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KENNYNICK, LLC, ET AL. *v.* STANDARD
PETROLEUM COMPANY
(AC 45118)

Alvord, Elgo and Seeley, Js.

Syllabus

The plaintiff retail gasoline dealer sought to recover damages from the defendant, a wholesale gasoline distributor, in connection with the defendant's breach of a dealer supply agreement between the parties regarding the sale of gasoline. The plaintiff claimed that it was overcharged when the defendant failed to apply a federal tax credit to the federal gasoline tax charged to the plaintiff and improperly charged the plaintiff for the Connecticut gross receipts tax on the defendant's profit and delivery costs. After a trial, the court found, *inter alia*, that the defendant breached the parties' contract by failing to properly apply the federal tax credit and the state gross receipts tax. On the plaintiff's appeal and the defendant's cross appeal to this court, *held* that the judgment of the trial court was affirmed; because the trial court properly resolved the issues in its thorough and well reasoned memorandum of decision, this court adopted that decision as a proper statement of the relevant facts, issues and applicable law.

Argued September 12—officially released October 31, 2023

Procedural History

Action to recover damages for, *inter alia*, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and transferred to the judicial district of Hartford, Complex Litigation Docket, where the plaintiff Faugno Acquisition, LLC, withdrew from the action; thereafter, the case was tried to the court, *Schuman, J.*; judgment in part for the named plaintiff, from which the named plaintiff appealed and the defendant cross appealed to this court; subsequently, the court, *Schuman, J.*, issued an articulation of its decision. *Affirmed.*

John J. Morgan, for the appellant-cross appellee (named plaintiff).

Nicholas P. Vegliante, with whom was *Joseph J. Arcata III*, for the appellee-cross appellant (defendant).

Opinion

PER CURIAM. The plaintiff Kennynick, LLC, appeals, and the defendant, Standard Petroleum Company, cross appeals, from the judgment of the trial court in this dispute between a wholesale gasoline distributor and a retail gasoline dealer.¹ The plaintiff claims that the court improperly (1) calculated the applicable time period for which it awarded prejudgment interest, (2) concluded that the plaintiff had not established violations of either the Connecticut Petroleum Franchise Act (CPFA), General Statutes § 42-133j et seq., or the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq., and (3) permitted the defendant to offer evidence to support unpleaded special defenses of offset or recoupment. In its cross appeal, the defendant claims that the court improperly (1) construed the contract between the parties to require it to pass along a federal tax credit to the plaintiff and (2) denied its special defenses of waiver and voluntary payment.² We affirm the judgment of the trial court.

This action concerns a dealer supply agreement between the parties regarding the sale of gasoline. In its operative complaint, the plaintiff alleged that the defendant had overcharged it by (1) failing to apply the federal “volumetric ethanol excise tax credit”; see *Standard Petroleum Co. v. Faugno Acquisition, LLC*, 330 Conn. 40, 44 n.5, 191 A.3d 147 (2018); to the federal gasoline tax that it charged the plaintiff and (2) improperly charging the plaintiff for the Connecticut gross receipts tax; see General Statutes § 12-587 (b) (1); on the defendant’s profit and delivery costs. The plaintiff’s complaint contained six counts alleging breach of contract, unjust enrichment, misrepresentation, and violations of CPFA, CUTPA, and the Uniform Commercial Code. In response, the defendant filed an answer and special defenses, in which it alleged, inter alia, waiver and voluntary payment on the part of the plaintiff.

Following a six day trial, the court found the defendant liable for breach of contract due to its failure to properly apply the federal tax credit and the Connecticut gross receipts tax, which resulted in an overcharge of \$37,637.72 to the plaintiff. The court ruled in favor of the defendant on the misrepresentation, CPFA violation, and CUTPA violation counts and rejected its special defenses.³ The court further concluded that the plaintiff was entitled to prejudgment interest and reimbursement from the defendant for its attorney’s fees, and rendered judgment accordingly. From that judgment, the plaintiff now appeals and the defendant cross appeals.

Our plenary review of the record, briefs, and arguments of the parties persuades us that the judgment should be affirmed. The issues properly were resolved in the court’s thorough and well reasoned memorandum

of decision. See *Kennynick, LLC v. Standard Petroleum Co.*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X03-CV-09-5042760-S (October 22, 2021) (reprinted at 222 Conn. App. 237, 153 A.3d 687 (2017)). We therefore adopt that memorandum of decision as a proper statement of the relevant facts, issues, and applicable law, as it would serve no useful purpose for us to repeat the discussion contained therein. See *Citizens Against Overhead Power Line Construction v. Connecticut Siting Council*, 311 Conn. 259, 262, 86 A.3d 463 (2014); *Phadnis v. Great Expression Dental Centers of Connecticut, P.C.*, 170 Conn. App. 79, 81, 153 A.3d 687 (2017).

The judgment is affirmed.

¹ The present case is part of a class action against the defendant for failing to pass on a federal tax credit to retail gasoline dealers and for overcharging them on the state gross receipts tax. Although Faugno Acquisition, LLC, also was named as a plaintiff, it withdrew from this action in December, 2019. As the court emphasized in its memorandum of decision, the present case concerns only the claims of Kennynick, LLC, and does not involve any class issues. We therefore refer to Kennynick, LLC, as the plaintiff in this opinion.

² The defendant also contends that the court improperly awarded compound prejudgment interest to the plaintiff, arguing that such an award is not permitted under General Statutes § 37-3a. At oral argument before this court, the defendant's counsel conceded that the defendant did not raise that claim with the trial court at any time, despite the fact that the plaintiff expressly requested an award of "5 percent annual compound interest" in its posttrial brief. Accordingly, we decline to consider that unpreserved claim. See Practice Book §§ 5-2 and 60-5; *Chief Disciplinary Counsel v. Rozbicki*, 326 Conn. 686, 695, 167 A.3d 351 (2017) ("[O]nly in [the] most exceptional circumstances can and will this court consider a claim, constitutional or otherwise, that has not been raised and decided in the trial court. . . . The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambush, which is unfair to both the trial court and the opposing party." (Internal quotation marks omitted.)), cert. denied, 138 U.S. , 138 S. Ct. 2583, 201 L. Ed. 2d 295 (2018); *State v. Favoccia*, 119 Conn. App. 1, 14, 986 A.2d 1081 (2010) ("[i]t is axiomatic that issues not properly raised before the trial court ordinarily will not be considered on appeal"), aff'd, 306 Conn. 770, 51 A.3d 1002 (2012).

³ The court declined to rule on the unjust enrichment count, as it related only to the class action component of the case, as well as the plaintiff's claims under the Uniform Commercial Code, which the court concluded "does not apply to the contract between the parties." On appeal, neither party challenges the propriety of that determination.
