

## SUPREME COURT PENDING CASES

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

JAMES A. MITCHELL *v.* STATE OF CONNECTICUT  
et al., SC 20287  
*Judicial District of Hartford*

**Petition for New Trial; Whether Trial Court Abused its Discretion in Denying Petitioner’s Late § 54-95 (a) Petition for Certification to Appeal from Ruling Denying Petition for New Trial.** In 2005, the petitioner was convicted of numerous crimes, including kidnapping, sexual assault, assault and criminal possession of a firearm. The petitioner appealed from the conviction and, during the pendency of the appeal, he filed a petition for a new trial. In 2016, after the petitioner’s direct and habeas appeals were decided, the trial court denied the petition for a new trial, and the petitioner filed an appeal challenging that judgment. The petitioner did not, however, file a petition for certification to appeal as required by General Statutes § 54-95 (a). The statute provides that “[n]o appeal may be taken from a judgment denying a petition for a new trial unless, within ten days after the judgment is rendered, the judge who heard the case . . . certifies that a question is involved in the decision which ought to be reviewed by the Supreme Court or by the Appellate Court.” Following a hearing, the Appellate Court dismissed the plaintiff’s appeal for failure to comply with § 54-95 (a). The petitioner then sought permission from the trial court to file a late petition for certification to appeal the ruling denying his petition for a new trial. The trial court denied the petitioner’s request, and the petitioner filed an appeal challenging that ruling. He argued that the trial court abused its discretion in denying his request for permission to file a late petition for certification to appeal because the court, in considering the length of the delay in filing the request, did not consider the reasons for the delay or any other factors relevant to permitting a late filing, but, instead, denied his request on the basis of the merits of his appeal. The Appellate Court (188 Conn. App. 245) dismissed the appeal, holding that the trial court did not abuse its discretion in denying the petitioner’s request for permission to file a late petition for certification to appeal. The Appellate Court noted that there was a substantial delay of close to one year from the time the petitioner filed his appeal from the ruling denying the petition for a new trial to the time that he filed his request for permission to file a late petition for certification to appeal. The Appellate Court rejected the petitioner’s claim that the delay was attributable to the fact that he had not been provided with a written

notice of appeal procedures and the statutory certification requirement, noting that neither the state nor the court were obligated to provide that information to him. Finally, the Appellate Court noted that although the trial court, in its memorandum of decision, referenced the merits of the petitioner's claims on appeal, it also made clear that its decision was based in large part on the petitioner's delay and that the court had considered the length of the delay and afforded due regard to the reasons for the delay. The Supreme Court granted the petitioner certification to appeal, and it will consider whether the Appellate Court correctly concluded that the trial court did not abuse its discretion in denying the petitioner's late petition for certification to appeal from the denial of his petition for a new trial.

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CITY OF NEW HAVEN *v.* AFSCME CO. 4, LOCAL 3144, SC 20362  
*Judicial District of New Haven*

**Arbitration; Whether Trial Court Properly Confirmed Arbitration Award Ordering that Fired City Employee Accused of Bribery and Corruption be Reinstated on Determining that Award did not Violate Public Policy.** In August, 2015, the city of New Haven terminated Nichole Jefferson's employment as its Executive Director of the Commission on Equal Opportunities. In that position, Jefferson oversaw construction contract compliance and the investigation of discrimination complaints and was tasked with enforcing a variety employment laws. The city claimed that it fired Jefferson because she violated the city's code of ethics and because she engaged in intimidation, attempted bribery and corruption with contractors doing business with the city. The city further claimed that Jefferson used city time and resources to create and operate a private entity and used her position in order to benefit that entity. Finally, the city accused Jefferson of insubordination stemming from her failure to cooperate with its investigation into her conduct. The defendant union filed a grievance, claiming that the city did not have just cause to terminate Jefferson's employment. The matter was referred to the Connecticut State Board of Mediation and Arbitration, which issued an arbitration award overturning Jefferson's termination and ordering that she be reinstated to her position. The city filed an application to vacate the arbitration award, claiming that it violated public policy. The trial court agreed that the arbitration award implicated an explicit, well-defined and dominant public policy, but it found that the award did not violate that public policy. The trial court considered the factors set forth in *Burr Road Operating Company II, LLC v. New England Health Care Employees Union District 1199*, 316 Conn. 618 (2015),

for determining whether termination is necessary to vindicate public policy: (1) any guidance offered by the relevant statutes, regulations and other embodiments of the public policy at issue; (2) whether the employment at issue implicates public safety or the public trust; (3) the egregiousness of the conduct; and (4) whether the grievant is incorrigible. The trial court found that although Jefferson's conduct implicated city and state ethics codes and criminal statutes and that there was actual harm sufficient to consider her behavior egregious, it could not find that she was "incorrigible" because there was insufficient evidence that she would not respond appropriately to progressive workplace discipline. The city appeals, claiming that the trial court err in confirming the arbitration award because the award ordering that Jefferson be reinstated violates the strong public policy of terminating government employees who engage in egregious conduct that is likely to undermine public confidence in government employees.

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THOMAS G. STONE III *v.* EAST COAST SWAPPERS, LLC  
D/B/A ECS PERFORMANCE, SC 20382  
*Judicial District of Hartford*

**Unfair Trade Practices; Attorney's Fees; Whether Trial Court Properly Determined that Plaintiff who had Proved CUTPA Violation was not Entitled to Award of Attorney's Fees.** The plaintiff loaned his son-in-law, Patrick Keithan, money to pay the defendant motor vehicle repair shop for the purchase and installation of a modified engine in Keithan's car. The modified engine was never installed, however, because Keithan did not want to pay for certain additional costs. Keithan failed to repay the loan, and the plaintiff obtained a judgment against him and secured a lien on the car, which remained in the defendant's possession. The defendant subsequently sold the car at auction. The plaintiff then brought this action against the defendant alleging that the defendant violated the Connecticut Unfair Trade Practices Act (CUTPA) in refusing to perform the work that had been paid for and by failing to provide the plaintiff with statutory notice of the auction. The trial court found that the plaintiff proved a CUTPA violation and awarded him \$8300 in compensatory damages, but it declined to award him punitive damages and attorney's fees, concluding that the plaintiff had not proven the evil motive or malice necessary to award punitive damages and that the plaintiff was not entitled to attorney's fees. The trial court noted that (1) although the defendant had been given an application for a title listing the plaintiff as a second position lien holder, it had not been provided with the actual title; (2) the defendant made an effort to review Keithan's

bankruptcy filing, which listed the plaintiff as an unsecured creditor; and (3) the defendant consulted with counsel before selling the vehicle at auction. The plaintiff appealed, claiming that the trial court erred in failing to award him attorney's fees. The Appellate Court (191 Conn. App. 63) affirmed the judgment, declining the plaintiff's request to recognize a rebuttable presumption that a plaintiff who prevails on a CUTPA violation claim is entitled to an award of attorney's fees unless special circumstances would render such an award unjust. The Appellate Court found that it was bound by the plain language of § 42-110g, which provides for an award of attorney's fees under CUTPA, and by *Staehe v. Michael's Garage, Inc.*, 35 Conn. App. 455 (1995), in which it held that the language of the statute is clear and unambiguous that the decision to award attorney's fees is within the sole discretion of the trial court. The Appellate Court also rejected the plaintiff's claim that the trial court erred by conflating the analyses for awarding attorney's fees and punitive damages, finding that nothing suggested that the trial court improperly required the plaintiff to show, in order to be awarded attorney's fees under CUTPA, that the defendant acted with malice, reckless disregard or evil intent. The Supreme Court granted the plaintiff certification to appeal, and it will consider whether the Appellate Court correctly concluded that the trial court did not abuse its discretion when it denied an award of attorney's fees to the plaintiff after he prevailed on his CUTPA claim.

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DOMINICK BOCCANFUSO et al. v. NADER DAGHOGHI  
et al., SC 20397  
*Housing Session at Norwalk*

**Summary Process; Whether Defendants Proved Special Defense of Equitable Non-Forfeiture.** The plaintiff landlords own commercial property located at 936-940 Post Road East in Westport. From 1970 to the end of 2013, the property was used as an automobile repair facility. The plaintiffs removed underground gasoline and waste oil storage tanks from the property in 2013, but they failed to follow proper protocols for the removals, resulting in environmental contamination. In November of 2013, the parties entered into a lease agreement, pursuant to which the defendants were to convert the property to spaces in which they would operate their two businesses, the Savoy Rug Gallery and a Subway sandwich shop. In July of 2014, the Department of Energy and Environmental Protection issued an enforcement order to the plaintiffs after finding evidence of environmental contamination on the property. The plaintiffs remediated the contamination in accordance with a stipulation with the department in 2016. Mean-

while, the plaintiffs brought this summary process action seeking possession of the property after the defendants failed to pay rent in December of 2014. The defendants asserted as a special defense that the plaintiffs' claim for possession was barred by the doctrine of equitable non-forfeiture. Specifically, the defendants claimed that they were justified in withholding rent because (1) they were unaware of the existence of environmental contamination on the property until several months after executing the lease, and they were concerned that the Subway would not be permitted to open due to the contamination; (2) the plaintiffs should have extended the rent abatement period when their property manager failed to timely obtain certificates of occupancy for either retail or food service uses; and (3) they paid their rent into an escrow account upon the advice of their attorney. The trial court rejected the special defense and rendered a judgment of possession in favor of the plaintiffs. The defendants appealed, and the Appellate Court (193 Conn. App. 137) affirmed the judgment, holding that the defendants could not prevail on their claim that the trial court applied an incorrect legal standard in determining that they failed to prove their special defense of equitable non-forfeiture. The Appellate Court held that the trial court properly applied the doctrine of equitable non-forfeiture to the facts of this case, as it determined that the defendants, who admitted that they deliberately stopped paying rent, failed to prove that the nonpayment of rent was not wilful or grossly negligent. The Appellate Court also held that the trial court, on the basis of certain testimony presented, reasonably could have reached its conclusion that the defendants failed to prove that they made a good faith effort to comply with the lease or had a good faith dispute as to its meaning. The Supreme Court granted the defendants certification to appeal, and it will consider whether the Appellate Court properly upheld the trial court's denial of the defendants' special defense of equitable non-forfeiture and judgment of possession in favor of the plaintiffs.

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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.*

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