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PRIME MANAGEMENT, LLC *v.*  
JESSICA ARTHUR ET AL.  
(AC 45330)

Bright, C. J., and Moll and DiPentima, Js.

*Syllabus*

The plaintiff landlord sought, by way of summary process, to regain possession of certain residential property that was occupied by the defendant tenant. The plaintiff and the defendant were parties to a written, one year lease that commenced on November 1, 2017, which provided that, if it was not renewed, it would convert to a month-to-month lease with all terms and conditions remaining in effect. On July 22, 2021, the plaintiff served the defendant with a notice to quit possession or occupancy of the premises on or before August 24, 2021, which included a disclaimer providing that any payment tendered after service of the notice to quit would not be accepted as rent. Before August 24, 2021, the plaintiff accepted a rental payment tendered by a rental assistance program in which the defendant participated. On September 27, 2021, the trial court granted the plaintiff's motion for default judgment for failure to appear and for possession and rendered a judgment of possession in favor of the plaintiff on the basis of lapse of time. The defendant thereafter filed a motion to open and an amended motion to dismiss the summary process action for lack of subject matter jurisdiction, arguing, *inter alia*, that the plaintiff's use and occupancy disclaimer violated an executive order issued by the governor limiting evictions. The court interpreted Executive Order No. 12D, § 2 (b), to conclude that the August, 2021 payment to the plaintiff was neither a use and occupancy payment nor a rental payment and denied the defendant's motions. On the defendant's appeal to this court, *held* that the trial court improperly denied the defendant's motion to open the default judgment and the defendant's amended motion to dismiss: the terms of Executive Order No. 12D, § 2 (b), provide plainly and unambiguously that a notice to quit claiming lapse of time cannot function to terminate a rental agreement before the quit date and any use and occupancy disclaimer included in the notice to quit is ineffective until after either the quit date or the date of completion of any pretermination process required by federal law or regulations, whichever is later, and, consequently, the parties were bound by the terms of the rental agreement, thus, the August, 2021 payment constituted rent and the plaintiff's acceptance of it rendered the July, 2021 notice to quit equivocal and deprived the court of subject matter jurisdiction over the summary process action; accordingly, the judgment was reversed.

Argued January 5—officially released February 28, 2023

*Procedural History*

Summary process action, brought to the Superior Court in the judicial district of New Haven, Housing Session, where the court, *Cirello, J.*, granted the plaintiff's motion for default for failure to appear and rendered a judgment of possession in favor of the plaintiff; thereafter, the court denied the named defendant's motions to open and to dismiss, and the named defendant appealed to this court. *Reversed; judgment directed.*

*Shelley A. White*, for the appellant (named defendant).

*David E. Rosenberg*, for the appellee (plaintiff).

*Opinion*

MOLL, J. The defendant Jessica Arthur<sup>1</sup> appeals from the judgment of the trial court denying her (1) motion to open a default judgment and (2) motion to dismiss the summary process action filed by the plaintiff, Prime Management, LLC. On appeal, the defendant claims that the court incorrectly interpreted Executive Order No. 12D, issued by Governor Ned Lamont on June 30, 2021, in concluding that it had subject matter jurisdiction over the summary process action. We agree and, accordingly, reverse the judgment of the trial court.

The following procedural history is relevant to our resolution of this appeal. On September 1, 2021, the plaintiff commenced the present summary process action. The plaintiff's complaint set forth the following relevant allegations. On or about October 31, 2017, the plaintiff and the defendant entered into a written lease agreement with respect to an apartment located in West Haven for a term of one year, from November 1, 2017, to October 31, 2018. The lease, a copy of which was appended to the complaint, further provided that, if not renewed, the lease would convert to a month-to-month lease with all of the terms and conditions remaining in effect. On July 22, 2021, the plaintiff served the defendant with a notice to quit possession or occupancy of the premises on or before August 24, 2021, on the basis of (1) lapse of time or (2) in the alternative, termination of the right or privilege to occupy the premises. The notice to quit included a use and occupancy disclaimer providing that "[a]ny payment tendered after service of this notice to quit, pursuant to [Executive Order No. 13, issued by Governor Lamont on July 19, 2021, and Executive Order No. 12D, § 2 (b)], will be accepted as use and occupancy only and not for rent and as costs of the proceeding only with a full reservation of rights to institute and maintain a summary process action." The plaintiff filed the present summary process action following the defendant's failure to quit possession or occupancy of the premises.

On September 17, 2021, the plaintiff filed a motion for default for failure to appear and for a judgment of possession. See General Statutes § 47a-26.<sup>2</sup> On September 27, 2021, the trial court, *Cirello, J.*, granted the plaintiff's motion and rendered a judgment of possession in favor of the plaintiff on the basis of lapse of time.

On October 1, 2021, the defendant filed an appearance as a self-represented party and filed an application for a waiver of fees in order to file a motion to open the default judgment. On October 4, 2021, the court granted the defendant's fee waiver application, and the defendant's motion to open was docketed. In support of the motion to open, the defendant asserted that she had "never [received] the summons for an eviction process."

On October 19, 2021, after counsel had filed an

appearance on her behalf, the defendant filed a motion to dismiss the summary process action for lack of subject matter jurisdiction on the basis that the July, 2021 notice to quit was defective on its face. The defendant contended that the use and occupancy disclaimer set forth in the notice to quit violated Executive Order No. 12D, § 2 (b), by indicating that (1) the defendant's tenancy was terminated upon service of the notice to quit, rather than after the August 24, 2021 quit date, and (2) payments tendered by the defendant to the plaintiff in between the date of service of the notice to quit and the August 24, 2021 quit date would not be accepted as rent. On December 1, 2021, the defendant filed an amended motion to dismiss, raising the additional claim that the notice to quit had been rendered equivocal because, prior to the August 24, 2021 quit date, the plaintiff had accepted a rental payment for the month of August, 2021, tendered to it by a Section 8 rental assistance program in which the defendant participates.<sup>3</sup> The defendant further argued that, pursuant to § 2 (b), the tender of the August, 2021 payment operated to cure the lapse of time claimed by the plaintiff. On December 8, 2021, the plaintiff filed an objection to the defendant's amended motion to dismiss.

On February 22, 2022, the court denied the defendant's amended motion to dismiss, relying on the reasoning set forth in its decision denying a motion to dismiss filed in an unrelated summary process action, *Rowan v. Sallm*, Superior Court, judicial district of New Haven, Housing Session, Docket No. CV-21-6014104-S (November 29, 2021). On the same day, the court denied the defendant's motion to open the default judgment, concluding that (1) the defendant had not alleged that a good defense to the plaintiff's claims exists, and (2) the defendant was not prevented from appearing by mistake, accident, or other reasonable cause. This appeal followed.<sup>4</sup>

We begin by setting forth the applicable standard of review and the relevant legal background. “Our standard of review of a trial court's findings of fact and conclusions of law in connection with a motion to dismiss is well settled. A finding of fact will not be disturbed unless it is clearly erroneous. . . . [If] the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts. . . . Thus, our review of the trial court's ultimate legal conclusion and resulting [denial] of the motion to dismiss will be de novo.” (Internal quotation marks omitted.) *Nationstar Mortgage, LLC v. Gabriel*, 201 Conn. App. 39, 43, 241 A.3d 763 (2020). Insofar as we address the denial of the defendant's motion to open the default judgment; see footnote 4 of this opinion; we also exercise plenary review under the circumstances of this case. See *Pennymac Corp. v. Tarzia*, 215 Conn. App. 190, 200 n.8, 281 A.3d 469 (2022) (Although this court “ordinarily

review[s] a [trial] court's ruling on a motion to open a judgment for an abuse of discretion . . . the dispositive issue in this appeal is not whether the trial court properly exercised its discretion in denying the motion to open but, rather, whether the trial court properly determined that it had subject matter jurisdiction under the circumstances of this case. . . . The issue of subject matter jurisdiction is not a matter of discretion.” (Citations omitted.).

General Statutes § 47a-23 provides in relevant part: “(a) When the owner or lessor . . . desires to obtain possession or occupancy of . . . any apartment in any building . . . and . . . when a rental agreement or lease of such property, whether in writing or by parol, terminates for any of the [reasons enumerated, including lapse of time and nonpayment of rent] . . . such owner or lessor . . . shall give notice to each lessee or occupant to quit possession or occupancy of such . . . apartment . . . at least three days before the termination of the rental agreement or lease, if any, or before the time specified in the notice for the lessee or occupant to quit possession or occupancy. . . .

“(e) A termination notice required pursuant to federal law and regulations may be included in or combined with the notice required pursuant to this section and such inclusion or combination does not thereby render the notice required pursuant to this section equivocal, provided the rental agreement or lease shall not terminate until after the date specified in the notice for the lessee or occupant to quit possession or occupancy or the date of completion of the pretermination process, whichever is later. A use and occupancy disclaimer may be included in or combined with such notice, provided that such disclaimer does not take effect until after the date specified in the notice for the lessee or occupant to quit possession or occupancy or the date of the completion of the pretermination process, whichever is later. Such inclusion or combination does not thereby render the notice required pursuant to this section equivocal. Such disclaimer shall be in substantially the following form: ‘Any payments tendered after the date specified to quit possession or occupancy, or the date of the completion of the pretermination process if that is later, will be accepted for use and occupancy only and not for rent, with full reservation of rights to continue with the eviction action.’ ”

General Statutes § 47a-23a provides in relevant part: “(a) If, at the expiration of the three days prescribed in section 47a-23, the lessee or occupant neglects or refuses to quit possession or occupancy of the premises, any commissioner of the Superior Court may issue a writ, summons and complaint which shall be in the form and nature of an ordinary writ, summons and complaint in a civil process, but which shall set forth facts justifying a judgment for immediate possession

or occupancy of the premises and make a claim for possession or occupancy of the premises. . . .”

“On March 10, 2020, [i]n response to the global pandemic of [COVID-19], Governor Lamont declare[d] a public health emergency and civil preparedness emergency throughout the [s]tate, pursuant to [General Statutes §§] 19a-131a and 28-9 . . . . Governor Lamont has renewed the declaration of both emergencies several times.” (Internal quotation marks omitted.) *CT Freedom Alliance, LLC v. Dept. of Education*, 346 Conn. 1, 5–6, A.3d (2023). As our Supreme Court has summarized, “following the proclamation of a civil preparedness emergency pursuant to § 28-9 (a), subsection (b) (1) empowers the governor to modify or suspend any statute, regulation or requirement that conflicts with the efficient and expeditious execution of civil preparedness functions or the protection of the public health. Subsection (b) (7) additionally empowers the governor to take other steps that are reasonably necessary in light of the emergency to protect the health, safety, and welfare of the people of the state.” *Casey v. Lamont*, 338 Conn. 479, 499, 258 A.3d 647 (2021).

Following his declaration of the public health and civil preparedness emergencies, Governor Lamont issued a series of executive orders that placed limitations on evictions in the state. Pursuant to § 1 (a) of Executive Order No. 7X, issued on April 10, 2020, § 47a-23 was modified to add subsection (f), which provides in relevant part that “[n]o landlord of a dwelling unit . . . shall, before July 1, 2020, deliver or cause to be delivered a notice to quit or serve or return a summary process action, for any reason set forth in this chapter or in sections 21-80 et seq. of the Connecticut General Statutes, except for serious nuisance as defined in section 47a-15 of the Connecticut General Statutes.” Subsequent executive orders continued the eviction moratorium but eased the restrictions. Pursuant to § 3 of Executive Order No. 10A, issued on February 8, 2021, the eviction moratorium was (1) extended for the duration of the public health and civil preparedness emergencies and (2) lifted for cases involving claims asserting (a) nonpayment of rent due on or before February 29, 2020, (b) serious nonpayment of rent as defined in the order, (c) serious nuisance as defined in General Statutes § 47a-15, or (d) a bona fide intention by the landlord to use the dwelling unit at issue as the landlord’s principal residence, provided the notice to quit is not delivered during the term of any existing rental agreement. On May 20, 2021, Governor Lamont extended Executive Order No. 10A, § 3, through June 30, 2021, and indicated that another executive order would follow concerning the eviction moratorium. See Executive Order No. 12B, §§ 3 and 8 (May 20, 2021).

On June 30, 2021, Governor Lamont issued Executive Order No. 12D. Section 2 (a) provides in relevant part:

“Notwithstanding any contrary provision of sections 47a-23 and 47a-23a of the Connecticut General Statutes, when the owner or lessor . . . desires to obtain possession or occupancy of . . . any apartment in any building . . . and . . . when a rental agreement or lease of such property, whether in writing or by parol, terminates by (I) lapse of time or (II) for nonpayment of rent . . . such owner or lessor . . . shall give notice to each lessee or occupant to quit possession or occupancy of such . . . apartment . . . at least thirty days before the time specified in the notice for the lessee or occupant to quit possession or occupancy.”

Section 2 (b) of Executive Order No. 12 D, titled “Opportunity to Cure,” provides in relevant part: “Notwithstanding any contrary provision of sections 47a-23 and 47a-23a of the Connecticut General Statutes, a notice to quit for a reason stated in paragraph (a) of this subsection shall not permit the termination of the rental agreement until after the date specified to each lessee or occupant to quit possession or occupancy of such . . . apartment . . . . A use and occupancy disclaimer included in or combined with such notice to quit shall not take effect until after the date specified in the notice for the lessee or occupant to quit possession or occupancy or the date of the completion of any pretermination process required by federal law or regulations, whichever is later. If, at the expiration of the thirty days prescribed herein, the lessee or occupant has not remedied any nonpayment of rent, including but not limited to through the approval of an application for rental assistance from UniteCT,<sup>5</sup> and neglects or refuses to quit possession or occupancy of the premises, any commissioner of the Superior Court may issue a writ, summons and complaint in accordance with the provisions of Section 47a-23 of the Connecticut General Statutes.”<sup>6</sup> (Footnote added.) Governor Lamont twice extended Executive Order No. 12D, once through September 30, 2021; see Executive Order No. 13, § 1 (July 19, 2021); and again through February 15, 2022. See Executive Order No. 14A, § 1 (September 30, 2021). Executive Order No. 12D was in effect when the plaintiff served the defendant with the notice to quit in July, 2021, as well as when the plaintiff commenced the present summary process action in September, 2021.

In denying the defendant’s amended motion to dismiss, the court relied on the rationale of its decision denying a motion to dismiss a separate summary process action, *Rowan v. Sallm*, supra, Superior Court, Docket No. CV-21-6014104-S. In *Rowan*, the plaintiffs served the defendants with a notice to quit on August 10, 2021, with a quit date of September 15, 2021, on the basis of lapse of time of the parties’ oral month-to-month lease. The notice to quit contained a use and occupancy disclaimer providing that “[a]ny payment tendered after service of this notice to quit will be accepted as use and occupancy and as costs of proceed-

ing only, and not for rent, with a full reservation of rights to institute and maintain a summary process action.” On September 1, 2021, prior to the quit date in the notice to quit, the plaintiffs received an electronic payment in the amount of the defendants’ rent due for the month of September, 2021, from a rental assistance program of which the defendants were participants. Following the September 15, 2021 quit date, the plaintiffs commenced a summary process action against the defendants. The defendants moved to dismiss the summary process action for lack of subject matter jurisdiction, asserting that, pursuant to Executive Order No. 12D, § 2 (b), the September, 2021 payment had to be considered rent, thereby rendering the notice to quit equivocal and “curing” the lapse of time.

In denying the defendants’ motion to dismiss in *Rowan*, the court stated that “[i]t is clear that the governor intended to allow a cause of action for lapse of time in Executive Order No. 12D. It is clearly enumerated in § 1 (a).<sup>7</sup> Section 2 (b) . . . does state that a ‘use and occupancy disclaimer included in or combined with such notice to quit shall not take effect until after the date specified in the notice for the lessee or occupant to quit possession,’ but that is followed by the phrase, ‘[i]f, at the expiration of the thirty days prescribed herein, the lessee or occupant has not remedied *any nonpayment* of rent . . . .’ Considering the two phrases together, the governor’s intent is clear, § 2 (b) is addressing nonpayment of rent claims that can be cured through payments through UniteCT.

“Actually, the whole . . . of § 2 (b) refers to the nonpayment of rent, and applications for UniteCT. The section does not address any of the other causes of action enumerated in [§ 2 (a)]. As such, the court construes § 2 (b) to encourage the parties to explore UniteCT to cure a nonpayment claim.

“The court further finds that the term ‘Cure’ in the heading of § 2 (b) is not to be interpreted . . . [to provide for] the creation of a new tenancy. An ‘opportunity to cure’ is what [it] is. An opportunity to cure a nonpayment eviction by utilizing funds available from UniteCT. The portions of the section related to the use and occupancy disclaimer are there to ensure that an application and funding from UniteCT will be more successful.” (Emphasis in original; footnote added.) The court further rejected the defendants’ reliance on § 2 (b) to argue that the September 1, 2021 payment had to be deemed to be rent, determining that § 2 (b) did “not automatically make the September 1, 2021 payment rent. It cannot be considered use and occupancy, but [Executive Order No. 12D] does not state that it must be considered rent.”

The dispositive claim raised by the defendant in the present case is that the court incorrectly interpreted Executive Order No. 12D, § 2 (b), to conclude that the August, 2021 payment, remitted to and accepted by



the plaintiff,<sup>8</sup> was not a rental payment. The defendant asserts that the August, 2021 payment constituted rent and that the plaintiff's acceptance of the payment rendered the July, 2021 notice to quit equivocal, such that the court lacked subject matter jurisdiction over the present summary process action. We agree.<sup>9</sup>

It is well settled that “[a] landlord’s service of a notice to quit is an act that is sufficiently unequivocal to terminate tenancy. . . . A notice to quit is a condition precedent to a summary process action and, if defective, deprives the court of subject matter jurisdiction.” (Citation omitted; internal quotation marks omitted.) *J. M. v. E. M.*, 216 Conn. App. 814, 820, 286 A.3d 929 (2022); see also *Bridgeport v. Barbour-Daniel Electronics, Inc.*, 16 Conn. App. 574, 584, 548 A.2d 744 (“[t]he necessary and only basis of a summary process proceeding is that the lease has terminated” (internal quotation marks omitted)), cert. denied, 209 Conn. 826, 552 A.2d 432 (1988). “Notwithstanding an unequivocal notice to quit, a landlord’s acceptance of rent prior to the quit date contained in the notice to quit can render the landlord’s intent to terminate the tenancy equivocal, repudiate the intent to terminate set forth in the notice to quit, and reinstate the lease.” *J. M. v. E. M.*, supra, 820. Thus, if the August, 2021 payment constituted rent, then the plaintiff’s acceptance of the payment rendered the notice to quit equivocal and deprived the court of subject matter jurisdiction to entertain the present summary process action.

In the *Rowan* decision, which the court incorporated into its denial of the defendant’s amended motion to dismiss, the court concluded that, pursuant to Executive Order No. 12D, § 2 (b), a payment made by a tenant in the interim between the service of a notice to quit for lapse of time and the quit date was not a use and occupancy payment; however, the court further concluded that § 2 (b) did not provide that such a payment must be considered rent. In essence, the court concluded that the August, 2021 payment was neither a rental payment nor a use and occupancy payment but, rather, fell into an undefined third category. We disagree with the court’s reasoning.

Our analysis requires us to interpret Executive Order No. 12D, § 2, in particular, subsection (b). Applying the principles of statutory interpretation to the executive order is apropos because the order has the full force and effect of law. See General Statutes § 28-9 (b) (1) (any order issued by governor pursuant to § 28-9 (b) (1) “shall have the full force and effect of law upon the filing of the full text of such order in the office of the Secretary of the State”); see also *Matter of Murack*, 957 N.W.2d 124, 128 (Minn. App. 2021) (applying principles of statutory interpretation to emergency executive orders issued by Governor of Minnesota because orders had “the full force and effect of law,” and observing

that “courts of other jurisdictions have applied principles of statutory interpretation in interpreting executive orders”).

General Statutes § 1-2z provides: “The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” “[W]hen construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature.” (Internal quotation marks omitted.) *Lawrence v. Gude*, 216 Conn. App. 624, 629, 285 A.3d 1198 (2022).

Guided by the aforementioned tenets, we read Executive Order No. 12D, § 2 (b), to provide, plainly and unambiguously, in relevant part that (1) a notice to quit claiming, inter alia, lapse of time cannot function to terminate a rental agreement on or before the quit date, and (2) any use and occupancy disclaimer included in the notice to quit is ineffective until after either the quit date or the date of completion of any pretermination process required by federal law or regulations, whichever is later.<sup>10</sup> Thus, pursuant to § 2 (b), the August, 2021 payment could not be deemed to be a use and occupancy payment. Although the court correctly observed that there is no express provision in § 2 (b) mandating that the August, 2021 payment be construed as rent, we do not agree that such an express declaration is necessary. In accordance with the first sentence of § 2 (b), the parties’ rental agreement could not be terminated on or before the August 24, 2021 quit date. Consequently, the parties were bound by the rental agreement, the terms of which provided for the creation of a month-to-month tenancy following the expiration of the initial lease period, at the time that the August, 2021 payment was remitted and accepted. “‘Rent,’” as used in § 47a-23 among other statutes, is statutorily defined as “all periodic payments to be made to the landlord under the rental agreement.” General Statutes § 47a-1 (h). Accordingly, we conclude that the August, 2021 payment constituted rent, and we reject the notion that the payment could have been of some other, undefined nature.<sup>11</sup> Consequently, we conclude that, as a result of the plaintiff’s acceptance of the August, 2021 payment, the July, 2021 notice to quit became equivocal, thereby depriving the court of subject matter jurisdiction over the present summary process action.

At this juncture, we clarify that we are *not* concluding that, pursuant to Executive Order No. 12D, § 2 (b), the defendant’s tender of the August, 2021 payment, in and of itself, operated to “cure” the lapse of time claimed by the plaintiff and to preclude the plaintiff from initiating summary process proceedings, which is an issue that

the parties briefed and argued extensively. The third and final sentence of § 2 (b) provides that, “[i]f, at the expiration of the thirty days prescribed herein, *the lessee or occupant has not remedied any nonpayment of rent, including but not limited to through the approval of an application for rental assistance from UniteCT*, and neglects or refuses to quit possession or occupancy of the premises, any commissioner of the Superior Court may issue a writ, summons and complaint in accordance with the provisions of Section 47a-23 of the Connecticut General Statutes.” (Emphasis added.) The defendant interprets § 2 (b) to provide that the tender of rent on or before the quit date in a notice to quit predicated on lapse of time operates to “cure” the lapse of time. We do not agree with that construction. We interpret § 2 (b) to provide that, if a *nonpayment of rent claim* is remedied by the tender of rent on or before the quit date, then no summary process action can be initiated *for nonpayment of rent*. In other words, only a nonpayment of rent claim can be “cured” under § 2 (b). Reading § 2 (b) to enable the mere tender of a rental payment to “cure” a lapse of time claim would yield absurd or unworkable results because, in effect, landlords would be prevented from terminating leases for lapse of time if the tenants continued to pay rent notwithstanding the fact that § 2 (a) expressly lifted the eviction moratorium as to lapse of time claims.

Our conclusion that Executive Order No. 12D, § 2 (b), does not enable tenants to “cure” lapse of time claims by *tendering* rental payments is not in conflict with our analysis regarding the July, 2021 notice to quit being rendered equivocal on the basis of the plaintiff’s *acceptance* of the August, 2021 payment. Executive Order No. 12D does not alter the requirement that an *unequivocal* notice to quit must precede the commencement of a summary process action. The July, 2021 notice to quit became equivocal as a result of the plaintiff’s acceptance of the August, 2021 payment, and, therefore, the court lacked subject matter jurisdiction over the present summary process action. Accordingly, we conclude that the court improperly denied the defendant’s motion to open the default judgment and the defendant’s amended motion to dismiss.

The judgment is reversed and the case is remanded with direction to grant the defendant’s motion to open the default judgment and to grant the defendant’s amended motion to dismiss the summary process action for lack of subject matter jurisdiction.

In this opinion the other judges concurred.

<sup>1</sup> The plaintiff’s complaint also named a John Doe defendant and a Jane Doe defendant. On September 14, 2021, the plaintiff withdrew the action as to Jane Doe. John Doe, against whom a judgment of possession was rendered after he had been defaulted for failure to appear, is not participating in this appeal. Accordingly, we refer in this opinion to Jessica Arthur as the defendant.

<sup>2</sup> General Statutes § 47a-26 provides: “If the defendant does not appear within two days after the return day and a motion for judgment for failure

to appear and an endorsed copy of the notice to quit is filed with the clerk, the court shall, not later than the first court day after the filing of such motion, enter judgment that the complainant recover possession or occupancy of the premises with the complainant's costs, and execution shall issue subject to the provisions of sections 47a-35 to 47a-41, inclusive."

<sup>3</sup> The defendant appended to the amended motion to dismiss a personal affidavit averring that, to the best of her knowledge, her rent for August, 2021, had been paid in full by the entity administering the Section 8 rental assistance program.

<sup>4</sup> The defendant's appeal form identifies the denial of her motion to open the default judgment as the only decision from which she is appealing. The defendant's preliminary statement of the issues, filed in accordance with Practice Book § 63-4 (a) (1), sets forth one issue: "Whether the trial court erred as a matter of law in denying [the defendant's] motion to open on the grounds that the court had subject matter jurisdiction over [the plaintiff's] summary process action, thereby rejecting the defendant's claims that [1] the notice to quit served on [the defendant] did not comply with the requirements [of] Executive Order [No.] 12D, and [2] [the defendant's] payment of rent to the [plaintiff] in the month of August, 2021, reinstated the defendant's lease, precluding commencement of [the plaintiff's] summary process action." In her appellate brief, the defendant states that she is challenging on appeal both the denial of her motion to open and the denial of her amended motion to dismiss, with the caveat that her "challenge to the denial of her motion to open is based solely on error in the denial of her amended motion to dismiss and the lack of subject matter jurisdiction." Notwithstanding the defendant's failure to identify the denial of her amended motion to dismiss in her appeal form as a decision from which she is appealing, to avoid elevating form over substance, we treat this appeal as being taken both from the denial of the motion to open and the denial of the amended motion to dismiss, with the resolution of the appeal hinging on whether the court correctly rejected the defendant's claim that it lacked subject matter jurisdiction to entertain the present summary process action. See *Levine v. 418 Meadow Street Associates, LLC*, 163 Conn. App. 701, 710, 137 A.3d 88 (2016) (defendants' preliminary statement of issues established their intent to challenge denials of motion to set aside verdict and motion for remittitur, notwithstanding their failure to list those decisions on appeal form).

<sup>5</sup> UniteCT is the state's "program to implement the emergency rental assistance programs established by section 501 of Division N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (December 27, 2020) and section 3201 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (March 11, 2021)." Executive Order No. 12D, § 1 (June 30, 2021).

<sup>6</sup> Executive Order No. 12D contains three other sections. Section 1 provides in relevant part that, before delivering a notice to quit for nonpayment of rent, the owner or lessor "shall complete and submit the landlord's portion of an application to UniteCT . . . ." See footnote 5 of this opinion. Section 3 identifies certain documents that must accompany residential notices to quit. Section 4 provides that any summary process proceeding, other than one asserting a claim of serious nuisance as defined in General Statutes § 21-80 or § 47a-15, will be stayed if an application to UniteCT is filed by the landlord or the tenant during the proceeding, with the stay lasting for thirty days or until the application is resolved, whichever occurs earlier. Section 4 further provides that if the application to UniteCT is approved, then the summary process proceeding remains stayed "until such UniteCT payment is made and the summary process action is withdrawn or dismissed." None of these other sections is germane to this appeal.

<sup>7</sup> We deem the court's reference to "§ 1 (a)" of Executive Order No. 12D to be a scrivener's error because § 1 does not contain any subsections and plainly concerns cases predicated on claims of nonpayment of rent only. We presume that the court intended to cite § 2 (a).

<sup>8</sup> The parties do not dispute that the August, 2021 payment was tendered prior to the August 24, 2021 quit date set forth in the July, 2021 notice to quit. In addition, the record reveals repeated assertions by the defendant that the plaintiff accepted the tender of the August, 2021 payment. The plaintiff did not deny those assertions in its briefing or during oral argument on appeal. Thus, on the basis of the record, we discern no dispute that the plaintiff accepted the August, 2021 payment.

<sup>9</sup> The defendant also claims that the court improperly denied her amended motion to dismiss because the notice to quit was defective on its face, thereby depriving the court of subject matter jurisdiction. We need not

address the merits of this claim in light of our resolution of the defendant's dispositive claim.

<sup>10</sup> Insofar as the court concluded that Executive Order No. 12D, § 2 (b), in its entirety, applies exclusively to nonpayment of rent claims, that conclusion is untenable. Section 2 (b) provides in relevant part that “a notice to quit *for a reason stated in paragraph (a) of this subsection [including lapse of time]* shall not permit the termination of the rental agreement until after the date specified to each lessee or occupant to quit possession or occupancy of such . . . apartment . . . . A use and occupancy disclaimer included in or combined *with such notice to quit* shall not take effect until after the date specified in the notice for the lessee or occupant to quit possession or occupancy or the date of the completion of any pretermination process required by federal law or regulations, whichever is later. . . .” (Emphasis added.) As we explain later in this opinion, however, we construe § 2 (b) to provide that only a nonpayment of rent claim is capable of being “cured” if the nonpayment of rent is remedied on or before the quit date.

<sup>11</sup> We also note that General Statutes § 47a-23 (e) provides that use and occupancy disclaimers “shall be in substantially the following form: ‘Any payments tendered after the date specified to quit possession or occupancy, or the date of the completion of the pretermination process if that is later, will be accepted *for use and occupancy only and not for rent*, with full reservation of rights to continue with the eviction action.’” (Emphasis added.) This language contemplates two categories of payments only, namely, (1) use and occupancy payments and (2) rental payments.

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