SHERI SPEER *v.* NATIONSTAR MORTGAGE, LLC
(AC 46630)

Elgo, Moll and Clark, Js.

Syllabus

The plaintiff appealed from the trial court's judgment granting the defendant's motion to dismiss her complaint for lack of subject matter jurisdiction. The plaintiff's complaint sought damages for the defendant's alleged actions undertaken in violation of the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq.). The plaintiff claimed, inter alia, that the court improperly concluded that she lacked standing to maintain her cause of action because she had commenced the action during the pendency of a bankruptcy proceeding and her claim became the property of the bankruptcy estate. *Held*:

The trial court improperly granted the defendant's motion to dismiss on the basis that the plaintiff lacked standing to maintain her action against the

defendant, as most of the challenged conduct in support of the plaintiff's alleged violations of CUTPA occurred after the filing of the bankruptcy petition and was not sufficiently rooted in the prebankruptcy past, and, accordingly, the claim did not become property of the bankruptcy estate as a matter of law.

Argued November 21, 2024—officially released September 23, 2025

Procedural History

Action to recover damages for the defendant's alleged violations of the Connecticut Unfair Trade Practices Act, and for other relief, brought to the Superior Court in the judicial district of New London, where the defendant was defaulted for failure to plead; thereafter, the court, *Goodrow*, *J.*, granted the defendant's motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Reversed*; *further proceedings*.

Sheri Speer, self-represented, the appellant (plaintiff).

Benjamin T. Staskiewicz, with whom, on the brief, was *Geoffrey Milne*, for the appellee (defendant).

Opinion

ELGO, J. In this foreclosure and bankruptcy related action, the self-represented plaintiff, Sheri Speer, appeals from the judgment of the trial court granting the motion to dismiss her complaint in favor of the defendant, Nationstar Mortgage, LLC, doing business as Mr. Cooper, for lack of subject matter jurisdiction. The plaintiff contends that the court improperly concluded that she lacked standing to maintain the claim set forth in her complaint due to the fact that she commenced this action during the pendency of a bankruptcy proceeding. More specifically, the plaintiff argues that the court improperly concluded that her claim was the property of the bankruptcy estate and was not abandoned by

the trustee.[1] We agree with the plaintiff that the court improperly dismissed her complaint. Accordingly, we reverse the judgment of the trial court and remand the case with direction to deny the defendant's motion to dismiss.

The following undisputed facts and procedural history are relevant to this appeal. The plaintiff obtained a mortgage on her home in Norwich (property). The defendant is a servicer of that mortgage, acting on behalf of the mortgage holder, Deutsche Bank, N.A., which commenced a foreclosure proceeding in 2010. In May, 2014, the plaintiff was subject to an involuntary bankruptcy petition and that petition listed the property and the mortgage on the schedules filed in that case.[2] In June, 2015, the bankruptcy trustee noticed an intention to abandon the property, and, after a hearing, filed a record of abandonment with the Bankruptcy Court. Only a few months after the filing on March 29, 2021, of the plaintiff's complaint in the present case, the bankruptcy trustee filed its final accounting on June 8, 2021. At all times relevant to this appeal, the plaintiff was self-represented in the various proceedings.

[1] Relatedly, the plaintiff argues that the trial court failed to make sufficient factual findings to support the granting of the motion to dismiss her complaint for lack of subject matter jurisdiction. Because we conclude that the plaintiff's cause of action was not the property of the bankruptcy estate—and that the trial court, therefore, improperly dismissed the complaint—we need not reach this issue. For the same reason, we need not reach the issue of whether the plaintiff's cause of action was abandoned by the bankruptcy estate, such cause of action not having been the property of the estate in the first instance.

[2] In our June 27, 2024 order on a motion for review filed by the plaintiff, this court took judicial notice of the bankruptcy proceedings in *In re Speer*, United States Bankruptcy Court, Docket No. 14-21007 (AMN) (D. Conn. June 24, 2015). Our review of the record of those proceedings indicates that the initial involuntary chapter 7 petition was filed on May 20, 2014. On January 5, 2015, the plaintiff converted the bankruptcy to a chapter 11 case, although it was later converted again to a chapter 7 case. The bankruptcy proceedings were lengthy and contentious. Ultimately, the trustee's final decree was issued, and the bankruptcy case was closed, on July 16, 2021.

In her complaint, the plaintiff sought damages for alleged actions undertaken by the defendant in violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.[3] The complaint alleged that the defendant, "in order to profit and enrich itself to the detriment of the plaintiff and the mortgage holder . . . made routine charges and assessments" for various homeowners association and condominium association fees, despite the fact that the plaintiff's home is not subject to any fees levied by any such organization. The complaint further alleged that the defendant asserted charges for "maintenance" in 2020, "even though it never maintained or fixed the property in any way," as well as charges for inspections of the property "up to and during 2020." The complaint also set forth allegations that, "prior to initiation of foreclosure proceedings and up to the present," the defendant engaged in underhanded tactics during the plaintiff's attempt to seek loan modification through the federal Home Affordable Modification Program (HAMP), as well as violations of the defendant's obligations under the federal Real Estate Settlement Procedures Act (RESPA). The complaint also alleged that the defendant's conduct was wilful and "ongoing" and that the defendant "continues pushing forward with foreclosure and accruing legal fees, costs and expenses" despite its false representations that it "continues to work with the plaintiff to restructure her loan and get it out of foreclosure."[4] It concluded with an allegation that the

[3] Paragraph three of the complaint states: "The plaintiff brings this action pursuant to [CUTPA] and the doctrine elucidated by the Connecticut Supreme Court in *Cenatiempo* v. *Bank of America, N.A.*, [333 Conn. 769] 219 A.3d 767 (2019)." For that reason, the trial court construed the plaintiff's complaint as one brought under CUTPA. In this appeal, neither party has raised any issue as to the propriety of that construction.

[4] We note that the defendant was not the foreclosing party on the plaintiff's mortgage but was the mortgaging servicer. In a separate action, a judgment of foreclosure was rendered by the trial court on August 22, 2025. See *Deutsche Bank National Trust Co.* v. *Speer*, Superior Court, judicial district of New London, Docket No. CV-10-6004390-S (August 22, 2025). The plaintiff

plaintiff had "suffered actual and ascertainable losses as a consequence of this conduct, which has included an accumulation of interest, default fees, significant arrearages, attorney's fees, and a much higher monthly mortgage payment, lost borrower incentive payments under HAMP and emotional distress." The plaintiff sought damages under CUTPA, punitive damages, costs of suit, and "other relief the court deems appropriate."

The defendant filed its first motion to dismiss on July 6, 2021, contending that the prior pending action doctrine precluded the plaintiff's claims. In essence, the defendant argued that, because the plaintiff had challenged the accuracy of the affidavit of debt created by the defendant in the foreclosure action, she should not be allowed to pursue her claims arising out of the alleged CUTPA violations that stemmed from the same nucleus of facts. The court disagreed and denied the motion to dismiss. In so doing, the court noted that the defendant was not a party to the foreclosure action and that the plaintiff "brought this action under CUTPA. . . . [A] foreclosure action . . . is a separate [and] distinct cause of action from the consumer protection action contemplated by CUTPA."

The plaintiff filed three motions for default against the defendant, alleging a failure to plead. The plaintiff's third motion for default as to the defendant's liability was granted by the court in June, 2022.[5] The court denied the defendant's attempts to open the judgment and ordered the defendant to comply with discovery requests. The defendant filed a second motion to open the judgment of default in February, 2023.[6]

has filed an appeal of that judgment. See *Deutsche Bank National Trust Co.* v. *Speer*, Connecticut Appellate Court, Docket No. AC 49112 (appeal filed September 8, 2025).]

[5] The court denied the plaintiff's July 6, 2021 and May 2, 2022 motions for default for failure to plead.

[6] The court did not rule on the second motion to open.

On the same day, the defendant filed a second motion to dismiss for lack of subject matter jurisdiction, this time premised on the bankruptcy status of the plaintiff when she filed her complaint against the defendant. By order dated May 8, 2023, the court granted the second motion to dismiss. In a subsequent order articulating the basis of that decision,[7] the court stated: "At the time the plaintiff filed this case, the plaintiff was in active chapter 7 bankruptcy . . . . [A]ll property of the [plaintiff], including prepetition causes of action of the [plaintiff], became the property of the bankruptcy estate. The plaintiff has no standing to bring this action and the court lacks subject matter jurisdiction . . . ." From that judgment, the plaintiff timely appealed to this court.

During the pendency of this appeal, the plaintiff filed a motion for articulation with the trial court, which the court denied. The plaintiff then filed a motion for review of that denial with this court. We subsequently granted review and, in part, granted relief insofar as we ordered the trial court to articulate its factual findings and legal conclusions as to the claim that the bankruptcy trustee abandoned the property, and all claims related to it, prior to the filing of the complaint against the defendant.

The trial court issued its articulation of its factual findings and legal conclusions on January 17, 2024. The

[7] The court originally granted the defendant's motion to dismiss by order dated May 8, 2023, stating that it granted the motion "for the reasons articulated in the memorandum . . . filed by the defendant in support of the motion to dismiss." On June 6, 2023, the court issued a supplemental order to correct a scrivener's error in the May 8, 2023 order. On June 26, 2023, the plaintiff appealed from that order. She subsequently filed a notice of demand for decision, asserting that the trial court had not "provided a memorandum of decision as to the order dismissing the case . . . and its related orders . . . ." In response, the court issued an additional order on October 13, 2023, to clarify the basis of its decision to grant the motion to dismiss.

court found, inter alia, that the filing date of the involuntary bankruptcy petition was July 23, 2015,[8] and that the plaintiff had filed the present action on March 29, 2021.[9] Referencing the report of abandonment filed by the trustee, the court further found that the trustee abandoned the property on July 24, 2015.[10] The court

[8] We note that the finding that the petition was filed on July 23, 2015, is belied by the record of the Bankruptcy Court docket, which indicates an initial filing date in 2014. As discussed previously; see footnote 2 of this opinion; the original involuntary petition was filed on May 20, 2014. Our review of the bankruptcy docket reveals that the Bankruptcy Court granted a motion to convert the case from chapter 7 to chapter 11 on January 5, 2015. The Bankruptcy Court also granted a motion to convert the case from chapter 11 to chapter 7 on July 23, 2015—the same day as the hearing on the trustee's report of abandonment of the property. Title 11 of the United States Code, § 1112, provides the conditions under which a debtor may convert a case under chapter 11 to chapter 7. "Cause to convert a [c]hapter 11 bankruptcy case to [c]hapter 7 exists where reorganization seems unlikely or unrealistic based on the [d]ebtor's track record as debtor-in-possession and where the risk of delay falls entirely on the creditors." *In re Milford Connecticut Associates, L.P.*, 404 B.R. 699, 708 (Bankr. D. Conn. 2009). Likewise, 11 U.S.C. § 706 grants a debtor subject to an involuntary petition under chapter 7 the ability to convert the case to chapter 11. Pursuant to 11 U.S.C. § 348 (a), the conversion of a case from under one chapter of [t]itle 11 of the United States Code to another chapter "does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief." 11 U.S.C. § 348 (a) (2018); see *Headrick* v. *Bradley County Memorial Hospital*, 208 S.W.3d 395, 400 (Tenn. App. 2006) (in determining whether cause of action is part of bankruptcy estate, court looks to date of filing of original petition, not date when case was converted to one under different chapter of title 11), appeal denied, Tennessee Supreme Court (August 21, 2006).

The defendant concedes that the plaintiff's complaint is based on events that occurred primarily in 2020. As such, any discrepancy regarding the court's determination of the effective filing date and the actual filing date as reflected in the bankruptcy file is of no moment for purposes of resolving the plaintiff's claim in this appeal. For that reason, we use the May 20, 2014 date as the filing date, which, as a matter of law, marks the point at which the bankruptcy estate was created.

[9] In its articulation, the court also found that "the bankruptcy petition was an involuntary petition." On appeal, neither party disputes that determination.

[10] Our review of the record of the bankruptcy proceeding indicates that, on June 19, 2015, the trustee of the plaintiff's bankruptcy estate gave notice of intent to abandon sixteen properties, including the property at issue in

determined that the claims raised in the present case "became the property of the bankruptcy estate at the time of the filing of the bankruptcy." The court stated that it had granted the motion to dismiss, concluding that it lacked subject matter jurisdiction because "the plaintiff was in active chapter 7 bankruptcy . . . . When [the plaintiff] filed the bankruptcy petition in her capacity as the bankruptcy debtor, all property of the debtor, including prepetition causes of action . . . became the property of the bankruptcy estate." The court recited that it had rejected the plaintiff's argument that the property reverted back to her upon the filing of the notice of intent to abandon because "at the time of the filing of the instant action, the bankruptcy case was still pending and the Bankruptcy Court had not approved the bankruptcy trustee's intention to abandon [the property]. The final accounting of the bankruptcy trustee was filed on June 8, 2021, after the filing of the instant action on March 29, 2021. Moreover, the notice of intent to abandon [the property] did not include abandonment of claims arising from [the property], such as the claims in the instant action."[11]

this case, pursuant to 11 U.S.C. § 554 (a). Both the trustee's affidavit (exhibit A) and the report of abandonment were attached to the plaintiff's memorandum of law in opposition to the motion to dismiss, dated March 9, 2023. Exhibit A, in support of the notice of intent to abandon, noted that Seaport Capital Partners, LLC, a creditor, had objected to the abandonment and made a "proposal for the purchase of the [plaintiff's] equity of redemption." Exhibit B noted that an objection to the proposed abandonment had been withdrawn "in part" and that the trustee was, in fact, abandoning the sixteen properties, including the property at issue here. A hearing on the matter was held before the Bankruptcy Court on July 23, 2015, and the report of abandonment of the property was filed with the Bankruptcy Court on July 24, 2015.

[11] We note that the plaintiff argued, in her motion for review of the trial court's denial of her motion for articulation, that the trial court "merely assumes that the existence of a prior bankruptcy, regardless of how, why, or when claims came into existence, accrued or were addressed, must all be precluded because of the mere existence of the bankruptcy." We granted review of the trial court's denial of the motion for articulation but denied relief to the plaintiff.

On appeal, the plaintiff claims that the court improperly concluded that she lacked standing to maintain the claim set forth in her complaint because it remained the property of the bankruptcy estate.[12] The plaintiff argues that the CUTPA claim was never the property of the bankruptcy estate.[13] The defendant argues that the court properly determined that the cause of action remains the unabandoned property of the bankruptcy estate because the plaintiff never scheduled the cause of action during the bankruptcy proceedings.

At the outset, we note that "[o]ur standard of review governing an appeal from a judgment granting a motion to dismiss on the ground of lack of subject matter jurisdiction concerns a question of law and is plenary." (Internal quotation marks omitted.) *State* v. *Saunders*, 132 Conn. App. 268, 270, 50 A.3d 321 (2011), cert. denied, 303 Conn. 924, 34 A.3d 394 (2012). The following relevant legal principles guide our analysis. "A motion to dismiss [for lack of standing] . . . 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. . . . A

[12] The plaintiff has set forth four issues in her principal appellate brief, but the first two can be distilled to the claim that the court erroneously determined that she lacked standing to pursue her CUTPA cause of action because it remained the property of the bankruptcy estate. The plaintiff also argues that the court erred in "not making any specific factual findings" including the date of her involuntary bankruptcy petition and when her cause of action accrued, as well as that the bankruptcy trustee abandoned the cause of action even if it were the property of the bankruptcy estate. As we explain in our analysis of the plaintiff's core claim, these issues are subsumed by the central question posed by the plaintiff and will be discussed as necessary.

[13] As explained in footnote 1 of this opinion, the plaintiff argues in the alternative that, if her cause of action were the property of the bankruptcy estate, it was abandoned when the trustee abandoned the property. The defendant counters that, even if the trustee did effectively abandon the property, the trustee did not abandon any causes of action "arising from" the property. Because we conclude that the plaintiff's cause of action was not the property of the bankruptcy estate, we need not address these arguments.

motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . [A] party must have standing to assert a claim in order for the court to have subject matter jurisdiction over the claim. . . . Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy." (Citation omitted; internal quotation marks omitted.) *Emerick* v. *Glastonbury*, 145 Conn. App. 122, 127, 74 A.3d 512 (2013), cert. denied, 311 Conn. 901, 83 A.3d 348 (2014).

"When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone." (Internal quotation marks omitted.) *Gold* v. *Rowland*, 296 Conn. 186, 200–201, 994 A.2d 106 (2010). "[I]n determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Sousa* v. *Sousa*, 322 Conn. 757, 770, 143 A.3d 578 (2016). Additionally, "[t]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." *Emerick* v. *Glastonbury*, supra, 145 Conn. App. 128.

The following relevant principles of bankruptcy law are necessary to resolve this issue. Upon the filing of a bankruptcy petition, a bankruptcy estate is immediately created—this estate is comprised of statutorily-delineated property that is broadly and expansively defined

at the commencement of the bankruptcy. See 11 U.S.C. § 541 (2018); Fed. R. Bankr. P. 1007. At this stage, "[t]he debtor must file a formal statement with the Bankruptcy Court including a schedule of his or her assets and liabilities. See 11 U.S.C. § 521 (a) (1) (B) (i). The assets, which become the property of the bankruptcy estate, include all causes of action belonging to the debtor that accrued prior to the filing of the bankruptcy petition. . . . A cause of action becomes a part of the bankruptcy estate even if the debtor fails to schedule the claim in his petition. . . . Property that is scheduled . . . but not administered by the plan, is abandoned to the debtor by operation of law at the close of the bankruptcy case. . . . By contrast, property that is not formally scheduled is not abandoned and therefore remains part of the estate. . . . Courts have held that because an unscheduled claim remains the property of the bankruptcy estate, the debtor lacks standing to pursue the claims after emerging from bankruptcy, and the claims must be dismissed." (Citations omitted; internal quotation marks omitted.) *Assn. Resources, Inc.* v. *Wall*, 298 Conn. 145, 165, 2 A.3d 873 (2010).

"Whether a cause of action belongs to a bankruptcy estate is a question of law . . . ." *Chartschlaa* v. *Nationwide Mutual Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008), cert. denied, 555 U.S. 1213, 129 S. Ct. 1534, 173 L. Ed. 2d 658 (2009). Once the bankruptcy estate has been created, "only the bankruptcy trustee has standing to pursue pre-petition causes of action." *Tyler* v. *DH Capital Management, Inc.*, 736 F.3d 455, 461 (6th Cir. 2013); see also *Seward* v. *Devine*, 888 F.2d 957, 963 (2d Cir. 1989) (prepetition causes of action belonging to debtor become part of bankruptcy estate at commencement of bankruptcy proceedings).

Moreover, "[b]ecause assets within the estate are those that exist 'as of the commencement of the case,' 11 U.S.C. § 541 (a), property acquired by the debtor

after the filing of a bankruptcy petition generally does not become part of the estate."[14] (Emphasis in original.) *Chartschlaa* v. *Nationwide Mutual Ins. Co.*, supra, 538 F.3d 122. "However, '[a]fter-acquired' property will vest in the estate if it is derived from property that was part of the estate as of the commencement of the bankruptcy. See 11 U.S.C. § 541 (a) (6) (making '[p]roceeds, product[s], offspring, rents or profits of or from property of [the] estate' part of bankruptcy estate). Postpetition property will become property of the estate only if it is 'sufficiently rooted in the pre-bankruptcy past.' " *Chartschlaa* v. *Nationwide Mutual Ins. Co.*, supra, 122. But see *Stanley* v. *Sherwin-Williams Co.*, 156 B.R. 25, 26–27 (Bankr. W.D. Va. 1993) (claims sounding in breach of contract and arising out of postpetition events were unabandoned property of bankruptcy estate). As our Supreme Court has acknowledged, there is a split in federal authority as to what approach to use in determining whether certain causes of action that accrue postpetition are acquired by the estate or remain the property of the debtor. See *Weiss* v. *Smulders*, 313 Conn. 227, 240 n.8, 96 A.3d 1175 (2014). As explained by our Supreme Court, the two approaches that courts use when resolving the question of whether a cause of action is the property of a bankruptcy estate are: (1) consult state law to determine when a cause of action accrued; or (2) establish whether, even if a claim arose postpetition under state law, it was, nonetheless, sufficiently rooted in the prebankruptcy past

[14] Title 11 of the United States Code, § 541 (a) (7), provides that "[a]ny interest in property that the estate acquires after the commencement of the case" becomes a part of the estate. The estate, however, is a distinct legal entity and is not equivalent to the debtor who has sought the protections of bankruptcy. See *In re Doemling*, 127 B.R. 954, 956 (Bankr. W.D. Pa. 1991) ("[A]fter the commencement of the case, the estate has an existence that is completely separate from that of the debtor. Section 541 (a) (7) covers only property that the estate itself acquires after the commencement of the proceeding. Hence, there is absolutely no support for [the claim] that all the debtor's property, whether obtained pre- or post-petition, is property of the estate unless specifically excluded.").

such that it should remain the property of the estate.[15] Id., 240–43. In both *Weiss* and this court's recent decision in *U.S. Bank Trust, National Assn.* v. *Shuey*, 232 Conn. App. 618, 643–46, 338 A.3d 353 (2025), the court conducted both approaches without determining which is applicable. We do the same here.

Accordingly, we first consider when the plaintiff's CUTPA action accrued under state law.[16] Under Connecticut law, a cause of action accrues when a plaintiff suffers actionable harm; actionable harm, in turn, occurs when the plaintiff discovers, or should discover, through the exercise of reasonable care, that an injury

[15] In *Weiss*, our Supreme Court observed that "[s]ome courts . . . have determined that applicable state law determines when a cause of action accrues and therefore consider that date in relation to the date on which the petition was filed. . . . These courts reason that [a]lthough federal bankruptcy law determines the outer boundary of what may constitute property of the estate, state law determines the nature of a debtor's interest in a given item. . . . Therefore, whereas federal law instructs us that [a cause of action] *may* constitute property of [the debtor's] estate, state law determines whether [the debtor's] interest in the cause of action is sufficient to confer on the estate a property right in the action. . . . The [United States Court of Appeals for the] Second Circuit, whose decisions carry particularly persuasive weight in our resolution of issues of federal law . . . follows this approach. . . .

"Other courts . . . deem the purposes of federal bankruptcy law controlling, namely, to secure for creditors everything of value the debtor may possess in alienable or leviable form when he files his petition, while leaving the debtor free after the petition date to accumulate new wealth in the future. . . . These courts consider whether, even if a cause of action accrued postpetition under state law, that action nonetheless was sufficiently rooted in the pre-bankruptcy past and so little entangled with the bankrupt's ability to make an unencumbered fresh start that it should be regarded as property of the bankruptcy estate. . . . Under this approach, if the claim has sufficient roots in the prebankruptcy past but does not materially impair the bankrupt's ability to obtain the fresh start intended under bankruptcy law, the claim belongs exclusively to the estate." (Citations omitted; emphasis in original; footnotes omitted; internal quotation marks omitted.) *Weiss* v. *Smulders*, supra, 313 Conn. 240–43.

[16] We note that the accrual approach has also been referred to as the "categorical approach." *In re Desormes*, 497 B.R. 390, 393 (Bankr. D. Conn. 2013).

has occurred and that the defendant's actions caused the injury to the plaintiff. See *Champagne* v. *Raybestos-Manhattan, Inc.*, 212 Conn. 509, 521, 562 A.2d 1100 (1989). "A cause of action, brought by means of a complaint or a counterclaim, is a means of seeking redress for having suffered harm." *Bank of America, N.A.* v. *Aubut*, 167 Conn. App. 347, 372, 143 A.3d 638 (2016).

With respect to the accrual of CUTPA actions, we find instructive CUTPA cases addressing statute of limitations defenses because the date of accrual is central to the analysis. In *Fichera* v. *Mine Hill Corp.*, 207 Conn. 204, 212, 541 A.2d 472 (1988), our Supreme Court held that the statute of limitations began to run upon "the occurrence of a violation," as dictated by General Statutes § 42-110g (f). (Internal quotation marks omitted.) In holding that the action, commenced in 1984, was barred, the court observed that the allegedly fraudulent conduct occurred prior to 1979. Id., 210–11. The court thus rejected the trial court's reliance on the continuing course of conduct doctrine to toll the statute of limitations. Id., 213. The court concluded that the "act or omission complained of" provision in [General Statutes] § 52-584 was indistinguishable from the "occurrence of a violation" language in § 42-110g (f). Id., 212–13. As such, they warranted similar treatment in the way the alleged event—occurrence, act or omission—triggers the running of the limitation period. In rejecting the claim that the defendant's continuing course of conduct operated to toll the statute of limitations, the court relied on the absence of any allegations of other discrete instances of fraudulent misrepresentation that could have been the basis for a CUTPA violation occurring after 1981. Id. The court stated: "To support a finding of a 'continuing course of conduct' that may toll the statute of limitations there must be evidence of the breach of a duty that remained in existence after commission of the original wrong related thereto. That duty

must not have terminated prior to commencement of the period allowed for bringing an action for such a wrong." Id., 209.

Our Supreme Court, in *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, 245 Conn. 1, 46, 717 A.2d 77 (1998) (*Willow Springs*), subsequently clarified its holding in *Fichera*, observing that it "stands for the proposition that an arguably fraudulent or deceptive act that is itself claimed to be a CUTPA violation that occurred more than three years before the filing of the action cannot, by itself, toll the statute of limitations. [*Fichera*] does not stand for the proposition that independent fraudulent or deceptive acts taking place within that three year period that have been undertaken for the purpose of concealing actionable conduct occurring prior to the three year period cannot independently form the basis of a CUTPA violation."

In light of these principles, we turn to the plaintiff's complaint and consider whether her cause of action accrued before or after the filing of the bankruptcy petition. The plaintiff filed this action on March 29, 2021.[17] The filing date of the involuntary bankruptcy action is May 20, 2014. In her complaint, the plaintiff alleges that the defendant, "in order to profit and enrich itself to the detriment of the plaintiff and the mortgage holder" made fraudulent charges "up to and during 2020." The complaint also set forth allegations that include unfair business practices related to loan modification attempts. The complaint also alleged that the defendant's conduct was wilful and "ongoing" and that the defendant "continues pushing forward with foreclosure and accruing legal fees, costs and expenses" despite its false representations that it "continues to

[17] Notably, the question of whether the plaintiff has alleged a colorable cause of action under CUTPA is not before us.

work with the plaintiff to restructure her loan and get it out of foreclosure." We acknowledge that the complaint is somewhat vague and that some of the purported conduct of the defendant appears to have occurred prior to the initiation of the bankruptcy proceedings. Nevertheless, our review, considering the complaint in the light most favorable to the plaintiff, as we are obligated to do, reveals that most of the alleged conduct in support of the plaintiff's CUTPA claim occurs well after the filing of the bankruptcy petition. We reiterate that *Willow Springs* held that "independent fraudulent or deceptive acts taking place within the three year" statute of limitations period are not time barred. *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, supra, 245 Conn. 46. It follows then that a 2021 CUTPA action, premised largely on allegations of independent fraudulent or deceptive acts occurring well after 2014, accrued after the filing of the bankruptcy petition and did not become property of the bankruptcy estate.

Considering the second approach under *Weiss*, we conclude for similar reasons that the plaintiff's cause of action was not the property of the bankruptcy estate. Claims that accrue postpetition can remain the property of the bankruptcy estate when they are found to be "sufficiently rooted in the prebankruptcy past and so little entangled with the [debtor's] ability to make an unencumbered fresh start . . . ." *Segal* v. *Rochelle*, 382 U.S. 375, 380, 86 S. Ct. 511, 15 L. Ed. 2d 428 (1966); see also *Mendelsohn* v. *Ross*, 251 F. Supp. 3d 518, 524 (E.D.N.Y. 2017) ("*Segal*'s holding, applied in numerous Second Circuit cases, [is] that property that is acquired post-petition *can* be deemed to be the property of a bankruptcy estate, so long as it is 'sufficiently rooted in the pre-bankruptcy past' of a debtor" (emphasis in original)); *In re Vasquez*, 581 B.R. 59, 67 (Bankr. D. Vt. 2018) ("[a]nalysis of whether a legal cause of action is

part of the bankruptcy estate has two components: the general rule that a claim which accrues after the filing of a bankruptcy petition is not part of the estate . . . and the well-established exception to that rule, which brings into the estate a claim that accrues postpetition if it 'is sufficiently rooted in the [debtor's] prebankruptcy past' " (citations omitted)); *In re Desormes*, 497 B.R. 390, 393 (Bankr. D. Conn. 2013) (concluding that "there may be no bright-line test for whether a cause of action that accrues post-petition will be included as part of the bankruptcy estate").

In the present case, the breadth of the plaintiff's complaint has tenuous roots in the prebankruptcy past. The complaint alleged various and ongoing conduct on the part of the defendant, centered mainly in 2020, including the assessment of fraudulent fees, as well as violations of HAMP and RESPA, and repeated and ongoing false representations through the foreclosure process. Put differently, the only relationship that this cause of action has to the prebankruptcy past is that the plaintiff took out a mortgage, which then was foreclosed on by another party, namely, Deutsche Bank, N.A. Moreover, the defendant concedes that the complaint centers on events that occurred in 2020. See footnote 6 of this opinion. To the extent that the complaint alleges a cause of action arising largely out of postpetition conduct on the part of the defendant, we cannot conclude that the cause of action is part of the bankruptcy estate.

In concluding that the plaintiff did not have standing, the court stated that the plaintiff's cause of action "became the property of the bankruptcy estate at the time of the filing of the bankruptcy"—such filing being, at the latest, in 2015. In so doing, the court seems to have construed the plaintiff's claim as a prepetition cause of action that should have been disclosed upon the initiation of the bankruptcy proceedings. The court's reasoning depends on the faulty assumption that—no

matter when a claim comes into existence and no matter what connection (if any) it may have to the scheduled property of the bankruptcy estate—it must be the property of the bankruptcy estate simply because it arose before the final accounting of the estate was completed. As the foregoing discussion makes clear, this is incorrect as a matter of law.

We conclude that the trial court's granting of the motion to dismiss the complaint was improper. The plaintiff has pleaded a cause of action that, as a matter of law, is not property of the bankruptcy estate. For that reason, the court incorrectly concluded that the plaintiff lacked standing to maintain her complaint against the defendant.

The judgment is reversed and the case is remanded with direction to deny the defendant's motion to dismiss and for further proceedings consistent with this opinion.

In this opinion the other judges concurred.

JANE DOE 1 ET AL. *v.* CHRISTOPHER LAMB ET AL.
(AC 46466)

Elgo, Clark and Westbrook, Js.

Syllabus

The plaintiffs, victims of criminal computer hacking by the defendant L, appealed from the summary judgment rendered by the trial court in favor of L's parent, the defendant J. The plaintiffs claimed that the court improperly granted summary judgment because J had voluntarily assumed a duty of care to them to monitor and supervise L's Internet usage at J's home or, in the alternative, J owed a general duty of care arising from her affirmative conduct, and J failed to prevent L, an adult, from hacking into the plaintiffs' social media accounts to obtain and post on the Internet photographs of them in the nude. *Held*:

The trial court properly rendered summary judgment for J on the plaintiffs' claims sounding in negligence, in which they alleged that J had voluntarily

assumed a duty of care to them, as this court could not conclude that a reasonable person in J's position could foresee that the mere act of providing a computer or Internet service to an adult child would result in the kind of harm the plaintiffs alleged, and, although J had made gratuitous, unsolicited email statements to the police representing what she had done and was intending to do to prevent future hacking attempts by L, there was no genuine issue of material fact that J did not learn that L had stolen the plaintiffs' photographs and posted them online until after that conduct had ceased.

Furthermore, contrary to the plaintiffs' claim, public policy considerations, under the circumstances at issue, did not compel the conclusion that J's actions gave rise to a duty of care to the plaintiffs, as the parties' normal expectations weighed against establishing such a duty, any benefit that might accrue from recognizing a public policy of encouraging parents to monitor their adult children's Internet use could not be counterbalanced by the practical difficulties inherent in taking on such a task, the recognition of such a legal duty would increase litigation, and the decisions of courts in other jurisdictions informed this court's determination that it could not conclude that J had taken on a policy of supervising L that was analogous to that of employers who undertake to supervise their employees.

The plaintiffs' claim that J owed them and other similarly situated victims a general duty of care on the basis of her assurances to the police that she would supervise L's computer related activities was unavailing, as this court was not convinced that J, in voluntarily undertaking to monitor L's activities, increased the risk of harm to the plaintiffs, who provided no evidentiary basis for their assertion that, subsequent to her statements to the police, J knew that L would be tempted to engage in further misconduct or that no one else would assume the responsibility for preventing his misconduct, and the fact that the General Assembly has not expressed, by way of statute, a public policy interest supporting the imposition of third-party liability against those who provide Internet access to others weighed against creating a common-law duty of care in such circumstances.

Argued January 13—officially released September 23, 2025

Procedural History

Action to recover damages for, inter alia, intentional infliction of emotional distress, and for other relief, brought to the Superior Court in the judicial district of Windham at Putnam, where the court, *Lynch*, *J.*, granted the motion for summary judgment filed by the defendant Matthew Lohbush; thereafter, the court, *Lohr*, *J.*, granted the motion for summary judgment filed by the defendant JoAnn Lohbush as to the plaintiff

Jane Doe 2; subsequently, the court, *Lohr*, *J.*, granted the motion for summary judgment filed by the defendant JoAnn Lohbush as to the plaintiff Jane Doe 1 et al. and rendered judgment for the defendant JoAnn Lohbush, from which the plaintiffs appealed to this court. *Affirmed.*

James J. Healy, with whom was *Christopher P. Anderson*, for the appellants (plaintiffs).

Stephanie M. Javarauckas, with whom, on the brief, was *Edward W. Gasser*, for the appellee (defendant JoAnn Lohbush).

Opinion

ELGO, J. This civil action concerns the criminal conduct of the defendant Christopher Lamb, who, utilizing Internet services and computer devices provided by the defendant JoAnn Lohbush, hacked into the personal accounts of and harassed and exploited a number of innocent victims.[1] The plaintiffs—Jane Doe 1, Jane Doe 2, Jane Doe 3, and John Doe 1—jointly appeal from the partial summary judgment rendered in favor of the

[1] Lohbush is the mother of Christopher Lamb. For clarity, we refer to Lohbush as the defendant and to Christopher Lamb by name in this appeal from the partial summary judgment rendered in favor of Lohbush. See *Tryon* v. *North Branford*, 58 Conn. App. 702, 703 n.1, 755 A.2d 317 (2000). Moreover, although Lamb's stepfather, Matthew Lohbush, was originally named as a defendant in this action, the trial court rendered summary judgment in his favor without objection in June, 2021.

In addition, we note that Lamb was an adult at all times relevant to this appeal and the events leading to his arrest. Following his arrest, Lamb pleaded guilty to various crimes related to his use of the Internet to hack into the plaintiffs' personal accounts and to disseminate compromising personal photographs of the plaintiffs. He was sentenced to a twenty year term of incarceration, execution suspended after eight years, followed by thirty years of probation. In this opinion, all references to Lamb's statements are from the transcript of a January 3, 2019 polygraph interview of him that was conducted as part of the criminal investigation into his activities. That transcript was submitted to the trial court in the present case as an exhibit to Jane Doe 2's memorandum of law in opposition to the defendant's motion for summary judgment.

defendant.[2] The plaintiffs claim that the trial court improperly rendered summary judgment in favor of the defendant because she voluntarily assumed a duty of care as to the plaintiffs or, in the alternative, that the defendant owed a general duty of care arising from her affirmative conduct.[3] We affirm the judgment of the trial court.

The record, viewed in the light most favorable to the plaintiffs as the nonmoving parties; see, e.g., *Schilberg Integrated Metals Corp.* v. *Continental Casualty Co.*, 263 Conn. 245, 252, 819 A.2d 773 (2003); reveals the following relevant facts and procedural history. In the winter of 2012, Lamb, then twenty years of age, moved back home to live with the defendant and his stepfather in the town of Brooklyn. Having failed out of college, Lamb was, by his own account, "[r]eally depressed," and he attempted suicide. Lamb "had way too much time" on his hands and, by some point in 2013, had "figured out" that he could break into people's social media and cloud accounts[4] because it was "exciting . . . ."[5]

[2] Because the partial summary judgment disposed of all counts brought by the plaintiffs against the defendant, this appeal is properly before us. See Practice Book § 61-3.

[3] In addition, the plaintiffs claim that, if the defendant owed a duty of care to them, the plaintiffs' claims of negligent supervision also should not have been denied. Because we conclude that the defendant did not owe the plaintiffs a duty of care under either theory put forth by the plaintiffs, we do not reach this issue.

[4] Cloud accounts are information storage and retrieval systems that are utilized by computers and cell phones, e.g., iCloud, Dropbox, Gmail, etc. Increasingly, "the data a user views on many modern cell phones may not in fact be stored on the device itself." *Riley* v. *California*, 573 U.S. 373, 397, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014). "Cloud computing is the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself. Cell phone users often may not know whether particular information is stored on the device or in the cloud, and it generally makes little difference." Id. Gaining access to an individual's cloud account, as occurred in the present case, can reveal immense amounts of personal and sensitive information.

[5] Lamb's behavior escalated over the course of several years. As he stated: "[A]s time went on, I kept on doing it more and more, and then it . . . wasn't enough at some points. You know, it's like breaking in and taking

Although the effects of Lamb's hacking were devastating, his methods were somewhat crude—he would change passwords to various accounts, e.g., iCloud, by answering the requisite security questions. Lamb would determine the answers to the security questions by using Facebook or other social media to access various personal details, such as a pet's name, a favorite food, or a first car. Locating the answers to these "fairly easy" questions was made possible by the fact that "everybody" in his age group has "a Facebook, and Instagram, a Twitter where they post all this information. . . . [A]nd, if you look for it, you could find pretty much . . . any kind of information." After securing access to these accounts, he would then enlist the help of anonymous individuals on a website called "Anon-IB" to extract all the data from them. Lamb would then harvest any compromising or otherwise explicit photographs, using those images as leverage to convince young women to send him more photographs. He conducted all of these activities through the Internet service provided by the defendant, and using an Internet protocol address (IP address) that, ultimately, was identified by the police as the origination of his criminal activity.[6]

Although Lamb was "creating fake Facebook accounts and messaging all these girls and sending their pics and demanding more," he was not "covering [his] tracks" and it was "fairly easy" to determine the origin of this

pictures wasn't enough; so, I had to post the pictures or send it to them. And then I'd have to . . . almost start, like, shaming these girls . . . for no really apparent reason. It wasn't like I had any grudges against them or anything like that. It was just something that gave me some type of excitement . . . ."

[6] "All computers that connect to the Internet identify each other through a unique string of numbers known as an Internet protocol address . . . . In general, when a subscriber purchases Internet service from an Internet service provider (ISP), the ISP selects from a roster of IP addresses under its control and assigns a unique IP address to the subscriber at a particular physical address." (Citation omitted.) *Commonwealth* v. *Martinez*, 476 Mass. 410, 410–11, 71 N.E.3d 105 (2017).

activity.[7] Lamb was "extremely scared" that he would get caught and tried to stop himself from continuing on this course of action. He nevertheless "couldn't" stop and "just needed to do it." Although Lamb did not sell any of the images that he obtained, he did broadly distribute them directly to the parents, friends, employers, schoolteachers, and other contacts of the victims. Lamb estimated that he hacked between seventy and one hundred individuals and obtained sexual images from approximately twenty or twenty-five of them. All of this criminal activity was done through the Internet connection and devices that were provided to Lamb by the defendant, and which were completely under her control.

In August, 2015, Trooper Matthew Pritchard of the Connecticut State Police visited the residence of the defendant while investigating hacking attempts that had originated from her home Internet connection. At that time, Pritchard informed the defendant that there had been an attempt to hack into a young woman's Facebook account, that it "hadn't been accessed," and that the IP address of the hacker had been traced to the defendant's home Internet service. The defendant subsequently engaged in an email correspondence with officers of the state police, in which she denied that any member of her family had been involved in hacking activity and promised to monitor the Internet traffic through her home. Initially "scared" by the visit by the state police, Lamb stopped hacking for "a few months . . . ."

Following the visit by the state police, the defendant started "randomly going through the computers in the

[7] Lamb claimed that he tried, "[a] couple of times," to hide the defendant's IP address but that it was only "[l]ike, 25 percent of the time, maybe . . . ." Lamb also opined that what he had done was not "technically" hacking but was more akin to "social engineering" because he was not "breaking, like, any of the code or anything like that."

house" to look for anything "suspicious." She took Lamb's computer "a few times" to "look through it" to make sure he wasn't "doing anything" improper, but the defendant "really didn't know what [she] was supposed to be looking for . . . ."[8] At some point after this initial contact by the police, Lamb disclosed to the defendant that he was the person who had drawn their attention and that he had hacked "a few others" as well.[9] At that time, Lamb did not inform the defendant that, in addition to hacking into those personal accounts, he had stolen photographs of nude females from those accounts and posted them online. Shortly after this conversation with the defendant, Lamb disposed of his computer, which had been purchased for him by the defendant, in a commercial dumpster.

[8] We note that Lamb's brother, John Lamb, also resided at the Brooklyn home during this time period. In his deposition testimony, John Lamb stated that he could not recall any time, while he resided there, when the defendant examined his laptop or cell phone.

[9] With respect to what the defendant knew, Lamb stated: "I didn't . . . go into detail of what I was doing. . . . [The defendant] didn't quite get what I was doing. I think that she thought, you know, I kind of tried to get into someone's account for whatever reason or whatever, and then—you know, it's like, you know, don't do it again. . . . [Y]ou can get in a lot of trouble for that, whatever. I mean, [she was] clearly mad, disappointed at me and stuff, but . . . I didn't really explain it very well." When Lamb was asked more specifically what he had disclosed to the defendant, Lamb replied, "I never told her that I was, like, stealing naked pictures and posting them online . . . . I don't know exactly how many I had gotten at that point but, you know, more than I mentioned." Lamb further elaborated that, after this first conversation, "We never really talked about it again, not until obviously September when everything kind of blew up. . . . [J]ust because she figured they weren't going to press any charges and stuff anyway that, you know, it's done with. Just kind of sweep it under the rug and kind of move on type of thing, I guess . . . ." Lamb also stated: "I never specifically said, like, I stole these pictures and posted them online. I never brought my brother into this in any way or my friends . . . . I was ashamed. . . . I knew if something happened like this, they could get in trouble. . . . Maybe I feel that my parents not cracking down enough assisted me, I guess, in a way, by not taking my computer, not watching over me as closely, not getting me help and stuff . . . . [T]hey assisted me in pretty much letting me continue doing it even though they weren't aware they were helping me."

Police officers returned to the defendant's home with a search warrant in September, 2017. Lamb subsequently received inpatient and outpatient care due to fears that he remained suicidal after having attempted to commit suicide several years previously. In March, 2018, Lamb surrendered himself to authorities when criminal charges were brought against him.

The plaintiffs initiated this civil action against the defendant and Lamb in August, 2018. The operative complaint contained forty-eight counts—eight of which are relevant to this appeal. The plaintiffs alleged, inter alia, claims sounding in negligence and negligent supervision against the defendant. For instance, the sixth count alleged that, with respect to Jane Doe 1, the defendant had provided unrestricted Internet access to Lamb even though she knew or should have known that Lamb had a "propensity" to engage in "hacking activities and/or to engage in the dissemination of defamatory material . . . ." The plaintiffs further alleged that the defendant's "carelessness and negligence" in failing to supervise Lamb or monitor him "in any way" had caused injuries to the plaintiffs, including severe anxiety, nausea, panic attacks, high blood pressure, post-traumatic stress disorder, bullying and harassment.[10]

In November, 2021, the defendant moved for summary judgment (first motion) with respect to the claims brought against her by Jane Doe 2. The defendant's counsel argued, in relevant part, that Jane Doe 2's claims of negligence ran afoul of the general prohibition against imposing a duty on individuals to control the conduct of others. More specifically, the defendant's counsel argued that she did not owe a duty to prevent

[10] The defendant's answer to the plaintiffs' complaint asserted special defenses that the plaintiffs' claims were barred by the applicable statutes of limitations. See General Statutes §§ 52-577 and 52-584.

Lamb from using the Internet, to restrict his access to the Internet, or to supervise Lamb while he was on the Internet. Further, the defendant's counsel argued that she had no special relationship with Lamb such that any duty to the plaintiffs would attach, and that the plaintiffs were alleging that the defendant should "anticipate, and therefore be liable for, [Lamb's] actions simply because she is his parent."

In July, 2022, Jane Doe 2 filed her opposition to the defendant's motion for summary judgment. In relevant part, she argued that the defendant knew or should have known that Lamb was using the devices provided by her to "engage in an activity in such a manner as to create an unreasonable risk of harm to others" and that she "failed to prevent [Lamb] from having access to those devices." Jane Doe 2 also argued that there was ample evidence, including the visit from the state police as well as Lamb's polygraph examination; see footnote 1 of this opinion; that suggested that the defendant actually knew that Lamb was using her IP address to engage in such conduct. Last, drawing on a theory of social host liability, Jane Doe 2 argued that she had pleaded a cognizable claim of negligence because she had alleged that the defendant, in providing Lamb with Internet access, had assumed a duty to third parties. Jane Doe 2 posited that, like a social host who knowingly provides alcohol to an individual who subsequently injures third parties, Lamb's tortious conduct was within the scope of the risk that the defendant knew or should have known that she was creating through her actions. Jane Doe 2 further argued that, after the 2015 visit by Pritchard, the defendant had failed to investigate the origin of the hacking attempts, had failed to notify the police of Lamb's activities, and had failed to "avoid the probability of harm to the plaintiffs." Notably, Jane Doe 2 did not argue that the defendant's emails

to Pritchard constituted a voluntary assumption of a duty to her and the other plaintiffs.

On August 22, 2022, the trial court heard argument on the first motion for summary judgment. The court began by inquiring as to what distinction existed between the defendant and her husband, who had been granted summary judgment without objection by the plaintiffs. See footnote 1 of this opinion. The court stated: "And so the question is as to his mother's culpability and . . . for her to say, yes, I paid the [Internet and cellular bills]. . . . [T]he argument is, well, if you did that then you are liable. You had control."

The court then asked the plaintiffs' counsel to explain how a duty arises under the facts of this case, posing a hypothetical in which a person rents a room to a tenant, providing that tenant with Internet access. Counsel for the plaintiffs then argued that a party who has control over the Internet and who knows or should have known that it is being used for criminal activity would have a special relationship with the tenant who was alleged to be engaged in criminal activity. The court then inquired as to the issue of an assumption of duty, pointing out the few steps that the defendant took after Pritchard's visit, "she changed passwords, she looked into, you know, this or that . . . ."

Counsel for the plaintiffs further argued that social host liability provided an analogous situation due to the "active participation" of the "person in control," stating: "And the reason I say that [the defendant had a duty] is that it's analogous to this situation because she had exclusive control over the IP address. Of the cellular service. She has years worth of knowledge of [Lamb] and whether she should supervise [Lamb] . . . ." In essence, the plaintiffs' counsel argued that the duty to third parties arose as a result of the defendant's special knowledge of and relationship to Lamb. When

pressed by the court as to whether the analysis would change if Lamb were paying rent to the defendant, the plaintiffs' counsel stated that it would not make any difference because "she knows that he doesn't have a job, he never leaves the basement, he's always on the computer . . . . But then the police come to [her] house and say something's going on here. In the instrumentality that [she] control[s]." The court then asked: "And she says, I know nothing about that. Maybe somebody's hacking in. I'll change the password. . . . [I]s she under a duty to do anything?" The plaintiffs' counsel responded that, "under negligent supervision, I would say yes, she's under a duty . . . to take reasonable steps to make sure that nothing likely to cause or possibly causing harm happens."

Encouraging the trial court to analogize the circumstances at hand to social host liability, the plaintiffs' counsel argued, inter alia, that the "distinction in all of those lines of cases [discussing social host liability is] active involvement versus passive involvement. . . . She had exclusive control over the IP address [and] the cellular service. She has years worth of knowledge of [Lamb] and whether she [could] reasonably supervise [Lamb] over those periods of time." The plaintiffs' counsel further argued that, in light of the plaintiffs' not opposing the granting of summary judgment in favor of Lamb's stepfather; see footnote 1 of this opinion; the issue of the defendant's control over the Internet and cellular service in the home was dispositive in that it created a "special relationship" between Lamb and his mother, the defendant, such that a duty to third parties should attach. Accordingly, the plaintiffs' counsel argued that the defendant knew that she could be exposed to civil liability because, after the police visited her home in 2015 and Lamb had told her what he had done, the defendant had protected him from the state police for the next two years.

The parties filed supplemental memoranda of law after the hearing on the first motion for summary judgment. In their supplemental memorandum of law, the plaintiffs argued, inter alia, that "[b]ecause the defendant . . . told the Connecticut State Police in 2015 that she had taken steps to [e]nsure that no one in her house with access to her IP address was using that IP address in an inappropriate manner, she voluntarily assumed a duty of reasonable care to make sure the family's computer devices and cell phones were not being used to cause harm to [Jane Doe 2]. And as she voluntarily assumed a duty of reasonable care, there are genuine issues of material fact as to whether the defendant acted reasonably, or breached that duty," thereby rendering summary judgment inappropriate.[11]

On February 8, 2023, the trial court granted the defendant's first motion for summary judgment on the negligence, negligent entrustment, negligent supervision, and fraudulent transfer claims brought by Jane Doe 2 against the defendant.[12] In its memorandum of decision, the court determined that no genuine issue of material fact existed as to whether the defendant had "owned, leased, rented, maintained, managed and/or controlled the home computer, laptop computers, and/or mobile smart phones" that were kept at her home, where Lamb resided, and that the defendant had provided the IP address and equipment necessary to access the Internet that Lamb had used to hack into the various "cloud based personal and social media accounts of various individuals, including [Jane Doe 2], where he gained

[11] The emails between Pritchard and the defendant were not attached to the plaintiffs' memoranda of law in opposition to *either* motion for summary judgment. Those emails were attached to Jane Doe 2's September 21, 2022 supplemental memorandum of law in opposition to the first motion for summary judgment.

[12] Jane Doe 2 appealed from the summary judgment rendered by the trial court on February 8, 2023. This court dismissed the appeal on April 26, 2023, for lack of a final judgment.

access to, among other items, nude photographs of [Jane Doe 2].'' The court also found that no genuine issue of material fact existed as to whether Lamb ''posted these nude photographs of [Jane Doe 2] on the Internet and created an online forum for disparaging comments to be made about [Jane Doe 2]. Some of this material was electronically forwarded to [Jane Doe 2's] contacts, parents, friends, teachers, school administrators and places of employment.'' The court also found that there was no genuine issue of material fact that, after another individual who is not a party to this case filed a complaint, officers of the state police became aware that someone utilizing the defendant's IP address had attempted to change passwords on multiple online accounts. In addition, there is no dispute that Pritchard traveled to the defendant's home and spoke with her and her family regarding the use of their IP address to ''change this individual's passwords without her permission'' and that, at that time, all members of the defendant's family, including Lamb, denied being the source of this hacking attempt.

With respect to Jane Doe 2's negligence claim, the court concluded that General Statutes § 52-572 plainly did not apply in the present case, as it pertains solely to parental liability for the torts of their *minor* children. The court also noted that ''it is not at all foreseeable that allowing a person to use one's Internet services will lead to that individual hacking into another's social media accounts in order to obtain intimate pictures to post on the Internet'' and thus concluded that there was no genuine issue of material fact as to whether the defendant voluntarily assumed a duty to Jane Doe 2.

With respect to Jane Doe 2's negligent entrustment claim, the court stated in relevant part that she ''has provided the court with numerous cases from different jurisdictions where courts have noted the potential dangers that lurk on the Internet. The court is certainly

mindful of the myriad of negative activities that can occur online. Notably absent from [Jane Doe 2's memorandum of law] are cases in which courts have found that the Internet and/or associated devices that can be used to access it have been considered dangerous instrumentalities *for the purpose of supporting a negligent entrustment cause of action*. This court is disinclined to break new ground in that regard." (Emphasis in original.) Emphasizing that, "under the general law governing negligent entrustment claims, liability will exist only where the item at issue is obviously potentially dangerous," the court concluded that no genuine issue of material fact existed as to whether the electronic devices and Internet service provided by the defendant constituted "the types of dangerous instrumentalities that can formulate the underlying basis of a negligent entrustment cause of action . . . ."

With respect to Jane Doe 2's negligent supervision claim, the court concluded that, "for all of the reasons stated in its discussion" of the negligence and negligent entrustment claims, no genuine issue of material fact existed as to whether the defendant owed Jane Doe 2 a duty of care. As the court succinctly stated, "[t]he defendant simply did not have any legal obligation to supervise the conduct of her adult son." For that reason, the court concluded that summary judgment was appropriate on the negligent supervision claim.

Last, with respect to Jane Doe 2's fraudulent transfer claim, the court noted that the defendant had furnished a sworn affidavit, in which she attested to the fact that she had transferred title to her home to a limited liability company in an effort to protect her assets while pursuing a real estate venture. In that affidavit, the defendant further attested that, approximately ten months later, the limited liability company transferred title back to her and her husband. The court found that Jane Doe 2 "made no argument, nor offered any evidence, to

contradict this assertion by the defendant." Because Jane Doe 2 had failed to establish a factual predicate for her fraudulent transfer claim, the court concluded that summary judgment was warranted and rendered judgment accordingly.

On March 3, 2023, the defendant filed a second motion for summary judgment as to the three remaining plaintiffs (second motion), arguing that she lacked a duty to any of them and, therefore, could not be held liable for Lamb's actions. Conceding that they were "identically situated" to Jane Doe 2, the remaining plaintiffs nonetheless argued, in their memorandum of law in opposition to the second motion for summary judgment, that, because they suffered "harms individually," the motion should be denied. On April 11, 2023, the trial court granted the second motion, thereby disposing of all remaining claims against the defendant, and this joint appeal followed.

Following the commencement of this appeal, the plaintiffs moved for an articulation, pursuant to Practice Book § 66-5, with respect to the trial court's April 11, 2023 order granting the defendant's second motion for summary judgment. On February 6, 2024, the court granted that motion and articulated its judgment with respect to the second motion for summary judgment. The court noted that the remaining plaintiffs' claims were "substantially similar" to those raised by Jane Doe 2 in the first motion for summary judgment and that the court's February, 2023 order and memorandum of decision applied "with equal force to all four plaintiffs." The court reiterated that it had determined that the defendant "owed no legal duty to any of [the plaintiffs] for tortious acts allegedly committed against them by her adult son, [Lamb], while utilizing their shared home Internet service."[13] The court concluded by stating that

[13] The trial court also stated that, in granting the second motion, it had "implicitly" overruled the objections to the motion for summary judgment, thereby "resolving all claims in the case against [the defendant] in her favor."

the defendant "owed no duty of care to any [of the plaintiffs], under any of the factual scenarios set forth in their respective claims against her, for Lamb's alleged actions."

I

On appeal, the plaintiffs first contend that the trial court improperly rendered summary judgment for the defendant on their claims sounding in negligence because the defendant voluntarily assumed a duty of care to the plaintiffs.[14] According to the plaintiffs, the defendant assumed a duty of care to them because she had knowledge that Lamb had used her Internet connection for an illicit purpose, exercised exclusive control over his access to the Internet, and attempted to "divert attention elsewhere" in order to shield Lamb from investigation. The plaintiffs argue that, under certain provisions of the Restatement (Second) of Torts as well as under Connecticut case law, a duty emerged out of these circumstances when the defendant "voluntarily undertook to supervise and monitor Lamb's use of her Internet connection," and did so in a manner that was "cursory, uninformed, and hopelessly deficient" even though she "should have known that she was utterly incapable" of monitoring Lamb's activity. Further, the plaintiffs contend that the defendant had the power and ability to prevent Lamb from using her Internet connection to harm others, but, despite having voluntarily "pledged to supervise and monitor Lamb,"

[14] Specifically, the plaintiffs claim that the trial court improperly rendered summary judgment on counts six, eighteen, thirty, and forty-two of their amended complaint. The sixth count of the operative complaint alleges, inter alia, that the defendant acted negligently in providing Internet access to Lamb when she knew or should have known of his "propensity" to engage in "hacking activities" and that her failure to monitor or stop Lamb from performing these activities resulted in injury to Jane Doe 1. The eighteenth count alleges the same with regard to Jane Doe 2. The thirtieth count alleges the same with regard to Jane Doe 3, and the forty-second count alleges the same negligent actions with regard to John Doe 1.

the result of her actions was to "put the victims in a far worse position." The defendant counters that the court correctly determined that her statements to Pritchard were not "conceptually" the same as an assumption of duty.[15] Further, the defendant argues that the court properly granted the motion for summary judgment because there is no genuine issue of material fact at issue, and the defendant did not, as a matter of law, owe a duty of care to the plaintiffs.

The following additional, undisputed facts and procedural history are relevant to the plaintiffs' claim. After the August, 2015 visit by the state police, the defendant engaged in an email correspondence with Pritchard. A copy of that correspondence, including an email sent on August 10, 2015, from the defendant to Pritchard, was attached to the plaintiffs' supplemental memorandum of law objecting to the second motion for summary judgment. In that email, the defendant reported, inter alia, that she had not "seen any evidence that this incident involved directly anyone in my household" and that she had determined that her sons had helped her father with a project in a different town during the days in which the alleged hacking attempt had taken place. She assured Pritchard that she knew from speaking "with someone who works on computers for their job" that "using someone else's IP address is not that difficult especially if it is someone outside our household who has had any connection . . . through the web at any

[15] The defendant refers to comments made by the trial court during the August 22, 2022 hearing. The court analogized the present situation to a scenario in which a person jumps in the water to save another individual from drowning but then ceases the effort to save the drowning person: "The theory behind that . . . is that you're causing others to not do something who might have [done something], right? You assumed a duty there. But . . . [t]his is [the defendant's] Internet. And [the defendant's] saying . . . maybe somebody's hacking in . . . . Let's change the passwords. [L]et's do a few things here. And so, I . . . don't see that conceptually [to be] the same as an assumption of the duty."

point with us" through her "fairly unsecured" Internet connection.[16] She reported having changed the password for her Internet service and having instructed her children not to disclose the new password to "friends who come visit." She assured Pritchard that, "based on the times of the incidents," she would be "pretty aware of any activity in the house whether it was my children or a friend." Last, the defendant stated that she was "going to ask for advice" to make her Internet connection "even more secure," including possibly consulting with a man her daughter informed her "is involved in cyber safety."[17] The defendant closed the email with "[t]hank you for bringing this to my attention." That correspondence indicates that, at that time, Pritchard was utilizing email simply to schedule visits with the family.

On October 8, 2015, following a request from Pritchard to schedule another time to visit and speak with the defendant and her family, the defendant sent another email to Pritchard, stating, inter alia, that "I do want all involved to know that we have spoken severely to all our children about the dangers of using the Internet improperly and how important it is to keep our computers and our [Wi-Fi] secure from even friends." The defendant also stated: "We want you to know that this situation has been monitored from our end and we have changed passwords etc. and are monitoring our laptops including my children's to be sure we are aware of all activity."

[16] The defendant stated, in her deposition testimony, that she could not remember who the person was to whom she referred in her email to Pritchard, "but it was someone at the time that worked on repairing computers or worked on servicing computers or something" and that this person had explained to her that "you can access accounts if you've already had the password in the past."

[17] The defendant clarified, in her deposition testimony, that she knows personally an individual who is a state trooper involved in "cyber safety" but that she never followed through with consulting him because she had "looked into everything" Pritchard had told her to do, deciding "not to involve friends of the family in a family matter."

It is undisputed that the defendant continued to pay for and allow Lamb to access the Internet and devices in her home until his arrest on March 18, 2018. It also is undisputed that, sometime after the police visited the home in 2015, Lamb admitted to the defendant that he had utilized the Internet provided in the home to hack into the accounts of several individuals.[18] In a statement provided to law enforcement on January 3, 2019, Lamb explained: "I didn't . . . go into detail of what I was doing. I don't think [the defendant] . . . she didn't quite get what I was doing. I think she thought [that] I tried to get into someone's account for whatever reason or whatever, and then [she said] don't do it again. . . . [She was] clearly mad, disappointed at me . . . but I don't think—because I didn't really explain it very well."[19] Lamb also told the police that, in retrospect, he "could have said more, gone into detail a little bit more of what [he] was doing so [the defendant] had a better understanding that . . . this wasn't, like, a small thing . . . ." When asked, "[w]hat specifically did you tell [the defendant]," Lamb stated that he admitted to hacking into "a couple of accounts" but that he "never told her that [he] was . . . stealing naked pictures and posting them online . . . ." Lamb also admitted that, after informing the defendant of his hacking activities, he "threw away" the Mac computer he had used for those activities in a trash can at the Home Depot store in Willimantic. Lamb stated that he did so "a few days after" admitting his hacking activities to the defendant.

[18] When asked specifically when he first admitted his hacking activities to the defendant, Lamb stated, "somewhere around" 2015 or 2016.

[19] In her deposition testimony, the defendant similarly stated that, although the police informed her that hacking attempts had originated from her IP address in 2015, she did not learn that her Internet service had been used to steal photographs of nude females from personal accounts and post them online until the police executed a search warrant at her home in September, 2017.

In ruling on the first motion for summary judgment, the trial court determined that, the arguments put forward by the plaintiffs notwithstanding, it was "not at all foreseeable that allowing a person to use one's Internet services will lead to that individual hacking into another's social media accounts in order to obtain intimate pictures to post on the Internet. The causal connection between those two activities is simply too attenuated for this court to determine that the defendant had a duty to protect [Jane Doe 2] from potential harm." The court also rejected Jane Doe 2's argument that the defendant had voluntarily assumed a duty to her. Interpreting §§ 314 A and 324 of the Restatement (Second) of Torts, the court determined that these provisions apply "to individuals who voluntarily take the care, custody or control of people who are incapacitated or otherwise incapable of caring for themselves" and that they are, therefore, inapplicable to the actions undertaken by the defendant. Consequently, the court determined that there was no legal duty on the part of the defendant to protect Jane Doe 2 from harm. That reasoning was applied by the court "with equal force" to the claims of the remaining plaintiffs. In sum, the court, having concluded that the defendant owed no legal duty to any of the plaintiffs for the tortious acts committed by Lamb, rendered summary judgment in favor of the defendant on all counts. On appeal, the plaintiffs challenge the propriety of that determination.

We begin with the relevant legal principles. "Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried." (Internal quotation marks omitted.) *Grenier* v.

Commissioner of Transportation, 306 Conn. 523, 534–35, 51 A.3d 367 (2012). "Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary. . . . On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court." (Internal quotation marks omitted.) *Hassiem* v. *O & G Industries, Inc.*, 197 Conn. App. 631, 635, 232 A.3d 1139, cert. denied, 335 Conn. 928, 235 A.3d 525 (2020). "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under the applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact is a fact that will make a difference in the result of the case. . . . It is not enough for the moving party merely to assert the absence of any disputed factual issue; the moving party is required to bring forward . . . evidentiary facts, or substantial evidence outside the pleadings to show the absence of any material dispute. . . . The party opposing summary judgment must present a factual predicate for his argument to raise a genuine issue of fact. . . . Once raised, if it is not conclusively refuted by the moving party, a genuine issue of fact exists, and summary judgment is inappropriate." (Citations omitted; internal quotation marks omitted.) *Martinez* v. *Premier Mainte-*

nance, *Inc.*, 185 Conn. App. 425, 434–35, 197 A.3d 919 (2018).

We next set forth the relevant principles of negligence. "Issues of negligence are ordinarily not susceptible of summary adjudication but should be resolved by trial in the ordinary manner. . . . Nevertheless, [t]he issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment because the question is one of law." (Citation omitted; internal quotation marks omitted.) *Streifel* v. *Bulkley*, 195 Conn. App. 294, 304, 224 A.3d 539, cert. denied, 335 Conn. 911, 228 A.3d 375 (2020).

The establishment of a duty owed to the plaintiffs by the defendant is a threshold inquiry. "[A] cause of action in negligence is comprised of four elements: duty; breach of that duty; causation; and actual injury. . . . Whether a duty exists is a question of law for the court, and only if the court finds that such a duty exists does the trier of fact consider whether that duty was breached. . . . If a court determines, as a matter of law, that a defendant owes no duty to a plaintiff, the plaintiff cannot recover in negligence from the defendant. . . . Duty is a legal conclusion about relationships between individuals, made after the fact, and imperative to a negligence cause of action. The nature of the duty, and the specific persons to whom it is owed, are determined by the circumstances surrounding the conduct of the individual. . . . Foreseeability is a critical factor in the analysis, because no duty exists unless an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result . . . . Our law makes clear that foreseeability alone, however, does not automatically give rise to a duty of care . . . . A further inquiry must be made, for we recognize that duty is not sacrosanct in itself . . . but is only an expression of the sum

total of those considerations of policy [that] lead the law to say that the plaintiff is entitled to protection. . . . The final step in the duty inquiry, then, is to make a determination of the fundamental policy of the law, as to whether the defendant's responsibility should extend to such results." (Internal quotation marks omitted.) *Roux* v. *Coffey*, 230 Conn. App. 130, 139, 330 A.3d 253, cert. denied, 351 Conn. 915, 331 A.3d 1217 (2025). "Negligence, like risk, is thus a term of relation." *Palsgraf* v. *Long Island Railroad Co.*, 248 N.Y. 339, 345, 162 N.E. 99 (1928); see also *Doe* v. *Cochran*, 332 Conn. 325, 339, 210 A.3d 469 (2019) ("Although it has been said that no universal test for [duty] ever has been formulated . . . our threshold inquiry has always been whether the specific harm alleged by the plaintiff was foreseeable to the defendant. The ultimate test of the existence of the duty to use care is found in the foreseeability that harm may result if it is not exercised. . . . By that is not meant that one charged with negligence must be found actually to have foreseen the probability of harm or that the particular injury [that] resulted was foreseeable, but the test is, would the ordinary [person] in the [alleged tortfeasor's] position, knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result . . . ." (Internal quotation marks omitted.)); *Jaworski* v. *Kiernan*, 241 Conn. 399, 406, 696 A.2d 332 (1997) ("A simple conclusion that the harm to the plaintiff was foreseeable, however, cannot by itself mandate a determination that a legal duty exists. Many harms are quite literally foreseeable, yet for pragmatic reasons, no recovery is allowed." (Internal quotation marks omitted.)). "Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right. 'Proof of negligence in the air, so to speak, will not do.' " *Palsgraf* v. *Long Island Railroad Co.*, supra, 341.

There is a "general prohibition against imposing upon an individual a duty to control the conduct of a third party . . . ." (Internal quotation marks omitted.) *Cannizzaro* v. *Marinyak*, 312 Conn. 361, 368, 93 A.3d 584 (2014). "The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action." (Internal quotation marks omitted.) Id.

With these principles in mind, we turn to the central question posed by the present appeal, namely, whether a parent who provides an adult child with unfettered access to electronic devices and Internet service, having some knowledge that such access is being used by the adult child for an illicit purpose and having made some assurances to law enforcement that she had taken certain precautions to prevent her family members from using her devices and Internet service for an improper purpose, owes a duty of care to third parties who are harmed by criminal activity perpetrated through the Internet.[20] In the present case, it is undisputed that the

[20] The defendant, in her appellate brief, argues that the plaintiffs are asking this court for a "futile second bite at the apple" because she did not argue adequately to the trial court that her "representations to [Pritchard are] evidence of an assumption of a duty to the plaintiffs." More specifically, the defendant contends that the plaintiffs did not argue to the trial court—until after oral arguments on the first motion for summary judgment, via supplemental briefing—that her emails to Pritchard constitute a voluntary assumption of a duty. Although it is true that the emails were not before the court until September, 2022, and, therefore, the August, 2022 hearing on the first motion for summary judgment did not address their role in the plaintiffs' claim that the defendant had assumed a duty of care to the plaintiffs, this argument is without merit. Our review of the record reveals that the plaintiffs argued to the court, by way of their supplemental memorandum of law in opposition to the second motion for summary judgment, that the defendant had voluntarily assumed a duty of reasonable care because she had "told the Connecticut State Police in 2015 that she had taken steps to [e]nsure that no one in her house with access to her IP address was using that IP address in an inappropriate manner" and that this duty of reasonable care extends to the plaintiffs. Moreover, our review of the court's determination that the defendant did not owe a duty of care to the plaintiffs is plenary.

defendant provided a Mac computer and Internet service to her adult son after he moved back into the family home in 2012. It also is undisputed that, sometime in 2015 or 2016; see footnote 18 of this opinion; the defendant learned that her son had utilized those instruments to engage in hacking activities but was not aware that he had stolen photographs of nude females or posted them online until after that conduct ceased. The question before us is whether these facts give rise to a duty under our laws. In answering that question, we begin with the issue of foreseeability, followed by an analysis of the various public policy considerations that inform our resolution of the plaintiffs' claims.[21]

A

The plaintiffs argue that Lamb's actions were foreseeable by the defendant. According to the plaintiffs, our Supreme Court has stated, in the context of §§ 323 and 324 A of the Restatement (Second) of Torts,[22] that "a

"Under Connecticut law, [t]he existence of a duty is a question of law . . . ." (Internal quotation marks omitted.) *Demond* v. *Project Service, LLC*, 331 Conn. 816, 834, 208 A.3d 626 (2019). Accordingly, there is no "futile second bite at the apple" under these circumstances, where both the requisite facts and legal argument were before the court.

[21] We recognize, as our Supreme Court has in the past, "that the issue of foreseeability cannot be neatly compartmentalized and considered wholly separate from the policy issues that are central to our legal determination of duty." *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 576, 717 A.2d 215 (1998). Although we conclude that no duty exists because the plaintiffs fail to satisfy *either* prong of the analysis—foreseeability or public policy—we conduct both prongs of the analysis because it is impossible to "neatly" compartmentalize these two prongs.

[22] Section 323 of the Restatement (Second) of Torts, titled "Negligent Performance of Undertaking to Render Services," states: "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking." 2 Restatement (Second), Torts § 323, p. 135 (1965).

Section 324 A of the Restatement (Second) of Torts, titled "Liability to Third Person for Negligent Performance of Undertaking," states: "One who

defendant who undertakes to act—even without an obligation to do so—is liable for any harm that flows from negligent conduct." Because, the plaintiffs contend, the defendant had been alerted to Lamb's hacking activities by law enforcement in 2015, her failure to monitor his computer usage or prevent him from accessing her devices and Internet service resulted in the foreseeable harm suffered by the plaintiffs.[23] The defendant counters that, because the harm caused to the plaintiffs was not reasonably foreseeable, she owed no duty of care to the plaintiffs.[24] Moreover, the defendant argues that,

undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if (a) his failure to exercise reasonable care increases the risk of such harm, or (b) he has undertaken to perform a duty owed by the other to the third person, or (c) the harm is suffered because of reliance of the other or the third person upon the undertaking." 2 Restatement (Second), supra, § 324 A, p. 142.

[23] The plaintiffs also argue that the defendant's voluntary assumption of a duty to monitor and supervise Lamb's computer activity "increased the harm to the plaintiffs . . . ." Our Supreme Court, for purposes of avoiding "analytical confusion," made clear that there is a distinction between the establishment of a duty under § 324 A of the Restatement (Second) of Torts and the attaching of liability once that duty is found to exist. "If a duty is owed, liability under § 324A for breach of the duty is determined by reference to subsections (a), (b) and (c) of § 324A. But the duty question comes first under § 324A, the same as it does in other areas of tort law, and this threshold inquiry must not be overlooked in cases under § 324A in which the scope of that duty is disputed." *Demond* v. *Project Service, LLC*, 331 Conn. 816, 835 n.12, 208 A.3d 626 (2019). Because we conclude that the defendant did not, as an initial matter, owe a duty to the plaintiffs, we need not address whether her actions gave rise to liability by increasing the risk of harm to the plaintiffs, under § 324 A (a).

[24] The defendant also argues that Lamb's actions were not foreseeable because the plaintiffs did not suffer any physical harm. In support of this argument, the defendant points to *Liberty Ins. Corp.* v. *Lamb*, United States District Court, Docket No. 3:19-cv-00005 (AWT) (D. Conn. September 10, 2021), a federal District Court decision in favor of Liberty Insurance Corporation. In that action, Liberty Insurance Corporation sought a declaratory judgment that it did not owe a duty to defend or indemnify Lamb or the defendant in the plaintiffs' state court action. During the proceedings, the District Court ruled that the plaintiffs had not suffered physical harm, as

even if her actions gave rise to an assumption of a duty pursuant to § 324 A of the Restatement (Second), that duty was not intended to protect the plaintiffs and, therefore, the duty was not assumed in order to "render services to protect another." (Emphasis omitted.) As such, the defendant argues that our Supreme Court's precedents, generally, as well as § 324 A of the Restatement (Second), specifically, limit any such duty to the foreseeable injuries suffered by persons intended to be beneficiaries, which does not include the plaintiffs. We agree with the defendant.

The following principles of foreseeability are relevant to resolving the plaintiffs' claim. "The default assumption of the common law . . . is that one owes a duty to exercise due care in one's affirmative conduct with respect to all people, insofar as one's negligent actions may foreseeably harm them." *Doe* v. *Cochran*, supra, 332 Conn. 339. In Connecticut, we "impose only a limited duty to take action to prevent injury to a third person. Our point of departure has been that absent a special relationship of custody or control, there is no duty to protect a third person from the conduct of another." (Internal quotation marks omitted.) *Fraser* v. *United States*, 236 Conn. 625, 632, 674 A.2d 811 (1996). "Thus, initially, if it is not foreseeable to a reasonable person in the defendant's position that harm of the type alleged would result from the defendant's actions to a particular plaintiff, the question of the existence of a duty to use due care is foreclosed, and no cause of action can be maintained by the plaintiff." (Internal quotation marks omitted.) Id., 633. However, "[as] long as harm of the general nature as that which occurred is foreseeable there is a basis for liability even though

that term was defined "within the meaning of the insuring agreement" of the pertinent insurance policies. (Internal quotation marks omitted.) Because we conclude that the defendant did not owe a duty to the plaintiffs, the issue of harm is not before us. Accordingly, we decline to address this argument.

the manner in which the accident happens is unusual, bizarre or unforeseeable." (Internal quotation marks omitted.) *Ruiz* v. *Victory Properties, LLC*, 315 Conn. 320, 335, 107 A.3d 381 (2015).

In support of their assertion that the defendant owed a duty to them, the plaintiffs argue that the circumstances of this case "align directly with Supreme Court precedent" because the defendant " 'gratuitously undertook' " to supervise Lamb's activity on the Internet, thereby assuming " 'a duty to do so safely.' "[25] In support of this proposition, the plaintiffs cite to our Supreme Court's decision in *Grenier* v. *Commissioner of Transportation*, supra, 306 Conn. 546–47, as well as this court's decision in *Coville* v. *Liberty Mutual Ins. Co.*, 57 Conn. App. 275, 282, 748 A.2d 875 (2000), cert. granted, 253 Conn. 919, 755 A.2d 213 (2000) (appeal withdrawn March 30, 2001).

In *Grenier*, our Supreme Court concluded that a national organization owed a duty of care to a student member because the organization undertook to provide transportation from a mandatory event, despite being under no obligation to provide such transportation. See

[25] The plaintiffs also baldly assert, as further support for their claim that the defendant owed a duty to them, that "the defendant also misled the state police into believing that the defendant was diligently monitoring her children in the manner that she had promised." We do not construe that sentence in their principal appellate brief as a distinct claim regarding law enforcement's reliance on the defendant's representations but, rather, merely as further support for their duty of care claim. Moreover, the plaintiffs have neither cited to legal authority for nor provided any analysis of such a claim. Accordingly, we decline to consider that claim independent of the duty of care claim raised by the plaintiffs. See, e.g., *Connecticut Coalition Against Millstone* v. *Connecticut Siting Council*, 286 Conn. 57, 87, 942 A.2d 345 (2008) (when "an issue is merely mentioned, but not briefed beyond a bare assertion of the claim, it is deemed to have been waived" (internal quotation marks omitted)); *State* v. *Nathaniel T.*, 230 Conn. App. 45, 52–53, 329 A.3d 285 (2024) (declining to review claim as inadequately briefed when defendant did not provide any analysis or citation to authority in support of claim).

Grenier v. *Commissioner of Transportation*, supra, 306 Conn. 546–47. *Grenier*, then, stands for the proposition that, under the specific facts of that case, the party who undertook to provide transportation from an event under its control assumed a duty to *those to whom it offered transportation*. Because there was no third-party duty at issue in *Grenier*, we conclude that it is inapposite.

Coville is similarly inapt to the present case. In *Coville*, the defendant driver forced his girlfriend—incapacitated due to alcohol consumption—to ride in his car with him, refusing to let her out of the vehicle despite her repeated attempts to escape. *Coville* v. *Liberty Mutual Ins. Co.*, supra, 57 Conn. App. 276–77. She subsequently fell out of the vehicle while still under the defendant driver's custody or control, becoming injured in the process. Id. We determined that, under those factual circumstances, it was appropriate for the trial court to instruct the jury that, should it find that the plaintiff girlfriend was "helpless in that she was intoxicated to the point of being semiconscious and was unable to take care of herself," this could be a basis, under provisions of the Restatement (Second) of Torts and consistent with Connecticut law, to conclude that the defendant driver had a specific "duty to secure [her] safety." Id., 283. *Coville* thus stands for the proposition that a party can voluntarily assume a duty of care *to a person who is under the custody or control of that party* as a result of those voluntary actions. There is no such scenario present here, where the plaintiffs allege that a duty of care was owed to them as a result of the defendant's voluntary actions with respect to Lamb, because the plaintiffs were not under the defendant's custody or control.

The plaintiffs also rely on *Zatkin* v. *Katz*, 126 Conn. 445, 450, 11 A.2d 843 (1940), a case that predates the Restatement (Second). More specifically, the plaintiffs

argue that *Coville*, by citing to *Zatkin*, stands for the proposition that "[o]ne who gratuitously undertakes a service that he has no duty to perform must act with reasonable care in completing the task assumed." *Coville* v. *Liberty Mutual Ins. Co.*, supra, 57 Conn. App. 282. The plaintiffs cite this language in support of their argument that the defendant voluntarily assumed a duty to supervise Lamb's use of the Internet. *Zatkin*, like *Coville*, addressed a challenge to jury instructions concerning claims of negligence against a wrecking company that loaded a truck whose contents spilled onto a public road, causing injury. *Zatkin* v. *Katz*, supra, 447–48. In *Zatkin*, our Supreme Court concluded: "The jury should have been instructed that if the [wrecking company defendant], through its servants, loaded the truck in such manner knowing it was to be operated upon the highway, it was liable for any injuries of which its manner of loading was the proximate cause. It would not affect the liability of the [wrecking company defendant] whether this service was performed gratuitously or resulted from contract. If, through its servants, it caused the truck to be so loaded as to constitute a nuisance upon the highway, knowing that it was to be so operated, it could not escape liability for injuries to users of the highway caused thereby." Id., 449–50. Although *Zatkin* establishes a duty to third parties as a result of the affirmative actions undertaken by a defendant company that created foreseeable risks of harm, it, too, is inapposite to the present case. Here, the defendant did not engage in any affirmative actions that created a reasonably foreseeable risk of harm to the plaintiffs by emailing the state police, particularly since she was unaware of the extent of Lamb's hacking activities at that time. See footnotes 18 and 19 of this opinion.

Most pertinent to our analysis is the decision of our Supreme Court in *Demond* v. *Project Service, LLC*, 331

Conn. 816, 208 A.3d 626 (2019), wherein the court considered the issue of third-party liability in relation to the Restatement (Second) of Torts and § 324 A, specifically. In *Demond*, the defendant company had contracted with the Department of Transportation to maintain a service plaza. Id., 820. When an individual, living out of his vehicle at the service plaza, consumed a large amount of alcohol and then caused a multivehicle crash on Interstate 395, the victims brought suit against the defendant company and other entities that had contracted to maintain and operate the service plaza. Id., 820, 824 and n.5. In that contract, the defendant company had agreed not to allow the consumption of alcohol or loitering at the service plaza. Id. The victims alleged, inter alia, that the defendant company had "breached a duty owed to passing motorists, arising under § 324A of the Restatement (Second), to protect them from the increased risk of harm created by the defendants' failure to perform their contractual obligations." Id., 820–21. The defendant company argued that "[its] contractual undertaking to prohibit loitering and alcohol consumption at the service plaza did not create a duty to third-party motorists injured off the service plaza premises by a drunk driver who became intoxicated at the service plaza . . . ." Id., 822.

In determining whether the defendant company owed such a duty, our Supreme Court first noted the "established principl[e] of Connecticut negligence law" that "a person typically has no duty of care to protect third persons from harm caused by a primary tortfeasor, or to control the conduct of that tortfeasor, unless there is a special relationship between the defendant and either the third person or the tortfeasor, or other exceptional circumstances exist."[26] Id., 835–36. Reflecting on

[26] As the court in *Demond* noted, there are situations in which our courts have recognized a special relationship that can give rise to a duty to third parties. See *Demond* v. *Project Service, LLC*, supra, 331 Conn. 836; see also, e.g., *Doe* v. *Boy Scouts of America Corp.*, 323 Conn. 303, 323–25, 147 A.3d 104 (2016) (affirmative duty of care to protect minor participants from sexual

the nature of legal duty, generally, the court remarked that, "[d]ue to the increasingly interdependent nature of our social lives today, in which many institutional and other caretaking or custodial roles exist as a matter of course, relationships giving rise to such a duty of care are not uncommon, but it still is important to keep in mind that a duty of care does not exist in the air, and caution must be exercised to ensure that a special relationship or other factors give rise to such a duty before negligence liability can be imposed for harm caused to a third person." Id., 836–37.

In concluding that the defendant had no duty to third-party motorists, the court nevertheless rejected the defense theory that the duty arising out of § 324 A of the Restatement (Second) was strictly circumscribed by the terms of the underlying contract. Id., 842–43. The court, however, also rejected the "pure foreseeability" model advanced by the plaintiffs in *Demond*. Id., 844–45. It observed that the "foreseeability reference in § 324A is not free-floating but instead is anchored to the reasonable expectations of the undertaking party . . . . [T]he undertaking party not only will assume duties to third parties expressly set forth in the contract itself, as well as pass-through duties owed by the hiring party that are assigned or transferred to the undertaking party, but also will assume a duty of care to protect third parties *from foreseeable, physical harm within the scope of the services to be performed*." (Citation omitted; emphasis altered.) Id., 845–46.

Having circumscribed the pure foreseeability analysis with the requirement that foreseeable harm must be contemplated by the scope of services rendered, the court undertook a public policy analysis of the plaintiff's

abuse by patrol leader); *Murdock* v. *Croughwell*, 268 Conn. 559, 566, 848 A.2d 363 (2004) (special relationship of custody or control may give rise to duty to protect third person from conduct of another).

claim. In so doing, it emphasized that "the duty analysis under § 324A of the Restatement (Second) remains subject to policy based limitations." Id., 848. The court then reasoned: "Because Connecticut common law clearly establishes a rule of nonliability in this context, the plaintiffs were required to demonstrate that the parties to the undertaking had an actual intention to protect motorists when they included the no alcohol/no loitering provisions in the [contract]. On this record, no reasonable fact finder could conclude that the parties to the [contract] had such a specific intent." Id., 853.

Because its analysis of § 324 A of the Restatement (Second) focused on duty to third parties based on contract, rather than duty to third parties arising from a gratuitous promise, *Demond* affords limited guidance as applied to this case. While *Demond* recognized that § 324 A expressly contemplates gratuitous undertakings, it did not consider the applicability of the Restatement (Second) in the context of a general assurance made to law enforcement, as opposed to a specific promise that is commercial in nature. Because the plaintiffs have provided us with no authority, nor have we found any, in which a court has applied § 324 A to such general assurances to law enforcement, we are not persuaded that the analysis in *Demond* should control.[27]

[27] See, e.g., *Gazo* v. *Stamford*, 255 Conn. 245, 250–51, 765 A.2d 505 (2001) (defendant company that contracted to remove snow had duty of care to pedestrian plaintiff injured due to negligent performance); *Sweeney* v. *Friends of Hammonasset*, 140 Conn. App. 40, 49, 58 A.3d 293 (2013) ("[§] 324 A does not apply because . . . the plaintiff in the present action does not allege that the defendants owed him a duty based upon their arrangement with a third party to render certain services" (internal quotation marks omitted)); *Carrico* v. *Mill Rock Leasing, LLC*, 199 Conn. App. 252, 264–65, 235 A.3d 626 (2020) (holding that § 324 A imposed duty of care on defendant who rendered snow removal services to third party pursuant to agreement in commercial context); *Clay Electric Cooperative, Inc.* v. *Johnson*, 873 So. 2d 1182, 1186 (Fla. 2003) (under § 324 A, commercial electricity provider assumed duty of care with respect to plaintiffs killed as result of company's negligent performance of contract to maintain streetlights).

At the same time, we reiterate that *Demond* underscored two principles that remain relevant to our analysis, irrespective of whether § 324 A of the Restatement (Second) applies; that is, foreseeability of harm and whether public policy countenances the expansion of liability to third parties under the circumstances of this case.[28] We reiterate that, "if it is not foreseeable to a reasonable person in the defendant's position *that harm of the type alleged* would result from the defendant's actions to a particular plaintiff, the question of the existence of a duty to use due care is foreclosed, and no cause of action can be maintained by the plaintiff." (Internal quotation marks omitted.) *Fraser* v. *United States*, supra, 236 Conn. 633. Here, the defendant issued a gratuitous, unsolicited series of statements, via email, that represented to law enforcement both what she had already done as well as what she was intending to do in order to prevent future hacking attempts from occurring through her Internet service provider. We cannot conclude that a reasonable person in the defendant's position could foresee that such activity, albeit inappropriate, would result in the kind of harm alleged here. Although the defendant admittedly provided Lamb with a Mac computer and Internet service at the family home beginning in 2012, there is no genuine issue of material fact that she did not learn of the defendant's hacking activities until sometime in 2015 or 2016; see footnote 18 of this opinion; and did not learn that he had stolen photographs of nude females from the hacked accounts or posted them online until after that conduct

[28] We note that § 324 A of the Restatement (Second) contains two caveats, the first of which provides that the American Law Institute "expresses no opinion as to whether . . . (1) the making of a contract or a gratuitous promise, without in any way entering upon performance, is a sufficient undertaking to result in liability under the rule stated in this [s]ection . . . ." 2 Restatement (Second), supra, § 324 A, caveat (1), p. 142. At times, the plaintiffs seem to allege that the defendant made promises that she did not keep.

had ceased. In our view, the mere act of providing a computer or Internet service to an adult child does not make such criminal conduct reasonably foreseeable.

As the trial court stated at oral argument on the defendant's first motion for summary judgment, "[i]f [a party such as the defendant] knows what [her son is] going to do, and . . . he says, I'm gonna go run somebody over, and she says, here, take the keys to my car. That's easy, right? The law can reach out and touch her for that. But in this instance, she knows that somebody's doing something potentially harmful to someone else. . . . [T]here's a level of complicity that is lacking here."

Noting the contrast to the situation presented by this case, the court wrote that "it is not at all foreseeable that allowing a person to use one's Internet services will lead to that individual hacking into another's social media accounts in order to obtain intimate pictures to post on the Internet. The causal connection between those two activities is simply too attenuated for this court to determine that the defendant had a duty to protect [Jane Doe 2] from potential harm." Given the pertinent legal principles, applied to the factual scenario presented by this case, we agree with the court's determination that Lamb's actions were not reasonably foreseeable by the defendant.

B

We next consider whether public policy considerations compel the conclusion that the defendant's actions in this case give rise to a duty of care to the plaintiffs. "With respect to the second inquiry, namely, the policy analysis, there generally is no duty that obligates one party to aid or to protect another party. . . . One exception to this general rule arises when a definite relationship between the parties is of such a character that public policy justifies the imposition of a duty to aid or to protect another." (Citation omitted.) *Ryan*

Transportation, Inc. v. *M & G Associates*, 266 Conn. 520, 526, 832 A.2d 1180 (2003). "In delineating more precisely the parameters of this limited exception to the general rule, [our Supreme Court] has concluded that, [in the absence of] a *special relationship of custody or control*, there is no duty to protect a third person . . . ." (Emphasis in original; internal quotation marks omitted.) *Grenier* v. *Commissioner of Transportation*, supra, 306 Conn. 539–40.

"[I]n considering whether public policy suggests the imposition of a duty, we . . . consider the following four factors: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions." (Internal quotation marks omitted.) *Ruiz* v. *Victory Properties, LLC*, supra, 315 Conn. 337.

In *Ryan Transportation, Inc.*, our Supreme Court rejected a theory that cotenants have a special relationship that gives rise to a duty to protect against injuries to a fellow tenant, noting that, "under certain circumstances, landlords may have a duty to take affirmative action to protect tenants and their guests from the criminal conduct of third parties" but that this duty does not extend to cotenants. *Ryan Transportation, Inc.* v. *M & G Associates*, supra, 266 Conn. 527; id. (duty of landlord is "limited to areas of the leasehold over which the landlord has exclusive control or to situations in which the landlord has the exclusive ability to prevent the unlawful conduct"). The scenario presented in *Ryan Transportation, Inc.*, involved two commercial tenants of a property, one of which had knowledge of an arson attempt on the property the day before an unknown arsonist successfully destroyed the entire building. Id.,

523. The court upheld the granting of summary judgment in that case, noting that there was nothing in the record to suggest that the party granted summary judgment exercised any control or superior ability to protect the other tenant of the property. See id., 528; see also *Gomes* v. *Commercial Union Ins. Co.*, 258 Conn. 603, 616, 783 A.2d 462 (2001) (concluding that no duty existed where there was "no overriding public policy or statute that compels [the] court to extend liability based on the facts of the present case").

The plaintiffs argue that "[c]onsiderations of public policy weigh strongly in favor of recognizing the defendant's duty in these circumstances" because there is a general interest in reporting and preventing criminal activity. Pointing to statutes that criminalize misuse of computers, as well as prohibitions against "cyberbullying," the plaintiffs urge us to expand our common-law framework, adapting it to the modern computer age. The plaintiffs further argue that the four factors we must deploy in analyzing the facts of this case—(1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of courts in other jurisdictions—all weigh in favor of recognizing a duty on the part of the defendant in this case. The defendant counters that imposing a duty of care on her would violate public policy by "exposing individuals responsible for maintaining an Internet connection to liability for the intentional criminal conduct of one who uses an electronic device to access that Internet connection."

First, the normal expectations of the parties, under the facts of this case, weigh against establishing a duty of care. There are strong presumptions against imposing liability on a parent for an adult child's acts.[29] "At

[29] We emphasize that the specific claim raised in this appeal is not confined to the familial context. Because the facts of this case arose in the context

common law, the torts of children do not impose vicarious liability upon parents qua parents, although parental liability may be created by statute; see General Statutes § 52-572; or by independently negligent behavior on the part of parents." (Footnote omitted.) *Kaminski* v. *Fairfield*, 216 Conn. 29, 34, 578 A.2d 1048 (1990); *Adams* v. *Aircraft Spruce & Specialty Co.*, 215 Conn. App. 428, 442 n.9, 283 A.3d 42 ("[a]lthough parents are deemed to have a special relationship with their *minor* children from which a duty of care to them and others may arise . . . with limited exceptions . . . no such duty exists between parents and their emancipated adult children" (citation omitted; emphasis in original)), cert. denied, 345 Conn. 970, 286 A.3d 448 (2022). Few adults would likely expect to be held liable for such activity on the part of their adult child. Relatedly, there is a strong public policy interest in maintaining widespread access to the Internet. Requiring that a person who provides Internet service to other adults be held responsible for the criminal misuse of that service does not, it seems to us, fall within the normal expectations of individuals in Connecticut.

Second, any benefit that might accrue from recognizing a public policy of encouraging parents to monitor their adult children's Internet usage under such circumstances cannot be counterbalanced by the practical difficulties inherent in taking on such a task. For example, where a user of the Internet has more knowledge than the owner of the electronic devices or Internet service, hiding criminal activity is likely to be fairly simple, and detection unlikely.

Third, were we to conclude that there is a duty of care owed to the plaintiffs on the facts of this case, there can be little doubt that recognizing a duty under

of a parental relationship, we simply note certain well established precepts regarding liability in that context.

these circumstances would *increase* litigation. The plaintiffs argue that they are seeking the "application of established legal principles" rather than novel causes of action. According to this logic, this case would not "open the door to an entirely new category of claims . . . ." (Internal quotation marks omitted.) We disagree with this assumption. As demonstrated by the foregoing discussion, the plaintiffs ask us to adapt common-law principles to a modern scenario—going beyond the current state of the law toward something new. The risk of creating additional litigation is very high in such an endeavor. As the defendant points out, and as we have already stated, the plaintiffs' argument leads to the possibility that anyone who purchases and controls an Internet connection could theoretically become liable for damages to a third party that are caused by the criminal activity of another person who uses that Internet access.[30]

Last, the decisions of courts in other jurisdictions also inform our analysis. The plaintiffs argue that New

[30] The plaintiffs argue that the present matter is "sui generis" in that the "underlying conduct occurred nearly a decade ago, well before Wi-Fi Internet grew to become accessible in public places, including supermarkets, coffee shops, restaurants, arenas, theaters, and numerous other locations that are openly accessible. . . . Back then, Lamb was dependent upon both the defendant's Internet connection, and the devices she controlled, in order to access the Internet and deploy the hacking scheme. . . . Because modern technology would allow for Internet access in numerous locations outside of one's residence, the fact pattern presented in this case would not arise today. . . . Since the circumstances dictate that this is a singular case, no increased litigation will result from recognizing a duty in this specific instance." (Citations omitted.) We disagree with that contention. Residential Internet service is commonplace in the United States. See, e.g., *Ashcroft* v. *American Civil Liberties Union*, 535 U.S. 564, 567, 122 S. Ct. 1700, 152 L. Ed. 2d 771 (2002) ("access to the Internet is widely available in homes . . . across the country"). The fact that "Internet access is [also] widely available at locations other than one's home"; *United States* v. *Miller*, 665 F.3d 114, 133 (5th Cir. 2011), cert. denied, 567 U.S. 918, 132 S. Ct. 2773, 183 L. Ed. 2d 643 (2012); does not convince us that criminal hacking activity like that at issue in this case is unlikely to occur through residential Internet service.

Jersey courts "recognized and applied a duty to monitor Internet usage" in *Doe* v. *XYC Corp.*, 382 N.J. Super. 122, 887 A.2d 1156 (App. Div. 2005). *XYC Corp.* involved an employer that had actual or imputed knowledge that an employee was viewing child pornography material on his work computer. See id., 140. The Appellate Division of the Superior Court of New Jersey concluded that the employer had a duty to act by either terminating the employee or reporting his criminal activity to law enforcement—or both. See id. The court grounded its conclusion on public policy concerns. Under New Jersey law, whether public policy imposes a duty hinges on whether the imposition of a duty "satisfies an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy." Id., 140–41. Specifically, the public policy analysis involves, "identifying, weighing, and balancing several factors—the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution." Id., 141. Noting the fact that public policy clearly favors exposing and penalizing crimes such as child pornography, the court also considered the Restatement (Second) of Torts. See id., 141–42. Because the matter involved an employer-employee relationship, the court relied in part on § 317 and determined that the employer had a duty, under that provision of the Restatement (Second) as well as under New Jersey law, to "control" its employee when that employee is "acting outside the scope of his employment" in order to "prevent the [employee] from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to [others]."[31] (Internal quotation marks omitted.) Id., 141.

[31] Section 317 of the Restatement (Second) of Torts provides: "A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if (a) the servant (i) is upon the premises in possession of the master or upon which the servant is privileged to enter

XYC Corp. is thus readily distinguishable from the present scenario. The court in that case imposed a duty on an employer that had actual or imputed knowledge of an employee's criminal conduct. The employer-employee relationship is a unique one—having roots in different areas of the common law and giving rise to different provisions of the Restatement (Second). Broadly, the plaintiffs are correct that *XYC Corp.* stands for the proposition that "a defendant can undertake an obligation to monitor the activities of another which will give rise to a duty to act to prevent harm to others." We cannot, however, agree with the plaintiffs that the defendant in this case "took on a policy" of supervising Lamb that is analogous to an employer who undertakes to supervise employees while they perform their job duties. Put simply, there is no special relationship akin to that of employer-employee that would give rise to a similar duty under the facts of this case.

The plaintiffs also look to a California appellate court decision to buttress their argument that we should recognize a duty arising out of the defendant's conduct. In another tragic case, family members of the victims of a nineteen year old shooter who lived with his parents appealed from the granting of summary judgment rendered in favor of the parents in a negligence action the family members had brought against the parents. See *Smith* v. *Freund*, 192 Cal. App. 4th 466, 121 Cal. Rptr. 3d 427 (2011), review denied, California Supreme Court, Docket No. S191439 (May 11, 2011). The California Court of Appeal held that the parents did not owe a duty to third parties because the shooter's violent acts were not foreseeable. Although the shooter had significant mental health related issues, he had no violent

only as his servant, or (ii) is using a chattel of the master, and (b) the master (i) knows or has reason to know that he has the ability to control his servant, and (ii) knows or should know of the necessity and opportunity for exercising such control." 2 Restatement (Second), supra, § 317, p. 125.

history toward third parties prior to the shooting. Id., 474–75. Noting that the family members had claimed that a special relationship between the parents and the shooter was the basis of the purported duty, the court stated that, "[w]hen deciding whether a duty of care arose from a special relationship, a court should consider pertinent factors, including foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (Internal quotation marks omitted.) Id., 473. The family members contended that the parents had undertaken a duty to monitor the shooter's medication usage, in part, to protect third parties, under § 324 A of the Restatement (Second).[32] Id., 473 n.4.

The plaintiffs argue that, unlike the parents of the shooter in *Freund*, the defendant had "learned directly from Lamb that he had engaged in multiple instances

[32] We note that the court in *Freund* concluded the public policy analysis by stating that "[a]ny connection between [the parents'] conduct and the shootings is speculative. [The parents'] conduct amounted to this: [T]hey allowed [the shooter] to live in their home, attended therapy sessions with him, monitored his medicine compliance, and reported to the doctors as requested. To impose a duty of care on [the parents] could cause greater harm in future cases by encouraging parents to disassociate from their adult children with chronic serious problems." *Smith* v. *Freund*, supra, 192 Cal. App. 4th 475. The defendant in the present case is similarly situated—having provided Internet access and food and lodging to her adult son who was clearly struggling. Although the defendant did have actual knowledge, at some point in 2015 or 2016; see footnote 18 of this opinion; that Lamb had engaged in "hacking," the trial court concluded, and we agree, that such knowledge did not make the entirety of his subsequent criminal activity foreseeable.

of illegal conduct that had been reported to the defendant by the state police." Acknowledging that foreseeability was absent in *Freund*, the plaintiffs argue that "the defendant had every reason to know that the monitoring services she had agreed to perform were directly tailored to Lamb's admitted misconduct and the harm that would result when he resumed hacking after realizing that the defendant's monitoring efforts were deficient." Important to our analysis, however, is the fact that the plaintiffs, in opposing the motions for summary judgment, submitted no evidence indicating that the extent of Lamb's activity, as well as its precise nature, was known to the defendant. See *Smith* v. *Freund*, supra, 192 Cal. App. 4th 473; see also *Regions Bank* v. *Joyce Meyer Ministries, Inc.*, 15 N.E.3d 545, 549 (Ill. App.) ("[i]n Illinois, [the voluntary undertaking exception] has been narrowly construed and duty imposed is limited by the extent of the undertaking"), appeal denied, 21 N.E.3d 718 (2014).

In light of the foregoing analysis as to the foreseeability of Lamb's conduct, in combination with the public policy interests that weigh against the imposition of a legal duty, the plaintiffs' claim that the defendant voluntarily assumed a duty of care to the plaintiffs must fail.

II

The plaintiffs next claim that the defendant owed a general duty of care, "stemming from her affirmative conduct," such that the trial court improperly granted the first and second motions for summary judgment. According to the plaintiffs, the defendant's actions were an attempt at "placating law enforcement with promises of ongoing monitoring and supervision," which she then followed through with "in a profoundly unsatisfactory

way."[33] Similar to the plaintiffs' first claim discussed in part I of this opinion, the core guiding principle in a general duty analysis has always been whether the specific harm alleged was foreseeable by the defendant. In support of their contention that the defendant owed a general duty of care, the plaintiffs rely on §§ 302, 302 B and 449 of the Restatement (Second) of Torts, as well as *Doe* v. *Saint Francis Hospital & Medical Center*, 309 Conn. 146, 72 A.3d 929 (2013). The plaintiffs argue that the defendant's affirmative actions "encouraged Lamb to resume this harmful conduct," which brought the harms suffered by the plaintiffs within the scope of the risk created by the defendant's negligent conduct.[34] The plaintiffs also contend that public policy

[33] Relatedly, the plaintiffs also argue that "[l]iability can be incurred where, as here, 'the risk created by the defendant's negligence included the hazard that the defendant's conduct would induce a third party to commit such an act.' See *Snell* v. *Norwalk Yellow Cab, Inc.*, 332 Conn. 720, [760], 212 A.3d 646 (2019)." In *Snell*, our Supreme Court determined that the superseding cause doctrine applies to criminally reckless conduct, affirming this court's determination that the trial court had correctly applied the doctrine of superseding cause. See id., 724. The facts in *Snell* were as follows: A taxicab driver left his keys in his unlocked vehicle, and two teenagers took the taxicab on a " 'joyride.' " The taxicab collided with another vehicle before striking and injuring the plaintiff, a pedestrian, after which the teenagers attempted to flee the scene. Id., 724–25. Our Supreme Court explained that "the superseding cause doctrine has been applied historically to any independent, intervening force that a defendant claims was the sole proximate cause of a plaintiff's injury." Id., 753. In *Snell*, the parties did not dispute the existence of a duty, arguing only the issue of causality. Id., 743. As our Supreme Court explained, however, "when a defendant claims that an independent intervening force superseded his own negligence, the question of legal causation is practically indistinguishable from an analysis of the extent of the tortfeasor's duty to the plaintiff." (Internal quotation marks omitted.) Id., 743 n.9. In determining whether a duty exists, "our threshold inquiry has always been whether the specific harm alleged by the plaintiff was foreseeable to the defendant . . . which is the same inquiry a jury makes in deciding whether a defendant's actions were the proximate cause of the harm." (Citation omitted; internal quotation marks omitted.) Id. This argument, then, merges with the broader argument raised by the plaintiffs with respect to the issue of foreseeability.

[34] The plaintiffs contend, more specifically, that the trial court improperly rendered summary judgment on counts ten, twenty-two, thirty-four, and

demands accountability for the defendant's actions "under the unique facts of this case."

The defendant does not address the plaintiffs' argument that §§ 302, 302 B and 449 of the Restatement (Second) are applicable to the facts of this case, nor does she argue the applicable case law with respect to these provisions. The defendant simply contends that the plaintiffs' attempt to "extend a duty to a third party based on the intentional criminal acts of another" has "no basis in law or public policy . . . ." We agree with the defendant.

As an initial matter, we note that the plaintiffs acknowledge that their argument, like their previous claim addressed in part I of this opinion, "is not susceptible to a universal test," and the "primary consideration" is whether the specific harm alleged was foreseeable by the defendant with the "second" question being whether public policy should impose responsibility on the defendant for her allegedly negligent conduct. This claim, then, follows the same analytical framework as the first claim. Accordingly, we incorporate much of our analysis with respect to both the foreseeability of Lamb's actions as well as the public policy interests at play in our evaluation of the propriety of expanding the law to create a novel duty.

A

We first consider the question of whether Lamb's criminal actions were reasonably foreseeable by the defendant. The following legal principles are relevant to the plaintiffs' claim. A general duty analysis begins

forty-six of their operative complaint. These claims pertain to the defendant's supervision of Lamb, alleging that the defendant knew or should have known that Lamb was engaged in hacking activities with respect to each of the plaintiffs, and that she knew or should have known that Lamb was not competent enough to be left unsupervised with access to the Internet.

with asking whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature as that suffered by the plaintiff was likely to result. See, e.g., *Ruiz* v. *Victory Properties, LLC*, supra, 315 Conn. 328–29. "The idea of risk in this context necessarily involves a recognizable danger, based upon some knowledge of the existing facts, and some reasonable belief that harm may possibly follow. . . . Accordingly, the fact finder must consider whether the defendant knew, or should have known, that the situation at hand would obviously and naturally, even though not necessarily, expose [the plaintiff] to probable injury unless preventive measures were taken." (Citations omitted; internal quotation marks omitted.) *LePage* v. *Horne*, 262 Conn. 116, 124, 809 A.2d 505 (2002).

Titled "risk of direct or indirect harm," § 302 of the Restatement (Second) provides that "[a] negligent act or omission may be one which involves an unreasonable risk of harm to another through either (a) the continuous operation of a force started or continued by the act or omission, or (b) the foreseeable action of the other, a third person, an animal, or a force of nature." 2 Restatement (Second), supra, § 302, p. 82. As its commentary makes clear, this section is "concerned only with the negligent character of the actor's conduct, and not with his duty to avoid the unreasonable risk." Id., comment (a). Most importantly, "[i]f the actor is under no duty to the other to act, his failure to do so may be negligent conduct within the rule stated in this [s]ection, but it does not subject him to liability, because of the absence of duty." Id.

Section 302 B provides that "[a]n act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct

is criminal." 2 Restatement (Second), supra, § 302 B, p. 88. As comment (d) to § 302 B explains, "[n]ormally the actor has much less reason to anticipate intentional misconduct than he has to anticipate negligence. In the ordinary case he may reasonably proceed upon the assumption that others will not interfere in a manner intended to cause harm to anyone. This is true particularly where the intentional conduct is a crime, since under ordinary circumstances it may reasonably be assumed that no one will violate the criminal law. Even where there is a recognizable possibility of the intentional interference, the possibility may be so slight, or there may be so slight a risk of foreseeable harm to another as a result of the interference, that a reasonable man in the position of the actor would disregard it."[35] Id., comment (d), p. 89.

The plaintiffs also rely on § 449, which provides, "[i]f the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby." 2 Restatement (Second), supra, § 449, p. 482. As comment (a) to § 449 makes clear, "[t]his [s]ection should be read together with § 302 B, and the [c]omments to that [s]ection, which deal with the foreseeable likelihood of the intentional or even criminal misconduct of a third person as a hazard which makes the actor's conduct negligent. As is there stated, the mere possibility or

[35] As our Supreme Court has stated, "[b]ecause §§ 302 B and 449 of the Restatement (Second) are closely related, the comments to § 449 expressly direct that that section is to be read in conjunction with § 302 B. See 2 Restatement (Second), supra, § 449, comment (a), p. 482 ('[t]his [s]ection should be read together with § 302 B, and the [c]omments to that [s]ection, which deal with the foreseeable likelihood of the intentional or even criminal misconduct of a third person as a hazard which makes the actor's conduct negligent')." *Doe* v. *Saint Francis Hospital & Medical Center*, supra, 309 Conn. 175 n.21.

even likelihood that there may be such misconduct is not in all cases sufficient to characterize the actor's conduct as negligence. *It is only where the actor is under a duty to the other, because of some relation between them, to protect him against such misconduct, or where the actor has undertaken the obligation of doing so, or his conduct has created or increased the risk of harm through the misconduct, that he becomes negligent.*" (Emphasis added.) Id., comment (a), pp. 482–83.[36]

As our Supreme Court has observed, "[a]n exception to the general rule that one has no legal obligation to protect another may arise when the defendant's own conduct creates or increases the foreseeable risk that such other person will be harmed by the conduct of a third party, including the foreseeable criminal conduct of that third party. . . . [T]his exception . . . is set forth in §§ 302 B and 449 of the Restatement (Second) [of Torts] . . . ." (Footnote omitted.) *Doe* v. *Saint Francis Hospital & Medical Center*, supra, 309 Conn. 175–76. The issue in that case was the duty that a hospital undertakes with regard to children who are under its care. Our Supreme Court explained that, as a general

[36] As the commentary to these two rules makes clear, the rules are focused on the negligent character of an actor's conduct—not the duty to avoid unreasonable risk. Comment (a) to § 302 provides, additionally, that, "[i]n general, anyone who does an affirmative act is under a duty to others to exercise the care of a reasonable man to protect them against an unreasonable risk of harm to them arising out of the act. The duties of one who merely omits to act are more restricted, and in general are confined to situations where there is a special relation between the actor and the other which gives rise to the duty. As to the distinction between act and omission, or 'misfeasance' and 'non-feasance,' see § 314 and [c]omments. If the actor is under no duty to the other to act, his failure to do so may be negligent conduct within the rule stated in this [s]ection, but it does not subject him to liability, because of the absence of duty." 2 Restatement (Second), supra, § 302, comment (a), p. 82. The commentary to § 302 B similarly notes that "[t]his section is a special application of the rule stated in [c]lause (b) of § 302. Comment [(a)] to that [s]ection is equally applicable here." 2 Restatement (Second), supra, § 302 B, comment (a), p. 89.

matter, Connecticut law does not require a defendant to "anticipat[e] the intentional misconduct of a third party . . . unless the defendant knows or has reason to know of the third party's criminal propensity. The criminal misconduct of a third party may be foreseeable under the facts of a particular case, however, without a showing that the defendant had such actual or constructive knowledge of the third party's criminal propensity. . . . [W]hen a defendant's conduct creates or increases the risk of a particular harm and is a substantial factor in causing that harm, or when the defendant otherwise has a legally cognizable duty to aid or protect another person, the fact that the harm is brought about by the actions of a third party does not relieve the defendant of liability, *even though the third party's conduct is criminal*, if the harm that occurred is within the scope of the risk created by the defendant's conduct or reasonably could have been anticipated in light of the defendant's duty to protect. Thus, when the harm resulting from the criminal misconduct of a third party is foreseeable in view of the facts and circumstances presented, there is no reason why the injured party should nevertheless be required to establish that the defendant had actual or constructive knowledge of the third party's criminal propensity." (Citation omitted; emphasis in original.) Id., 172–73. In other words, "proof of actual or constructive knowledge of propensity is but one way to establish that the criminal misconduct of the third party was foreseeable." Id., 173; see also *Doe* v. *Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 379, 119 A.3d 462 (2015) (upholding jury verdict finding that religious organization negligently supervised priest who had known propensity to engage in molestation of children).[37]

[37] Our Supreme Court has addressed whether a psychotherapist has a duty to exercise control to prevent an outpatient—who was known to be dangerous—from "inflicting bodily harm on a victim who was neither readily identifiable nor within a foreseeable class of victims." *Fraser* v. *United States*, supra, 236 Conn. 630. In concluding that the psychotherapist did not

The plaintiffs argue that there is at least a genuine issue of material fact with respect to whether the defendant had actual or constructive knowledge of the particular conduct at issue here, specifically the full scope of Lamb's criminal activity against these particular plaintiffs. They contend that the defendant's own affirmative conduct created or increased the risk of the particular harms that they suffered, and that the defendant's conduct was a substantial factor in causing that harm. The plaintiffs argue that the defendant's "affirmative acts" in the aftermath of the state police visit to her home—namely, her assurance to the police that she would supervise Lamb's use of electronic devices and Internet services—gave rise to a duty of care that she owed to the plaintiffs and other similarly situated victims.[38]

In support of these contentions, the plaintiffs point to comment (f) to § 302 B of the Restatement (Second) of Torts. Comment (f) provides: "It is not possible to state definite rules as to when the actor is required to

have a duty to exercise control over the outpatient, the court offered four reasons for this conclusion: (1) precedent did not establish a duty to unidentifiable victims; (2) related areas of the common law did not impose a duty to unidentifiable victims; (3) policy reasons specific to the relationship between a therapist and a patient cautioned against imposing such a duty of control; (4) the decisions of courts in other jurisdictions have declined to extend such a duty to unidentifiable third parties. See id., 632. Much of the reasoning of *Fraser* applies to the present case as well, because the plaintiffs were not identifiable to the defendant.

[38] The plaintiffs argue that the trial court's determination that the defendant and Lamb did not have a special relationship that would support the imposition of a duty "misses the reality that the defendant owed a duty of care resulting from her own 'affirmative conduct' in hiding Lamb's illegal hacking under the guise of her ongoing monitoring and supervision." Citing to the various provisions of the Restatement discussed previously in part II of this opinion, the plaintiffs then argue that the defendant "may be liable for the intentional conduct of a third person when such acts are 'within the scope of the risk created by the [defendant's] conduct.' " The plaintiffs further reference *Doe* v. *Saint Francis Hospital & Medical Center*, supra, 309 Conn. 146, in support of this proposition.

take precautions against intentional or criminal misconduct. As in other cases of negligence . . . it is a matter of balancing the magnitude of the risk against the utility of the actor's conduct. Factors to be considered are the known character, past conduct, and tendencies of the person whose intentional conduct causes the harm, the temptation or opportunity which the situation may afford him for such misconduct, the gravity of the harm which may result, and the possibility that some other person will assume the responsibility for preventing the conduct or the harm, together with the burden of the precautions which the actor would be required to take. Where the risk is relatively slight in comparison with the utility of the actor's conduct, he may be under no obligation to protect the other against it." (Citation omitted.) 2 Restatement (Second), supra, § 302 B, comment (f), p. 93.

We acknowledge that the harm perpetrated on the plaintiffs in this case was extreme—but the gravity of the harm is not the only factor that we are required to consider. With respect to whether the defendant was aware of Lamb's " 'past conduct,' " the plaintiffs argue that, because Lamb had admitted to the defendant that he had engaged in hacking activities following the police visit in 2015, she therefore "easily was aware" that Lamb would have the " 'temptation [and] opportunity' " to engage in the same behavior. Although it is true that Lamb admitted engaging in such conduct to the defendant, there also is no evidence in the materials submitted in connection with the motions for summary judgment that the defendant was aware that Lamb had stolen photographs of nude females from the hacked accounts or posted them online until after that conduct had ceased.[39] As Lamb stated in his January 3, 2019

[39] Lamb stated that he did not tell the defendant that he needed help "because she didn't quite get what I was doing. I think that she thought, you know, I kind of tried to get into someone's account for whatever reason . . . . [I]t's like, you know, don't do it again. . . . [The defendant was] clearly mad, disappointed at me and stuff . . . ."

statement to the police: "I didn't . . . go into detail of what I was doing. I don't think [the defendant] . . . she didn't quite get what I was doing. I think that she thought, you know, I kind of tried to get into someone's account for whatever reason or whatever, and then [she said] don't do it again. . . . [She was] clearly mad, disappointed at me . . . but I don't think—because I didn't really explain it very well." Lamb also told the police that, in retrospect, he "could have said more, gone into detail a little bit more of what [he] was doing so [the defendant] had a better understanding that . . . this wasn't, like, a small thing . . . ." Under those particular facts, which the plaintiffs have provided no evidentiary basis to dispute, we reject the plaintiffs' contention that the defendant possessed knowledge that Lamb would be tempted or provided an opportunity for further misconduct of the kind that ultimately was discovered.

The plaintiffs also argue that the defendant "knew that no other party would assume the responsibility for preventing the misconduct." We cannot agree that the defendant knew that no one else would assume the responsibility for preventing Lamb's misconduct when her home had been visited by the state police—who were investigating the misconduct. Under these circumstances, and in the absence of any evidence that the defendant knew that Lamb had a known history of criminal computer use, we are not convinced that the defendant owed a duty to the plaintiffs under comment (f) to § 302 B of the Restatement (Second) of Torts.

We also are not persuaded that the defendant, in voluntarily undertaking to monitor Lamb's computer related activities, increased the likelihood of harm to the plaintiffs. As the Supreme Court of Alabama stated when interpreting the scope of § 324 A of the Restatement (Second), the "test is not whether the risk was increased over what it would have been if the defendant had not

been negligent. Rather, a duty is imposed only if the risk is increased over what it would have been had the defendant not engaged in the undertaking at all. . . . Liability can be imposed on one who voluntarily undertook the duty to act only where the actor affirmatively either made, or caused to be made, a change in the conditions which change created or increased the risk of harm to the plaintiff. . . . See also *Patentas* v. *United States*, 687 F.2d 707, 717 (3d Cir. 1982) (. . . comment [c] to section 324A makes clear that increased risk means some physical change to the environment or some other material alteration of circumstances . . .)." (Citations omitted; internal quotation marks omitted.) *Yanmar America Corp.* v. *Nichols*, 166 So. 3d 70, 84–85 (Ala. 2014). In *Yanmar America Corp.*, the Alabama Supreme Court held that a company that had issued nonspecific safety warnings had not increased the risk to the operators of a defective tractor because the warnings by the company, even if deficient, never actually reached the operators. Id., 85–86; see also *Thompson* v. *Bohlken*, 312 N.W.2d 501, 508 (Iowa 1981) (gratuitously inspecting premises and failing to note hazardous conditions did not impose liability under § 324 A because such conduct did not increase risk to injured parties).

Here, the plaintiffs were not in a worse position by virtue of the mere fact that the defendant sent various emails to Pritchard. Although Pritchard informed the defendant in 2015 that hacking attempts had originated from her home Internet service and Lamb subsequently admitted to her that he had engaged in hacking activities, it also is undisputed that the defendant did not learn of Lamb's criminal activity in stealing photographs of nude females and posting them online until the police executed a search warrant in September, 2017. See footnote 19 of this opinion. Moreover, following the defendant's email correspondence with Pritchard, Lamb ceased his activities for "a few months . . . ." When

he later resumed his hacking activities, Lamb went right back to doing what he had been doing—but he did not *increase* the harm caused to the plaintiffs because of any actions on the part of the defendant. As a result, we do not agree that the defendant's conduct, by itself, increased the risk of the harm endured by the plaintiffs in this case.

Our Supreme Court wrestled with the issue of foreseeability in *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 717 A.2d 215 (1998). The court was confronted with a case involving a negligently caused fire alarm. Id., 567–68. Responding to that alarm, two firefighters were killed and others suffered injuries when the braking mechanism failed on the fire truck in which they were traveling. Id., 567. The parties argued for differing interpretations of what the scope of foreseeability means in negligence actions. Id., 573–74. Writing for the majority, Chief Justice Callahan stated that "[w]e agree with the defendants that the analysis of foreseeability logically cannot be extended so far that the term 'general harm' incorporates any accident involving a fire engine responding to a false alarm with no consideration given to the direct cause of the accident. It is impractical, if not impossible, to separate the question of duty from an analysis of the cause of the harm when the duty is asserted against one who is not the direct cause of the harm." Id., 574. The court also cited approvingly to a popular treatise, noting that " '[t]he question whether there is a duty has most often seemed helpful in cases where the only issue is in reality whether the defendant stands in any such relation to the plaintiff as to create any legally recognized obligation of conduct for the plaintiff's benefit. Or, reverting again to the starting point, whether the interests of the plaintiff are entitled to legal protection at the defendant's hands against the invasion which has in fact occurred. Or, again reverting, whether the conduct is the 'proximate cause' of the

result. The circumlocution is unavoidable, since all of these questions are, in reality, one and the same.' " Id., 574–75 n.9, citing W. Keeton et al., Prosser and Keeton on the Law of Torts (5th Ed. 1984) § 42, p. 274.

Although the plaintiffs do not rely on § 442 B of the Restatement (Second) of Torts in support of their claim that the defendant owed a general duty of care as a result of her affirmative conduct, that provision is instructive on the issue of intentional conduct by a third party.[40] In *Snell* v. *Norwalk Yellow Cab*, *Inc.*, 332 Conn. 720, 759 n.18, 212 A.3d 646 (2019), our Supreme Court summarized the factual scenario present in *Ruiz* v. *Victory Properties*, *LLC*, supra, 315 Conn. 320, as an "apt example" of the principle set forth in § 442 B: "In *Ruiz*, a small child was injured when an older child unintentionally dropped a piece of concrete on her head from the third floor landing of the apartment building where the children resided. . . . The older child had obtained the concrete from the backyard of that apartment building, where he and the victim had been playing. . . . The trial court granted the defendant landlord's motion for summary judgment, concluding that the defendant owed the victim no duty of care because no reasonable juror could find that her injuries were a foreseeable consequence of the defendant's [failure to maintain the property in a clean and safe condition by leaving loose pieces of concrete in the backyard] and because imposing liability on the defendant would be contrary to overriding public policy considerations. . . . The Appellate

[40] There is a strong relationship between various provisions of the Restatement (Second). As our Supreme Court has iterated: "[A]lthough §§ 302 B, 448 and 449 of the Restatement (Second) delineate when a defendant may be liable for a third party's intentionally harmful acts, those sections merely reiterate the principle set forth in §§ 442 B and 435 (1), which is the same principle that governs every section of the Restatement (Second) of Torts relating to proximate causation: liability will attach if the defendant knew or should have known that his conduct created or increased the risk that the third party would act in such a manner." *Snell* v. *Norwalk Yellow Cab*, *Inc.*, 332 Conn. 720, 761, 212 A.3d 646 (2019).

Court reversed the judgment of the trial court, and we affirmed the Appellate Court's judgment . . . explaining that the defendant does not dispute that the risk of harm created by its failure to remove the buckets, trash, broken concrete pieces and other debris from the backyard was that children playing in the area might trip on them or throw them at other children. The types of injuries one would expect to result from this type of behavior run the gamut from cuts and bruises to broken bones, concussions and even fractured skulls. [The child's] injuries, although severe, fall squarely along this continuum of harm. That they occurred in an unusual manner, namely, by a child dropping a piece of concrete into the backyard playground from a third floor balcony instead of throwing it while in the backyard, does not alter this fundamental fact. We therefore agree with the Appellate Court that [the child's] injuries were sufficiently foreseeable that it was inappropriate for the trial court to foreclose the foreseeability question as a matter of law." (Citations omitted; internal quotation marks omitted.) *Snell* v. *Norwalk Yellow Cab, Inc.*, supra, 759 n.18.

As our Supreme Court concluded, "[a]s § 442 B of the Restatement (Second) of Torts indicates, however, if all of the facts were the same except that an adult intentionally had dropped the concrete on the child's head, the defendant's liability would turn on whether an adult committing such an act was within the scope of the risk created by the defendant's failure to remove the accumulated debris from its property. Such a case *undoubtedly* would be resolved in the defendant's favor on a motion for summary judgment because it seems clear that a jury reasonably could not find that such an act was a foreseeable risk of the defendant's negligence." (Emphasis added.) Id.

As the foregoing discussion makes clear, the fact that Lamb was an adult at the time of these criminal actions

is dispositive. The scope of the risk created by the defendant's actions simply does not encompass criminal activity of the kind that was perpetrated by Lamb. The defendant's actions, likewise, did not increase the risk of harm to the plaintiffs. The rendering of summary judgment in favor of the defendant was not improper because no jury could reasonably conclude that Lamb's criminal activity was reasonably foreseeable by the defendant. Accordingly, the plaintiffs' claim must fail. As we discussed in part I of this opinion, we nonetheless proceed with the public policy analysis because these issues are so deeply intertwined. See footnote 21 of this opinion.

B

Next, we consider whether the various public policy interests at play dictate that we conclude that the defendant owed a duty of care to the plaintiffs. Our discussion of the various public policy interests at play in part I B of this opinion is equally applicable here.[41] We will not repeat the analysis in part I B, but we will expand briefly on it.

At the outset, we note that it is the legislature "which has the 'primary responsibility for formulating public policy' . . . ." *Sic* v. *Nunan*, 307 Conn. 399, 410, 54 A.3d 553 (2012); see also *Jarmie* v. *Troncale*, 306 Conn. 578, 622, 50 A.3d 802 (2012) (declining to expand duty of care due to potential unintended consequences and

[41] As detailed in part I B of this opinion, the public policy analysis is a multifactorial one. See *Murillo* v. *Seymour Ambulance Assn., Inc.*, 264 Conn. 474, 480, 823 A.2d 1202 (2003) (determining that there are "four factors to be considered in determining the extent of a legal duty as a matter of public policy: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions"). "In every case in which a defendant's negligent conduct may be remotely related to a plaintiff's harm, the courts must draw a line, beyond which the law will not impose legal liability." *Lodge* v. *Arett Sales Corp.*, supra, 246 Conn. 578.

because it is "the legislature rather than the courts [that is] the proper forum for resolving this issue, as it has done in similar situations"). Connecticut does mandate certain forms of liability for parents of minor children, in addition to whatever other liabilities exist at law. See General Statutes § 52-572.[42] In granting the first motion for summary judgment, the trial court specifically noted that § 52-572 could not provide the basis for imposing liability on the defendant, given that Lamb was an adult during the applicable time period alleged in the complaint.[43] Moreover, as the defendant aptly notes, the legislature has enacted laws that specifically provide for the filing of civil lawsuits against those who engage in computer crimes. See General Statutes

[42] General Statutes § 52-572 provides: "(a) The parent or parents or guardian, other than a temporary guardian appointed pursuant to section 45a-622, of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause damage to any property or injury to any person, or, having taken a motor vehicle without the permission of the owner thereof, cause damage to the motor vehicle, shall be jointly and severally liable with the minor or minors for the damage or injury to an amount not exceeding five thousand dollars, if the minor or minors would have been liable for the damage or injury if they had been adults.

"(b) This section shall not be construed to relieve the minor or minors from personal liability for the damage or injury.

"(c) The liability provided for in this section shall be in addition to and not in lieu of any other liability which may exist at law.

"(d) As used in this section, 'damage' shall include depriving the owner of his property or motor vehicle or of the use, possession or enjoyment thereof."

[43] The trial court also found the plaintiffs' argument that this case is analogous to the social host line of cases to be "unpersuasive." The court contrasted the scenario presented in *Craig* v. *Driscoll*, 262 Conn. 312, 813 A.2d 1003 (2003), with that presented here, noting that furnishing alcohol to minors may be a proximate cause of the injuries sustained by a third party because "the consumption, resulting intoxication, and injury-producing conduct are foreseeable intervening causes, or at least the injury-producing conduct is one of the hazards which make such furnishing [of alcohol] negligent." (Internal quotation marks omitted.) Id., 335; cf. *Demond* v. *Project Service, LLC*, supra, 331 Conn. 837 (owner or possessor of property in this state generally cannot be held liable in negligence for harms caused by adults who consume alcohol on that property but cause injury only after leaving to drive on public roads even when playing active role in creating risk by serving alcohol).

§§ 53a-251 and 53a-254.[44] As this court has previously stated, § 53a-251 (b) "evinces a well defined public policy disallowing *knowingly* unauthorized access to computer systems . . . ." (Emphasis in original.) *Brantley* v. *New Haven*, 100 Conn. App. 853, 861, 920 A.2d 331 (2007). Those statutes, however, do not contemplate the extension of a duty to anyone who provides Internet service to an individual who conducts criminal activity by means of computers. In "analyzing the relevant factors in determining whether recognizing a duty in a particular instance is inconsistent with public policy . . . our statutes themselves are a source of public policy, and may militate in favor of recognizing a common-law duty of care when doing so advances the general policies and objectives of the statute. . . . Thus, in determining the normal expectations of the parties, our appellate courts have often looked to Connecticut's existing body of common law and statutory law relating to th[e] issue." (Internal quotation marks omitted.)

[44] General Statutes § 53a-251 sets forth various ways an individual can be charged with computer related crimes, all involving unauthorized access to computers and computer systems. Subsection (b), for example, provides: "Unauthorized access to a computer system. (1) A person is guilty of the computer crime of unauthorized access to a computer system when, knowing that he is not authorized to do so, he accesses or causes to be accessed any computer system without authorization.

"(2) It shall be an affirmative defense to a prosecution for unauthorized access to a computer system that: (A) The person reasonably believed that the owner of the computer system, or a person empowered to license access thereto, had authorized him to access; (B) the person reasonably believed that the owner of the computer system, or a person empowered to license access thereto, would have authorized him to access without payment of any consideration; or (C) the person reasonably could not have known that his access was unauthorized." General Statutes § 53a-251 (b).

General Statutes § 53a-254 provides: "(a) A person is guilty of computer crime in the third degree when he commits computer crime as defined in section 53a-251 and (1) the damage to or the value of the property or computer services exceeds one thousand dollars or (2) he recklessly engages in conduct which creates a risk of serious physical injury to another person.

"(b) Computer crime in the third degree is a class D felony."

Lamb pleaded guilty to, inter alia, twenty counts of computer crime in the third degree under § 53a-254.

Streifel v. *Bulkley*, supra, 195 Conn. App. 315. The legislature has not seen fit to enact any statutes requiring individuals to monitor or supervise another person's use of the Internet, and our common law ought not be deployed to expand liability beyond the statutorily defined contours of public policy.

The fact that the General Assembly has not expressed, by way of statute, a public policy interest supporting the imposition of third-party liability against those who provide Internet access to others weighs against creating a common-law duty of care in such circumstances. Courts must be extraordinarily careful in determining that public policy interests demand expanding a duty of care because of the widespread implications such precedent would create: "[I]t is well established that Connecticut courts will not impose a duty of care on [a defendant] if doing so would be inconsistent with public policy." (Internal quotation marks omitted.) Id., 307.

We also must consider the implications of our decision in terms of future litigation. See, e.g., *Jaworski* v. *Kiernan*, supra, 241 Conn. 409 (evaluating as public policy concern "desire to stem the possible flood of litigation that might result from adopting simple negligence as the standard of care to be utilized in athletic contests"). It is the role of the legislature, and not the judiciary, to evaluate and weigh the widespread implications of making individuals liable for the criminal Internet activity of another person. Given the ubiquity of the Internet, subjecting the defendant to liability for the criminal actions perpetrated by Lamb could, and likely would, open the proverbial floodgates of litigation. See also part I B of this opinion.

We conclude that the trial court properly determined that there was no genuine issue of material fact as to

whether the defendant owed a legal duty to the plaintiffs. The court, therefore, properly rendered summary judgment in favor of the defendant.

The judgment is affirmed.

In this opinion the other judges concurred.

MCHENRY SOLAR, LLC *v.* TOWN OF HAMPTON (AC 47636)

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

Syllabus

The plaintiff appealed from the trial court's judgment denying its motion for summary judgment in its underlying tax appeal against the defendant on its claim that it was entitled to judgment as a matter of law that certain personal property that it used to generate electricity was exempt from taxation pursuant to statute (§ 12-81 (76)). The plaintiff claimed that the court incorrectly concluded that it was not entitled to the exemption because the generation of electricity is not manufacturing within the meaning of § 12-81 (76). *Held*:

The trial court properly denied the plaintiff's motion for summary judgment, as, considering the legislative history of the statute and the construction of the statutory scheme as a whole, the generation of electricity is not manufacturing within the meaning of § 12-81 (76) and, thus, legislative intent renders businesses engaged in the generation of electricity ineligible for the manufacturing exemption from the property tax.

Argued June 3—officially released September 23, 2025

Procedural History

Appeal from the decision of the defendant's tax assessor denying the plaintiff's request for an exemption from taxation on certain of the plaintiff's personal property, brought to the Superior Court in the judicial district of Windham and transferred to the judicial district of New Britain, where the court, *Hon. Henry S. Cohn*, judge trial referee, denied the plaintiff's motion for summary judgment, and the plaintiff appealed to this court. *Affirmed.*

Thomas Melone, for the appellant (plaintiff).

Michael C. Collins, with whom was *Thomas A. Plotkin*, for the appellee (defendant).

Opinion

CRADLE, C. J. In this tax appeal, the plaintiff, McHenry Solar, LLC, appeals from the trial court's denial of its motion for summary judgment in which it argued that it was entitled to judgment as a matter of law on its claim that certain personal property that it uses to generate electricity is exempt from taxation pursuant to General Statutes § 12-81 (76),[1] which provides for the exemption of machinery and equipment used for manufacturing.[2] On appeal, the plaintiff claims that the court incorrectly concluded that it was not entitled to the exemption pursuant to § 12-81 (76) because the generation of electricity is not manufacturing within the meaning of the exemption. We affirm the

[1] General Statutes § 12-81 (76) provides in relevant part: "Effective for assessment years commencing on or after October 1, 2011, machinery and equipment, including machinery and equipment used in connection with biotechnology [shall be exempt from taxation]. For purposes of this subdivision, 'machinery' and 'equipment', and 'biotechnology' have the same meanings as provided in subdivision (72) of this section. . . ."

[2] "Ordinarily, the denial of a motion for summary judgment is not an appealable [final] judgment." *Factor King, LLC* v. *Housing Authority*, 197 Conn. App. 459, 475, 231 A.3d 1186, cert. denied, 335 Conn. 927, 234 A.3d 979 (2020). In the present case, on January 19, 2024, the plaintiff moved the trial court, pursuant to Practice Book § 61-4 (a), to make a written determination that the issues related to the manufacturing property tax exemption resolved by the trial court's summary judgment ruling were of such significance to the determination of the outcome of the case that the delay incident to the appeal would be justified. The trial court granted the motion on March 28, 2024. Thereafter, on April 17, 2024, the plaintiff filed a preappeal motion with this court asking that the Chief Judge of the Appellate Court concur with the trial court's determination that the plaintiff be allowed to immediately appeal from the summary judgment ruling pursuant to Practice Book § 61-4 (a). On May 9, 2024, then Chief Judge Bright granted the plaintiff's motion.

judgment of the trial court and remand the case for further proceedings consistent with this opinion.[3]

The following facts, which either were found by the trial court or are undisputed in the record, and procedural history are relevant to our disposition of this appeal. The plaintiff is the owner of certain personal property (property) located at its "solar facility" in Hampton. The property consists of various equipment[4] used by the plaintiff to generate solar electricity, which the plaintiff then sells to Connecticut Light & Power Company.

On September 30, 2022, the plaintiff, pursuant to General Statutes § 12-119,[5] commenced the underlying tax appeal against the defendant, the town of Hampton, challenging the defendant's tax assessment on its property. The plaintiff claimed that the tax had been wrongfully assessed because its property is used for the "manufacture of electricity" and, therefore, is exempt from taxation pursuant to § 12-81 (76). In the alternative, the plaintiff claimed that the tax assessed on its property was "manifestly excessive and could not have been arrived at except by disregarding the statutes for determining the valuation of the personal property."

[3] In its complaint, the plaintiff also challenged the defendant's assessment of its property as excessive. That claim is unaffected by the summary judgment proceedings and remains pending.

[4] Specifically, the property is comprised of "modules, inverters, racking [system], [Distribution Automation Systems] controls, camera [system], weather monitoring system, transformer, revenue meter, switchboard, wiring and switch enclosures."

[5] General Statutes § 12-119 provides in relevant part: "When it is claimed that a tax has been laid on property not taxable in the town . . . in whose tax list such property was set, or that a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof . . . may . . . make application for relief to the superior court for the judicial district in which such town . . . is situated. . . ."

On April 18, 2023, the plaintiff filed a motion for summary judgment on the issue of the tax exemption, claiming there was no genuine issue of material fact that its property constituted machinery and equipment used for manufacturing, thereby "entitl[ing] the plaintiff to the manufacturing exemption pursuant to . . . § 12-81 (76)." On June 16, 2023, the defendant filed an objection to the plaintiff's motion, disputing that the generation of electricity constitutes manufacturing for purposes of the exemption under § 12-81 (76).

On January 2, 2024, the court, *Hon. Henry S. Cohn*, judge trial referee, issued a memorandum of decision denying the plaintiff's motion for summary judgment. The court first noted that § 12-81 (76) exempts from personal property taxes "machinery and equipment" and provides that those terms shall have the same meaning as provided in subsection (72).[6] Section 12-81 (72) (A) (i), in turn, provides in relevant part that "[m]achinery and equipment means tangible personal property which is installed in a manufacturing facility[7] . . . and the predominant use of which is for manufacturing, processing[8] or fabricating[9] . . . ." (Footnotes added; internal quotation marks omitted.) Section 12-81 (72)

[6] We note that both § 12-81 (72) and (76) provide exemptions for machinery and equipment used for manufacturing. Subsection (72), however, "is effective for assessment years commencing on or after October 1, 2002, but prior to assessment years commencing on or after October 1, 2011," whereas subsection (76) is "[e]ffective for assessment years commencing on or after October 1, 2011." Because the plaintiff challenges the tax assessed on its property for the assessment year commencing October 1, 2022, it claims the exemption pursuant to § 12-81 (76).

[7] "Manufacturing facility" means "that portion of a plant, building or other real property improvement used for manufacturing, processing or fabricating . . . ." General Statutes § 12-81 (72) (A) (ii).

[8] "Processing" means "the physical application of the materials and labor in a manufacturing process necessary to modify or change the characteristics of tangible personal property." General Statutes § 12-81 (72) (A) (v).

[9] "Fabricating" means "to make, build, create, produce or assemble components or tangible personal property work in a new or different manner . . . ." General Statutes § 12-81 (72) (A) (iv).

(A) (iii) defines manufacturing as "the activity of converting or conditioning tangible personal property by changing the form, composition, quality or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. . . ."

In construing the provisions at issue, the court noted that "neither party argues that the language of the statute is plain or unambiguous" and, therefore, considered "extratextual evidence to the extent it is useful." The court first observed that the legislature had added the current definition of manufacturing to § 12-81 (72) in 1992; see Public Acts 1992, No. 92-193, § 1 (Public Act 92-193); and that, prior to the enactment of Public Act 92-193, our Supreme Court, in *United Illuminating Co.* v. *Groppo*, 220 Conn. 749, 755, 601 A.2d 1005 (1992), had held that the generation of electricity is not manufacturing within the meaning of the Sales and Use Taxes Act, General Statutes § 12-406 et seq. The court further observed that "Public Act 92-193 unified the definition of 'manufacturing' for property tax exemptions and sales tax exemptions." The court explained: "Public Act 92-193 made the definition of 'manufacturing' the same for purposes of the Sales and Use Taxes Act . . . and the personal property tax exemption under § 12-81. The legislature is presumed to [have been] aware of [our Supreme Court's] interpretation of the Sales and Use Taxes Act [when it adopted Public Act 92-193] . . . and [it] took no action to change the definition of 'manufacturing' after *United Illuminating Co.* v. *Groppo*, supra, 749, held that the generation of electricity is not manufacturing under the Sales and Use Taxes Act. Reading the statutes together, because the definition of manufacturing is the same under both the Sales and Use Taxes Act and § 12-81 (72) and (76), the generation of electricity is not considered manufacturing under § 12-81 (76) for the plaintiff to be entitled to the tax

exemption." (Citations omitted.) The plaintiff subsequently filed a motion for reargument and reconsideration, which the court summarily denied. This appeal followed.

The standard of review of a trial court's ruling on summary judgment is well established. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . Our review of the trial court's decision to [deny] the defendant's motion for summary judgment is plenary. . . . On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court." (Internal quotation marks omitted.) *Marrero* v. *Hoffman of Simsbury, Inc.*, 220 Conn. App. 649, 658–59, 298 A.3d 1265 (2023).

Both parties agree that the dispositive issue in this appeal is whether the trial court correctly concluded that the generation of electricity is not manufacturing within the meaning of the property tax exemption under § 12-81 (76). The plaintiff's claim, therefore, presents an issue of statutory construction. "When we are called upon to construe a statute that is implicated by a summary judgment motion, our review is plenary. . . . In determining the meaning of a statute, we look first to the text of the statute and its relationship to other statutes. General Statutes § 1-2z. If the text of the statute is not plain and unambiguous, we may consider extratextual sources of information such as the statute's 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 . . . . Our fundamental objective is to ascertain the legislature's intent." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Doe* v. *West Hartford*, 328 Conn. 172, 181–82, 177 A.3d 1128 (2018). "Moreover, in interpreting tax exemptions, we employ three overlapping presumptions. First, statutes that provide exemptions from taxation are a matter of legislative grace that must be strictly construed against the taxpayer. Second, any ambiguity in the statutory formulation of an exemption must be resolved against the taxpayer. Third, the taxpayer must bear the burden of proving the error in an adverse assessment concerning an exemption." (Internal quotation marks omitted.) *Sikorsky Aircraft Corp.* v. *Commissioner of Revenue Services*, 297 Conn. 540, 547, 1 A.3d 1033 (2010).

The plaintiff argues that its process of generating solar electricity fits squarely within the plain and unambiguous definition of manufacturing contained in § 12-81 (72) (A) (iii), "the activity of converting or conditioning tangible personal property by changing the form, composition, quality or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail." Specifically, the plaintiff argues that its property performs "at least three transformations of tangible personal property . . . during the manufacturing process," each of which, the plaintiff alleges, is sufficient to satisfy the definition of manufacturing set forth in § 12-81 (72). The plaintiff explains that its property first "transforms the atoms in the semiconductor material in the solar modules by knocking loose electrons allowing electrical current to be captured . . . result[ing] in what is known as direct electrical energy. The [property] then . . . transforms the electricity by converting it from direct current to

alternating current electrical energy and then further transforms the electricity to a different (higher) voltage so that it is compatible with [the electric grid]." We disagree with the plaintiff's argument that the "transformations" described by the plaintiff clearly constitute the "converting or conditioning of tangible personal property." The definition of manufacturing does not mention atoms, electrons, energy or electricity. It is neither clear nor obvious that the "transformation" of such matter would fall into the definition of manufacturing set forth in § 12-81 (72).[10]

The rule of strict construction for exemptions to taxation also militates against an interpretation that the statute unambiguously includes the generation of electricity within the meaning of manufacturing. See, e.g., *William W. Backus Hospital* v. *Stonington*, 349 Conn. 713, 725, 321 A.3d 1117 (2024) (concluding that statutory terms governing property tax exemption, although definitionally broad enough to encompass plaintiff's property, were ambiguous "given the low bar of reasonableness necessary to establish statutory ambiguity for purposes of § 1-2z"). It is well established that "[o]ur role is to interpret statutes as they are written. . . . [We] cannot, by [judicial] construction, read into statutes provisions [that] are not clearly stated . . . [and] [w]e are not permitted to supply statutory language that the legislature may have chosen to omit . . . ." (Citations omitted; internal quotation marks omitted.) *Rainbow Housing Corp.* v. *Cromwell*, 340 Conn. 501, 520, 264 A.3d 532 (2021). Had the legislature intended for the manufacturing exemption under § 12-81 (76) to

[10] Although the plaintiff primarily argues on appeal that § 12-81 (72) is unambiguous on the basis that the generation of electricity satisfies the statutory definition of manufacturing, the plaintiff also advances cursory arguments that the generation of electricity satisfies the statutory definitions for "processing" and "fabricating." See footnotes 8 and 9 of this opinion. For the same reasons set forth herein, we conclude that those terms are ambiguous as to whether the generation of electricity is included.

plainly and unambiguously apply to machinery and equipment used for the generation of electricity, it easily could have done so. See *Scholastic Book Clubs, Inc.* v. *Commissioner of Revenue Services*, 304 Conn. 204, 219, 38 A.3d 1183 ("it is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so" (citation omitted)), cert. denied, 568 U.S. 940, 133 S. Ct. 425, 184 L. Ed. 2d 255 (2012). Indeed, several provisions of § 12-81 that govern other exemptions from the property tax expressly provide that personal property used for the generation of electricity falls within those particular exemptions. See General Statutes § 12-81 (57) (A) (providing exemption for "any Class I renewable energy source . . . or hydropower facility . . . *installed for the generation of electricity*" (emphasis added)); General Statutes § 12-81 (63) (b) (providing exemption for "cogeneration systems" and defining that term to include "equipment which is designed, operated and installed as a system which *produces, in the same process, electricity*" (emphasis added)).[11] We decline to read into § 12-81 (72) an exemption for the generation of electricity that was not clearly stated by the legislature.

[11] The plaintiff contends that "the . . . legislature has expressly included electricity within the definition of 'tangible personal property' in other tax statutes. The Sales and Use Taxes Act, for example, defines 'tangible personal property' broadly as 'personal property that may be seen, weighed, measured, felt or touched or that is in any other manner perceptible to the senses.' General Statutes § 12-407 (a) (13). Electricity clearly meets these criteria. Addressing the question directly, the [Sales and Use Taxes] Act further provides: 'Tangible personal property' includes: (A) digital goods, (B) canned or prewritten computer software, including canned or prewritten software that is electronically accessed or transferred, other than when purchased by a business for use by such business, and any additional content related to such software, and (C) the distribution, generation or transmission of electricity." General Statutes § 12-407 (a) (13). This definition does not resolve the ambiguity in the definition of manufacturing contained in § 12-81 (76). It also does not seem relevant to that definition in light of the purpose of the manufacturing exemption as discussed herein.

The plaintiff argues that "[t]he fact that electricity involves manufacturing is embedded in various Connecticut legislation." In so arguing, the plaintiff cites to various statutes relating to municipal electric plants. Any reference in those statutes to electricity being "manufactured," however, underscores the ambiguity in the definition of manufacturing at issue in § 12-81 (72), which does not mention electricity. In other words, the reference in other statutes to the manufacturing of electricity and the absence of such a reference in § 12-81 (72) demonstrates a deliberate choice by the legislature to not include it as a manufacturing exemption in § 12-81 (72). It is well settled that, "[w]here a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed." (Internal quotation marks omitted.) *Viera* v. *Cohen*, 283 Conn. 412, 431, 927 A.2d 843 (2007). In the absence of any language relating to the generation of electricity in § 12-81 (72), we reject the plaintiff's contention that the definition of manufacturing unambiguously includes its generation of solar electricity.

The plaintiff contends that "[w]hat this appeal is about is that the trial court was stuck in the past on the case of *United Illuminating Co.* v. *Groppo*, [supra, 220 Conn. 749], and an old, superseded statute and not on the present new statute that was enacted after the *Groppo* case." We disagree.

In *Groppo*, our Supreme Court addressed whether periodic maintenance services to machinery and equipment on the plaintiff's electricity generating power plants were exempt from the statutory sales tax imposed on "services to industrial . . . real property." (Internal quotation marks omitted.) *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 750–51. The regulations promulgated under the Sales and Use Taxes Act

provided in relevant part that "[s]ervices rendered to machinery and production equipment [at an industrial plant] are not taxable . . . ." (Emphasis omitted; internal quotation marks omitted.) Id., 754. For purposes of the exemption, the regulations defined "an industrial plant" as a "manufacturing facility at which a manufacturing production process is occurring." (Internal quotation marks omitted.) Id. The regulations further defined "manufacturing" as "the performance as a business of an integrated series of operations which places personal property in a form, composition or character different from that in which it was acquired for sale in the regular course of business by the manufacturer. . . . Manufacturing is an activity which shall occur solely at an industrial plant."[12] (Internal quotation marks omitted.) Id., 754 n.5. On appeal, the plaintiff "contend[ed] that services rendered to the components of its electricity generating facilities [were] exempt from the sales tax because the generation of electricity is manufacturing." (Internal quotation marks omitted.) Id., 754–55.

In resolving the plaintiff's claim, our Supreme Court first concluded that "[t]he regulatory definition of manufacturing [was] ambiguous as to whether the generation of electricity [was] included."[13] (Internal quotation

[12] The regulations defined "manufacturing production process" as "any one of a series of production activities, beginning with the movement of the raw materials after their receipt . . . and ending with the completion of the finished product . . . for its sale to the ultimate consumer. . . . Manufacturing production process shall occur solely at an industrial plant." (Internal quotation marks omitted.) *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 754 n.6.

[13] As discussed further herein, the definition of "manufacturing" in § 12-426-11b (10) of the Regulations of Connecticut State Agencies, since repealed, had defined manufacturing in substantively similar terms as § 12-81 (72). Our conclusion that the definition set forth in § 12-81 (72) is ambiguous is consistent with our Supreme Court's determination that the definition of manufacturing in § 12-426-11b (10) of the regulations was "ambiguous as to whether the generation of electricity is included." (Internal quotation marks omitted.) *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 756.

marks omitted.) Id., 756. The court therefore turned for interpretive guidance to other sections of the Sales and Use Taxes Act that contained similar language to the statute at issue and to the legislative history of the act as a whole. See *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 756–62. After reviewing that extratextual material, the court held that, "[w]hile the generation of electricity *may in some sense* be a manufacturing process, we conclude that the legislature did not intend to exempt businesses engaged in the generation of electricity for public consumption from the [statutory] tax on services rendered to machinery and production equipment . . . ." (Emphasis added; internal quotation marks omitted.) Id., 755. Specifically, the court concluded that the legislative history of the Sales and Use Taxes Act revealed that the elimination of the sales tax for manufacturers was "intended to encourage the growth and development of 'true' manufacturing industries in Connecticut." Id., 761. In other words, "the manufacturing industries exempted from taxes on . . . services rendered [to machinery and equipment] were intended to be such as might go elsewhere . . . not those, like a public power utility, that would ordinarily be expected to remain in this state." (Citation omitted; internal quotation marks omitted.) Id., 762. The court therefore concluded that manufacturing exemptions from the sales tax, including the regulatory exemption claimed by the plaintiff, "[did] not apply to businesses engaged in the generation of electricity." Id.

The plaintiff contends that *Groppo* is no longer good law because the decision was "overruled" by the legislature's subsequent enactment of Public Act 92-193.[14] Section 1 of Public Act 92-193 amended § 12-81 (72) by, inter

[14] *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 749, was officially released on January 7, 1992. The legislature enacted Public Act 92-193 on July 1, 1992.

alia, adding the current definition of "manufacturing,"[15] and § 6 of Public Act 92-193 made the same definition of "manufacturing" applicable with respect to the Sales and Use Taxes Act.[16] The plaintiff thus argues that Public Act 92-193, by changing the definition of "manufacturing" for purposes of exemptions to the sales tax, effectively abrogated the holding of *Groppo*, and, moreover, that "the intention [of the legislature in adopting Public Act 92-193] was to *broaden* the [definition of manufacturing] to cover processes that were not considered the industrial plant type manufacturing of days gone by that were the focus of *Groppo*." (Emphasis in original.) The plaintiff contends that the "[p]roduction and transformation of electricity from the plaintiff's solar facility is one of those broadened processes." In so arguing, the plaintiff does not address the similarity between the definitions of manufacturing at issue in *Groppo* and this case. Our Supreme Court examined those definitions in *Sikorsky Aircraft Corp.* v. *Commissioner of Revenue Services*, supra, 297 Conn. 558.

In *Sikorsky Aircraft Corp.* v. *Commissioner of Revenue Services*, supra, 297 Conn. 563, our Supreme Court compared the definition of manufacturing set forth in

[15] Prior to Public Act 92-193, General Statutes (Rev. to 1991) § 12-81 (72), like the current revision of the statute, defined machinery and equipment in relevant part as "tangible personal property which is . . . installed in a manufacturing facility . . . and the predominant use of which is for . . . manufacturing"; it did not, however, define the term "manufacturing." See also Public Acts 1990, No. 90-270, § 28; Public Act 92-193, § 1.

[16] The plaintiff cursorily asserts in its brief to this court that Public Act 92-193 did not make "the definitions of manufacturing . . . identical under the property tax statutes and the sales and use tax statute." This argument is without merit. Public Act 92-193 amended both § 12-81 (72) and the Sales and Use Taxes Act, neither of which had defined the term "manufacturing," by, inter alia, providing that "manufacturing means the activity of converting or conditioning tangible personal property by changing the form, composition, quality or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail." (Internal quotation marks omitted.) Public Acts 1992, No. 92-193, §§ 1, 6.

the regulations promulgated under the Sales and Use Taxes Act prior to 1992, which was the definition at issue in *Groppo*, to the definition of manufacturing enacted in 1992, which, as stated previously, was identical under the Sales and Use Taxes Act and the property tax statute at issue in this case.[17] In *Groppo*, the regulation at issue defined manufacturing as "the performance . . . of an integrated series of operations which places personal property in a form, composition or character different from that in which it was acquired for sale . . . ." (Internal quotation marks omitted.) *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 754 n.5. The definition enacted by Public Act 92-193 provides in relevant part that manufacturing means "the activity of converting or conditioning tangible personal property by changing the form, composition, quality or character of the property for ultimate sale at retail . . . ." In examining those definitions, the Supreme Court concluded that "[t]he minor differences in language appear inconsequential. Both the statutory and the regulatory definitions provide that manufacturing involves changing the form, composition or character of personal property for purposes of sale. Put simply, both definitions describe the actual process involved in making a product and relate to activities that occur directly on an assembly line or on the production floor."[18] (Footnote omitted.) *Sikorsky Aircraft Corp.* v. *Commissioner of*

[17] Although *Sikorsky Aircraft Corp.* v. *Commissioner of Revenue Services*, supra, 297 Conn. 540, involved the definition of manufacturing in the Sales and Use Taxes Act, versus the property tax statute at issue in this case, and did not pertain to the generation of electricity, the 1992 definition under both statutes is identical and the court's analysis of the change in the legislature's language is relevant to our resolution to the plaintiff's claim in this case.

[18] In addition, the court noted that, like the term manufacturing in Public Act 92-193, "[t]he closely related concepts of fabricating and processing also are defined in very traditional terms . . . ." (Internal quotation marks omitted.) *Sikorsky Aircraft Corp.* v. *Commissioner of Revenue Services*, supra, 297 Conn. 558 n.14.

Revenue Services, supra, 558. The court further explained: "One would expect, [based on the legislative history of Public Act 92-193], that the definition of manufacturing [therein] would reflect [an] intent to broaden the scope of tax exemptions allowed to manufacturers. . . . [H]owever . . . [t]he change alluded to in the legislative history is not literally in the definition itself . . . . [Rather] [t]hat change reflects the legislature's understanding that manufacturing in high technology industries involves a much more complicated, nuanced and interconnected process . . . ." Id., 563. The court, therefore, concluded that Public Act 92-193 did not "[signify] an intended change in the actual definition of manufacturing." Id., 558. The plaintiff's claim that the legislature overruled *Groppo* when it enacted Public Act 92-193 therefore is not supported by any meaningful change in the language of the definition of manufacturing.

Rather than examine the language used by the legislature in defining manufacturing, the plaintiff relies primarily on a bill analysis of Public Act 92-193 prepared by the Office of Legislative Research (OLR), which states in relevant part that "[t]his bill extends the [property tax exemption for manufacturing machinery and equipment] by . . . using . . . broader definitions of manufacturing and machinery . . . ."[19] Office of Legislative Research, Amended Bill Analysis for Substitute House Bill No. 5708, as amended by House Amendments A, B, and C, p. 4, available at https://www.cga.ct.gov/ps92/ba/1992HB-05708-R00-BA.htm (last visited September 11, 2025). Although the OLR report states the purpose of Public Act 92-193 was to broaden the definition of manufacturing, it does not mention anything

[19] "Although the comments of the [OLR] are not, in and of themselves, evidence of legislative intent, they properly may bear on the legislature's knowledge of interpretive problems that could arise from a bill." *Harpaz* v. *Laidlaw Transit, Inc.*, 286 Conn. 102, 124 n.15, 942 A.2d 396 (2008).

about the generation of electricity. More importantly, however, the plaintiff's reliance on that summary disregards the legislative history of Public Act 92-193.

We agree with the defendant's assertion that the legislative history of § 12-81 "reveals a kindred purpose behind the [property tax] exemption [for manufacturing machinery and equipment] to that found" by our Supreme Court in *Groppo* with respect to the sales tax exemption for services rendered to machinery and equipment at manufacturing facilities. The legislature added machinery and equipment used for manufacturing to the list of property tax exemptions, codified at § 12-81 (72),[20] in 1990. See Public Acts 1990, No. 90-270, § 28. The enacting bill was intended to create "an integrated and sensible attitude toward a *retention of our manufacturing base*." (Emphasis added.) 33 S. Proc., Pt. 10, 1990 Sess., p. 3140, remarks of Senator Kevin B. Sullivan. Senator Sullivan urged that unanimous approval of the legislation "would be a true manifestation of the fact that Connecticut wishes to *retain its manufacturing base* . . . ." (Emphasis added.) Id., p. 3139. Another purpose of the exemption was to attract *new* manufacturing industries to the state. Representative William J. Cibes, Jr., remarked that "[t]he bill, as amended . . . addresses one of the main problems that businesses and especially manufacturing has confronted in recent years in this state. . . . [A] study

[20] The manufacturing exemption for machinery and equipment claimed by the plaintiff, § 12-81 (76), was added in 2006. See Public Acts 2006, No. 06-83, § 9. As stated herein, the only material difference between subsections (72) and (76) is the assessment years for which each provision is effective. See footnote 6 of this opinion; see also 49 H.R. Proc., Pt. 11, 2006 Sess., pp. 3370–72, remarks of Representative Cameron C. Staples ("[Public Act 06-83] references existing [statutory] definitions [for manufacturing and machinery and equipment], and there is no change to those definitions as to what is covered under the machinery and equipment portions of the [statute]. . . . [The] bill, in no way, changes what is covered under this exemption. It just matches the present exemption statutes.").

. . . found that one of the major disincentives for business to expand or to locate into Connecticut in the first place, was the impact of the personal property tax on manufacturing equipment. The bill as amended addresses that problem head on . . . .'' 33 H.R. Proc., Pt. 26, 1990 Sess., pp. 9381–82.

Similarly, during the legislative discussion of Public Act 92-193, it became clear not only that any broadening of the term ''manufacturing'' was intended *only* to bring ''high technology manufacturing processes'' within the meaning of that term, but also that the underlying purpose of the manufacturing exemptions—to benefit those industries that might go elsewhere—remained the same. Representative Lenny T. Winkler remarked that ''this [bill] will certainly allow us to be more competitive and will definitely *bring in more jobs to the state that we desperately need.*'' (Emphasis added.) 35 H.R. Proc., Pt. 19, 1992 Sess., p. 6401; see also id., p. 6405, remarks of Representative Glenn Arthur (stating that modernized definition of manufacturing ''will build a business atmosphere *that will attract new manufacturing and high technology jobs to our state*'' (emphasis added)). Representative Thomas S. Luby remarked that ''what this bill does is it *modernizes* the definition [of manufacturing] and, in a sense, takes . . . *higher technological applications in manufacturing* that may not be directly connected to the manufacturing equipment and . . . brings them within . . . certain tax exemptions or breaks.'' (Emphasis added.) Id., p. 6391. In other words, ''the bill modernize[d] the definition of manufacturing equipment and machinery *so that it includes those kinds of equipment and machinery . . . that are used in high technology manufacturing processes.*'' (Emphasis added.) Id., p. 6405, remarks of Representative Arthur. The legislative history of Public Act 92-193 discloses no evidence to support the plaintiff's contention that the legislature intended for the newly promulgated definition of manufacturing contained therein

to include the generation of electricity. Rather, the legislative history makes clear that the property tax exemption for manufacturing machinery and equipment, as enacted, was intended to benefit manufacturing industries that "might go elsewhere . . . not those, like a . . . power utility, that would ordinarily be expected to remain in this state." (Citation omitted; internal quotation marks omitted.) *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 762.

On the basis of the foregoing, we therefore agree with the defendant's contention that, although Public Act 92-193 changed the definition of manufacturing, "the initial legislative intent behind the manufacturing exemption—the retention of Connecticut's manufacturing base" remained the same, and, to the extent that Public Act 92-193 was intended to broaden the definition of manufacturing, its purpose was only to bring "high technology" manufacturing, such as the development of computer programming, within the ambit of the manufacturing exception, not the generation of electricity.

Moreover, "it is a well-recognized rule of statutory construction that the legislature is presumed to know all the existing statutes, the judicial interpretation of them, and the effect that its action or nonaction will have on them." (Internal quotation marks omitted.) *Booker* v. *Jarjura*, 120 Conn. App. 1, 20, 990 A.2d 894, cert. denied, 297 Conn. 909, 995 A.2d 636 (2010). "This presumption is strengthened when the legislature has affirmatively reenacted the statute after the interpretation in question." (Internal quotation marks omitted.) *Chestnut Point Realty, LLC* v. *East Windsor*, 158 Conn. App. 565, 573, 119 A.3d 1229 (2015), aff'd, 324 Conn. 528, 153 A.3d 636 (2017). "Because the legislature is presumed to be aware of the judicial construction placed on its enactments . . . its failure to correct or undermine what we stated in those cases is evidence

that the legislature has validated our interpretation." (Citation omitted.) *Angelsea Productions, Inc.* v. *Commission on Human Rights & Opportunities*, 236 Conn. 681, 693, 674 A.2d 1300 (1996). Thus, because the legislative history of Public Act 92-193 demonstrates that the legislature did not intend for the newly promulgated definition of manufacturing, which it made applicable to the Sales and Use Taxes Act, to include the generation of electricity, Public Act 92-193 may be viewed as evidence of the legislature's validation of our Supreme Court's interpretation that manufacturing exemptions to the sales tax are intended to benefit only those industries that might go elsewhere and, therefore, do not apply to "businesses engaged in the generation of electricity." *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 762.[21]

On the basis of the foregoing, we are not persuaded by the plaintiff's argument that Public Act 92-193 overruled the holding of *Groppo* by broadening the definition of manufacturing to include the generation of electricity.[22]

[21] We further note that Public Act 92-193 added a provision to § 12-81 (72) allowing a municipality to retroactively recoup tax revenue on property that had been exempt under that subsection if the claimant subsequently "moves its manufacturing operations *entirely out of this state*." (Emphasis added.) We view the addition of this provision as evidence of the legislature's affirmation that the same legislative purpose the court in *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 749, relied on in constructing manufacturing exemptions to the sales tax underlies the manufacturing exemption from the personal property tax pursuant to § 12-81 (72). Public Act 92-193 added the following provision to § 12-81 (72): "The . . . municipality . . . shall hold a security interest . . . in any machinery or equipment which is exempt from taxation pursuant to this subdivision, in an amount equal to the tax revenue reimbursed or lost . . . . Such security interest shall be enforceable against the claimant for a period of four years after the last assessment year in which such exemption was received in any case in which said manufacturer ceases all manufacturing operations or moves its manufacturing operations entirely out of this state." Public Acts 1992, No. 92-193, § 1.

[22] Indeed, in a recent decision from our Supreme Court, Justice Ecker confirmed, in dicta, that *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 749, not only remains good law but that its holding extends to cases where, as here, a taxpayer claims an exemption for property used for the generation of electricity pursuant to § 12-81 (72) and (76). See *Wind Cole-*

Accordingly, our Supreme Court's decision in *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 749, although interpreting the meaning of "manufacturing" relative to an exemption from the sales tax, is highly relevant to our interpretation of "manufacturing" within the meaning of the property tax exemption claimed by the plaintiff.[23]

"It is axiomatic that, when interpreting the terms of one statute, we are guided by the principle that the legislature is always presumed to have created a harmo-

brook South, LLC v. *Colebrook*, 344 Conn. 150, 182 n.4, 278 A.3d 442 (2022) (*Ecker, J.*, concurring). Specifically, Justice Ecker explained in his concurrence: "This court has held that the generation of electricity does not constitute 'manufacturing' in the cognate exemption for sales and use taxes; see *United Illuminating Co.* v. *Groppo*, supra, [220 Conn. 755]; and, thus, the wind turbines in the present case evidently would not qualify under the existing exemptions for machinery used in designated manufacturing operations. See General Statutes § 12-81 (60), (70), (72), (76), and (78). Presumably, this explains why the plaintiff [in the present case] has not claimed the benefit of any such exemption." *Wind Colebrook South, LLC* v. *Colebrook*, supra, 183 n.4. "Although dicta is not binding precedent . . . we may look to dicta as persuasive authority . . . ." (Citation omitted.) *Voris* v. *Molinaro*, 302 Conn. 791, 797 n.6, 31 A.3d 363 (2011).

[23] The plaintiff argues that this court previously has suggested that decisions interpreting the term "manufacturing" prior to the enactment of Public Act 92-193 have "no precedential value." The plaintiff relies on *Kobyluck Bros., LLC* v. *Planning & Zoning Commission*, 167 Conn. App. 383, 400, 142 A.3d 1236, cert. denied, 323 Conn. 935, 151 A.3d 383 (2016), which the plaintiff characterizes as holding that *Connecticut Water Co.* v. *Barbato*, 206 Conn. 337, 537 A.2d 490 (1988), in which our Supreme Court interpreted the same, since repealed regulatory definition at issue in *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 749, "was not useful for determining what the terms manufacturing and processing . . . [currently] meant . . . ." The plaintiff's reliance on *Kobyluck Bros., LLC*, is misplaced. In that case, this court found *Connecticut Water Co.* to be of limited precedential value because of the "critical distinction between . . . statutory construction principles" in a tax assessment appeal and a zoning appeal. *Kobyluck Bros., LLC* v. *Planning & Zoning Commission*, supra, 399.

Moreover, our Supreme Court has expressly rejected the plaintiff's argument. See *Sikorsky Aircraft Corp.* v. *Commissioner of Revenue Services*, supra, 297 Conn. 555 n.11 ("[a]lthough *Connecticut Water Co.* relied on [the repealed regulatory definition], our reasoning in that case still applies because [that regulatory] definition of manufacturing . . . is not substan-

nious and consistent body of law." (Internal quotation marks omitted.) *State* v. *Agron*, 323 Conn. 629, 638, 148 A.3d 1052 (2016). "[J]ust as the legislature is presumed to enact legislation that renders the body of the law coherent and consistent, rather than contradictory and inconsistent . . . courts must discharge their responsibility, in case by case adjudication, to [ensure] that the body of law . . . remains coherent and consistent. . . . Thus, we are required to read statutes together when they [relate] to the same subject matter." (Citation omitted; internal quotation marks omitted.) *State* v. *Courchesne*, 296 Conn. 622, 709, 998 A.2d 1 (2010). "The law prefers rational and prudent statutory construction, and we seek to avoid interpretations of statutes that produce odd or illogical outcomes." *State* v. *George J.*, 280 Conn. 551, 574–75, 910 A.2d 931 (2006), cert. denied, 549 U.S. 1326, 127 S. Ct. 1919, 167 L. Ed. 2d 573 (2007). "[I]t is axiomatic that those who promulgate statutes . . . do not intend to promulgate statutes . . . that lead to absurd consequences or bizarre results. . . . Consequently, [i]n construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended . . . ." (Citation omitted; internal quotation marks omitted.) *State* v. *Courchesne*, supra, 710.

Mindful of these legal principles, we conclude that it would make little sense and yield a bizarre result if the generation of electricity is manufacturing for purposes of the manufacturing exemptions from the personal property tax but not the sales tax. As stated previously, the legislature, by enacting Public Act 92-193, made the definition of manufacturing the same for both sets of exemptions. And, as we conclude herein, the manufacturing exemptions from the sales tax and the

tially distinct from the definition of manufacturing in [Public Act 92-193]" (citations omitted)).

manufacturing exemptions from the property tax pursuant to § 12-81 (72) and (76) were created by the legislature to serve the same purpose, namely, to retain manufacturing industries that might go elsewhere, and, therefore, are intended to benefit the *same* manufacturing industries. Because, pursuant to *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 762, that legislative intent renders "businesses engaged in the generation of electricity" ineligible for manufacturing exemptions from the sales tax, it would be illogical to conclude that the legislature intended for the same businesses to be eligible for the manufacturing exemption from the property tax pursuant to § 12-81 (76). See *Rainbow Housing Corp.* v. *Cromwell*, supra, 340 Conn. 520 ("[W]e [must] construe a statute in a manner that will not thwart its intended purpose or lead to absurd results. . . . We must avoid a construction that fails to attain a rational and sensible result that bears directly on the purpose the legislature sought to achieve." (Internal quotation marks omitted.)).

We therefore conclude that the generation of electricity is not manufacturing within the meaning of § 12-81 (72) and (76),[24] and thus that the court properly denied the plaintiff's motion for summary judgment.

The judgment is affirmed and the case is remanded for further proceedings consistent with this opinion.

In this opinion the other judges concurred.

[24] Our conclusion that machinery and equipment used for the generation of electricity is ineligible for the manufacturing exemption pursuant to § 12-81 (76), therefore, is dispositive of the plaintiff's arguments; see footnote 10 of this opinion; that its electricity generating property qualifies for the exemption on the alternative bases that the generation of electricity is "processing" or "fabricating," as those terms are defined by § 12-81 (72). See *United Illuminating Co.* v. *Groppo*, supra, 220 Conn. 755 (rather than "undertak[ing] a scientific discussion of the nature of electricity or its generation by mechanical means [to determine whether such use falls within the statutory terms]" relying on "the legislative history and construction of the [statutory scheme] as a whole" for its conclusion that plaintiff did not qualify for claimed manufacturing exemption").

JAMES GOLDEN *v.* WORLDQUANT PREDICTIVE TECHNOLOGIES, LLC, ET AL.

WORLDQUANT PREDICTIVE TECHNOLOGIES, LLC, ET AL. *v.* JAMES GOLDEN (AC 47099)

Alvord, Elgo and Westbrook, Js.

Syllabus

The plaintiff appealed from the trial court's judgments denying his application to vacate an arbitration award and granting the defendants' application to confirm that same award, which had been issued in connection with an employment dispute. The award was issued in favor of the defendant W Co., the plaintiff's former employer, and the defendant B, a member of W Co.'s board of managers. The plaintiff claimed, inter alia, that the court improperly failed to vacate the award because the arbitrator exceeded the scope of the arbitration submission and acted in manifest disregard of the law in awarding attorney's fees and costs to the defendants. *Held*:

The plaintiff's failure to include the trial court docket number of the defendants' application to confirm the arbitration award on his appeal form did not render his appeal moot, as the defendants provided no authority indicating that a party's failure to list all of the trial court docket numbers on an appeal form in accordance with the rule of practice (§ 61-7 (a) (1)) deprived this court of subject matter jurisdiction, and the appeal form filed by the plaintiff provided notice to the defendants that the plaintiff was challenging the propriety of both the judgment denying his application to vacate the award and the judgment granting the defendants' application to confirm the award.

The plaintiff could not prevail on his claim that the trial court improperly failed to vacate the arbitration award because the arbitrator both exceeded the scope of the arbitration submission and acted in manifest disregard of the law in awarding attorney's fees and costs to the defendants, as the plain language of the arbitration clause in the plaintiff's employment agreement provided that the prevailing party was entitled to receive an award of attorney's fees and costs in addition to all other damages to which such party was entitled, the alleged ambiguity in the arbitration clause regarding the arbitrator's ability to award attorney's fees undermined any claim that the award fell outside of the scope of the submission, the court expressly found that the defendants were the prevailing party in the arbitration, and the plaintiff failed to demonstrate a manifest disregard of the law by the arbitrator with respect to the award of attorney's fees and costs.

The arbitrator did not manifestly disregard the law by denying the plaintiff's counterclaim alleging breach of the duty of good faith and fair dealing, as the arbitrator set forth the proper legal principles governing the duty of good faith and fair dealing and made detailed findings with respect to the conduct of both the plaintiff and W Co. based on his review and credibility assessment of the documentary and testimonial evidence presented at the arbitration proceeding.

The plaintiff failed to establish that the trial court improperly denied his application to vacate the arbitration award or improperly granted the defendant's application to confirm the award because the arbitrator acted in manifest disregard of the law by misapplying the after-acquired evidence doctrine with respect to evidence that W Co. knew the plaintiff had provided consulting services to a third party in violation of his employment agreement prior to the termination of his employment, as the plaintiff failed to overcome the high burden of showing that the governing law on waiver was well-defined, explicit and clearly applicable in situations in which both the after-acquired evidence doctrine and a reservation of rights clause were implicated, that an obvious error existed that was capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator, or that the arbitrator appreciated, yet ignored, a clearly governing legal principle.

Argued February 11—officially released September 23, 2025

Procedural History

Application, in the first case, to vacate an arbitration award, and application, in the second case, to confirm an arbitration award, brought to the Superior Court in the judicial district of Middlesex, where the court, *Hon. Edward S. Domnarski*, judge trial referee, granted the parties' joint motion to consolidate the actions; thereafter, the actions were tried to the court, *Shah, J.*; judgment, in the first case, denying the application to vacate the award, and judgment, in the second case, granting the application to confirm the award, from which the plaintiff in the first case and the defendant in the second case appealed to this court. *Affirmed.*

William J. Anthony, with whom were *Stephen J. Curley* and, on the brief, *Mathew W. Beckwith*, for the appellant (plaintiff in the first case and defendant in the second case).

David B. Zabel, with whom, on the brief, were *Barbara M. Schellenberg* and *Heather Spaide*, for the appellees (defendants in the first case and plaintiffs in the second case).

Opinion

ELGO, J. The plaintiff, James Golden, appeals from the judgments of the trial court denying his application to vacate an arbitration award and granting an application to confirm that award filed by the defendants, WorldQuant Predictive Technologies, LLC (WorldQuant), and Jeffrey Blomberg.[1] On appeal, we consider whether (1) the plaintiff's failure to strictly comply with the requirements of Practice Book § 61-7 (a) (1) renders this appeal moot, (2) the arbitrator exceeded the scope of the arbitration submission and acted in manifest disregard of the law in awarding attorney's fees and costs to the defendants, (3) the arbitrator acted in manifest disregard of the law in denying the plaintiff's counterclaim alleging breach of the duty of good faith and fair dealing, and (4) the arbitrator acted in manifest disregard of the law by misapplying the after-acquired evidence doctrine. We affirm the judgments of the trial court.

This appeal originates in an employment dispute. In May, 2018, WorldQuant hired the plaintiff as its chief executive officer. The plaintiff's employment was governed by a written agreement, which the plaintiff signed on May 22, 2018 (employment agreement). Pursuant to that agreement, the plaintiff's compensation included a

[1] There are two actions underlying this appeal that were joined for trial. The action seeking to vacate the arbitration award was commenced by Golden and named WorldQuant and Blomberg as defendants. The action seeking to confirm the arbitration award was commenced by WorldQuant and Blomberg and named Golden as the defendant. For clarity in this opinion, we refer to Golden as the plaintiff and to WorldQuant and Blomberg collectively as the defendants and individually as WorldQuant and Blomberg. At all relevant times, Blomberg was a member of WorldQuant's board of managers.

base salary of $800,000 per year, a discretionary annual bonus, and 5000 "Incentive Units," which amounted to a 5 percent equity stake in WorldQuant.[2] The employment agreement also contained an arbitration clause that pertained to any disputes regarding the plaintiff's employment.[3]

On April 21, 2021, WorldQuant terminated the plaintiff's employment.[4] WorldQuant then filed a demand

[2] As the arbitrator found in his September 7, 2022 decision, the incentive units described in the employment agreement provided the plaintiff with a 5 percent equity interest in WorldQuant. The plaintiff's eligibility for that additional compensation was memorialized in a separate agreement between the parties, titled "Restricted Unit Agreement," which provided that the plaintiff's receipt of the incentive units was subject to a three year vesting schedule.

[3] The arbitration clause provides in relevant part: "Arbitration. . . . By executing below, you agree that any dispute, controversy or claim arising out of or relating to this [a]greement and/or your employment with [WorldQuant] shall be submitted to and decided by binding arbitration as the exclusive means of resolution thereof. Subject to the terms below, such arbitration shall be administered by a single arbitrator appointed in accordance with the rules and procedures of the American Arbitration Association and shall be conducted in accordance with the American Arbitration Association rules and procedures and the substantive laws of the State of Connecticut, without regard to the state's conflicts of laws provisions. Such arbitration shall take place in Fairfield County, Connecticut at a specific location reasonably determined by such appointed arbitrator, and each of you and [WorldQuant] hereby consents to such forum and venue for arbitration hereunder. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrator. Any arbitral award determination shall be final and binding upon you and [WorldQuant]. No arbitrator shall be empowered to award punitive, consequential or exemplary damages, and you hereby waive any right to recover any such damages; provided, that the party prevailing in any such arbitration proceeding shall be entitled to receive, in addition to all other damages to which such party may be entitled, the costs incurred by such party in connection with such arbitration, including, without limitation, reasonable attorneys' fees, costs and expenses."

[4] The notice of termination sent to the plaintiff stated in relevant part: "Regrettably, your employment with [WorldQuant] has been terminated for cause effective April 21, 2021 . . . due to your gross negligence, mismanagement, fraud, dishonesty, and other discriminatory and abhorrent conduct. Your conduct violated your fiduciary duties owed to [WorldQuant], as well as [WorldQuant's] policies and procedures and, possibly, state and federal laws.

"In addition to your flagrant and repeated abuse of [WorldQuant's] [e]xpense [r]eimbursement [p]olicy to pay for personal charges unrelated

for arbitration on May 6, 2021, in which it sought a declaratory judgment that the plaintiff's employment had been terminated for cause[5] and asserted claims of breach of fiduciary duty and breach of the duty of loyalty against him. In response, the plaintiff filed an answer that was accompanied by several affirmative defenses, counterclaims against WorldQuant, and third-party claims against Blomberg.[6]

to [WorldQuant] business, [WorldQuant] has learned that you knowingly and intentionally provided false or misleading information to the [b]oard of [m]anagers and [WorldQuant's] founder about personnel matters (among other things) on multiple occasions. Upon subsequent investigation, it was also determined that you made inappropriate and disparaging comments at work regarding [WorldQuant's] founder in the presence of other employees. You have also made inappropriate and harassing comments to employees. Such conduct is categorically unacceptable and in violation of numerous [WorldQuant] policies and state and federal law. Additionally, audio recordings of you made by a former employee demonstrate that you lied to [WorldQuant's] lawyers and management about personnel and contractual matters that resulted in significant legal exposure and the payment to this employee of monies not otherwise due to her based on your conduct. Accordingly, [WorldQuant] is terminating your employment for [c]ause as defined in and in accordance with the terms of your [e]mployment [a]greement . . . .

"Please be advised that [WorldQuant] reserve[s] all of its rights under the [e]mployment [a]greement . . . at law or otherwise, and nothing in this letter shall be construed as a modification, release or waiver of any rights or claims."

[5] The employment agreement contains a definition of the term "[c]ause," providing: " 'Cause' shall mean (i) your material breach of [the employment agreement], a material violation by you of any of [WorldQuant's] policies or procedures or your refusal to follow or your knowing disregard of reasonable instructions by [WorldQuant] consistent with this [employment agreement]; (ii) fraud, gross negligence or willful misconduct in the performance of your obligations or with respect to the business of [WorldQuant] or its Affiliates (as defined on Schedule 1); or (iii) you are indicted for commission of any felony, or of a misdemeanor arising out of volitional behavior involving moral turpitude."

[6] The plaintiff alleged claims of breach of contract, breach of the duty of good faith and fair dealing, promissory estoppel, wrongful discharge, failure to pay wages weekly, and failure to pay wages upon termination against WorldQuant. The plaintiff also alleged conversion and an additional claim of failure to pay wages against both WorldQuant and Blomberg. During the arbitration proceeding, the plaintiff withdrew his claims of failure to pay wages weekly and failure to pay wages upon termination against WorldQuant. The parties also stipulated that the third-party claims asserted

In January, 2022, WorldQuant filed a motion to amend its demand for arbitration to augment its existing claims and to add a breach of contract claim regarding consulting services that the plaintiff performed for a company known as HX Square, Inc. (HXS), while employed by WorldQuant. The arbitrator granted that motion on February 7, 2022.

As the trial court noted in its memorandum of decision, the parties thereafter "were involved in an arbitration conducted by the American Arbitration Association . . . . After discovery, which included the production of thousands of pages of documents and ten prehearing depositions, the parties filed cross motions for summary judgment with the permission of the arbitrator. On April 26, 2022, the arbitrator issued his decision on the cross motions for summary judgment (summary judgment decision) which (1) granted summary judgment in favor of WorldQuant dismissing [the plaintiff's] third counterclaim for promissory estoppel; (2) granted summary judgment in favor of WorldQuant and Blomberg dismissing [the plaintiff's] sixth counterclaim for conversion; and (3) granted summary judgment in favor of Blomberg on [the plaintiff's] fourth counterclaim for alleged failure to pay wages. Except as partially granted in favor of WorldQuant and Blomberg, the parties' cross motions for summary judgment were denied. Because not all of the claims and counterclaims asserted by the parties had been resolved by the summary judgment decision, a nine day evidentiary hearing was conducted by the arbitrator from May 9, 2022, through May 19, 2022. Ten witnesses testified during the hearing, and the parties submitted approximately 450 exhibits . . . . Near the end of the arbitration hearing, the parties agreed to, and the arbitrator approved, bifurcation of

against Blomberg, as well as any defenses and claims that he may assert against the plaintiff, would be subject to the arbitration provision in the employment agreement.

the arbitrator's consideration of the issues raised concerning liability and damages. Accordingly, the parties submitted posthearing briefs and reply briefs on the liability issues to the arbitrator in July and August, 2022. On September 7, 2022, the arbitrator issued his interim decision of liability (liability decision).

"In the liability decision, the arbitrator granted WorldQuant's claims against [the plaintiff], finding that WorldQuant's termination of [the plaintiff's] employment was for cause, that [the plaintiff] breached his employment agreement with WorldQuant, and that [the plaintiff] breached his fiduciary duties and duty of loyalty to WorldQuant.[7] The arbitrator also denied all of [the plaintiff's] remaining counterclaims against WorldQuant. Following the liability decision, the parties submitted to the arbitrator additional extensive briefing regarding WorldQuant's claims for damages and expenses of the arbitration, including attorney's fees, and argued the issues at a hearing held by the arbitrator on December 13, 2022. On December 27, 2022, the arbitrator issued his decision on damages and attorney's fees, costs, and expenses (damages decision). As a result of the summary judgment decision, the liability decision, and the damages decision . . . all of WorldQuant's claims against [the plaintiff] in the arbitration were granted; all of [the plaintiff's] counterclaims and third-party claims against WorldQuant and Blomberg in the arbitration were denied and dismissed. The arbitration award required [the plaintiff] to pay to WorldQuant the amount

[7] In the liability decision, the arbitrator found that the plaintiff had materially breached the employment agreement and that the termination of his employment was for cause. In light of those determinations, the arbitrator concluded that the plaintiff had "forfeited his unvested and vested equity" in WorldQuant. See footnote 2 of this opinion. The arbitrator concluded by noting that WorldQuant "is the prevailing party and is entitled to remedies. The holding that [the plaintiff] forfeits his vested and unvested restrictive units is one such remedy. . . . [O]ther damages will be reduced because of [WorldQuant's] own conduct."

of $690,578.60 within thirty days after December 27, 2022."[8] (Citation omitted; footnote added.)

On January 25, 2023, the plaintiff filed an application with the Superior Court to vacate or modify the arbitration award pursuant to General Statutes § 52-418 (a) (4),[9] in which he alleged that the arbitrator had acted in manifest disregard of the law.[10] On February 23, 2023, the defendants filed an application for an order confirming the arbitration award. The parties then filed a joint request to consolidate their respective applications to confirm and to vacate the arbitration award, which the court granted.

The parties thereafter submitted memoranda of law, and the court held a hearing on the applications to confirm and to vacate the arbitration award on August 1, 2023. By memorandum of decision dated September 29, 2023, the court granted the defendants' application

[8] We note that the defendants had requested a total of $2,820,169.13 in damages, attorney's fees, costs and expenses. In the damages decision, the arbitrator noted that he was exercising his equitable power to reduce the total relief provided to the defendants because they "did not have 'clean hands' . . . ." The arbitrator explained that "this reduction in the damages and fees, costs and expenses sought must be viewed in the context of what already has been awarded as a remedy in the [liability decision]. . . . [The plaintiff was] stripped of his equity [in WorldQuant], which arguably was the largest component of his compensation . . . ."

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

[10] As our Supreme Court has observed, "[a] proceeding to vacate an arbitration award is not a civil action, but is rather a special statutory proceeding." *Middlesex Ins. Co.* v. *Castellano*, 225 Conn. 339, 344, 623 A.2d 55 (1993).

to confirm and denied the plaintiff's application to vacate. The court rendered judgment accordingly in both cases, and this appeal followed.

I

We begin by addressing an issue that implicates the subject matter jurisdiction of this court. In their appellate brief, the defendants submit that the plaintiff's failure to strictly comply with the requirements of Practice Book § 61-7 (a) (1) renders the present appeal moot. We disagree.

"Mootness presents a legal question and implicates this court's subject matter jurisdiction, a threshold matter to resolve. . . . This court has a duty to dismiss cases over which it lacks subject matter jurisdiction, which cannot be conferred by the consent of the parties." (Citation omitted.) *Gladstein* v. *Goldfield*, 325 Conn. 418, 424, 159 A.3d 661 (2017). "[T]he question of subject matter jurisdiction, because it addresses the basic competency of the court, can be raised by any of the parties, or by the court sua sponte, *at any time* . . . ." (Emphasis in original; internal quotation marks omitted.) *M&T Bank* v. *Lewis*, 349 Conn. 9, 20, 312 A.3d 1040 (2024). Our review of the question of mootness is plenary. *State* v. *Rodriguez*, 320 Conn. 694, 699, 132 A.3d 731 (2016).

"Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by the judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant. . . . [I]t is not the province of

appellate courts to decide moot questions, disconnected from the granting of actual relief or from *the determination of which no practical relief can follow*. . . . In determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way." (Citation omitted; emphasis in original; internal quotation marks omitted.) *MacDermid, Inc.* v. *Leonetti*, 328 Conn. 726, 754–55, 183 A.3d 611 (2018).

The defendants' mootness claim is predicated on the plaintiff's failure to comply with Practice Book § 61-7 (a) (1), which provides: "Two or more parties in the same case may appeal jointly or severally. Separate cases heard together and involving at least one common party may as of right be appealed jointly, provided all the trial court docket numbers are shown on the appeal form (JD-SC-033)." It is undisputed that the plaintiff did not strictly comply with that rule of practice, as he did not list the docket number for the defendants' application to confirm on his November 14, 2023 appeal form. The defendants contend that this omission indicates that the plaintiff "failed to appeal the trial court's decision" to confirm the arbitration award and, therefore, "there is no practical relief that can be granted to him in this appeal since an identical judgment remains in place and in effect in the action to confirm." We do not agree.

As the November 14, 2023 appeal form filed with this court plainly indicates, the plaintiff brought this appeal from "[t]he decision and judgment denying the application to vacate the arbitration award *and* granting the application to confirm the arbitration award." (Emphasis added.) The defendants, therefore, were on notice that the plaintiff intended to challenge the propriety of both judgments in this appeal.[11]

[11] The plaintiff likewise argues in his principal appellate brief that "[t]he trial court erred in denying [his] application to vacate the arbitration award rendered in WorldQuant's favor and granting [the defendants'] application

It bears emphasis that, although the plaintiff's application to vacate and the defendants' application to confirm were filed as separate cases in the Superior Court, they were ordered consolidated at the request of the parties. Moreover, following a joint hearing, the court issued a single memorandum of decision that resolved both cases and listed their respective docket numbers.

We recognize that the plaintiff did not list the trial court docket number for the defendants' application to confirm on his November 14, 2023 appeal form, as required by Practice Book § 61-7 (a) (1). Because that deficiency is technical in nature, we decline to exalt form over substance due to the plaintiff's failure to strictly comply with that rule of practice when it is undisputed that the plaintiff expressly stated on that appeal form that he was appealing from *both* the judgment denying his application to vacate and the judgment granting the application to confirm. See *State* v. *Rios*, 30 Conn. App. 712, 714, 622 A.2d 618 (1993) (although appellate court does not condone failure to comply with rule of practice, it will "not exalt form over substance if the deficiency [is] of a technical nature"); see also *Lostritto* v. *Community Action Agency of New Haven, Inc.*, 269 Conn. 10, 34, 848 A.2d 418 (2004) ("[t]his court repeatedly has eschewed applying the law in such a hypertechnical manner so as to elevate form over substance").

The defendants have provided no authority, nor are we aware of any, in which a court of this state has concluded that a party's failure to list all trial court docket numbers on an appeal form in accordance with

to confirm the award." By way of relief, the plaintiff asks this court to "reverse the trial court's decision denying [his] application to vacate and granting [the defendants'] application to confirm . . . ." The basis of the plaintiff's challenge to both judgments is identical—namely, that the arbitration award was made in manifest disregard of the law.

Practice Book § 61-7 (a) (1) deprived the court of subject matter jurisdiction. Because the appeal form filed by the plaintiff provided notice to the defendants that the plaintiff was challenging the propriety of both the judgment denying his application to vacate and the judgment granting the defendants' application to confirm the arbitration award, we conclude, on the undisputed facts of this case, that the plaintiff's failure to include the docket number for the defendants' application to confirm does not render the present appeal moot.

II

We next consider the plaintiff's claims that the court improperly failed to vacate the arbitration award because the arbitrator both exceeded the scope of the arbitration submission and acted in manifest disregard of the law in awarding attorney's fees and costs to the defendants. We disagree.

At the outset, we note that the plaintiff predicated his application to vacate on § 52-418 (a) (4); see footnote 9 of this opinion; and alleged that the arbitrator exceeded his authority in rendering the arbitration award. As our Supreme Court has explained, "a claim that the arbitrators have 'exceeded their powers' may be established under § 52-418 in either one of two ways: (1) the award fails to conform to the submission, or, in other words, falls outside the scope of the submission; or (2) the arbitrators manifestly disregarded the law." *Harty* v. *Cantor Fitzgerald & Co.*, 275 Conn. 72, 85, 881 A.2d 139 (2005). When a party raises both of those issues, as the plaintiff does here, they "require independent consideration." Id., 88.

In addition, we note that the appellate courts of this state engage in de novo review of "a trial court's decision . . . [on] whether an arbitration award violates

the proscriptions of § 52-418 . . . .”[12] *Ahmed* v. *Oak Management Corp.*, 348 Conn. 152, 176, 302 A.3d 850 (2023), cert. denied, U.S. , 144 S. Ct. 2520, 219 L. Ed. 2d 1200 (2024). The de novo standard applied in the context of arbitration proceedings is fundamentally distinct from that normally applied in other judicial contexts, where no deference is accorded. See, e.g., *Groton* v. *United Steelworkers of America*, 254 Conn. 35, 51–52, 757 A.2d 501 (2000) (noting that “[o]ur legal system . . . ordinarily give[s] great deference . . . to both the factual and legal determinations of the arbitrators” and that, even when appellate review “requires a de novo determination by the court . . . we give deference to the arbitrator’s factual determinations” (citation omitted)). As our Supreme Court observed, “what . . . de novo review [in the arbitration context] encompasses depends on which ground for vacating an award is at issue. Irrespective of which ground is at issue, however, a court must afford substantial deference to the arbitrator’s interpretation of the scope and meaning of the agreement’s terms. . . . Because the parties bargained for the arbitrator’s construction of their agreement, an arbitral decision even arguably construing or

[12] Because our review of the plaintiff’s claims regarding the award of attorney’s fees and costs is de novo, we disagree with the defendants that the record is inadequate for review. We recognize that the plaintiff distinctly challenged the propriety of the award of attorney’s fees and costs in his application to vacate, his memorandum of law in support thereof, and his argument at the August 1, 2023 hearing. We also recognize that the court did not expressly address those claims in its September 29, 2023 memorandum of decision.

At the same time, the lack of an explicit statement of the court’s reasoning for rejecting those claims does not inhibit our review thereof. Appellate review of a claim that an arbitration award either exceeded the scope of the submission or was made in manifest disregard of the law is identical to that of the trial court. Like the trial court, an appellate court engages in de novo review and does not “review the evidence considered by the arbitrators” or “review the award for errors of law or fact.” (Internal quotation marks omitted.) *Harty* v. *Cantor Fitzgerald & Co.*, supra, 275 Conn. 80. Accordingly, the failure of the trial court to set forth its reasoning with respect to these claims does not preclude our review on appeal.

applying the contract must stand, regardless of a court's view of its (de)merits." (Citation omitted; internal quotation marks omitted.) *Ahmed* v. *Oak Management Corp.*, supra, 176–77.

The application of such deference comports with the precept that, "[w]hen arbitration is created by contract, we recognize that its autonomy can only be preserved by minimal judicial intervention. . . . Because the parties themselves, by virtue of the submission, frame the issues to be resolved and define the scope of the arbitrator's powers, the parties are generally bound by the resulting award. . . . Since the parties consent to arbitration, and have full control over the issues to be arbitrated, a court will make every reasonable presumption in favor of the arbitration award and the arbitrator's acts and proceedings. . . . The party challenging the award bears the burden of producing evidence sufficient to invalidate or avoid it . . . ." (Internal quotation marks omitted.) *Bridgeport* v. *Kasper Group, Inc.*, 278 Conn. 466, 474, 899 A.2d 523 (2006). Accordingly, our courts "afford an unparalleled level of deference to the arbitrator and construe the grounds for vacatur quite narrowly." *Ahmed* v. *Oak Management Corp.*, supra, 348 Conn. 183; see also *Harty* v. *Cantor Fitzgerald & Co.*, supra, 275 Conn. 80 (" '[j]udicial review of arbitral decisions is narrowly confined' ").

Moreover, with respect to the factual findings and legal conclusions drawn by the arbitrator, we note that an application to vacate predicated on claims that an arbitrator exceeded the scope of the submission or acted in manifest disregard of the law "presupposes an unrestricted submission." *Blondeau* v. *Baltierra*, 337 Conn. 127, 154, 252 A.3d 317 (2020); accord *Toland* v. *Toland*, 179 Conn. App. 800, 807 n.5, 182 A.3d 651 ("analysis under § 52-418 . . . applies when a party attempts to vacate *unrestricted* submissions" (emphasis in original)), cert. denied, 328 Conn. 935, 183 A.3d

1174 (2018). In such instances, our Supreme Court has applied "the standard of review applicable to unrestricted submissions"; *Blondeau* v. *Baltierra*, supra, 154; pursuant to which "courts will not review the evidence considered by the arbitrators nor will they review the award for errors of law or fact."[13] (Internal quotation marks omitted.) *Harty* v. *Cantor Fitzgerald & Co.*, supra, 275 Conn. 80. With those principles in mind, we turn to the plaintiff's claims.

A

The plaintiff claims that the court improperly failed to vacate the arbitration award because the arbitrator exceeded the scope of the arbitration submission in awarding attorney's fees and costs to the defendants. In the present case, the arbitration clause in the employment agreement; see footnote 3 of this opinion; constitutes the written submission to arbitration. See *Ahmed* v. *Oak Management Corp.*, supra, 348 Conn. 186–87.

"The standard for reviewing a claim that the award does not conform to the submission requires what we have termed in effect, de novo judicial review. . . . The de novo label in this context means something very different from typical de novo review because review under this standard and in this setting is limited to a comparison of the award to the submission. Our inquiry generally is limited to a determination as to whether the parties have vested the arbitrators with the authority to decide the issue presented or to award the relief conferred. . . . In making this determination, the court may not engage in fact-finding by providing an independent interpretation of the contract, but simply is charged with determining if the arbitrators have ignored their obligation to interpret and to apply the contract as written. . . . To justify vacating an award on the

[13] In his appellate reply brief, the plaintiff states that he does not dispute "the facts found by the arbitrator."

ground that the award exceeds the scope of the submission, we must determine that the award *necessarily* falls outside the scope of the submission." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Blondeau* v. *Baltierra*, supra, 337 Conn. 155–56.

On appeal, the plaintiff claims that the award of attorney's fees and costs exceeded the scope of the submission. The language of the arbitration clause indicates otherwise. It provides in relevant part: "[A]ny dispute, controversy or claim arising out of or relating to this [a]greement and/or your employment with [WorldQuant] shall be submitted to and decided by binding arbitration as the exclusive means of resolution thereof. . . . Any arbitral award determination shall be final and binding upon you and [WorldQuant]. No arbitrator shall be empowered to award punitive, consequential or exemplary damages, and you hereby waive any right to recover any such damages; provided, that the party prevailing in any such arbitration proceeding shall be entitled to receive, in addition to all other damages to which such party may be entitled, the costs incurred by such party in connection with such arbitration, including, without limitation, reasonable attorneys' fees, costs and expenses." By its plain language, that clause provides that the prevailing party is "entitled" to receive an award of attorney's fees and costs "*in addition to* all other damages to which such party may be entitled . . . ." (Emphasis added.) In light of that unambiguous language, we cannot conclude that the award of attorney's fees and costs necessarily exceeded the scope of the submission.

Even if the arbitration clause was ambiguous as to whether attorney's fees and costs are permitted in light of the prohibition of punitive damages, the plaintiff still could not prevail. As the Supreme Court has observed, "[t]o justify vacating an award . . . we must determine

that the award *necessarily* falls outside the scope of the submission. . . . Here, the ambiguity [in the submission] as to the parties' intent precludes such a result." (Citation omitted; emphasis in original.) *Harty* v. *Cantor Fitzgerald & Co.*, supra, 275 Conn. 98–99. Thus, even if an ambiguity exists in the arbitration clause regarding the arbitrator's ability to award attorney's fees and costs, as the plaintiff steadfastly has argued,[14] that ambiguity undermines any claim that the arbitration award in the present case necessarily fell outside the scope of the submission. See id. Accordingly, the plaintiff's claim fails.

B

The plaintiff also argues that the arbitrator acted in manifest disregard of the law in awarding attorney's fees and costs to the defendants. That claim requires a different analysis than the preceding one.

As our Supreme Court has explained, "[m]anifest disregard of the law is an extremely deferential standard of review. [T]he manifest disregard of the law ground for vacating an arbitration award is narrow and should be reserved for circumstances of an arbitrator's extraordinary lack of fidelity to established legal principles. . . . This level of deference is appropriate because the parties voluntarily have chosen arbitration as a means to resolve their legal dispute. . . . As an essential component of that choice, they have agreed to bypass the

[14] At the August 1, 2023 joint hearing on the plaintiff's application to vacate and the defendants' application to confirm the arbitration award, the plaintiff's counsel argued that an ambiguity existed in the arbitration clause due to the existence of both a provision proscribing punitive damages and a provision authorizing attorney's fees and costs. He stated: "There is a clear ambiguity on the face of this contract permitting attorney's fees versus prohibiting punitive damages . . . ." The plaintiff's counsel also argued that "[t]he arbitrator failed to reconcile this ambiguity in awarding [the defendants] attorney's fees and costs." The plaintiff renewed that argument in his principal appellate brief.

usual adjudicative apparatus, including its conventional appellate features, for the advantages that accompany private arbitration. To borrow a phrase from the marriage ceremony, that choice is made for better or for worse, which, in this context, means that the arbitrator's decision is final and binding unless it is manifestly, obviously, and indisputably wrong. Review by a judicial authority is not forfeited entirely, but it is conducted under a different and far less rigorous level of scrutiny.

"Under this highly deferential standard . . . our precedent instructs that three elements must be satisfied before we will vacate an arbitration award on the ground that the arbitration panel manifestly disregarded the law: (1) the error was obvious and capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator; (2) the arbitration panel appreciated the existence of a clearly governing legal principle but decided to ignore it; and (3) the governing law alleged to have been ignored by the arbitration panel is [well-defined], explicit, and clearly applicable. . . . [E]very reasonable presumption and intendment will be made in favor of the [arbitration] award and of the arbitrators' acts and proceedings." (Citations omitted; internal quotation marks omitted.) *Blondeau* v. *Baltierra*, supra, 337 Conn. 161–62.

The plaintiff argues that the arbitrator manifestly disregarded the law by awarding attorney's fees and costs because WorldQuant was not the prevailing party. That claim requires little discussion. In the liability decision, the arbitrator found in favor of the defendants on *all* of their claims and denied *all* of the counterclaims raised by the plaintiff. Moreover, the court expressly found that the defendants were the "prevailing party" in this arbitration. By way of relief, the arbitrator ordered the forfeiture of the plaintiff's equity interest in WorldQuant. See footnotes 2, 7 and 8 of this opinion.

The foregoing belies any claim that the defendants were not the prevailing party in this arbitration.

Those determinations also undermine the plaintiff's contention that the arbitrator manifestly disregarded the law by awarding attorney's fees and costs in the absence of an award of damages. First, as a factual matter, the plaintiff is mistaken. In his principal appellate brief, the plaintiff conflates the damages element of breach of contract, breach of fiduciary duty, and breach of the duty of loyalty actions with the relief ultimately awarded by the arbitrator. The plaintiff argues, in syllogistic fashion, that (1) damages are essential elements of those actions, (2) the arbitrator awarded no damages specific to those actions in the damages decision, and (3) as a result, the damages element of those actions was not established in this case. The fallacy in that argument is the uncontroverted fact that the primary relief granted to the defendants was the forfeiture of the plaintiff's equity interest in WorldQuant. As the arbitrator noted in the damages decision, the consequence of his decision in favor of the defendants on all claims was that the plaintiff "is stripped of his equity [in WorldQuant], which arguably was the largest component of his compensation . . . ."[15] The arbitrator further explained that he had reduced the award of damages to WorldQuant due to the sizeable relief that already had been granted to WorldQuant in the liability decision. As the arbitrator stated, his "reduction in the damages . . . sought [by the defendants] must be viewed in the context of what already has been awarded [to the defendants] as a remedy"—namely, the loss of that significant equity interest. That explication indicates that the arbitrator concluded that damages were warranted in light of the

[15] In opposing the defendants' request for more than $2.8 million in damages, attorney's fees and costs, the plaintiff claimed that it " 'shocks the conscience' especially in light of the fact that the [liability decision] already stripped [him] of his vested and unvested equity [in WorldQuant]."

plaintiff's breaches of the employment contract, his fiduciary duty, and his duty of loyalty, but that the arbitrator opted to reduce those damages in light of his decision to order the forfeiture of the plaintiff's equity interest in WorldQuant.

The plaintiff's claim also incorrectly presumes that an award of damages is a necessary prerequisite to an award of attorney's fees and costs. The plain language of the arbitration clause does not support that contention; rather, it explicitly provides that "the party prevailing in any such arbitration proceeding shall be entitled to receive, in addition to all other damages to which such party may be entitled, the costs incurred by such party in connection with such arbitration, including, without limitation, reasonable attorneys' fees, costs and expenses." In agreeing to that provision, the parties memorialized the prevailing party's right to receive attorney's fees and costs in addition to any other damages that may be awarded by an arbitrator. The inclusion of such a provision in the employment contract is consistent with Connecticut law.[16] Accordingly, the plaintiff has not demonstrated a manifest disregard of the law by the arbitrator with respect to the award of attorney's fees and costs.

[16] As our Supreme Court has observed, "[t]he general rule of law known as the American rule is that attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception. . . . Connecticut adheres to the American rule. . . . There are few exceptions. [One] example [is] where a specific contractual term provides for the recovery of attorney's fees and costs . . . ." (Citations omitted; internal quotation marks omitted.) *24 Leggett Street Ltd. Partnership* v. *Beacon Industries, Inc.*, 239 Conn. 284, 311, 685 A.2d 305 (1996); see also *McCarter & English, LLP* v. *Jarrow Formulas, Inc.*, 351 Conn. 186, 209–10, 329 A.3d 898 (2025) (declining to depart from "the majority rule precluding an award of punitive damages in a breach of contract action" but emphasizing that "there were alternative approaches [the plaintiff] could have pursued in an attempt to protect its interests," including inserting "a provision in a [contract] with [the defendant] addressing potential remedies should [the defendant] breach [the] contract").

III

The plaintiff also claims that the court improperly failed to vacate the arbitration award because the arbitrator acted in manifest disregard of the law by denying his breach of the duty of good faith and fair dealing counterclaim. We do not agree.

"[E]very contract carries an implied duty requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement." (Internal quotation marks omitted.) *Ramirez* v. *Health Net of the Northeast, Inc.*, 285 Conn. 1, 16 n.18, 938 A.2d 576 (2008). "To constitute a breach of [the implied covenant of good faith and fair dealing], the acts by which a defendant allegedly impedes the plaintiff's right to receive benefits that he or she reasonably expected to receive under the contract must have been taken in bad faith. . . . Bad faith in general implies both actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. . . . Bad faith means more than mere negligence; it involves a dishonest purpose." (Citation omitted; internal quotation marks omitted.) *De La Concha of Hartford, Inc.* v. *Aetna Life Ins. Co.*, 269 Conn. 424, 433, 849 A.2d 382 (2004).

"Whether a party has acted in bad faith is a question of fact, subject to the clearly erroneous standard of review." *Harley* v. *Indian Spring Land Co.*, 123 Conn. App. 800, 837, 3 A.3d 992 (2010). "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.) *De La Concha of Hartford, Inc.* v. *Aetna Life Ins. Co.*, supra, 269 Conn. 432.

The following additional facts, as found by the arbitrator, are relevant to this claim. The plaintiff's "actions and misrepresentations" surrounding the termination of the employment of Diana Novick, WorldQuant's principal salesperson, were "the triggering event for why [WorldQuant] had reason to lose confidence in [the plaintiff] and [c]ause for his discharge." As the arbitrator found: "Starting in late-2019 and then in mid-2020, [the plaintiff] expressed his dissatisfaction with Novick's performance to [legal counsel Joshua Hawks-Ladds] and Human Resources Vice President [Jordana] Upton. . . . On December 3, 2020, [the plaintiff] gave a year-end performance review to Novick. . . . Novick secretly recorded the meeting. . . . The performance review was positive and included detailed discussions of Novick's compensation and equity in [WorldQuant]. Yet, shortly after the meeting, [the plaintiff] planned to terminate Novick's employment. . . . [The plaintiff] also hired a new Director of Sales . . . who started in January, 2021. On March 4, 2021, [WorldQuant] terminated Novick. The decision was made by [the plaintiff] in consultation with . . . [Upton and Hawks-Ladds].

"On March 15, 2021, Novick's attorney, Salvatore Gangemi, sent a letter that challenged her termination and requested additional severance. . . . The letter recites Novick's performance, the compensation and equity discussions, and how she believed [the plaintiff] and [WorldQuant] had limited her ability to be an effective salesperson. The letter also states that Novick observed 'circumstances that confirmed [the plaintiff's] unlawful biases, based on gender, religion and age.' The letter provided examples of the alleged discriminatory conduct . . . . [WorldQuant] asked [the plaintiff] to address Novick's attorney's letter, which he did, explaining and strongly denying the allegations. . . .

Hawks-Ladds then sent a response to the demand letter from [Gangemi]; the seven page letter denied the allegations against [the plaintiff] and explained that Novick's poor performance was the cause for her termination. . . .

"In response, [Gangemi] claimed that [WorldQuant's] letter contained misrepresentations and lies. Gangemi also revealed that Novick had recordings that proved what [WorldQuant] said was false. On April 7, 2021, Gangemi provided the recordings to [WorldQuant]. . . . Blomberg testified that the recording was shocking, as did Hawks-Ladds. . . . They both realized that [the plaintiff] had not been truthful about Novick, and he had deceived them about what he had said about Novick's performance and her entitlement to equity. As a result, [WorldQuant] recognized it had possible exposure and changed its negotiating posture. [WorldQuant] then offered [Novick] eight months of severance, additional commissions and payment of [her] attorney's fees. The result was that the severance agreement with Novick paid her four times the original severance offer. The agreement was reached on April 13, 2021. . . .

"As part of the discussions leading to the settlement agreement with Novick, her counsel demanded protection in the event that [the plaintiff] brought some action against her. This resulted in a supplement to the agreement with Novick. . . . The supplement . . . required indemnification for any claims [the plaintiff] might make against Novick. Hawks-Ladds, Blomberg and Upton exchanged several emails about the final Novick agreement and the supplement. . . . Some of these emails were sent to [the plaintiff], but not all. On April 10, 2021, Hawks-Ladds wrote: 'Attached is a new [s]eparation [a]greement and a [s]upplement to the [a]greement for you to review. Do not send to [the plaintiff]. Once you approve these, I will send the [s]eparation

[a]greement to [the plaintiff] (and not the [s]upplement) and I will note the promises [the plaintiff] is making in the [s]eparation [a]greement—I will explain to him that we need these for a deal to be made (innocuous, etc.). Please provide any changes. I am supposed to be on vacation, so want to get this done ASAP and then sent to Gangemi.' . . .

"[The plaintiff] contends he never saw the supplement although he did see the 'Do not show to [the plaintiff]' reference at the bottom of an email chain that [WorldQuant] says was inadvertently forwarded to [the plaintiff]. . . . [The plaintiff] also testified that he did not have his own counsel review the 'substance' of the Novick agreement he was asked to sign. Yet the facts are otherwise: the supplement is mentioned in the email chain dated April 12, 2021, between [the plaintiff] and his attorney . . . .

"[The plaintiff] testified that, at the time this supplement was being circulated, he did not know that [Hawks-Ladds] was not representing him. . . . [The plaintiff] did not notice the differences in the several drafts of the Novick agreement or that the references to the supplement in the original drafts had been removed." (Citations omitted; emphasis altered; footnote omitted.)

At the request of counsel, the arbitrator listened to "the entire taped conversation" of Novick's December 3, 2020 performance review conducted by the plaintiff. The arbitrator found that this review "confirm[ed] . . . that [the plaintiff's] statements and misrepresentations on the Novick matter support" the conclusion that WorldQuant had cause to terminate the plaintiff's employment under the employment agreement. As the arbitrator found, "[t]he tape gives no hint that Novick was about to be terminated . . . . The tape documents representations [the plaintiff] made about equity, and

they discussed options and profits interest, although he later denied such statements. . . . [T]he two key areas where [the plaintiff] was not truthful are apparent: that is, the review was positive despite [the plaintiff's] intent to terminate Novick; and there was 'equity promised or implied,' despite [the plaintiff's] later denial. . . . These statements are material and are directly contradicted by [the plaintiff's] explanations in the document he prepared for counsel to respond to Novick's attorney. . . . That document includes misrepresentations and is reflective of [the plaintiff's] overall credibility throughout this proceeding." (Citations omitted; emphasis omitted.) The arbitrator further found that there was "no evidence that [the plaintiff's] termination was . . . done to avoid payment of vested or unvested equity. It was a reaction to the material breach of [the plaintiff's] responsibilities as [chief executive officer] and the resulting loss of trust [in him]."

In evaluating the plaintiff's breach of the duty of good faith and fair dealing counterclaim, the arbitrator correctly observed that "the key question . . . is whether [WorldQuant] acted in bad faith." The arbitrator noted that "the investigation and termination process [WorldQuant] followed is not ideal human resources practice. And the conduct of [WorldQuant] in failing to provide the Novick supplemental agreement to [the plaintiff] is troubling to say the least. But [the plaintiff's] own behavior and lack of credibility in his testimony about his sharing of the related emails with his counsel . . . compounds the situation. Neither side has clean hands."[17] The arbitrator then concluded that, "[a]lthough the termination and related events were poorly handled,

[17] In light of his determination in the liability decision that "[n]either side has clean hands," the arbitrator awarded far less than the $2,820,169.13 in total relief sought by the defendants. In the damages decision, the arbitrator explained that he was exercising his equitable power to reduce the defendants' total award to $690,578.60 because they did not have clean hands.

they do not rise to the level of dishonest or sinister motive sufficient to meet the required bad faith standard. [WorldQuant] has not breached the covenant of good faith and fair dealing." (Emphasis omitted.)

Although the plaintiff does not agree with the arbitrator's finding that WorldQuant's conduct did not rise to the level of bad faith, "[a] party's mere disagreement with the [arbitrator's] interpretation and application of established legal principles is a far cry from the egregious or patently irrational misperformance of duty that must be shown in order to prove a manifest disregard of the law . . . ." (Internal quotation marks omitted.) *Saturn Construction Co.* v. *Premier Roofing Co.*, 238 Conn. 293, 308, 680 A.2d 1274 (1996). In the present case, the arbitrator set forth the proper legal principles governing the duty of good faith and fair dealing and made detailed findings with respect to the conduct of both the plaintiff and WorldQuant based on his review and credibility assessment of the documentary and testimonial evidence presented at the arbitration proceeding.[18] Accordingly, this is not a case in which the arbitrator ignored clearly applicable law. See, e.g., *Blondeau* v. *Baltierra*, supra, 337 Conn. 162. The plaintiff's claim that the arbitrator manifestly disregarded the law, therefore, is unavailing.

IV

The plaintiff claims that the court improperly failed to vacate the arbitration award because the arbitrator acted in manifest disregard of the law by misapplying the after-acquired evidence doctrine. Because the arbitrator found that the defendants had notice prior to the

[18] We reiterate that, in considering a manifest disregard of the law claim pursuant to § 52-418 (a) (4), our courts apply "the standard of review applicable to unrestricted submissions"; *Blondeau* v. *Baltierra*, supra, 337 Conn. 154; and "will not review the evidence considered by the arbitrators nor will they review the award for errors of law or fact." (Internal quotation marks omitted.) *Harty* v. *Cantor Fitzgerald & Co.*, supra, 275 Conn. 80.

decision to terminate the plaintiff's employment that he had provided consulting services to HXS during the course of his employment with WorldQuant, the plaintiff maintains that the proper application of the after-acquired evidence doctrine compels the conclusion that the defendants waived any claim with respect to that conduct. We disagree.

Known also as the "after-acquired evidence defense"; see, e.g., *Miller Plastic Products, Inc.* v. *National Labor Relations Board*, 141 F.4th 492, 520 (3rd Cir. 2025); *Tilkey* v. *Allstate Ins. Co.*, 56 Cal. App. 5th 521, 563, 270 Cal. Rptr. 3d 559 (2020); the after-acquired evidence doctrine "is equitable in nature and is usually applied in a situation involving termination or another adverse employment action to ensure that an employee does not benefit from the employee's own misconduct or misrepresentation. The rationale of the cases applying the [doctrine] is that a plaintiff who was not entitled to the employment in the first place cannot claim economic damages for the loss of it." (Internal quotation marks omitted.) *Silberstein* v. *Pro-Golf of America, Inc.*, 278 Mich. App. 446, 461, 750 N.W.2d 615 (2008), appeal denied, 483 Mich. 886, 759 N.W.2d 882 (2009). As the United States Court of Appeals for the Eighth Circuit explained, the after-acquired evidence doctrine "applies when an employee is fired for an unlawful reason but the employer later learns of other conduct that, by itself, would have resulted in discharge had it come to the employer's attention . . . . It is the employer's burden to prove that it would have fired the employee upon discovery of the evidence." (Citation omitted.) *Smith* v. *AS America, Inc.*, 829 F.3d 616, 625–26 (8th Cir. 2016). "Where an employer seeks to rely upon after-acquired evidence of wrongdoing, it must . . . establish that the wrongdoing was of such severity that the employee in fact would have been terminated on those grounds alone if the employer had

known of it at the time of the discharge." *McKennon* v. *Nashville Banner Publishing Co.*, 513 U.S. 352, 362–63, 115 S. Ct. 879, 130 L. Ed. 2d 852 (1995).

The after-acquired evidence doctrine typically is utilized by defendants as a shield to minimize or bar recovery by a plaintiff pursuing a wrongful discharge claim. See, e.g., *O'Brien* v. *Ohio State University*, 139 Ohio Misc. 2d 36, 42, 859 N.E.2d 607 (2006) ("[u]nder the after-acquired evidence doctrine, when an employer wrongfully terminates an employee but later learns that good cause for termination then existed, the after-acquired evidence doctrine operates to either lessen or bar the employee's recovery of damages"), aff'd, 2007 WL 2729077 (Ohio App. September 20, 2007), appeal denied, 117 Ohio St. 3d 1406, 881 N.E.2d 274 (2008); see also *Crawford Rehabilitation Services, Inc.* v. *Weissman*, 938 P.2d 540, 547 (Colo. 1997) ("[t]he after-acquired evidence doctrine shields an employer from liability or limits available relief where, after a termination, the employer learns for the first time about employee wrongdoing that would have caused the employer to discharge the employee"); *Gassmann* v. *Evangelical Lutheran Good Samaritan Society, Inc.*, 261 Kan. 725, 727–28, 933 P.2d 743 (1997) (holding that employee was not entitled to any relief if employer could establish after-acquired evidence sufficient for termination of employment); *McDill* v. *Environamics Corp.*, 144 N.H. 635, 640–41, 757 A.2d 162 (2000) (noting that "[s]ome jurisdictions permit after-acquired evidence to serve as a complete bar to an employee's recovery, while other jurisdictions apply the after-acquired evidence doctrine only to mitigate an employee's damages" and then holding that "in a breach of contract action after-acquired evidence of employee misconduct is a defense to a breach of contract action for wages and benefits lost as a result of discharge if the employer can demonstrate that it would have fired

the employee had it known of the misconduct" (internal quotation marks omitted)); R. White & R. Brussack, "The Proper Role of After-Acquired Evidence in Employment Discrimination Litigation," 35 B.C. L. Rev. 49, 94 (1993) ("[a]fter-acquired evidence has rapidly developed into a powerful defense tactic for employers").

The United States Supreme Court has held, as a matter of federal law in the employment discrimination context, that when an employer meets its burden under the after-acquired evidence doctrine, "neither reinstatement nor front pay is an appropriate remedy [for a wrongly discharged employee]. It would be both inequitable and pointless to order the reinstatement of someone the employer would have terminated, and will terminate, in any event and upon lawful grounds." *McKennon* v. *Nashville Banner Publishing Co.*, supra, 513 U.S. 361–62; see also *Stone Key Group, LLC* v. *Taradash*, 204 Conn. App. 55, 95, 328 A.3d 159 ("[i]n the federal system, as a general rule, after acquired evidence is relevant to the relief due a successful plaintiff in an employment discrimination discharge case" (internal quotation marks omitted)), cert. denied, 338 Conn. 912, 259 A.3d 653 (2021), and cert. denied, 338 Conn. 912, 259 A.3d 653 (2021). This court has adopted that precept as a matter of state law with respect to damages awarded in the context of a wrongful discharge action brought by an employee against an employer. See *Preston* v. *Phelps Dodge Copper Products Co.*, 35 Conn. App. 850, 856–61, 647 A.2d 364 (1994).

The procedural posture of the present case stands in stark contrast to that precedent. Here, it was the employer that commenced this arbitration proceeding and subsequently augmented the original complaint with additional allegations regarding the conduct of its employee in providing consulting services to an outside

company in contravention of the employment agreement.[19] In the liability decision, the arbitrator found that the plaintiff entered into a consulting agreement with HXS while employed by WorldQuant and that Blomberg and others at WorldQuant had knowledge about that relationship prior to the termination of the plaintiff's employment. The arbitrator also found that the defendants were unaware that the plaintiff received substantial compensation from HXS until after his dismissal. As the arbitrator stated: "Although [the plaintiff] does not appear to have attempted to conceal the HXS deal, he did not provide the [consulting agreement] or notice of this project or the fee to [the defendants]. . . . [The defendants discovered] the details of [the plaintiff's consulting agreement with HXS] in January, 2022, as part of the discovery for this arbitration. . . . Receiving $115,000 is more than de minimus and is a material breach of the provision of the employment agreement that required him to work full-time for [WorldQuant] unless he received permission to do otherwise." (Citations omitted.) Accordingly, as a factual matter, this is not a case in which the defendants had knowledge at the time of the termination of the plaintiff's employment

[19] The plaintiff's employment agreement provides in relevant part: "Your employment shall be on a full-time basis, which means that you shall devote your full time to your employment during normal working hours, and not carry on other business activities at any time that are competitive or that may interfere in any manner with the business of [WorldQuant]. Subject to the foregoing, and without limiting your obligations set forth in Section B below, it is acknowledged and agreed that you may engage in the 'permitted activities' listed on Schedule 2; provided that (i) such activities be and remain de minimis in nature; (ii) you may not accept cash compensation in connection with any such 'permitted activity' and (iii) you shall promptly notify [WorldQuant's] [b]oard of [m]anagers, in writing, in the event that your status changes with respect to any such 'permitted activity.' No other business activity shall constitute a 'permitted activity,' unless so determined by [WorldQuant's] [b]oard of [m]anagers in its sole discretion." Schedule 2 of the employment agreement lists six entities by name and specifies the nature of the plaintiff's activities in connection therewith. HXS is not one of the listed entities.

that he was receiving substantial compensation from HXS. Rather, that knowledge was acquired after this arbitration proceeding commenced.

The present case is further distinguishable from case law on the after-acquired evidence doctrine due to the fact that the termination notice provided to the plaintiff contained a reservation of rights clause, which provides: "Please be advised that [WorldQuant] . . . reserve[s] all of its rights under the [e]mployment [a]greement . . . at law or otherwise, and nothing in this letter shall be construed as a modification, release or waiver of any rights or claims." In the liability decision, the arbitrator expressly weighed the plaintiff's claim that application of the after-acquired evidence doctrine compelled the conclusion that the defendants waived any claim regarding his consulting work with HXS against the defendants' claim that there was no waiver due to the reservation of rights in the termination notice. The arbitrator noted that "courts in Connecticut have recognized that a reservation of rights in other contexts can allow consideration of additional issues that are related to the initial reasons given," citing to *McCulloch* v. *Hartford Life & Accident Ins. Co.*, 363 F. Supp. 2d 169, 188 (D. Conn. 2005). The arbitrator then found that the issue of the plaintiff's consulting work with HXS did "relate to the reasons given for the termination of [the plaintiff's employment], which were allegations of policy violations in breach of the employment agreement. Here the breach was of a fundamental component of the employment agreement—the duty not to work for pay from another entity. Unlike some cases where courts have held that by failing to assert a specific reason for termination, the party waives its rights to do so later, here [WorldQuant] reserved its rights." The arbitrator further noted that he "is unaware of contrary

precedent on waiver under Connecticut law." The arbitrator thus concluded that "[t]here was no waiver in this case" by the defendants.[20]

In light of the foregoing, we conclude that the plaintiff has not met his burden of demonstrating that the arbitrator manifestly disregarded the law. He has not overcome the "high hurdle"; *Harty* v. *Cantor Fitzgerald & Co.*, supra, 275 Conn. 102; of showing that the governing law on waiver is well-defined, explicit, and clearly applicable in situations in which both the after-acquired evidence doctrine and a reservation of rights clause are implicated, that an obvious error existed that was capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator, or that the arbitrator appreciated yet ignored a clearly governing legal principle. See *Blondeau* v. *Baltierra*, supra, 337 Conn. 161–62. Accordingly, the plaintiff has not established that the court improperly denied his appli-

[20] In addition, we note that, outside the context of employment discrimination actions; see, e.g., *McKennon* v. *Nashville Banner Publishing Co.*, supra, 513 U.S. 354; the after-acquired evidence doctrine arguably is inapposite when an employer terminates an employee for cause and thereafter seeks to supplement the grounds for termination. As the Restatement (Second) of Agency provides, "[a] principal is privileged to discharge before the time fixed by the contract of employment an agent who has committed such a violation of duty that his conduct constitutes a material breach of contract . . . ." 2 Restatement (Second), Agency, § 409 (1), p. 258 (1958). The commentary to that section notes that, "[i]f a principal has cause for the discharge of an agent and discharges him, the fact that the principal is not at the time aware that he has cause for discharge is immaterial." Id., comment (e), p. 261. The Restatement of Employment Law similarly provides that "[a]n employer has cause for early termination of an agreement for a definite term of employment if the employee has materially breached the agreement . . . ." Restatement, Employment Law, § 2.04 (a), p. 71 (2015). As that treatise explains, "under the approach adopted by this Restatement, the employer must always establish the basis for cause. . . . Some decisions require that the employer's stated justification be the actual reason for the termination, although the traditional rule is that the employer's motivation is irrelevant as long as adequate cause in fact existed at the time of dismissal." (Citation omitted.) Id., reporter's note to comment (e), p. 80.

cation to vacate or improperly granted the defendants' application to confirm the arbitration award.

The judgments are affirmed.

In this opinion the other judges concurred.

COLIN J. PENCE *v.* COMMISSIONER OF MOTOR VEHICLES ET AL.
(AC 47595)

Moll, Suarez and Westbrook, Js.

Syllabus

The plaintiff appealed from the trial court's judgment dismissing his administrative appeal from the decision of the defendant Commissioner of Motor Vehicles. In his decision, the commissioner suspended the plaintiff's motor vehicle operator's license following his arrest for operating a motor vehicle while under the influence of intoxicating liquor and required, pursuant to statute (§ 14-227b (i)), as a condition for the restoration of his license, that the plaintiff install an ignition interlock device in a motor vehicle he owned or operated. The plaintiff claimed that the court improperly dismissed his administrative appeal for lack of standing because he had established that he was an indigent driver who did not own a motor vehicle, could not afford a motor vehicle, and had no access to a motor vehicle in which to install an ignition interlock device, and, therefore, there was a possibility that his legally protected interest in a motor vehicle operator's license would be adversely and unequally affected by the ignition interlock device requirement in violation of the equal protection clauses of the United States and Connecticut constitutions. *Held*:

The trial court properly determined that the plaintiff did not have standing to assert his constitutional claim, as the plaintiff failed to establish that he was a member of the group of individuals that he asserted § 14-227b (i) was enacted to discriminate against, namely, indigent drivers who do not own a motor vehicle, who cannot afford a motor vehicle, and who do not have access to a motor vehicle in which to install an ignition interlock device, as is required by § 14-227b (i).

(*One judge dissenting*)

Argued March 26—officially released September 23, 2025

Procedural History

Appeal from the decision of the named defendant suspending the plaintiff's motor vehicle operator's

license and imposing an ignition interlock device requirement, brought to the Superior Court in the judicial district of New Britain and tried to the court, *Budzik*, *J.*; judgment dismissing the appeal, from which the plaintiff appealed to this court. *Affirmed.*

J. Christopher Llinas, for the appellant (plaintiff).

Andrew M. Ammirati, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellee (named defendant).

Opinion

MOLL, J. The plaintiff, Colin J. Pence, appeals from the judgment of the Superior Court rendered in favor of the defendant[1] Commissioner of Motor Vehicles (commissioner) dismissing his administrative appeal from the decision of the commissioner suspending his motor vehicle operator's license for forty-five days and requiring the installation of an ignition interlock device in his motor vehicle for six months pursuant to General Statutes § 14-227b (i).[2] On appeal, the plaintiff argues

[1] The plaintiff also named as a defendant the Office of the Attorney General.

[2] General Statutes § 14-227b (i) provides in relevant part: "(1) The commissioner shall suspend the operator's license or operating privilege of a person . . . against whom a decision was issued, after a hearing, pursuant to subsection (h) of this section, as of the effective date contained in the suspension notice, for a period of forty-five days. As a condition for the restoration of such operator's license or operating privilege, such person shall be required to install an ignition interlock device on each motor vehicle owned or operated by such person and, upon such restoration, be prohibited from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device . . . .

"(2) (A) A person twenty-one years of age or older at the time of the arrest who submitted to a test and the results of such test indicated that such person had an elevated blood alcohol content, or was found to have been operating a motor vehicle under the influence of intoxicating liquor or any drug, or both based on a report filed pursuant to subsection (d) of this section, shall install and maintain an ignition interlock device for the following periods: (i) For a first suspension under this section, six months . . . ."

Since the events underlying this appeal, the legislature has amended § 14-227b in ways that have no bearing on the merits of the present case. See

that the court improperly dismissed his administrative appeal for lack of standing because he established that he is an indigent driver who does not own a motor vehicle, cannot afford a motor vehicle, and has no access to a motor vehicle in which to install an ignition interlock device, as is required by § 14-227b (i), and, therefore, there is a possibility that his legally protected interest in a motor vehicle operator's license will be adversely and unequally affected by the ignition interlock device requirement. We disagree and, accordingly, affirm the judgment of the Superior Court.

The following procedural history and facts, as recited by the court or as undisputed in the record, are relevant to our resolution of this appeal. On August 13, 2022, at approximately 1:05 a.m., Officer Michael Wilcoxson was dispatched in response to a complaint about a motor vehicle in the middle of the roadway fronting 101 North Plains Industrial Road in Wallingford. After assessing the scene and observing that the plaintiff's motor vehicle had collided with the guardrail on the west side of North Plains Industrial Road, Wilcoxson asked the plaintiff to perform three standardized field sobriety tests, all of which the plaintiff failed. The plaintiff was arrested and transported to the Wallingford Police Department, where he was read his *Miranda* rights[3] and submitted to two Breathalyzer tests in which his blood alcohol content registered as 0.1992 and 0.1942, respectively. As a result, Wilcoxson arrested the plaintiff for, inter alia,[4] operating a motor vehicle while under

Public Acts 2024, No. 24-40, § 54; Public Acts 2024, No. 24-137, § 2; Public Acts 2025, No. 25-159, § 61. In the interest of simplicity, we refer to the current revision of the statute.

[3] See *Miranda* v. *Arizona*, 384 U.S. 436, 478–79, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[4] The plaintiff also was charged with failure to drive on the right side of the road in violation of General Statutes § 14-230 (a) and littering in violation of General Statutes (Rev. to 2021) § 22a-250 (a).

the influence of intoxicating liquor in violation of General Statutes § 14-227a.[5]

On August 26, 2022, the commissioner issued a suspension notice to the plaintiff notifying him of a forty-five day suspension of his motor vehicle operator's license, effective September 12, 2022, with a requirement to install and maintain an ignition interlock device for six months. On October 26, 2022, at the plaintiff's request, the commissioner held an administrative license suspension hearing before a hearing officer, pursuant to § 14-227b, to determine whether the plaintiff's motor vehicle operator's license should be suspended and subjected to an ignition interlock device requirement as a condition of reinstatement. At the hearing, several exhibits were admitted and the hearing officer heard testimony from two witnesses, the plaintiff and Attorney Michael Paris.[6] The plaintiff did not contest the four issues that are typically considered during a license

[5] General Statutes § 14-227a provides in relevant part: "(a) No person shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both. A person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle (1) while under the influence of intoxicating liquor or any drug or both, or (2) while such person has an elevated blood alcohol content. . . ."

Since the events underlying this appeal, the legislature has amended § 14-227a in ways that have no bearing on the merits of the present case. See Public Acts 2025, No. 25-110, § 49. In the interest of simplicity, we refer to the current revision of the statute.

[6] Attorney Paris is employed as a public defender in Bridgeport. At the October 26, 2022 hearing, Attorney Paris testified about his experiences with indigent clients who have been convicted under § 14-227a and, as a result, had their motor vehicle operator's licenses suspended and were required to install ignition interlock devices. He explained that he has observed that such individuals "are never able to . . . get their license properly restored and drive legally" and that the requirement of an ignition interlock device "really becomes a lifetime suspension" of their motor vehicle operator's license because they often do not have motor vehicles in which they can install an ignition interlock device. Attorney Paris did not testify about the plaintiff or the facts of the present case.

suspension hearing, namely, whether (1) the police officer had probable cause to arrest the person for operating a motor vehicle while under the influence of intoxicating liquor or any drug or both, (2) such person was placed under arrest, (3) such person submitted to a test or analysis, commenced within two hours of the time of operation, that indicated that such person had an elevated blood alcohol content, and (4) such person was operating a motor vehicle. See General Statutes § 14-227b (g) (2); *Do* v. *Commissioner of Motor Vehicles*, 330 Conn. 651, 658–59, 200 A.3d 681 (2019). Instead, the plaintiff raised a constitutional challenge to § 14-227b (i), claiming that its requirement of an ignition interlock device, as applied to him, violates the equal protection clauses of the United States and Connecticut constitutions.

On October 27, 2022, the hearing officer, acting on behalf of the commissioner, found that (1) the police officer had probable cause to arrest the plaintiff for a violation of § 14-227a, (2) the plaintiff was placed under arrest, (3) the plaintiff submitted to a Breathalyzer test and the results indicated a blood alcohol content of 0.08 percent or more, and (4) the plaintiff was operating a motor vehicle.[7] As a result, the hearing officer suspended the plaintiff's motor vehicle operator's license or operating privilege for forty-five days and required the installation of an ignition interlock device for six months. On November 11, 2022, the plaintiff filed a petition for reconsideration, which the commissioner's

[7] During the administrative hearing, the plaintiff's counsel raised his constitutional claim but acknowledged that he did not expect the hearing officer to declare § 14-227b (i) unconstitutional, explaining that such an expectation would be "unrealistic." He noted, however, that he was raising the issue before the hearing officer in order to create a factual record to support such claim in subsequent appellate proceedings. In the October 27, 2022 decision, the hearing officer did not address the plaintiff's constitutional argument.

petition review committee subsequently denied on November 28, 2022.

On January 18, 2023, pursuant to General Statutes § 4-183,[8] the plaintiff appealed to the Superior Court from the decision of the commissioner. In his petition, the plaintiff argued that "[t]he underlying statute, § 14-227b, is unconstitutional as an 'as applied' equal protection violation, pursuant to the fourteenth amendment to the United States constitution and article first, § 20, of the [constitution of] Connecticut . . . to the extent it authorizes imposition of an [ignition interlock device] requirement, across the board, on all drivers who either fail a chemical test or refuse when offered the opportunity to take a chemical test after their arrest for operating under the influence . . . without regard for whether they own a vehicle, can afford a vehicle, or have access to a vehicle into which they can install an [ignition interlock device]." On March 15, 2023, the commissioner filed an answer. On April 24 and May 15, 2023, the plaintiff and the commissioner, respectively, filed briefs addressing the plaintiff's constitutional claim.[9]

On September 19, 2023, the court, *Budzik*, *J.*, heard argument on the plaintiff's administrative appeal. During the hearing, the court briefly raised, sua sponte, the issue of whether the plaintiff had standing to raise his constitutional claim, and the plaintiff's counsel briefly addressed that claim. On January 11, 2024, the court issued a memorandum of decision dismissing the plaintiff's appeal for lack of standing.[10] Specifically, the court

[8] General Statutes § 4-183 provides in relevant part: "(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. . . ."

[9] On May 30, 2023, the plaintiff filed a reply brief.

[10] The court also concluded that "there is substantial evidence in the record to demonstrate the four elements set forth in . . . § 14-227b (g). See *Buckley* v. *Muzio*, 200 Conn. 1, 6–7, 509 A.2d 489 (1986)."

stated that "the court cannot conclude that [the plaintiff] is, in fact, indigent, or otherwise unable to afford a car on anything other than a temporary basis. Thus, the court concludes that [the plaintiff] is not within the class of persons whose rights he seeks to vindicate and, therefore, [the plaintiff] has no standing to assert his proffered claim of unconstitutionality." In support of its conclusion, the court recited the following factual findings: "The record [in the administrative proceedings] establishes that [the plaintiff] is a single, twenty-eight year old, high school graduate, who, up until the time of his arrest, had a full time job as a cook at a local restaurant at which he earned approximately $450 a week. It is undisputed that [the plaintiff] was in fact able to afford a car up until the night of his arrest. [The plaintiff] lives with his parents, who previously purchased a car for him and paid for the insurance on that car. There is no evidence in the record that [the plaintiff's] parents charged him rent or other expenses. Although [the plaintiff] testified that he was out of work on the day of the October [26, 2022 administrative] hearing and had an injury to his foot, there is no evidence in the record to the effect that [the plaintiff] will be out of work permanently or for any long period of time, that he is disabled from working or otherwise unable to obtain some kind of income, that he lacks savings or other financial resources, or that he does not have access to another car through some other means (his family, for example). While the record establishes that, on the day of the hearing, [the plaintiff] was without a car and was unemployed, there is nothing in the record indicating that circumstance was more than transitory or temporary in nature, or that it was somehow beyond [the plaintiff's] capacity to remedy in some reasonable time period." (Footnotes omitted.)

On January 25, 2024, the plaintiff filed a motion to reargue, arguing that he had established his indigency

and, therefore, had standing to assert his constitutional claim. The plaintiff largely relied on the fact that he was deemed eligible for public defender representation in his associated criminal case, which arose out of the same arrest that gave rise to the administrative proceedings underlying the present case. Specifically, the plaintiff argued that "the public defender found [the plaintiff] to be an indigent defendant and determined him to be eligible for public defender representation. . . . The determination of indigency here is no different than the associated determination of indigency before the public defender. If anything, it is even more apt here, given [the plaintiff's] subsequent injury and unemployment. [The plaintiff] stood before the [commissioner], and now, before this court, as a proper party to the dispute, with a colorable claim and allegation of injury, being unequal treatment under the law, without rational basis, as to the application of . . . § 14-227b (i) and its requirement that all Connecticut drivers install an [ignition interlock device] in a vehicle as [the] sole means of reinstating their license or privilege to drive, without regard to whether they own a vehicle, can afford a vehicle, or have access to a vehicle within which to install an [ignition interlock device]." (Citation omitted.)

On April 5, 2024, the court issued an order granting in part the plaintiff's motion to reargue, wherein it further articulated the basis of its January 11, 2024 decision. Specifically, the court stated that "indigency for purposes of seeking public defender representation is not the claim [the plaintiff] asserts in this matter. As set forth in the motion to reargue, [the plaintiff] asserts that he is 'indigent' such that he is within the class of persons who face the 'additional burden of a potentially infinite suspension' of their [motor vehicle operator's] license because of the requirement for an [ignition] interlock device. . . . As further set forth in the motion

to reargue, a common and plain meaning of 'indigent' is '[i]n a general sense, one who is needy and poor, or one who has not sufficient property to furnish him a living nor anyone able to support him to whom he is entitled to look for support. Term commonly used to refer to one's financial ability, and ordinarily indicates one who is destitute of means of comfortable subsistence so as to be in want.' Black's Law Dictionary (6th Ed. [1990]) p. [773]." (Citation omitted.) The court thereafter concluded that "there was no evidence in the record that [the plaintiff's] financial condition was such that he was facing a 'potentially infinite suspension' because he was 'needy and poor' or lacked 'sufficient property to furnish him a living' or that he lacked 'anyone able to support him to whom he is entitled to look for support' or that [the plaintiff] was 'destitute of means of comfortable subsistence.' Instead, the court concludes that the record demonstrates that [the plaintiff] was well able to support himself up until the evening of his car accident resulting from his own intoxication (a fact that [the plaintiff] does not appear to dispute), and that [the plaintiff's] financial condition on the day of the hearing [before the commissioner] was nothing more than temporary. There is no evidence in the record supporting the conclusion that [the plaintiff's] financial condition on the day of the hearing was permanent, or likely to be of such long duration that he faced an 'infinite license suspension.' " This appeal followed.

We begin by setting forth the applicable standard of review and legal principles that are relevant to our resolution of the plaintiff's claim. "[J]udicial review of the commissioner's action is governed by the Uniform Administrative Procedure Act [General Statutes §§ 4-166 through 4-189], and the scope of that review 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 this 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 of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) *Mata* v. *Commissioner of Motor Vehicles*, 221 Conn. App. 25, 34–35, 299 A.3d 1262 (2023).

"The issue of standing implicates the trial court's subject matter jurisdiction and therefore presents a threshold issue for our determination. . . . Because a determination regarding the trial court's subject matter jurisdiction raises a question of law, our review is plenary." (Citation omitted; internal quotation marks omitted.) *State* v. *Bradley*, 341 Conn. 72, 79, 266 A.3d 823 (2021).

"Furthermore, [t]he scope of review of a trial court's factual decisions related to the issue of standing on appeal is limited to a determination of whether they are clearly erroneous in view of the evidence and pleadings. . . . 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. . . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great deference to its findings. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court's ruling." (Citation omitted; internal

quotation marks omitted.) *U.S. Bank, National Assn.* v. *Moncho*, 203 Conn. App. 28, 41–42, 247 A.3d 161, cert. denied, 336 Conn. 935, 248 A.3d 708 (2021).

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action . . . . 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 established by showing that the party claiming it is authorized by statute to bring [an action] or is classically aggrieved. . . . The fundamental test for determining [classical] aggrievement encompasses a [well settled] twofold determination: *first, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in* [*the subject matter of the challenged action*], *as distinguished from a general interest, such as is the concern of all members of the community as a whole.* Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]. . . . Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected. . . .

"This court has explained that the two prongs of the standing analysis are distinct and, thus, cannot be conflated. . . . *When a* [*party asserting standing in an action*] *cannot demonstrate that he has a specific, personal and legal interest in the subject matter of the challenged action, a court need not decide whether his interest has been specially and injuriously affected.*" (Citations omitted; emphasis added; internal quotation

marks omitted.) *State* v. *Bradley*, supra, 341 Conn. 79–81.

"Only members of a class whose constitutional rights are endangered by a statute may ask to have it declared unconstitutional. . . . Courts are instituted to give relief to parties whose rights have been invaded, and to give it at the instance of such parties; and a party whose rights have not been invaded cannot be heard to complain if the court refuses to act at his instance in righting the wrongs of another who seeks no redress." (Internal quotation marks omitted.) Id., 84.

With these legal principles in mind, we turn to the merits of the plaintiff's claim on appeal. The plaintiff challenges the constitutionality of § 14-227b (i), which requires the installation of an ignition interlock device as a condition for the restoration of a motor vehicle operator's license, specifically arguing that such provision violates his right to equal protection under both the United States and Connecticut constitutions. The plaintiff claims that he has standing to assert this claim in his individual capacity[11] because "he is an indigent driver who doesn't own a vehicle, cannot afford a vehicle, and has no access to a vehicle in which to install an [ignition interlock device], as he is required to do by . . . § 14-227b (i), and that there is a possibility that his legally protected interest in a [motor vehicle operator's] license will be adversely and unequally affected by the [ignition interlock device] requirement of § 14-227b (i) as the sole means by which he can restore his license." We disagree.

The plaintiff lacks standing to raise an equal protection claim relating to § 14-227b (i) because he has not

[11] We note that the plaintiff does not claim that he was authorized by statute to bring a constitutional challenge to § 14-227b (i) or that he has third-party standing to bring the challenge in a representational capacity on behalf of others. See *State* v. *Bradley*, supra, 341 Conn. 81.

successfully demonstrated "a specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole." (Internal quotation marks omitted.) *State* v. *Bradley*, supra, 341 Conn. 80. As we noted earlier in this opinion, the court found that, at the time of the October 26, 2022 administrative hearing, the plaintiff did not own a car and was out of work due to an injury to his foot. More importantly, however, the plaintiff failed to demonstrate that he was out of work permanently or for a prolonged period of time, or otherwise unable to support himself financially such that he could not afford a motor vehicle. As the court noted, "there is no evidence in the record to the effect that [the plaintiff] will be out of work permanently or for any long period of time, that he is disabled from working or otherwise unable to obtain some kind of income, [or] that he lacks savings or other financial resources . . . ." Rather, the evidence that the plaintiff obtained a high school degree and, at the time of his arrest, was employed by a local restaurant, demonstrated that he was capable of earning an income. Also relevant is the court's finding that the plaintiff lives in his parents' home, and no evidence was provided to suggest that he is responsible for any living expenses, including rent or groceries. We cannot conclude, on the basis of these factual findings, that the plaintiff established that he is an indigent driver who cannot afford a motor vehicle.

Moreover, the plaintiff failed to present evidence demonstrating that he is an indigent driver who has no access to a motor vehicle in which to install an ignition interlock device. Rather, the evidence presented by the plaintiff suggested that he did, in fact, have the means to access a vehicle, as the vehicle that he drove prior to his arrest on August 13, 2022, was purchased for him by his parents. His parents also paid the insurance for

that motor vehicle. There was no evidence presented indicating that he would not have these benefits, or similar accommodations, provided to him going forward.

The plaintiff argues that the determination of his indigency, pursuant to General Statutes § 51-297 (f) (1),[12] in his associated criminal case demonstrates that he is a member of the defined class that is allegedly aggrieved by the ignition interlock device requirement set forth in § 14-227b (i). We are unpersuaded. In his appellate brief and during oral argument before this court, the plaintiff explicitly stated that the aggrieved class of which he purports to be a member is not merely indigent drivers but "indigent driver[s] *who* [*do not*] *own a vehicle*, *cannot afford a vehicle*, *and* [*have*] *no access to a vehicle into which to install an* [*ignition interlock device*], as [they are] required to do by . . . § 14-227b (i) . . . ." (Emphasis added.) Thus, the controlling question is not merely whether the plaintiff is indigent, but rather whether the plaintiff is a member of the aforementioned class.[13] For the reasons we have stated, the plaintiff has not demonstrated that he is an indigent driver who cannot afford a vehicle and has no access

[12] General Statutes § 51-297 (f) (1) provides in relevant part: "As used in this chapter, 'indigent defendant' means (A) a person who is formally charged with the commission of a crime punishable by imprisonment and who does not have the financial ability at the time of his request for representation to secure competent legal representation and to provide other necessary expenses of legal representation . . . ."

Since the events underlying this appeal, the legislature has amended § 51-297 (f) in ways that have no bearing on the merits of the present case. See Public Acts 2023, No. 23-204, § 201. In the interest of simplicity, we refer to the current revision of the statute.

[13] In the plaintiff's appellate brief, he asks this court to take judicial notice of his attorney's pro bono representation of him in the present case. Setting aside that a finding of indigency, alone, is not dispositive, we decline the plaintiff's request because such evidence was not before the court when it determined that the plaintiff lacked standing. See *Hudson City Savings Bank* v. *Hellman*, 196 Conn. App. 836, 863–64, 231 A.3d 182 (2020) (declining to consider evidence on appeal that was not before trial court).

to a vehicle in which to install an ignition interlock device.[14]

Additionally, while the plaintiff correctly notes that "[a]ggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected"; (internal quotation marks omitted) *State* v. *Bradley*, supra, 341 Conn. 80; this notion goes to the second prong of the twofold test set forth in *Bradley*. Thus, insofar as the plaintiff suggests that the court improperly failed to recognize this principle when it determined that the plaintiff was not a member of the class that he claims is aggrieved by the ignition interlock device requirement set forth in § 14-227b (i), namely, indigent drivers who do not own a motor vehicle, cannot afford a motor vehicle, and do not have access to a motor vehicle in which to install an ignition interlock device, we disagree.

Simply stated, on the basis of the record before us,[15] the plaintiff has not established that he is a "member of the group" of individuals "that he asserts the statute was enacted to discriminate against," namely, indigent drivers who do not own a vehicle, cannot afford a vehicle, and do not have access to a vehicle in which to install an ignition interlock device as is required by § 14-227b (i). *State* v. *Bradley*, supra, 341 Conn. 86. Because the plaintiff has not satisfied the first part of the twofold test set forth in *Bradley*, we need not decide

[14] We recognize that the plaintiff asserts that he does not currently own a vehicle. This fact has no bearing on whether the plaintiff has standing to pursue his constitutional claim, as he has not demonstrated that he cannot afford a vehicle or that he does not have access to a vehicle.

[15] The dissent states that, at a minimum, the plaintiff was entitled to an evidentiary hearing on the standing issue. We note that the plaintiff does not claim on appeal that the court committed error in failing to conduct an evidentiary hearing; rather, he maintains in his appellate brief that he established standing on the basis of the existing record.

whether the plaintiff has "successfully establish[ed] that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]." (Internal quotation marks omitted.) Id., 80–81.

In sum, we conclude that the court properly determined that the plaintiff did not have standing to assert his constitutional claim.

The judgment is affirmed.

In this opinion SUAREZ, J., concurred.

WESTBROOK, J., dissenting. The majority affirms the Superior Court's dismissal of the administrative appeal brought by the plaintiff, Colin J. Pence, for lack of standing. In doing so, the majority upholds a decision that, in my view, misapplies standing doctrine, disregards the uncontested administrative record, imposes an unsupported standard of "permanent" indigency, and relieves the Superior Court from holding an evidentiary hearing on the very issue it deemed dispositive. Because I would conclude on the basis of this record that the plaintiff met his burden of demonstrating his standing to bring this action, I would reverse the judgment of the Superior Court. Accordingly, I respectfully dissent.

I begin by acknowledging my general agreement with the facts and procedural history set forth in the majority opinion, which I will not repeat. I would only highlight that the administrative record demonstrates that the plaintiff, under oath, testified before the hearing officer that he is indigent, owns no motor vehicle, has no legal access to another's vehicle, and cannot afford to install an ignition interlock device. The plaintiff was not cross-examined, the administrative record contains no facts that contradict the plaintiff's sworn testimony, and the hearing officer did not make any express finding that

the plaintiff's testimony in this regard was not credible, nor is such a finding necessarily implied by the hearing officer's ruling in favor of the defendant Commissioner of Motor Vehicles because the plaintiff's indigency and ability to comply with ignition interlock device requirements was not an issue decided by the hearing officer. In my view, these undisputed facts constitute a showing of a present injury sufficient to establish standing.[1]

"Standing is the legal right to set judicial machinery in motion. . . . Standing . . . is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it 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." (Citations omitted; internal quotation marks omitted.) *Webster Bank* v. *Zak*, 259 Conn. 766, 774, 792 A.2d 66 (2002). "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 requires no more than a colorable claim of injury; a [party] ordinarily establishes . . . standing by

[1] "Standing is established by showing that the party claiming it is authorized by statute to bring [an action] or is classically aggrieved. . . . The fundamental test for determining [classical] aggrievement encompasses a [well settled] twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]. . . . Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) *State* v. *Bradley*, 341 Conn. 72, 80, 266 A.3d 823 (2021). The administrative record supports that the plaintiff satisfies both the first and second prongs of this test and, thus, is classically aggrieved.

allegations of injury." (Internal quotation marks omitted.) *St. Germain* v. *LaBrie*, 108 Conn. App. 587, 591, 949 A.2d 518 (2008).

Furthermore, standing ordinarily must be assessed in reference to the time an action is initiated. See, e.g., *Deutsche Bank National Trust Co.* v. *Bliss*, 159 Conn. App. 483, 488, 124 A.3d 890 ("in order to have standing to bring a foreclosure action the plaintiff must, *at the time the action is commenced*, be entitled to enforce the promissory note that is secured by the property" (emphasis in original; internal quotation marks omitted)), cert. denied, 320 Conn. 903, 127 A.3d 186 (2015), cert. denied, 579 U.S. 903, 136 S. Ct. 2466, 195 L. Ed. 2d 801 (2016); see also *Davis* v. *Federal Election Commission*, 554 U.S. 724, 734, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008) ("the standing inquiry [is] focused on whether the party invoking jurisdiction had the requisite stake in the outcome *when the suit was filed*" (emphasis added)).[2] The Superior Court and the majority focus not on the plaintiff's circumstances when he commenced the underlying action, but on what his circumstances *might* be in the future. In doing so, they appear to obscure the present nature of the injury alleged and conflate standing with the possibility that the plaintiff's claim may become moot or otherwise nonjusticiable in the future if his present circumstances should change. Standing to raise a constitutional injury arises from present conditions, even if those conditions may not prove to be immutable. See *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000) (discussing analytical distinctions between standing

[2] I agree with the plaintiff's argument that, "[a]lthough standing in Connecticut is not controlled by article III [of] the United States constitution or associated case law, the doctrine of standing in Connecticut closely aligns with its federal counterpart and focuses upon the key question of whether a litigant has made a colorable claim of direct injury actually suffered or likely to be suffered."

and mootness and noting that "[t]he requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)" (internal quotation marks omitted)). That the plaintiff, at some future time, may no longer be indigent or otherwise may acquire the ability to comply with the statutory ignition interlock device requirements is speculative and, in my view, an improper inquiry for the present standing analysis.

The Superior Court, when reviewing an administrative appeal under General Statutes § 4-183, ordinarily must confine itself to the agency record. Section 4-183 (i) provides in relevant part: "The appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the agency are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the court. . . ." From the time of his arrest in August, 2022, through at least the time of oral argument before this court in March, 2025, there is nothing in the record demonstrating that the plaintiff's financial status or circumstances has changed, a further indication that this is not a case of temporary hardship. To resolve the criminal charges against him, the plaintiff was represented by a public defender—a status that required a formal indigency determination under General Statutes § 51-297. The plaintiff submitted a copy of his sworn application to support his claim of indigency. No contrary evidence was submitted and, as previously stated, the administrative agency made no adverse findings regarding his claim of indigency. Nevertheless, the Superior Court dismissed the action sua sponte, indicating that the plaintiff offered no evidence that his circumstances were "more than transitory or temporary in nature," noting, for instance, that the plaintiff did not

establish whether his parents charged him for rent or other expenses.

Here, although the hearing officer did not decide the constitutional issue, it permitted the plaintiff to create a record in support of his claim. The Superior Court, rather than confining itself to the administrative record, made additional factual determinations without holding an evidentiary hearing at which the plaintiff would have had an opportunity to respond to the court's sua sponte standing concerns. In my view, if a plaintiff must show that they are permanently indigent in order to challenge a law that burdens the indigent, then few, if any, plaintiffs will ever be able to meet that threshold. This effectively renders the statute immune from challenges by those it harms most.

The Superior Court's conclusion that the plaintiff lacked standing because he may not be "permanently" indigent is also problematic. Statutory definitions of indigency can be found in General Statutes §§ 51-297 (f)[3] and 52-259b[4]—which are both based on *current*

[3] General Statutes § 51-297 (f) provides in relevant part: "(1) As used in this chapter, 'indigent defendant' means (A) a person who is formally charged with the commission of a crime punishable by imprisonment and who does not have the financial ability at the time of his request for representation to secure competent legal representation and to provide other necessary expenses of legal representation . . . .

"(2) An assessment determining whether a person has the financial ability to secure competent legal representation and to provide other necessary expenses of legal representation or qualifies as an indigent defendant pursuant to subdivision (1) of this subsection shall be based upon guidelines established by the commission. The commission shall annually establish such guidelines providing that a person whose income, calculated as described in such guidelines, is two hundred fifty per cent or less of the federal poverty level may qualify as an indigent defendant. The commission shall make such guidelines available to the public on the Division of Public Defender Service's Internet web site."

[4] General Statutes § 52-259b provides in relevant part: "(a) In any civil or criminal matter, if the court finds that a party is indigent and unable to pay a fee or fees payable to the court or to pay the cost of service of process, the court shall waive such fee or fees and the cost of service of process shall be paid by the state.

financial status, not on a showing of "permanent" indigency. Each of these provisions focuses on present financial hardship, not an indefinite economic status. The ignition interlock device statutes themselves provide for a reduction or elimination of charges associated with the installation, maintenance or removal of ignition interlock devices for indigent persons. See General Statutes § 14-227o.[5] A person may establish indigency by providing to a provider of ignition interlock device services proof of participation in the state's supplemental nutrition or home energy assistance programs.[6] None of the aforementioned statutes, however, requires a party to demonstrate that his or her financial circumstances will remain the same in the future. The plaintiff's existing indigency at the time he commenced this action

"(b) There shall be a rebuttable presumption that a person is indigent and unable to pay a fee or fees or the cost of service of process if (1) such person receives public assistance, or (2) such person's income after taxes, mandatory wage deductions and child care expenses is one hundred twenty-five per cent or less of the federal poverty level. For purposes of this subsection, 'public assistance' includes, but is not limited to, state-administered general assistance, temporary family assistance, aid to the aged, blind and disabled, supplemental nutrition assistance and Supplemental Security Income. . . ."

[5] General Statutes § 14-227o provides in relevant part: "Notwithstanding any provision of the general statutes requiring a person subject to an order to install and maintain an ignition interlock device to bear all costs associated with such installation and maintenance, any provider of ignition interlock device services, including installation, maintenance and removal of such devices, may include in a lease agreement with a person required to install such device . . . a reduction to or an elimination of the charge for such services if such person is indigent. Such person may provide to the provider of such ignition interlock device services as proof of indigency a valid participation card or letter indicating participation in the state-administered federal Supplemental Nutrition Assistance Program or the state-administered federal Low Income Home Energy Assistance Program. Any such letter shall be on letterhead stationery of the Department of Social Services and in original form."

[6] Although the financial assistance provided for in § 14-227o arguably undermines, at least in part, the merits of the plaintiff's constitutional claim, it does not resolve it entirely because the statute does not address the issue of an indigent party's inability to obtain a vehicle in which to install an ignition interlock device.

rendered him unable to meet the conditions to regain his license. That is the injury relevant to the standing inquiry. Stated differently, before the administrative agency, the plaintiff raised an equal protection claim based on his indigency determination for public defender services. The Superior Court simply had no evidence before it to dispute the testimony and exhibits presented before the hearing officer and, in my view, impermissibly strayed from the administrative record.

The Superior Court's handling of the standing analysis is further undermined by its late articulation of a legal standard for rejecting the plaintiff's assertion of indigency, which the court first produced in its response to the plaintiff's motion for reconsideration and reargument. For the first time, the Superior Court cites to the general definition of indigency contained in Black's Law Dictionary, rather than considering and applying one of the statutory definitions adopted by the Connecticut legislature and courts. Dictionary definitions may aid in legal interpretations, but they do not supplant statutory legal standards. By adopting a nonbinding dictionary definition, the court introduced a heightened standard for indigency that risks inconsistent application in future cases. The court further advances another unsupported element, asserting that the plaintiff could not prevail because he would not face "infinite license suspension"—a classification that creates an unnecessarily narrow conception of harm.

In short, I conclude that the plaintiff's uncontested testimony before the hearing officer placed him squarely within the class allegedly burdened by the statute. I would hold that the plaintiff has demonstrated standing to pursue his equal protection claim—or at the very least, he was entitled to an evidentiary hearing to pro-

duce facts in support of his claim.[7] Accordingly, I would reverse the judgment of the court.

I respectfully dissent.

[7] My disagreement with the court's resolution of this matter on standing grounds should not be misconstrued as any indication regarding the relative strength of the plaintiff's underlying equal protection claims. Under existing precedent, indigency is not a class that implicates either strict or intermediate scrutiny and other courts that have considered similar claims as those raised in the present case have rejected them upon rational basis scrutiny. See, e.g., *Probst* v. *Pennsylvania*, 578 Pa. 42, 54–58, 849 A.2d 1135 (2004). Whether the plaintiff was likely to prevail on his claims has no bearing on whether the plaintiff met the relatively low bar to establish standing to assert his claims.