Highlights | Recent Superior Court Decisions

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Arbitration Law

Horrocks v. Keepers, Inc., 70 CLR 348 (Abrams, James W., J.), holds that a judicial determination that the substantive provisions of a contract containing an arbitration clause are void as a violation of public policy does not invalidate the arbitration clause. The opinion holds that a finding that an employment agreement designating the plaintiffs as independent contractors was void as an attempt to avoid wage and hour laws, does not invalidate the arbitration clause. Findings stated in an arbitration award are entitled to collateral estoppel effect even if the arbitrator provided no explanation of the findings. All that is required for collateral estoppel to apply is that issues were presented to and ruled on by the arbitrator. *Imbruce v. Johnson*, 70 CLR 416 (Lee, Charles T., J.).

An arbitration agreement that provides that arbitration shall be conducted "under the Commercial Rules of the AAA" incorporates the AAA rule that any dispute over arbitrability of a matter must be resolved by the arbitrators, rather than the general common-law rule that the preliminary issue of arbitrability normally is resolved by the court. The opinion orders that arbitrability be resolved by the arbitrators even though the terms of the party's basic agreement would otherwise have defaulted to a requirement that arbitrability be resolved by a court. *Claridge Associates, LLC v. Canelas*, 70 CLR 448 (Krumeich, Edward T., J.).

Bankruptcy and Foreclosure Law

Whether to apply judicial estoppel to dismiss a complaint for a plaintiff's failure to have disclosed the existence of a personal injury cause of action that accrued during an earlier bankruptcy proceeding requires an evaluation of three factors: whether (a) the plaintiff's position during the proceeding was inconsistent with a position taken after the proceeding; (b) the bankruptcy court had formally adopted the debtor's inconsistent position; and (c) the debtor would gain an unfair advantage over the party seeking estoppel. This opinion holds that a debtor who failed to disclose a personal injury cause of action that came into existence during a bankruptcy proceeding was not judicially estopped from prosecuting the cause after the bankruptcy was dismissed based on the court's findings that the failure to disclose the civil action would have had little impact on the bankruptcy proceeding and the debtor gained no advantage over the defendant in the civil action by not pressing the civil action until the bankruptcy was dismissed. *Emond v. DePersia*, 70 CLR 427 (Taylor, Mark H., J.).

Civil Procedure

Doe v. Yellowbrick Real Estate, 70 CLR 363 (Krumeich, Edward T., J.), holds that the granting of a motion to use a pseudonym to one party does not automatically entitle the other party to a reciprocal right. The opinion presents a useful summary of opinions ruling on motions to use pseudonyms, emphasizing the very special circumstances required for granting such motions and the necessity of providing evidence going beyond a general description of the nature of the matter.

Jurisdiction over a resident defendant who recently moved to Connecticut from another state may be obtained pursuant to service under the longarm statutes if a diligent search of contemporaneous records reveals only the former foreign residence, even though the defendant was not a nonresident at the time of service. *Gasparini v. Mena*, 70 CLR 369 (Krumeich, Edward T., J.).

The provision of the Anti-SLAPP Suit Statute authorizing the use of affidavits in support of or opposition to Special Motions to Dismiss, Conn. Gen. Stat. § 52-196(e)(2), authorizes only affidavits that present facts. Therefore affidavits from expert witnesses and character witnesses or that contain hearsay evidence are generally inadmissible at hearings on special motions to dismiss. *Greenberg v. Gunnery*, Inc., 70 CLR 425 (Shaban, Dan, J.).

Constitutional Law

The State Constitution should not be construed as providing a constitutional tort remedy for injuries for which a reasonably adequate statutory remedy is already available, because to do otherwise would be inconsistent with the principle of separation of powers. *Evans v. UConn*, 70 CLR 355 (Budzik, Matthew J., J.). The opinion holds allegations that UConn's dismissal of a graduate assistant was motivated by racial discrimination does not state a cause of action for violation of Article First, Section 8 of the Connecticut Constitution, because the Fair Employment Practices Act provides an adequate remedy.

Contracts

Zeolla v. Flight Fit N Fun (New Britain), LLC, 70 CLR 376 (Taylor, Mark H., J.), holds that a noncustodial adult accompanying a child to a recreational facility has no apparent authority to sign a liability waiver on behalf of the child.

The legal sufficiency of a general contractor's third-party complaint for indemnification against a subcontractor for claims asserted by the project sponsor against the general contractor, with respect to the issues of exclusive control and liability for negligence, must be evaluated in light of the factual allegations of both the direct complaint against the general contractor and the third-party complaint asserting the indemnification claim. *A. Pappajohn Co. v. Mende*, 70 CLR 392.

Education Law

Desloges v. Griswold, 70 CLR 325 (Jongbloed, Barbara Bailey, J.), holds that the School Districting Statute, which provides that "[e]ach town shall through its board of education maintain the control of all the public schools within its limits," Conn. Gen. Stat. § 10-240, constitutes a delegation of the authority to maintain discipline in public schools from the state to its municipalities, and in turn from each municipality to its board of education. Therefore each municipality is vicariously liable for the torts of its board of education and the board's employees and agents with respect to claims arising out of, inter alia, disciplinary matters.

Insurance Law

Allegations that the defendant, an insurance agent, negligently misrepresented to a customer that Employment Practices Liability Coverage had been added to an existing business liability policy with retroactive coverage, when in fact no such coverage had been added, are sufficient to state a violation of the provision of CUIPA that defines as an unfair insurance practice the making of a statement that "[m]isrepresents the benefits, advantages, conditions or terms of any insurance policy," Conn. Gen. Stat. § 38a-816(1)(A), and therefore states a violation of CUTPA as well. *General Digital Corp. v. Anderson-Meyer Insurance, Inc.*, 70 CLR 430 (Taylor, Mark H., J.).

Goncalves v. UTICA Mutual Insurance Co., 70 CLR 411 (Roraback, Andrew W., J.), holds that in an action for damages from an accident caused in part by the negligence of an unidentified operator and in which a recovery has been obtained against a UIM insurer sued as a surrogate for the unidentified operator, any damages attributed to the unidentified operator in excess of the insurer's policy limits may be reallocated to the remaining tortfeasors pursuant to the Apportionment Reallocation Statute, Conn. Gen. Stat. § 52-172h(g).

A defendant in a motor vehicle accident case may implead the plaintiff's UIM insurer as a surrogate for an unidentified hit and run operator, even though there is no contractual privity between the defendant/apportionment plaintiff and the insurer. *Stackpole v. Selvaraj*, 70 CLR 454 (Povodator, Kenneth B., J.T.R.).

Real Property Law

Westchester Modular Homes, Inc. v. 21 Heusted Drive, 70 CLR 441 (Lee, Charles T., J.), holds that an assignment of a mortgage constitutes a "conveyance" within the meaning of that term as used in the Connecticut Recordation Statute, Conn. Gen. Stat. § 47-10 ("No [unrecorded] conveyance shall be effectual to hold any land against any other person but the grantor and his heirs …"). The opinion rejects the plaintiff's claim that the Statute applies only to transactions involving the transfer of fee interests.

The provision of the Marketable Record Title Act authorizing the recovery of attorneys fees "in any action brought for the purpose of *quieting title to land* … for the [sole] purpose of slandering title to land," Conn. Gen. Stat. § 47-33j, does not apply to all actions to quiet title but rather only to actions brought under the Act pursuant to Conn. Gen. Stat. § 47-33f (authorizing the filing of notices of claims within 40 years of the effective date of a person's root of title) and Conn. Gen. Stat. § 47-33g (governing the contents of those notices). This opinion holds that the Act does not apply to an action brought by an easement holder challenging the servient estate holder's filing of a notice disputing the easement. *Aron v. Shesler*, 70 CLR 458 (Calmar, Harry E., J.).

State and Local Government Law

Carbonardo-Schroeter v. Mancini, 70 CLR 373 (Kamp, Michael P., J.), holds that a municipal employee with an employment claim against a municipality must exhaust all administrative remedies before commencing suit, including, as in this case, all grievance hearings in a 3-step grievance process available under a collective bargaining agreement and a subsequent arbitration also available under the agreement. Punitive damages may not be awarded in an action against a municipality in the absence of legislative or charter authorization, because such relief would penalize the public for the improper acts of municipal agents. *Dingle v. Stamford*, 70 CLR 335 (Bellis, Barbara N., J.). Although the State Defective Highway Act requires that a notice of claim include, inter alia, "the time of occurrence of injuries caused by a road defect," Conn. Gen. Stat. § 13a-149, a notice which states the date without referencing a specific time is sufficient to entitle the plaintiff to rely on the Act's savings clause to amend the notice. *Timperanza v. Fairfield*, 70 CLR 421 (Welch, Thomas J., J.).

Zoning Law

Brookside Package, LLC v. Bridgeport PZC, 70 CLR 402 (Radcliffe, Dale W., J.), holds that the Bridgeport PZC's interpretation of the phrase "the entrance" as used in a zoning regulation prohibiting the location of any liquor package store within a 750-foot radius of the entrance to any house of worship, hospital or commercial day care center, as referring only to the store's main entrance for customers and not to secondary doors, is reasonable and therefore valid. The opinion holds that the regulation is not violated by the fact that a service door at the rear of a proposed package store is within the prohibited radius. ■