Highlights | Recent Superior Court Decisions

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Civil Procedure

Friere v. Werdann, 70 CLR 572 (Sizemore, Nada K., J.), holds that although the Prejudgment Remedy Statute on its face recites that a signed writ, summons, and complaint should be served *after* court approval of a prejudgment remedy application, and that an approved PJR "shall" be dismissed if not served and returned to court "within 30 days of" approval, simultaneous service and return of a *signed* writ, summons, and complaint pursuant to Conn. Gen. Stat § 52-578j is permitted.

Contracts

The practice of some automobile dealerships to receive an undisclosed commission for arranging financing with commercial lenders for motor vehicle purchases, even though such commissions could be avoided if the customer were to deal directly with the lender, does not violate either the federal Truth in Lending Act or the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a et seq. The opinion presents a useful description of dealer-arranged financing practices. *Thompson v. Connex Credit Union*, 70 CLR 570 (Schuman, Carl J., J.).

Criminal Law

State v. Gonzalez, 70 CLR 566 (Fasano, Roland D., J.), holds that the 2018 Public Act amending the statute that authorizes sentencing courts to impose an enhanced, "special parole" period for certain categories of more serious crimes, to require that the presiding judge make a determination that such an enhancement "is necessary to ensure public safety," is a procedural rather than substantive statute and therefore is *not* retroactively available to inmates sentenced prior to the Act's October 1, 2018 effective date.

Driving Under the Influence

State v. Borges, 70 CLR 536 (Schwartz, Joseph B., J.), holds that evidence that a defendant was found sleeping in the driver's seat of a motor vehicle without having placed the key in the ignition or having started the vehicle with a remote starter is insufficient to establish a criminal charge of Operating Under the Influence, Conn. Gen. Stat § 14-227a. Some evidence of an attempt to turn on the vehicle motor must be presented.

Family Law

A property loss insurance policy taken out on a $15,000 engagement ring identifying only the groom as the insured can be enforced following a loss only by the groom and not the bride-to-be. *Caccamo v. State Farm Fire & Casualty Insurance Co.*, 70 CLR 535 (Noble, Cesar A., J.).

Insurance Law

Indian Harbor Insurance Co. v. Steadfast Insurance Co., 70 CLR 553 (Moukawsher, Thomas G. J.), holds that allegations by an excess insurer of prematurely being forced to honor claims because of a primary insurer's unnecessary honoring of uncovered claims are not sufficient to state a claim of equitable indemnity brought by the excess insurer against the primary insurer, because an essential element of a claim of equitable indemnification is that the indemnitee be unjustly enriched due to the indeminitor's honoring of a claim that the indemnitee had a legal obligation to satisfy. The allegations do, however, state a claim for *equitable subrogation*, because the basis for an equitable subrogation claim is inequity rather than unjust enrichment.

Real Property

An equitable interest in real property is not sufficient to establish standing to sue. *Schettino v. Orange Landing Association, Inc.*, 70 CLR 281 (Abrams, James W., J.). The opinion holds that a spouse residing in a condominium unit solely owned by the other spouse lacks standing to sue the condominium association. The opinion rejects the occupant spouse's arguments that standing is established by a constructive trust in the unit through occupancy, and by an unvested right to inherit the unit from the owner spouse.

State and Local Government Law

Girolametti v. Danbury, 70 CLR 554 (Bellis, Barbara N., J.), holds that governmental immunity is waived under the Municipal Indemnification Statute, Conn. Gen. Stat § 52-557n, for a claim against a city building inspector for allegedly conducting an inadequate inspection of a building and improperly issuing a building permit and certificate of occupancy, regardless of whether the duties are discretionary or ministerial, but only if the approvals were issued with a *reckless disregard for health and*

safety or, in the case of inspections, if the inspector was aware of violations. The opinion denies a motion for summary judgment on the portions of a complaint alleging that inspections were conducted and permits were issued with a "reckless disregard for health and safety," even though it is well settled in Connecticut that such functions are discretionary.

Torts

Although not expressly stated in the listing of the types of loss of consortium which may be recovered by a surviving spouse in an action under the Wrongful Death Statute, Conn. Gen. Stat § 52-555b, the statute does authorize the survivor to recover for personal "anguish" and "anxiety" caused by the death. *Cadavid v. Stamford Health, Inc.*, 70 CLR 530 (Krumeich, Edward T., J.T.R.).

Davenport v. Belniak, 70 CLR 563 (Noble, Cesar A., J.), holds that a physician or hospital may be liable in medical malpractice for a patient's suicide death, provided there is evidence that the defendant should have reasonably anticipated the suicide. The defendants unsuccessfully argued that there is no liability for medical malpractice in the absence of evidence that the defendant had a special relationship of control over the patient.

The risk of financial ruin of a defendant found liable on a CUTPA claim is a valid consideration in establishing a punitive damages award. *Russo v. Thornton*, 70 CLR 397 (Lee, Charles T., J.). This opinion limits punitive damages to an award of attorneys' fees and nontaxable costs, so as to avoid the imposition of a catastrophic financial loss on the defendant. The opinion is also useful for its holding that the clandestine establishment of a new, competing business to which a corporate officer of a family-owned business unilaterally diverted production equipment and funds constitutes conduct occurring in "trade or business" within the meaning of CUTPA, exposing the defendant to punitive damages and attorneys' fees.

Ligouri v. Sabbarese, 70 CLR 356 (D'Andrea, Robert A., J.), holds that the 90-day extension of the statute of limitations authorized for personal injury and wrongful death actions, created to allow additional time for the plaintiff to obtain an opinion of negligence from a similar health care provider and prepare a certificate of good faith, Conn. Gen. Stat § 52-190a(c), remains in effect even though no medical malpractice claim is ultimately included in the plaintiff's complaint, provided it was reasonable for the plaintiff to have believed at the time of the extension request that a malpractice claim was reasonably feasible.

Although the Wrongful Conduct Rule—no party may seek affirmative relief based on prior conduct by that party that was illegal—generally has been applied only to circumstances where a party is seeking to benefit from *criminal* conduct, the rule also may be applied to claims based on conduct of the plaintiff that constituted a violation of the Statutory Theft Statute, Conn. Gen. Stat § 52-564. *Imbruce v. Johnson*, 70 CLR 416 (Lee, Charles T., J.).

Trusts and Estates

Haider v. Hernandez, 70 CLR 461 (Lee, Charles T., J.), holds that a probate court's ancillary jurisdiction over a nonresident decedent's assets in this state, Conn. Gen. Stat § 45a-287, applies not only to assets located in this state at the decedent's death but also to property transferred post death into this state, provided the transfer occurs before the filing of an application for ancillary probation in this state.

An attorney engaged to draft a will is liable to beneficiaries under either a theory of tort or breach of contract only if (a) both the client and attorney agreed that the attorney owed a duty to beneficiaries as well as the client, and (b) the alleged error relates to the drafting and execution of the will. *Wisniewski v. Palermino*, 70 CLR 423 (Noble, Cesar A., J.).

Unemployment Compensation

Javier v. Administrator, Unemployment Compensation Act, 70 CLR 473 (Wiese, Peter E., J.), holds that an applicant's mistaken belief that the 21-day period to appeal an administrator's decision to deny benefits was based on business days rather than calendar days does not, as a matter of law, constitute good cause for a late filing. Therefore an appeal *must* be denied by the Employment Security Appeals Division Board of Review if the applicant's misunderstanding is the only grounds offered as justification for a late appeal.

An appeal upholding the denial of unemployment compensation benefits on the grounds that the employee had been terminated for "wilful misconduct in the course of the individual's employment," Conn. Gen. Stat § 31-236(a)(B), requires formal written findings by the Administrator that the employee (a) had "acted in disregard of the employer's interest" and (b) had done so deliberately and a written recitation of the facts that support those particular findings. This opinion remands a decision by the Employment Security Board of Review upholding the dismissal of an employee because there are no facts in the record to support the "employer interest" and "deliberate action" findings. *Harris v. Administrator, Unemployment Compensation Act*, 70 CLR 432 (Farley, John B., J.).