CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

FREDERICK J. WALTERS ET AL. *v.* FRANCESCO G. SERVIDIO ET AL. (AC 46455)

Moll, Westbrook and Flynn, Js.

Syllabus

The plaintiffs and the defendants owned real property on Road A, which intersects with Road B in two locations. The northern intersection was north of the defendants' properties and south of the plaintiffs' properties and was known as the "Y right of way." The only access to the southern intersection was obtained by traveling over an area between the defendants' properties (disputed area), which was rocky, wooded, and unpaved. The Y right of way, which provided the plaintiffs with access to Road B, was much closer to the plaintiffs' properties than the southern intersection. In 1908, before the Y right of way existed, the original subdivision map for the area was recorded on the land records. In 1958, the northern part of the subdivision was resubdivided into larger lots, some of which would later become the plaintiffs' properties, and the resubdivision map recorded on the land records shows the Y right of way. When the defendants purchased their property on Road A, the paving in front of their house that ran from the northern part of the disputed area to the Y right of way was not a road but a driveway nine feet in width, and there was no paving or other physical manifestation of a road in the disputed area. Since the defendants purchased the property on Road A in 1987, with the exception of a short period of time during a sewer project in late 2003 and early 2004, during which time the defendants granted to the town of Greenwich an easement for sewer installation, the disputed area had not been passable to traffic and the defendants had not observed anyone travel through the disputed area for any purpose, including to access the southern intersection. The

The court further reasoned that, "[w]hile not directly applicable to . . . § 53a-39, the statute governing parole eligibility and suitability, General Statutes § 54-125a (f) (4),[2] provides an instructive and useful framework in assessing the existence of 'good cause' sufficient to modify a sentence . . . particularly since the factors enumerated must be . . . evaluated with the objective of being consistent with the factors set forth in [General Statutes] § 54-300."[3] (Footnote added.) Accordingly, the court explained that "[f]actors that have been examined include, but are not limited to: (1)

[2] General Statutes § 54-125a (f) (4) provides in relevant part: "After [a] hearing [to determine eligibility for parole release], the [Board of Pardons and Paroles] may allow [a] person to go at large on parole with respect to any portion of a sentence that was based on a crime or crimes committed while such person was under eighteen years of age if the board finds that such parole release would be consistent with the factors set forth in subdivisions (1) to (4), inclusive, of subsection (c) of section 54-300 and if it appears, from all available information . . . that [among other things] . . . (C) such person has demonstrated substantial rehabilitation since the date such crime or crimes were committed considering such person's character, background and history, as demonstrated by factors, including, but not limited to, such person's correctional record, the age and circumstances of such person as of the date of the commission of the crime or crimes, whether such person has demonstrated remorse and increased maturity since the date of the commission of the crime or crimes, such person's contributions to the welfare of other persons through service, such person's efforts to overcome substance abuse, addiction, trauma, lack of education or obstacles that such person may have faced as a child or youth in the adult correctional system, the opportunities for rehabilitation in the adult correctional system, whether the person has also applied for or received a sentence modification and the overall degree of such person's rehabilitation considering the nature and circumstances of the crime or crimes."

[3] General Statutes § 54-300 provides in relevant part: "(c) In fulfilling its mission, the [Connecticut Sentencing Commission] shall recognize that: (1) The primary purpose of sentencing in the state is to enhance public safety while holding the offender accountable to the community, (2) sentencing should reflect the seriousness of the offense and be proportional to the harm to victims and the community, using the most appropriate sanctions available, including incarceration, community punishment and supervision, (3) sentencing should have as an overriding goal the reduction of criminal activity, the imposition of just punishment and the provision of meaningful and effective rehabilitation and reintegration of the offender, and (4) sentences should be fair, just and equitable while promoting respect for the law."

the gravity of his crime; (2) correctional record and length of time incarcerated; (3) his age and circumstances at the time of the commission of the crime; (4) whether he has demonstrated remorse and increased maturity since the date of the offense; (5) whether he has contributed to the welfare of other persons through service while incarcerated; and (6) the degree [to] which he has fully availed himself of opportunities for growth, rehabilitation, and contribution within the correctional system considering the nature and circumstances of the crime he committed."

The court concluded that, "after a review and consideration of the information and material presented, and with contemplation of the proper standard," the defendant had not established good cause to modify his sentence "when balanced against the facts and harm created by the serious crime he committed." The court went on to explain that its decision was "not meant to lessen or nullify the positive steps the defendant has taken during his period of incarceration or his ability to succeed once he is released. However, the court felt that, although the defendant showed remorse . . . the gravity of the crime and harm to the victims and society at large requires that the request for sentence modification be denied at this time."

On September 28, 2022, the defendant filed a "motion for rectification," in which he argued that the court, in ruling on his motion for sentence modification, had improperly failed to consider the fact that he had been on mind-altering drugs at the time he committed the underlying offenses. He further contended that "[a] criminal's state of mind . . . must be considered by the court where [the defendant's] motion for release is at issue, and to leave it out is plain error." On September 30, 2022, the court, *Harmon, J.*, held a hearing on the defendant's motion, which the court treated as a motion for reconsideration. In a memorandum of decision

dated December 2, 2022, the court denied the defendant's motion for reconsideration, explaining that "when rendering its initial decision [on the motion for sentence modification], [the court] was aware of the drug dependency and the effect it may have had in contributing to the illegal activity by [the defendant]. The court must still consider the gravity of the crime. The offense put both police officers and innocent civilians at risk and resulted in an injury to a young child. Based on the gravity of the offense, the court does not believe a sentence modification is appropriate at this time . . . ." This appeal followed.

On appeal, the defendant claims that the court abused its discretion in finding that he had failed to establish good cause to modify his sentence pursuant to § 53a-39. We disagree.

We begin by setting forth the standard of review and legal principles relevant to this claim. Section 53a-39 provides in relevant part that "the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced. . . ."[4]

[4] General Statutes § 53a-39 provides in relevant part: "(a) Except as provided in subsection (b) of this section, at any time during an executed period of incarceration, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced.

"(b) On and after October 1, 2021, at any time during the period of a sentence in which a defendant has been sentenced prior to, on or after October 1, 2021, to an executed period of incarceration of more than seven years as a result of a plea agreement, including an agreement in which there is an agreed upon range of sentence, upon agreement of the defendant and the state's attorney to seek review of the sentence, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on proba-

"[I]n arriving at its sentencing determination, the sentencing court may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information [it] may consider or the source from which it may come. . . . [T]his broad discretion applies with equal force to a sentencing court's decision regarding a sentence modification . . . . Accordingly, we review a court's judgment granting or denying a motion to modify a sentence for abuse of discretion. . . . An abuse of discretion exists when a court could have chosen different alternatives but has decided the matter so arbitrarily as to vitiate logic, or has decided it based on improper or irrelevant factors. . . . As such, [i]n determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . Generally speaking, under this deferential standard, [w]here the trial court has properly considered all of the offenses proved and imposed a sentence within the applicable statutory limitations, there is no abuse of discretion." (Citations omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Martin G.*, 222 Conn. App. 395, 403–404, 305 A.3d 324 (2023), cert. denied, 348 Conn. 944, 308 A.3d 34 (2024).

The defendant argues that the trial court abused its discretion in determining that he had not established good cause to modify his sentence, in that the court

tion or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced. . . ."

We note that § 53a-39 has been amended since the events underlying this appeal; see Public Acts 2023, No. 23-47, § 1; those amendments have no bearing on the merits of this appeal. Accordingly, we refer to the current revision of the statute.

We also note that the defendant, in his appellate brief, asserts that the legislative intent behind earlier amendments to § 53a-39 in 2021 and 2022 "appears . . . [to have been] largely directed at ushering the earlier release of rehabilitated inmates." We decline to opine as to the intent of the legislature in amending the statute because it is not necessary to the resolution of the defendant's claim on appeal.

improperly weighed certain factors and failed to consider others. First, the defendant contends that the court improperly relied solely on the severity of the defendant's offense when denying his modification. The court's decision, which plainly reflects that it weighed several factors, belies that contention and does not merit further discussion.

The defendant also argues that "[i]t is inappropriate for the courts to rely upon the statutory parole framework when assessing good cause pursuant to § 53a-39" because that reliance necessarily "constrains the 'unlimited' nature of the appropriate inquiry espoused [in our case law]." Although the defendant argues that "the weight and value that the court assigned to this framework was inappropriate, particularly given the different functions of the trial court and the Board of Pardons and Parole," he concedes that "the trial court was free to consider [the § 54-125 (f) (4)] factors in arriving at its conclusion . . . ." Indeed, this court has held that, "in reviewing applications for sentence modifications of definite sentences, [the sentencing court] performs a function similar to that of a parole board"; *State* v. *Millhouse*, 3 Conn. App. 497, 500–501, 490 A.2d 517 (1985); and has affirmed the consideration of § 54-125 (f) (4) factors when considering sentence modifications. See *State* v. *Martin G.*, supra, 222 Conn. App. 405–406. This is consistent with our well settled law that a sentencing court's broad discretion also applies to its decisions regarding sentence modification and it "may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information [it] may consider or the source from which it may come." (Internal quotation marks omitted.) *State* v. *Dupas*, 291 Conn. 778, 783, 970 A.2d 102 (2009).[5]

[5] The defendant asks this court to "provide guidance to the lower courts regarding proper considerations that should inform the [good cause] standard" in the context of § 53a-39. He cites *Kelsey* v. *Commissioner of Correction*, 202 Conn. App. 21, 31–35, 244 A.3d 171 (2020), aff'd, 343 Conn. 424, 274 A.3d 85 (2022), as an example of the type of guidance this court should

Moreover, the court did not limit its consideration of the defendant's motion to the factors enumerated in the parole statute. Although the defendant argues that the court should have relied more heavily on his rehabilitation and certain other factors,[6] he does not cite any legal authority that governs the degree of weight a court must afford factors that it considers in determining whether good cause has been established, nor are we aware of any. Here, the court expressly considered the steps the defendant has taken toward rehabilitation but concluded that those steps did not outweigh other factors that it considered. The court's consideration of all of these factors was consistent with the broad discretion afforded to courts in ruling on motions for sentence modification.[7] We therefore conclude that the

provide. In response to the defendant's concern, *Martin G.*, and now the present case, provide a nonexclusive list of considerations that may properly inform a court's ruling on a motion for sentence modification in similar cases. We decline, however, to provide further guidance at this time given the broad discretion of the courts in this area; see *State* v. *Martin G.*, supra, 222 Conn. App. 404; and the " 'largely unlimited' " information a court can consider in ruling on a motion for sentence modification. *State* v. *Dupas*, supra, 291 Conn. 783.

[6] The defendant contends that the court should have considered: "(1) whether the defendant's sentence comports with contemporary norms in sentencing, (2) whether and what goals of sentencing will be better met by the defendant's release or continued incarceration, (3) the defendant's life expectancy and ability to contribute to society upon reentry, (4) the likelihood of recidivism, (5) whether the court may impose supervision to better assist with the defendant's reintegration needs or to promote the safety of society, (6) whether scientific advances since the time of the defendant's sentencing place the defendant's original sentence in a different light, (7) whether the 'new' information presented by the defendant since the time that he was sentenced warrants a departure from the original sentence, and (8) input from any victim(s)." (Footnotes omitted.)

[7] The defendant also argues that the court abused its discretion because, even if the court properly considered the factors it used in making its determination as to good cause, those factors weigh in favor of his release and the state's arguments to the contrary are weak. It is axiomatic that, in determining whether there has been an abuse of discretion, this court "[does] not review the evidence to determine whether a conclusion different from the one reached could have been reached." (Internal quotation marks omitted.) *Alder* v. *Alder*, 60 Conn. App. 612, 613, 760 A.2d 1263 (2000).

court did not abuse its discretion in determining that the defendant failed to establish good cause to warrant a sentence modification.

The judgment is affirmed.

In this opinion the other judges concurred.

MEINEKE BRISTOL, LLC *v.* PREMIER AUTO, LLC, ET AL.

MARIAMMA BABU, LLC *v.* PREMIER AUTO, LLC, ET AL.

585 MAIN STREET, LLC *v.* PREMIER AUTO, LLC, ET AL.

PREMIER AUTO, LLC *v.* AMERICAN TRADING COMPANY, INC., ET AL. (AC 46467)

Cradle, Suarez and Westbrook, Js.

Syllabus

P Co. and F appealed to this court from the judgments rendered by the trial court in four related civil actions that were consolidated for trial and that encompassed various claims by multiple entities concerning the sale of three businesses to P Co. and associated leases, notes, and guarantee agreements. *Held*:

1. This court dismissed the portion of the appeal related to P Co. and F's claim that the trial court abused its discretion when it precluded them from presenting certain evidence at trial; because P Co. and F failed to challenge on appeal each of two independent grounds on which the trial court excluded the evidence, this court could not grant them any practical relief.
2. This court declined to consider the merits of P Co.'s claim that the trial court erred in determining that P Co. failed to prove its breach of contract cause of action, as P Co. failed to provide an adequate record for review.

Argued May 21—officially released July 30, 2024

Procedural History

Action, in the first case, to recover damages for, inter alia, fraudulent transfer, and for other relief, brought to the Superior Court in the judicial district of New Britain, Housing Session, action, in the second case, to recover damages for, inter alia, fraudulent transfer, and for other relief, brought to the Superior Court in the judicial district of Middlesex, action, in a third case, to recover damages for, inter alia, fraudulent transfer, and for other relief, brought to the Superior Court in the judicial district of Fairfield, Housing Session at Bridgeport, and action, in a fourth case, to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Middlesex; thereafter, the first two cases were transferred to the Superior Court in the judicial district of Fairfield, Housing Session at Bridgeport; subsequently, the cases were consolidated and transferred to the Superior Court in the judicial district of Hartford, Complex Litigation Docket, where the named defendant in the first three cases and the defendants in the fourth case filed various counterclaims; thereafter, Michael J. Flynn was cited in as a defendant in the first three cases, and Patrick Flynn was cited in as a counterclaim defendant in the fourth case; subsequently, the plaintiff in each of the first three cases withdrew its claims as against Michael J. Flynn; thereafter, the cases were tried to the court, *Farley, J.*; judgment in each of the first three cases for Patrick Flynn on the counts of the complaints alleging fraudulent transfer, for the plaintiff in each of the first three cases on all remaining counts of the complaints and on the counterclaims, and judgment for the defendants in the fourth case on the complaint and on the counterclaim, from which Premier Auto, LLC, et al. appealed to this court. *Appeal dismissed in part; affirmed.*

Paul H. D. Stoughton, for the appellants (named defendant et al. in the first three cases and named plaintiff in the fourth case).

Colin B. Connor, for the appellee (plaintiff in the first case).

Opinion

SUAREZ, J. Premier Auto, LLC (Premier Auto), and Patrick Flynn appeal from the judgments rendered by the trial court in four related civil actions that were consolidated for trial.[1] The actions encompass various

[1] In *Meineke Bristol, LLC* v. *Premier Auto, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-20-5066300-S, Meineke Bristol, LLC, brought an action against Premier Auto, Patrick Flynn, and Michael J. Flynn. Counts one and two of the amended complaint, directed at Premier Auto, sounded in breach of commercial lease and unjust enrichment, respectively. Counts three, four, and five, directed at Patrick Flynn, sounded in breach of personal guarantee, fraudulent transfer, and common-law fraudulent conveyance, respectively. Counts six and seven, directed at Michael J. Flynn, sounded in fraudulent transfer and common-law fraudulent conveyance, respectively. Premier Auto filed a two count counterclaim sounding in intentional misrepresentation and negligent misrepresentation.

In *Mariamma Babu, LLC* v. *Premier Auto, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-20-5066301-S, Mariamma Babu, LLC, brought an action against Premier Auto, Patrick Flynn, and Michael J. Flynn. Counts one and two of the amended complaint, directed at Premier Auto, sounded in breach of commercial lease and unjust enrichment, respectively. Counts three, four, and five, directed at Patrick Flynn, sounded in breach of personal guarantee, fraudulent transfer, and common-law fraudulent conveyance, respectively. Counts six and seven, directed at Michael J. Flynn, sounded in fraudulent transfer and common-law fraudulent conveyance, respectively. Premier Auto filed a two count counterclaim sounding in intentional misrepresentation and negligent misrepresentation.

In *585 Main Street, LLC* v. *Premier Auto, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-20-5066302-S, 585 Main Street, LLC, brought an action against Premier Auto, Patrick Flynn, and Michael J. Flynn. Counts one and two of the amended complaint, directed at Premier Auto, sounded in breach of commercial lease and unjust enrichment, respectively. Counts three, four, and five, directed at Patrick Flynn, sounded in breach of personal guarantee, fraudulent transfer, and common-law fraudulent conveyance, respectively. Counts six and seven, directed at Michael J. Flynn, sounded in fraudulent transfer and common-law fraudulent conveyance, respectively. Premier Auto filed a two count counterclaim sounding in intentional misrepresentation and negligent misrepresentation.

In *Premier Auto, LLC* v. *American Trading Co.*, Superior Court, judicial district of Hartford, Docket No. CV-20-5066305-S, Premier Auto brought an action against American Trading Company, Inc.; Babu & Sons, LLC; Bristol Muffler, Inc.; Vital, Inc.; and Vazhayil Babu. In its revised complaint, Premier

claims by multiple entities concerning the sale by Vazhayil Babu of three businesses as well as associated leases, notes, and guarantee agreements to Premier Auto. On appeal, Premier Auto and Patrick Flynn claim that the trial court abused its discretion when it precluded them from presenting certain evidence. Premier Auto also claims that the court erred in determining that Premier Auto failed to prove its breach of contract cause of action. For the reasons set forth subsequently in this opinion, we conclude that the portion of the appeal concerning the first claim is moot and must be dismissed. With respect to the remaining claim in this appeal, we affirm the judgments of the trial court.

The following facts, as found by the court, *Farley, J.*, and procedural history are relevant to the resolution of this appeal. "These four consolidated actions arise out of a purchase and sale agreement for three Meineke auto repair shops, along with two notes associated with the agreement, three commercial leases for the three shop locations in Bristol, Middletown and Monroe, Connecticut, and guarantee agreements associated with the notes and leases. In *Premier Auto, LLC* v. *American Trading Co.*, Superior Court, judicial district of Hartford, Docket No. CV-20-5066305-S, Premier Auto sued several corporate entities[2] that constitute the 'seller' in the purchase and sale agreement as well as the seller's individual 'controlling stockholder'[3] (collectively referred

Auto alleged causes of action sounding in breach of contract, intentional misrepresentation, and negligent misrepresentation. American Trading Company, Inc.; Babu & Sons, LLC; Bristol Muffler, Inc.; Vital, Inc.; and Vazhayil Babu thereafter filed various counterclaims against Premier Auto sounding in breach of contract. On February 18, 2021, Patrick Flynn was cited in as a counterclaim defendant in this action.

In light of the fact that Premier Auto and Patrick Flynn had various party designations at the time of trial, for simplicity we will refer in this opinion to these parties by name, rather than by a party designation.

[2] "The defendant entities are: American Trading Company, Inc.; Babu & Sons, LLC; Bristol Muffler, Inc.; and Vital, Inc. (the 'Babu entities')."

[3] "The individual defendant is Vazhayil Babu ('Babu')."

to as the 'Babu defendants'). The suit alleges a breach of the purchase and sale agreement, intentional misrepresentation, and negligent misrepresentation. The Babu defendants have asserted a counterclaim against Premier Auto and added Patrick Flynn, the guarantor of the notes, as an additional counterclaim defendant. The counterclaim alleges breach of the purchase and sale agreement, the notes and the guarantee. In *Meineke Bristol, LLC* v. *Premier Auto, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-20-5066300-S, *Mariamma Babu, LLC* v. *Premier Auto, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-20-5066301-S, and *585 Main Street, LLC* v. *Premier Auto, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-20-5066302-S, the named plaintiffs (the 'landlord plaintiffs') at the three locations seek to recover past and accelerated rents pursuant to the leases and associated guarantees. They also assert a fraudulent transfer claim against [Patrick] Flynn, the guarantor. Premier Auto and [Patrick] Flynn plead intentional and negligent misrepresentation as a defense and assert counterclaims against the landlord plaintiffs alleging intentional and negligent misrepresentation.

"The case was tried to the court for two days, followed by posttrial briefing. The court finds the issues in favor of the landlord plaintiffs on their claims for breach of the lease agreements and associated guarantees and against Premier Auto and [Patrick] Flynn on the counterclaims asserted in those collection actions. The court finds in favor of [Patrick] Flynn on the fraudulent transfer claims. The court finds in favor of the Babu defendants and against Premier Auto on its breach of contract claim and its intentional and negligent misrepresentation claims in *Premier Auto, LLC* v. *American Trading Co.* and finds in favor of the Babu defendants on their counterclaims in that case for breach of contract against Premier Auto and breach of guarantee

against [Patrick] Flynn."[4] (Footnotes in original.) This

[4] The court set forth its award of damages as follows: "In *Premier Auto, LLC* v. *American Trading Co.*, supra, Superior Court, Docket No. CV-20-5066305-S, the court enters judgment against the plaintiff, Premier Auto, on its complaint and in favor of the defendants against Premier Auto and [Patrick] Flynn as follows on the counterclaims. Judgment enters on count one of the counterclaims against Premier Auto and in favor of American Trading Company, Inc.; Bristol Muffler, Inc.; and Vital, Inc., in the amount of $1 each, plus costs and attorney's fees of $36,727.05. Judgment enters on count one in favor of Babu & Sons, LLC, in the amount of $299,347.08, plus costs and attorney's fees of $36,727.05. Judgment enters on count two of the counterclaims against Premier Auto and in favor of Babu & Sons, LLC, in the amount of $130,368.90. Judgment enters on count three of the counterclaims against Premier Auto and in favor of Babu & Sons, LLC, in the amount of $168,978.18. Judgment enters on count four of the counterclaims against Patrick Flynn and in favor of Babu & Sons, LLC, in the amount of $299,347.08, plus costs and attorney's fees in the amount of $36,727.05. The damages awarded in count four are duplicative of the damages awarded under counts two and three, which, in turn, are duplicative of the damages awarded to Babu & Sons, LLC, on count one. $299,347.08 is the maximum amount Babu & Sons, LLC, may recover from either or both of Premier Auto and [Patrick] Flynn on the counterclaims. The award of attorney's fees is duplicative as to all parties and on all counts and recoverable only once against Premier Auto and/or [Patrick] Flynn.

"In *Meineke Bristol*, *LLC* v. *Premier Auto*, *LLC*, supra, Superior Court, Docket No. CV-20-5066300-S, judgment enters in favor of the plaintiff and against the defendants, Premier Auto and Patrick Flynn, on the plaintiff's complaint in the amount of $392,438.45, plus costs and attorney's fees in the amount of $22,196.13, for a total judgment of $414,634.58. The judgment against Premier Auto is duplicative of the judgment against [Patrick] Flynn and may only be recovered up to the amount of $414,634.58 against either or both of them. Judgment enters against Premier Auto on its counterclaims.

"In *Mariamma Babu*, *LLC* v. *Premier Auto*, *LLC*, supra, Superior Court, Docket No. CV-20-5066301-S, judgment enters in favor of the plaintiff and against the defendants, Premier Auto and Patrick Flynn, on the plaintiff's complaint in the amount of $647,125.66, plus costs and attorney's fees in the amount of $22,196.13, for a total judgment of $669,321.79. The judgment against Premier Auto is duplicative of the judgment against [Patrick] Flynn and may only be recovered up to the amount of $669,321.79 against either or both of them. Judgment enters against Premier Auto on its counterclaims.

"In *585 Main Street*, *LLC* v. *Premier Auto*, *LLC*, supra, Superior Court, Docket No. CV-20-5066302-S, judgment enters in favor of the plaintiff and against the defendants, Premier Auto and Patrick Flynn, on the plaintiff's complaint in the amount of $1,268,213.95, plus costs and attorney's fees in the amount of $22,196.13, for a total judgment of $1,290,410.08. The judgment against Premier Auto is duplicative of the judgment against [Patrick] Flynn

appeal followed. Additional facts and procedural history will be set forth as necessary.

I

Premier Auto and Patrick Flynn first claim that the court abused its discretion when it precluded them from presenting certain evidence at trial. We conclude that this claim is moot.

The following additional facts and procedural history are relevant to this claim. On the second day of trial, Premier Auto attempted to introduce into evidence, through Patrick Flynn's testimony during its case-in-chief, a marketing brochure. Premier Auto and Patrick Flynn represent that this document had been prepared by an agent of the Babu defendants and was given to and relied on by Premier Auto and Patrick Flynn prior to the purchase of the Meineke franchises. It is also undisputed that, contrary to discovery requests and a trial management order, Premier Auto had not produced this document prior to the second day of trial. The Babu defendants and the landlord plaintiffs objected to its admission on several grounds, including lack of authentication, hearsay, and late disclosure. The court sustained the objection.

In its memorandum of decision, the court stated that it excluded the brochure on two grounds: lack of authentication and late disclosure. The court reasoned that "[t]he circumstances under which the brochure was produced, in the middle of the trial even though it ostensibly constituted the heart of the proponents' case, without any authentication by either the Babu [defendants] or [their broker, Ken] Stein, left the authenticity of the materials in question. Principally, however, the court excluded these materials because they should

and may only be recovered up to the amount of $1,290,410.08 against either or both of them. Judgment enters against Premier Auto on its counterclaims."

have been produced long before the trial and, at a minimum, when the parties submitted their compliance with the trial management order. [Patrick] Flynn testified that after the first day of evidence he 'realized the importance of spending additional time trying to locate a copy' of the brochure. He should have realized its importance when responding to discovery and preparing exhibits for trial. The Babu defendants . . . were prejudiced by the failure of Premier Auto and [Patrick] Flynn to locate and produce this material sooner than halfway through the trial. The Babu defendants had no fair and reasonable opportunity to investigate and defend a claim based on this material."

The court expressly relied on two independent legal grounds in precluding the evidence at issue. In their appellate brief, Premier Auto and Patrick Flynn merely assert that their late disclosure of the brochure could not have prejudiced the Babu defendants because it was prepared by a third party on the Babu defendants' behalf. Thus, Premier Auto and Patrick Flynn challenge the court's ruling on only one ground, that the evidence was prejudicial due to its untimely disclosure. Premier Auto and Patrick Flynn do not challenge the court's conclusion that the evidence was not properly authenticated.

"[W]here alternative grounds found by the reviewing court and unchallenged on appeal would support the trial court's judgment, independent of some challenged ground, the challenged ground that forms the basis of the appeal is moot because the court on appeal could grant no practical relief to the complainant." (Internal quotation marks omitted.) *Horenian* v. *Washington*, 128 Conn. App. 91, 99, 15 A.3d 1194 (2011); see also *Bongiorno* v. *J & G Realty, LLC*, 211 Conn. App. 311, 322, 272 A.3d 700 (2022).

Therefore, because the appellants have not challenged on appeal each independent ground for excluding the proffered exhibit, we cannot grant them any practical relief with respect to their first claim. Accordingly, we dismiss the portion of the appeal related to that claim as moot.

II

Premier Auto next claims that the court erred in determining that it failed to prove its breach of contract cause of action. We decline to reach the merits of this claim because Premier Auto has failed to provide an adequate record for review.

The following factual and procedural history is relevant to our resolution of this claim. One of the core factual disputes at trial was whether certain tax returns containing adverse financial information about the Meineke franchises were disclosed to Patrick Flynn. Patrick Flynn testified that there was never any such disclosure from either the Babu defendants or Stein. Premier Auto claimed before the trial court that the failure to disclose these materials amounted to a breach of the purchase and sale agreement. The Babu defendants argued that the records were turned over to Stein with the direction for them to be given to Premier Auto and Patrick Flynn. Stein was not called to testify at trial, and no other evidence as to whether the tax returns were disclosed was presented. In its memorandum of decision, the court "[found] the evidence in equipoise, requiring the conclusion that Premier Auto failed to carry its burden on the issue." Premier Auto now argues that the evidence was not in equipoise and, in actuality, "the evidence of nondisclosure was clear and unequivocal."

"Factual findings are subject to a clearly erroneous standard of review. . . . It is well established that [a] finding of fact will not be disturbed unless it is clearly

erroneous in view of the evidence and pleadings in the whole record. . . . 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 . . . . Our authority, when reviewing the findings of a judge, is circumscribed by the deference we must give to decisions of the trier of fact, who is usually in a superior position to appraise and weigh the evidence. . . . The question for this court . . . is not whether it would have made the findings the trial court did, but whether in view of the evidence and pleadings in the whole record it is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *J. M.* v. *E. M.*, 216 Conn. App. 814, 820–21, 286 A.3d 929 (2022).

"A determination regarding whether the court's finding was clearly erroneous requires that we review all of the evidence presented to the trial court, including the testimony of the witnesses. Thus, the transcript of the trial is necessary on appeal in order to properly evaluate whether the evidence presented to the trial court supports the court's conclusion . . . .

"[An appellant] has the burden of providing this court with a record from which this court can review any alleged claims of error. . . . Practice Book § 61-10 (a) provides: It is the responsibility of the appellant to provide an adequate record for review. . . . The general purpose of [the relevant] rules of practice . . . [requiring the appellant to provide a sufficient record] is to ensure that there is a trial court record that is adequate for an informed appellate review of the various claims presented by the parties. . . . It is not an appropriate function of this court, when presented with an inadequate record, to speculate as to the reasoning of the trial court or to presume error from a silent record."

(Citations omitted; internal quotation marks omitted.) Id., 821–22.

In the present case, on May 18, 2023, Premier Auto and Patrick Flynn, through their counsel, filed with the Office of the Appellate Clerk a certificate regarding transcripts indicating that, "pursuant to Practice Book § 63-4 (3) . . . no transcript is deemed necessary for this appeal." Our rules of practice, nevertheless, permit a party to include "portions of the transcript" in the appendix to their briefs. See Practice Book § 67-8 (a).[5] In the appendix to its principal brief, Premier Auto provided this court with a portion of the trial transcripts from the July 13 and 14, 2022 trial dates.[6] Premier Auto describes these excerpts as being taken from the testimony of Patrick Flynn and Babu. These excerpts, however, do not provide this court with a complete record of the testimony of these witnesses.[7]

In connection with a claim that requires this court to review the evidence presented at trial, we do not merely rely on an appellant's characterization of the evidence or review only the portions of the evidence on which it relies. Instead, we must consider the evidence as a whole, including evidence of a testimonial nature. In the absence of a complete transcript, we would have to resort to speculation to resolve Premier

[5] Practice Book § 67-8 provides in relevant part: "(a) . . . A party appendix may be used: (1) to include excerpts from exhibits; (2) to include excerpts from the transcripts deemed necessary by any parties pursuant to Section 63-4 (a) (3); (3) to provide other items from the proceeding below that a party deems necessary for the proper presentation of the issues on appeal; or (4) to comply with other provisions of the rules of practice that require the inclusion of certain materials in the party appendix. . . ."

[6] Specifically, Premier Auto submitted seven pages of the July 13, 2022 transcript and nine pages of the July 14, 2022 transcript.

[7] We note that Meineke Bristol, LLC, filed an appellee's brief in this appeal and, in the appendix to its brief, also included portions of the trial transcripts of July 13 and 14, 2022. These additional excerpts of the transcripts do not alter our conclusion that the record is inadequate for review.

Auto's claim that the court erred in determining that it failed to prove its breach of contract cause of action. See *Maye* v. *Canady*, 214 Conn. App. 455, 461, 280 A.3d 1270, cert. denied, 345 Conn. 919, 284 A.3d 627 (2022); see also *R & P Realty Co.* v. *Peerless Indemnity Ins. Co.*, 193 Conn. App. 374, 380, 219 A.3d 429 (2019) ("[i]n the absence of transcripts *of the entire trial*, we cannot evaluate the plaintiffs' arguments in support of their appellate claim without resorting to speculation" (emphasis added)). Accordingly, we are unable to address the merits of this claim because Premier Auto has not provided this court with an adequate record for review.

The portion of the appeal challenging the preclusion of certain evidence is dismissed; the judgments are affirmed in all other respects.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* ANTHONY CRUZ (AC 45685)

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

Syllabus

Convicted of the crimes of assault in the first degree, criminal possession of a firearm and carrying a pistol without a permit, the defendant appealed to this court, claiming that his constitutional rights to confrontation and a fair trial were violated as a result of misrepresentations made by the state in moving to join his case for trial with that of his codefendant, J. The defendant and J had entered an apartment in which C was staying and engaged in an altercation with him, during which the defendant shot C, and C stabbed J with a knife. A police detective, F, interviewed J twice. During trial, the state informed the court that it intended to offer as consciousness of guilt evidence against J a recording of only J's first interview with the police. That recording was admitted into evidence during the state's direct examination of F, and the state did not thereafter question F about the second interview or offer the recording of that interview into evidence. On cross-examination, in response to an open-ended question by defense counsel, F testified that, during the second interview, J had identified the defendant and had

stated that the defendant was in C's apartment at the time of the shooting. The court denied the defendant's motion to strike F's answer but expressed concern about F's reference to the second interview, of which the jury previously had been unaware. The court then approved an agreement between the parties, under which they would each elicit limited testimony from F about the second interview. F further testified that J had later identified the defendant from a photographic array the police had prepared. During closing argument, the state relied on F's testimony as substantive evidence of the defendant's culpability. *Held* that the defendant could not prevail on his unpreserved claim that the joinder of his case with J's case for trial was improper because the state had misrepresented that the evidence in the two cases was cross admissible: it was only after F had referenced J's second interview with the police in a truthful, responsive answer to defense counsel's open-ended question on cross-examination about the police investigation that the state relied on that interview as substantive evidence against the defendant; moreover, at no point prior to that cross-examination did the state use, or suggest an intention to use, the second interview against the defendant, and the defendant abandoned any challenge to the court's denial of his motion to strike F's testimony by failing to brief a claim of error as to that issue; furthermore, defense counsel expressly agreed to the procedure approved by the trial court that permitted the state to introduce limited portions of J's second interview through F's redirect testimony, and defense counsel failed to raise any objection to the agreement on the record.

Argued March 6—officially released July 30, 2024

Procedural History

Substitute information charging the defendant with the crimes of assault in the first degree, conspiracy to commit assault in the first degree, criminal possession of a firearm, criminal use of a firearm, and carrying a pistol without a permit, brought to the Superior Court in the judicial district of Hartford, where the court, *Gold, J.*, granted the state's motion to join for trial the defendant's case with that of a codefendant; thereafter, the case was tried to the jury before *Gold, J.*; verdict of guilty of assault in the first degree, criminal possession of a firearm, criminal use of a firearm and carrying a pistol without a permit; subsequently, the court vacated the verdict as to the charge of criminal use of a firearm; judgment of guilty of assault in the first degree,

criminal possession of a firearm and carrying a pistol without a permit, from which the defendant appealed to this court. *Affirmed.*

Adele V. Patterson, for the appellant (defendant).

James A. Killen, senior assistant state's attorney, with whom, on the brief, were *Sharmese L. Hodge*, state's attorney, and *Emily Dewey Trudeau*, senior assistant state's attorney, for the appellee (state).

Opinion

MOLL, J. The defendant, Anthony Cruz, appeals from the judgment of conviction, rendered after a jury trial, of assault in the first degree in violation of General Statutes § 53a-59 (a) (5), criminal possession of a firearm in violation of General Statutes (Rev. to 2019) § 53a-217, and carrying a pistol without a permit in violation of General Statutes (Rev. to 2019) § 29-35 (a). On appeal, the defendant claims that the state made certain purported misrepresentations in moving to join his case with a codefendant's case that resulted in an improper joinder of the cases and violated his constitutional rights to confrontation and to a fair trial pursuant to the sixth and fourteenth amendments to the United States constitution. We disagree and, accordingly, affirm the judgment of conviction.

The following facts, which the jury reasonably could have found, and procedural history are relevant to our resolution of the defendant's claim. Sometime prior to September 10, 2019, an incident occurred between the defendant and Marcelo Campos. Specifically, Campos witnessed the defendant attempting to get into Campos' car because the defendant believed that Campos had stolen liquor from him. Campos called the police to report the defendant, but the defendant was not arrested in connection with this incident.

During the early morning hours of September 10, 2019, Campos was at an apartment located at 433 Zion Street in Hartford (apartment), which was situated above a bodega owned by the defendant's family. Campos, who was living out of his car at the time, previously had been permitted by the owner of the building to stay in the apartment; however, Campos did not have permission to be at the apartment that morning.

While on the back porch of the apartment, Campos observed a group of individuals outside, one of whom was carrying a gun. Campos went into the apartment, looked out of a window, and saw the group in front of the building, at which point he recognized the defendant as the individual holding the gun. Thereafter, the group gained entry to the building, ascended the stairs, and entered the apartment. At some point, the defendant told Campos, "you're mine, motherfucker." Two of the other individuals in the group, including Jamal Johnson, approached Campos and started swinging at him. Campos, who was armed with two knives, stabbed Johnson. During this tussle, the defendant shot Campos. Following the gunshot, Johnson and the other individual who had been attacking Campos dispersed, with one of them stating, "not here, Ant." The defendant then shot Campos a second time and fled. Campos managed to call 911 and was taken to Hartford Hospital (hospital) to be treated for his injuries, which resulted, inter alia, in the removal of his spleen and a portion of his small intestine.

That same day, Johnson arrived at the hospital to receive treatment for his stab wounds. While at the hospital, Johnson told a police officer who had been dispatched to investigate his stabbing that he had been stabbed in the vicinity of 465 Zion Street in Hartford, which was approximately four or five buildings north

of the apartment, by an unidentified male who had approached him asking for money.

On September 30, 2019, two members of the Hartford Police Department, including Detective Philip Fuschino, interviewed Johnson (first interview). During the first interview, which was recorded, Johnson initially maintained his narrative that an unidentified male stabbed him in the area of 465 Zion Street. Johnson's account changed as the first interview progressed, with Johnson later stating that (1) an unknown assailant had stabbed him downstairs from the apartment (i.e., 433 Zion Street), (2) he chased the assailant upstairs into the apartment, (3) he fought with the assailant, and (4) he exited the apartment after hearing a gunshot. At no point during the first interview did Johnson name the defendant or identify the shooter.

On October 8, 2019, the defendant was arrested in connection with Campos' shooting. Subsequently, on January 3, 2020, Johnson was arrested vis-à-vis Campos' shooting. On the day of his arrest, Johnson was interviewed for a second time by Fuschino and another detective (second interview). During the second interview, which was also recorded, Johnson stated that (1) he knew the defendant by the nickname "Ant," (2) he and the defendant entered the apartment on September 10, 2019, "to fuck up" Campos, and (3) before they had entered the apartment, the defendant was "talking about all the problems he had with Campos . . . ." Johnson never indicated during the second interview that he saw the defendant with a gun or witnessed the defendant shoot at Campos. Subsequently, Johnson picked the defendant out of a photographic array prepared by the police.

In its operative long form information against the defendant, dated April 11, 2022, the state charged the defendant with (1) assault in the first degree in violation

of § 53a-59 (a) (5), (2) conspiracy to commit assault in the first degree in violation of General Statutes §§ 53a-48 and 53a-59 (a) (5), (3) criminal possession of a firearm in violation of General Statutes (Rev. to 2019) § 53a-217, (4) criminal use of a firearm in violation of General Statutes § 53a-216, and (5) carrying a pistol without a permit in violation of General Statutes (Rev. to 2019) § 29-35 (a). In its operative information against Johnson, dated April 11, 2022, the state charged Johnson with conspiracy to commit assault in the first degree in violation of §§ 53a-48 and 53a-59 (a) (5).[1]

On March 1, 2022, pursuant to Practice Book § 41-19,[2] the state filed a motion for joinder of the defendant's case with Johnson's case for trial. The state asserted in relevant part that (1) the defendant and Johnson were "charged with conspiring to assault the same victim, for the same motive, at the same time and place," (2) "[a]ll evidence against one defendant, to include witness testimony, would be used in an identical manner against the other," and (3) "the proffered defenses raised by [the defendant's trial counsel (defense counsel) and Johnson's trial counsel (Johnson's counsel)] are not in conflict, as [the defendant and Johnson] each alleged to have not been present for the shooting, and

[1] In prior informations read to the jury during the first day of trial on April 7, 2022, the state also charged the defendant and Johnson each with conspiracy to commit assault in the first degree in violation of §§ 53a-48 and 53a-59 (a) (4). On April 11, 2022, the trial court, *Gold, J.*, determined that these conspiracy charges were precluded by Wharton's rule, which "provides that [a]n agreement by two persons to commit a particular crime cannot be prosecuted as a conspiracy when the crime is of such a nature as to necessarily require the participation of two persons for its commission." (Emphasis omitted; internal quotation marks omitted.) *State* v. *Jones*, 35 Conn. App. 839, 849, 647 A.2d 43 (1994). Thereafter, the state filed its operative informations, which omitted these conspiracy charges.

[2] Practice Book § 41-19 provides: "The judicial authority may, upon its own motion or the motion of any party, order that two or more informations, whether against the same defendant or different defendants, be tried together."

to have no idea as to the identity of the shooter." On March 3, 2022, the trial court, *Gold, J.*, held a hearing on the motion for joinder. The court summarized that the "motion sets forth the fact that the evidence is the same, in many respects, as to both [the defendant and Johnson]. Both [the defendant and Johnson] have been charged in connection with the same incident. The state represents that the defenses that will be raised by . . . Johnson and [the defendant] are not, in any way, antagonistic. Nor will they require the jury to reject one in order to find the other." Defense counsel and Johnson's counsel did not object to the motion. The court further inquired whether there was any concern about the possibility that the defendant's and Johnson's respective defenses would be mutually antagonistic. Defense counsel and Johnson's counsel responded that they did not discern any risk of presenting antagonistic defenses. The court, without objection, granted the motion for joinder.[3]

On March 24, 2022, the court held a hearing to address outstanding pretrial motions. The state requested that the court address any preliminary objections to exhibits set forth in a proposed exhibit list that the state had circulated to the court and to opposing counsel. In response, defense counsel stated: "I can make it easy for you. I don't have objections to anything." The court then inquired whether the state intended to introduce "Johnson's statement . . . ." The state represented that it planned to offer recordings of the first and second interviews as consciousness of guilt evidence, not for

[3] On March 22, 2022, prior to jury selection, the court summarized the hearing on the motion for joinder, stating in relevant part that it had (1) granted the motion without objection and (2) been "assured by [defense counsel and Johnson's counsel] that they saw no potential for [obstacles to joinder] occurring, anything in the nature of inconsistent defenses." Additionally, at the outset of the first day of trial on April 7, 2022, the court iterated that the respective cases against the defendant and Johnson had been joined without objection.

the truth of the matter asserted, against Johnson only. The state further stated that a limiting instruction preceding the playbacks of the first and second interviews "would be appropriate just because of any potential *Crawford*[4] issues as they relate to [the defendant]." (Footnote added.) With regard to the second interview, the state represented that Johnson "maintain[ed] that [the defendant] did not have a weapon and was not the shooter and that [the shooter] was a third party unknown to both of them." In light of that representation, defense counsel did not object to the admission of the second interview as proffered by the state. With the consent of defense counsel and Johnson's counsel, the court indicated that it would review the first and second interviews in advance of trial.

The joined cases were tried to a jury on April 7, 8 and 11, 2022. Prior to the start of evidence on April 7, 2022, and outside of the jury's presence, the following colloquy occurred between the court and defense counsel regarding the second interview:

"The Court: . . . Johnson in [the second interview] could be seen . . . to some degree [to] implicate [the defendant] in the crimes by putting [the defendant] at the scene of the crime at the time of the crime. I did not hear anything specific that . . . Johnson said that [the defendant] was involved in the shooting or that he possessed the handgun. I think, in fact, [Johnson] said he did not see [the defendant] with a handgun. But [Johnson] does say [the defendant] was . . . at the scene of the crime at the time of the shooting. So, to the extent that will assist the state, one might see that

[4] "In *Crawford* v. *Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), the United States Supreme Court held that testimonial hearsay is admissible against a criminal defendant at trial only if the defendant had a prior opportunity for cross-examination and the witness is unavailable to testify at trial." *State* v. *Armadore*, 186 Conn. App. 140, 148, 198 A.3d 586 (2018), aff'd, 338 Conn. 407, 258 A.3d 601 (2021).

as somewhat of a *Bruton*[5] problem that could warrant a severance. But it's my understanding that you have no objection to that statement being played, and you continue to have no objection to the joinder of these cases. Am I correct in my understanding?

"[Defense Counsel]: One hundred percent correct.

"The Court: One hundred percent correct. All right. So, you're not seeking those statements made by Johnson that put [the defendant] at the scene to be redacted. Correct?

"[Defense Counsel]: No, sir.

"The Court: And you are not seeking, because of those statements, to have the matter severed?

"[Defense Counsel]: That's correct." (Footnote added.)

On April 8, 2022, outside of the jury's presence, the state informed the court that it intended to offer the first interview as consciousness of guilt evidence, but it did not plan to offer the second interview. Later that day, the state called Fuschino as a witness. During Fuschino's direct examination, the court, without objection, admitted the first interview in full, which was played for the jury. The state did not question Fuschino

[5] "[I]n [*Bruton* v. *United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968)], the United States Supreme Court held that a defendant is deprived of his rights under the confrontation clause [of the sixth amendment to the United States constitution] when his codefendant's incriminating confession is introduced at their joint trial, even if the jury is instructed to consider that confession only against the codefendant. The *Bruton* court held that the admission of the codefendant's statements added substantial, perhaps even critical weight to the [g]overnment's case [against the defendant] in a form not subject to cross-examining, since [the codefendant] did not take the stand, and therefore, [the defendant] had been denied his rights of confrontation. . . . In *Bruton* . . . the court emphasized that it was dealing with a case in which the hearsay statement inculpating [the defendant] was clearly inadmissible against him under traditional rules of evidence." (Citation omitted; internal quotation marks omitted.) *State* v. *Robertson*, 254 Conn. 739, 765, 760 A.2d 82 (2000).

regarding the second interview or offer the second interview.

On cross-examination, defense counsel questioned Fuschino about the police investigation into Campos' shooting. During cross-examination, the following colloquy occurred between defense counsel and Fuschino:

"[Defense Counsel]: Okay. So, at the end of the day, you have . . . Campos telling you that [the defendant] is responsible for shooting him, right?[6]

"[Fuschino]: Correct.

"[Defense Counsel]: That there is no other independent evidence whatsoever that would support that other than [Campos'] worth?

"[Fuschino]: Well, during the second interview of . . . Johnson, he identified [the defendant]." (Footnote added.)

Defense counsel immediately moved to strike Fuschino's answer. The state objected, arguing that Fuschino's answer was responsive to defense counsel's question. After excusing the jury, the court stated that defense counsel had asked an "open-ended question" regarding evidence that the police had gathered connecting the defendant to Campos' shooting, to which Fuschino had provided a responsive answer. The court then expressed concern about Fuschino's reference to the second interview, of which the jury previously had been unaware, and indicated that additional action was required to address the issue. The court reserved to the next trial date its ruling on the motion to strike and its consideration of how to rectify the issue caused by Fuschino's testimony.

[6] On September 23, 2019, Campos provided a statement to Fuschino identifying the defendant as the shooter.

On April 11, 2022, outside of the jury's presence, the court denied the motion to strike Fuschino's testimony, determining that Fuschino "did respond appropriately to the question that had been posed by [defense counsel]." Nevertheless, the court determined that it was "incumbent upon [the court] to find some way to protect the rights of [the defendant and Johnson] on one hand, [and] the state's on the other by limiting the extent to which there can be follow up to that." The court then delineated, for the record, an off-the-record agreement reached with counsel (agreement), pursuant to which (1) Fuschino would resume the witness stand, (2) the court would repeat the last two questions that defense counsel had posed to Fuschino and Fuschino's attendant answers, (3) the court would explain to the jury that (a) Johnson had participated in a second interview with the police on the day of his arrest, which interview was conducted by Fuschino, along with another detective, largely in the same fashion as the first interview, and (b) the second interview would not be played for the jury, but counsel would be permitted to ask a few narrow questions regarding the second interview, (4) defense counsel would ask two leading questions to Fuschino about the second interview, reflecting that Johnson never indicated that he saw the defendant either (a) with a gun or (b) shoot Campos, and (5) the state would be afforded an opportunity for redirect examination, which, insofar as it delved into the second interview, would be limited to asking leading questions indicating that (a) Johnson and the defendant entered the apartment to " 'fuck . . . Campos up,' " (b) Johnson referred to the defendant by the nickname "Ant," (c) Johnson selected the defendant's photograph out of an array of photographs prepared by the police, and (d) the defendant "had issues" with Campos. The court noted that it was "trying to find a way to almost thread a needle allowing enough evidence in so as to offset

any suggestion that there was no other evidence against [the defendant] but, at the same time, not allowing that single [question] to throw open the door completely to allow, in essence, the whole second interview . . . to come in." Defense counsel affirmed that he did not object to this procedure.

Before recalling the jury, the court reviewed proposed jury instructions with counsel. In discussing a proposed instruction regarding consciousness of guilt with respect to the first interview, the court inquired whether the instruction should also apply to the evidence concerning the second interview that would be adduced pursuant to the agreement. The state responded that it was seeking to use evidence vis-à-vis the second interview as substantive evidence against the defendant because it was defense counsel who had brought the second interview to the jury's attention. The court responded: "Yeah. I mean, I guess that's going to be argued by all sides substantively." Defense counsel did not object or otherwise interject during this discussion.

After the jury had returned to the courtroom, in accordance with the agreement, the court provided the jury with additional information concerning the second interview. Thereafter, Fuschino resumed the witness stand. On cross-examination, Fuschino testified that, during the second interview, Johnson never indicated that he saw the defendant either (1) with a gun or (2) fire a weapon at Campos. On redirect examination, Fuschino testified that, during the second interview, Johnson stated that (1) he knew the defendant by the nickname "Ant," (2) he and the defendant entered the apartment "to fuck up . . . Campos," and (3) before entering the apartment, the defendant "was talking about all the problems he had with Campos . . . ." Fuschino further testified that Johnson later picked out the defendant from a photographic array.

During its closing argument and rebuttal, the state relied on the second interview as substantive evidence incriminating the defendant. Thereafter, in charging the jury, the court provided a consciousness of guilt instruction as to the first interview and instructed the jury that it could not consider that evidence with respect to the charges against the defendant. The court's jury instructions did not expressly refer to the second interview.

On April 12, 2022, the jury found the defendant guilty of the charges of assault in the first degree, criminal possession of a firearm, criminal use of a firearm, and carrying a pistol without a permit; however, the jury acquitted him of the conspiracy to commit assault in the first degree charge. As to Johnson, the jury found him not guilty of the conspiracy to commit assault in the first degree charge. On July 12, 2022, after vacating the defendant's conviction of criminal use of a firearm,[7] the court sentenced the defendant to a total effective sentence of thirteen years of incarceration followed by seven years of special parole. This appeal followed.

On the basis of the defendant's appellate briefs, we decipher the crux of the defendant's claim to be that the joinder of his case with Johnson's case was improper and his constitutional rights to confrontation and to a fair trial were violated as a result of the state's purported misrepresentations, in moving for joinder,

[7] The court vacated the criminal use of a firearm conviction on the basis of its determination that, pursuant to § 53a-216 and *State* v. *Hardy*, 85 Conn. App. 708, 858 A.2d 845 (2004), aff'd, 278 Conn. 113, 896 A.2d 755 (2006), the defendant could not be convicted "on both [the criminal use of a firearm] charge and the underlying charge, which, in this case, would be the assault in the first degree [charge]." See General Statutes § 53a-216 (a) ("[n]o person shall be convicted of criminal use of a firearm . . . and the underlying felony upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information"); *State* v. *Hardy*, supra, 712–13 (reversing judgment of conviction of criminal use of firearm when defendant was convicted of both criminal use of firearm and underlying felony of robbery in first degree).

that the evidence in the respective cases against the defendant and Johnson was cross admissible. The defendant asserts that, following the grant of the motion for joinder, the state improperly relied on the second interview, which was inadmissible as to the defendant, to support its case against the defendant. The defendant maintains that, in line with its representations in support of the motion for joinder, the state should have taken action to prevent the second interview from being admitted at trial, or to minimize the effect of the admission of any portion thereof, by, for instance, agreeing with defense counsel's motion to strike Fuschino's testimony and requesting a curative instruction.[8]

Conceding that his claim is unpreserved, the defendant seeks review of his unpreserved claim pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015). "Pursuant to *Golding*, a [defendant] can prevail on a claim of constitutional error not preserved at trial only *if all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the [defendant] of a fair trial; and (4) if subject to harmless error analysis, the [state] has failed to demonstrate harmlessness of the alleged

[8] The state frames the defendant's appeal as raising a claim of prosecutorial impropriety. See *State* v. *Cusson*, 210 Conn. App. 130, 164, 269 A.3d 828 ("It is well established that [i]n analyzing claims of prosecutorial [impropriety], we engage in a two step analytical process. The two steps are separate and distinct: (1) whether [impropriety] occurred in the first instance; and (2) whether that [impropriety] deprived a defendant of his due process right to a fair trial." (Internal quotation marks omitted.)), cert. denied, 343 Conn. 913, 274 A.3d 114 (2022). The defendant refutes this construction of his claim and clarified during oral argument before this court that he was not specifically raising such a claim. On the basis of this acknowledgment and our interpretation of the defendant's claim, we conclude that the prosecutorial impropriety framework is inapplicable here.

constitutional violation beyond a reasonable doubt. . . . The first two steps in the *Golding* analysis address the reviewability of the claim, [whereas] the last two steps involve the merits of the claim." (Emphasis in original; internal quotation marks omitted.) *In re Gabriella M.*, 221 Conn. App. 827, 836, 303 A.3d 319, cert. denied, 348 Conn. 925, 304 A.3d 443 (2023). We conclude that the defendant's unpreserved claim is reviewable, as (1) the record is adequate for review and (2) the claim is of constitutional magnitude alleging violations of fundamental rights. We further conclude, however, that the defendant's claim fails on the merits under the third prong of *Golding* because he has failed to demonstrate that the claimed violations of his constitutional rights occurred.

We begin by setting forth the following principles regarding the joinder of cases pursuant to Practice Book § 41-19, which permits a judicial authority to "order that two or more informations, whether against the same defendant or different defendants, be tried together." "[T]he argument for joinder is most persuasive when the offenses are based [on] the same act or criminal transaction, since it seems unduly inefficient to require the state to resolve the same issues at numerous trials. . . . In contrast, when the cases are not of the same character, the argument for joinder is far less compelling because the state must prove each offense with separate evidence and witnesses [thus] eliminat[-ing] any real savings in time or efficiency which might otherwise be provided by a single trial. . . . Further, [a] joint trial expedites the administration of justice, reduces the congestion of trial dockets, conserves judicial time, lessens the burden [on] citizens who must sacrifice both time and money to serve [on] juries, and avoids the necessity of recalling witnesses who would otherwise be called to testify only once. . . .

"Although joint trials may serve to conserve judicial resources, we note that trials may not be joined if a substantial injustice is likely to result unless a separate trial be accorded. . . . A separate trial will be ordered [when] the defenses of the accused are antagonistic, or evidence will be introduced against one which will not be admissible against others, and it clearly appears that a joint trial will probably be prejudicial to the rights of one or more of the accused. . . . We also note that [t]he phrase prejudicial to the rights of the [accused] means something more than that a joint trial will probably be less advantageous to the accused than separate trials." (Citations omitted; internal quotation marks omitted.) *State* v. *Tyus*, 342 Conn. 784, 796–97, 272 A.3d 132 (2022). "[W]e will reverse a trial court's ruling on joinder only [when] the trial court commits an abuse of discretion that results in manifest prejudice to one or more of the defendants. . . . [I]n deciding whether to [join informations] for trial, the trial court enjoys broad discretion, which, in the absence of manifest abuse, an appellate court may not disturb." (Citation omitted; internal quotation marks omitted.) Id., 797–98.

We conclude that the constitutional violations claimed by the defendant are not supported by the record. Contrary to the defendant's position, the state did not misrepresent its intentions vis-à-vis the second interview in the motion for joinder. The second interview was not referenced expressly either in the motion for joinder or during the March 3, 2022 hearing prior to the court's grant of the motion. During the pretrial hearing on March 24, 2022, the state notified the court and opposing counsel that it planned to offer the first and second interviews at trial; however, per the state's proffer, the first and second interviews would be offered as consciousness of guilt evidence against Johnson only. On the second day of trial, the state represented to the court and opposing counsel that it did not intend to

offer the second interview, and, in accord with that representation, the state neither questioned Fuschino on direct examination about the second interview nor offered the second interview.

The record further reflects that, while questioning Fuschino on cross-examination regarding the police investigation into Campos' shooting, defense counsel elicited testimony from Fuschino that, for the first time, alerted the jury to the existence of the second interview and Johnson's identification of the defendant during that interview. After the state objected to defense counsel's motion to strike Fuschino's testimony on the ground that Fuschino's answer was responsive to the question asked, the state adduced additional portions of the second interview through Fuschino's testimony, as permitted pursuant to the agreement, and substantively relied on the second interview in arguing its case against the defendant.

As the record demonstrates, at no point prior to the cross-examination of Fuschino by defense counsel did the state use, or suggest an intention to use, the second interview as evidence, substantively or otherwise, against the defendant. It was only after Fuschino, in a truthful, responsive answer[9] to defense counsel's question on cross-examination,[10] referenced the second interview that the state sought to rely on the second interview as substantive evidence in prosecuting the

[9] It is undisputed that Fuschino answered defense counsel's question truthfully.

[10] Before setting forth the terms of the agreement on the record on April 11, 2022, the court stated that it "want[ed] to make it clear that the court [was] in no way criticizing . . . Fuschino for responding as he did. As [the court] said, [Fuschino's answer] was responsive to the question that [defense counsel] had posed." The defendant does not claim on appeal that the court improperly determined that Fuschino's testimony was responsive. Indeed, as the defendant's appellate counsel conceded on appeal, the defendant has not briefed a claim of error asserting that the court's denial of the motion to strike was improper.

defendant's case. It cannot reasonably be inferred from the state's reliance on the second interview following defense counsel's cross-examination of Fuschino that it made misrepresentations vis-à-vis the motion for joinder. Instead, we conclude that defense counsel's line of questioning on cross-examination opened the door for the state to utilize the second interview against the defendant. See *State* v. *Mark T.*, 339 Conn. 225, 236, 260 A.3d 402 (2021) ("Generally, a party who delves into a particular subject during the examination of a witness cannot object if the opposing party later questions the witness on the same subject. . . . The party who initiates discussion on the issue is said to have opened the door to rebuttal by the opposing party." (Internal quotation marks omitted.)).

Our conclusion that the state did not make misrepresentations vis-à-vis the motion for joinder is bolstered by two additional considerations. First, by failing to brief a claim of error with regard to the denial of the motion to strike Fuschino's testimony; see footnote 10 of this opinion; the defendant has abandoned any claim challenging the court's decision to allow Fuschino's initial testimony regarding the second interview to remain in evidence. See *White* v. *Latimer Point Condominium Assn., Inc.*, 191 Conn. App. 767, 777 n.6, 216 A.3d 830 (2019) (appellant's failure to brief claim results in abandonment of claim). Second, after having denied the motion to strike, the court set forth the terms of the agreement, which authorized the state, through Fuschino's testimony on redirect examination, to introduce limited portions of the second interview. Defense counsel expressly affirmed that he agreed to the procedure detailed in the agreement, and defense counsel did not raise any objection to the agreement on the record. See *State* v. *Andres C.*, 208 Conn. App. 825, 854, 266 A.3d 888 (2021) ("When a party consents to or

expresses satisfaction with an issue at trial, claims arising from that issue are deemed waived and may not be reviewed on appeal. . . . [W]e do not look with favor on parties requesting, or agreeing to, an instruction or a procedure to be followed, and later claiming that that act was improper." (Internal quotation marks omitted.)), aff'd, 349 Conn. 300, 315 A.3d 1014 (2024). Under these circumstances, the defendant has not asserted a viable claim that his constitutional rights were violated stemming from the state's representations in support of the motion for joinder.

In sum, we conclude that the defendant has failed to demonstrate that violations of his constitutional rights occurred as required under the third prong of *Golding*.[11]

The judgment is affirmed.

In this opinion the other judges concurred.

[11] In the alternative, the defendant requests reversal of the judgment of conviction pursuant to the plain error doctrine. "The plain error doctrine is based on Practice Book § 60-5, which provides in relevant part: The court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The court may in the interests of justice notice plain error not brought to the attention of the trial court. . . . The plain error doctrine is reserved for truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . A party cannot prevail under [the] plain error [doctrine] unless [he] has demonstrated that the failure to grant relief will result in manifest injustice." (Internal quotation marks omitted.) *Lafferty* v. *Jones*, 225 Conn. App. 552, 572 n.26, 316 A.3d 742 (2024). For the same reasons that we reject his claim under the third prong of *Golding*, we conclude that the defendant has not "met the stringent standard for relief pursuant to the plain error doctrine." (Internal quotation marks omitted.) Id.

BANK OF NEW YORK MELLON, SUCCESSOR TRUSTEE *v.* WADE H. HORSEY II ET AL.
(AC 46167)

Elgo, Clark and Lavine, Js.

Syllabus

Pursuant to the rule of practice (§ 61-11 (g)), "[i]n any action for foreclosure in which the owner of equity has filed, and the court has denied, at least two prior motions to open or other similar motion, no automatic stay shall arise upon the court's denial of any subsequent contested motion by that party, unless the party certifies under oath, in an affidavit accompanying the motion, that the motion was filed for good cause arising after the court's ruling on the party's most recent motion. . . ."

The substitute plaintiff sought to foreclose a mortgage on certain real property owned by the defendants W and J. The trial court rendered a judgment of strict foreclosure, which W appealed to this court. This court affirmed the judgment and remanded the case for the purpose of setting new law days. W then filed his first motion to open and vacate the judgment of strict foreclosure, which the trial court denied. J appealed to this court, which affirmed the judgment and remanded the case for the purpose of setting new law days. The trial court denied W's second motion, captioned "Motion for Judgment of Dismissal for Lack of Standing and Lack of Subject Matter Jurisdiction," and W appealed to this court, which dismissed the appeal. The trial court denied W's third motion, captioned "Motion for Void Judgment," and reset the law days. W and J then filed a motion to set aside the judgment resetting the law days. On the date the law days were set to commence, W and J filed the present appeal from the trial court's inaction on their motion to set aside the judgment. The next day, the trial court denied that motion, and W and J filed an amended appeal from that decision. *Held* that this court could not grant W and J any practical relief, and, accordingly, the appeal was dismissed as moot: W's first, second and third motions constituted "at least two prior motions to open or other similar motion" under the plain meaning of Practice Book § 61-11 (g) and, accordingly, because no automatic stay arose on the trial court's denial of the motion to set aside the judgment and the filing of the appeal therefrom, the law days had passed, and title to the property had vested absolutely in the substitute plaintiff; moreover, the motion to set aside the judgment did not have an accompanying affidavit, as required by § 61-11 (g), that set forth that the motion was filed for good cause that arose after the trial court's ruling on W's third motion.

Argued February 15—officially released July 30, 2024

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of Hartford, where The Bank of New York Mellon, successor trustee, was substituted as the plaintiff; thereafter, the court, *Dubay*, *J.*, granted the substitute plaintiff's motion for a judgment of strict foreclosure and rendered judgment thereon, from which the named defendant appealed to this court, *Prescott*, *Elgo* and *Bright*, *Js.*, which affirmed the judgment of the trial court and remanded the case for the purpose of setting new law days; subsequently, the court, *Dubay*, *J.*, denied the named defendant's motion to open the judgment, and the defendant Jacquelyn Costa Horsey appealed to this court, *Prescott*, *Elgo* and *Suarez*, *Js.*, which affirmed the judgment of the trial court and remanded the case for the purpose of setting new law days; thereafter, the court, *Budzik*, *J.*, denied the named defendant's motion for a judgment, and the named defendant appealed to this court, which dismissed the appeal; subsequently, the court, *Baio*, *J.*, denied the named defendant's motion for a void judgment and reset the law days; thereafter, the named defendant et al. appealed to this court from the trial court's inaction on their motion to set aside the judgment of the trial court resetting the law days; subsequently, the court, *Baio*, *J.*, denied the motion to set aside the judgment filed by the named defendant et al., and the named defendant et al. filed an amended appeal. *Appeal dismissed.*

Thomas P. Willcutts, for the appellants (defendants).

Geoffrey K. Milne, for the appellee (substitute plaintiff).

Opinion

LAVINE, J. In this protracted foreclosure matter, the defendants Wade H. Horsey II and Jacquelyn Costa

Horsey[1] appeal from the judgment of the trial court denying their motion to set aside the court's judgment of strict foreclosure rendered in favor of the substitute plaintiff, The Bank of New York Mellon, as Successor Trustee for JPMorgan Chase Bank, N.A., as Trustee for Novastar Mortgage Funding Trust, Series 2005-2 Novastar Home Equity Loan Asset-Backed Certificates, Series 2005-2. The dispositive issue in this appeal is whether the defendants filed "at least two prior motions to open or other similar motion" pursuant to Practice Book § 61-11 (g),[2] such that an automatic appellate stay did not apply to toll the running of the law days. We conclude that no automatic stay was triggered by operation of § 61-11 (g), and, thus, the law days have passed, divesting the defendants of their interest in the property, and title to the property has vested in the substitute plaintiff. Accordingly, this court can provide the defendants no practical relief, and we dismiss this appeal as moot.

In order to place this matter in proper context, a detailed recitation of its procedural history must be provided. The following facts and procedural history, as set forth in this court's decision in *Bank of New York Mellon* v. *Horsey*, 182 Conn. App. 417, 190 A.3d 105, cert. denied, 330 Conn. 928, 194 A.3d 1195 (2018), or as otherwise undisputed, are relevant to our disposition

[1] Sovereign Bank also was named as a defendant in the foreclosure action but has not appealed from the judgment of foreclosure or participated in the present appeal. Because only Wade Horsey and Jacquelyn Horsey have participated in this appeal, all references herein to the defendants are to the Horseys collectively, and we refer to them individually by first name when appropriate.

[2] Practice Book § 61-11 (g) provides in relevant part: "In any action for foreclosure in which the owner of the equity has filed, and the court has denied, at least two prior motions to open or other similar motion, no automatic stay shall arise upon the court's denial of any subsequent contested motion by that party, unless the party certifies under oath, in an affidavit accompanying the motion, that the motion was filed for good cause arising after the court's ruling on the party's most recent motion. . . ."

of the present appeal. "The original plaintiff, The Bank of New York Mellon, as Successor Trustee under Novastar Mortgage Funding Trust 2005-2, commenced this action in September, 2009 . . . [seeking] to foreclose on a mortgage that the defendant[s] had executed in 2005 on property in Avon as security for a note in the principal amount of $390,000.[3] The original plaintiff alleged that it was the holder of the note and mortgage and that the note was in default for nonpayment. . . .

"Foreclosure mediation began and continued through the end of 2010. Over the following year and a half, the parties filed a number of motions related to discovery. On September 26, 2012, the original plaintiff assigned the mortgage to the substitute plaintiff, which the court substituted into the action for the original plaintiff on November 19, 2012." (Citation omitted; footnote in original.) Id., 421–22.

After the defendants filed their answer on October 9, 2013, "[n]o further activity in the action occurred until April 17, 2015, at which time the defendant[s] filed a motion pursuant to Practice Book § 14-3 asking the court to render a judgment of dismissal on the ground that the substitute plaintiff had failed to prosecute the action with reasonable diligence. The court, *Vacchelli, J.*, issued an order on May 6, 2015, denying the defendant[s'] motion, but directing the substitute plaintiff to move for summary judgment or to take some other action to advance the case within sixty days. The court

[3] "The note originally was executed by the defendant[s] in favor of Novastar Mortgage, Inc. (Novastar), and the mortgage securing the note was executed in favor of Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Novastar and its successors and assigns. In October, 2008, MERS assigned the mortgage to the original plaintiff. The note was endorsed from Novastar to JPMorgan Chase Bank, N.A., the original trustee of the Novastar Mortgage Funding Trust 2005-2, and then from JPMorgan Chase Bank, N.A., to the substitute plaintiff as the successor trustee." *Bank of New York Mellon* v. *Horsey*, supra, 182 Conn. App. 421 n.2.

indicated that, if the substitute plaintiff failed to comply, the court would entertain a renewed motion to dismiss.

"The substitute plaintiff filed a motion for summary judgment as to liability only on December 21, 2015. Along with its motion, the substitute plaintiff submitted copies of the note, the mortgage and assignments, and an affidavit averring, inter alia, that the substitute plaintiff was the holder of the note and the mortgagee of record . . . . [Wade] filed an objection to the motion for summary judgment on February 29, 2016. He did not attach an affidavit or any other evidence that disputed factually the summary judgment submissions of the substitute plaintiff. . . .

"The court, *Robaina, J.*, heard argument on the motion for summary judgment on March 21, 2016. On April 14, 2016, the court issued orders, without comment . . . overruling [Wade's] objection to the motion for summary judgment. The court also issued the following order granting the motion for summary judgment as to liability only: '[I]t is hereby found that no genuine issue of material fact exists as to the defendants' liability on the note and mortgage. . . . Determination of the amount of indebtedness is deferred until such time as [the substitute] plaintiff seeks a judgment of foreclosure.'

"On April 19, 2016, [Wade] filed an appeal from the court's April 14, 2016 orders granting the motion for summary judgment as to liability and denying his motion for a disciplinary dismissal of the action. The substitute plaintiff filed with this court a motion to dismiss that appeal for lack of a final judgment. The motion was granted on May 25, 2016. . . . On July 20, 2016, the substitute plaintiff reclaimed for the short calendar list its April 23, 2010 motion seeking a judgment of strict foreclosure.

"On August 1, 2016, the parties appeared before the court, *Noble, J.*, on the court's dormancy docket. The court had issued a notice to appear and show cause on March 18, 2016, prior to the hearing on the motion for summary judgment, directing the parties to appear to address the status of the case and indicating that 'the court may dismiss this action at the hearing.' The court first heard from counsel for the substitute plaintiff, who indicated that the substitute plaintiff was ready to proceed to judgment but was awaiting the return of the original note and other documents necessary to secure the judgment," as those documents were in the possession of a law firm that the substitute plaintiff had previously hired to represent it in this action. (Citations omitted; footnotes omitted.) Id., 422–25. Wade then "brought to the court's attention that he previously had filed a motion to dismiss for lack of diligence and that the substitute plaintiff had failed to comply with the court's order directing the substitute plaintiff to take some action to advance the case within sixty days. . . . [A]fter confirming that the case had been on the docket since 2009, the court . . . dismissed the action." Id., 425.

The substitute plaintiff filed a motion to open and set aside the judgment of dismissal, arguing that "it had filed and reclaimed a motion for a judgment of strict foreclosure prior to the court's dismissal . . . ." Id. The court granted the motion to open, then considered the motion for a judgment of strict foreclosure. Id., 426. After determining the fair market value of the property and the amount of debt owed, the court rendered a judgment of strict foreclosure and set law days to commence on November 28, 2016. Id., 428.

Wade then appealed to this court, claiming, among other things, that the substitute plaintiff lacked standing to prosecute this action. Id., 440. This court rejected that claim and concluded, on the basis of the record

presented, "that [Wade] failed to rebut the presumption that the substitute plaintiff ha[d] standing to prosecute this action as the holder of the note and mortgage." Id. Accordingly, this court affirmed the judgment of the trial court and remanded the case for the purpose of setting new law days. Id., 445.

On December 20, 2018, the substitute plaintiff filed a motion in the trial court to reset the law days in accordance with this court's remand order. On February 22, 2019, before the court ruled on the motion to reset the law days, Wade filed a motion to open and vacate the judgment of strict foreclosure. In his motion, Wade claimed that the original plaintiff lacked standing at the inception of the case to pursue the foreclosure action. Wade further argued that, when he raised the issue of standing in his objection to the substitute plaintiff's motion for summary judgment, the court should have held an evidentiary hearing to determine whether the original plaintiff was the holder of the note at the time the action was commenced or whether the mortgage loan servicer was otherwise entitled to enforce the note.

On March 26, 2019, the court, *Sheridan, J.*, denied Wade's motion to open the judgment because it was "untimely and fail[ed] to demonstrate good cause to open the judgment of strict foreclosure entered on September 12, 2016, which judgment was affirmed by [the] Appellate Court on appeal." Wade filed a motion to reargue and reconsider the denial of the motion to open, which the court, *Dubay, J.*, denied. The court then reset the law days to commence on May 28, 2019.

On May 10, 2019, Jacquelyn appealed to this court from the judgment of strict foreclosure and the trial court's denial of Wade's February 22, 2019 motion to open. In a per curiam decision, this court affirmed the judgment of the trial court and remanded the case for

the purpose of setting new law days. *Bank of New York Mellon* v. *Horsey*, 210 Conn. App. 904, 267 A.3d 994, cert. denied, 343 Conn. 909, 273 A.3d 696 (2022).

On June 3, 2022, the substitute plaintiff filed a motion in the trial court to reset the law days in accordance with this court's remand order. That same day, Wade filed a motion captioned "Motion for Judgment of Dismissal for Lack of Standing and Lack of Subject Matter Jurisdiction." In that motion, Wade again argued that the original plaintiff lacked standing at the time the foreclosure action was commenced because it was not the owner of the note or mortgage when the action was initiated. Wade argued that any affidavits attesting otherwise were "fraudulent and forgeries attempting to mislead the Superior Court," and that "[t]he jurisdictional defect resulting from the [original] plaintiff's lack of standing cannot be cured by amending the complaint to add a party having standing." On this basis, Wade requested that the court dismiss the case with prejudice.

The court, *Budzik, J.*, denied Wade's motion for judgment on July 11, 2022, "[f]or the reasons stated in the [substitute] plaintiff's objection to the underlying motion"[4] and "because the issues raised by [Wade] in his motion as to standing and fraud have already been decided by the Appellate Court. See *Bank of New York Mellon* v. *Horsey*, [supra, 182 Conn. App. 444–45]."

On July 18, 2022, Wade appealed to this court. This court dismissed the appeal as untimely as to the September 12, 2016 judgment and for lack of a final judgment as to the July 11, 2022 order.[5]

[4] In the memorandum accompanying its objection to Wade's motion, the substitute plaintiff explained how it had standing and raised arguments about the law of the case doctrine, as Wade had already raised multiple, nearly identical prior challenges to subject matter jurisdiction that were resolved by the court in favor of the substitute plaintiff.

[5] The trial court had not yet ruled on the substitute plaintiff's June 3, 2022 motion to reset the law days in accordance with this court's remand order in *Bank of New York Mellon* v. *Horsey*, supra, 210 Conn. App. 904, and, therefore, no law days were scheduled at the time of the appeal from the

On November 4, 2022, Wade filed a motion captioned "Motion for Void Judgment." In the motion, Wade again raised a claim of fraud and a claim of lack of standing, arguing, inter alia, that Novastar Mortgage, Inc., continued to own the note and there was no evidence presented about the circumstances of the alleged transfer of the note to the original plaintiff. On this basis, Wade requested that the court "render any decisions in this case to be consider[ed] void and the case be dismissed."

On November 14, 2022, while that motion was still pending, the trial court, *Baio, J.*, reset the law days to commence on January 10, 2023. The court then denied Wade's "Motion for Void Judgment" on November 21, 2022, explaining that "[t]his motion comes well after the judgment was entered in this matter, the judgment affirmed by the Appellate Court and remanded for the sole purpose of resetting the law day . . . and subsequent appeal dismissed by order dated [September 28, 2022] . . . . That new law day was set in accordance with the Appellate Court remand following the denial of the petition for [certification] and by direction upon the remand."

On December 28, 2022, the defendants filed a motion to set aside the November 14, 2022 judgment of the court resetting the law days. The defendants argued that the judgment should be set aside on the basis of our Supreme Court's decision in *Bank of New York Mellon* v. *Tope*, 345 Conn. 662, 286 A.3d 891 (2022), which had been released one week earlier and addressed the issue of establishing standing in a foreclosure action.[6] The defendants, who previously were self-represented, were represented by Thomas P. Willcutts,

July 11, 2022 order. See *Connecticut National Bank* v. *L & R Realty*, 40 Conn. App. 492, 493, 671 A.2d 1315 (1996) (setting of law days is necessary for final judgment in strict foreclosure action).

[6] Specifically, in *Tope*, our Supreme Court explained that, "to establish standing to foreclose on the defendant's property, the plaintiff needed to prove that it was the holder of the note or one who was otherwise entitled to enforce the note." *Bank of New York Mellon* v. *Tope*, supra, 345 Conn.

the attorney for the prevailing party in *Tope*, for the filing of this motion.[7] Significantly, the motion was not accompanied by an affidavit in which the defendants certified under oath that the motion was filed for good cause arising after the court's ruling on Wade's most recent motion, pursuant to Practice Book § 61-11 (g).

On January 10, 2023, the date that the law days were set to commence, the defendants filed the present appeal from "[t]he court's inaction" on their December 28, 2022 motion to set aside the judgment. The following day, the court, *Baio, J.*, denied the defendants' motion to set aside the judgment, and the defendants filed an amended appeal from that decision.

On January 5, 2024, this court ordered both parties to submit supplemental briefs "addressing (1) whether, in light of [Wade's] filing of 'at least two motions to open or other similar motion' on February 22, 2019, June 3, 2022, and November 4, 2022, which all were denied by the trial court prior to the filing of the December 28, 2022 motion to set aside that is the subject of this appeal, an automatic appellate stay remained in effect pursuant to Practice Book § 61-11 (g) when the law days were scheduled to commence on January 10,

679–80. The court also explained that "being in possession of the note does not make one a 'holder' of a note when the note has a special endorsement to a different party," and, therefore, if the plaintiff is not the holder of the note, "the plaintiff can enforce the note only if it can demonstrate that it is a nonholder in possession of the note with the rights of a holder. . . . To do so, the plaintiff must prove that the transferor delivered the note to the plaintiff intending to vest in it the right to enforce the instrument." (Citation omitted.) Id., 681. Our Supreme Court concluded that, because the question of the plaintiff's standing in that case "turn[ed] on questions of fact, namely, whether the plaintiff has been vested with the right to enforce the note, the trial court should not have denied the motion to open but should have conducted an evidentiary hearing to determine whether the plaintiff had standing to bring the foreclosure action in the present case." Id., 682–83.

[7] The defendants continue to be represented by Attorney Willcutts on appeal to this court.

2023, and (2) if no appellate stay was in effect at that time, why the present appeal should not be dismissed as moot in light of *Citigroup Global Markets Realty Corp.* v. *Christiansen*, 163 Conn. App. 635, 137 A.3d 76 (2016), and *Barclays Bank of New York* v. *Ivler*, 20 Conn. App. 163, 565 A.2d 252, [cert. denied, 213 Conn. 809, 568 A.2d 792] (1989).''

In its supplemental brief, the substitute plaintiff argues that the present appeal should be dismissed as moot because, pursuant to Practice Book § 61-11 (g), an automatic appellate stay was not in effect to prevent the law days from passing, and, accordingly, title had vested irrevocably in the substitute plaintiff. In the defendants' supplemental brief, they argue that the appeal is not moot. Specifically, the defendants argue that "none of the . . . cited motions satisfy the criteria and stated purpose of a § 61-11 (g) motion,'' and, therefore, an automatic appellate stay was in effect to prevent the law days from passing. We conclude that the present appeal is moot, and, accordingly, we dismiss the appeal for lack of subject matter jurisdiction.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [this] court's subject matter jurisdiction. . . . Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable . . . . Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy [is] capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant. . . . A case is considered moot if [the court] cannot grant the appellant any practical relief through its disposition of the merits . . . . Because

mootness implicates this court's subject matter jurisdiction, it raises a question of law over which we exercise plenary review. . . .

"It is a well-settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . *An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal.* . . . When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot." (Emphasis in original; internal quotation marks omitted.) *Speer* v. *Norwich*, 216 Conn. App. 883, 887–88, 287 A.3d 612 (2022), cert. denied, 346 Conn. 914, 290 A.3d 375 (2023).

This court "ha[s] routinely dismissed appeals by defendants in foreclosure actions as being moot once title to the property had vested in the plaintiff. The dispositive question in those contexts is whether the law days have run so as to extinguish the defendant's equity of redemption and vest title absolutely in the plaintiff. . . . If the law days have run, no practical relief [could] follow from a determination of the merits of [the] case . . . ." (Citation omitted; internal quotation marks omitted.) *DXR Finance Parent, LLC* v. *Theraplant, LLC*, 223 Conn. App. 362, 372, 309 A.3d 347, cert. denied, 348 Conn. 957, 310 A.3d 380 (2024); see also *U.S. Bank National Assn.* v. *Rothermel*, 339 Conn. 366, 375, 260 A.3d 1187 (2021) ("[i]n Connecticut, the passage of the law days in an action for strict foreclosure extinguishes a mortgagor's equitable right of redemption and vests absolute title in the encum-

brancer"). Accordingly, except in limited circumstances,[8] "it is not within the power of appellate courts to resuscitate the mortgagor's right of redemption or otherwise to disturb the absolute title of the redeeming encumbrancer." *Barclays Bank of New York* v. *Ivler*, supra, 20 Conn. App. 166–67; see also *Connecticut National Mortgage Co.* v. *Knudsen*, 323 Conn. 684, 687 n.5, 150 A.3d 675 (2016) ("an appeal from a judgment of strict foreclosure is moot when the law days pass, the rights of redemption are cut off, and title becomes unconditional in the plaintiff" (internal quotation marks omitted)); *DXR Finance Parent, LLC* v. *Theraplant, LLC*, supra, 372 ("once title has vested absolutely in the mortgagee, the mortgagor's interest in the property is extinguished and cannot be revived by a reviewing court" (internal quotation marks omitted)).

An automatic appellate stay may operate to toll the running of the law days. See Practice Book § 61-11 (a). Section 61-11 (g) addresses the issue of how many times a defendant in a strict foreclosure action is entitled to an automatic stay while appealing denials of motions to open or other similar motions. *Deutsche Bank National Trust Co.* v. *Fraboni*, 182 Conn. App. 811, 828, 191 A.3d 247 (2018). Titled "Strict foreclosure—motion rendering ineffective a judgment of strict foreclosure," § 61-11 (g) provides in relevant part: "In any action for foreclosure in which the owner of the equity has filed, and the court has denied, at least two prior motions to open or other similar motion, no automatic stay shall arise

[8] "[O]ur Supreme Court and this court have recognized that [courts possess] inherent powers to provide limited forms of continuing equitable relief after the passage of the law days in 'rare and exceptional' cases . . . ." *U.S. Bank National Assn.* v. *Booker*, 220 Conn. App. 783, 799, 299 A.3d 1215, cert. denied, 348 Conn. 927, 304 A.3d 860 (2023). "The category of claims that fall within this class of cases sound in [f]raud, accident, mistake, and surprise . . . . These are rare exceptions, applicable only in unusual circumstances." (Citations omitted; internal quotation marks omitted.) *DXR Finance Parent, LLC* v. *Theraplant, LLC*, supra, 223 Conn. App. 374–35.

upon the court's denial of any subsequent contested motion by that party, unless the party certifies under oath, in an affidavit accompanying the motion, that the motion was filed for good cause arising after the court's ruling on the party's most recent motion. . . ." The application of § 61-11 (g) may result in the dismissal of an appeal because, "[w]hen no automatic appellate stay is in effect, there is nothing to prevent the law days from passing, rendering a pending appeal from a judgment of strict foreclosure moot." *Connecticut National Mortgage Co.* v. *Knudsen*, supra, 323 Conn. 687; see *Citigroup Global Markets Realty Corp.* v. *Christiansen*, supra, 163 Conn. App. 640 (dismissing appeal on basis of conclusion that no automatic appellate stay was in effect to prevent law days from passing, pursuant to application of § 61-11 (g), which rendered appeal moot).

In the present case, the defendants argue that Wade's February 22, 2019, June 3, 2022, and November 4, 2022 motions did not qualify as "at least two prior motions to open or other similar motion" under Practice Book § 61-11 (g) and, therefore, an automatic appellate stay was in effect to prevent the law days from passing. Specifically, the defendants contend that (1) the prior motions would not have rendered the judgment ineffective, which is required under the plain meaning of § 61-11 (g), and (2) interpreting § 61-11 (g) to include the prior motions at issue would not serve the purpose of that rule, as set forth in our case law, because "none of the . . . motions had the effect of creating an appellate stay, such as would nullify a law day set by the court in its judgment of strict foreclosure," and, thus, they "did not create the repetitive appellate stays that § 61-11 (g) is designed to prevent."[9] We disagree.

[9] The defendants also focus on Wade's self-represented status at the time that he filed the February 22, 2019, June 3, 2022, and November 4, 2022 motions, arguing that "[t]he proposed interpretation of [Practice Book] § 61-11 (g) operates to create both surprise and injustice, particularly when applied to a [self-represented] litigant." Although "[i]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants

"The interpretive construction of the rules of practice is to be governed by the same principles as those regulating statutory interpretation. . . . In seeking to determine [the] meaning [of a statute or a rule of practice, we] . . . first . . . consider the text of the statute [or rule] itself and its relationship to other statutes [or rules]. . . . If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence . . . shall not be considered. . . . When [the provision] is not plain and unambiguous, we also look for interpretive guidance to the . . . history and circumstances surrounding its enactment, to the . . . policy it was designed to implement, and to its relationship to existing [provisions] and common law principles governing the same general subject matter . . . . We recognize that terms [used] are to be assigned their ordinary meaning, unless context dictates otherwise. . . . Put differently, we follow the clear meaning of unambiguous rules, because [a]lthough we are directed to interpret liberally the rules of practice, that liberal construction applies only to situations in which a strict adherence to them [will] work surprise or injustice." (Citations omitted; internal quotation marks omitted.) *Meadowbrook Center, Inc.* v. *Buchman*, 328 Conn. 586, 594–95, 181 A.3d 550 (2018).

We first turn to the text of Practice Book § 61-11 (g), which provides in relevant part that, if a defendant in

and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party"; (internal quotation marks omitted) *Lowthert* v. *Freedom of Information Commission*, 220 Conn. App. 48, 57, 297 A.3d 218 (2023); we note that the defendants were represented by counsel in filing their December 28, 2022 motion to set aside that is the subject of this appeal, and it was at that time that they should have considered the applicability of § 61-11 (g) and whether to file an affidavit of good cause to accompany that motion. Moreover, "[a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law." (Internal quotation marks omitted.) Id.

a strict foreclosure action has filed, and the court has denied, "at least two prior motions to open or other similar motion, no automatic stay shall arise upon the court's denial of any subsequent contested motion by that party," unless that motion is accompanied by an affidavit of good cause.[10]

Our appellate courts have not yet fully examined the exact parameters of what constitutes a "[motion] to open or other similar motion" for purposes of Practice Book § 61-11 (g). This court has indicated, however, that a motion to reargue or reconsider a denial of a motion to open would qualify as one of the prior motions included under that provision. See *Lending Home Funding Corp.* v. *REI Holdings, LLC*, 214 Conn. App. 703, 719 n.18, 281 A.3d 1 (2022) ("the first motion to reargue/reconsider the court's denial of the first motion to open was only the second 'motion to open or other similar motion' filed subsequent to the judgment of strict foreclosure" pursuant to Practice Book § 61-11 (g)). In addition, Practice Book § 63-1 (c) (1), which governs the creation of new appeal periods, provides guidance as to what types of motions, like a motion to open, would render a judgment ineffective:

[10] Although the defendants focus on the language in the title of Practice Book § 61-11 (g), directed at "motion[s] rendering ineffective a judgment of strict foreclosure," our review of the plain meaning of that rule is not so limited. "Although the title of a statute provides some evidence of its meaning, the title is not determinative of its meaning. . . . Our Supreme Court has stated that boldface catchlines in the titles of statutes . . . are intended to be informal brief descriptions of the contents of the [statutory] sections. . . . These boldface descriptions should not be read or considered as statements of legislative intent since their sole purpose is to provide users with a brief description of the contents of the sections. . . . Moreover, the title of a statute cannot trump an interpretation that is based on an analysis of the statutory . . . language and purpose." (Citation omitted; internal quotation marks omitted.) *Coyle* v. *Commissioner of Revenue Services*, 142 Conn. App. 198, 203, 69 A.3d 310 (2013), appeal dismissed, 312 Conn. 282, 91 A.3d 902 (2014) (certification improvidently granted); see id., 205 (looking to substance of statutory language rather than language of title of statute for purpose of statutory interpretation).

"Motions that, if granted, would render a judgment, decision or acceptance of the verdict ineffective include, but are not limited to, motions that seek: the opening or setting aside of the judgment; a new trial; the setting aside of the verdict; judgment notwithstanding the verdict; reargument of the judgment or decision; collateral source reduction; additur; remittitur; or any alteration of the terms of the judgment. . . ." Practice Book § 63-1 (c) (1).

We conclude that Wade's February 22, 2019, June 3, 2022, and November 4, 2022 motions constitute "at least two prior motions to open or other similar motion" under the plain meaning of Practice Book § 61-11 (g). Wade himself explicitly designated his February 22, 2019 motion as a motion to open, seeking to open and vacate the judgment of strict foreclosure, which clearly falls within the ambit of § 61-11 (g). In addition, although Wade titled his June 3, 2022 motion as a "Motion for Judgment of Dismissal for Lack of Standing and Lack of Subject Matter Jurisdiction" and his November 4, 2022 motion as a "Motion for Void Judgment," our review of the substance of those motions and the relief sought therein leads us to conclude that they are the functional equivalents of motions to open.

"[O]ur case law has recognized that a motion is to be decided on the basis of the substance of the relief sought rather than on the form or the label affixed to the motion. . . . It is the substance of a motion, therefore, that governs its outcome, rather than how it is characterized in the title given to it by the movant." (Internal quotation marks omitted.) *Hebrand* v. *Hebrand*, 216 Conn. App. 210, 219, 284 A.3d 702 (2022); see also *Cocchia* v. *Testa*, 206 Conn. App. 634, 644, 261 A.3d 90 (2021) (evaluating "content and substance" of motion).

In the present case, the substance of the arguments contained within the June 3 and November 4, 2022

motions, like the February 22, 2019 motion to open, was that the trial court lacked subject matter jurisdiction over the present action because the original plaintiff was not the holder of the note and therefore lacked standing to commence the action. In addition, although characterized differently, Wade's prior motions sought essentially the same relief—to "vacate," "void," or "dismiss" the judgment. The content of the motions and the nature of the relief sought is consistent with motions to open filed in other cases. See, e.g., *Bank of New York Mellon* v. *Tope*, supra, 345 Conn. 669–70 (defendant filed motion to open seeking to vacate judgment of foreclosure by sale on basis of claim that court lacked subject matter jurisdiction because plaintiff was not holder of note and did not have standing to commence action); *Deutsche Bank National Trust Co.* v. *Pardo*, 170 Conn. App. 642, 645, 155 A.3d 764 (defendant filed motion to open judgment of strict foreclosure on same basis), cert. denied, 325 Conn. 912, 159 A.3d 231 (2017); see also *U.S. Bank Trust, N.A.* v. *Healey*, 224 Conn. App. 867, 868, 315 A.3d 1112 (2024) (defendants filed motion to open seeking to "dismiss" judgment); *Myrtle Mews Assn., Inc.* v. *Bordes*, 125 Conn. App. 12, 13, 6 A.3d 163 (2010) (defendant filed motion to open judgment of strict foreclosure claiming judgment was "void" because court lacked personal jurisdiction). Because the prior motions at issue are all, in effect, motions to open, they comprise "at least two prior motions to open or other similar motion" under the plain meaning of Practice Book § 61-11 (g).

Moreover, we are not persuaded by the defendants' argument that applying Practice Book § 61-11 (g) to the present case on the basis of the prior motions at issue would not serve the purpose of that rule. Our Supreme Court and this court have explained that § 61-11 (g) was enacted "to put a stop to the ' "perpetual motion

machine" '[11] and accompanying appellate litigation generated when a defendant files serial motions to open a judgment of strict foreclosure and, each time a motion to open is denied, files a new appeal from the judgment denying the motion to open." (Footnote in original.) *Connecticut National Mortgage Co.* v. *Knudsen*, supra, 323 Conn. 687; see also *First Connecticut Capital, LLC* v. *Homes of Westport, LLC*, 112 Conn. App. 750, 762, 966 A.2d 239 (2009). If we accept the defendants' arguments, we would, in effect, be inviting them to submit an endless series of creatively labeled motions, all seeking the same goal—opening the judgment.

Considering the repetitive nature of the February 22, 2019, June 3, 2022, and November 4, 2022 motions, which continued to delay the finality of the judgment, we conclude that they are precisely the types of motions that Practice Book § 61-11 (g) intended to address. In reaching this conclusion, we emphasize that the present action was commenced nearly fifteen years ago and that the judgment of strict foreclosure was rendered nearly eight years ago. The February 22, 2019 and June 3, 2022 motions generated additional appellate litigation,[12] as discussed in *Connecticut National Mortgage*

[11] " 'Prior to [the effective date of Practice Book § 61-11 (g)], a defendant in a foreclosure action could employ consecutive motions to open the judgment in tandem with Practice Book §§ 61-11 and 61-4 "to create almost the perfect perpetual motion machine.' " *Citigroup Global Markets Realty Corp.* v. *Christiansen*, [supra, 163 Conn. App. 639]." *Connecticut National Mortgage Co.* v. *Knudsen*, supra, 323 Conn. 687 n.7.

[12] As explained previously in this opinion, Jacquelyn appealed following the denial of Wade's February 22, 2019 motion, and Wade appealed following the denial of his June 3, 2022 motion.

The defendants did not appeal from the denial of Wade's November 4, 2022 motion, and, thus, that motion did not result in an appellate stay or the resetting of the law days, as the defendants argue. Nevertheless, it was still the type of motion that could have generated the additional appellate litigation discussed in *Connecticut National Mortgage Co.* v. *Knudsen*, supra, 323 Conn. 687, given that it was, in effect, a motion to open, as discussed previously in this opinion.

Co. v. *Knudsen*, supra, 323 Conn. 687, and were followed by the setting of new law days.[13] Indeed, all three motions, which were effectively "serial motions to open a judgment of strict foreclosure," created a "perpetual motion machine" employed by the defendants, which § 61-11 (g) was designed to prevent. (Internal quotation marks omitted.) Id. Accordingly, applying § 61-11 (g) to the present case on the basis of the prior motions at issue serves the purpose of that rule.

Because we conclude that Wade filed, and the trial court denied, "at least two prior motions to open or other similar motion" pursuant to Practice Book § 61-11 (g), we further conclude that no automatic appellate stay arose upon the court's denial of the defendants' December 28, 2022 motion to set aside the judgment and the filing of the appeal therefrom. As noted, the defendants' December 28, 2022 motion to set aside the judgment did not have an accompanying affidavit, and, therefore, the motion did not meet the requirement contained in § 61-11 (g) to set forth a good cause that arose after the court's ruling on Wade's most recent motion. See *Citigroup Global Markets Realty Corp.* v. *Christiansen*, supra, 163 Conn. App. 640. Thus, the law days have passed, and title has vested absolutely in the substitute plaintiff. See id., 642. Accordingly, we cannot grant the defendants any practical relief and must dismiss the appeal as moot.

The appeal is dismissed.

In this opinion the other judges concurred.

[13] The defendants focus on the fact that the appeal following the denial of the June 3, 2022 motion did not result in an appellate stay that automatically suspended or nullified any law days. That is not, however, attributable to the nature or the character of the June 3, 2022 motion. Instead, the trial court delayed resetting the law days that were nullified by the appeal from the February 22, 2019 motion until after the resolution of the June 3, 2022 motion and its accompanying appeal, and, thus, there were no law days scheduled at the time of the appeal from the June 3, 2022 motion.