SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

JPMORGAN CHASE BANK, N.A. *v.* ROGER ESSAGHOF et al., SC 20090
Judicial District of Stamford-Norwalk at Stamford

Foreclosure; Whether Trial Court Properly Ordered Mortgagors to Reimburse Mortgagee for Property Taxes and Homeowner's Insurance Premiums Paid by Mortgagee During Pendency of Appeal from Foreclosure Judgment. The defendants, Roger Essaghof and Katherine Marr-Essaghof, obtained a loan from the plaintiff's predecessor in interest that was secured by a mortgage on their property in Weston. The plaintiff brought this foreclosure action against the defendants after they defaulted on the loan, and the trial court rendered a judgment of strict foreclosure. The defendants appealed from the judgment of foreclosure and, during the pendency of the appeal, the plaintiff filed a motion asking the trial court to invoke its equitable powers and order the defendants to reimburse it for property taxes and homeowner's insurance premiums that it was paying while the appeal was pending. The plaintiff was covering the defendants' tax and insurance obligations in order to maintain its priority over other encumbrancers. The trial court granted the plaintiff's motion, and the defendants amended their appeal to also challenge that decision. The Appellate Court (177 Conn. App. 144) affirmed the trial court's judgment and rejected the defendants' claim that the trial court abused its discretion in ordering them to reimburse the plaintiff for its payments of property taxes and homeowner's insurance premiums made during the pendency of the appeal. The Appellate Court noted that a foreclosure action is an equitable proceeding in which "either a forfeiture or a windfall should be avoided if possible." It then concluded that the trial court here did not abuse its discretion where it was well within the trial court's equitable powers to address its concern that, absent an order granting the plaintiff's motion, the defendants "would experience a windfall because they would be allowed to live on their property for free at the plaintiff's expense until the conclusion of the foreclosure proceedings." The defendants were granted certification to appeal from the Appellate Court's decision. The Supreme Court will decide whether the trial court's order that the defendants reimburse the plaintiff for property taxes and homeowner's insurance violated General Statutes § 49-14, which governs deficiency proceedings in actions for foreclosure. The defendants argue that the property and insurance charges advanced by the plaintiff here constitute part of the mortgage debt and accordingly that those

charges can only be recovered by the plaintiff in § 49-14 deficiency judgment proceedings.

SHARON CLEMENTS *v.* ARAMARK CORPORATION et al., SC 20167
Compensation Review Board

Workers' Compensation; Whether Appellate Court Properly Determined that Plaintiff's Injury Compensable Where Condition that Caused the Injury not "Peculiar" to Plaintiff's Employment. The plaintiff was employed by the defendant, Aramark Corporation, as a mess attendant at the Coast Guard Academy in New London. Her duties included serving food and beverages and cleaning up after meals. One morning, the plaintiff was walking along a path at the academy after reporting for work when she became lightheaded and passed out, falling backward and hitting her head on the ground. The plaintiff had a history of heart disease and, after being taken to the hospital following her fall, she suffered a cardiac arrest. The plaintiff sought workers' compensation benefits for the injury she suffered to her head in the fall. A workers' compensation commissioner dismissed her claim, finding that the plaintiff's injury did not arise out of her employment with Aramark and that the cause of the fall was a cardiac episode that was unrelated to her employment. The Compensation Review Board affirmed the commissioner's finding and dismissal, and the plaintiff appealed to the Appellate Court. The Appellate Court (182 Conn. App. 224) reversed the decision of the Compensation Review Board, ruling that it had wrongly deemed the plaintiff's head injury noncompensable, and it remanded the case to the board with direction to sustain the plaintiff's appeal from the commissioner. The Appellate Court held that, while the personal infirmity that caused the plaintiff to fall did not arise out of her employment, the resultant injury that was caused by her head hitting the ground at her workplace *did* arise out of her employment such that it was compensable. In support of its conclusion that the plaintiff's injury was compensable, the Appellate Court cited Connecticut Supreme Court precedent for the proposition that a compensable injury may arise out of employment even though the risk of injury from that employment is no different in degree or kind from the risk of injury to which an employee may be exposed outside of his or her employment. The court noted, however, that, in *Labadie* v. *Norwalk Rehabilitation Services, Inc.*, 274 Conn. 219, 238 (2005), the Supreme Court had taken a contrary position when it cited a 1916 Connecticut Supreme Court case for the proposition that conditions that arise out of employment are "peculiar to [employment], and not such exposure as the ordinary person is subjected to." The

Appellate Court regarded that proposition in *Labadie* as anomalous, noting that, in two other decisions, the Supreme Court had held that an injury was compensable even though the risk the employee faced was no greater than what the employee would have been exposed to outside of work. The Supreme Court granted Aramark certification to appeal, and it will decide whether the Appellate Court properly determined that the plaintiff's head injury was compensable even though the condition that caused the plaintiff's injury was not "peculiar" to her employment.

ROGER SAUNDERS, TRUSTEE OF ROGER SAUNDERS MONEY PURCHASE PLAN *v.* KDFBS, LLC, et al., SC 20182
Judicial District of Danbury

Appellate Jurisdiction; Final Judgment; Foreclosure; Whether Appellate Court Properly Dismissed, for Lack of a Final Judgment, Appeal Taken from Judgment that Ordered Foreclosure by Sale and Determined Priority of Mortgages. The plaintiff brought this action by a two count complaint. With the first count, the plaintiff sought to foreclose a mortgage it held on a Ridgefield condominium owned by defendant KDFBS, LLC. The second count sought a declaratory judgment determining that the plaintiff's mortgage had priority over a mortgage on the property given to defendants Karen Davis and Daniel Davis. Following trial, the trial court issued a memorandum of decision ordering, as to the first count, that there be foreclosure by sale. The court ruled, as to the second count, that the plaintiff's mortgage had priority over the Davis mortgage, noting that the Davis mortgage could not be found in the chain of title. The Davises appealed to the Appellate Court, and the plaintiff moved that the appeal be dismissed, claiming that the Appellate Court lacked jurisdiction over it because the trial court's determination of the priority of the mortgages did not constitute an appealable final judgment. The plaintiff cited *Moran* v. *Morneau*, 129 Conn. App. 349 (2011), where the Appellate Court held that an order determining the priorities of mortgages is an interlocutory order and not a final judgment when, as here, it is rendered prior to the foreclosure sale and that a trial court does not render a final judgment as to priorities until the sale is approved and the court renders a supplemental judgment. The *Moran* court rejected the claim that an interlocutory order of priorities is a final judgment under the second prong of *State* v. *Curcio*, 191 Conn. 27, 31 (1983), because, barring an immediate appeal, the appellant would suffer an irreparable loss of her right to be declared first in

priority, noting that the appellant could vindicate her claim to priority in an appeal taken following the rendering of a supplemental judgment. Here, the Appellate Court simply granted the plaintiff's motion to dismiss with the notation that the appeal was being dismissed for lack of a final judgment. The Supreme Court granted the Davises certification to appeal the judgment of dismissal, and it will determine whether the Appellate Court properly dismissed their appeal challenging the determination of the priority of the mortgages for lack of a final judgment. The Davises claim that the determination of priorities was a final judgment because that finding was integral to determining whether the foreclosure should be strict or by sale, because the trial court rendered judgment on the entire complaint as contemplated by Practice Book § 61-2, and because General Statutes § 52-29 (a) provides that a Superior Court judgment declaring the rights and legal relations of the parties "shall have the force of a final judgment."

CHRISTOPHER BARKER *v.* ALL ROOFS BY DOMINIC et al., SC 20196
Compensation Review Board

Workers' Compensation; Whether Appellate Court Properly Concluded That City was § 31-291 "Principal Employer" of Worker Hired by Uninsured Subcontractor to Repair Roof of City-Owned Building. The plaintiff sought workers' compensation benefits for a compensable injury he suffered while working for an uninsured subcontractor on a project to repair the roof of the defendant city's transfer facility. The trial commissioner concluded that the city was liable for the plaintiff's benefits because it was his "principal employer" under § 31-29, which provides that "[w]hen any principal employer procures any work to be done wholly or in part for him by a contractor, or through him by a subcontractor, and the work so procured to be done is a part of process in the trade or business of such principal employer," the principal employer shall be liable for workers' compensation benefits. The Compensation Review Board, affirmed the commissioner's decision, ruling that the city was the plaintiff's principal employer under § 31-219 because building maintenance is an essential obligation of the city and, thus, part of the "business" of the city. The city appealed to the Appellate Court, claiming that § 31-291 was not intended to apply to governmental entities because such entities are not engaged in any "trade or business." The Appellate Court (183 Conn. App. 612) disagreed and affirmed the Compensation Review Board's decision, stating that the Supreme Court, in *Massolini* v. *Driscoll*, 114 Conn. 546 (1932), construed § 31-219 and determined that a municipality can be held liable as a principal

employer of an uninsured subcontractor's employee. The court also rejected the city's claim that *Massolini* was incorrectly decided in that it defined "business" in an overly broad manner, noting that, as an intermediate appellate court, it was bound by *Massolini* and could not alter or reinterpret that decision, especially given that the language of § 31-291 has not changed since *Massolini* was decided. The court also found unavailing the city's contention that the legislature abrogated the rule of *Massolini* by establishing the Second Injury Fund, which now has the statutory responsibility to pay workers' compensation benefits for all employees of uninsured employers. In support of its decision, the court noted that (1) the statute that created the fund contained no language that referred to or purported to modify § 31-291, and (2) the Supreme Court has cited *Massolini* in the years since the fund was created as the legal basis for holding governmental entities liable as principal employers under § 31-291. Finally, the city claimed that, even if § 31-291 can be applied to governmental entities, the board erred in affirming the commissioner's finding that the city was the plaintiff's principal employer because repairing roofs is not "a part or process" in the city's "trade or business." The court, however, determined that it was reasonable for the commissioner to conclude that because the city has a responsibility to manage, maintain, repair and control its property pursuant to General Statutes § 7-148, the work of repairing the roof of a city owned building is a part or process in the trade or business of the city. The city was granted certification to appeal, and the Supreme Court will consider whether the Appellate Court properly concluded that, under § 31-291, as construed by *Massolini*, the city was liable for workers' compensation benefits as the principal employer of a worker hired by an uninsured subcontractor to repair the roof of building owned by the city.

IN RE TRESIN J., SC 20267
Juvenile Matters at Hartford

Termination of Parental Rights; Whether, in Determining Whether Incarcerated Parent had Ongoing Relationship with Child, Trial Court Bound to Consider Parent's Positive Feelings Toward Child; Whether Appellate Court Properly Determined that Infancy Exception Inapplicable Where Interference with Parent-Child Relationship did not Begin Until Child was Five Years Old. Tresin was born in June, 2011. In May, 2013, Tresin's father (the respondent) was sentenced to a term of incarceration when his probation was revoked following his conviction on a charge of possession of marijuana. The respondent remained in custody until the fall

of 2017. In August, 2017, the Commissioner of Children and Families (the petitioner) filed a petition seeking termination of the respondent's parental rights, alleging that, pursuant to General Statutes § 17a-112 (j) (3) (D), the respondent had no ongoing parent-child relationship with Tresin. The trial court granted the termination petition, finding that there was no ongoing parent-child relationship between Tresin and his father. The court found that Tresin did not know who his father was and that he had no positive parental memories of his father. The respondent appealed, claiming that the trial court wrongly terminated his parental rights on finding no ongoing parent-child relationship where, the respondent alleged, the petitioner had interfered with his relationship with Tresin by, among other things, failing to allow him any contact with the child despite his requests for phone calls while he was incarcerated. The respondent also claimed that the trial court erred in failing to apply the law as set out in *In re Carla C.*, 167 Conn. App. 248 (2016). In that case, the Appellate Court ruled that the trial court wrongly granted a mother's petition that a father's parental rights be terminated on the ground of no ongoing parent-child relationship where (1) the father was incarcerated when the child was an infant, (2) the mother had interfered with the father's efforts to maintain contact with the child, and (3) there was undisputed evidence that the father had positive feelings for the child and expressed interest in her health and well-being. Here, the Appellate Court deemed *In re Carla C.* distinguishable and it affirmed the judgment terminating the respondent's parental rights. The court rejected the respondent's claim that, in accordance with *In re Carla C.*, the trial should have taken into consideration his positive feelings toward Tresin where Tresin was less than two years old at the time the respondent was incarcerated. The court noted that, in *In re Carla C.*, the mother's interference with the relationship between the child and the incarcerated father began when the child was two years old, whereas as here the petitioner's alleged interference did not begin until Tresin was five years old. The Appellate Court noted that the law provides that a child's positive feelings for a noncustodial parent generally are determinative except where the child is an infant or otherwise too young to have any discernable feelings and that only in the case of such infancy must the inquiry focus on the positive feelings of the parent. The respondent appeals, and the Supreme Court will consider whether the Appellate Court properly concluded that the trial court, in terminating the respondent's parental rights on the ground of lack of an ongoing parent-child relationship, was not required to apply the infancy exception recognized in *In re Carla C.*

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

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