ROBERT D. RUSSO, EXECUTOR (ESTATE OF THOMAS F. THORNTON), ET AL. *v.* BRETT W. THORNTON ET AL.
(AC 45070)

Alvord, Prescott and Moll, Js.

Syllabus

The plaintiffs sought to recover damages from the defendants for, inter alia, breach of fiduciary duty in connection with the defendant B's alleged tortious interference with the business expectancies of the plaintiff companies, T Co. and H Co. The decedent, T, founded the plaintiff companies and, following T's death, R was elected as their sole director. While employed by the plaintiff companies, B established the defendant companies, W Co. and D Co., to engage in the same business as the plaintiff companies. B covertly removed equipment and records from the plaintiff companies' place of business and, subsequently, R terminated B's employment. Before trial, the court granted the plaintiffs' application for temporary ex parte relief, ordering, inter alia, that the defendants were enjoined from transferring the defendant companies' assets. The court also granted the plaintiffs' motion for a temporary receiver to monitor the defendants' compliance with the terms of the temporary injunction. The jury returned a verdict for the plaintiffs against B as to certain counts of the complaint. The remaining counts were tried to the court, which determined that the plaintiffs had not established a prima facie case for a claim under the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq.) against the defendant companies. The court, in a supplemental memorandum of decision, concluded that B had violated CUTPA and that the plaintiffs were entitled to punitive damages. The court thereafter awarded punitive damages against B in the form of attorney's fees and costs. The plaintiffs filed an application for a financial institution execution directed to B. B filed a motion to vacate the execution and a judgment lien encumbering his real property, arguing that the court had not rendered a final judgment because the temporary injunction and temporary receivership had not been made permanent or further modified, and because there had been no "formal entry of judgment." The court denied B's motion, concluding that it rendered a final judgment when it awarded punitive damages and that the defendants failed to appeal within the ensuing twenty day appeal period. The court also granted the plaintiffs' application for a turnover and charging order. On the defendants' appeal to this court, *held*:

1. D Co. was not aggrieved by the trial court's denial of B's motion to vacate or by the court's turnover and charging order and, accordingly, this court dismissed the portion of the appeal filed by D Co.; D Co. did not

have a specific personal and legal interest that had been specially and injuriously affected by the judgment from which the defendants appealed, as the execution and the judgment lien affected only B's property interests and the turnover and charging order imposed obligations only on B and W Co.

2. The trial court correctly concluded that it had rendered a final judgment that gave rise to the postjudgment enforcement remedies pursued by the plaintiffs: the court rendered a final judgment when it determined the amount of the punitive damages awarded to the plaintiffs with respect to their CUTPA claim against B because, at that juncture, all of their claims had been resolved, no appeal had been filed on or before the expiration of the appeal period and, accordingly, the plaintiffs were authorized to seek postjudgment enforcement remedies in the form of the execution, the judgment lien, and the turnover and charging order, all of which originated following the expiration of the appeal period and the automatic appellate stay of execution; moreover, contrary to the claim of B and W Co., no legal authority mandates that, as a prerequisite for the rendering of a final judgment in a civil case, a trial court must issue a "formal written and signed judgment."

3. The trial court properly ordered injunctive relief and continued a receivership as part of its turnover and charging order:

a. B and W Co. could not prevail on their claim that the turnover and charging order improperly subjected them to injunctive relief; B and W Co. conflated the plaintiffs' prejudgment requests for injunctive relief with their postjudgment request for temporary injunctive relief in connection with their application for a turnover and charging order, and the court did not abuse its discretion in temporarily enjoining B and W Co. from taking certain actions relating to W Co.'s operations pending B's turnover of his interest in W Co. to the plaintiffs or the satisfaction of the judgment debt.

b. B and W Co.'s claim that the turnover and charging order improperly continued the receivership pending B's turnover of his interest in W Co. to the plaintiffs or the satisfaction of the judgment debt was unavailing because an application for a receiver is a civil action sounding in equity and, thus, the court did not require express statutory authorization to continue the receivership temporarily.

Argued November 15, 2022—officially released February 14, 2023

Procedural History

Action seeking damages for, inter alia, breach of fiduciary duty, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the plaintiffs filed an amended complaint; thereafter, the case was transferred to the Complex Litigation

Docket; subsequently, certain counts of the complaint were tried to the jury before *Lee*, *J.*; verdict and judgment in part for the plaintiffs; thereafter, the plaintiffs withdrew certain counts of the complaint; subsequently, the remaining counts of the complaint were tried to the court, *Lee*, *J.*; judgment in part for the plaintiffs; subsequently, the court, *Ozalis*, *J.*, awarded the plaintiffs attorney's fees and costs; thereafter, the court, *Ozalis*, *J.*, granted the plaintiffs' application for a turnover and charging order and denied the named defendant's motion to vacate a judgment lien and financial institution execution, and the defendants appealed to this court. *Appeal dismissed in part*; *affirmed.*

Harold F. McGuire, *Jr.*, with whom was *Daniel F. McGuire*, for the appellants (defendants).

Joseph DaSilva, *Jr.*, with whom, on the brief, was *Marc J. Grenier*, for the appellees (plaintiffs).

Opinion

MOLL, J. The defendants, Brett W. Thornton (Brett), ProxySoft Worldwide, Inc. (ProxySoft Worldwide), and ProxySoft Direct, Inc. (ProxySoft Direct), appeal from the judgment of the trial court (1) granting an application for a turnover and charging order filed by the plaintiffs, Home Dental Care, Inc., Thornton International, Inc., and Robert D. Russo, acting in his capacity as executor of the estate of Thomas F. Thornton, and (2) denying Brett's motion to vacate a judgment lien and a financial institution execution. On appeal, the defendants claim that the court (1) incorrectly concluded that it had rendered a final judgment that gave rise to the postjudgment enforcement remedies pursued by the plaintiffs, and (2) improperly ordered injunctive relief and continued a receivership as part of the turnover and charging order. We conclude that ProxySoft Direct is not aggrieved by the judgment from which the defendants have appealed, and, therefore, we dismiss

the portion of the appeal filed by ProxySoft Direct. As to the remainder of the appeal, filed by Brett and ProxySoft Worldwide, we affirm the judgment of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to our resolution of this appeal. The decedent, Thomas F. Thornton, was the founder of Thornton International, Inc., and Home Dental Care, Inc. (collectively, plaintiff companies), which were involved in the manufacture and distribution of dental floss. Following the decedent's death, Russo was appointed as the executor of the decedent's estate. On April 9, 2014, in accordance with the decedent's will, Russo was elected as the sole director, secretary, and treasurer of the plaintiff companies, and Brett was elected as the president of the plaintiff companies. While employed by the plaintiff companies, Brett established ProxySoft Worldwide and ProxySoft Direct (collectively, defendant companies) to engage in the same business as the plaintiff companies. In late April, 2015, Brett covertly removed, inter alia, equipment and records from the plaintiff companies' place of business and transported those items to the defendant companies' place of business. By correspondence dated May 4, 2015, Brett informed Russo that he intended to start his own company engaging in the same lines of business as the plaintiff companies. On May 6, 2015, Russo discovered Brett's removal of the plaintiff companies' assets, and, on the same day, Russo terminated Brett's employment as president of the plaintiff companies.

On May 14, 2015, the plaintiffs filed an application for an ex parte temporary injunction and an order to show cause, as well as a verified complaint. In an amended verified complaint dated February 12, 2016,[1]

[1] On January 26, 2016, pursuant to Practice Book § 10-60 (a) (3), the plaintiffs filed a request for leave to file an amended verified complaint, to which the defendants did not file an objection within fifteen days. See Practice Book § 10-60 (a) (3) ("[i]f no party files an objection to the request

the plaintiffs alleged claims of breach of fiduciary duty (count one), statutory theft in violation of General Statutes § 52-564 (count two), conversion (count three), violation of the Connecticut Uniform Trade Secrets Act (CUTSA), General Statutes § 35-50 et seq. (count four), tortious interference with contract and business expectancies (count five), violation of § 1125 (a) of the Lanham Act, 15 U.S.C. § 1051 et seq. (count six), injunctive relief pursuant to the common law (count seven), and violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. (count eight). The defendants filed a verified answer and special defenses, and the plaintiffs filed a reply to the special defenses.

On April 12, 2016, the trial court, *Heller*, *J.*, granted the plaintiffs' application for temporary ex parte relief, ordering, inter alia, that the defendants were enjoined from transferring the defendant companies' assets. The same day, the court granted a motion that the plaintiffs had filed on October 23, 2015, seeking to appoint a temporary receiver vis-à-vis the defendant companies. The court appointed Attorney Frederic S. Ury to serve as the temporary receiver. Ury's duties included, inter alia, monitoring the defendants' compliance with the terms of the temporary injunction, but Ury was not responsible for managing the day-to-day operations of the defendant companies. The court further ordered that the defendant companies would incur the cost of Ury's fees and expenses.

On September 20, 2017, the plaintiffs filed a motion requesting that the court conduct a court trial as to counts six through eight concomitantly with a jury trial that had been scheduled as to counts one through five. On October 6, 2017, the court, *Lee*, *J.*, granted the plaintiffs' motion.

[for leave] within fifteen days from the date it is filed, the amendment shall be deemed to have been filed by consent of the adverse party").

The evidentiary portion of the jury trial on counts one through five commenced on October 11, 2017, and concluded on October 25, 2017. On October 31, 2017, the jury returned a verdict in favor of the plaintiffs against Brett, which the court accepted and recorded on the same day. The jury also answered interrogatories as part of the verdict as follows. With respect to the plaintiffs' claims against Brett, encompassed in counts one through five, the jury awarded a total of $3,592,000 in damages as to the claims for breach of fiduciary duty, statutory theft, and tortious interference with contract and business expectancies, but it awarded no compensatory damages as to the conversion or CUTSA claims.[2] Although the jury did not award compensatory damages vis-à-vis the conversion claim against Brett, it determined that the plaintiffs were entitled to common-law punitive damages as to that claim. With respect to the plaintiffs' claims against the defendant companies, encompassed in counts three through five, the jury found the defendant companies liable only on the CUTSA claim, but it awarded no damages as to that claim.

On January 2, 2018, the defendants filed a motion to dissolve the temporary injunction and to discharge the temporary receiver. On January 19, 2018, the plaintiffs filed an objection. On February 1, 2018, the court (1) denied without prejudice the portion of the defendants' motion seeking to discharge the temporary receiver and (2) granted in part and denied in part the portion of the defendants' motion seeking to dissolve the temporary injunction, ordering in relevant part that the defendant companies continue to be enjoined from transferring any of their assets.[3]

[2] Brett admitted liability as to the breach of fiduciary duty claim, and the jury found him liable as to the statutory theft, conversion, CUTSA, and tortious interference with contract and business expectancies claims.

[3] The court granted the defendants partial relief by terminating certain portions of the temporary injunction, which we need not detail.

On March 22, 2018, the court granted in part a motion to set aside the verdict that the defendants had filed on November 7, 2017, and ordered a remittitur reducing the damages awarded against Brett from $3,592,000 to $2,276,000. The plaintiffs accepted the remittitur by way of a notice filed on April 9, 2018.[4] On July 23, 2018, the plaintiffs withdrew counts six and seven.

On April 1, 2019, the court issued a supplemental decision addressing count eight, which alleged that the defendants had violated CUTPA.[5] The court determined that the plaintiffs had not established a prima facie case for a CUTPA claim against the defendant companies. As to Brett, however, the court reserved the questions of (1) whether Brett was liable under CUTPA and, (2) if so, whether, under CUTPA, the plaintiffs were entitled to punitive damages, attorney's fees, and costs.[6]

On April 5, 2019, the defendants filed another motion to discharge the temporary receiver, to which the plaintiffs filed an objection on the same day. On May 30, 2019, the court ordered that the temporary receivership "should continue in place" except that, going forward, the plaintiffs would be responsible for the cost of the receiver's fees and expenses and it would be "within

[4] The jury awarded $3,592,000 in compensatory damages against Brett, comprising (1) $1,721,000 as to count one, (2) $185,000 as to count two, which was trebled to $555,000, and (3) $1,316,000 as to count five. The court determined that the compensatory damages awarded against Brett as to count five were duplicative of the compensatory damages awarded against him as to count one. Accordingly, the court set aside the jury's verdict as to count five and concluded that the plaintiffs were entitled to $2,276,000 in compensatory damages collectively as to counts one and two.

[5] In its April 1, 2019 supplemental decision, the court also addressed, and rejected, a request by the plaintiffs for injunctive relief or royalties vis-à-vis count four, which asserted that the defendants had violated CUTSA.

[6] The court determined that the plaintiffs were not entitled to recover compensatory damages under CUTPA because such damages would be duplicative of damages already awarded by the jury.

[the plaintiffs'] discretion to decide if they want to continue to do it."[7]

On May 21, 2020, the court issued a memorandum of decision[8] concluding that (1) the plaintiffs had demonstrated that Brett had violated CUTPA and (2) the plaintiffs were entitled to punitive damages pursuant to General Statutes § 42-110g (a) of CUTPA in the form of attorney's fees and costs, the amount of which would be determined following an evidentiary hearing.[9] On March 4, 2021, after several evidentiary hearings, the court, *Ozalis*, *J.*, awarded the plaintiffs punitive damages under CUTPA against Brett in the total amount of $177,615.90, comprising $151,740.50 in attorney's fees and $25,875.40 in costs.[10] Electronic notice of the March 4, 2021 decision issued on the same day.

[7] Between June 30, 2016, and April 30, 2019, in his capacity as receiver, Ury filed reports with the court on a nearly monthly basis. Following the court's May 30, 2019 order, Ury did not file another report until January 10, 2022, after this appeal had been filed.

[8] By way of additional background to the court's May 21, 2020 memorandum of decision, the plaintiffs indicated in posttrial briefing that they had rested as to the CUTPA claim following the presentation of evidence at the jury trial on counts one through five and did not seek to present any additional evidence to the court. On June 29, 2019, at the defendants' request, the court held an evidentiary hearing to allow them to present additional evidence on the CUTPA claim.

[9] In light of its award of punitive damages under § 42-110g (a) of CUTPA, the court determined that awarding the plaintiffs separate attorney's fees pursuant to § 42-110g (d) would be duplicative and, therefore, it declined to do so.

[10] As reflected in the jury's interrogatory answers, the jury determined that the plaintiffs were entitled to common-law punitive damages vis-à-vis their conversion claim against Brett as alleged in count three. In its March 4, 2021 decision, the court explained that, "[o]n July 19, 2019, prior to [the May 21, 2020] decision, the plaintiffs submitted an affidavit of attorney's fees, which requested reasonable attorney's fees in the amount of $26,355 . . . for the development of and prosecution of the CUTPA claim. . . . At the same time, the plaintiffs also submitted a separate attorney's fees request related to the jury's common-law punitive damages award. . . . The plaintiffs requested $485,987.87 in attorney's fees . . . and requested costs of $25,817.40. After [the court's] May 21, 2020 decision relating to the award of reasonable attorney's fees and costs in the development and prosecution of the plaintiffs' CUTPA claim, the plaintiffs combined these prior requests,

Prior to April 1, 2021, no appeal had been filed by the defendants in the present case.[11] On April 1, 2021, the plaintiffs filed an application for a financial institution execution directed to Brett as the judgment debtor. The execution identified the date of the judgment as March 4, 2021, and the amount of the judgment to be $2,453,615.90. On May 25, 2021, the execution was issued.

On June 10, 2021, Brett filed a motion to vacate the execution, as well as a judgment lien that the plaintiffs had recorded on the land records of the town of Wilton on April 1, 2021, encumbering real property owned by Brett (motion to vacate). Brett argued that the execution and the judgment lien were premature because the court had yet to render a final judgment. Specifically, Brett asserted that there remained "open" matters, in particular, the temporary injunction and temporary receivership ordered by the court that, as Brett argued, had not been made permanent or further modified. Brett further contended that there had been no "formal entry of judgment" in the present case "detailing the defendants, the counts of the complaint that are involved, the amounts awarded, the costs, and any interest awarded," and that no notice of such judgment had ever issued.

On July 20, 2021, the execution was returned partially satisfied.[12] On July 23, 2021, the plaintiffs filed an objection to Brett's motion to vacate. The same day, pursuant

and filed an affidavit of attorney's fees, which requested $511,942.50 in attorney's fees and $25,875.49 in costs for the development of and prosecution of their CUTPA claim." (Citations omitted.) We construe the court's March 4, 2021 decision to reflect that the plaintiffs abandoned their pursuit of the common-law punitive damages awarded by the jury, instead opting to pursue attorney's fees and costs only as punitive damages under CUTPA.

[11] On September 15, 2017, two proposed intervenors, Katherine Thornton and Laura Thornton, appealed from the denial of an amended and renewed motion to intervene that they had filed in the present action. That appeal was withdrawn.

[12] The state marshal recovered $2741.62 from the financial institution and deducted $411.25 from that amount in marshal's fees.

to General Statutes § 52-356b,[13] the plaintiffs filed an application seeking (1) a turnover order directing Brett to turn over to the plaintiffs 100 percent of his shares, stock certificates, or other indicia of his ownership of interest in ProxySoft Worldwide, and (2) a charging order providing that, until Brett had complied with the turnover order or until the satisfaction of the judgment debt, any and all distributions to which Brett may be entitled in connection with his interest in ProxySoft Worldwide would be transferred to the plaintiffs. The plaintiffs also requested the appointment of a receiver "to control the affairs and [to] operate . . . ProxySoft Worldwide . . . until such time as the judgment referenced herein has been satisfied in full." On August 24, 2021, the defendants filed a combined reply brief to the plaintiffs' objection to Brett's motion to vacate and an objection to the plaintiffs' application for a turnover and charging order. On September 22, 2021, the court held a hearing on the plaintiffs' application for a turnover and charging order.

On October 21, 2021, the court denied Brett's motion to vacate, determining that (1) it had rendered a final judgment on March 4, 2021, and (2) the defendants had failed to file an appeal within the ensuing twenty day appeal period, such that, as of March 25, 2021, the plaintiffs were free to pursue postjudgment enforcement remedies. In a separate decision issued on October 21, 2021, the court granted the plaintiffs' application for a turnover and charging order, ordering that (1)

[13] General Statutes § 52-356b provides in relevant part: "(a) If a judgment is unsatisfied, the judgment creditor may apply to the court for an execution and an order in aid of the execution directing the judgment debtor, or any third person, to transfer to the levying officer either or both of the following: (1) Possession of specified personal property that is sought to be levied on; or (2) possession of documentary evidence of title to property of, or a debt owed to, the judgment debtor that is sought to be levied on.

"(b) The court may issue a turnover order pursuant to this section, after notice and hearing . . . on a showing of need for the order. . . ."

Brett's interest in ProxySoft Worldwide was charged with payment of the unsatisfied amount of the judgment debt, plus costs, (2) Brett was to turn over to the plaintiffs his sole shareholder's interest in ProxySoft Worldwide, and (3) until Brett had turned over his interest in ProxySoft Worldwide to the plaintiffs or until the judgment debt was paid in full, inter alia, (a) ProxySoft Worldwide could neither acquire nor alienate any capital asset without court approval, (b) ProxySoft Worldwide could not issue any loans, and (c) neither ProxySoft Worldwide nor Brett could "undertake, enter into, or consummate any sale, transfer, encumbrance, hypothecation, split, dilution, or other modification of [Brett's] interest in [ProxySoft Worldwide] or in [ProxySoft Worldwide's] structure and/or ownership." The court further ordered that, pending Brett's compliance with the turnover order or the satisfaction of the judgment debt, ProxySoft Worldwide was required to supply future financial documents within ten days following their issuance or the close of any respective accounting period to Ury, "whose appointment as the receiver . . . [was] . . . continued and renewed."[14] This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

As a preliminary matter, we address the issue of whether ProxySoft Direct is aggrieved by the trial court's denial of Brett's motion to vacate or by the court's turnover and charging order. We conclude that ProxySoft Direct is not aggrieved by either of these decisions, and, therefore, we dismiss the portion of the appeal filed by ProxySoft Direct.[15]

[14] The language of the turnover and charging order largely tracked that of a proposed order filed by the plaintiffs.

[15] On December 19, 2022, we ordered, sua sponte, the parties to file simultaneous supplemental briefs addressing this aggrievement issue. The parties filed briefs in accordance with our order. The parties are in agreement that ProxySoft Direct is not aggrieved by the court's denial of Brett's motion to vacate or by the court's turnover and charging order.

" 'Aggrievement, in essence, is appellate standing. . . . It is axiomatic that aggrievement is a basic requirement of standing, just as standing is a fundamental requirement of jurisdiction. . . . There are two general types of aggrievement, namely, classical and statutory; either type will establish standing, and each has its own unique features. . . . The test for determining [classical] aggrievement encompasses a well settled twofold determination: first, the party claiming aggrievement must demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest shared by the community as a whole; second, the party claiming aggrievement must establish that this specific personal and legal interest has been specially and injuriously affected by the decision.' . . . *In re Ava W.*, 336 Conn. 545, 554–55, 248 A.3d 675 (2020); see also General Statutes § 52-263 (establishing as prerequisite to party filing appeal that 'party is aggrieved by the decision of the court or judge upon any question or questions of law'). 'Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected.' " *Healey* v. *Mantell*, 216 Conn. App. 514, 524, 285 A.3d 823 (2022).

We conclude that ProxySoft Direct does not have a specific personal and legal interest that has been specially and injuriously affected either by the court's denial of Brett's motion to vacate or by the court's turnover and charging order.[16] Both the execution and the judgment lien affect only Brett's property interests, such that the court's denial of Brett's motion to vacate has no cognizable bearing on ProxySoft Direct. Similarly, the turnover and charging order makes no mention of ProxySoft Direct; rather, it concerns Brett's

[16] In addition, there is no basis on which to conclude that ProxySoft Direct is statutorily aggrieved by the court's decisions.

interests in ProxySoft Worldwide and imposes obligations only on Brett and ProxySoft Worldwide. Accordingly, ProxySoft Direct is not aggrieved by the judgment from which the defendants have appealed, and, therefore, we dismiss the portion of this appeal filed by ProxySoft Direct.

II

With respect to the trial court's denial of Brett's motion to vacate, as well as the court's turnover and charging order, Brett and ProxySoft Worldwide claim that the court incorrectly concluded that it had rendered a final judgment and, therefore, the plaintiffs were not entitled to pursue postjudgment enforcement remedies in the form of the execution, the judgment lien, and the turnover and charging order. We disagree.

Whether the trial court correctly concluded that it had rendered a final judgment that gave rise to postjudgment enforcement remedies presents a question of law subject to plenary review. See *Williams* v. *Mansfield*, 215 Conn. App. 1, 10, 281 A.3d 1263 (2022) ("[w]hen . . . a court's decision is challenged on the basis of a question of law, our review is plenary").

"The right of appeal is purely statutory, and . . . § 52-263[17] provides that parties may appeal to this court from the final judgment of the trial court." (Footnote in original.) *Kazemi* v. *Allen*, 214 Conn. App. 86, 102, 279 A.3d 742 (2022), cert. denied, 345 Conn. 971, 286 A.3d 906 (2023); see also Practice Book § 61-1 ("[a]n aggrieved party may appeal from a final judgment,

[17] "General Statutes § 52-263 provides in relevant part: '[I]f either party is aggrieved by the decision of the court . . . upon any question or questions of law arising in the trial . . . he may appeal to the court having jurisdiction from the final judgment of the court . . . .' " (Emphasis omitted.) *Kazemi* v. *Allen*, 214 Conn. App. 86, 102 n.6, 279 A.3d 742 (2022), cert. denied, 345 Conn. 971, 286 A.3d 906 (2023).

except as otherwise provided by law"). " 'When judgment has been rendered on an entire complaint . . . such judgment shall constitute a final judgment.' Practice Book § 61-2. As a general rule, however, a judgment that disposes of only a part of a complaint is not final, unless it disposes of all of the causes of action against the appellant. *Manifold* v. *Ragaglia*, 272 Conn. 410, 417–18 n.8, 862 A.2d 292 (2004); *Cheryl Terry Enterprises, Ltd.* v. *Hartford*, 262 Conn. 240, 246, 811 A.2d 1272 (2002); see also Practice Book § 61-3 (party may appeal if partial judgment disposes 'of all causes of action . . . against a particular party or parties')." *Meribear Productions, Inc.* v. *Frank*, 328 Conn. 709, 717, 183 A.3d 1164 (2018).

"Unless a different time period is provided by statute, an appeal must be filed within twenty days of the date notice of the judgment or decision is given." Practice Book § 63-1 (a). "If notice [of the judgment or decision] is given only by mail or by electronic delivery, the appeal period shall begin on the day that notice was sent to counsel of record by the clerk of the trial court." Practice Book § 63-1 (b). "Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to file an appeal has expired." Practice Book § 61-11 (a).

In denying Brett's motion to vacate, the court concluded that it had rendered a final judgment on March 4, 2021, when it determined the amount of the punitive damages awarded to the plaintiffs vis-à-vis their CUTPA claim against Brett. The court explained that, "[a]s all of the causes of action asserted against the defendants in the amended [verified] complaint were adjudicated when this court issued its memorandum of decision on March 4, 2021, judgment was final on that date." The court further determined that the defendants did not file an appeal within the ensuing twenty day appeal

period, such that the "judgment was final for all purposes, including but not limited to, for collection purposes on March 25, 2021." Accordingly, the court concluded that there was no basis to vacate the execution, which was issued on May 25, 2021, or the judgment lien, which was recorded on April 1, 2021.[18]

We agree with the court's reasoning insofar as the court concluded that, as of March 25, 2021, the plaintiffs were permitted to pursue postjudgment enforcement remedies to collect the full amount of the damages that they had been awarded. The court rendered an appealable final judgment on March 4, 2021, when it determined the amount of statutory punitive damages to which the plaintiffs were entitled pursuant to their CUTPA claim against Brett. At that juncture, all of the plaintiffs' claims had been resolved in full.[19] Electronic notice of the March 4, 2021 decision issued on the same

[18] The finality of judgment argument was raised by Brett in his motion to vacate, as well as by Brett and ProxySoft Worldwide in their objection to the plaintiffs' application for a turnover and charging order. The court did not address the finality of judgment argument in the turnover and charging order, which was issued on the same day as the court's denial of Brett's motion to vacate. We conclude that the court necessarily rejected the finality of judgment argument in issuing the turnover and charging order. Accordingly, as framed by Brett and ProxySoft Worldwide on appeal, we consider the finality of judgment argument in connection with both the court's denial of Brett's motion to vacate and the court's turnover and charging order.

[19] We note that the court had rendered a final judgment disposing of the plaintiffs' causes of action *against the defendant companies* nearly two years earlier. On April 1, 2019, the court issued a supplemental memorandum of decision addressing the plaintiffs' two unresolved claims at the time: (1) the plaintiffs' CUTPA claim against the defendants, as alleged in count eight; and (2) the plaintiffs' request for injunctive relief and royalties vis-à-vis the plaintiffs' CUTSA claim against the defendants, as alleged in count four. The court rejected the plaintiffs' request for relief as to their CUTSA claim. In addition, the court determined that the plaintiffs had failed to demonstrate a prima facie case to support their CUTPA claim against the defendant companies. The April 1, 2019 supplemental memorandum of decision disposed of the plaintiffs' final claims directed to the defendants companies, and, therefore, it constituted a final judgment vis-à-vis the plaintiffs' causes of action against the defendant companies. See Practice Book § 61-3.

day, thereby commencing the twenty day appeal period and invoking the attendant automatic appellate stay of execution. See Practice Book §§ 61-11 (a) and 63-1 (a) and (b). No appeal was filed on or before March 24, 2021, when the appeal period and the automatic appellate stay of execution expired. See Practice Book §§ 61-11 (a) and 63-1 (a). Accordingly, the plaintiffs were authorized to seek postjudgment enforcement remedies in the form of the execution, the judgment lien, and the turnover and charging order, all of which originated following the expiration of the appeal period and of the automatic appellate stay of execution vis-à-vis the March 4, 2021 decision, in order to collect the full amount of damages awarded to them.

Brett and ProxySoft Worldwide claim that, as a matter of law, in order to render a final judgment, the court was required to issue a "formal written and signed judgment" that was "sufficiently detailed to identify within the four corners of the document all the issues that have been decided during the litigation," including the "amount of the judgment debt, the date that judgment was entered on a jury verdict, and any associated costs, with reference to underlying interim decisions," and to "eliminate the need for extraneous references."[20] Brett and ProxySoft Worldwide maintain that "[t]he written judgment in this case should have included all that information in sufficient detail to enable appellate review on a complete record. [They] were entitled to assume that a judgment with those characteristics

[20] In their appellate brief, the plaintiffs contend that a judgment file is "[t]he closest analog to the summary that [Brett and ProxySoft Worldwide] seek . . . ." "The judgment file . . . is a clerical document, which, even if missing, does not prevent a judgment from having been rendered. . . . The issues of an appeal may be considered even if there is no judgment file." (Citation omitted.) *Gorelick* v. *Montanaro*, 94 Conn. App. 14, 25, 891 A.2d 41 (2006). In their reply brief, Brett and ProxySoft Worldwide clarify that the "formal written and signed judgment" that they assert the court should have issued and a judgment file are not one and the same.

would be rendered before their time to appeal began to run and before judgment enforcement proceedings commenced," and yet, "[t]he trial court's various rulings were never consolidated in a single dispositive final judgment" as per "[t]he usual practice in this state . . . ."[21]

Put simply, Brett and ProxySoft Worldwide's proposition is without merit. There is no legal authority of

[21] The statement of issues section of Brett and ProxySoft Worldwide's principal appellate brief sets forth four issues, including the following: "While pivotal issues regarding a temporary injunction and a temporary receivership remained unresolved, should the trial court have held that there was a final judgment in the case?" Additionally, the argument section of Brett and ProxySoft Worldwide's principal appellate brief contains a heading that reads: "Point 3: Outstanding issues as to the temporary injunction and the receivership should have been decided before judgment issued." Nowhere in their principal appellate brief, however, do Brett and ProxySoft Worldwide provide any legal analysis in support of these assertions. The crux of Brett and ProxySoft Worldwide's contentions under the "Point 3" heading is that, in its turnover and charging order, the court improperly ordered injunctive relief and continued the receivership, which we address in part III of this opinion and which has no bearing on the question of whether the court correctly concluded that it had rendered a final judgment giving rise to postjudgment enforcement proceedings. Thus, insofar as Brett and ProxySoft Worldwide attempt to assert on appeal that there were "[o]utstanding issues" regarding the ex parte temporary injunction and temporary receivership ordered by the court that precluded the rendering of a final judgment that gave rise to postjudgment enforcement proceedings, we decline to review this issue. See *Hebrand* v. *Hebrand*, 216 Conn. App. 210, 224 n.11, 284 A.3d 702 (2022) ("We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.)). In their reply brief, Brett and ProxySoft Worldwide include a little more than one page of analysis under the following heading: "Point 3. Important issues remained open on March 4, 2021." The analysis in the reply brief does not prove helpful, and, in any event, "we consider an argument inadequately briefed when it is delineated only in the reply brief." *Hurley* v. *Heart Physicians, P.C.*, 298 Conn. 371, 378 n.6, 3 A.3d 892 (2010).

which we are aware mandating that, as a prerequisite for the rendering of a final judgment in a civil case, a trial court in this state must issue a "formal written and signed judgment" as described by Brett and ProxySoft Worldwide.[22] On at least one occasion, this court has eschewed the notion that the finality of a judgment is conditioned on the entry of a "formal judgment" following the filing of a motion for judgment. See *Heyman Associates No. 5, L.P.* v. *FelCor TRS Guarantor, L.P.*, 153 Conn. App. 387, 396 n.11, 102 A.3d 87 (determining that, notwithstanding lack of "formal judgment" rendered at time that appeal was filed, defendant had appealed from final judgment "insofar as at the time the appeal was taken the court had adjudicated the entirety of the plaintiffs' complaint"), cert. denied, 315 Conn. 901, 104 A.3d 106 (2014). Moreover, our case

[22] Brett and ProxySoft Worldwide cite Practice Book § 64-1 to support their argument. Their reliance on this rule of practice is misplaced.

Practice Book § 64-1 provides in relevant part: "(a) The trial court shall state its decision either orally or in writing . . . in making any . . . rulings that constitute a final judgment for purposes of appeal under Section 61-1, including those that do not terminate the proceedings. The court's decision shall encompass its conclusions as to each claim of law raised by the parties and the factual basis therefor. . . .

"(b) If the trial judge fails to file a memorandum of decision or sign a transcript of the oral decision in any case covered by subsection (a), the appellant may file with the appellate clerk a notice that the decision has not been filed in compliance with subsection (a). . . . The appellate clerk shall promptly notify the trial judge of the filing of the appeal and the notice. The trial court shall thereafter comply with subsection (a)."

Practice Book § 64-1 does not operate to inform the issue of whether a judgment is final; rather, its purpose is to help create an adequate record for appellate review. See *Stechel* v. *Foster*, 125 Conn. App. 441, 445, 8 A.3d 545 (2010) ("[w]hen the record does not contain either a memorandum of decision or a transcribed copy of an oral decision signed by the trial court stating the reasons for its decision, this court frequently has declined to review the claims on appeal because the appellant has failed to provide the court with an adequate record for review" (internal quotation marks omitted)), cert. denied, 300 Conn. 904, 12 A.3d 572 (2011). Indeed, to cure a trial court's failure to comply with § 64-1 (a), subsection (b) provides for the filing of a notice *after* an appeal has been filed. Thus, § 64-1 does not advance Brett and ProxySoft Worldwide's argument.

law does not reflect that parties have struggled to file appeals in cases involving complaints with multiple counts that are disposed of in segments without the entry of a single document comprehensively detailing the proceedings. See, e.g., *Campbell* v. *Porter*, 212 Conn. App. 377, 386–87, 387 n.10, 275 A.3d 684 (2022) (appeal filed in case in which portions of revised complaint were disposed of in myriad ways, including by way of motion to strike, following jury trial, and withdrawal of certain counts); *Brady* v. *Bickford*, 179 Conn. App. 776, 784–86, 183 A.3d 27 (2018) (appeal filed in case in which portion of amended complaint was disposed of by way of summary judgment and remainder of amended complaint was adjudicated following court trial).[23]

In sum, we conclude that the court properly denied Brett's motion to vacate, and we reject Brett and ProxySoft Worldwide's initial challenge to the court's turnover and charging order.

III

Brett and ProxySoft Worldwide also claim that, in the turnover and charging order, the trial court improperly (1) ordered injunctive relief and (2) continued the receivership. We address each claim in turn.

A

Brett and ProxySoft Worldwide contend that the turnover and charging order improperly subjected them to

[23] Brett and ProxySoft Worldwide relatedly argue that the court never issued *notice* of a "formal written and signed judgment" rendered in the present case. This argument is untenable in light of our rejection of the "formal written and signed judgment" requirement proposed by Brett and ProxySoft Worldwide. Moreover, in their principal appellate brief, Brett and ProxySoft Worldwide acknowledge that they received electronic notice of the March 4, 2021 decision determining the amount of the plaintiffs' punitive damages award under CUTPA. Thus, Brett and ProxySoft Worldwide received notice of the final judgment rendered on that date.

injunctive relief, including a prohibition on ProxySoft Worldwide's ability to transfer assets or to make loans pending Brett's turnover of his interest in ProxySoft Worldwide to the plaintiffs or the satisfaction of the judgment debt. Brett and ProxySoft Worldwide maintain that the court was not authorized to order injunctive relief as part of the turnover and charging order because (1) the plaintiffs had abandoned their claim for injunctive relief under the common law, as alleged in the withdrawn seventh count of their amended verified complaint, and (2) the court and the jury had rejected the plaintiffs' claims against ProxySoft Worldwide.[24] This claim is unavailing.

"The issuance of an injunction and the scope and quantum of injunctive relief [rest] in the sound discretion of the trier. . . . [T]he court's ruling can be reviewed only for the purpose of determining whether the decision was based on an erroneous statement of law or an abuse of discretion. . . . In determining

[24] Additionally, Brett and ProxySoft Worldwide claim that the plaintiffs failed to proffer evidence to justify injunctive relief in the turnover and charging order and that the court failed to conduct an evidentiary hearing on that issue. Brett and ProxySoft Worldwide do not provide any appreciable legal analysis in support of this claim. Accordingly, we conclude that this claim is inadequately briefed, and we decline to review it. See *Onofrio* v. *Mineri*, 207 Conn. App. 630, 637, 263 A.3d 857 (2021) (" 'Both this court and our Supreme Court "repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited." . . . *State* v. *Buhl*, 321 Conn. 688, 724, 138 A.3d 868 (2016); see also *Parnoff* v. *Mooney*, 132 Conn. App. 512, 518, 35 A.3d 283 (2011) ("[i]t is not the role of this court to undertake the legal research and analyze the facts in support of a claim or argument when it has not been briefed adequately . . . ."). ' *Seaport Capital Partners, LLC* v. *Speer*, 202 Conn. App. 487, 489–90, 246 A.3d 77, cert. denied, 336 Conn. 942, 250 A.3d 40 (2021); see also Practice Book § 67-4.").

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 [when] an abuse of discretion is manifest or [when] injustice appears to have been done." (Citation omitted; internal quotation marks omitted.) *Newtown* v. *Gaydosh*, 211 Conn. App. 186, 205, 272 A.3d 206, cert. denied, 343 Conn. 920, 275 A.3d 213 (2022).

Brett and ProxySoft Worldwide appear to conflate the plaintiffs' prejudgment requests for ex parte temporary injunctive relief and injunctive relief under the common law with the plaintiffs' postjudgment request for temporary injunctive relief in connection with their application for a turnover and charging order. The former is not germane to the latter. We discern no abuse of discretion by the court, ostensibly in an effort to protect the integrity of the turnover and charging order, in its decision to enjoin Brett and ProxySoft Worldwide temporarily from taking certain actions relating to ProxySoft Worldwide's operations pending Brett's turnover of his interest in ProxySoft Worldwide to the plaintiffs or the satisfaction of the judgment debt. Accordingly, Brett and ProxySoft Worldwide's claim fails.

B

Brett and ProxySoft Worldwide also assert that the turnover and charging order improperly continued the receivership pending Brett's turnover of his interest in ProxySoft Worldwide to the plaintiffs or the satisfaction of the judgment debt. Brett and ProxySoft Worldwide contend that there is no statutory authority that permitted the continuation of the receivership as part of the turnover and charging order.[25] This claim, which raises

[25] Brett and ProxySoft Worldwide also cursorily assert that the court continued the receivership with no supporting evidence submitted by the plaintiffs and without conducting an evidentiary hearing. We decline to review this claim because, like Brett and ProxySoft Worldwide's similar claim concerning the court's order of injunctive relief in the turnover and charging order, we conclude that it is inadequately briefed. See footnote 24 of this opinion.

a question of law subject to our plenary review; *Williams* v. *Mansfield*, supra, 215 Conn. App. 10; merits little discussion. "The Superior Court is a court of general equitable jurisdiction and as such has power to appoint receivers and make such orders in the receivership proceedings as the exigencies of the case may require." *Bassett* v. *Merchants Trust Co.*, 115 Conn. 530, 534, 161 A. 789 (1932); see also W. Horton et al., 1 Connecticut Practice Series: Superior Court Civil Rules (2021–2022 Ed.) c. 21, authors' comments, p. 938 ("[*a*]*bsent statutory provisions*, an application for a receiver is a civil action sounding in equity" (emphasis added)). Thus, we reject Brett and ProxySoft Worldwide's proposition that the court required express statutory authorization to continue the receivership temporarily as part of the turnover and charging order.

The portion of the appeal filed by ProxySoft Direct, Inc., is dismissed for lack of aggrievement; the judgment is affirmed.

In this opinion the other judges concurred.

AH MIN HOLDING, LLC *v.* CITY OF HARTFORD (AC 44843)

Elgo, Cradle and Norcott, Js.

Syllabus

The plaintiff landlord sought to recover damages from the defendant city for the defendant's alleged breach of a tax abatement agreement in regard to certain residential properties the plaintiff owned in Hartford. The agreement provided that the plaintiff agreed to maintain and rent a specified number of dwelling units at the properties for low and moderate income persons or families in order to receive a certain tax abatement. In response to complaints about a variety of deteriorating and hazardous living conditions at the properties, the defendant's housing code inspector, K, conducted several inspections of the dwelling units and discovered numerous housing code violations. K gave the plaintiff notice of the violations and specified a date by which the plaintiff needed to correct them. A few months later, K conducted additional

inspections, revealing nearly identical violations as those found previously. K again sent violation notices to the plaintiff, specifying when the violations had to be corrected. Following the second round of inspections, the defendant's tax abatement committee held a meeting, at which it unanimously voted to terminate the agreement. In accordance with the agreement, the committee issued a termination letter to the plaintiff, stating that, if the alleged code violations were not cured within ninety days, the agreement would be terminated. The defendant took the position that after the ninety day period passed without correction of the code violations, the agreement automatically terminated. Several months later, the plaintiff sold the properties, and, as part of the closing, was required to pay the defendant a certain amount of real property taxes. If the agreement had not been terminated, the plaintiff would have had to pay abated taxes in a lesser amount. The plaintiff thereafter sought to collect the amount of the property taxes it claimed to have overpaid due to the allegedly improper termination of the agreement. Following a trial to the court, the trial court found for the defendant on the plaintiff's claims, and the plaintiff appealed to this court. *Held*:

1. Contrary to the plaintiff's claim, the trial court properly read into the agreement certain provisions of the General Statutes (§§ 47a-1 and 47a-7) and the Hartford municipal code (§ 18-2) regarding maintenance obligations in effect at the time of the agreement's formation: this court concurred with the trial court's determination that the agreement was unambiguous and that the plaintiff had a contractual duty to "maintain" the properties, which encompassed the obligation to provide repair and general upkeep to the dwelling units, it was undisputed that these statutory and code provisions were in effect at the time the agreement was formed, they plainly addressed the same subject matter, namely, a landlord's duty to maintain residential rental properties, and, because the obligation to maintain the properties already existed in the express terms of the agreement, importing the statutory and code provisions served only to define the scope of that obligation and did not create a new substantive duty; moreover, the plaintiff's interpretation that the term "maintain" referred only to the continued use of the properties for the purpose of low and moderate income housing, regardless of the condition of such dwelling units, suggested that maintaining the properties allowed the plaintiff to provide housing that did not meet minimum standards of habitability, a suggestion that was patently unreasonable; furthermore, in order to construe the agreement as the plaintiff suggested, there would had to have been an express provision in the agreement to the contrary to relieve the plaintiff of the duties contained in the existing statutory and code provisions, which there was not.
2. This court concluded that, because the trial court properly read the statutory and municipal code provisions into the agreement and the plaintiff cited no additional authority and made no additional argument that the court's factual findings were clearly erroneous, the plaintiff's

claims that the court incorrectly found that the defendant had the contractual right to terminate the agreement based on violations of §§ 47a-1 and 47a-7 and § 18-2 of the code, and that the plaintiff failed to prove that the defendant breached the agreement, necessarily failed.

Argued October 17, 2022—officially released February 14, 2023

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the case was tried to the court, *Hon. Robert B. Shapiro*, judge trial referee; judgment for the defendant, from which the plaintiff appealed to this court. *Affirmed.*

Kevin J. McEleney, with whom, on the brief, was *Adam Marks*, for the appellant (plaintiff).

Laura Pascale Zaino, with whom, on the brief, was *Michael C. Collins*, for the appellee (defendant).

Opinion

ELGO, J. The plaintiff, Ah Min Holding, LLC, appeals from the judgment of the trial court, rendered in favor of the defendant, the city of Hartford, on the plaintiff's claims that the defendant breached a tax abatement agreement (agreement) regarding properties owned by the plaintiff and known as the Clay Arsenal Renaissance Apartments (CARA properties) and that the defendant was unjustly enriched by that alleged breach. On appeal, the plaintiff argues that the court improperly (1) read into the agreement a term that the plaintiff must comply with the General Statutes and certain provisions of the defendant's Municipal Code (code) relating to the maintenance of dwelling units, (2) concluded that the defendant had a contractual right to terminate the agreement, and (3) concluded that the plaintiff failed to prove that the defendant breached the agreement. The defendant argues in response that the court properly read the related statutes and code provisions into the agreement.

Further, the defendant argues that, because those provisions properly were read into the agreement, the court correctly determined that the defendant had the contractual right to terminate the agreement because the plaintiff failed to maintain the properties in accordance therewith and that the plaintiff failed to prove that the defendant breached the agreement. We agree with the defendant and, therefore, affirm the judgment.

The following facts and procedural history are relevant to this appeal. The plaintiff formerly owned the CARA properties, thirty-four parcels of residential real property in Hartford. The CARA properties primarily were used as housing for low and moderate income persons and families. On April 15, 2015, the plaintiff, by and through its sole member Emmanuel Ku, entered into the agreement with the defendant, wherein the plaintiff agreed to maintain and rent a specified number of dwelling units for low and moderate income persons or families in order to receive the tax abatement pursuant to the formulae provided in the agreement.

In relevant part, § 7 of the agreement required that "[m]onies equal to the amount of the tax abatement provided for in this [a]greement shall be used by [the plaintiff] solely for one or more of the following purposes:

"a. To reduce rents for the dwelling units on the premises below the levels which would be achieved in the absence of such abatement;

"b. To improve the quality and design of such dwelling units;

"c. To effect occupancy of such dwelling units by persons and families of varying income levels within limits determined by the [state Commissioner of Housing], by regulation; and,

"d. To provide necessary related facilities and services in such dwelling units."

Section 8 of the agreement provided that "[t]he abatement provided for in this [a]greement shall terminate at any time when [the plaintiff] shall cease to maintain approximately 150-156 units of housing solely for low or moderate income persons or families on the premises or when such units cease to fulfill the purposes set forth [in] this [a]greement, provided that such abatement shall not terminate if the [defendant] approves of such cessation or if [the plaintiff] is unable to maintain such units because of fire, act of God, governmental action or any other cause beyond its control, in which event the abatement provided for in this [a]greement shall be adjusted proportionately to the number of such units which [the plaintiff] is then maintaining on the premises." Additionally, the agreement required the plaintiff to permit the defendant's chief operating officer and the state Commissioner of Housing to "inspect the premises at any reasonable time when an abatement is provided pursuant to this [a]greement for any reasonable purpose, including the purpose of determining whether the premises are being used for the purposes set forth in [§] 7 of this [a]greement." If the defendant or its Committee on Abatement of Assessments and Taxes (committee) were to determine that the plaintiff was not in substantial compliance with its obligations under the agreement, the agreement could be terminated following written notice to the plaintiff of such determination and after a ninety day period in which the plaintiff could correct the specified noncompliance.

Prior to February, 2018, the committee received numerous complaints about the living conditions at the CARA properties. These complaints informed the committee about a variety of deteriorating and hazardous conditions, including rodent infestations, unattended to mold in the bathrooms, floorboards coming up, and

various additional conditions of disrepair. In response, the defendant's housing code inspector, Kionna Owens, conducted several inspections of dwelling units in the CARA properties throughout the month of February, 2018. Owens discovered several code violations during these inspections and, on March 5, 2018, sent the plaintiff notices of these violations. Each notice included the specific code violations and specified a date by which the plaintiff needed to correct the violations.

In April, 2018, Owens conducted additional inspections, which revealed nearly identical code violations as those found in February. They included a continued rodent and bug infestation; defective appliances and plumbing, including sinks and toilets; peeling paint; water damage and bulges in walls and ceilings; defective or inoperable electrical devices, including smoke detectors and outlets; and inoperable window locks and damaged doors. As a result, on May 30, 2018, Owens again sent violation notices to the plaintiff and specified that these violations must be corrected by June 30, 2018.

After the April inspections, but before the May 30, 2018 code violation notices were sent to the plaintiff, the committee held a meeting on May 16, 2018, to discuss the status of the CARA properties. During the meeting, the committee unanimously voted to terminate the agreement between the plaintiff and the defendant. On May 25, 2018, in accordance with the agreement, the committee issued a termination letter to the plaintiff, stating that the agreement would be terminated if it failed to cure the alleged code violations within ninety days. The letter stated that the decision to terminate was premised on alleged violations concerning the living conditions in more than eighty dwelling units of the CARA properties. Specifically, the termination letter stated: "It is the strong opinion of the [c]ommittee that your continued failure to provide housing that is sanitary, safe and code compliant constitutes a serious lack

of substantial compliance with the [a]greement and a breach of the contract with the [defendant] for which this action is well-grounded." The termination letter included copies of the numerous notices of code violations dated March 5, 2018. At the time of the termination letter, there were approximately ninety-nine outstanding violations of the code and, upon reinspection, forty-five of those violations continued. Those violations were noted as "substantial in nature" and "compromised the sanitary conditions [and] the health of . . . the tenants of the buildings . . . ."

The defendant took the position that after the ninety day period passed without correction of the code violations, the plaintiff's agreement with the defendant automatically terminated.[1] Several months later, on or about November 29, 2018, the plaintiff sold the CARA properties. As part of the closing, the plaintiff paid the defendant real property taxes in the amount of $176,628.15. If the agreement had not been terminated, the plaintiff would only have been liable to pay abated taxes in the amount of $43,500.

On January 23, 2019, the plaintiff filed a two count complaint seeking to recover the $133,128.15 in property taxes it claims to have overpaid due to the allegedly improper termination of the agreement. In count one, the plaintiff claimed that the defendant breached the agreement when it failed to provide a tax abatement for the 2017 grand list and required the plaintiff to pay $176,628.15 in assessed real property taxes when the abated amount would have been $43,500. In so doing, the plaintiff essentially alleged that the defendant

[1] The termination letter stated in relevant part that "this termination is effective [ninety] days from your receipt of this notice during which period you have the ability to cure the deficiencies." Testimony from the defendant's corporation counsel, Howard Rifkin, during a deposition in advance of trial, confirmed that this term conveyed that the termination became effective without further notice if the violations were not corrected within ninety days.

improperly terminated the agreement because there was no provision in the agreement requiring it to comply with the code. In the second count, the plaintiff asserted a claim of unjust enrichment because the defendant "unjustly, wrongfully and/or erroneously imposed, assessed, charged and collected taxes far in excess of the amounts called for under the abatement agreement and the defendant imposed, charged and accepted tax payments, interest and penalties far in excess of the amounts that were properly due pursuant to the abatement agreement." In its answer, the defendant denied the plaintiff's claims of breach of contract and unjust enrichment and asserted a claim for setoff based on fines for the continued violations of the code.[2] A remote virtual trial took place on April 14, 2021, at which the parties stipulated to many of the material facts.[3]

After the trial and posttrial briefing, the court issued a memorandum of decision in which it found in favor of the defendant on both of the plaintiff's claims. In reaching its conclusion, the court found that compliance with the relevant sections of the code must be

[2] The trial court did not consider the defendant's setoff claim and neither party has raised any claims on appeal regarding it.

[3] The following are the stipulations between the parties that were submitted to the court on April 13, 2021:

"a. [The plaintiff] formerly owned the [CARA properties].

"b. On or about April 15, 2015, [the plaintiff] and the [defendant] entered into the [agreement].

"c. On May 25, 2018, the [committee] issued a letter to [the plaintiff] indicating that the [agreement] would be terminated if [the plaintiff] failed to cure alleged [code] [v]iolations within [ninety] days.

"d. [The plaintiff] sold the properties on or about November 29, 2018.

"e. As part of the closing, [the plaintiff] paid the [defendant] real property taxes of $176,628.15.

"f. The [defendant] treated the [agreement] as terminated and required [the plaintiff] to pay the full balance of taxes owed without the benefit of a tax abatement.

"g. If the [agreement] was not terminated, [the plaintiff] would have been liable to pay abated taxes of $43,500. Therefore, the amount in controversy is $133,128.15 before accounting for any alleged setoffs."

read into the agreement between the parties. The court, relying on precedent from this court and our Supreme Court, considered the express terms of the agreement as well as any necessary implications arising from the provisions of the agreement. The court specifically stated that, in Connecticut, "[c]ontracting parties are presumed to contract in reference to the existing law, and to have in mind all the existing laws relating to the contract, or to the subject matter thereof." (Internal quotation marks omitted.) Relying on General Statutes §§ 47a-7[4] and 47a-1,[5] as well as § 18-2 of the code,[6] the

[4] General Statutes § 47a-7 provides in relevant part: "(a) A landlord shall: (1) Comply with the requirements of chapter 368o and all applicable building and housing codes materially affecting health and safety of both the state or any political subdivision thereof; (2) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant, a member of his family or other person on the premises with his consent, in which case such duty shall be the responsibility of the tenant; (3) keep all common areas of the premises in a clean and safe condition; (4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating and other facilities and appliances and elevators, supplied or required to be supplied by him; (5) provide and maintain appropriate receptacles for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and (6) supply running water and reasonable amounts of hot water at all times and reasonable heat except if the building which includes the dwelling unit is not required by law to be equipped for that purpose or if the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection.

"(b) If any provision of any municipal ordinance, building code or fire code requires a greater duty of the landlord than is imposed under subsection (a) of this section, then such provision of such ordinance or code shall take precedence over the provision requiring such lesser duty in said subsection. . . ."

[5] General Statutes § 47a-1 (c) defines a " '[d]welling unit' " as "any house or building, or portion thereof, which is occupied, is designed to be occupied, or is rented, leased or hired out to be occupied, as a home or residence of one or more persons."

[6] At the time the parties entered into the agreement, § 18-2 of the code provided: "No owner shall occupy or let to any other occupant any vacant dwelling unit unless it is clean, sanitary and fit for human occupancy." Hartford Municipal Code § 18-2 (Rev. to January 9, 2015). This section of

court further concluded that the law existing at the time of contract formation required the plaintiff to comply with health and safety requirements in the maintenance of the CARA properties. Thus, the court determined that these statutes and code provisions must be read into the agreement.

On the basis of this reasoning, the court found that the plaintiff made no meaningful effort to correct the host of code violations at the CARA properties and that these substantial violations evidenced that the plaintiff's substandard maintenance of the housing units ceased to fulfill the purposes set forth in the agreement. In reaching this conclusion, the court explicitly declined to credit the testimony of the representative for the plaintiff's property management company, Robert Prichard, whose testimony that the plaintiff had approved additional funding to address issues identified by the defendant and that the plaintiff had conducted spot checks regarding repairs of the housing units was not supported by any documentation. In accordance with its factual findings and legal conclusions, the court found that the plaintiff failed to satisfy its obligations

the code also included the same language, in relevant part, at the time of the defendant's alleged breach of the agreement. See Hartford Municipal Code § 18-2 (Rev. to April 20, 2018).

We note that, currently, § 18-2 of the code provides: "The purpose of this chapter is to promote the public health, safety, and general welfare with respect to housing in the City of Hartford by achieving all of the following:

"A. Enacting citywide standards for clean, safe, and habitable housing to, among other things, promote the general health and well-being of residents, improve indoor air quality, prevent asthma, reduce symptoms of allergies, and minimize the presence of toxic levels of lead.

"B. Empowering city officials to inspect properties to assess compliance.

"C. Clarifying the scope of enforcement authority.

"D. Aligning city ordinance with building code, anti-blight and property-maintenance code, health code, fire code, and the zoning regulations adopted by the planning and zoning commission.

"E. Promoting sustainable practices." Hartford Municipal Code § 18-2 (2022).

pursuant to the agreement and rendered judgment for the defendant. This appeal followed.

I

The plaintiff first claims that the court improperly read §§ 47a-1 and 47a-7 and § 18-2 of the code into the agreement. Specifically, the plaintiff argues that the agreement's definition of housing for low or moderate income persons or families does not include a requirement that the housing must be completely free of alleged violations of the General Statutes or the code to be considered housing for low or moderate income persons or families, nor does the agreement include a separate provision requiring the landlord to comply with provisions of the General Statutes or the code cited by the court. The plaintiff also relies on General Statutes § 8-215, the statute that forms the basis for the agreement in question, to argue that there was no contractual obligation to comply with §§ 47a-1 or 47a-7 or the municipal code. The plaintiff claims that, because § 8-215 does not expressly incorporate an obligation to comply with §§ 47a-1 or 47a-7 or any municipal code, the court improperly read those statutes and code provisions into the agreement.

In response, the defendant argues that the court properly read §§ 47a-1 and 47a-7 and § 18-2 of the code into the agreement because "a fair and reasonable construction" of the plaintiff's express contractual obligation to "maintain" its properties includes the obligation to complete repairs and general upkeep of the CARA properties. See *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.*, 252 Conn. 479, 498, 746 A.2d 1277 (2000). The defendant argues that the statutes in effect at the time of contract formation, specifically §§ 47a-1 and 47a-7 and § 18-2 of the code, provide necessary guidance for the required maintenance of low and

moderate income dwelling units. Therefore, the defendant asserts that the standards in these statutory and code provisions must be read into the agreement. We agree with the defendant.

We first set forth the applicable standard of review. "Although ordinarily the question of contract interpretation, being a question of the parties' intent, is a question of fact [subject to the clearly erroneous standard of review] . . . [when] there is definitive contract language, the determination of what the parties intended by their commitments is a question of law [over which our review is plenary]." (Internal quotation marks omitted.) *Alpha Beta Capital Partners, L.P.* v. *Pursuit Investment Management, LLC*, 193 Conn. App. 381, 403, 219 A.3d 801 (2019), cert. denied, 334 Conn. 911, 221 A.3d 446 (2020), and cert. denied, 334 Conn. 911, 221 A.3d 446 (2020). On appeal, when the issue of intent is a question of law, "[this court is not] bound by the trial court's interpretation of the contract provision at issue; rather, [this court has] an equal opportunity to consider the words of the contract within the four corners of the instruments itself." (Internal quotation marks omitted.) *Axela New Britain Groups, LLC* v. *LHPB Realty, LLC*, 165 Conn. App. 694, 699, 140 A.3d 296 (2016).

Our interpretation of contract provisions is guided by well established principles of contract law. "A contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and

unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity . . . . Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms." (Internal quotation marks omitted.) *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.*, supra, 252 Conn. 498.

"Contract language is unambiguous when it has a definite and precise meaning about which there is no reasonable basis for a difference of opinion." (Internal quotation marks omitted.) *Briggs* v. *Briggs*, 75 Conn. App. 386, 394, 817 A.2d 112, cert. denied, 263 Conn. 912, 821 A.2d 767 (2003). When determining whether a contract is ambiguous, "[a]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous." (Citation omitted; internal quotation marks omitted.) *Cruz* v. *Visual Perceptions, LLC*, 311 Conn. 93, 103, 84 A.3d 828 (2014). "[T]he mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous." (Internal quotation marks omitted.) Id.

Bearing in mind these principles of contract interpretation, we concur with the trial court's determination that the agreement is unambiguous. Specifically, we conclude that the plaintiff has a contractual duty to "maintain" the CARA properties, which encompasses the obligation to provide repair and general upkeep to the dwelling units. Black's Law Dictionary defines "maintain," as "[t]o care for (property) for purposes of

operational productivity or appearance; to engage in general repair and upkeep." Black's Law Dictionary (11th Ed. 2019) p. 1142. Thus, the ordinary meaning of "maintain" incorporates repair and upkeep. Although the plaintiff argues on appeal that "maintain" refers only to the continued use of the properties for the purpose of low and moderate income housing, regardless of the condition of such dwelling units, the agreement, when viewed in its entirety, does not support a construction that strips the obligation of upkeep and repair from the plain meaning of "maintain." See *Cruz* v. *Visual Perceptions, LLC*, supra, 311 Conn. 103. Indeed, § 7 of the agreement specifies the plaintiff's obligations with respect to the upkeep of the CARA properties, which include the duty to "improve the quality and design of such dwelling units" and to "provide necessary related facilities and services in such dwelling units." Section 8 of the agreement also expressly states that, if the plaintiff "shall cease to *maintain* approximately 150-156 units of housing solely for low or moderate-income persons or families on the premises," or if the plaintiff fails to "*fulfill the purposes set forth of this* [*a*]*greement*," the abatement shall be adjusted proportionately. (Emphasis added.) Further, §§ 9 and 10 of the agreement provide that the plaintiff shall give all assurances that the premises are used for the purposes set forth in § 7 and permit inspection of the premises "*for any reasonable purpose*," including determining whether the premises are being used in accordance with § 7 of the agreement. (Emphasis added.) Thus, the other provisions of the agreement support, rather than subvert, the plain meaning of the term "maintain," which by definition includes repair and upkeep.

Moreover, the plaintiff's mere assertion that we adopt its interpretation of the term in question does not necessitate a finding of ambiguity. See *Cruz* v. *Visual Perceptions, LLC*, supra, 311 Conn. 103. Indeed, the plaintiff's

construction suggests that maintaining the properties allows the plaintiff to provide housing that does not meet minimum standards of habitability, which is patently unreasonable. Consequently, we decline to adopt the plaintiff's limited definition of "maintain" and, instead, conclude that the only reasonable interpretation of the contractual term to "maintain" encompasses the duty to repair and upkeep the CARA properties. We therefore conclude that the agreement is unambiguous.

Our Supreme Court has also held that "[t]he law . . . is that statutes existing at the time a contract is made become a part of it and *must be read into it just as if an express provision to that effect were inserted therein*, except where the contract discloses a contrary intention." (Emphasis added; internal quotation marks omitted.) *Deming* v. *Nationwide Mutual Ins. Co.*, 279 Conn. 745, 780, 905 A.2d 623 (2006). When we incorporate a statute as if it were an express term of the contract, we do so in order to "construe the scope or validity of an obligation *already embraced* within the terms of the contract, [but] we do not incorporate the law to create a substantive obligation where none previously had existed." (Emphasis added.) Id., 781. Furthermore, "[a]s a general matter, parties are presumed to have contracted with knowledge of the existing law, and contract language must be interpreted in reference thereto. . . . *Unless the agreement indicates otherwise*, a statute existing at the time an agreement is executed becomes part of it and must be read into is just as if an express provision to that effect were inserted therein." (Citation omitted; emphasis added; internal quotation marks omitted.) *LMK Enterprises, Inc.* v. *Sun Oil Co.*, 86 Conn. App. 302, 307, 860 A.2d 1229 (2004).

In the present case, we concur with the trial court's determination that §§ 47a-1 and 47a-7 and § 18-2 of the code must be read into the agreement as if an express term to that effect were present. First, it is undisputed

that these statutory and municipal code provisions were in effect at the time the contract was formed. These provisions plainly address the same subject matter—the landlord's duty to maintain residential rental properties—and further inform the terms of the agreement, particularly § 7, with respect to rendering necessary facilities and services to the dwelling units. Because the obligation to maintain the CARA properties already existed in the express terms of the agreement, importing §§ 47a-1 and 47a-7 and § 18-2 of the code into the agreement serves only to define the scope of that obligation and does not create a new substantive duty. See *Deming* v. *Nationwide Mutual Ins. Co.*, supra, 279 Conn. 781. Thus, because these provisions existed at the time of contract formation and express an obligation that already existed in the express terms of the agreement, they must be read into the agreement just as if an express provision to that effect were included in the terms of the agreement. See id., 780; *LMK Enterprises, Inc.* v. *Sun Oil Co.*, supra, 86 Conn. App. 307.

In addition, the plaintiff does not dispute that it had the obligation to comply with the requirements contained in these statutory and code provisions at the time it entered into the agreement and throughout its ownership, but nevertheless attempts to argue that the agreement was not formed in contemplation of these statutory and code requirements and, therefore, the maintenance obligations defined by the statutes and code are not tethered to the agreement. As previously discussed, however, § 8 of the agreement expressly includes the obligation to "maintain" the CARA properties, which by definition includes the duty to engage in general repair and upkeep. In order to construe the agreement as the plaintiff suggests, there would need to be an express provision to the contrary to relieve the plaintiff of the duties contained in the existing statutory and code provisions. See *Deming* v. *Nationwide*

Mutual Ins. Co., supra, 279 Conn. 780; *LMK Enterprises, Inc.* v. *Sun Oil Co.*, supra, 86 Conn. App. 307. Here, there is no express provision to that effect. Thus, the absence of a contrary provision further supports the conclusion that these provisions must be read into the agreement to define the scope of the contractual duty to maintain the CARA properties.

Ultimately, the existing statutory and code provisions are consistent with the scope of the plaintiff's existing contractual obligation to maintain the CARA properties, and there is no contractual provision providing that the plaintiff does not need to comply with such requirements. Thus, these provisions must be read into the agreement.

Furthermore, the plaintiff's reliance on § 8-215 does not support the argument that §§ 47a-1 and 47a-7 and § 18-2 of the code were improperly read into the agreement. Although the plaintiff is correct that § 8-215 does not expressly direct a contracting landlord to comply with §§ 47a-1 and 47a-7 and § 18-2 of the code, § 8-215 does provide in relevant part that "[s]uch tax abatement shall be used for one or more of the following purposes: (1) To reduce rents below the levels which would be achieved in the absence of such abatement and to improve the quality and design of such housing; (2) to effect occupancy of such housing by persons and families of varying income levels within limits determined by the Commissioner of Housing by regulation; or (3) *to provide necessary related facilities or services in such housing*. . . ." (Emphasis added.) For the aforementioned reasons, we conclude that the requirement to "provide necessary related facilities or services in such housing" actually supports the conclusion that §§ 47a-1 and 47a-7 and § 18-2 of the code are merely defining the scope of the existing obligation to maintain the CARA properties and, therefore, must be read into the agreement.

In light of the foregoing, §§ 47a-1 and 47a-7 and § 18-2 of the code must be read into the agreement. The plaintiff had the express obligation to maintain the CARA properties, which included the duty to provide repair and general upkeep. The statutory and code provisions in question are consistent with this existing express obligation to maintain the properties, and there is no contrary provision relieving the plaintiff of the duties described in these provisions. We therefore conclude that the court properly read these statutory and code provisions into the agreement.

II

We next briefly address the plaintiff's second and third claims on appeal. The plaintiff argues in its second claim that the court incorrectly found that the defendant had the contractual right to terminate the agreement based on violations of §§ 47a-1 and 47a-7 and § 18-2 of the code. In its brief, the plaintiff relies on the assumption that, in the absence of the housing maintenance obligations set forth in those statutory and code provisions, the defendant did not have a contractual right to terminate the agreement based on the plaintiff's failure to correct the numerous violations. The plaintiff asks this court to apply the clearly erroneous standard of review required in breach of contract cases; see *Colliers, Dow & Condon, Inc.* v. *Schwartz*, 77 Conn. App. 462, 471, 823 A.2d 438 (2003); but the plaintiff does not assert any additional grounds to challenge the court's factual determinations with respect to the code violations. Instead, the plaintiff relies solely on its argument that the court improperly read the statutory and code provisions into the agreement to support its claim that the court incorrectly determined the defendant had the contractual right to terminate the agreement. Because we conclude that the court properly read those provisions into the agreement and the plaintiff cited no additional authority and made no additional argument that

the court's factual findings were clearly erroneous, the plaintiff's second claim necessarily fails.

Similarly, in its third claim, the plaintiff argues that the court incorrectly found that the plaintiff failed to prove that the defendant breached the agreement. Here, the plaintiff again relies on the assumption that the court improperly read the statutory and code provisions into the agreement and adds that, because the absence of those provisions would deprive the defendant of its contractual right to terminate the agreement for failure to cure the cited violations, the court incorrectly found that the plaintiff failed to prove breach. Again, because we conclude that the court properly read those provisions into the agreement and the plaintiff cited no additional authority and made no additional argument that the court's factual findings were clearly erroneous, the plaintiff's third claim also fails.

The judgment is affirmed.

In this opinion the other judges concurred.

RICHARD LASTRINA, CONSERVATOR (ESTATE OF DANIEL LASTRINA) *v.* EVELYN BETTAUER (AC 44509)

RICHARD LASTRINA, CONSERVATOR (ESTATE OF DANIEL LASTRINA) *v.* BRUCE E. BURNHAM (AC 44510)

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

Syllabus

The plaintiff, as conservator of the estate of his son D, sought to recover damages from the defendants, B and E, for medical malpractice in connection with their treatment of D. D used marijuana on a regular basis and, anticipating that his employer may administer random drug tests, decided to obtain a medical marijuana certificate based on a diagnosis of post-traumatic stress disorder (PTSD), even though D did

not believe that he suffered from that condition. D scheduled an appointment with B, a physician, to obtain the medical marijuana certificate. B referred D to E, a psychologist, who diagnosed D with PTSD based on D's misrepresentations. B accepted E's diagnosis and provided D with a medical marijuana certificate. D proceeded to use medical marijuana every day and, after approximately two weeks, stopped taking his medication for his bipolar disorder. Thereafter, D was hospitalized due to a manic episode and was later discharged to a facility to participate in a marijuana dependent rehabilitation program. The plaintiff alleged that the defendants violated the applicable standards of care for their respective professions and that, as a result of the defendants' negligence, D suffered from adverse consequences caused by his use of medical marijuana, including exacerbation of D's bipolar disorder and hospitalization. Each defendant filed a motion for summary judgment, claiming that the wrongful conduct rule, which serves as a limitation on liability in civil actions premised on the notion that a plaintiff should not recover for injuries that are sustained as the direct result of his or her knowing and intentional participation in a criminal act, and public policy barred the plaintiff's actions. The trial court granted the motions, finding that D's conduct in purposely deceiving the defendants to obtain certification for medical marijuana constituted a violation of the statute (§ 21a-266) that prohibits the acquisition of a controlled substance by, inter alia, fraud, and was a felony pursuant to statute (§ 21a-255). Accordingly, the trial court held that it would violate public policy to impose a duty on the defendants to protect D from the consequences of his own admitted illegal conduct. On the plaintiff's appeal to this court, *held*:

1. The trial court properly granted the defendants' motions for summary judgment as that court correctly found that there was no genuine issue of material fact as to whether a sufficient causal nexus existed between D's misrepresentations to the defendants and his injuries to preclude recovery: it was undisputed that D intentionally lied to the defendants to obtain a PTSD diagnosis so that he could purchase medical marijuana, that the plaintiff's sole claim was that D's injuries were caused by his use of the medical marijuana that he illegally obtained, and that D's conduct constituted a violation of § 21a-266 (a) and that such violation constituted a felony pursuant to § 21a-255 (c), and, accordingly, D's illegal conduct was therefore intertwined with the alleged negligent treatment by the defendants because that treatment was simply part of and resulted from D's fraud, and, to the extent that D suffered injuries from his use of medical marijuana, those injuries occurred because D, after his encounters with the defendants, engaged in the further volitional criminal conduct of going to a medical dispensary and fraudulently obtaining marijuana.
2. The trial court correctly concluded that no genuine issue of material fact existed as to whether D's conduct amounted to "serious criminality": the wrongful conduct rule has been limited to cases in which the plaintiff's

injuries stem from conduct that is prohibited, as opposed to merely regulated, by law, and the violation is serious or involves moral turpitude, the plaintiff conceded that D's conduct in seeking to obtain medical marijuana by fraud constituted an unclassified felony, and, on appeal, the plaintiff presented no meaningful argument in support of his claim that a genuine issue of material fact existed as to whether D's conduct amounted to serious criminality.

Argued November 2, 2022—officially released February 14, 2023

Procedural History

Action, in each case, to recover damages for medical malpractice, brought to the Superior Court in the judicial district of Hartford, where the court, *Cobb*, *J.*, granted the motion for summary judgment filed by the defendant in each case and rendered judgment thereon, from which the plaintiff filed separate appeals to this court. *Affirmed.*

Gerald S. Sack, for the appellant in each case (plaintiff).

Laura E. Waltman, with whom, on the brief, was *Jonathan A. Kocienda*, for the appellee in Docket No. AC 44509 (defendant).

William F. Corrigan, for the appellee in Docket No. AC 44510 (defendant).

Opinion

BRIGHT, C. J. In these medical malpractice actions, the plaintiff, Richard Lastrina, as conservator of the estate of his son Daniel Lastrina (Daniel), appeals from the judgments of the trial court granting the motions for summary judgment filed by the defendants, Evelyn Bettauer, a psychologist, and Bruce E. Burnham, a physician. The court granted summary judgment for each defendant, concluding that it would violate public policy to impose a duty on the defendants to protect Daniel from the harm caused by his own illegal conduct. On appeal, the plaintiff claims that the court improperly

granted summary judgment for the defendants because there are genuine issues of material fact as to whether Daniel's illegal conduct (1) caused his injuries and (2) constituted "serious criminality." We disagree and, accordingly, affirm the judgments of the trial court.

The record, viewed in the light most favorable to the plaintiff as the nonmoving party, reveals the following facts and procedural history. In the summer of 2008, after his freshman year of college, Daniel began using marijuana and continued to use marijuana regularly over the following years. Daniel suffers from bipolar disorder and was hospitalized on several occasions between 2011 and 2017, due to episodes of depression and mania. Since 2012, Daniel has been prescribed various medications to treat his condition.

In his deposition, Daniel explained that, in April, 2017, he wanted a medical marijuana certificate "so that if [his employer] drug tested [him] at work, [he] wouldn't get fired." In pursuit of that goal, he reviewed the list of debilitating medical conditions[1] that qualify for medical marijuana use and decided that, although he did not suffer from any of those conditions, he could convince a doctor that he had post-traumatic stress disorder (PTSD). He scheduled an appointment with Burnham and falsely reported that he had been traumatized by his prior admissions to mental health facilities related

[1] General Statutes (Rev. to 2021) § 21a-408 (3) provides in relevant part: " 'Debilitating medical condition' means (A) cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy or uncontrolled intractable seizure disorder, cachexia, wasting syndrome, Crohn's disease, [post-traumatic] stress disorder, irreversible spinal cord injury with objective neurological indication of intractable spasticity, cerebral palsy, cystic fibrosis or terminal illness requiring end-of-life care . . . or (B) any medical condition, medical treatment or disease approved for qualifying patients by the Department of Consumer Protection pursuant to regulations adopted under section 21a-408m . . . ."

to his bipolar disorder and that he continued to suffer from that trauma.[2] He also told Burnham that he had used marijuana regularly without any adverse consequences.

After meeting with Daniel, Burnham referred him to Bettauer, who met Daniel that same day. Daniel repeated his misrepresentation to Bettauer, and she diagnosed him with PTSD. Burnham accepted Bettauer's diagnosis and provided Daniel with a medical marijuana certificate. Daniel proceeded to use medical marijuana every day and, after approximately two weeks, stopped taking his medication for his bipolar disorder. On October 9, 2017, Daniel was hospitalized due to a manic episode and thereafter was discharged to Silver Hill Hospital to participate in a marijuana dependent rehabilitation program.

After the plaintiff was appointed conservator of Daniel's estate in November, 2017, he initiated separate medical malpractice actions against the defendants.[3] The plaintiff alleged that Bettauer violated the applicable standard of care for psychologists by, among other things, improperly diagnosing Daniel with PTSD. In the Burnham action, the plaintiff alleged that Burnham deviated from the applicable standard of care for physicians certifying patients for the use of medical marijuana in several ways, including that he relied on Bettauer's diagnosis of PTSD and prescribed medical marijuana for Daniel when Burnham knew that Daniel suffered from bipolar disorder and had experienced negative consequences from the use of marijuana. In each case, the plaintiff alleged that, due to the defendants' violations of the respective standards of care, Daniel suffered from adverse consequences resulting

[2] Daniel understood PTSD to be caused by "traumatic events in your life that cause you to relive them in your mind."

[3] The plaintiff brought the first action against Bettauer in August, 2018, and the second action against Burnham in February, 2019.

from his use of medical marijuana, including exacerbation of Daniel's bipolar disorder and hospitalization. The two cases were consolidated for purposes of discovery.

Bettauer filed an answer and special defenses in which she denied any negligence and asserted, inter alia, that the plaintiff's claims were barred because Daniel's injuries were sustained due to his own wrongful conduct. Burnham filed an answer leaving the plaintiff to his proof.

Each defendant filed a motion for summary judgment, claiming that, pursuant to *Greenwald* v. *Van Handel*, 311 Conn. 370, 88 A.3d 467 (2014), the wrongful conduct rule and public policy barred the plaintiff's actions.[4] The wrongful conduct rule serves as "a limitation on liability in civil actions premised on the notion that a plaintiff should not recover for injuries that are sustained as the direct result of his or her knowing and intentional participation in a criminal act." (Internal quotation marks omitted.) *Burke* v. *Mesniaeff*, 334 Conn. 100, 122 n.9, 220 A.3d 777 (2019). In *Greenwald*, our Supreme Court concluded that it was unnecessary to adopt "any sweeping rule or exceptions thereto" because it was clear based on the facts alleged by the plaintiff that "it would violate public policy to impose a duty on the defendant to protect the plaintiff from the injuries arising from the legal consequences of his admitted illegal conduct." *Greenwald* v. *Van Handel*, supra, 374. In the present cases, the defendants argued

[4] As an alternative ground for summary judgment, Burnham asserted that the plaintiff is unable to prove causation because Daniel's deposition testimony established that his access to medical marijuana was not the cause of his injuries. Because the court held that the plaintiff's action was barred as a matter of public policy, the court did not consider this alternative claim. On appeal, Burnham renewed his causation claim as an alternative ground for affirming the judgment of the trial court. Because we conclude that the court properly granted summary judgment on public policy grounds, we do not consider the merits of Burnham's alternative claim.

in their motions for summary judgment that the rationale of *Greenwald* applies with equal force to bar the plaintiff's claims because any injuries Daniel suffered were the result of his admitted illegal conduct.

The plaintiff filed objections to the motions for summary judgment. In his memoranda of law in support of the objections, the plaintiff asserted that there was a genuine issue of material fact as to whether Daniel's conduct was a "serious felony," which he argued was not the case. The plaintiff also argued that there was a genuine issue of material fact as to causation. The plaintiff attached to his memoranda affidavits from similar health care providers who opined that the defendants' deviations from the standards of care—not Daniel's misrepresentation—caused Daniel to be misdiagnosed with PTSD, which caused his injuries.[5]

The court held a remote hearing on the motions for summary judgment on December 7, 2020. On December 11, 2020, the court filed a memorandum of decision granting the defendants' motions. Although the court noted that our Supreme Court had declined to adopt fully the wrongful conduct rule in *Greenwald*, it found that the general principles addressed in *Greenwald* concerning wrongdoing were applicable to the present cases. The court determined that Daniel's conduct in purposely deceiving the defendants to obtain certification for medical marijuana constituted a felony. The

[5] In the Bettauer action, the plaintiff submitted an affidavit from a clinical psychologist, Kathleen Cairns, who opined that "the cause of the harm and damage done to [Daniel] was a misdiagnosis of [PTSD] which was erroneously made by [Bettauer]. . . . Whatever [Daniel] may have told [Bettauer] to convince her to diagnose him with PTSD was not the reason for her professional deviations from the standard of care." In the Burnham action, the plaintiff submitted an affidavit from a psychiatrist, Deepak Cyril D'Souza, who opined that "Burnham's deviations from the standard of care . . . are the reasons Daniel was wrongfully diagnosed with PTSD and permitted to purchase medical marijuana, not anything that Daniel may or may not have told him about his past medical history."

court explained that such conduct violated General Statutes § 21a-266 (a),[6] which prohibits the acquisition of a controlled substance[7] "by fraud, deceit, misrepresentation or subterfuge," and that a violation of § 21a-266 (a) is a felony pursuant to General Statutes § 21a-255 (c).[8] Accordingly, the court rejected the plaintiff's claim that there was a genuine issue of material fact as to whether Daniel's conduct constituted a "serious felony." The court also rejected the plaintiff's claim regarding causation, concluding that "Daniel's injuries were not independent of his admitted criminal acts, but caused by them." Accordingly, the court held that it would violate public policy to impose a duty on the defendants to protect Daniel from the consequences of his own admitted illegal conduct. The plaintiff filed motions to reconsider and/or reargue, which the court denied. These appeals followed.[9]

As a preliminary matter, we first set forth the applicable standard of review. "On appeal, [w]e must decide

[6] General Statutes § 21a-266 provides in relevant part: "(a) No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance (1) by fraud, deceit, misrepresentation or subterfuge . . . .

"(b) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance, or unlawfully to procure the administration of any such substance, shall not be deemed a privileged communication."

[7] In 2017, when Daniel sought a diagnosis from the defendants, marijuana was classified as a schedule II controlled substance under the Connecticut controlled substance scheduling regulations. See General Statutes (Rev. to 2017) § 21a-243 (e); see also Regs., Conn. State Agencies § 21a-243-8 (g) (November 5, 2015).

[8] General Statutes § 21a-255 (c) provides: "Any person who violates any provision of sections 21a-243 to 21a-282, inclusive, for which no penalty is expressly provided, (1) for a first offense, may be fined not more than three thousand five hundred dollars or imprisoned not more than two years, or be both fined and imprisoned, and (2) for any subsequent offense, shall be guilty of a class C felony."

[9] While these appeals were pending, the plaintiff filed a motion for articulation in both actions, which the court denied. The plaintiff filed motions for review of those decisions, and this court granted review but denied the relief requested.

whether the trial court erred in determining that there was no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . . [O]ur review is plenary and we must decide whether the [trial court's] conclusions are legally and logically correct and find support in the facts that appear on the record. . . .

"Practice Book § [17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . .

"A material fact is a fact that will make a difference in the outcome of the case. . . . Once the moving party has presented evidence in support of the motion for summary judgment, the opposing party must present evidence that demonstrates the existence of some disputed factual issue . . . . To oppose a motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant's affidavits and documents." (Internal quotation marks omitted.) *Streifel* v. *Bulkley*, 195 Conn. App. 294, 299–300, 224 A.3d 539, cert. denied, 335 Conn. 911, 228 A.3d 375 (2020).

In addition, we note that "[t]he existence of a duty is a question of law . . . . If a court determines, as a matter of law, that a defendant owes no duty to a plaintiff, the plaintiff cannot recover in negligence from the defendant." (Internal quotation marks omitted.) *Jarmie* v. *Troncale*, 306 Conn. 578, 589, 50 A.3d 802 (2012).

I

The plaintiff first claims that the court improperly granted the defendants' motions for summary judgment

because there is a genuine issue of material fact as to whether a sufficient causal nexus exists between Daniel's misrepresentation to the defendants and his injuries to preclude recovery.[10] Thus, although whether a duty exists is a question of law, the plaintiff contends that application of the wrongful conduct rule in the present cases depends on a disputed factual issue regarding causation. We are not persuaded.

We begin our analysis with a review of *Greenwald* v. *Van Handel*, supra, 311 Conn. 370, in which our Supreme Court discussed the wrongful conduct rule and its application. In that case, a plaintiff filed a professional negligence action against a defendant, a licensed clinical social worker, for failing to treat him in connection with his viewing of child pornography as a minor. Id., 372. In his complaint, the plaintiff alleged "that

[10] On appeal, the plaintiff concedes that "the wrongful conduct rule bars a plaintiff's recovery of damages in a civil case where there is no genuine issue of material fact as to a sufficient causal nexus between the plaintiff's illegal conduct and his alleged injuries and when the plaintiff's conduct amounts to serious criminality." (Internal quotation marks omitted.) Accordingly, he does not address the four factors we typically consider in determining the extent of a legal duty as a matter of public policy: "(1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions." (Internal quotation marks omitted.) *Jarmie* v. *Troncale*, supra, 306 Conn. 603.

Nevertheless, we conclude that consideration of these factors supports the court's conclusion in the present cases. First, an individual who lies to a doctor to obtain a prescription would not expect to be able to bring an action against the doctor for believing his or her lies. Second, precluding recovery in the present cases in which the patient committed fraud in seeking treatment would not discourage patients from seeking medical care for real medical conditions. Third, imposing a duty under the present circumstances would result in increased litigation because it would allow individuals to induce medical malpractice by falsely reporting symptoms and then bringing an action against the doctor for injuries allegedly resulting from any misdiagnosis. Fourth, and finally, as will be discussed further in part I of this opinion, the decisions of other jurisdictions support the denial of recovery when the plaintiff has suffered injuries as the result of illegally obtaining a controlled substance.

the defendant's failure to address his forays into child pornography when he was a minor led to his continued viewing of child pornography and his home being raided and searched by the police. The plaintiff further alleged that, as a consequence of the defendant's negligence, he has spent, and will be required to continue to spend, large sums of money on professional mental health care for his recovery and maintenance." Id., 373. The trial court granted the defendant's motion to strike the complaint on the ground that it would violate public policy to allow the plaintiff to profit from his own criminal acts and rendered judgment for the defendant. Id., 374. On appeal, the plaintiff claimed that Connecticut had not adopted a wrongful conduct rule and that, assuming such a rule applies, our Supreme Court should adopt certain exceptions to the rule recognized by the Michigan Supreme Court. Id., 372, 382.

In rejecting the plaintiff's claims, our Supreme Court explained that it has "recognized the common-law maxims that [n]o one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, [and] have their foundation in universal law administered in all civilized countries . . . .

"Many of our sister states . . . have extended these principles to tort actions. The generally articulated common-law wrongful conduct rule in these jurisdictions provides that a plaintiff cannot maintain a tort action for injuries that are sustained as the direct result of his or her knowing and intentional participation in a criminal act. . . .

"The jurisdictions extending this rule to tort actions have set certain limitations on its application. Courts in many of these states have limited the rule's application to cases in which the plaintiff's injuries stem from

conduct that is prohibited, as opposed to merely regulated, by law, and the violation is serious or involves moral turpitude. . . . In addition, courts have universally recognized that there must be a sufficient causal nexus between the plaintiff's illegal conduct and his alleged injuries to bar recovery. . . .

"Although courts have had difficulty drawing these lines in some cases, the present case causes no such problems. The plaintiff has admitted to conduct that constitutes a serious felony, and such conduct has a direct causal connection to his alleged injuries. Accordingly, there is no question that he would be barred from recovering under this rule . . . ." (Citations omitted; footnotes omitted; internal quotation marks omitted.) Id., 376–80.

Ultimately, our Supreme Court concluded that, "irrespective of whatever limits might be imposed by the wrongful conduct rule, it is clear . . . that it would violate the public policy of our state to impose a duty on the defendant to protect the plaintiff from injuries arising from the legal consequences of the plaintiff's volitional criminal conduct, unlawful viewing and downloading of child pornography. Under the theory of recovery advanced by the plaintiff, the more serious the criminal conduct, and the more severe the attendant punishment, the greater his recovery would be. It is self-evident why such a result would contravene public policy. Moreover, [t]he fundamental policy purposes of the tort compensation system [namely] compensation of innocent parties, shifting the loss to responsible parties or distributing it among appropriate entities, and deterrence of wrongful conduct . . . would not be met by imposing such liability on the defendant.

"In reaching this conclusion, we underscore that we do not hold that the defendant did not have a duty to

exercise reasonable care in his treatment of the plaintiff. Indeed, if the plaintiff sustained injuries independent of the legal consequences of his criminal acts as a result of the defendant's negligent treatment of his underlying mental condition, the wrongful conduct rule would have no application. The door of a court is not barred because the plaintiff has committed a crime. . . . The court's aid is denied only when he who seeks it has violated the law *in connection with the very transaction as to which he seeks legal redress.* Then aid is denied despite the defendant's wrong. It is denied in order to maintain respect for law; in order to promote confidence in the administration of justice; in order to preserve the judicial process from contamination." (Emphasis in original; internal quotation marks omitted.) Id., 385–86; see also *Jarmie* v. *Troncale*, supra, 306 Conn. 599.

In further defining the limits of its holding, our Supreme Court explained that, because the plaintiff did not claim that he lacked criminal responsibility for his illegal conduct, it had "no occasion to consider whether a plaintiff could recover for injuries arising from nonvolitional criminal conduct. We simply conclude that injuries arising from volitional criminal conduct cannot, as a matter of public policy, provide a basis for recovery." Id., 387 n.10.

In the present cases, the plaintiff claims that *Greenwald* should be limited to its facts. He seizes on the court's qualification in *Greenwald* that, "if the plaintiff sustained injuries independent of the legal consequences of his criminal acts as a result of the defendant's negligent treatment . . . the wrongful conduct rule would have no application." Id., 386. The plaintiff claims "[t]hat is precisely the case here" and argues that Daniel's false "statements are irrelevant to the diagnosis, and there is no direct causal link between the statements of [Daniel] and the diagnosis of PTSD." The plaintiff contends that,

based on the affidavits of his expert witnesses, there are genuine issues of material fact as to whether Daniel's misrepresentation supported a diagnosis of PTSD and whether Daniel sustained injuries independent of the legal consequences of his criminal acts due to the defendants' negligent diagnosis and treatment. Therefore, according to the plaintiff, he is entitled to a trial at which the fact finder can consider his evidence that the causal nexus between Daniel's illegal conduct and his alleged injuries is insufficient to bar recovery.

The defendants respond that, based on the submissions made in connection with the motions for summary judgment, Daniel's injuries are, as a matter of law, directly connected to his admitted illegal conduct, and, therefore, the court properly granted summary judgment on the basis of public policy. We agree with the defendants.

Although the qualification in *Greenwald* on which the plaintiff relies, standing alone, might suggest that our Supreme Court limited application of the wrongful conduct rule to injuries arising from the *legal* consequences of a plaintiff's wrongful conduct, we do not read *Greenwald* so narrowly. Nor does the plaintiff claim that *Greenwald* should be read so narrowly. See footnote 10 of this opinion. The context of that statement is important.

In *Greenwald*, the plaintiff only sought damages that arose from the search of his home related to his continued viewing of child pornography almost two years after the defendant stopped treating him. *Greenwald* v. *Van Handel*, supra, 311 Conn. 372–73. In particular, he alleged that, as a result of the search, he faced the possibility of arrest and conviction and "being sentenced to a term of imprisonment, serving a period of probation, registering as a sex offender in the state's sex offender registry for an indeterminate period of time

and suffering the humiliation, publicity, embarrassment and economic repercussions associated with being arrested and/or convicted of downloading, viewing and/or possessing child pornography." *Greenwald* v. *Van Handel*, Conn. Supreme Court Records & Briefs, October Term, 2013, Pt. 1, Record p. 6. Thus, the court was faced only with a claim for damages arising out of criminal conduct that the plaintiff engaged in after he ceased treatment with the defendant. The court held that permitting the plaintiff to pursue a claim against the defendant for the consequences of his volitional criminal conduct would violate public policy. *Greenwald* v. *Van Handel*, supra, 311 Conn. 385. At the same time, the court also recognized that the plaintiff would not have been precluded from pursuing a claim for injuries resulting from the defendant's negligent treatment that were not the consequence of his subsequent illegal conduct. Id., 386. Put differently, the illegality of the condition for which a patient seeks treatment does not affect the duty of care a medical professional owes to a patient.

For example, a medical professional treating a patient for an opioid addiction owes the same duty of care to the patient regardless of whether the patient obtained the opioids legally or illegally. Society has an interest in treating the patient's addiction, whatever its cause, and in ensuring that medical professionals providing such treatment do so to the applicable standard of care. For that reason, if a patient suffers injuries related to his addiction, such as hospitalizations or worsening health, due to the doctor's breach of that duty of care, the wrongful conduct rule would have no application to claims stemming from such injuries. On the other hand, if the patient commits a robbery to obtain money to buy more opiates and suffers injuries arising from his arrest, the wrongful conduct rule would apply to

preclude that patient from recovering for injuries arising from the robbery, regardless of whether the addiction that led him to commit the robbery was the result of illegal conduct. This reasoning is consistent with the public policy of encouraging individuals to seek treatment for illegal behavior, while not permitting an individual who has chosen to continue to engage in criminal conduct to shift the blame for that conduct to others.

Thus, the court's qualification in *Greenwald* as to the legal consequences of criminal acts, on which the plaintiff relies, must be understood in light of the particular claim asserted by the plaintiff in *Greenwald* and in the context of the court's other statements regarding when illegal conduct bars recovery as a matter of public policy. In this regard, the court first noted that it "has recognized the common-law maxims that [n]o one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime." (Internal quotation marks omitted.) Id., 376. Our Supreme Court cited two cases in which it had applied these principles, and neither of those cases involved injuries arising from the legal consequences of criminal conduct. Id., 377; see also *Thompson* v. *Orcutt*, 257 Conn. 301, 316, 777 A.2d 670 (2001) (concluding "that the fraud committed by the plaintiff in the bankruptcy court implicates an important public interest that justifies the application of the doctrine of unclean hands on public policy grounds"); *Solomon* v. *Gilmore*, 248 Conn. 769, 791, 731 A.2d 280 (1999) (holding that mortgage loan issued in violation of statutory licensing requirement was unenforceable on public policy ground).

Furthermore, the court in *Greenwald* determined that "[t]he fundamental policy purposes of the tort compensation system [namely] compensation of innocent parties, shifting the loss to responsible parties or distributing it among appropriate entities, and deterrence of

wrongful conduct . . . would not be met by imposing such liability on the defendant." (Citation omitted; internal quotation marks omitted.) *Greenwald* v. *Van Handel*, supra, 311 Conn. 385–86.

Applying the principles endorsed by the court in *Greenwald* to the undisputed facts of the present cases, we conclude that the plaintiff's claims fail as a matter of public policy. Daniel did not seek treatment from the defendants for a condition from which he suffered. To the contrary, he misrepresented to the defendants that he suffered from PTSD when he knew that he did not. It is undisputed that his conduct constituted a violation of § 21a-266 (a) and that the violation constituted a felony pursuant to § 21a-255 (c). Thus, Daniel's illegal conduct was intertwined with the alleged negligent treatment by the defendants because that treatment was simply part of and resulted from Daniel's fraud. Furthermore, the plaintiff's criminal conduct did not end with his acquisition of the medical marijuana certificate but continued each time he obtained marijuana from a medical dispensary using the certificate he fraudulently had obtained. See General Statutes § 21-266 (a) ("[n]o person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance . . . by fraud, deceit, misrepresentation or subterfuge"). Although the plaintiff seeks to limit Daniel's illegal conduct to his fraud in inducing the diagnosis of PTSD, this is not a case in which the defendants handed Daniel marijuana after he lied to them. Instead, to the extent Daniel suffered injuries from his use of medical marijuana, those injuries occurred because Daniel, after his encounters with the defendants, engaged in the further volitional criminal conduct of going to a medical dispensary and fraudulently obtaining marijuana. For this reason, Daniel cannot be described as an innocent party. He played a central role in causing his claimed injuries.

Our conclusion is consistent with decisions from other states, which we turn to in light of the scarcity of relevant decisions in Connecticut. *Price* v. *Purdue Pharma Co.*, 920 So. 2d 479 (Miss. 2006), on which Burnham relies, is instructive. In that case, a plaintiff brought an action against various defendants, including several doctors who had prescribed him the painkiller OxyContin. Id., 481–82. The plaintiff asserted medical malpractice claims against the doctor defendants, claiming that he suffered injuries from ingesting the drug. Id. The defendant doctors moved for summary judgment pursuant to the wrongful conduct rule, and the plaintiff, in opposing the motions, claimed only that the defendant doctors breached the applicable standard of care. Id., 483. The trial court granted summary judgment for the defendant doctors, and the plaintiff appealed. Id.

On appeal, the Supreme Court of Mississippi affirmed the judgment. The court noted that, "if the plaintiff is a lawbreaker at the time of his injury, that alone is not enough to bar the plaintiff from recovery. . . . The injury must be a proximate result of committing the illegal act. . . . The injury must be traceable to his own breach of the law and such breach must be an integral and essential part of his case. . . . The question is not merely when the wrongdoing was done, but what resulted from it. . . . [I]f a plaintiff actually requires essential aid from his own illegal act to establish a claim, he has no case." (Citations omitted; internal quotation marks omitted.) Id., 485.

Applying these principles, the court reasoned that the plaintiff "absolutely requires the essential aid from his own misdeeds to establish his claim. His violation of the law is not merely a condition, but instead an integral and essential part of his case and *the* contributing cause of his alleged injury." (Emphasis in original.) Id. The court emphasized that "[t]he undisputed fact

remains that [the plaintiff] obtained a controlled substance through his own fraud, deception, and subterfuge by misrepresenting his medical history and ongoing treatment to those from whom he sought care. This offense is the central point to every claim on which he rested his already tenuous case, which therefore now completely collapses." Id., 486. Accordingly, the court held "that the wrongful conduct rule in Mississippi prevents a plaintiff from suing caregivers, pharmacies, and pharmaceutical companies and laboratories for addiction to a controlled substance which he obtained through his own fraud, deception, and subterfuge." (Internal quotation marks omitted.) Id.

Similarly, in *Orzel* v. *Scott Drug Co.*, 449 Mich. 550, 537 N.W.2d 208 (1995), a plaintiff brought a negligence action against a defendant, a pharmacy, alleging that the defendant was negligent in filling the plaintiff's prescriptions for Desoxyn, "a trade name for the chemical methamphetamine, [which] is a schedule 2 controlled substance . . . ." Id., 552. The defendant failed to confirm the plaintiff's identity when filling prescriptions that were written for individuals other than the plaintiff, and it filled the prescriptions too frequently. Id., 569. The jury returned a verdict for the plaintiff, but the trial court granted the defendant's motion for judgment notwithstanding the verdict on the ground that the plaintiff's illegal acts of obtaining the drug without a valid prescription barred his claims. Id., 557. On appeal, the Supreme Court of Michigan had little difficulty concluding that the plaintiff's "illegal conduct is of the type that warrants application of the wrongful-conduct rule. By his own admissions, as well as that of his counsel, [the plaintiff] repeatedly violated several provisions of the controlled substances act when he obtained, possessed, and used Desoxyn without a valid prescription." (Footnotes omitted.) Id., 562–63. The court then addressed the plaintiff's argument that the wrongful

conduct rule was inapplicable because his illegal conduct was not the cause of his injuries. Specifically, he argued that, after years of abusing Desoxyn, he was legally insane when he interacted with the defendant, thereby excusing what otherwise would be illegal conduct. Id., 566. The court rejected this claim, concluding that "the illegal conduct that [the plaintiff] engaged in while he was sane served as 'a' proximate cause of his asserted injuries. . . .

"[The plaintiff's] use of Desoxyn while he was sane cannot be characterized as a separate transaction from his use while he was insane, because his initial consumption of the drug inevitably led to this subsequent use while he was insane. Consequently, any injuries that are a direct result of his use while he was insane are also foreseeable consequences of his use while he was sane.

"The [plaintiff] inadvertently concede[s] the significant causal relationship between [his] use of Desoxyn while he was sane and his injuries insofar as [he] cannot establish [his] cause of action without relying on it: [the plaintiff's] use of Desoxyn while he was sane directly and proximately caused the insanity that [he] insist[s] excuses portions of his illegal conduct, and, in turn, precludes application of the wrongful-conduct rule. In other words, [the plaintiff's] use of Desoxyn while he was sane is an integral and essential part of [his] case. . . . [Thus, the plaintiff's] use of Desoxyn while he was sane serves as a proximate contributing cause of his asserted injuries." (Citation omitted; internal quotation marks omitted.) Id., 567–68.

Notably, although the court found that the defendant's conduct "was seriously blameworthy"; id., 569; it determined that none of the limitations or exceptions to the wrongful conduct rule applied and, therefore, that the plaintiff's claims were barred because they

were "based, at least in part, on [the plaintiff's] illegal conduct." Id., 577.

The same reasoning applies in the present cases, where the plaintiff's claims arise from Daniel's illegal conduct in obtaining a controlled substance through fraud. On the basis of the submissions presented to the court in connection with the motions for summary judgment, there is no genuine issue of material fact that Daniel intentionally lied to the defendants to obtain a PTSD diagnosis so that he could purchase medical marijuana and that the plaintiff's sole claim is that Daniel's injuries were caused by his use of the medical marijuana that he illegally obtained. Given these undisputed facts, we reject the plaintiff's characterization of Daniel's injuries as independent of, or collateral to, his illegal conduct. Indeed, the record does not give rise to a genuine dispute as to whether the injuries the plaintiff alleges resulted from Daniel's abuse of a controlled substance are connected to obtaining that controlled substance by fraud—that is precisely the risk created by such conduct. Furthermore, the defendants' alleged medical malpractice—misdiagnosing Daniel with PTSD and certifying him for medical marijuana—is exactly the result that Daniel sought to accomplish through his illegal conduct. In other words, Daniel achieved the outcome he desired through his fraud and suffered injuries as a result. Thus, just as in *Price* and *Orzel*, Daniel's "violation of the law is not merely a condition, but instead an integral and essential part of his case and *the* contributing cause of his alleged injury." (Emphasis in original.) *Price* v. *Purdue Pharma Co.*, supra, 920 So. 2d 485; see also *Orzel* v. *Scott Drug Co.*, supra, 449 Mich. 568–69 (plaintiff's conduct in illegally obtaining and abusing controlled substance "serve[d] as a proximate contributing cause of his . . . injuries" and thereby satisfied "the causation limitation under the wrongful-conduct rule").

Furthermore, the plaintiff's reliance on the opinions of similar health-care providers opining that the defendants caused Daniel's injuries is misguided. As our Supreme Court explained in *Greenwald*, the wrongful conduct rule applies "only when he who seeks [the court's aid] has violated the law *in connection with the very transaction as to which he seeks legal redress.* Then aid is denied *despite the defendant's wrong*." (Emphasis altered; internal quotation marks omitted.) *Greenwald* v. *Van Handel*, supra, 311 Conn. 386. The rule is based on "the public policy consideration that the courts should not lend assistance to one who seeks compensation under the law for injuries resulting from his own acts when they involve a substantial violation of the law . . . . It simply means that proof of such an injury would not demonstrate any cause of action cognizable at law." (Internal quotation marks omitted.) Id., 385. Therefore, in considering whether the wrongful conduct rule applies, the focus of the analysis is on the plaintiff's conduct to determine whether the plaintiff "violated the law *in connection with the very transaction as to which* [*the plaintiff*] *seeks legal redress.*" (Emphasis in original; internal quotation marks omitted.) Id., 386. As our Supreme Court concluded, "injuries arising from volitional criminal conduct cannot, as a matter of public policy, provide a basis for recovery." Id., 387 n.10. Because there is no genuine issue of material fact as to whether the plaintiff's alleged injuries arose from Daniel's volitional criminal conduct, his claims against the defendants are barred even if the defendants were negligent.

The plaintiff nevertheless directs our attention to an unpublished opinion from the Court of Appeals of Michigan, in which the court, discussing the causal requirement, explained that "an exception to the wrongful conduct rule exists where the wrongful conduct is only collaterally or incidentally connected to the cause of

action so that the plaintiff may prove his case without relying on the wrongful conduct. . . . Similarly, an exception to the rule exists where the illegal conduct is merely a condition and not a contributing cause of the injury and where the plaintiff's illegal conduct does not give rise to both his cause of action and his criminal responsibility." (Citation omitted.) *Marks* v. *Childress*, Docket No. 192638, 1997 WL 33330917, *2 (Mich. App. December 30, 1997).

The plaintiff fails to discuss the facts involved in *Marks* and, instead, simply states in conclusory fashion that "[t]his is the case here, given that the plaintiff's experts have concluded that a diagnosis of PTSD should not have been made based on Daniel's false statements and that the actual cause of Daniel's injuries was [the] defendants' deviation from the standard of care in their management of his care, independent of the false statements. . . . Here, [Daniel's] false statements are not the basis of his cause of action; rather, it was medical malpractice by the defendants in their decision to certify him for medical marijuana without adequate grounds to do so, including the conduct[ing] of an adequate investigation." We are not persuaded.

In *Marks*, approximately one month after a plaintiff stole a gun from a car, a defendant accidentally shot the plaintiff with the stolen gun. *Marks* v. *Childress*, supra, 1997 WL 33330917, *1. The plaintiff brought a negligence action against the defendant, and the trial court rendered judgment for the defendant pursuant to the wrongful conduct rule. Id. On appeal, the court held that the wrongful conduct rule did not apply, reasoning that "[b]eing shot is a risk of being around any weapon, not a risk that either arises from or is increased by the gun's stolen status." Id., *2. The court determined that "the theft was only collaterally or incidentally connected to [the] plaintiff's negligence action and [the] plaintiff could theoretically prevail on his claim without

ever mentioning from where the gun came. In other words, the gun's stolen status was only a condition and not a contributing cause of [the] plaintiff's injury and, although the theft gives rise to [the] plaintiff's criminal responsibility, it did not give rise to his cause of action against [the] defendant." Id.

The present cases are distinguishable from *Marks*. First, the plaintiff alleges that the defendants were negligent in diagnosing Daniel with PTSD and in treating him for that condition, all of which occurred during his criminal act of attempting to obtain a controlled substance by fraud. Thus, the defendants' alleged negligence occurred during the commission of the illegal act in the present cases, whereas the plaintiff in *Marks* was injured approximately one month after he stole the gun during an incident unrelated to the theft.[11] Second, unlike the plaintiff's theft of the gun in *Marks*, which the court noted did not create or increase the risk of being shot, Daniel's wrongful conduct in the present cases—lying to the defendants to convince them that he suffered from PTSD so that he could obtain medical marijuana and then illegally obtaining medical marijuana—undoubtedly created the risk that Daniel would suffer injuries as a result of his volitional illegal conduct. Contrary to the plaintiff's suggestion, Daniel's fraud was not merely incidental to the defendant's alleged malpractice. His false statements to the defendants and his subsequent use of the illegally obtained medical marijuana are the factual underpinnings of his malpractice claims. Given these factual distinctions, *Marks* is of little assistance in the present cases.

The plaintiff also claims that "[s]imilar reluctance in using the wrongful conduct rule to bar a recovery can

[11] One judge dissented in *Marks*, reasoning that, "[b]ecause possession of the firearm underlies any claim for liability in this case, public policy should preclude this [c]ourt from lending its aid to [the] plaintiff, who, in effect, bases his cause of action on his own illegal conduct." *Marks* v. *Childress*, supra, 1997 WL 33330917, *3 (Markey, J., dissenting).

be found in *Manning* v. *Noa*, 345 Mich. 130, 76 N.W.2d 75 (1956), *Cahn* v. *Copac, Inc.*, 198 So. 3d 347 (Miss. App. 2015), [cert. denied, 202 So. 3d 613 (Miss. 2016)], *Tug Valley Pharmacy, LLC* v. *All Plaintiffs Below in Mingo County*, 235 W. Va. 283, 773 S.E.2d 627 (2015) (rejecting wrongful conduct rule), and *Buono* v. *Valentino*, Superior Court, judicial district of New Haven, Docket No. CV-19-6094043-S (July 21, 2020) (70 Conn. L. Rptr. 123).

"Given these authorities, and the record before this court, the *Greenwald* ruling should be limited to its facts and not relied on to bar plaintiff's pursuit of legitimate medical malpractice claims in this case."

Although the plaintiff fails to apply these authorities to the facts presented here, we briefly address their import. In *Manning* v. *Noa*, supra, 345 Mich. 132–33, a plaintiff attended an illegal bingo game at a church and was injured after the game had ended when she fell in a hole while leaving the premises. A jury awarded her damages, and the defendant appealed, claiming that the plaintiff's illegal conduct precluded her recovery. Id., 133, 137. The Supreme Court of Michigan disagreed, concluding that the illegal bingo game was incidental to her injuries because, at the time of her injury, "[t]he evening ha[d] come to a close and the day's pursuits, wicked or pure, [were] over." Id., 134. The court reasoned that, although the plaintiff was on the premises to attend the illegal bingo game, it was not sufficient "that some illegal act be a remote link in the chain of causation." Id., 137.

Similarly, in *Buono* v. *Valentino*, supra, 70 Conn. L. Rptr. 123, a plaintiff brought a premises liability action against a defendant, alleging that he fell due to unsafe changes in the grade along the edge of a driveway coupled with inadequate lighting. As a special defense, the defendant claimed that the plaintiff's action was barred

by the wrongful conduct rule because the plaintiff was on the premises to purchase marijuana from one of the tenants living there. Id. The plaintiff moved to strike the special defense, arguing that there was no causal nexus between his illegal conduct and his injuries. Id. The trial court granted the motion to strike, concluding that "[t]he plaintiff's illegal activity merely served as an occasion for the injury, as opposed to being a proximate contributing cause of [the plaintiff's] asserted injuries." (Internal quotation marks omitted.) Id., 125.

Both *Manning* and *Buono* involved premises liability claims, and the plaintiffs' illegal conduct was the reason for their presence on the premises but did not alter their status as invitees. Indeed, in the present cases, if Daniel had fallen while walking into or out of the defendants' offices due to a defective stair or walkway, there would be no connection between his illegal conduct and his injuries aside from explaining his presence at the location. That, however, is not the case here. Daniel's criminal purpose was to be misdiagnosed with PTSD so that he could obtain and use medical marijuana, and the plaintiff alleges that the cause of his injuries was being misdiagnosed with PTSD and permitted to use medical marijuana. Thus, unlike the illegal bingo game in *Manning* or the illegal sale of marijuana in *Buono*, Daniel's illegal conduct is directly connected to his injuries. Simply put, there is nothing incidental about Daniel's illegal conduct with regard to his injuries.

Next, in *Cahn* v. *Copac, Inc.*, supra, 198 So. 3d 349, a decedent had been admitted to a defendant drug treatment facility for his addiction to alcohol and prescription medications. The decedent stole Suboxone from a physician's office at the facility and subsequently died from an overdose of the drug. Id., 353. The plaintiffs brought a wrongful death action against the treatment facility, a physician, and two nurses, alleging that the

defendants were negligent in treating the decedent after they knew that he had ingested Suboxone and that the defendants' negligent or criminal acts in storing and dispensing Suboxone caused the decedent's death. Id., 361–63. The trial court rendered summary judgment for the defendants pursuant to the wrongful conduct rule. Id., 351.

On appeal, the Mississippi Court of Appeals reversed the judgment, holding that the wrongful conduct rule did not preclude the plaintiffs' medical malpractice and negligence claims. Id., 365. Central to the court's holding was its conclusion that the defendant treatment facility had assumed a duty of care to the decedent to guard against the foreseeable risk that a patient who was a drug addict would attempt to obtain and abuse controlled substances. Id., 361. The court reasoned that the defendants were "paid to assist and treat [the decedent] to help him overcome his drug addiction. . . . It is foreseeable that patients for prescription-drug abuse will attempt to secure prescription drugs if possible, and the defendants had a duty to legally possess Suboxone, to properly and securely store Suboxone, and to restrict access to Suboxone from patients at [the treatment facility]. Here, [the decedent's] death resulted from his addiction to and known propensity to abuse prescription drugs, the very reason he was placed in [the defendants'] care to begin with." Id., 364–65.

In the present cases, however, Daniel was not under the defendants' care for drug abuse. Had that been the case and had the defendants facilitated Daniel's access to additional drugs, our analysis would be different. Instead, Daniel lied to the defendants to induce a diagnosis that would allow him to acquire a controlled substance by fraud. Consequently, as previously noted, the present cases are more analogous to *Price* v. *Purdue*

Pharma Co., supra, 920 So. 2d 479, in which the Mississippi Supreme Court applied the wrongful conduct rule to bar recovery, than they are to *Cahn*.

Last, in *Tug Valley Pharmacy, LLC* v. *All Plaintiffs Below in Mingo County*, supra, 235 W. Va. 283, multiple plaintiffs brought an action against several pharmacies and physicians alleging that the defendants negligently prescribed controlled substances for the plaintiffs, causing the plaintiffs to become addicted to the controlled substances. On a certified question from the trial court, the West Virginia Supreme Court of Appeals declined to adopt the wrongful conduct rule and held "that a plaintiff's immoral or wrongful conduct does not serve as a common law bar to his or her recovery for injuries or damages incurred as a result of the tortious conduct of another. Unless otherwise provided at law, a plaintiff's conduct must be assessed in accordance with [West Virginia's] principles of comparative fault." Id., 292. Our Supreme Court, however, reached a contrary conclusion in *Greenwald*. Specifically, the court held: "[W]e agree with other jurisdictions that have concluded that the mere availability of common-law or statutory comparative negligence, which permits a plaintiff to recover even if his own negligence contributed to his injuries; see General Statutes § 52-572h (b); does not negate application of the wrongful conduct rule." *Greenwald* v. *Van Handel*, supra, 311 Conn. 384.

In sum, Daniel, by his own admission, accomplished his criminal purpose when he obtained medical marijuana by lying to the defendants and suffered injuries due to his use of the medical marijuana he wrongfully acquired through his criminal deception. Accordingly, we agree with the trial court that the undisputed facts establish a direct causal connection between Daniel's injuries and his illegal conduct.

II

The plaintiff also claims that a genuine issue of material fact exists as to whether Daniel's conduct amounted to "serious criminality." We are not persuaded.

As previously noted in this opinion, the wrongful conduct rule has been limited "to cases in which the plaintiff's injuries stem from conduct that is prohibited, as opposed to merely regulated, by law, and the violation is serious or involves moral turpitude." (Internal quotation marks omitted.) *Greenwald* v. *Van Handel*, supra, 311 Conn. 378.

In *Orzel* v. *Scott Drug Co.*, supra, 449 Mich. 561, the Supreme Court of Michigan explained that "[t]he mere fact that a plaintiff engaged in illegal conduct at the time of his injury does not mean that his claim is automatically barred under the wrongful-conduct rule. To implicate the wrongful-conduct rule, the plaintiff's conduct must be prohibited or almost entirely prohibited under a penal or criminal statute. . . .

"In contrast, where the plaintiff's illegal act only amounts to a violation of a safety statute, such as traffic and speed laws or requirements for a safe workplace, the plaintiff's act, while illegal, does not rise to the level of serious misconduct sufficient to bar a cause of action by application of the wrongful-conduct rule."

In the present cases, the court reasoned that "[*t*]*he plaintiff admits that Daniel's conduct constituted a felony* but asserts that, under *Greenwald*, his conduct must be a 'serious' felony and that there is a disputed issue as to whether Daniel's conduct was 'serious.' . . . In describing the requisite nature of the plaintiff's conduct in *Greenwald*, [our] Supreme Court used a number of words and phrases including 'serious felony,' but also 'illegal,' a 'criminal act,' 'illegal conduct,' 'wrongful,'

'conduct that is prohibited,' 'immoral,' 'felonious conduct,' and 'serious criminality.' . . . The court in the present case finds that [Daniel's] conduct meets all of these descriptions, and the undisputed admitted facts establish that his conduct was serious." (Citations omitted; emphasis added.)

On appeal, the plaintiff argues that, "[a]lthough the trial court found Daniel's conduct to amount to serious criminality, it also clearly admits that the undisputed admitted facts merely establish that his conduct was serious. Serious misconduct and serious criminality are different standards. Given that *Greenwald* requires serious criminality before the wrongful conduct rule can be applied, the trial court erred in applying the wrongful conduct rule to this case when the undisputed admitted facts establish only that Daniel's conduct was serious." (Internal quotation marks omitted.) We are not persuaded.

As noted by the trial court, the plaintiff conceded that Daniel's conduct in seeking to obtain medical marijuana by fraud constituted a felony, albeit an unclassified one. For that reason, the court addressed the only disputed point—whether that felony was "serious" for purposes of applying the wrongful conduct rule. On appeal, however, the plaintiff offers no argument as to why Daniel's illegal conduct was not "serious" and, instead, appears to concede this point by arguing that "the undisputed admitted facts establish only that Daniel's conduct was serious." (Internal quotation marks omitted.)

Given that the plaintiff presents no meaningful argument in support of his claim that a genuine issue of material fact exists as to whether Daniel's conduct amounted to serious criminality, we decline to construct one on his behalf. See *Harris* v. *Bradley Memorial Hospital & Health Center, Inc.*, 306 Conn. 304, 337,

50 A.3d 841 (2012) ("this court will not make arguments on behalf of parties that have declined to make any"), cert. denied, 569 U.S. 918, 133 S. Ct. 1809, 185 L. Ed. 2d 812 (2013). Nonetheless, we note that courts in other jurisdictions have upheld the application of the wrongful conduct rule where the illegal conduct at issue involved violations of the state's controlled substances act. See *Orzel* v. *Scott Drug Co.*, supra, 449 Mich. 561–64 (holding application of wrongful conduct rule appropriate where plaintiff illegally obtained and used controlled substance); see also *Price* v. *Purdue Pharma Co.*, supra, 920 So. 2d 485–86 (holding that wrongful conduct rule applied where plaintiff illegally obtained and used prescription painkiller OxyContin). Thus, given that there is no genuine issue of material fact that Daniel's conduct in fraudulently obtaining medical marijuana constituted a violation of § 21a-266 (a) and that such a violation constitutes a felony pursuant to § 21a-255 (c), we have no difficulty concluding that Daniel's violation of this state's controlled substances act warrants application of the wrongful conduct rule.

The judgments are affirmed.

In this opinion the other judges concurred.

CIRCULENT, INC. *v.* THE HATCH AND BAILEY COMPANY (AC 45277)

Cradle, Clark and Seeley, Js.

Syllabus

The plaintiff technology services provider sought to recover damages from the defendant for, inter alia, breach of contract on the basis of the defendant's alleged failure to pay amounts owed under two agreements, a managed technologies service agreement and a disaster recovery services agreement. The evidence submitted at trial included exhibit 5, a billing statement from the plaintiff to the defendant representing invoices generated by the plaintiff and payments made by the defendant, and

exhibit 13, an accounts receivable from the plaintiff showing amounts unpaid by the defendant. The trial court rendered judgment for the defendant based on its findings that the defendant paid in full the amounts due to the plaintiff under the terms of the agreements. On appeal to this court, the plaintiff argued that the court erred in finding that the defendant had paid in full the amounts owed on both agreements and that the term of the disaster recovery services agreement had been one year rather than three years. *Held*:

1. The trial court's finding that the defendant tendered payments in full under the terms of the managed technologies service agreement was clearly erroneous: although the court cited to exhibits 5 and 13 in support of its finding, this court found that those exhibits demonstrated that the defendant failed to make payments through the end of the agreement, and no other evidence in the record supported the trial court's finding; moreover, a witness for the defendant testified that the defendant stopped paying the plaintiff under the agreement, and the court's conclusion that the defendant did not untimely terminate the agreement was predicated on its clearly erroneous finding that the defendant tendered payment in full under the agreement; accordingly, because this court concluded that the trial court's error was harmful, the plaintiff was entitled to a new trial on the count of the complaint alleging breach of this agreement.
2. The trial court's finding that the term of the disaster recovery services agreement was one year was clearly erroneous: record evidence, including written information on the agreement itself as well as testimony from the plaintiff's president and chief executive officer, supported the plaintiff's contention that the term of the agreement was three years, and no evidence supported the court's finding that the term was one year; moreover, evidence in the record, including exhibits 5 and 13, revealed that the defendant did not tender payments in full on the agreement during the three years following its effective date; accordingly, because the trial court's clearly erroneous findings undermined this court's confidence in the court's fact-finding process, the plaintiff was entitled to a new trial on the count of the complaint alleging breach of this agreement.

Argued November 7, 2022—officially released February 14, 2023

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the plaintiff withdrew certain counts of the complaint; thereafter, the case was tried to the court, *Jacobs*, *J.*; judgment for the defendant on the remaining counts of

the complaint, from which the plaintiff appealed to this court. *Reversed*; *new trial.*

John L. Cesaroni, with whom, on the brief, was *Aaron A. Romney*, for the appellant (plaintiff).

Bruce L. Elstein, for the appellee (defendant).

Opinion

CLARK, J. In this action for breach of contract, the plaintiff, Circulent, Inc., appeals from the judgment of the trial court rendered in favor of the defendant, The Hatch and Bailey Company. On appeal, the plaintiff claims that the court erred in finding that (1) the defendant paid in full the amounts owed to the plaintiff on the parties' managed technologies services agreement (MTS agreement), (2) the term of the parties' "Disaster Recovery-as-a-Service" agreement (DRaaS agreement) was one year rather than three years, and (3) the defendant paid in full the amounts owed on the DRaaS agreement. The plaintiff argues that, as a result of its erroneous findings, the court improperly rendered judgment in favor of the defendant as to counts one and two of the plaintiff's complaint, which alleged a breach of the DRaaS agreement and a breach of the MTS agreement, respectively. Because we conclude that the court's conclusions as to those counts rested on clearly erroneous factual findings, we reverse the judgment of the trial court and remand the case for a new trial as to those counts.

The following procedural history and facts, as found by the court in its posttrial memorandum of decision, are relevant to our resolution of the plaintiff's appeal. The plaintiff commenced this action in July, 2020, alleging that the defendant (1) breached the parties' DRaaS agreement (count 1), (2) breached the parties' MTS

agreement (count 2), (3) breached the parties' "Firewall-as-a-Service" agreement (count 3), and (4) tortiously interfered with a contractual relationship (count 4).

On October 5, 2020, the defendant filed its answer, special defenses and counterclaims. As to its special defenses, the defendant alleged that (1) the liquidated damages clauses in the contracts were unenforceable, (2) the restrictive covenants in the agreements that prohibited the defendant from engaging the plaintiff's personnel also were unenforceable, (3) it paid all the sums due under the agreements, and (4) the plaintiff refused and neglected to approve a modification request in accordance with the terms of the MTS agreement. As to its counterclaims, the defendant alleged that the plaintiff violated 18 U.S.C. § 2707[1] and Connecticut's Unfair Trade Practices Act, General Statutes § 42-110a et seq.

Prior to trial, the issues to be decided were narrowed. As to count two, the plaintiff no longer pursued its allegations that the defendant materially breached the agreement by engaging the plaintiff's employees prior to the termination of the agreement. Rather, count two's focus was narrowed to the defendant's alleged early termination of the MTS agreement and its failure to pay the amounts owed on the agreement. The plaintiff withdrew counts three and four. And the defendant's counterclaims were stricken by the court.[2]

In June, 2021, the case was tried to the court, *Jacobs*, *J.*, in a three day remote trial. On December 1, 2021, the court issued its memorandum of decision, finding that, "[o]n September 22, 2017, the parties entered into

[1] Title 18 of the United States Code, § 2707, creates a private right of action for a knowing violation of the Stored Communications Act, 18 U.S.C. § 2701 et seq.

[2] The defendant has not challenged that decision on appeal.

the written but unsigned [MTS agreement]. [Trial Exhibit 2.] Pursuant to the terms of the MTS agreement, the plaintiff was to provide technology services and numerous devices to the defendant for three years beginning on [October 16, 2017] and ending on [October 31, 2020], and the defendant was to pay a monthly fee of $3875.39 to the plaintiff for said term.

"The MTS agreement included the following provision for modification of the terms of the agreement: 'The parties agree that any modifications or additions to the Work shall be described in a written Modification of Work order to be approved or denied by [the plaintiff].' [Trial Exhibit 2.] No provision within the [MTS] agreement specified that a particular form was required to be submitted in order for the requested modification to be considered.

"On May 16, 2019, the defendant notified the plaintiff of its request to reduce the number of devices managed under the MTS agreement to one device. [Exhibit A.] The plaintiff responded by stating that, pursuant to the MTS agreement, reduction requests must be submitted by a particular form. On July 22, 2019, after the defendant submitted the form provided by the plaintiff, the plaintiff denied the request. [Trial Exhibit J.] In response to the defendant's request, the plaintiff did not provide the reasons for the denial.

"The MTS agreement also included a provision whereby, in relevant part, liquidated damages would be awarded to the plaintiff in the event of the defendant's untimely termination of the [MTS] agreement. [Exhibit 2.]

"The defendant tendered payments in full until the end of the term of the [MTS] agreement. [Trial Exhibits 5 and 13.]

"On December 19, 2017, the parties entered into the written but unsigned [DRaaS agreement]. [Trial Exhibit

1.] Pursuant to said agreement the plaintiff was to provide technology services and devices to the defendant from March 1, 2018, to February 28, 2019, and the defendant would make monthly payments of $572.93 to the plaintiff for the term of the [DRaaS] agreement.

"The DRaaS agreement included the following provision for modification of the terms of the [DRaaS] agreement: 'The parties agree that any modifications or additions to the Work shall be described in a written Modification of Work order to be approved or denied by [the plaintiff].' [Trial Exhibit 1.] No provision within the agreement specified that a particular form was required to be submitted in order for the requested modification to be considered.

"The defendant tendered payments in full until the end of the term of the [DRaaS] agreement. [Trial Exhibits 5 and 13.]

"The DRaaS agreement included a provision whereby, in relevant part, liquidated damages would be awarded in the event of the defendant's untimely termination of the [DRaaS] agreement. [Exhibit 1.]"

In light of these findings, the court stated: "As to the allegations set forth in count one and count two of the complaint, this court concludes that the defendant performed pursuant to the terms of the two agreements, rendering payments as per the agreements. This court concludes that the defendant did not materially breach either of the two agreements. In addition, the court concludes that the defendant's conduct did not constitute untimely terminations of the agreements. The court does not address the enforceability of the liquidated damages clause as the liquidated damages clause is not activated unless, in relevant part, the defendant has terminated the agreement prior to the agreement expiration date.

"As to the allegation set forth in the first special defense, this court concludes that the liquidated damages provision is not activated, as this court has concluded that the defendant did not terminate the agreement. As to the third special defense, this court concludes that the defendant fully paid all sums set forth in the agreements.

"As to the allegations set forth in the fourth special defense, this court concludes that the plaintiff's failure to grant the defendant's reduction request does not constitute a material breach of contract. Pursuant to the modification terms of the agreements, the plaintiff had the authority to deny the request and no obligation to explain the reasons it did so." Accordingly, the court rendered judgment in favor of the defendant on counts one and two of the complaint.

On December 3, 2021, the plaintiff filed a motion to reargue, arguing, inter alia, that the court erroneously found that the defendant paid the amounts due to the plaintiff under the terms of their written agreements. The plaintiff argued that, "[b]ecause there is no evidence in the record from which the court could have made that finding, and it is clear that the court misconstrued undisputed evidence, [the plaintiff] respectfully requests that the court grant reargument and enter judgment in favor of [the plaintiff] as to counts one and two of the complaint."

The defendant filed its own motion to reargue and an objection to the plaintiff's motion to reargue. As to the court's finding that the defendant paid in full the amounts owed on the MTS agreement, the defendant conceded that "[t]he position on reargument presented by the plaintiff is correct concerning the defendant's proof of payment . . . ." The defendant argued, however, that the court's mistake did not end the inquiry,

contending that the evidence "supported that the plaintiff materially breached the MTS agreement and that the defendant did not do so." The defendant argued that the court's finding regarding the payment on the DRaaS agreement was supported by the evidence.

On January 5, 2022, the court, in a summary, one word order, denied the parties' motions to reargue. On January 6, 2022, the plaintiff filed another motion to reargue, this time directing the court to the defendant's motion to reargue, which revealed that the parties agreed that the court misinterpreted exhibits 5 and 13[3] with respect to its finding that the defendant paid in full the amounts owed under the MTS agreement. On February 1, 2022, the court denied the plaintiff's second motion to reargue in a summary, one word order. This appeal followed.[4]

We begin by setting forth the relevant legal principles governing our review of the plaintiff's claims. "[W]here the factual basis of the [trial] court's decision is chal-

[3] Exhibit 5 is a billing statement dated May 26, 2021, that reflects the amounts billed by the plaintiff and the payments made by the defendant for the time period December 31, 2018, to May 10, 2021, including amounts purported to be past due.

Exhibit 13 is an accounts receivable for the defendant dated June 21, 2021, described by Marcus Lee, the plaintiff's president and CEO, as an "aging summary," which shows the amounts owed to the plaintiff by the defendant.

[4] On February 18, 2022, after filing its appeal, the plaintiff filed a motion for articulation with the trial court, asking that it articulate "how the trial court determined that the defendant . . . paid the amounts due under the [MTS agreement] through the end of its term"; "how the trial court determined that the [DRaaS agreement] . . . expired on February 28, 2019"; and "how the trial court determined that the defendant paid the amounts due under the DRaaS agreement through the end of its term." On April 12, 2022, the trial court issued an order indicating that its memorandum of decision "references the specific exhibits on which it relied in arriving at each of its determinations," and that "its decision is neither ambiguous nor deficient."

On April 19, 2022, the plaintiff filed with this court a motion for review, asking that this court order the trial court to articulate the basis of its findings that the plaintiff set out in its motion for articulation. On June 15, 2022, this court granted review but denied the requested relief.

lenged we must determine whether the facts set out in the memorandum of decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, those facts are clearly erroneous." (Internal quotation marks omitted.) *Downing* v. *Dragone*, 184 Conn. App. 565, 572, 195 A.3d 699 (2018). "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. . . . Under the clearly erroneous standard of review, a finding of fact must stand if, on the basis of the evidence before the court and the reasonable inferences to be drawn from that evidence, a trier of fact reasonably could have found as it did." (Internal quotation marks omitted.) *NRT New England, LLC* v. *Longo*, 207 Conn. App. 588, 600, 263 A.3d 870, cert. denied, 340 Conn. 906, 263 A.3d 821 (2021). "In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court's ruling." (Internal quotation marks omitted.) *David M. Somers & Associates, P.C.* v. *Busch*, 283 Conn. 396, 403, 927 A.2d 832 (2007).

"[W]here . . . some of the facts found [by the trial court] are clearly erroneous and others are supported by the evidence, we must examine the clearly erroneous findings to see whether they were harmless, not only in isolation, but also taken as a whole. . . . If, when taken as a whole, they undermine appellate confidence in the court's [fact-finding] process, a new hearing is required." (Internal quotation marks omitted.) *Osborn* v. *Waterbury*, 197 Conn. App. 476, 485, 232 A.3d 134 (2020), cert. denied, 336 Conn. 903, 242 A.3d 1010 (2021).

I

The plaintiff first claims that the court erroneously found that the defendant paid the amounts owed on the MTS agreement in full through the end of its term and that the court's determination as to count two was predicated on this erroneous finding. The defendant concedes "that it did not prove payment of the MTS agreement" but nevertheless contends that there was "sufficient support for the court's judgment." We agree with the plaintiff.

We have reviewed the record thoroughly and conclude that the trial court's decision as to count two rests on a clearly erroneous factual finding because there is no evidence supporting the court's finding that "[t]he defendant tendered payments in full until the end of the term of the [MTS] agreement." Although the court cited to exhibits 5 and 13 in support of its finding that payments were made in full under the agreement, our review of those exhibits reveal the opposite to be true. Exhibit 5, a May 26, 2021 billing statement, contains both positive and negative values on it. It was undisputed that the positive values on the statement represented invoices generated by the plaintiff in that amount and that the negative values on the statement indicated payments made by the defendant. A simple inspection of exhibit 5 shows that the defendant ceased making its regular payments after May, 2019, rather than making payments in full through the end of the term of the MTS agreement.[5] Exhibit 13, an accounts receivable, similarly shows that there were amounts unpaid by the defendant after May, 2019. There is no other evidence in the record to support the court's finding. Indeed, the

[5] The court found that, "[p]ursuant to the terms of the MTS agreement, the plaintiff was to provide technology services and numerous devices to the defendant for three years beginning on [October 16, 2017] and ending on [October 31, 2020], and the defendant was to pay a monthly fee of $3875.39 to the plaintiff for said term."

defendant's own witness, Christian Dean, the defendant's general manager and sales manager, testified that the defendant stopped paying under the MTS agreement after May, 2019.

The defendant "acknowledge[s] that it did not prove payment of the MTS agreement" but nevertheless contends that "the court's finding . . . that the defendant did not untimely terminate the MTS agreement was grounded upon the evidence." It contends that, "[a]fter considering the evidence, testimony, credibility, and a fair interpretation of what the MTS agreement provided, the conclusion that the defendant did not breach was properly rendered." The defendant's contention, however, ignores the fact that the trial court's conclusion as to count two relied exclusively on the clearly erroneous factual finding that the defendant tendered full payments to the plaintiff. Indeed, the court's memorandum of decision stated in no uncertain terms that the "defendant performed pursuant to the terms of the two agreements, *rendering payments as per the agreements*" and, therefore, "the defendant did not materially breach either of the two agreements." (Emphasis added.) Immediately following these conclusions, the court went on to state in its memorandum of decision that, "[i]n addition, the court concludes that the defendant's conduct did not constitute untimely terminations of the agreements." A fair reading of the court's conclusion as to count two reveals that it was predicated on the court's clearly erroneous finding that the defendant tendered payments in full under the MTS agreement.

Because we conclude that the trial court's judgment as to count two relied exclusively on the court's clearly erroneous factual finding that the defendant "tendered payments in full until the end of the term of the [MTS] agreement," we are compelled to conclude that the court's error was harmful, requiring a new trial. See, e.g., *Osborn* v. *Waterbury*, supra, 197 Conn. App. 488

("[b]ecause the trial court's clearly erroneous finding that there were 'perhaps as many as 400 students' on the playground was so inextricably intertwined with the court's conclusion that the defendants were negligent, we are constrained to conclude that the court's error was harmful"); *Downing* v. *Dragone*, supra, 184 Conn. App. 574–75 (new trial required because trial court's reasoning substantially relied on clearly erroneous factual finding).

II

The plaintiff next argues that the court erroneously rendered judgment in favor of the defendant on count one because the court's conclusion as to that count also rested on clearly erroneous findings. The plaintiff claims that trial court's finding that the defendant "tendered payments in full until the end of the term of the [DRaaS] agreement" was clearly erroneous because it was predicated on the court's erroneous finding that the term of the DRaaS agreement was one year, instead of three years. We agree with the plaintiff.

The court found that the term of the DRaaS agreement was one year—"the plaintiff was to provide technology services and devices to the defendant from March 1, 2018, to February 28, 2019 . . . ." Citing to exhibits 5 and 13; see footnote 3 of this opinion; the court found that "[t]he defendant tendered payments in full until the end of the term of the [DRaaS] agreement . . . ." (Citation omitted.)

In its appellee brief, the defendant acknowledges that "the parties agreed that the plaintiff would provide backup and disaster recovery services for the defendant for *three years*," as opposed to one year. (Emphasis added.) The defendant appears to argue nevertheless that the court's factual finding that the defendant fully paid the DRaaS agreement was "firmly based upon the

evidence." In particular, it claims that exhibit 5 "demonstrates payment in full of the sums claimed due under the DRaaS agreement." Pointing to four particular invoices, the defendant claims that when one compares exhibit 5 to exhibit 13, it corroborates payment in full. The plaintiff disagrees. It contends that the defendant's argument is a "misrepresentation of the record." The plaintiff argues that it is not in dispute that the defendant made a few small payments to the plaintiff on account of the DRaaS agreement after December 1, 2020. The plaintiff argues that "the uncontroverted evidence showed that the plaintiff applied those payments to the oldest outstanding invoices that the defendant had failed to pay prior to December 1, 2020, and therefore, any payments made after December 1, 2020, with respect to the DRaaS agreement were properly applied to those older invoices."

On the basis of our review of the record, we agree with the plaintiff that the court's conclusion as to count one also rested on clearly erroneous factual findings. We have found no evidence in the record that supports the court's finding that that the term of the DRaaS agreement was for one year—"from March 1, 2018, to February 28, 2019." Instead, the evidence presented supports the plaintiff's contention that the term of the DRaaS agreement was three years. Indeed, on page 8 of the DRaaS agreement, next to the field titled "Term," there is a box marked "3 years." Additionally, testimony of Marcus Lee, the plaintiff's president and CEO, confirmed that the term of the DRaaS agreement was for three years.

The court's memorandum of decision reveals that its finding that the defendant "tendered payments in full until the end of the term of the [DRaaS] agreement" and its ultimate conclusion that the defendant did not materially breach the DRaaS agreement was predicated on its erroneous finding that the term of the DRaaS

agreement was one year. What is more, the plaintiff is correct in that the evidence in the record reveals that the defendant did not in fact "tender payments in full" on the DRaaS agreement during the *three years* (as opposed to the one year) following the effective date of the agreement. The trial court's clearly erroneous findings, taken as whole, undermine this court's confidence in the court's fact-finding process, requiring a new trial as to count one.[6] See *Autry* v. *Hosey*, 200 Conn. App. 795, 801, 239 A.3d 381 (2020) ("[i]f, when taken as a whole, [the clearly erroneous findings] undermine appellate confidence in the court's [fact-finding] process, a new hearing is required" (internal quotation marks omitted)).[7]

The judgment is reversed and the case is remanded for a new trial on counts one and two of the plaintiff's complaint.

In this opinion the other judges concurred.

[6] In addition to reversing the trial court's judgment, the plaintiff invites this court to "direct the trial court to enter judgment in favor of the plaintiff." We decline its invitation because we do not have the requisite factual findings to do so. See *United Concrete Products, Inc.* v. *NJR Construction, LLC*, 207 Conn. App. 551, 565 n.17, 263 A.3d 823 (2021) ("[a] trial court's decision that 'rests on a clearly erroneous factual finding' requires a new trial").

[7] Although the defendant contends that there are alternative grounds on which to affirm the court's judgment, we decline to review them. First, none of the defendant's purported alternative grounds for affirmance were decided by the trial court. It is well known that "[o]nly in [the] most exceptional circumstances can and will this court consider [an alternative ground for affirmance] . . . that has not been raised and *decided* in the trial court." (Emphasis added; internal quotation marks omitted.) *State* v. *Juan J.*, 344 Conn. 1, 12, 276 A.3d 935 (2022). This is not an exceptional circumstance. Second, even if this court wished to decide those claims, we would be unable to do so because the trial court did not make the requisite findings necessary to decide them or because the ones that it did make are ones on which we cannot rely. See *Hartford* v. *McKeever*, 314 Conn. 255, 274, 101 A.3d 229 (2014) (Appellate Court not required to review alternative ground for affirmance "when the record was inadequate for review of the claim because the trial court had not made the requisite factual findings"); see also parts I and II of this opinion.

DANIEL MCGOVERN *v.* PAULA MCGOVERN
(AC 45028)
(AC 45029)

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

Syllabus

The plaintiff appealed to this court from the judgment of the trial court dissolving his marriage to the defendant after the plaintiff and his counsel failed to appear for trial. The plaintiff's counsel had filed several motions on the day of the trial prior to the time trial was to start. After trial began, counsel filed a motion for a continuance in which she stated that she had suddenly become ill and could not proceed. The court denied the motion that day, stating that it had waited for counsel and her client for a reasonable amount of time before starting the proceeding and had not been informed of the motion for a continuance until well into the proceeding. The court dismissed the plaintiff's complaint and rendered judgment on the defendant's cross complaint. The court thereafter denied the plaintiff's motion to reconsider its ruling on the request for a continuance and denied his motion to open the judgment. *Held*:

1. The trial court did not abuse its discretion in denying the plaintiff's motion for a continuance: the record revealed a pattern of violation by the plaintiff of deadlines set by the court, including his failure to file a financial affidavit and to comply with trial management orders, the financial affidavit he ultimately filed was wholly inadequate, and he only belatedly and partially complied with the trial management orders after the defendant filed a motion for sanctions; moreover, the court reasonably could have considered the impact of the delay on the defendant, as the start date of the trial had been set six months previously and the dissolution action had been pending for more than one year, and, although sudden illness of a party's counsel could form a legitimate reason for a continuance, the plaintiff's motion was not filed until after the start of trial, and no reason was offered in the motion for the failure of the plaintiff himself to appear.
2. The plaintiff's claim that the trial court abused its discretion in denying his motion to open the judgment was unavailing; the court acted reasonably in rejecting the plaintiff's reasons for opening the judgment, namely, his counsel's sudden illness and a claim of immeasurable harm resulting from the dissolution of the marriage, and the plaintiff did not file either a notice pursuant to the applicable rule of practice (§ 64-1 (b)) seeking the required oral or written decision from the court for its denial of the motion to open or a motion asking the court to articulate the factual and legal basis for its ruling.

Argued January 18—officially released February 14, 2023

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the defendant filed a cross complaint; thereafter, the matter was tried to the court, *Price-Boreland*, *J.*; subsequently, the court dismissed the complaint; thereafter, the court, *Price-Boreland*, *J.*, rendered judgment on the cross complaint and dissolved the marriage and granted certain other relief; subsequently, the court denied the plaintiff's motion to open and vacate the judgment, and the plaintiff filed separate appeals with this court; thereafter, the appeals were consolidated. *Affirmed*.

Jessica C. Wilson, for the appellant (plaintiff).

John F. Morris, for the appellee (defendant).

Opinion

ALVORD, J. The plaintiff, Daniel McGovern, appeals from the judgment of the trial court dissolving his marriage to the defendant, Paula McGovern, and denying his motion to open the judgment of dissolution. On appeal, the plaintiff claims that the court abused its discretion in (1) denying his motion for a continuance and (2) denying his motion to open the judgment of dissolution.[1] We affirm the judgment of the trial court.

[1] Although the plaintiff's first claim, as phrased in the plaintiff's statement of issues, could be construed as challenging the court's custodial and property division orders, the argument contained in the plaintiff's brief focuses on the court's decision to proceed with the dissolution trial in the absence of the plaintiff and its denial of his motion for continuance. The plaintiff does not provide any argument or analysis in support of any claim that the court misapplied the law or abused its discretion in distributing the parties' marital assets. "[When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.) *C. B.* v. *S. B.*, 211 Conn. App. 628, 630, 273 A.3d 271 (2022). Accordingly, any claim that the court improperly distributed the parties' marital assets is deemed abandoned.

In his appellate brief, the plaintiff also raised an unpreserved constitutional claim. Specifically, he argued that he was deprived of his "fundamental

The following facts and procedural history are relevant to our resolution of the plaintiff's appeal. The parties are the parents of a child born in February, 2005. The parties were married in October, 2005. A prior action for dissolution of the marriage was commenced by Paula in a self-represented capacity in August, 2018 (2018 dissolution proceeding). See *McGovern* v. *McGovern*, Superior Court, judicial district of New Haven, Docket No. FA-18-5043830-S. The court rendered a judgment of dissolution in the 2018 dissolution proceeding in January, 2019, but subsequently granted Daniel's motion to open the judgment in June, 2019, filed by his counsel. In August, 2019, Paula, who remained self-represented, withdrew the 2018 dissolution action.

In May, 2020, the plaintiff commenced the present dissolution action. The defendant filed an answer and cross complaint, which was amended on October 9, 2020, and August 24, 2021. A remote trial was scheduled to be held on August 27, 2021, at 2 p.m.[2] Earlier that day, the trial was rescheduled to 3 p.m. to accommodate the court's schedule. All parties were notified of the time change.

The court commenced the remote trial at 3:05 p.m. and noted that neither the plaintiff nor his attorney was present. The court noted that the defendant had filed a cross complaint and offered her counsel the opportunity to be heard. The defendant's counsel requested that the court dismiss the plaintiff's complaint and render judgment on the defendant's cross complaint in accor-

liberty interest in the care and custody of his child without due process" when the court awarded the defendant sole custody of the parties' child, without having heard from the plaintiff, who did not appear on the date of trial. The parties' child was born in February, 2005, and attained the age of eighteen in February, 2023. During oral argument before this court on January 18, 2023, the plaintiff's counsel conceded that the plaintiff's unpreserved claim with respect to custody of the child is moot.

[2] The judicial notice scheduling the trial for August 27, 2021, was issued on February 3, 2021.

dance with the defendant's proposed orders. The court took a recess. After it returned on the record, the court reviewed the procedural history of the case with the defendant's counsel, following which it dismissed, with prejudice, the plaintiff's complaint and considered the defendant's cross complaint to be the matter before the court. The court then took another recess. When it returned on the record, the court considered the defendant's proposed orders.

The court examined relevant documents in the file: both parties' financial affidavits[3] and the child support guidelines worksheet that had been filed by the plaintiff's counsel in May, 2021. With respect to the parties' then sixteen year old child, the child support guidelines worksheet prepared by the plaintiff indicated that his presumptive child support payment would be $16 per week. The defendant confirmed with the court that she was not seeking child support.

The defendant was sworn in and provided testimony. With respect to the real estate asset listed on the defendant's financial affidavit, the defendant testified that she had purchased the home in Hamden four years prior to the marriage with her own money and that she had paid the mortgage herself since the date of purchase. The defendant testified that she had paid all expenses related to the parties' child and their home, both prior to the parties' separation in 2014, when the plaintiff left the home and family, and after the separation. The defendant testified that the plaintiff was not a partner in sharing the financial responsibilities of the marriage. The defendant requested that the court award her the home. With respect to the defendant's pension, the defendant testified that she has been employed as

[3] The defendant filed an updated financial affidavit on August 19, 2021. The plaintiff did not file an updated financial affidavit, and the court relied on his June 7, 2021 financial affidavit. See footnote 6 of this opinion.

a teacher by the city of New Haven for thirty-five years and has made contributions from her wages to her pension plan for the entirety of her employment, which included years both prior to the marriage, during the nine years the plaintiff was living with the family, and after the parties' separation in 2014.

The court then adopted most of the defendant's proposed orders and incorporated them into the judgment of dissolution. Specifically, the court granted the defendant sole custody of the parties' child and ordered that the plaintiff "may have visitation with the child solely at the [defendant's] discretion." The court did not award alimony or child support to either party.[4] The court ordered that each party retain his or her own assets and liabilities as identified on each party's respective financial affidavit.[5] This order included the defendant's retaining her retirement plan assets and the home in Hamden where she and the child were living.

Several filings were made on the day of the trial but prior to the scheduled 3 p.m. start of the trial. First, the defendant filed a motion for sanctions, arguing that the plaintiff had failed to comply with the court's standing orders by not submitting, among other documents, a current financial affidavit and written proposed orders for trial.[6] The court did not rule on this motion.[7] The

[4] Pursuant to General Statutes § 46b-56c, the court retained jurisdiction to enter educational support orders for the parties' child.

[5] We note that the financial affidavit filed by the plaintiff was egregiously lacking in reliable financial information. Under certain categories, including utilities and transportation, the plaintiff put "TBD." Debts were not identified as sole or joint. Certain assets reflect a value of "TBD," and the affidavit does not indicate whether those assets are owned solely or jointly.

[6] In April, 2021, the court ordered the plaintiff to file a financial affidavit by April 26, 2021. The plaintiff did not file a financial affidavit in compliance with the court's order. On May 3, 2021, the court again ordered the plaintiff to file a financial affidavit by May 10, 2021. On May 17, 2021, the defendant filed a motion for contempt on the basis of the plaintiff's failure to comply, repeatedly, with the court's orders. On June 7, 2021, the plaintiff filed a financial affidavit.

[7] The court issued an order stating that it would address the issue at the beginning of trial but did not thereafter issue a ruling on the motion.

plaintiff's counsel then filed amended, proposed orders[8] and a motion captioned "motion for order to reassign trial date to status conference." In the motion, the plaintiff's counsel stated that the matter had been assigned to be heard from 3 p.m. to 5 p.m. and that she expected the case to take between two and four days of trial. The plaintiff's counsel also represented in the motion that, despite her good faith efforts to proceed with trial and prepare her client, "the plaintiff's status at a rehabilitation center with limited access to outside contact has been a barrier to full preparation." Additionally, the plaintiff's counsel represented in the motion that depositions had not yet been conducted due to the defendant's unavailability and limited access to the plaintiff. Thus, the plaintiff's counsel requested in the motion that the trial date be used as a status conference wherein only the attorneys' presence would be required. The court did not rule on this "motion for order."

The plaintiff's counsel also filed, after the scheduled 3 p.m. start of the trial, a motion for continuance, in which it was represented that she "ha[d] become suddenly ill (dehydrated to a severe extent) and [could not] proceed today."[9] By order dated the same day, the

[8] In the plaintiff's principal appellate brief, the plaintiff's counsel represents that the amended proposed orders were filed on August 26, 2021. The official case detail, however, reflects a filing date of August 27, 2021, the date of the trial.

[9] In the plaintiff's principal appellate brief, his counsel represents: "[The] plaintiff's counsel, a solo practitioner, reached out to the only other attorney associated with her firm, an intern, to see if he might be able to appear on her behalf at 3:00 p.m. Although he was unable to appear, the intern assisted [the] plaintiff's counsel with the electronic filing (e-filing) of a Motion for Continuance . . . which was e-mailed directly to the trial court's attention via Case Flow Coordinator . . . and opposing counsel at 3:08 p.m. with the subject heading URGENT: PLEASE SEE MOTIONS FILED WITH THE COURT TODAY." The email contained in the plaintiff's appendix, which also was filed as an exhibit in connection with the plaintiff's motion for reargument and reconsideration, indicates that it was sent by Richard L. Straube, Esq., of Wilson Family Law, LLC.

court denied the motion for continuance, stating: "The matter was initially scheduled for 2 p.m. today, August 27, 2021; however, it was moved to 3 p.m. due to the court's conflict with an ongoing hearing. The court was ready at 3 p.m.; however, [the court] waited for [the plaintiff's counsel] and her client for a reasonable amount of time before starting the proceedings. The court was informed of [the plaintiff's] motion [for continuance] well into the proceeding."[10]

On September 16, 2021, the plaintiff filed a motion seeking reargument and reconsideration of the court's ruling on his motion for continuance, the ruling on his motion to seal, and the judgment of dissolution and attendant orders. On September 17, 2021, the court denied the plaintiff's motion for reargument and reconsideration. Also on September 17, 2021, the plaintiff filed a motion to open the dissolution judgment. Therein, he argued that "[c]ounsel for the plaintiff was not able to proceed on [August 27, 2021] and notified the court, through a colleague[11] as soon as she was able . . . . This case involves the custody of a minor child as well as the finances of a sixteen (16) year marriage; a grave injustice and immeasurable harm would result if the plaintiff were not allowed his right to be heard." (Footnote added.) On September 20, 2021, the court denied the plaintiff's motion to open the judgment. This appeal followed.[12]

I

The plaintiff's first claim on appeal essentially challenges the court's denial of his motion for continuance. Specifically, he argues that, "despite alternatives and

[10] The plaintiff also filed, on the day of trial, a motion to seal his previously filed "motion for order to reassign trial date to status conference" on the ground that it contained "sensitive information." By order issued the same day, the court denied the motion to seal.

[11] See footnote 9 of this opinion.

[12] The plaintiff filed two separate appeals, which were consolidated.

ability to conduct a trial on the merits, the postponement of which would have prejudiced no one, the trial court instead chose to proceed without plaintiff's counsel in an exercise of judicial conduct that can only be seen as so arbitrary 'as to vitiate logic.' " The defendant responds that the court acted well within its discretion in declining to continue the matter. We agree with the defendant.

"The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel. . . . There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied. . . . [I]f the reasons given for the continuance do not support any interference with [a] specific constitutional right, the [reviewing] court's analysis will revolve around whether the trial court abused its discretion. . . .

"Decisions to grant or to deny continuances are very often matters involving judicial economy, docket management or courtroom proceedings and, therefore, are particularly within the province of a trial court. . . . Whether to grant or to deny such motions clearly involves discretion, and a reviewing court should not disturb those decisions, unless there has been an abuse of that discretion, absent a showing that a specific constitutional right would be infringed. . . .

"Our Supreme Court has articulated a number of factors that appropriately may enter into an appellate court's review of a trial court's exercise of its discretion in denying a motion for a continuance. Although resistant to precise cataloguing, such factors revolve around

the circumstances before the trial court at the time it rendered its decision, including: the timeliness of the request for continuance; the likely length of the delay; the age and complexity of the case; the granting of other continuances in the past; the impact of delay on the litigants, witnesses, opposing counsel and the court; the perceived legitimacy of the reasons proffered in support of the request; [and] the [movant's] personal responsibility for the timing of the request . . . ." (Internal quotation marks omitted.) *McNamara* v. *McNamara*, 207 Conn. App. 849, 866–67, 263 A.3d 899 (2021).

In the present case, the trial had been scheduled approximately six months earlier for the date of August 27, 2021. The plaintiff's counsel did not file the motion for continuance of the trial until *after* the remote proceeding had begun.[13] At the time of trial, the dissolution action had been pending for more than one year, as it had been filed in June, 2020. The record reveals a pattern of the plaintiff's violation of deadlines set by the court throughout the dissolution proceedings. First, the plaintiff twice failed to comply with orders directing him to file a financial affidavit, only filing it after the defendant filed a motion for contempt. The financial affidavit he ultimately filed was wholly inadequate, lacking in reliable financial information. Second, the plaintiff failed to comply with the court's trial management orders, which required him to file written proposed orders and witness and exhibit lists, among other documents. Again, the plaintiff only belatedly and partially

[13] To the extent that this court were to construe the plaintiff's motion for order "to reassign [the] trial to [a] status conference," filed earlier on the date of the trial, as, in substance, a request for a continuance, it would not change our analysis. The motion for order was filed within six hours of the start of trial, there was no indication in the record that the court was aware of the motion for order, and the plaintiff's counsel did not appear for the proceeding that she requested to have reassigned to a status conference.

complied with the court's orders after the defendant filed a motion for sanctions.

Furthermore, as noted previously, the parties had been involved in dissolution proceedings for approximately three years, beginning with the 2018 dissolution action that went to judgment before being opened based on the plaintiff's motion and withdrawn by the defendant. The court reasonably could have considered the impact of the delay on the defendant, who had been a party to dissolution proceedings for approximately three years. With respect to the legitimacy of the reason for the request for continuance, although sudden illness of a party's counsel could form a legitimate reason for a continuance, the motion for continuance in the present case was not filed until after the start of the proceeding, and no reason was offered in that motion for the failure of the plaintiff himself to appear.

On the basis of the foregoing, we conclude that the court's denial of the plaintiff's motion for a continuance, made after the start of the proceeding, was not an abuse of its discretion. See, e.g., *Watrous* v. *Watrous*, 108 Conn. App. 813, 828, 949 A.2d 557 (2008) ("We are especially hesitant to find an abuse of discretion when the motion is made on the day of trial. . . . Every reasonable presumption in favor of the proper exercise of the trial court's discretion will be made." (Internal quotation marks omitted.)).

II

The plaintiff's next claim on appeal is that the court abused its discretion in denying his motion to open the judgment. We disagree.

"The principles that govern motions to open or set aside a civil judgment are well established. Within four months of the date of the original judgment, Practice

Book [§ 17-4] vests discretion in the trial court to determine whether there is a good and compelling reason for its modification or vacation. . . . The exercise of equitable authority is vested in the discretion of the trial court and is subject only to limited review on appeal." (Internal quotation marks omitted.) *Farren* v. *Farren*, 142 Conn. App. 145, 152, 64 A.3d 352, cert. denied, 309 Conn. 903, 68 A.3d 658 (2013). "We do not undertake a plenary review of the merits of a decision of the trial court to grant or to deny a motion to open a judgment. . . . In an appeal from a denial of a motion to open a judgment, our review is limited to the issue of whether the trial court has acted unreasonably and in clear abuse of its discretion. . . . In determining whether the trial court abused its discretion, this court must make every reasonable presumption in favor of its action. . . . The manner in which [this] discretion is exercised will not be disturbed so long as the court could reasonably conclude as it did." (Internal quotation marks omitted.) *Zilkha* v. *Zilkha*, 167 Conn. App. 480, 494, 144 A.3d 447 (2016).

In the present case, the court summarily denied the plaintiff's motion to open the judgment. Although the denial of a motion to open is a judgment for which an oral or written decision is required; see Practice Book § 64-1 (a) (6); *Valenzisi* v. *Connecticut Education Assn.*, 150 Conn. App. 47, 51, 90 A.3d 324 (2014); the plaintiff did not file a notice pursuant to Practice Book § 64-1 (b) with the appellate clerk's office, nor did he file a motion asking the court to articulate the factual and legal basis for its ruling. Given our duty to make every reasonable presumption in favor of the correctness of the court's decision; see, e.g., *Gordon* v. *Gordon*, 148 Conn. App. 59, 67–68, 84 A.3d 923 (2014); our review of the record before us leads us to conclude that the court acted reasonably and did not abuse its discretion in rejecting the plaintiff's reasons offered in support of

his motion to open the judgment, namely, counsel's sudden illness and a claimed "immeasurable harm" arising out of the court's dissolution of the parties' sixteen year marriage.[14] See *Brehm* v. *Brehm*, 65 Conn. App. 698, 706, 783 A.2d 1068 (2001) (court did not abuse its discretion in denying motion to open dissolution judgment rendered without defendant present where defendant was aware of conflict with trial date in advance and did not request continuance until day of trial).

The judgment is affirmed.

In this opinion the other judges concurred.

[14] As noted previously, although the plaintiff's motion claimed harm arising out of the determination of custody of the parties' minor child, the plaintiff's counsel, at oral argument before this court, stated that he was not seeking relief relative to custody, given the age of the parties' child. See footnote 1 of this opinion.