Highlights | Recent Superior Court Decisions

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Civil Procedure

Millbank Manufacturing Co. v. Durkin, 68 CLR 894 (Karazin, Edward R., J.T.R.), holds that a court's jurisdiction over a Bill of Discovery is not dependent on the existence of subject matter jurisdiction over the possible suit for which the pre-suit discovery is being sought. The matter involves a Bill of Discovery for information concerning a possible products liability action. The opinion holds that the defendant's argument that the federal Consumer Product Safety Act preempts state jurisdiction has no relevance to the merits of a Bill of Discovery.

A personal injury cause of action may not be attacked through the use of an order of execution pursuant to Conn. Gen. Stat. § 52-356b (authorizing an order of execution in favor of a judgment creditor against personal property in which the judgment debtor has an interest), because the term "property" for purposes of applying the execution statutes includes only causes "which could be assigned or transferred," Conn. Gen. Stat. § 52-350a(16), whereas under Connecticut common law *personal injury* causes are not assignable. *Chicago Title Insurance Co. v. Maynard*, 69 CLR 397 (Cosgrove, Emmet L., J.T.R.).

Tapia v. Gap, Inc., 69 CLR 359 (D'Andrea, Robert A., J.), holds that photos of an accident scene taken by an attorney representing one of the parties are not protected under the attorney work product privilege.

Contracts

Bencivengo v. A Better Way Wholesale Autos, Inc., 69 CLR 357 (Richards, Sybil V., J.), holds that the Used Car Warranty Act's requirement that used car dealers disclose whether a vehicle has been declared a "constructive total loss" does not impose a continuing duty that would toll a limitations period.

Although a single mechanic's lien may be filed to secure [two] sequential contracts involving the same parties and the same real property, even if a lien was not filed within the required 90-day period with respect to the first of the two contracts, separate liens [must be filed to] secure work performed by a general contractor and a subcontractor even though both contracts were performed with respect to the same project and the same parcel. *Yale Electric East, LLC v. Semac Electric Co.*, 69 CLR 463 (Hernandez, Alex V., J.).

Corporations and Other Business Organizations

Individuals cannot simultaneously hold interests in a corporation as shareholders and as partners, but they can simultaneously be partners in a partnership that holds interests in a corporation. *Chugh v. Kalra*, 69 CLR 363 (Schuman, Carl J., J.). The opinion holds one partner of such a partnership may sue the other for breach of an oral partnership and breach of the fiduciary duty between partners with respect to claims arising out of the management of the partnership's interest in a corporation. The defendants argued that their individual purchases of the corporate shares automatically dissolved the partnership, thereby eliminating a right to recover for breach of fiduciary duty or breach of the partnership agreement.

Family Law

Zealand v. Balber, 69 CLR 323 (Kavanewsky, John F., J.), holds that the presumption that an engagement ring is a conditional gift to be returned if no marriage occurs is defeated by a long-term period of living together in an intimate relationship without a marriage.

A person infected with a contagious venereal disease has a duty to warn a partner of the condition prior to engaging in sexual relations. *Mancini v. Bisho*p, 69 CLR 479 (Shortall, Joseph M., J.T.R.). The opinion holds that evidence that the defendant was involved in a two-year monogamous relationship with the plaintiff without advising of the condition is sufficient to establish claims of negligence, infliction of emotional distress and fraudulent nondisclosure for damages incurred after acquiring the disease.

A court's authority in a dissolution action to appoint counsel for a child is subject to two limitations: an appointment must be "in the best interests of the child," Conn. Gen. Stat. § 54b-54(a), and may be made only when the court finds that "the custody, care, education, visitation or support of a minor child is in actual controversy," Conn. Gen. Stat. § 54b-54(b). The opinion denies a motion for appointment of counsel for two children primarily because (a) it is not clear that representation would be helpful, (b) evidence from an involved guardian ad litem is available, (c) an attorney's role is directed more towards

presenting a child's wishes rather than the child's best interests, and (d) appointment of counsel would be costly. *Mathog v. Yontef-Mathog*, 69 CLR 407 (Nguyen-O'Dowd, Tammy, J.).

Health Law

Western Connecticut Health Network v. Ainger, 69 CLR 341 (D'Andrea, Robert A., J.), holds that a patient whose health insurance was unexpectedly canceled retroactively to a period before substantial hospital costs were incurred may be required to personally compensate the hospital at its full "pricemaster" rates, i.e., at the rates each hospital must file with the Health Systems Planning Unit of the Department of Health's Office of Health Strategy from which insurer discounts are negotiated, Conn. Gen. Stat. § 19a-681. The opinion seems to reason that a hospital has no discretion to accept a lesser rate.

Insurance Law

Chuckta v. Travelers Home & Marine Insurance Co., 69 CLR 350 (Taylor, Mark H., J.), holds that the statute limiting uninsured motorist coverage for a claimant injured while occupying an owned vehicle to policies that cover the occupied vehicle bars coverage under any other policy regardless of whether the claimant is a named or unnamed insured under another policy. The claimant unsuccessfully sought additional coverage under a UIM policy covering another vehicle also owned by the insured and of which the claimant is a named insured.

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

Landlord and Tenant
State and Local Government Law

The statutory requirement that a notice of violation of a blight ordinance include a description of the claimed conditions is not satisfied by a statement that "the property is not being adequately maintained." Rather, the notice must include a description of the specific conditions deemed to be in violation of the ordinance. *Stamford v. Yanicky*, 69 CLR 440 (Genuario, Robert L., J.).

Tax Law

A taxpayer's failure to attend a board of assessment appeals hearing on an assessment appeal does not defeat subject matter jurisdiction for a court appeal from the board's denial decision. *Tomas v. Wilton*, 69 CLR 471 (Karazin, Edward R., J.T.R.). The taxpayer claims that it did not receive the notice of hearing mailed by the appeal board and therefore was unable to attend. The Board now argues that the appeal to court is barred because the taxpayer failed to exhaust the appeal remedy. The opinion concludes that the court is bound by a 1904 Supreme Court holding that a taxpayer's failure to appear before a board of appeals does not deprive a court of subject matter jurisdiction over a subsequent appeal to court, regardless of a taxpayer's failure to exhaust administrative remedies.

Zoning

A zoning commission has standing pursuant to Conn. Gen. Stat. § 8-8 to appeal from zoning board of appeals decisions granting variances or ruling on zoning enforcement matters. The defendants unsuccessfully argued that a zoning commission has standing to appeal only decisions that involve its own rulings. *Plainfield PZC v. Plainfield ZBA*, 69 CLR 405 (Berger, Marshall K., J.T.R.). The opinion is also useful for its holding that the proper procedural vehicle to challenge the standing of only one of several plaintiffs named in a complaint is a motion to strike for misjoinder pursuant to Practice book § 11-3, not a motion to dismiss the complaint.

Tillman v. Shelton PZC, 69 CLR 409 (Domnarski, Edward S., J.), holds that the requirement that a Planned Development District "*shall be uniform* for each class or kind of buildings, structures or use of land *throughout each district*," Conn. Gen. Stat. § 8-2, is not defeated by the fact that a proposed PDD is divided into sub-areas subject to differing combinations of zoning restrictions. The opinion seems to reason that a PDD with a variety of sub-areas subject to a general set of standard restrictions, any of which may be imposed on individual sub-portions of the PPD, is "uniform" at the moment the PPD is created because *all* of the sub-districts are simultaneously subject to a uniform collection of restrictions, even though each sub-area may be subject to different subset of the *collection*. ■