CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

JEREMY A. CHARTIER ET AL. *v.* JOHN CHARLES VALLIERE ET AL.
(AC 47615)

Elgo, Moll and Seeley, Js.

Syllabus

The defendants appealed from the trial court's judgment admitting to probate the purported will of the decedent, which named the plaintiffs as executors of the decedent's estate. The defendants claimed, inter alia, that the court improperly denied their motion to dismiss the action on timeliness grounds because the action, which had been brought by the plaintiffs as an appeal from a decree of the Probate Court pursuant to statute (§ 45a-186 (b)) was not filed within thirty days. *Held*:

The trial court improperly denied the defendants' motion to dismiss, as the plaintiffs failed to file their appeal of the Probate Court's decree within the thirty day appeal period set forth in § 45a-186 (b), and the plaintiffs' claim that the appeal period ran from the date the Probate Court issued a second decree was unavailing, as that decree, which merely added a statutory reference and elaborated on the factual findings made in the first decree, was issued pursuant to the Probate Court's inherent power to correct its records and was not a modification of the first decree, and, thus, the trial court lacked subject matter jurisdiction over the appeal.

Argued March 12—officially released July 29, 2025

Procedural History

Appeal from a decree of the Probate Court for the district of Plainfield-Killingly appointing the named defendant as an independent administrator of the Estate

of Susan Chartier and declaring a certain will to be invalid, brought to the Superior Court in the judicial district of Windham, where the court, *Altermatt*, *J.*, denied the motion to dismiss filed by the defendant Allen Chartier et al.; thereafter, the case was tried to the court, *Altermatt*, *J.*; judgment for the plaintiffs, from which the defendant Allen Chartier et al. appealed to this court. *Vacated*; *judgment directed.*

Ernest J. Cotnoir, for the appellants (defendant Allen Chartier et al.).

Jayme E. Stamper, with whom was *Kayley Hoffman*, for the appellees (plaintiffs).

Opinion

MOLL, J. The defendants Allen Chartier and Carolyn Chartier[1] appeal from the judgment of the Superior Court admitting to probate the purported will of the decedent, Susan Chartier, which names the plaintiffs, Jeremy A. Chartier and Dianne Laferriere,[2] as executors of the decedent's estate. On appeal, the defendants claim that the court (1) improperly denied their motion to dismiss the present action on timeliness grounds, and, (2) in the alternative, incorrectly found that the plaintiffs had satisfied their burden of showing that the purported will was properly executed. We agree with the defendants' first claim and, accordingly, vacate the judgment of the Superior Court.

The following facts, which are undisputed, and procedural history are relevant to our resolution of this

[1] In the present action, the plaintiffs originally named as defendants John Charles Valliere, Thomas Chartier, Allen Chartier, and Carolyn Chartier. Thomas, Allen, and Carolyn are the siblings of the decedent, Susan Chartier. Only Allen and Carolyn, however, are parties to this appeal. In the interest of simplicity, we refer to Allen and Carolyn collectively as the defendants.

[2] Jeremy A. Chartier is the son of Thomas Chartier and the nephew of the decedent. Dianne Laferriere is Jeremy's partner. We refer to Jeremy and Dianne collectively as the plaintiffs.

appeal. The decedent, who died on June 1, 2023, was survived by three siblings, including the two defendants. On June 13, 2023, the plaintiffs petitioned to the Probate Court to admit to probate as the decedent's will an instrument dated April 27, 2023 (purported will), and to grant either letters testamentary or letters of administration to the proposed fiduciaries, the two plaintiffs. In the petition, the plaintiffs expressly requested a hearing for the specific purpose of considering the "admission of the will . . . and [the] appointment of [fiduciaries]." The purported will left the entirety of the decedent's estate to the plaintiffs and named them as executors of the estate. On July 12, 2023, the defendants moved for "a temporary independent administrator [to] be appointed, such as an independent attorney, who can safeguard the assets and preserve the status quo of the [decedent's] estate assets to administer justice." On that same day, the defendants also moved to contest the purported will on the basis of "undue influence; fraud; improper execution; lack of competence, unsound mind and/or duress."

Following a hearing on July 26, 2023, by way of a decree dated July 26, 2023 (first decree), the Probate Court, *Rowe, J.*, appointed John Charles Valliere as the independent administrator of the decedent's estate. The first decree states in relevant part: "The [plaintiffs] submitted [the purported] will to the court. The [purported] will, as submitted, includes signatures averring to be that of the decedent and [two] witnesses. The [purported] will was not notarized and the witnesses did not appear in court. Of note, this file was previously calendared, and a continuance was requested by the [plaintiffs] to allow for time to retain counsel and secure the witnesses' attendance at the hearing. The witnesses did not appear today, and the [plaintiffs] have not yet secured counsel. As there exists the potential for waste to be committed and with the mandate to ensure the

protection of the estate, the hearing was held today. . . . The petition is approved, administration of the estate is granted to [Valliere], and letters of administration are hereby issued to [Valliere]." The first decree also ordered Valliere, in his capacity as administrator, (1) to file a true and complete inventory of all property of the decedent's estate, (2) to file the Connecticut estate tax return, (3) to settle the decedent's estate within twelve months, and (4) to record a "Notice for Land Records/Appointment of Fiduciary, PC-251," on the land records of each town where the decedent owned or had an interest in real property. Notice of the first decree was sent to the parties on July 27, 2023.

On August 24, 2023, the plaintiffs filed a request for a hearing to address the validity of the purported will. Thereafter, the defendants objected, arguing that the Probate Court had already acted on this request when it held a hearing on the plaintiffs' petition to admit the purported will, after which the Probate Court appointed Valliere as an independent administrator of the estate. The plaintiffs did not appeal from the first decree pursuant to General Statutes § 45a-186 (b).[3]

On September 13, 2023, the court issued a second decree (second decree). The second decree was identical to the first decree, except for the addition of a

[3] General Statutes § 45a-186 (b) provides: "Any person aggrieved by an order, denial or decree of a Probate Court may appeal therefrom to the Superior Court. An appeal from a matter heard under any provision of section 45a-593, 45a-594, 45a-595 or 45a-597, sections 45a-644 to 45a-677, inclusive, sections 45a-690 to 45a-703, inclusive, or section 45a-705a, shall be filed not later than forty-five days after the date on which the Probate Court sent the order, denial or decree. Except as provided in sections 45a-187 and 45a-188, an appeal from an order, denial or decree in any other matter shall be filed on or before the thirtieth day after the date on which the Probate Court sent the order, denial or decree. The appeal period shall be calculated from the date on which the court sent the order, denial or decree by mail or the date on which the court transmitted the order, denial or decree by electronic service, whichever is later."

paragraph that reads: "The operative language of [General Statutes §] 45a-251[4] states that 'a will or codicil shall not be valid to pass any property unless it is in writing, subscribed by the testator and attested by two witnesses, each of them subscribing to the testator's presence . . . .' The [purported] will as submitted is type-written although not on any letterhead. There were blank spaces left incomplete with regards to support for the decedent's pets. While according to [§] 45a-251 there is no absolute requirement that notarization occur, the somewhat generic nature of the structure of the [purported] will coupled with the lack of witness attendance at today's hearing [(i.e., on July 26, 2023)], even with the additional time allowance for their attendance, [persuades the court that] questions as to the validity of the witnesses' signatures exist rendering the [purported] will invalid." (Emphasis omitted; footnote added.) Like the first decree, the second decree is dated July 26, 2023. Notice of the second decree was sent to the parties on September 13, 2023.

On September 27, 2023, the plaintiffs commenced an appeal in the Superior Court. The plaintiffs alleged that they were aggrieved by the second decree because the purported will was the last will and testament of the decedent, it was properly executed pursuant to the requirements set forth in § 45a-251, and the decedent was of sound mind when she executed the purported will.

On December 7, 2023, the defendants filed a motion to dismiss the plaintiffs' appeal on the ground that the Superior Court lacked subject matter jurisdiction

[4] General Statutes § 45a-251 provides: "A will or codicil shall not be valid to pass any property unless it is in writing, subscribed by the testator and attested by two witnesses, each of them subscribing in the testator's presence; but any will executed according to the laws of the state or country where it was executed may be admitted to probate in this state and shall be effectual to pass any property of the testator situated in this state."

because the appeal was not timely filed. Specifically, the defendants argued that, despite the issuance of the second decree in September, 2023, "[t]he actions which the plaintiffs seek to reverse are the Probate Court's failure to admit the purported will and the appointment of an independent administrator. These are all actions taken by the Probate Court on July 26, 2023, after a duly noticed hearing. Notice of the [first] decree and a copy thereof was sent by the Probate Court to all parties on July 27, 2023, so that an appeal, to be timely, would have needed to be filed no later than August 28, 2023." The plaintiffs opposed the defendants' motion to dismiss, arguing that their appeal was timely filed because the first decree did not address the validity of the purported will. The second decree, the plaintiffs argued, "differ[ed] significantly from the [first decree] in that it included the Probate Court's determination that the purported will was invalid and included a citation to § 45a-251." Relying on General Statutes § 45a-128,[5] which, upon the modification of a decree, grants "the same right of and time for appeal as in the case of any other order or decree," the plaintiffs contended that pursuant to § 45a-186 (b); see footnote 3 of this opinion; they had thirty days from the date on which notice of the second

[5] General Statutes § 45a-128 provides in relevant part: "(b) . . . [A]ny order or decree other than a decree authorizing the sale of real estate made by a court of probate may, in the discretion of the court, be reconsidered and modified or revoked by the court, on the court's own motion or on the written application of any interested person. Such application shall be made or filed within one hundred twenty days after the date of such order or decree and before any appeal is allowed or after withdrawal of all appeals. The court may reconsider and modify or revoke any such order or decree for any of the following reasons: (1) For any reason, if all parties in interest consent to reconsideration, modification or revocation, or (2) for failure to provide legal notice to a party entitled to notice under law, or (3) to correct a scrivener's or clerical error, or (4) upon discovery or identification of parties in interest unknown to the court at the time of the order or decree.

"(c) Upon any modification or revocation there shall be the same right of and time for appeal as in the case of any other order or decree."

decree was sent to the parties to appeal to the Superior Court.

On February 6, 2024, the court, *Altermatt*, *J.*, denied the defendants' motion to dismiss. The court stated that the determination of whether the appeal was timely filed turns on when the Probate Court issued its decree regarding the issue being appealed, namely, the validity of the purported will. The court determined that, "[w]hile the Probate Court in its first decree approved the granting of letters of administration and directed the appointed [administrator] to settle the estate, it did not address the validity/invalidity of the [purported] will, either in its orders or its findings. In the second decree, however, the Probate Court addressed the [purported] will in its findings and specifically stated that the [purported] will was invalid." Thus, in the court's view, "the running of the statutory appeal period began after issuance of the second decree, in which the [purported] will was declared invalid. As such, the [plaintiffs'] appeal was timely filed . . . ."

On March 1, 15 and 22, 2024, the Superior Court, sitting as the Probate Court; see *Connery* v. *Gieske*, 323 Conn. 377, 390, 147 A.3d 94 (2016); conducted a trial de novo on the plaintiffs' application to submit the purported will. The court admitted into evidence several exhibits in full and heard testimony from several witnesses, including the two individuals, Gary Caputo and Albert Caputo, who signed the purported will as witnesses to its execution. On April 22, 2024, the court issued an order finding by clear and convincing evidence that the purported will was valid. The court stated in relevant part: "In reaching its determination, the court relied heavily on the testimony of the witnesses who were present on the date the [purported] will was executed, as well as those who interacted with the [decedent] during the period leading up to the execution. The court found the testimony of Gary Caputo to

be particularly persuasive and credible regarding [the decedent's] mental status, her awareness of her family situation and her assets, and her desires as to how and to whom her assets should be devised. . . .

"The evidence demonstrated that the [purported] will was executed with the requisite statutory formalities, and that [the decedent] had testamentary capacity when she prepared and executed [the purported] will. Conversely, the defendants were unable to demonstrate by a fair preponderance of the evidence that the [decedent] was subjected to undue influence leading up to or during the execution of [the purported] will, whereas the plaintiffs, by clear and convincing evidence, disproved the defendants' claim of undue influence." This appeal followed. Additional facts and procedural history will be set forth as necessary.

We begin by setting forth the applicable standard of review and relevant legal principles. "The standard of review for a motion to dismiss is well settled. A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . Our review, therefore, is plenary." (Citation omitted; internal quotation marks omitted.) *Porto* v. *Sullivan*, 119 Conn. App. 360, 364, 987 A.2d 1092 (2010).

"Our legislation has always favored the speedy settlement of estates, and to that end has carefully limited the time within which such appeals [from probate] must be taken. . . . It is a familiar principle that a court which exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation. . . . Our courts of probate have a limited jurisdiction and can exercise only such powers as are conferred on them by statute.

. . . They have jurisdiction only when the facts exist on which the legislature has conditioned the exercise of their power. . . . The Superior Court, in turn, in passing on an appeal, acts as a court of probate with the same powers and subject to the same limitations. . . . The right to appeal from a decree of the Probate Court is purely statutory . . . and the requirements fixed by statute for taking and prosecuting the appeal must be met." (Citation omitted; internal quotation marks omitted.) Id., 365.

The applicable time frame for appeals from a judgment of the Probate Court to the Superior Court is set forth in § 45a-186 (b), which provides in relevant part: "Any person aggrieved by an order, denial or decree of a Probate Court may appeal therefrom to the Superior Court. . . . [A]n appeal from an order, denial or decree . . . shall be filed on or before the thirtieth day after the date on which the Probate Court sent the order, denial or decree. . . ." "Failure to comply with the relevant time limit set forth in [§ 45a-186 (b)] deprives the Superior Court of subject matter jurisdiction and renders such an untimely appeal subject to dismissal." (Internal quotation marks omitted.) *Rider* v. *Rider*, 210 Conn. App. 278, 286, 270 A.3d 206 (2022).

With these legal principles in mind, we turn to the merits of the defendants' dispositive claim on appeal. The defendants argue that the Superior Court improperly denied their motion to dismiss because the plaintiffs' appeal from the Probate Court decree was not timely filed pursuant to § 45a-186 (b). Specifically, the defendants contend that the appeal period began to run on July 27, 2023, when the Probate Court sent notice and a copy of the first decree to the parties. Moreover, the defendants argue that the Superior Court's conclusion to the contrary was predicated on its incorrect determination that the first decree failed to rule on the validity of the purported will. Therefore, the defendants

contend that, because the plaintiffs' appeal was filed outside the time limit set forth in § 45a-186 (b), the Superior Court lacked subject matter jurisdiction over the appeal.[6] In response, the plaintiffs argue that, because the Probate Court did not specifically state that the purported will was invalid, Valliere was appointed as a temporary independent administrator and the issue of the validity of the purported will was not decided. Therefore, the plaintiffs claim, because the first decree did not rule on the validity of the purported will, the second decree constituted a modification of the first decree pursuant to § 45a-128 (b) and the appeal period began to run when notice of the second decree was sent to the parties on September 13, 2023.[7] They claim, therefore, that the appeal was timely filed. We agree with the defendants.

In light of the foregoing principles and the parties' competing assertions, the dispositive question is whether the first decree resolved the question of the validity

[6] Because we conclude that the Superior Court lacked subject matter jurisdiction over the appeal from the Probate Court, we need not reach the merits of the defendants' second claim, namely, that the Superior Court improperly found that the plaintiffs had satisfied their burden of showing that the purported will was properly executed pursuant to the requirements set forth in § 45a-251.

[7] Underlying the respective arguments of the plaintiffs and the defendants is an assumption that § 45a-128 (b) applies only to decrees that are not final. The defendants contend that the first decree was a final judgment pursuant to General Statutes § 45a-24, which provides in relevant part: "All orders, judgments and decrees of courts of probate, rendered after notice and from which no appeal is taken, shall be conclusive and shall be entitled to full faith, credit and validity and shall not be subject to collateral attack, except for fraud." Therefore, the defendants argue, the Probate Court has no power to reconsider, modify, or revoke the first decree, which was rendered after notice and a hearing. On the other hand, the plaintiffs argue that the first decree was not a final decree as to the validity of the purported will, and, therefore, the court still had the authority to make a modification pursuant to § 45a-128 (b). Because we conclude subsequently in this opinion that § 45a-128 does not apply under the facts of the present case, we need not resolve whether the parties' assumption is correct.

of the purported will. The resolution of that question requires us to construe the first decree. "Like the consideration of a court's subject matter jurisdiction, the construction of a judgment is a question of law for the court. . . . As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . The judgment should admit of a consistent construction as a whole. . . . To determine the meaning of a judgment, we must ascertain the intent of the court from the language used and, if necessary, the surrounding circumstances." (Internal quotation marks omitted.) *Sacramone* v. *Harlow, Adams & Friedman, P.C.*, 218 Conn. App. 288, 298, 291 A.3d 1042 (2023).

We begin with the recognition that the first decree is not a model of clarity. The plaintiffs' petition sought two orders from the court: a declaration that the purported will was valid and, pursuant to the purported will, an appointment of the two plaintiffs as executors of the decedent's estate. Although the first decree states generally that "[t]he petition is approved," it granted neither of the plaintiffs' two requests. Moreover, although the first decree takes clear action regarding the appointment of an administrator of the estate, it does not expressly state that the purported will is valid or invalid.

Notwithstanding the lack of such express language of the first decree, the findings and orders therein require the conclusion that the Probate Court implicitly declared the purported will invalid. The first decree incorporates factual findings regarding the purported will that necessitate that conclusion. Specifically, the first decree observes that, although the purported will contains signatures "*averring* to be that of the decedent and [two] witnesses"; (emphasis added); the purported will was not notarized and the witnesses did not appear

before the court at the hearing on the petition. Although the language of § 45a-251 is not explicitly included in the first decree, these findings indicate that the Probate Court concluded that the plaintiffs had not provided sufficient proof that the purported will was "subscribed by the testator and attested by two witnesses, each of them subscribing in the testator's presence," as required by § 45a-251. Moreover, the court's findings must be understood in conjunction with the principle that "a will's proponent retains the burden of proving, by a preponderance of the evidence, that the will was executed in the manner required by statute. . . . The proponent must prove anew that the will's execution was in compliance with the statute in effect at the time it was executed. . . . To be valid, [a] will must comply strictly with the requirements of [the] statute. . . . Because the offer for probate of a putative will is in essence a proceeding in rem the object of which is a decree establishing a will's validity against all the world . . . the proponent must at least make out a prima facie case that all statutory criteria have been satisfied even when compliance with those criteria has not been contested." (Citations omitted; footnote omitted.) *Gardner* v. *Balboni*, 218 Conn. 220, 225–26, 588 A.2d 634 (1991). The court's findings, therefore, indicate that it concluded that the plaintiffs had failed to meet their burden to prove that the purported will complied with the statutory requirements.

Additionally, the first decree appointed Valliere to be the administrator of the decedent's estate and made several orders consistent with the granting of the defendants' contest of the purported will, including allowing twelve months for Valliere to settle the estate. The appointment of Valliere as the administrator and the issuance of the orders consistent with that appointment directly contradicted the purported will's express provisions, including its nomination of the plaintiffs as executors of the decedent's estate, thus indicating that the

Probate Court implicitly declared the purported will invalid in the first decree. It is a fundamental principle of the law of wills that the intent of the testator, as expressed through the provisions of the will, is what governs. See, e.g., *Swole* v. *Burnham*, 111 Conn. 120, 121–22, 149 A. 229 (1930) ("The cardinal rule of testamentary construction is the ascertainment and effectuation of the intent of the testator, if that be possible. If this intent, when discovered, has been adequately expressed and is not contrary to some positive rule of law, it will be carried out."). In the present case, therefore, if the Probate Court had admitted the purported will, its provision appointing the plaintiffs as executors would control. See id. In the alternative, as we will explain herein, if the court intended to delay its consideration of whether to admit the purported will, it would have appointed a temporary administrator. See General Statutes § 45a-316.[8] When the Probate Court deems an individual to have died intestate, however, it routinely appoints an administrator to settle the affairs of the decedent's estate. See General Statutes § 45a-303.[9]

[8] General Statutes § 45a-316 provides: "Whenever, upon the application of a creditor or other person interested in the estate of a deceased person, it is found by the court of probate having jurisdiction of the estate that the granting of administration on the estate or the probating of the will of the deceased will be delayed, or that it is necessary for the protection of the estate of the deceased, the court may, with or without notice, appoint a temporary administrator to hold and preserve the estate until the appointment of an administrator or the probating of the will. The court shall require from such administrator a probate bond. If the court deems it more expedient, it may order any state marshal or constable to take possession of the estate until the appointment of an administrator or executor."

[9] General Statutes § 45a-303 provides in relevant part: "(a) Jurisdiction of intestate estates. Probate costs. (1) When any person domiciled in this state dies intestate, the court of probate in the district in which the deceased was domiciled at his death shall have jurisdiction to grant letters of administration. . . .

"(b) Application, notice and hearing re letters of administration. Upon application for letters of administration to the court of probate having jurisdiction of the estate of an intestate decedent, the court shall, before granting letters of administration, after notice required by this section, hold a hearing. Notice of such hearing, either public notice, personal notice or

The first decree's order allowing Valliere twelve months to settle the estate is particularly significant to our conclusion that the Probate Court had found the purported will invalid. We recognize that, prior to the hearing held by the Probate Court regarding the validity of the purported will, the defendants filed a motion to appoint a temporary independent administrator of the decedent's estate pursuant to, inter alia, § 45a-316. See footnote 8 of this opinion. Nothing in the first decree, however, suggests that the appointment of Valliere was to be on a temporary basis, and the provision ordering him to "settle" the estate within twelve months clearly indicates that the appointment was permanent. See 31 Am. Jur. 2d 195, Executors and Administrators § 223 (2022) ("[i]n general, the authority of an executor or administrator continues until the estate is fully settled unless he or she is removed, dies, or resigns"). Moreover, the first decree did not reference § 45a-316, which allows the court to appoint a temporary administrator to maintain the status quo of the estate if it believes that the probating of the will of the deceased will be

both as the court deems best, shall be given to all persons interested in such estate, including the Commissioner of Revenue Services in the case of a nondomiciliary decedent, unless all persons so interested sign and file in court a written waiver of such notice, or unless the court, for cause shown, dispenses with such notice. The finding by the court that such estate is not more than sufficient to pay the expenses of administration, the funeral and last sickness shall be sufficient cause to dispense with such notice.

"(c) To whom letters of administration granted. (1) Upon hearing as required by this section, the court of probate having jurisdiction shall grant administration of the intestate decedent's estate to any one or more persons or their designees appointed in the following order, provided such person or persons are entitled to share in the estate of the decedent: (A) The surviving spouse, (B) any child of the decedent or any guardian of such child as the court shall determine, (C) any grandchild of the decedent or any guardian of such grandchild as the court shall determine, (D) the decedent's parents, (E) any brother or sister of the decedent, (F) the next of kin entitled to share in the estate, or, on their refusal, incapacity or failure to give bond or upon the objection of any heir or creditor to such appointment found reasonable by the court, to any other person whom the court deems proper. . . ."

delayed. See footnote 8 of this opinion. If the Probate Court intended to afford the plaintiffs an opportunity to continue litigating the validity of the purported will, it should have explicitly stated that intention by noting that the issue would remain open or that the plaintiffs would have such opportunity at a later date. See *Sacramone* v. *Harlow, Adams & Friedman, P.C.*, supra, 218 Conn. App. 299. Thus, it is clear that the Probate Court intended in the first decree to appoint Valliere as a full or permanent administrator.

In summary, the first decree's factual findings calling into question whether the purported will's execution complied with the applicable statutory requirements, understood together with the appointment of Valliere as an independent administrator—in direct contradiction to the provisions of the purported will—indicate that the Probate Court in the first decree necessarily found the purported will invalid. The court's order directing Valliere to settle the estate within twelve months, which cannot be reconciled with the proposition that the first decree intended to leave open the question of the purported will's validity, further underscores our conclusion that the first decree must be understood to have denied the plaintiffs' application to submit the purported will.

Subsequent proceedings also inform our interpretation of the first decree. Specifically, the Probate Court's response to the plaintiffs' request for an additional hearing, via the issuance of the second decree, indicates that the court intended merely to amplify the first decree's implicit ruling that the purported will was invalid. The Probate Court issued the second decree without addressing the plaintiffs' request for an additional hearing. If the first decree had not determined the validity of the purported will, resolving that issue by way of a second decree would have been improper without prior notice or an additional hearing pursuant to General Statutes

§ 45a-286, which provides in relevant part that "[a]ny court of probate shall, before proving or disapproving any last will and testament, or codicil thereto, hold a hearing thereon, of which notice, either public or personal or both, as the court may deem best, has been given to all parties known to be interested in the estate, unless all parties so interested sign and file in court a written waiver of such notice, or unless the court, for cause shown, dispenses with such notice. . . ." Prior to the issuance of the second decree, the Probate Court did *not* (1) hold a second hearing on the validity of the purported will, (2) provide notice of such a hearing, (3) obtain a written waiver from the parties of such notice, or (4) show cause to dispense with such notice. Instead, the second decree merely added a reference to § 45a-251—which, as was iterated, requires a will to be in writing, subscribed by the testator, and attested by two witnesses—and elaborated on its factual findings made in the first decree regarding the insufficiency of the evidence surrounding the signatures of the testator and witnesses. Thus, the circumstances surrounding the issuance of the second decree; see *Sacramone* v. *Harlow, Adams & Friedman, P.C.*, supra, 218 Conn. App. 298; lend support to our interpretation that the first decree was a final decree regarding the validity of the purported will. The second decree, therefore, was issued pursuant to the Probate Court's "inherent power to correct its records so as to make the history of its proceedings speak the truth." *Lillico* v. *Perakos*, 152 Conn. 526, 532, 209 A.2d 92 (1965).

We find unpersuasive the plaintiffs' argument that the second decree constituted a modification pursuant to § 45a-128 (b) and that, therefore, they had thirty days from the date on which the Probate Court provided notice of the second decree to appeal. "[Section] 45a-128 permits a Probate Court, in its discretion, to reconsider, modify or revoke an order or decree. The legislature has, however, limited the Probate Court's ability

to do so to only four circumstances." *Sacramone* v. *Harlow*, *Adams & Friedman*, *P.C.*, supra, 218 Conn. App. 297. Specifically, § 45a-128 (b) provides that the Probate Court "may reconsider and modify or revoke any such order or decree for any of the following reasons: (1) For any reason, if all parties in interest consent to reconsideration, modification or revocation, or (2) for failure to provide legal notice to a party entitled to notice under law, or (3) to correct a scrivener's or clerical error, or (4) upon discovery or identification of parties in interest unknown to the court at the time of the order or decree. (c) Upon any modification or revocation there shall be the same right of and time for appeal as in the case of any other order or decree."

The plaintiffs rely solely on the third circumstance of § 45a-128 (b), asserting that the second decree was a modification for the purpose of correcting a scrivener's error. If we accept the plaintiffs' premise, however, that the first decree left open the question of the validity of the purported will, the additional paragraph of the second decree cannot be understood to correct a mere scrivener's error in the first decree, and, therefore, the second decree does not qualify as a modification under § 45a-128 (b) on that basis. See, e.g., *State* v. *Rosario*, 238 Conn. 380, 386–88, 680 A.2d 237 (1996) (misstated date in search warrant was considered scrivener's error); *First Federal Savings & Loan Assn. of Rochester* v. *Pellechia*, 31 Conn. App. 260, 266, 624 A.2d 395 (misstatement of single digit of docket number was considered scrivener's error), cert. denied, 227 Conn. 923, 632 A.2d 701 (1993).

In sum, we conclude that, in the first decree issued by the Probate Court, it ruled that the purported will was invalid and, pursuant to § 45a-186 (b), the plaintiffs had thirty days from July 27, 2023,[10] to appeal to the

[10] Section 45a-186 (b) provides in relevant part that "[t]he appeal period shall be calculated from the date on which the court sent the order, denial or decree by mail or the date on which the court transmitted the order,

Superior Court. Thus, the plaintiffs' appeal to the Superior Court on September 27, 2023, was not timely filed, and the Superior Court lacked subject matter jurisdiction over the appeal.

The judgment is vacated and the case is remanded with direction to render judgment dismissing the action.

In this opinion the other judges concurred.

CHERYL L. PEARLMAN *v.* DOUGLAS GERVOLINO (AC 47514)

Cradle, C. J., and Elgo and Wilson, Js.

Syllabus

The plaintiff landlord appealed from the trial court's judgment with respect to its award of attorney's fees and costs to the defendant tenant on the count of his counterclaim alleging violations of the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq.) in connection with the plaintiff's handling of his security deposit. The plaintiff claimed that the court improperly awarded the defendant attorney's fees and costs for matters not authorized under CUTPA. *Held*:

The trial court abused its discretion in calculating the amount of attorney's fees and costs the defendant was entitled to recover, as pursuant to the statute (§ 42-110g (d)) providing for an award of attorney's fees and costs under CUTPA, such fees and costs are limited to work reasonably performed by an attorney related to the prosecution of a CUTPA claim and, on review of the defendant's affidavit, his request for attorney's fees included fees for matters unrelated thereto.

Argued April 16—officially released July 29, 2025

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Danbury, where the defendant filed a counterclaim; thereafter, the case was tried to the court, *Shaban*, *J.*; judgment in part for the

denial or decree by electronic service, whichever is later." It is undisputed that notice of the first decree was sent to all parties on July 27, 2023.

plaintiff on the complaint and judgment in part for the defendant on the counterclaim; subsequently, the court granted the defendant's motion for attorney's fees and denied the plaintiff's motion to reargue, and the plaintiff appealed to this court. *Reversed*; *further proceedings*.

Cheryl L. Pearlman, self-represented, the appellant (plaintiff).

Opinion

CRADLE, C. J. The self-represented plaintiff, Cheryl L. Pearlman, appeals from the judgment of the trial court awarding the defendant, Douglas Gervolino, attorney's fees and costs pursuant to the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.[1] On appeal, the plaintiff claims that the court improperly awarded the defendant attorney's fees and costs not authorized under CUTPA. Specifically, the plaintiff claims that the court's award of attorney's fees was not limited to those fees associated with the defendant's CUTPA claim.[2] We agree and, accordingly, reverse the judgment of the trial court and remand the case for a new hearing on the defendant's motion for attorney's fees.[3]

The following facts, as found by the trial court, and procedural history are relevant to the plaintiff's appeal.

[1] Pursuant to CUTPA, "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." General Statutes § 42-110b (a).

Attorney's fees may be awarded for a violation of CUTPA pursuant to General Statutes § 42-110g (d).

[2] The defendant did not file a brief in this appeal. We, therefore, have considered this appeal on the basis of the record, the plaintiff's appellate brief, and the plaintiff's oral argument before this court.

[3] In light of our disposition, we need not address the plaintiff's additional claim that the trial court erred by denying her motion to reargue the award of attorney's fees. See, e.g., *Glory Chapel International Cathedral* v. *Philadelphia Indemnity Ins. Co.*, 224 Conn. App. 501, 517 n.8, 313 A.3d 1273 (2024); *Doe* v. *West Hartford*, 168 Conn. App. 354, 359 n.5, 147 A.3d 1083 (2016), aff'd, 328 Conn. 172, 177 A.3d 1128 (2018).

On July 19, 2022, the defendant entered into a written lease with the plaintiff for the use and occupancy of 130 Head of Meadow Road in Newtown (premises) from August 1, 2022, through May 31, 2023, at a rate of $3700 per month. The defendant paid a $7400 security deposit to the plaintiff to secure the lease. "Not long after taking occupancy, problems arose between the parties." The defendant "claimed that the premises was unfit for human habitation and, on that basis, withheld rent for the . . . months of . . . September and October, 2022." Consequently, the plaintiff commenced a summary process action seeking possession of the premises. On October 28, 2022, the court in that action rendered judgment of possession in favor of the plaintiff, and the defendant subsequently vacated the premises. The two months of unpaid rent, however, remained outstanding, and the plaintiff, in turn, refused the defendant's request for the return of his security deposit.

Thereafter, on November 23, 2022, the plaintiff commenced the underlying action against the defendant, alleging, inter alia, breach of contract for nonpayment of rent. The defendant, in turn, filed an answer, special defenses, and a five count counterclaim. Pertinent to this appeal, count two of the counterclaim alleged that the plaintiff failed to place the defendant's security deposit into an escrow account in violation of General Statutes § 47a-21 (h),[4] and count five of the counter-

[4] General Statutes § 47a-21 (h) provides in relevant part: "(1) Each landlord shall immediately deposit the entire amount of any security deposit received by such landlord from each tenant into one or more escrow accounts established or maintained in a financial institution for the benefit of each tenant. Each landlord shall maintain each such account as escrow agent and shall not withdraw funds from such account . . . .

(4) (A) The landlord shall provide each tenant with a written notice stating the amount held for the benefit of the tenant and the name and address of the financial institution at which the tenant's security deposit is being held not later than thirty days after the landlord receives a security deposit from the tenant or the tenant's previous landlord or transfers the security deposit to another financial institution or escrow account. . . ."

claim alleged multiple violations[5] of CUTPA.[6] The matter was tried before the court, *Shaban*, *J.*, on July 12, 2023. On November 9, 2023, the court issued a memorandum of decision in which it found in favor of the plaintiff on her claim of breach of contract for nonpayment of rent and in favor of the defendant on counts two and five of his counterclaim.[7] With respect to count two of the counterclaim, the court found that the plaintiff, "by admission through her pleading and her own testimony," failed to deposit the defendant's security deposit into an escrow account, as required by statute. With respect to count five, the court found that the plaintiff's violations of § 47a-21 (h) constituted violations of CUTPA.[8] Specifically, with respect to the CUTPA violations, the court relied on the plaintiff's failure to place the security deposit into an escrow account in violation of § 47a-21 (h) (1),[9] and the plaintiff's failure to provide the defendant with certain information regarding his security deposit in violation of

[5] Specifically, the defendant alleged that the plaintiff's violation of § 47a-21 (h), as set forth in count two of the counterclaim, constituted a violation of CUTPA. The remaining CUTPA violations alleged in count five of the counterclaim consisted of several alleged violations of § 47a-21 (d) related to the plaintiff's handling of the security deposit, the plaintiff's unauthorized towing of the defendant's car, and the plaintiff's "failure to provide smoke alarms" and "to maintain the premises in a condition fit for habitation."

[6] The remaining counts of the counterclaim alleged breach of contract related to the plaintiff's handling of the security deposit (count one), harassment and unlawful entry into premises (count three), and trespass to chattel on the basis of the plaintiff having the defendant's car towed from the premises (count four).

[7] In addition, the court found in favor of the defendant on count four of the counterclaim and in favor of the plaintiff on counts one and three of the counterclaim. See footnote 6 of this opinion.

[8] The court found in favor of the plaintiff with respect to the remaining CUTPA violations alleged in count five of the defendant's counterclaim. See footnote 5 of this opinion.

[9] The court reasoned: "[T]his alone may not constitute a CUTPA violation. However, coupled with the fact [that] the plaintiff withdrew the deposit funds that were to have been escrowed for the defendant and then used them for her own personal expenses, the court finds this constitutes both a [statutory] violation . . . as well as a CUTPA violation. This was more

§ 47a-21 (h) (4) (A).[10] The court awarded the defendant $500 in punitive damages on the CUTPA count of the counterclaim.[11] In addition, the court found that, "[b]ecause the defendant has had to prosecute his counterclaim to enforce his claims of statutory violations relative to his security deposit, an award of attorney's fees is appropriate. The defendant may pursue such an award pursuant to Practice Book § 11-21[12] if he so [chooses]." (Footnote added.)

On November 13, 2023, the defendant filed a motion for attorney's fees pursuant to CUTPA. The defendant submitted with his motion an affidavit of legal fees (affidavit), which contained an itemized billing statement of counsel's services.[13] The affidavit indicated that the defendant's counsel charged $450 per hour, and he expended 25.9 hours on the defendant's case, thereby incurring $11,655 in fees and $369.51 in costs. On November 28, 2023, the plaintiff filed an objection to the defendant's motion for attorney's fees, in which she argued, inter alia: "CUTPA allows for [the award of] 'reasonable [attorney's] fees' . . . [which] logically

than a negligent failure to comply with the statute. It was an unscrupulous, wilful and voluntary act to use the funds for her own personal expenses outside of the enumerated uses authorized by the statute. . . . Simply put, the actions of the plaintiff were unfair to the defendant." (Citation omitted.)

[10] The court reasoned: "The failure to provide the information was an unfair act with respect to the defendant as the funds belonged to him and he had a right to know where they were being held. By failing to reveal the information, the plaintiff effectively hid from the defendant her use of the funds for her personal benefit."

[11] On appeal, the plaintiff does not challenge the court's award of punitive damages.

[12] Practice Book § 11-21 provides in relevant part that "[m]otions for attorney's fees shall be filed with the trial court within thirty days following the date on which the final judgment of the trial court was rendered. . . ."

[13] During the hearing on the motion for attorney's fees, the defendant's counsel indicated to the court that the affidavit of attorney's fees that he filed with the court contained "the exact billing records that [he gave] to [the defendant] . . . except . . . in the form of an affidavit instead of an invoice."

includes only charges associated with [the CUTPA claim], i.e., the claimed withholding of the banking/deposit information for the security deposit, but not for other matters and claims not associated with [the CUTPA] claim. The fees requested [by the defendant] include time expended to respond to all claims by the plaintiff as well as [all] five counterclaims submitted by the defendant," several of which "concern other matters and . . . [on] which the defendant [did not prevail]."

A hearing on the defendant's motion for attorney's fees was scheduled for December 18, 2023, and was continued to January 23, 2024, by request of the plaintiff. On the morning of the January 23, 2024 hearing, the plaintiff filed a motion for an additional continuance on the basis that she was "out of state." The court denied her request for an additional continuance,[14] and the hearing on the defendant's motion for attorney's fees proceeded in the plaintiff's absence. Following the hearing, the court issued a written order indicating that "[t]he defendant appeared at the hearing, and the court considered the defendant's motion for [attorney's] fees . . . [and] also reviewed the plaintiff's objection [to the defendant's motion] and had defense counsel address any specific objections raised [therein]." The court, "[h]aving reviewed the bases of the defendant's motion . . . [found that] the defendant has set forth a legal basis for his claim for attorney's fees and [costs] in the defense of the plaintiff's action and the prosecution of his counterclaims." (Citations omitted.) Accordingly,

[14] In a written order issued on the same date, the court stated: "[The] plaintiff was previously granted a continuance on December 12, 2023. Further, notice of the today's hearing was issued on December 13, 2023, yet the plaintiff waited until the day of the hearing to move for an additional continuance. As noted on the judicial form for continuances, such motions are to be made at least three days before the scheduled event. Lastly, other than indicating that she is out of state, the movant provides no reason as to how and why she is prevented from attending the hearing."

the court awarded the defendant attorney's fees and costs in the amount of $12,024.51, which included all the fees and costs set forth in the defendant's affidavit. On February 14, 2024, the plaintiff filed a motion to reargue the award of attorney's fees, asserting, inter alia, that "[t]he court abused its discretion in awarding attorney's fees to the defendant [related to] counts [for] which [he is] not entitled" to recover fees. The court denied the plaintiff's motion to reargue. This appeal followed.

On appeal, the plaintiff claims that the court abused its discretion in "awarding attorney's fees and costs not authorized under CUTPA." Specifically, the plaintiff argues that an award of attorney's fees under CUTPA is limited to those fees related to successful CUTPA claims, and that the court, "[b]y indiscriminately awarding all fees requested by the defendant that were included [in his affidavit]," improperly calculated the amount of fees and costs the defendant was entitled to recover under CUTPA.[15] We agree.

We begin by setting forth our standard of review and the legal principles relevant to the plaintiff's claim. "[W]e review an award of attorney's fees under the abuse of discretion standard of review. This standard applies to the amount of fees awarded . . . and also to the trial court's determination of the factual predicate justifying the award. . . . Under the abuse of discretion standard of review, [w]e will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. . . . [Thus, our] review of such rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did." (Internal quotation marks

[15] The plaintiff has not challenged the reasonableness of the hourly rate charged by the defendant's counsel.

omitted.) *Noyes* v. *Antiques at Pompey Hollow, LLC*, 144 Conn. App. 582, 597, 73 A.3d 794 (2013).

General Statutes § 42-110g (d) provides in relevant part that "[i]n any action brought by a person under [CUTPA], the court may award . . . costs and reasonable attorneys' fees based on the work reasonably performed by an attorney . . . ." This court has held that § 42-110g (d) "relates solely to claims related to the prosecution of a CUTPA claim and not to all claims." *Jacques All Trades Corp.* v. *Brown*, 57 Conn. App. 189, 200, 752 A.2d 1098 (2000). Accordingly, "[i]n the absence of abuse of discretion, the court can award attorney's fees under CUTPA only for those expenses that were related to the prosecution of a CUTPA claim." Id.; see also *Tomick* v. *United Parcel Service, Inc.*, 135 Conn. App. 589, 626 n.26, 43 A.3d 722, cert. denied, 305 Conn. 920, 47 A.3d 389 (2012), and cert. denied, 305 Conn. 920, 47 A.3d 389 (2012).

In *Jacques All Trades Corp.* v. *Brown*, supra, 57 Conn. App. 192, the plaintiff brought an action against the defendants, Laverne Brown and the city of Hartford, for breach of two separate home improvement contracts, one private contract with Brown, and the other contract with the city. Brown, in turn, asserted a counterclaim consisting of three counts, one of which alleged a violation of CUTPA. Id., 193. Brown prevailed on her CUTPA counterclaim and moved for an award of attorney's fees, upon which "the court ordered Brown's counsel to provide an itemized account of the time and expense required to litigate the CUTPA claim." Id., 200. Brown subsequently submitted a bill totaling $19,413.50, which the trial court awarded to Brown as attorney's fees under CUTPA. Id. On cross appeal to this court, Brown claimed that the trial court improperly calculated her attorney's fees. Specifically, she contended that, pursuant to § 42-110g (d), "she [was] entitled to *all* attorney's fees incurred in the defense of [the plaintiff's]

action and the prosecution of her counterclaim." (Emphasis in original.) Id. This court disagreed and concluded that the trial court properly limited its award of attorney's fees solely to the fees Brown "incurred in the pursuit of her CUTPA claim" and properly excluded the "fees [related to] her other counterclaims." Id.

In *Heller* v. *D. W. Fish Realty Co.*, 93 Conn. App. 727, 734–36, 890 A.2d 113 (2006), this court further clarified the scope of attorney's fees recoverable under CUTPA. In that case, the plaintiffs brought an action against the defendant for breach of contract, negligence, and violations of CUTPA. Id., 730. After prevailing on all claims, the plaintiffs sought to recover attorney's fees under CUTPA. Id., 734. In response, the trial court "ordered the plaintiffs to submit evidence as to the portion of the fees requested specifically related to the CUTPA [claim]," which the plaintiffs were unable to do because of the close factual connection between the claims. (Internal quotation marks omitted.) Id., 735. Because the plaintiffs were unable to apportion the fees, the trial court, relying on *Jacques All Trades Corp.*, denied their motion for attorney's fees. Id. In reversing the trial court's denial of attorney's fees, this court distinguished cases in which the factual basis of a CUTPA claim is integral to, rather than separate from, the facts underlying other claims. Specifically, this court held that the trial court improperly relied on *Jacques All Trades Corp.* in ordering the plaintiffs to apportion their attorney's fees among their claims because, "[i]n the present case, the plaintiffs' breach of contract and negligence claims were related to their CUTPA claim because they depended on the same facts." Id., 735; see also *Taylor* v. *King*, 121 Conn. App. 105, 131, 994 A.2d 330 (2010) ("when the facts underlying the CUTPA claim are indistinguishable from those facts relating to other claims, § 42-110g (d) encompasses claims related to the prosecution of a CUTPA claim . . . not only one

claim explicitly labeled as a CUTPA claim" (internal quotation marks omitted)).

Thus, in the present case, the defendant's award of attorney's fees pursuant to § 42-110g (d) was limited to those fees related to the prosecution of the CUTPA count of his counterclaim. Our review of the defendant's affidavit, however, reveals that his request for attorney's fees was not limited to only those fees. For example, some of the fees listed therein were incurred by counsel's "[r]eview of [the summary process] case" and "[r]esearch [of] mortgage and federal eviction moratorium" and the filing of an unsuccessful motion to open in the summary process action. These fees appear to be wholly unrelated to the defendant's CUTPA claim. The affidavit also includes numerous fees related to counsel's review of the pleadings, filing and amending of the counterclaim, and correspondence with the defendant and opposing party. These itemized entries, however, do not apportion the corresponding fees among the defendant's various counts of his counterclaim. And, although certain entries appear to relate solely to the defendant's CUTPA count of his counterclaim,[16] these services were billed in conjunction with more general services relating to the entire litigation, such as "trial preparation" and "[r]eview of new pleadings." In calculating the defendant's award of attorney's fees, however, the court included in its award *all* the costs and fees set forth in the defendant's affidavit. Because the court did not limit its award of attorney's fees to those fees incurred on the defendant's CUTPA claim, but, rather, expressly awarded the defendant all "attorney's fees and [costs incurred] in the defense of the plaintiff's action and the prosecution of his counterclaims," we conclude that the court abused its discretion in calculating the amount of attorney's fees and

[16] Namely, several itemized entries in the affidavit concern the defendant's objection to the plaintiff's motion to strike the CUTPA count of the counterclaim.

costs the defendant was entitled to recover under CUTPA.[17]

The judgment is reversed and the case is remanded for a new hearing on the defendant's motion for attorney's fees.

In this opinion the other judges concurred.

SARAH PITTU ET AL. *v.* BUGAJ CONTRACTORS COMPANY, LLC
(AC 47215)

Moll, Suarez and Seeley, Js.

Syllabus

The defendant contractor appealed from the judgment of the trial court discharging a mechanic's lien that the defendant had placed on certain real property owned by the plaintiffs. The defendant claimed that the court improperly shifted the burden of proof to the defendant by requiring it to prove that it did not breach a contract entered into between the parties, rather than requiring it to prove only that there was probable cause to sustain its lien. *Held*:

This court concluded that, although the trial court articulated the correct burdens of proof delineated in the statute (§ 49-35b) governing the hearing on the plaintiffs' application for the discharge of the mechanic's lien, the trial court's determinations rested on legally erroneous grounds, as the trial court incorrectly determined that its finding that the defendant had breached the parties' contract precluded the defendant from establishing a valid mechanic's lien, because, even though the defendant had not substantially performed under the parties' contract, the defendant could properly rely on the contract price, and the invoices and change orders submitted there-

[17] In the plaintiff's brief to this court, she suggests that the trial court "sought to punish [her] by awarding additional fees to the defendant beyond what was authorized by law" because she had failed to appear at the January 23, 2024 hearing. The record is devoid of any evidence to support the plaintiff's contention. We emphasize that "[t]he term abuse of discretion does not imply a bad motive or wrong purpose but merely means that the ruling appears to have been made on untenable grounds." (Internal quotation marks omitted.) *Medical Device Solutions, LLC* v. *Aferzon*, 207 Conn. App. 707, 774, 264 A.3d 130, cert. denied, 340 Conn. 911, 264 A.3d 94 (2021).

with, to demonstrate the value of its materials and services for the purposes of establishing that there was probable cause to sustain the lien.

Argued January 13—officially released July 29, 2025

Procedural History

Application to reduce or discharge a mechanic's lien on certain real property owned by the plaintiffs, brought to the Superior Court in the judicial district of Fairfield and tried to the court, *Hon. Barry K. Stevens*, judge trial referee; judgment granting the application, from which the defendant appealed to this court. *Reversed*; *further proceedings*.

Sabato P. Fiano, for the appellant (defendant).

Anthony J. Musto, for the appellees (plaintiffs).

Opinion

SUAREZ, J. The defendant, Bugaj Contractors Company, LLC, appeals from the judgment of the trial court discharging a mechanic's lien that it had placed on certain real property owned by the plaintiffs, Sarah Pittu and Raul Herrera. The defendant claims that the court improperly (1) shifted the burden of proof to the defendant at the hearing held pursuant to General Statutes § 49-35a on the plaintiffs' application to discharge the mechanic's lien by requiring it to prove that it did not breach a contract entered into between the parties, rather than requiring it to prove only that there was probable cause to sustain its lien, (2) found, "presumably by clear and convincing evidence," that the defendant breached the contract between the parties, and (3) concluded that the mechanic's lien was premised entirely on the contract and, therefore, failed to sustain the lien on the basis of applicable principles of restitution and/or unjust enrichment.[1] (Emphasis omitted.) In support of its first claim, the defendant argues that it

[1] For ease of discussion, we address the claims in a different order than they were presented in the defendant's principal appellate brief.

was not obligated to prove a breach of contract claim at the hearing. We agree that the trial court incorrectly determined that its finding that the defendant breached the parties' contract precluded the defendant from establishing a valid mechanic's lien and, accordingly, we reverse the judgment of the court and remand the case for further proceedings.

The following facts, as found by the court or as undisputed in the record, and procedural history are relevant to this appeal. "In a contract dated December 23, 2020, the plaintiffs retained the defendant to perform home improvement renovations [(project)] on [their] property [located at 222 High Ridge Road in Fairfield (property)]. Pursuant to the contract, the total cost of the project was $662,050 (plus any approved change orders). The evidence indicates that the plaintiffs paid $502,961.41 to the defendant and another $9843.35 to third parties for work under the contract or relating to it.[2] . . .

"The work was scheduled to begin on January 4, 2021, and was to be substantially completed by August 15, 2021. The contract provide[s] that time was not of the essence. The contract further provide[s] that a [t]emporary certificate of occupancy shall be deemed substantial completion." (Citations omitted; footnote added; internal quotation marks omitted.) The project was not substantially completed by August 15, 2021, or by the last time the defendant worked at the property near the end of June, 2022. No temporary certificate of occupancy had been obtained by the time the defendant stopped work at the property.

[2] At the court's request, the parties filed a stipulation summarizing the amount that the defendant claimed it was owed, which totaled $237,407.24, and the plaintiffs' position as to the maximum possible lien amount, which totaled $144,805.24. Specifically, the plaintiffs disputed three invoices for "[e]xtras [c]laimed" by the defendant. The stipulation indicated that its filing did not constitute an admission by the plaintiffs that any amount was due.

In September, 2022, the defendant filed a mechanic's lien on the property, which indicated that its filing was "in accordance with a certain contract between it and the [plaintiffs]" and was "for just services rendered and/or materials furnished" during the project. The plaintiffs subsequently filed an application to reduce or discharge the mechanic's lien, alleging that there was no probable cause to sustain the validity of the lien and/or that the amount of the lien was excessive. The defendant filed an objection thereto.

On May 19 and June 30, 2023, the court, *Hon. Barry K. Stevens*, judge trial referee, held a hearing on the plaintiffs' application. Over the course of this hearing, the court received documentary evidence, which included the parties' contract, certain invoices, and the certificate of mechanic's lien, and heard testimony from Pittu and Grzegorz Bugaj, the sole member of the defendant.[3] At the hearing, Pittu testified that the defendant delayed work, failed to respond to communications from the plaintiffs, and damaged and/or failed to repair items in the home and that, eventually, the relationship became contentious. Pittu testified that the defendant stopped work on the project in June, 2022. Bugaj testified to the contrary that he "did not stop working on the property. I wasn't allowed to work on the property [after June, 2022] and, no, I was not allowed to continue work or [to] obtain the certificate of occupancy." Pittu denied that either she or Herrera had prevented the defendant from working on the project. In particular, Pittu testified that, in July, 2022, she had told Bugaj that he could return to the property after her daughter's birthday and that she would "get back to him after." "After the work

[3] The court heard this case together with *Pittu* v. *T&J Custom Woodworking, LLC*, Superior Court, judicial district of Fairfield, Docket No. CV-22-6118478-S (October 23, 2023), which concerned the plaintiffs' application to discharge a mechanic's lien filed by a subcontractor that had performed work on the project. The cases were not consolidated, however, and T&J Custom Woodworking, LLC, has not appeared or participated in this appeal.

stopped (and before the filing of the mechanic's lien), the parties engaged in discussions about the defendant resuming work under the contract, but these discussions were unsuccessful."

After the conclusion of the hearing, the parties filed simultaneous posttrial hearing briefs and reply briefs. The plaintiffs argued therein that (1) the defendant did not establish probable cause to sustain the validity of its lien, and (2) they had established that the lien was invalid by clear and convincing evidence because the defendant failed to substantially perform under the contract and because it provided "no other basis" to support its lien. The defendant argued that it provided "clear, definitive, and specific evidence as to the amount of contract work that it completed at the property, versus the amount that it was paid by the plaintiffs."

On December 12, 2023, the court issued a ruling granting the plaintiffs' application to discharge the mechanic's lien. The court found that the defendant breached the parties' contract by abandoning the project without explanation at the end of June, 2022. The court explicitly credited Pittu's testimony that the defendant had ceased working on the project without reason and discredited Bugaj's contrary testimony. The court stated that the defendant's "mechanic's lien claim is premised entirely on the contract." The court noted that a party's breach of contract does not necessarily prevent recovery in restitution but, nevertheless, found that the defendant was not entitled to equitable relief, inter alia, in light of its finding that "[t]he defendant has provided no credible evidence explaining why it stopped work on the project." For those reasons, the court concluded "that the defendant has failed to establish probable cause to sustain the validity of its lien and that the plaintiffs have established by clear and convincing evidence that the lien should be discharged." This appeal

followed.[4] Additional facts will be set forth as necessary.

On appeal, the defendant claims, inter alia, that the trial court improperly shifted the burden of proof by requiring it to prove a breach of contract claim at a proceeding in which it was statutorily required to prove only that there was probable cause that its mechanic's lien was valid. Specifically, the defendant argues that, although the court appeared to have required the defendant to have "affirmatively raised and disproved" that it did not breach its contract with the plaintiffs when it ceased work on the project, the defendant had no obligation to prove a breach of contract claim at the hearing on the plaintiffs' application. The plaintiffs counter that "nothing in the . . . court's decision states that the defendant was required to prove anything regarding a breach of contract." We conclude that the court improperly applied the law in grounding its determinations that (1) the defendant failed to establish probable cause that the lien was valid and (2) the plaintiffs established by clear and convincing evidence that the lien was not valid on its finding that the defendant breached the parties' contract.[5]

[4] Pursuant to General Statutes § 49-35c (a), an order granting an application to discharge a mechanic's lien is a final judgment for purposes of appeal. On February 13, 2024, the court approved the parties' joint stipulation for an appellate stay of the effect of the court's discharge order, pending the disposition of this appeal. The parties further stipulated that the statute of limitations by which the defendant may bring any action to foreclose on its mechanic's lien shall be tolled until sixty days after the disposition of this appeal, including the expiration of any appellate stay.

[5] Our holding with respect to this claim is also dispositive of the defendant's second and third claims. With respect to the defendant's claim that the court improperly found, "presumably by clear and convincing evidence"; (emphasis omitted); that it breached the parties' contract, we need not determine whether this finding was clearly erroneous because even assuming, without deciding, that the defendant breached the contract, a breaching party may still assert a valid lien, for the reasons stated in this opinion.

For the same reason, we need not separately address the defendant's claim that the court improperly declined to sustain the lien under theories of restitution and/or unjust enrichment. Although the court stated that the

We first set forth the standard of review and relevant legal principles. The issue of whether the court held the parties to the proper standard of proof is a question of law that we review de novo. See, e.g., *Downing* v. *Dragone*, 216 Conn. App. 306, 330, 285 A.3d 59 (2022), cert. denied, 346 Conn. 903, 287 A.3d 601 (2023). In the absence of a contrary indication, "we must presume that the court applied the correct legal standard." (Internal quotation marks omitted.) *In re Eric M.*, 217 Conn. App. 809, 837, 290 A.3d 411, cert. denied, 346 Conn. 921, 291 A.3d 1040 (2023). Our review of the trial court's ultimate determinations that (1) the defendant did not establish probable cause that the lien was valid, and (2) the plaintiffs established the invalidity of the lien by clear and convincing evidence, however, are subject to the clearly erroneous standard of review. See *36 DeForest Avenue, LLC* v. *Creadore*, 99 Conn. App. 690, 695, 915 A.2d 916, cert. denied, 282 Conn. 905, 920 A.2d 311 (2007); see also *Kaplan* v. *Scheer*, 182 Conn. App. 488, 501, 190 A.3d 31, cert. denied, 330 Conn. 913, 193 A.3d 49 (2018).

The determination of whether the trial court's decision is clearly erroneous "involves a two part function: [when] the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision; where the factual basis of the court's decision is challenged

defendant had not made a restitution claim, it nevertheless addressed that issue and found that the defendant was not entitled to equitable relief. In so doing, the court reasoned that it may "evaluate the reasons for and the circumstances surrounding the breach of contract and may consider whether the breach was nonwilful. The defendant has provided no credible evidence explaining why it stopped work on the project." As we explain subsequently in this opinion, whether the defendant intentionally breached the parties' contract, and whether that breach precluded it from recovering restitution damages, are not dispositive of whether the defendant presented a valid lien at a hearing pursuant to General Statutes § 49-35b.

we must determine whether the facts set out in the memorandum of decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, those facts are clearly erroneous. That is the standard and scope of this court's judicial review of decisions of the trial court. Beyond that, we will not go. . . . 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." (Internal quotation marks omitted.) *Pro-Build East, LLC* v. *Poffenberger*, 136 Conn. App. 184, 187–88, 45 A.3d 654 (2012). "Our deferential standard of review, however, does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal." (Internal quotation marks omitted.) *Princess Q. H.* v. *Robert H.*, 150 Conn. App. 105, 112, 89 A.3d 896 (2014).

To the extent that the defendant's claim requires us to apply the relevant statutes governing mechanic's liens, our review is plenary. See, e.g., *E & M Custom Homes, LLC* v. *Negron*, 140 Conn. App. 92, 103, 59 A.3d 262 (2013), appeal dismissed, 314 Conn. 519, 102 A.3d 707 (2014); *36 DeForest Avenue, LLC* v. *Creadore*, supra, 99 Conn. App. 699–700. A mechanic's lien is a creature of statute. See *Newtown Associates* v. *Northeast Structures, Inc.*, 15 Conn. App. 633, 636, 546 A.2d 310 (1988). General Statutes § 49-33 (a) provides in relevant part: "If any person has a claim for more than ten dollars for materials furnished or services rendered in the construction, raising, removal or repairs of any building or any of its appurtenances or in the improvement of any lot or in the site development or subdivision of any plot of land, and the claim is by virtue of an agreement with or by consent of the owner of the land

upon which the building is being erected or has been erected or has been moved, or by consent of the owner of the lot being improved or by consent of the owner of the plot of land being improved or subdivided . . . then the plot of land, is subject to the payment of the claim." Section 49-33 (b) further provides in relevant part that "[t]he claim is a lien on the land, building and appurtenances or lot or in the event that the materials were furnished or services were rendered in the site development or subdivision of any plot of land, then on the plot of land . . . ."

A mechanic's lien is not valid "unless the person performing the services or furnishing the materials (1) . . . lodges with the town clerk of the town in which the building, lot or plot of land is situated a certificate in writing, which shall be recorded by the town clerk with deeds of land, (A) describing the premises, the amount claimed as a lien thereon . . . and the date of the commencement of the performance of services or furnishing of materials, (B) stating that the amount claimed is justly due . . . ." General Statutes § 49-34.

The procedures governing applications to discharge or reduce a mechanic's lien are also governed by statute. Section 49-35a (a) provides in relevant part: "Whenever one or more mechanics' liens are placed upon any real estate pursuant to sections 49-33, 49-34, 49-35 and 49-38, the owner of the real estate, if no action to foreclose the lien is then pending before any court, may make application . . . that a hearing or hearings be held to determine whether the lien or liens should be discharged or reduced. . . ." Upon the hearing held on such an application, "the lienor shall first be required to establish that there is probable cause to sustain the validity of his lien. Any person entitled to notice under section 49-35a may appear, be heard and prove by clear and convincing evidence that the validity of the lien should not be sustained or the amount of the lien

claimed is excessive and should be reduced." General Statutes § 49-35b (a).

After the hearing, "the court or judge may: (1) Deny the application or motion if probable cause to sustain the validity of the lien is established; or (2) order the lien discharged if (A) probable cause to sustain its validity is not established, or (B) by clear and convincing evidence its invalidity is established; or (3) reduce the amount of the lien if the amount is found to be excessive by clear and convincing evidence; or (4) order the lien discharged or reduce the amount of the lien conditioned upon the posting of a bond, with surety, in a sum deemed sufficient by the judge to indemnify the lienor for any damage which may occur by the discharge or the reduction of amount." General Statutes § 49-35b (b).

"The standard of proof applicable in proceedings to discharge mechanic's liens is a modest one. For a lien to be upheld, a lienor must establish only that there is probable cause to sustain the validity of the lien. Proof of probable cause is not as demanding as proof by a fair preponderance of the evidence. . . . It is important to remember that the [lienor] does not have to establish that he will prevail, only that there is probable cause to sustain the validity of the claim. . . . The legal idea of probable cause is a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it. . . . Probable cause is a flexible common sense standard. It does not demand that a belief be correct or more likely true than false." (Citation omitted; footnote omitted; internal quotation marks omitted.) *36 DeForest Avenue, LLC* v. *Creadore*, supra, 99 Conn. App. 694–95. Once probable cause has been established, the party applying for a discharge of the lien must establish by clear and convincing evidence

that the lien is invalid. See *Rutka* v. *Meriden*, 145 Conn. App. 202, 210, 75 A.3d 722 (2013).

"In conducting our review, we also must remain cognizant of the remedial purpose of our mechanic's lien statutes, i.e., to give one who furnishes materials or services the security of the building and land for the payment of his claim by making such claim a lien thereon . . . and the oft-stated directive that those provisions should be liberally construed in order to implement [that] remedial purpose . . . ." (Citation omitted; internal quotation marks omitted.) *36 DeForest Avenue, LLC* v. *Creadore*, supra, 99 Conn. App. 695.

In the present case, the court articulated the correct burdens of proof delineated in § 49-35b and applied them to the facts in concluding that the defendant did not establish probable cause that its lien was valid and that the plaintiffs established by clear and convincing evidence that the lien was *not* valid. Thus, "in the absence of a contrary indication, we must presume that the court applied the correct legal standard." (Internal quotation marks omitted.) *In re Eric M.*, supra, 217 Conn. App. 837.

Although we presume the court applied the correct legal standard, for the reasons that follow, we conclude that the court incorrectly determined that its finding that the defendant breached the parties' contract conclusively precluded it from asserting a valid mechanic's lien. Thus, we agree with the defendant that it "had no obligation to prove [a] breach of contract claim at the hearing." (Emphasis omitted.) Therefore, we conclude that the court's determinations that (1) the defendant did not establish probable cause as to the validity of the lien and (2) the plaintiffs established the lien's invalidity by clear and convincing evidence rested on legally erroneous grounds. The court stated that the defendant's mechanic's lien claim was "premised entirely on

the contract." The court noted the defendant's argument that its calculation of the "amount owed under the contract [was] correct and accurate and [that] proof of substantial performance [was] unnecessary for this calculation." The court rejected that contention, concluding that the "fallacy" of the defendant's argument lay in its breach of the parties' contract. Thus, the court concluded that its determination that the defendant breached the contract definitively established that the lien was not valid.[6]

The issue before the court was whether the defendant had established probable cause that the lien it placed on the property was valid and, if so, whether the plaintiffs established the lien's invalidity by clear and convincing evidence. A lienor may establish the validity of a mechanic's lien by introducing evidence of its performance of services and/or furnishing of materials in support of their "claim . . . by virtue of an agreement with or by consent of the owner of the land . . . ." General Statutes § 49-33; see also, e.g., *Ceci Bros., Inc.* v. *Five Twenty-One Corp.*, 51 Conn. App. 773, 777, 724 A.2d

[6] We disagree with the plaintiffs' arguments that the defendant should have filed a motion for articulation and/or to reargue if it believed that the court (1) overlooked a basis supporting the validity of the lien other than the contract or (2) improperly applied the burden of proof. The court sufficiently articulated its rationale in determining whether the defendant's lien was valid under the burden shifting scheme pursuant to § 49-35b. The fact that the defendant challenges the court's determination that its lien was not valid because it breached the contract does not necessarily mean that the court overlooked a relevant principle of law. The defendant, therefore, was not required to file a motion to reargue or for articulation. "[T]he purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts." (Internal quotation marks omitted.) *Jaser* v. *Jaser*, 37 Conn. App. 194, 202, 655 A.2d 790 (1995); see also, e.g., *Northland Two Pillars, LLC* v. *Harry Grodsky & Co.*, 133 Conn. App. 226, 231, 35 A.3d 333 (2012) ("[a]n articulation is appropriate [when] the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification" (internal quotation marks omitted)).

541 (1999) ("[p]ursuant to . . . § 49-33 (a), the persons entitled to file a mechanic's lien are those who have furnished materials or rendered services in connection with the construction . . . or repairs of any building . . . or in the improvement of any lot" (internal quotation marks omitted)).

"[I]n a foreclosure of a mechanic's lien, a contractor is entitled to the value of the materials that it furnished or the services that it rendered in the construction of a project. . . . [T]he substantial performance doctrine is *not* the only method available for ascertaining that value. The reasonable value of the materials and services can be proven by: (1) providing evidence that the contract price represents the value of a contractor's materials and services . . . (2) demonstrating the contractor substantially performed such that the contract is the proper valuation of its materials and services . . . or (3) submitting evidence of the cost to complete the work." (Citations omitted; emphasis added; internal quotation marks omitted.) *Absolute Plumbing & Heating, LLC* v. *Edelman*, 146 Conn. App. 383, 396–97, 77 A.3d 889 (*Absolute Plumbing*), cert. denied, 310 Conn. 960, 82 A.3d 628 (2013).

The court found, and the defendant has not disputed on appeal, that there was no substantial performance in the present case. The contract provides that a "[t]emporary certificate of occupancy shall be deemed substantial completion . . . ." It is undisputed that the defendant did not obtain the certificate of occupancy before it stopped working on the project and that the contract was not fully performed. Whether the defendant substantially performed, although relevant under the framework outlined in *Absolute Plumbing*, was not dispositive of the lien's validity. Even if we assume without deciding that the court's finding that the defendant intentionally abandoned the project was not clearly erroneous, the defendant could still properly

rely on the contract price, and the invoices and change orders submitted therewith, to demonstrate the "value of [its] materials and services . . . ." (Internal quotation marks omitted.) *Absolute Plumbing & Heating, LLC* v. *Edelman*, supra, 146 Conn. App. 396–97.[7] Thus, we reject the plaintiffs' argument that "[o]nly when the contract is substantially performed can the contract price be used as the value of the lien." We stated unequivocally to the contrary in *Absolute Plumbing* that substantial performance is *not* the only method available to establish the value of a contractor's materials or services. See *Absolute Plumbing & Heating, LLC* v. *Edelman*, supra, 396–97; see also, e.g., *Pero Building Co.* v. *Smith*, 6 Conn. App. 180, 185, 504 A.2d 524 (1986) ("[t]he right to a mechanic's lien is not a contractual right, rather it is a statutory right available to secure, as well as to enforce, payment for materials and labor rendered"). Accordingly, the court incorrectly concluded that the defendant's breach of the parties' contract conclusively precluded it from establishing a valid mechanic's lien.

Negron is also instructive to our analysis. In that case, this court affirmed the trial court's calculation of a mechanic's lien filed by the plaintiff contractor. See *E & M Custom Homes, LLC* v. *Negron*, supra, 140 Conn. App. 94. The trial court found, and this court affirmed, that the plaintiff in that case did not substantially perform under the parties' contract. Id., 105–106. In fact, the trial court in *Negron* found that the defendant property owners were entitled to recover damages on their counterclaim, which asserted violations of the New Home Construction Contractors Act, General Statutes § 20-417a et seq., and the Connecticut Unfair Trade

[7] We note that the defendant has not argued that it submitted any evidence of the cost to complete the work, which could have been another avenue to demonstrate the lien's validity. See *Absolute Plumbing & Heating, LLC* v. *Edelman*, supra, 146 Conn. App. 396–97.

Practices Act, General Statutes § 42-110a et seq. Id., 96–97. The plaintiff claimed that the trial court improperly referred to the parties' construction loan budget, rather than to the contract, in determining the lien amount. Id., 102. We disagreed, noting that "[t]he purpose of the [mechanic's lien] statute is to give a contractor security for labor and material. . . . If the materials are not furnished, and the work is not done, in the construction, raising, removal, or repairs of a building, there can be no lien. . . . Prior precedent from [our Supreme Court has] concluded that the statute was not intended to provide a security interest for a builder's expectation of profit or other contract measure of damages." (Citation omitted; internal quotation marks omitted.) Id., 104. In *Negron*, the plaintiff "did not provide evidence that the contract price represented the value of its materials and services"; rather, we concluded that the evidence supported the court's conclusion that the balance due on the contract was profit, not the value of the plaintiff's materials and services. Id., 105. Accordingly, this court affirmed the trial court's conclusion that the value of the contractor's materials furnished and services rendered should be based on the construction budget. Id., 106; see also, e.g., *Dreambuilders Construction, Inc.* v. *Diamond*, 121 Conn. App. 554, 562 and n.4, 997 A.2d 553 (2010) (trial court's finding as to value of services rendered and materials furnished was not clearly erroneous because evidence showed that amount of claimed mechanic's lien, although based on "contract price less the amount paid," was not reflection of builder's expectation of profit or other contractual measure of damages (internal quotation marks omitted)).

This court in *Negron*, however, did not conclude that the lack of substantial performance precluded the contractor from asserting *any* lien amount. Rather, we stated that, in such a case, the lien may be sustained

on the value of the services and/or materials rendered. See *E & M Custom Homes, LLC* v. *Negron*, supra, 140 Conn. App. 105–106; cf., e.g., *Intercity Development, LLC* v. *Andrade*, 96 Conn. App. 608, 613–14, 901 A.2d 731 (2006) (plaintiff could not sustain mechanic's lien in reliance on contract price when it did not offer proof of reasonable value of work done and materials furnished), rev'd in part on other grounds, 286 Conn. 177, 942 A.2d 1028 (2008).

In the present case, by contrast, the court incorrectly concluded that the defendant was not entitled to any lien amount on the basis of its breach of the parties' contract, without considering whether the contract price and invoices presented represented the value of the defendant's services. At the hearing, the defendant submitted a copy of the lien, the facial validity of which was not disputed, as well as the contract between the parties, invoices and change orders. Bugaj testified regarding the work that the defendant performed and as to the invoices that reflected that work. The plaintiffs disputed the lien amount before the trial court in the parties' written stipulation and in their posthearing reply brief. See footnote 2 of this opinion. On appeal, the plaintiffs argue that the defendant did not offer evidence of the value of its services rendered. The defendant counters that it offered such evidence through its invoices, change orders, and Bugaj's testimony.

The court stated that the defendant "insists that, before leaving the project, it provided services and materials under the contract for approximately $237,407, for which it was not paid . . . ." Because the court concluded that the defendant's breach of contract precluded it from recovering *any* lien amount, however, it did not make any findings as to the value of the defendant's services, or as to whether the contract price accurately reflected the value of services rendered, as opposed to the defendant's expectation of profit or

other contract measure of damages. As stated previously, the court incorrectly concluded that the defendant's breach was dispositive of whether the lien was valid. Accordingly, the case must be remanded for a new hearing pursuant to § 49-35a in accordance with this opinion.[8]

It bears reemphasis that "the burden of proof at a probable cause hearing is a low one, and the court in evaluating the evidence must weigh both factual and legal probabilities. . . . [A] probable cause hearing is not a full-scale trial on the merits and the defendant did not have to establish that [it] ultimately will prevail, only that there is probable cause to sustain the validity of the claim." (Citation omitted.) *36 DeForest Avenue, LLC* v. *Creadore*, supra, 99 Conn. App. 698. For the foregoing reasons, the court incorrectly concluded that the mechanic's lien filed by the defendant was not valid in light of its finding that the defendant intentionally breached the parties' contract.

The judgment granting the application to discharge the mechanic's lien is reversed and the case is remanded for further proceedings consistent with this opinion.

In this opinion the other judges concurred.

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[8] Because the trial court did not make any factual findings as to the proper lien amount, and because it is improper for an appellate court to make its own factual findings; see, e.g., *Rose* v. *Commissioner of Correction*, 348 Conn. 333, 349–50, 304 A.3d 431 (2023); we do not address for the first time on appeal what the proper lien amount should be, if any, or whether the lien amount claimed by the defendant should be reduced in light of any payments already made by the plaintiffs pursuant to § 49-35b (b) (3). See, e.g., *ProBuild East, LLC* v. *Poffenberger*, supra, 136 Conn. App. 192 (lien amount may be diminished by "bona fide payments . . . made by the owner . . . before receiving notice of [the mechanic's] lien" (internal quotation marks omitted)).

HUDSON CITY SAVINGS BANK *v.* CHARLES D. HELLMAN ET AL.
(AC 46642)

Elgo, Suarez and Clark, Js.

Syllabus

The defendant homeowners, C and H, appealed from the trial court's judgment of foreclosure by sale rendered for the substitute plaintiff, M Co. The defendants executed and delivered a note payable to B Co., which endorsed the note in blank and assigned the note and mortgage to the plaintiff, H Co., which later merged into M Co. B Co. remained the servicer of the loan. The defendants claimed, inter alia, that the trial court improperly denied their motion for a continuance in order to conduct further discovery. *Held*:

The trial court did not abuse its discretion in its discovery rulings or in denying the defendants' motion for a continuance, as the defendants failed to seek timely remedies available under our rules of practice and their request for relief on the eve of trial was untimely.

The trial court correctly determined that M Co. had sustained its burden of proof, as there was sufficient evidence to establish that M Co. had authorized B Co. to act on its behalf.

The trial court's conclusion that M Co. had established that a notice of default had been sent to the defendants by first class mail was not clearly erroneous, as it was supported by ample evidence.

The trial court did not abuse its discretion by excluding certain testimony as to conversations between C and agents of B Co. as inadmissible hearsay, as the defendants failed to establish the scope of the authority or the identity of the purported agents of B Co.

This court declined to address the defendants' inadequately briefed claim that the trial court improperly overruled the defendants' objection to testimony that addressed certain business practices.

The trial court's sua sponte comments as to the sufficiency of M Co.'s evidence and regarding testimony from a witness for M Co., although unnecessary, did not rise to the level of judicial bias, as the comments were situated within the context of a scheduling concern and did not rise to the level of being so egregious as to demand a reversal of the court's judgment pursuant to the plain error doctrine.

The trial court did not abuse its discretion in failing to grant the defendants' equitable relief under the doctrine of unclean hands, as the defendants offered little evidence to establish that special defense.

Argued October 16, 2024—officially released July 29, 2025

Procedural History

Action to foreclose a mortgage on certain real property of the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where Manufacturers and Traders Trust Company was substituted as the plaintiff; thereafter, the court, *Spader*, *J.*, sustained the substitute plaintiff's objections to discovery requests by the named defendant et al.; subsequently, the court, *Genuario*, *J.*, denied the motion for a continuance and request for adjudication of the discovery issues filed by the named defendant et al.; thereafter, the case was tried to the court, *Genuario*, *J.*; judgment of foreclosure by sale; subsequently, the court, *Genuario*, *J.*, sustained the substitute plaintiff's objection to the motion to open the evidence filed by the named defendant et al. and denied the motion to reargue filed by the named defendant et al., and the named defendant et al. appealed to this court. *Affirmed.*

Charles D. Hellman, self-represented, for the appellants (named defendant et al.).

Pierre-Yves Kolakowski, for the appellee (substitute plaintiff).

Opinion

ELGO, J. The defendants Charles D. Hellman and Holly H. Hellman appeal from the judgment of foreclosure by sale rendered by the trial court in favor of the substitute plaintiff, Manufacturers and Traders Trust Company (M&T).[1] We note at the outset that this is the

[1] For convenience, we refer to Charles D. Hellman and Holly H. Hellman individually by first name and collectively as the defendants in this opinion. Charles is a licensed attorney, and he represents both himself and Holly in this matter. Bank of America, N.A. (BANA), was also named as a defendant in the complaint for its claimed interest in the property by way of a mortgage dated October 28, 2002.

Hudson City Savings Bank (HCSB) merged with M&T in 2015, which was substituted as the plaintiff, over the defendants' objection, in 2017. For clarity we will refer to HCSB and M&T by name when necessary. Any

second time the parties have appeared before this court on this matter. In *Hudson City Savings Bank* v. *Hellman*, 196 Conn. App. 836, 231 A.3d 182 (2020), we reversed the summary judgment rendered by the trial court in favor of the plaintiff and remanded the case for further proceedings consistent with our opinion. In *Hellman*, we concluded that summary judgment had been granted improperly because a genuine issue of material fact existed as to whether the plaintiff had provided the defendants with the required EMAP notice.[2] Id., 849. On remand, the trial court addressed the EMAP notice requirement, fully litigated the matter and rendered a judgment of foreclosure by sale. On appeal, the defendants claim that the trial court improperly (1) denied their motion for a continuance in order to conduct further discovery, (2) deemed sufficient the evidence offered by the plaintiff, (3) admitted testimony offered by the plaintiff and excluded testimony offered by the defendants, (4) admitted the testimony of a witness due to judicial bias, and (5) failed to grant the defendants equitable relief under the doctrine of unclean hands. We affirm the judgment of the trial court.

In the prior appeal, this court set forth the following facts and procedural history. "On May 22, 2007, the defendants executed and delivered a note payable to Bank of America, N.A. (BANA), in the original principal amount of $532,000. The loan was secured by a mortgage deed on real property located in Westport, executed that same day, and recorded on the Westport land records. BANA endorsed the note in blank. The defendants have been in default on the note and mortgage since September, 2011.

reference to the plaintiff in this opinion refers to M&T as the substituted plaintiff in the foreclosure action.

[2] "EMAP stands for the Emergency Mortgage Assistance Program. General Statutes §§ 8-265cc through 8-265kk." (Internal quotation marks omitted.) *7 Germantown Road, LLC* v. *Danbury*, 351 Conn. 169, 185 n.8, 329 A.3d 927 (2025).

"On January 7, 2013, BANA assigned both the note and the mortgage to [Hudson City Savings Bank (HCSB)], with that assignment subsequently recorded on the Westport land records on January 14, 2013. On June 2, 2013, BANA, as the servicer for the note, sent a letter to the defendants notifying them of their rights under the mortgage relief program pursuant to the provisions of General Statutes §§ 8-265cc through 8-265kk. On June 21, 2013, BANA sent a letter to the defendants providing notice that the loan was in serious default and information with respect to the total amount required to cure the default. The notice of default also provided that, should the default not be cured on or before July 31, 2013, the mortgage payments would be accelerated.

"When no payments followed, HCSB commenced the present foreclosure action against the defendants on December 4, 2013. HCSB filed the operative complaint, its third revised complaint, on June 29, 2016. On January 20, 2017, the defendants filed an answer that included thirteen special defenses alleging, inter alia, that (1) HCSB lacked the right or capacity to maintain the action as a corporation, (2) HCSB lacked standing, (3) the assignment of the note and mortgage was not actual and bona fide, (4) BANA's conduct with respect to the mortgage constituted unclean hands, and (5) HCSB was estopped from enforcing the mortgage.

"On August 4, 2017, HCSB moved for summary judgment as to liability, arguing that there was no genuine issue of material fact with respect to the defendants' liability on the note and mortgage. Attached to that motion was the affidavit of Regina Rhodes. In the Rhodes affidavit, the affiant averred, in relevant part, that (1) she was authorized to sign the affidavit on behalf of HCSB as an assistant vice president for BANA, (2) BANA maintained records for the loan in question, and part of her responsibilities was to be familiar with

the types of records maintained by BANA in connection with the loan, (3) she had personal knowledge of BANA's procedures for creating the records, (4) as of May 22, 2007, the defendants owed $532,000 as evidenced by the note payable to BANA, (5) on or before November 25, 2013, HCSB 'became and at all times since then has been the party entitled to collect the debt evidenced by the [n]ote and is the party entitled to enforce the [m]ortgage securing the debt,' (6) the note and mortgage are in default for nonpayment as of September 1, 2011, (7) the defendants were given notice of default, 'by certified mail, postage fully prepaid,' on June 21, 2013, and (8) HCSB 'directly or through an agent, has possession of the promissory note. [HCSB] is the assignee of the security instrument for the referenced loan.' Accompanying the Rhodes affidavit were copies of the note, a June 21, 2013 notice of default addressed to the defendants, a quitclaim deed of the property, the mortgage, the assignment of the note and mortgage from BANA to HCSB, and a June 2, 2013 notice addressed to the defendants that contained information pursuant to §§ 8-265cc through 8-265kk.

"After being granted an extension of time to respond, the defendants filed their opposition to HCSB's motion for summary judgment on October 27, 2017. In support of their opposition, the defendants submitted the affidavit of Charles . . . . In that affidavit, Charles . . . averred that, during 2012, BANA repeatedly stated that it no longer owned the 'loan' and mortgage, and refused to reveal the identity of the new owner. He further averred, in relevant part, that (1) HCSB failed to establish that notice of default was delivered to the defendants as a condition of the mortgage due to Rhodes averring that HCSB had sent notice by certified mail without proof of receipt and (2) he could no longer find any physical branches of HCSB in Connecticut which

'raise[d] questions as to [HCSB's] existence and status as a real party in interest in this matter.'[3]

"On October 30, 2017, the court, *Randolph*, *J.*, held a hearing on the motion for summary judgment and heard arguments from both parties. Three days later, the court granted HCSB's motion for summary judgment as to liability. In its order, the court found that no genuine issue of material fact existed as to the defendants' liability and that the defendants' special defenses and affidavit were insufficient to rebut HCSB's prima facie case.

"On November 28, 2017, HCSB filed a motion to substitute M&T as the plaintiff, pursuant to Practice Book §§ 9-16 and 9-23. In support of its motion, HCSB attached a copy of a certificate of effectiveness that evidenced that, as of November 1, 2015—approximately twenty-one months before HCSB filed its motion for summary judgment as to liability—HCSB had merged into M&T. Over the defendants' opposition, the court, *Lee*, *J.*, granted that motion on December 11, 2017. On February 26, 2018, the court, *Randolph*, *J.*, rendered judgment of foreclosure by sale in favor of M&T, ordering that a sale of the property be held on June 23, 2018. On March 6, 2018, notice of judgment of foreclosure by sale was sent to the defendants." (Footnote added; footnotes omitted.) *Hudson City Savings Bank* v. *Hellman*, supra, 196 Conn. App. 838–42.

In *Hellman*, this court held that HCSB, as the former plaintiff, had "failed to establish that no genuine issue of material fact existed regarding whether it satisfied a condition precedent to foreclosure." Id., 849. Important

[3] The mortgage required that "[a]ll notices given by [b]orrower or [l]ender in connection with this [s]ecurity [i]nstrument must be in writing. Any notice to [b]orrower in connection with this [s]ecurity [i]nstrument shall be deemed to have been given to [b]orrower when mailed by first class mail or when actually delivered to [b]orrower's notice address if sent by other means."

to our decision on this issue was the contested nature of the notice to the defendants. The defendants averred that, because the Rhodes affidavit states that the notice was sent by certified mail, there was no evidence that HCSB had complied with the requirement of the mortgage that notice be sent by first class mail. HCSB then countered that the copy of the envelope shows it was sent by first class mail. As a result of these competing assertions, there was a genuine issue of material fact that precluded the granting of summary judgment.[4] Id., 858.

After our decision in *Hellman*, due to the onset of the COVID-19 pandemic in March, 2020, there was no activity on the docket until the plaintiff filed its second motion for summary judgment in December, 2021. In their objection to the plaintiff's motion for summary judgment, the defendants argued that a continuance pending compliance with the discovery request would be more appropriate, pointing out that they had requested that the plaintiff provide details about how and when the plaintiff came into possession of the note, the circumstances of the prior transfer of the note and mortgage by BANA to the plaintiff, and the consideration allegedly paid by the plaintiff for the note and mortgage. On July 19, 2022, the court, *Spader*, *J.*, issued an order in which it noted the outstanding discovery disputes and issued an order on the plaintiff's pending objection. In a separate order dated July 19, 2022 (July discovery order), the court further found that the defendants' discovery requests were "overly broad, in general, seeking, arguably, volumes of inadmissible and irrelevant documents. There is no specificity to the requests and

[4] In light of this conclusion, we declined to consider two claims by the defendants related to the granting of summary judgment, namely, that (1) there were genuine issues of material fact as to the validity of the assignment of the note by BANA to HCSB, and (2) more discovery was needed from HCSB as to how it came into possession of the note. *Hudson City Savings Bank* v. *Hellman*, supra, 196 Conn. App. 849 n.9.

they appear to just [be] an attempt to burden the target entities and delay the proceeding." The court ordered that "the plaintiff shall disclose documents relating to the purported demand notices/EMAP notices and any communications relating to the alleged default that have not already been included as attachments to pleadings herein. To the extent that the actual note and mortgage and assignments thereto were provided as attachments to previous motions if there are any other assignments or modifications that were not provided as exhibits, they should be sent to the defendants' counsel." The court also ordered the plaintiff to produce any documents reviewed and relied on to produce the affidavits, as well as any and all demand notices that may not have already been included in the pleadings. The defendants unsuccessfully sought reconsideration of the discovery order.

Attached to its second motion for summary judgment, the plaintiff submitted an affidavit from Juan Rubio, an agent of BANA (Rubio affidavit). The Rubio affidavit averred, inter alia, that notice of default had been mailed via first class mail on June 21, 2013, to the defendants. On November 16, 2022, the court, *Genuario*, *J.*, issued an order denying the second motion for summary judgment. The court concluded that there was a genuine issue of material fact because of the discrepancy between the Rubio affidavit and the Rhodes affidavit as to the method by which the notice of default and intent to accelerate was mailed—either certified mail, as averred in the Rhodes affidavit, or first class, as averred in the Rubio affidavit.

Trial was held on January 31 and February 14, 2023. The plaintiff called two witnesses, Zachary Chromiak, an employee of BANA, and Kristy Nanci, an employee of Covius, a subcontractor of BANA responsible for processing the mailing of the notice of default and acceleration to the defendants. Both defendants also testified for the defense. The parties submitted posttrial briefing.

On May 12, 2023, the defendants also filed a motion to open the evidence.

On May 17, 2023, the court, *Genuario*, *J.*, issued its memorandum of decision. In its memorandum of decision, the court summarized the testimony of Chromiak, noting that, as "part of his duties, [Chromiak] had examined the original note, and the records of [BANA], including correspondence, affidavits of debt, payoff figures, systems notes, and other records including records of payments and disbursements. His testimony was sufficient to establish that the plaintiff was the owner of the note and the defendants were in default of their obligations under the note. Additionally, both the defendants testified and stated in their testimony unequivocally, that they signed the note and that they had not kept up with their payments on the note."

As to the EMAP notice, the court found that both Chromiak and Nanci established that "a notice which included all the [required] criteria was sent." The testimony of Chromiak and Nanci further established that "a notice was prepared by importing the data in the [BANA] files to a template which allowed the letter to be printed by Covius and ultimately mailed. . . . The testimony of [Nanci] establishes . . . that the letter was printed by Covius [and] placed in an envelope with prepaid postage. The amount of the prepaid postage was consistent with what is required for first class mail and placed in a secure bin. Representatives of the United States Postal Services [USPS] arrive at the Covius premises and take the letters from the secure bin. In this way, the letters are printed and placed into an envelope by Covius using the business record information contained in the [BANA] files. The court finds, by a preponderance of the evidence, that, by placing the letters in a secure bin at the Covius place of business, which bin is accessed by [USPS] employees, Covius has delivered the letter to the post office to be sent by first class mail." Therefore, the court concluded, the plaintiff

had complied with the necessary conditions precedent in the mortgage deed. The court rendered a judgment of foreclosure by sale and entered an order setting a sale date of November 18, 2023. The plaintiff then filed an objection to the defendants' motion to open, and the court sustained the plaintiff's objection to the motion to open. The defendants then filed a motion to reargue, which was denied.

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

I

The defendants first claim that the court's discovery rulings deprived them of a defense such that they were denied a fair trial. The crux of the defendants' claim is that the court improperly sustained objections to certain discovery requests and denied their motion for a continuance, and that, had they been permitted to obtain the requested discovery, the defendants would have been able to prove that BANA was not operating with the authority or agreement of M&T when it issued the notice of acceleration and default and EMAP notice to them.[5] In response, the plaintiff notes that the defendants waited more than eight years to serve any admission requests and almost two years after this court

[5] In their reply brief to this court, the defendants further argue that *Hudson City Savings Bank* v. *Hellman*, supra, 196 Conn. App. 841 n.4, "clearly rendered various of [the defendants'] discovery requests per se relevant to this litigation." This is a misinterpretation of *Hellman*. In our prior decision, this court held that (1) the trial court did not abuse its discretion in allowing the substitution of M&T as the plaintiff, (2) the defendants were not prejudiced by that substitution, (3) the court's granting of summary judgment as to the issue of liability was improper because the plaintiff had, at that point, failed to establish that no genuine issue of material fact existed regarding whether it had satisfied all the conditions precedent to foreclosure, and (4) HCSB established that it possessed the note at the time that it commenced the foreclosure action against the defendants, thereby establishing that it had standing to so commence the action. *Hudson City Savings Bank* v. *Hellman*, supra, 838–42, 848–51. In addressing the defendants' challenge to HSBC's standing, we noted that the Hellman affidavit, which averred, inter alia, that BANA had made certain representations to the defendants that

remanded the case subsequent to the first appellate proceedings. The plaintiff further avers that the court properly determined that the defendants' requests were "exceedingly expansive" and overbroad in its July discovery order. Pointing to the court's reasoning when it considered the renewed motion for a continuance on the morning of trial, the plaintiff argues that the court correctly reasoned that the defendants had not followed the proper methods of resolving discovery disputes, as dictated by our rules of practice, and that the court properly sustained the plaintiff's objection to the motion for a continuance. We agree with the plaintiff.

The following additional facts and procedural history are relevant for our resolution of this claim. The defendants propounded seventy requests for production to the plaintiff in January, 2022.[6] The plaintiff objected to

allegedly "raised doubts" as to its ability to assign the note and mortgage to the plaintiff (allegations raised again here and discussed in more detail in part III A of this opinion), in no way undercut HCSB's showing that it had standing. Id., 855. We noted that, "whether BANA had the power to assign the note and mortgage—therefore implicating whether HCSB was the proper holder of the note—goes to the merits of the foreclosure action." Id. As we noted, HCSB was under no further obligation to prove that it had possessed the note at the time that the foreclosure action was commenced because, at the October 30, 2017 hearing on the motion for summary judgment, "(1) it had produced the note endorsed in blank and (2) the defendants failed to offer evidence to rebut the presumption that HCSB possessed the note at the time it commenced the foreclosure action." Id., 856. We further stated that a copy of the assignment of the note was affixed to the Rhodes affidavit, clearly establishing that HCSB came into possession of the note by way of an assignment from BANA on January 7, 2013—well prior to the commencement of the action against the defendants. Id., 857. Moreover, the trial court's ruling on the defendants' requests for production ordered the plaintiff to provide "any other assignments or modifications" that were in its possession and "that were not already provided." Notwithstanding the discovery they were entitled to receive, it remains the case today, as it was in 2020, that the defendants have offered no evidence to rebut the presumption—also supported by the evidence—that the plaintiff had standing to pursue the action.

[6] We note that these requests for production included, for example, "[a]ll communications between you and the defendants" and "[a]ll communications between you and any other person concerning the defendants."

the defendants' first set of requests for production in April, 2022, arguing that it was "clear, on its face, that this discovery was propounded only as an annoyance or undue burden on the plaintiff, or simply to frustrate justice."[7] Also in April, 2022, the court granted a motion for a continuance of oral argument on the motion for summary judgment, noting that the motion could be reclaimed "after the parties meet to address discovery objections."[8]

In its July order with respect to the plaintiff's objection to the defendants' first set of requests for production, the court agreed with the plaintiff that the defendants' document requests were "overly broad, in general, seeking, arguably, volumes of inadmissible and irrelevant documents." The court further noted that the lack of specificity in the requests seemed to be an attempt to burden the plaintiff and delay the proceedings. Nonetheless, the court ordered the plaintiff to disclose "documents relating to the purported demand notices/EMAP notices and any communications relating to the alleged default that have not already been included as attachments to pleadings herein" as well as "any other assignments or modifications" to the actual note and mortgage that were not already provided. The court also ordered the plaintiff to turn over any documents relied on by

[7] We note that BANA, acting in its capacity as a codefendant in the action, filed its own objection to the defendants' request for production, citing reasons similar to those of the plaintiff.

[8] Practice Book § 13-10 (i) provides: "No objection to any request for production shall be placed on the short calendar list until an affidavit by counsel or self-represented parties is filed certifying that they have made good faith attempts to resolve the objection and that counsel and/or self-represented parties have been unable to reach an agreement. The affidavit shall set forth: (1) the date of the objection; (2) the name of the party who filed the objection and to whom the objection was addressed; (3) the date, time and place of any conference held to resolve the differences; and (4) the names of all conference participants. If no conference has been held, the affidavit shall also set forth the reasons for the failure to hold such a conference."

the affiants in the creation of the submitted affidavits, if any, "beyond what has already been provided." Lastly, the court ordered the plaintiff to turn over "any and all demand notices that may not have already been included in the pleadings." It set a deadline of August 31, 2022, for compliance with its order.

The defendants filed a motion for reargument of the July discovery order. The plaintiff filed a notice of compliance with the court before the deadline, indicating that it had provided another forty-two pages of documents. On November 30, 2022, the defendants served interrogatories and requests for production to the plaintiff and BANA, largely centered on the question of who possessed and/or transferred the note and the mortgage at different points during the preceding litigation, as well as the plaintiff's relationship with BANA. On December 9 and 12, 2022, the defendants also served two separate sets of requests for admission each on the plaintiff and BANA, largely centered on the same issues as the November 30, 2022 interrogatories. On January 5, 2023, the plaintiff and BANA objected to both sets of requests for admission, asserting, inter alia, that the requests were beyond the scope of this court's remand in *Hellman*.

On January 20, 2023, the defendants filed a motion for a continuance of the trial—which was scheduled to commence on January 31, 2023—asserting that they needed time to "review in advance of trial . . . the plaintiff and [BANA's] recent [objections to the requests for admission]," that "[r]esponses from [the plaintiff and BANA] to [the interrogatories and requests for production] are also due prior to the current trial date," and that "[i]t is clear that these [interrogatories and requests for production] will also be entirely objected to, and [the defendants] will be required to seek review of same as well in order to be prepared for trial." On January 24, 2023, the court denied that motion without

prejudice but ordered that "[t]he defendants may renew the motion on January 31, 2023, prior to the commencement of trial. In the event that it is denied, all parties should be prepared to proceed on January 31, 2023."

On January 23, 2023, the defendants also filed a motion, supported by an affidavit averred by Charles, to "determine the sufficiency of objections by the plaintiff and [BANA] to requests for admission." The court denied that motion, "to the extent that the request is one for adjudication of the request prior to the commencement of trial." On January 30, 2023, the plaintiff and BANA objected to the interrogatories and requests for production on the basis that the requests had been served "on the eve of trial" and were "being used merely for delay purposes rather than for a legitimate need for any information to assist in the prosecution or defense of this action."

On January 31, 2023, the trial commenced as scheduled. At the outset of the trial, the defendants renewed their motion for a continuance and motion to determine the sufficiency of the plaintiff's objections to their requests for admission. The defendants argued that there had been no "substantive response" to their interrogatories. The plaintiff responded that the defendants were "consistently" filing "discovery as a tactic to delay things." In ruling on this renewed motion, the court noted that the defendants had more than two years after this court's decision in April, 2020, in which to conduct discovery, in accordance with the rules of practice. The court noted that the defendants "have not taken advantage of these processes [as set forth in the rules of practice] or to the extent you have there have been no court orders sanctioning the plaintiffs. So, I think the time for trying this case is here and I'm going to deny your motion for continuance, and I am going to

deny your request for adjudication of the discovery issues as untimely at this point."[9]

In their principal brief to this court, the defendants now argue that—due to procedural "maneuvers" on the part of the plaintiff—they were "required to address the patent deficiencies" in the plaintiff's objection to their discovery request within the ambit of the plaintiff's second motion for summary judgment, rather than through the "normal discovery practice."[10] The plaintiff

[9] We note that Charles averred, in an affidavit submitted to the court on July 2, 2022, that, "due to the plaintiff's own conduct," no meeting between the defendants and the plaintiff had occurred for the purpose of discussing the discovery objections. The defendants argued that the plaintiff's failure to meet and discuss the discovery objections was a "brazen violation" of the court's order marking off the second motion for summary judgment. After the court's July discovery order, the defendants submitted a motion for reargument, repeating the claim that the failure of the parties to meet pursuant to Practice Book § 13-10 was due to the plaintiff's conduct. The court denied that motion. Our review of the record confirms that the defendants never filed a motion to compel, nor moved for sanctions related to discovery issues.

[10] The defendants also aver that Charles' health impacted his ability to function at full capacity as the defendants' counsel, due to an alleged COVID-19 infection. More specifically, the defendants argue that, after the July discovery order, they intended to "promptly propound additional, more focused discovery requests" and would have done so, but for the "greatly reduced capacity" of Charles, caused by the COVID-19 infection. In his trial testimony, Charles testified that he was "ill" with COVID-19, and "at best, was able to work only at a greatly reduced capacity" throughout the remainder of 2022. According to the defendants, "[b]ut for his condition, the defendants' additional discovery requests could readily have been propounded, and objections to them resolved, well in advance of trial. . . . [but] the defendants were not able to propound their two sets of [requests for admissions and interrogatories] to [BANA] and [the plaintiff] until December of 2022." Given that these factual assertions were before the trial court, as a component of the defendants' motion for a continuance, we consider them as part and parcel of the defendants' claim that the court improperly denied their motion for a continuance.

In addition, the defendants argue in passing that, at the time of trial, the court failed to rule on their motion to determine the sufficiency of the plaintiff's objections to the requests for admission. As the defendants acknowledge elsewhere in their principal brief, however, the court in fact denied that motion on the record on January 31, 2023. To the extent that

counters that the trial court properly adjudicated the "wildly excessive" discovery requests and that the defendants have not demonstrated any impropriety in the court's ruling sustaining the plaintiff's objections to those discovery requests.

We next set forth our standard of review. "[W]e review a denial of a motion for a continuance to obtain discovery under an abuse of discretion standard. . . . The ultimate issue in our review, therefore, is whether the court reasonably could have ruled on the . . . motion for a continuance as it did." (Citations omitted.) *West Hartford* v. *Murtha Cullina, LLP*, 85 Conn. App. 15, 26, 857 A.2d 354, cert. denied, 272 Conn. 907, 863 A.2d 700 (2004). Upon our review of the record, we cannot conclude that the court abused its discretion.

The present action began in December, 2013. This court released its decision in *Hellman* on April 14, 2020. It was not until January, 2022, that the defendants propounded their requests for production. The plaintiff moved to extend the deadline for compliance to mid-April, 2022, which was granted by the court.[11] The plaintiff filed its responses and objections to the defendants' requests for production on April 12, 2022. The court issued its order regarding the plaintiff's objections on July 19, 2022. The plaintiff gave notice of compliance with that order on August 29, 2022. The defendants waited until November 30, 2022, to begin propounding additional discovery requests. The defendants then moved for a continuance on the grounds of incomplete discovery on January 20, 2023—just eleven days before the scheduled start of trial. Three days later, the defendants filed a motion to determine the sufficiency of the

the defendants claim that the court erred in failing to rule on that motion, we reject that claim.

[11] We note that the court also then twice granted the defendants' request for a continuance of the oral argument on the reclaimed second motion for summary judgment.

objections to the discovery requests. In the interim, the defendants never alerted the court to the purported deficiencies in the plaintiff's production. Nor did the defendants ever request additional time to propound discovery requests on the basis of Charles' illness. See footnote 10 of this opinion. We further note that the defendants did not move for the court to intervene on their discovery requests nor did they seek sanctions against the plaintiff. Given the history of the litigation, the failure of the defendants to seek timely remedies available under our rules of practice and the untimely request for relief on the eve of trial, we cannot conclude that the court abused its discretion in its discovery rulings or in denying the defendants' motion for continuance. See *State* v. *Bradley*, 39 Conn. App. 82, 88, 663 A.2d 1100 (1995) ("[m]otions for continuance on the eve of trial are disfavored"), cert. denied, 236 Conn. 901, 670 A.2d 322 (1996). The defendants' claim therefore fails.

II

The defendants next claim that the court incorrectly determined that the plaintiff had sustained its burden of proof because the evidence was insufficient to establish both that the plaintiff (1) authorized BANA to act on its behalf, and (2) complied with the requisite conditions precedent to foreclosure. We consider each of these claims in turn.

A

The defendants argue that the plaintiff failed to adequately demonstrate that BANA had acted with the requisite authority in issuing notice of acceleration and default to them. The defendants further contend that Chromiak's testimony as to the existence of a servicing agreement between BANA and M&T is insufficient to establish the existence of such a relationship. According to the defendants, this court's ruling in *Aurora Loan*

Services, LLC v. *Condron*, 181 Conn. App. 248, 186 A.3d 708 (2018) (*Aurora*), set forth a "stringent standard" for demonstrating authorization to act on behalf of a lender," one that the plaintiff "utterly failed" to satisfy in the present case. The plaintiff counters that the defendants misread *Aurora*, a case in which a loan servicer was the foreclosing plaintiff, rather than the owner of the note, and a power of attorney and servicing agreement were necessary to establish authority to foreclose. Here, because it was foreclosing "in its own name," the plaintiff contends that it had standing to do so and was under no obligation to produce documentation of a servicing agreement authorizing BANA to issue the notice of acceleration.[12]

We first set forth the following relevant legal principles and standard of review. "Historical facts constitute a recital of external events and the credibility of their narrators. So-called mixed questions of fact and law, which require the application of a legal standard to the historical-fact determinations, are not facts in this sense. . . . [Such questions require] plenary review by this court unfettered by the clearly erroneous standard. . . . When legal conclusions of the trial court are challenged on appeal, we must decide whether [those] . . . conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Lindholm* v. *Brant*, 283 Conn. 65, 76–77, 925 A.2d 1048 (2007). In order to establish a

[12] The defendants also argue in their principal brief that Chromiak's testimony was insufficient to establish the existence of any servicing agreement or power of attorney under the best evidence rule. See Conn. Code Evid. § 10-1. The plaintiff counters that, under this court's decision in *Citibank, N.A.* v. *Stein*, 186 Conn. App. 224, 199 A.3d 57 (2018), cert. denied, 331 Conn. 903, 202 A.3d 373 (2019), Chromiak's testimony was sufficient to establish that BANA was operating with authority when it issued the notice of acceleration. Because we agree with the plaintiff that it was not required to produce evidence of the servicing agreement or power of attorney to prevail on the merits of this claim, we do not reach this issue.

prima facie case in a mortgage foreclosure action, a plaintiff must establish, inter alia, that it is the owner of the note and mortgage, and that it has complied with any conditions precedent to the foreclosure. See *Hudson City Savings Bank* v. *Hellman*, supra, 196 Conn. App. 850. Here, we must determine whether the court properly concluded that the plaintiff was not required to produce evidence of the servicing agreement between itself and BANA, as a matter of law.

A brief recitation of the relevant portion of this court's opinion in *Aurora* is necessary in order to evaluate the defendants' claim. In *Aurora*, after the trial court rendered a judgment of strict foreclosure, the mortgagors appealed, claiming, inter alia, that the foreclosing party—a loan servicer—lacked the authority to foreclose on the mortgage. *Aurora Loan Services, LLC* v. *Condron*, supra, 181 Conn. App. 251. In sum, the mortgagors claimed that the loan servicer had failed to demonstrate that it was acting with the note holder's authority to foreclose on the property. Id., 254. The loan servicer maintained that it previously had been the holder of the note and that it had provided sufficient evidence of its authority to foreclose. Id. As this court explained: "The rules for standing in foreclosure actions when the issue of standing is raised may be succinctly summarized as follows. When a holder seeks to enforce a note through foreclosure, the holder must produce the note. The note must be sufficiently endorsed so as to demonstrate that the foreclosing party is a holder, either by a specific endorsement to that party or by means of a blank endorsement to bearer. If the foreclosing party shows that it is a valid holder of the note and can produce the note, it is presumed that the foreclosing party is the rightful owner of the debt. That presumption may be rebutted by the defending party, but the burden is on the defending party to provide sufficient proof that the holder of the note is not the owner of the debt,

for example, by showing that ownership of the debt had passed to another party. It is not sufficient to provide that proof, however, merely by pointing to some documentary lacuna in the chain of title that *might* give rise to the possibility that some other party owns the debt. In order to rebut the presumption, the defendant must *prove* that someone else is the owner of the note and debt. Absent that proof, the plaintiff may rest its standing to foreclose on its status as the holder of the note." (Emphasis in original; internal quotation marks omitted.) Id., 254–55. The issue in *Aurora* was that the loan servicer contended that it had entered into a trust agreement by which a third party owned the debt and the loan servicer was authorized to service the mortgage and initiate foreclosure proceedings. Id., 252–56. This court reviewed the evidence and concluded that there had been sufficient demonstration that the loan servicer had acted under an existing trust agreement as well as a limited power of attorney, which made clear that the note holder had "unequivocally manifested its intention to authorize the [loan servicer] to exercise its rights to enforce the debt." Id., 258.

Here, however, the plaintiff is correct that, as the holder of the note, it was under no obligation to produce evidence of the servicing agreement or power of attorney that authorized BANA to issue the requisite notices to the defendants. Put differently, because the plaintiff in the present case possessed the note, which was endorsed in blank, there was a rebuttable presumption that it was the owner of the debt—and the defendants produced no evidence that the plaintiff was not the owner of the debt. Chromiak testified that he had reviewed BANA's business records associated with the servicing of the mortgage, that BANA had originated the loan, that M&T owns the debt, and that there had been no other loan servicers. The note, endorsed in blank, was

provided to the court by M&T. The defendants did not object to this testimony or the relevant exhibits.

As the court noted in its memorandum of decision, "[t]he plaintiff did not have to establish the authorization of the loan servicer to bring the action because the loan servicer did not bring the action, the plaintiff initiated this lawsuit. [BANA's] employee testified and through him the plaintiff introduced business records of [BANA] which established the plaintiff's right to foreclose the mortgage. . . . Nothing in the business record rule requires that the person testifying, to establish the admissibility of its own business records, be an agent of a party. The employee of [BANA] testified based on his own knowledge that certain records were kept in the regular course of business of [BANA] and that it was the regular course of business of [BANA] to keep such records." To be clear, Charles admitted during his testimony that he had no documents or affidavits to suggest that anyone else was the proper party to bring this action. In conclusion, the plaintiff is correct that, given the facts that were established in this case, there was no need to confirm in any further detail the existence of a servicing agreement between BANA and M&T. The defendants' claim, therefore, fails.

B

The defendants also argue that the court's "conclusion that the plaintiff established [that] a notice of default had been sent to defendants by first class mail was erroneous." The defendants contend that the court's conclusion that the notice of default was mailed via first class mail was erroneous because it "relied heavily" on the testimony of Nanci, who was "not yet employed at Covius in 2013" when the notices were mailed. The defendants contend that, if we determine that Nanci's testimony was properly admitted; see part III B of this opinion; we must nonetheless conclude

that the records and testimony put forth by Nanci "in no way establish the plaintiff's case." In support of this argument, the defendants point to alleged discrepancies with the markings on the envelopes of the exhibits offered at trial, as well as the alleged lack of personal knowledge on the part of Nanci as to the business practices at Covius at the time of the mailing. Although the defendants acknowledge that the task of weighing properly admitted evidence is "within the province of the trier of fact" they nonetheless maintain that the evidence was insufficient to support the conclusion that proper notice was provided by the plaintiff, as a condition precedent to foreclosure.

The plaintiff concedes that the notice of acceleration contains a "scrivener's error" with respect to the date of the note. The plaintiff argues that the notice nonetheless correctly identifies the borrowers, the residential property address, the original amount of the note, and the relevant missing principal and interest payment information. Accordingly, the plaintiff contends that the court had ample evidentiary support for the conclusion that the requisite notices were issued via first class mail.

We next set forth the relevant legal principles necessary to resolve the defendants' claim. "To the extent that the trial court has made findings of fact, our review is limited to deciding whether such findings were clearly erroneous. . . . As the finder of fact, the court is responsible for weighing the evidence. It is the [fact finder's] right to accept some, none or all of the evidence presented. . . . Moreover, [e]vidence is not insufficient . . . because it is conflicting or inconsistent. [The court] is free to juxtapose conflicting versions of events and determine which is more credible. . . . It is the [finder of fact's] exclusive province to weigh the conflicting evidence and to determine the credibility of witnesses." (Internal quotation marks omitted.) *Caliber Home Loans, Inc.* v. *Zeller*, 205 Conn. App. 642, 654–55,

259 A.3d 1, cert. denied, 338 Conn. 914, 259 A.3d 1179 (2021). "Because it is the sole province of the trier of fact to assess the credibility of the witnesses, it is not our role to second-guess such credibility determinations." *State* v. *Franklin*, 115 Conn. App. 290, 292, 972 A.2d 741, cert. denied, 293 Conn. 929, 980 A.2d 915 (2009).

The court found that "[t]he defendants also argue that the plaintiff did not comply with the condition precedent required in the mortgage, and that [it] failed to establish that the plaintiff had . . . complied with the condition precedent in its mortgage that it notify the defendants that they were in default, a date not less than thirty days from the date that the notice is given by which the default must be cured, the action required to cure the default and the fact that the failure to cure the default would result in acceleration of the sum secured and foreclosure or sale of the property. Both [Chromiak] and another witness [Nanci], who was an employee of an entity named Covius, testified. Both established that a notice which included all the above criteria was sent."

At trial, the plaintiff admitted into evidence copies of the notice of acceleration and default, dated June 21, 2013, as well as the EMAP notice, dated June 2, 2013. Nanci testified that the required notice was mailed first class through Covius, picked up from a Covius facility by USPS, and not returned to Covius. Both Chromiak and Nanci testified as to the relevant business records that also support the court's conclusion that the notice was issued via first class mail to the defendants—as did the Rubio affidavit. In light of the ample evidence before it, the court's finding that such a mailing was in fact issued is not clearly erroneous.

III

The defendants next claim that the court made improper evidentiary rulings. More specifically, the

defendants argue that the court (1) improperly excluded portions of Charles' testimony as to phone conversations he purportedly had with BANA representatives and (2) improperly admitted Nanci's testimony with respect to certain business records. We consider each of these arguments in turn.

A

The defendants argue that, during alleged conversations between Charles and BANA representatives, the BANA representatives made certain representations to the defendants regarding the lack of opportunity to modify the mortgage and that the debt could not be satisfied for "anything less than full price." According to the defendants, the excluded testimony should have been admitted because it falls within an exception to the prohibition against hearsay as statements of a party opponent.[13]

The plaintiff counters that the statements Charles offered were lacking the proper foundation and were also inadmissible hearsay, and, therefore, they were properly excluded. The plaintiff argues in the alternative that, even if the testimony was erroneously excluded, such error was harmless. We conclude that the court did not abuse its discretion in excluding the testimony.

The following additional facts and procedural history are relevant to the defendants' claim. On February 14, 2023, Charles took the stand. Almost immediately, he began to testify as to being "contacted repeatedly" by

[13] We note that the defendants also brief the argument that the court erroneously precluded the testimony because it was not being offered as hearsay. In essence, the defendants argue that the testimony was being offered, instead, to demonstrate inequitable conduct on the part of the mortgage servicer, BANA, because the statements were fraudulent misrepresentations. We decline to review this claim, for the reasons set forth in footnote 16 of this opinion.

BANA "representatives." The plaintiff objected to Charles' testimony regarding the content of these conversations on the basis of hearsay and as "calling in settlement negotiations." The defendants responded that the testimony was admissible because BANA is a party to the action and an agent to the plaintiff. The court reasoned that, "I can't let you testify in general about what generally people from [BANA] have said. You would have to start out by identifying the person." The court further noted that a more complete foundation would be necessary to determine what authority these representatives had at the time of these alleged conversations, adding that, "if you can lay better groundwork, I will hear what you and counsel have to say at any given point in time about particular testimony." The defendants then argued that BANA is "clearly the agent" of the plaintiff and it "functioned at all times as the agent of the plaintiff in this action." The court acknowledged this point, stating that "what I can't let you do is say I was on the phone with somebody who I thought was from [BANA] and they said X. If you want to provide me with a little more detail about how the conversation came about, who you spoke to, then maybe you can get over the hearsay objection. But if it's as general as what it appears to be, I don't think you can get over the hearsay objections at this point. You haven't told me who said what." The defendants replied, "People who contacted [Charles] with knowledge of the loan, with knowledge of the situation regarding the loan, in an effort to secure payment of the loan, who represented themselves to be authorized to speak on behalf of [BANA] and given the intimate knowledge they had of the situation of the loan, of the status of the loan right down to how many payments had been—were in arrears at that time, the amount of the loan, the monthly payments, they had all the information . . . . No one else would have contacted me attempting to get me to make payments to [BANA]."

Charles then testified that he had requested a modification of the loan terms. When he attempted to describe the response from the purported BANA representatives, the plaintiff's counsel again objected on hearsay grounds and the court sustained the objection, noting that, "[i]n order for a statement from a third party to be admitted, you have not only to prove the third party was an agent of the defendant but you have to prove the scope of the agency. You can't prove that from the mouth of the agent. By your own words, these are people who were trying to collect the loan. They may or may not have had authority to negotiate the loan. So, I don't see why on the record before me how I can allow their statements . . . to be admitted . . . ." The defendants could not provide any further foundation in support of admitting these statements by the alleged representatives of BANA.

At the conclusion of trial, the defendants noted that they did not have any additional evidence to put forward, "subject to any disposition of any of the open issues like the hearsay objection." The court set a posttrial briefing schedule, and the defendants then inquired as to "any special handling with respect to the hearsay issue regarding the [BANA] representatives." The court replied, "If you want to file a motion to open evidence for the purpose of putting somebody on, you can file that. If you want to argue that certain evidence the court has admitted it shouldn't consider because it's in violation of the hearsay rule, you can . . . argue that in your brief."[14] On May 12, 2023, the defendants filed a motion to open the evidence.

[14] The defendants did not address the court's hearsay ruling as to the purported conversations between Charles and representatives of BANA in their posttrial briefing. In the motion to open the evidence, however, the defendants, for the first time, argued that the purported statements of BANA representatives were not being offered as exceptions to the prohibition against hearsay but, instead, that the court should have admitted them as fraudulent misrepresentations. According to the defendants, the court should have admitted the excluded testimony because, as nonhearsay, the

On June 13, 2023, the court held a hearing on the motion to open. At this hearing, the defendants argued *both* that the excluded testimony was admissible as an exception to the prohibition against hearsay and *also* that it was being offered to demonstrate that BANA had engaged in fraudulent misrepresentations—not for the truth of the matter asserted in the statements. In support of their contention that the excluded testimony should have been admitted, the defendants argued that § 8-3 (1) of the Connecticut Code of Evidence should apply, rendering the excluded testimony admissible.[15] The court reiterated that it had sustained the objection to the purported statements by BANA representatives because the defendants could not identify the declarant, the declarant's position at BANA, or the scope of the declarant's authority. The court also noted that, if the statements were being offered as fraudulent misrepresentations rather than for the truth of the matter asserted therein, then the defendants would still need to demonstrate them as such by providing evidence of their falsity. Upon the conclusion of arguments, the court denied the motion.[16]

statements were not being offered for their truth but because the statements were "*untrue*, and thus gives rise to [the defendants'] assertions of estoppel, unclean hands, violation of the implied covenant of good faith and fair dealing . . . and inequitable conduct." (Emphasis in original.) We discuss the claim that the court improperly granted the plaintiff equitable relief in part V of this opinion.

[15] More specifically, the defendants argued that § 8-3 (1) (G) of the Connecticut Code of Evidence applies to the excluded testimony. Section 8-3 (1) (G) renders admissible "a statement made by a predecessor in title of the party, provided the declarant and the party are sufficiently in privity that the statement of the declarant would affect the party's interest in the property in question." Nothing in this rule obviates the propriety of the court's determination that the defendants did not lay a proper foundation for the statements when they failed to identify the declarant and whether the individual had the authority to make the alleged statement.

[16] We further note that the defendants, in the statement of issues in their principal brief before this court, identify, as their seventh issue, "[w]hether [the defendants'] motion to reopen evidence to permit certain testimony of [Charles] that had been excluded at trial was properly denied." Our review of the record reveals that the defendants' motion to open the evidence, filed

We next set forth our standard of review. "It is well settled that [w]e review the trial court's decision to admit [or exclude] evidence, if premised on a correct view of the law . . . for an abuse of discretion. . . . Under the abuse of discretion standard, [w]e [must] make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion." (Internal quotation marks omitted.) *Corbo* v. *Savluk*, 209 Conn. App. 351, 361, 267 A.3d 919 (2021). "On appeal, a court's evidentiary rulings will be overturned only where there was an abuse of discretion and a showing by the defendant of substantial prejudice or injustice. . . . In reviewing claims that the court abused its discretion, every reasonable presumption should be made in favor of upholding the court's ruling." (Internal quotation marks omitted.) *Parker* v. *Slosberg*, 73 Conn. App. 254, 258–59, 808 A.2d 351 (2002).

An out-of-court statement used to prove the truth of the matter asserted is hearsay and is generally inadmissible unless an exception applies. See *State* v. *Stepney*, 191 Conn. 233, 249–50, 464 A.2d 758 (1983), cert. denied, 465 U.S. 1084, 104 S. Ct. 1455, 79 L. Ed. 2d 772 (1984).

subsequent to the trial and posttrial briefing, put forward—for the first time—the argument that the purported statements by alleged BANA representatives were being offered not for the truth of their assertions, but instead as fraudulent misrepresentations. Beyond the statement of issues, the defendants do not advance an argument that the court improperly denied their motion to open in their briefing to this court. Rather, the defendants argue only that the court erred in precluding Charles' testimony during the evidentiary portion of trial, even though they did not argue at the time they proffered that testimony that it was admissible as nonhearsay because it was not being offered for the truth. Because the defendants do not brief the issue of whether the motion to open was properly denied, we deem that claim to be inadequately briefed. See *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 803, 256 A.3d 655 (2021) ("Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.))

One such exception is for admissions made by a party opponent, which are generally admissible against that party. See *State* v. *Markeveys*, 56 Conn. App. 716, 719, 745 A.2d 212, cert. denied, 252 Conn. 952, 749 A.2d 1203 (2000). See also Conn. Code Evid. § 8-3 (1).

In order to survive any hearsay objection, a party offering testimony as to the substance of a statement by a party's agent or employee must satisfy another test: "A broad statement of that rule is that the statement of an agent is admissible as an admission against his [or her] principal if the statement concerned a matter within the scope of the declarant's employment and was made before that relationship was terminated." (Internal quotation marks omitted.) *Hartford National Bank & Trust Co.* v. *DiFazio*, 6 Conn. App. 576, 585, 506 A.2d 1069, cert. denied, 200 Conn. 805, 510 A.2d 192 (1986); see also Conn. Code Evid. § 8-3 (1) (D) (rendering admissible "a statement by the party's agent, servant or employee, concerning a matter within the scope of the agency or employment, and made during the existence of the relationship").

Party opponent admissions, however, do not fall within this exception to the prohibition against hearsay statements when the declarant is unidentifiable. "To fall within that exception, one must be able to identify the declarant clearly as a party to the litigation." *DeMarkey* v. *Fratturo*, 80 Conn. App. 650, 655, 836 A.2d 1257 (2003). Moreover, "[b]efore evidence can be admitted to show what an agent said, it must be established that the agent was authorized by the principal to make an admission. . . . The agency relationship must be proved by a fair preponderance of the evidence." (Internal quotation marks omitted.) *Burns* v. *RBS Securities, Inc.*, 151 Conn. App. 451, 462, 96 A.3d 566, cert. denied, 314 Conn. 920, 100 A.3d 851 (2014); see also *Robles* v. *Lavin*, 176 Conn. 281, 284, 407 A.2d 959 (1978) ("[b]efore evidence can be admitted to show what an

agent said, it must be established that the agent was authorized by the principal to make an admission").

Here, the defendants failed to establish the scope of the authority or the identity of the purported agents of BANA, sufficient to justify admitting Charles' proffered hearsay testimony. Given that Charles could not identify who these "representatives" were, or the scope of their authority, the court was well within its discretion in determining that the statements offered by Charles were inadmissible hearsay.[17] The defendants' claim therefore fails.

Assuming, without deciding, that the agency relationship between these unidentified individuals and the plaintiff was established, we nonetheless conclude that the defendants still cannot demonstrate that the court abused its discretion in excluding the proffered testimony because the defendants have not demonstrated that the testimony was material or relevant. As the court noted, when considering the defendants' motion to open evidence to permit this same previously excluded testimony, the alleged statements made to Charles were irrelevant and immaterial to the present case because the holder of the note is "entitled to collect the note according to its terms regardless of the business terms

[17] We note that, as discussed in part II A of this opinion, the defendants dispute that BANA was operating as an agent of HCSB when it issued the notice of acceleration and EMAP notice. It is difficult to reconcile that argument with the contention that the purported statements made to Charles, allegedly occurring around the same time, by employees of BANA, were admissible as statements of an agent of a party opponent. The plaintiff has contended that BANA was its servicing agent, consistently, throughout the proceedings before the trial court. See *Hudson City Savings Bank* v. *Hellman*, supra, 196 Conn. App. 854 (HCSB submitted affidavit in connection with first summary judgment motion averring that BANA is its servicing agent). Even if we look past this, and surmise that the defendants had conceded that BANA was operating as an agent of HCSB when the purported statements were made to Charles, the court acted within its discretion in excluding the testimony for lack of a proper foundation, for the reasons set forth in this section of our opinion.

pursuant to which it acquired the note." Put simply, the court found that the proffered evidence was not relevant or material because the holder of the note is entitled to collect the note according to its terms regardless of how it came into possession of the note.

In order for statements of a party opponent to be admissible, there is a "threshold requirement that such statements must be relevant and material to issues in the case." (Internal quotation marks omitted.) *State* v. *Reese*, 77 Conn. App. 152, 162, 822 A.2d 348, cert. denied, 265 Conn. 910, 831 A.2d 252 (2003). In the present case, the court determined that the alleged statements of the unidentified declarant were not relevant or material to the issues presented in the case. The court therefore did not abuse its discretion in excluding the testimony.[18]

B

The defendants next argue that the court improperly overruled their objection to that portion of Nanci's testimony that addressed certain business practices at Covius in 2013. More specifically, the defendants objected at trial to portions of Nanci's testimony, arguing that Nanci should not have been allowed to testify as to business records created in 2013 because she was not employed by Covius until 2015. When Nanci was asked how she could be certain that the practices in 2013 were the same as those she was familiar with through her own experience, she testified, "I can say that because my manager was here at that time . . . he has trained me on these processes and has confirmed that information." The defendants objected to this testimony

[18] Similarly, even if we were to review the defendants' argument that Charles' testimony was improperly excluded because it was not being offered for the truth of the matter asserted, we would conclude that the court properly precluded that testimony because it was not relevant or material to the issues presented in this case.

on hearsay grounds and the court overruled the objection. In their principal brief, the defendants now contend that this ruling was erroneous, but they fail to cite to any legal authority that would support this conclusion. More specifically, although the defendants acknowledge that personal knowledge is not a foundational requirement for the introduction of a business record, they nonetheless argue—again, without citation to any legal authority—that the court's ruling was erroneous because, in order to admit the testimony, Nanci "must be equipped to state the entity's procedures giving rise to the records accord with the procedures with which she is familiar." Because this issue is inadequately briefed, we decline to address it. See *Braham* v. *Newbould*, 160 Conn. App. 294, 312 n.15, 124 A.3d 977 (2015) (it is not our court's role to "undertake the legal research and analyze the facts in support of a claim or argument when it has not been briefed adequately" (internal quotation marks omitted)).

IV

The defendants next claim that Nanci's testimony was improperly admitted due to judicial bias. Specifically, the defendants claim that the court "suggested" to the plaintiff that it had "potential weaknesses or gaps in its case" and issued a "sua sponte invitation and grant of leave" to the plaintiff to "identify and put on an additional, theretofore unidentified witness to remedy any such gaps or weaknesses." The plaintiff counters that the court's comments were given in the context of "housekeeping matters" and these comments did not demonstrate a lack of impartiality. The plaintiff further argues that the defendants did not raise any objection to the court's comments, did not bring to the court's attention any concerns about impartiality, and did not seek the recusal of the judge. We conclude that the court's comments do not rise to the level of plain error warranting reversal.

The following additional facts and procedural history are relevant to our resolution of this claim. Prior to the start of trial, on January 27, 2023, the parties filed a joint trial management report.[19] That report contained the names of four witnesses—Chromiak, Susan Vincent (an appraiser), Charles and Holly. The only other witness identified was a defense expert witness described as "[a] real property appraiser."[20]

At the close of the first day of trial, but before the plaintiff rested its case-in-chief, the court engaged in a scheduling conference with both parties. In so doing, the court stated:

"I do have the foreclosure calendar at 2 p.m., so I don't think we should do it tomorrow. I could make myself available Thursday or I could make myself available Friday. I prefer to do it Thursday.

"Think about that for a moment while I raise another issue. . . . I have not come to a conclusion on this issue; I want to emphasize that. It would appear to me that one of the issues in this case, and has been in this case all along including in the Appellate Court, is whether or not the plaintiff has sustained its burden of proof that it has complied with all conditions precedent, including the issuance of the demand letters and [EMAP] letter. I anticipate that there's going to be some briefing as to whether or not the records introduced by the witness who was employed by [BANA] are business records of [BANA] or not, or are they business records . . . of Covius, and it may not be that—it may well be that the evidence that is introduced already is sufficient to establish them as business records, or it may well

[19] The plaintiff previously had filed its own trial management report, which contained the same witness list as the joint report subsequently submitted to the court.

[20] On January 31, 2023, the parties filed a stipulation with the court as to the fair market value of the property. As a result of this stipulation, an appraiser did not testify at trial—for either of the parties.

be that the evidence that's introduced already is not sufficient to establish them as business records of [BANA] because some of them were compiled by Covius.

"The plaintiff may want to consider whether or not it wants to bring in a witness from Covius. If the plaintiff wants to do that, I'll give the plaintiff until next week to do that."

The defendants did not object to these comments by the court. After the first day of trial, the defendants filed a motion for a continuance, citing a viral infection and the recommendation of their doctor. The court, granting this request, continued the trial until February 14, 2023. On February 6, 2023, between the first and second day of trial, the plaintiff also filed a caseflow request, asking the court for permission for "its witness" to appear virtually, which the court granted. On February 10, 2023, the defendants filed their own caseflow request asking the court for permission to recall, if necessary, the plaintiff's witness, Chromiak. In support of this request, the defendants stated that they "may need to call [Chromiak] for brief testimony" and had so notified opposing counsel, so as to have him be available "virtually as required" subject to the court's ruling. This request remained outstanding when the trial recommenced.

At the start of the second day of trial, Charles, on the defendants' behalf, objected to Nanci's testimony, arguing that, "recognizing what went on at the last hearing . . . I do need to make an objection for the record that this witness . . . was not even identified by name until just now, or her affiliation was not listed among the witnesses for plaintiff in the joint pretrial memo and I have no notice whatsoever as to what this witness will testify as to. For these reasons, Your Honor, I must

object to plaintiffs putting this witness on as part of its case.'"[21]

In responding to this objection, the court noted that, at the close of evidence on the prior day of trial, it had "inquired" as to whether it may be necessary for the plaintiff to have a representative of Covius testify "to establish the business records" but that this was not a requirement—the court had merely "opined out loud or speculated out loud as to whether that was necessary. [The plaintiff's counsel] apparently responded by calling this witness. I don't think given the court's comments it should be a surprise to the defendants but [the court] will give the defendants ample opportunity to cross-examine and will give the defendant[s] a lot of latitude in that cross-examination, to the extent reasonable." The court then overruled the defendants' objection and allowed Nanci to testify.[22]

We next set forth our standard of review. Here, the defendants concede that they did not object to Nanci's testimony on the ground of judicial bias. Because that specific claim was not preserved, the defendants seek plain error review. "[The plain error] doctrine, codified at Practice Book § 60-5, is an extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved, are of such monumental proportion that they threaten to erode our system

[21] Notably, the defendants did not request a continuance of the proceedings for additional time to prepare for the testimony of the witness in order to cure any prejudice arising from the lack of notice. See *Yeske* v. *Avon Old Farms School, Inc.*, 1 Conn. App. 195, 205–206, 470 A.2d 705 (1984) (court may entertain motion for continuance for late disclosure of witness).

[22] On appeal, the defendants also claim that the court's overruling of their objection to Nanci's testimony "independently renders her appearance an error warranting reversal" but without any further explanation or analysis. We deem any claim that the court improperly allowed Nanci to testify because she was not a disclosed witness to be abandoned. See *Deutsche Bank National Trust Co.* v. *Shivers*, 136 Conn. App. 291, 292 n.2, 44 A.3d 879 (claim not briefed on appeal was deemed abandoned, and court may decline to review it), cert. denied, 307 Conn. 938, 56 A.3d 950 (2012).

of justice and work a serious and manifest injustice on the aggrieved party. [T]he plain error doctrine. . . . is not . . . a rule of reviewability. It is a rule of reversibility. That is, it is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment, for reasons of policy. . . . In addition, 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. . . . Plain error is a doctrine that should be invoked sparingly. . . . Implicit in this very demanding standard is the notion . . . that invocation of the plain error doctrine is reserved for occasions requiring the reversal of the judgment under review. . . . An appellate court addressing a claim of plain error first must determine if the error is indeed plain in the sense that it is patent [or] readily discernable on the face of a factually adequate record, [and] also . . . obvious in the sense of not debatable. . . . This determination clearly requires a review of the plain error claim presented in light of the record.

"Although a complete record and an obvious error are prerequisites for plain error review, they are not, of themselves, sufficient for its application. . . . [I]n addition to examining the patent nature of the error, the reviewing court must examine that error for the grievousness of its consequences in order to determine whether reversal under the plain error doctrine is appropriate. A party cannot prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice." (Internal quotation marks omitted.) *Schimenti* v. *Schimenti*, 181 Conn. App. 385, 392–93, 186 A.3d 739 (2018). "Put another way, plain error review is reserved for only the most egregious

errors." *State* v. *McClain*, 324 Conn. 802, 814, 155 A.3d 209 (2017).

In cases in which a claim of judicial impropriety "strikes at the very core of judicial integrity and tends to undermine public confidence in the established judiciary"; *Felix* v. *Hall-Brooke Sanitarium*, 140 Conn. 496, 501, 101 A.2d 500 (1953); an appellate court properly may reverse the judgment of a trial court on the basis of unpreserved claims of judicial bias under the plain error doctrine. See, e.g., *State* v. *D'Antonio*, 274 Conn. 658, 674, 877 A.2d 696 (2005). Remarking on such situations, our Supreme Court has noted that such a review is proper when "[i]t is quite evident from our review of the trial transcript that a serious departure from these high standards [of impartiality] occurred in the court below." *Cameron* v. *Cameron*, 187 Conn. 163, 169, 444 A.2d 915 (1982).

We acknowledge that the court's sua sponte comments as to the sufficiency of the plaintiff's evidence were unnecessary. They did not, however, rise to the level of judicial bias. The court situated its comments within the context of a scheduling concern, in an attempt to discern how much time would be required to try the rest of the case. The court qualified its remarks by saying, "I have not come to a conclusion on this issue" and "it may well be." The court also gave the defendants adequate time to prepare for the witness in light of the defendants' objection that they lacked notice. Moreover, our review of the record of the trial court proceedings is devoid of any other similar comment, and the defendants have failed to demonstrate any other conduct that would suggest that the proceeding was tainted by bias. Accordingly, we conclude that the court's comments did not rise to the level of being so egregious as to demand a reversal of the court's judgment.

V

Lastly, the defendants claim that the plaintiff's inequitable conduct and the doctrine of unclean hands should have precluded the court from granting the equitable relief sought by the plaintiff.[23] In essence, the defendants argue that "incontestable evidence" establishes that the plaintiff engaged in "inequitable" and "repeated" conduct and has "evinced unclean hands repeatedly in this litigation" that resulted in an assault "on the integrity of the court."[24] In support of that contention, the defendants direct our attention to the plaintiff's filing of (1) the motion for default and judgment made during the statutorily mandated mediation period, as well as the multiple motions made for default for "nonexistent" defaults, and (2) the Rhodes affidavit, which "unambiguously represented to the court that the notice of default . . . had been given to the defendants by 'certified mail' . . . ."[25] The plaintiff counters that the court properly exercised its discretion in rejecting the unclean hands

[23] The defendants pleaded unclean hands as a special defense.

[24] These arguments were presented—in slightly different form—to the trial court in the defendants' request to file a surreply to the plaintiff's second motion for summary judgment. There, the defendants cited, in passing, to Practice Book § 17-48. That provision provides the court with instructions on how to address affidavits that are given in bad faith or solely for the purpose of delay, including the awarding of attorney's fees to the party that has been impacted by such behavior. It further authorizes contempt proceedings as well as judicial discipline for attorneys who engage in such conduct. We can see no evidence in the record before us that the defendants ever requested that the court provide any of those remedies.

[25] In Connecticut, upon initiation of foreclosure proceedings, the parties have the option of participating in court sponsored foreclosure mediation. See *Ocwen Loan Servicing, LLC* v. *Mordecai*, 209 Conn. App. 483, 486–87 n.5, 268 A.3d 704 (2021) ("[d]uring the pendency of mediation, [a] litigation hold is placed on the case, during which time a mortgagee is prohibited from making any motion, request or demand of a mortgagor, except as it may relate to the mediation program; General Statutes § 49-31*l* (c) (6); and no judgment of strict foreclosure or foreclosure by sale may be rendered against the mortgagor during the mediation period" (internal quotation marks omitted)).

defense. The plaintiff argues that neither the "simple misfiling of a default motion" during the mediation period—which was promptly withdrawn—nor the various motions for default that were filed over the lengthy course of this litigation rise to the level required to substantiate an unclean hands defense. The plaintiff also argues that it made no representation that the notice of acceleration, as averred in the Rhodes affidavit to have been "given" via certified mail, had been received by the defendants and that, moreover, the evidence at trial demonstrated that the notice of acceleration was mailed via both first class mail and certified mail. In essence, the plaintiff argues that the court properly determined that the defendants had not proven their special defense that the plaintiff conducted itself with unclean hands. We agree with the plaintiff.

Our standard of review for this claim is well established. "[A]pplication of the doctrine of unclean hands rests within the sound discretion of the trial court. . . . The exercise of [such] equitable authority . . . is subject only to limited review on appeal. . . . The only issue on appeal is whether the trial court has acted unreasonably and in clear abuse of its discretion. . . . In determining whether the trial court abused its discretion, this court must make every reasonable presumption in favor of [the trial court's] action." (Internal quotation marks omitted.) *Ulster Savings Bank* v. *28 Brynwood Lane, Ltd.*, 134 Conn. App. 699, 711, 41 A.3d 1077 (2012).

"[A]n action to foreclose a mortgage is an equitable proceeding. . . . It is a fundamental principle of equity jurisprudence that for a complainant to show that he is entitled to the benefit of equity he must establish that he comes into court with clean hands. . . . The clean hands doctrine is applied not for the protection of the parties but for the protection of the court. . . .

It is applied not by way of punishment but on considerations that make for the advancement of right and justice. . . . The doctrine of unclean hands expresses the principle that where a plaintiff seeks equitable relief, he must show that his conduct has been fair, equitable and honest as to the particular controversy in issue. . . . Unless the plaintiff's conduct is of such a character as to be condemned and pronounced wrongful by honest and fair-minded people, the doctrine of unclean hands does not apply." (Citations omitted; internal quotation marks omitted.) *Thompson* v. *Orcutt*, 257 Conn. 301, 310, 777 A.2d 670 (2001). "The party seeking to invoke the clean hands doctrine to bar equitable relief must show that his opponent engaged in wilful misconduct with regard to the matter in litigation. . . . The trial court enjoys broad discretion in determining whether the promotion of public policy and the preservation of the courts' integrity dictate that the clean hands doctrine be invoked." (Internal quotation marks omitted.) *Ridgefield* v. *Eppoliti Realty Co.*, 71 Conn. App. 321, 335, 801 A.2d 902, cert. denied, 261 Conn. 933, 806 A.2d 1070 (2002).

The court did not abuse its discretion in rejecting the defendants' special defense that the plaintiff acted with unclean hands. The court considered the defendants' arguments and noted that, although they pleaded thirteen special defenses, including unclean hands, they offered "little evidence" to establish any of them. Although the court found that that the Rhodes affidavit had "failed to establish" that notice had been made via first class mail, or that notice mailed by certified mail "was actually delivered," it did not conclude that the affidavit was executed in bad faith or that it contained any fraudulent misrepresentations, especially in light of evidence that the notice of acceleration ultimately was delivered by both first class mail and certified mail.

The motion for default that was filed during the statutorily mandated mediation period—in 2014—was promptly withdrawn after the defendants' objection. The long, contentious route that this case has taken has resulted in delay of the plaintiff's relief—while it is undisputed that the defendants have remained in the property in continued default of their obligations on the note and mortgage—for more than one decade. After considering the defendants' arguments, the court determined that "nothing in the case at bar persuades this court that equity requires anything other than a judgment in the plaintiff's favor." We cannot disagree with that determination. The court's denial of the equitable relief requested by the defendants was not an abuse of its discretion.

The judgment is affirmed and the case is remanded for the purpose of making a new finding as to the amount of the debt, for the setting of a new sale date, and for other proceedings according to law.

In this opinion the other judges concurred.

MARYANNE HORNISH ET AL. *v.* TOWN OF SUFFIELD (AC 47147)

Alvord, Westbrook and Wilson, Js.

Syllabus

The plaintiffs appealed from the Superior Court's judgment dismissing their administrative appeal from the final decision of the defendant Department of Agriculture, which had affirmed a disposal order, issued by an animal control officer for the defendant town, to euthanize the plaintiffs' dog. The plaintiffs claimed, inter alia, that the statute ((Rev. to 2019) § 22-358 (c)) authorizing the euthanizing of the dog was an unconstitutional delegation of legislative authority to the town in violation of the separation of powers doctrine. *Held*:

The plaintiffs could not prevail on their claim that § 22-358 (c) violated the separation of powers doctrine because, pursuant to *Bottone* v. *Westport* (209 Conn. 652), the separation of powers doctrine does not pertain to

delegations of powers from the state legislature to a municipality, and it was clear under the statute (§ 22-331) governing the appointment of municipal animal control officers that the legislature has delegated the enforcement of dog bite statutes to municipalities pursuant to § 22-331 (b), and the animal control officer who issued the disposal order regarding the plaintiffs' dog was an employee of the town.

The plaintiffs failed to satisfy their burden of showing that the department's hearing officer violated their procedural rights under the Uniform Administrative Procedure Act (§ 4-166 et seq.) and deprived them of a fair hearing.

Argued April 14—officially released July 29, 2025

Procedural History

Administrative appeal from the final decision of the defendant Department of Agriculture affirming a disposal order issued by an animal control officer for the named defendant regarding the plaintiffs' dog, brought to the Superior Court in the judicial district of New Britain and tried to the court, *Hon. Henry S. Cohn*, judge trial referee; judgment dismissing the appeal, from which the plaintiffs appealed to this court. *Affirmed.*

Amy E. Markim, with whom was *Timothy P. Jensen*, for the appellants (plaintiffs).

Derek E. Donnelly, with whom, on the brief, was *Eric Duey*, for the appellee (named defendant).

Gail Shane, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellee (defendant Department of Agriculture).

Opinion

PER CURIAM. The plaintiffs, Maryanne Hornish and Neil Hornish, appeal from the judgment of the Superior Court dismissing their administrative appeal from the final decision of the defendant Department of Agriculture (department).[1] The final decision affirmed a disposal order, issued by an animal control officer for the

[1] In their original complaint, filed on February 4, 2021, the plaintiffs named the town of Suffield as the sole defendant. On December 23, 2021, the plaintiffs filed an amended complaint that added the department as a party defendant.

defendant town of Suffield (town), to euthanize the plaintiffs' dog pursuant to General Statutes (Rev. to 2019) § 22-358, as amended by Public Acts 2019, No. 19-197, § 1.[2] On appeal, the plaintiffs claim that (1) § 22-358 (c) is an unconstitutional delegation of legislative authority in violation of the separation of powers doctrine, and (2) procedural irregularities deprived them of a fair hearing. We affirm the judgment of the Superior Court dismissing the plaintiffs' appeal.

The following facts, as set forth by the department's final decision maker, Bruce A. Sherman, are relevant to this appeal. The dog came to live with the plaintiffs, his owners, in June, 2019. On November 6, 2019, an incident occurred inside the plaintiffs' home in Suffield. A friend of the plaintiffs' family, Janet D'Aleo, accompanied by her home health aide, Elizabeth Nicholls, was visiting with Agnes Wosko, who is Maryanne Hornish's mother and lived with the plaintiffs. During the visit, the plaintiffs' dog, who was unprovoked, attacked and bit D'Aleo numerous times, resulting in her death. The plaintiffs were not home at the time the attack began, but Maryanne Hornish returned home at some point during the incident. Later that same day, the town's animal control officer, Ryan Selig, issued a quarantine order with respect to the dog. On November 14, 2019, Selig issued a disposal order pursuant to § 22-358 (c).

On November 18, 2019, Maryanne Hornish filed an appeal and request for a hearing with the department. A notice of hearing was provided to the parties, stating, inter alia, that the hearing would be conducted in accordance with the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq., and the department's rules of practice, as set forth in §§ 22-7-8 through

[2] Hereinafter, unless otherwise indicated, all references to § 22-358 in this opinion are to the 2019 revision of the statute, as amended by Public Acts 2019, No. 19-197, § 1.

22-7-38 of the Regulations of Connecticut State Agencies. Following a request filed by the Estate of Janet D'Aleo (estate), the hearing officer, Carole W. Briggs, granted the estate intervenor status.

The administrative hearing, during which the plaintiffs were self-represented, was held on June 2 and 4, 2020. The parties introduced documentary evidence and presented testimony. On October 20, 2020, the hearing officer issued a proposed final decision, recommending the affirmance of Selig's disposal order. After reviewing the record and considering the plaintiffs' exceptions to the proposed final decision, the final decision maker issued a December 21, 2020 final decision affirming Selig's order. The final decision incorporated the proposed final decision and included responsive language to the plaintiffs' exceptions.

Thereafter, the plaintiffs appealed to the Superior Court. The plaintiffs claimed that § 22-358 (c) is an unconstitutional delegation of legislative authority in violation of the separation of powers doctrine. The plaintiffs further claimed that they were deprived of a fair hearing. The parties filed briefs and appeared before the court, *Hon. Henry S. Cohn*, judge trial referee. On November 13, 2023, the court issued its memorandum of decision in which it concluded that the statute was constitutional and rejected the plaintiffs' remaining challenges to the final decision. Accordingly, the Superior Court dismissed the plaintiffs' administrative appeal. This appeal followed. Additional facts will be set forth as necessary.

I

The plaintiffs' first claim on appeal is that § 22-358 (c) "violates the separation of powers provisions of the Connecticut constitution because it impermissibly delegates a legislative function to the executive branch without declaring a clear legislative policy, adequate

standards, or intelligible principles to guide the animal control officer's decision." See Conn. Const., art. II. The town and the department respond that the statute is constitutional and also raise as an alternative ground for affirmance that the plaintiffs' claim fails on the basis that a legislative delegation of power to a municipality does not raise separation of powers concerns.[3] We agree with the town and the department's alternative ground for affirmance.

We first set forth our standard of review. "[A]lthough we have noted that [a]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts . . . we have maintained that [c]ases that present pure questions of law . . . invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . The plaintiff's constitutional claims are therefore entitled to plenary review." (Citation omitted; internal quotation marks omitted.) *Miller* v. *Dept. of Agriculture*, 168 Conn. App. 255, 266, 145 A.3d 393, cert. denied, 323 Conn. 936, 151 A.3d 386 (2016).

The statute at issue in the present case provides in relevant part: "The commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may make any order concerning the restraint or disposal of any biting dog . . . as the commissioner

[3] The Superior Court noted the town and the department's alternative argument but addressed the plaintiffs' delegation argument directly, concluding that it was meritless. "It is well established that, [w]here the trial court reaches a correct decision but on [alternative] grounds, this court has repeatedly sustained the trial court's action if proper grounds exist to support it. . . . [W]e . . . may affirm the court's judgment on a dispositive [alternative] ground for which there is support in the trial court record." (Internal quotation marks omitted.) *Manufacturers & Traders Trust Co.* v. *Virgulak*, 233 Conn. App. 329, 339 n.6, A.3d (2025).

or such officer deems necessary. . . . Any person aggrieved by an order of any municipal animal control officer, the Chief Animal Control Officer, any animal control officer or any regional animal control officer may request a hearing before the commissioner within fourteen days of the issuance of such order. Any order issued pursuant to this section that requires the restraint of an animal shall be effective upon its issuance and shall remain in effect during any appeal of such order to the commissioner. After such hearing, the commissioner may affirm, modify or revoke such order as the commissioner deems proper. . . .'' General Statutes (Rev. to 2019) § 22-358 (c), as amended by Public Acts 2019, No. 19-197, § 1.

The following legal principles regarding the separation of powers also are relevant. ''The [c]onstitution of this state provides for the separation of the governmental functions into three basic departments, legislative, executive and judicial, and it is inherent in this separation, since the law-making function is vested exclusively in the legislative department, that the [l]egislature cannot delegate the law-making power to any other department or agency. In the establishment of three distinct departments of government, the [c]onstitution, by necessary implication, prescribes those limitations and imposes those duties which are essential to the independence of each and to the performance by each of the powers of which it is made the depositary.'' *State* v. *Stoddard*, 126 Conn. 623, 627, 13 A.2d 586 (1940); see also *Casey* v. *Lamont*, 338 Conn. 479, 503, 258 A.3d 647 (2021).

In *Bottone* v. *Westport*, 209 Conn. 652, 664, 553 A.2d 576 (1989), however, our Supreme Court explained: ''The separation of powers doctrine . . . does not pertain to delegations from the state legislature to a municipality. A municipality cannot be considered 'any other department or agency' in the context of that phrase in

Stoddard; a municipality is not one of the three departments enumerated in the constitution's separation of powers provision. Accordingly, a nondelegation doctrine founded upon the separation of powers doctrine does not pertain by jurisprudential necessity to the delegation of power from the state legislature to a municipality." (Footnote omitted.) The court went on to state that "the rule limiting the delegation of legislative power between coequal branches of state government is not the appropriate rule to govern the delegation of legislative power from the state to a municipality." Id., 667; see also *Stafford Higgins Industries, Inc.* v. *Norwalk*, 245 Conn. 551, 566, 715 A.2d 46 (1998).

In the present case, the plaintiffs have framed their constitutional challenge as one claiming a violation of the separation of powers doctrine. Our Supreme Court held in *Bottone* that the separation of powers doctrine does not pertain to delegations from the state legislature to a municipality. *Bottone* v. *Westport*, supra, 209 Conn. 664. Because the present case involves a delegation to a municipality, the plaintiffs' claim is foreclosed by our Supreme Court's holding in *Bottone*.[4]

In their reply brief, the plaintiffs argue that "*Bottone* does not stand for the proposition that [§] 22-358 (c), which delegates authority to the [department] (which, in turn, sometimes but not always utilizes municipal

[4] The plaintiffs have waived any claim that the statute is unconstitutionally vague under a traditional due process analysis by their failure to brief any such claim. Likewise, the plaintiffs do not claim that, under the analysis in *Bottone*, the delegation to the municipality was unconstitutional because it did not provide "reasonable notice of what conduct may be authorized or prohibited . . . ." *Bottone* v. *Westport*, supra, 209 Conn. 675. "[W]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) *Bohonnon Law Firm, LLC* v. *Baxter*, 131 Conn. App. 371, 383, 27 A.3d 384, cert. denied, 303 Conn. 902, 31 A.3d 1177 (2011).

animal control officers to carry out its actions), constitutes a delegation to a municipality to which *Bottone*, and not *Stoddard*, applies." We disagree. Pursuant to General Statutes § 22-331, municipal animal control officers are appointed by the municipality's chief of police or other appointing authority. It is clear under this statute that the legislature has delegated the enforcement of dog bite statutes to municipalities. Indeed, the plain language of § 22-331 provides that municipal animal control officers are appointed "to administer and enforce the laws relating to dogs and other domestic animals." General Statutes § 22-331 (b).[5] In the present case, the record reveals that Selig, the animal control officer who issued the disposal order, was an employee of the town. Accordingly, we reject the plaintiffs' claim rooted in the separation of powers doctrine.

II

The plaintiffs' second claim on appeal is that procedural irregularities deprived them of a fair hearing. Specifically, they argue that (1) the town did not rule out that the dog was provoked, (2) the estate improperly was allowed to participate "as if it were a full party," (3) the town did not present an expert witness on D'Aleo's cause of death, and (4) the hearing officer improperly relied on the testimony of Shawn St. John, a detective with the Suffield Police Department, as to the home health aide's account of the incident. We conclude that the plaintiffs cannot prevail on their procedural claims.

We first set forth our well established standard of review of administrative agency rulings. "Judicial review of an administrative decision is a creature of statute

[5] General Statutes § 22-331 (b) provides in relevant part: "[T]he chief . . . of police in each other city or town having a police department . . . shall appoint a municipal animal control officer . . . to administer and enforce the laws relating to dogs and other domestic animals. . . ."

. . . and [General Statutes § 4-183 (j)] permits modification or reversal of an agency's decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) [i]n violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error or law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. . . .

"Under the UAPA, the scope of our review of an administrative agency's decision is very restricted. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither [the appellate] court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . We have stated that not all procedural irregularities require a reviewing court to set aside an administrative decision . . . . The complaining party has the burden of demonstrating that its substantial rights were prejudiced by the error. . . . It is fundamental that a plaintiff has the burden of proving that the [agency], on the facts before [it], acted contrary to law and in abuse of [its] discretion . . . ." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Miller* v. *Dept. of Agriculture*, supra, 168 Conn. App. 265–66.

The Superior Court, in considering the plaintiffs' appeal, first found that "substantial evidence existed for the animal control officer and the [department's final decision maker] to find that the dog was a danger and subject to the order at issue." Specifically, the court referenced the dog's history of biting and that he had bit D'Aleo and caused her death. The court referenced Detective St. John's testimony that he "spoke with Beth Sanchez, who had cared for the dog . . . for approximately two years, and, during that time, the dog was involved in three instances of aggression or bite events. Two had been reported to the Norwich police, while the third had not. Through a photo confirmation, Sanchez confirmed to . . . Selig that the dog she had cared for was the [plaintiffs'] dog . . . ."

The court then turned to the plaintiffs' procedural challenges, stating: "First, while admitting that hearsay proof is permissible in an administrative appeal hearing, [the plaintiffs] stated that the evidence must be reliable. They contend that [Detective] St. John's testimony was unreliable. The example given to the court was that [Detective] St. John gave different testimony regarding the incident in a deposition taken by the . . . estate after the plaintiffs' hearing. The final review of the [hearing officer], however, had not been issued at the time when the deposition text became available. There was no reason why the plaintiffs could not have submitted the deposition to the town's hearing officer for [her] review. The plaintiffs argue that the doctor's report came to the attention of the plaintiffs immediately before the hearing. Further, the doctor himself did not testify. On the other hand, our Supreme Court has held that a hearing officer may make use of evidence as it exists in the record and may choose as [she] wants to make use of the evidence of record. . . . There was sufficient time after the municipal hearing for the plaintiffs to reply. The plaintiffs contend that [the hearing officer]

did not discuss any provocation of the dog. But the text of the ruling . . . shows that the provocation was discussed. The plaintiffs contend that the . . . estate was allowed to participate in the hearing and dominated the hearing. The record shows, however, that the estate participated modestly at the hearing. The plaintiffs also question the [hearing officer's] use of [Wosko's] oral statement . . . . [Wosko] later wrote a written statement, but the hearing officer used the first oral statement. This was [her] prerogative in reviewing the evidence. The court observed that the plaintiffs chose to appear at the hearing as self-represented [parties]. Some of the alleged mistakes that they point to were caused by their voluntary decision to appear as self-represented [parties]. Our Appellate Court has recently declared that, while the trial court should be solicitous of self-represented parties, the trial court must also refrain from interfering with the rights of other parties, such as the municipality here." (Citation omitted.) Having rejected the plaintiffs' claims, the court dismissed the appeal.

On the basis of our examination of the record and the briefs, and our consideration of the arguments of the parties, we conclude that the plaintiffs cannot prevail on their procedural claims.[6] See *Direct Energy Services*,

[6] To the extent the plaintiffs seek to raise any claims that the hearing officer's procedures violated due process under the federal constitution, such claims are abandoned due to inadequate briefing. Specifically, the plaintiffs fail to "apply the traditional three part balancing test set forth in *Mathews* v. *Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), to determine what safeguards the federal constitution requires to satisfy procedural due process." (Internal quotation marks omitted.) *Turn of River Fire Dept., Inc.* v. *Stamford*, 159 Conn. App. 708, 712 n.2, 123 A.3d 909 (2015). "It is well established that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.) Id.; see also *Frauenglass & Associates, LLC* v. *Enagbare*, 149 Conn.

LLC v. *Public Utilities Regulatory Authority*, 347 Conn. 101, 154, 296 A.3d 795 (2023). First, the plaintiffs' claim that the "town did not rule out" that the dog was provoked is belied by the record. The final decision maker considered the plaintiffs' exception to the proposed final decision on the issue of provocation and stated, from his review of the record, that he agreed with the hearing officer's determination that the dog was not provoked. This determination finds support in the record in the testimony of Selig and Detective St. John. We are not persuaded by the plaintiffs' contention otherwise. Second, the plaintiffs challenge the extent of the participation permitted by the estate, arguing that the estate improperly was permitted to cross-examine witnesses without limit. We agree with the Superior Court's determination that the "estate participated modestly at the hearing," and we conclude that the plaintiffs have not demonstrated any disruption of the proceedings related to the estate's participation.

Third, the plaintiffs claim that the town should have introduced expert testimony relative to D'Aleo's cause of death. Section 7-2 of the Connecticut Code of Evidence provides in relevant part that an expert witness "may testify in the form of an opinion or otherwise concerning scientific, technical or other specialized knowledge, if the testimony will assist the trier of fact in understanding the evidence or in determining a fact in issue." In the present case, the final decision maker made clear that autopsy evidence was unnecessary in order for him "to reasonably conclude, on this record, that the bite or bites inflicted by [the dog] were very serious and that [the dog] is a risk to public safety

App. 103, 110–11, 88 A.3d 1246 (federal due process claim was inadequately briefed where defendant failed to mention applicable balancing test, let alone include analysis of *Mathews* test as applied to facts of defendant's case), cert. denied, 314 Conn. 927, 101 A.3d 273 (2014). Accordingly, we deem any procedural due process claim abandoned due to inadequate briefing and decline to review it.

. . . .” The ample evidence before the final decision maker concerning the dog bites that immediately preceded D’Aleo’s death leads us to conclude that expert opinion as to the cause of her death was unnecessary. See *Utica Mutual Ins. Co.* v. *Precision Mechanical Services, Inc.*, 122 Conn. App. 448, 455, 998 A.2d 1228 (“[A]lthough expert testimony may be admissible in many instances, it is required only when the question involved goes beyond the field of the ordinary knowledge and experience of the trier of fact. . . . The trier of fact need not close its eyes to matters of common knowledge solely because the evidence includes no expert testimony on those matters. . . . Rather, [the finder of fact is] not expected to lay aside matters of common knowledge or [its] own observation and experience of the affairs of life, but, on the contrary, to apply them to the evidence or facts in hand, to the end that their action may be intelligent and their conclusions correct.” (Citation omitted; footnotes omitted; internal quotation marks omitted.)), cert. denied, 298 Conn. 926, 5 A.3d 487 (2010). Fourth, the plaintiffs claim that the hearing officer improperly relied on Detective St. John’s testimony as to what the home health aide said about the incident, arguing that it constituted unreliable hearsay. “In administrative proceedings under the UAPA, evidence is not inadmissible solely because it constitutes hearsay. . . . Additionally, a party to an administrative proceeding under the UAPA is not required to call any particular witness.” (Citations omitted.) *Miller* v. *Dept. of Agriculture*, supra, 168 Conn. App. 267. The plaintiffs have not demonstrated that the hearing officer erred in relying on Detective St. John’s testimony.[7]

[7] The plaintiffs raise two additional contentions that warrant little discussion. First, in two brief paragraphs of their principal appellate brief, the plaintiffs suggest that the hearing officer erred in crediting the testimony of Detective St. John regarding the contents of an audio call from D’Aleo’s emergency call button. The plaintiffs claim that the hearing officer instead should have credited Neil Hornish’s testimony regarding the audio call. We reject this claim because it is well established that “[t]he credibility of witnesses and the determination of factual issues are matters within the

Accordingly, we conclude that the plaintiffs have failed to satisfy their burden of showing that the hearing officer violated their procedural rights under the UAPA.

The judgment is affirmed.

JOSEPH FARYNIARZ *v.* JOSE E. RAMIREZ ET AL. (AC 47509)

Moll, Clark and Seeley, Js.

Syllabus

The plaintiff judgment creditor appealed from the trial court's judgment granting the defendant judgment debtor's motion to exempt from execution certain accounts at a financial institution containing retirement funds. The plaintiff claimed, inter alia, that the court erred in crediting as prima facie evidence a form containing false information that had been executed by the defendant. *Held*:

This court dismissed the plaintiff's appeal for lack of subject matter jurisdiction, the plaintiff having failed to file his appeal within the seven day appeal period set forth in the statute (§ 52-367b (i)) governing orders determining issues raised by a claim of exemption with respect to accounts held by financial institutions.

Argued May 21—officially released July 29, 2025

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior

province of the administrative agency." (Internal quotation marks omitted.) *Cohen* v. *Dept. of Energy & Environmental Protection*, 215 Conn. App. 767, 830, 285 A.3d 760, cert. denied, 345 Conn. 968, 285 A.3d 1126 (2022), and cert. denied, 345 Conn. 969, 285 A.3d 737 (2022); see also *Goldstar Medical Services, Inc.* v. *Dept. of Social Services*, 288 Conn. 790, 830, 955 A.2d 15 (2008) ("[i]t is well established that it is the exclusive province of the trier of fact to make determinations of credibility, crediting some, all, or none of a given witness' testimony").

Second, the plaintiffs claim that "[t]he town and the estate were allowed to unfairly combine resources against the [self-represented] plaintiffs to create a biased record that ultimately led to a decision that was improper and substantially prejudicial to the plaintiffs." In support of their claim, the plaintiffs repeat the various procedural challenges previously discussed in this opinion. Because we reject the plaintiffs' procedural challenges, we likewise reject their contention that the alleged errors resulted in substantial prejudice to the plaintiffs.

Court in the judicial district of Ansonia-Milford and tried to the court, *Stevens*, *J.*; judgment for the plaintiff; thereafter, the court, *J. Welch*, *J.*, granted the named defendant's motion for exemption from execution, and the plaintiff appealed to this court. *Appeal dismissed.*

Robert J. Sullivan, *Jr.*, with whom, on the brief, was *Edward T. Murnane*, *Jr.*, for the appellant (plaintiff).

Jonathan J. Klein, for the appellee (named defendant).

Opinion

MOLL, J. The plaintiff, Joseph Faryniarz, appeals from the judgment of the trial court granting the application for exemption from execution filed by the defendant Jose E. Ramirez[1] pursuant to General Statutes §§ 52-321a[2] and 52-352b (13).[3] On appeal, the plaintiff

[1] In the present action, the plaintiff originally named as defendants Jose E. Ramirez, JR Chem, LLC, and JR Chemical, Inc. Only Ramirez, however, is participating in this appeal. In the interest of simplicity, therefore, we refer solely to Ramirez as the defendant.

[2] General Statutes § 52-321a provides in relevant part: "(a) (1) . . . [A]ny interest in or amounts payable to a participant or beneficiary from the following shall be exempt from the claims of all creditors of such participant or beneficiary: (A) Any trust, custodial account, annuity or insurance contract established as part of a Keogh plan or a retirement plan established by a corporation which is qualified under Section 401, 403, 404 or 409 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended; (B) any individual retirement account which is qualified under Section 408 of said internal revenue code to the extent funded, including income and appreciation, (i) as a roll-over from a qualified retirement plan, as provided in subparagraph (A) of this subdivision, pursuant to Section 402 (a) (5), 403 (a) or 408 (d) (3) of said internal revenue code, or (ii) by annual contributions which do not exceed the maximum annual limits set forth in Section 219 (b) of said internal revenue code, determined without regard to any reduction or limitation for active participants required by Section 219 (g) of said internal revenue code; (C) (i) any simple retirement account established and funded pursuant to Section 408 (p) of said internal revenue code, (ii) any simple plan established and funded pursuant to Section 401 (k) (11) of said internal revenue code, [or] (iii) any Roth IRA established and funded pursuant to Section 408A of said internal revenue code . . . ."

[3] General Statutes § 52-352b (13) provides that "[a]ny assets or interests of an exemptioner in, or payments received by the exemptioner from, a

claims that the court erred (1) as a legal matter, in interpreting General Statutes § 52-367b (f) (1)[4] as creating a presumption, shifting to a judgment creditor (i.e., the plaintiff) the burden of disproving a judgment debtor's (i.e., the defendant's) claim that accounts at a financial institution consist of exempt retirement funds and (2) as a factual matter, in connection with the judgment debtor's claim that certain accounts contained exempt retirement funds, in crediting as prima facie evidence a form containing false information that had been executed by the defendant. We do not reach the merits of the plaintiff's claims, however, because this appeal was not filed within the seven day appeal period provided by § 52-367b (i),[5] and, accordingly, we dismiss this appeal for lack of subject matter jurisdiction.

The following procedural history is relevant to our resolution of this appeal. On October 28, 2016, the plaintiff commenced the underlying action against the defen-

plan or arrangement described in section 52-321a" are exempt from any form of process or court order for the purpose of debt collection.

[4] General Statutes § 52-367b (f) (1) provides: "Upon receipt of an exemption claim form or a secured party claim notice, the clerk of the court shall enter the appearance of the judgment debtor or such secured party with the address set forth in the exemption claim form or secured party claim notice. The clerk shall forthwith send file-stamped copies of the exemption claim form or secured party claim notice to the judgment creditor and judgment debtor with a notice stating that the disputed funds are being held for forty-five days from the date the exemption claim form or secured party claim notice was received by the financial institution or until a court order is entered regarding the disposition of the funds, whichever occurs earlier, and the clerk shall promptly schedule the matter for a hearing. The claim of exemption filed by such judgment debtor shall be prima facie evidence at such hearing of the existence of the exemption."

[5] General Statutes § 52-367b (i) provides that, following a hearing on a claim of exemption, "[t]he court . . . shall enter an order determining the issues raised by the claim of exemption and claim by a secured party of a prior perfected security interest in such deposit account. The clerk of the court shall forthwith send a copy of such order to the financial institution. Such order shall be deemed to be a final judgment for the purposes of appeal. No appeal shall be taken except within seven days of the rendering of the order. The order of the court may be implemented during such seven-day period, unless stayed by the court."

dant. In his complaint, the plaintiff asserted claims for, inter alia, breach of contract, conversion, unjust enrichment, fraud, and violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. On March 1, 2017, the defendant filed the operative answer and special defenses, to which the plaintiff filed a reply on March 31, 2017.

The court, *Stevens*, *J.*, bifurcated the liability and damages phases of the trial. On May 15 and 16, 2018, the court heard evidence as to liability. The court admitted into evidence several exhibits in full and heard testimony from several witnesses. With respect to liability, the court issued a memorandum of decision on February 25, 2019, wherein it found in favor of the plaintiff on his breach of contract (relating to a royalty and licensing payments contract), fraudulent representation, and CUTPA claims. On December 24, 2019, following additional evidence on the issue of damages, the court issued a memorandum of decision awarding $908,224 in damages to the plaintiff.

On June 9, 2022, the defendant filed a claim for exemption from execution, pursuant to §§ 52-321a and 52-352b (13), with respect to two of his accounts that were held by Merrill Lynch, Pierce, Fenner & Smith, Inc. (Merrill Lynch).[6] The two accounts at issue ended in 2336 and 9L40. On August 10, 2022, the plaintiff filed an objection to the defendant's claim of exemption. On September 21, 2023, and January 30, 2024, the court, *J. Welch*, *J.*, heard argument from the parties' respective counsel and conducted an evidentiary hearing to determine whether the accounts held by Merrill Lynch were

[6] The defendant also indicated on the exemption claim form that certain accounts held by Merrill Lynch were exempt from execution pursuant to § 52-352b (7), which provides that "[w]orkers' compensation, Social Security, veterans and unemployment benefits" are exempt from any form of process or court order for the purpose of debt collection. The defendant subsequently withdrew his claim under § 52-352b (7).

retirement accounts that were exempt from execution. Thereafter, the plaintiff and the defendant filed supplemental briefs.

On March 8, 2024, the court rendered its order granting the defendant's claim of exemption. Specifically, the court held "(1) that the restricted accounts with account numbers ending in 2336 [and] 9L40 are exempt accounts pursuant to §§ 52-352b (13) and 52-321a; (2) that the funds in those accounts are exempt funds; and (3) that there is insufficient evidence to rebut the prima facie evidence that the claimed exemption exists that is afforded by [the aforementioned] statutes."

On April 1, 2024, the plaintiff filed this appeal. On May 7, 2025, prior to oral argument, we ordered, sua sponte, the parties "to file supplemental memoranda of no more than 1500 words on or before May 19, 2025, addressing whether the plaintiff's appeal from the trial court's granting of the defendant's exemption from execution should be dismissed for lack of subject matter jurisdiction because the appeal was not filed within the seven day appeal period set forth in . . . § 52-367b (i). See, e.g., *Ambroise* v. *William Raveis Real Estate, Inc.*, 226 Conn. 757, 767, [628 A.2d 1303] (1993) (seven day time limit to appeal set forth in General Statutes § 52-278*l* is jurisdictional)."

On May 19, 2025, both parties submitted supplemental briefs in accordance with our order. In the plaintiff's supplemental brief, he argues that this court does not lack subject matter jurisdiction because (1) the seven day appeal period set forth in § 52-367b does not apply to the present case, and (2) even if it were to apply, the present case is distinguishable from *Ambroise* because, contrary to § 52-278*l*, § 52-367b does not clearly manifest an intent to make the stated time constraint mandatory and not waivable.[7] In his supplemental brief, the

[7] The plaintiff also contends that the seven day appeal period set forth in § 52-367b violates his right to due process under the Connecticut constitution and the United States constitution. We decline to address this claim,

defendant relies on *Ambroise* in arguing that this court lacks subject matter jurisdiction because the language of § 52-367b (i) is "clear and emphatic," and, therefore, the time limit therein was likewise intended to be subject matter jurisdictional.

As a threshold matter, we observe that the appeal period set forth in § 52-367b (i) applies in the present case. Section 52-367b (i) provides: "The court, after a hearing conducted pursuant to subsection (f) of this section, shall enter an order determining the issues raised by the claim of exemption and claim by a secured party of a prior perfected security interest in such deposit account. The clerk of the court shall forthwith send a copy of such order to the financial institution. Such order shall be deemed to be a final judgment for the purposes of appeal. No appeal shall be taken except within seven days of the rendering of the order. The order of the court may be implemented during such seven-day period, unless stayed by the court." The plaintiff makes no meaningful attempt to explain why this statutory provision does not apply, and his cursory suggestion that it does not apply warrants no discussion.

The crux of the issue before us is whether the appeal period set forth in § 52-367b (i) is subject matter jurisdictional. Our analysis is largely guided by *Ambroise* v. *William Raveis Real Estate, Inc.*, supra, 226 Conn. 757, in which our Supreme Court held that certain statutory time limits on the right to appeal are subject matter jurisdictional. Id., 767. *Ambroise* concerned § 52-278*l*, which provides in relevant part that "[a]n order . . . granting or denying a prejudgment remedy following a hearing . . . shall be deemed a final judgment for purposes of appeal. . . . No such appeal shall be taken except within seven days of the rendering of the order

however, as it is inadequately briefed. See *Spinnato* v. *Boyd*, 231 Conn. App. 460, 480–81, 333 A.3d 818 (2025).

from which the appeal is to be taken. . . .'' See *Ambroise* v. *William Raveis Real Estate, Inc.*, supra, 758. The court in *Ambroise* stated that ''the proper analysis of a statutory time limitation on the right to appeal devolves into a question of statutory construction: did the legislature, in imposing the time limitation, intend to impose a subject matter jurisdictional requirement on the right to appeal? We approach this question according to well established principles of statutory construction designed to further our fundamental objective of ascertaining and giving effect to the apparent intent of the legislature. . . . In seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . .

''Subject matter jurisdiction is the power of the court to hear and determine cases of the general class to which the proceedings in question belong. . . . Furthermore, taking into account the established principle that every presumption is to be indulged in favor of jurisdiction . . . we require a strong showing of a legislative intent to create a time limitation that, in the event of noncompliance, acts as a subject matter jurisdictional bar.'' (Citations omitted; internal quotation marks omitted.) Id., 764–65.

The court ultimately held that ''[t]he failure to take an appeal within the time constraints of § 52-278*l* results in an absence of subject matter jurisdiction that cannot be waived by the parties or by the court'' and, accordingly, dismissed the subject appeal. Id., 767. In coming to this conclusion, the court emphasized, inter alia, that the language of § 52-278*l* is ''clear and emphatic'' and ''contains a statutory time period for taking an appeal with regard to a statutory remedy that has no common

law counterpart." Id., 765–66. The court also noted that "the manifest purpose of § 52-278*l* (b) is to permit the parties to know within a very brief period of time whether the order is final or is going to be challenged on appeal," and "[a] holding that the time period is discretionary and therefore can be waived would undermine that legislative purpose." Id., 767.

Relying on *Ambroise*, this court previously has determined that other statutes employing language similar to § 52-278*l* also impose jurisdictional time constraints on an appeal. See, e.g., *Burke Construction, Inc.* v. *Smith*, 41 Conn. App. 737, 742, 677 A.2d 15 (1996) (holding that seven day appeal period in General Statutes § 49-35c (b)[8] is mandatory and failure to appeal within that period strips this court of subject matter jurisdiction); *Srager* v. *Koenig*, 36 Conn. App. 469, 471, 651 A.2d 752 (1994) (holding that failure to appeal within seven day appeal period set forth in General Statutes § 52-325c (b)[9] deprives this court of subject matter jurisdiction because, inter alia, "[t]he language of § 52-325c (b) is clear and is virtually the same as the language of § 52-278*l* (b), which the Supreme Court held to impose such a jurisdictional requirement").

In the present case, § 52-367b (i) has virtually the same language as the statutes at issue in *Ambroise*, *Burke Construction, Inc.*, and *Srager*. See footnotes 5, 8 and 9 of this opinion. Moreover, the seven day appeal period set forth in § 52-367b (i) is written in "clear and emphatic" terms and governs an appeal with regard to a statutory remedy that has no common-law counterpart. See *Ambroise* v. *William Raveis Real Estate, Inc.*, supra,

[8] General Statutes § 49-35c (b) pertains to orders on applications to reduce or discharge mechanic's liens and provides in relevant part: "No appeal may be taken from the order except within seven days thereof. . . ."

[9] General Statutes § 52-325c (b) pertains to orders on applications to discharge notices of lis pendens and provides in relevant part: "No appeal shall be taken from such order except within seven days thereof. . . ."

226 Conn. 765. We also note that, as was the case in *Ambroise*, a holding in the present case that the time period is discretionary and therefore can be waived would undermine the legislative purpose that is apparent from the legislature's inclusion of a very brief appeal period in § 52-367b (i). See id., 767. Thus, the legislature, in imposing the time limitation set forth in § 52-367b (i), manifested an intent to impose a subject matter jurisdictional requirement on the right to appeal.

We conclude that, pursuant to § 52-367b (i), the plaintiff had seven days from the rendering of the court's March 8, 2024 order to appeal to this court and, therefore, the plaintiff's appeal on April 1, 2024, was not timely filed. Accordingly, we lack subject matter jurisdiction over the appeal.

The appeal is dismissed.

In this opinion the other judges concurred.

THOMAS FREDO *v.* KRISTIN FREDO
(AC 46803)

Cradle, C. J., and Elgo and Moll, Js.

Syllabus

The plaintiff, whose marriage to the defendant previously had been dissolved, appealed from the trial court's judgment granting the defendant's motion for contempt with respect to the plaintiff's failure to transfer two lots of real property, one to the defendant and one to a trust for the benefit of the parties' children, pursuant to court orders. The plaintiff claimed, inter alia, that the defendant did not have standing to assert a claim regarding the lot that he was supposed to transfer to a trust for the benefit of their children. *Held*:

The trial court improperly rendered judgment for the defendant with respect to her claim regarding the lot that was supposed to be transferred to a trust for the benefit of the parties' children, as the defendant failed to demonstrate a direct or personal interest in the lot or a direct injury she had suffered as a result of the plaintiff's failure to transfer that lot and, accordingly, the defendant lacked standing to assert a claim as to that lot.

This court declined to review the plaintiff's claim that the trial court erred in finding him in contempt because his failure to transfer the lots was not wilful, as the plaintiff failed to provide this court with a transcript of the contempt hearing and, thus, the record was inadequate for review.

The trial court's monetary award to the defendant, following its finding of contempt, did not constitute an impermissible modification of a property settlement, as the award was not in response to a motion that sought modification of the court's orders but, rather, a motion for contempt that sought to effectuate those orders by transfer of the lots at issue and, because the court could not effectuate its prior orders or make the defendant whole by ordering the transfer of the lots due to the plaintiff's delay in complying with those orders, the monetary award was necessary to vindicate the court's prior orders.

This court declined to review the plaintiff's claim that the trial court's monetary award to the defendant for lost financial opportunities resulting from the plaintiff's failure to transfer the lots was not supported by the evidence, as the plaintiff failed to provide this court with the entire trial court record, without which this court would be left to speculate as to the basis of the trial court's award.

Argued April 30—officially released July 29, 2025

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Gruendel*, *J.*, rendered judgment dissolving the marriage and granting certain other relief in accordance with the parties' settlement agreement; thereafter, the court, *Alfano*, *J.*, granted the defendant's motion for contempt and rendered judgment thereon, from which the plaintiff appealed to this court. *Vacated in part*; *judgment directed.*

C. Michael Budlong, for the appellant (plaintiff).

John C. Lewis III, with whom, on the brief, was *Mario Cerame*, for the appellee (defendant).

Opinion

CRADLE, C. J. In this postjudgment marital dissolution matter, the plaintiff, Thomas Fredo, appeals from

the judgment of the trial court granting the motion for contempt filed by the defendant, Kristin Fredo, alleging that the plaintiff wilfully violated unambiguous court orders to transfer two lots of real property, one to her and another to a trust for the benefit of the parties' children. On appeal, the plaintiff claims that (1) the defendant did not have standing to assert a claim regarding the lot that he was supposed to transfer to a trust for the benefit of their children; (2) the court erred in finding him in contempt; (3) the court's monetary award to the defendant constituted an impermissible postjudgment modification of the parties' property settlement; and (4) there was no evidentiary basis for the court's award to the defendant of compensation for lost financial benefits stemming from the plaintiff's failure to transfer the lots.[1] We agree with the plaintiff's claim that the defendant lacked standing to assert a claim as to the lot that was supposed to be transferred into a trust for the benefit of the parties' children and vacate the portion of the judgment related to that lot. We affirm the judgment of the trial court in all other respects.

The record reveals the following undisputed facts and procedural history. The parties married on July 17, 1993. They have three children of the marriage: a son born in January, 1994; a daughter born in October, 1995; and a daughter born in February, 1998. In July, 2004, the plaintiff filed the underlying complaint for dissolution of marriage. On November 24, 2004, the court rendered judgment dissolving the parties' marriage. The judgment incorporated by reference the terms of a separation agreement that the parties had entered into on the same date. The separation agreement provided, inter alia, that the plaintiff was entitled to several family businesses free from any claims of the defendant. One of those businesses owned real property in North

[1] We address the plaintiff's claims in a different order than they are set forth in his appellate brief.

Granby that it planned to subdivide. In consideration of the defendant relinquishing any claims that she had to those businesses, the agreement provided that, upon obtaining approval for the subdivision of the North Granby property, as well as zoning approval, the plaintiff was required to transfer one lot from the subdivision to the defendant and another lot from the subdivision to a trust for the benefit of the parties' children to be used for the children's post high school education, of which the plaintiff would be the trustee.

On January 27, 2009, the defendant filed a motion for contempt alleging that the plaintiff wilfully violated the dissolution judgment in that he had failed to convey to her and failed to convey into a trust, for the benefit of the parties' children, the subdivision lots. Following a two day hearing, the court, *Hon. John R. Caruso*, judge trial referee, issued a memorandum of decision in which it declined to find the plaintiff in contempt but ordered that he transfer the lots within thirty days. The plaintiff filed an appeal of that decision, which he withdrew after the parties entered a stipulation dated October 7, 2010 (2010 stipulation), whereby they agreed, inter alia, that the defendant would release the lis pendens she had filed on the land records in the town of Granby as to all but lots 512 and 615 of the subdivision. The stipulation further provided: "In satisfaction of his obligation contemplated in [the dissolution judgment], the [p]laintiff shall, in his discretion, transfer either Lot 615 or Lot 512 to the [d]efendant as soon as the existing development mortgage to Windsor Federal Savings Bank . . . has been satisfied . . . . The [p]laintiff shall transfer Lot 616 to the trust contemplated in [the dissolution judgment]. Such transfer shall take place as soon as the existing mortgage referred to above has been satisfied."

On March 12, 2021, the defendant filed a motion for contempt alleging that the plaintiff violated the dissolution judgment and the 2010 stipulation in that he failed

to transfer the subdivision lots to her or to create a trust and transfer a lot to that trust for the benefit of their children. On December 30, 2022, following an evidentiary hearing, the court, *Alfano*, *J.*, issued a written order finding that the plaintiff wilfully had violated the orders that he transfer the lots at issue. The court reasoned: "The court finds that the plaintiff had the legal authority to transfer the lots to the defendant. Moreover, he did so with the specific knowledge and agreement of his business partner in the property. . . .

"The plaintiff acknowledges that the lots discussed in the [2010 stipulation] have not been transferred to the defendant. He explained that he does not want to and does not think he currently can transfer one or more of these lots to the defendant but that he does want to make her whole in some way. . . .

"The subdivision approval for [the North Granby property] is currently expired. It expired on July 26, 2019. . . . [U]pon the expiration date, the subdivided lots . . . effectively merged into a singular parcel. Thus, the remaining unsold '500' lots merged into a singular land parcel, now approximately 8.5 acres in size, and the remaining unsold '600' lots merged into a singular land parcel of approximately fifteen acres in size. The plaintiff and [his business partner] are currently, through their company . . . in the process of working to obtain subdivision approval for the property again. However, right now, the land previously demarcated into individual lots cannot be transferred as individual lots. . . .

"The plaintiff acknowledged that he should have transferred the lots outlined in the [2010] stipulation to the defendant after fully satisfying the mortgage [which was paid off in full on April 19, 2016]. The conditions outlined in the [2010] stipulation for the transference of the lots existed from the date of the mortgage release

in April of 2016 until the expiration of the subdivision's approval in 2019. Yet, the lots were not transferred during that time period by the plaintiff to the defendant. The plaintiff testified that he thinks he has met his obligations in supporting his children. It appears he was suggesting that the transference of the lot designated to be for the benefit of the children might therefore be moot as he has satisfied his obligation in another way. The court does not agree as neither the 2004 [dissolution] judgment nor the 2010 stipulation contemplate that the plaintiff could satisfy his lot obligation relative to the children in another way. . . .

"The court has been presented with clear and convincing evidence that the plaintiff wilfully violated a clear and unambiguous court order."

Having found the plaintiff in contempt, the court then faced the task of fashioning a remedy for that contempt. The court explained: "The current status of the [subdivision] properties leaves the path to rectifying the plaintiff's contempt less clear. . . .

"While the plaintiff currently has control of open land in the [North Granby] property expanse, which was previously designated to be the lots in question, the specific lots do not currently exist. They may be reapproved as subdivision lots within the next number of months. They may not. Currently, the identified lots are merged with others into a larger parcel of land.[2] In

[2] The court noted: "The defendant's perspective is that this agreement regarding the lots has been in place since 2010 and the plaintiff has thus had at least nine years to effectuate the contemplated transfer. The defendant argues that the two merged parcels of land which have now subsumed the lots at issue (Lots 512 or 615; Lot 616) should now be transferred to the defendant in satisfaction of the terms of the [2010 stipulation]. The defendant points out that these larger, merged lots are alienable and without restriction as to conveyance at this time. While the expert testimony supports this position, the two merged lots are also significantly greater in size and more valuable than the lots initially designated to be transferred to the defendant. The previously existing Lot 512 was approximately 2.5 acres, Lot 615 approximately 1.3 acres and Lot 616 approximately 1.8 acres."

addition, even assuming the subdivision approval is reinstated, thereby effectively making the lots in question discrete 'lots' again, there remains the question of their alienability and accessibility because of the lack of required public improvements. Specifically, there is no approved, existing road accessing at least one of the preexisting lots. The court is concerned about awarding a potential, rather than an immediate and tangible, award to the defendant. . . .

"Testimony and evidence was presented to the court of the value of four lots in 2021 similarly situated to the lots at issue in this case. The fair market value for the lots at that time was approximately $50,000 per lot. No evidence was presented regarding the value of the lots at the time of the dissolution in 2004, or at the time of the [2010] stipulation . . . or at the time that the mortgage was fully satisfied in 2016. It is clear to the court that regardless of the market value of the lots, the defendant has also lost out on any potential financial benefit of being an owner of the two lots in question for the past six years. . . .

"Under these facts and circumstances, the court must fashion an equitable remedy to compensate the defendant for the plaintiff's contempt of the court order and the current impracticability of specific performance of the terms of the [2010 stipulation]." (Footnote added.)

On the basis of the foregoing, the court ordered, inter alia: "The plaintiff shall pay to the defendant the sum of $125,000 as follows: $50,000 no later than April 1, 2023; $50,000 no later than June 30, 2023; and $25,000 no later than September 30, 2023. . . . This judgment shall be in full satisfaction of the terms in the initial 2004 [dissolution] judgment and the 2010 stipulation related to the properties in question."

The plaintiff thereafter filed a motion for reconsideration or reargument on the ground that his noncompliance with the 2010 stipulation was not wilful because

compliance was impossible or impracticable "due to certain town of Granby regulations." The plaintiff further argued that the defendant did not have standing to assert any claim regarding the lot that was supposed to be transferred into a trust for the benefit of the parties' children, who had all reached the age of majority. On that basis, the plaintiff claimed that the court improperly compensated the defendant for two lots instead of one.[3] The court denied the plaintiff's motion as to its finding of contempt but held an evidentiary hearing limited to the issue of whether the lot that was supposed to be transferred into a trust for the benefit of the parties' children "was properly made part of the court's award in its decision on the motion for contempt."

Following an evidentiary hearing on the plaintiff's motion for reconsideration, the court issued an order denying "the plaintiff's requested relief of removing the second lot from the court's December 30, 2022 order . . . ." The court recounted: "The plaintiff testified that his understanding of the language in the parties' underlying agreements was that a trust was to be established for the children for which he would be the trustee and that trust was to own one of the subdivision lots. From his perspective, the purpose of that trust was to fulfill his obligation to support the children in college. The plaintiff believes that he has met this obligation to his children, thus obviating the purpose of the trust. . . .

"No language in the parties' 2004 [dissolution judgment] or their subsequent 2010 stipulation specifically

[3] The plaintiff stated: "With regard to this issue, the plaintiff is not requesting reconsideration and/or reargument with regard to the court's valuation of the lots, nor with the court's decision to order him to make the defendant whole via payment; instead, the plaintiff's contention is that but only for a misapprehension of the facts could the court have fashioned its order compensating the defendant for two lots when, pursuant to the 2010 [stipulation] and the court order approving such, the defendant only has an interest in one."

mentions an educational support order. The plaintiff argues that, although the underlying [dissolution judgment] and the [2010] stipulation may not be well drafted, it was the parties' intent that the second lot to be held in a trust was to pay for college. In fact, the plaintiff never established the trust. He testified that he spoke with counsel about it and realized it was a contractual obligation. However, he unilaterally decided not to establish the trust and to take care of his view of the trust's obligations in a different fashion. . . .

"The defendant's position is that the plaintiff had a legal obligation under both the 2004 [dissolution judgment] and the 2010 [stipulation] to convey two lots. In agreeing to the terms of those agreements, she factored in the lot that would be put in trust for the benefit of the children. It was a bargained for point. Arguably, the defendant therefore forfeited some other potential financial benefit in securing that transfer for the benefit of the children. She contracted for that conveyance to occur, and it never has. Not only did the conveyance of the lot for the benefit of the children never occur, the underlying condition of the plaintiff setting up a trust never occurred. This court cannot look into the parties' states of mind when the agreement was initially made nineteen years ago and then reiterated thirteen years ago and analyze what they were thinking and intending. As the plaintiff's counsel said at the hearing, unfortunately, it is not a well drafted contract with respect to the issue at hand. However, the parties were both represented by counsel and reached the agreement as written. It would be inequitable for this court to now undermine the parties' agreement so many years ago to find that what was written was not really what they were thinking or what was meant. It would further be inequitable to deny one of the parties their bargained for rights under the agreements. Although the second lot in question was designated as being held in trust

for the children, the children are not and have never been a party to the contract."

The court further stated that it "does not find that the plaintiff was attempting to shirk responsibility for funding his children's higher educations. However, the court cannot help but find that he failed to meet his contractual obligations of both setting up the trust for the children and conveying a lot to the trust for their benefit. The plaintiff has consistently treated the lot which was to be placed in trust for the benefit of his children as his own asset. His obligation to perform these two actions was something that the [defendant] bargained and gave consideration for, and which did not occur. Transferring the value of the lot that was to be held in trust to the defendant enables her to distribute that value to the intended beneficiaries, if she sees that as appropriate." This appeal followed.

I

The plaintiff first claims that the defendant lacked standing to assert a claim related to the order requiring the transfer of a lot into a trust for the benefit of the parties' children. We agree.

"Standing . . . is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented. . . . These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity. Such a personal stake in the outcome of the controversy . . . provides the requisite assurance of concrete adverseness and diligent advocacy. . . . Where a party is found to lack standing, the court is consequently without subject matter jurisdiction to

determine the cause. . . . The general rule is that one party has no standing to raise another's rights. . . . When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . . [Standing is] ordinarily held to have been met when a complainant makes a colorable claim of direct injury he . . . is likely to suffer . . . ." (Citation omitted; internal quotation marks omitted.) *Freccia* v. *Freccia*, 232 Conn. App. 353, 368–69, A.3d , cert. denied, 352 Conn. 957, A.3d (2025), and cert. granted, 352 Conn. 957, A.3d (2025), and cert. denied, 352 Conn. 958, A.3d (2025). "The [movant] bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.) *Emerick* v. *Glastonbury*, 145 Conn. App. 122, 128, 74 A.3d 512 (2013), cert. denied, 311 Conn. 901, 83 A.3d 348 (2014).

The defendant contends that she has standing to pursue a claim to the lot that was supposed to be transferred into a trust for the benefit of the parties' children because she was a party to the separation agreement, which provided for the transfer, and that she gave up any interest in the plaintiff's businesses in consideration for the transfer of the two lots. This court considered a similar situation in *Hamburg* v. *Hamburg*, 182 Conn. App. 332, 193 A.3d 51, cert. denied, 330 Conn. 916, 193 A.3d 1211 (2018). In *Hamburg*, the parties had entered into a separation agreement, which was incorporated into the judgment of dissolution, that provided that their children were to be the beneficiaries of certain financial accounts intended to fund their private school and college educations.[4] Id., 335. The defendant father withdrew funds from those accounts for his own use and

[4] Specifically, "the [plaintiff] and the defendant agreed that each of them 'shall maintain any and all custodial accounts held in his or her individual name for the benefit of the children. Said accounts shall be used only for the educational expenses of the children . . . .' " *Hamburg* v. *Hamburg*, supra, 182 Conn. App. 335 n.1.

failed to repay them. Id., 336. The defendant's failure to repay those funds resulted in various findings of contempt and orders providing for repayment. Id., 336–40. In 2015, the substitute plaintiff, the temporary administrator of the estate of the plaintiff, filed an application for order to show cause why an order should not enter that the defendant, inter alia, commence making payments on the debt owed to the children resulting from the defendant's failure to repay the funds that he had withdrawn from the children's education funds. Id., 340. The defendant filed a motion to dismiss the substitute plaintiff's application for order to show cause, arguing that the substitute plaintiff was neither classically nor statutorily aggrieved by the debt he owes the children, and, therefore, that he lacked standing to pursue any claim related to it. Id., 340–41. The trial court denied the motion to dismiss, and the defendant appealed, claiming, inter alia, that the trial court "erroneously concluded that the substitute plaintiff has standing to prosecute an action for repayment of the funds he took from the children's education accounts." Id., 345.

This court agreed with the defendant, reasoning that "[t]he substitute plaintiff has not directed us to any evidence presented at the time the court ruled on the motion to dismiss that would demonstrate a personal and direct interest in the moneys the defendant owes the children, and our review of the record did not disclose any such evidence. The substitute plaintiff also does not claim that he has a fiduciary relationship with the children. . . . More importantly, however, the court made no factual finding that the substitute plaintiff has a direct and personal interest in those moneys or the right to collect the funds on behalf of the children, unlike a direct interest in the money the defendant owed the [plaintiff]. The substitute plaintiff, therefore, failed to carry his burden to demonstrate standing with

respect to the moneys the defendant owes his children."[5] Id., 349–50.

As in *Hamburg*, the defendant here has not demonstrated a direct or personal interest in the lot that was ordered to be transferred into a trust for the benefit of the parties' children.[6] Although the defendant may have been the party who entered into the agreement that provided for the transfer of that lot, she has not demonstrated, or even claimed, a direct injury that she has suffered as a result of the plaintiff's failure to transfer it. We therefore conclude that the defendant lacked standing to assert the claim as to the lot that was supposed to be transferred into a trust for the benefit of the parties' children. Accordingly, the judgment of contempt related to that lot and the associated award of damages must be vacated.

II

The plaintiff next claims that the court erred in finding him in contempt because his failure to transfer the lots was not wilful.[7]

[5] We note that this court also affirmed the judgment of the court granting the motion to intervene filed by one of the children. The court held that "[t]he substitute plaintiff has no fiduciary relationship with the children and, therefore, cannot adequately represent them. Because [the parties' daughter] has a direct and personal interest in having the defendant reimburse the education funds, she has carried her burden and the court properly granted her motion to intervene." *Hamburg* v. *Hamburg*, supra, 182 Conn. App. 352. The court held that "[n]o other party has standing to pursue repayment from the defendant of the funds he took from the accounts for his own use." Id.

[6] The plaintiff also argues that any claim related to the lot that was to be transferred to the children is moot because the trust was intended to finance the children's college educations and he paid for their education by other means. Because we conclude that the defendant did not have standing to assert the claim as to the lot that was to be transferred into a trust for the benefit of the parties' children, we need not address the plaintiff's mootness claim.

[7] The plaintiff also claims that the dissolution judgment was ambiguous. This claim was not raised before the trial court and therefore is not preserved for our review. Even if we were to review and agree with the plaintiff's claim that the 2004 dissolution judgment was ambiguous, he has failed to

"To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. . . . It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive." (Internal quotation marks omitted.) *Jacob-Dick* v. *Dick*, 231 Conn. App. 404, 411, 333 A.3d 210 (2025). "Whether a party's violation was wilful depends on the circumstances of the particular case and, ultimately, is a factual question committed to the sound discretion of the trial court." (Internal quotation marks omitted.) *Hall* v. *Hall*, 335 Conn. 377, 392, 238 A.3d 687 (2020). We review the factual findings that underlie a court's contempt determination pursuant to the clearly erroneous standard. See *Talbot* v. *Talbot*, 148 Conn. App. 279, 289, 85 A.3d 40, cert. denied, 311 Conn. 954, 97 A.3d 984 (2014).

The resolution of the plaintiff's claim requires us to examine the evidentiary basis for the court's finding of wilfulness. We are, however, unable to do so because the plaintiff has failed to provide to this court the transcript of the contempt hearing.[8] Practice Book § 61-10 (a) provides: "It is the responsibility of the appellant to provide an adequate record for review. The appellant shall determine whether the entire record is complete, correct and otherwise perfected for presentation on appeal." It is well settled that "[t]he absence of such a record is an insurmountable obstacle to review of the

claim any ambiguity as to the 2010 stipulation, which also required him to transfer the lots at issue.

[8] The plaintiff provided only the transcript of the June 7, 2023 hearing on his motion for reconsideration. As noted herein, that hearing concerned only whether the lot that was supposed to have been transferred to a trust for the children should have been included in the court's earlier decision on the defendant's motion for contempt. The defendant provided in the appendix to her brief a portion of the transcript of the contempt hearing, but not the transcript of the entire hearing.

claims of error in the circumstances of this case." (Internal quotation marks omitted.) *Manzi* v. *Manzi*, 134 Conn. App. 333, 336, 38 A.3d 1247 (2012). "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. . . . This court also has explained that [a]n appellate tribunal cannot render a decision without first fully understanding the disposition being appealed. . . . Our role is not to guess at possibilities, but to review claims based on a complete factual record . . . . Without the necessary factual and legal conclusions . . . any decision made by us respecting [the claims raised on appeal] would be entirely speculative." (Citation omitted; internal quotation marks omitted.) *R & P Realty Co.* v. *Peerless Indemnity Ins. Co.*, 193 Conn. App. 374, 379, 219 A.3d 429 (2019).

Without the transcript of the contempt hearing, we cannot review the entirety of the evidentiary record upon which the court based its finding of wilfulness. We therefore decline to review the plaintiff's challenge to the court's contempt determination.

III

The plaintiff next claims that the court's monetary award to the defendant constituted an impermissible modification of a property settlement. We disagree.

It is well settled that "[t]he court's authority to transfer property appurtenant to a dissolution proceeding rests on [General Statutes] § 46b-81. . . . Accordingly, the court's authority to divide the personal property of the parties, pursuant to § 46b-81, must be exercised, if at all, at the time that it renders judgment dissolving the marriage. . . . A court, therefore, does not have

the authority to modify the division of property once the dissolution becomes final. . . .

"Although the court does not have the authority to modify a property assignment, a court, after distributing property, which includes assigning the debts and liabilities of the parties, does have the authority to issue postjudgment orders effectuating its judgment. . . . [I]t is . . . within the equitable powers of the trial court to fashion whatever orders [are] required to protect the integrity of [its original] judgment. . . . This court has explained the difference between postjudgment orders that modify a judgment rather than effectuate it. A modification is [a] change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact. . . . In contrast, an order effectuating an existing judgment allows the court to protect the integrity of its original ruling by ensuring the parties' timely compliance therewith. . . .

"If a party's motion can fairly be construed as seeking an effectuation of the judgment rather than a modification of the terms of the property settlement, this court must favor that interpretation. . . . Similarly, when determining whether the new order is a modification, we examine the practical effect of the ruling on the original order. . . . In order to determine the practical effect of the court's order on the original judgment, we must examine the terms of the original judgment as well as the subsequent order. [T]he construction of [an order or] judgment is a question of law for the court . . . [and] our review . . . is plenary. As a general rule, [orders and] judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the [order or] judgment. . . . The interpretation of [an order or] judgment may involve the circumstances surrounding [its] making. . . .

Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The [order or] judgment should admit of a consistent construction as a whole. . . .

"Relatedly, [f]aced with a party in contempt of court, it is within the court's province to fashion appropriate remedial orders. Courts have in general the power to fashion a remedy appropriate to the vindication of a prior . . . judgment. . . . Having found noncompliance, the court, in the exercise of its equitable powers, necessarily ha[s] the authority to fashion whatever orders [are] required to protect the integrity of [its original] judgment." (Citation omitted; internal quotation marks omitted.) *Walzer* v. *Walzer*, 209 Conn. App. 604, 615–16, 268 A.3d 1187, cert. denied, 342 Conn. 907, 270 A.3d 693 (2022).

"It is well established that, [i]n a contempt proceeding . . . a trial court has broad discretion to make whole a party who has suffered as a result of another party's failure to comply with the court order." (Internal quotation marks omitted.) *Scott* v. *Scott*, 215 Conn. App. 24, 50–51, 282 A.3d 470 (2022).

Here, the court's monetary award to the defendant was not in response to a motion that sought modification of the court's orders, but, rather, a motion for contempt that sought to effectuate those orders by transfer of the lots at issue. As the court noted in its decision, it could not effectuate its prior orders or make the defendant whole by ordering the transfer of the lots because,[9] due to the plaintiff's delay in complying with those orders, the subdivision approval had expired, and the individual lots no longer existed as subdivided lots. The monetary award was necessary to vindicate the

[9] Indeed, as noted in footnote 3 of this opinion, the plaintiff expressly indicated that he was not asking the court to reconsider its decision "to make the defendant whole via payment . . . ."

court's prior orders. We therefore reject the plaintiff's claim that it constituted an impermissible modification of the parties' property settlement.

IV

The plaintiff finally claims that the court's award of $25,000 to the defendant for lost financial opportunities resulting from the plaintiff's failure to transfer the lots was not supported by the evidence.

It is axiomatic that "[d]amages are recoverable only to the extent that the evidence affords a sufficient basis for estimating their amount in money with reasonable certainty." (Internal quotation marks omitted.) *Argentinis* v. *Fortuna*, 134 Conn. App. 538, 548, 39 A.3d 1207 (2012). Therefore, the plaintiff's claim challenging the evidentiary basis for the court's award requires us to review the evidence that was before the court. As noted herein, however, the plaintiff has failed to provide us with the entire trial court record, without which we would be left to speculate as to the basis of the court's award. We decline to do so.[10]

The judgment is vacated as to the finding of contempt related to the subdivision lot that was ordered to be transferred into a trust for the benefit of the parties' children and as to the award of damages to the defendant with respect to that lot; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

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[10] At oral argument before this court, counsel for the plaintiff also argued that the court's award of damages for the loss of financial opportunities was improper because the defendant did not allege such a loss in her motion for contempt. Because the plaintiff did not brief this claim, it is not properly before us.