Highlights | Recent Superior Court Decisions

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Administrative Law

Possession of a medical marijuana permit and daily use of marijuana precludes a Connecticut applicant from qualifying as a "suitable person" for a pistol permit, because the State Pistol Permit Statute disqualifies for eligibility to carry a pistol any person who has been convicted of a felony, Conn. Gen. Stat. § 29-28(b)(2), and under federal law possession of marijuana is a felony. *Stratford Police Department v. Board of Firearms Permit Examiners*, 70 CLR 266 (Cordani, John L., J.).

Bankruptcy and Foreclosure

The fair market value of property involved in a foreclosure action for purposes of ruling on a creditor's PJR application may not be established by the use of values recorded on an assessor's field card. *JP Morgan Chase Bank, N.A. v. Ryder*, 70 CLR 250 (Tierney, Kevin, J.T.R.).

Civil Procedure

Bocchino v. Travelers Indemnity Co., 70 CLR 272 (Abrams, James W., J.), holds that reliance on the Wrong Defendant Statute to save an action dismissed for naming the wrong defendant does not require evidence that the plaintiff acted diligently.

The provision of the Municipal Powers Statute that extends authority to an assistant town clerk to exercise all of the powers of the town clerk "in the absence or inability of the town clerk," Conn. Gen. Stat. § 52-57, extends authority for an assistant town clerk to accept service of process while a town clerk is absent or unable to act. *Fairfield Housing Corp. v. Fairfield Conservation Commission*, 70 CLR 239 (Berger, Marshall K., J.T.R.).

N.E. Leasing, LLC v. Perrotti, 70 CLR 279 (Young, Robert E., J.), holds that although the Prejudgment Remedy Statute contemplates the filing of a prejudgment application before the related civil action is commenced, there is no error in simultaneously filing a civil action and its related PJR application.

A plaintiff's statutory 20-day time limit to assert a direct claim against a third-party defendant impleaded by a first-party defendant pursuant to the Third Party Impleader Statute, Conn. Gen. Stat. § 52-102a(c), is directory and not mandatory. Therefore, such a plaintiff may serve a third-party complaint against an impleaded third-party defendant at any time before the limitations period has lapsed. *Gombos v. Whole Foods Market Group, Inc.*, 70 CLR 283 (Krumeich, Edward T., J.).

Civil Rights

CHRO v. Edge Fitness, 70 CLR 232 (Cordani, John L., J.), holds that although the provision of the Discrimination in Public Accommodations Statute establishing exceptions from the statute's prohibition of discrimination based on a person's sex expressly provides for only two exceptions (the rental of sleeping accommodations for the exclusive use of persons of the same sex and separate bathrooms or locker rooms), Conn. Gen. Stat. § 46a-64(b)(1), the act allows a more general exception for circumstances in which legitimate gender privacy concerns provide justification for a broader range of exceptions. This opinion holds that the practice of public physical fitness facilities to offer women-only work out areas while denying men single-gender accommodations does not violate the act.

Even though the Anti-Bullying Statute defines "bullying" to require more than one incident of bullying, Conn. Gen. Stat. § 10-222d, the plaintiff in an action against a public school system for a student's suicide death allegedly caused by the school's failure to protect the decedent from bullying is entitled to discovery of records of other students charged with even a single incident of bullying, because such information falls within the scope of discovery allowed by the Practice Book discovery rule, Practice Book § 13-2 (information "reasonably calculated to lead to the discovery of admissible evidence"). *Palosz v. Greenwich*, 70 CLR 242 (Genuario, Robert L., J.).

Contracts

Strazza Building & Construction, Inc. v. Harris, 70 CLR 92 (Genuario, Robert L., J.) (Strazza I), holds that the Supreme Court's recent recognition of a rebuttable presumption that a construction project subcontractor is in privity with its general contractor for res judicata and collateral estoppel purposes does not apply to the reverse situation. That is, collateral estoppel cannot be asserted by subcontractors in later litigation against third parties. The opinion reasons that the Supreme Court's ruling was based on the fact that a general contractor is likely to have broad knowledge concerning the performance be *all* subcontractors, so it is reasonable to presume that a general contractor's interests are being sufficient-

ly protected in subcontractor litigation against third parties for application of collateral estoppel in later litigation involving the general contractor. On the other hand, individual subcontractors are less likely to be familiar with the performance of other subcontractors and therefore there is less justification for applying the doctrines in later disputes between a general contractor and third parties. This opinion holds that a ruling in an action unsuccessfully prosecuted by a project sponsor against a single subcontractor for the release of a mechanic's lien, that any lienable funds had been exhausted and therefore unavailable to satisfy *any* subcontractor claims, is not entitled to res judicata or collateral estoppel in a subsequent action brought by the *general* contractor against the project sponsor.

Criminal Law

A superior court opinion holds that the collateral estoppel doctrine can be applied to retrials in criminal cases only with respect to findings rendered in connection to charges on which a defendant was *acquitted*, because it is only in the event of an acquittal that a defendant could not be retried with a possible change in the resolution of the issue for which estoppel is being claimed. The opinion presents an interesting discussion of the application of the collateral estoppel doctrine to criminal trials. *State v. Epps*, 70 CLR 253 (Blawie, John F., J.).

Employment Law

Stavridis v. National Spine & Pain Centers, LLC, 70 CLR 23 (D'Andrea, Robert A., J.), holds that 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.

A superior court opinion holds that allegations that an employer violated the Connecticut Fair Employment Practices Act by terminating an employee for the manner in which a chronic medical condition was being treated (the use of a marijuana-based oil to treat a skin disease) state a claim, even though CFEPA requires proof that discriminatory conduct was based on the *existence* rather than the *manner* of treating a disability. *Peck v. Waterbury Board of Education*, 70 CLR 8 (Gordon, Matthew D., J.).

The opinion in *Martin v. United Capital Corp.*, 70 CLR 19 (Moukawsher, Thomas G., J.), presents a useful explanation of the court's decision to award mandatory attorney's fees well in excess of a claimant's recovery on a claim under the Conn. Minimum Wage Statute, Conn. Gen. Stat. § 31-68 (providing that an employer who violates the Minimum Wage Statute "*shall be required to pay* the costs and such reasonable attorney's fees as may be allowed by the court"). The opinion observes that the traditional rules governing discretionary fee awards are not directly applicable to claims under statutes that impose *mandatory* fee awards.

Environmental Law

The authority granted by the Inland Wetlands Statute to local IWC agencies for the delegation of the authority to approve field modifications to an approved permit, Conn. Gen. Stat. § 22a-42a(c)(2), coupled with a local ordinance tracking the language of the statute, extends to an agent's approval for the deposit of 300 cu. ft. of fill in an upland review area. *Zahid v. Greenwich Inland Wetlands & Watercourses Agency*, 70 CLR 245 (Berger, Marshall K., J.T.R.).

Family Law

Moncure v. Crane, 70 CLR 259 (Brazzel-Massaro, Barbara, J.), holds that the marital privilege applies only to confidential communications during the course of a marriage and therefore has no application to communications after a divorce, even if the relationship of the spouses remains amicable. However, the privilege remains in effect after divorce for the communications occurring during a marriage.

Although the transfer of a diamond ring to a person to whom the donor is engaged is implicitly conditioned on the occurrence of the marriage, thereby requiring the return of the ring if the marriage does not occur, there is no implication that a transfer to a person with whom the donor has a long-term romantic relationship is conditional. *Lewis v. Doria*, 70 CLR 270 (Genuario, Robert L., J.).

Social Services

Commissioner of the Department of Social Services v. FOIC, 70 CLR 229 (Cordani, John L., J.), holds that although on its face the statute prohibiting the Department of Social Services from disclosing information concerning applicants for assistance is broadly worded to prohibit the disclosure of *any* information concerning applicants, Conn. Gen. Stat. § Conn. Gen. Stat. § Conn. Gen. Stat. § 17b-90, the purpose of the act is to prevent the disclosure of information that might reveal the *identity* of applicants. The prohibition, therefore, does not apply to requests for copies of information that have been redacted to eliminate information that might reasonably lead to the discovery of the identity of an applicant.

Zoning

Bailey v. New Milford ZBA, 70 CLR 237 (Pickard, John W., J.T.R.), holds that a home occupation zoning regulation limiting such uses in a single-family residential zone to situations in which (a) there be no external evidence of the business, (b) there is no outside noise beyond what is normal for a single-family residence, (c) the business be conducted entirely within the main dwelling, (d) the business be clearly incidental and secondary to the residential use, and (e) the business not be disruptive to adjacent neighbors, has not been satisfied by the operation of a commercial dog-handling business with outside dog runs accommodating up to 20 dogs. ■