

Highlights

Recent Superior Court Decisions

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■ Arbitration Law

Ship-Rite Packaging, LLC v. People's United Bank, N.A., 71 CLR 243 (Jacobs, Irene P., J.), holds that a contractual agreement to arbitrate makes arbitration a condition precedent to suit only if the contract plainly states that arbitration must be attempted before resorting to litigation. The opinion holds that an agreement stating that "arbitration is the exclusive remedy if it is elected by either party" does not establish arbitration as a condition precedent to litigation.

■ Civil Procedure

Boyd v. Feng, 71 CLR 206 (Sicilian, James, J.), holds that although an allegation that the plaintiff has failed to mitigate damages is not included in the Practice Book listing of the defenses that must be raised as special defenses, such a defense should be permitted because it alerts the litigants and the court that mitigation may be raised at trial.

A non-owner relative of a homeowner may prosecute possessory real property torts against third parties, but only for damages personally experienced by the plaintiff. *Hunt v. Woodbridge*, 71 CLR 212 (Abrams, James W., J.). The opinion also holds that a municipal entity not designated by statute as a "public body corporate and politic" may not be directly sued but rather sued only through its municipality.

In spite of the frequent statements that a ruling on a motion to strike a complaint may be based solely on facts alleged in the complaint, statements in a plaintiff's

subsequent pleadings that are voluntary and knowingly made may constitute judicial admissions and be considered when ruling on a motion to strike a complaint. *Diaz v. Backes* (Genuario, Robert L., J.), 71 CLR 279.

■ Corporations and Other Business Organizations

A foreign corporation's sale of a component part for incorporation into an end product with knowledge that the part was likely to reach end users in other states no longer satisfies the due process requirement that an action against a foreign defendant be supported by evidence of contacts with the forum state. *McCoy v. General Motors, LLC*, 71 CLR 282 (Schuman, Carl J., J.). Rather, the plaintiff in such an action must now establish direct contacts by the component manufacturer with the foreign jurisdiction.

■ Criminal Law

A minor faced with a transfer to the regular criminal docket because of the seriousness of an offense is constitutionally entitled to a pre-transfer hearing on eligibility for youthful offender status, in spite of the seriousness of the crime. *State v. Puntiel*, 71 CLR 257 (Keegan, Maureen M., J.). The opinion reasons that the statutory presumption of eligibility for youthful offender status provides such significant benefits to a juvenile criminal defendant that a hearing is constitutionally required before eligibility is withdrawn. The opinion also holds that the state has the burden of proving by a preponderance of the evidence that the juvenile is not qualified for youthful offender status.

The exception to the three-year statute of limitations for filing a petition for a new trial for criminal cases in which the petition is based on "DNA evidence...or other newly discovered evidence...not discoverable or available at the time of the original trial," Conn. Gen. Stat. § 52-582, applies only to "forensic scientific evidence that was not discoverable or available at the time of the original trial...." The opinion holds that the exception is not applicable to a claim asserting that in the original trial the prosecution knowingly solicited and relied on false testimony from a key witness. 71 CLR 303 *Burgos-Torres v. State*, 71 CLR 303 (Bhatt, Tejas, J.).

■ Driving under the Influence

A police department's failure to preserve body and dashboard recordings of the arrest of a vehicle operator on DUI charges, in violation of the statute requiring that all records of DUI arrests be maintained for at least two years, Conn. Gen. Stat. § 14-227i, requires dismissal of the charges, even if the failure was accidental and other evidence may be available. The opinion in effect holds that arrest recordings of DUI arrests are so reliable and essential as to always require dismissal of charges when not preserved in compliance with the statute. *State v. Rodriguez*, 71 CLR (Oliver, Vernon D., J.).

■ Employment Law

The Whistleblower Statute applies only to employee reports of violations that have actually occurred or are in the course of occurring; the statute does not apply to reports of merely planned or discussed violations. *Harris v. Department of Public Health*,

71 CLR 299 (Rosen, Stuart D., J.). The opinion holds that the termination by officials of the Department of Public Health of an employee for raising concerns that a contemplated fine against a private employer for violations of COVID-19 regulations would be unlawful and which were modified to avoid the possible illegality did not constitute a violation of the statute because no actual violation occurred. The opinion is one of first impression.

■ Health Law

The private cause of action for the release of a person's HIV information, Conn. Gen. Stat. § 19a-590 does not require an intent to harm but rather only the defendant's knowledge that the information was restricted. *Hart v. NB Health Care, LLC*, 71 CLR 222 (Wiese, Peter E., J.). This opinion holds that allegations that a delivery service dropped a shipment of AIDS medication off at the home of a neighbor of the intended recipient, resulting in an accidental disclosure of the recipient's HIV status, are insufficient to state a claim under the act.

■ Insurance Law

In a motor vehicle accident case involving both an identified and an unidentified tortfeasor in which the plaintiff has settled with the identified tortfeasor and sued its own insurer for UIM coverage, the settlement damages from the identified operator are not offset dollar-for-dollar against the insurer's UIM limits for purposes of determining eligibility for UIM benefits from the uninsured tortfeasor. The defendant/insurer unsuccessfully argued that the recovery should be offset against the UIM limits, thereby eliminating any UIM recovery. *Garcia v. State Farm Mutual Automobile Insurance Co.*, 71 CLR 248 (Lynch, Ann E., J.).

The statute authorizing an exclusion of coverage, including UIM insurance, for vehicles being used for participation in "transportation network" businesses applies to vehicles used in connection with the Uber ride sharing program, including when no passenger occupies the vehicle.

Nguyen v. James River Insurance Co., 71 CLR 296 (Stevens, Barry K., J.).

■ Public Utilities

Direct Energy Services, LLC v. PURA, 71 CLR 226 (Klau, Daniel J., J.), holds that the Public Utilities Regulatory Authority's recent adoption of restrictions on the use of transferable certificates, known as "voluntary renewable offers" or VROs, limiting the purchase of VROs by local fossil fuel generators to ones that originate in states which contribute the most to this state's pollution (generally nearby states to the west and south of Connecticut), in order to provide an incentive the use those VROs that will make the greatest contribution to this state's efforts to reduce carbon admissions, does not violate the Interstate Commerce Clause. A VRO is a certificate representing a carbon reduction achieved by a renewable energy source which may be purchased at a premium to offset local generators' mandatory fossil fuel reduction targets.

■ Real Property Law

A petition pursuant to the 2018 Public Act authorizing an expedited procedure before the Tax and Administrative Appeals Session of the Superior Court to invalidate an allegedly false filing on the land records, Conn. Gen. Stat. § 47-31a, may only be brought by a party that has been expressly identified in the challenged land record. *Linden v. Islam*, 71 CLR 204 (Klau, Daniel J., J.).

A court that lacks jurisdiction over an action to foreclose a mechanics lien if the plaintiff fails to timely provide a lis pendens to the property owner, as required by the Mechanic's Lien Statute, Conn. Gen. Stat. § 39-39, also lacks jurisdiction over the plaintiff's alternate claim for breach of contract, at least where no contract claim was expressly asserted in the original foreclosure complaint. *Davidoff v. Star Partners, LLC*, 71 CLR 246 (Spader, Walter M., J.).

A deed reciting that it reserves to the grantor and heirs "a right of way and

easement for all lawful purposes, in over and upon" a specified portion of the deeded land establishes two independent property interests, a "right of way" limited to use to access another parcel, and a separate "easement" granting rights to use the entire parcel for any lawful purpose. *Bianco v. Denning*, 71 CLR 292 (Krumreich, Edward T., J.T.R.).

■ State and Local Government Law

A premises liability claim against a municipal housing authority is subject to a motion for summary judgment based on a plaintiff's inaccuracy in the statutorily required notice of the location, date, and time of injury, Conn. Gen. Stat. § 8-67, only if the notice is so defective as to patently fail to meet statutory requirements, where "patently defective" means so inadequate as to deprive an authority of an opportunity to make a proper investigation. *Sawczuk v. Naugatuck Housing Authority*, 71 CLR 270 (Gordon, Matthew D., J.). The opinion holds that a two-day error in the date on which a claimed injury occurred is *not* "patently defective" thereby leaving resolution of the adequacy issue for trial.

■ Torts

A claim for apportionment need not be based on acts of negligence arising out of the same event. Therefore, an operator sued in negligence for injuries arising out of a motor vehicle accident may bring an apportionment complaint against a physician whose allegedly negligent treatment exacerbated the plaintiff's injuries. *Logue v. Yale University*, 71 CLR 30 (Kamp, Michael P., J.).

Although not yet definitively recognized by the state's appellate courts, most trial court opinions that have considered the issue hold that social hosts may be sued for negligently allowing a guest to become intoxicated at a social gathering and to operate a motor vehicle after leaving the gathering, resulting in injuries to a third party. *Daly v. Hussain*, 71 CLR 169 (Genuario, Robert L., J.). ■