Highlights | Recent Superior Court Decisions

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Animal Rights

A municipal animal control department's assumption of custody of two horses while the owner was incapacitated creates a bailment, making the municipality liable for the unauthorized disposal of the animals. Therefore the euthanization of one horse and the transfer by adoption of the other horse without the owner's consent entitles the owner to compensation equal to the value of the horses, even though no compensation was paid to the department for voluntarily assuming custody of the animals. *Ardito v. Woodbridge Animal Control*, 70 CLR 1 (Blue, Jon C., J.T.R.).

Civil Procedure

Rockoff v. Annulli, 70 CLR 39 (Taylor, Mark H., J.), holds that derogatory statements about the qualifications of a licensed professional constitute a "matter of public concern" within the meaning of the Anti-SLAPP Suit Statute, Conn. Gen. Stat. § 52-196a(a)(1) (defining "matter of public concern" as "an issue related to … the government, zoning and *other regulatory matters*"). Therefore in an action for defamation brought by a licensed professional based on such comments the defendant may move for dismissal under the Statute on the grounds that the action interferes with the defendant's constitutional right of free speech.

A plaintiff's mistaken attachment of the wrong complaint to the process returned to court following service on the defendant of process that included the correct complaint is a voidable mistake which can be cured by amending the return with the correct complaint, at least where it is still possible to comply with the remaining requirements for the return of process. *Taylor v. Wal-Mart, Inc.*, 70 CLR 3 (Gordon, Matthew D., J.).

Doe v. VB Holdings, LLC, 70 CLR 45 (Gordon, Matthew D., J.), holds that an application to prosecute an action through the use of a pseudonym or to seal a file must be supported by live testimony, documentary evidence and/or sworn affidavits; the mere recitation that the nature of the case warrants such treatment is insufficient.

Contracts

People's United Bank, N.A. v. Armata, 70 CLR 59 (Schuman, Carl J., J.), holds that a waiver in a guaranty agreement of any reliance on special defenses in future enforcement actions extends to special defenses based on conduct arising after the execution of the original guaranty, unless the guaranty agreement expressly provides otherwise.

A dispute between an employer and employee over a noncompete agreement does not arise in "trade or commerce" and therefore does not give rise to a CUTPA claim," even if the dispute is based on an alleged interference by the employer with the plaintiff's ability to work for another employer. *Stavridis v. National Spine & Pain Centers, LLC*, 70 CLR 23 (D'Andrea, Robert A., J.).

Corporations and Other Business Organizations

A nonattorney member of a limited liability company lacks standing to commence an action on behalf of the LLC, and the error may not be cured by a subsequent appearance by counsel. *Global Painting & Sealcoating, LLC v. Williams*, 70 CLR 24 (Kowalski, Ronald E., J.).

Landlord and Tenant

8 Broadleaf Circle, LLC v. Pittman, 70 CLR 63 (Shah, Rupal, J.), holds that the delivery to a local public housing authority of a copy of a notice of termination of a federally subsidized tenancy (a Kapa notice) is a mandatory requirement that cannot be cured after the tenant has filed a motion to dismiss a summary process action.

A reservation in a stipulated judgment resolving a summary process action against a federally-subsidized tenant, of the right to an immediate execution in the event of a further breach, is enforceable only with respect to breaches specifically identified in the stipulation. *New Britain Housing Authority v. Perez*, 70 CLR 61 (Shah, Rupal, J.). The opinion denies a landlord's request for execution under a stipulated agreement because the stipulation referred only to the obligation to pay rent without incorporating references to the tenant's other statutory obligations.

Law of Lawyering

Rosenay v. Taback, 70 CLR 69 (Pierson, W., Glen, J.), holds that it is a violation of the Rules of Professional Conduct for an attorney to seek permission to access a nonclient's private information on a social media website, as by submitting a request to be "friended," unless the attorney first discloses (i) the requestor's role as an attorney, (ii) the requestor's interest in the matter for which information is being sought, and (iii) the purpose of the request. The opinion concludes that a failure to make such a disclosure would violate (A) Rule 4.1(1) ("a lawyer shall not knowingly … [m]ake a

false statement of material fact or law to a third person"), (B) Rule 4.3 ("In dealing on behalf of a client with a person who is not represented by counsel … a lawyer shall not state or imply that the lawyer is disinterested"), and (C) Rule 8.4(3) (a lawyer shall not "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation"). The opinion is also useful for its holding that an attorney's ethical obligation to "provide competent representation to a client," *includes* an obligation to use social media as a discovery tool, when appropriate.

Real Property

Lucas Point Association v. 17950 Lake Estates Drive Realty, LLC, 70 CLR 47 (Povodator, Kenneth B., J.T.R.), holds that a non-owner occupant of a residence with a close relationship to the owner has standing to prosecute actions for interference with *possessory* rights in the property, provided the violation has a direct impact on the occupant.

Torts

Picone v. Tenenbaum, 70 CLR 10 (Brazzel-Massaro, Barbara, J.), holds that a medical malpractice plaintiff's failure to attach the curriculum vitae of the author of an opinion of negligence that was incorporated by reference into the opinion may be cured by amendment, even after the limitations period for the claim has lapsed, provided the letter and curriculum vitae were in existence when the complaint was served.

The Apportionment of Damages Statute provides the sole remedy for apportionment claims between the existing parties to a personal injury action. *Harding v. Mrini*, 70 CLR 31 (Pierson, W. Glen, J.). The opinion holds that no existing party to an action may assert a counterclaim or cross claim for apportionment from another party.

A municipality sued on a Defective Highway Act claim may not implead a third party for indemnification in tort after the limitations period for a direct action by the plaintiff against the defendant has lapsed, because the "sole proximate cause" limitation of the Highway Act will defeat any recovery from the municipality if the property owner is found liable to any degree at all, leaving the plaintiff without a defendant for which the limitations period has not yet lapsed in violation of the requirement of the Impleader Statute that the impleading of a nonessential defendant should not "work an injustice upon the plaintiff. *Murphy v. Ridgefield*, 70 CLR 65 (D'Andrea, Robert A., J.).

Workers' Compensation Law

Desmond v. Yale-New Haven Hospital, Inc., 70 CLR 13 (Bellis, Barbara N., J.), holds that the provision of the Workers' Compensation Act authorizing recovery for an employer's retaliation for an employee's exercise of rights under the Act, Conn. Gen. Stat. § 31-290a, does not apply to claims based on an employer's alleged bad faith conduct in *the processing* of the compensation claim.

Zoning

Cirillo v. Fairfield ZBA, 70 CLR 57 (Stevens, Barry K., J.), holds that on an appeal to court from a zoning board of appeals decision to affirm a zoning enforcement officer's decision to grant a building permit, the permit applicant is not entitled to supplement the administrative record pursuant to Conn. Gen. Stat. § 8-8(k) (authorizing additional evidence to supplement an administrative record if "necessary for the equitable disposition" of a court appeal) with evidence challenging the zoning board's jurisdiction in the appeal, both because (a) the appeal to Court is from the ZBA's decision on the merits of the agency decision, not the *agency's* jurisdiction in the underlying agency appeal, and (b) no additional evidence is "necessary for the equitable disposition" of the court appeal. ■