# TOWN OF STRATFORD *v.* 500 NORTH AVENUE, LLC, ET AL.
(AC 44905)

Bright, C. J., and Cradle and Clark, Js.

*Syllabus*

The plaintiff town sought to foreclose municipal tax liens assessed against certain real property that had been owned by the defendant N Co. until shortly before this action was commenced. The parties agreed that title to the property vested in another company prior to the commencement

of the action. The trial court granted the plaintiff's motion for summary judgment as to liability, and thereafter rendered a judgment of foreclosure by sale, from which N Co. appealed to this court. The plaintiff moved to dismiss the appeal for lack of subject matter jurisdiction on the ground that N Co. lacked standing to maintain the appeal because it no longer owned the property and, therefore, was not aggrieved by the judgment. *Held* that the plaintiff's motion to dismiss was granted and the appeal was dismissed because N Co. lacked standing to challenge the foreclosure judgment on appeal: because N Co. was divested of its ownership interest in the property by the time the judgment of foreclosure by sale was rendered, it did not have a specific personal and legal interest in the transfer of title to the property through the foreclosure sale, and, even if the foreclosure sale proceeds were insufficient to satisfy N Co.'s alleged tax obligations, the plaintiff could not pursue a deficiency judgment against N Co.; moreover, because N Co. lacked standing, it would not suffer any collateral consequences from the foreclosure judgment, and, therefore, was not aggrieved by the judgment because the plaintiff could not use the judgment as a basis for invoking the doctrine of collateral estoppel to preclude N Co. from relitigating any issues resolved by the judgment, including its alleged tax liabilities.

Considered October 6, 2021—officially released February 22, 2022

*Procedural History*

Action to foreclose municipal tax liens on certain real property, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the defendant Rose-Tiso & Co., LLC, et al. were defaulted for failure to appear; thereafter, the court, *Spader*, *J.*, granted the plaintiff's motion for summary judgment as to liability; subsequently, the court, *Stevens*, *J.*, rendered judgment of foreclosure by sale, from which the named defendant appealed to this court; subsequently, the plaintiff moved to dismiss the appeal. *Motion granted*; *appeal dismissed.*

*Bryan L. LeClerc*, in support of the motion.

*Kenneth A. Votre*, in opposition to the motion.

*Opinion*

CLARK, J. This is an appeal by the defendant 500 North Avenue, LLC,[1] from a judgment of foreclosure

[1] The complaint also named as defendants Roger K. Colacurcio; Mamie M. Colacurcio; American Tax Funding, LLC; Albina Pires; Dahill Donofrio; Joseph Regensburger; Robin Cummings; Red Buff Rita, Inc.; EBay Wanted,

rendered in favor of the plaintiff, the town of Stratford. The plaintiff has moved to dismiss the appeal for lack of subject matter jurisdiction on the ground that the defendant lacks standing to maintain the appeal because it no longer owns the property at issue and, therefore, is not aggrieved by the judgment. Although the defendant concedes that it has no ownership interest in the property, it opposes the motion on the ground that it is aggrieved by the possible collateral consequences of the judgment. Specifically, the defendant argues that the judgment establishes its underlying tax obligations to the plaintiff and could be used by the plaintiff to establish the defendant's liability in a future, independent action by the plaintiff to collect unpaid taxes not satisfied by a judgment in this case. For the reasons that follow, we conclude that the defendant is not aggrieved by the judgment and, therefore, lacks standing to pursue this appeal. As a result, we grant the motion to dismiss and dismiss the appeal for lack of subject matter jurisdiction.

On May 29, 2019, the plaintiff commenced this action pursuant to General Statutes § 12-181[2] against the defendant and others to foreclose seven municipal tax liens assessed against certain real property located in Stratford (property). The property had been owned by the defendant until shortly before the action was commenced. The parties agree that title to the property vested in JRB Holding Co., LLC (JRB Holding), prior to the commencement of the present case.[3] The plaintiff

Inc.; United States of America, Department of the Treasury—Internal Revenue Service; As Peleus, LLC; Rose-Tiso & Co., LLC; and JRB Holding Co., LLC.

This appeal was filed only by the defendant 500 North Avenue, LLC. All references herein to the defendant are to 500 North Avenue, LLC.

[2] General Statutes § 12-181 provides in relevant part: "The tax collector of any municipality may bring suit for the foreclosure of tax liens in the name of the municipality by which the tax was laid . . . ."

[3] The parties do not specify in their submissions to this court how JRB Holding obtained title to the property. It appears that the defendant was divested of its title to the property on May 28, 2019, by a judgment of strict

filed a revised complaint on October 3, 2019, and the defendant filed an answer and special defenses on November 15, 2019.

In June, 2020, the plaintiff filed a motion for summary judgment as to liability against the defendant and JRB Holding. The defendant objected, and, on October 20, 2020, the trial court, *Spader*, *J.*, granted the plaintiff's motion for summary judgment. On November 5, 2020, the court denied the defendant's motion to reargue the decision granting the motion for summary judgment.

The plaintiff then moved for a judgment of strict foreclosure. Two defendants who are not parties to the present appeal, Mamie M. Colacurcio and Roger K. Colacurcio, moved for a judgment of foreclosure by sale, on the grounds that there was substantial equity in the property and because the United States was a party to the action. See 28 U.S.C. § 2410 (c) (2018) ("an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale"). On August 2, 2021, the trial court, *Stevens*, *J.*, rendered a judgment of foreclosure by sale. The court found the amount of the debt to be $179,293.32 and the fair market value of the property to be $500,000, and ordered the foreclosure sale to take place on October 16, 2021. The defendant filed the present appeal on August 19, 2021, challenging the judgment of foreclosure by sale. The plaintiff moved to dismiss this appeal on August 30, 2021, and the defendant objected.[4]

foreclosure rendered in a separate action to foreclose a mechanic's lien on the property. *Rose-Tiso & Co., LLC* v. *500 North Avenue, LLC*, Superior Court, judicial district of Fairfield, Docket No. CV-18-6081558-S (April 8, 2019). The original plaintiff in that case, Rose-Tiso & Co., LLC, asserted that it assigned its mechanic's lien to JRB Holding by an assignment dated February 5, 2019, and the trial court granted a motion to substitute JRB Holding as the plaintiff on the same day that it rendered the judgment of strict foreclosure.

[4] The present appeal was filed solely by the defendant. After the plaintiff filed its motion to dismiss this appeal, the defendant and JRB Holding filed

In its motion to dismiss, the plaintiff argues that the defendant lacks standing to bring this appeal because it is not aggrieved by the judgment of foreclosure by sale. Specifically, the plaintiff contends that the defendant has no interest in the property, and that, if a deficiency exists after the foreclosure sale, the plaintiff may not pursue a deficiency judgment against the defendant. The defendant counters that it is aggrieved because the judgment establishes its tax liability to the plaintiff and would operate to collaterally estop it from contesting that liability in any future, independent action brought by the plaintiff pursuant to General Statutes § 12-161.[5] For the reasons that follow, we conclude that the defendant is not aggrieved by the judgment.

"A threshold inquiry of this court upon every appeal presented to it is the question of appellate jurisdiction. . . . It is well established that the subject matter jurisdiction of the Appellate Court and of [our Supreme Court] is governed by [General Statutes] § 52-263, which provides that an aggrieved party may appeal to the court having jurisdiction from the final judgment of the court. . . . [O]nce the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented . . . and the court must fully resolve it before proceeding further with the case. . . . If it becomes apparent to the court that such jurisdiction is lacking, the appeal must be dismissed." (Citation

a "motion to change party designation," in which they sought to add JRB Holding as an appellant in this appeal. In a separate order issued simultaneously with this opinion, this court denied that motion without prejudice to JRB Holding filing within twenty days a motion for permission to file a late appeal. See Practice Book § 60-2 (5).

[5] General Statutes § 12-161 provides: "All taxes properly assessed shall become a debt due from the person, persons or corporation against whom they are respectively assessed to the town, city, district or community in whose favor they are assessed, and may be, in addition to the other remedies provided by law, recovered by any proper action in the name of the community in whose favor they are assessed."

omitted; emphasis omitted; internal quotation marks omitted.) *Trumbull* v. *Palmer*, 123 Conn. App. 244, 249–50, 1 A.3d 1121, cert. denied, 299 Conn. 907, 10 A.3d 526 (2010).

"Standing is established by showing that the party . . . is authorized by statute to bring an action, in other words statutorily aggrieved, or is classically aggrieved. . . . The fundamental test for determining [classical] aggrievement encompasses a well-settled twofold determination: [F]irst, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]." (Internal quotation marks omitted.) *Cimmino* v. *Household Realty Corp.*, 104 Conn. App. 392, 395, 933 A.2d 1226 (2007), cert. denied, 285 Conn. 912, 943 A.3d 470 (2008).

Because the defendant was divested of its ownership interest in the property at the time the judgment of foreclosure by sale was rendered, it did not have a specific personal and legal interest in the transfer of title to the property through the foreclosure sale. See *Trumbull* v. *Palmer*, supra, 123 Conn. App. 251–53 (proposed intervenor who had no interest in property lacked direct and substantial interest in subject matter of foreclosure litigation). Moreover, even if the foreclosure sale proceeds are insufficient to satisfy the full amount of the defendant's alleged tax obligations, the plaintiff may not pursue a deficiency judgment against the defendant in the present action pursuant to General Statutes § 49-14. See *Winchester* v. *Northwest Associates*, 255 Conn. 379, 386–87, 767 A.2d 687 (2001).

As the defendant correctly observes, however, the plaintiff conceivably could pursue an independent action against it pursuant to § 12-161 to recover any unpaid taxes for the years during which the defendant owned the property, if the foreclosure sale fails to generate sufficient proceeds to satisfy all of those alleged tax liabilities; see id., 387–88 ("a plaintiff who forecloses on a tax lien is not without a remedy to recover the balance of any taxes owed by a defendant: the plaintiff is free to commence a second action against the defendant for that purpose"); and the liens are not extinguished by virtue of the plaintiff obtaining title to the property. Cf. *American Tax Funding, LLC* v. *First Eagle Corp.*, 196 Conn. App. 298, 306, 229 A.3d 1218 (assignee of tax liens lost right to collect liens upon taking title to property), cert. denied, 335 Conn. 942, 237 A.3d 729 (2020). The defendant argues that it is therefore aggrieved by the judgment in the present case because the judgment establishes its liability to the plaintiff with respect to its outstanding tax obligations and could have collateral consequences in any future, independent action to collect that debt pursuant to § 12-161. Specifically, the defendant argues that the plaintiff could use the judgment in the present case to invoke the doctrine of collateral estoppel in any such action to preclude it from contesting the liability that it seeks to challenge in the present appeal. We are not persuaded.

Our Supreme Court has adopted the view expressed in § 28 (1) of the Restatement (Second) of Judgments that, "[a]lthough an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded [when the] party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action . . . ." (Internal quotation marks omitted.) *Water Pollution*

*Control Authority* v. *Keeney*, 234 Conn. 488, 494–95, 662 A.2d 124 (1995); see also *Commissioner of Motor Vehicles* v. *DeMilo & Co.*, 233 Conn. 254, 268–69, 659 A.2d 148 (1995); *Iacurci* v. *Wells*, 108 Conn. App. 274, 281, 947 A.2d 1034 (2008). Because the defendant has no ownership interest in the property, it lacks standing to appeal the judgment of foreclosure by sale and consequently may not, as a matter of law, obtain judicial review of that judgment. The plaintiff, therefore, could not use the foreclosure judgment as a basis for invoking the doctrine of collateral estoppel to preclude the defendant from relitigating any issues resolved by the foreclosure judgment, including the defendant's alleged tax liabilities, in a subsequent action brought pursuant to § 12-161. Accordingly, the defendant is not aggrieved by the judgment in the present case because it will not suffer any collateral consequences from it.

As a result, we conclude that, because the defendant is not aggrieved by the judgment, it lacks standing to pursue this appeal.

The plaintiff's motion to dismiss the appeal is granted, and the appeal is dismissed.

In this opinion the other judges concurred.

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## CELIA WHEELER ET AL. *v.* BEACHCROFT, LLC, ET AL.
## (AC 44348)

Moll, Alexander and Suarez, Js.

*Syllabus*

The defendant B Co., which owned a portion of a residential housing development adjacent to Long Island Sound, appealed to this court from the judgment of the trial court summarily enforcing a settlement agreement among the parties to resolve a dispute over access to the shore. The plaintiffs, who owned interior lots in the development, had brought an action to quiet title to an avenue that ran through the development as

well as to a lawn that abuts the sound at the end of the avenue. After most of the parties' claims were resolved during the course of the litigation, counsel for some of the parties informed the trial court that all of the parties had reached a settlement agreement and, thereafter, entered two interrelated agreements on the record during a pretrial hearing. The settlement agreement required, inter alia, that B Co. would quitclaim the avenue to the town of Branford and P Co., a municipal subdivision of the town, and grant the town an easement for the repair, maintenance and replacement of a certain drainpipe at the end of the avenue that ran toward the sound. After the court ordered that the case had been reported settled, B Co. claimed that the defendants J and E, who owned a waterfront lot in the development, had interfered with the execution of the settlement agreement. B Co. filed a motion seeking an order that J and E were bound by the agreement and had no right to interfere with its implementation but later withdrew its motions for order and to bind. J and E claimed that they were not bound by the agreement. At a later hearing on motions to enforce the agreement that were filed by the plaintiffs, the town and P Co., in which they asserted that J and E were not bound by the agreement, the plaintiffs' counsel did not represent that J and E had signed off on the agreement. The court then ordered the plaintiffs' counsel to file a proposed order regarding enforcement of the agreement. The court thereafter granted the plaintiffs' motions to enforce the agreement, concluding that J and E were not parties to the agreement and entering certain orders to implement the agreement. *Held*:

1. B Co. could not prevail on its claim that the trial court erred in finding that J and E were not parties to the settlement agreement, which was based on B Co.'s assertions that whether they were parties to the agreement was not before the court, that the record did not support the court's finding and that the court failed to conduct an evidentiary hearing on the matter:

a. In determining that J and E were not parties to the settlement agreement, the trial court addressed a question that was relevant to its adjudication of the motions to enforce the agreement, and, notwithstanding B Co.'s claim that the issue of whether J and E were parties to the agreement was not before the court as a result of its withdrawal of prior motions it filed to bind them to the agreement, the status of J and E was squarely before the court vis-‑vis the parties' motions to enforce the agreement.

b. The trial court did not abuse its discretion in finding that J and E were not parties to the settlement agreement: during the pretrial hearing, counsel for J and E unequivocally conveyed to the court that J and E were not in agreement with the terms of the agreement, which no party disputed, and counsel for J and E was not present when the plaintiffs' counsel, without mentioning J and E, subsequently entered the agreement on the record; moreover, the agreement, which imposed no obligations

on J and E, provided that it was without prejudice as to any claims by or against them, and B Co.'s counsel did not identify J and E as parties, and thereafter took the position that B Co. had not required J and E to approve the agreement; furthermore, statements made by the plaintiffs' counsel when he entered the agreement on the record and during the subsequent hearing on the motions to enforce the agreement reasonably could be construed to indicate that J and E, although not joining the settlement agreement, were not objecting to the other parties' presenting the agreement to the court.

c. The trial court did not abuse its discretion by not conducting an evidentiary hearing as to whether J and E were parties to the settlement agreement: prior to and at the hearing on the motions to enforce the agreement, B Co. did not pursue opportunities it had to make a request to introduce evidence on that issue; moreover, at the hearing on the motions to enforce the agreement, B Co.'s counsel answered affirmatively when asked directly by the court to confirm that B Co. was no longer seeking an order binding J and E to the agreement, and B Co.'s counsel made no response to the court's statements that it did not believe it was necessary to hear evidence with respect to the motions to enforce.

2. Contrary to B Co.'s assertion, the trial court did not alter or omit material terms contained in the settlement agreement when it entered orders to implement the agreement, except for the court's failure to include notice and cooperation terms the agreement explicitly required:

a. This court determined that, under its case law, the abuse of discretion standard of review applied to its consideration of B Co.'s claims.

b. The trial court did not abuse its discretion in its orders implementing certain material terms of the settlement agreement in its enforcement decision, as the court reasonably determined that Long Island Sound was the southern boundary of a view easement contained in the settlement agreement, it did not fail to order that the settlement agreement was contingent on the execution of certain quitclaim deeds and releases, this court having perceived no appreciable difference between the parties' agreement that the settlement agreement was contingent on the execution of the documents at issue and the court's ordering that all settlement documents, which included those at issue, shall be executed, the enforcement decision did not create confusion in describing the area in which sitting and recreating was prohibited, as this court perceived no appreciable difference between the description of that area in the settlement agreement and the enforcement decision, the court's enforcement decision, read in its entirety, provided, contrary to B Co.'s claim, that the town may maintain, repair and replace the drainpipe, the court did not improperly omit, as B Co. claimed, a cooperation clause from its enforcement decision, as the agreement contained no sweeping cooperation clause but required the parties to cooperate as to the town's acquisition of the avenue and as to other necessary approvals, and the court

did not improperly omit an order requiring the withdrawal and release of claims by the parties in a related action.

c. The trial court improperly failed to include in its enforcement decision an order that the town was required to provide reasonable notice to and cooperate with B Co. in scheduling repair work on the drainpipe on B Co.'s property for which the town had an easement: the notice and cooperation terms were set forth explicitly in the settlement agreement, the court did not include or refer to them in its enforcement decision, and this court did not read them to be implicit in that decision; moreover, it was apparent that the court intended to have the enforcement decision encompass all material terms of the settlement agreement.

Argued November 9, 2021—officially released February 22, 2022

*Procedural History*

Action seeking, inter alia, a judgment declaring that certain real property is a public way, and for other relief, brought to the Superior Court in the judicial district of New Haven and transferred to the judicial district of Hartford, Complex Litigation Docket, where the court, *Bright*, *J*., granted the motions by James R. McBurney et al. to intervene as party defendants; thereafter, the court, *Shapiro*, *J*., granted the motion of Peter Paquin et al. to intervene as party plaintiffs and to file an intervening complaint; subsequently, count one of the plaintiffs' and the intervening plaintiffs' complaints were tried to the court, *Bright*, *J*.; judgment for the named defendant on count one of the plaintiffs' and intervening plaintiffs' amended complaints; thereafter, the court, *Bright*, *J*., granted in part the motions for summary judgment filed by the named defendant and the intervening defendants on the remaining counts of the plaintiffs' amended complaint and rendered partial judgment thereon, from which the named defendant and the intervening defendants filed separate appeals with the Supreme Court, which affirmed the trial court's judgment; subsequently, the named defendant filed a cross claim as against the defendant James R. McBurney et al.; thereafter, the court, *Moukawsher*, *J*., denied the motion for sanctions filed by the defendant James R. McBurney et al., and granted the motions filed by the

named plaintiff et al. to enforce the parties' settlement agreement and rendered judgment thereon, from which the named defendant appealed to this court. *Reversed in part; judgment directed.*

*Richard P. Colbert*, with whom were *Matthew J. Letten* and *Gerald L. Garlick*, for the appellant (named defendant).

*Joel Z. Green*, with whom, on the brief, was *Linda Pesce Laske*, for the appellees (named plaintiff et al.).

*Peter J. Berdon*, for the appellee (plaintiff Pine Hill Orchard Association, Inc.).

*Thomas J. Donlon*, for the appellee (defendant town of Branford).

*Michael S. Taylor*, with whom were *Brendon P. Levesque* and, on the brief, *Peter J. Zarella*, for the appellees (defendant James R. McBurney et al.).

*Opinion*

MOLL, J. This appeal is the latest episode in what our Supreme Court has described as "a nearly century old dispute among neighbors in a housing development along the Long Island Sound (sound) over access to the shore."[1] *Wheeler* v. *Beachcroft, LLC*, 320 Conn. 146, 148, 129 A.3d 677 (2016). The defendant Beachcroft, LLC,[2] appeals from the judgment of the trial court summarily enforcing a settlement agreement entered on the

[1] This dispute has spawned several appeals, including a prior appeal filed in the present case. See *Wheeler* v. *Beachcroft, LLC*, 320 Conn. 146, 129 A.3d 677 (2016); see also *McBurney* v. *Paquin*, 302 Conn. 359, 28 A.3d 272 (2011); *McBurney* v. *Cirillo*, 276 Conn. 782, 889 A.2d 759 (2006), overruled in part on other grounds by *Batte-Holmgren* v. *Commissioner of Public Health*, 281 Conn. 277, 914 A.2d 996 (2007); *Fisk* v. *Ley*, 76 Conn. 295, 56 A. 559 (1903). Additionally, there is an appeal pending in this court in a different matter relating to this dispute. See *Wheeler* v. *Cosgrove*, Connecticut Appellate Court, Docket No. AC 42547 (appeal filed January 31, 2019).

[2] The original plaintiffs who filed this matter are Celia W. Wheeler, Charles L. Dimmler III, Angela Rossetti, Dean Leone, Tina Mannarino, Lori P. Callahan, Harold D. Sessa, and Sheryl Lee Sessa. Additionally, the following parties intervened as plaintiffs: Peter Paquin, Suzanne Paquin, Frank Cirillo,

record on the eve of trial. On appeal, the defendant claims that the court (1) committed error in making a finding that two intervening defendants, the McBurneys, were not parties to the settlement agreement, and (2) improperly altered or omitted material terms of the settlement agreement in summarily enforcing the settlement agreement.[3] We reverse the judgment of the trial court only insofar as the court's decision summarily enforcing the settlement agreement omitted certain terms of the settlement agreement, and we affirm the judgment in all other respects.

The following facts, as drawn from a previous decision of our Supreme Court, and procedural history are relevant to our resolution of this appeal. The dispute in this matter centers on "a housing development (development) that is located adjacent to the sound on Crescent Bluff Avenue (avenue) in the town of Branford. . . . The development consists of thirty-five lots in a long and narrow five acre tract of land. The narrow end of the development borders the sound to the south, with the avenue running north to south through the

Susan Cirillo, James Baldwin, Joann Baldwin, Antoinette Verderame, Leslie Carothers, and Ann Harrison. Before this appeal was filed, Callahan, Harold D. Sessa, Sheryl Lee Sessa, Harrison, and Carothers withdrew their respective claims. We refer in this opinion to (1) Wheeler, Dimmler, Rossetti, Leone, and Mannarino collectively as the plaintiffs, and (2) Peter Paquin, Suzanne Paquin, Frank Cirillo, Susan Cirillo, James Baldwin, Joann Baldwin, and Verderame collectively as the intervening plaintiffs.

Beachcroft, LLC, was the only defendant named in the plaintiffs' original complaint. Subsequently, the town of Branford (town) and Pine Orchard Association, Inc., were cited in as defendants. Additionally, the following parties intervened as defendants: James R. McBurney, Erin E. McBurney, Roger A. Lowlicht, and Kay A. Haedicke. We refer in this opinion to (1) Beachcroft, LLC, as the defendant, (2) the town, Pine Orchard Association, Inc., Lowlicht, and Haedicke individually by name or by surname, and (3) James R. McBurney and Erin E. McBurney collectively as the McBurneys.

[3] On March 15, 2021, the McBurneys filed a motion to dismiss this appeal in part as moot, which this court denied on April 21, 2021. In their appellate brief, the McBurneys reasserted their mootness claim; however, the McBurneys' counsel withdrew this claim during oral argument before this court.

development and perpendicular to the sound. Thirty-one lots line the avenue in the interior of the development. The avenue runs between the four waterfront lots, with two lots on each side. The avenue ends at a small strip of land (lawn) directly abutting the sound . . . .'' (Citation omitted.) Id., 150. The plaintiffs own interior lots in the development, the McBurneys and Lowlicht and Haedicke[4] own waterfront lots in the development, and the defendant owns the avenue and part of the lawn in the development. Id. In addition, there appears to be no dispute that the intervening plaintiffs also own interior lots in the development.

In 2009, pursuant to General Statutes § 47-31,[5] the plaintiffs commenced the present quiet title action. The plaintiffs' third amended complaint, their operative complaint filed on October 9, 2018, contained eleven counts asserting various rights with respect to the avenue and the lawn that were adverse to any interests claimed by the defendant, the town, Pine Orchard Association, Inc., the intervening plaintiffs, the McBurneys, and/or Lowlicht and Haedicke. The intervening plaintiffs' amended complaint, their operative complaint filed on July 12, 2012, contained eleven counts that

[4] Lowlicht and Haedicke are joint property owners and have at all relevant times been represented by the same counsel. Accordingly, we treat them as a unit.

[5] General Statutes § 47-31 (a) provides: ''An action may be brought by any person claiming title to, or any interest in, real or personal property, or both, against any person who may claim to own the property, or any part of it, or to have any estate in it, either in fee, for years, for life or in reversion or remainder, or to have any interest in the property, or any lien or encumbrance on it, adverse to the plaintiff, or against any person in whom the land records disclose any interest, lien, claim or title conflicting with the plaintiff's claim, title or interest, for the purpose of determining such adverse estate, interest or claim, and to clear up all doubts and disputes and to quiet and settle the title to the property. Such action may be brought whether or not the plaintiff is entitled to the immediate or exclusive possession of the property.''

substantively tracked the plaintiffs' claims.[6] Additionally, pursuant to § 47-31 (d),[7] the defendant, the town, Pine Orchard Association, Inc.,[8] and Lowlicht and Haedicke claimed interests in the avenue and the lawn. The McBurneys did not file an answer and made no statement pursuant to § 47-31 (d). Over the course of the litigation, either by way of summary judgment or following trial, the trial court ruled against the plaintiffs and the intervening plaintiffs with respect to most of their claims.[9] The remaining claims were scheduled to be tried on February 3, 2020.

On January 31, 2020, during a hearing conducted by the court, *Moukawsher, J.*, to address pretrial matters,

[6] We note that, unlike the plaintiffs' operative complaint, the intervening plaintiffs' operative complaint did not expressly refer to the McBurneys or to Lowlicht and Haedicke.

[7] General Statutes § 47-31 (d) provides: "Each defendant shall, in his answer, state whether or not he claims any estate or interest in, or encumbrance on, the property, or any part of it, and, if so, the nature and extent of the estate, interest or encumbrance which he claims, and he shall set out the manner in which the estate, interest or encumbrance is claimed to be derived."

[8] In a memorandum of decision issued on November 4, 2013, disposing of one of the claims raised by the plaintiffs and the intervening plaintiffs, the trial court, *Bright, J.*, found the following as to Pine Orchard Association, Inc.: "On June 13, 1903, [Pine Orchard Association, Inc.] was chartered by the state of Connecticut as an incorporated borough and municipal subdivision of the town . . . . It has taxing power and jurisdiction over land use and streets within its borders. . . . The purpose of [Pine Orchard Association, Inc.] 'is to provide for the improvement of the lands in said district and for the health, comfort, and convenience of persons living therein.' . . . All persons owning real property within the boundaries of the borough of Pine Orchard are members of [Pine Orchard Association, Inc.] by virtue of their residency. The area covered by [Pine Orchard Association, Inc.] includes both public and private roads. It is undisputed that [the avenue] is in Pine Orchard and subject to [Pine Orchard Association, Inc.'s] jurisdiction." (Citations omitted.)

[9] The court's decisions disposing of these claims are not at issue in this appeal. In the prior appeal filed in this matter, our Supreme Court affirmed the judgment of the court, *Bright, J.*, denying, in part, motions for summary judgment predicated on res judicata filed by the defendant, the McBurneys, and Lowlicht and Haedicke. See *Wheeler* v. *Beachcroft, LLC*, supra, 320 Conn. 148–50, 154–55.

the court granted an oral motion made by the plaintiffs' counsel to continue the trial to February 4, 2020, to provide the parties with additional time to continue ongoing settlement negotiations. On February 4, 2020, with counsel for some, but not all, of the parties present before the court, two interrelated settlement agreements were entered on the record. The plaintiffs' counsel recited the terms of the first settlement agreement, and the town's counsel set forth the terms of the second settlement agreement (collectively, settlement agreement).[10] The settlement agreement required, inter alia, (1) the defendant to quitclaim a portion of the lawn, along with an existing stairway and a triangular piece of property containing the stairway, which together provided access from the avenue to the shore, to Pine Orchard Association, Inc., (2) the parties to the settlement agreement to "exchange mutual general releases and . . . withdraw all pending claims and actions by them," (3) the defendant to quitclaim the avenue to the town and to grant the town an easement to repair, maintain, and replace a drainpipe, and (4) the town to pay the defendant $200,000. The same day, the court ordered that the case had been reported settled and that, unless withdrawn sooner, the case would be dismissed on May 19, 2020.

On March 2, 2020, the defendant filed a motion titled "Motion for Order (in Aid of Settlement)" (motion for order). The defendant asserted that, following the February 4, 2020 hearing, the McBurneys had engaged in conduct interfering with the execution of the settlement agreement. As relief, the defendant requested that the court order that the McBurneys (1) were bound by the settlement agreement and (2) "ha[d] no rights to take

[10] Although there were two settlement agreements entered on the record, the parties generally identify them together as a single settlement agreement. Accordingly, we refer in this opinion to the two settlement agreements collectively as the settlement agreement.

any action to interfere with the implementation of the settlement agreement."[11] On March 5, 2020, the McBurneys filed an objection, arguing, inter alia, that they were not parties to the settlement agreement. Additionally, the McBurneys requested that the court sanction the defendant for filing the motion for order in bad faith, vexatiously, wantonly, or oppressively.

On May 22, 2020, the plaintiffs, the town, and Pine Orchard Association, Inc., each filed a motion to summarily enforce the settlement agreement. In their respective motions, the movants asserted that the McBurneys were not parties to the settlement agreement. On the same day, the defendant filed a motion captioned "Motion to Bind McBurneys to Settlement Agreement" (motion to bind), requesting that the court order that the McBurneys (1) had no rights with respect to its property, (2) were estopped from claiming any right to interfere with the settlement agreement, and/or (3) had waived any right to interfere with the settlement agreement.

On June 12, 2020, the defendant withdrew the motion for order and the motion to bind. On the same day, the defendant filed a "response" to the motions to summarily enforce the settlement agreement, stating, inter alia, that it agreed that a global settlement had been reached, and that, therefore, the court did not need to adjudicate the pending motions.

On July 1, 2020, the court conducted a hearing on the motions to summarily enforce the settlement agreement and the McBurneys' request for sanctions against the defendant. No evidence was offered or admitted during the hearing. After hearing argument from the parties,

[11] On March 4, 2020, Lowlicht and Haedicke filed a separate motion by which they "join[ed] in [the defendant's] request for an order that [the McBurneys] be precluded from contesting or interfering with the settlement agreement . . . ."

the court ordered the plaintiffs' counsel to file a proposed order regarding enforcement of the settlement agreement. The court also reserved its ruling on the McBurneys' request for sanctions against the defendant.

On July 9, 2020, in accordance with the court's July 1, 2020 order, the plaintiffs filed a proposed order (original proposed order). On July 14, 2020, the defendant filed an objection to the original proposed order.

On July 14, 2020, the court denied the McBurneys' request for sanctions against the defendant. In its order, the court stated that "[the McBurneys] were not part of the settlement [agreement] . . . ."

On August 4, 2020, the court conducted a hearing to address the defendant's objections to the original proposed order. On August 5, 2020, the plaintiffs filed an amended proposed order (amended proposed order), to which the defendant filed an objection on August 6, 2020.

On August 11, 2020, the court issued a memorandum of decision granting the motions to summarily enforce the settlement agreement (enforcement decision). As part of the enforcement decision, the court found that the McBurneys had "declined to participate in the settlement agreement . . . ." In addition, the court entered orders to implement the terms of the settlement agreement. On August 31, 2020, the defendant filed a motion to reargue, which the court denied on October 9, 2020. This appeal followed. Additional facts and procedural history will be set forth as necessary.

Before we analyze the defendant's claims, we set forth the following general legal principles relevant to our resolution of this appeal. "In [*Audubon Parking Associates Ltd. Partnership* v. *Barclay & Stubbs, Inc.*, 225 Conn. 804, 626 A.2d 729 (1993) (*Audubon*)], our Supreme Court determined that a settlement agreement

resolving the issues in a pending case may be enforced prior to and without the necessity of a trial: A trial court has the inherent power to enforce summarily a settlement agreement as a matter of law when the terms of the agreement are clear and unambiguous. . . . Agreements that end lawsuits are contracts, sometimes enforceable in a subsequent suit, but in many situations enforceable by entry of a judgment in the original suit. A court's authority to enforce a settlement by entry of judgment in the underlying action is especially clear where the settlement is reported to the court during the course of a trial or other significant courtroom proceedings." (Internal quotation marks omitted.) *Commissioner of Transportation* v. *Lagosz*, 189 Conn. App. 828, 837, 209 A.3d 709, cert. denied, 333 Conn. 912, 215 A.3d 1210 (2019). "Summary enforcement is not only essential to the efficient use of judicial resources, but also preserves the integrity of settlement as a meaningful way to resolve legal disputes. When parties agree to settle a case, they are effectively contracting for the right to avoid a trial." (Internal quotation marks omitted.) Id., 838. "Nevertheless, the right to enforce summarily a settlement agreement is not unbounded. The key element with regard to the settlement agreement in *Audubon* . . . [was] that there [was] no factual dispute as to the terms of the accord. Generally, [a] trial court has the inherent power to enforce summarily a settlement agreement as a matter of law [only] when the terms of the agreement are clear and unambiguous . . . and when the parties do not dispute the terms of the agreement. . . . The rule of *Audubon* effects a delicate balance between concerns of judicial economy on the one hand and a party's constitutional rights to a jury and to a trial on the other hand. . . . To use the *Audubon* power outside of its proper context is to deny a party these fundamental rights and would work a

manifest injustice." (Citations omitted; internal quotation marks omitted.) *Reiner* v. *Reiner*, 190 Conn. App. 268, 277, 210 A.3d 668 (2019).

I

We first turn to the defendant's claim that the trial court improperly made a finding that the McBurneys had "declined to participate in the settlement agreement," which, in essence, is akin to a finding that the McBurneys were not parties to the settlement agreement. This claim is unavailing.

To put the defendant's claim in its proper context, we set forth the following additional facts and procedural history. On January 31, 2020, respective counsel for the plaintiffs, the defendant, the town, Pine Orchard Association, Inc., the McBurneys, and Lowlicht and Haedicke appeared before the court to discuss several pretrial matters.[12] During the hearing, the plaintiffs' counsel stated that "very substantial progress" was being made to settle the case and that a "tentative agreement" had been reached with respect to the plaintiffs. The defendant's counsel commented that, "[b]etween [the plaintiffs] and [the defendant] we have an understanding, subject to documentation, as to how we can resolve this case." The town's counsel indicated that the town was "prepared if there's a global resolution . . . ." Counsel for Lowlicht and Haedicke stated that Lowlicht and Haedicke "agree to that part of the settlement that affects them. [They] don't stand in the way of it. [They are] not really affected by it, but [they] don't stand in the way of it."

The McBurneys' counsel informed the court that "the settlement that's proposed has been circulated to [the McBurneys] as well, and they cannot buy in or agree

[12] None of the intervening plaintiffs, who were self-represented at the time, appeared at the January 31, 2020 hearing.

to those terms. I've articulated this to, I believe, all counsel. And I believe if this settlement is entered, that there would be continuing litigation concerning this property, although in a different facet." The McBurneys' counsel further stated that, although the proposed settlement would "extinguish this case," the "potential settlement may result in additional litigation unrelated to this particular matter, but directly related to the settlement." The plaintiffs' counsel responded that "the disposition of this case" would not be "affect[ed]." The defendant's counsel did not reply to the statements of the McBurneys' counsel.

On February 4, 2020, respective counsel for the plaintiffs, the defendant, the town, Pine Orchard Association, Inc., and the McBurneys appeared before the court. At the outset, the plaintiffs' counsel informed the court that "the plaintiffs have reached an agreement with [the defendant] and [the defendant's principal member] on terms and conditions of settlement, which we would like to recite for the record." Immediately thereafter, the court monitor began experiencing technological difficulties, and the court took a recess. Following the recess, respective counsel for the plaintiffs, the defendant, and the town reappeared before the court. The plaintiffs' counsel stated that counsel for Pine Orchard Association, Inc., and counsel for the McBurneys had left to attend to other matters. The plaintiffs' counsel continued: "However, we do have a—their consent. We have an agreement. We have . . . terms and conditions that all of the parties have agreed to in settlement of this claim."[13] The plaintiffs' counsel further noted that, although counsel for Lowlicht and Haedicke was not

[13] The plaintiffs' counsel represented that he had received written confirmation from "all of the interior lot owners who ha[d] not previously entered into arrangements with [the defendant] and [the defendant's principal member]" that they consented to the terms and conditions of the settlement agreement.

present, he was "familiar with the terms and conditions." In reciting the terms of the first of the two settlement agreements, the plaintiffs' counsel stated that "it is [the plaintiffs'] intention to withdraw without prejudice the claims against . . . the McBurneys . . . and Lowlicht and Haedicke with the understanding that the McBurneys and Lowlicht [and] Haedicke will similarly withdraw without prejudice . . . any pleadings, their defenses, and any statements of interest [pursuant to § 47-31 (d)] that they had filed in this case."

The defendant's counsel stated that the terms of the settlement agreement as recited were accurate, with the exception of one minor misstatement made by the plaintiffs' counsel. The following exchange then occurred:

"[The Defendant's Counsel]: . . . [J]ust to make it clear, these two settlements that were reported are interdependent. This is a global settlement. If one falls through, the other one doesn't happen.

"The Court: You mean the town's and the plaintiffs'?

"[The Defendant's Counsel]: And the plaintiffs'—

"The Court: Yeah.

"[The Defendant's Counsel]: —interior lot owners, [the defendant].

"The Court: Right.

"[The Defendant's Counsel]: It all has to happen or nothing happens."

In the defendant's motion for order, the defendant asserted that, following the February 4, 2020 hearing, the McBurneys had (1) threatened to file a lawsuit if the settlement agreement was effectuated, (2) contacted Pine Orchard Association, Inc., to try to "block the settlement [agreement]," and (3) claimed that the settlement agreement was " 'unenforceable.' " The defendant

contended that it had not "require[d] the McBurneys to approve the settlement [agreement]" because, as averred in an accompanying affidavit of the defendant's counsel, the McBurneys' counsel had advised the defendant's counsel on February 4, 2020, before the terms of the settlement agreement had been read into the record, that the McBurneys "were not going to do anything to interfere with the settlement [agreement]." The defendant asked the court to order that the McBurneys (1) were bound by the settlement agreement and (2) "ha[d] no rights to take any action to interfere with the implementation of the settlement agreement."

In their objection to the motion for order, the McBurneys maintained that they were not parties to the settlement agreement and denied making any assurance "to 'not interfere' with the settlement [agreement]." They stated, as averred in an accompanying affidavit of their counsel, that, on January 31, 2020, during settlement discussions and in open court, their counsel conveyed that they were not endorsing the terms of the settlement being negotiated, particularly insofar as the settlement would permit the defendant to erect a fence that the McBurneys believed violated their property rights. They further stated that (1) their counsel did not participate in settlement discussions following the January 31, 2020 hearing, (2) in an e-mail thread generated on February 3, 2020, notifying the clerk of the trial court that a settlement had been reached, the plaintiffs' counsel indicated that the plaintiffs would be withdrawing their claims as to the McBurneys such that it was the McBurneys' counsel's "choice" whether he wanted to appear before the court the next day, and (3) during the recess taken on February 4, 2020, their counsel left to attend another matter under the impression that all parties were aware that the McBurneys were not in agreement with the settlement terms.

On May 13, 2020, the court ordered, along with an attendant briefing schedule, that May 22, 2020, was the deadline by which the parties were permitted to file motions to summarily enforce the settlement agreement. On May 15, 2020, the defendant filed a motion seeking a court order requiring that any responses to discovery requests that it had served on the plaintiffs, the McBurneys, and Pine Orchard Association, Inc., dated May 15, 2020, be served on or before June 1, 2020. The defendant contended that the discovery requests sought the production of documents that were "relevant and material to the motions that will soon be filed with regard to the settlement agreement . . . ." In subsequent filings, the defendant clarified that the discovery would "be material and relevant to the issue of what interest the McBurneys are suddenly . . . claiming in [the defendant's] property." On June 4, 2020, the court denied the defendant's motion without prejudice, stating that "[t]he court's first obligation is to review the words the parties used without resort to unexpressed intentions. If the moving party claims the matter cannot be resolved without the documents at issue it should make this argument in its briefing." The same day, in denying a case flow request filed by the plaintiffs seeking an emergency status conference, the court stated that "[the defendant] has been ordered to make its case for the discovery in the briefing related to enforcement. Any party objecting to the need for this discovery should do the same. The court will determine whether discovery is needed when considering first whether enforcement may be considered without discovery. No party need comply with the [defendant's discovery] requests until further order of the court."

In their motion to summarily enforce the settlement agreement, the plaintiffs asserted that the defendant was refusing to abide by the settlement agreement on the basis of its insistence either that the McBurneys

were parties to the settlement agreement or that the settlement agreement was contingent on the McBurneys being or becoming parties thereto. The plaintiffs contended that the McBurneys were not parties to the settlement agreement, which, the plaintiffs posited, "[the defendant] was fully aware of when [it] agreed to the terms of the [settlement] agreement and knew when the [settlement] agreement was recited into the record." As relief, the plaintiffs asked the court to summarily enforce the settlement agreement "entered into by the parties and as presented to the court." In the town's motion, the town asserted that "[i]t was agreed to and reported that the settlement agreement . . . did not need to involve [the McBurneys and Lowlicht and Haedicke]; further, that these parties had been advised through their attorneys of record of the details of the settlement agreement, and that the plaintiffs would withdraw the claims against them. It was mutually acknowledged and understood by [respective] counsel that this withdrawal would moot the defenses and statements of interest [pursuant to § 47-31 (d)] that they had filed, allowing the case to be withdrawn, and leaving them to resolve, if they wished, their separate interests as waterfront property owners, either by discussion or by a separate action." As relief, the town requested that the court summarily enforce the settlement agreement "as between and among the parties to it . . . ." Pine Orchard Association, Inc., adopted and incorporated the town's arguments into its respective motion.

In the defendant's motion to bind, the defendant set forth several arguments supporting its claim that the "settlement agreement should be binding on the McBurneys." As relief, the defendant sought a court order providing that the McBurneys (1) had no rights in its property, (2) were estopped from claiming any right to interfere with the settlement agreement, and/or (3) had

waived any right to interfere with the settlement agreement.

In the defendant's so-called response to the motions to summarily enforce the settlement agreement, filed following the withdrawals of the motion for order and the motion to bind, the defendant stated that it "agree[d], as it ha[d] consistently claimed, that all parties entered into a global settlement agreement [and] that it is fully enforceable as [to] all parties." (Emphasis omitted.) The defendant argued that the court did not need to consider the motions to summarily enforce the settlement agreement because the defendant was prepared to "effectuat[e] the settlement [agreement] among all parties and then [enjoy] the benefits they bargained for under that agreement." The defendant further stated that it "maintain[ed] that the McBurneys ha[d] no rights over [its] property and what, if any, rights they had were waived and/or are estopped. Once the settlement agreement [was] fully implemented, [it] intend[ed] to fully exercise and enjoy any and all of its right[s] under the agreement. If that result[ed] in the McBurneys claiming some purported rights, [it would] dispense with those claims at that time."

The issue of whether the McBurneys were parties to the settlement agreement was addressed during the July 1, 2020 hearing on the motions to summarily enforce the settlement agreement and the McBurneys' request for sanctions against the defendant. To start, the court explained its understanding that, with respect to the McBurneys, all that was required under the settlement agreement was a withdrawal of the plaintiffs' claims against them. The court then questioned whether, to the extent that the McBurneys were seeking to claim rights that were inconsistent with the settlement agreement and to the extent that the defendant had arguments in defense against those claims, such claims and arguments were appropriate to raise in the present

action rather than in a separate proceeding. Relatedly, the court questioned whether the McBurneys were parties to the settlement agreement.

After several exchanges between the court and the defendant's counsel,[14] the court stated that, "here, as far as the McBurneys [go], it doesn't seem like . . . there's now, now anyway, a claim by [the defendant] that they're . . . bound by the settlement [agreement] because they agreed to it or some other legal argument that would affect them and say that they're bound by the settlement [agreement]. They're a party to the settlement [agreement]. That's not a claim now being pressed. Is that . . . a correct understanding?" The defendant's counsel did not respond directly to that question, instead indicating that the defendant had filed the motion for order "to try and keep [the settlement agreement] in place," that the defendant "want[ed] to go forward" with the settlement agreement, and that the defendant's "thought" was to pursue its claims against the McBurneys in a cross claim that it had filed against them approximately two months after the terms of the settlement agreement had been placed on the record.[15] The following colloquy then occurred:

[14] Between the January 31, 2020 hearing and June 12, 2020 (the date on which the defendant withdrew the motion for order and the motion to bind), the defendant was represented by Attorney Gerald L. Garlick of Seiger Gfeller Laurie LLP. On June 12, 2020, Attorney Richard P. Colbert of Day Pitney LLP appeared on behalf of the defendant as additional counsel. Both Attorney Colbert and Attorney Garlick attended the July 1, 2020 hearing; however, Attorney Colbert primarily spoke to the court on behalf of the defendant and exclusively addressed the court's questions regarding the McBurneys.

[15] On April 2, 2020, without requesting leave of the court, the defendant filed a cross claim against the McBurneys, seeking (1) to quiet title to its property or, alternatively, (2) damages for maintenance and repair costs in the event that the court determined that the McBurneys possessed an easement over its property. In its appellate briefs, the defendant represents that the cross claim has been withdrawn; however, the trial court file contains no such withdrawal.

"The Court: Let me just get one thing clear . . . . [I]t's now [the defendant's] position that it favors enforcement of the settlement agreement as filed by the other parties, that it is not seeking . . . to have any sort of order binding the McBurneys here, and that it wishes only that I deny the [McBurneys'] motion for sanctions. Is that a fair representation of [the defendant's] current position . . . ?

"[The Defendant's Counsel]: Yes."

After hearing argument from the plaintiffs' counsel, the court stated: "I want to make clear that in setting . . . this up, it seemed to me that what I was supposed to focus on is what happened in front of me. There was an agreement on the record in court, and if there was something for me to enforce it would be that. And that's why I took the position that . . . I have to determine whether there's some ambiguity or some other reason why I would go outside the terms that had been written down and were read on the record in court [on February 4, 2020] . . . . [I] wouldn't even get into testimony. It would not appear that . . . there's any reason for me to be concerned about that at all since [the defendant] . . . has changed its position about whether [the settlement agreement is] enforceable under these circumstances . . . ." The defendant's counsel did not object to those statements.

Later, the court again asked the defendant's counsel to address whether the McBurneys had "consciously join[ed]" the settlement agreement. The defendant's counsel responded that, prior to February 4, 2020, the defendant did not believe that the McBurneys were in agreement with the proposed settlement. However, he further stated that (1) in light of a purported representation made by the McBurneys' counsel to Attorney Gerald L. Garlick, counsel for the defendant, before the terms of the settlement agreement had been placed on

the record on February 4, 2020, (i.e., that the McBurneys would not "interfere" with the settlement agreement), and (2) upon hearing the plaintiffs' counsel state during the February 4, 2020 hearing, as paraphrased by the defendant's counsel, that he had "the consent of the McBurneys and . . . an agreement [by] all parties [as] to all terms," the defendant subsequently believed that the McBurneys were "joining in [the settlement] agreement . . . [and were] stamping their approval on it." In response, the court stated that "[what is] most concerning for me here is a suggestion that the McBurneys were affirmatively joining into th[e] settlement [agreement] rather than just saying, look, you can withdraw the action and we're out of it, and we'll do what we want later." The court further stated that the February 4, 2020 hearing transcript does not reflect that the plaintiffs' counsel had represented that "the McBurneys signed off on [the settlement agreement]. I know it doesn't say that."

The court then solicited comments from other counsel. The plaintiffs' counsel stated that "[t]he McBurneys absolutely did not sign on to the terms and conditions of the settlement [agreement]. They consented to my presenting the settlement [agreement] to the court and would not interfere and appear before the court to object to the entry of a settlement amongst the parties . . . who were signed onto th[e] [settlement] agreement . . . . That was the import of my—[the McBurneys] consent[ed] to our presenting the settlement [agreement], but they weren't going to appear and lodge an objection to the settlement [agreement] because they had absolutely nothing to do with [it]. . . . [T]he action was going to be withdrawn as to them." The McBurneys' counsel stated that "all the parties had a clear understanding . . . of the mechanics of the settlement [agreement] and that the McBurneys weren't part of that, that there was essentially a settlement around

them by withdrawing claims." The town's counsel likewise concurred that the McBurneys were not parties to the settlement agreement.

In discussing the motions to summarily enforce the settlement agreement, the court observed that none of the parties was opposing enforcement. The defendant's counsel stated that the defendant agreed that there was a settlement agreement and that it did not object to the motions to enforce it.

In the plaintiffs' original proposed order, the plaintiffs included a sentence providing that the McBurneys had "declined to participate in the settlement agreement . . . ." In its objection to the original proposed order, the defendant argued that the February 4, 2020 hearing transcript does not reflect that the McBurneys had " 'declined to participate in the settlement agreement.' "

Additionally, on July 13, 2020, the McBurneys objected to the original proposed order "to the extent it is construed in any way as a judgment of the court as to the McBurneys' rights in the subject matter thereof. Instead, the [original] proposed order should be understood as an order of the court limited to enforcement of the contractual rights between the parties to the settlement agreement (which does not include the McBurneys)." In an ensuing "response/objection" that the defendant filed on July 14, 2020, the defendant argued that the court should not adjudicate any settlement enforcement issues concerning the McBurneys, which would be "fully and fairly litigated in another forum."[16]

On July 14, 2020, in denying the McBurneys' request for sanctions against the defendant, the court stated

[16] On November 16, 2020, the defendant commenced a separate action against the McBurneys and Pine Orchard Association, Inc., in which the defendant, inter alia, is seeking to quiet title to its property. See *Beachcroft, LLC* v. *McBurney*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X07-CV-20-6142650-S. That action remains pending.

in relevant part: "The court would not sanction [the defendant] for trying to get heard on its claim that, on various legal grounds, the [McBurneys] may not interfere with the settlement [agreement] that resolved this litigation. [The defendant] is accused, though, of misrepresenting to the court that the McBurneys agreed to be bound by th[e] settlement [agreement]. *The court knows from the proceedings in front of it and the parties' submissions that this is not true*. This is a motion for sanctions and not a matter of discerning the settlement terms, [s]o the court can look beyond the letter of the [settlement] agreement to the circumstances. [The defendant's] counsel has sworn that the McBurneys' lawyers said outside the courtroom [on February 4, 2020] that the McBurneys would not interfere with the settlement [agreement], and, indeed, the McBurneys' counsel was silent while in court [on February 4, 2020] and left court early. The McBurneys may contend with full justification that they did not give up by virtue of the settlement [agreement] any rights they had—*they are right that they were not part of the settlement [agreement*]—but that doesn't mean [the defendant] could only have asserted its beliefs in bad faith." (Emphasis added.)

The issue regarding the McBurneys' status with respect to the settlement agreement was addressed again during the August 4, 2020 hearing on the original proposed order. During the hearing, the defendant's counsel iterated that no issues regarding the McBurneys should be addressed in the court's summary enforcement of the settlement agreement. The defendant's counsel further asserted that the issue of whether the McBurneys had assented to the settlement agreement had not been adjudicated, as the defendant had withdrawn the motion for order and the motion to bind without any discovery being permitted or an evidentiary hearing being conducted relating to that issue. The defendant's counsel

maintained that the court "shouldn't take a position one way or the other as to whether the McBurneys ha[d] adopted the settlement [agreement], [were] part[ies] to it, or ha[d] agreed to do anything in connection with [it] [b]ecause we just haven't adjudicated the issue."

In response, the court stated that "what I believe happened was that [the plaintiffs' counsel] moved to enforce the settlement [agreement]. And I conducted a hearing about that, *and I concluded that the McBurneys were not part of the settlement* [*agreement*]. And that much is decided. . . . So, regardless of the motion that [the defendant] may have made . . . I was hearing the motion that [the plaintiffs' counsel] made to enforce th[e] settlement [agreement]. *And it was clear that the McBurneys were not part of it.* And that's going to be part of my order. But I'm not resolving the relationship between [the defendant] and [the] McBurney[s]. I'm just—*they were not . . . part*[*ies*] *to the settlement* [*agreement*]. That's what I concluded from the hearing. That's what I ordered [the plaintiffs' counsel] . . . to prepare a proposed order for." (Emphasis added.) The court permitted the defendant's counsel to comment, and the following colloquy occurred:

"[The Defendant's Counsel]: . . . [M]y final comment will be: We were not given an opportunity for discovery. We were not given an opportunity to present evidence at the [July 1, 2020] hearing. You had indicated that there would not be any evidence or testimony at that hearing. You cannot—

"The Court: Because I concluded I didn't need it.

"[The Defendant's Counsel]: Well, in my view, Judge—

"The Court: It was a question of law.

"[The Defendant's Counsel]: Yes, Judge. In all due respect, I think that testimony of people as to what

they said, what authority they had, and what effect those words that were spoken to [the defendant]—both [to Attorney Garlick] and to [the defendant] on the record and before and the effect that it had on them in relation to the settlement [agreement] is relevant testimony. And, you know, again, I'm just going to—

"The Court: I find that we discussed this already at the—at the hearing that I held on it. And that I concluded that discovery wasn't warranted. The question was simply: What was the agreement that was placed on the record before the court? And which didn't call for outside evidence. Because it was clear to me that my focus was on what was said on the record. And I'm not going to spend any more time debating it. Because I know what happened at the hearing. I know that I already considered that issue and indicated what I was doing. And this was solely about the fact that I imposed on [the plaintiffs' counsel] the obligation to give me a draft order that reflected what I had concluded on the record. So . . . this discussion is over with respect to that."

The next day, the plaintiffs filed the amended proposed order, which retained the language reflecting that the McBurneys had "declined to participate in the settlement agreement . . . ." In its objection to the amended proposed order, the defendant again argued that the February 4, 2020 hearing transcript does not reflect that the McBurneys had " 'declined to participate in the settlement agreement.' "

In the enforcement decision, the court noted that, on July 1, 2020, it conducted an *Audubon* hearing[17] and that, although the defendant had "requested discovery and a trial-type hearing on the terms [of the settlement

[17] "A hearing pursuant to *Audubon* . . . is conducted to decide whether the terms of a settlement agreement are sufficiently clear and unambiguous so as to be enforceable as a matter of law." (Citation omitted; internal quotation marks omitted.) *Reiner* v. *Reiner*, supra, 190 Conn. App. 270 n.3.

agreement] . . . the court found no ambiguity in the recorded terms, thus rendering th[e] settlement [agreement] summarily enforceable with no need for discovery and testimony."

Additionally, the court stated: "The present action was scheduled for a trial of all issues on . . . February 4, 2020. At that time, counsel for the plaintiffs together with counsel for [the defendant] and [the town] appeared before the court and presented and stipulated to the terms and conditions of a settlement agreed to by those parties to the present action along with [Pine Orchard Association, Inc.] that disposed of any and all claims alleged by and between them in the above referenced matter . . . . The [self-represented] intervening plaintiffs . . . received notice of the scheduled hearing but declined to attend the hearing. The plaintiffs, however, represented to the court that the intervening plaintiffs had been advised of, and consented to, the terms and conditions of the settlement agreement presented to the court.

"[The McBurneys and Lowlicht and Haedicke] declined to participate in the settlement agreement, and it was represented to the court that any and all claims alleged against and/or by [them], if any, in the present action would be withdrawn upon implementation of the settlement agreement. The transcript [of the February 4, 2020 hearing] expressly reflects that while all parties agreed that this case was ending, the agreement was that it was ending for [the McBurneys and Lowlicht and Haedicke] 'without prejudice' to their claims or the claims against them."

In its motion to reargue, the defendant argued that the court resolved the issue of whether the McBurneys were parties to the settlement agreement without permitting discovery or conducting an evidentiary hearing notwithstanding that the issue was a disputed question

of fact. In denying the motion to reargue, the court stated that "[t]he court's ruling was based on the unambiguous recitation of the terms of the [settlement] agreement in court made in the presence of and with the agreement of counsel for [the defendant]. One plain term of the agreement was that the settlement of this case was without prejudice to the McBurney claims. Therefore, no testimony was required."

In addition, on September 8, 2020, the McBurneys filed a motion for clarification, requesting that the court clarify that the enforcement decision concerned "merely the court's enforcement of a settlement agreement amongst certain parties not including the McBurneys, that the [enforcement decision] should not be construed as making any determination of any of [the] McBurneys' claimed rights, or the rights of any other nonparty, in the easement at issue in the settlement agreement, and that the [enforcement decision] should not be construed as enforceable against anyone other than parties to the settlement agreement . . . ." (Emphasis omitted.) On September 17, 2020, the court denied the motion for clarification, stating that "[t]he court has already made clear that the termination of this lawsuit was without prejudice to any claims by or against the McBurneys."

In claiming that the court committed error in making a finding that the McBurneys were not parties to the settlement agreement, the defendant asserts that (1) the issue of whether the McBurneys were parties to the settlement agreement was not before the court for consideration, (2) the record does not support the court's finding, and (3) the court improperly failed to conduct an evidentiary hearing. We address, and reject, each of these contentions in turn.

A

We first address the defendant's assertion that the court improperly addressed the question of whether the

McBurneys were parties to the settlement agreement because that issue was not pending before it. The defendant contends that, following its withdrawals of the motion for order and the motion to bind, there was no motion before the court requiring a determination as to whether the McBurneys were parties to the settlement agreement. This claim fails.

"At the outset, we note that [p]leadings have their place in our system of jurisprudence. While they are not held to the strict and artificial standard that once prevailed, we still cling to the belief, even in these iconoclastic days, that no orderly administration of justice is possible without them. . . . It is fundamental in our law that the right of a [party] to recover is limited to the allegations in his [pleading]. . . . Facts found but not averred cannot be made the basis for a recovery. . . . Thus, it is clear that [t]he court is not permitted to decide issues outside of those raised in the pleadings. . . . It is equally clear, however, that the court must decide those issues raised in the pleadings." (Citations omitted; internal quotation marks omitted.) *Shapero* v. *Mercede*, 77 Conn. App. 497, 503–504, 823 A.2d 1263 (2003). This rationale extends equally to motions. See, e.g., *Chang* v. *Chang*, 197 Conn. App. 733, 750–53, 232 A.3d 1186 (2020); *Breiter* v. *Breiter*, 80 Conn. App. 332, 335–36, 835 A.2d 111 (2003). "[A]n interpretation of the pleadings in the underlying action . . . presents a question of law and is subject to de novo review on appeal." (Internal quotation marks omitted.) *Breiter* v. *Breiter*, supra, 335.

Here, notwithstanding the defendant's withdrawals of the motion for order and the motion to bind, the McBurneys' status as to the settlement agreement was squarely before the court vis-vis the motions to summarily enforce the settlement agreement, in which all of the movants sought summary enforcement of the settlement agreement *with respect to the parties to the*

*settlement agreement*, which, as the movants claimed, did not include the McBurneys. Indeed, during the August 4, 2020 hearing, the court stated that the plaintiffs had "moved to enforce the settlement [agreement]. And I conducted a hearing about that and I concluded that the McBurneys were not part of the settlement [agreement]. . . . So regardless of the motion that [the defendant] may have made . . . I was hearing the motion that [the plaintiffs' counsel] made to enforce th[e] settlement [agreement]. . . . [The McBurneys] were not . . . part[ies] to the settlement [agreement]. That's what I concluded from the hearing." Accordingly, we conclude that, in determining that the McBurneys were not parties to the settlement agreement, the court addressed a question relevant to its adjudication of the motions to summarily enforce the settlement agreement.

B

We next turn to the defendant's assertion that the court's finding that the McBurneys were not parties to the settlement agreement is not supported by the record. We disagree.

"[T]o the extent that the defendant['s] claim implicates the court's factual findings, our review is limited to deciding whether such findings were clearly erroneous. . . . 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. . . . In making this determination, every reasonable presumption must be given in favor of the trial court's ruling." (Internal quotation marks omitted.) *Commissioner of Transportation* v. *Lagosz*, supra, 189 Conn. App. 841.

On the basis of the record before the court, we conclude for the following reasons that the court's finding that the McBurneys were not parties to the settlement agreement is not clearly erroneous. First, during the January 31, 2020 hearing, the McBurneys' counsel unequivocally conveyed that the McBurneys were not in agreement with the terms of the settlement being negotiated, and no party disputed that representation. Second, during the February 4, 2020 hearing, with respective counsel for the plaintiffs, the defendant, the town, Pine Orchard Association, Inc., and the McBurneys present, the plaintiffs' counsel represented to the court that "the plaintiffs [had] reached an agreement with [the defendant] and [the defendant's principal member] on terms and conditions of settlement . . . ." The plaintiffs' counsel did not mention the McBurneys as being part of the settlement agreement. Third, during the February 4, 2020 hearing, the following colloquy occurred between the court and the defendant's counsel:

"[The Defendant's Counsel]: . . . [J]ust to make it clear, these two settlements that were reported are interdependent. This is a global settlement. If one falls through, the other one doesn't happen.

"The Court: You mean the town's and the plaintiffs'?

"[The Defendant's Counsel]: And the plaintiffs—

"The Court: Yeah.

"[The Defendant's Counsel]: —interior lot owners, [the defendant].

"The Court: Right.

"[The Defendant's Counsel]: It all has to happen or nothing happens."

The defendant's counsel did not identify the McBurneys as parties to the settlement agreement during that exchange. Fourth, the McBurneys' counsel was not

present at the time that the settlement agreement was read into the record, and at no time prior to his departure from the courtroom did the McBurneys' counsel state on the record that the McBurneys had changed their position as conveyed to the court during the January 31, 2020 hearing. Fifth, the settlement agreement, which imposed no obligations on the McBurneys, provided that it was without prejudice to any claims by or against them.[18] Sixth, the defendant itself, in its motion for order filed approximately one month after the February 4, 2020 hearing, took the position that it had "not require[d] the McBurneys to approve the settlement [agreement]."

The defendant stresses that the February 4, 2020 hearing transcript does not support the finding that the McBurneys were not parties to the settlement agreement because it demonstrates that, after noting that respective counsel for Pine Orchard Association, Inc., and the McBurneys were not present in the courtroom, the plaintiffs' counsel represented that "we do have a— their consent. We have an agreement. We have . . . terms and conditions that all of the parties have agreed to in settlement of this claim." In light of the contents of the record described in the preceding paragraph, however, we agree with the court's statement during the July 1, 2020 hearing that the plaintiffs' counsel did not represent that "the McBurneys signed off on [the settlement agreement]." Considered in context, the statements by the plaintiffs' counsel reasonably can be construed to indicate that the McBurneys, although not joining the settlement agreement, were not objecting to the other parties' presenting the settlement agreement to the court.[19]

[18] We note that the McBurneys did not file an answer, make a statement pursuant to § 47-31 (d), or raise any claim in the present action that would have to be withdrawn.

[19] We deem it notable that the defendant never filed a motion seeking summary enforcement of the settlement agreement predicated on an argument that the McBurneys were interfering with its implementation. Such a

In sum, we conclude that the court did not err in finding that the McBurneys were not parties to the settlement agreement.

C

Last, we address the defendant's assertion that the court improperly resolved the question of whether the McBurneys were parties to the settlement agreement without conducting an evidentiary hearing. We are not persuaded.

"We consistently have held that, unless otherwise required by statute, a rule of practice or a rule of evidence, whether to conduct an evidentiary hearing generally is a matter that rests within the sound discretion of the trial court." (Internal quotation marks omitted.) *DeRose* v. *Jason Robert's*, *Inc*., 191 Conn. App. 781, 797, 216 A.3d 699, cert. denied, 333 Conn. 934, 218 A.3d 593 (2019). "In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . Reversal is required only where an abuse of discretion is manifest or where injustice appears to have been done. . . . Discretion means a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice. . . . It goes without saying that the term abuse of discretion does not imply a bad motive or wrong purpose but merely means that the ruling appears to have been made on untenable grounds." (Internal quotation marks omitted.) *St. Denis-Lima* v. *St. Denis*, 190 Conn. App. 296, 304, 212 A.3d 242, cert. denied, 333 Conn. 910, 215 A.3d 734 (2019). The defendant does not argue that the court violated any statute, rule of practice, or rule of evidence

motion would have been appropriate if the McBurneys were, in fact, parties to the settlement agreement.

by not conducting an evidentiary hearing, and, therefore, we consider whether the court's inaction constituted an abuse of discretion.

Under the circumstances of this case, we conclude that the court did not abuse its discretion by not conducting an evidentiary hearing as to the issue of whether the McBurneys were parties to the settlement agreement. At no point prior to the July 1, 2020 hearing did the defendant request an opportunity to present evidence as to that specific issue, which, as we explained in part I A of this opinion, the plaintiffs, the town, and Pine Orchard Association, Inc., had placed before the court by way of their respective motions to summarily enforce the settlement agreement.[20] During the July 1, 2020 hearing, when asked directly by the court to confirm that the defendant was no longer seeking from the court an order binding the McBurneys to the settlement agreement, the defendant's counsel answered affirmatively. Furthermore, the defendant's counsel made no response to the court's statements that, on the basis of his representations, the court did not believe that it was necessary to hear evidence with respect to the motions to enforce the settlement agreement. Although the defendant's counsel made some comments suggesting that the defendant believed that the McBurneys were parties to the settlement agreement, those comments, at most, reflected that the defendant was not conceding that the

[20] In the enforcement decision, the court stated that the defendant had "requested discovery and a trial-type hearing on the terms [of the settlement agreement] . . . ." The discovery requests that the defendant served on the plaintiffs, the McBurneys, and Pine Orchard Association, Inc., in May, 2020, which the court prohibited without prejudice, sought, as the defendant described, documents "material and relevant to the issue of what interest the McBurneys are suddenly . . . claiming in [the defendant's] property." Those discovery requests did not seek materials concerning the McBurneys' status as either parties or nonparties to the settlement agreement. The record does not reflect a request by the defendant for discovery or an evidentiary hearing on that issue prior to July 1, 2020.

McBurneys were not parties to the settlement agreement. We do not, however, construe those comments as overriding the affirmation made by the defendant's counsel that the defendant was no longer seeking to bind the McBurneys to the settlement agreement or to reflect that the defendant was pressing for an evidentiary hearing. Thus, at the end of the July 1, 2020 hearing, it could be reasonably concluded that there was no need to hold an evidentiary hearing as to whether the McBurneys were parties to the settlement agreement.

After the July 1, 2020 hearing, the defendant argued that it was not given an opportunity to present evidence on the issue of whether the McBurneys were parties to the settlement agreement. As the court observed during the August 4, 2020 hearing, however, that issue was addressed and resolved at the July 1, 2020 hearing. The defendant had opportunities, both prior to and at the July 1, 2020 hearing, to make a request to introduce evidence on that issue; however, the defendant did not pursue those opportunities. We cannot fault the court for not conducting an evidentiary hearing in this situation.

In sum, in light of the foregoing circumstances, we conclude that the court did not abuse its discretion by not conducting an evidentiary hearing as to the question of whether the McBurneys were parties to the settlement agreement.

II

The defendant next claims that, in summarily enforcing the settlement agreement, the trial court improperly altered or omitted material terms of the settlement agreement. For the reasons that follow, we agree with the defendant only insofar as the court omitted one material set of terms of the settlement agreement from the enforcement decision; we otherwise reject the defendant's remaining contentions.

The following additional facts and procedural history are relevant to our resolution of this claim. During the July 1, 2020 hearing, the court ordered the plaintiffs to file a proposed order with regard to the motions to summarily enforce the settlement agreement. Of import, the court conveyed to the plaintiffs that it wanted "to have a single document that's an order of the court that lays out all the elements [of the settlement agreement]."

Both the original proposed order and the amended proposed order, as described by the plaintiffs, contained "orders to enforce the settlement agreement that [were] in conformity with the terms and conditions of the settlement agreement except as to the timing of the implementation of the settlement [agreement] . . . ."[21] In its objections to the original proposed order and the amended proposed order, the defendant argued that the plaintiffs had altered or omitted material terms of the settlement agreement.

In the enforcement decision, the court entered orders to implement the terms of the settlement agreement, which we will further discuss in part II B of this opinion. Before setting forth those orders, the court "found that the draft order submitted by the plaintiffs conformed to the unambiguous terms of the settlement [agreement] as recorded, with one exception [addressed by the court]. Having addressed that legitimate concern, this order reflects what the parties plainly agreed to when recording the settlement [agreement] and provides detail when needed, not to in any way change the agreement, but as a matter solely of enforcing what was unambiguously agreed." In its motion to reargue, the defendant

[21] On July 1, 2020, the court ordered the plaintiffs to file a separate proposed order setting forth a schedule to effectuate the terms of the settlement agreement. On July 9, 2020, in compliance with the court's order, the plaintiffs filed a proposed scheduling order, which the court approved on July 10, 2020. That order is not at issue in this appeal.

contended that the court's enforcement decision conflicted with the terms of the settlement agreement. In denying the motion to reargue, the court stated that "[t]he court's ruling was based on the unambiguous recitation of the terms of the [settlement] agreement in court made in the presence of and with the agreement of counsel for [the defendant]."

A

Before turning to the merits of the defendant's claim, we address the parties' dispute as to the applicable standard of review. The town and Pine Orchard Association, Inc., contend that the abuse of discretion standard applies. The plaintiffs argue in favor of a "deferential" standard of review. In contrast, the defendant asserts that we should apply plenary review. We conclude that the proper standard of review is the abuse of discretion standard.

In *Vance* v. *Tassmer*, 128 Conn. App. 101, 16 A.3d 782 (2011), appeal dismissed, 307 Conn. 635, 59 A.3d 170 (2013), this court considered whether, in summarily enforcing a settlement agreement, a trial court had exceeded the scope of the agreement by conveying certain real property to the plaintiffs. Id., 108–109, 117. In reviewing that claim, this court explained that "[i]t is axiomatic that courts do not rewrite contracts for the parties. *Herbert S. Newman & Partners, P.C.* v. *CFC Construction Ltd. Partnership*, 236 Conn. 750, 760, 674 A.2d 1313 (1996). In determining whether the court went beyond the scope of the settlement agreement . . . we review the court's decision for an abuse of discretion. See *Waldman* v. *Beck*, 101 Conn. App. 669, 673, 922 A.2d 340 (2007). '[T]he court's authority in such a circumstance is limited to enforcing the undisputed terms of the settlement agreement that are clearly and unambiguously before it, and the court has no discretion to impose terms that conflict with the agreement. See *Janus Films, Inc.* v. *Miller*, 801 F.2d 578,

582 (2d Cir. 1986) ("[i]n determining the details of relief [pursuant to a settlement agreement], the judge may not award whatever relief would have been appropriate after an adjudication on the merits, but only those precise forms of relief that are either agreed to by the parties . . . or fairly implied by their agreement" . . .).' *Waldman* v. *Beck*, supra, 673–74." *Vance* v. *Tassmer*, supra, 117. Similarly, in *Waldman*, this court applied the abuse of discretion standard in addressing whether, in summarily enforcing a settlement agreement, a trial court had exceeded the scope of the agreement by rendering judgment against the defendant. See *Waldman* v. *Beck*, supra, 673–74. As *Vance* and *Waldman* demonstrate, the abuse of discretion standard applies when the question before this court is whether, in summarily enforcing a settlement agreement, a trial court has exceeded the bounds of the agreement.

The defendant acknowledges the aforementioned language but, nevertheless, contends that plenary review applies. The defendant relies on *Aquarion Water Co. of Connecticut* v. *Beck Law Products & Forms, LLC*, 98 Conn. App. 234, 907 A.2d 1274 (2006) (*Aquarion*), to support its proposition. This reliance is misplaced. In *Aquarion*, the defendants claimed on appeal that the trial court, in summarily enforcing a settlement agreement, "went beyond the scope of the settlement agreement"; id., 243; by (1) rendering judgment of possession in the plaintiffs' favor and (2) awarding the plaintiffs attorney's fees and costs pursuant to a provision of the agreement. Id., 242–43. With respect to the first claim, this court applied the abuse of discretion standard and concluded that the trial court acted within the scope of the settlement agreement by rendering judgment of possession, agreeing with the plaintiffs' argument that the settlement agreement at issue was "the functional equivalent of a judgment of possession . . . ." (Internal quotation marks omitted.) Id., 242. With respect to the

second claim, this court determined that the defendants' contention—that the provision in the settlement agreement providing for attorney's fees and costs in any *future* actions did not permit an award of attorney's fees and costs in the underlying action—raised a question of law. See id., 243. Accordingly, this court applied plenary review; see id.; and concluded that the attorney's fees and costs award was improper, as a matter of law, "on the basis of the settlement agreement." Id., 244.

This court's treatment of the first claim in *Aquarion* aligns with the principle set forth in *Vance* and *Waldman* that the question of whether a court has exceeded the scope of a settlement agreement when summarily enforcing it is subject to the abuse of discretion standard.[22] In contrast, at its core, the second claim in *Aquarion* did not concern the trial court's enforcement of the settlement agreement but, rather, the court's award of attorney's fees and costs pursuant to the agreement on the basis of its interpretation of the agreement. This distinction explains the two separate standards of review applied by this court to the two different claims raised in *Aquarion*.

In sum, pursuant to *Vance*, *Waldman*, and *Aquarion*, the abuse of discretion standard applies to the defendant's claim that the court committed error in enforcing the settlement agreement by altering or omitting material terms of the settlement agreement.

B

The defendant raises seven issues as part of its claim that, in the enforcement decision, the court improperly altered or omitted material terms of the settlement agreement. We address each issue in turn.

[22] In fact, this court in *Waldman* cited *Aquarion* in stating that the abuse of discretion standard applied in that case. See *Waldman* v. *Beck*, supra, 101 Conn. App. 673.

1

First, the defendant asserts that the court improperly expanded the southern boundary of a view easement[23] that would encumber a portion of the defendant's property pursuant to the settlement agreement. We disagree.

The settlement agreement provides that a portion of the lawn owned by the defendant "shall be subject to a viewscape easement, prohibiting the erection or placement of any permanent structure that is taller than 30 inches and/or any landscaping that is taller than 30 inches, nor any personal property that unreasonably impairs or blocks this viewscape easement. [Certain] gardens at the top of . . . riprap[24] in the view easement area can remain at their current height. *The eastern line of the view easement shall be a straight line from the* [*avenue*] *to the riprap along the westernmost edge of* [*certain other*] *gardens* [*on the east side of the lawn*]." (Emphasis added; footnote added.) In the enforcement decision, the court ordered that the portion of the lawn at issue "shall be subject to a viewscape easement prohibiting the erection or placement of any permanent structure that is taller than thirty (30") inches and/or any landscaping that is taller than thirty (30") inches, nor any personal property that unreasonably impairs or blocks the view of [the sound] from the avenue (the 'viewscape easement'). The gardens at the top of the riprap in the viewscape easement area can remain at the height that existed during February of 2020. . . . *The eastern boundary line of the viewscape easement shall be a straight line that . . . shall extend from the southerly boundary line of the portion of the avenue*

[23] We intend our use of the term "view easement" to be interchangeable with the parties' and the trial court's use of the term "viewscape easement."

[24] "Riprap consists of large stones or chunks of concrete that are layered on an embankment slope to prevent erosion. Merriam Webster's Collegiate Dictionary (10th Ed. 1998)." *Johnson* v. *North Branford*, 64 Conn. App. 643, 646 n.8, 781 A.2d 346, cert. denied, 258 Conn. 926, 783 A.2d 1028 (2001).

*to be conveyed to the town . . . to [the sound] and shall run along the westernmost edge of the existing gardens on the east side of the lawn. The viewscape easement shall be bounded to the south by [the sound].*"[25] (Emphasis added.)

The defendant asserts that, pursuant to the settlement agreement, the southern boundary of the view easement is coterminous with the edge of the riprap, meaning that neither the riprap nor the sound, which is located below the riprap, is subject to the view easement. We are not persuaded. The settlement agreement does not expressly define the southern boundary of the view easement, providing only that the eastern boundary of the easement extends from the southern boundary line of the avenue "to the riprap . . . ." Notably, in the preceding sentence, the settlement agreement refers to gardens located "at the top of the riprap . . . ." This belies the defendant's argument that the view easement extended only to the edge of the riprap, as the parties did not designate the "top" of the riprap as a boundary of the easement. Moreover, as the plaintiffs posit in their appellate brief, the plain purpose of the view easement is to permit a view of the sound. Under these circumstances, it is reasonable to determine that the settlement agreement fairly implied that the view easement extended to the sound. Accordingly, we conclude that the court did not abuse its discretion in designating the sound as the southern boundary of the view easement.

2

Second, the defendant argues that the court improperly omitted from the enforcement decision an order that the settlement agreement is "contingent" on the execution of quitclaim deeds and releases by the owners

[25] The court also described the northern and western boundaries of the view easement, which we need not detail.

of interior lots along the avenue who had not previously entered into agreements with the defendant. We are not persuaded.

The settlement agreement provides that "[t]he parties shall exchange mutual general releases and shall withdraw all pending claims and actions by them. The documents to be executed will include, but not be limited to, quitclaim deeds by all owners on the [avenue], who have not previously done so, and [Pine Orchard Association, Inc.], releasing any and all claims and rights to [the defendant's property and to [the] property [of the defendant's principal member] . . . . *Th*[*e*] *settlement* [*agreement*] *is subject to and contingent upon the execution of documents acceptable to the parties.*" (Emphasis added.) In the enforcement decision, the court ordered in relevant part that "[a]ll settlement documents shall be executed and exchanged by all parties, and the various property interests to be conveyed shall be completed and executed by September 4, 2020. In addition to general releases by and between the parties to the settlement agreement, the documents to be executed shall include, but not be limited to, quitclaim deeds by all owners of properties on [the] avenue who have not previously entered into an agreement with [the defendant] and, in addition, [Pine Orchard Association, Inc.], releasing any and all claims and rights to the properties . . . owned by [the defendant's principal member] and [the defendant] . . . ." The court did not explicitly order that the settlement agreement was "contingent" on the execution of any documents.

The defendant contends that the court committed error in failing to order that the settlement agreement was "contingent" on the execution of the documents at issue by the interior lot owners. The defendant maintains that portions of the settlement agreement will be unenforceable unless the interior lot owners execute the documents at issue, such that the inclusion of the

word "contingent" is critical to signify that the settlement agreement is untenable without the participation of the interior lot owners. We disagree. The court ordered that "[a]ll settlement documents shall be executed and exchanged by all parties" and that "the documents to be executed shall include . . . quitclaim deeds by all owners of properties on [the] avenue who have not previously entered into an agreement with [the defendant] . . . ." We perceive no appreciable difference between the parties agreeing that the settlement agreement is "contingent" on the execution of the documents at issue by the interior lot owners and the court ordering that all settlement documents, which "shall include" the documents at issue, "shall be executed . . . ." Thus, we conclude that the court did not abuse its discretion by not ordering that the settlement agreement was "contingent" on the execution of the documents at issue.

3

Third, the defendant contends that the court improperly delineated where sitting and recreating is prohibited on a portion of the lawn that Pine Orchard Association, Inc., is to acquire from the defendant pursuant to the settlement agreement. This assertion is unavailing.

The settlement agreement provides that the defendant "shall convey to Pine Orchard Association, [Inc.] . . . by quitclaim deed a strip of land that provides an 11 foot wide clear and unimpeded pedestrian access way from the end of the paved portion of [the avenue] to the stairway leading to [the sound] and then to [the sound], together with the stairs leading to [the sound]," along with the triangular piece of property containing the stairs. The parties refer to these segments collectively as "the path." The settlement agreement further provides that "the path shall be used for pedestrian access to the riprap, stairs, seawall, walkway, and the

waterfront. *Except as provided below, no sitting or recreating shall be permitted on the path above the top of the stairs, nor shall any permanent structures be installed there. Sitting and recreating shall be permitted on the stairs, riprap, and/or seawall upon the path in the area from the top of the stairs to* [*the sound*]." (Emphasis added.) In the enforcement decision, the court ordered that "[t]he path shall be used for pedestrian access to the riprap, stairs, seawall, walkway and the waterfront . . . . *Sitting and recreating shall be permitted on the stairs, riprap and/or seawall upon the path in the area from the top step of the stairs to* [*the sound*]. *No sitting or recreating shall be permitted on the path to the north and landward of the top step of the stairs nor shall any permanent structures be installed there.*" (Emphasis added.)

The defendant contends that the court improperly described the portion of the path where sitting and recreating is barred as "north and landward of the top step of the stairs" rather than " 'above the top of the stairs.' " The defendant posits that the court's order creates confusion as to whether sitting and recreating is permitted on a grassy area located in the path next to the stairs. We are not convinced. We perceive no appreciable difference between the phrases "north and landward of the top step of the stairs" and "above the top of the stairs." Accordingly, we conclude that the court did not abuse its discretion in describing the area where sitting and recreating is prohibited on the path.

4

Fourth, the defendant asserts that the court improperly omitted from the enforcement decision an order that an easement over the defendant's property that the town is to acquire from the defendant pursuant to the settlement agreement enables the town to replace a drainpipe. We reject this assertion.

The settlement agreement provides that it "is contingent upon the acquisition by the [town] of the [avenue] and the granting of an easement over the lawn area *to maintain and repair the drain line*." (Emphasis added.) The settlement agreement subsequently provides in relevant part that "[t]he town will receive from [the defendant] an easement *to maintain*, *repair*, *and replace a drainpipe* that runs from a catch basin in [a] cul-de-sac [at the end of the avenue] straight south . . . to empty into [the sound]. . . . [T]he easement would include the right of the town to pass over and use additional portions of the [defendant's] property to the east, and outside that easement, only as necessary *to perform maintenance and repairs and replacement of that drainpipe*." (Emphasis added.) In the enforcement decision, the court ordered that "[the defendant] shall grant to the town an easement and a license over the lawn *to maintain and repair a drain line* owned and operated by the town (the 'town easement'). . . . [T]he license shall grant the right to pass over and use additional portions of the lawn to the east, and outside the town easement, only as necessary *to perform maintenance and repairs and replacement of the drainpipe*." (Emphasis added.)

The defendant contends that the court improperly failed to order that the easement permits the town not only to repair and to maintain the drainpipe, but to replace the drainpipe. We do not agree that the court's enforcement decision omits that provision of the settlement agreement. Although one portion of the court's enforcement decision refers only to the town repairing and maintaining the drainpipe with no mention of the town replacing the drainpipe,[26] the court clearly recognized the town's ability to replace the drainpipe in subsequently ordering that the town could pass over and

[26] Similarly, one section of the settlement agreement refers to the town's being granted an easement "to maintain and repair the drain line," with no allusion to replacement of the drainpipe.

use portions of the lawn outside of the easement "only as necessary to perform maintenance and repairs and *replacement* of the drainpipe." (Emphasis added.) Read in its entirety, the court's enforcement decision provides that the town may maintain, repair, *and* replace the drainpipe. Accordingly, we conclude that the court did not abuse its discretion.

5

Fifth, the defendant argues that the court improperly omitted from the enforcement decision an order that, in the event that the town must remove a fence, yet to be erected by the defendant, to access the drainpipe discussed in part II B 4 of this opinion, the town must (1) provide reasonable notice to the defendant and (2) cooperate with the defendant in scheduling repair work. We agree.

The settlement agreement provides that, "[i]n the event that the town requires removal of [the defendant's] fence to access the drainpipe, *the town shall provide reasonable notice, and shall cooperate with* [*the defendant's principal member*] *in scheduling the repair work. Emergency repairs are excepted from this requirement* [(notice and cooperation terms)]. In the event the town must remove the fence, it shall have the obligation to restore or replace it." (Emphasis added.)In the enforcement decision, the court ordered that "[t]he town will restore or replace [the defendant's] fence(s) if the town needs to remove the fence to access the drainpipe." The court's enforcement decision did not contain the notice and cooperation terms.

The defendant contends that the court improperly failed to include in the enforcement decision the notice and cooperation terms, which the defendant represents that it insisted on inserting into the settlement agreement "[t]o limit the intrusion by the town for maintenance . . . ." We agree with the defendant. Although

the notice and cooperation terms are set forth explicitly in the settlement agreement, the court did not include or refer to them in the enforcement decision, and we do not read them to be implicit therein. Of note, the plaintiffs' amended proposed order included language attempting to incorporate the notice and cooperation terms.[27] Thus, on the basis of the record before us, we perceive no apparent basis for the court's omission of the notice and cooperation terms from the enforcement decision.

Ordinarily, a court's omission of a settlement term in a decision summarily enforcing a settlement agreement is not problematic, particularly when the court is focused on enforcing a discrete portion of the agreement. That is, the terms of a settlement agreement remain in full force and effect notwithstanding a court's failure to mention them in an enforcement decision. Here, however, it is evident that the court intended to have the enforcement decision encompass all material terms of the settlement agreement. The court described the enforcement decision as "reflect[ing] what the parties plainly agreed to when recording the settlement [agreement] . . . ." In addition, in ordering the plaintiffs to file a proposed order with regard to the motions to summarily enforce the settlement agreement, the court stated that it wanted "to have a single document that's an order of the court that lays out all the elements [of the settlement agreement]." Under these circumstances, we conclude that the court erred in failing to

[27] The amended proposed order provided in relevant part: "The town will restore or replace [the defendant's] fence(s) if the town needs to remove the fence while using the town easement or license for emergency repairs; otherwise, the town will give reasonable notice to [the defendant] of its need to repair the drain line and shall cooperate with [the defendant] in scheduling the repair work so that [the defendant] can remove (and thereafter replace) the fence(s) at [the defendant's] expense." We offer no opinion as to whether this language in the amended proposed order accurately encapsulates the notice and cooperation terms.

include the notice and cooperation terms in the enforcement decision.[28]

6

Sixth, the defendant contends that the court improperly omitted from the enforcement order a "cooperation clause." This contention is unavailing.

The settlement agreement provides that "[the] settlement [agreement] is contingent upon the acquisition by the [town] of the [avenue] and the granting of an easement over the lawn area to maintain and repair the drain line. Th[e] settlement [agreement] is also subject to the approval of the Pine Orchard Association, [Inc.], Executive Board. *The parties shall cooperate and actively support the acquisition by the town and approval by* [*Pine Orchard Association, Inc.*]." (Emphasis added.) A subsequent portion of the settlement agreement provides that "[t]he parties will actively cooperate in supporting the obtaining of . . . necessary approvals [by the town]." The court's enforcement decision does not utilize the term "cooperate."

The defendant posits that the settlement agreement requires the parties, in general, to cooperate with one another because the settlement agreement provides that " 'the parties shall cooperate . . . .' " The defendant ignores, however, that there is no sweeping "cooperation clause" in the settlement agreement; rather, the language that the defendant relies on concerns only the town's acquisition of the avenue and approvals needed

[28] As we explain elsewhere in part II B of this opinion, we reject the defendant's claims that the court omitted other material terms of the settlement agreement in the enforcement decision. Even if we were to assume that the enforcement decision omits other material terms of the settlement agreement, we iterate that the settlement agreement controls, such that the parties to the settlement agreement remain bound by any terms not addressed in the enforcement decision.

by the town and Pine Orchard Association, Inc. Additionally, the enforcement decision provides that "[a]ny party who fails, neglects or refuses to comply with [the enforcement decision] shall be subject to the imposition of sanctions and such other orders as are deemed reasonable and necessary by this court to implement the terms and conditions of the settlement agreement and of this order." Ostensibly, any party to the settlement agreement who acts to undermine the settlement agreement is subject to sanctions or other necessary and reasonable enforcement orders.[29] Accordingly, we conclude that the court did not abuse its discretion by not including a "cooperation clause" in the enforcement decision.

7

Last, the defendant claims that the court improperly omitted from the enforcement decision an order that withdrawals and releases of the claims raised in *Wheeler* v. *Cosgrove*, Superior Court, judicial district of New Haven, Docket No. CV-17-6074630-S (*Cosgrove* matter)—in which an application was filed by the plaintiffs, among others, in 2017 seeking to lay out the avenue as a highway pursuant to General Statutes § 13a-63—were required. We disagree.

During the February 4, 2020 hearing, in setting forth the terms of the settlement agreement, the plaintiffs' counsel stated that "[t]he parties shall exchange mutual general releases and shall withdraw all pending claims and actions by them. The documents to be executed will include, but not be limited to, quitclaim deeds by

[29] Furthermore, we note that "[i]mplicit in every contract is the common-law duty of good faith and fair dealing. [I]t is axiomatic that the . . . duty of good faith and fair dealing is a covenant implied into a contract or a contractual relationship. . . . In other words, every contract carries an implied duty requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement." (Internal quotation marks omitted.) *Vance* v. *Tassmer*, supra, 128 Conn. App. 111.

all owners on the [avenue], who have not previously done so, and [Pine Orchard Association, Inc.], releasing any and all claims and rights to [the defendant's] property and to . . . property [of the defendant's principal member] . . . ." Shortly thereafter, the plaintiffs' counsel continued: "[T]he plaintiffs will report the settlement of this case in the [*Cosgrove* matter], which is pending . . . . We'll ask that [a] hearing [in the *Cosgrove* matter] be suspended pending the final approval of and documentation of th[e] settlement [agreement]. And I suppose that the withdrawals by the various parties . . . would similarly be filed upon the satisfaction of that—of . . . approvals by the town and Pine Orchard Association, [Inc.]." In the enforcement decision, the court ordered in relevant part that "[a]ll parties shall file withdrawals of any and all claims alleged by them, without costs, on or before September 11, 2020." The court entered no orders in relation to the *Cosgrove* matter.

The defendant contends that the court improperly failed to order that the claims in the *Cosgrove* matter be withdrawn and released in accordance with the settlement agreement. The settlement agreement, however, does not mandate withdrawals and releases of claims with respect to the *Cosgrove* matter. Although the plaintiffs' counsel stated during the February 4, 2020 hearing that the parties had agreed to withdraw "all pending claims *and actions* by them," when read in context of the settlement agreement in its entirety, we are not persuaded that the term "actions" includes the *Cosgrove* matter. (Emphasis added.) At most, the plaintiffs agreed to report the settlement of the present action to the court in the *Cosgrove* matter and seek suspension of a hearing then-scheduled in the *Cosgrove* matter pending the finalization of the settlement agreement, which presumably would affect the continued

viability of the *Cosgrove* matter.[30] Accordingly, we conclude that the court did not abuse its discretion by not including in the enforcement decision an order requiring withdrawals and releases of the claims in the *Cosgrove* matter.

The judgment is reversed in part and the case is remanded with direction to incorporate into the trial court's August 11, 2020 enforcement decision the terms of the settlement agreement regarding the town of Branford's obligation, in the event that the town requires removal of the defendant's fence to access the drainpipe, to provide reasonable notice and to cooperate in scheduling repair work, except in situations involving emergency repairs; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

[30] On February 5, 2020, the plaintiffs, among others, filed a case flow request in the *Cosgrove* matter informing the trial court of the settlement agreement reached in the present case and that the settlement agreement would satisfy their claims in the *Cosgrove* matter. The plaintiffs requested that the court order that (1) all further proceedings in the *Cosgrove* matter be suspended and (2) the *Cosgrove* matter be withdrawn on or before May 19, 2020, or be subject to dismissal, with the understanding that the proceedings would resume if the settlement agreement failed for any reason. On February 6, 2020, the court, *Ozalis, J.*, ordered that certain scheduled proceedings in the *Cosgrove* matter were suspended and that the *Cosgrove* matter had to be withdrawn on or before May 19, 2020, unless the settlement agreement failed for any reason. The court subsequently extended the deadline to withdraw the *Cosgrove* matter several times, with the most recent deadline set as March 1, 2021. To date, the *Cosgrove* matter has not been withdrawn, and the case remains unresolved. Additionally, there is an appeal from the denial of a motion for summary judgment predicated on res judicata and collateral estoppel filed in the *Cosgrove* matter that is pending in this court. See *Wheeler* v. *Cosgrove*, Connecticut Appellate Court, Docket No. AC 42547 (appeal filed January 31, 2019).

# NATIONAL BANK TRUST *v.* ILYA YUROV ET AL. (AC 44329)

Cradle, Clark and Palmer, Js.

*Syllabus*

The plaintiff bank sought to enforce a foreign judgment against the defendant B, a shareholder of the plaintiff. The plaintiff had commenced an action in England against the defendant and various codefendants, seeking damages for moneys owed to it in connection with fraudulent loans or fraudulent transactions made by the defendant. The English court rendered judgment in favor of the plaintiff, finding that the plaintiff had suffered significant losses as a result of fraud perpetrated by the defendant and his codefendants. The plaintiff filed a certification of the foreign judgment, signed by the plaintiff's counsel, in the Superior Court pursuant to the applicable statutes (§§ 50a-33 and 52-605 (a)). The defendant filed a motion to open and either dismiss or stay the enforcement of the certified foreign judgment, arguing, inter alia, that the trial court improperly concluded that the certified judgment was a foreign judgment as defined by statute (§ 50a-31 (2)), and that the certification required by § 52-605 (a) may be signed by counsel rather than the judgment creditor. The defendant further argued that the contract between the plaintiff and the defendant required that all disputes be resolved in accordance with Russian law in Russian courts. Subsequently, the plaintiff filed an objection to the defendant's motion and attached exhibit A, an order by the English court with two schedules, which set forth transactions and monetary amounts that corresponded with the amounts set forth in the English court's judgment. The trial court denied the defendant's motion, from which the defendant appealed to this court. *Held*:

1. There was no merit to the defendant's claim that the trial court erred in concluding that the certified judgment was a foreign judgment as defined by § 50a-31 (2) because it did not grant the recovery of a sum of money: the plaintiff's claim against the defendant arose from financial losses that it suffered as a result of the defendant's fraudulent conduct, and the judgment of the English court was replete with references to and findings of those losses; moreover, although the defendant argued that the court improperly relied on exhibit A to support its conclusion that the certified judgment provided for a sum of money because it was not part of the English judgment, exhibit A was a part of the English judgment, and, therefore, this court was bound to consider that judgment in its entirety; furthermore, the defendant failed to challenge the authenticity of either the document that originally was filed by the plaintiff or exhibit A that was submitted with the plaintiff's opposition to the defendant's motion to open.

2. The defendant could not prevail on his claim that the trial court erred in holding that the plaintiff's counsel could sign the certification pursuant to § 52-605 (a): the defendant's argument that the applicable provisions (§§ 8-1 (3) and 8-2 (a)) of the Connecticut Code of Evidence require certification to be made by one with personal knowledge, and, therefore, the certification signed by the plaintiff's counsel who was not involved in the English proceedings was inadmissible hearsay was unavailing; moreover, the defendant did not provide authority that §§ 8-1 (3) and 8-2 (a) of the Connecticut Code of Evidence pertain to such certifications; furthermore, to the extent that the defendant's objection to the certification was evidentiary, even if the signature of the plaintiff's counsel rendered the English judgment inadmissible hearsay, the defendant's acknowledgment that he was not challenging the authenticity of the judgment rendered any evidentiary impairment harmless.
3. The defendant could not prevail on his claim that the trial court erred in denying his motion to open the judgment when the contract required that all disputes be resolved in accordance with Russian law in Russian courts: the defendant, having failed to brief his argument that the trial court failed to exercise its discretion in determining whether it would consider his claim that the underlying matter should have been heard in Russia and having raised it for the first time at oral argument, it was considered abandoned; moreover, the trial court considered the defendant's argument, concluding that, because the defendant failed to challenge the English court's jurisdiction over him during that proceeding, he had waived his right to challenge it; furthermore, because the trial court properly considered and rejected the defendant's personal jurisdiction argument, the record did not support the defendant's claim that it failed to exercise its discretion.

Argued November 29, 2021—officially released February 22, 2022

*Procedural History*

Action to enforce a foreign judgment, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Lynch, J.*, denied the defendant Sergey Belyaev's motion to open and dismiss or stay the enforcement of the certified foreign judgment, from which the defendant Sergey Belyaev appealed to this court. *Affirmed.*

*Jeffrey Hellman*, for the appellant (defendant Sergey Belyaev).

*Joshua W. Cohen* and *Andrew M. Ammirati*, for the appellee (plaintiff).

*Opinion*

CRADLE, J. In this action stemming from the alleged fraud against the plaintiff, National Bank Trust, by the defendant Sergey Belyaev,[1] the defendant appeals from the denial of his motion to open and dismiss or stay the enforcement of a certified foreign judgment filed by the plaintiff. On appeal, the defendant claims that the trial court improperly (1) concluded that the certified judgment was a foreign judgment as defined by General Statutes § 50a-31 (2) because it did not grant the recovery of a sum of money; (2) concluded that the certification required by General Statutes § 52-605 (a) may be signed by counsel rather than the judgment creditor; and (3) refused to open the judgment when the contract between the plaintiff and the defendant required that all disputes be resolved in accordance with Russian law in Russian courts. We affirm the judgment of the trial court.

The following procedural history is relevant to the resolution of the defendant's claims on appeal. On January 23, 2020, the Commercial Court of the Queen's Bench Division of the High Court of Justice of England and Wales (UK court) issued a judgment in favor of the plaintiff, finding that the plaintiff had suffered significant financial losses as a result of fraud perpetrated by the defendant and certain of his codefendants.[2] On June 30, 2020, the plaintiff filed a certification of the judgment in the Superior Court pursuant to General Statutes §§ 50a-33 and 52-605 (a).[3] In the certification, which

[1] Ilya Yurov, Nikolay Fetisov, Nataliya Yurova, Irina Belyaeva and Elena Pischulina are also named as defendants in this action, but they are not parties to this appeal. Accordingly, any reference herein to the defendant is to Sergey Belyaev only.

[2] The defendant and certain of the other defendants named in this case were shareholders of the plaintiff and also owned the companies to which they made fraudulent loans or conducted fraudulent transactions. The UK court found those defendants liable for the financial ruin of the plaintiff.

[3] General Statutes § 50a-33 provides: "Except as provided in section 50a-34, a foreign judgment meeting the requirements of section 50a-32 is conclusive

was signed by counsel for the plaintiff, the plaintiff alleged that the judgment had not been satisfied, that the enforcement of the judgment had not been stayed, and that the approximate amount due to the plaintiff, as of June 12, 2020, was $900 million. The certification also alleged that the defendant owns property located at 85 Bishop Lane in Avon.

On August 17, 2020, the defendant filed a motion to open and either dismiss or stay the enforcement of the certified judgment on the grounds that the foreign judgment was not entitled recognition because (1) it was not a judgment of a "foreign state granting or denying recovery of a sum of money" as required by § 50a-31 (2); (2) it was not a "final and conclusive" judgment under § 50a-32 because it was "in the process of being appealed"; (3) the certification was signed by counsel for the plaintiff, rather than the judgment creditor, as required by §§ 50a-33 and 52-605; (4) the defendant was entitled to a stay of the enforcement of the judgment because he was in the process of appealing it; and (5) the UK court did not have personal jurisdiction over the defendant. On September 29, 2020, the court summarily denied the defendant's motion. This appeal followed.

On November 2, 2020, the defendant filed a motion for articulation of the court's denial of his motion, followed by an amended motion for articulation filed on November 3, 2020. On November 23, 2020, the court filed an articulation of its denial of the defendant's

between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit."

General Statutes § 52-605 (a) provides: "A judgment creditor shall file, with a certified copy of a foreign judgment, in the court in which enforcement of such judgment is sought, a certification that the judgment was not obtained by default in appearance or by confession of judgment, that it is unsatisfied in whole or in part, the amount remaining unpaid and that the enforcement of such judgment has not been stayed and setting forth the name and last-known address of the judgment debtor."

motion. In its articulation, the court indicated that it had considered and rejected all of the arguments raised by the defendant in his motion to open and either dismiss or stay the enforcement of the certified judgment. The court held that the certified judgment was a final and conclusive foreign judgment that granted the recovery of a sum of money, that the plaintiff's counsel was not prohibited from signing the certification of that judgment, that the defendant had waived the issue of personal jurisdiction when he appeared before the UK court, that the defendant did not dispute receiving a copy of the filed certification, and that there was no appeal pending of the certified judgment.

On appeal, the defendant claims that the court erred (1) in concluding that the certified judgment was a foreign judgment as defined by § 50a-31 (2) because it did not grant the recovery of a sum of money; (2) in holding that the plaintiff's counsel could sign the certification under § 52-605 (a); and (3) in denying the motion to open the judgment when the contract required that all disputes be resolved in accordance with Russian law in Russian courts.[4] We address each claim in turn.

I

The defendant first claims that the court erred in concluding that the certified judgment was a foreign judgment under § 50a-31 (2) because it is not a judgment "granting or denying recovery of a sum of money."[5] We disagree.

[4] The defendant also claimed that the court improperly denied a stay of the proceedings pursuant to General Statutes § 50a-36 (a) when the court was aware that the defendant had sought leave to appeal and sought a stay in the foreign court. While this appeal was pending, the U.K. Court of Appeal, Civil Division, denied the defendant's request for permission to appeal. Accordingly, the defendant conceded at oral argument before this court that this claim is moot, and he is not pursuing it.

[5] General Statutes § 50a-31 (2) defines "[f]oreign judgment" as "any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty or a judgment for support in matrimonial or family matters."

In order to address the defendant's claim, we must construe the judgment of the UK court. "Because [t]he construction of a judgment is a question of law for the court . . . our review of the . . . claim is plenary. As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . The interpretation of a judgment may involve the circumstances surrounding the making of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole." (Internal quotation marks omitted.) *Anketell* v. *Kulldorff*, 207 Conn. App. 807, 821, 263 A.3d 972, cert. denied, 340 Conn. 905, 263 A.3d 821 (2021).

In rejecting the defendant's claim that the UK judgment was not a judgment granting or denying the recovery of a sum of money, the trial court reasoned, inter alia: "[T]he UK court issued the certified judgment finding that the [defendant] caused specific monetary losses to the plaintiff and that the plaintiff was entitled to recover those losses from the [defendant]. The [defendant's] contention that no sum of money was awarded [is] without merit and [flies] in the face of the lengthy certified judgment itself. . . .

"The [defendant] conceded that the certified judgment, which was hundreds of pages long, was described by the UK court as a judgment. The UK court found that the [defendant's] actions caused the plaintiff's financial collapse. The UK court set forth specific dollar amounts that the [defendant] and the two others were responsible for and the reasoning for its decision. The amounts set forth in its decision specifically corresponded with the amounts set forth in the exhibit A attached to [the] plaintiff's opposition. See certified judgment, ¶¶ 1, 1213, 1235, 1460, 1493, 1522, 1544, 1587, 1650, 1651, 1652,

1655, 1656, 1699, 1710, 1726, 1729, 1735, 1743, 1777, 1801, 1867, 1868, 1891 and 1892. It is readily apparent that in the certified judgment, the UK court awarded a sum of money to the plaintiff. . . .

"In the plaintiff's opposition, the plaintiff attached as exhibit A, a two page order dated January 23, 2020,[6] with two schedules setting forth transactions and monetary amounts. The UK court also noted in this order that other issues, such as pre[judgment] and postjudgment interest, would be determined later. (Exhibit A to plaintiff's opposition ¶ 3.). . . .

"The [defendant] stated that exhibit A, 'may be a valid judgment' but then argued that this matter should be dismissed, stayed or the judgment opened. The [defendant] argued that because the plaintiff provided this court with exhibit A in September, 2020, the certified judgment which was filed in June, 2020, was fatally flawed. This court disagrees. The certified judgment is a judgment granting the plaintiff a recovery of a sum of money. Indeed the monetary amounts set forth in the certified judgment mirror the amounts set forth in exhibit A, which the judgment debtor acknowledges may be a valid judgment." (Footnote omitted.) The court concluded: "A review of the 570 page certified judgment filed in this case shows that it is a judgment awarding the plaintiff a sum of money."

On the basis of the foregoing, the trial court concluded that the judgment of the UK court was a judgment granting the recovery of a sum of money in accordance with § 50a-31 (2). We agree. The plaintiff's claim against the defendant arose from financial losses that it suffered as a result of the defendant's fraudulent

[6] "This is the same date as the typewritten date on the certified judgment. Exhibit A was file stamped as having been filed with the UK court on January 23, 2020. The certified judgment was dated January 23, 2020, but file stamped as filed with the UK court on February 18, 2020."

conduct, and the judgment of the UK court is replete with references to and findings of those losses, some of which the trial court aptly cited in its articulation. The defendant argues that the UK judgment does not satisfy § 50a-31 (2) because "it does not specify the amount against [the defendant] and the amount cannot merely be mathematically calculated." He contends that, although the various sections of the judgment cited by the trial court set forth losses suffered by the plaintiff or amounts owed to the plaintiff, they do not grant the plaintiff a "specific sum against [the defendant]." The defendant further contends that the court improperly relied on exhibit A to support its conclusion that the certified judgment provided for the recovery of a sum of money because it "was not part of the judgment and is not properly before the trial court for purposes of determining the validity of the judgment." We are not persuaded.

The defendant ignores the trial court's explicit reference to several portions of the UK judgment that initially was filed by the plaintiff. It is clear from the face of exhibit A, that it is part of the UK judgment[7] and, in construing that judgment, we are bound, as noted herein, to consider it in its entirety. The defendant has provided no authority for his contention that the plaintiff's failure to file exhibit A with its original filing precluded the trial court from considering it as part of the UK judgment. Moreover, the defendant does not challenge the authenticity of either the document that originally was filed by the plaintiff or exhibit A that was submitted with the plaintiff's opposition to the defendant's motion to open. We therefore conclude that the defendant's claim is without merit.

[7] Exhibit A bears the same case caption and docket number of the document originally filed by the plaintiff, and is entitled "Order," effective "[u]pon the trial of the above [referenced] action [a]nd upon the handing down of [the] judgment herein on 23 January 2020 . . . ."

II

The defendant next claims that the court erred in holding that the plaintiff's counsel could sign the certification under § 52-605 (a). We disagree.

Section 52-605 (a) provides: "A judgment creditor shall file, with a certified copy of a foreign judgment, in the court in which enforcement of such judgment is sought, a certification that the judgment was not obtained by default in appearance or by confession of judgment, that it is unsatisfied in whole or in part, the amount remaining unpaid and that the enforcement of such judgment has not been stayed and setting forth the name and last-known address of the judgment debtor."

In his motion to open and either dismiss or stay the enforcement of the certified judgment, the defendant argued that § 52-605 "requires a certification signed by the judgment creditor, not its counsel, as representations of counsel are not evidence. *Despotovic* v. *Gavrilovic Holding Petrinja*, Docket No. CV-18-4086996-S, 2018 WL 6016710, *2 (Conn. Super. October 29, 2018)." In rejecting this argument, the trial court reasoned: "Here, a certified copy of the UK judgment was filed. Nothing prohibits the plaintiff's counsel from certifying that (1) the judgment was not obtained by default in appearance or confession of judgment, (2) it is unsatisfied, (3) its enforcement has not been stayed and (4) setting forth the name and last known address of the judgment debtor. Indeed, sister states have accepted counsel's certification. See *Boston College* v. *Grande*, Docket No. A-5663-06T2, 2009 WL 775101, *1 (N.J. Super. App. Div. March 26, 2009) (accepting New Jersey attorney's certification). Moreover, Connecticut courts have accepted affidavits of counsel attesting to the authenticity of court documents. See *Mac's Car City, Inc.* v. *American National Bank*, 205 Conn. 255, 258, 532 A.2d 1302 (1987); see also *Alcon Interactive Group,*

*LLC* v. *Gate Five, LLC*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-15-6024864-S (September 28, 2017).

"In claiming that [the] plaintiff's counsel could not certify the UK judgment, [the defendant] cited *Despotovic* v. *Gavrilovic Holding Petrinja*, [supra, 2018 WL 6016710] . . . . However, the matter before the court in *Despotovic* was different. At issue [in that case] was the plaintiff's failure to provide the court with any authority, other than the representation of the plaintiff's counsel, that the Croatian judgment was final, conclusive, and enforceable in Croatia. Here . . . English law provided this court with the authority to conclude that the certified judgment was final, conclusive, and enforceable in England. Accordingly, *Despotovic* is inapposite. The certification filed in this case by the plaintiff's counsel was proper and the judgment debtor's argument to the contrary was rejected."

On appeal, the defendant does not argue that the plaintiff's counsel was statutorily barred from signing the certification; nor does he dispute the plaintiff's compliance with the requirements of § 52-605 (a). Rather, the defendant argues that "[t]he certification by [the] plaintiff's U.S. counsel is inadmissible hearsay." He contends that "[s]ince [the] plaintiff's U.S. counsel was not involved in the UK proceedings, he has no personal knowledge of the proceedings upon which to base the certification and by definition is certifying based upon hearsay. By comparison, a factual representative of the plaintiff who was involved in the UK proceedings could actually attest to the results of the UK proceedings."

The defendant contends that the trial court's rejection of his argument "glosses over the critical evidentiary issue." He argues: "[Section] 52-605 (a) requires a certification. Connecticut Code of Evidence §§ 8-1 (3)[8] and

[8] Connecticut Code of Evidence § 8-1 (3) provides: " 'Hearsay' means a statement, other than one made by the declarant while testifying at the proceeding, offered in evidence to establish the truth of the matter asserted."

8-2 (a)[9] require certification to be made by one with personal knowledge. Here, the plaintiff's counsel's certification is based upon hearsay and is insufficient." (Footnotes added.) We first note that the defendant did not challenge the signature of the plaintiff's counsel on hearsay grounds before the trial court. Additionally, both §§ 8-1 (3) and 8-2 (a) of the Connecticut Code of Evidence pertain to hearsay in general; neither refer to certifications by counsel, and the defendant has provided no authority that §§ 8-1 (3) and 8-2 (a) of the Connecticut Code of Evidence pertain to such certifications. Moreover, the defendant asserts that he "is challenging who signed the certification, not the authenticity of the document." To the extent the defendant's objection to the certification is evidentiary, even if the signature of the plaintiff's counsel rendered the UK judgment inadmissible hearsay, the defendant's acknowledgment that he is not challenging the authenticity of the judgment renders any evidentiary impairment harmless. Accordingly, the defendant cannot prevail on this claim. See *Ulanoff* v. *Becker Salon, LLC*, 208 Conn. App. 1, 14–15, 262 A.3d 863 (2021) ("even if a court has acted improperly in connection with the introduction of evidence, reversal of a judgment is not necessarily mandated because there must not only be an evidentiary [impropriety], there also must be harm" (internal quotation marks omitted)).

III

Finally, the defendant claims that the court erred in denying the motion to open the judgment "when the contract . . . required that all disputes be resolved in accordance with Russian law in Russian courts." In addressing this argument, the trial court explained:

[9] Connecticut Code of Evidence § 8-2 (a) provides: "Hearsay is inadmissible, except as provided in the Code, the General Statutes or any Practice Book rule adopted before June 18, 2014, the date on which the Supreme Court adopted the Code."

"[T]he burden of proving that the UK lacked jurisdiction over the [defendant] was on the [defendant]. . . . If the personal jurisdictional issue was fully litigated and/or waived by the [defendant], in the foreign court, it cannot be raised in this court. . . .

"Here, the [defendant] did not dispute and could not dispute that his attorney filed an acknowledgement of service with the UK court and, although given the option to check a box contesting the UK court's jurisdiction, did not. . . . Rather, the [defendant's] attorney indicated that the [defendant] intended to defend the claim before the UK court. Because the [defendant] waived his right to contest personal jurisdiction in the UK court, he could not attack its judgment here by contesting personal jurisdiction through a belated enforcement of an arbitration clause." (Citations omitted.)

In his brief to this court, the defendant claims that the UK judgment "is not entitled to registration pursuant to General Statutes § 50a-34 (b) (5)," which provides that, "[a] foreign judgment need not be recognized if . . . [t]he proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court . . . ." At oral argument before this court, counsel for the defendant clarified his argument. He argued that the trial court failed to exercise its discretion in determining whether it would consider his claim that the underlying matter should have been heard in Russia.

Because the defendant did not set forth this argument in his brief to this court, and raised it for the first time at oral argument, it is not properly before us. *Rousseau* v. *Weinstein*, 204 Conn. App. 833, 855, 254 A.3d 984 (2021) ("It is well settled that claims on appeal must be adequately briefed, and cannot be raised for the first time at oral argument before the reviewing court. . . .

Claims that are inadequately briefed generally are considered abandoned." (Internal quotation marks omitted.)). Moreover, we disagree with the substance of the defendant's contention. After considering the defendant's argument, the trial court concluded that, because the defendant failed to challenge the UK court's jurisdiction over him during that proceeding, he had waived his right to challenge it here. Because the trial court properly considered and rejected the defendant's personal jurisdiction argument, the record does not support the defendant's claim that it failed to exercise its discretion.

The judgment is affirmed.

In this opinion the other judges concurred.

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# REGINA PICKARD *v.* DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES (AC 44415)

Bright, C. J., and Alexander and Bishop, Js.

*Syllabus*

The plaintiff, whose employment with the defendant had been terminated, appealed to this court from the trial court's judgment dismissing her application to vacate an arbitration award following the cancellation of an arbitration of a grievance relating to her termination. The Office of Labor Relations had denied a grievance by the plaintiff's union seeking her reinstatement. The plaintiff thereafter waived her right to union representation and sought independent counsel to represent her during the arbitration of that grievance. The plaintiff failed to deposit the required funds for her share of the arbitration costs in escrow, and the office cancelled the arbitration. The plaintiff filed an application to vacate an arbitration award pursuant to statute (§ 52-418 or § 52-420), and requested that the court issue a pendente lite order pursuant to statute (§ 52-422) to, inter alia, open the arbitration proceedings. The court granted the defendant's motion to dismiss for lack of subject matter jurisdiction. On the plaintiff's appeal to this court, *held* that the trial court lacked subject matter jurisdiction over the plaintiff's application to vacate an arbitration award and, thus, properly dismissed

it: no arbitration award was issued, thus, an essential condition of §§ 52-418 and 52-420 was not met; moreover, because no arbitration was pending, the trial court lacked jurisdiction to consider the plaintiff's petition for an order pendente lite.

Submitted on briefs December 2, 2021—officially released February 22, 2022

*Procedural History*

Application to vacate an arbitration award, brought to the Superior Court in the judicial district of Hartford, where the court, *Lynch, J.*, granted the defendant's motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

*Norman A. Pattis* and *Kevin Smith* filed a brief for the appellant (plaintiff).

*Maria C. Rodriguez*, assistant attorney general, *William Tong*, attorney general, and *Philip M. Schulz*, deputy associate attorney general, filed a brief for the appellee (defendant).

*Opinion*

BISHOP, J. In this special statutory proceeding, the plaintiff, Regina Pickard, appeals from the judgment of the Superior Court granting the motion to dismiss filed by the defendant, the Department of Mental Health and Addiction Services, claiming that the court lacked subject matter jurisdiction over the plaintiff's application to vacate an arbitration award pursuant to General Statutes §§ 52-418, 52-420, and 52-422. On appeal, the plaintiff claims that the court erred in concluding that it lacked subject matter jurisdiction over her application to vacate an arbitration award.[1] We disagree and, accordingly, affirm the judgment of the court.

[1] The defendant also argues that sovereign immunity bars the plaintiff's claim. Because we conclude that the court lacked subject matter jurisdiction over the plaintiff's claim, we need not address the defendant's sovereign immunity argument.

The following undisputed facts and procedural history are relevant to our disposition of the plaintiff's claim on appeal. The plaintiff was an employee of the defendant and a member of the New England Health Care Employees Union District 1199 (union). On October 2, 2017, the defendant notified her that she was the subject of an investigation for allegedly assaulting her supervisor. During the investigation into the allegations, the plaintiff was represented by her union. On March 5, 2018, the plaintiff's employment with the defendant was terminated. In response to the plaintiff's termination, the union filed a grievance on the plaintiff's behalf with the Office of Labor Relations (office), pursuant to a collective bargaining agreement between the union and the state.[2] Multiple hearings on the grievance were held in which the plaintiff and her union representative presented evidence, seeking her reinstatement. However, on June 1, 2018, the office denied the plaintiff's grievance. The union then informed the office of its intent to arbitrate the plaintiff's grievance.

Subsequently, the plaintiff waived her right to union representation, instead opting to hire independent counsel to represent her during the arbitration. On May 8, 2019, the office advised the plaintiff that the costs associated with the arbitration would be split evenly between her and the state in accordance with the collective bargaining agreement,[3] and that the arbitrator required a deposit, in escrow, of $4000 for her share of the projected cost of the arbitration, a minimum of sixty

[2] Exhibit D, which was attached to the affidavit submitted by the defendant in support of its motion to dismiss, includes article 32 of the collective bargaining agreement between the union and the state, which sets forth the grievance and arbitration procedure.

[3] Article 32, § 7, of the collective bargaining agreement provides in relevant part: "The expenses for the arbitrator's service and for the hearing shall be shared equally by the [s]tate and the [u]nion. However, in dismissal or suspension cases where the [u]nion is not a party, one-half the cost shall be borne by the [s]tate and the half by the [e]mployee submitting to arbitration."

days prior to the first day of arbitration. The office informed the plaintiff that "[i]f the funds are not confirmed to be in escrow by the deposit deadline date, the [a]rbitration will be cancelled." On May 9, 2019, counsel for the plaintiff confirmed with the office that the plaintiff understood that a deposit was required.

The arbitration was scheduled to begin on October 16, 2019, and, accordingly, the deposit was due on August 16, 2019. The plaintiff, however, failed to meet the deposit deadline. On August 21, 2019, the office, not the arbitrator, notified the plaintiff that, because the arbitrator had not received his deposit by the due date, the arbitration had been cancelled and the office considered the case closed. In response, on August 23, 2019, counsel for the plaintiff requested that the deposit deadline be extended to October 30, 2019, and that the arbitration be rescheduled for January, 2020. The office denied the plaintiff's request and dismissed the plaintiff's request for arbitration.

On October 31, 2019, the plaintiff filed an application with the Superior Court to vacate an arbitration award pursuant to either § 52-418 or § 52-420, and requested that the court issue a pendente lite order pursuant to § 52-422 (1) to require the office and the defendant to appear and show cause for why the plaintiff's application to vacate should not be granted, (2) to open the arbitration proceedings, and (3) to afford her a reasonable opportunity to comply with the deposit requirement. The plaintiff essentially argued that the office deprived her of her right to due process when it, as opposed to the arbitrator, terminated the arbitration proceedings.

The defendant filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Practice Book

§ 10-30 (a),[4] along with a supporting affidavit. The defendant argued that the court lacked subject matter jurisdiction over the plaintiff's application "because no arbitration award has been issued, no arbitration is pending and as a result, the conditions prescribed by the statutes are not [met]." The plaintiff opposed the defendant's motion to dismiss arguing that, "while an arbitrator has not rendered an award in this case, the [office] prevented an arbitrator from even having the opportunity to make an award by arbitrarily elevating itself to the position of arbitrator and summarily dismissing [the plaintiff's] case. . . . In short, the state has made itself the arbitrator in this proceeding and has awarded itself a dismissal, thus allowing the court to vacate the dismissal." The court granted the defendant's motion to dismiss, concluding that it lacked jurisdiction because the office's dismissal of the plaintiff's request for arbitration did not constitute an award under §§ 52-418 and 52-420, and there was no pending arbitration as required by § 52-422. This appeal followed.

On appeal, the plaintiff claims that the court improperly granted the defendant's motion to dismiss for lack of subject matter jurisdiction over her application to vacate an arbitration award. Specifically, the plaintiff contends that the dismissal of the arbitration was the functional equivalent of an arbitration award, asserting that "the state has made itself the arbitrator in this proceeding and has awarded itself a dismissal, thus allowing the court to vacate the dismissal." We are not persuaded.

We begin by setting forth our standard of review. "The standard of review for a court's decision on a motion to dismiss [under Practice Book § 10-30 (a) (1)] is well settled. A motion to dismiss tests, inter alia,

[4] Practice Book § 10-30 (a) provides in relevant part: "A motion to dismiss shall be used to assert: (1) lack of jurisdiction over the subject matter . . . ."

whether, on the face of the record, the court is without jurisdiction. . . . [O]ur review of the court's ultimate legal conclusion and resulting [determination] of the motion to dismiss will be de novo. . . . When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone. . . . In undertaking this review, we are mindful of the well established notion that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Dorry* v. *Garden*, 313 Conn. 516, 521, 98 A.3d 55 (2014).

"Trial courts addressing motions to dismiss for lack of subject matter jurisdiction pursuant to § [10-30 (a) (1)] may encounter different situations, depending on the status of the record in the case. . . . [L]ack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. . . . Different rules and procedures will apply, depending on the state of the record at the time the motion is filed. . . .

"[I]f the complaint is supplemented by *undisputed facts* established by affidavits submitted in support of the motion to dismiss . . . the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint.

. . . Rather, those allegations are tempered by the light shed on them by the [supplementary undisputed facts]. . . . If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits . . . or other evidence, the trial court may dismiss the action without further proceedings." (Citations omitted; emphasis in original; footnotes omitted; internal quotation marks omitted.) *Conboy* v. *State*, 292 Conn. 642, 650–52, 974 A.2d 669 (2009).

Here, the plaintiff's application to vacate was supplemented by undisputed facts established by the affidavit submitted by the defendant in support of its motion to dismiss.[5] Therefore, in ruling on the defendant's motion to dismiss, we consider the supplementary, undisputed facts in the affidavit along with the well pleaded facts in the complaint. See id.

"[S]ubject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . ." (Internal quotation marks omitted.) *A Better Way Wholesale Autos, Inc.* v. *Saint Paul*, 338 Conn. 651, 658, 258 A.3d 1244 (2021). "It is a familiar principle that a court which exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation." (Internal quotation marks omitted.) *Mehdi* v. *Commission on Human Rights & Opportunities*, 144 Conn. App. 861, 865, 74 A.3d 493 (2013); see also

[5] Attached to the affidavit is (1) a termination letter from the defendant to the plaintiff, (2) a dismissal notice of the plaintiff's grievance, (3) the plaintiff's notice of her intent to pursue arbitration, (4) a portion of the collective bargaining agreement between the state and the union, and (5) various correspondence between the plaintiff's attorney and the office.

*Goodson* v. *State*, 232 Conn. 175, 180, 653 A.2d 177 (1995) (Where a "statute confers a definite jurisdiction upon a judge and it defines the conditions under which such relief may be given . . . jurisdiction is only acquired if the essential conditions prescribed by statute are met. If they are not met, the lack of jurisdiction is over the subject-matter . . . ." (Internal quotation marks omitted.)).

We begin by clarifying a point we find has significant bearing on this appeal. The plaintiff claims that "[t]his is an appeal from the trial court's ruling dismissing an administrative appeal." This characterization is incorrect. In this matter, the plaintiff did not file an administrative appeal but, instead, chose to seek relief through a special statutory proceeding brought pursuant to §§ 52-418, 52-420, and 52-422. See *Goodson* v. *State*, supra, 232 Conn. 180 ("[a]n application for an order pendente lite pursuant to § 52-422 is a special statutory proceeding"); see also *Middlesex Ins. Co.* v. *Castellano*, 225 Conn. 339, 344, 623 A.2d 55 (1993) (explaining that application to vacate arbitration award brought pursuant to § 52-420 "is not a civil action, but is rather a special statutory proceeding"); *Middletown* v. *Police Local, No. 1361*, 187 Conn. 228, 231, 445 A.2d 322 (1982) (explaining that application to vacate arbitration award brought pursuant to § 52-418 "triggers special statutory proceedings that are not civil actions"). As the court aptly explained, §§ 52-418, 52-420, and 52-422 "[confer] a definite jurisdiction upon a judge and [define] the conditions under which such relief may be given . . . . [J]urisdiction is only acquired if the essential conditions prescribed by [the] statute are met." (Internal quotation marks omitted.) *Goodson* v. *State*, supra, 180.

As to the special statutory procedure, the defendant contends that the essential conditions prescribed by §§ 52-418, 52-420, and 52-422 were not met, and, therefore, the court lacked jurisdiction to hear the plaintiff's

claim. Specifically, the defendant asserts that (1) §§ 52-418 and 52-420 require the existence of an arbitration award, and here, no award was issued, and (2) § 52-422 requires a pending arbitration proceeding before an arbitrator, and here, there is no pending arbitration proceeding. We agree with the defendant.

We first review § 52-418. It provides in relevant part: "(a) Upon the application of any party to an arbitration, the superior court . . . shall make an order vacating *the award* if it finds any of the following defects: (1) If the award has been procured by corruption, fraud or undue means; (2) if there has been evident partiality or corruption on the part of any arbitrator; (3) if the arbitrators have been guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced; or (4) if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made. . . ." (Emphasis added.) General Statutes § 52-418 (a). One of the essential conditions of § 52-418 is the existence of an award.

Section 52-420 likewise mandates the existence of an arbitration award. It provides in relevant part: "(b) No motion to vacate, modify or correct *an award* may be made after thirty days from the notice of the *award* to the party to the arbitration who makes the motion. (c) For the purpose of a motion to vacate, modify or correct *an award*, such an order staying any proceedings of the adverse party to enforce the *award* shall be made as may be deemed necessary. Upon the granting of an order confirming, modifying or correcting *an award*, a judgment or decree shall be entered in conformity

therewith by the court or judge granting the order."[6] (Emphasis added.) General Statutes § 52-420 (b) and (c).

Our Supreme Court has held that a dismissal of a request for arbitration does not constitute an arbitration award. See *Coldwell Banker Manning Realty, Inc.* v. *Cushman & Wakefield of Connecticut, Inc.*, 293 Conn. 582, 603, 980 A.2d 819 (2009) (*Coldwell*). In *Coldwell*, the plaintiff claimed that the trial court "improperly concluded that the . . . dismissal of its request for arbitration for untimeliness constituted an arbitration award for purposes of [General Statutes] § 52-417."[7] Id., 592. The court agreed and held that the "dismissal of [the plaintiff's] request for arbitration did not constitute an award . . . and that the trial court improperly granted [the plaintiff's] application to confirm the award [pursuant to § 52-417] because there was no award to confirm." Id., 604. The court explained that "[a]rbitration is [a] process of dispute resolution in which a neutral third party (arbitrator) renders a decision after . . . both parties have an opportunity to be heard. . . . The decision rendered by the arbitrator upon the controversy submitted for arbitration constitutes the arbitration award. The principal characteristic of an arbitration award is its finality as to the matters submitted so that the rights and obligations of the parties may be definitely fixed. . . . In other words, [a] final award is

[6] Although the plaintiff filed her application pursuant to §§ 52-418, 52-420, and 52-422, she states that she "does not cite [§ 52-420] for its substantive authority, but rather to show that her claim is not time barred."

[7] General Statutes § 52-417 provides: "At any time within one year after an award has been rendered and the parties to the arbitration notified thereof, any party to the arbitration may make application to the superior court for the judicial district in which one of the parties resides or, in a controversy concerning land, for the judicial district in which the land is situated or, when the court is not in session, to any judge thereof, for an order confirming the award. The court or judge shall grant such an order confirming the award unless the award is vacated, modified or corrected as prescribed in sections 52-418 and 52-419."

[o]ne [that] conclusively determines the matter submitted and leaves nothing to be done except to execute and carry out [its] terms . . . . The requirement that an award be mutual, final and definite as between the parties to the arbitration has been codified at . . . § 52-418 (a) (4)." (Citations omitted; internal quotation marks omitted.) Id., 594. The court concluded that the dismissal of the arbitration "did not satisfy the requirement of finality as to the matters submitted so that the rights and obligations of the parties [were] definitely fixed . . . and, therefore, was not a decision on the merits." (Citation omitted; internal quotation marks omitted.) Id., 600.

Our Supreme Court also has held that a determination on the issue of arbitrability does not constitute an award under § 52-418 because it is not a final resolution of the underlying claim on the merits. In *Naugatuck* v. *AFSCME, Council No. 4, Local 1303*, 190 Conn. 323, 460 A.2d 1285 (1983), the court explained that "[§] 52-418 only authorizes a court to vacate an arbitrator's award and then only under narrow circumstances. Unless an arbitration decision is an award, therefore, there is no right of appeal. This court has held that a finding on arbitrability is not an award until it becomes part of an award on the merits. . . . Therefore, a party must demonstrate that an award on the merits has been rendered before any right to appeal attaches." (Citation omitted; internal quotation marks omitted.) Id., 326. In *Coldwell*, our Supreme Court stated that its conclusion in *Naugatuck* "is consistent with the governing law on arbitration, which provides that an arbitration award settles the rights and obligations of the parties." *Coldwell Banker Manning Realty, Inc.* v. *Cushman & Wakefield of Connecticut, Inc.*, supra, 293 Conn. 603.

In the present case, the plaintiff concedes that "it is true that an independent arbitrator never heard the instant case or had the opportunity to render an award

in it . . . .'' The plaintiff nevertheless contends that the dismissal of the arbitration is the functional equivalent of an award. We are unpersuaded by this novel claim. The dismissal of the arbitration in the present case is not a final resolution of the underlying claim on the merits; see *Naugatuck* v. *AFSCME*, *Council No. 4*, *Local 1303*, supra, 190 Conn. 326; nor does it conclusively resolve the rights and obligations of the parties as to the matter submitted. See *Coldwell Banker Manning Realty, Inc.* v. *Cushman & Wakefield of Connecticut, Inc.*, supra, 293 Conn. 594. Because we conclude that an essential condition of §§ 52-418 and 52-420 has not been met, we conclude that the court lacked subject matter jurisdiction over the plaintiff's application to vacate.

We next turn to § 52-422, which provides in relevant part: ''At any time before an award is rendered pursuant to an arbitration under this chapter, the superior court . . . upon application *of any party to the arbitration*, may make forthwith such order or decree, issue such process and direct such proceedings as may be necessary to protect the rights of the parties *pending the rendering of the award* and to secure the satisfaction thereof when rendered and confirmed.'' (Emphasis added.)

Section 52-422 permits a judge to make orders pendente lite. To do so, however, our Supreme Court has made clear that ''a pending arbitration is an essential condition that must exist before § 52-422 may be invoked.'' *Goodson* v. *State*, supra, 232 Conn. 180. In *Goodson*, the plaintiff filed a petition pursuant to § 52-422 requesting an order pendente lite. Id., 178. At the time the plaintiff filed his petition, the arbitration process had not yet been invoked, but was the next step in the grievance procedure. Id. The trial court held a hearing on the plaintiff's petition pursuant to § 52-422 and issued an order. Id. On appeal to our Supreme

Court, the defendant claimed that the trial court lacked subject matter jurisdiction over the plaintiff's petition because § 52-422 applies only to *parties to an arbitration* and, at the time the plaintiff filed the petition, there was no pending arbitration. Id., 178–79. The court agreed, explaining that, "[b]y its express terms, § 52-422 allows the trial court to issue an order only 'upon application of any party to the arbitration. . . .' Thus, a pending arbitration is an essential condition that must exist before § 52-422 may be invoked. It is undisputed that on the date the trial court conducted its hearing and entered its order, there was no pending arbitration. The essential condition prescribed by the statute was not met, therefore, and the trial court lacked jurisdiction to have considered the plaintiffs' petition pursuant to § 52-422." Id., 180.

The plaintiff concedes that *Goodson* mandates that a pending arbitration exist before § 52-422 may be invoked but endeavors to distinguish *Goodson* from the facts in the present case. The plaintiff argues that, "[a]t the time that the *Goodson* plaintiffs brought their petition seeking an order pendente lite, they had not yet begun the arbitration process and were still proceeding through their union grievance process. . . . Unlike *Goodson*, [the plaintiff here] had begun the arbitration process . . . . Consequently, the court does have the necessary jurisdictional prerequisite because arbitration had begun . . . ." (Citations omitted.) The plaintiff's effort to distinguish *Goodson* from the procedural facts at hand fails. Like in *Goodson*, here, there is no pending arbitration. Regardless of whether the arbitration had not yet begun or had already concluded, no pending arbitration existed at the time the petition pursuant to § 52-422 was filed. *Goodson* makes clear that an essential condition of § 52-422 is a pending arbitration—a condition that is not met in the present case. We therefore conclude that the court lacked jurisdiction

to have considered the plaintiff's petition for an order pendente lite pursuant to § 52-422.[8]

The judgment is affirmed.

In this opinion the other judges concurred.

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[8] We note that, to the extent the plaintiff was aggrieved by the office's dismissal of the arbitration proceedings, her proper recourse, if any, is under the Uniform Administrative Procedure Act. See General Statutes § 4-166 et seq.