken from a "final judgment" does not apply to appeals to the Superior Court from probate court rulings, because the statutory right to an appeal from probate is extended to "*any person* aggrieved by *any* order, denial or decree of a Probate Court in *any* matter," Conn. Gen. Stat. § 45a-186(a). *Satara v. Hammer*, 68 CLR 796 (Karazin, Edward R., J.T.R.). ■