MERIBEAR PRODUCTIONS, INC. *v.* JOAN E. FRANK ET AL.
(SC 19721)

Palmer, McDonald, D'Auria, Mullins and Kahn, Js.*

Syllabus

The plaintiff, M Co., which had obtained a judgment in California against the defendants, J and G, sought to enforce that judgment in Connecticut and to recover damages from the defendants in connection with a home staging services contract between the parties. The contract was signed by J, the owner of the home where M Co. was to provide design and decorating services, including the staging of home furnishings. G signed an addendum to the contract that authorized M Co. to charge him for certain fees and that indicated his personal guarantee to M Co. When the defendants later defaulted on their payment obligations under the contract and failed to cooperate with M Co.'s attempts to repossess the furnishings, M Co. filed an action in California Superior Court. The

* This case originally was scheduled to be argued before a panel of this court consisting of Justices Palmer, McDonald, D'Auria, Mullins and Kahn. Although Justice Kahn was not present when the case was argued before the court, she has read the briefs and appendices, and listened to a recording of the oral argument prior to participating in this decision.

defendants failed to appear or defend, and the California court rendered a default judgment against the defendants. In the present action, M Co. filed a three count complaint, seeking enforcement of the California judgment in count one and alleging breach of contract in count two and quantum meruit in count three. That complaint alleged no facts relating to the substantive nature of the claims on which the California judgment was based. The court found for M Co. and against G on count one, but found for J and against M Co. on that count on the ground that the California court lacked personal jurisdiction over J. The court found for M Co. and against J on count two and concluded that, because M Co. had prevailed on its breach of contract claim, the court did not need to consider the alternative claim for quantum meruit in count three. In resolving counts two and three, the trial court made no reference to G. The trial court awarded damages against G on count one and against J on count two, and rendered judgment for M Co., from which the defendants filed a joint appeal with the Appellate Court. The Appellate Court affirmed the trial court's judgment, rejecting the defendants' claims on the merits. On the granting of certification, the defendants appealed to this court. *Held* that, because the trial court's judgment was not final as to G, as that court failed to dispose of counts two and three with respect to G, the Appellate Court lacked jurisdiction over the defendants' joint appeal, and, accordingly, the judgment of the Appellate Court was reversed, and the case was remanded to that court with direction to dismiss the appeal: although the trial court's judgment as to J was final because that court expressly disposed of counts one and two as to her and implicitly disposed of count three as to her, as the breach of contract and the quantum meruit counts alleged mutually exclusive theories of recovery such that establishing the elements of one precluded recovery on the other, the trial court's judgment as to G was not final because that court disposed of count one, but not count two or three, as to him, as the court could have found G liable under either count two or three without returning a verdict that was legally inconsistent with its determination with respect to count one; moreover, because M Co. did not withdraw counts two and three as to G or give any indication that it had unconditionally abandoned those counts, those counts remained unadjudicated as to G, and, accordingly, it could not be said that further proceedings could have no effect on him.

Argued November 13, 2017—officially released May 15, 2018

Procedural History

Action to, inter alia, enforce a foreign default judgment rendered against the defendants in California, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the defendants filed an answer and special defense alleging that the judg-

ment was not enforceable due to lack of personal jurisdiction by the California court; thereafter, the matter was tried to the court, *Tyma, J.*; judgment for the plaintiff, from which the defendants appealed to the Appellate Court, *Gruendel, Alvord* and *Pellegrino, Js.*, which affirmed the trial court's judgment, and the defendants, on the granting of certification, appealed to this court. *Reversed*; *judgment directed.*

Michael S. Taylor, with whom were *James P. Sexton*, and, on the brief, *Matthew C. Eagan*, for the appellants (defendants).

Anthony J. LaBella, with whom, on the brief, was *Deborah M. Garskof*, for the appellee (plaintiff).

Opinion

McDONALD, J. A threshold jurisdictional issue in this case requires us to clarify the circumstances under which there can be an appealable final judgment when the trial court's decision does not dispose of counts advancing alternative theories of relief. The plaintiff, Meribear Productions, Inc., brought an action against the defendants, Joan E. Frank and George A. Frank, for common-law enforcement of a foreign default judgment, breach of contract and quantum meruit. Judgment was rendered in favor of the plaintiff against each of the defendants under different counts of the complaint. The Appellate Court affirmed the judgment on the merits, and this court thereafter granted the defendants' petition for certification to appeal from that judgment. Upon further review, it is apparent that the judgment was not final as to George Frank, and, therefore, the Appellate Court lacked jurisdiction over the defendants' joint appeal.

The following facts were found by the trial court or are otherwise reflected in the record. The defendants, who are husband and wife, decided to sell their West-

port home. They hired the plaintiff, a home staging services provider, to provide design and decorating services, which included the staging of home furnishings owned by the plaintiff, to make the residence more attractive to potential buyers. The plaintiff is a California corporation with its principal place of business located in Los Angeles. The staging agreement was signed only by Joan Frank, the owner of the property. George Frank signed an addendum to the agreement, which authorized the plaintiff to charge his credit card for the initial staging fee, which included the first four months of rental charges, and indicated his personal guarantee to the plaintiff, but he crossed out the phrase "any obligations that may become due."

More than four months after the furnishings were delivered and staged in the defendants' home, the defendants defaulted on their payment obligations and failed to cooperate with the plaintiff's attempts to repossess the furnishings. The plaintiff filed an action against the defendants in a California Superior Court. The defendants did not appear or defend. The California court entered a default judgment against the defendants in the amount of $259,746.10, which included prejudgment interest and attorney's fees.[1]

Approximately one month later, the plaintiff commenced the present action in Connecticut seeking to hold the defendants jointly and severally liable under the foreign default judgment and to recover additional attorney's fees, costs, and postjudgment interest. In response to the defendants' assertion of a special defense that the judgment was void because the California court lacked personal jurisdiction over them, the plaintiff amended the complaint to add two counts seek-

[1] The complaint alleged breach of contract, conversion and fraud, and sought total damages in the amount of $253,000 ($18,000 in lost rent and $235,000 in converted inventory). For reasons that are not clear, the court awarded damages in the amount of $248,300.

ing recovery against both defendants under theories of breach of contract and quantum meruit. Prior to trial, a prejudgment attachment in the amount of $259,764.10, together with 10 percent postjudgment interest, pursuant to provisions of the California Code of Civil Procedure, was entered against the Westport real property owned by Joan Frank.

In a trial to the court, the plaintiff litigated all three claims. In its posttrial brief, the plaintiff requested that the court give full faith and credit to the California judgment, plus postjudgment interest; "[i]n the alternative," find that the defendants had breached the contract and award damages in the same amount awarded in the California judgment, plus interest, fees and costs; and, "[f]inally, in the event [that] neither request is . . . granted," render judgment in the plaintiff's favor on the quantum meruit count in the same amount.

The court issued a memorandum of decision finding in favor of the plaintiff on count one against George Frank and on count two against Joan Frank. The court acknowledged at the outset that the three count complaint was for "common-law enforcement of a foreign default judgment, and alternatively, for breach of contract and quantum meruit." Turning first to count one, the trial court determined that, as a result of the manner in which process was served, the California court lacked personal jurisdiction over Joan Frank but had jurisdiction over George Frank. In rejecting George Frank's argument that the exercise of jurisdiction did not comply with the dictates of due process, the court cited his admission "that he signed a guarantee of the staging agreement . . . that provides that Los Angeles is the appropriate forum." Consequently, the court stated that it would render judgment on count one for Joan Frank and against George Frank.

In resolving the remaining counts, the court made no further reference to George Frank. As to count two,

the court concluded that Joan Frank had breached the contract, that she could not prevail on her special defenses to enforcement of the contract, and that judgment would be rendered for the plaintiff and against Joan Frank. As to count three, the court cited case law explaining that parties routinely plead alternative counts of breach of contract and quantum meruit, but that they are only entitled to a single measure of damages. The court concluded: "The plaintiff has proven that Joan Frank breached the contract. Therefore, the court need not consider the alternative claim for quantum meruit."

The court awarded damages against George Frank on count one and against Joan Frank on count two. Although both awards covered inventory loss and lost rents, the California judgment included prejudgment interest and attorney's fees, whereas the breach of contract award included late fees related to the rental loss. The judgment file provided: "The court, having heard the parties, finds the issues for the plaintiff. Whereupon it is adjudged that the plaintiff recover of the defendant Joan E. Frank $283,106.45 damages and that the plaintiff recover of the defendant George A. Frank $259,746.10." The court indicated that a hearing would be scheduled on attorney's fees, but did not address the subject of postjudgment interest.

The defendants jointly appealed from the judgment to the Appellate Court, claiming that (1) the California judgment was unenforceable against George Frank because he did not have sufficient minimum contacts with California for its court to exercise personal jurisdiction over him, (2) the staging services agreement was not enforceable because it failed to comply with certain provisions of the Home Solicitation Sales Act, General Statutes § 42-134a et seq., and (3) the damage award was improper because (a) the judgment against George Frank under the first count and against Joan

Frank under the second count constituted double recovery for the same loss, and (b) the award under the second count improperly included damages for conversion of the home furnishings. See *Meribear Productions, Inc.* v. *Frank*, 165 Conn. App. 305, 311, 316, 321–22, 140 A.3d 993 (2016). The Appellate Court affirmed the trial court's judgment, rejecting the defendants' claims on the merits. Id., 307. With respect to the double damages issue, the Appellate Court noted that "the plaintiff may recover the full amount awarded by the trial court based on count one or count two of its complaint. It may, however, recover only once for the harm that it suffered." Id., 322.

The defendants' certified appeal to this court followed.[2] During the course of oral argument, the defendants conceded that the plaintiff was entitled to some recovery under quantum meruit and asserted that, although that count had not been addressed in any manner by the trial court as to George Frank, the plaintiff could obtain a ruling on that count on remand should the defendants succeed on their appeal. In response, this court questioned whether George Frank's appeal had been taken from a final judgment when the trial court's ruling had not disposed of all counts against him. Because this issue had not been addressed in the parties' briefs, we ordered supplemental briefs on that issue. In those briefs, the parties agreed that there was a final judgment. They contended that the failure to rule on an alternative claim for relief does not affect

[2] This court granted certification, limited to the following issues: "Did the Appellate Court correctly determine that the trial court properly determined that: (1) the foreign judgment against George A. Frank was enforceable after concluding that he had minimum contacts with California that warranted the exercise of its jurisdiction; (2) the contract signed by Joan E. Frank was enforceable notwithstanding the provisions of the Home Solicitation Sales Act; and (3) an award of double damages to the plaintiff was appropriate." *Meribear Productions, Inc.* v. *Frank*, 322 Conn. 903, 138 A.3d 288 (2016).

the finality of the judgment.[3] Although there is Appellate Court authority to support the parties' position, we conclude that one line of this case law, applicable to the present case, is inconsistent with our final judgment law. We conclude that the trial court's failure to dispose of either the contract count or the quantum merit count as to George Frank resulted in the lack of a final judgment. Accordingly, the Appellate Court should have dismissed the defendants' joint appeal.[4] See *In re Santi-*

[3] The discussion at oral argument focused exclusively on the trial court's failure to dispose of the quantum meruit count as to George Frank. As there was no discussion at oral argument regarding its failure to dispose of the breach of contract count as to him, we did not ask the parties to address both counts in their supplemental briefs. Nonetheless, their argument as to alternative claims applies to both counts.

The defendants did argue, however, that the judgment was final because the second and third counts of the complaint had been brought against only Joan Frank. The allegations in the complaint, the plaintiff's posttrial brief, and the trial court's decision plainly belie that argument. It is evident that the trial court did not rule on the second and third counts of the complaint as to George Frank because the plaintiff had presented these counts as alternatives should it fail to prevail on the first count. Although the trial court's findings of fact include a finding that George Frank was "not a party to the staging agreement," we do not construe that finding as a determination that George Frank could not be held liable for breach of contract. Rather, it appears that the court was emphasizing that George Frank, unlike Joan Frank, had not signed the agreement.

[4] In the defendants' supplemental brief on this issue, there was no request for this court to consider Joan Frank's appeal separately should we conclude that the judgment is not final as to George Frank. Nor did they contend that the issues as to each defendant overlapped to such an extent that we should consider both. This court has recognized that, "[i]n some circumstances, the factual and legal issues raised by a legal argument, the appealability of which is doubtful, may be so inextricably intertwined with another argument, the appealability of which is established that we should assume jurisdiction over both." (Internal quotation marks omitted.) *Aqleh* v. *Cadlerock Joint Venture II, L.P.*, 299 Conn. 84, 90, 10 A.3d 498 (2010). However, that circumstance is not applicable in the present case. We have previously relied on this exception when there is a final judgment as to all of the parties before the reviewing court, and the question is whether we can also consider an interlocutory ruling affecting those parties properly before us. See, e.g., *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 354 n.9, 63 A.3d 940 (2013); *Canty* v. *Otto*, 304 Conn. 546, 553–56, 41 A.3d 280 (2012). In the present case, the judgment is final as to Joan Frank only. In addition, we have

ago G., 325 Conn. 221, 229, 157 A.3d 60 (2017) ("the lack of a final judgment is a jurisdictional defect that [necessitates] . . . dismissal of the appeal" [internal quotation marks omitted]).

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

If a party wishes to appeal from a partial judgment rendered against it, barring a limited exception not applicable to the present case, it can do so only if the remaining causes of action or claims for relief are withdrawn or unconditionally abandoned before the appeal is taken.[5] Compare *Stroiney* v. *Crescent Lake*

invoked this exception when resolution of the interlocutory ruling would control or bear on the resolution of the final judgment or the case generally. See, e.g., *Santorso* v. *Bristol Hospital*, supra, 354 n.9 (action was not barred by res judicata but was barred under statute of limitations); *Collins* v. *Anthem Health Plans, Inc.*, 266 Conn. 12, 28–30, 836 A.2d 1124 (2003) (analysis of class certification issues would equally apply to claims that are subject to immediate review and those not subject to immediate review); *Taff* v. *Bettcher*, 243 Conn. 380, 384 n.2, 703 A.2d 759 (1997) ("orders relating to custody and support are part of a carefully crafted mosaic such that a change to one will necessarily create a change to the other"). In the present case, our resolution of George Frank's jurisdictional challenge to the California judgment could have no bearing on Joan Frank's challenge to the judgment against her for breach of contract or on any potential liability under quantum meruit. Nor would it be dispositive of the challenge to the damages awarded.

[5] Practice Book § 61-4 (a), setting forth the exception to that rule, provides that when partial summary judgment has been granted upon fewer than all of the causes of action against a party, "[s]uch a judgment shall be considered an appealable final judgment only if the trial court makes a written determination that the issues resolved by the judgment are of such significance to

Tax District, 197 Conn. 82, 84, 495 A.2d 1063 (1985) (There was no final judgment when the trial court rendered summary judgment on a claim seeking declaratory judgment without disposing of the claims for injunctive relief and damages. "The plaintiffs have not withdrawn or abandoned their claims for relief that have not yet been adjudicated. The situation, therefore, is similar to where a judgment has been rendered only upon the issue of liability without an award of damages."), with *Zamstein* v. *Marvasti*, 240 Conn. 549, 555–57, 692 A.2d 781 (1997) (final judgment after trial court granted motion to strike four of six counts because plaintiff abandoned remaining claims in motion for judgment by representing that he would withdraw counts, and plaintiff did so after court rendered judgment).

In assessing whether a judgment disposes of all of the causes of action against a party, this court has recognized that the trial court's failure to *expressly* dispose of all of the counts in the judgment itself will not necessarily render the judgment not final. Rather, the reviewing court looks to the complaint and the memorandum of decision to determine whether the trial court explicitly *or implicitly* disposed of each count. See, e.g., *Normand Josef Enterprises, Inc.* v. *Connecticut National Bank*, 230 Conn. 486, 488 n.1, 646 A.2d 1289 (1994) (final judgment despite absence of explicit finding on count four, alleging misrepresentation, because court implicitly rejected count four on merits when its resolution of another count found that defendant's conduct came "*close to* a misrepresentation" and court's judgment provided that it was entered for plaintiff and against defendant "on counts one, two and three of the complaint *only*" [emphasis altered; internal

the determination of the outcome of the case that the delay incident to the appeal would be justified, and the chief justice or chief judge of the court having appellate jurisdiction concurs" [emphasis omitted]).

quotation marks omitted]); *Martin* v. *Martin's News Service, Inc.*, 9 Conn. App. 304, 306 n.2, 518 A.2d 951 (1986) (final judgment when neither judgment file nor memorandum of decision specifically indicated that judgment was entered on counterclaim because "[i]t is clear that had judgment been entered specifically on the counterclaim, it would have been entered in favor of the plaintiff" when court's decision discussed subject of counterclaim at length, and judgment provided that court " 'finds the issues for the plaintiff' "), cert. denied, 202 Conn. 807, 520 A.2d 1287 (1987); see also *Wesley* v. *Schaller Subaru, Inc.*, 277 Conn. 526, 529 n.1, 893 A.2d 389 (2006) ("[w]hen there is an inconsistency between the judgment file and the oral or written decision of the trial court, it is the order of the court that controls because the judgment file is merely a clerical document, and the pronouncement by the court . . . is the judgment" [internal quotation marks omitted]).

In so concluding, this court explained that, "[a]though it is preferable for a trial court to make a formal ruling on each count, we will not elevate form over substance when it is apparent from the memorandum of decision [whether the plaintiff prevailed on each count]." *Normand Josef Enterprises, Inc.* v. *Connecticut National Bank*, supra, 230 Conn. 488 n.1. Whereas the court's memorandum of decision in *Normand Josef Enterprises, Inc.*, implicitly disposed of the count lacking a formal ruling by indicating that the proof was insufficient to establish an essential element or elements of the claim, the Appellate Court has since relied on this "form over substance" proposition in other circumstances.

The Appellate Court has held that there was a final judgment when the trial court rendered judgment "in favor of the plaintiff" and expressly found for the plaintiff on one or more counts, but did not address claims raising alternative theories of recovery. See, e.g., *Nation*

Electrical Contracting, LLC v. *St. Dimitrie Romanian Orthodox Church*, 144 Conn. App. 808, 814–15 n.6, 74 A.3d 474 (2013) (final judgment when trial court rendered judgment for plaintiff on unjust enrichment count but made no reference to quantum meruit count; latter claim viewed "as having been resolved because the plaintiff would not have been entitled to recover under both [counts]," which raised "alternative theories of restitution," differing only in that one remedy is available despite unenforceable contract and other is available despite absence of quasi-contractual relationship); *Carrillo* v. *Goldberg*, 141 Conn. App. 299, 306 n.6, 61 A.3d 1164 (2013) (The trial court rendered judgment for the plaintiffs on certain counts and for the defendants on another count, but "did not specify its rulings with respect to the plaintiffs' breach of fiduciary duties and breach of contract claims. As the judgment file states, however, that the court found 'the issues on the [c]omplaint for the [p]laintiffs,' we conclude that this is an appealable final judgment."); *Atelier Constantin Popescu, LLC* v. *JC Corp.*, 134 Conn. App. 731, 738 and n.4, 49 A.3d 1003 (2012) (The trial court rendered judgment in favor of the plaintiff, and in its decision found for the plaintiff on five of the eleven counts in the complaint, even though "[t]he court did not address explicitly the plaintiff's restitution claim. Nevertheless, we conclude that the present appeal was taken from a final judgment."); *Hardie* v. *Mistriel*, 133 Conn. App. 572, 574 and n.2, 36 A.3d 261 (2012) (There was a final judgment when the trial court rendered judgment in favor of the plaintiff on the trespass count but did not render "formal" judgment on the conversion and negligence counts to recover for the same injury and did not discuss those counts in its memorandum of decision. "It is apparent from the memorandum of decision, and is reiterated in the judgment file, that the court found in favor of the plaintiff on its trespass count and awarded

damages on that count."); *Rent-A-PC, Inc.* v. *Rental Management, Inc.*, 96 Conn. App. 600, 604 n.3, 901 A.2d 720 (2006) (final judgment in case in which eight count complaint alleged various theories of recovery for same injury where court found issues on one count, unjust enrichment, for plaintiff, without addressing other issues); *Raudat* v. *Leary*, 88 Conn. App. 44, 49, 868 A.2d 120 (2005) (final judgment on two count complaint alleging intentional and negligent misrepresentation when court stated in memorandum of decision that because it had ruled in favor of plaintiff on intentional misrepresentation count, it did " 'not need to address the second count of the complaint as to negligent misrepresentation,' " and made similar statement in judgment file, when law indicated that these theories are mutually exclusive); *Union Trust Co.* v. *Jackson*, 42 Conn. App. 413, 416 n.2, 679 A.2d 421 (1996) ("The trial court's memorandum of decision discusses only the action in breach of contract. The court, therefore, did not need to address the plaintiff's alternative cause of action of unjust enrichment. The judgment file indicates judgment was rendered on the complaint and therefore there is a final judgment.").

A closer review of these alternative theory cases reveals that they actually fall into two categories. One category involves counts alleging claims that are legally inconsistent, also referred to as mutually exclusive, such that establishing the elements of one precludes liability on the other (e.g., negligent infliction of emotional distress and intentional infliction of emotional distress, or breach of contract and promissory estoppel). See, e.g., *DaCruz* v. *State Farm Fire & Casualty Co.*, 268 Conn. 675, 693, 846 A.2d 849 (2004) ("[i]ntentional conduct and negligent conduct, although differing only by a matter of degree . . . are separate and mutually exclusive" [citation omitted; internal quotation marks omitted]); *Harley* v. *Indian Spring Land*

Co., 123 Conn. App. 800, 831, 3 A.3d 992 (2010) ("[b]ecause the elements of a breach of contract include the formation of an agreement . . . which, in turn, requires the presence of adequate consideration . . . and promissory estoppel is appropriate when there is an absence of consideration to support a contract . . . we conclude that the court rendered an inconsistent judgment when it found in favor of the plaintiff on both counts" [citations omitted]). In such cases, it is fair to infer that a judgment in favor of the plaintiff on one count *legally* implies a judgment in favor of the defendant on the other count. See *Harley* v. *Indian Spring Land Co.*, supra, 831–32 ("Although a party may plead, in good faith, inconsistent facts and theories, a court may not award a judgment on inconsistent facts and conclusions. . . . Where a party is entitled to only a single right to recover, it is the responsibility of the trial court to determine which of the inapposite sets of facts the party has proved, and then to render judgment accordingly." [Internal quotation marks omitted.]).

The second category involves claims that present alternative theories of recovery for the same injury, but are not legally inconsistent. In such cases, there is no legal impediment to the trier of fact finding that the plaintiff has established both claims, although the plaintiff can recover only once for the same injury. See *Rowe* v. *Goulet*, 89 Conn. App. 836, 849, 875 A.2d 564 (2005) ("Duplicated recoveries . . . must not be awarded for the same underlying loss under different legal theories. . . . Although a plaintiff is entitled to allege respective theories of liability in separate claims, he or she is not entitled to recover twice for harm growing out of the same transaction, occurrence or event." [Citations omitted.]). Indeed, in some cases, the damages may be measured differently and, in turn, result in a different recovery under the alternative theories. See, e.g., *Jonap* v. *Silver*, 1 Conn. App. 550, 553, 561–62, 474 A.2d 800

(1984) (award reduced by $24,000 where jury awarded plaintiff $24,000 on counts alleging invasion of privacy for appropriating his name and $32,000 on counts alleging invasion of privacy for placing plaintiff in false light because elements of damage establishing liability for each were duplicative). In such cases, when the court has found in favor of the plaintiff on one count, this ruling does not imply as a matter of fact or law whether the plaintiff has established the defendant's liability under the other count.

Because of the different effect of the rulings in these categories, drawing a distinction between them for purposes of the final judgment rule advances the policies underlying that rule, "namely, the prevention of piecemeal appeals and the conservation of judicial resources." *Niro* v. *Niro*, 314 Conn. 62, 78, 100 A.3d 801 (2014); see also *Canty* v. *Otto*, 304 Conn. 546, 554, 41 A.3d 280 (2012) (citing policy " 'to facilitate the speedy and orderly disposition of cases at the trial court level' "). At trial, the parties have expended resources to fully litigate all of the claims advanced. A rule that would allow the trial court not to dispose of counts that present alternative, legally consistent theories of recovery could lead to multiple unnecessary appeals and retrials. In exceptional circumstances in which the trial court and the parties agree that litigating only some of the alternative claims for relief and proceeding to appeal on those issues before litigating alternative claims would constitute the greater efficiency, our rules provide a mechanism to address those circumstances. See Practice Book § 61-4 (a) (set forth in relevant part in footnote 5 of this opinion).

In sum, we conclude that when the trial court disposes of one count in the plaintiff's favor, such a determination implicitly disposes of legally inconsistent, but not legally consistent, alternative theories. When a

legally consistent theory of recovery has been litigated and has not been ruled on, there is no final judgment.

That having been said, it is our view that, whenever feasible, the far better practice would be for the trial court to fully address the merits of all theories litigated, even those that are legally inconsistent.[6] If the trial court determines that the plaintiff has established more than one theory of recovery for the same injury, the trial court would render judgment in the plaintiff's favor on the primary count and render judgment for the defendant on the other(s), albeit solely due to the nature of the alternative claims. By so doing, we envision several economies that would inure to the benefit of the parties and the judicial system. The losing party would be able to more accurately assess the likelihood of success on appeal to decide whether to invest the resources to pursue further litigation. If the appeal proceeds, the case would typically be resolved in that appeal, thus substantially reducing the number of retrials and successive appeals.

Applying these rules to the present case, we conclude that the judgment as to Joan Frank was final. The trial court expressly disposed of counts one and two as to her. Counts two and three alleged mutually exclusive theories. See, e.g., *Walpole Woodworkers, Inc.* v. *Manning*, 307 Conn. 582, 587 n.9, 57 A.3d 730 (2012) ("[q]uantum meruit is an equitable remedy to provide restitution for the reasonable value of services despite an unenforceable contract"); *300 State, LLC* v. *Hanafin*, 140 Conn. App. 327, 330–31, 59 A.3d 287 (2013) (breach of lease and quantum meruit counts are mutually exclusive). By stating that it did not need to consider the quantum meruit claim in count three in light of its

[6] By this, we mean that the court would make all of the findings of fact and any legally consistent conclusions of law related to the alternative claim(s), as well as the damages established in relation to that claim.

finding of liability on the breach of contract claim in count two, the court implied that Joan Frank was entitled to judgment on count three solely due to the alternative nature of the claim.

The judgment as to George Frank, however, was not final. Of the three counts brought against him, the court disposed of only count one, finding him liable under the California default judgment. However, the court also could have found him liable under either, but not both, of the other counts without returning a legally inconsistent verdict. To prevail on count one, the plaintiff needed to establish only that (1) a valid default judgment had been entered in the California court against George Frank, and (2) the judgment remained unsatisfied. In fact, the complaint in the present action alleged no facts relating to the substantive nature of the claims on which judgment was rendered in California. Although the trial court relied on George Frank's admission that he had signed a guarantee of the staging agreement in rejecting his due process defense to count one, that finding would not be legally inconsistent with a finding against him on either the breach of contract count or the quantum meruit count. Insofar as the plaintiff suggests that the trial court found facts that would sustain a verdict on quantum meruit, we conclude that it is improper for us to make such a determination, especially in the context of a jurisdictional defect. See *Crowell* v. *Danforth*, 222 Conn. 150, 158, 609 A.2d 654 (1992) (determination of quantum meruit claim "requires a factual examination of the circumstances and of the conduct of the parties . . . that is not a task for an appellate court [but rather for the trier of fact]" [internal quotation marks omitted]). Therefore, counts two and three have not been disposed of, explicitly or implicitly.

The plaintiff has neither withdrawn counts two and three as to George Frank, nor given any indication that

it has unconditionally abandoned them. Indeed, not only do these counts remain unadjudicated, they present the possibility that George Frank could be found liable for additional damages. As previously noted, the damages on count two as to Joan Frank exceeded those on count one as to George Frank. Therefore, it cannot be said that further proceedings could have no effect on him.

As there was no final judgment, the Appellate Court did not have jurisdiction over the appeal.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to dismiss the defendants' joint appeal.

In this opinion the other justices concurred.

MACDERMID, INC. *v.* STEPHEN J. LEONETTI (SC 19817)

Palmer, McDonald, Robinson, D'Auria, Mullins and Kahn, Js.*

Syllabus

The plaintiff, alleging, inter alia, unjust enrichment, sought to recover a severance payment it had made pursuant to a termination agreement with the defendant, its former employee. The defendant, who had sustained an injury in 2004 during the course of his employment, filed a timely workers' compensation claim. Following the termination of his employment in 2009, the defendant signed the termination agreement in exchange for twenty-seven weeks of severance pay. In that agreement, the defendant agreed to release the plaintiff from, inter alia, all workers' compensation claims and recited his understanding that the severance pay was all that he was entitled to receive from the plaintiff and greater than the amount required under the plaintiff's normal policies and procedures. The agreement also contained a severability clause providing that, in the event any provision was found to be invalid, the remaining terms would be construed so as to give effect to the intent of the parties. Following a hearing, a workers' compensation commissioner concluded that, without administrative approval of the agreement, the defendant had not effectively waived his rights under the Workers' Compensation

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

Act (§ 31-275 et seq.). The commissioner then concluded that the agreement should not be approved because the severance pay was based on length of the defendant's employment and, therefore, contained no compensation for his injury. The plaintiff appealed from that decision to the Compensation Review Board, which affirmed. On the plaintiff's subsequent appeal, this court concluded that the release contained in the agreement was unenforceable without the commissioner's approval and, accordingly, affirmed the board's decision. This court reasoned that the Workers' Compensation Commission is not competent to rule on contractual rights and obligations in the absence of legislative authorization and that the enforceability of the agreement's remaining provisions was not a question for the workers' compensation forum. Following the close of the plaintiff's evidence in the present action, the defendant filed a motion seeking a directed verdict, claiming lack of consideration for the release. The trial court reserved decision on that motion, and, thereafter, the jury returned a verdict for the plaintiff on its claim of unjust enrichment. The defendant then filed postverdict motions, asserting, inter alia, that the verdict violated public policy embodied in statutes (§§ 31-290 and 31-296) prohibiting agreements from relieving employers of obligations created under the act without the approval of a workers' compensation commissioner. The trial court denied the defendant's postverdict motions and rendered judgment in accordance with the jury verdict. On appeal, the defendant claimed, inter alia, that the plaintiff was barred from pursuing recovery for unjust enrichment under the doctrine of collateral estoppel and that such recovery was precluded by §§ 31-290 and 31-296, public policy, and the severability clause of the agreement. *Held*:

1. The plaintiff's unjust enrichment claim was not barred by the doctrine of collateral estoppel, this court having concluded that there was not a sufficient identity of the issues between the present case and the workers' compensation proceedings; the workers' compensation proceedings did not resolve the issues underlying the plaintiff's claim for unjust enrichment, as those proceedings were jurisdictionally limited to determining whether to approve the termination agreement as a release of the defendant's workers' compensation claim and did not involve adjudication of the defendant's allegedly deceptive conduct in entering into the agreement, on which the plaintiff's unjust enrichment claim was predicated.

2. The defendant could not prevail on his claims that the plaintiff's recovery was barred by §§ 31-290 and 31-296, public policy, and the severability clause in the termination agreement, as the defendant did not adequately preserve those claims for appeal; the defendant did not timely alert the plaintiff and the trial court to these claims because his statutory and public policy claims, which were raised in his postverdict motions, had not previously been addressed in his motion for a directed verdict, and

because the defendant asserted his claim pertaining to the severability clause for the first time on appeal.

3. This court declined to address the defendant's claims that the trial court improperly failed to instruct the jury in accordance with certain of his preliminary requests to charge and that the trial court's instruction on unjust enrichment improperly permitted the jury to find for the plaintiff in the absence of proof that any of the defendant's actions or omissions caused the plaintiff to suffer injury: the defendant, having devoted only cursory attention in his appellate brief to the harmfulness of the trial court's failure to instruct the jury in accordance with his requests to charge, inadequately briefed those claims of instructional error; moreover, the defendant's claim that the trial court improperly instructed the jury on unjust enrichment was unreviewable under the general verdict rule, as the plaintiff's unjust enrichment claim was predicated on separate legal theories of recovery, and the defendant failed to request interrogatories that would establish the ground on which the jury made its decision.

4. The defendant could not prevail on his claim that the trial court improperly excluded six documents from evidence: the defendant's claims relating to five of those documents were dismissed as moot because the defendant had challenged their exclusion only on the limited basis of hearsay and had failed to address other, independent grounds for their exclusion; moreover, the defendant did not explain how the verdict was likely affected by the trial court's particular exclusion of the sixth document, and, accordingly, that claim was inadequately briefed.

Argued November 6, 2017—officially released May 15, 2018

Procedural History

Action to recover damages for, inter alia, unjust enrichment, and for other relief, brought to the Superior Court in the judicial district of Waterbury, where the defendant filed a counterclaim; thereafter, the court, *Shapiro*, *J.*, denied the defendant's motion for summary judgment and granted the plaintiff's motion for summary judgment as to the counterclaim and rendered judgment thereon, from which the defendant appealed to the Appellate Court, *Gruendel*, *Alvord* and *West*, *Js.*, which affirmed the trial court's judgment; subsequently, the case was tried to the jury before *Shapiro*, *J.*; verdict in part for the plaintiff; thereafter, the court, *Shapiro*, *J.*, denied the defendant's motions for judgment notwithstanding the verdict and to set aside the verdict

and rendered judgment in accordance with the verdict, from which the defendant appealed. *Appeal dismissed in part*; *affirmed.*

Marc P. Mercier, with whom were *Bruce S. Beck* and, on the brief, *Alexa J.P. Lindauer*, for the appellant (defendant).

John R. Horvack, Jr., for the appellee (plaintiff).

Opinion

ROBINSON, J. The defendant, Stephen J. Leonetti, appeals from the judgment of the trial court, rendered after a jury trial, in favor of the plaintiff, MacDermid, Inc., on its claim of unjust enrichment.[1] On appeal, the defendant contends the following: (1) the plaintiff's unjust enrichment claim is barred by collateral estoppel on the basis of the proceedings underlying our decision in *Leonetti* v. *MacDermid, Inc.*, 310 Conn. 195, 76 A.3d 168 (2013); (2) the plaintiff's recovery is precluded by General Statutes §§ 31-290[2] and 31-296 (a),[3] the terms

[1] The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[2] General Statutes § 31-290 provides: "No contract, expressed or implied, no rule, regulation or other device shall in any manner relieve any employer, in whole or in part, of any obligation created by this chapter, except as herein set forth."

[3] General Statutes § 31-296 (a) provides: "If an employer and an injured employee, or in case of fatal injury the employee's legal representative or dependent, at a date not earlier than the expiration of the waiting period, reach an agreement in regard to compensation, such agreement shall be submitted in writing to the commissioner by the employer with a statement of the time, place and nature of the injury upon which it is based; and, if such commissioner finds such agreement to conform to the provisions of this chapter in every regard, the commissioner shall so approve it. A copy of the agreement, with a statement of the commissioner's approval, shall be delivered to each of the parties and thereafter it shall be as binding upon both parties as an award by the commissioner. The commissioner's statement of approval shall also inform the employee or the employee's dependent, as the case may be, of any rights the individual may have to an annual cost-of-living adjustment or to participate in a rehabilitation program administered by the Department of Rehabilitation Services under the provisions of this chapter. The commissioner shall retain the original agreement,

of a termination agreement (agreement) between the parties, and public policy; (3) the trial court's jury instructions were improper; and (4) the trial court improperly excluded certain evidence. The plaintiff disagrees and claims that many of the defendant's arguments are unpreserved, inadequately briefed, or both. We agree with the plaintiff. Accordingly, we affirm the judgment of the trial court.

The record, including our decision in *Leonetti* v. *MacDermid, Inc.*, supra, 310 Conn. 195, reveals the following facts and procedural history. "The [defendant] worked for the [plaintiff] for twenty-eight years until he was discharged in early November, 2009. Five years earlier, in June, 2004, the [defendant] sustained a lower back injury during the course of his employment. The [defendant] timely filed notice of a workers' compensation claim related to this injury on April 14, 2005. The parties stipulated to the [Workers' Compensation Commissioner (commissioner)] that the injury suffered by the [defendant] was a compensable injury.

"At the time that the [plaintiff] informed the [defendant] that he would be discharged from his employment, the [plaintiff] presented the [defendant] with a proposed . . . agreement." Id., 199. Under the terms of the agreement, the defendant's purpose in entering into the agreement was to provide "a binding agreement and understanding" with the plaintiff. As such, the agreement provided that the parties desired "to make the proposed transition as amiable and [trouble free]

with the commissioner's approval thereof, in the commissioner's office and, if an application is made to the superior court for an execution, the commissioner shall, upon the request of said court, file in the court a certified copy of the agreement and statement of approval."

We note that § 31-296 (a) has been amended since the events underlying the present appeal. See, e.g., Public Acts, Spec. Sess., June, 2012, No. 12-1, § 85. Those changes are not, however, relevant to the present appeal. For the sake of simplicity, we refer to the current revision of the statute.

as possible . . . .' 'Article II of the agreement signed by the parties provides that the [defendant] agreed to release the [plaintiff] from the following: 'any and all suits, claims, costs, demands, attorney's fees, damages, back pay, front pay, interest, special damages, general damages, workers' compensation claims, punitive damages, liabilities, actions, administrative proceedings, expenses, accidents, injuries and any other cause of action in law or equity that [the defendant] has or may have or might in any manner acquire which arise out of, relate to, or is in connection with his . . . employment with, relationship with or business dealings with [the plaintiff] or the termination of that employment, relationship or dealings, or any other act, occurrence or omission, known or unknown, which occurred or failed to occur on or before the date this [a]greement is executed.'

"Article III of the agreement provides that, in consideration 'for the agreements and covenants made herein, the release given, the actions taken or contemplated to be taken, or to be refrained from,' the [defendant] would be paid twenty-seven weeks 'severance pay, determined solely upon the [defendant's] current base salary,' which amounted to $70,228.51, within thirty days of the [plaintiff's] receipt of the properly executed agreement; the [defendant] would continue to earn paid time off through his final day of employment; the [defendant] would be able to continue to obtain medical and dental benefits for up to eighteen consecutive months from his last date of employment under the Consolidated Omnibus Budget Reconciliation Act of 1985; 29 U.S.C. §§ 1161 through 1168 [2006]; and the [defendant] had the option to convert group life insurance to individual life insurance within thirty days of his last day of employment.

"Article III of the agreement also provided that '[the defendant] understands that the payments and benefits

listed above are *all* that [the defendant] is entitled to receive from [the plaintiff]. . . . [The defendant] agrees that the payments and benefits above are more than [the plaintiff] is required to pay under its normal policies, procedures and plans.' . . .

"Article IV of the agreement also required the [defendant] to enter into a one year noncompete agreement and also contained a clause stating in part that '[the defendant] acknowledges that he has been given a reasonable period of time of at least thirty . . . days to review and consider this [a]greement *before* signing it. [The defendant] is encouraged to consult his or her attorney prior to signing this [a]greement.' " (Emphasis in original.) *Leonetti* v. *MacDermid, Inc.*, supra, 310 Conn. 199–201.

Article V (b) of the agreement, entitled "[i]nvalid [c]lauses," provides: "It is understood and agreed that if any terms or provisions of this [a]greement shall contravene or be invalid under the laws of the United States, such contravention or invalidity shall not invalidate the whole [a]greement, but it shall be construed and enforced as to most nearly give effect to the intentions of the parties as expressed herein as possible."

"The [defendant] did not want to release his preexisting workers' compensation claim relating to the 2004 injury by signing the agreement. He consulted with his attorney, who contacted the [plaintiff's] counsel and requested that the [plaintiff] remove from the agreement the language that could operate to release the [defendant's] workers' compensation claim. The [plaintiff] refused to modify the language of the agreement. The [defendant's] counsel wrote a letter to the [plaintiff's] counsel asserting that the release language of article II of the agreement 'really has no effect without the [c]ommissioner's approval' and scheduled an informal hearing before a workers' compensation commis-

sioner for January 8, 2010. The [plaintiff's] counsel did not attend the informal hearing, although a representative of Liberty Mutual Insurance Group, which administered the claim on behalf of the [plaintiff], did attend. Nothing was resolved on January 8, and, on January 27, 2010, the hearing was rescheduled for March 1, 2010.

"On January 26, 2010, the [plaintiff] sent the [defendant] a letter stating that, unless the [defendant] signed the unmodified agreement within the next ten days, it would withdraw its offer of $70,228.51 in severance pay. The [defendant] signed the agreement on February 2, 2010, and the commissioner found that the [defendant] did so because he did not wish to forfeit his severance pay. After the [plaintiff] received the signed agreement from the [defendant], it paid the [defendant] the $70,228.51. At that time, the commissioner had not approved the agreement as a 'voluntary agreement' or stipulation as defined in § 31-296.

"A formal hearing was held several months later to determine the enforceability of the language in article II of the agreement that dealt with the release of the [defendant's] workers' compensation claim. Specifically, the parties asked the commissioner to determine as follows: (1) '[w]hether a signed termination agreement between [an] employer and [an] employee can effectively waive the parties' rights and obligations set forth in the [Workers' Compensation Act (act), General Statutes § 31-275 et seq., in the absence of] approval of the agreement by a [commissioner]'; and (2) '[i]f the . . . agreement does not waive the parties' rights and obligations set forth in the [act]—whether the [c]ommissioner would issue an order that the . . . agreement be entered as a full and final stipulation of the [defendant's] workers' compensation claim against the [plaintiff].'

"The commissioner first found that, without approval by a commissioner, the agreement did not effectively

waive the parties' rights and obligations under the act. Next, the commissioner found that the agreement should not be approved as a full and final stipulation of the [defendant's] workers' compensation claim. In making this determination, the commissioner credited the [defendant's] testimony that 'the [agreement] and payment of $70,228.51 was based on the number of years [the defendant] worked for the [plaintiff] and there was no money paid in this agreement for [the defendant's] workers' compensation claim.' As a result, the commissioner found that the [plaintiff] had paid no consideration to the [defendant] for his accepted workers' compensation claim. In light of these findings, the commissioner found that the Workers' Compensation Commission (commission) retained jurisdiction over the [defendant's] 2004 injury and scheduled a further hearing on the [defendant's] assertion that the injury has rendered a 10 percent permanent partial disability rating to the [defendant's] lumbar spine." *Leonetti* v. *MacDermid, Inc.*, supra, 310 Conn. 201–203. The plaintiff appealed from the commissioner's decision to the Workers' Compensation Review Board (board), which affirmed the commissioner's decision. Id., 203. Thereafter, the plaintiff appealed from the decision of the board. Id., 199. We then transferred that appeal to this court. Id.

On appeal, this court concluded that, under § 31-296, a contractual release of a workers' compensation claim is unenforceable until it has been approved by the commissioner. Id., 207. We then upheld the board's decision affirming the commissioner's refusal to approve the release as a full and final settlement of the defendant's workers' compensation claim in light of its finding that the defendant had not intended to release his compensation claim by signing the agreement. Id., 208. Importantly, we went on to explain that the commission "is not competent to rule on the rights and obligations of

the parties to a contract when those rights and obligations do not involve the issues that the legislature has authorized the commission to consider." Id., 220. Thus, we noted that "[t]he enforceability of the remainder of the agreement is not a question for the workers' compensation forum. . . . *Of course*, [*the plaintiff*] *retains the right to seek whatever civil recourses it deems appropriate with respect to the remainder of the agreement, a matter about which we express no opinion*." (Emphasis added.) Id., 221.

On November 30, 2011, while the workers' compensation matter was still pending on appeal, the plaintiff commenced the present action against the defendant, asserting claims of civil theft, fraud, unjust enrichment, conversion, and seeking rescission of the agreement.[4] Specifically, the plaintiff claimed that its promise to pay the defendant under the agreement was rendered unenforceable by the defendant's conduct, false promises, and misrepresentations. The defendant denied the plaintiff's allegations and asserted certain special defenses, including res judicata or collateral estoppel, on the basis of the proceedings underlying this court's decision in *Leonetti* v. *MacDermid, Inc.*, supra, 310 Conn. 195. The defendant also claimed that enforcement of the worker's compensation release provisions in the agreement would render the contract illegal under §§ 31-290 and 31-296.[5] The plaintiff denied the special defenses.

[4] The plaintiff subsequently amended its complaint on January 15, 2013, to include a sixth count, alleging that the defendant filed a fraudulent claim for workers' compensation benefits as defined in General Statutes § 31-290c. Given that the jury returned a verdict in favor of the defendant on this count and that this count is unrelated to the agreement, the defendant has not challenged it on appeal.

[5] The defendant also filed a counterclaim, alleging that the plaintiff instituted the present action against him in retaliation for the exercise of his rights under the act. The trial court subsequently denied the plaintiff's motion to dismiss that counterclaim on the basis of absolute immunity. The plaintiff filed an interlocutory appeal, and, in *MacDermid, Inc.* v. *Leonetti*, 310 Conn. 616, 625–26, 79 A.3d 60 (2013), this court upheld the trial court's denial of

The matter was tried to a jury, and, after the close of the plaintiff's evidence, the defendant moved for a directed verdict. The trial court reserved decision on that motion. Both parties filed preliminary requests to charge the jury, which were later supplemented. See part III of this opinion. Thereafter, the defendant took exception to the trial court's jury charge, claiming various errors in the charge given as well as the trial court's failure to instruct the jury in accordance with the defendant's request to charge.

On February 26, 2016, the jury returned a verdict in favor of the plaintiff on the claim of unjust enrichment, awarding $70,228.51 in damages, and in favor of the defendant on the remaining counts of the complaint. Thereafter, on March 7, 2016, the defendant filed a motion for judgment notwithstanding the verdict and a motion to set aside the verdict as to unjust enrichment. The trial court denied the defendant's motions in a memorandum of decision dated April 22, 2016, and rendered judgment in accordance with the jury's verdict. The trial court also awarded the plaintiff interest in accordance with a previous offer of compromise in the amount of $24,689.65 and attorney's fees of $350. This appeal followed. See footnote 1 of this opinion. Additional relevant facts will be set forth as necessary.

On appeal, the defendant contends that (1) the plaintiff's unjust enrichment claim is barred by collateral estoppel on the basis of the proceedings underlying this court's decision in *Leonetti* v. *MacDermid, Inc.*, supra,

the motion to dismiss, concluding that, "when an employer's interest in unfettered access to the courts is weighed against an employee's interest in exercising his rights under the act without fear of facing a baseless retaliatory civil action, the employee's interest prevails." In the proceedings that followed, the trial court rendered summary judgment in favor of the plaintiff on the defendant's counterclaim, concluding that it was premature. See *MacDermid, Inc.* v. *Leonetti*, 158 Conn. App. 176, 178, 118 A.3d 158 (2015) (upholding trial court's award of summary judgment on defendant's counterclaim). This counterclaim is not at issue in the present appeal.

310 Conn. 195, (2) the plaintiff's recovery is precluded by §§ 31-290 and 31-296, the terms of the agreement, and public policy, (3) the trial court's jury instructions were improper, and (4) the trial court improperly excluded certain evidence. We address each of these claims in turn.

I

We first address the question of whether the plaintiff's unjust enrichment claim is barred by the doctrine of collateral estoppel.[6] The defendant argues that the material facts underlying *Leonetti* v. *MacDermid, Inc.*, supra, 310 Conn. 195, are the same as those at issue in the present case. Specifically, the defendant contends that it has already been finally determined that the agreement's workers' compensation release, upon which, the defendant argues, the plaintiff's claim is based, is unenforceable, and, therefore, his agreement to release his claim was not binding on him and cannot legally constitute a pretense or a promise. As such, the defendant further contends that *Leonetti* served as a final judicial determination that the agreement was neither enforceable nor effective with respect to the release of the defendant's workers' compensation claim. The defendant argues, therefore, that the princi-

[6] Insofar as the defendant also argues that the plaintiff's unjust enrichment claim is barred by the doctrine of res judicata, we conclude that argument is inadequately briefed. "We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . *Where a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned.*" (Emphasis added; internal quotation marks omitted.) *Connecticut Light & Power Co.* v. *Gilmore*, 289 Conn. 88, 124, 956 A.2d 1145 (2008). Although the defendant claims that the plaintiff's recovery for unjust enrichment is "precluded pursuant to the doctrines of collateral estoppel and/or res judicata," the defendant provides no analysis of res judicata, instead analyzing only the issue of collateral estoppel.

ples of collateral estoppel barred the plaintiff from relitigating that same issue in the present case.

In response, the plaintiff argues, inter alia, that the defendant's collateral estoppel claim is meritless because he fails to identify any element of the plaintiff's unjust enrichment claim that was actually litigated and previously decided.[7] The plaintiff also argues that the defendant's claim "stem[s] from the false premise that [the plaintiff's] unjust enrichment claim is an attempt to enforce the unenforceable workers' compensation release." We agree with the plaintiff and conclude that the doctrine of collateral estoppel does not bar the plaintiff's recovery for unjust enrichment.

We begin by setting forth the applicable standard of review. The defendant's claim requires us to determine whether the doctrine of collateral estoppel precludes

[7] The plaintiff also argues that an interlocutory appeal previously taken by the defendant bars this appeal on the issue of collateral estoppel. On April 21, 2014, the defendant filed an interlocutory appeal from the trial court's denial of his motion for summary judgment, which was based on a collateral estoppel argument. The plaintiff moved to dismiss the appeal asserting, inter alia, that the Appellate Court lacked subject matter jurisdiction because no final judgment had been rendered. The Appellate Court granted the plaintiff's motion to dismiss the defendant's appeal for lack of subject matter jurisdiction. Accordingly, the dismissal of that interlocutory appeal cannot serve as a bar to the present appeal because the Appellate Court did not render a final judgment on the merits of the defendant's collateral estoppel argument. Cf. *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 351, 63 A.3d 940 (2013).

Additionally, the plaintiff argues that the defendant failed to adequately preserve his collateral estoppel defense at trial because the defendant's directed verdict and postverdict motions did not "mention 'collateral estoppel' at all." Although the defendant did not use the phrase "collateral estoppel" in his motions, the record reflects that he did assert the controlling effect of *Leonetti* in his motion for a directed verdict, his supplemental request to charge, and his posttrial motions. Thus, the defendant provided the trial court and the plaintiff with the basis of his collateral estoppel defense with sufficient clarity to put them on reasonable notice of this defense. Given that the "sine qua non of preservation is fair notice to the trial court," we conclude that the defendant adequately preserved this defense. *State* v. *Jorge P.*, 308 Conn. 740, 753, 66 A.3d 869 (2013).

the plaintiff's unjust enrichment claim. This presents a question of law over which our review is plenary. *Lighthouse Landings, Inc.* v. *Connecticut Light & Power Co.*, 300 Conn. 325, 345, 15 A.3d 601 (2011).

The fundamental principles underlying the doctrine of collateral estoppel are well established. "The common-law doctrine of collateral estoppel, or issue preclusion, embodies a judicial policy in favor of judicial economy, the stability of former judgments and finality. . . . Collateral estoppel, or issue preclusion, is that aspect of res judicata which prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties upon a different claim. . . . For an issue to be subject to collateral estoppel, it must have been fully and fairly litigated in the first action. It also must have been actually decided and the decision must have been necessary to the judgment. . . .

"An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined. . . . An issue is *necessarily determined* if, in the absence of a determination of the issue, the judgment could not have been validly rendered. . . . If an issue has been determined, but the judgment is not dependent [on] the determination of the issue, the parties may relitigate the issue in a subsequent action." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Lyon* v. *Jones*, 291 Conn. 384, 406, 968 A.2d 416 (2009). "Before collateral estoppel applies [however] there must be an *identity of issues* between the prior and subsequent proceedings. To invoke collateral estoppel the issues sought to be litigated in the new proceeding must be *identical* to those considered in the prior proceeding." (Emphasis in original; internal quotation marks omitted.) *Corcoran* v. *Dept. of Social Services*, 271 Conn. 679, 689, 859 A.2d 533 (2004). In other words, "collateral estoppel has

no application in the absence of an identical issue." *Gladysz* v. *Planning & Zoning Commission*, 256 Conn. 249, 261, 773 A.2d 300 (2001). Further, "an overlap in issues does not necessitate a finding of identity of issues for the purposes of collateral estoppel." *Wiacek Farms, LLC* v. *Shelton*, 132 Conn. App. 163, 172, 30 A.3d 27 (2011), cert. denied, 303 Conn. 918, 34 A.3d 394 (2012); see also *Corcoran* v. *Dept. of Social Services*, supra, 691 (acknowledging that there was overlap of issues but declining to apply collateral estoppel because issues were not identical).

We conclude that there is not a sufficient identity of issues between the present case and *Leonetti* v. *MacDermid, Inc.*, supra, 310 Conn. 195, to establish that the plaintiff's recovery is barred by collateral estoppel. A successful claim of unjust enrichment requires proof that (1) the defendant received a benefit, (2) the defendant did not perform in exchange for that benefit, and (3) the failure to perform operated to the detriment of the plaintiff. *Gagne* v. *Vaccaro*, 255 Conn. 390, 409, 766 A.2d 416 (2001). These issues were not considered in *Leonetti*. In *Leonetti*, this court identified the principal issue as "whether the [board] properly affirmed the commissioner's refusal to approve as a valid 'stipulation' [the agreement] between [the plaintiff] and [the defendant]." *Leonetti* v. *MacDermid, Inc.*, supra, 198. We concluded that, under the act, the agreement's release of the defendant's workers' compensation claim was unenforceable "unless and until the commissioner approved the agreement." Id., 207. In *Leonetti*, we noted that the commission's subject matter jurisdiction was limited to whether to approve the agreement as a release of the defendant's workers' compensation claim; as such, we explained that "[t]he enforceability of the remainder of the agreement is not a question for the workers' compensation forum . . . ."[8] Id., 221.

[8] We also note that no preclusive effect can attach when the prior tribunal lacked jurisdiction to consider the relevant issues. See *Bender* v. *Bender*,

Thus, we concluded that any consideration of the defendant's "allegedly deceitful" conduct in entering into the agreement was properly left to another forum. Id., 215–16. Specifically, we explained that, "once the commissioner determined that the $70,228.51 was not paid to the [defendant] in exchange for his release of his workers' compensation claim, the actions engaged in by the [defendant] warranted no further consideration in the workers' compensation forum." Id., 220. Importantly, we noted that the plaintiff "*retains the right to seek whatever civil recourses it deems appropriate with respect to the remainder of the agreement, a matter about which we express no opinion.*" (Emphasis added.) Id., 221. The plaintiff now seeks to have this "deceitful" conduct adjudicated in the context of the present unjust enrichment action, an issue that cannot be deemed barred by collateral estoppel given that *Leonetti* expressly did not address that issue.

The defendant, however, asserts that the plaintiff's claim of unjust enrichment is predicated on the defendant's "alleged[ly] deceptive conduct" and "[t]he only deceit that the [p]laintiff alleged was [the] [d]efendant's misrepresentation in the [a]greement that he would release his workers' compensation claim." We disagree. The plaintiff's claims do not depend on the enforceability of the release of workers' compensation claims contained in the agreement. It is undisputed that the defendant was allowed to pursue his workers' compensation claim and that the payment of $70,228.51 was not a workers' compensation benefit. Id., 203. Rather, the plaintiff's unjust enrichment claim is based on the parties' actions as they relate to the remainder of the

292 Conn. 696, 716–17, 975 A.2d 636 (2009). As such, given that *Leonetti* expressly states that the commission's subject matter jurisdiction was limited to determining the enforceability of the workers' compensation release, that claim cannot have collateral estoppel effect on the plaintiff's recovery for unjust enrichment.

agreement. Specifically, the plaintiff points to several instances of the defendant's conduct, apart from the unenforceable release, that form the basis of its claim. For example, the plaintiff notes that the defendant acted contrary to the purpose of the agreement, which was "to make the proposed transition as amiable and trouble-free as possible . . . ." The plaintiff also notes that the defendant breached article IV (d) of the agreement, which provided that he had received a "reasonable period of time" to review the agreement prior to signing it, by arguing to the contrary before the commission. Most importantly, the plaintiff contends that the defendant breached article III of the agreement that provided that the defendant understood that "the payments . . . are all that [the defendant] is entitled to receive from [the plaintiff]. . . . [The defendant] agrees that the payments . . . are *more* than [the plaintiff] is required to pay under its normal policies, procedures and plans."[9] (Emphasis altered.) Accordingly, the prior proceedings in *Leonetti* did not resolve identical issues, and, as such, the plaintiff's recovery under its unjust enrichment claim is not barred by the doctrine of collateral estoppel.

II

We next turn to the defendant's claims that the plaintiff's recovery is barred by §§ 31-290 and 31-296, by the terms of the agreement, and by public policy and that, as such, the plaintiff cannot prevail on its unjust enrichment claim as a matter of law.

The record reveals the following additional facts and procedural history that are relevant to our resolution of these claims. On February 18, 2016, after the close

[9] As the trial court noted, "[t]he jury reasonably could have concluded that [the defendant] was unjustly enriched [because, in the absence of] the agreement, [the plaintiff] had no obligation to pay any severance benefits, and [the defendant] had no right to receive them."

of the plaintiff's evidence, the defendant filed a motion seeking a directed verdict. With respect to the plaintiff's unjust enrichment claim, this motion centered on the fact that the defendant had "received no consideration in exchange for the workers' compensation release." The defendant referenced his supplemental request to charge number forty-two, which stated that, "[b]ecause [the plaintiff] did not pay [the defendant] any consideration . . . in exchange for releasing his workers' compensation claim, the workers' compensation release . . . failed to comply with the requirements of Connecticut law . . . ." The trial court reserved decision on that motion. Thereafter, on March 7, 2016, the defendant filed a motion for judgment notwithstanding the verdict and a motion to set aside the verdict as to the claim of unjust enrichment. Both of those motions asserted that the plaintiff's recovery for unjust enrichment "would violate the public policy embodied in [the act], including but not limited to the provisions of [§§ 31-290 and 31-296]." The trial court denied the defendant's motions on April 22, 2016.

On appeal, the defendant claims that § 31-296 provides that a voluntary agreement between an employer and an injured employee must be reviewed by the commissioner to ascertain whether it conforms with the provisions of the act. Accordingly, the defendant claims that, because § 31-290 prohibits contracts from relieving employers of "any obligation created by [the act]," the plaintiff is improperly attempting to circumvent the approval requirement of § 31-296 by "couching its claim as one based upon unjust enrichment/implied contract . . . ." The defendant also argues that article V (b) of the agreement provides that, if the defendant's release of his workers' compensation claim was found to be invalid, the remainder of the agreement would still be enforced. According to the defendant, this, in turn, would bar the plaintiff from recovering under a theory

of unjust enrichment, or a contract implied in law, because an express contract between the parties forecloses the possibility of recovery under an implied-in-law contract. Finally, the defendant claims that the agreement violates public policy and is, therefore, unenforceable.[10] In response, the plaintiff argues, inter alia, that the defendant did not adequately preserve these claims. We agree with the plaintiff and conclude that the defendant failed to adequately preserve these claims in his motion for a directed verdict.

Whether the evidence presented by the plaintiff is sufficient to withstand a motion for a directed verdict is a question of law, over which our review is plenary. *Curran* v. *Kroll*, 303 Conn. 845, 855, 37 A.3d 700 (2012). "Directed verdicts are not favored. . . . A trial court should direct a verdict only when a jury could not reasonably and legally have reached any other conclusion. . . . In reviewing the trial court's decision [to deny a defendant's motion for a directed verdict] we must consider the evidence in the light most favorable to the plaintiff. . . . A directed verdict is justified if . . . the evidence is so weak that it would be proper for the court to set aside a verdict rendered for the other party." (Internal quotation marks omitted.) *Bagley* v. *Adel Wiggins Group*, 327 Conn. 89, 102, 171 A.3d 432 (2017); see also *Gagne* v. *Vaccaro*, supra, 255 Conn. 400 (same standard applies to motions for judgment notwithstanding verdict).

A motion for a directed verdict serves to "adequately [alert the opposing party] and the trial court to the

[10] Specifically, the defendant contends that, in "Connecticut, there are strong public policy reasons for the oversight of releases by employees of workers' compensation claims." Thus, the defendant claims that, because the plaintiff failed to obtain approval of his workers' compensation claim release, the plaintiff cannot recover under a theory of unjust enrichment as a matter of law. Accordingly, the defendant asserts that the "appropriate remedy is the rendering of judgment for the defendant, notwithstanding the verdict for the plaintiff."

[relevant] legal issue[s] . . . .'' *Salaman* v. *Waterbury*, 246 Conn. 298, 309, 717 A.2d 161 (1998). Specifically, ''[a] motion for a directed verdict is a prerequisite to the filing of a motion to set aside the verdict. . . . [T]o permit the appellant first to raise posttrial an issue that arose during the course of the trial would circumvent the policy underlying the requirement of timely preservation of issues.'' (Citations omitted.) *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, 245 Conn. 1, 49, 717 A.2d 77 (1998). ''[A] motion for judgment notwithstanding the verdict is not a new motion, but the renewal of a motion for a directed verdict.'' (Internal quotation marks omitted.) *Haynes* v. *Middletown*, 314 Conn. 303, 312, 101 A.3d 249 (2014). Thus, such postverdict motions may not be predicated on a ground not previously raised in a motion for a directed verdict. *Salaman* v. *Waterbury*, supra, 309; see also Practice Book § 16-37 (''a party who has moved for a directed verdict may move to have the verdict and any judgment rendered thereon set aside and have judgment rendered *in accordance with his or her motion for a directed verdict*'' [emphasis added]).

In the present case, the defendant's motion for directed verdict, as to the unjust enrichment claim, was based solely on the ground that the defendant ''received no consideration in exchange for the [w]orkers' [c]ompensation release.'' Although the defendant's motion for a directed verdict referenced his supplemental request to charge forty-two, which in turn mentions the requirements of Connecticut law *generally*, there is no mention of § 31-290, § 31-296, article V (b) of the agreement, or public policy. Moreover, the defendant also made no mention whatsoever of article V (b) of the agreement in his postverdict motions. The defendant did, however, assert that the plaintiff's recovery ''would violate the public policy embedded in [§§ 31-290 and 31-296]'' in his motion for judgment notwith-

standing the verdict and motion to set aside the verdict. The defendant's attempt to preserve these statutory and public policy arguments by including them in his postverdict motions is unsuccessful because such motions may not be predicated on a ground not previously raised in a motion for a directed verdict.[11] See *Salaman* v. *Waterbury*, supra, 246 Conn. 309. Thus, the defendant did not timely alert the plaintiff and the trial court to his public policy and statutory arguments and never alerted the trial court to his argument regarding article V (b) of the agreement. Accordingly, we conclude that defendant did not adequately preserve these claims for appeal.[12]

III

We next address the defendant's challenges to the trial court's jury instructions. The record reveals the following additional relevant facts and procedural his-

[11] To the extent that the defendant raises additional challenges to the trial court's denial of his postverdict motions, we conclude that any such argument is inadequately briefed. The defendant's brief claims, on a single page, that the trial court "erred in denying the defendant's postverdict motions" and simply incorporates arguments he made throughout the rest of his brief with no analysis specific to his postverdict motions. See *Connecticut Light & Power Co.* v. *Gilmore*, 289 Conn. 88, 124, 956 A.2d 1145 (2008) ("[W]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." [Internal quotation marks omitted.]).

[12] We also note that the defendant's contention that the plaintiff's recovery for unjust enrichment violates §§ 31-290 and 31-296 and public policy is grounded on the incorrect presumption that the plaintiff's unjust enrichment claim is based solely on the unenforceable workers' compensation release. As discussed previously in this opinion, it is undisputed that the $70,228.51 payment was not a workers' compensation benefit; rather, it was a voluntary severance payment. Moreover, the defendant received full workers' compensation benefits. Thus, the plaintiff's recovery of the $70,228.51 severance payment does not affect the defendant's workers' compensation benefits and did not relieve the plaintiff of its obligations under the act. Accordingly, restitution in this case does not defeat the purpose of the act and, as such, does not violate public policy.

tory. The defendant filed a preliminary request to charge on November 6, 2015. Request thirty-six in that document sought an instruction relating to the provisions of §§ 31-290 and 31-296. Thereafter, on February 16, 2016, the defendant filed a supplemental request to charge. Request forty-four in that document pertained to this court's holding in *Leonetti*. Specifically, it sought the following instruction: "In considering the claims raised by [the plaintiff] concerning its severance agreement, [the plaintiff] is free to seek recourse with respect to the provisions contained in its agreement, other than the workers' compensation release. In other words, you may consider [the plaintiff's] claims of fraud, theft, conversion and unjust enrichment only as they pertain to the remainder of the severance agreement." The trial court declined to provide the jury with those specific instructions.

On appeal, the defendant contends that the trial court improperly failed to instruct the jury in accordance with requests forty-four and thirty-six and that the court's unjust enrichment charge was not proper. Specifically, the defendant claims that, in refusing to charge the jury in accordance with request forty-four, the plaintiff was able to "pursue its claim of unjust enrichment based on the very clause that had previously been judged unenforceable under the act." With respect to request thirty-six, the defendant claims that, in failing to charge the jury on the provisions of §§ 31-290 and 31-296, the trial court "permitted the jury to rely upon the unenforceable promise contained in the [a]greement in order to find the defendant liable in derogation of the public policy" of the act. The defendant also contends that the trial court's instructions on unjust enrichment improperly permitted the jury to find in favor of the plaintiff in the absence of proof that any of the defendant's actions or omissions caused the plaintiff injury.

In response, the plaintiff argues, inter alia, that the defendant failed to adequately brief the harmfulness of the alleged instructional errors. The plaintiff further argues that the trial court adequately instructed the jury on the legal principles of *Leonetti* and the provisions of §§ 31-290 and 31-296, and, as such, was under no obligation to charge the jury in the specific manner requested by the defendant. With respect to the trial court's instruction on unjust enrichment, the plaintiff argues, inter alia, that the defendant's claim is barred by the general verdict rule. We agree with the plaintiff and conclude that, with respect to requests forty-four and thirty-six, the defendant failed to adequately brief the harmfulness of the alleged instructional errors. We also conclude that the defendant's argument with respect to the trial court's unjust enrichment instructions is barred by the general verdict rule.

A

Requests Forty-Four and Thirty-Six

We begin our analysis of the defendant's claims with respect to requests forty-four and thirty-six by noting that "[w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . Where a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.) *Connecticut Light & Power Co.* v. *Gilmore*, 289 Conn. 88, 124, 956 A.2d 1145 (2008). Moreover, without adequate briefing on the harmfulness of an alleged error, "the defendant is not entitled to review of [the] claim on the merits." *Saint Bernard School of Montville, Inc.* v. *Bank of America*, 312 Conn.

811, 829, 95 A.3d 1063 (2014). Specifically, with respect to jury instructions, we have explained that "[i]t is axiomatic . . . that not every error is harmful. . . . [W]e have often stated that before a party is entitled to a new trial . . . he or she has the burden of demonstrating that the error was harmful. . . . An instructional impropriety is harmful if it is likely that it affected the verdict." (Citation omitted; internal quotation marks omitted.) *Scanlon* v. *Connecticut Light & Power Co.*, 258 Conn. 436, 448, 782 A.2d 87 (2001).

As the party challenging the jury instructions, the defendant was required to prove that the instructions likely affected the verdict. With respect to request forty-four, the defendant's harm analysis consists of only one sentence in which he claims that, had the trial court given his requested instruction, he "would have been entitled to judgment as a matter of law on the [f]ourth [c]ount of the amended complaint . . . ." As to request thirty-six, the defendant's harm analysis is similarly brief and asserts that the trial court's charge permitted the plaintiff to recover "in derogation of the protections afforded by the [a]ct" and misled the jury and caused injustice to him. Thus, the defendant's harm analyses consist of only cursory statements. In the absence of additional detail regarding the question of harm, we conclude that these claims of instructional error were inadequately briefed.[13]

[13] While we are not required to reach the merits of the defendant's argument with respect to requests forty-four and thirty-six, we note that the substance of the defendant's arguments are unpersuasive because, contrary to the defendant's contentions, the trial court adequately instructed the jury regarding this court's holding in *Leonetti* and the provisions of §§ 31-290 and 31-296. "When reviewing [a] challenged jury instruction . . . we must adhere to the well settled rule that a charge to the jury is to be considered in its entirety, read as a whole, and judged by its total effect rather than by its individual component parts. . . . [T]he test of a court's charge is not whether it is as accurate upon legal principles as the opinions of a court of last resort but whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law. . . . As long as [the instructions] are correct in law, adapted to the

B

Unjust Enrichment Jury Instruction

Turning to the defendant's claim that the trial court improperly instructed the jury on the plaintiff's unjust enrichment cause of action, we note that "[u]nder the general verdict rule, if a jury renders a general verdict for one party, and [the party raising a claim of error on appeal did not request] interrogatories, an appellate court will presume that the jury found every issue in favor of the prevailing party." (Internal quotation marks omitted.) *Tetreault* v. *Eslick*, 271 Conn. 466, 471, 857 A.2d 888 (2004). As such, the general verdict rule precludes an appeal claiming instructional error when the jury could have decided the case on a ground not implicated by the challenged instruction. See *Kalams* v. *Giacchetto*, 268 Conn. 244, 251–52, 842 A.2d 1100 (2004) (declining to consider claim of instructional error under general verdict rule); see also *Dowling* v. *Finley Associates, Inc.*, 248 Conn. 364, 371, 727 A.2d 1245 (1999) (noting that "if any ground for the verdict is proper, the verdict must stand" and that "only if every ground is improper does the verdict fall" [internal quotation marks omitted]). The purpose of the rule is based "on the policy of the conservation of judicial resources, at both the appellate and trial levels. On the appellate level, the rule relieves an appellate court from the necessity of adjudicating claims of error that may not arise from

issues and sufficient for the guidance of the jury . . . we will not view the instructions as improper. . . . We do not critically dissect a jury instruction." (Citation omitted; internal quotation marks omitted.) *Ancheff* v. *Hartford Hospital*, 260 Conn. 785, 811, 799 A.2d 1067 (2002). Additionally, while "[a] request to charge [that] is relevant to the issues of [a] case and [that] is an accurate statement of the law must be given . . . [i]nstructions to the jury need not be in the precise language of a request." (Citation omitted; internal quotation marks omitted.) *Scanlon* v. *Connecticut Light & Power Co.*, supra, 258 Conn. 445–46. Thus, the trial court was under no obligation to fashion its own charge using the specific language contained in requests forty-four and thirty-six.

the actual source of the jury verdict that is under appellate review. . . . In the trial court, the rule relieves the judicial system from the necessity of affording a second trial if the result of the first trial potentially did not depend upon the trial errors claimed by the appellant." (Internal quotation marks omitted.) *Gajewski* v. *Pavelo*, 229 Conn. 829, 836, 643 A.2d 1276 (1994).

"This court has held that the general verdict rule applies to the following five situations: (1) denial of separate counts of a complaint; (2) denial of separate defenses pleaded as such; (3) denial of separate legal theories of recovery or defense pleaded in one count or defense, as the case may be; (4) denial of a complaint and pleading of a special defense; and (5) denial of a specific defense, raised under a general denial, that had been asserted as the case was tried but that should have been specially pleaded." (Internal quotation marks omitted.) *Kalams* v. *Giacchetto*, supra, 268 Conn. 255.

In the present case, the defendant claims that the following unjust enrichment instruction by the trial court was improper: "When considering [the defendant's promise to release his workers' compensation claim] I instruct you, as a matter of law, that a promise includes within it a promise to do all that is necessary to carry the promise into effect." The third general verdict situation—separate legal theories of recovery pleaded in one count—is implicated in the present case, barring review of this claim. See *Kalams* v. *Giacchetto*, supra, 268 Conn. 255. The plaintiff's unjust enrichment claim not only relied on the defendant's intentions not to release his workers' compensation claim and to do all that was necessary to carry that into effect, but also on other misrepresentations contained in the agreement, such as the statements indicating the defendant believed that he had sufficient time to review the agreement and that $70,228.51 was more than he was

entitled to receive.[14] See *Brown* v. *Bridgeport Police Dept.*, 155 Conn. App. 61, 70, 107 A.3d 1013 (2015) (third situation was implicated because pleading "set forth distinct legal theories on which the jury could find [that] use of deadly force was statutorily authorized"); *Thames River Recycling, Inc.* v. *Gallo*, 50 Conn. App. 767, 782, 720 A.2d 242 (1998) (given that plaintiff had several theories of recovery supporting one count, case fell into third situation); cf. *Staudinger* v. *Barrett*, 208 Conn. 94, 99–100, 544 A.2d 164 (1988) (general verdict rule applied when "defendants' denial of negligence and their allegations of contributory negligence constitute[d] two discrete defenses, either of which could have supported the jury's general verdict"). The defendant did not request jury interrogatories that would properly establish the ground on which the jury made its decision on the unjust enrichment count. As such, the defendant's claim of instructional error as to unjust enrichment is unreviewable under the general verdict rule.

IV

Finally, we address the defendant's evidentiary claims. The following additional facts are relevant to our resolution of these claims. In accordance with the court's trial management orders, the plaintiff moved to exclude, inter alia, all evidence and argument showing that the commissioner had imposed a $500 fine on the plaintiff as a result of its general counsel's refusal to attend a workers' compensation hearing, including exhibit I, which is the January 8, 2010 order from the commission imposing that fine. The defendant objected

[14] The defendant similarly claims that the trial court improperly instructed the jury that it should not consider whether the defendant's promises were unenforceable and that, "[because] the [commission] did not approve the [agreement], you may find that [the defendant] would be unjustly enriched by retaining the benefits of that agreement." These claims are also barred by the general verdict rule for the same reason.

to that motion and also opposed the plaintiff's objections to the introduction of defendant's exhibits C, D, and F through L, which were based on similar legal arguments.[15] The plaintiff also sought to exclude exhibit Z, which was an April 5, 2010 letter from the defendant's attorney. The defendant opposed that motion. After oral argument, the trial court issued a ruling excluding exhibit I and ruling that it would consider other evidentiary issues briefed in the motion during trial. The trial court ultimately excluded defendant's exhibits G, H, I, J, Z, and JJJ[16] on the basis of hearsay, the danger of unfair prejudice substantially outweighing probative value, and confusion of the issues.

On appeal, the defendant claims that the trial court improperly excluded his exhibits G, H, I, J, Z, and JJJ. The defendant contends that these exhibits revealed relevant communications between the parties and the state of mind of the defendant. Moreover, the defendant contends that, contrary to the plaintiff's objection at trial, exhibits G, H, I, J, Z, and JJJ did not constitute hearsay. Specifically, the defendant contends that exhibits G, J, Z, and JJJ did not constitute hearsay because they were not offered for the truth of the mat-

[15] Exhibits C, F, and G are various letters from the defendant's attorney to the plaintiff's attorney regarding the workers' compensation release contained in the agreement. Exhibit D is a December 22, 2009 letter from the defendant's attorney to the plaintiff's attorney containing a copy of a notice for an informal hearing before the commission on January 8, 2010. Exhibit H is an affidavit from the attorney that represented the plaintiff before the commission in support of its motion to quash and motion for a protective order. Exhibit J is a January 19, 2010 letter from the plaintiff's former attorney advising the commission that he no longer represented the plaintiff. Exhibit K is a copy of a notification of appearance dated January 27, 2010. Exhibit L is copy of a notice for an informal hearing before the commission on March 1, 2010.

[16] Exhibit JJJ is a version of exhibit G, a letter from the defendant's attorney to the plaintiff's attorney, created by the defense during trial. The trial court excluded it on the same grounds as exhibit G—namely, hearsay, its probative value was substantially outweighed by the danger of unfair prejudice, and confusion of the issues.

ters asserted. In response, the plaintiff argues, inter alia, that the defendant's arguments with respect to exhibits G, H, I, J, and JJJ, are unreviewable because the defendant does not address all of the trial court's bases for excluding these exhibits. The plaintiff also argues that the defendant failed to adequately brief the harmfulness of the trial court's evidentiary rulings, and, as such, the defendant's claim with respect to exhibit Z may not be considered. We agree with the plaintiff, and conclude that, because the defendant did not challenge all of the bases under which the trial court excluded exhibits G, H, I, J, and JJJ, his claims on appeal related to those exhibits are moot. With respect to exhibit Z, we further conclude that the defendant failed to adequately brief the harmfulness of the evidentiary ruling.

A

Exhibits G, H, I, J, and JJJ

We begin our analysis of the defendant's claims with respect to exhibits G, H, I, J, and JJJ by noting that "[m]ootness is a question of justiciability that must be determined as a threshold matter because it implicates [this] court's subject matter jurisdiction . . . ." (Internal quotation marks omitted.) *Lyon* v. *Jones*, supra, 291 Conn. 392. "The fundamental principles underpinning the mootness doctrine are well settled. . . . 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." (Citation omitted; internal quotation

marks omitted.) *State* v. *Lester*, 324 Conn. 519, 526, 153 A.3d 647 (2017). "[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.) *Lyon* v. *Jones*, supra, 394.

"Where an appellant fails to challenge all bases for a trial court's adverse ruling on his claim, even if this court were to agree with the appellant on the issues that he does raise, we still would not be able to provide [him] any relief in light of the binding adverse finding[s] [not raised] with respect to those claims. . . . Therefore, when an appellant challenges a trial court's adverse ruling, but does not challenge all independent bases for that ruling, the appeal is moot." (Citation omitted; internal quotation marks omitted.) *State* v. *Lester*, supra, 324 Conn. 526–27; see also *Lyon* v. *Jones*, supra, 291 Conn. 395 ("even if we were to agree with the plaintiff on the issue that she *does* raise with respect to her . . . claims, we still would not be able to provide her any relief in light of the binding adverse finding with respect to those claims" [emphasis in original]).

In the present case, the trial court excluded exhibits G, H, J, and JJJ as both hearsay and because their probative value was substantially outweighed by the danger of unfair prejudice. The trial court excluded exhibit I because its probative value was substantially outweighed by the danger of unfair prejudice and confusion of the issues. On appeal, the defendant challenges the trial court's exclusion of these exhibits only on the limited basis of hearsay. Because there are independent bases for the trial court's exclusion of the evidence that the defendant has not challenged in the present appeal,

even if we were to hold that the trial court improperly excluded exhibits G, H, I, J, and JJJ on the basis of hearsay, we could grant no practical relief to the defendant. Accordingly, we conclude that the defendant's evidentiary claims pertaining to these exhibits are moot and that, therefore, this court lacks subject matter jurisdiction to consider those claims.[17]

B

Exhibit Z

Turing to the defendant's claim with respect to exhibit Z, we set forth the applicable standard of review. "Upon review of a trial court's decision, we will set aside an evidentiary ruling only when there has been a clear abuse of discretion. . . . The trial court has wide discretion in determining the relevancy of evidence . . . and [e]very reasonable presumption should be made in favor of the correctness of the court's ruling in determining whether there has been an abuse of discretion." (Internal quotation marks omitted.) *State* v. *Santos*, 318 Conn. 412, 423, 121 A.3d 697 (2015). Moreover, "evidentiary rulings will be overturned on appeal only where there was an abuse of discretion and a showing by the defendant of substantial prejudice or injustice." (Internal quotation marks omitted.) *Stokes* v. *Norwich Taxi, LLC*, 289 Conn. 465, 489, 958 A.2d 1195 (2008).

"It is a fundamental rule of appellate review of evidentiary rulings that if [the] error is not of constitutional dimensions, an appellant has the burden of establishing

[17] We also note that, during oral argument before this court, the defendant appears to have conceded this point by acknowledging that he failed to challenge all of the bases on which the trial court excluded these exhibits. Specifically, in response to the assertion that there were alternative grounds for the exclusion of these exhibits, the defendant stated: "I would concede, Your Honor, that we briefed the question of admissibility on the basis of hearsay . . . . We'll continue to rely on the brief."

that there has been an erroneous ruling *which was probably harmful to him*." (Emphasis added; internal quotation marks omitted.) *State* v. *Gonzalez*, 272 Conn. 515, 527, 864 A.2d 847 (2005). Thus, "[w]e do not reach the merits of [a] claim [where] the defendant has not briefed how he was harmed by the allegedly improper evidentiary ruling." *State* v. *Baker*, 168 Conn. App. 19, 35, 145 A.3d 955, cert. denied, 323 Conn. 932, 150 A.3d 232 (2016); see also *Saint Bernard School of Montville, Inc.* v. *Bank of America*, supra, 312 Conn. 829 (without adequate briefing of harmfulness of error, "the defendant is not entitled to review of [the] claim on the merits").

The only mention of the harmfulness of this evidentiary ruling in the defendant's brief consists of only broad statements and a conclusory assertion that the alleged errors "deprived [the] defendant of his opportunity to properly and fairly present his case to the jury and misled the jury . . . ." Nowhere does the defendant's brief explain how the verdict was likely affected by the trial court's particular exclusion of exhibit Z. Accordingly, because we conclude that the defendant failed to adequately brief the harmfulness of the trial court's evidentiary ruling, he is not entitled to review of his claim with respect to exhibit Z on the merits.

The appeal is dismissed with respect to the defendant's claims regarding exhibits G, H, I, J, and JJJ; the judgment is affirmed.

In this opinion the other justices concurred.