CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

BRANT SMITH *v.* MARSHVIEW FITNESS, LLC, ET AL.
(AC 41219)

Prescott, Elgo and Bishop, Js.

Syllabus

The plaintiff brought an action against the defendant M Co., seeking to recover, inter alia, damages for the allegedly fraudulent transfer of certain assets to M Co. The plaintiff, who was the owner of two fitness centers, sold the businesses to R, who bought the businesses through C Co. and O Co. That purchase was financed by a bank loan from W Co. that was secured by a security interest in the assets of C Co. and O Co. Subsequently, M Co. reached an agreement with R to purchase the assets of C Co. and O Co. The agreement was approved by W Co., which subsequently released its lien on the assets of C Co. and O Co. in exchange for $100,000, even though its loan exceeded $800,000, and the plaintiff released his subordinate lien on those assets in exchange for $59,806.13. M Co. then sold the assets of C Co. and O Co. to a new tenant in the building for $159,806.13. The plaintiff thereafter brought the present action, alleging violations of the Uniform Fraudulent Transfer Act (UFTA) (§ 52-552a et seq.), common-law fraudulent transfer, and violations of the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq.). The plaintiff claimed that M Co., C Co., and O Co. conspired to strip C Co. and O Co. of assets sufficient to satisfy their indebtedness to him by fraudulently transferring those assets to M Co. for a price that was not reasonably equivalent to their value. After the trial court granted a motion for summary judgment filed by M Co. and rendered judgment thereon, it denied the plaintiff's motion to reargue, and the plaintiff appealed to this court. *Held*:

1. The plaintiff could not prevail on his claim that the trial court improperly concluded that the transfer of the property of C Co. and O Co. to M Co. was not fraudulent under the common law or UFTA, which was based on the court's determination that the property did not constitute "assets" because it was encumbered by a valid lien in excess of its value: that court determined, on the basis of an affidavit submitted by the plaintiff's expert witness, that because it was undisputed that the property transferred to M Co. had a value of $551,437 and was encumbered by a valid lien held by W Co. in excess of $800,000 at the time of that transfer, it did not meet the definition of "assets," the plaintiff's own deposition testimony and an affidavit submitted by a member of M Co. supported the court's finding as to the amount of the W Co. lien, and the plaintiff did not submit any evidence in opposition to the motion for summary judgment that disputed the amount of that lien; moreover, the plaintiff's claim that the transfer of assets was not limited to the personal property or equipment of C Co. and O Co. but, instead, included the businesses of C Co. and O Co., the value of which exceeded the W Co. lien, was unavailing, as the record was clear that M Co. did not purchase the businesses of C Co. and O Co. but only the personal property, consisting of the gym and office equipment, and, therefore, the record supported the trial court's determination that the property transferred to M Co. did not constitute "assets" that were subject to fraudulent conveyance because there was no genuine issue of material fact that the property was encumbered by a valid lien that exceeded its value at the time of the transfer.

2. The plaintiff could not prevail on his claim that the trial court improperly rendered summary judgment on his CUTPA claim, which was based on his claim that the underlying conduct on which he claimed that M Co. violated CUTPA was broader than the facts supporting his fraudulent transfer claims: the plaintiff's claim was belied by the complaint itself, wherein the plaintiff simply incorporated the facts from his fraudulent transfer counts and added allegations that those facts constituted an unfair or deceptive practice by M Co. that caused him to suffer an ascertainable loss in violation of CUTPA, and although, with respect to his fraudulent transfer claims, the plaintiff set forth an allegation, which he then incorporated into his CUTPA count, that M Co. secretly conspired to purchase the property from C Co. and O Co. to strip them of any assets to satisfy their debts to him, such a bare assertion did not raise a claim of a deceptive or unfair trade practice that was factually or legally distinct from the plaintiff's claims relating to alleged fraudulent transfers; moreover, the plaintiff's discussion of this issue in his brief on appeal was confined to a single paragraph in which he failed to explain, other than in sweeping generalities, how that allegation, if proven, would amount to an unfair trade practice, separate and distinct from the claims relating to fraudulent transfer.

3. The trial court did not abuse its discretion in denying the plaintiff's motion to reargue the motion for summary judgment; the plaintiff's motion to reargue sought to rehash the arguments that the plaintiff previously had made in opposition to the motion for summary judgment, which had already been presented to, and rejected by, the trial court.

Argued March 11—officially released June 25, 2019

Procedural History

Action to recover damages for, inter alia, the allegedly fraudulent transfer of certain property to the named defendant, and for other relief, brought to the Superior Court in the judicial district of Middlesex, where the court, *Aurigemma*, *J.*, granted the named defendant's motion for summary judgment and rendered judgment thereon; thereafter, the court denied the plaintiff's motion to reargue, and the plaintiff appealed to this court. *Affirmed*.

Rowena A. Moffett, for the appellant (plaintiff).

Kenneth J. McDonnell, with whom, on the brief, was *Michael L. McGlinchey*, for the appellee (named defendant).

Opinion

PRESCOTT, J. In this commercial dispute relating to the sale of certain property belonging to two fitness centers, the plaintiff, Brant Smith, appeals from the summary judgment rendered in favor of the defendant Marshview Fitness, LLC.[1] The trial court concluded that the defendant was entitled to summary judgment because the transfer of certain property, in which the plaintiff claims to have had an economic interest, was not fraudulent, as a matter of law, under either the common law or the Uniform Fraudulent Transfer Act (UFTA), General Statutes § 52-552a et seq. In doing so,

[1] SHF-Clinton, LLC, and SHF-Old Saybrook, LLC, also are defendants in this action. They have been defaulted for failing to appear and the claims against them are still pending. Because they have not participated in this appeal, any reference herein to the defendant is to Marshview Fitness, LLC.

the trial court also rejected the plaintiff's related claim under the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.

On appeal, the plaintiff claims, among other things,[2] that the trial court improperly (1) concluded that the transfer at issue was not fraudulent under the common law or UFTA because the property that was transferred did not constitute "assets," (2) rejected his CUTPA claim on the ground that it was based solely on his allegations of fraudulent transfer, and (3) denied his motion to reargue. We affirm the judgment of the trial court.

The trial court set forth the following factual and procedural history. "The plaintiff was the owner of two fitness centers that had been operated as 'Shoreline Health and Fitness' in Clinton and Old Saybrook, Connecticut. On September 15, 2010, the plaintiff and his former partners sold the businesses to Ryan Rothschild. Rothschild bought the businesses through two separate companies, SHF-Clinton, LLC, and SHF-Old Saybrook, LLC (SHF entities). The Rothschild/SHF entities' purchase of the plaintiff's fitness centers was financed by Wells Fargo Bank [Wells Fargo] under a program sponsored by the United States Small Business Administration [SBA]. The principal amount of the Wells Fargo loan at the time of the plaintiff's sale to the SHF entities was $1.2 million. That loan was secured by a security interest in the assets of the SHF entities, which was prior in right to the security interest of the plaintiff.

[2] With respect to the fraudulent transfer claims, the plaintiff challenges each of the three legal grounds on which the court based its conclusion that the defendant was entitled to judgment as a matter of law on those claims. We agree that the property transferred did not qualify as an "asset" that could be transferred fraudulently in light of the fact that it was encumbered by a valid lien that exceeded its value. Accordingly, we need not address the plaintiff's challenges to the court's additional grounds for concluding that the transfer was not fraudulent.

"As part consideration for the sale to Rothschild, the plaintiff took back a promissory note for $150,000 and another note for $300,000. Rothschild defaulted on the notes, and the plaintiff commenced [an action] against him titled *Smith* v. *Rothschild*, [Superior Court, judicial district of Middlesex, Docket No. CV-14-6012641-S] (Rothschild action). In that case, the plaintiff filed a motion for temporary injunction and court-ordered inspection of company records dated October 21, 2014. That motion sought to enjoin Rothschild from selling the interests or assets of the SHF entities and an order permitting the plaintiff to inspect and copy the books and records of the SHF entities. The plaintiff never sought a hearing or otherwise proceeded on the foregoing motion.

"In connection with the motion for temporary injunction, the plaintiff signed an affidavit in which he averred that the $300,000 note referred to above was secured by a security agreement [that] gave the plaintiff 'a continuing security interest in all of the assets of [the SHF entities].' . . . [The plaintiff] also averred that 'I maintain that I am entitled to a right of first refusal with respect to any proposed sale of the [SHF entities].' . . .

"While the plaintiff was litigating his claims against Rothschild, he was simultaneously negotiating with Rothschild to purchase the assets of the SHF entities. The plaintiff's offer to purchase the assets of the SHF entities was accepted by Rothschild. However, Wells Fargo did not accept the offer because SBA regulations prohibited repurchase of the assets by the plaintiff, a former owner. At that time, Rothschild and the SHF entities owed Wells Fargo in excess of $800,000 on the SBA loan used to purchase the assets from the plaintiff. Wells Fargo had to agree to release its security interest in the SHF entities' assets before [they] could be sold.

"[The defendant] was the landlord for the SHF-Clinton fitness center. The members of [the defendant] are

Todd Pozefsky and John Giannotti. After the plaintiff's failed attempt to purchase the assets of the SHF entities, Pozefsky and Giannotti negotiated with Rothschild for the purpose of purchasing the assets of the SHF entities so that Rothschild would voluntarily vacate the [defendant's] premises.

"[The defendant] reached an agreement with Rothschild to purchase the assets of the SHF entities. The agreement was approved by Wells Fargo, which agreed to accept $100,000 to release its security interest in the SHF entities' assets, even though its loan exceeded $800,000. Wells Fargo approved the sale by Rothschild contingent on the plaintiff receiving no more than $63,500 in exchange for the release of his subordinate security interest in the assets of the SHF entities. At his deposition, the plaintiff admitted that he was aware of the [defendant's] purchase, and that he was represented by counsel in the preparation of a payoff letter accepting $59,806.13 in exchange for a release 'terminating [his Uniform Commercial Code] lien on the assets of the [SHF entities].' . . .

"On February 26, 2016, Wells Fargo released its lien on the SHF entities' assets in exchange for $100,000, and the plaintiff released his subordinate lien on those assets in exchange for $59,806.13.[3] On February 29, 2016, [the defendant] then sold the assets to a new tenant in the building for $159,806.13, the exact amount it had paid for the assets.

"After the sale of the SHF entities' assets, Rothschild stopped defending the Rothschild action and allowed

[3] The plaintiff argues that the trial court erroneously determined that by releasing his $150,000 lien in exchange for $59,806.13, he consented to the alleged fraudulent transfer. The plaintiff contends that he did not consent, and that he retained a right to prevent the sale of the SHF entities' assets under a security agreement related to the $300,000 note. We need not address this argument, as it is not material to the grounds on which we base our resolution of the plaintiff's claims on appeal.

a default judgment to enter against himself and the SHF entities. Rothschild then appealed the default judgment and filed bankruptcy proceedings. Although the plaintiff released his lien in order to permit the sale of the SHF entities' assets to occur, he now claims that [the] sale constituted a fraudulent transfer as to him." (Citations omitted; footnote added.)

The plaintiff brought this action by way of a four count complaint dated August 10, 2016, alleging violations of UFTA under General Statutes §§ 52-552e and 52-552f in the first two counts, respectively, a common-law fraudulent transfer in the third count, and a violation of CUTPA in the fourth count. The plaintiff alleged that the defendant and the SHF entities conspired to "strip the SHF entities of assets sufficient to satisfy their indebtedness to [him]" by fraudulently transferring the assets of the SHF entities to the defendant for a price that was not reasonably equivalent to their value.

On August 1, 2017, the defendant moved for summary judgment, arguing that it was entitled to judgment as a matter of law on all counts of the plaintiff's complaint. The plaintiff objected to the defendant's motion, asserting that the defendant had "failed to meet its burden of showing that there was no genuine issue as to any material fact." By way of a written memorandum of decision filed on November 16, 2017, the court granted the defendant's motion for summary judgment. The court concluded that the defendant was entitled to judgment as a matter of law on the plaintiff's fraudulent transfer claims for three reasons: (1) the plaintiff consented to and voluntarily participated in the transaction that he now claims was fraudulent; (2) the defendant retained no proceeds from the transaction; and (3) the property that was transferred did not constitute "assets" of the SHF entities because it was encumbered by a valid lien. The court further concluded that the defendant was entitled to judgment as a matter of law

on the plaintiff's CUTPA claim because that claim was based on the invalid claims of fraudulent transfer. The court denied the plaintiff's subsequent motion to reargue, and this appeal followed.

We begin by setting forth the relevant standard of review that governs our review. "The standard of review of a trial court's decision granting summary judgment is well established. Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The courts are in entire agreement that the moving party . . . has the burden of showing the absence of any genuine issue as to all the material facts . . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the [nonmoving] party must present evidence that demonstrates the existence of some disputed factual issue. . . . Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary. . . . On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court." (Citations omitted; internal quotation marks omitted.) *Lucenti* v. *Laviero*, 327 Conn. 764, 772–73, 176 A.3d 1 (2018). With these principles in mind, we turn to the plaintiff's claims on appeal.

I

The plaintiff first challenges the trial court's summary judgment on his claims of fraudulent transfer. Specifically, the plaintiff argues that the court improperly concluded that the transfer of the SHF entities' property to the defendant was not fraudulent on the ground that the property did not constitute "assets" because it was encumbered by a valid lien in excess of its value. We are not persuaded.

"A party alleging a fraudulent transfer or conveyance under the common law bears the burden of proving either: (1) that the conveyance was made without substantial consideration and rendered the transferor unable to meet his obligations or (2) that the conveyance was made with a fraudulent intent in which the grantee participated. . . . The party seeking to set aside a fraudulent conveyance need not satisfy both of these tests. . . . These are also elements of an action brought pursuant to . . . §§ 52-552e (a) and 52-552f (a). . . . Indeed, although [UFTA] provides a broader range of remedies than the common law . . . [it] is largely an adoption and clarification of the standards of the common law of [fraudulent conveyances] . . . ." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Certain Underwriters at Lloyd's, London* v. *Cooperman*, 289 Conn. 383, 394–95, 957 A.2d 836 (2008). Accordingly, our Supreme Court has considered claims of fraudulent transfer based on the common law and claims based on UFTA together. See id.; see also *National Loan Investors, L.P.* v. *World Properties, LLC*, 79 Conn. App. 725, 731 n.8, 830 A.2d 1178 (2003) ("[o]ur analysis proceeds under the UFTA, but a common-law analysis would reach the same result"), cert. denied, 267 Conn. 910, 840 A.2d 1173 (2004).

Section 52-552e (a) sets forth the test to determine whether a transfer is fraudulent: "A transfer made or

obligation incurred by a debtor is fraudulent as to a creditor, if the creditor's claim arose before the transfer was made or the obligation was incurred and if the debtor made the transfer or incurred the obligation: (1) With actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due."

The term transfer is defined by General Statutes § 52-552b (12) to mean "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance." Section 52-552b (2) defines an asset as, "property of a debtor, but the term does not include . . . (A) Property to the extent it is encumbered by a valid lien . . . ." A valid lien, pursuant to § 52-552b (13), is "a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings." Thus, a transfer cannot be considered fraudulent if, at the time of the transfer, the transferred property is encumbered by valid liens exceeding the property's value because the property would no longer be considered an asset under § 52-552b (2), and only assets may be transferred fraudulently. See generally *Dietter* v. *Dietter*, 54 Conn. App. 481, 494, 737 A.2d 926, cert. denied, 252 Conn. 906, 743 A.2d 617 (1999).[4]

[4] The plaintiff also argues that the definition of "asset" under UFTA does not apply to his common-law fraudulent transfer claim. The plaintiff fails, however, to provide any analysis or cite to any legal authority for this argument, and his argument is belied by this court's decision in *National Loan Investors, L.P.* v. *World Properties, LLC*, supra, 79 Conn. App. 725,

Here, the trial court determined that it was undisputed that the property transferred to the defendant had a value of $551,437 and was encumbered by a valid lien held by Wells Fargo in excess of $800,000 at the time of that transfer. The trial court based its valuation on an affidavit submitted by the plaintiff's expert witness, Joe Fay. On that basis, the court concluded that the property did not meet the definition of "assets" and that the transfer of that property could not be considered fraudulent.

The plaintiff's challenge to the trial court's conclusion that the property transferred did not constitute "assets" is twofold. First, the plaintiff claims that there was a dispute as to the amount of the Wells Fargo lien. In support of its finding of the amount of the Wells Fargo lien, the trial court cited to the plaintiff's own deposition testimony in which he estimated the outstanding debt to Wells Fargo to be "in the neighborhood of $800,000." The defendant filed with its memorandum of law in support of summary judgment, the affidavit of Pozefsky, in which he averred that, at the time of the allegedly fraudulent transaction, the transferred property was encumbered by a lien held by Wells Fargo in excess of $800,000. The plaintiff did not submit any evidence in opposition to summary judgment that disputed the amount of the lien and, thus, failed to demonstrate the existence of a genuine issue of material fact as to it.

Second, the plaintiff argues that the transfer was not limited to the personal property or equipment of the SHF entities but, instead, included the SHF businesses themselves, the value of which exceeded the Wells Fargo

as discussed herein. Indeed, the rationale for this principle—that any property of the debtor that is encumbered would not generally be available to pay the debts of its creditors, as those holding security interests would be first in line and, thus, are not considered assets—is logically applicable to common-law claims, as well as to claims under UFTA.

lien. The plaintiff contends that the property transferred to the defendant included the "customer list and business goodwill" of the SHF entities. The plaintiff has not provided a citation to the record in support of this argument, and our exhaustive search of the record has revealed no evidentiary support for it. The Asset Purchase Agreement clearly provides that the defendant would purchase "certain assets" of the SHF entities, including "all equipment, furniture and fixtures, inventory and computers" that are listed on Exhibit A, Assets-Equipment List, attached thereto. Likewise, Pozefsky's affidavit states that the defendant agreed to purchase "all equipment, furniture and fixtures, inventory and computers utilized by the SHF entities . . . ." The payoff letter from Wells Fargo also references "collateral comprising all equipment, furniture, fixtures, inventory and computers." The record is clear that the defendant did not purchase the businesses of the SHF entities but only the personal property, consisting of the gym and office equipment.[5]

On the basis of the foregoing, we conclude that the record supports the trial court's determination that the property transferred to the defendant did not constitute "assets" that were subject to fraudulent conveyance because there was no genuine issue of material fact that it was encumbered by a valid lien that exceeded its value at the time of the transfer. Accordingly, the court did not improperly render summary judgment in favor of the defendant on all three of the fraudulent transfer counts of the plaintiff's complaint.

[5] The plaintiff also argues that the property was not encumbered at the time of the transfer because Wells Fargo released its lien "prior to the consummation of the subject transaction." The plaintiff ignores the facts that the release of the Wells Fargo lien was required in order for the transaction to take place, and the lien would not have been released if Wells Fargo had not been satisfied by the proceeds from the transaction at issue.

II

The plaintiff also claims that the trial court improperly rendered summary judgment on count four alleging that the defendant violated CUTPA. The plaintiff contends that the underlying conduct on which he claims the defendant violated CUTPA is broader than the facts supporting his fraudulent transfer claims. We disagree.

The plaintiff brought this action by way of a four count complaint; three counts alleging fraudulent transfer and a fourth count alleging a violation of CUTPA. In the fourth count, the plaintiff incorporated by reference most of the paragraphs of the first three counts of his complaint and set forth two additional paragraphs. In addition to the fraudulent transfer allegations that he incorporated into his CUTPA count, the plaintiff alleged: "[The defendant's] conduct as aforesaid constitutes unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of CUTPA." The plaintiff also alleged: "As a direct result of [the defendant's] wrongful conduct, [the plaintiff] has suffered ascertainable loss. More specifically, but without limitation, [the defendant's] purchase of the SHF entities' assets for less than reasonable value deprived the SHF entities of sufficient means to satisfy their indebtedness to [the plaintiff]."

In granting summary judgment on the plaintiff's CUTPA claim, the trial court explained: "In count four of the complaint, the plaintiff alleges a violation of CUTPA based on the fraudulent conveyances alleged in counts one through three. As set forth above, the court has found that there were no fraudulent conveyances. Therefore, summary judgment enters on count four, as well as counts one through three."

"CUTPA is, on its face, a remedial statute that broadly prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade

or commerce. . . . [CUTPA] provides for more robust remedies than those available under analogous common-law causes of action, including punitive damages . . . and attorney's fees and costs, and, in addition to damages or in lieu of damages, injunctive or other equitable relief. . . . To give effect to its provisions, [General Statutes] § 42-110g (a) of [CUTPA] establishes a private cause of action, available to [a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by [General Statutes §] 42-110b . . . ." (Internal quotation marks omitted.) *Artie's Auto Body, Inc.* v. *Hartford Fire Ins. Co.*, 317 Conn. 602, 623, 119 A.3d 1139 (2015).

The plaintiff argues that "the underlying conduct which formed the basis of [his] CUTPA claim is broader than the facts supporting the fraudulent transfer claims." This argument is belied by the complaint itself, wherein the plaintiff simply incorporated the facts from his fraudulent transfer counts and added allegations that those facts constituted an unfair or deceptive practice by the defendant that caused him to suffer an ascertainable loss in violation of CUTPA.

It is true that, with respect to his fraudulent transfer claims, the plaintiff set forth an allegation, which he then incorporated into his CUTPA count, that the defendant secretly conspired to purchase the subject property from the SHF entities to strip them of any assets to satisfy their debts to him. We are not persuaded that this bare assertion raises a claim of a deceptive or unfair trade practice that is factually or legally distinct from his claims relating to alleged fraudulent transfers. Indeed, the plaintiff's discussion of this issue in his brief on appeal is confined to a single paragraph in which he fails to explain, other than in sweeping generalities, how that allegation, if proven, would amount to an unfair trade practice, separate and distinct from the

claims relating to fraudulent transfer. We, therefore, conclude that the plaintiff's argument that his CUTPA claim was broader than his allegations of fraudulent transfer is unavailing.

III

The plaintiff finally claims that the trial court erred in denying his motion to reargue the motion for summary judgment. We disagree.

"The standard of review for a court's denial of a motion to reargue is abuse of discretion. . . . As with any discretionary action of the trial court . . . the ultimate [question for appellate review] is whether the trial court could have reasonably concluded as it did. . . .

"The purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts. . . . It also may be used to address . . . claims of law that the [movant] claimed were not addressed by the court. . . . [A] motion to reargue [however] is not to be used as an opportunity to have a second bite of the apple . . . ." (Internal quotation marks omitted.) *Seaport Capital Partners, LLC* v. *Speer*, 177 Conn. App. 1, 16–17, 171 A.3d 472 (2017), cert. denied, 331 Conn. 931, A.3d (2019).

In his motion to reargue, including his memorandum of law in support of the motion and several exhibits, which consisted of 166 pages in total, the plaintiff asserted that the court had "overlook[ed] controlling principles of law and demonstrate[d] a misapprehension of certain key facts, which preclude[d] the [rendering] of summary judgment in [the] defendant's favor." The court summarily denied the plaintiff's motion.

The plaintiff claims on appeal that the court abused its discretion in denying his motion to reargue "given the controlling legal precedent and key facts precluding

the entry of summary judgment, which were presented to the court but which the court failed to correct following its decision, resulting in an injustice because of the court's oversight of material issues of fact and law." On the basis of our review of the plaintiff's motion to reargue, we conclude that, as to the dispositive issues addressed in this opinion, the plaintiff was seeking to rehash the arguments that he made in opposition to summary judgment, which had already been presented to and rejected by the trial court.[6] We, therefore, conclude that the court did not abuse its discretion in denying the plaintiff's motion to reargue.

The judgment is affirmed.

In this opinion the other judges concurred.

1916 POST ROAD ASSOCIATES, LLC *v.* MRS. GREEN'S OF FAIRFIELD, INC., ET AL.
(AC 41276)

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

Syllabus

The plaintiff, which had entered into a commercial lease for certain of its real property, sought to recover damages from the defendant U Co., the guarantor on the commercial lease, which had been assigned to N Co. When N Co. assigned its interest to G Co., U Co. confirmed in a letter to the plaintiff that its guarantee would remain in effect. During the term of G Co.'s lease, G Co. was sold to P Co. Prior to the sale, U Co. sent a second letter to the plaintiff in which U Co. requested that the plaintiff irrevocably waive its option to cancel the lease as a result of P Co.'s acquisition of G Co., and that neither P Co.'s acquisition of G Co. nor the cancellation waiver would limit U Co.'s obligations under

[6] The defendant argues that the plaintiff improperly attached exhibits to his motion to reargue that he did not submit in his opposition to summary judgment, and because those documents were not submitted in his opposition, they were not properly before the court in deciding the plaintiff's motion to reargue. Because we conclude that the plaintiff's motion to reargue constituted an improper attempt to rehash his arguments in opposition to summary judgment, we need not address the propriety of the plaintiff's submission of new exhibits with his motion to reargue.

the guarantee. Thereafter, G Co., in connection with its acquisition by P Co., informed the plaintiff that it was exercising its option to extend the lease term beyond the original termination date of the lease. The plaintiff then consented to the acquisition of G Co. by P Co. and waived its option to cancel the lease. Thereafter, G Co. failed to pay rent owed, and the plaintiff obtained a judgment in its favor in a summary process action against G Co. and evicted G Co. for failure to pay rent. Subsequently, the plaintiff brought this action, in which it claimed that U Co. was liable for G Co.'s debts to the plaintiff. U Co. filed a motion for summary judgment, asserting that, under the language of the guarantee, it could not be held liable for a breach that occurred after the expiration date of the original lease term. The plaintiff claimed that U Co.'s two letters to the plaintiff created a genuine issue of material fact as to whether U Co.'s guarantee was expanded or modified to cover the optional lease term. The trial court granted U Co.'s motion for summary judgment and rendered judgment thereon, from which the plaintiff appealed to this court. *Held* that the trial court properly granted U Co.'s motion for summary judgment, as the unambiguous language in U Co.'s two letters to the plaintiff did not change U Co.'s obligations under the guarantee and, thus, there was no genuine issue of material fact as to whether U Co.'s guarantee covered the optional extension period of the lease agreement; there was no language in the first letter that supported the plaintiff's claim that it served to create a new guarantee, as the unambiguous language of the letter did nothing more than assure the plaintiff that U Co.'s guarantee would not be unenforceable as a result of the lease assignment to G Co., there was no indication in the second letter that the guarantee was being modified in consideration of the plaintiff's consent to the acquisition of G Co. by P Co., as there was no reference to G Co.'s exercise of its option to extend the lease, and the plaintiff's contention that U Co.'s reference to a future transaction referred to the extension of the lease term was at best speculation, which alone was not sufficient to overcome a motion for summary judgment.

Argued February 14—officially released June 25, 2019

Procedural History

Action to recover damages for, inter alia, breach of a guarantee of a commercial lease, brought to the Superior Court in the judicial district of Fairfield, Housing Session at Bridgeport, where the named defendant et al. were defaulted for failure to plead; thereafter, the court, *Rodriguez*, *J.*, granted the motion for summary judgment filed by the defendant United Natural Foods, Inc., and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Robert D. Russo, for the appellant (plaintiff).

Robert C. Hinton, for the appellee (defendant United Natural Foods, Inc.).

Opinion

DiPENTIMA, C. J. The plaintiff, 1916 Post Road Associates, LLC, appeals from the summary judgment rendered in favor of the defendant United Natural Foods, Inc.[1] The plaintiff contends that the trial court improperly rendered summary judgment because two separate letters sent by the defendant create a genuine issue of material fact as to whether the defendant's guarantee of the terms of a commercial lease continued through an optional extension period following the expiration of the original lease term. We disagree and, accordingly, affirm the judgment of the trial court.

Viewed in the light most favorable to the plaintiff as the nonmoving party, the record reveals the following facts and procedural history. The plaintiff is the owner of real property located at 1916 Post Road in Fairfield, Connecticut. On May 24, 1996, the plaintiff entered into a fifteen year lease agreement (lease) with Sweetwater Associates, Inc. (Sweetwater), and on May 1, 1997, the lease term began.[2] Five months later, on November 7, 1997, Sweetwater assigned the lease to Natural Retail Group, Inc. (Natural Retail), and, on the same day, the defendant guaranteed "the payment and performance by the [a]ssignee of all of its obligations under the [l]ease and all of the obligations of the [t]enant as defined under the [l]ease effective as of the date hereof." On April 4, 1999, Natural Retail subsequently assigned

[1] Mrs. Green's of Fairfield, Inc., Planet Organic Holding Corp. and Planet Organic Health Corp. also were named as defendants in the underlying action. They were defaulted for failure to plead and have not participated in the present appeal. Accordingly, we refer to United Natural Foods, Inc., as the defendant.

[2] The original fifteen year term, therefore, was set to expire on May 1, 2012.

its interest to Mrs. Green's of Fairfield, Inc. (Mrs. Green's); in a letter dated May 13, 1999, the defendant confirmed that its guarantee would remain in effect despite the assignment of the lease to Mrs. Green's.[3]

At some point during the original lease term, the shareholders of Mrs. Green's sold all interest in the business to Planet Organic Health Corp. Prior to this sale, the defendant sent a second letter, dated June 28, 2007, to the plaintiff indicating that it had "no objection to the acquisition of the shares of [Mrs. Green's] by Planet Organic Health Corp. or its affiliates . . . ." In addition to communicating that it had no objection to the acquisition of Mrs. Green's, the defendant also requested that the plaintiff "irrevocably waive its option to cancel the [l]ease as a result of the [a]cquisition . . . without prejudice to [the plaintiff's] right to exercise such option in connection with a future transaction."[4]

[3] The May 13, 1999 letter provides in relevant part: "Reference is made to . . . a certain [l]ease [a]greement dated as of May 24, 1996 . . . between [the plaintiff] and [National Retail], as assignee of Sweetwater Associates, Inc. . . . and . . . a certain [a]ssignment of [the] [l]ease of even date . . . relating to the assignment of the [l]ease to Mrs. Green's . . . . [The defendant] has guaranteed [National Retail's] obligations under the [l]ease. This letter will confirm the agreement of [National Retail] and [the defendant] that, in order to induce [the plaintiff] to execute a certain [c]onsent to [a]ssignment of even date . . . [National Retail] and [the defendant] expressly agree that [the plaintiff's] consent to the [a]ssignment shall not release [National Retail] or [the defendant] from any obligation with respect to the [l]ease, except to the extent paid or performed by [the] [a]ssignee."

[4] Section 15.2 of the lease provides in relevant part: "If [t]enant is a corporation . . . and if at any time after execution of this [l]ease any part of all of the corporate shares shall be transferred by sale, assignment, bequest, inheritance, operation of law or other disposition . . . so as to result in a change in the present control of said corporation by the person or persons now owning a majority of said corporate shares, [t]enant shall give the landlord notice of such event within fifteen (15) days prior to the date of such transfer. In such event and whether or not [t]enant has given such notice, [l]andlord may elect to terminate this [l]ease at any time thereafter by giving [t]enant notice of such election, in which event this [l]ease and the rights and obligations of the parties hereunder shall cease as of a date set forth in such notice which date shall not be less than sixty (60) days after the date of such notice."

Finally, the defendant stated that "neither the [a]cquisition nor the [c]ancellation [w]aiver shall in any way limit [the defendant's] obligations under the existing guarant[ee] made by [the defendant] in favor of [the plaintiff]."

On July 3, 2007, in connection with Planet Organic Health Corp.'s acquisition of Mrs. Green's, the plaintiff received a letter from Mrs. Green's with several enclosures. Among those enclosures was a notice from Mrs. Green's that it was exercising its option to extend the lease term from the original termination date through April 30, 2017.[5] Also included were a copy of the defendant's June 28, 2007 letter to the plaintiff and lease guarantees from Planet Organic Health Corp. and Planet Organic Holding Corp. Sometime after receiving the July 3, 2007 letter from Mrs. Green's, the plaintiff consented to the acquisition of Mrs. Green's by Planet Organic Health Corp. and waived its option to cancel the lease.

During the extension period, Mrs. Green's failed to pay the rent owed for November, 2016.[6] Thereafter, on January 5, 2017, the plaintiff served Mrs. Green's with a notice to quit the premises and, on February 15, 2017, commenced a summary process action to evict Mrs. Green's. Judgment in the summary process action was rendered in favor of the plaintiff on March 1, 2017,

[5] Section 21.1 of the lease provides in relevant part: "At the expiration of the original [t]erm hereof, and provided [t]enant is not in material default of its part hereunder, [l]andlord hereby grants to [t]enant an option to renew this [l]ease for three (3) separate additional five (5) year [t]erms . . . commencing at the expiration of the [i]nitial [t]erm. Tenant must notify [l]andlord of its intention to renew under this option at least six (6) months prior to the expiration of the [i]nitial [t]erm."

Further, the lease provided that the terms of the option period would be the same as the terms for the original lease period, with the exception of changes to the yearly rental cost.

[6] Mrs. Green's also failed to pay the rent for each of the months remaining on the lease until its expiration on April 30, 2017.

and Mrs. Green's was evicted on March 17, 2017. The plaintiff claims that, despite diligent efforts, it was unable to re-lease the premises prior to the expiration of the extended lease term, April 30, 2017.

On April 24, 2017, the plaintiff commenced the present action against the defendant. The complaint alleges that the defendant is liable for the debts of Mrs. Green's pursuant to the terms of the November 7, 1997 guarantee, as confirmed by the May 13, 1999 letter. On July 31, 2017, the defendant filed an answer and special defenses, in which it admitted that it had entered into a written guarantee of the lease obligations of Mrs. Green's, but denied that it was liable for that company's debts to the plaintiff. Then, on September 20, 2017, the defendant filed a motion for summary judgment, arguing that there was no genuine issue of material fact as to whether the guarantee extended through the optional extension period beyond the original lease term and, on the basis of the language in the guarantee, the defendant could not be held liable for a breach that occurred after the expiration of the original lease term. The plaintiff filed an opposition to the defendant's motion, contending that the defendant's guarantee did apply to the optional extension period or, "[a]t the very least," there was a factual dispute as to this issue. On December 18, 2017, the court granted the defendant's motion for summary judgment.[7] This appeal followed.

On appeal, the plaintiff claims that the trial court improperly granted the defendant's motion for summary judgment because there is a genuine issue of material fact that the defendant's guarantee continued through the optional extension period following the expiration of the original lease term. We disagree and, therefore, affirm the judgment of the trial court.

[7] On January 2, 2018, the plaintiff filed a motion to reargue, which was summarily denied by the court on January 5, 2018.

We begin by setting forth the relevant standard of review and legal principles that govern our review. "Practice Book § [17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . [I]ssue-finding, rather than issue-determination, is the key to the procedure. . . . [T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist. . . . Our review of the decision to grant a motion for summary judgment is plenary. . . . We therefore must decide whether the court's conclusions were legally and logically correct and find support in the record." (Internal quotation marks omitted.) *Cruz* v. *Schoenhorn*, 188 Conn. App. 208, 214–15, 204 A.3d 764 (2019).

The standard of review for contract interpretation is also well established. "Although ordinarily the question of contract interpretation, being a question of the parties' intent, is a question of fact . . . [when] there is definitive contract language, the determination of what the parties intended by their . . . commitments is a question of law [over which our review is plenary]. . . . Where the language of an agreement is susceptible to more than one reasonable interpretation, however, it

is ambiguous. . . . [T]he determination . . . whether contractual language is plain and unambiguous is itself a question of law subject to plenary review." (Citations omitted; internal quotation marks omitted.) *Meeker* v. *Mahon*, 167 Conn. App. 627, 632–33, 143 A.3d 1193 (2016). "Furthermore, a presumption that the language used is definitive arises when . . . the contract at issue is between sophisticated parties and is commercial in nature." (Internal quotation marks omitted.) *Allstate Life Ins. Co.* v. *BFA Ltd. Partnership*, 287 Conn. 307, 314, 948 A.2d 318 (2008). It is undisputed that the parties to this case are corporations and that the transaction was commercial in nature.

"[Guarantees] are . . . distinct and essentially different contracts; they are between different parties, they may be executed at different times and by separate instruments, and the nature of the promises and the liability of the promisors differ substantially . . . . The contract of the guarantor is his own separate undertaking in which the principal does not join." (Internal quotation marks omitted.) *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, 312 Conn. 662, 675–76, 94 A.3d 622 (2014); see also *Wolthausen* v. *Trimpert*, 93 Conn. 260, 265, 105 A. 687 (1919) ("[a] guaranty is a collateral undertaking to pay a debt or perform a duty, in case of the failure of another person, who is in the first instance liable to such payment or performance" [internal quotation marks omitted]).

This court previously has addressed whether a guarantor of a lease can be held liable for a default that occurred during an extension period following the expiration of the original lease term. See *Village Linc Corp.* v. *Children's Store, Inc.*, 31 Conn. App. 652, 626 A.2d 813 (1993). In *Village Linc Corp.*, the plaintiff appealed from the trial court's denial of an application for a prejudgment remedy against defendants who had guaranteed a rental lease. Id., 652–53. The trial court denied

the prejudgment remedy on the ground that the plaintiff had failed to adduce sufficient evidence to show that the defendants' guarantee was intended to secure the renewed lease period in which the default had occurred. Id., 658. On appeal, this court affirmed the judgment of the trial court. Id., 660. In reaching that decision, this court noted that the guarantee did not refer to any lease renewal and that the lease renewal itself did not include any indication that the guarantee would continue to apply. Id., 659–60. Further, the court contrasted the language in the defendants' guarantee with those cases in which the parties clearly intended a continuing guarantee to have been created. Id. For example, in *Connecticut National Bank* v. *Foley*, 18 Conn. App. 667, 560 A.2d 475 (1989), the guarantee provided that the guarantor could be held "responsible for everything the borrower owes . . . *now and in the future*." (Emphasis in original; internal quotation marks omitted.) Id., 670. Similarly, in *LeCraw* v. *Atlanta Arts Alliance, Inc.*, 126 Ga. App. 656, 191 S.E.2d 572 (1972), the language of the guarantee provided that if a default occurred " 'at any time' " during the lease, the guarantor would assume responsibility for the tenant's obligations. Id., 657; see also *Zero Food Storage, Inc.* v. *Udell*, 163 So. 2d 303, 304–305 (Fla. App. 1964). Conversely, the guarantee in *Village Linc Corp.* provided that it applied to the original lease term and made no mention of its applicability to any potential lease renewals. In light of this evidence, the court concluded that the decision to deny the application for a prejudgment remedy against the guarantor was not clearly erroneous. *Village Linc Corp.* v. *Children's Store, Inc.*, supra, 660.

Here, the defendant claims that the present case is similar to *Village Linc Corp.* because the November 7, 1997 guarantee contains no indication that it was intended to continue in the event the tenant exercised its option to extend the lease term. In support of this

argument, the defendant cites the provision of the guarantee that specifies it is limited to the payment and performance of the tenant's obligations under the lease "effective as of the date hereof." The defendant contends that this provision unambiguously limits the guarantee to the obligations that the tenant had under the lease when the guarantee went into effect, which did not include the optional lease term. In response, the plaintiff does not dispute that the November 7, 1997 guarantee references the original lease term and, thus, was not intended to cover the optional extension period.[8] Instead, the plaintiff rests its argument on the May 13, 1999 letter and the June 28, 2007 letter, arguing that the language in these letters creates a genuine issue of material fact as to whether the guarantee was expanded or modified to cover the optional lease term.

With respect to the May 13, 1999 letter, the plaintiff argues that, in confirming that its guarantee would remain in effect despite the assignment of the lease to Mrs. Green's, the defendant did not indicate that the guarantee was limited to the original lease term. In essence, the plaintiff infers that this letter served to create a new guarantee—one that was not limited to the original lease term—in consideration of the plaintiff's consent to the assignment of the lease. As to the June 28, 2007 letter, the plaintiff contends that it was sent

[8] In its principal brief to this court, the plaintiff acknowledged that "[t]he first guarantee, dated November 7, 1997, like in *Village Linc Corp.* . . . did refer only to the initial term of the lease. . . . The [November 7, 1997 guarantee] stated the commencement date and the expiration date of the lease." At oral argument, however, the plaintiff's counsel claimed that the November 7, 1997 guarantee itself was not expressly limited to the original lease term. To the extent that the plaintiff takes the position that the November 7, 1997 guarantee is ambiguous with respect to whether the parties intended it to cover the optional extension period, we decline to address this contention, as it runs afoul of our well settled rule that "claims on appeal must be adequately briefed, and cannot be raised for the first time at oral argument before the reviewing court." (Internal quotation marks omitted.) *Bridgeport* v. *Grace Building, LLC*, 181 Conn. App. 280, 294, 186 A.3d 754 (2018).

in contemplation not only of the acquisition of Mrs. Green's by Planet Organic Health Corp. but also of the lease extension, and was intended to modify the guarantee to cover this period in consideration of the plaintiff waiving its right to cancel the lease. We do not read these two letters to the same effect.

First, as to the May 13, 1999 letter, there is no language in the document that supports the plaintiff's claim that it served to create a new guarantee. Rather, the letter merely confirms that the obligations of the defendant, as guarantor, would not change as a result of the plaintiff's consent to the assignment of the lease to Mrs. Green's. See footnote 3 of this opinion. Those obligations were created by the November 7, 1997 guarantee, which the plaintiff does not dispute was limited to the original lease term. As such, the unambiguous language of the May 13, 1999 letter does nothing more than assure the plaintiff that the defendant's guarantee would not be unenforceable as a result of the lease assignment. See *Meeker* v. *Mahon*, supra, 167 Conn. App. 635–36 (holding that "unambiguous language of the guarantee, read in conjunction with the unambiguous language of the lease," supported legal conclusion that defendants' liability for any of the tenants' lease obligations did not include any of those obligations occurring on dates after the lease expired).

Second, in reviewing the defendant's June 28, 2007 letter to the plaintiff, we can discern no indication that the guarantee was being modified in consideration of the plaintiff's consent to the acquisition of Mrs. Green's by Planet Organic Health Corp. As stated previously in this opinion, the June 28, 2007 letter: (1) provides that the defendant has no objection to the acquisition of Mrs. Green's by Planet Organic Health Corp.; (2) requests that the plaintiff waive its right to cancel the lease; and (3) confirms that the plaintiff's consent to the acquisition of Mrs. Green's by Planet Organic Health Corp. would not affect the defendant's obligations

under its existing guarantee. There is no reference to Mrs. Green's exercising its option to extend the lease; thus, it can hardly be surmised that the letter was sent in contemplation of such an action. Moreover, the contention that the defendant's reference to a "future transaction" referred to the extension of the lease term is at best speculation, which alone is not sufficient to overcome a motion for summary judgment. See *Escourse* v. *100 Taylor Avenue, LLC*, 150 Conn. App. 819, 829–30, 92 A.3d 1025 (2014). Accordingly, having concluded that the unambiguous language in the May 13, 1999 letter and the June 28, 2007 letter did not change the defendant's obligations under the November 7, 1997 guarantee, we further conclude there is no genuine issue of material fact as to whether the defendant's guarantee covered the optional extension period of the lease agreement.

The judgment is affirmed.

In this opinion the other judges concurred.

MARIA W. *v.* ERIC W.*
(AC 41284)

DiPentima, C. J., and Alvord and Norcott, Js.

Syllabus

The defendant appealed to this court from the judgment of the trial court dissolving his marriage to the plaintiff and from the court's order, made in connection with a postjudgment motion for contempt filed by the plaintiff, requiring him to make certain payments to satisfy his child support and alimony arrearages. *Held*:

1. The defendant could not prevail on his claim that the trial court abused its discretion by admitting the plaintiff's testimony that he previously had been arrested and charged with certain criminal offenses, which he claimed improperly and adversely influenced the court's opinion of him; even if the admission of the testimony was erroneous, the defendant failed to demonstrate how he was harmed by its admission.

* In accordance with our policy of protecting the privacy interests of the victims of family violence, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

2. This court lacked jurisdiction over the defendant's challenge to the trial court's findings and order related to the plaintiff's postjudgment motion for contempt; the trial court had found that the defendant was in arrears on his child support and alimony obligations and ordered the defendant to make payments to the plaintiff on the arrearage, but continued the matter to a later date to make the necessary determination of whether the defendant's failure to pay was wilful or due to his inability to pay, and, therefore, given that the court resolved some, but not all, of the issues in the motion for contempt, the order from which the defendant appealed was not final, and this court was without jurisdiction to entertain the defendant's claim due to the lack of a final judgment.

Argued April 16—officially released June 25, 2019

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Waterbury and tried to the court, *Hon. Lloyd Cutsumpas*, judge trial referee; judgment dissolving the marriage and granting certain other relief; thereafter, the plaintiff filed a motion for contempt and the court issued certain orders, and the defendant appealed to this court. *Affirmed in part*; *appeal dismissed in part.*

Eric W., self-represented, the appellant (defendant).

Opinion

PER CURIAM. The self-represented defendant, Eric W., appeals from the judgment of dissolution and the court's order related to the postjudgment motion for contempt filed by the plaintiff, Maria W.[1] On appeal, the defendant has raised numerous claims,[2] which we

[1] The plaintiff neither filed a brief nor appeared for oral argument in this court. Consistent with an order from this court dated January 28, 2019, rendered pursuant to Practice Book § 85-1, we consider this appeal solely on the basis of the record, as defined by Practice Book § 60-4, and the defendant's brief.

[2] The defendant, in his brief, expresses several concerns that are mentioned but not briefed adequately and, therefore, do not merit our review. See *Estate of Rock* v. *University of Connecticut*, 323 Conn. 26, 33, 144 A.3d 420 (2016) ("[c]laims are inadequately briefed when they are merely mentioned and not briefed beyond a bare assertion" [internal quotation marks omitted]).

have distilled to his claims that the court (1) abused its discretion by admitting evidence at the dissolution trial of his arrest and (2) with respect to the plaintiff's motion for contempt, improperly found him to be in arrears on his child support and alimony obligations and ordered him to make certain weekly payments to the plaintiff to cover his current and delinquent child support and alimony obligations. We affirm the judgment of dissolution and dismiss the appeal with respect to the motion for contempt for lack of a final judgment.

The record reveals the following relevant facts and procedural history. The parties were married on March 17, 2000, and are the parents of one minor child. The plaintiff initiated the underlying dissolution proceeding in June, 2016. The trial lasted five days, commencing on May 11, 2017, and concluding on June 9, 2017. At trial, the plaintiff testified as to an April 5, 2016 incident in which the police arrested and charged the defendant.[3] The charges were risk of injury to a child, assault in the third degree, resisting arrest, and disturbance of the peace. The defendant objected to this testimony on the ground that the charges had been dismissed. The court overruled the defendant's objection.

On June 26, 2017, the court dissolved the parties' marriage. In its judgment of dissolution, the court found the plaintiff's evidence "far more credible" than that of the defendant. The court found that the plaintiff acted as the primary caregiver to the child and that the defendant, despite having been afforded supervised parenting time with the child, had failed to visit the child in more

[3] In its pendente lite orders of June 30, 2016, related to the plaintiff's motions for sole custody, child support, and exclusive possession and use of the family residence, the court stated that "[t]he defendant is subject to a criminal protective order stemming from his arrest on domestic violence charges" and that he also is "subject to a temporary restraining order issued by [the] court on May 17, 2016, pursuant to General Statutes § 46b-15. That order will remain in effect until August 17, 2016."

than one year. The court granted the parties joint legal custody of the child and further ordered that the child's "primary residence and physical custody will be with the [plaintiff] . . . ." Finding that the defendant's pendente lite child support and alimony payments were in arrears in the amount of $1008 and $1200, respectively, the court ordered the defendant to make weekly payments of $16 toward the child support arrearage and $10 toward the alimony arrearage. It additionally ordered the defendant to pay the plaintiff weekly child support in the amount of $82 and weekly alimony in the amount of $25.

On November 29, 2017, the plaintiff filed a motion for contempt, alleging that the defendant owed her $3857 for past due child support and alimony. Following a January 2, 2018 hearing on the matter, the court found that the defendant owed the plaintiff $5739 and ordered him to make payments on that amount.[4]

On appeal, the defendant asks this court to reverse the court's dissolution orders in their entirety and to remand the matter for a new trial. "An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the [evidence] presented. . . . It is within the province of the trial court to find facts and draw proper inferences from the evidence presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the

[4] The court initially found the defendant in arrears totaling $4389. The court subsequently issued a "Findings Correction" in which it found the defendant in arrears of $5739. In its "Findings Correction" memorandum, the court recounted that the defendant had been subject to court ordered weekly payments on child support and alimony arrears, and indicated that the defendant "is urged to make every effort . . . to make payment on the orders in place . . . . The orders are fixed and not subject to relitigation."

correctness of its action. . . . [T]o conclude that the trial court abused its discretion, we must find that the court either incorrectly applied the law or could not reasonably conclude as it did. . . . Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Emphasis omitted; internal quotation marks omitted.) *Kirwan* v. *Kirwan*, 185 Conn. App. 713, 726, 197 A.3d 1000 (2018).

The defendant first contends that the court's orders improperly were predicated on the criminal charges that were dismissed. He argues that the admission of this testimony adversely influenced the court's opinion of him, as demonstrated by the court's decision to credit the plaintiff's evidence. We review the court's evidentiary ruling for an abuse of discretion. *Senk* v. *Senk*, 115 Conn. App. 510, 518, 973 A.2d 131 (2009). "A party claiming error in an evidentiary ruling of the court must carry the burden of demonstrating that the error was harmful before a new trial may be granted. . . . In a civil case, the standard for determining whether such an improper ruling is harmful is whether the ruling would likely affect the result." (Citation omitted.) Id., 520.

In the present case, despite the defendant's objection on the ground that the charges have since been dismissed, the court did not specify its reason for permitting this testimony. Even if we assume that the court erroneously admitted the evidence, however, the defendant has not demonstrated how the admission of this testimony harmed him. Accordingly, we reject the defendant's claim.

Additionally, the defendant challenges the court's January 2, 2018 findings and order related to the plaintiff's motion for contempt. The court's January 2, 2018 order, finding an arrearage and ordering payments, from which the defendant appealed, however, left open the issue as to whether the defendant's failure to pay was wilful or due to his inability to pay.[5]

"The jurisdiction of the appellate courts is restricted to appeals from judgments that are final. . . . The appellate courts have a duty to dismiss, even on [their] own initiative, any appeals that [they lack] jurisdiction to hear." (Citations omitted; internal quotation marks omitted.) *Khan* v. *Hillyer*, 306 Conn. 205, 209, 49 A.3d 996 (2012). "The lack of a final judgment implicates the subject matter jurisdiction of an appellate court to hear an appeal. A determination regarding . . . subject matter jurisdiction is a question of law . . . [and, therefore] our review is plenary." (Internal quotation marks omitted.) Id.

The court, in its January 2, 2018 "Findings Correction" memorandum on the plaintiff's motion for contempt, stated in relevant part: "The court has not made a determination of the defendant's wilfulness or ability to pay the [alimony and child support] orders and the matter is *continued to April 9, 2018, for that purpose.* . . . The only contempt issue remaining is wilfulness and ability to pay." (Emphasis added.)

Consequently, the court's arrearage finding and payment orders did not constitute a complete resolution of the contempt motion and, therefore, were not an appealable final judgment. See *Bucy* v. *Bucy*, 19 Conn.

[5] To determine whether to hold a party in contempt of an order of court, the court must find, inter alia, that the party's violation of the order was "wilful or excused by a good faith dispute or misunderstanding." (Internal quotation marks omitted.) *Cunniffe* v. *Cunniffe*, 150 Conn. App. 419, 437, 91 A.3d 497, cert. denied, 314 Conn. 935, 102 A.3d 1112 (2014).

App. 5, 6–8, 560 A.2d 483 (1989) (not appealable final judgment because court declined to find defendant in contempt and left open issues of whether parties could arrange for payment of medical bills between themselves and terms by which defendant was obligated to make certain required payments). The court continued the contempt hearing to address the necessary element of wilfulness. The defendant's appeal from the court's January 2, 2018 order, therefore, is dismissed.

The judgment of dissolution is affirmed; the appeal is dismissed in part only with respect to the motion for contempt.