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Audita Querela

A Guide to Resources in the Law Library

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This guide links to advance release opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar and Harvard's Case Law Access Project. The online versions are for informational purposes only.

References to online legal research databases refer to in-library use of these databases. Remote access is not available.

- "Audita querela is a limited and extraordinary legal remedy, based on equity, to inhibit the unconscionable use of a lawful judgment because of matters arising subsequent to the judgment. . . .The broad issue becomes not comparative inconvenience but comparative hardship. . . .Courts have a longstanding general power of equity to afford relief against unreasonable conduct even when the activity is otherwise lawful. . . .Equity is a system of positive jurisprudence founded on established principles and adaptable to new circumstances not remediable at law." Westfarms Associates v. Kathy-John's, Inc., Superior Court, Judicial District of Hartford-New Britain at Hartford, Housing Session, No. SPH 851130901 733 (March 17, 1986) (1986 Conn. Super. Lexis 51) (1986 WL 400555).

- "The history of the writ of audita querela in Connecticut reveals its limited applicability to civil judgments." State v. Alegrand, 130 Conn. App. 652, 666, 23 A.3d 1250, 1258 (2011).

- ". . . .the writ of audita querela was found to be for use in civil matters when enforcement of a judgment would be contrary to the ends of justice due to matters that have arisen since its rendition." State v. Cotto, 111 Conn. App. 818, 820, 960 A.2d 1113, 1114 (2008).

- "The court found that the defendant was not credible and therefore denied the plaintiff's request to enjoin the eviction. Where the trial court is the arbiter of credibility, this court does not disturb findings on the basis of the credibility of witnesses." Ruiz v. Gat2 conn ling, 73 Conn. App. 574, 576, 808 A.2d 710, 711 (2002).

- "Reference to the writ is made most frequently in cases where payment has been made after the judgment or where subsequent protection of the bankruptcy court has been invoked." Cohen v. MBA Financial Corp., Superior Court, Judicial District of New Haven at New Haven, No. CV 950379585 (July 2, 1999) (25 Conn. L. Rptr. 3) (1999 Conn. Super. Lexis 1770) (1999 WL 509814).

- "There is no Practice Book rule regarding Writs of Audita Querela. There is no statute authorizing Writs of Audita Querela. Writs of Audita Querela are common law. They precede the first appellate statute in Connecticut passed in 1882. There is no statutory right of appeal from a Writ of Audita Querela. *Housing Authority v. Melanson*, 23 Conn. App. 519, 521 (1990); *Lashgari v. Lashgari*, 197 Conn. 200-201 (fn. 7) (1985)." Wheeler v. Jones, Superior Court, Judicial District of Stamford-Norwalk at Norwalk, Housing Session, No. SPNO-9412 16795 (July 31, 1995) (1995 Conn. Super. Lexis 2273) (1995 WL 476573).

- "Because the writ of audita querela is regularly filed in the housing courts of Connecticut, judges there have had occasion to develop the doctrine further." East Hartford Housing Authority v. Kendrick, Superior Court, Judicial District of Hartford-New Britain at Hartford, No. SPH 9406-76333 (December 6, 1994) (1994 Conn. Super. Lexis 3393) (1994 WL 740792).

Section 1: Application for Writ of Audita Querela

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to the application of the writ of audita querela.

DEFINITIONS:

- "The ancient writ of audita querela has been defined as 'a writ issued to afford a remedy to a defendant against whom judgment had been rendered, but who had new matter in defense (e.g., a release) arising, or at least raisable for the first time, after judgment.'" Ames v. Sears, Roebuck & Company, 206 Conn. 16, 20, 536 A.2d 563, 565 (1988).

  See also: *Black's Law Dictionary*, 11th ed., 2019, p. 162;
  Connecticut Landlord and Tenant Law with Forms, 3rd ed., by Noble Allen, Connecticut Law Tribune, 2021, § 8-8:4.

- "Audita querela is a remedy granted in favor of one against whom execution has issued on a judgment, the enforcement of which would be contrary to justice because of (1) matters arising subsequent to its rendition, or (2) prior existing defenses that were not available to the judgment debtor in the original action, or (3) the judgment creditor's fraudulent conduct or circumstances over which the judgment debtor had no control. Ballentine's Law Dictionary (3d Ed. 1969)." Oakland Heights Mobile Park, Inc. v. Simon, 40 Conn. App. 30, 32, 668 A.2d 737, 739 (1995).

- "A writ of audita querela is a post-judgment motion designed to postpone or prevent enforcement of a judgment because of equitable considerations. *Norman Associates v. Vann*, SPH 8302-17843 (1983) #437, Citing 2 Stephenson, Connecticut Civil Procedure, Sec. 209 (2d Ed.) Audita querela is an extraordinary remedy arising in equity to prevent the unconscionable use of a lawful judgment because of matters arising subsequent to the judgment. *Westfarms Associates v. Kathy-John's Inc.*, SPH 8511-30901 (1986) #733, Citing Stephenson, Connecticut Civil Procedure, Sec. 209. The issue for the Court is that of comparative hardship." Lee v. Connor, Superior Court, Judicial District of Waterbury, No. SPWA-8905-07283 (October 17, 1990) (2 Conn. L. Rptr. 716) (1990 Conn. Super. Lexis 1582) (1990 WL 261923).

FORMS:

- *Connecticut Summary Process Manual*, by Paul J. Marzinotto, Connecticut Law Tribune, 2002.
  Form 8.14. Writ of Audita Querela, p.98

- 15A *Am Jur Pleading & Practice Forms Annotated*, Judgments, Thomson West, 2016 (Also available on Westlaw).
  § 440. Petition or application – For writ of audita querela – Following levy of execution

§ 441. Petition or application – For writ of audita querela – Claim paid before entry of judgment
§ 442. Writ of audita querela – To sheriff or constable – Summons
§ 443. Writ of audita querela – Statutory form

RECORDS & BRIEFS:

- Connecticut Supreme Court Records and Briefs, December 1987. Ames v. Sears, Roebuck & Company, 206 Conn. 16, 536 A.2d 563 (1988). Figure 1.
  Includes: Application for Writ of Audita Querela (with certification and order)

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Commission on Human Rights and Opportunities v. S Ex Rel. Julissa Cortes v. Margaret Valenti, 213 Conn. App. 635, 659-660, 278 A.3d 607 (2022). "The fact that the defendant may have learned of the existence of the additional evidence following the court's rendering of judgment does not suffice for the allowance of a writ of audita querela. Rather, the controlling consideration is whether the moving party could have raised at trial the issues presented in the application for a writ of audita querela. See *Oakland Heights Mobile Park, Inc. v. Simon*, supra, 40 Conn. App. at 33, 668 A.2d 737. All of the issues raised in the defendant's application… reasonably could have been raised during trial. Because the issues were not raisable for the first time postjudgment, but rather were issues that not only could have been raised, but were actually raised and litigated at trial, a writ of audita querela is inapplicable."

- Orange Palladium, LLC v. Ready, 144 Conn. App. 283, 72 A.3d 1191 (2013). "The defendant further argues that the trial court improperly denied its application for a writ of audita querela. We decline to review this claim because the precise legal basis for the writ was not distinctly raised at trial."

- TD Banknorth, N.A. v. White Water Mountain Resorts of Connecticut, Inc., 133 Conn. App. 536, 547-548, 37 A.3d 766, 773 (2012). "The defendant also argues that the court erred by failing to consider his pleadings as a writ of audita querela. The defendant did not file a writ of audita querela with the trial court, and therefore this argument is not properly before us. . . .A writ of audita querela is filed with the court that rendered the judgment complained of. . . .Because the defendant did not distinctly raise the claim of audita querela in the trial court, we need not address here the vitality of that writ in this case."

- State v. Alegrand, 130 Conn. App. 652, 669-670, 23 A.3d 1250, 1260 (2011). "There is no Connecticut precedent to authorize the civil writ of audita querela in the criminal context, and we decline to authorize it for the first time here. . . .
  We recognize that there is a split of authority in the federal courts as to how audita querela might be used; however, we must look to the source of our own jurisdiction as a court system established under the Connecticut constitution and Connecticut statutes. The writ of audita querela remains nothing more than a

more specific form of equitable relief and remains a remedy for civil judgments."

- Anthony Julian Railroad Construction Company, Inc. v. Mary Ellen Drive Associates, 50 Conn. App. 289, 294-295, 717 A.2d 294, 297 (1998). "This case provides an appropriate context for the application of this common law writ. Here, matters have arisen subsequent to the entry of the judgment that render it inequitable to allow the plaintiff to execute on the defendant's property. These subsequent events consist of a negotiated settlement with two of the defendants in this action after the judgment of strict foreclosure was rendered, along with the release of the mechanic's lien, which is the sole means of recovery that was pleaded by the plaintiff in this action. Thus, while the writ of audita querela was not specifically sought in this case, the existence of such a writ provides analogous authority that enables a court of equity to supervise its judgments and to control the issuance of executions. We conclude, therefore, that the trial court properly conducted a hearing with respect to the plaintiff's application for a property execution."

- Oakland Heights Mobile Park, Inc. v. Simon, 40 Conn. App. 30, 32-33, 668 A.2d 737 (1995). "The defendant first claims that the trial court did not issue proper notice of the Appellate Court's decision. The defendant incorrectly relies on General Statutes § 47a-26h(b), which requires the trial court clerk to issue notice to defendants upon the entry of summary process judgments. Nothing in that statute, however, indicates that it is intended to apply to decisions of the Appellate Court. The rule for judgments following appeal is set forth in General Statutes § 51-213. …Because there is no requirement that the appellate clerk directly notify the parties of an appellate decision, the trial court properly denied the defendant's writ of audita querela on the first claim."

- Ames v. Sears, Roebuck & Company, 206 Conn. 16, 17, 536 A.2d 563 (1988). "This appeal entails an examination of the circumstances under which a judgment debtor, by use of a writ of audita querela, can obtain relief from a final judgment awarding monetary damages to a judgment creditor."

- Luddington v. Peck, 2 Conn. 700, 701-702 (1818). "If the judgment had been satisfied, after the rendering of it, he could have had relief by *audita querela*, and have recovered his costs; but if this action is sustained, a party never need to have recourse to an *audita querela*."

WEST KEY NUMBERS:

- Audita Querela
    1. Nature and scope of remedy
    2. Judgments subject to review
    3. Grounds for review
    4. Proceedings to procure review, and effect thereof
    5. Writ and service
    6. Pleading

7. Evidence
9. Judgment
10. Appeal or error
11. Costs
12. Liabilities on bonds and recognizances

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 7 *Am Jur 2d,* Audita Querela, Thomson West, 2017, with 2023 supplement (Also available on Westlaw).
  - § 1. Generally; definitions and distinctions
  - § 2. Modern status of writ
  - § 3. Availability of remedy
  - § 4. Availability of remedy—In criminal cases
  - § 5. Practice and procedure to obtain writ
- 7A *CJS* Audita Querela, Thomson West, 2015 with 2023 supplement (Also available on Westlaw).
  - I. In general
    - § 1. Audita querela as a common law writ
    - § 2. Distinctions between audita querela and other forms of relief
    - § 3. Executions and judgments historically subject to audita querela review
    - § 4. Modern status of writ of audita querela
    - § 5. --State criminal cases
  - II. Applicability of Writ to Federal Criminal Cases
  - III. Procedure
    - § 14. Proceedings for audita querela; parties, jurisdiction, and time for application
    - § 15. Evidence and trial; service of writ
    - § 16. Judgment; costs
    - § 17. Review
- 13 *A.L.R. Fed 2d* 493, *Availability and Appropriateness of Audita Querela Relief in Connection with Immigration and Naturalization Proceedings*, by Kurtis A. Kemper, Thomson West, 2006 (Also available on Westlaw).

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- *2 Stephenson's Connecticut Civil Procedure*, 3rd ed., by Renee Bevacqua Bollier et al., Atlantic Law Book Co., 2002, with 2014 supplement.
  - § 201. Writs of Audita Querela, pp. 439-442
- *Connecticut Landlord and Tenant Law with Forms,* 3rd ed., by Noble Allen, Connecticut Law Tribune, 2021.
  - § 9-3:4. Writ of Audita Querela, pp. 135-136
- *2 DuPont on Connecticut Civil Practice,* by Ralph P. DuPont, 2022-2023 ed., LexisNexis.
  - Chapter 17. Judgments
  - § 17-43.4. Audita Querela, Writ of Use and Effect of
- *Connecticut Summary Process Manual*, by Paul J. Marzinotto, Connecticut Law Tribune, 2002.
  - VIII. Summary Process Motions – Defendant

E. Post Execution Relief – Writ of Audita Querela, pp. 81-83

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Paula A. Franzese and Cecil J. Thomas, *Disrupting Dispossession: How Right to Counsel in Landlord-Tenant Proceedings Is Reshaping Outcomes*, 52 Seton Hall L. Rev. 1255 (2022).
- Caleb J. Fountain, *Audita Querela and the Limits of Federal Nonretroactivity*. 70 N.Y.U. Annual Survey of American Law 2, 203, (2014).

Table 1: Housing Court Case Decisions

Housing Court Case Decisions	
Vesta Winthrop LLC v. Moreno, SA, Superior Court, Judicial District of New London, No. CV23-6061375S, (August 25, 2023) (2023 WL 5547459).	"This execution had not been served when …, the tenant filed a Motion to Quash the execution….she has an eight year old child to begin school next week. That if she is evicted she will lose her government subsidy, which she assuredly will, and she will be irreparably harmed by an eviction." "This court has great power to do harm by wrongfully evicting a tenant. This court also has the power to do justice if it sees a way to do that. Here it is easy to blame the tenant for her failure to put this matter high enough on her list of important matters. But what distresses the court greatly after fully examining the case is that it is very likely that this case was brought to evict a tenant that missed one seventy-nine dollar ($79) monthly payment." "While it appears true that there is no requirement for the landlord to list the amount of money due or the exact arrearage, if either figure had been made disclosed to the court in the pleadings, the course of events would have been different."
Is Ra El Bey v. US Bank National Association as Trustee, Superior Court, Judicial District of Fairfield at Bridgeport, No. CV20-5044250S, (July 19, 2022) (2022 WL 2827554).	"On March 13, 2020, the court, …, denied the application [for writ of audita querela] and issued the following decision. 'The Appellate Court has affirmed the foreclosure judgment and the stay in this matter has been terminated. The arguments set forth by the defendants herein have been rejected by the appellate authorities binding on this Court.' 'The emergency request for audita querela relief is denied as the audita remedy is only available if some new defense arose since the rendering of the judgment (it has not) or if enforcement of the execution would be contrary to justice (based upon the numerous reviews by the Appellate Courts, the foreclosure judgment still stands, the plaintiff is the owner of the property and entitled to possession thereof).' "
Tedford, II v. Fleming, Superior Court, Judicial District of Tolland at Rockville, No. CV21-6022710S, (March 7,	"FN 1….Thereafter,…another audita was filed." "In addition, the defendants raised a new argument about a recent complaint they filed with the health department regarding the subject premises. Specifically, the

2022) (2022 WL 1050022	defendants claim they complained in December 2021 or January 2022 that the water in the premises is in some way unhealthy and requires testing. The defendants mention that they were concerned about the health of their 14-year-old daughter related to the condition of the water. The defendants argued that General Statute § 47a-20 prevents a landlord from maintaining a summary process action against a tenant who has a pending complaint filed against them for a health code violation. However, § 47a–20 only prohibits a landlord from seeking to evict a tenant because the tenant complained to public officials about property conditions. It does not restrict a landlord's right to evict a tenant for failing to pay his rent. *Parzych v. Durham*, No. CV1030289, 2015 WL 601153, at p.1 (Conn. Super. Ct. Jan. 23, 2015)." "While the court is understanding of the importance of family health, the health and size of the family was previously factored into the court's equitable considerations when entering judgment following trial… when entering judgment of possession to the plaintiff, the court granted a generous stay of execution for an additional six (6) weeks. The defendants have had the benefit of equitable considerations but now the equities have shifted, and it is just that the execution proceed."
Vesta Winthrop, LLC v. Marcelo, Superior Court, Judicial District of New London, Housing Session, No. CV20-6045304 (September 20, 2021) (2021 WL 4895118).	"The Court is aware that a writ of audita querela is an extraordinary legal remedy, based on equity to inhibit the unconscionable use of a lawful judgment. *Westfarms Associates v. Kathy-Johns Inc.,* Hartford Superior Court, Housing Session no. SPH 851130901 (1986) (1986 Conn.Super. Lexis 51)." "At the virtual hearing, it became obvious that Vesta and the tenant had differing interpretations of the Court's order. Vesta takes the position that the order may be read to mean that upon the thirty days following the expiration of all moratoria, an execution shall issue. The tenant reads the court order to mean that as long as she pays her portion of the subsidized rent, $422 per month, "without fail" that she may remain in possession." "According to Vesta's analysis, it is unnecessary to comply with the last sentence of the order "The plaintiff may apply for an execution upon filing an affidavit of noncompliance, should the defendant fail to pay her rent within the grace period." Vesta did not file an affidavit of non-compliance nor did Vesta offer any evidence of an arrearage. Therefore there is no evidence that the tenant failed to pay her portion of the rent. Indeed, the plaintiff offered no evidence of any economic loss whatsoever, let alone a substantial economic loss. The loss to the tenant could be catastrophic if evicted."

	"…, the tenant, claims that she is unemployed and has three small children one of whom has epilepsy and is presently not able to attend school. She maintains that she will lose her government rental subsidy if evicted and that the family will have no other safe, adequate and affordable place to live." "The court notes that when the prior court order was entered, it was contemplated that when the moratorium was ended, that the COVID-19 pandemic would have ended. It was not contemplated that a newer and perhaps more dangerous Delta variant of the virus would create even greater difficulties and hardships, especially for mothers raising young children.[1] This is a condition that arose subsequent to the judgment and earlier orders of the court." "Assessing the comparative hardships, not to grant relief would result in enormous hardship to the tenant as to make it unconscionable to immediately enforce the judgment."
Aria Farmington, LLC v. Venice Pizza, Superior Court, Judicial District of Hartford, Housing Session, No. CV20-6016747 (August 3, 2021) (2021 WL 3727814).	"The defendants, …, filed this application for a writ of restoration with its application for a writ of audita querela. The court previously granted the writ of audita querela, restoring the case to pleadings status, and subsequently granted the defendants' motion to dismiss for lack of subject matter jurisdiction. The plaintiff lacks standing since it is neither the owner nor lessor of the premises, and thus the notice to quit was defective. In response to the present motion, the plaintiff objects pursuant to General Statutes § 47a-19 and the defendants' failure to record the commercial lease. After consideration, the court granted the application for a writ of restoration. (p.1) --- "*Bridgeport v. Grace Building, LLC,* 181 Conn.App. 280, 296, 186 A.3d 754 (2018), a recent case, relied on *Du Bouchet* [12 Conn. 533 (1838)] and unequivocally stated the law on writs of restoration: "Almost two centuries ago, this state's highest court recognized that a party to a summary process action that wrongly is dispossessed of leased property is clearly entitled to a writ restoring him to the possession thereof, provided that the term of the lease has not yet expired ... If ... the tenant has been [wrongly] dispossessed of his property, both justice and authority require, that he be restored." (Citations omitted; internal quotation marks omitted.) The court reiterated: "[S]uch a writ can only issue if the lease has not expired by its terms." (Internal quotation marks omitted.) *Id.*, 297." (p.2)

CREF, LLC v. Puskarz, Superior Court, Judicial District of Hartford, Housing Session, No. HDSP180219 (July 8, 2016) (2016 Conn. Super. LEXIS 1815) (2016 WL 3912534).	"In a case such as this, the writ of audita querela also effectively requires the court to consider and apply principles of equity where judgment has been entered upon grounds that do not satisfy the legislature's summary process scheme as a whole because a fundamental, statutorily created defense was not brought to the attention of the judicial authority entering the default. Thus, the issues raised by the defendant's writ of audita querela require the court to address the relevant provisions of General Statutes §47a–23c(a)(1)3 which establish absolute protection from eviction for certain tenants, and the relevant provisions of General Statutes §47a–23c(b)(1)4 which define the circumstances under which the tenants identified in §47a–23c(a)(1)(B) are not statutorily protected. The writ of audita querela is an appropriate mechanism for stopping enforcement of judgment against a defendant whose mental disability places him within the category of persons (who cannot be evicted based on lapse of time, the sole count brought against him by the plaintiff in this case. Given the specific language of §47a–23c(a)(1)(B) and §47a–23c(b), to permit execution to proceed based on an underlying judgment of default resulting from the plaintiff's complaint in this case would be unjust and contrary to the principles of equity affecting summary process actions in this state."
Pope v. Dean, Superior Court, Judicial District of New Haven at New Haven, Housing Session, No. SPNH 960647402 (May 22, 1997) (19 Conn. L. Rptr. 673) (1997 Conn. Super. Lexis 1715) (1997 WL 375017).	"The plaintiff claims that matters arising subsequent to the entry of a judgment cannot logically be a defense to the judgment. But see *Pettit v. Seaman,* 2 Root 178 (1795). In a scenario such as this, however, audita querela indeed provides 'a remedy... in favor of one against whom execution has issued on a judgment, the enforcement of which [judgment] would be contrary to justice because of ... matters arising subsequent to its rendition ...' *Oakland Heights Mobile Park, Inc. v. Simon*, *supra,* 40 Conn.App. 32. In a case such as this, it is to the enforcement of the judgment-by way of execution to which the writ is addressed. Support for the defendants' utilization of the writ of audita querela is found in one of the first reported cases in Connecticut, *Lothrup v. Bennet,* Kirby (1786). In that case, a judgment debtor, facing an outstanding execution, paid part of the judgment to the creditor himself and the balance to the sheriff. The creditor refused to endorse payment of the portion paid to him, obtained possession of the execution and sought an alias execution for the balance claimed by the debtor to have been paid. The

	creditor then levied on the debtor's property. The debtor brought a bill in equity to enjoin all proceedings on the execution. The court held, in this era before the merger of law and equity, that the debtor could not maintain such an equitable proceeding because he had an adequate remedy at law by, inter alia, a writ of audita querela. Just as the debtor in *Lothrop v. Bennet, supra,* claimed that the creditor had subverted his efforts to satisfy the judgment as a matter of law, so the defendants claim here. An execution here would be based on the stipulated judgment between the parties. 'A stipulated judgment is a contract between the parties ...' *State v. Phidd*, 42 Conn.App. 17, 29, 681 A.2d 310 (1996), cert. denied, 238 Conn. 907, 679 A.2d 2 (1996). 'Normally, a duty to satisfy a condition precedent is excused if the other party does not cooperate. E. Farnsworth, Contracts (1982) § 8.6, pp. 565-66.' *Christophersen v. Blount*, 216 Conn. 509, 513 n. 6, 582 A.2d 460 (1990). This court holds that the defendants may maintain an application for a writ of audita querela. See 7A C.J.S., Audita Querela, § 3, p. 902."
First National Bank of Chicago v. Jansson, Superior Court, Judicial District of Fairfield at Bridgeport, Housing Session, No. SPBR 950830174 (July 19, 1996) (1996 Conn. Super. Lexis 2041) (1996 WL 474037).	"'The writ of audita querela provides relief from a judgment at law because of events occurring subsequently which would cause discharge of a judgment debtor … A writ of audita querela depends upon a showing of new matter in defense … arising, or at least raisable for the first time, after judgment.' *Ames v. Sears, Roebuck & Co.*, 206 Conn. 16, 21 (1988). Its use is most common in summary process judgments. *Westfarms Mall Associates v. Kathy Johns, Inc.,* H-733, March 17, 1986, (Goldstein, J.); *Knaus v. Lomas,* 1990 Ct.Sup. 4038, November 20, 1990, H-932, November 16, 1990, (Berger, J.); *Wyngate, Inc. v. Bozak, Inc.* H-684, September 11, 1985, (Goldstein, J.); *Norman Associates v. Vann,* H-437, August 4, 1983, (Aronson, J.); *Seven Fifty Main Street Associates Limited Partnership v. Spector,* H-706, November 29, 1985, (Goldstein, J.); *Wheeler v. Jones,* SNBR-434, July 31, 1995, (Tierney, J.); *Two Stephenson Conn. Civ. Proc.* Sec. 209 (2d Ed). The issues in a writ of audita querela in a summary process action are whether or not events that have occurred since the entry of the judgment would prevent the judgment from being enforced on equitable grounds. Normal equitable considerations are used in all of the above summary process cases. *Westfarms Mall Associates v. Kathy Johns, Inc.,* H-733."
Wheeler v. Jones, Superior Court, Judicial District of Stamford-	"The next issue is whether or not the denial of the Writ of Audita Querela and the appeal to the Appellate Court from that denial. . . .acts as a stay of execution. . . . Appeals

Norwalk at Norwalk, Housing Session, No. SPNO-9412 16795 (July 31, 1995) (1995 Conn. Super. Lexis 2273) (1995 WL 476573).	are authorized by statute only. Stays of execution are statutory only. A Writ of Audita Querela is a common law remedy not a statutory remedy. There is no right of appeal from a Writ of Audita Querela and there is, therefore, no stay of execution on a Writ of Audita Querela."
East Hartford Housing Authority v. Kendrick, Superior Court, Judicial District of Hartford-New Britain at Hartford, No. SPH 9406-76333 (December 6, 1994) (1994 Conn. Super. Lexis 3393) (1994 WL 740792).	"Our Supreme Court has recognized the viability of the writ of audita querela in a non-housing matter, namely, *Ames v. Sears, Roebuck & Co.*, 206 Conn. 16 (1988). There, the court cited out of state authority as well as Connecticut treatises in explaining the writ as one 'issued to afford a remedy to a defendant against whom judgment had been rendered, but who had new matter in defense (e.g., a release) arising, or at least raisable for the first time, after judgment.' 206 Conn. at 20. Because the writ of audita querela is regularly filed in the housing courts of Connecticut, judges there have had occasion to develop the doctrine further."
Housing Authority of Town of East Hartford v. Melanson, Superior Court, Judicial District of Hartford-New Britain at Hartford, Housing Session, No. SPH 8810-46860EH (April 4, 1991) (1991 Conn. Super. Lexis 1219) (1991 WL 86259).	"When this case is examined in light of the tenant's hardship, her inability to meet a reinstatement plan which exceeded her income, her ability to meet a reasonable repayment plan (and clearly not unreasonable in light of other repayment plans for similarly situated public housing tenants), the landlord's indication of her valued tenancy evidenced by both the initial offer of reinstatement, albeit at terms beyond her means, and by offering her a position of some stature at the facility, equity requires, through the writ of audita querela, that relief be granted. Professor Stephenson noted that the writ could be used to *postpone or prevent* the enforcement of the execution. It has already been used in this case to postpone the execution. This court now for a third time grants the relief by allowing the tenant to reinstate through the continuing monthly payment of use and occupancy together with a monthly payment of $85.00 on the arrearage."

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

Table 2: Other Unreported Decisions (Audita Querela)

Other Unreported Decisions	
Stewart v. King, Superior Court, Judicial District of New Haven at New Haven, No. CV126034332S, (September 27, 2013) (2013 Conn. Super. Lexis 2176) (2013 WL 5716796).	"Having failed to prevail in the petition for a new trial, the court can see no basis to grant a writ of audita querela on the same grounds that were rejected by the court in its memorandum of decision. . . . Additionally, the writ of audita querela is a remedy generally granted a *defendant* which protects him or her from the *execution of a judgment.* Here, the writ was brought by. . . .the plaintiff in the first action and is the plaintiff in this action. Thus he is not a 'defendant' and no execution, by definition, has issued as a result of the. . . .judgment from the first action. Furthermore, if the plaintiff is seeking the relief potentially afforded by the writ of audita querela, he should have filed the writ in the first action. . . ."
Gladu v. BAC Home Loans Servicing, LP, Superior Court, Judicial District of Hartford at Hartford, No. X04HHDCV106014923 S (March 7, 2011) (2011 Conn. Super. Lexis 496) (2011 WL 1169434).	"The core of the audita querela and equitable relief claims is based on fraud or neglect rather than enforcement of any term of the modification agreement." "It is true that the modification agreement forms the backdrop against which the fraud and/or negligence claims of the audita querela and equitable relief counts were measured, but that circumstance fails to convert these counts to breach of contract claims."
Nikoukai v. Baharamian, Superior Court, Judicial District of New Haven at New Haven, No. CV084033857S (January 27, 2010) (2010 Conn. Super. Lexis 213) (2010 WL 760451).	"Because the defendant had raised his present claim during the summary process trial he does not qualify for a remedy under the writ of audita querela."
State v. Patel, Superior Court, Judicial District of Tolland, Geographic Area 19 at Rockville, Nos. CR030079132S, CR030079139S,	"None of the cases in which the writ of audita querela was addressed in criminal cases supports the contention that a criminal court retains jurisdiction, after a defendant's sentences are fully expired, over such an equitable remedy merely because of an inequity. Stated somewhat differently, the fact that an inequity occurred does not, in and of itself, serve as the genesis of a court's subject matter jurisdiction.

CR030079687S (November 5, 2010) (51 Conn. L. Rptr. 16) (2010 Conn. Super. Lexis 2880) (2010 WL 4886408).	Accordingly, the writ of audita querela is dismissed for lack of jurisdiction."
Verderame v. Trinity Estates Development Corp., Superior Court, Judicial District of New Haven at New Haven, No. CV980409683S (November 27, 2006) (42 Conn. L. Rptr. 417) (2006 Conn. Super. Lexis 3581) (2006 WL 3691603).	"[T]he sale of the property. . . .is not a new matter relevant to this action that may be raised in a writ of audita querela. . . . For the foregoing reasons, the First Count in the defendants' writ is dismissed because, as a matter of law, the defendants cannot seek equitable relief by claiming ineffective assistance of counsel in a writ of audita querela. The Second Count in the writ is also dismissed because it fails to allege any new matter relevant to this action that could be raised in a writ of audita querela."
Housing Authority of the City of Middletown v. Chaney, Superior Court, Judicial District of Middlesex at Middletown, No. CV0915398 (December 5, 2006) (2006 Conn. Super. Lexis 3637) (2006 WL 3719480).	" 'Equitable relief is extraordinary and not available as a matter of right, but rather it is within the discretion of the court.' *Modzelewski v. William Raveis Real Estate, Inc.*, 65 Conn.App. 708, 715, 783 A.2d 1074, cert. denied, 258 Conn. 948, 788 A.2d 96 (2001). Because the granting of a writ of audita querela is a form of equitable relief, the court is well within its discretion in granting a writ of audita querela if the appropriate criteria have been met and assuming that the hardships to either party have been properly weighed. See *Westfarms Associates v. Kathy-John's, Inc.*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. SPH 851130901 (March 17, 1986, Goldstein, J.). The court is also well within its discretion in denying an application for a writ if the proper criteria have not been met. . . . 'The issues in a writ of audita querela in a summary process action are whether or not events that have occurred since the entry of the judgment would prevent the judgment from being enforced on equitable grounds. Normal equitable considerations are used ...' *First National Bank of Chicago, Trustee v. Jansson, supra,* Superior Court, Docket No. SPBR-9508 30174."
Montanaro v. Gorelick, Superior Court, Judicial District of Fairfield at Bridgeport, No. CV970346208S (January 7, 2003) (2003 Conn. Super.	"As defined, the writ of audita querela is inapplicable here. Because this ancient writ impairs the finality of judgments, the common law precluded its use in cases in which the movant sought to rely on a defense that he had the opportunity to raise before the entry of judgment. The writ is most appropriately raised because of events occurring

Lexis 63) (2003 WL 190759).	after the entry of judgment which should operate to discharge a party from the effect of a judgment. As discussed above, the events forming the basis of the plaintiff's fraud allegation arose before the entry of judgment and he had the opportunity to assert this allegation before that time. The plaintiff has not even *claimed* that he did not have this opportunity or was precluded from exercising it because of some wrongful act of defendant Gorelick. The plaintiff has not cited and the court has not located any cases in which a writ of audita querela has been used in circumstances similar to those presented here. See generally, 7 Am.Jur.2d Audita Querela, § 3. The application of the doctrine of audita querela to these facts would operate to subsume the statute of limitations in its entirety and would be in direct contravention of the principal that the doctrine should not unduly impair the finality of judgments."
Cohen v. MBA Financial Corp., Superior Court, Judicial District of New Haven at New Haven, No. CV 950379585 (July 2, 1999) (25 Conn. L. Rptr. 3) (1999 Conn. Super. Lexis 1770) (1999 WL 509814).	"The writ of audita querela is issued to afford a remedy to one against whom a judgment has been entered, but who has new matter in defense arising, or at least raisable for the first time, after judgment. *Ames v. Sears, Roebuck & Co.*, 206 Conn. 16, 20, 536 A.2d 563 (1988). Reference to the writ is made most frequently in cases where payment has been made after the judgment or where subsequent protection of the bankruptcy court has been invoked. A motion to open the judgment is the usual vehicle to correct a 'judicial' error as opposed to a 'clerical' error in the entry of a judgment. Stephenson, Connecticut Civil Procedure § 207, p. 854 (2d Ed.1981). A typical example, according to Stephenson, is that of a court that has 'mistakenly rendered judgment in excess of its jurisdiction or for more than the amount of the *ad damnum* when the defendant defaults.' *Id*."
Utica First Insurance Co. v. McGuire, Superior Court, Judicial District of New Haven at New Haven, No. 400522 (December 4, 1998) (23 Conn. L. Rptr. 502) (1998 Conn. Super. Lexis 3395) (1998 WL 867375).	"It is apparent that, in this setting, the functions of audita querela and of injunction are substantially the same. Both forms of action are recognized procedural vehicles for obtaining relief from wrongfully obtained judgments and executions. The principal difference between the forms of action in question is historical. . . . The writ of audita querela has long since been abolished in the country of its birth; 37 *Halsbury's Laws of England* 90 n. 1 (4th ed.1982); and in federal practice on this side of the Atlantic; Fed.R.Civ.P. 60(b). Blackstone opined more than two centuries ago that the writ was 'almost useless' and had, even in his day, been 'driven ... quite out of practice.' 3 William Blackstone, *Commentaries on the Laws of England* 405 (1768). It is something of a mystery why

	the writ continues to exist in Connecticut. The plain intention of the 1879 Practice Act was to abolish the old common law forms of action. Conn. Gen.Stat. § 52-91 provides that, 'There shall be one form of civil action.' The only exceptions to this rule are affirmatively created by statute. Conn. Gen.Stat. § 52-122, also derived from the Practice Act, provides that § 52-91 'shall not affect flowage petitions, or proceedings in paternity, replevin, summary process, habeas corpus, mandamus, ne exeat, quo warranto, forcible entry and detainer or peaceable entry and forcible detainer, or for the payment of awards. See *Hinckley v. Breen*, 55 Conn. 119, 121-22, 9 A. 31 (1887). Audita querela is not among the enumerated forms of action thus saved from the sweep of § 52-1. In spite (and without discussion) of this significant statutory problem, our courts have continued to hold that audita querela remains a viable proceeding. But the fact that this ancient writ remains a viable option does not mean that it must be considered an exclusive remedy. 'When these ghosts of the past stand in the path of justice clanking their medieval chains the proper course for the judge is to pass through them undeterred.' *United Australia, Ltd. v. Barclays Bank, Ltd.*, [1941] A.C. 1, 29 (H.L.1940) (Atkin, L.J.). This court will consequently be undeterred by the fact that Utica has not proceeded in audita querela and turn to the merits."

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

Figure 1: Application for Writ of Audita Querela

NO. 81-66362	:	SUPERIOR COURT
LAURIE L. AMES, PPA,	:	J.D. NEW LONDON
ET AL		
VS.	:	AT NEW LONDON
SEARS, ROEBUCK AND CO.	:	DECEMBER 1, 1986

APPLICATION FOR WRIT OF AUDITA QUERELA

1. Applicant is the defendant in the above entitled action. Heretofore, on July 9, 1984 the above-named plaintiff secured and caused to be entered a judgment against petitioner as defendant for the sum of $175,000. By decision dated August 26, 1986 said judgment was affirmed by the Appellate Court.

2. The claim and cause of action of the plaintiff upon which this action was brought was fully settled and satisfied, to wit:

a) Prior to the entry of the judgment, plaintiff received payment in the amount of $25,000 from Wallace and Gladys Nordstrom, formerly defendants in this action, in consideration for releasing the Nordstroms from liability (Trial Transcript, pp. 157-160);

b) Subsequent to the Appellate Court decision, plaintiff received from petitioner $150,000, plus interest, thereby fully settling and satisfying the judgment of $175,000 entered herein.

3. Plaintiff threatens to sue out and cause to be issued a writ of execution and to levy upon property of the petitioner and to proceed under the writ and levy and to cause the property of this petitioner to be sold to petitioner's manifest damage and grievance.

WHEREFORE, petitioner prays that:

a) The Court direct the issuance of the writ of audita querela against plaintiff, and hearing on such writ be set and heard on December 10, 1986;

b) Pending hearing hereon, and pursuant to the writ herein prayed for, all proceedings under the writ of execution aforesaid be stayed; and

c) On that hearing, the judgment aforesaid be adjudged and declared to be wholly satisfied and discharged, and all proceedings under any writ of execution be stayed;

d) Such other and further order may enter as may be just in the premises.

DEFENDANT, SEARS,
ROEBUCK & COMPANY

By
/s/ _____
Name
For

_____

CERTIFICATION

THIS IS TO CERTIFY that a copy of the forgoing has been mailed, this date to

_____

_____

/s/ _____

NO. 81-66362	:	SUPERIOR COURT
LAURIE L. AMES, PPA,	:	J.D. NEW LONDON
ET AL		
VS.	:	AT NEW LONDON
SEARS, ROEBUCK AND CO.	:	DECEMBER 1, 1986

ORDER

The foregoing Application for Writ of Audita Querela having been heard, it is hereby ORDERED / DENIED - See Memo of Decision filed this date.

Dated at New London, Connecticut, this _____ day of December, 1986.

By the Court, _____, J.

/s/_____
Chief Clerk

Filed December 3, 1986

Table 3: Federal Criminal Connecticut Case

Federal Criminal Connecticut Case
• U.S. v. Simms, 866 F. Supp. 2d 94, 95 (D. Conn. 2011). "Travis Simms has returned to this Court seeking the ancient writ of audita querela: an innovation from the time of Edward III that has lingered somewhat uncertainly into present-day American criminal law. Mr. Simms invokes the writ in the hope that the Court will modify his sentence to counteract the State of Connecticut's refusal to allow his state and federal sentences to run concurrently, as this Court ordered in July 2011. Facing the prospect of serving several more years in prison than this Court — or perhaps any court — ever envisioned, Mr. Simms has asked that his federal sentence be reduced to time served and that he be handed over to the custody of the State of Connecticut to begin his period of incarceration there. Unfortunately, the relief Mr. Simms seeks is beyond that which this Court has the power to provide. Because the Second Circuit does not allow the writ of audita querela to be issued for purely equitable reasons, Mr. Simms's Application for the Writ [doc. # 892] must be DENIED."
• U.S. v. Simms, 866 F. Supp. 2d 94, 97-98 (D. Conn. 2011). "The writ of audita querela, which dates from the fourteenth century, 'was initially used by judgment debtors against creditors where the debtors had paid the debt and the creditors still tried to press the claims.' Ira P. Robbins, The Revitalization of the Common-Law Civil Writ of Audita Querela as a Post-Conviction Remedy in Criminal Cases: The Immigration Context and Beyond, 6 Geo. Immigr. L.J. 643, 645 (1992); see also James Wm. Moore & Elizabeth B.A. Rogers, Federal Relief from Civil Judgments, 55 Yale L.J. 623, 659 (1946). Blackstone hailed it as 'a writ of a most remedial nature, [which] seems to have been invented, lest in any case there should be an oppressive defect of justice, where a party, who hath a good defence, is too late to make it in the ordinary forms of law.' 3 William Blackstone, Commentaries (quoted in Moore & Rogers, supra, 660). Given Connecticut's attempt to press its claim even after Mr. Simms will have — in this Court's judgment — paid his debt to society, the writ's ancient origins have a certain resonance with the current case. But the King's Bench does not bind this Court as the Second Circuit does. And although '[t]he Second Circuit has not granted a writ of audita querela in the criminal context and has not, therefore, set forth any standards under which such a writ may be granted,' U.S. v. Persico, Nos. 99 Civ. 4291(JFK), 84 CR. 809(JFK), 2000 WL 145750, (S.D.N.Y. Feb. 7, 2000), it has at least offered a number of cautionary instructions as to what the writ in its modern form is not. To start: the writ is not dead. It 'has been abolished with respect to civil cases, see Fed.R.Civ.P. 60(b), but it remains available in limited circumstances with respect to criminal convictions.' United States v. Richter, 510 F.3d 103, 104 (2d Cir.2007) (per curiam). More specifically, the writ is not available unless 'there was a legal defect in the conviction.' United States v. Tablie, 166 F.3d 505, 507 (2d Cir.1999) (per curiam) (quotation marks omitted).

The verb tense in this last quotation masks the fact that audita querela traditionally targeted only defects arising after judgment. Authority both within and without the Second Circuit supports this. See United States v. LaPlante, 57 F.3d 252, 253 (2d Cir.1995) (noting audita querela's availability 'where there is a legal ... objection to a conviction that has arisen subsequent to the conviction' (emphasis added)); United States v. Reyes, 945 F.2d 862, 863 n. 1 (5th Cir.1991) ('While ... coram nobis is used to attack a judgment that was infirm, for reasons that later came to light, at the time it was rendered, audita querela was a means of attacking a judgment that was correct at the time rendered but which is rendered infirm by matters which arise after its rendition.'); United States v. Ayala, 894 F.2d 425, 429 (D.C.Cir.1990) ('[T]he distinction between audita querela and other forms of postconviction relief lies not in the character of the grounds for voiding the judgment, but rather in the timing of the occurrence of these grounds.'); Black's Law Dictionary 150 (9th ed. 2009) ('A writ available to a judgment debtor who seeks a rehearing of a matter on grounds of newly discovered evidence or newly existing legal defenses.')."