Highlights | Recent Superior Court Decisions

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Administrative Law

Cooke v. FOIC, 71 CLR 182 (Farley, John B., J.), holds that although the provision of the Administrative Procedure Act tolling the 45-day period for filing an appeal from a decision of the Freedom of Information Commission while an application for a waiver of fees is pending on its face only authorizes tolling of the period to *file* and not to *serve* the appeal, Conn. Gen. Stat. § 4-183(m), the provision tolls both the time to file and to serve the appeal.

A municipal pension board established by a town charter is similar to an administrative agency; therefore the scope of review in an appeal to court from such a board is the same as for the decisions of administrative agencies: whether there is substantial evidence in the record of the board's proceeding to support the board's factual findings. *Huston v. Meriden*, 71 CLR 129 (Burgdorff, Mary-Margaret D., J.).

Civil Procedure

While a corporation's registration to do business in a particular state might constitute consent to jurisdiction for *specific* jurisdiction for claims arising out of in-state activities, it does not confer general jurisdiction over actions with little or no relationship to in-state activities. Therefore an attempt to obtain general jurisdiction over a registered foreign corporation requires an analysis as to whether federal constitutional due process requirements have been satisfied. This opinion holds that general jurisdiction may not be asserted against a trucking company with headquarters in Tennessee that has registered to do business in this state for the operation of a satellite terminal, for injuries arising out of a collision in New Jersey between a company-owned truck and the New York operator of another vehicle. *Perdomo v. Western Express, Inc.*, 71 CLR 148 (Lynch, Ann E., J.).

A Rhode Island hospital's use of Yellow Page advertisements to solicit prospective patients residing in Connecticut is sufficient to allow longarm jurisdiction pursuant to the Longarm Statute, Conn. Gen. Stat. § 33-926(f), over a medical malpractice action brought by a Connecticut patient arising out of treatment provided by the Rhode Island hospital. *Binkowski v. Westerly Hospital*, 71 CLR 186 (Calmar, Harry E., J.).

Contracts

Dickau v. Mingrone, 71 CLR 171 (Wilson, Robin L., J.), holds that a clause of a contract authorizing the recovery of attorney fees "if any legal action is brought *to enforce any provision of this Agreement*" is not limited to the costs to litigate *express* terms of the contract but rather includes implied terms as well, such as, in this case, the implied covenant of good faith and fair dealing.

Education Law

Bradley v. Yovino, 71 CLR 184 (Jacobs, Irene P., J.), holds that a clause of a private university's handbook authorizing the Dean of Students to "impose an immediate suspension…from the university until a student conduct hearing can be scheduled," on students "facing allegations *of serious criminal activity*" authorizes, as a matter of contract law, the suspension of a student charged with the rape of another student without further investigation or an opportunity for a hearing, based solely on the Dean's evaluation that such action is "necessary to preserve…the welfare of the University community…."

Health Law

Western Connecticut Health Network v. Vasquez Salinas, 71 CLR 181 (Brazzel-Massaro, Barbara, J.), holds that an action by a hospital to enforce payment of an admission contract with a non-English-speaking patient requires proof that the patient was provided sufficient information to have understood the terms of the agreement. This opinion holds the submission in evidence by a hospital of an agreement signed by a non-English-speaking patient, without providing evidence that an interpreter or other assistance had been provided at signing, is insufficient to render the agreement enforceable.

Insurance Law

An exclusion from a business insurance policy for lost business income, for loss "caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or diseases," applies to and therefore bars coverage of claims for business income loss caused by the Corona-19. *Hartford Fire Insurance Co. v. Moda, LLC*, 71 CLR 135 (Bellis, Barbara N., J.). The opinion also holds that an "all risk" policy providing coverage for "all risks of direct physical loss or direct physical damage to property from any external cause" does not provide business interruption coverage caused by the COVID-19 virus, at least in the absence of damage to property. The opinion reasons that the emphasis on physical loss or damage clearly indicates an intention to exclude coverage for loss unaccompanied by physical damage.

Landlord and Tenant Law

Rent due on a commercial restaurant lease with a clause imposing on the tenant all costs of compliance with government regulations may be challenged on the grounds that the

unanticipated COVID-19 executive orders have rendered performance impractical, only if performance would be illegal and not merely impractical. *AGW Sono Partners, LLC v. Downtown Soho, LLC* 71 CLR 130 (Spader, Walter M., J.).

Perdomo v. Western Express, Inc., 71 CLR 148 (Lynch, Ann E., J.), holds that while a corporation's registration to do business in a particular state might constitute consent to jurisdiction for specific jurisdiction for claims arising out of in-state activities, it does not confer general jurisdiction over actions with little or no relationship to in-state activities.

Law of Lawyering

The denial of an application for reinstatement from an attorney who resigned from the bar following a criminal trial which resulted in a conviction on some charges but acquitted of other charges, may be based on the grounds that the attorney refused to answer questions about the acquitted charges posed by the panel of Superior Court judges assigned to rule on the application. The attorney argued that any questions concerning crimes for which acquittals were entered are irrelevant for purposes of ruling on an application for reinstatement. The application is denied on the grounds that the attorney failed to meet the burden of proving good moral character by refusing to respond to the panel questions, coupled with a failure to acknowledge responsibility for the guilty verdicts. *Disciplinary Council v. Spadoni*, 71 CLR 166 (Sheridan, Budzik, Lynch, Js.).

Public Utilities

Fuelcell Energy, Inc. v. Public Utilities Regulatory Authority, 71 CLR 175 (Klau, Daniel J., J.), holds that a ll procurement proceedings conducted by the Public Utilities Regulatory Authority are designated by statute as uncontested, Conn. Gen. Stat. § 16-35(c), thereby eliminating any opportunity for an appeal to the Superior Court on a final decision in such a proceeding because agency appeals to court may only be taken from decisions rendered in *contested* cases. This opinion holds that an alternate energy producer has no right to appeal from a PURA ruling that it was not qualified to participate in the Shared Clean Energy Facility Program, recently established to require that United Illuminating and Eversource purchase excess electricity produced by qualifying, in-state clean energy facilities.

Real Property Law

The existence of a foreclosure deed in the chain of title relied on to establish the 15-year period of continuous possession or use needed to establish a claim of adverse possession or prescriptive easement does not interrupt the period. The defendant unsuccessfully argued that nonconsensual transactions interrupt a continuous use period. The opinion provides a useful discussion of the requirements for establishing claims for adverse possession and prescriptive easement. *Caesar, LLC v. Cassaino*, 71 CLR 121 (Farley, John B., J.).

State and Local Government Law

Although decisions of municipal emergency dispatch center employees as how to classify incoming emergency calls and whether to dispatch emergency personnel are normally discretionary decisions and therefore immune from liability for negligence pursuant to the Municipal Indemnification Statute, Conn. Gen. Stat. § 52-557n, liability may be imposed under the common-law exception to governmental immunity for injury to an identifiable victim in imminent harm. This opinion holds that whether the defendant dispatchers were negligent in delaying notification to police personnel in addition to emergency personnel, in response to an emergency call to assist a person being viciously attacked by two dogs that resulted in the death of the victim, presents an issue of fact as to whether liability may be imposed under the "imminent harm/identifiable person" exception. *Bogan v. New Haven*, 71 CLR 190 (Young, Robert E., J.).

Torts

The owner of a competitive sports facility does not owe a duty to protect participants in competitive activities from injuries inflicted by other participants, at least in the absence of prior knowledge that a particular participant is prone to engage in unusually rough tactics. *Fernandez v. Parkin*, 71 CLR 89 (Gordon, Matthew D., J.). The opinion holds that a soccer facility is not liable to a participant for injuries caused by an apparently intentional kick by an opponent.

Allegations that the defendant physician intentionally understated the risks of surgically implanting pelvic mesh products while negligently and intentionally misrepresenting the benefits of such a procedure state claims for a lack of informed consent, negligent and intentional misrepresentation, and a violation of CUTPA, but do not state a claim for medical malpractice. The complaint, therefore, does not require an accompanying opinion of negligence from a similar healthcare provider. *DeJordy v. Johnson & Johnson*, 71 CLR 152 (Bellis, Barbara N., J.).

Toledo v. St. Vincent's Medical Center, 71 CLR 41 (Jacobs, Irene P., J.), holds that Connecticut does not recognize a cause of action for loss of consortium with an unmarried domestic partner of the opposite sex, although it does provide for such relief for injuries to a same-sex partner for injuries incurred before same-sex marriages were legally recognized. The plaintiff unsuccessfully argued that Connecticut courts should adopt a policy of weighing the *intensity* rather than the *legal status* of domestic relationships when evaluating loss of consortium claims.

Workers Compensation Law

Bourque v. Service Management Group, LLC, 71 CLR 77 (Stevens, Barry K., J.), holds that an employee of a subsidiary corporation is not necessarily an employee of the parent corporation for purposes of determining whether the parent is immune from liability under the subsidiary's immunity from common-law liability for employment-related injuries. Conn. Gen. Stat. § 31-284(a). The opinion denies a parent company's motion for summary judgment in an action brought by an employee of a subsidiary for injuries incurred at a building owned by the parent. ■