JPMORGAN CHASE BANK, NATIONAL ASSOCIATION *v.* ROGER ESSAGHOF ET AL.
(SC 20090)

Robinson, C. J., and Palmer, McDonald, D'Auria, Kahn, Ecker and Vertefeuille, Js.*

Syllabus

Pursuant to statute (§ 49-1), "[t]he foreclosure of a mortgage is a bar to any further action upon the mortgage debt, note or obligation against the person or persons who are liable for the payment thereof . . . ."

Pursuant further to statute (§ 49-14 (a)), however, "[a]t any time within thirty days after the time limited for redemption has expired, any party to a mortgage foreclosure may file a motion seeking a deficiency judgment."

The plaintiff bank sought to foreclose a mortgage on certain of the defendants' real property after they had defaulted on a loan that had been modified by agreement. The trial court rendered a judgment of strict foreclosure, from which the defendants appealed to the Appellate Court. While the appeal was pending and the defendants were still occupying the property, the trial court granted the plaintiff's motion for equitable relief and ordered the defendants to reimburse the plaintiff for future property taxes and homeowners insurance premiums that the plaintiff would pay during the pending appeal. The defendants filed an amended appeal with the Appellate Court, which affirmed the trial court's judgment of strict foreclosure and determined that the trial court's order relating to tax and insurance premium reimbursements was not an abuse of discretion. On the granting of certification, the defendants appealed to this court. *Held*:

1. The trial court abused its discretion by ordering the defendants to make monetary payments to the plaintiff outside of a deficiency judgment pursuant to § 49-14, and, accordingly, the Appellate Court improperly upheld that order: by pursuing strict foreclosure, the plaintiff elected to take absolute title to the property, a remedy in rem, and to pursue any remaining debt through the procurement of a deficiency judgment, a remedy in personam; moreover, because a deficiency judgment was the exclusive procedure by which the plaintiff could obtain a remedy in personam from the defendants in the context of strict foreclosure, and because the trial court's order requiring the defendants to reimburse the plaintiff for future taxes and insurance premiums was a remedy in personam insofar as it operated on the defendants personally with respect to other property owned by them and settled a dispute by imposing a personal liability or obligation on them in favor of the plaintiff, the trial court's order was improper.

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

2. This court declined to consider the defendants' claim that the trial court should have been disqualified due to certain statements that called that court's impartiality into question; the defendants' disqualification claim was not properly before this court, as the defendants failed to raise the issue at trial or on appeal before the Appellate Court, and the issue was beyond the scope of the certified question.

Argued October 21, 2019—officially released August 20, 2020**

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the case was tried to the court, *Hon. Kevin Tierney*, judge trial referee, who, exercising the powers of the Superior Court, rendered judgment of strict foreclosure, from which the named defendant et al. appealed to the Appellate Court; thereafter, the court, *Hon. Kevin Tierney*, judge trial referee, granted the plaintiff's motion for reimbursement of property taxes and insurance premiums, and the named defendant et al. filed an amended appeal with the Appel late Court; subsequently, the Appellate Court, *Lavine*, *Mullins* and *Mihalakos*, *Js.*, affirmed the judgment of the trial court, and the named defendant et al., on the granting of certification, appealed to this court. *Reversed in part*; *judgment directed.*

Ridgely Whitmore Brown, for the appellants (named defendant et al.).

Brian D. Rich, for the appellee (plaintiff).

Jeffrey Gentes, *John L. Pottenger*, *Jr.*, and *Serena Candelaria*, *Adrian Gonzalez*, *Amy Hausmann*, *Natasha Khan* and *Srinath Reddy Kethireddy*, law student interns, filed a brief for the Housing Clinic of the Jerome N. Frank Legal Services Organization as amicus curiae.

** August 20, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Opinion

McDONALD, J. In this certified appeal, we must decide whether a trial court may order a mortgagor to reimburse a mortgagee for the mortgagee's ongoing advancements of property taxes and insurance premiums during the pendency of an appeal from a judgment of strict foreclosure. The defendants Roger Essaghof and Katherine Marr-Essaghof[1] appeal from the judgment of the Appellate Court affirming the trial court's order requiring that the defendants reimburse the plaintiff, JPMorgan Chase Bank, National Association, for property tax and insurance premium payments advanced by the plaintiff during the pendency of this appeal. The defendants' principal claim is that the Appellate Court incorrectly concluded that the trial court's order was a valid exercise of its equitable authority. We conclude that the trial court abused its discretion because the relief it ordered is inconsistent with the remedial scheme available to a mortgagee in a strict foreclosure. Accordingly, we reverse the judgment of the Appellate Court insofar as it upheld the trial court's order directing the defendants to reimburse the plaintiff for property taxes and insurance premiums. We affirm the Appellate Court's judgment in all other respects.

The following undisputed facts and procedural history are relevant to our resolution of this appeal. In

[1] As noted by the Appellate Court in *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, 177 Conn. App. 144, 171 A.3d 494 (2017), "[t]he plaintiff, JPMorgan Chase Bank, National Association, acquired Washington Mutual Bank, F.A., the originator of the note and mortgage from which this foreclosure action arises. Washington Mutual Bank, F.A., also held a junior lien with respect to the mortgage that was foreclosed in this action . . . ." Id., 146 n.1. As a result, JPMorgan Chase Bank, National Association, formerly known as Washington Mutual Bank, F.A., also was named as a defendant in this action. The defendant JPMorgan Chase Bank, National Association, however, was defaulted for failure to appear and is not a party to this appeal. Accordingly, we refer to Roger Essaghof and Katherine Marr-Essaghof, collectively, as the defendants, and individually by name where appropriate.

May, 2006, the defendants executed an adjustable rate promissory note in favor of Washington Mutual Bank, F.A.; see footnote 1 of this opinion; in the original, principal amount of $1.92 million. *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, 177 Conn. App. 144, 146–47, 171 A.3d 494 (2017). The loan was secured by a mortgage deed, executed by both defendants, on residential property located in Weston. See id., 147. Approximately two years later, the defendants executed a loan modification and defaulted on the loan shortly thereafter by failing to make payments. Id., 148–49. In September, 2008, the plaintiff acquired Washington Mutual and its assets, including the defendants' loan. Id., 149.

The plaintiff commenced this foreclosure action in March, 2009. Id. In November, 2015, after a seven day bench trial, the court rendered a judgment of strict foreclosure in favor of the plaintiff. See id., 149–50. The court found that the total debt was more than $3.2 million while the fair market value of the property was $1.65 million and set the law days. The defendants timely appealed to the Appellate Court, claiming that the trial court erred in rejecting two of their special defenses; see id., 146, 151; and the automatic appellate stay went into effect pursuant to Practice Book § 61-11 (a).

In early 2016, with the appeal pending and the defendants still living at the property, the plaintiff moved for the trial court to terminate the appellate stay under Practice Book § 61-11 (d) or, in the alternative, to invoke its equitable authority and order the defendants to reimburse the plaintiff for future property taxes and insurance premiums that the plaintiff would advance during the pendency of the appeal. Id., 150 and n.4. On February 23, 2016, the court denied the motion to terminate the stay but granted the requested equitable relief. Id. The court reasoned that, between March, 2010, and January, 2016, the plaintiff had paid more than $330,000

in property taxes and insurance premiums to protect both its security interest in the property and the priority of its mortgage loan. The court noted that the tax and insurance payments, however, had always been the defendants' responsibility and would continue to be—regardless of the outcome of the pending foreclosure appeal. It further noted that the defendants' obligation to pay the taxes and insurance premiums was not contested in the foreclosure litigation, and the obligation could neither affect nor be affected by the outcome of the appeal. At a hearing on the plaintiff's motion, the trial court explained: "[I]t's not fair that the [defendants] can live in this house and not pay the real estate taxes that they're obligated to [pay] when they win this appeal. It's not fair that they live in this house and not pay the insurance on the house that they're living in. When they win the appeal, they have to pay it." The court further explained: "It's not fair that he has to have his obligations that are his when he wins the appeal or he loses the appeal be paid by somebody else. Where do we get that as a law? How can I stand for that? How can I allow that to happen?"

The court's order applied prospectively. That is, it did not require the defendants to pay the insurance premiums and real estate taxes that had accrued from the time of default; it only required the defendants to reimburse the plaintiff for real estate taxes that it paid in January, 2016, and, on an ongoing basis, for all future property tax and insurance payments until the end of the litigation. The court established the following payment and reimbursement arrangement: the plaintiff would pay the real estate taxes and insurance premiums and submit proof of payment to the defendants. The defendants would then have thirty days to reimburse the plaintiff. If the defendants did not comply, the plaintiff could seek sanctions against either or both defendants, including, but not limited to, a finding of contempt. At

the hearing, the court acknowledged that it could not hold the defendants in contempt if they were unable to pay but suggested that, if they did have the ability to pay, the court could jail the defendants as an incentive to do so. The defendants subsequently amended their pending appeal in the Appellate Court to challenge the February 23, 2016 order on the ground that it was an abuse of discretion because it carried the threat of imprisonment for failure to pay a debt, the "equivalent to the re-creation of [a] debtors' prison." (Internal quotation marks omitted.) *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, supra, 177 Conn. App. 150, 160.

The Appellate Court rejected each of the defendants' claims related to the special defenses and affirmed the trial court's judgment of strict foreclosure. Id., 146, 151, 163. That court also held that the trial court's order relating to tax and insurance premium reimbursements was not an abuse of discretion. Id., 162. The Appellate Court reasoned that the trial court's payment order was a matter of the court's broad equitable discretion, and it could not "conceive of any abuse of discretion on the part of the trial court . . . in determining that a balancing of the equities justified ordering the defendants to pay for expenses that they would have been required to pay no matter the outcome of this case." (Footnote omitted.) Id.

We thereafter granted the defendants' petition for certification to appeal, limited to the following issue: "Did the Appellate Court properly affirm the judgment of the trial court ordering the defendants to reimburse the plaintiff for property taxes and homeowners insurance premiums in violation of the provisions of General Statutes § 49-14 pertaining to deficiency proceedings?" *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, 328 Conn. 915, 180 A.3d 962 (2018).

Although we granted the defendants' petition limited to the one issue, on appeal, the defendants raise two claims: (1) the Appellate Court improperly affirmed the

trial court's order to reimburse the plaintiff for taxes and insurance premiums because, in a strict foreclosure, a trial court may award money damages only in a deficiency judgment pursuant to § 49-14; and (2) this court should vacate the judgment in its entirety and order a new trial before a different judge because certain statements the trial court made at a hearing on February 8, 2016, call into question the trial court's impartiality, requiring its disqualification under rule 2.11 of the Code of Judicial Conduct.[2] We agree with the defendants that the trial court's order constituted an abuse of discretion because it does not fit within the remedial scheme available to a mortgagee in a strict foreclosure. We decline to consider the merits of the defendants' second claim because the defendants did not raise the disqualification issue before the trial court or the Appellate Court, and because it is outside the scope of the certified question. Accordingly, we reverse in part the judgment of the Appellate Court.

I

We first consider whether the trial court's order requiring the defendants to reimburse the plaintiff for tax and insurance premium advancements was a valid exercise of the court's equitable authority. The defendants argue that, although a court generally has broad equitable discretion in a foreclosure proceeding, monetary payments are legal, not equitable, relief and must be awarded only in accordance with the procedure for deficiency judgments set forth in § 49-14. The plaintiff disagrees and contends that the trial court's order was a valid exercise of the court's equitable authority.

This court reviews the exercise of a trial court's equitable powers for an abuse of discretion. See, e.g., *Presidential Village, LLC* v. *Phillips*, 325 Conn. 394, 407, 158 A.3d 772 (2017); see also *MTGLQ Investors, L.P.*

[2] Details of the February 8, 2016 hearing are set forth in part II of this opinion.

v. *Egziabher*, 134 Conn. App. 621, 624, 39 A.3d 796 (2012) ("[o]ur review of a trial court's exercise of the legal discretion vested in it is limited to the questions of whether the trial court correctly applied the law and could reasonably have reached the conclusion that it did" (internal quotation marks omitted)). "Although we ordinarily are reluctant to interfere with a trial court's equitable discretion . . . we will reverse where we find that a trial court acting as a court of equity could not reasonably have concluded as it did . . . or to prevent abuse or injustice." (Internal quotation marks omitted.) *Presidential Village, LLC* v. *Phillips*, supra, 407.

We begin with well established background principles regarding the foreclosure of a mortgage. "A note and a mortgage given to secure it are separate instruments, executed for different purposes . . . ." (Internal quotation marks omitted.) *Hartford National Bank & Trust Co.* v. *Kotkin*, 185 Conn. 579, 581, 441 A.2d 593 (1981). "Upon a mortgagor's default on an underlying obligation, the mortgagee is entitled to pursue . . . its remedy at law for the amount due on the note, its remedy in equity to foreclose on the mortgage, or both remedies in one consolidated cause of action." *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, 312 Conn. 662, 673, 94 A.3d 622 (2014). "[T]he extent of the recovery . . . should not in any event exceed the amount of the debt." (Internal quotation marks omitted.) *Hartford National Bank & Trust Co.* v. *Kotkin*, supra, 581–82.

A mortgage foreclosure is a proceeding in rem; *Atlas Garage & Custom Builders, Inc.* v. *Hurley*, 167 Conn. 248, 252, 355 A.2d 286 (1974); its purpose is to extinguish the mortgagor's equity of redemption and vest absolute title to the property in the mortgagee. See *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, supra, 312 Conn. 673. A judgment in rem "creates no personal liability but operates only on the res which is the subject of the litigation . . . ." 50 C.J.S. 792, Judgments § 1385

(2009); see also *Zellen* v. *Second New Haven Bank*, 454 F. Supp. 1359, 1363 (D. Conn. 1978) ("the generally accepted definition of a proceeding in rem is 'a proceeding to determine the right in specific property, against all the world, equally binding on everyone' "); *Hodge* v. *Hodge*, 178 Conn. 308, 313, 422 A.2d 280 (1979) ("an action in rem is an action brought to enforce or protect a [preexisting] interest in particular property" (internal quotation marks omitted)). An action at law on the note, by contrast, is a proceeding in personam because it "imposes a personal liability or obligation on one person in favor of another" and "does not directly affect the status of the res . . . ." 49 C.J.S. 44, Judgments § 12 (2009); see also *Zellen* v. *Second New Haven Bank*, supra, 1363 ("[t]he object of an in personam action is to obtain a judgment against a person rather than to obtain a judgment determining the status and disposition of property"); Garner's Dictionary of Legal Usage (3d Ed. 2011) p. 461 ("[a]n action is in personam when its purpose is to determine the rights and interests of the parties themselves in the subject matter of the action . . . [and] an action is in rem when the court's judgment determines the title to property and the rights of the parties, not merely among themselves, but also against all persons at any time claiming an interest in the property at issue").

A foreclosure is "peculiarly an equitable action, and the court may entertain such questions as are necessary to be determined in order that complete justice may be done." *Hartford Federal Savings & Loan Assn.* v. *Lenczyk*, 153 Conn. 457, 463, 217 A.2d 694 (1966). The court's discretion, however, is not unlimited. "The law governing strict foreclosure lies at the crossroads between the equitable remedies provided by the judiciary and the statutory remedies provided by the legislature. . . . In exercising its equitable discretion . . . the court must comply with mandatory statutory provi-

sions that limit the remedies available to a foreclosing mortgagee." (Citations omitted; footnote omitted.) *New Milford Savings Bank* v. *Jajer*, 244 Conn. 251, 256–57, 708 A.2d 1378 (1998).

"Historically, a foreclosure proceeding was an absolute bar to further action on the mortgage debt. In *M'Ewen* v. *Welles*, 1 Root [Conn.] 202, 203 (1790), the [court] enunciated that '[i]f [the mortgagee] choose[s] to take the land and to make it his own absolutely, whereby the mortgagor is totally divested of his equity of redemption, the debt is thereby paid and discharged: And if it eventually proves insufficient to raise the sum due, it is the mortgagee's own fault, and at his risk.' Starting in 1835, a succession of statutes established a mortgagee's right to a judgment for the deficiency when the value of the property proves inadequate to satisfy the mortgage debt in full." *Factor* v. *Fallbrook, Inc.*, 25 Conn. App. 159, 161–62, 593 A.2d 520, cert. denied, 220 Conn. 908, 597 A.2d 332 (1991). The modern versions of these statutes are General Statutes §§ 49-1 and 49-14. We discuss each in turn.

Section 49-1 provides in relevant part that "[t]he foreclosure of a mortgage is a bar to any further action upon the mortgage debt, note or obligation against the person or persons who are liable for the payment thereof . . . ." Under § 49-1, "a judgment of strict foreclosure extinguishes all rights of the foreclosing mortgagee on the underlying note, except those enforceable through the use of the deficiency judgment procedure delineated in . . . § 49-14." *First Bank* v. *Simpson*, 199 Conn. 368, 370, 507 A.2d 997 (1986). More specifically, with the exception of a deficiency judgment under § 49-14, § 49-1 precludes a mortgagee from "pursu[ing] personal remedies against the mortgagors with respect to their personal obligations" on the mortgage debt. (Emphasis omitted.) *New Milford Savings Bank* v. *Jajer*, supra, 244 Conn. 265.

Section 49-14 (a) is a limited exception to this bar on further action following a strict foreclosure,[3] and it provides that, "[a]t any time within thirty days after the time limited for redemption has expired, any party to a mortgage foreclosure may file a motion seeking a deficiency judgment. . . . At [the deficiency hearing] the court shall hear the evidence, establish a valuation for the mortgaged property and shall render judgment for the plaintiff for the difference, if any, between such valuation and the plaintiff's claim. The plaintiff in any further action upon the debt, note or obligation, shall recover only the amount of such judgment." A deficiency judgment is a remedy in personam; see W. Cook, "The Powers of Courts of Equity," 15 Colum. L. Rev. 37, 52 (1915); see also *Bank of Stamford* v. *Alaimo*, 31 Conn. App. 1, 5, 622 A.2d 1057 (1993) (plaintiff in foreclosure action "who intends to bring a deficiency judgment authorized by . . . § 49-14 must allege facts sufficient, not only to justify the decree of foreclosure on the mortgage, but to support *a judgment in personam* against the particular defendant or defendants against whom a deficiency judgment will be sought" (emphasis added; footnote omitted)); and "any deficiency judgment sought in connection with the foreclosure arises from the contractual relationship between the parties to the promissory note." *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, supra, 312 Conn. 674. Accordingly, a deficiency judgment, in light of § 49-1, is "the only available means of satisfying a mortgage debt when the security is inadequate to make the foreclosing plaintiff whole." *First Bank* v. *Simpson*, supra, 199 Conn. 371; see 1 D. Caron & G. Milne, Connecticut Foreclosures (10th Ed. 2020) § 10-5:1, pp. 705–706. In other words, a deficiency judgment is the only procedure by which a court may order a mortgagor to pay money to a mortgagee in the context of a strict foreclosure.

[3] General Statutes § 49-28 provides the exception to § 49-1 for a deficiency judgment following a foreclosure by sale.

Although §§ 49-1 and 49-14 are not implicated until the law days have run, the statutes operate within, and must be consistent with, the larger remedial scheme. "It is our adjudicatory responsibility to find the appropriate accommodation between applicable judicial and statutory principles. . . . [C]ourts must . . . [ensure] that the body of the law—both common and statutory—remains coherent and consistent." (Internal quotation marks omitted.) *New Milford Savings Bank* v. *Jajer*, supra, 244 Conn. 257. To that end, the fact that the statutes do not apply until *after* the law days have run does not mean that a mortgagee seeking a strict foreclosure may subvert the remedial scheme by receiving monetary payments *before* the law days have run. Were we to permit such a practice during the pendency of a mortgagor's appeal, there would be little principled reason that a mortgagee could not also ask a court to order the payment of property insurance premiums or real estate taxes—or even monthly installments of principal and interest—as a condition to the mortgagor's asserting a defense to a foreclosure. We are aware of no statutory or common-law authority that would authorize such a pendente lite order. Unlike in the summary process context, in which the legislature has authorized courts to order use and occupancy payments during the pendency of an eviction action; see General Statutes § 47a-26b; or during the appeal of an eviction action; see General Statutes § 47a-35a; there is no similar statutory framework in the foreclosure context. "Where the legislature has taken action in an area, [this court] generally interpret[s] the legislature's failure to take similar action in a closely related area as indicative of a decision not to do so." *Bell Atlantic NYNEX Mobile, Inc.* v. *Commissioner of Revenue Services*, 273 Conn. 240, 255, 869 A.2d 611 (2005).

In sum, once a mortgagee elects to pursue a strict foreclosure against the mortgagor, it is limited to a specific statutory process by which it may seek to be

made whole. First, the mortgagee receives title to the property that secures the note—a remedy in rem. Then, if the debt exceeds the value of the property, the mortgagee may seek to recover the difference from the mortgagor in a deficiency judgment pursuant to § 49-14—a remedy in personam. A deficiency judgment is the exclusive procedure by which a mortgagee in a strict foreclosure may obtain a remedy in personam from a mortgagor.

We now apply these principles to the facts of this case. The plaintiff filed a one count complaint against the defendants, seeking to foreclose on the property; there was no second count alleging breach of contract relating to the promissory note. By pursuing the foreclosure, the plaintiff elected its remedy in equity: to take absolute title to the property, a remedy in rem, and topursue any remaining debt in the context of a deficiency judgment, the only process through which it could receive a remedy in personam from the defendants. After a bench trial, the court rendered a judgment of strict foreclosure, and the defendants appealed. While the appeal was pending, the trial court ordered the defendants to reimburse the plaintiff for all future tax and insurance premium advancements through the end of the litigation. The question, then, is whether the trial court's order constitutes a remedy in rem or a remedy in personam.

At least two aspects of the trial court's order make clear that it was a remedy in personam. First, unlike a judgment in rem, the order did not "[operate] only on the res . . . ." 50 C.J.S., supra, p. 792. To the contrary, it operated on the defendants personally with respect to *other* property owned by them, by requiring them to pay over money under threat of contempt. Put simply, the order did not involve the question of who was entitled to the property. Thus, it did not operate on the res *at all*, let alone operate *only* on the res.

Second, like a judgment in personam, the payment order settled a dispute by "impos[ing] a personal liability or obligation on [the defendants] in favor of [the plaintiff]." 49 C.J.S., supra, p. 44. The order involved personal liability because it required the defendants to pay money from their personal funds to the plaintiff. Although it is true that the order did not *create* this liability—indeed, the taxes and insurance premiums were the defendants' responsibility independent of the order—the threatened consequence for failure to pay was also personal: the defendants could be held in contempt of court for defying a court order, and the trial court suggested that they could be jailed as an incentive to pay. There is no more personal a liability than the physical confinement of one's body. See W. Cook, supra, 15 Colum. L. Rev. 52 ("To levy on a man's property, sell it, pass title to it to a purchaser, and pay the proceeds to the plaintiff . . . is very obviously to do a fundamentally different thing from ordering the defendant to do an act and putting him in jail for contempt if he does not obey; and the phrases in rem and in personam probably express this as well as any others. . . . [A]s a punishment for not doing something and for the purpose of persuading him to do it, the court deals directly with the physical person of the defendant, as distinguished from dealing with his property.").

Furthermore, as the plaintiff advances the taxes and insurance premiums, the payments become part of the mortgage debt; see General Statutes § 49-2 (a) ("[p]remiums of insurance, taxes and assessments paid by the mortgagee . . . are a part of the debt due the mortgagee or lienor"); *Lewis* v. *Culbertson*, 124 Conn. 333, 336, 199 A. 642 (1938) ("[mortgage debt includes] . . . [p]remiums of insurance, taxes and assessments paid by the mortgagee" (internal quotation marks omitted)); *Desiderio* v. *Iadonisi*, 115 Conn. 652, 654–55, 163 A. 254 (1932) ("[the mortgagee] is entitled to have the security for the debt preserved against loss or diminu-

tion in value by reason of obligations owed by the mortgagor . . . for taxes and the like . . . and if [the mortgagee] discharges such obligations [itself], [it] may tack them to the mortgage debt");[4] and, as discussed, the mortgagee in a strict foreclosure may recover mortgage debt only in the context of a deficiency judgment. See General Statutes §§ 49-1 and 49-14. Because a deficiency judgment is a remedy in personam, payments that are properly recoverable only as part of a deficiency judgment are most logically also classified as in personam. Accordingly, we conclude that the trial court's order constitutes a remedy in personam, which, because it took place outside the context of a deficiency judgment, was impermissible.

The plaintiff contends that, in *Desiderio* v. *Iadonisi*, supra, 115 Conn. 652, we endorsed the relief that the trial court ordered in the present case. In *Desiderio*, we noted—in dictum—that a mortgagee has a right "to have the value of [its] security preserved until the foreclosure has become absolute or the property is sold . . . [and, if] payment of taxes is necessary to preserve the security or any part of it from being taken to satisfy them, the court may order their payment by the receiver . . . ." Id., 656. Setting aside the fact that we held that it was not error for the trial court to *decline* to order the receiver to pay the taxes; see id., 657; the principle we noted in that case differs from the relief the court ordered in the present case.

There is a difference between ordering *a receiver* to pay taxes from funds that it has collected and ordering *the mortgagor* to reimburse the mortgagee for taxes and insurance premiums, which renders *Desiderio*

[4] Section 9 of the mortgage deed executed by the parties in the present case similarly provides in relevant part: "Any amounts disbursed by [l]ender under this Section 9 shall become additional debt of [b]orrower secured by this [s]ecurity [i]nstrument. These amounts shall bear interest at the [n]ote rate from the date of disbursement and shall be payable, with such interest, upon notice from [l]ender to [b]orrower requesting payment."

inapposite. A receiver acts as an agent or arm of the court. See, e.g., *New Haven Savings Bank* v. *General Finance & Mortgage Co.*, 174 Conn. 268, 270, 386 A.2d 230 (1978). It takes in rent and income generated by the property and uses the money to manage the property. Although the mortgagor *might* ultimately be entitled to funds taken in by the receiver, the money is in the possession of the court, and the court can order it to be distributed "as justice and equity require . . . ." *Desiderio* v. *Iadonisi*, supra, 115 Conn. 655. To be sure, regardless of whether a receiver is involved, it is the responsibility of the mortgagor, not the mortgagee, to pay the taxes and insurance premiums. The salient question is what remedies or mechanisms are available to the mortgagee to ensure that payment is made. In a foreclosure in which a receiver has been collecting income generated by the property, and in which the preservation of the mortgagee's security depends on payment of the taxes, it falls within the equitable authority of the court to order the receiver to pay the taxes from rents it has collected. But, in the circumstances of the present case, the court's equitable authority is limited by the remedial scheme available in a strict foreclosure, which precludes a remedy in personam outside the context of a deficiency judgment.[5]

The plaintiff further contends that, under this court's decision in *Jajer*, § 49-1 does not preclude a mortgagee's "continuing access to equitable foreclosure proceedings" following the foreclosure of a mortgage. *New Mil-*

[5] The plaintiff also notes that a couple of trial court cases have ordered similar relief, including *Mun* v. *Doria*, Docket No. CV-04-4001719-S, 2008 WL 2967039 (Conn. Super. July 11, 2008), and *Norwich Savings Society* v. *Caldrello*, Docket No. 512204, 1994 WL 174214 (Conn. Super. April 26, 1994). Neither of these cases is persuasive. In both *Mun* and *Caldrello*, the only authority the courts cite in support of their orders is the broad discretion available to a court, given the equitable nature of a foreclosure. See *Mun* v. *Doria*, supra, *2; *Norwich Savings Society* v. *Caldrello*, supra, *4. Neither court considered the statutory limitations on equitable discretion that we discuss in this opinion.

ford Savings Bank v. *Jajer*, supra, 244 Conn. 267. Specifically, the plaintiff argues that the court's order is purely a matter of equity arising out of the mortgage, and, as such, it is the kind of equitable order that *Jajer* permits. We disagree.

In *Jajer*, we explained that, following the foreclosure of a mortgage, § 49-1 "expressly bar[s] an in personam remedy . . . ." Id., 266. That is, the statute precludes the mortgagee from "pursu[ing] *personal* remedies against the mortgagors with respect to their *personal* obligations" on the mortgage debt. (Emphasis in original.) Id., 265. It does not, however, preclude a mortgagee from pursuing further remedies in rem. See id., 266–67. Properly understood, *Jajer* permits a mortgagee's "continuing access to equitable foreclosure proceedings"; id., 267; but limits the remedies available in those proceedings—remedies in rem are permissible, whereas remedies in personam are not. *Jajer* itself illustrates the difference. In that case, the mortgagee foreclosed a mortgage in which the property comprised three parcels of land. Id., 253. Due to a scrivener's error, the foreclosure complaint referred to only two of the three parcels, and the mortgagee did not discover its mistake until after a judgment of strict foreclosure was rendered, the law days passed, and it acquired title to parcels one and two. See id. Because the mortgage had already been foreclosed, the mortgagee could no longer recover personally—i.e., seek a remedy in personam—from the mortgagors. See id., 267 n.25. But, because § 49-1 does not prohibit a mortgagee from seeking a remedy in rem in a further equitable foreclosure proceeding, the mortgagee could pursue a foreclosure to obtain title to parcel three. See id., 266–67.

In the present case, although the trial court issued its order as a matter of its equitable discretion, the relief it ordered was, as we have explained in this opinion,

undoubtedly in personam. Thus, the trial court's order was improper.

We conclude that, when the defendants defaulted on their payment obligations, and the plaintiff elected strict foreclosure as its remedy, the plaintiff chose a remedial scheme that prescribes a specific and exclusive process by which it could be made whole. At the conclusion of this process, assuming the defendants do not redeem, their equity of redemption will be extinguished by the passing of the law days, and absolute title to the property will vest in the plaintiff. If the debt exceeds the value of the property, the plaintiff may then pursue the difference from the defendants in a deficiency proceeding pursuant to § 49-14. The deficiency judgment is the only procedure available to the plaintiff to recover its mortgage debt, including payments advanced to pay real estate taxes and property insurance, in excess of the value of the property. The trial court's order directing the defendants to make monetary payments to the plaintiff outside of a deficiency judgment was an abuse of discretion.

II

The defendants next argue, in a footnote spanning the last two pages of their brief, that the trial court violated rule 2.11 of the Code of Judicial Conduct by making certain statements that call into question the court's impartiality. Specifically, the defendants contend that the trial court's repeated references to "bologna sandwiches"—evidently, a reference to being jailed for contempt—call for this court to vacate the judgment and remand the case for a new trial before a different judge. The plaintiff argues that the defendants have abandoned any claim that the trial court should have been disqualified because the defendants did not raise the disqualification issue before the Appellate Court, and it is outside the scope of the certified question.

At a hearing on February 8, 2016, the trial court discussed, among other things, consequences that could arise if the defendants were to defy a court order to reimburse the plaintiff for tax and insurance premiums. After acknowledging that the court could not punish the defendants if they could not afford the payments, the court went on to discuss what could happen if the defendants declined to make the payments despite being able to do so. In that context, the following colloquy took place:

"The Court: . . . [I]f he doesn't have money . . . then there's no punishment that I can enter.

"[The Plaintiff's Counsel]: Right.

"The Court: But the other punishment would be to tell them about bologna sandwiches. You know what—you know what the reference to bologna sandwiches [is]?

"[The Plaintiff's Counsel]: I don't, Your Honor.

* * *

"The Court: Well, Mr. Brown, tell him what [the reference] to bologna sandwich[es] is.

"[The Defendants' Counsel]: That's the only meat you get in jail.

"The Court: That's the only food that you get downstairs.

"[The Plaintiff's Counsel]: Oh.

"The Court: When you go downstairs, that's what you get, you get bologna sandwiches.

* * *

"The Court: You don't get a choice of mayonnaise or mustard, either. You just get the bologna with the sandwich. That's it.

"[The Plaintiff's Counsel]: Okay.

"The Court: You get something to drink. It's called bologna sandwiches. And we'll give him bologna sandwiches, and then he sits down there . . . . I'm not going to put [Katherine Marr-Essaghof] in jail; I'll put [Roger Essaghof] in jail first. Okay. And then he sits down there, and she's upstairs, so she can make the telephone calls to get the money.

"[The Plaintiff's Counsel]: Okay.

"The Court: Or to get the proof that he doesn't have any money, and then, after being down there at 11 o'clock in the morning, and he has his bologna sandwich, [at] 3:30 in the afternoon, we come back, and we have a hearing. If it's a Friday afternoon hearing, it's going to be a little dicey because the marshal is going to be knocking at the door, saying, van's leaving, we're going up to North Avenue, we've got to—you've got to make a—let's go, make a decision. So, I'll make a decision.

"[The Plaintiff's Counsel]: Okay.

"The Court: You get a hot meal for that night though.

"[The Plaintiff's Counsel]: No, bologna.

"The Court: No, you sleep in a gym . . . on North Avenue."

The defendants concede that the disqualification issue was not raised at trial or presented to the Appellate Court. The issue is also beyond the scope of the certified question. Accordingly, although we do not condone this colloquy, we decline to consider the merits of the defendants' claim.[6] See, e.g., *Grimm* v. *Grimm*,

[6] The defendants also suggest that the trial court's references to "bologna sandwiches" were improper "given the fact that [Roger Essaghof] is a Persian Jew." We see nothing in the record to support the suggestion that the references to "bologna sandwiches" were motivated by Roger Essaghof's identity as a Persian Jew. At oral arguments before this court, the defendants' counsel was asked how he knew what the trial court meant in referring to

276 Conn. 377, 393, 886 A.2d 391 (2005) ("a claim that has been abandoned during the initial appeal to the Appellate Court cannot subsequently be resurrected by the taking of a certified appeal to this court"), cert. denied, 547 U.S. 1148, 126 S. Ct. 2296, 164 L. Ed. 2d 815 (2006); *State* v. *Robert H.*, 273 Conn. 56, 86, 866 A.2d 1255 (2005) (declining to consider claim because it was not preserved for appeal and because it "exceed[ed] the scope of the certified question"); *Gillis* v. *Gillis*, 214 Conn. 336, 343, 572 A.2d 323 (1990) ("[i]t is a well settled general rule that courts will not review a claim of judicial bias on appeal unless that claim was properly presented to the trial court via a motion for disqualification or a motion for mistrial").

The judgment of the Appellate Court is reversed in part and the case is remanded to that court with direction to reverse the trial court's order directing the defendants to reimburse the plaintiff for property taxes and homeowners insurance premiums and to remand the case to that court for the purpose of setting a new law day; the judgment of the Appellate Court is affirmed in all other respects.

In this opinion the other justices concurred.

"bologna sandwiches." He replied: "It's commonly known to be—bologna sandwiches means you're going to a—either civil or criminal contempt. In fact . . . back when I was a good deal younger, I had a civil contempt where I found out what a . . . bologna sandwich was. So, yes, it's a reference, and it's understood . . . ." Given that (1) the defendants acknowledge that "bologna sandwiches" is a known, long-standing reference to being held in contempt, (2) the trial court made the references while discussing contempt as the consequence for noncompliance with a court order, and (3) there is otherwise no indication in the record that the trial court was biased against, or even aware of, Roger Essaghof's identity as a Persian Jew, we see no basis from which to infer that the trial court's comments were related in any way to his identity.

ANTONIO VITTI *v.* CITY OF MILFORD ET AL. (SC 20350)

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

Syllabus

The plaintiff appealed from the decision of the Compensation Review Board, which affirmed the decision of the Workers' Compensation Commissioner awarding the plaintiff benefits pursuant to statute (§ 31-308 (b)) for a 23 percent permanent partial disability on the basis of the functional capacity of his transplanted heart. While employed as a police officer for the named defendant, the city of Milford, the plaintiff was diagnosed with giant cell myocarditis and underwent a heart transplant. The plaintiff thereafter filed a claim for benefits pursuant to the statute (§ 7-433c) governing compensation for municipal police officers with hypertension or heart disease. The commissioner issued a finding and award, determining that the plaintiff had reached maximum medical improvement approximately three years after receiving the transplant and that he was entitled to benefits for a 23 percent permanent partial disability of the transplanted heart. In affirming the commissioner's finding and award, the board concluded that the commissioner had properly considered the function of the transplanted heart in awarding benefits rather than awarding the plaintiff 100 percent permanent partial disability benefits on the basis of the removal and complete loss of his native heart. On the plaintiff's appeal from the board's decision, *held* that the board properly considered the functionality of the transplanted heart after a finding of maximum medical improvement, rather than the total loss of the plaintiff's native heart, in fashioning the specific indemnity award because the plaintiff had not suffered a complete loss of that organ within the meaning of § 31-308 (b): although the language of § 31-308 (b) was ambiguous with respect to whether permanent partial disability benefits were to be based on the complete loss of a native organ or the loss of use of a transplanted organ, the legislative history surrounding § 31-308 (b) evinced an intent to balance the goals of protecting workers and compensating them for their losses with the economic burden placed on employers and insurance companies, and requiring compensation for the complete loss of a native organ, despite a successful transplant surgery that restores the organ's functional capacity, was inconsistent with and would expand the scope of benefits provided by § 31-308 (b) beyond the legislature's intent, and would require the commissioner to disregard the ameliorative effects of the transplant, contrary to this court's well established case law concerning whether a plaintiff has

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

reached maximum medical improvement; moreover, although courts generally do not consider improvements from artificial implants in awarding permanent partial disability benefits, a transplant of live tissue is not akin to a prosthetic device for purposes of § 31-308 (b), and, accordingly, the board properly considered the functional capacity of the plaintiff's transplanted heart rather than deeming the removal of his native heart a 100 percent loss under § 31-308 (b).

Argued February 27—officially released August 24, 2020**

Procedural History

Appeal from the decision of the Workers' Compensation Commissioner for the Fourth District awarding certain permanent partial disability benefits to the plaintiff, brought to the Compensation Review Board, which affirmed the commissioner's decision, and the plaintiff appealed. *Affirmed.*

Andrew J. Morrissey, with whom, on the brief, was *David J. Morrissey*, for the appellant (plaintiff).

Scott Wilson Williams, for the appellees (defendants).

Opinion

ROBINSON, C. J. This appeal presents a question of first impression in our workers' compensation law, namely, whether a claimant who undergoes a heart transplant is entitled to a specific indemnity award for permanent partial disability under the Workers' Compensation Act (act), specifically, General Statutes § 31-308 (b),[1] for the total loss of the claimant's native heart, or

** August 24, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] General Statutes § 31-308 (b) provides in relevant part: "With respect to the following injuries, the compensation, in addition to the usual compensation for total incapacity but in lieu of all other payments for compensation, shall be seventy-five per cent of the average weekly earnings of the injured employee . . . . All of the following injuries include the loss of the member or organ and the complete and permanent loss of use of the member or organ referred to:

"MEMBER	INJURY	WEEKS OF COMPENSATION
	* * *	
"Heart		520
	* * *	

whether the award should instead be based on the rated function of the claimant's new, transplanted heart. The plaintiff, Antonio Vitti, who had been employed as a police officer by the named defendant, the city of Milford (city),[2] appeals[3] from the decision of the Compensation Review Board (board) affirming the decision of the Workers' Compensation Commissioner for the Fourth District (commissioner), who awarded him permanent partial disability benefits of 23 percent based on the function of his transplanted heart. On appeal, the plaintiff claims that § 31-308 (b) mandates compensation for the 100 percent loss of his native heart because his transplanted heart is akin to a prosthetic device and, therefore, not considered in any function rating for purposes of awarding permanent partial disability benefits. We disagree and, accordingly, affirm the decision of the board.

The record reveals the following undisputed facts and procedural history. The city employed the plaintiff as a police officer from 1993 until his retirement in 2014. In August, 2010, the plaintiff began experiencing nausea,

"If the injury consists of the loss of a substantial part of a member resulting in a permanent partial loss of the use of a member, or if the injury results in a permanent partial loss of function, the commissioner may, in the commissioner's discretion, in lieu of other compensation, award to the injured employee the proportion of the sum provided in this subsection for the total loss of, or the loss of the use of, the member or for incapacity or both that represents the proportion of total loss or loss of use found to exist, and any voluntary agreement submitted in which the basis of settlement is such proportionate payment may, if otherwise conformable to the provisions of this chapter, be approved by the commissioner in the commissioner's discretion. Notwithstanding the provisions of this subsection, the complete loss or loss of use of an organ which results in the death of an employee shall be compensable pursuant only to section 31-306."

[2] PMA Management Corp. of New England, Inc. (PMA), which is a third-party administrator for the city's workers' compensation benefits, is also a defendant in this appeal. Hereinafter, we refer to PMA and the city collectively as the defendants and individually by name when appropriate.

[3] The plaintiff appealed from the decision of the Compensation Review Board to the Appellate Court; see General Statutes § 31-301b; and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

abdominal pain, and shortness of breath, which subsequently led to his diagnosis of giant cell myocarditis, a rare autoimmune disease. The plaintiff received a heart transplant on September 28, 2010. The heart transplant was successful, and the plaintiff returned to work in a part-time capacity in 2011, subsequently returning to a full-time schedule in 2012. As a result of the transplant operation, the plaintiff follows a daily medication regimen and has various activity limitations, including a reduced capacity to exercise and to travel via air to the same extent he could prior to the surgery.

In September, 2010, the plaintiff filed for workers' compensation benefits pursuant to the Heart and Hypertension Act. See General Statutes § 7-433c. In determining the specific indemnity award to which the plaintiff is entitled,[4] the commissioner issued a decision finding that the plaintiff had reached maximum medical improvement on November 21, 2013, three years after his successful heart transplant. Crediting the testimony of two medical expert witnesses and the plaintiff's description of his condition, the commissioner found that the plaintiff was entitled to an award of 23 percent permanent partial disability benefits.[5]

[4] The city previously contested the compensability of the plaintiff's claim on the ground that giant cell myocarditis is not "heart disease" within the meaning of § 7-433c. The Appellate Court recently upheld the board's determination that the plaintiff's condition is a compensable heart disease under § 7-433c. See *Vitti* v. *Milford*, 190 Conn. App. 398, 420, 210 A.3d 567, cert. denied, 333 Conn. 902, 214 A.3d 870 (2019).

[5] The commissioner heard testimony from three medical expert witnesses regarding the plaintiff's condition. First, Donald Rocklin, a cardiologist, testified that, prior to the heart transplant, the plaintiff's heart was failing. He also opined that the plaintiff's transplanted heart had a 23 percent impairment rating and discussed the medication regimen that the plaintiff had received. Rocklin submitted a letter to the commissioner stating that, prior to the heart transplant, the plaintiff would have received an impairment rating of 100 percent. He further analogized the plaintiff's condition to that of a coronary artery disease that is treated with medical therapy, such as a myocardial infraction. Second, Joseph Robert Anthony, a cardiologist, opined that the transplanted heart should be rated at 28 percent impairment. Third, Stephen Demeter, a board certified physician in internal medicine,

The plaintiff appealed from the commissioner's finding and award to the board, claiming that the commissioner improperly failed to award him 100 percent permanent partial disability benefits as a result of the removal of his native heart during the transplant procedure. The board affirmed the commissioner's finding and award, concluding that the commissioner had properly considered the function of the transplanted heart in awarding permanent partial disability benefits. The board disagreed with the plaintiff's argument that a transplanted heart should be treated as akin to a prosthetic device for purposes of awarding benefits. This appeal followed. See footnote 3 of this opinion.

On appeal, the plaintiff claims that, in awarding permanent partial disability benefits, the board improperly considered the functional capacity of the transplanted heart rather than deeming the removal of his native heart a 100 percent loss under § 31-308 (b). Specifically, the plaintiff asserts that the plain meaning of the phrase "the loss of the member or organ," as used in § 31-308 (b), refers to the complete loss of the native heart when it was removed during the transplant surgery rather than the function of the subsequently transplanted heart. As a corollary, the plaintiff contends that a transplanted organ is analogous to a postamputation prosthetic device and, therefore, should not be considered for the purpose of awarding permanent partial disability benefits. The plaintiff further argues that, even if the transplanted heart is considered an organ rather than a prosthetic device, we should interpret the word "organ," as used in § 31-308 (b), as limited to *only* the native organ.

pulmonary medicine and occupational medicine, testified that, prior to the heart transplant, the plaintiff had not reached maximum medical impairment. He further rated the transplanted heart at 12 percent impairment. The commissioner found the testimony of Rocklin and Demeter to be credible.

In response, the defendants contend that the board correctly interpreted § 31-308 (b) in treating the transplanted heart as an organ rather than a prosthetic device. Consistent with well established case law requiring that permanent partial disability be evaluated after the claimant reaches maximum medical improvement, the defendants further argue that the board properly considered the functioning of the transplanted heart in upholding the commissioner's award of permanent partial disability benefits. We agree with the defendants and conclude that a transplanted heart is not akin to a prosthetic device; accordingly, the plaintiff's permanent partial disability benefits properly reflect the functional loss of use of his transplanted heart rather than the total loss of his native heart.

"The principles that govern our standard of review in workers' compensation appeals are well established. The conclusions drawn by [the commissioner] from the facts found must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them. . . . [Moreover, it] is well established that [a]lthough not dispositive, we accord great weight to the construction given to the workers' compensation statutes by the commissioner and [the] board. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . We have determined, therefore, that the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation . . . ." (Internal quotation marks omitted.) *Coughlin* v. *Stamford Fire Dept.*, 334 Conn. 857, 862–63, 224 A.3d 1161 (2020). Because the present case does not

involve a time-tested interpretation, "[w]e . . . apply plenary review and established rules of construction." *Brennan* v. *Waterbury*, 331 Conn. 672, 683, 207 A.3d 1 (2019).

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and [common-law] principles governing the same general subject matter . . . .

"Furthermore, [i]t is well established that, in resolving issues of statutory construction under the act, we are mindful that the act indisputably is a remedial statute that should be construed generously to accomplish its purpose. . . . The humanitarian and remedial purposes of the act counsel against an overly narrow construction that unduly limits eligibility for workers' compensation. . . . Accordingly, [i]n construing workers' compensation law, we must resolve statutory ambiguities or lacunae in a manner that will further the remedial purpose of the act. . . . [T]he purposes of the act itself are best served by allowing the remedial legislation a reasonable sphere of operation considering those purposes." (Citation omitted; internal quotation marks

omitted.) *Balloli* v. *New Haven Police Dept.*, 324 Conn. 14, 18–19, 151 A.3d 367 (2016); see, e.g., *Brennan* v. *Waterbury*, supra, 331 Conn. 683.

"At the outset, it is important to understand that the act provides for two unique categories of benefits—those designed to compensate for loss of earning capacity and those awarded to compensate for the loss, or loss of use, of a body part. . . . Total or partial incapacity benefits fall into the first category. . . . Disability benefits, also referred to as specific indemnity awards or permanency awards, fall into the second category." (Citations omitted; internal quotation marks omitted.) *Marandino* v. *Prometheus Pharmacy*, 294 Conn. 564, 577, 986 A.2d 1023 (2010); see also *Rayhall* v. *Akim Co.*, 263 Conn 328, 349, 819 A.2d 803 (2003) (discussing act's compensation for disability via payment of medical expenses under General Statutes § 31-294d in addition to specific indemnity awards). The second category of benefits, which are provided pursuant to § 31-308 (b), the provision at issue in this appeal, enumerates a series of members and organs that, if injured, qualify an employee for disability benefits or a specific indemnity award. *Marandino* v. *Prometheus Pharmacy*, supra, 577. Prior to setting forth this comprehensive list, § 31-308 (b) provides in relevant part: "All of the following injuries include the loss of the member or organ and the complete and permanent loss of use of the member or organ referred to . . . ." This statutory text furnishes the starting point for our analysis in the present appeal.

The plaintiff argues that the plain language of § 31-308 (b), insofar as it refers to "the . . . organ," directs the commissioner to consider only the loss of the native organ.[6] As a corollary, he contends that a transplanted

[6] The defendants argue that there was not a 100 percent loss of the native heart, citing Rocklin's testimony that 10 to 20 percent of the native heart tissue remained in the plaintiff's body after the transplant. This factual assertion, however, does not bear on the ultimate analysis of whether a

heart should be treated as the equivalent of a prosthetic device being used after an amputation, rendering it not an ''organ'' for purposes of the determining benefit awards under § 31-308 (b). In construing statutes, words and phrases are to be construed according to the ''commonly approved usage of the language . . . .'' General Statutes § 1-1 (a); accord *State* v. *Panek*, 328 Conn. 219, 227, 177 A.3d 1113 (2018). With no statutory definition of the term organ, we ''consider the common meaning of that phrase, as expressed in the dictionary.'' *State* v. *Panek*, supra, 229. At the time § 31-308 (b) and its amendments were passed, ''organ'' was defined in relevant part as, ''in animals and plants, a part composed of specialized tissues and adapted to the performance of a specific function or functions''; Webster's New World Dictionary of the American Language (2d College Ed. 1972) p. 1002; and as ''a differentiated structure (as a heart . . .) consisting of cells and tissues and performing some specific function in an organism . . . .'' Merriam-Webster's Collegiate Dictionary (10th Ed. 1993) p. 819; accord Merriam-Webster's Collegiate Dictionary (11th Ed. 2003) p. 874. It is undisputed that the transplanted heart retains the qualities that characterize an organ as the term is commonly understood. A heart transplant surgery is distinct from an amputation in that it is not a procedure concerned solely with removal; it has the ultimate goal of replacement. Furthermore, unlike the prosthetic devices referenced by the plaintiff, a transplanted heart is—consistent with the dictionary definitions—composed of organic, living tissue and performs the same function that the native heart did, albeit at an increased functional level.

Nevertheless, in asserting that the language of § 31-308 (b) is plain and unambiguous in its limitation to the native organ, the plaintiff relies heavily on the

transplanted heart should be considered a prosthetic. Prosthetic devices are used even when a complete loss of a member is not sustained and, therefore, do not necessitate a 100 percent loss.

statute's use of the definite article "the" in specifying the organ's loss or impaired function. See *Mattatuck Museum-Mattatuck Historical Society* v. *Administrator, Unemployment Compensation Act*, 238 Conn. 273, 277, 279, 679 A.2d 347 (1996) (holding that plaintiff museum was liable for unemployment benefits for art instructor, who plaintiff alleged it employed as independent contractor, because use of article "the" to modify "business" in "ABC test" statute was intended to reference "the particular activities engaged in by the plaintiff" museum specifically rather than by museums generally). This is a reasonable reading of § 31-308 (b), and, given the board's equally reasonable construction of the statute, which considered the functional capacity of the transplanted heart, the statute is ambiguous for purposes of the § 1-2z analysis. See, e.g., *Commissioner of Public Safety* v. *Freedom of Information Commission*, 312 Conn. 513, 534, 93 A.3d 1142 (2014). Accordingly, we consider extratextual sources, including legislative history, to determine whether the legislature intended the words "the . . . organ" in § 31-308 (b) to be limited to the native organ. See id.

In considering the extratextual evidence, we begin with the legislative history of § 31-308 (b). Although the legislative history of § 31-308 (b) illustrates the legislature's intent to provide benefits to employees that would compensate them for the losses of specific organs or members, it is silent on the specific issue of whether a transplanted organ is an "organ." We note, however, that, in 1967, the legislature enacted No. 842, § 15, of the 1967 Public Acts, which extended permanent partial disability benefits to include the loss of an organ or a loss of its function, in addition to the loss of body members such as limbs, but did not specifically identify which injured organs were compensable or to what degree.[7]

[7] Speaking in support of No. 842 of the 1967 Public Acts, Representative Paul Pawlak, Sr., recognized that an employee's capacity to work may not be directly affected by the removal of some body parts, but also that such

Instead, the statute gave the commissioner the discretion to award benefits for injuries to nonscheduled organs or members. Public Acts 1967, No. 842, § 15, codified at General Statutes (Cum. Supp. 1967) § 31-308. In 1993, the legislature restructured the act in an attempt to reduce workers' compensation insurance rates paid by employers in light of an economic recession. See Public Acts 1993, No. 93-228 (P.A. 93-228); see also *Rayhall* v. *Akim Co.*, supra, 263 Conn. 346. To eliminate the perception of ambiguity that had resulted from the statute's lack of specificity as to covered body parts and its concomitant grant of discretion to the commissioner, P.A. 93-228, § 19, specifically provided the number of weeks that an employee could be compensated under § 31-308 (b) for a total loss of certain individual body parts, including the heart.[8] See 36 S. Proc., Pt. 11, 1993 Sess., pp. 3888–89, remarks of Senator James H. Maloney ("[L]egislative intent is . . . useful

losses might reduce that person's life expectancy. He stated: "We recognize that each organ of the body is not equally [important] to the human body and for this reason we have given the commissioners broad discretion to determine the values involved with the maximum of 780 weeks compensation. The commissioners in exercising this discretion will have to consider such factors as . . . the disabling effect of the loss of the organ with respect to the entire body and the necessity of having full use of such organ. . . . [W]e cannot establish a specific relative value for each organ of the body, but we believe that the commissioners, guided by medical assistance, will apply this provision fairly." 12 H.R. Proc., Pt. 9, 1967 Sess., p. 4040.

[8] The defendants argue that, when the legislature first enacted § 31-308 (b), "medicine was in the dark ages compared to today, and transplants would have been viewed as science fiction," and that, "without life saving measures such as transplants being available, injuries causing complete loss of the brain, heart, and lungs would have resulted in death and no permanent partial disability benefits would have been owed." The provisions of § 31-308 (b) referencing organs and enumerating covered organs, however, were not enacted during the "dark ages" of medicine but in the 1960s and 1990s. This court takes judicial notice that, contemporaneous with the 1967 and 1993 amendments to § 31-308 (b), the first heart transplant in the United States was performed in 1968, with the first procedure resulting in long-term success in 1981. See P. Linden, "History of Solid Organ Transplantation and Organ Donation," 25 Critical Care Clinics 165, 170 (2009). Subsequently, that procedure has been relatively common throughout the 1990s to present.

[only] when there is an ambiguity. There's no ambiguity in the legislation, as drafted. There is simply a statement that the listed injuries are compensable. There is no statement that would then give any comfort to the notion that any injury that's not listed is somehow compensable . . . .").

Moreover, repeated throughout the 1993 legislative history was a desire by the legislature to set forth a balanced workers' compensation scheme. See, e.g., id., p. 3840, remarks of Senator Thomas A. Colapietro. The legislature intended for the scheme to protect workers and to compensate them for their losses but not to impose such a large burden on employers and insurance companies so as to drive jobs out of the state. Id., p. 3883, remarks of Senator John Andrew Kissel; 36 H.R. Proc., Pt. 18, 1993 Sess., p. 6298, remarks of Representative Paul R. Munns. The legislative history of the specific indemnity award, particularly after 1993, informs us that the legislature's focus was on both compensating employees for their loss of an organ and protecting Connecticut's economy by sending a clear and supportive message to employers. See *Pasquariello* v. *Stop & Shop Cos.*, 281 Conn. 656, 661, 916 A.2d 803 (2007) (stating that "the principal goal" of 1993 restructuring was to cut "employers' costs in maintaining the workers' compensation system"). Nevertheless, the legislative history is silent with respect to the treatment of transplanted organs specifically.

The plaintiff's proposed interpretation of § 31-308 (b), which would require compensation for the complete loss of the native organ despite a successful transplant that restores much of the functional capacity, is inconsistent with the legislature's adoption of a schedule of specific indemnity awards via the 1993 amendments. To stop the inquiry with the loss of a native organ, even if a new one were successfully transplanted, would automatically subject employers and insurers to compensating employees for complete losses, even when medical

advances have allowed a greater degree of "maximum medical improvement" through means such as transplants.

The plaintiff asserts, however, that there is indirect evidence in the relevant statutory scheme indicating that the legislature contemplated a situation in which an employee could lose their heart, live, and be entitled to total compensation. The plaintiff points out that, pursuant to § 31-308 (b), any loss of an organ that results in death will be compensated only under General Statutes § 31-306. The plaintiff argues that that reference to death in § 31-308 (b) demonstrates that the legislature recognized the possibility that employees may lose their hearts completely but not die. Although we are mindful that the act is remedial in nature and "should be construed generously to accomplish its purpose"; (internal quotation marks omitted) *Pizzuto* v. *Commissioner of Mental Retardation*, 283 Conn. 257, 265, 927 A.2d 811 (2007); we nevertheless find this strained construction unpersuasive. If we were to hold that the statute limited compensation only to the loss of native organs, without any consideration given to the functioning of transplanted organs, the statutory benefits would be expanded in a way that is inconsistent with the legislature's intention. It would subject employers and insurers to the payment of higher permanent partial disability awards, even in situations in which an employee receives medical care that restores a great degree of function, as was the case here.

Moreover, a holding that § 31-308 (b) is triggered automatically upon the removal of a native organ, without regard to the ameliorative effects of a transplant, would be inconsistent with nearly one century of case law governing the concept of maximum medical improvement. Indeed, we recently clarified that "permanent disability benefits vest, or become due, when the claimant reaches maximum medical improvement." *Brennan* v.

Waterbury, supra, 331 Conn. 695; see, e.g., *Panico* v. *Sperry Engineering Co.*, 113 Conn. 707, 716, 156 A. 802 (1931) (holding that "specific indemnity for proportionate loss of use accrued" when injury "reached the stage of ultimate improvement"); *Wrenn* v. *Connecticut Brass Co.*, 96 Conn. 35, 38, 112 A. 638 (1921) ("The complete and permanent loss of the use of the arm occurs when no reasonable prognosis for complete or partial cure, and no improvement in the physical condition or appearance of the arm can be reasonably made. Until such time the specific compensation for the loss of the arm, or for the complete and permanent loss of its use, cannot be made."). The plaintiff's proposed interpretation of § 31-308 (b) as limited to the native organ would have the incongruous result of requiring the commissioner to ignore the claimant's point of maximum medical improvement when it pertains to transplants or to make a finding of maximum medical improvement prior to all potential medical interventions being exhausted, namely, before the transplant takes hold.

Finally, we address the plaintiff's argument that a transplanted heart is akin to a prosthetic device because it is not the organ with which an individual was born. Decisions of several of our sister state courts, some of which the board considered in its opinion in the present case, are instructive on this point. For example, the Florida District Court of Appeal held that there is a distinction between transplanted live tissue and a prosthetic device, which that state's Supreme Court previously had defined as an artificial substitute, in concluding that a corneal graft of living tissue was not a prosthetic device for purposes of disability benefits. See *Colonial Oaks Apartment* v. *Hood*, 680 So. 2d 446, 447–48 (Fla. App. 1996). Similarly, the Rhode Island Supreme Court specifically considered the distinction between live tissue and prosthetic devices when it concluded that a claimant who underwent a transplant surgery replacing his amputated thumb with his index

finger was entitled to compensation based on post-transplant functionality. See *Fogarty* v. *State*, 103 R.I. 228, 231, 236 A.2d 247 (1967) ("Live tissue . . . is not equatable with a prosthetic device purchased from a surgical appliance dealer. One is real; the other artificial."). Along that line, other state courts have held that artificial implants do not constitute such a total replacement so as to be considered in the award of disability benefits. See *Tew* v. *Hillsdale Tool & Mfg. Co.*, 142 Mich. App. 29, 37–38, 369 N.W.2d 254 (1985) (recognizing distinction between live tissue and artificial prosthetic device in concluding that prosthetic boot should not be considered when awarding plaintiff's benefits because it does not become part of body); *Kalhorn* v. *Bellevue*, 227 Neb. 880, 886, 420 N.W.2d 713 (1988) (synthetic intraocular lens implanted into claimant's eye should be treated as prosthetic or corrective and not considered when awarding disability benefits); *State ex rel. General Electric Corp.* v. *Industrial Commission*, 103 Ohio St. 3d 420, 426–27, 816 N.E.2d 588 (2004) (intraocular plastic lens is corrective and, therefore, could not be considered in making benefits award for lost eyesight); *Creative Dimensions Group, Inc.* v. *Hill*, 16 Va. App. 439, 445–46, 430 S.E.2d 718 (1993) (artificial lens implant was corrective and prosthetic device). But see *Lee Connell Construction Co.* v. *Swann*, 254 Ga. 121, 121, 327 S.E.2d 222 (1985) (surgical improvement to claimant's eyesight via implant of permanent lens could be considered in assessing claimant's total loss of sight).

We agree with these sister state decisions; to hold that a transplanted heart is more akin to an artificial prosthetic device than to an organ composed of living tissue is inconsistent with both the common understanding of the word "organ" and the legislature's intent in amending § 31-308 (b) in 1993 to balance the benefits provided under the act.[9] Accordingly, we conclude that

[9] As discussed at oral argument before this court, organ transplants, including heart transplants, are distinct from joint replacements because the mem-

the board correctly determined that a functionality analysis of the transplanted heart, after a finding of maximum medical improvement, was appropriate in fashioning the plaintiff's specific indemnity award in the present case because the transplant meant that the plaintiff had not suffered a complete loss of his heart within the meaning of § 31-308 (b).

The decision of the Compensation Review Board is affirmed.

In this opinion the other justices concurred.

JANET FELICIANO *v.* STATE OF CONNECTICUT ET AL.
(SC 20373)

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

Syllabus

Pursuant to statute (§ 52-556), "[a]ny person injured . . . through the negligence of any state official or employee when operating a motor vehicle owned and insured by the state against personal injuries . . . shall have a right of action against the state to recover damages for such injury."

Pursuant further to statute (§ 31-284 (a)), an employer otherwise in compliance with § 31-284 "shall not be liable for any action for damages on

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ber's rating includes the relevant joint; thus, there is no reasonable argument that the entire member is lost in that instance, with only a portion of its function lost as a result of the joint replacement. We also recognize that artificial mechanisms exist that would sustain heart functioning in place of a heart composed of living tissue. See J. Cook et al., "The Total Artificial Heart," 7 J. Thoracic Disease 2172, 2172 (2015). The organ at issue in the present case, however, is one that is enumerated under § 31-308 (b) and that was completely replaced by living tissue. We note, therefore, that this case does not disturb the treatment of joint replacements, which replace a part of a member and are distinct from a total replacement of an enumerated organ, such as the heart. See *Rayhall* v. *Akim Co.*, supra, 263 Conn. 357 (recognizing that maximum medical improvement of leg would be found after completion of knee replacement).

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

account of personal injury sustained by an employee arising out of and in the course of his employment," and "[a]ll rights and claims between [such] an employer . . . [and its] employees, arising out of personal injury . . . sustained in the course of employment are abolished other than rights and claims given by [the Workers' Compensation Act] . . . ."

The plaintiff, a state employee, sought to recover damages from the state for personal injuries she sustained when an uninsured motor vehicle struck a vehicle in which she was a passenger. The vehicle in which the plaintiff was riding was owned and insured by the state and operated by another state employee, T, who was acting in the course of his employment. The plaintiff alleged that T's operation of that vehicle was negligent and that T caused the collision. The state moved to dismiss the claim against it, contending that, because the plaintiff was eligible for and received workers' compensation benefits for her injuries, the state's waiver of sovereign immunity in § 52-556 did not apply to the plaintiff's negligence claim and that the trial court, therefore, lacked subject matter jurisdiction. The court granted the state's motion to dismiss for lack of subject matter jurisdiction, and the plaintiff appealed. *Held*:

1. The trial court had subject matter jurisdiction over the plaintiff's action against the state and, accordingly, improperly granted the state's motion to dismiss for lack of jurisdiction; contrary to the state's claim, its waiver of sovereign immunity in § 52-556 for claims arising from a state employee's negligent operation of a state owned and insured motor vehicle extends to a litigant, such as the plaintiff, who is a state employee, as the phrase "[a]ny person" in § 52-556 signifies that the waiver applies without restriction to persons who are injured under the circumstances specified in that statute.

2. The plaintiff's action against the state was nevertheless barred by the workers' compensation exclusivity provision in § 31-284 (a) because the state's waiver of sovereign immunity pursuant to § 52-556 did not preclude the state from raising its defense to liability under § 31-284 (a), as nothing in § 52-556 expressly provides or otherwise suggests that the state has waived its right to present this, or any other, defense to liability: interpreting § 52-556 to implicitly waive the state's defense under § 31-284 (a) would be inconsistent with the express language of and the public policy principles underlying the workers' compensation exclusivity provision, of which the legislature was undoubtedly aware when it enacted § 52-556, as § 31-284 (a), which predates the enactment of § 52-556, manifests a legislative intent that the remedy available to employees who benefit from workers' compensation should be limited to those benefits and should preclude the right to bring a common-law tort action, and to read § 52-556 to preclude the state from asserting a defense under § 31-284 (a) would expand the rights of state employees beyond those envisioned in the workers' compensation statutory scheme by allowing them to recover damages from the state and to collect

workers' compensation benefits, thereby providing them with greater rights than other employees injured in the course of employment; moreover, reading § 52-556 to waive the state's defense under § 31-284 (a) also would be inconsistent with the principle that this court must strictly construe waivers of sovereign immunity, as that interpretation would read the state's consent to jurisdiction in § 52-556 also to waive a defense to liability that is available to private employers, despite the absence of any language or necessary implication in the statute justifying that broad interpretation; accordingly, the form of the trial court's judgment was improper because the court should not have dismissed the action for lack of subject matter jurisdiction but should have rendered judgment for the state on the merits of its defense under § 31-284 (a).

Argued January 13—officially released August 24, 2020**

Procedural History

Action to recover damages for personal injuries sustained as a result of the alleged negligence of the named defendant's employee, brought to the Superior Court in the judicial district of Hartford, where the trial court, *Cobb*, *J.*, granted the named defendant's motion to dismiss and rendered judgment thereon, from which the plaintiff appealed. *Improper form of judgment*; *reversed*; *judgment directed.*

Gerald S. Sack, with whom, on the brief, was *Jonathan A. Cantor*, for the appellant (plaintiff).

Lorinda S. Coon, for the appellee (named defendant).

Opinion

MULLINS, J. The plaintiff, Janet Feliciano, a state employee, appeals from the judgment of the trial court granting the motion to dismiss filed by the named defendant, the state of Connecticut (state).[1] We must resolve

** August 24, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The plaintiff 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.

Although the plaintiff's complaint originally named the state, Constitution State Services, LLC, and Metropolitan Casualty Insurance Company (Metropolitan) as defendants, the plaintiff subsequently withdrew her claims against Constitution State Services, LLC, and Metropolitan, and those entities are not parties to this appeal.

whether the state's waiver of sovereign immunity in General Statutes § 52-556 for claims arising from a state employee's negligent operation of a state owned and insured motor vehicle extends to litigants who are state employees.[2] The state claims that it does not. We conclude that it does.

The state contends that the judgment of the trial court nevertheless may be affirmed on the alternative ground that, even if § 52-556 applies to state employees, the plaintiff's action is barred by the workers' compensation exclusivity provision in General Statutes § 31-284 (a).[3] More specifically, the state argues that the waiver of sovereign immunity pursuant to § 52-556 does not

[2] General Statutes § 52-556 provides: "Any person injured in person or property through the negligence of any state official or employee when operating a motor vehicle owned and insured by the state against personal injuries or property damage shall have a right of action against the state to recover damages for such injury."

Section 52-556 is largely unchanged since the enactment of its predecessor in 1927. See Public Acts 1927, c. 209, codified at General Statutes (Rev. to 1930) § 5988. For simplicity, we refer to both § 52-556 and its statutory predecessor as § 52-556 throughout this opinion, and all references to the enactment of § 52-556 are to the enactment of its predecessor in 1927.

[3] General Statutes § 31-284 (a) provides: "An employer who complies with the requirements of subsection (b) of this section shall not be liable for any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from personal injury so sustained, but an employer shall secure compensation for his employees as provided under this chapter, except that compensation shall not be paid when the personal injury has been caused by the wilful and serious misconduct of the injured employee or by his intoxication. All rights and claims between an employer who complies with the requirements of subsection (b) of this section and employees, or any representatives or dependents of such employees, arising out of personal injury or death sustained in the course of employment are abolished other than rights and claims given by this chapter, provided nothing in this section shall prohibit any employee from securing, by agreement with his employer, additional compensation from his employer for the injury or from enforcing any agreement for additional compensation."

Section 31-284 (a) has not substantively changed since the enactment of its predecessor in 1913. See Public Acts 1913, c. 138, codified at General Statutes (Rev. to 1918) § 5341. For convenience, we refer to both § 31-284 (a) and its statutory predecessor as § 31-284 (a) throughout this opinion, and all references to the enactment of § 31-284 (a) are to the enactment of its predecessor in 1913.

preclude it from raising its defense to liability under § 31-284 (a). We agree. Because we also conclude that the state is entitled to judgment as a matter of law, we reverse the judgment of dismissal and remand this case to the trial court with direction to render judgment in favor of the state.[4]

The record reveals the following undisputed facts and procedural history. On December 16, 2016, the plaintiff was a passenger in a motor vehicle owned and insured by the state. The vehicle was being operated by another state employee, William Texidor. Both Texidor and the plaintiff were acting in the course of their employment when another vehicle, operated by Tyreke Brooks, struck their vehicle. At the time of the collision, Brooks' vehicle was uninsured. As a result of the collision, the plaintiff suffered various personal injuries for which she required medical treatment and due to which she lost wages. As the plaintiff conceded in response to the state's request for admission, she filed for and received workers' compensation benefits for her injuries and damages.

The plaintiff subsequently brought this action against, inter alios, the state and Metropolitan Casualty Insurance Company; see footnote 1 of this opinion; alleging that Texidor's operation of the vehicle was negligent and caused the collision. The state moved to dismiss count one of the complaint, which was the only claim brought against the state, for lack of subject matter jurisdiction on the ground of sovereign immunity. In its motion, the state argued that, because the plaintiff was eligible for and received workers' compensation benefits, the waiver of sovereign immunity in § 52-556 did not apply

[4] After we transferred the appeal to this court, we granted permission to both parties to file supplemental briefs. In their supplemental briefs, the parties treat §§ 31-284 (a) and 52-556 as inconsistent with each other and disagree as to which of the two statutes applies in the present case. As we explain in the body of this opinion, we reject the premise of the parties' arguments that §§ 31-284 (a) and 52-556 are inconsistent with each other.

to the plaintiff's claim, and the court, therefore, lacked subject matter jurisdiction.

Relying on this court's decision in *Sullivan* v. *State*, 189 Conn. 550, 457 A.2d 304 (1983), the trial court granted the motion to dismiss. Specifically, the trial court relied on a footnote in *Sullivan* in which this court noted, in relevant part, that "[t]here is no cause of action against the state on the ground of vicarious liability under § 52-556 when [the claim is] brought by a state employee" and the state provides that employee with workers' compensation benefits. Id., 555 n.7. Under those circumstances, this court concluded that the state is "immune from liability [in] any action for damages on account of personal injury sustained by an employee arising out of and in the course of his [or her] employment . . . ." (Internal quotation marks omitted.) Id. This appeal followed.

Sovereign immunity implicates this court's subject matter jurisdiction. E.g., *Miller* v. *Egan*, 265 Conn. 301, 313, 828 A.2d 549 (2003). Accordingly, prior to proceeding to the merits, we must first resolve the issue of whether § 52-556 waives the state's immunity from suit when the plaintiff is a state employee. See *St. Paul Travelers Cos.* v. *Kuehl*, 299 Conn. 800, 816, 12 A.3d 852 (2011) ("Once the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented. . . . The court must fully resolve it before proceeding further with the case." (Internal quotation marks omitted.)).

The general principles governing sovereign immunity are well established. "[W]e have long recognized the validity of the common-law principle that the state cannot be sued without its consent . . . ." (Internal quotation marks omitted.) *Smith* v. *Rudolph*, 330 Conn. 138, 143, 191 A.3d 992 (2018). "[A] litigant that seeks to overcome the presumption of sovereign immunity [pursuant to a statutory waiver] must show that . . . the legisla-

ture, either expressly or by force of a necessary implication, statutorily waived the state's sovereign immunity . . . . In making this determination, [a court shall be guided by] the well established principle that statutes in derogation of sovereign immunity should be strictly construed. . . . [When] there is any doubt about their meaning or intent they are given the effect [that] makes the least rather than the most change in sovereign immunity. . . . Whether the legislature has waived the state's sovereign immunity raises a question of statutory interpretation." (Citation omitted; internal quotation marks omitted.) *Allen* v. *Commissioner of Revenue Services*, 324 Conn. 292, 299–300, 152 A.3d 488 (2016), cert. denied, U.S. , 137 S. Ct. 2217, 198 L. Ed. 2d 659 (2017).

To resolve the state's claim that the waiver of sovereign immunity in § 52-556 does not extend to state employees, we turn to the language of the statute. See General Statutes § 1-2z. Section 52-556 provides: "Any person injured in person or property through the negligence of any state official or employee when operating a motor vehicle owned and insured by the state against personal injuries or property damage shall have a right of action against the state to recover damages for such injury." It is well established that § 52-556 expressly waives the state's immunity from suit for civil actions brought by employees who are not employed by the state. See, e.g., *Hicks* v. *State*, 297 Conn. 798, 802, 1 A.3d 39 (2010) (acknowledging express waiver); *Rivers* v. *New Britain*, 288 Conn. 1, 13, 950 A.2d 1247 (2008) (same); *Allison* v. *Manetta*, 284 Conn. 389, 396, 933 A.2d 1197 (2007) (same).

The question presented in this appeal is whether that waiver, which applies to "[*a*]*ny* person" who is injured under the circumstances specified by § 52-556, extends to a person who is a state employee. (Emphasis added.) The statute does not define or otherwise limit the term "any." Therefore, we rely on General Statutes § 1-1 (a),

which directs that, "[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language . . . and understood accordingly."

Merriam-Webster's Collegiate Dictionary defines the word "any" as "EVERY—used to indicate one selected without restriction . . . ." Merriam-Webster's Collegiate Dictionary (11th Ed. 2003) p. 56. The phrase "any person," therefore, signifies that the waiver applies *without restriction* to persons who are injured under the circumstances specified in § 52-556. The language is unambiguous. Consequently, the waiver of sovereign immunity from suit in § 52-556 extends to persons who are state employees, and, therefore, the court had jurisdiction over this action.

We find unpersuasive the state's reliance on dictum from this court's decision in *Sullivan* v. *State*, supra, 189 Conn. 555–56 n.7, as support for its position that the trial court lacked subject matter jurisdiction over the present case on the basis that the state had not waived its sovereign immunity. Specifically, the state contends that, under *Sullivan*, § 52-556 does not waive sovereign immunity with respect to actions brought by state employees or their representatives when the state has provided workers' compensation benefits. Even if we agreed with the state's reading of *Sullivan*, which we do not, the state's interpretation of the dictum in that decision runs contrary to the plain language of § 52-556.

We acknowledge that there appears to be some confusion regarding whether the statements in *Sullivan* implied that a trial court lacks subject matter jurisdiction over the state employee's claim or simply that the claim fails on its merits. We take this opportunity to clarify those remarks.

In *Sullivan*, the plaintiff, relying on the motor vehicle exception to the Workers' Compensation Act in General

Statutes § 31-293a, brought a wrongful death action, alleging negligent operation of a motor vehicle, where both the defendant and the plaintiff's decedent were state employees acting in the course of their employment at the time of the accident. See id., 550–51. The defendant state employee moved to dismiss the action on the ground that it was barred by the immunity granted to state employees pursuant to General Statutes (Rev. to 1983) § 4-165.[5] Id., 551–52. The plaintiff in *Sullivan* had conceded that the immunity pursuant to that statute applied under the facts of the case. See id., 552–53. As a result, in the absence of any statutory waiver of the state's sovereign immunity, this court concluded that the case was not properly before it due to the plaintiff's failure to first present her claim to the Claims Commissioner. See id., 553–55, 559.

In a footnote, this court, in dictum, rejected the state's suggestion "that the plaintiff might have an authorized action at law against the state under . . . § 52-556." Id., 555 n.7. This court explained that, although § 52-556 waives the state's sovereign immunity for claims arising from a state employee's negligent operation of a state owned and insured motor vehicle, "the state retains the right to interpose any lawful defense." Id. Following that comment, this court stated that § 52-556 was "inapplicable to the plaintiff" because "[t]here is no cause of action against the state . . . under § 52-556 when brought by a state employee or his representative." Id.

This court then discussed the relationship between § 52-556 and the workers' compensation statutory scheme. The court explained that, when the legislature

[5] General Statutes (Rev. to 1983) § 4-165 provides in relevant part: "No state officer or employee shall be personally liable for damage or injury, not wanton or wilful, caused in the performance of his duties and within the scope of his employment. Any person having a complaint for such damage or injury shall present it as a claim against the state under the provisions of this chapter. . . ."

enacted § 52-556, the state already had agreed to participate in the workers' compensation program and, therefore, "had already expressly delineated its liability to [state] employees . . . ." Id., 556 n.7. The form of that liability, the court stated, came with the mutual waiver of rights that is integral to the workers' compensation statutory scheme—the employer's acceptance of the form of strict liability imposed by the workers' compensation program in exchange for the employee's acceptance of a limitation on remedies in tort. See id., 555–56 n.7. This court in *Sullivan* understood the scope of the waiver of immunity in § 52-556 in that context.

Accordingly, the court rejected the proposition that, when the legislature enacted § 52-556, it intended to *expand* the rights of state employees, allowing them to recover against their employer in a tort action in addition to receiving workers' compensation benefits. In other words, a state employee's remedy against his or her employer is not a cause of action in tort but, rather, is the administrative remedy provided through the workers' compensation program. The court's statement, therefore, that "[t]here is no cause of action" for state employees pursuant to § 52-556 does not mean that such claims are barred by sovereign immunity. Id., 555 n.7. This court's decision in *Grant* v. *Bassman*, 221 Conn. 465, 604 A.2d 814 (1992), sheds further light on the meaning of our statement in *Sullivan*. In *Grant*, this court expressly rejected the proposition that the workers' compensation exclusivity provision implicates subject matter jurisdiction. See id., 471–73. We began by acknowledging that, "[i]n the past, parties have raised and we have reviewed claims that an injured plaintiff's exclusive remedy is under the Workers' Compensation Act both by way of a motion to dismiss and by way of a special defense." Id., 471. We then explained that, rather than depriving the trial court of jurisdiction, however, § 31-284 (a) effected the "*destruction of an otherwise existent common-law right of action*."

(Emphasis in original; internal quotation marks omitted.) Id., 472.

In place of the extinguished cause of action at common law, an employee's remedy against a participating employer is an administrative one, through the workers' compensation program. Some of the confusion arose, we said, because the substituted remedy "involves a special tribunal, rather than the Superior Court." (Internal quotation marks omitted.) Id. That result, we explained, "is a mere incident of the destruction of the common-law right of action. *In other words, there is not a lack of jurisdiction in the court but a want of a cause of action in the plaintiff.*" (Emphasis in original; internal quotation marks omitted.) Id. Accordingly, consistent with the plain language of § 52-556, *Grant* and *Sullivan* support the conclusion that the availability of workers' compensation benefits to state employees does not divest the courts of jurisdiction over a claim filed by a state employee pursuant to § 52-556 but is, instead, a defense to an otherwise cognizable claim.

Having concluded that the trial court had jurisdiction pursuant to the waiver of sovereign immunity in § 52-556, we turn to the state's alternative ground for affirmance. Specifically, we consider whether we may affirm the judgment of the trial court on the alternative ground that the plaintiff's claim is barred by § 31-284 (a). The state argues that, even if § 52-556 waived the state's sovereign immunity from suit, the state can still assert a defense in this action under § 31-284 (a). In response, the plaintiff contends that the waiver of sovereign immunity in § 52-556 prohibits the state from asserting any defense, including the exclusivity provision in § 31-284 (a). We agree with the state that § 31-284 (a) precludes the plaintiff's claim.

Preliminarily, we observe that, although the trial court granted the state's motion to dismiss count one of the complaint for lack of subject matter jurisdiction,

its analysis, by focusing on the preclusive effect of § 31-284 (a), went to the merits of the exclusivity defense. Thus, consistent with our prior decisions, we treat the state's motion to dismiss as a motion for summary judgment insofar as it relied on the exclusivity provision of § 31-284 (a), and the trial court's decision dismissing count one of the complaint as the rendering of judgment in favor of the state. See *D'Eramo* v. *Smith*, 273 Conn. 610, 615, 872 A.2d 408 (2005) (treating portion of Claims Commissioner's motion to dismiss that addressed merits of action as motion for summary judgment and treating trial court's dismissal as rendering of judgment in favor of Claims Commissioner).

Whether § 52-556 waives the state's right to assert the workers' compensation exclusivity provision as a defense presents a question of statutory construction over which we have plenary review. See, e.g., *Rutter* v. *Janis*, 334 Conn. 722, 730, 224 A.3d 525 (2020). Nothing in § 52-556 expressly provides or otherwise suggests that the state has waived its right to present this—or any other—defense to liability. Although the statute's silence on this point does not conclusively resolve the question, it militates against construing § 52-556 to waive defenses to liability.[6]

The silence of § 52-556 on this issue does not exist in a vacuum. As we did in *Sullivan*, we view the relation-

[6] We are unpersuaded by the plaintiff's contention that, because § 52-556 provides that any person who falls under the statutory waiver of immunity "shall" have a right of action against the state, the statute by necessity precludes the state from asserting any defense to its liability. The word "shall" in § 52-556, does not define a limit, or lack thereof, placed on the state's ability to defend an action brought by a member of the class of persons to whom the waiver is granted. Instead, the word "shall" signifies that members of the defined class of persons "shall" have a right of action against the state. The word "shall" is an auxiliary verb that qualifies the meaning of the verb "to have," by forming the verb phrase "shall have." Thus, the word "shall" indicates the mandatory nature of the waiver by stating that persons who fall within the ambit of the statute "*shall have* a right of action against the state . . . ." (Emphasis added.) General Statutes § 52-556.

ship between §§ 52-556 and 31-284 (a) in the proper historical context. It is significant that § 31-284 (a) predates the enactment of § 52-556. Therefore, when the legislature enacted § 52-556, it did so in the context of the state's already existing, statutory defense to liability pursuant to § 31-284. Specifically, § 31-284 (a) provides in relevant part that "[a]n employer who complies with the requirements of subsection (b) of this section *shall not be liable for any action for damages* on account of personal injury sustained by an employee arising out of and in the course of his employment . . . ." (Emphasis added.) Subsection (a) of § 31-284 further provides in relevant part that "[a]ll rights and claims between an employer who complies with the requirements of subsection (b) of this section and employees, or any representatives . . . of such employees, arising out of personal injury or death sustained in the course of employment are *abolished* other than rights and claims given by this chapter . . . ." (Emphasis added.) Thus, the state, like any employer, enjoyed a defense to liability for an employee's personal injuries sustained in the course of employment, and, in exchange, the employee enjoyed a speedy, no-fault remedy to recover for those injuries.

Significantly, the right that the plaintiff contends was conferred by § 52-556—the right to bring a cause of action against her employer despite that employer's compliance with the workers' compensation statutory scheme—was abolished by § 31-284 (a) before § 52-556 was enacted. See *Grant* v. *Bassman*, supra, 221 Conn. 472 (observing that exclusivity provision effected "destruction of an otherwise existent common-law right of action" (emphasis omitted; internal quotation marks omitted)). The enactment of § 52-556 opened an avenue to sue the state, not just for state employees, but also for private citizens. We see no evidence that the statute intended to grant state employees the right to sue the state *and* to collect workers' compensation, which

would leave a state employee with greater rights than other employees injured in the course of employment.[7]

Indeed, through § 31-284 (a), the state already had precisely delineated its legal obligations to its employees at the time that § 52-556 was enacted. See *Sullivan* v. *State*, supra, 189 Conn. 556 n.7. By participating in the workers' compensation program, the state consented to liability within that statutory scheme. Put another way, by participating in the program, the state had already indicated the type of liability to which it consented with respect to its employees. In fact, this court has previously explained that the workers' compensation statutory scheme imposes "a form of strict liability" on employers, including the state. (Internal quotation marks omitted.) *Mingachos* v. *CBS, Inc.*, 196 Conn. 91, 97, 491 A.2d 368 (1985). Thus, it bears noting that the state's right to interpose the defense of the workers' compensation exclusivity provision does not deprive the plaintiff of the right to a remedy from the state. Instead, by virtue of the trade-off in the workers' compensation scheme, the plaintiff is limited to a particular type of remedy—workers' compensation benefits—and is precluded from availing herself of a remedy in tort.

This court has explained that "[§] 31-284 (a), the exclusivity provision in the [Workers' Compensation] [A]ct, manifests a legislative policy decision that a limitation on remedies under tort law is an appropriate trade-off for the benefits provided by workers' compensation. That trade-off is part and parcel of the remedial purpose of the act in its entirety." *Driscoll* v. *General Nutrition Corp.*, 252 Conn. 215, 220–21, 752 A.2d 1069 (2000). Specifically, "[t]he purpose of the [workers'] compensation statute is to compensate the worker for injuries arising out of and in the course of employment,

[7] We acknowledge that allowing the state to rely on the workers' compensation exclusivity provision renders the waiver in § 52-556 inapplicable to state employees, including the plaintiff, as a practical matter. That result, however, strikes the proper balance between §§ 52-556 and 31-284 (a).

without regard to fault, by imposing a form of strict liability on the employer. . . . The act is to be broadly construed to effectuate the purpose of providing compensation for an injury arising out of and in the course of the employment regardless of fault. . . . Under typical workers' compensation statutes, employers are barred from presenting certain defenses to the claim for compensation, the employee's burden of proof is relatively light, and recovery should be expeditious. In a word, these statutes compromise an employee's right to a [common-law] tort action for [work-related] injuries in return for relatively quick and certain compensation." (Citations omitted; internal quotation marks omitted.) *Mingachos* v. *CBS*, *Inc.*, supra, 196 Conn. 97.

Interpreting § 52-556 to implicitly waive the state's defense pursuant to § 31-284 (a) would be inconsistent with the express language of and the public policy principles underlying the workers' compensation exclusivity provision, of which the legislature was undoubtedly aware when it enacted § 52-556. "[T]he legislature is always presumed to have created a harmonious and consistent body of law . . . ." (Internal quotation marks omitted.) *Board of Education* v. *State Board of Education*, 278 Conn. 326, 333, 898 A.2d 170 (2006). As we have explained, § 31-284 (a) manifests a legislative intent that the remedy available to employees who benefit from workers' compensation should be limited to those benefits and should preclude the right to bring a common-law tort action. Reading § 52-556 to preclude the state from relying on its defense pursuant to § 31-284 (a) would work the opposite effect, allowing state employees both to receive workers' compensation benefits and to bring a tort action against the state, thus expanding the rights of state employees beyond those envisioned in the workers' compensation statutory scheme.

Reading § 52-556 to waive the defense pursuant to § 31-284 (a) also would be inconsistent with the precepts that we strictly construe waivers of sovereign immunity. See *Envirotest Systems Corp.* v. *Commissioner of Motor Vehicles*, 293 Conn. 382, 388, 978 A.2d 49 (2009). If we were to interpret § 52-556 to waive not only immunity from suit, but also the state's defense to liability pursuant to § 31-284 (a), we would read the state's waiver of sovereign immunity *broadly*. That interpretation would read the state's consent to jurisdiction in § 52-556 also to waive a defense to liability that is available to private employers, despite the absence of any language or necessary implication in the statute justifying that broad interpretation of the waiver. Accordingly, consistent with the purposes of both §§ 52-556 and 31-284 (a), we conclude that, although the waiver of sovereign immunity in § 52-556 extends to state employees, that waiver does not preclude the state from asserting a defense to liability on the basis of § 31-284 (a).

Finally, we observe that the plaintiff conceded in her responses to the state's request for admissions that she applied for and received workers' compensation benefits. Consequently, the trial court correctly concluded that the plaintiff's action against the state is barred by § 31-284 (a). See General Statutes § 31-284 (a). The form of the judgment, however, was improper because the trial court had jurisdiction over the plaintiff's complaint. See, e.g., *D'Eramo* v. *Smith*, supra, 273 Conn. 612 (form of judgment was improper when trial court granted motion to dismiss on basis that went to merits rather than jurisdiction); *New England Pipe Corp.* v. *Northeast Corridor Foundation*, 271 Conn. 329, 334, 338, 857 A.2d 348 (2004) (form of judgment was improper when trial court granted motion to dismiss but plaintiff's claim must be denied on merits).

The form of the judgment is improper, the judgment is reversed and the case is remanded with direction to render judgment for the state.

In this opinion the other justices concurred.