

## SUPREME COURT PENDING CASES

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

STATE *v.* DONALD RAYNOR, SC 20183

*Judicial District of Hartford*

**Criminal; Whether *Porter* Hearing on Scientific Reliability Required Before Admission of Testimony of State’s Firearm and Tool Mark Expert; Whether Trial Court Properly Denied Defendant’s Motion in Limine Seeking Limitation of Scope of Expert’s Testimony; Whether Trial Court Properly Admitted Uncharged Misconduct Evidence.** The defendant and Jose Rivera were members of a Hartford street gang. While driving around the city, they encountered the victim, a member of a rival street gang, and the defendant fired shots at the victim with an assault rifle. The victim died of his gunshot wounds. The police recovered the assault rifle in an unrelated investigation, and Rivera later confessed to the murder, implicated the defendant, and identified the assault rifle as the weapon used by the defendant in the murder. The defendant was convicted of murder following a jury trial, and he appealed. The Appellate Court (181 Conn. App. 760) affirmed the defendant’s conviction, rejecting the defendant’s claim that the trial court improperly admitted the testimony of James Stephenson, the state’s expert firearm and tool mark examiner, who opined that most of cartridge casings recovered from the murder scene were positively matched to the assault rifle. The Appellate Court determined that the trial court was not required to hold a hearing under *State v. Porter*, 241 Conn. 57 (1997), to assess the scientific reliability and relevancy of Stephenson’s testimony before admitting it, noting that it had held in *State v. Legnani*, 109 Conn. App. 399, cert. denied, 289 Conn. 940 (2008), that evidence related to “the well-established and admissible science and practice of firearm and tool mark identification” is not subject to a *Porter* hearing. The Appellate Court also determined that the trial court did not abuse its discretion in denying the defendant’s motion in limine which sought to limit the scope of Stephenson’s testimony so that he could only opine that his conclusions were “more likely than not . . . correct” rather than state them with a degree of certainty. The court also rejected the defendant’s claim that the trial court improperly admitted uncharged misconduct evidence of his participation in a prior shooting that did not injure its targets. The Appellate Court observed that the defendant did not challenge the trial court’s conclusion that the evidence was admissible to establish identity and means and reasoned that the defendant had not shown

that the evidence was unduly prejudicial where, among other things, the severity of the charged conduct outweighed the severity of the uncharged conduct. The defendant was granted certification to appeal from the Appellate Court's decision. The Supreme Court will decide whether the Appellate Court correctly concluded that the trial court properly denied the defendant's motion for a *Porter* hearing and his motion in limine. The Supreme Court will also decide whether the Appellate Court correctly concluded that the trial court properly admitted the uncharged misconduct evidence.

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WELLS FARGO BANK, N.A. *v.* ERIC LORSON et al., SC 20194  
*Judicial District of Fairfield*

**Foreclosure; Special Defenses; Whether Appellate Court Properly Held That Noncompliance with Regulations Promulgated by the Federal Department of Housing and Urban Development is a Special Defense That a Defendant Must Plead and Prove.** The defendants, Eric Lorson and Laurin Maday, executed a mortgage in favor of the McCue Mortgage Company, which assigned the mortgage to the plaintiff, Wells Fargo Bank, N.A. The defendants failed to make the required payments due under the note, and the plaintiff commenced this foreclosure action. After the plaintiff filed a certificate of closed pleadings, the defendants moved to amend their answer to include a special defense alleging that the plaintiff had not complied with various regulations promulgated by the federal Department of Housing and Urban Development (HUD). The defendants' proposed special defense was based on provisions in the loan agreement that stated that, in the event of a default, the plaintiff must comply with the HUD regulations before accelerating the debt and commencing a foreclosure action. The defendants argued that, because the plaintiff had not complied with the HUD regulations, it had not satisfied all conditions precedent to enforcing the note and mortgage such that the plaintiff had failed to make out a prima facie case for foreclosure. The trial court sustained the plaintiff's objection to the defendants' motion to file an amended answer and, following a two day bench trial, rendered a judgment of strict foreclosure. The defendants appealed to the Appellate Court (183 Conn. App. 200), claiming that the plaintiff had failed to make out its prima facie case because there was insufficient evidence that it had complied with the HUD regulations as a condition precedent to bringing the foreclosure action. The plaintiff argued that noncompliance with HUD regulations must be raised as a special defense, which the defendants had failed to do in

the operative pleadings. The Appellate Court affirmed the judgment, concluding that the defendants had an affirmative duty to plead non-compliance with the HUD regulations as a special defense and that their failure to do so was fatal to their claim on appeal. The defendants were granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly held that noncompliance with the HUD regulations is a special defense that the defendants must plead and prove.

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SOPHIE BLONDEAU *v.* MICHAEL BALTIERRA, SC 20282  
*Judicial District of Stamford/Norwalk*

**Dissolution of Marriage; Arbitration; Appellate Jurisdiction; Whether Motion to Vacate Arbitration Award Sufficiently Invoked Trial Court’s Jurisdiction; Whether Arbitration Award Properly Vacated on Ground that it Included Child Support Orders in Violation of § 46b-66; Whether Judgment Vacating Arbitration Award an Appealable Final Judgment.** The parties to this marital dissolution action agreed to submit their differences to arbitration. Their arbitration agreement provided that substantive issues would be governed by Connecticut law, except that the French Civil Code shall apply “with regard to any claim by the parties that the Arbitrator either vacate [the parties’] premarital agreement or effectuate their premarital agreement and if effectuated determine what property is included within the premarital agreement.” The premarital agreement provided that the parties’ separate property would remain their separate property and that the property acquired in their joint names belonged to both of them, absent proof to the contrary. The arbitrator found that the marital home was joint property because the parties held title to it jointly. The arbitrator further found that the premarital agreement did not state how to divide joint property and that, under French law, each party recovers his or her contribution to a joint asset, while Connecticut law gives the court discretion over the distribution of a joint asset. The arbitrator determined that Connecticut law governed, awarded the marital home to the plaintiff and ordered that she pay the defendant \$212,000 for his share of the \$531,000 in equity in the property. The plaintiff filed a motion to vacate the arbitration award. The trial court granted the motion, finding that the arbitrator exceeded her powers by applying Connecticut law in distributing the marital home in contravention of the arbitration agreement and by failing to effectuate the premarital agreement in determining that the marital home was joint property. The trial court

also found that the arbitration award should be vacated because it included orders allocating the parties' responsibilities for the children's health care, child care and extracurricular activity expenses in violation of General Statutes § 46b-66, which prohibits arbitration of child support issues. The defendant appeals, claiming that the plaintiff's motion did not sufficiently set forth the grounds on which the arbitration award should be vacated and that, as a result, the trial court lacked subject matter jurisdiction because a proper motion to vacate was not filed within the statutorily required time period. The defendant also claims that the trial court improperly found that the arbitrator exceeded her powers in the distribution of the marital home and that the trial court should not have vacated the arbitration award on the ground that it included child support orders in violation of § 46b-66 because the trial court separately entered the same orders in the dissolution action pursuant to a stipulation by the parties. The plaintiff argues that this appeal should be dismissed for lack of jurisdiction because the challenged order is interlocutory in that the dissolution action is still pending before the trial court and has yet to proceed to a final judgment of dissolution. While acknowledging that General Statutes § 52-423 provides that an appeal may be taken from a judgment that vacates an arbitration award, the plaintiff argues that that appeal statute does not apply here and that the challenged order does not satisfy the common-law finality test for interlocutory orders set out in *State v. Curcio*.

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JANET H. FOISIE *v.* ROBERT A. FOISIE, SC 20384  
*Judicial District of New London*

**Dissolution; Substitution of Parties; Whether Trial Court Properly Denied Wife's Motion to Substitute Deceased Husband's Estate as Defendant in Divorce Action so That She Could Seek to Open Judgment on Basis of Fraud.** The parties divorced in 2011. In 2015, the plaintiff filed a motion to open and set aside the dissolution judgment on the ground of fraud. She argued that, on the financial affidavits that he had submitted at the time of the parties' divorce, the defendant had failed to disclose millions of dollars in assets. The defendant died in 2018, and, at the time of his death, the plaintiff's motion to open remained pending before the trial court. The plaintiff filed a motion to substitute the executors of the defendant's estate as the defendants in the dissolution action pursuant to General Statutes § 52-599 so that she could continue to pursue the motion to open. General Statutes § 52-599 provides in relevant part that "a cause

or right of action shall not be lost or destroyed by the death of any person, but shall survive in favor of or against the executor or administrator of the deceased person,” and that a plaintiff may file a motion to substitute a deceased defendant’s executor or administrator as the defendant in the underlying action within one year of receiving written notice of the defendant’s death. The statute also provides, however, that its provisions do not apply “to any cause or right of action or to any civil action or proceeding the purpose or object of which is defeated or rendered useless by the death of any party thereto.” The trial court denied the motion to substitute, ruling that the defendant’s death defeated both the purpose of the dissolution judgment and the plaintiff’s motion to open it, such § 52-599’s provisions allowing for the continuation of a cause of action against an executor or administrator did not apply. The plaintiff appeals, and the Supreme Court will decide whether the trial court properly denied the plaintiff’s motion to substitute the executors of the defendant’s estate as the defendants in the underlying dissolution action.

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SHORELINE SHELLFISH, LLC *v.* TOWN OF BRANFORD, SC 20392  
*Judicial District of New Haven*

**Contracts; Local Shellfisheries; Whether Trial Court Properly Interpreted General Statutes § 26-266 Concerning Authority Over Branford Shellfish Beds; Whether Town Ordinance Concerning Leases of Shellfish Beds Applicable.** The plaintiff, Shoreline Shellfish, LLC, entered into an agreement with the Branford Shellfish Commission providing that the plaintiff would explore certain shoreline areas off of the coast of Branford for shellfish beds and give the information that it obtained to the commission. In exchange, the commission granted the plaintiff a right of first refusal to lease the shellfish beds that it discovered. The plaintiff later exercised its right of first refusal and applied to lease a shellfish bed known as Lot 511, but the commission leased the lot to a third party. The plaintiff then brought this action against the town of Branford, alleging breach of contract and promissory estoppel. The trial court rendered summary judgment in favor of the town, finding that the agreement giving the plaintiff the right of first refusal was not valid or enforceable because the commission was not authorized to enter into it. The trial court noted that § 88-8 of the Branford town code provides that “[n]o lease, license or transfer of shellfishing grounds owned by the Town of Branford shall be permitted without the approval of the Board of Selectmen.” The trial court found that there was no evidence before

it that the board had approved the agreement between the plaintiff and the commission. The trial court rejected the plaintiff's argument that § 88-8 is preempted by General Statutes § 26-266, pursuant to which, the plaintiff claims, both the board and the commission are empowered to grant rights of first refusal to lease shellfish beds. Section 26-266 provides that "[t]he selectmen of the town of Branford or shellfish commission . . . shall have charge of all the . . . shellfish grounds lying in said town . . . with power to issue licenses for the taking of shellfish and shells therefrom." The trial court found that there was nothing in the statute suggesting that the town may not give the board control over decisions made by the commission and that the statute merely provides the town with discretion to authorize either the board or the commission to exercise the powers and fulfill the duties provided by it. The plaintiff appeals from the judgment and challenges the trial court's interpretation of § 26-266. The plaintiff also claims that there was a material issue of fact as to whether the town or the state owns the lot at issue here and that § 88-8 would apply only if the lot is owned by the town. The plaintiff further claims that even if § 88-8 does apply to the subject lot, the ordinance is invalid because it is contrary to controlling state statutes.

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*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.*

*John DeMeo  
Chief Staff Attorney*

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