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ORDERS

CONNECTICUT REPORTS

VOL. 335

STATE OF CONNECTICUT *v.* KEVIN LYNCH

The defendant's petition for certification to appeal from the Appellate Court, 193 Conn. App. 637 (AC 41420), is denied.

Kevin Lynch, self-represented, in support of the petition.

Melissa L. Streeto, senior assistant state's attorney, in opposition.

Decided April 1, 2020

DAVID HAYWOOD *v.* COMMISSIONER OF CORRECTION

The petitioner David Haywood's petition for certification to appeal from the Appellate Court, 194 Conn. App. 757 (AC 41677), is denied.

Vishal K. Garg, assigned counsel, in support of the petition.

Timothy J. Sugrue, assistant state's attorney, in opposition.

Decided April 1, 2020

JESUS RUIZ *v.* COMMISSIONER OF CORRECTION

The petitioner Jesus Ruiz' petition for certification to appeal from the Appellate Court, 195 Conn. App. 847 (AC 41947), is denied.

Vishal K. Garg, assigned counsel, in support of the petition.

Rocco A. Chiarenza, assistant state's attorney, in opposition.

Decided April 1, 2020

JACK E. TUREK ET AL. *v.* ZONING BOARD OF APPEALS OF THE CITY OF MILFORD

The plaintiffs' petition for certification to appeal from the Appellate Court, 196 Conn. App. 122 (AC 41824), is denied.

Kevin J. Curseaden, in support of the petition.

Matthew B. Woods, in opposition.

Decided April 1, 2020

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CONNECTICUT APPELLATE REPORTS

Vol. 196

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

RCN CAPITAL, LLC *v.* SUNFORD PROPERTIES AND DEVELOPMENT, LLC, ET AL.
(AC 42184)

Lavine, Alvord and Lavery, 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 who are made parties to the foreclosure . . . ."

The plaintiff sought to foreclose, inter alia, a mortgage on certain real property owned by the defendant S Co. and to collect on a personal guarantee by the defendant L. S Co. had executed a promissory note in the amount of $800,000 in favor of the plaintiff, which was secured by a mortgage on the subject property, and L executed a guarantee agreement in which he personally guaranteed all sums due under the note, including attorney's fees and costs. Following S Co.'s default on the note, the plaintiff commenced this action by way of a three count complaint, and the trial court rendered a judgment of strict foreclosure as to the first two counts. Thereafter, the trial court granted the plaintiff's motion for a deficiency judgment against S Co., and the parties stipulated that there was a deficiency of $449,441.88, including attorney's fees and costs. The plaintiff subsequently filed a motion for summary judgment as to liability on count three of the complaint, which was directed against L and sought to collect on his personal guarantee of the note. The defendants filed an objection to the motion, contending that the plaintiff was barred from recovering from L pursuant to § 49-1 and the statute (§ 49-14) that provides a limited exception to § 49-1. The trial court granted the motion for summary judgment, concluding, inter alia, that § 49-1 had no effect on the plaintiff's ability to recover monetary damages from L following the judgment of strict foreclosure. Thereafter, the trial

court granted the plaintiff's motion for judgment as to count three of the complaint and rendered judgment in favor of the plaintiff in the amount of $531,938.98. On the defendants' appeal to this court, *held*:

1. The defendants could not prevail on their claim that the trial count improperly rendered judgment in favor of the plaintiff on count three of its complaint, which was based on their contention that, pursuant to §§ 49-1 and 49-14, the plaintiff was barred from recovering on L's personal guarantee; in light of binding precedent, this court concluded that the trial court properly enforced L's personal guarantee, as the bar pursuant to § 49-1 applies only to those individuals or entities who are made or could have been made parties to the foreclosure, and, because L was a guarantor, he was not a party to the foreclosure and could not properly have been made a party to it, and, therefore, § 49-1 did not have an effect on the plaintiff's ability to recover money damages from L under count three of the complaint.
2. Contrary to the defendants' claim that the trial court improperly held them jointly and severally liable for the judgment on L's personal guarantee, the reference to joint and several liability in the written order prepared by the court clerk was a scrivener's error, as the court's judgment pertained only to L's personal guarantee under count three of the complaint.

Argued October 15, 2019—officially released April 14, 2020

Procedural History

Action, inter alia, to foreclose a mortgage on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of New London, where the court, *Cosgrove*, *J.*, rendered a judgment of strict foreclosure; thereafter, the court, *Nazzaro*, *J.*, opened and vacated the judgment in part, and the plaintiff withdrew the action as to the defendant Kwok L. Sang; subsequently, the court, *Nazzaro*, *J.*, granted the plaintiff's motion for a deficiency judgment and rendered judgment thereon; thereafter, the court, *Nazzaro*, *J.*, granted the plaintiff's motion for summary judgment as to liability on count three of the complaint; subsequently, the court, *Hon. Joseph Q. Koletsky*, judge trial referee, denied the motion for nonsuit filed by the named defendant et al., granted the plaintiff's motion for judgment as to count three of the complaint and rendered judgment for the

plaintiff, from which the defendants appealed to this court. *Appeal dismissed in part*; *affirmed*.

Edward Bona, for the appellants (defendants).

Jon C. Leary, for the appellee (plaintiff).

Opinion

LAVERY, J. In this action to foreclosure two mortgages and to collect on a personal guarantee, the defendants Sunford Properties & Development, LLC (Sunford) and Janny Lam[1] appeal from the judgment of the trial court, rendered in favor of the plaintiff, RCN Capital, LLC. The defendants claim that the trial court improperly (1) allowed the plaintiff to pursue a claim for monetary damages against Lam that was more than the amount to which the parties had stipulated to be the amount of the deficiency and (2) rendered judgment against all defendants, holding them jointly and severally liable on Lam's guarantee.[2] We affirm the judgment of the trial court.

[1] Kwok L. Sang also appealed from the judgment of the trial court; however, the plaintiff withdrew the second count of the complaint, which was directed against Sang. Due to this withdrawal, Sang is not a party to the underlying action and, therefore, lacks standing to appeal. See *M.U.N. Capital, LLC* v. *National Hall Properties, LLC*, 163 Conn. App. 372, 376, 136 A.3d 665 (defendant corporation lacked standing to appeal because plaintiff withdrew action against it such that it was not party to underlying action), cert. denied, 321 Conn. 902, 136 A.3d 1272 (2016). The parties were notified prior to oral argument before this court to be prepared to address Sang's jurisdictional issue. See, e.g., *State* v. *Connor*, 321 Conn. 350, 371, 138 A.3d 265 (2016) ("if the Appellate Court decides to address an issue not previously raised or briefed, it may do so only after requesting supplemental briefs from the parties or allowing argument regarding that issue" (internal quotation marks omitted)). Accordingly, the appeal as to Sang is dismissed. We therefore refer in this opinion to Sunford and Lam collectively as the defendants and individually by name where appropriate.

[2] The defendants also contend that the trial court (1) improperly rendered judgment while their motion to dismiss the third count of the operative complaint was pending, (2) abused its discretion by not taking judicial notice of the judgment in *RCN Capital, LLC* v. *Chicago Title Ins. Co.*, Superior Court, judicial district of Hartford, Docket No. CV-17-6076972-S (August 27, 2018); see *RCN Capital, LLC* v. *Chicago Title Ins. Co.*, Docket No. 42082 (Conn. App.) (pending appeal filed September 11, 2018); and (3) abused its discretion by denying the defendants' motion for nonsuit.

The following facts and procedural history are relevant to this appeal. On June 28, 2012, Sunford executed and delivered to the plaintiff a commercial promissory note in the amount of $600,000, which was later modified to $800,000. In conjunction with this note, Sunford also executed and delivered a commercial mortgage deed and security agreement for 352 Main Street, Norwich (Main Street property). At the same time, Kwok L. Sang guaranteed repayment of the sums due on the note executed by Sunford by way of a guarantee agreement and mortgage deed for 86-92 Water Street, Norwich (Water Street property). Meanwhile, Lam personally guaranteed all sums due under the note, including costs and attorney's fees, by way of a guarantee agreement.

On January 14, 2015, the plaintiff commenced this action by writ of summons and complaint. In its second revised complaint dated December 10, 2015, the plaintiff sought, in count one, to foreclose on the Main Street property; in count two, to foreclose on the Water Street property, with a specific request for repayment of sums due under the note guaranteed by the limited guarantee agreement entered into by Sang; and, in count three, to collect on any outstanding sums pursuant to Lam's personal guarantee. On May 16, 2016, the court rendered a judgment of strict foreclosure as to both the Main Street property and the Water Street property.[3]

After thoroughly examining the record in the present case and fully considering the parties' briefs and oral arguments, we conclude that the aforementioned claims are without merit. In regard to the defendants' first claim, we are aware that when a motion to dismiss challenges the court's subject matter jurisdiction, it must be addressed when brought to the court's attention. See Practice Book § 10-33. Although the court did not directly rule on the motion to dismiss, it adequately addressed and rejected the arguments from the motion in its February 17, 2017 memorandum of decision, granting the plaintiff's motion for judgment.

[3] The court found that the defendants owed $1,040,845.02. The fair market value of both properties was valued at a total of $977,000.

On November 14, 2016, the court opened and vacated the judgment of strict foreclosure as to count two concerning Sang and the Water Street property, and the claim against Sang was withdrawn. The judgment was

On October 27, 2016, the plaintiff filed a motion for a deficiency judgment against Sunford. The motion was granted on March 8, 2017, and, on that same date, the parties stipulated that there was a deficiency in the amount of $449,441.88, which included appraisal and attorney's fees. On October 31, 2016, the plaintiff moved for summary judgment as to count three of its complaint, which was brought against Lam for the personal guarantee of the promissory note. The defendants filed an objection to the plaintiff's motion for summary judgment and a supporting memorandum of law, in which Lam, in particular, contended that the plaintiff had failed to obtain a proper deficiency judgment and, therefore, was barred from recovery pursuant to General Statutes §§ 49-1 and 49-14.[4] Lam further argued that "[a]lthough . . . [Lam] was named as a party [to the foreclosure action] . . . [the plaintiff] appears to seek the collection of excess amounts due

vacated due to a foreclosure by sale by the city of Norwich. See *Norwich* v. *Sang*, Superior Court, judicial district of New London, Docket No. KNL-CV-15-6023942-S (May 12, 2016). Accordingly, once the judgment as to Sang was vacated, and the claim against him was withdrawn, he no longer was a party to the current action. See footnote 1 of this opinion.

[4] General Statutes § 49-1 provides in relevant part: "The 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 who are made parties to the foreclosure and also against any person or persons upon whom service of process to constitute an action in personam could have been made within this state at the commencement of the foreclosure; but the foreclosure is not a bar to any further action upon the mortgage debt, note or obligation as to any person liable for the payment thereof upon whom service of process to constitute an action in personam could not have been made within this state at the commencement of the foreclosure. . . ."

"Section 49-14 (a) furnishes a limited exception to [§ 49-1] for strict foreclosures, providing 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.' Therefore, once a mortgagee strictly forecloses on a mortgage and obtains title to the property following the running of the law days, § 49-1 extinguishes all rights of the mortgagee with respect to the 'mortgage debt, note or obligation' against persons who are or could have been made parties to the foreclosure, except as provided in § 49-14." (Footnotes omitted.) *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, 312 Conn. 662, 670–71, 94 A.3d 622 (2014).

under the note postforeclosure. The record also reflects that it has been more than [thirty] days since the plaintiff obtained title to the properties . . . ."

Shortly after their objection was filed on November 15, 2016, the defendants moved to dismiss count three of the complaint. Asserting similar arguments to those raised in the objection, the defendants argued that the plaintiff's claim had been rendered moot by operation of §§ 49-1 and 49-14, and, therefore, the court lacked subject matter jurisdiction. The court heard oral argument on the plaintiff's motion for summary judgment and the objection thereto on December 5, 2016.

On February 17, 2017, the court granted the plaintiff's motion for summary judgment as to the personal liability of Lam under count three of the complaint. Addressing the defendants' arguments from their motion to dismiss, the court explained that the plaintiff is not barred from holding Lam personally liable because § 49-1 does not apply to a guarantor of a debt. Citing to *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, 312 Conn. 662, 677, 94 A.3d 622 (2014), the court stated that, "due to the separate and distinct liability of a guarantor . . . in the absence of a statute expressly pertaining to guarantors, such secondary obligors are not proper parties to a claim seeking the foreclosure of a mortgage and their obligations are not limited by the extinguishment of the mortgagor's rights and obligations." (Internal quotation marks omitted.) The court concluded that § 49-1 had no effect on the plaintiff's ability to recover monetary damages from Lam following the judgment of strict foreclosure. Thus, the court concluded that the defendants' contention that § 49-1 was a bar to the plaintiff's claim was inapplicable and insufficient to rebut the plaintiff's prima facie case as to its entitlement to recover from Lam.

As a result of the court's ruling on the plaintiff's motion, on September 6, 2018, the plaintiff filed a motion for judgment as to the personal liability of Lam

under the third count of the complaint, seeking monetary damages in the amount of $531,938.98. On September 21, 2018, the court granted the plaintiff's motion and rendered judgment in favor of the plaintiff in the amount of $449,441.88 in damages and $82,497.10 in prejudgment interest, for a total of $531,938.98. This appeal followed. Additional facts and procedural history will be set forth as necessary.

On appeal, Lam claims that the trial court's judgment on count three of the complaint, as to Lam's personal liability, should be reversed because the plaintiff was barred from recovery pursuant to §§ 49-1 and 49-14. Specifically, Lam argues that the plaintiff is barred because it (1) agreed to a stipulated deficiency judgment prior to the court's ruling on the motion for a deficiency judgment and (2) failed to file a motion seeking a deficiency judgment against Lam, personally, within the statutorily mandated time frame. We disagree and conclude that the trial court properly enforced Lam's personal guarantee.

The issues set forth on appeal require this court to interpret and apply the statutory language of §§ 49-1 and 49-14. "The interpretation and application of a statute . . . involves a question of law over which our review is plenary." (Internal quotation marks omitted.) *Griswold* v. *Camputaro*, 177 Conn. App. 779, 791, 173 A.3d 959 (2017), aff'd, 331 Conn. 701, 207 A.3d 512 (2019).

Before we address the merits of Lam's claim, we set forth certain fundamental principles concerning real property in regard to foreclosure actions. "The purpose of [a] foreclosure is to extinguish the mortgagor's equitable right of redemption that he retained when he granted legal title to his property to the mortgagee following the execution of the mortgage." *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, supra, 312 Conn. 673. It is well established that, when a mortgagor defaults on an underlying note, "the plaintiff is

entitled to pursue its remedy at law on the [note], or to pursue its remedy in equity upon the mortgage, or to pursue both." *Hartford National Bank & Trust Co.* v. *Kotkin*, 185 Conn. 579, 581, 441 A.2d 593 (1981). When a plaintiff pursues a remedy for foreclosure, "Connecticut follows the title theory of mortgages, which provides that on the execution of a mortgage on real property, the mortgagee holds legal title and the mortgagor holds equitable title to the property. . . . As the holder of equitable title, also called the equity of redemption, the mortgagor has the right to redeem the legal title on the performance of certain conditions contained within the mortgage instrument." (Internal quotation marks omitted.) *Ocwen Federal Bank, FSB* v. *Charles*, 95 Conn. App. 315, 322–23, 898 A.2d 197, cert. denied, 279 Conn. 909, 902 A.2d 1069 (2006).

One such remedy at law for a default on the mortgage is the enforcement of the underlying note. See *New Milford Savings Bank* v. *Jajer*, 244 Conn. 251, 265–66 n.23, 708 A.2d 1378 (1998). "A promissory note is simply a written contract for the payment of money." (Internal quotation marks omitted.) *Ankerman* v. *Mancuso*, 271 Conn. 772, 777, 860 A.2d 244 (2004). Therefore, any deficiency judgment sought by a plaintiff in conjunction with a foreclosure is a result of the contractual obligation between the parties to the promissory note. See *Eichman* v. *J & J Building Co.*, 216 Conn. 443, 453, 582 A.2d 182 (1990) ("deficiency judgment hearings more closely resemble suits for collection")

In addition to remedies against a mortgagor, when the payment of a promissory note is safeguarded by a separate guarantee, the mortgagee may initiate a claim against the guarantors to recover the remaining debt of the mortgagor. See *Bank of Boston Connecticut* v. *Schlesinger*, 220 Conn. 152, 157–58, 595 A.2d 872 (1991). "[A] guarantee is a promise to answer for the debt, default or miscarriage of another." *Regency Savings Bank* v. *Westmark Partners*, 59 Conn. App. 160, 164,

756 A.2d 299 (2000). This obligation is "separate from the contractual agreement between the lender and borrower, a guarantee imports the existence of two different obligations: the obligation of the borrower and the obligation of the guarantor." *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, supra, 312 Conn. 675. "[Guarantees] are . . . distinct and essentially different contracts; they are between different parties, they may be executed at different times and by separate instruments, and the nature of the promises and the liability of the promisors differ substantially . . . . The contract of the guarantor is his own separate undertaking in which the principal does not join." (Citations omitted; internal quotation marks omitted.) *Carpenter* v. *Thompson*, 66 Conn. 457, 463–64, 34 A. 105 (1895). As a result of this separate obligation, "[a] mortgagee cannot enforce a mortgage obligation in a foreclosure proceeding against a guarantor because a guarantor is not a party to such obligation." *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, supra, 682.

Next, in addressing the merits of the present case, we rely on *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, supra, 312 Conn. 665, in which our Supreme Court addressed the issue of "whether . . . § 49-1, under which the foreclosure of a mortgage is a bar to further action against persons liable for the payment of the mortgage debt, note or obligation who are, or may be, made parties to the foreclosure, applies to guarantors of the mortgage note." (Footnote omitted.) In that case, the defendant borrowed $1,012,500 from Washington Mutual Bank. Id., 666. The defendant then executed a promissory note and a mortgage on real property in New Haven. Id. The guarantors of the loan executed a personal guarantee in which they assumed joint and several liability for the repayment of the loan. Id. After the defendant defaulted on the note, JP Morgan Chase Bank, N.A., as a successor in interest to Washington Mutual Bank, sought to foreclose the mortgage and to enforce the personal guaran-

tee. Id. The court granted the plaintiff's motion for summary judgment as to the liability of the defendant and the guarantors and, thereafter, rendered a judgment of strict foreclosure. Id., 667. The plaintiff then filed a motion for a deficiency judgment, to which the guarantors filed an objection, arguing that, "because the plaintiff had not filed a motion for a deficiency judgment within thirty days of the running of the law days as required by § 49-14, the plaintiff was barred by § 49-1 from taking any further action to collect money damages from the guarantors." Id.

Presented with the question of "whether § 49-1 evidences a clear intent to extinguish the otherwise independent obligations of the guarantors by making them effectively necessary parties to a claim that seeks the strict foreclosure of a mortgage"; id., 678; the court interpreted the term "obligation" in § 49-1, when read in context with the entire statute, to exclude a guarantee. Id., 672. The court interpreted "obligation" narrowly, explaining that "if the term 'mortgage' modifies not only the term 'debt,' but also the terms 'note' and 'obligation,' the latter could refer to obligations that are *secured by a mortgage* but not secondary obligations that provide further security, such as a guarantee that obligates payment of a promissory note secured by a mortgage." (Emphasis in original.) Id., 671. As such, the court concluded that "guarantors are not obligated on a mortgage because they have a separate and distinct contractual obligation from the promissory note and mortgage under their guarantee. . . . [T]hey are not 'parties to the foreclosure,' irrespective of whether the mortgagee pursues a claim against the guarantors in the same cause of action in which it pursues foreclosure of the mortgage." Id., 673. Moreover, the court concluded that guarantors are not subject to the preclusion pursuant to § 49-1 because "[d]ue to the separate and distinct liability . . . in the absence of a statute expressly pertaining to guarantors, such secondary obli-

gors are not proper parties to a claim seeking the foreclosure of a mortgage and their obligations are not limited by the extinguishment of the mortgagor's rights and obligations." Id., 677. Thus, the trial court's rendering of strict foreclosure in *JP Morgan Chase Bank, N.A.*, "had no effect on the plaintiff's ability to recover damages for the remaining unpaid debt from the guarantors . . . because the guarantors were not parties to the plaintiff's foreclosure claim . . . the guarantors' obligation having arisen separately under their guarantee." Id., 686.

The present case is controlled by *JP Morgan Chase Bank, N.A.* Here, this court is presented not only with an analogous factual scenario, in that both cases concern the enforcement of a personal guarantee on a promissory note, but is also presented with the same issue that was resolved in that case. Specifically, Lam contends that the plaintiff was barred, pursuant to §§ 49-1 and 49-14, from recovering on the personal guarantee because the stipulated judgment applied to all matters, including count three of the plaintiff's complaint. Lam asserts that the stipulated judgment was "accepted and openly submitted to fully resolve [all] matters between the parties after the passage of the title of the properties." Lam further contends that the trial court went above and beyond the stipulated judgment in holding Lam liable for more than the stipulated amount, thus violating existing law and public policy. Lastly, Lam asserts that the plaintiff failed to file a motion seeking a deficiency judgment specifically against Lam personally, within the statutorily mandated time frame.

Lam, however, fails to take into account the binding authority set forth in *JP Morgan Chase Bank, N.A.* Applying our Supreme Court's holding to the present case, it is clear that Lam's contentions are incorrect. In particular, Lam, as additional collateral for the obligations due under the promissory note, executed and delivered to the plaintiff a personal guarantee. The

guarantee explicitly named Lam as a "guarantor" and assured the "prompt payment and performance of a Certain Non-revolving Note made by [Sunford]." The guarantee was signed by Lam on June 28, 2012.

Because Lam was named a "guarantor" and assured the prompt payment of the note, Lam had a separate and distinct obligation from that evidenced by the note. Our Supreme Court has stated: "A mortgagee cannot enforce a mortgage obligation in a foreclosure proceeding against a guarantor because a guarantor is not a party to such an obligation. . . . The guarantors have no legal interest in the property securing the note and have no equitable or statutory right of redemption in the property. Accordingly, the plaintiff could not properly make the guarantors parties to the foreclosure claim because it could not seek to extinguish the guarantors' right of redemption, which is the purpose of foreclosure, nor in the alternative seek to enforce the note against them. The plaintiff only could seek that relief from the defendant, who had pledged its property as security for the contract between it and the plaintiff. Although the guarantors have a general interest in the foreclosure due to their separate and distinct obligation under the guarantee to pay any remaining amount due on the underlying debt, that interest does not render them parties to the foreclosure." (Footnotes omitted.) *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, supra, 312 Conn. 682–83. Therefore, the bar pursuant to § 49-1 applies solely to those individuals or entities who are made or could have been made "parties to the foreclosure." Because Lam was a guarantor, Lam was not a party to the foreclosure and could not properly have been made a party to it. Accordingly, the trial court properly held Lam personally liable because § 49-1 did not have an effect on the plaintiff's ability to recover money damages from Lam under count three of the complaint.[5]

[5] Additionally, even though the defendants claim that the plaintiff failed to meet the statutory time frame for seeking a deficiency judgment pursuant

We briefly address the defendants' claim that the court improperly held them jointly and severally liable for the judgment on Lam's personal guarantee. This claim is directly related to a statement set forth in the court's September 21, 2018 order, stating that "judgment enters in favor of the plaintiff against the defendants jointly and severally in the amount of $449,441.88 in damages [and] $82,497.10 in prejudgment interest for a total judgment of $531,938.98." This order was prepared by the court clerk and was not signed by the judge. We conclude that the reference to joint and several liability was a scrivener's error. See generally *Dan* v. *Dan*, 315 Conn. 1, 7 n.7, 105 A.3d 118 (2014) (misstatement in court order prepared by court clerk contained scrivener's error).[6]

It is clear from the record that the plaintiff had filed a motion for judgment on count three of the complaint, which was specifically brought against Lam only, and that it had filed an affidavit of debt, addressing the claim for damages under Lam's guarantee.[7] A review of the transcript of the hearing in damages reveals that the only matter argued before the trial court at that time was Lam's personal guarantee.[8] Although the written order incorrectly referenced "joint and several liability," we conclude that this reference was a scrivener's error, as the judgment pertained to only Lam's

to § 49-14 (a), the effect of that statute was not implicated because the plaintiff's rights were not extinguished under § 49-1.

[6] In *Dan* v. *Dan*, supra, 315 Conn. 7 n.7, the defendant requested an articulation from the trial court specifically related to the misstatement contained in its order, and the trial court stated that it was a scrivener's error. In the present case, although the defendants filed a motion for articulation, they did not request the court to articulate this order. Because the record is clear, we conclude that the order contains a scrivener's error.

[7] Specifically, in its motion for judgment, the plaintiff stated: "The plaintiff . . . herein moves that a judgment enter against . . . Lam under count three of the . . . complaint. A judgment as to liability only entered against [Lam]."

[8] At the hearing in damages, the plaintiff's counsel stated in relevant part: "Your Honor, this [hearing] follows a summary judgment as to liability on

personal guarantee under count three of the complaint. Additionally, the record reveals that the plaintiff, shortly after the court clerk issued this order, sent a certified notice of judgment to counsel for both Lam and Sunford, which provided in relevant part: "The plaintiff in the above-entitled action hereby gives notice that on September 21, 2018, the court entered a judgment in its favor in the amount of $531,938.98 under count three of the second revised complaint . . . against . . . Lam."

The appeal is dismissed with respect to Kwok L. Sang; the judgment is affirmed.

In this opinion the other judges concurred.

HUDSON CITY SAVINGS BANK *v.* CHARLES D. HELLMAN ET AL.
(AC 41472)

Keller, Elgo and Bishop, Js.

Syllabus

The substitute plaintiff, M Co., sought to foreclose a mortgage on certain real property owned by the defendants. After commencing the action, the original plaintiff, H Co., moved for summary judgment as to liability, which the trial court granted. Thereafter, the court granted H Co.'s motion to substitute M Co. as the plaintiff. In support of its motion to substitute, H Co. provided certain evidence that showed it had merged into M Co. approximately twenty-one months before H Co. had filed its motion for summary judgment. The court then rendered judgment of foreclosure by sale in favor of M Co., and the defendants appealed to this court, claiming that the court improperly granted the motion to substitute M Co. for H Co. and granted summary judgment as to liability in favor of H Co. *Held*:

1. The trial court did not abuse its discretion when it granted H Co.'s motion to substitute M Co. as the plaintiff as the substitution had no substantive effect: when H Co. merged into M Co., no assignment of the underlying

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count three of the complaint. [Count three] pertains to a personal guarantee of . . . Lam. We submitted the affidavit of [the plaintiff] that lists the updated debt following the foreclosure and the deficiency judgment [in] count one. So, we're seeking judgment [of the] amount that [is] listed in the affidavit of debt."

cause of action occurred, as H Co.'s assets, including the cause of action against the defendants, vested in M Co. by operation of law, and M Co. was the real party of interest upon its merger with H Co.; moreover, the substitution of M Co. did not prejudice the defendants, as the defendants did not articulate how being misled by the failure to substitute M Co. as the plaintiff for more than two years after the merger occurred caused actual prejudice to their ability to defend against the claims brought against them, and M Co.'s obligation to establish its prima facie case was not circumvented because it carried the same burden in obtaining summary judgment as H Co. once the merger became effective; furthermore, under established law, the substitution of M Co. as the plaintiff was not necessary after its merger with H Co., and the failure of M Co. to substitute itself prior to H Co.'s motion for summary judgment did not preclude the defendants from obtaining discovery on any of the issues that were pertinent to opposing that motion.

2. The defendants could not prevail on their claim that the trial court improperly granted summary judgment as to liability in H Co.'s favor because H Co. failed to establish that it had standing, in that it possessed the mortgage note at the time the action was commenced: the record clearly demonstrated that H Co. satisfied its prima facie case that it had standing, as its production of the note, endorsed in blank, established a rebuttable presumption that it possessed the note at the time it commenced the foreclosure action, and the defendants failed to offer evidence to rebut that presumption; moreover, although H Co. was not obligated to provide anything further to show that it had standing to enforce the note, its additional evidentiary submissions established that it possessed the note at the time it commenced the underlying action.

3. The trial court improperly determined that M Co. satisfied its burden of proof to establish that H Co. complied with the notification requirements pursuant to the mortgage, and, thus, there was a genuine issue of material fact as to whether H Co. satisfied a condition precedent to foreclosure; H Co. did not submit any evidence to prove that the notice of default was actually delivered to the defendants, and no admissible evidence existed to support the claim that the notice of default was sent by first class mail, and, accordingly, the judgment was reversed and the case was remanded for further proceedings.

Argued September 23, 2019—officially released April 14, 2020

Procedural History

Action to foreclose a mortgage on certain real property of the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Randolph*, *J.*, granted the named plaintiff's motion for summary judgment as to liability; thereafter, the court, *Lee*, *J.*, granted

the named plaintiff's motion to substitute Manufacturers and Traders Trust Company as the plaintiff; subsequently, the court, *Randolph*, *J.*, rendered judgment of foreclosure by sale, from which the named defendant et al. appealed to this court; thereafter, the court, *Randolph*, *J.*, granted the substitute plaintiff's motion to terminate the stay of execution. *Reversed*; *judgment directed*; *further proceedings*.

Charles D. Hellman, self-represented, for the appellants (named defendant et al.).

Zachary Grendi, for the appellee (substitute plaintiff).

Opinion

ELGO, J. The defendants Charles D. Hellman and Holly H. Hellman[1] appeal from the judgment of foreclosure by sale rendered by the trial court in favor of the substitute plaintiff, Manufacturers and Traders Trust Company (M&T). On appeal, the defendants claim that the court improperly (1) granted the motion to substitute M&T for Hudson City Savings Bank (HCSB) as the plaintiff in the action,[2] and (2) rendered summary judgment as to liability in favor of HCSB. We agree with the defendants' second claim and reverse the judgment of the trial court.

The following facts and procedural history are relevant to the present appeal. On May 22, 2007, the defendants executed and delivered a note payable to Bank

[1] For convenience, we refer to Charles D. Hellman and Holly H. Hellman as the defendants in this opinion. We further note that in this action, Charles D. Hellman, a licensed attorney, represents both himself and Holly H. Hellman.

Bank of America, N.A., was also named as a defendant in the complaint for its claimed interest in the property by way of a mortgage dated October 28, 2002; it has not participated in the present appeal.

[2] As discussed herein, at the time that the foreclosure action was commenced, HCSB was the plaintiff preceding M&T. The motion to substitute was precipitated by HCSB's merger with M&T, effective November 1, 2015. HCSB was also the named plaintiff at the time summary judgment was rendered in its favor, which preceded the motion to substitute M&T as the plaintiff. For purposes of clarity, we refer to M&T and HCSB by name.

of America, N.A. (BANA), in the original principal amount of $532,000. The loan was secured by a mortgage deed on real property located in Westport, executed that same day, and recorded on the Westport land records.[3] BANA endorsed the note in blank. The defendants have been in default on the note and mortgage since September, 2011.

On January 7, 2013, BANA assigned both the note and the mortgage to HCSB, with that assignment subsequently recorded on the Westport land records on January 14, 2013. On June 2, 2013, BANA, as the servicer for the note, sent a letter to the defendants notifying them of their rights under the mortgage relief program pursuant to the provisions of General Statutes §§ 8-265cc through 8-265kk. On June 21, 2013, BANA sent a letter to the defendants providing notice that the loan was in serious default and information with respect to the total amount required to cure the default. The notice of default also provided that, should the default not be cured on or before July 31, 2013, the mortgage payments would be accelerated.

When no payments followed, HCSB commenced the present foreclosure action against the defendants on December 4, 2013. HCSB filed the operative complaint, its third revised complaint, on June 29, 2016. On January 20, 2017, the defendants filed an answer that included thirteen special defenses, alleging, inter alia, that (1) HCSB lacked the right or capacity to maintain the action as a corporation, (2) HCSB lacked standing, (3) the assignment of the note and mortgage was not actual and bona fide, (4) BANA's conduct with respect to the mortgage constituted unclean hands, and (5) HCSB was estopped from enforcing the mortgage.

On August 4, 2017, HCSB moved for summary judgment as to liability, arguing that there was no genuine

[3] On February 8, 2004, the defendant Holly H. Hellman became the owner of the Westport property by way of a quitclaim deed.

issue of material fact with respect to the defendants' liability on the note and mortgage. Attached to that motion was the affidavit of Regina Rhodes. In the Rhodes affidavit, the affiant averred, in relevant part, that (1) she was authorized to sign the affidavit on behalf of HCSB as an assistant vice president for BANA, (2) BANA maintained records for the loan in question, and part of her responsibilities was to be familiar with the types of records maintained by BANA in connection with the loan, (3) she had personal knowledge of BANA's procedures for creating the records, (4) as of May 22, 2007, the defendants owed $532,000 as evidenced by the note payable to BANA, (5) on or before November 25, 2013, HCSB "became and at all times since then has been the party entitled to collect the debt evidenced by the [n]ote and is the party entitled to enforce the [m]ortgage securing the debt," (6) the note and mortgage are in default for nonpayment as of September 1, 2011, (7) the defendants were given notice of default, "by certified mail, postage fully prepaid," on June 21, 2013, and (8) HCSB "directly or through an agent, has possession of the promissory note. [HCSB] is the assignee of the security instrument for the referenced loan." Accompanying the Rhodes affidavit were copies of the note, a June 21, 2013 notice of default addressed to the defendants, a quitclaim deed of the property, the mortgage, the assignment of the note and mortgage from BANA to HCSB, and a June 2, 2013 notice addressed to the defendants that contained information pursuant to §§ 8-265cc through 8-265kk.

After being granted an extension of time to respond, the defendants filed their opposition to HCSB's motion for summary judgment on October 27, 2017. In support of their opposition, the defendants submitted the affidavit of the defendant Charles D. Hellman. In that affidavit, Charles D. Hellman averred that, during 2012, BANA repeatedly stated that it no longer owned the "loan" and mortgage, and refused to reveal the identity of the

new owner. He further averred, in relevant part, that (1) HCSB failed to establish that notice of default was delivered to the defendants as a condition of the mortgage due to Rhodes averring that HCSB had sent notice by certified mail without proof of receipt and (2) he could no longer find any physical branches of HCSB in Connecticut which "raise[d] questions as to [HCSB's] existence and status as a real party in interest in this matter."

On October 30, 2017, the court, *Randolph*, *J.*, held a hearing on the motion for summary judgment and heard arguments from both parties. Three days later, the court granted HCSB's motion for summary judgment as to liability. In its order, the court found that no genuine issue of material fact existed as to the defendants' liability and that the defendants' special defenses and affidavit were insufficient to rebut HCSB's prima facie case.

On November 28, 2017, HCSB filed a motion to substitute M&T as the plaintiff, pursuant to Practice Book §§ 9-16 and 9-23.[4] In support of its motion, HCSB attached a copy of a certificate of effectiveness that evidenced that, as of November 1, 2015—approximately twenty-one months before HCSB filed its motion for summary judgment as to liability—HCSB had merged into M&T.[5] Over the defendants' opposition, the court, *Lee*, *J.*, granted that motion on December 11, 2017. On February 26, 2018, the court, *Randolph*, *J.*, rendered

[4] Practice Book § 9-16 provides that, "[i]f, pending the action, the plaintiff assigns the cause of action, the assignee, upon written motion, may either be joined as a coplaintiff or be substituted as a sole plaintiff, as the judicial authority may order; provided that it shall in no manner prejudice the defense of the action as it stood before such change of parties."

Practice Book § 9-23 provides that "[a]n action may be brought in all cases in the name of the real party in interest, but any claim or defense may be set up which would have been available had the plaintiff sued in the name of the nominal party in interest."

[5] The record provides no indication that either the court or the defendants were aware that HCSB had merged into M&T some two years prior to the motion to substitute being filed.

judgment of foreclosure by sale in favor of M&T, ordering that a sale of the property be held on June 23, 2018. On March 6, 2018, notice of judgment of foreclosure by sale was sent to the defendants. This appeal followed.[6]

I

We first address the defendants' claim that the court improperly granted HCSB's motion to substitute M&T as the plaintiff. According to the defendants, substituting M&T as the plaintiff impeded their ability to properly oppose HCSB's motion for summary judgment and obtain proper discovery from M&T. In response, M&T asserts that the defendants were not prejudiced because the substitution had no substantive effect. We agree with M&T.

"Practice Book § 9-16 confers authority on a trial court judge to substitute a new plaintiff as the sole plaintiff in a pending action as long as the substitution does not prejudice the defense of the action. The decision whether to grant a motion for the [substitution] of a party to pending legal proceedings rests generally in the sound discretion of the trial court. . . . Our review is limited to a determination of possible abuse of discretion." (Citation omitted; internal quotation marks omitted.) *Trevek Enterprises, Inc.* v. *Victory Contracting Corp.*, 107 Conn. App. 574, 578–79, 945 A.2d 1056 (2008). "In reviewing the trial court's exercise of that discretion, every reasonable presumption should be indulged in favor of its correctness . . . and only if its action discloses a clear abuse of discretion is our interference warranted." (Internal quotation marks omitted.) *Joblin* v. *LaBow*, 33 Conn. App. 365, 367, 635 A.2d 874 (1993), cert. denied, 229 Conn. 912, 642 A.2d 1207 (1994).

[6] On May 1, 2018, the court granted M&T's motion for termination of the automatic stay of execution on appeal. On July 23, 2018, this court denied the defendants' motion to vacate the trial court's termination of the automatic appellate stay.

"Our rules of practice . . . permit the substitution of parties as the interests of justice require." *Federal Deposit Ins. Corp.* v. *Retirement Management Group, Inc.*, 31 Conn. App. 80, 84, 623 A.2d 517, cert. denied, 226 Conn. 908, 625 A.2d 1378 (1993). "As long as [the] defendant is fully apprised of a claim arising from specified conduct and has prepared to defend the action, his ability to protect himself will not be prejudicially affected if a new plaintiff is added . . . ." (Internal quotation marks omitted.) *Rana* v. *Terdjanian*, 136 Conn. App. 99, 110, 46 A.3d 175, cert. denied, 305 Conn. 926, 47 A.3d 886 (2012).

We begin by noting that the defendants' claim appears to be centered on the merger of HCSB into M&T and how that merger eventually came to light. The defendants assert that they were prejudiced by the substitution due to the fact that the motion to substitute was filed more than two years after the merger took effect and more than three months after HCSB filed for summary judgment. According to the defendants, the timing of these events (1) misled both themselves and the court, (2) circumvented HCSB's obligation to show it was entitled to seek judgment, and (3) impeded their ability to oppose the motion for summary judgment because the merger contradicted the averments made in the Rhodes affidavit.

Guiding our resolution of the defendants' claim are the statutory and legal principles governing the mergers of banking institutions. In *Financial Freedom Acquisition, LLC* v. *Griffin*, 176 Conn. App. 314, 170 A.3d 41, cert. denied, 327 Conn. 931, 171 A.3d 454 (2017), this court provided a comprehensive discussion of how a foreclosure action is affected when a plaintiff bank merges into another banking institution during the pendency of the action.[7] In that case, this court explored

[7] Given the complicated background of *Financial Freedom Acquisition, LLC* v. *Griffin*, supra, 176 Conn. App. 314, we believe it to be helpful to provide the facts of that case. The following summary provides an overview.

federal and Connecticut banking law—as well as Connecticut corporate law—to resolve the consequences of the plaintiff's merger and name change during the pendency of the action in which the new entity was never substituted as the plaintiff. See id., 322–33. In so doing, this court noted that, "[a]lthough Connecticut banking law applies only to banks organized under Connecticut law . . . it provides guidance for determining the impact of a merger of banking entities. . . . With respect to a banking merger resulting in a Connecticut bank, Connecticut law provides that (1) the corporate

The decedent, whose estate was named as a defendant, executed a note secured by a mortgage in July, 2008, and both were eventually assigned to OneWest Bank, F.S.B. Id., 317, 320. OneWest Bank, F.S.B. then assigned the note to the plaintiff, an entity that was a subsidiary of OneWest Bank, F.S.B. Id., 320. In May, 2011, the plaintiff instituted the foreclosure action against the defendants. Id., 321. In July, 2011, the plaintiff transferred the note and mortgage back to OneWest Bank, F.S.B. Id., 320. In February, 2014, OneWest Bank, F.S.B. changed its name to OneWest Bank, N.A. after converting from a federal savings bank to a national banking association. Id. In September, 2014, OneWest Bank, N.A. was substituted as the plaintiff. Id., 321. In August, 2015, IMB HoldCo, LLC, the holding company of OneWest Bank, N.A., merged with CIT Group, the holding company of CIT Bank. Id., 320. As part of the merger, CIT Bank merged into OneWest Bank, N.A., and, although the latter was the surviving entity, it changed its name to CIT Bank, N.A. Id., 321. CIT Bank, N.A. was never substituted as the plaintiff in the action. Id.

At trial, OneWest Bank, N.A., as the substitute plaintiff, introduced the original note and an allonge specifically endorsing the note to OneWest, F.S.B., and another allonge wherein OneWest Bank, F.S.B., endorsed the note in blank. Id. OneWest Bank, N.A. also introduced testimony from a vice president and foreclosure litigation manager employed by CIT Bank, N.A., who outlined the series of assignments and corporate restructurings that resulted in CIT Bank, N.A.'s possession of the note. Id., 321–22. Following trial, the court concluded that OneWest Bank, N.A. had established its prima facie case of foreclosure and ruled against the defendants with respect to their special defense and counterclaim. Id., 322. In response to the defendants' motion for articulation concerning which plaintiff owned the loan, the court acknowledged that OneWest Bank, N.A., was then known as CIT Bank, N.A., due to a legal name change. Id. On appeal, the defendants challenged the court's finding that the substitute plaintiff had established its prima facie case, arguing that, as a result of a corporate merger of the substitute plaintiff, ownership of the note had vested in a different legal entity, CIT Bank, N.A., that was never made a party to the action. Id. This court affirmed the trial court's judgment. Id., 343.

existence of the constituent banks shall be continued by and in the resulting bank; (2) the entire assets . . . of each of the constituent banks shall be vested in the resulting bank without any deed or transfer; (3) [n]o suit, action or other proceeding pending at the time of the merger . . . before any court or tribunal in which any of such constituent banks is a party shall be abated or discontinued because of such merger . . . but may be continued and prosecuted to final effect by or against the resulting bank; and (4) [t]he resulting bank shall have the right to use the name of any of the constituent banks . . . . General Statutes § 36a-125 (g)." (Citations omitted; internal quotation marks omitted.) *Financial Freedom Acquisition, LLC* v. *Griffin*, supra, 327–28.

"With federal and state banking law in mind, we seek additional guidance from the corporate law of this state and other jurisdictions relating to mergers and changes of name of *nonbanking* entities. In a merger of corporations governed by Connecticut law . . . the name of the survivor *may*, *but need not be*, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger. . . . General Statutes § 33-820 (a) (5). . . .

* * *

"The Uniform Limited Liability Company Act similarly provides that all property of each merging entity vests in the surviving entity and that the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding . . . . The rationale behind not requiring the substitution of the surviving entity's name in a pending proceeding is that [s]uch a substitution has no substantive effect because, whether or not the survivor's name is substituted, the survivor succeeds to the claims of any party to the merger whose separate existence ceased as a result of the merger. . . .

* * *

"Under the relevant federal and state authority, the merger to which the substitute plaintiff was [a] party had the following consequences. First, the substitute plaintiff's corporate existence and identity continued in the resulting bank. . . . Second, the substitute plaintiff's assets, including the [defendants'] note, vested in the resulting bank by operation of law and without any deed or transfer. . . . Third, the present action, which was pending at the time of the merger's consummation, was not abated, discontinued, or otherwise affected. . . . Last, the substitute plaintiff could have substituted the resulting bank in this action, but it was not required to do so." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Financial Freedom Acquisition, LLC* v. *Griffin*, supra, 176 Conn. App. 331–33.

Relevant to the present matter is the governing principle that M&T was not required to be substituted as the plaintiff in place of HCSB. The rationale behind this discretion afforded to substituting the surviving legal entity as the plaintiff in a pending action is a matter of practicality: "[S]uch a substitution has no substantive effect" because, irrespective of the substitution, the surviving entity succeeds all claims and assets. (Internal quotation marks omitted.) Id., 331. We are further guided by this state's policy concerning intervention of right. Practice Book § 9-18 provides in relevant part: "If a person not a party has an interest or title which the judgment will affect, the judicial authority, on its motion, shall direct that person to be made a party. . . ." See generally *Investors Mortgage Co.* v. *Rodia*, 31 Conn. App. 476, 480 and n.3, 625 A.2d 833 (1993).

With these principles in mind, we conclude that the court did not abuse its discretion when it granted the motion to substitute M&T as the plaintiff. In reaching this determination, we note that the motion at issue

was predicated in part on Practice Book § 9-16, a section that provides for the substitution of a plaintiff when the cause of action itself is assigned to a different party. Attached to the motion to substitute was both a certificate from the New York State Department of Financial Services and a certification of the certificate of effectiveness evidencing that the merger became effective on November 1, 2015. However, no assignment of the underlying cause of action occurred because, importantly, no assignment was necessary. The merger of HCSB into M&T caused HCSB's assets—including the note and the cause of action against the defendants—to vest in M&T by operation of law. See *Financial Freedom Acquisition, LLC* v. *Griffin*, supra, 176 Conn. App. 326 ("[a]ll rights . . . in and to every type of property . . . and choses in action shall be transferred to and vested in the [resulting] national banking association by virtue of such consolidation [or merger] without any deed or other transfer" (emphasis omitted; internal quotation marks omitted)). Although § 9-16 calls for the substitution of a party upon that party's assignment of the cause of action, it was an appropriate vehicle to bring about the substitution of M&T, who was the real party of interest upon its merger with HCSB.[8]

In addition, we disagree with the defendants that the substitution of M&T prejudiced them. First, we acknowledge that both the defendants and the court were misled by the failure to substitute M&T as the plaintiff for more than two years after the merger occurred. While it is clear that the substitution does not affect M&T's rights it assumed by virtue of the merger, the failure to put the parties and the court on notice that M&T assumed the rights of HCSB was, at

[8] Even assuming that Practice Book § 9-16 was not the appropriate basis to bring about the substitution, we underline the wide discretion afforded to courts for the substitution of parties given our state's policy of ensuring that a real party of interest is added as a party to the underlying action.

a minimum, careless. Indeed, it is possible that this type of neglectful practice could be the basis for a myriad of prejudices that a defendant could face by virtue of not knowing who the proper plaintiff is. Nevertheless, there is no basis for finding prejudice here, and the defendants do not articulate how being misled in this instance caused actual prejudice to their ability to defend against the claims brought against them.

Second, M&T's obligation to establish its prima facie case was not circumvented because, like HCSB—whose corporate existence continued by and in M&T after the merger became effective—it had the identical burden subsequent to the merger. In other words, M&T carried the same burden in obtaining summary judgment as HCSB once the merger became effective. The merger of HCSB into M&T did not obviate the burden of either HCSB or M&T to establish a prima facie case.

Lastly, we do not believe that the substitution of M&T hindered the defendants' ability to defend themselves in this action. Under established law, the substitution of M&T as the plaintiff was not necessary after its merger with HCSB. See id., 333 (plaintiff could have substituted resulting bank as plaintiff in action after merger, but was not required to do so). Moreover, the failure of M&T to substitute itself prior to HCSB's motion for summary judgment did not preclude the defendants from obtaining discovery on any of the issues that were pertinent to opposing that motion. Accordingly, the court did not abuse its discretion when it granted HCSB's motion to substitute M&T as the plaintiff.

II

We turn next to the defendants' claim that the court improperly rendered summary judgment as to liability in HCSB's favor. Specifically, the defendants argue that HCSB, as the former plaintiff, (1) failed to establish that it possessed the note at the time the action was

commenced, and (2) failed to establish that no genuine issue of material fact existed regarding whether it satisfied a condition precedent to foreclosure. We agree with the defendants' second argument.[9]

The legal principles and standard of review governing our resolution of this claim are well settled. "On appeal, [w]e must decide whether the trial court erred in determining that there was no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . Because the trial court rendered judgment for the [plaintiff] as a matter of law, our review is plenary and we must decide whether [the trial court's] conclusions are legally and logically correct and find support in the facts that appear in the record. . . . Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . A material fact is a fact that will make a difference in the outcome of the case. . . . Once the moving party has presented evidence in support of the motion for summary judgment, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . The movant has the burden of showing the nonexistence of such issues but the evidence thus presented, if otherwise sufficient, is not rebutted by the bald statement that an issue of fact does exist. . . . To oppose a motion for summary

[9] The defendants also assert that summary judgment was improperly granted because (1) there were genuine issues of material fact as to the validity of the assignment of the note by BANA to HCSB, and (2) more discovery was needed from HCSB as to how it came into possession of the note. Because we conclude that the court improperly granted summary judgment in favor of HCSB, we do not address the defendants' remaining claims.

judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant's affidavits and documents." (Internal quotation marks omitted.) *U.S. Bank, N.A.* v. *Foote*, 151 Conn. App. 620, 630–31, 94 A.3d 1267, cert. denied, 314 Conn. 930, 101 A.3d 952 (2014).

"In order to establish a prima facie case in a mortgage foreclosure action, the plaintiff must prove by a preponderance of the evidence that it is the owner of the note and mortgage, that the defendant mortgagor has defaulted on the note and that any conditions precedent to foreclosure, as established by the note and mortgage, have been satisfied. . . . Thus, a court may properly grant summary judgment as to liability in a foreclosure action if the complaint and supporting affidavits establish an undisputed prima facie case and the defendant fails to assert any legally sufficient special defense." (Internal quotation marks omitted.) *Bank of America, N.A.* v. *Aubut*, 167 Conn. App. 347, 359, 143 A.3d 638 (2016).

"In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue.

. . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue." (Internal quotation marks omitted.) *Romprey* v. *Safeco Ins. Co. of America*, 310 Conn. 304, 319–20, 77 A.3d 726 (2013).

A

The defendants first argue that HCSB, as the former plaintiff, failed to establish the existence of standing. Specifically, the defendants argue that the Rhodes affidavit only provides that HCSB was in possession of the note when it commenced the foreclosure action. According to the defendants, the Rhodes affidavit is silent as to when HCSB came into possession of the note, and the averment that HCSB was entitled to enforce the note on or before November 25, 2013, was conclusory. In response, M&T asserts that HCSB provided more than sufficient evidence to establish that it possessed the note at the time it commenced the action. We agree with M&T.

We begin by noting that, although our standard of review of the granting of summary judgment is plenary; see *Wells Fargo Bank, N.A.* v. *Henderson*, 175 Conn. App. 474, 481, 167 A.3d 1065 (2017); the defendants here challenge the summary judgment on the basis that HCSB failed to establish that it possessed the note at the time it commenced the underlying action. In the context of foreclosure actions, whether a plaintiff possesses the relevant note at the time the action is commenced implicates that plaintiff's standing. See *Deutsche Bank National Trust Co.* v. *Cornelius*, 170 Conn. App. 104, 110–11, 154 A.3d 79 ("[g]enerally, in order to have standing to bring a foreclosure action the plaintiff must, *at the time the action is commenced*, be entitled to enforce the promissory note that is secured by the property" (emphasis in original; internal quotation marks omitted)), cert. denied, 325 Conn. 922, 159

A.3d 1171 (2017); *Deutsche Bank National Trust Co.* v. *Thompson*, 163 Conn. App. 827, 832, 136 A.3d 1277 (2016) ("[i]f the plaintiff did not hold the note at the time it commenced this [foreclosure] action, then it would have lacked standing and the case must be dismissed").

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . A determination regarding a trial court's subject matter jurisdiction is a question of law. When . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Citation omitted; internal quotation marks omitted.) *Wells Fargo Bank, N.A.* v. *Caldrello*, 192 Conn. App. 1, 20, 219 A.3d 858, cert. denied, 334 Conn. 905, 220 A.3d 37 (2019).

"The rules for standing in foreclosure actions when the issue of standing is raised may be succinctly summarized as follows. When a holder seeks to enforce a note through foreclosure, the holder must produce the note. The note must be sufficiently endorsed so as to demonstrate that the foreclosing party is a holder, either by a specific endorsement to that party or by means of a blank endorsement to bearer. If the foreclosing party shows that it is a valid holder of the note and can produce the note, it is presumed that the foreclosing party is the rightful owner of the debt. That presumption may be rebutted by the defending party, but the burden is on the defending party to provide sufficient proof that the holder of the note is not the owner of the debt, for example, by showing that ownership of the debt had passed to another party. It is not sufficient to provide that proof, however, merely by pointing to some documentary lacuna in the chain of title that might give rise

to the possibility that some other party owns the debt. In order to rebut the presumption, the defendant must prove that someone else is the owner of the note and debt. Absent that proof, the plaintiff may rest its standing to foreclose on its status as the holder of the note." (Internal quotation marks omitted.) *Wells Fargo Bank, N.A.* v. *Henderson*, supra, 175 Conn. App. 483.

"Appellate courts in this state have held that the burden [of showing that a plaintiff owns the note] is satisfied when the mortgagee includes in its submissions to the court a sworn affidavit averring that the mortgagee is the holder of the promissory note in question at the time it commenced the action. . . . The evidentiary burden of showing the existence of a disputed material fact then shifts to the defendant. It is for the maker of the note to rebut the presumption that a holder of the note is also the owner of it." (Internal quotation marks omitted.) *Wells Fargo Bank, N.A.* v. *Strong*, 149 Conn. App. 384, 392, 89 A.3d 392, cert. denied, 312 Conn. 923, 94 A.3d 1202 (2014). Furthermore, "[t]he possession by the bearer of a note [e]ndorsed in blank imports prima facie that [it] acquired the note in good faith for value and in the course of business, before maturity and without notice of any circumstances impeaching its validity. The production of the note establishes [its] case prima facie against the makers and [it] may rest there. . . . It [is] for the defendant to set up and prove the facts which limit or change the plaintiff's rights." (Internal quotation marks omitted.) *Equity One, Inc.* v. *Shivers*, 310 Conn. 119, 135, 74 A.3d 1225 (2013).

In support of its motion for summary judgment, HCSB attached to its motion three pertinent documents establishing that it was the holder of the note at the time it commenced the underlying foreclosure action. First, the Rhodes affidavit unequivocally states the following: (1) Rhodes, as the affiant, is an officer of BANA; (2)

BANA is the servicing agent for HCSB for the underlying debt; (3) Rhodes has personal knowledge of BANA's records maintained in connection with the debt; (4) these records are "made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge"; (5) the records are "kept in the course of BANA's regularly conducted business activities"; (6) "it is the regular practice of BANA to make such records"; (7) "[o]n or before November 25, 2013, [HCSB] became and at all times since then has been the party entitled to collect the debt evidenced by the [n]ote and is the party entitled to enforce the [m]ortgage securing the debt"; and (8) "[HCSB] . . . has possession of the [note]." Second, a copy of the note, endorsed in blank, was attached as an exhibit to HCSB's motion and the original was presented to both the court and the defendants during a hearing on the motion. Lastly, a copy of the assignment of the note and mortgage from BANA to HCSB, which was also attached to HCSB's motion as an exhibit, clearly shows that the assignment was executed on January 7, 2013—more than ten months prior to HCSB's commencing the foreclosure action.[10]

As our Supreme Court has made clear, HCSB's production of the note established a rebuttable presumption that it possessed the note at the time it commenced the foreclosure action. See *Equity One, Inc.* v. *Shivers*, supra, 310 Conn. 135. The production of the note, by itself, "establishe[d] [HCSB's] case prima facie" with respect to its standing. Id. (Internal quotation marks omitted.) In the absence of the defendants' offering any evidence of their own to rebut the presumption that HCSB owned the note when it commenced the underly-

[10] The assignment, titled "Assignment of Mortgage," clearly assigned the mortgage "together with the note(s) and obligations therein described and the money due and to become due thereon . . . ."

ing foreclosure proceedings, HCSB was not required to do anything more. See id. (because plaintiff did not need to do more to prove standing than simply present note endorsed in blank, defendant was not entitled to evidentiary hearing on that issue). In the present case, the note—endorsed in blank—was attached as an exhibit to the Rhodes affidavit submitted in support of HCSB's motion for summary judgment.[11] On October 30, 2017, HCSB again produced the original note and presented it to the court. Thus, the production of the note—both as an exhibit to the Rhodes affidavit and at the hearing—established a rebuttable presumption that HCSB possessed the note at the time it commenced the foreclosure action. See id. ("[t]he production of the note [endorsed in blank] establishes [the plaintiff's] case prima facie against the makers and [it] may rest there" (internal quotation marks omitted)).

In response, the only evidence offered by the defendants to rebut that presumption was in the form of the Hellman affidavit. In that affidavit, the defendant Charles D. Hellman averred, in relevant part, that (1) prior to the commencement of the foreclosure action, BANA represented to the defendants that it did not own the note prior to the date of assignment, which raised doubts about its ability to assign the note and mortgage, and (2) he could no longer find any physical HCSB bank branches, which raised doubt as to HCSB's existence. These averments in no way undercut HCSB's showing that it had standing. First, whether BANA had the power to assign the note and mortgage—therefore implicating whether HCSB was the proper holder of the note—goes to the merits of the foreclosure action, "not [HCSB's]

[11] The defendants' claim that there was no basis that the affiant in the Rhodes affidavit had personal knowledge as to HCSB's possession of the note is without merit. Indeed, the averments plainly establish that Rhodes, as the affiant, had personal knowledge of the matters stated therein. See *Bank of America, N.A.* v. *Aubut*, supra, 167 Conn. App. 364–65 (outlining requirements for establishing affiant's personal knowledge when affidavit is submitted in support of summary judgment in foreclosure action).

standing to bring the action." *Wells Fargo Bank, N.A.* v. *Strong*, supra, 149 Conn. App. 400. Second, the averment that the affiant could not find any physical HCSB bank branches is merely a bald assertion that, by itself, is not evidence that calls into doubt HCSB's existence.[12] See *Property Asset Management, Inc.* v. *Lazarte*, 163 Conn. App. 737, 746–47, 138 A.3d 290 (2016) (after plaintiff presents prima facie evidence that it has standing, "the burden is on the defendant to impeach the validity of [the] evidence that [the plaintiff] possessed the note at the time that it commenced the . . . action . . . [and must] prove the facts which limit or change the plaintiff's rights" (internal quotation marks omitted)).

Despite failing to rebut the presumption that HCSB had standing by virtue of its production of the note, the defendants assert that HCSB did not submit evidence that establishes it possessed the note at the time it commenced the action. As discussed previously, HCSB had no obligation to do so because (1) it produced the note endorsed in blank and (2) the defendants failed to offer evidence to rebut the presumption that HCSB possessed the note at the time it commenced the foreclosure action. Even if we assume otherwise, the defendants' contention is without merit. The record shows that HCSB submitted evidence clearly demonstrating that it was in possession of the note on December 4, 2013—the date on which it commenced the underlying action. For instance, the Rhodes affidavit specifically averred that, "[o]n or before November 25, 2013, [HCSB] became and *at all times since* then has been the party entitled to collect the debt evidenced by the [n]ote and is the party entitled to enforce the [m]ortgage securing the debt." (Emphasis added.) More significantly, a copy

[12] More importantly, as discussed at length in part I of this opinion, HCSB's existence continued in M&T, and M&T had the right to use the name of HCSB in continuing the underlying foreclosure action. See *Financial Freedom Acquisition, LLC* v. *Griffin*, supra, 176 Conn. App. 328. Thus, HCSB's standing was not affected solely as the result of its merger into M&T.

of the assignment of the note was affixed to the Rhodes affidavit as an exhibit. That assignment conclusively shows that HCSB came into possession of the note by way of an assignment from BANA on January 7, 2013—more than ten months before HCSB commenced the foreclosure proceedings against the defendants. The Rhodes affidavit and the assignment, both submitted in tandem with the note endorsed in blank, "was prima facie evidence that [HCSB] was the holder of the note at the relevant time and thus was entitled to enforce the note." *US Bank National Assn.* v. *Christophersen*, 179 Conn. App. 378, 385, 180 A.3d 611, cert. denied, 328 Conn. 928, 182 A.3d 1192 (2018).

In sum, the record clearly demonstrates that HCSB satisfied its prima facie case that it had standing. Its production of the note, endorsed in blank, established a rebuttable presumption that it possessed the note at the time it commenced the foreclosure action. Because the defendants failed to offer evidence to rebut that presumption, HCSB was not obligated to provide anything further to show that it had standing to enforce the note. Yet, HCSB did precisely that. Its submissions of the note endorsed in blank, the Rhodes affidavit, and the assignment of the note established that it possessed the note at the time it commenced the underlying action. Accordingly, we conclude that M&T has standing.

B

The defendants next argue that there was a genuine issue of material fact as to whether HCSB satisfied a condition precedent to foreclosure. In particular, the defendants highlight HCSB's obligation under the mortgage to provide the defendants with notice of default before exercising its option to accelerate. The defendants assert that, because the Rhodes affidavit states that the notice was sent by certified mail, and, because HCSB provided no evidence that notice was sent by first class mail or that it was received by the defendants,

HCSB failed to satisfy a condition precedent to foreclosure. M&T maintains that, although the Rhodes affidavit states that the notice was sent by certified mail, the copy of the envelope annexed to that affidavit shows that it was sent by regular mail due to the markings and number notations. Accordingly, M&T argues that the evidence sufficiently establishes that HCSB sent the notice of default by regular mail and it therefore satisfied all conditions precedent prior to commencing the foreclosure action. We agree with the defendants.

The following legal authority and standard of review govern our resolution of this dispute as to notice. "It is well established that [n]otices of default and acceleration are controlled by the mortgage documents. Construction of a mortgage deed is governed by the same rules of interpretation that apply to written instruments or contracts generally, and to deeds particularly. . . . In construing a deed, a court must consider the language and terms of the instrument as a whole. . . . Moreover, the words [in the deed] are to be given their ordinary popular meaning, unless their context, or the circumstances, show that a special meaning was intended. . . .

"In construing a contract, the controlling factor is normally the intent expressed in the contract, not the intent which the parties may have had or which the court believes they ought to have had. . . . Where . . . there is clear and definitive contract language, the scope and meaning of that language is not a question of fact but a question of law. . . . In such a situation our scope of review is plenary, and is not limited by the clearly erroneous standard. . . . In contrast, a contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous. . . . Ordinarily, such ambiguity requires the use of extrinsic evidence by a trial court to determine the

intent of the parties, and, because such a determination is factual, it is subject to reversal on appeal only if it is clearly erroneous."[13] (Citations omitted; internal quotation marks omitted.) *Aurora Loan Services, LLC* v. *Condron*, 181 Conn. App. 248, 264–65, 186 A.3d 708 (2018).

Turning to the mortgage at issue here, section 22 provides in relevant part that the "[l]ender shall give notice to [the borrower] prior to acceleration following [the borrower's] breach of any covenant or agreement in this [s]ecurity [i]nstrument . . . . The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than [thirty] days from the date the notice is given to [the borrower], by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this [s]ecurity [i]nstrument and foreclosure or sale of the [p]roperty." Section 15 of the mortgage governs the manner in which notices are to be given. That section provides in relevant part that "[a]ll notices given by [the borrower] or [the lender] in connection with this [s]ecurity [i]nstrument must be in writing. Any notice to [the borrower] in connection with this [s]ecurity [i]nstrument shall be deemed to have been given to [the borrower] when mailed by first class mail or when actually delivered to [the borrower's] notice address if sent by other means." Because such language creates a condition precedent to commencing a foreclosure action, HCSB was thus required to give the defendants actual notice of the relevant information, with the defendants presumptively in receipt of that notice only if it was sent by first class mail.

[13] We note that the record contains no evidence that the intent of the parties in executing the mortgage was an issue before the trial court, nor has that issue been raised on appeal. Moreover, neither party has asserted that any ambiguity exists in the mortgage, nor do we perceive one.

We believe that *Condron* is instructive in this regard. In that case, this court addressed a similar claim concerning the satisfaction of a condition precedent when a notice of default is sent to a borrower by certified mail. Like the present case, the mortgage at issue in *Condron* contained a condition precedent that notice of default be sent to a borrower, and that such notice will be deemed given to the borrower if sent by first class mail. *Aurora Loan Services, LLC* v. *Condron*, supra, 181 Conn. App. 263–64. That mortgage also provided that, if the notice of default was sent by other means, then notice would be given to the borrower only if it was "actually delivered" to the borrower's address. (Emphasis omitted; internal quotation marks omitted.) Id., 264. In moving for summary judgment, the plaintiff bank in *Condron* provided evidence that the notice of default was sent by certified mail, but provided no evidence that the notice was actually delivered to the defendants. Id. Looking to the unambiguous language of the mortgage and the evidence presented to the trial court, this court held that the plaintiff failed to satisfy a condition precedent to foreclosure. Id., 273. In reaching that determination, the court summarized the "critical difference" between certified mail and first class mail in the context of satisfying the requirements of a mortgage. Id., 266–70. Because the plaintiff "failed to submit a return receipt or any other evidence into the record to prove that the notice of default was actually delivered to the defendants by certified mail," it therefore failed to satisfy its burden of proof that it complied with the notice requirements of the mortgage. Id., 273.

In the present case, the only documents submitted by HCSB that the notice of default was given to the defendants consisted of (1) the Rhodes affidavit and (2) a copy of the notice itself. As discussed previously, the Rhodes affidavit that was submitted by HCSB in support of its motion for summary judgment makes only one reference to the notice of default. Specifically,

the Rhodes affidavit states that "[n]otice of default was given to [the defendants] on June 21, 2013 . . . . The [n]otice was given by certified mail, postage fully prepaid, was addressed as set forth on the attached [e]xhibit A-2. As set forth in [e]xhibit A-2, among other things, the [n]otice specified the default, the action required to cure the default and a date by which the default had to be cured." HCSB submitted no documents to authenticate exhibit A-2 as purporting to be a notice of default sent by first class mail, nor did it provide any documentation showing that the notice of default was actually delivered to the defendants.

In resolving this issue, we reiterate that our plenary review of a court's decision granting summary judgment is limited to whether "the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact" when that evidence is viewed "in the light most favorable to the nonmoving party."[14] (Internal quotation marks omitted.) *Lucenti* v. *Laviero*, 327 Conn. 764, 773, 176 A.3d 1 (2018). Moreover, our law is well settled that a court is limited to considering documents that would be admissible at trial. *New Haven* v. *Pantani*, 89 Conn. App. 675, 678, 874 A.2d 849 (2005). Thus, "[b]efore a document may be considered by the court [in support of] a motion for summary judgment, there must be a preliminary showing of [the document's] genuineness, i.e., that *the proffered item of evidence is what its proponent claims it to be*." (Emphasis added; internal quotation marks

[14] In granting HCSB's motion for summary judgment, the court issued a four sentence order that consisted of the following: "The motion for summary judgment having been heard, it is hereby found that no genuine issue of material fact exists as to the defendants' liability on the note and mortgage. The defendants' special defenses and affidavit are insufficient to rebut [HCSB's] prima facie case. It is therefore ordered GRANTED. Determination of the amount of indebtedness is deferred until such time as [HCSB] seeks a judgment of foreclosure. Practice Book §§ 17-44 through 17-51."

We further note that *Aurora Loan Services, LLC* v. *Condron*, supra, 181 Conn. App. 248, was published after the trial court granted HCSB's motion.

omitted.) *Gianetti* v. *Health Net of Connecticut, Inc.*, 116 Conn. App. 459, 466, 976 A.2d 23 (2009).

On our review of the record, viewed in the light most favorable to the defendants, we conclude that HCSB did not meet its burden of showing that it satisfied a condition precedent to foreclosure. The Rhodes affidavit states that the notice of default was "given by certified mail, postage fully prepaid, was addressed as set forth on the attached [e]xhibit A-2." That exhibit contains a scanned copy of the envelope addressed to the defendants and the notice of default. However, nothing from that exhibit provides any indication that the notice of default was actually delivered to the defendants if sent by certified mail. Although M&T argues that the scanned envelope contained in the exhibit is evidence that the notice of default was sent by first class mail, it is not accompanied by an affidavit authenticating it as such. See *New Haven* v. *Pantani*, supra, 89 Conn. App. 678 (documents not authenticated by, for example, either affidavit or certified copy, are not admissible evidence to establish plaintiff's prima facie burden for summary judgment). Instead, it was accompanied by the Rhodes affidavit which averred that the document constituted notice by certified mail. As we have discussed previously, under *Condron*, the absence of any indication that the certified mail notice was actually delivered is fatal. M&T's claim that the document actually represents evidence of first class mail also fails because it lacks an authenticating document to support the claim that it is what M&T purports it to be. See id., 680 (plaintiff failed to establish prima facie case for summary judgment because documents submitted were not authenticated).

Despite these deficiencies in its documentation, M&T raises a number of arguments that the evidence was sufficient to satisfy its burden for summary judgment. First, M&T claims that HCSB consistently

asserted that the notice of default was sent by regular mail. Specifically, it cites to the allegation in the operative complaint that states that "[HCSB] has complied with all statutory and contractual preconditions prior to commencing this foreclosure action including issuance of a written notice of default, sent first class mail, postage prepaid on or about June 21, 2013 to the defendants . . . ." M&T, however, fails to explain how that allegation is anything but *inconsistent* with the Rhodes affidavit that HCSB submitted as evidence in support of summary judgment.[15]

Second, M&T argues that, despite the averment made in the Rhodes affidavit that the notice of default was sent by certified mail, the barcode and accompanying numbers contained on the envelope is evidence that the notice was "quite obviously sent by regular mail . . . ." We have no way to discern what the barcode and the numbers represent for purposes of determining how the envelope was mailed, nor was any evidence submitted to the court that explained these features on the envelope. Although counsel for M&T has assured us that the barcode and numbers represent that it was sent by first class mail, such representations are not admissible evidence. See, e.g., *Brusby* v. *Metropolitan District*, 160 Conn. App. 638, 652 n.12, 127 A.3d 257 (2015) ("[t]his court, as well as our Supreme Court, repeatedly has stated that representations of counsel are not evidence" (internal quotation marks omitted)). Moreover, M&T's reference to website links purporting to show the United States Postal System's certified mail number system was not evidence before the trial court, and we therefore do not consider it on appeal. *Fiorelli*

[15] M&T's position that it has consistently asserted that the notice of default was sent by first class mail is further undermined by HCSB's representation to the court during the hearing on the motion for summary judgment. In arguing that HCSB satisfied the condition precedent to give notice to the defendants, HCSB's counsel explicitly stated that exhibit A-2 to its motion for summary judgment "shows that [the notice of default] was sent . . . by certified mail . . . ."

v. *Gorsky*, 120 Conn. App. 298, 307 n.3, 991 A.2d 1105 (evidence that was not before trial court when it decided motion for summary judgment will not be considered on appeal), cert. denied, 298 Conn. 933, 10 A.3d 517 (2010).

Lastly, in an attempt to distinguish *Condron*, M&T notes that, (1) unlike in that matter, in this case, HCSB claimed that it sent the notice of default by both certified mail and first class mail, and (2) the defendants in *Condron* provided evidence that they "affirmatively did receive the notice of default . . . ." (Emphasis omitted.) For all intents and purposes, M&T's initial argument is a distinction without a difference that has no influence on our application of *Condron* to the present facts. M&T's latter argument fails for the same reason. Not only did the defendants in *Condron* affirmatively state that they *did not* receive notice, but most importantly, at issue was the plaintiff's failure to satisfy its burden that the defendants "actually received the notice of default." *Aurora Loan Services, LLC* v. *Condron*, supra, 181 Conn. App. 264, 276. Compare *Wells Fargo Bank, N.A.* v. *Fitzpatrick*, 190 Conn. App. 231, 241–42, 210 A.3d 88 (*Condron* is distinguishable because defendants indisputably "had actual notice of the default and the possibility that they faced a foreclosure because they had been through [a] first foreclosure action and admittedly received the [notice of default] before the first foreclosure action was commenced"), cert. denied, 332 Conn. 912, 209 A.3d 1232 (2019). M&T likewise has failed to satisfy its burden that the defendants actually received the notice of default, and the defendants therefore had no obligation to establish that a genuine issue existed as to that material fact. See *State Farm Fire & Casualty Co.* v. *Tully*, 322 Conn. 566, 573, 142 A.3d 1079 (2016) (when evidence submitted by moving party fails to establish no genuine issue of material fact, nonmoving party has no obligation to submit evidence establishing existence of issue).

Accordingly, we conclude that the evidence submitted by HCSB failed to show that it satisfied a condition precedent to foreclosure. HCSB did not submit any evidence to prove that the notice of default was actually delivered to the defendants, and no admissible evidence exists to support the claim that the notice of default was sent by first class mail. Therefore, the court improperly determined that M&T satisfied its burden of proof to establish that HCSB complied with the notification requirements pursuant to the mortgage.

The judgment is reversed and the case is remanded with direction to deny the motion for summary judgment and for further proceedings consistent with this opinion.

In this opinion the other judges concurred.

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CONNECTICUT APPELLATE REPORTS

Vol. 197

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

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ARTHUR PETRUCELLI *v.* CITY OF MERIDEN
(AC 39630)

Prescott, Moll and Flynn, Js.

Syllabus

The petitioner appealed to the Superior Court from the decision of the citation hearing officer for the respondent city upholding a citation assessed against the petitioner for violating the respondent's anti-blight ordinance. The court rejected the petitioner's appeal, which included claims that, inter alia, the anti-blight ordinance was unconstitutional and that there was insufficient evidence to find him noncompliant with the ordinance. On appeal to this court, the petitioner claimed that the trial court abused its discretion in precluding the testimony of two of his witnesses, Y and K, and erroneously concluded that the respondent had not violated his due process rights, that the anti-blight ordinance was not unconstitutionally vague as applied to him, and that there was sufficient evidence establishing his noncompliance with the anti-blight ordinance. *Held*:

1. The trial court did not abuse its discretion in precluding Y's proffered testimony and, even if the court abused its discretion in precluding K's proffered testimony, the petitioner failed to demonstrate that the error was harmful; Y was called to testify out of order and K's testimony would not have operated to discredit the testimony of M, the respondent's housing inspector who issued the citation, because M did not testify that the petitioner told him he could enter the property alone at any time and, even if he had testified to this, K's testimony on this issue would have been cumulative.
2. The trial court did not err in concluding that the respondent had not violated the petitioner's due process rights; the record reflected that the petitioner received a written, detailed notice of the blight violation, the respondent conducted hearings regarding the blight violation at the

petitioner's request, granted the petitioner multiple extensions of time to address the violations, and met with the petitioner at his property prior to the assessment being imposed.

3. The petitioner could not prevail on his claim that the anti-blight ordinance was unconstitutionally vague as applied to him; the evidence relied on by the petitioner did not establish that the respondent enforced the anti-blight ordinance in an arbitrary and discriminatory manner.

4. The trial court did not err in determining that there was sufficient evidence demonstrating that the property was blighted; photographs submitted at the hearing, along with the testimony of M, established that there was garbage, trash, litter, rubbish or debris on the property in violation of the anti-blight ordinance.

Argued November 14, 2019—officially released April 14, 2020

Procedural History

Petition to reopen a citation assessment issued by the respondent, brought to the Superior Court in the judicial district of New Haven, geographical area number seven, where the court, *Cronan, J.*, rendered judgment denying the petition, from which the petitioner appealed to this court. *Affirmed.*

Jeffrey D. Brownstein, for the appellant (petitioner).

Stephanie Dellolio, city attorney, with whom, on the brief, was *Deborah Leigh Moore*, former city attorney, for the appellee (respondent).

Opinion

MOLL, J. The petitioner, Arthur Petrucelli, appeals from the judgment of the trial court rendered in favor of the respondent, the city of Meriden (city), following a de novo hearing held on his petition to reopen an assessment entered against him by a citation hearing officer for violation of the city's anti-blight ordinance. On appeal, the petitioner claims that the court (1) abused its discretion by precluding, in whole or in part, two of his witnesses from testifying, (2) erroneously concluded that the city had not violated his due process rights, (3) erroneously concluded that the city's anti-blight ordinance was not unconstitutionally vague as applied to him, and (4) erroneously concluded that

there was sufficient evidence establishing his noncompliance with the anti-blight ordinance. We affirm the judgment of the trial court.

The following facts are relevant to our resolution of this appeal. In 2003, pursuant to General Statutes § 7-148 (c) (7) (H) (xv),[1] the city enacted chapter 159 of the Code of the City of Meriden (anti-blight ordinance). Section 159-2 of the anti-blight ordinance provides in relevant part that "[n]o owner . . . of real property . . . located in the [c]ity of Meriden shall create, allow, maintain or cause to be maintained, continue, or suffer to exist a blighted premises." Section 159-3 of the anti-blight ordinance, in defining the term "blight," provides in relevant part that "[a]ny building or structure or any parcel of land in which at least one of the following conditions exists shall be considered blighted . . . B. It is not being maintained as defined herein.[2] . . .

[1] General Statutes § 7-148 (c) (7) (H) (xv) authorizes a municipality to "[m]ake and enforce regulations for the prevention and remediation of housing blight, including regulations reducing assessments and authorizing designated agents of the municipality to enter property during reasonable hours for the purpose of remediating blighted conditions, provided such regulations define housing blight and require such municipality to give written notice of any violation to the owner and occupant of the property and provide a reasonable opportunity for the owner and occupant to remediate the blighted conditions prior to any enforcement action being taken, and further provided such regulations shall not authorize such municipality or its designated agents to enter any dwelling house or structure on such property, and including regulations establishing a duty to maintain property and specifying standards to determine if there is neglect; prescribe civil penalties for the violation of such regulations of not less than ten or more than one hundred dollars for each day that a violation continues and, if such civil penalties are prescribed, such municipality shall adopt a citation hearing procedure in accordance with section 7-152c."

[2] Section 159-3 of the anti-blight ordinance, in defining the phrase "not being maintained," provides in relevant part that "[a] structure is not being maintained if any of the following conditions apply . . . C. Garbage, trash, litter, rubbish, or debris are situated on the premises. D. Abandoned, wrecked, or junked motor vehicles are stored on the premises. E. Lawns, landscaping, or driveways are deteriorating or unkempt. . . ."

Section 159-3 of the anti-blight ordinance defines "debris" as "[m]aterial which is incapable of immediately performing the function for which it was

F. It is a substantial factor causing serious depreciation of the property values in the neighborhood. G. There exist at the property conditions promoting rodent harborage and/or infestation. H. There exist at the property overgrown shrubs, brush or weeds. I. Parking lots/areas are left in a state of disrepair or abandonment and/or are used to store abandoned or unregistered vehicles. . . . N. Garbage on the property is not stored in standard containers and/or is scattered throughout the yard. . . . Q. There exists on the property . . . trash, rubbish, rubble, tires, brush, used materials or discarded items of little or no value. . . .'' (Footnote added.) Section 159-7 (A) of the anti-blight ordinance provides in relevant part that the ordinance ''may be enforced by citation, in addition to other remedies, in accordance with [General Statutes] § 7-152c . . . . City of Meriden code enforcement officials shall have authority to issue citations.''

The trial court set forth the following relevant procedural history in its corrected memorandum of decision

designed, including but not limited to abandoned, discarded, or unused objects; junk or collections of equipment such as automobiles, boats and recreation vehicles which are missing parts, not complete in appearance and in an obvious state of disrepair; and parts of automobiles, furniture, appliances, cans, boxes, scrap metal, tires, batteries, containers, and garbage.''

Section 159-3 of the anti-blight ordinance defines ''litter'' as ''[a]ny discarded, used, or unconsumed substance or waste material, whether made of aluminum, glass, plastic, rubber, paper, or other natural or synthetic material, or any combination thereof, including but not limited to any bottle, jar, or can or any top, cap or detachable tab of any bottle, jar, or can; any unlighted cigarette, cigar, match or any flaming or glowing material; or any garbage, trash, refuse, debris, rubbish, glass clippings or other lawn or garden waste, newspaper, magazine, glass, metal, plastic, or paper containers or other packaging or construction material, which has not been deposited in a receptacle.''

Section 159-3 of the anti-blight ordinance defines ''rubbish'' as ''[a]ny nonputrescible waste materials, except ashes, including but not limited to paper, cardboard, tin cans, wood, glass, bedding, furniture, crockery, appliances, junk automobiles, demolition material, tree limbs, and industrial wastes.''

dated October 10, 2017.[3] "On March 11, 2015, the City of Meriden Department of Development and Enforcement sent a letter to the [petitioner] concerning the condition of his property located at 48 Bradley Avenue in Meriden [(property)]. This letter . . . referenced the authority granted to the city by the Connecticut General Statutes and incorporated in [§] 159-2 of the [anti-blight ordinance]. The letter detailed seven separate sections of the [anti-blight ordinance] that could be considered blight violations. On April 8, 2015, the [petitioner] requested a hearing before the Meriden Neighborhood Rehabilitation Advisory Board [(board)] concerning the notice sent to him. A hearing was held by the board on May 14, 2015, and the [petitioner] was granted a thirty day extension for the purpose of allowing the [petitioner] to come into compliance with the anti-blight ordinance.

"An inspection of the property was scheduled for June 22, 2015, but the [petitioner] sought an additional extension and one was granted by the board until July 22, 2015. When no apparent progress was made by the July 22 date, the [petitioner] was issued a citation for a violation of the anti-blight ordinance on July 30, 2015. The [petitioner] requested a hearing before a citation hearing officer. At a hearing held on September 28, 2015, the [petitioner] was granted an additional thirty day extension to address compliance issues. On October 26, [2015],[4] another hearing was held by the citation hearing officer where it was reported that the anti-blight issues were not addressed by the [petitioner].

[3] The trial court decided the petitioner's petition to reopen the assessment on September 2, 2016; however, on that date, it inadvertently issued in the present action a memorandum of decision pertaining to a related action, *Petrucelli* v. *Meriden*, Superior Court, judicial district of New Haven, Docket No. CV-16-5006564-S. On October 10, 2017, the court issued a corrected memorandum of decision setting forth its ruling on the petition filed in the present action.

[4] The corrected memorandum of decision states that the second citation hearing was held on October 26, 2016, which we presume to be a scrivener's error.

The hearing officer assessed a fine of $500 for failure to comply with the ordinance which could be enhanced by a fine of $100 a day if compliance was not forthcoming." (Citation omitted; footnote added.)

In November, 2015, pursuant to General Statutes § 7-152c (g)[5] and Practice Book § 23-51,[6] the petitioner commenced the present action by filing a petition to reopen the October 26, 2015 assessment.[7] The petition set forth thirteen numbered paragraphs asserting various claims. The petitioner asserted, inter alia, that (1) the city had denied him due process by failing to provide him with

[5] General Statutes § 7-152c provides in relevant part: "(a) Any municipality as defined in subsection (a) of section 7-148 may establish by ordinance a citation hearing procedure in accordance with this section. The Superior Court shall be authorized to enforce the assessments and judgments provided for under this section.

***

"(g) A person against whom an assessment has been entered pursuant to this section is entitled to judicial review by way of appeal. An appeal shall be instituted within thirty days of the mailing of notice of such assessment by filing a petition to reopen assessment, together with an entry fee in an amount equal to the entry fee for a small claims case pursuant to section 52-259, at a superior court facility designated by the Chief Court Administrator, which shall entitle such person to a hearing in accordance with the rules of the judges of the Superior Court."

[6] Practice Book § 23-51 provides: "(a) Any aggrieved person who wishes to appeal a parking or citation assessment issued by a town, city, borough or other municipality shall file with the clerk of the court within the time limited by statute a petition to open assessment with a copy of the notice of assessment annexed thereto. A copy of the petition with the notice of assessment annexed shall be sent by the petitioner by certified mail to the town, city, borough or municipality involved.

"(b) Upon receipt of the petition, the clerk of the court, after consultation with the presiding judge, shall set a hearing date on the petition and shall notify the parties thereof. There shall be no pleadings subsequent to the petition.

"(c) The hearing on the petition shall be de novo. There shall be no right to a hearing before a jury."

[7] The petition was captioned as a "Petition to Reopen Assessment." We observe that § 7-152c (g) provides that a person against whom a citation assessment has been entered may institute an appeal by filing a "petition to *reopen* assessment . . . ." (Emphasis added.) By comparison, Practice Book § 23-51 (a) provides that an aggrieved person may appeal a citation assessment by filing a "petition to *open* assessment . . . ." (Emphasis added.) We will refer to the petition as a petition to "reopen" the assessment in conformity with the language of § 7-152c (g).

adequate notice regarding his purported violation of the anti-blight ordinance, (2) the anti-blight ordinance was unconstitutionally vague as applied to him, and (3) there was insufficient evidence to demonstrate that he had violated the anti-blight ordinance. The petitioner requested that the trial court conduct a de novo hearing and grant him relief, inter alia, by reversing the assessment and prohibiting the city from enforcing any assessments pertaining to the property entered under either the anti-blight ordinance or a separate ordinance regarding abandoned, inoperable, or unregistered motor vehicles.

The trial court held a two day de novo hearing on the petition in March and April, 2016. On September 2, 2016, the court rendered judgment in favor of the city. In its October 10, 2017 corrected memorandum of decision, after dismissing each of the petitioner's claims set forth in the petition, the court stated that it "rejects the appeal of the [petitioner] and returns the matter to the [city] to reimpose the penalties assessed by the hearing officer . . . ." This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The petitioner first claims that the trial court abused its discretion during the de novo hearing by precluding the proffered testimonies of John Yacovino, a deputy fire marshal of the city, and Thomas Kilroy, a city housing inspector. This claim is unavailing.

"It is well established that [t]he trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion. . . . [E]videntiary rulings will be overturned on appeal only where there was an abuse of discretion and a showing by the [petitioner] of substantial prejudice or injustice. . . . [I]n determining whether there has been an abuse of discretion, every reasonable presumption should be made in favor of the correctness of the trial court's

ruling . . . .'' (Internal quotation marks omitted.) *Burns* v. *RBS Securities, Inc.*, 151 Conn. App. 451, 461–62, 96 A.3d 566, cert. denied, 314 Conn. 920, 100 A.3d 851 (2014).

The following additional facts are relevant to our resolution of this claim. During the first day of the de novo hearing, the petitioner called Yacovino as his first witness. Immediately after the clerk had sworn in Yacovino, the city's counsel objected, arguing that Yacovino's impending testimony would be irrelevant with regard to whether the petitioner had violated the anti-blight ordinance. The court stated that it was uncertain as to the purpose of Yacovino's testimony, as the petition to reopen the assessment did not contain a statement of facts. The petitioner's counsel responded that Peter Miller, the city housing inspector who had issued the July 30, 2015 citation to the petitioner, had testified during the October 26, 2015 citation hearing that, without an administrative warrant and without the petitioner being present, he had entered and inspected the property on the day of the hearing. The petitioner's counsel proffered that Yacovino would testify that, in his capacity as a city fire marshal, he had interacted with the petitioner on numerous occasions over the course of ten to fifteen years regarding fire code violations and that the petitioner had never permitted him to enter the petitioner's property without the petitioner's express authorization and without the petitioner being present. In reply, the city's counsel argued, inter alia, that there were other witnesses available who could offer testimony regarding whether Miller's entry onto the property was permissible and that Yacovino's proposed testimony was not germane to the present action. The petitioner's counsel retorted that the issue was not whether the petitioner had permitted Miller to enter the property, but whether Miller, when called to testify, would be a credible witness.

Following argument, the court determined that the petitioner had called Yacovino as a witness out of order, stating: "I have the petition. I don't know what the issues are, at this point in time. And you're bringing [Yacovino in] and asking him questions about his interaction, with [the petitioner], over the years. It's – it's entirely out of order." On that basis, the court sustained the city's objection and excused Yacovino.

The petitioner next called Miller as a witness. Miller testified in relevant part as follows. During the September 28, 2015 citation hearing, the citation hearing officer granted the petitioner a thirty day extension of time to bring the property into compliance with the anti-blight ordinance. That same day, at the request of the petitioner and his counsel, Miller and a few other individuals met with the petitioner and his counsel on the property and conducted a "general tour" of the property. While on the property, a verbal agreement was reached pursuant to which the city was permitted to monitor the property periodically during the thirty day period. Miller interpreted the agreement to mean that he had authorization to enter the property at any time during the thirty day period regardless of whether the petitioner was present; however, Miller admitted that the petitioner had never told him expressly that he was permitted to enter the property unaccompanied at will. Thereafter, on October 26, 2015, before the start of the citation hearing held that day, Miller entered and inspected the property. The petitioner was not present during Miller's inspection.

After Miller finished testifying, the petitioner called Kilroy as a witness. At the outset, Kilroy testified that he had cited the petitioner for violating the anti-blight ordinance with respect to a different property in Meriden owned by the petitioner. The city's counsel objected, arguing that Kilroy's testimony regarding any anti-blight citation issued with respect to other property

owned by the petitioner was irrelevant. The petitioner's counsel proffered that he intended to elicit testimony from Kilroy that, during Kilroy's past interactions with the petitioner, the petitioner had never allowed Kilroy to enter his property unattended. According to the petitioner's counsel, Kilroy's testimony was relevant because it would discredit Miller's purported testimony that the petitioner had given him permission to enter the property at any time, regardless of whether the petitioner was present, during the thirty day period following the September 28, 2015 citation hearing. The court stated that it could take judicial notice that the petitioner and the city "have been fighting with each other, probably, longer than we have been around" and "do not see eye to eye," but it agreed with the city's counsel that testimony from Kilroy regarding his encounters with the petitioner that were unrelated to the property was irrelevant. Thereafter, Kilroy testified that he attended the September 28, 2015 citation hearing and that, during the hearing, there had been no agreement reached permitting the city to enter the property without the petitioner present. He further testified that he did not attend the subsequent meeting held on the property between Miller, the petitioner, and the petitioner's counsel, among others, on September 28, 2015.

The petitioner next called John Rutka, an acquaintance of the petitioner, to testify. Rutka testified that he was present at the September 28, 2015 meeting on the property and that he did not hear the petitioner agree to authorize Miller to enter the property unaccompanied at any time during the thirty day period following the September 28, 2015 citation hearing. The petitioner's counsel then called the petitioner as a witness. The petitioner testified in relevant part that he had never permitted Miller or any other city official to enter the property unless his counsel was present and the purpose of the entry was to discuss issues regarding the property.

On appeal, the petitioner claims that the court abused its discretion by precluding the proffered testimonies of Yacovino and Kilroy. The petitioner asserts that Yacovino and Kilroy would have testified that he had never permitted either of them, respectively, to enter his property without either him or his counsel present. The petitioner posits that the excluded evidence would have undermined the credibility of Miller, who, the petitioner contends, had testified that the petitioner had given him permission to enter the property, regardless of whether the petitioner was present, during the thirty day period following the September 28, 2015 citation hearing. According to the petitioner, Miller was a key witness whose testimony was critical to the court's determination that he had violated the anti-blight ordinance. We address the court's rulings as to Yacovino and Kilroy in turn.

A

We first consider the court's decision precluding Yacovino's proffered testimony. In precluding that testimony, the court determined that the petitioner had called Yacovino as a witness out of order. According to the petitioner, the purpose of Yacovino's proffered testimony was to attack Miller's credibility; however, Miller had not yet been called to testify. Precluding Yacovino's proffered testimony was reasonable given that the evidence that the proffered testimony was intended to discredit, namely, Miller's testimony, had not yet been admitted. The petitioner makes no argument that the court's determination that Yacovino was called out of order was improper. Thus, we conclude that the court did not abuse its discretion by precluding Yacovino's proffered testimony.

B

We next turn to the court's ruling precluding Kilroy's proffered testimony. Unlike Yacovino, the petitioner called Kilroy as a witness after Miller had testified. The

court determined that Kilroy's proffered testimony was irrelevant because it had no nexus to the property, but rather concerned Kilroy's interactions with the petitioner relating to a different property owned by the petitioner. We conclude that, even if the court's preclusion of Kilroy's proffered testimony constituted an abuse of discretion, the petitioner has failed to demonstrate that the error was harmful.

"Even when a trial court's evidentiary ruling is deemed to be improper, we must determine whether that ruling was so harmful as to require a new trial. . . . In other words, an evidentiary ruling will result in a new trial only if the ruling was both wrong and harmful. . . . Harmful error occurs in a civil action when the ruling would likely affect the result. . . . It is the [petitioner's] burden to show harmful error." (Internal quotation marks omitted.) *Suntech of Connecticut, Inc.* v. *Lawrence Brunoli, Inc.*, 173 Conn. App. 321, 347, 164 A.3d 36 (2017), appeal dismissed, 330 Conn. 342, 193 A.3d 1208 (2018). "In those instances wherein a party claims that the trial court improperly excluded testimony, we undertake a review of the relationship of the excluded evidence to the central issues in the case and whether that evidence would have been merely cumulative of admitted testimony." (Internal quotation marks omitted.) *Doyle* v. *Kamm*, 133 Conn. App. 25, 35, 35 A.3d 308 (2012).

Here, the petitioner sought to introduce Kilroy's proffered testimony to discredit Miller, who purportedly testified that the petitioner had permitted him to enter the property at any time, regardless of whether the petitioner was present, during the thirty day period following the September 28, 2015 citation hearing. Contrary to the petitioner's belief, however, Miller testified that the petitioner did *not* tell him expressly that he could enter the property alone at any time; instead, Miller testified that he *interpreted* the verbal agreement reached by the parties during the September 28, 2015

meeting on the property, permitting the city to monitor the property periodically during the thirty day period, as authorizing him to have such open access to the property. Thus, Kilroy's proffered testimony would not have operated to discredit Miller. Additionally, even if Miller had testified that the petitioner had given him express permission to enter the property unaccompanied at will, both Rutka and the petitioner testified that the petitioner had never given Miller such authorization. As a result, at most, Kilroy's proffered testimony would have been cumulative. For these reasons, even if the court had abused its discretion by precluding Kilroy's proffered testimony on the relevancy ground cited by the court, the petitioner has not established harmful error.

In sum, we conclude that (1) the court did not abuse its discretion by precluding Yacovino's proffered testimony, and (2) assuming that the court abused its discretion by precluding Kilroy's proffered testimony, the petitioner has failed to demonstrate that the court's ruling was harmful. Accordingly, the petitioner's claim challenging the court's preclusion of the proffered testimonies of Yacovino and Kilroy fails.

II

We next turn to the petitioner's claim that the trial court improperly concluded that the city did not deprive him of his due process rights.[8] Specifically, the petitioner asserts that the city failed to provide him with adequate notice and process in enforcing the anti-blight ordinance against him. We are not persuaded.

The petitioner's claim implicates his right to procedural due process. "[F]or more than a century the central meaning of procedural due process has been clear:

[8] We analyze the petitioner's due process claim under the federal constitution only because he has not provided an independent analysis of an alleged due process violation under the state constitution. See *Chief Disciplinary Counsel* v. *Rozbicki*, 326 Conn. 686, 694 n.8, 167 A.3d 351 (2017), cert. denied, U.S. , 138 S. Ct. 2583, 201 L. Ed. 2d 295 (2018).

Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. . . . It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner. . . . [T]hese principles require that a [party] have . . . an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally." (Internal quotation marks omitted.) *Merkel* v. *Hill*, 189 Conn. App. 779, 786–87, 207 A.3d 1115 (2019). "Whether a party was deprived of his due process rights is a question of law to which appellate courts grant plenary review." *McFarline* v. *Mickens*, 177 Conn. App. 83, 100, 173 A.3d 417 (2017), cert. denied, 327 Conn. 997, 176 A.3d 557 (2018).

In rejecting the petitioner's claim that the city had violated his due process rights, the court stated: "In this matter, the record reflects that the [petitioner] was first sent a notice of order informing him of possible blight violations on March 31, 2015.[9] On April [8], 2015, the [petitioner] requested a hearing before the [board] and was given a hearing on May 14, 2015. The [petitioner] was further granted a thirty day extension and a second thirty day extension [to come into compliance with the anti-blight ordinance]. After being issued a citation for noncompliance, the [petitioner] requested a hearing [before a citation hearing officer] and was given one. The [petitioner] was then granted an additional thirty day extension before the imposition of penalties. The court finds that there is no constitutional or legal basis on the part of the [petitioner] to claim a violation of his due process rights." (Footnote added.)

We agree with the court and conclude that the petitioner has failed to demonstrate a violation of his due process rights. As the court found, the city provided

[9] We presume that the court was referring to the March 11, 2015 letter sent to the petitioner by the city.

the petitioner with a written, detailed notice of the blight violations, conducted hearings regarding the blight violations at the petitioner's request, and granted the petitioner multiple extensions of time to address the blight violations. In addition, the record reflects that city officials offered to meet with the petitioner on the property to discuss the blight violations prior to the issuance of the July 30, 2015 citation, and city officials toured the property with the petitioner on September 28, 2015, prior to the imposition of the citation assessment on October 26, 2015. Accordingly, we reject the petitioner's due process claim.[10]

III

We now turn to the petitioner's claims that the court improperly concluded that (1) the anti-blight ordinance was not unconstitutionally vague as applied to him,[11] and (2) there was sufficient evidence demonstrating that he had violated the anti-blight ordinance. We are not persuaded.

The following additional facts are relevant to our resolution of these claims. The March 11, 2015 letter that the city sent to the petitioner, inter alia, notified the petitioner that the property was in violation of § 159-2 of the anti-blight ordinance because the conditions

[10] Throughout his appellate briefs, the petitioner identifies a litany of purported defects in the notice and process with respect to the city's enforcement of the anti-blight ordinance against him. We find no merit to these claimed defects and need not discuss them further.

[11] "The void for vagueness doctrine is a procedural due process concept that originally was derived from the guarantees of due process contained in the fifth and fourteenth amendments to the United States constitution. . . . [Our Supreme Court has] equated vagueness analysis under our state constitution with the corresponding federal constitutional analysis." (Internal quotation marks omitted.) *Wethersfield* v. *PR Arrow, LLC*, 187 Conn. App. 604, 630–31, 203 A.3d 645, cert. denied, 331 Conn. 907, 202 A.3d 1022 (2019). The petitioner has not provided an independent analysis of his void for vagueness claim under the state constitution and, therefore, we limit our analysis to the federal constitution. See *Chief Disciplinary Counsel* v. *Rozbicki*, 326 Conn. 694 n.8, 167 A.3d 351 (2017), cert. denied, U.S. , 138 S. Ct. 2583, 201 L. Ed. 2d 295 (2018).

described in parts B, F, G, H, I, N, and Q of the definition of "blight" set forth in § 159-3 of the anti-blight ordinance were present on the property.[12] The trial court concluded that there was no evidence that the anti-blight ordinance was unconstitutional as applied to the petitioner or that the city had enforced the ordinance arbitrarily against the petitioner. Additionally, the court concluded that there was sufficient evidence establishing that the petitioner had violated the anti-blight ordinance and that "[n]o 'law abiding taxpayer' should have to own a property in proximity to the conditions created and maintained by the [petitioner]."

As a preliminary matter, we discuss the scope of the petitioner's claims that we are reviewing. From what we can distill from his appellate briefs, the petitioner asserts that (1) the anti-blight ordinance, in defining "blight" in general, was impermissibly vague as applied to him because "different city inspectors, different members of a city board and/or different various homeowners could disagree as to whether a certain condition

[12] The March 11, 2015 letter provides in relevant part: "Your property at 48 Bradley Avenue, Meriden, CT is in violation of [§ 159-2 of the anti-blight ordinance] and the following issues are to be addressed:

"Collect and properly dispose of any garbage, trash, litter, rubbish or debris situated on the premises. (§ 159-3 – Blight-Parts 'B' and 'N' and Not Being Maintained-Part 'C')

"Remove the abandoned, wrecked or junked motor vehicles stored on the premises. (§ 159-3 – Blight-Parts 'B' and 'I' and Not Being Maintained-Part 'D')

"Correct the deteriorated and unkempt conditions of the lawn, landscaping and driveway. (§ 159-3 – Blight-Parts 'B' and 'I' and Not Being Maintained-Part 'E')

"Correct the conditions that create a substantial factor causing serious depreciation of property values in the neighborhood. (§ 159-3 – Blight-Part 'F')

"Correct the conditions that promote rodent harborage or infestation. (§ 159-3 – Blight-Part 'G')

"Trim and maintain the overgrown shrubs, brush and weeds. (§ 159-3 – Blight-Part 'H')

"Remove all trash, rubbish, rubble, tires, brush, used materials or discarded items of little or no value. (§ 159-3 – Blight-Part 'Q') . . . ."

of real property and/or an article of personal property is blight," and (2) certain specific portions of the "blight" definition were impermissibly vague as applied to him on various grounds. Additionally, the petitioner contends that there was no evidence introduced at the de novo hearing demonstrating that the conditions constituting blight existed on the property.

We need not consider whether each provision of the anti-blight ordinance identified by the petitioner was unconstitutionally vague as applied to him nor whether there was evidence demonstrating that every condition of blight for which the petitioner was cited was present on the property. Section 159-3 of the anti-blight ordinance, in defining the term "blight," provides that "[a]ny building or structure or any parcel of land in which *at least one* of the following conditions exists *shall* be considered blighted . . . ." (Emphasis added.) Thus, any *one* of the enumerated conditions listed in § 159-3, if proven to exist, is sufficient to render a property blighted pursuant to the anti-blight ordinance. The trial court did not refer to any specific provisions of the anti-blight ordinance in rejecting the petitioner's claims. Keeping in mind that, "[i]f faced with . . . an ambiguity, we construe the court's decision to support, rather than to undermine, its judgment" and that "our appellate courts do not presume error on the part of the trial court [but], [r]ather, we presume that the trial court, in rendering its judgment . . . undertook the proper analysis of the law and the facts"; (internal quotation marks omitted) *Barber* v. *Barber*, 193 Conn. App 190, 200–201, 219 A.3d 378 (2019); we may affirm the trial court's judgment if we conclude that the petitioner has failed to demonstrate that (1) any one of the provisions of the anti-blight ordinance that he was cited for violating was unconstitutionally vague as applied to him and (2) there was insufficient evidence establishing his noncompliance with that provision.

We conclude that the petitioner has not satisfied his burden with respect to part B of the definition of "blight" set forth in § 159-3 of the anti-blight ordinance, which provides that property that "is not being maintained" is considered blighted. Elsewhere in § 159-3, the phrase "not being maintained" is defined in relevant part as follows: "A structure is not being maintained if any of the following conditions apply: . . . C. Garbage, trash, litter, rubbish, or debris are situated on the premises."

A

We first consider whether § 159-3 of the anti-blight ordinance, insofar as it provides that property is blighted if it is not being maintained in that "[g]arbage, trash, litter, rubbish, or debris are situated on the premises," was unconstitutionally vague as applied to the petitioner. We conclude that it was not.

"As a threshold matter, it is necessary to discuss the applicable standard of review. A statute is not void for vagueness unless it clearly and unequivocally is unconstitutional, making every presumption in favor of its validity. . . . The party challenging a statute's constitutionality has a heavy burden of proof; the unconstitutionality must be proven beyond all reasonable doubt. . . . Additionally, in a vagueness challenge, such as this, civil statutes can be less specific than criminal statutes and still pass constitutional muster. . . . To prove that a statute is unconstitutionally vague, the challenging party must establish that an ordinary person is not able to know what conduct is permitted and prohibited under the statute. . . .

"To demonstrate that [a statute] is unconstitutionally vague as applied to [him], the [petitioner] therefore must . . . demonstrate beyond a reasonable doubt that [he] had inadequate notice of what was prohibited or that [he was] the victim of arbitrary and discriminatory enforcement. . . . [T]he void for vagueness doctrine embodies two central precepts: the right to fair

warning of the effect of a governing statute . . . and the guarantee against standardless law enforcement. . . . If the meaning of a statute can be fairly ascertained a statute will not be void for vagueness since [m]any statutes will have some inherent vagueness, for [i]n most English words and phrases there lurk uncertainties. . . . The determination of whether a statutory provision is unconstitutionally vague is a question of law over which we exercise de novo review." (Citations omitted; internal quotation marks omitted.) *Ogden* v. *Zoning Board of Appeals*, 157 Conn. App. 656, 668–69, 117 A.3d 986, cert. denied, 319 Conn. 927, 125 A.3d 202 (2015). The foregoing principles apply equally to municipal ordinances. See, e.g., id., 668–72 (analyzing claim that trial court erroneously concluded that zoning regulations were unconstitutionally vague as applied); *Booker* v. *Jarjura*, 120 Conn. App. 1, 24–26, 990 A.2d 894 (analyzing claim that trial court erroneously concluded that provision of city charter was not unconstitutionally vague as applied), cert. denied, 297 Conn. 909, 995 A.2d 636 (2010).

The petitioner does not contend on appeal that the terms "[g]arbage, trash, litter, rubbish, or debris" pursuant to § 159-3 of the anti-blight ordinance are ambiguous such that he had inadequate notice as to whether those conditions existed on the property;[13] rather, the only cognizable argument that the petitioner presents in support of his contention that the provision of the anti-blight ordinance at issue was impermissibly vague as applied to him is that different city officials and different homeowners could disagree as to whether the conditions on his property constituted blight. In essence, the petitioner appears to be raising the specter of the anti-blight ordinance being applied in an arbitrary and discriminatory manner.

[13] The terms "litter," "rubbish," and "debris" are defined in § 159-3 of the anti-blight ordinance. See footnote 2 of this opinion.

"To demonstrate that [a] statute's vagueness gives an agency unbridled discretion to enforce the statute arbitrarily and discriminatorily, the challenging party must establish that he was the victim of such arbitrary and discriminatory enforcement." *Connecticut Building Wrecking Co.* v. *Carothers*, 218 Conn. 580, 592, 590 A.2d 447 (1991). The petitioner argues that the city arbitrarily targeted him as evidenced by a small claims decision, admitted into evidence during the de novo hearing, wherein a magistrate rejected a claim submitted by him alleging that the city had wrongfully destroyed flowers and small trees that he had planted on a portion of his property. In rejecting the petitioner's claim, the magistrate concluded that (1) the city had failed to follow the procedures set forth in its ordinances in removing the plants and trees but (2) the petitioner had wrongfully planted the flowers and trees without a permit, such that he failed to suffer any compensable damages.[14] We are not persuaded that the city's failure to follow its ordinances in an unrelated matter involving the petitioner establishes that it enforced the anti-blight ordinance against the petitioner in an arbitrary and discriminatory manner. In addition, the petitioner thinly asserts that the city arbitrarily targeted him because Miller testified during the de novo hearing that he used a "zoom" feature on his cell phone to photograph the property. We can discern no visage of arbitrary and discriminatory enforcement on the basis of that evidence. Accordingly, the petitioner's void for vagueness claim fails.

B

We next turn to the question of whether there was insufficient evidence establishing that "[g]arbage, trash, litter, rubbish, or debris" was situated on the property

[14] The magistrate also concluded that the petitioner had failed to present evidence concerning the actual value of the flowers and trees.

in violation of the § 159-3 of the anti-blight ordinance. This issue warrants little discussion.

"Because the . . . claim challenges the sufficiency of the evidence, which is based on the court's factual findings, the proper standard of review is whether, on the basis of the evidence, the court's finding . . . was clearly erroneous. . . . In other words, a court's finding of fact is clearly erroneous and its conclusions drawn from that finding lack sufficiency when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Moreover, we repeatedly have held that [i]n a [proceeding] tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony. . . . Where there is conflicting evidence . . . we do not retry the facts or pass on the credibility of the witnesses. . . . The probative force of conflicting evidence is for the trier to determine." (Internal quotation marks omitted.) *Seale* v. *GeoQuest, Inc.*, 189 Conn. App. 587, 592, 208 A.3d 326 (2019). Here, the petitioner cites to his own testimony elicited during the de novo hearing that he cleaned the property, thereby bringing it into compliance with § 159-3 of the anti-blight ordinance. The petitioner, however, overlooks the photographs of the property introduced into evidence during the hearing and Miller's testimony, which amply demonstrate that "[g]arbage, trash, litter, rubbish, or debris" was situated on the property. Accordingly, we find no error in the trial court's determination that there was sufficient evidence demonstrating that the property was blighted.

The judgment is affirmed.

In this opinion the other judges concurred.

GEORGE M. PURTILL, ADMINISTRATOR (ESTATE OF ADELMA GRENIER SIMMONS) *v.* EDWARD WERNER COOK (AC 42379)

Elgo, Devlin and Harper, Js.

Syllabus

The plaintiff, the administrator of the estate of A, sought, by way of summary process, to regain possession of certain premises occupied by the defendant. The defendant previously held a life estate in the premises but had his life estate terminated by the Probate Court. Thereafter, the plaintiff served the defendant with a notice to quit and, when the defendant failed to vacate the premises, the plaintiff initiated a summary process action. The defendant was defaulted for failure to plead and the court rendered a judgment of possession in favor of the plaintiff. The defendant filed a motion to open and an application for a stay of execution. The court denied the motion to open but granted a limited, final stay of execution for thirty days. The defendant subsequently filed a claim of exemption from eviction on behalf of C Co., as occupant of the property, which the court dismissed, and the defendant appealed to this court. *Held*:

1. The trial court did not abuse its discretion in denying the defendant's motion to open the judgment of default; the defendant failed to articulate a good defense and had not met the standard for opening a judgment pursuant to statute (§ 52-212) because he failed to demonstrate that he had been prevented by mistake, accident or other reasonable cause from making his defense and from timely filing his answer.
2. This court lacked subject matter jurisdiction over the defendant's challenge to the trial court's order granting him a limited stay because the claim was moot; subsequent to the commencement of this appeal, an automatic stay arose pursuant to statute (§ 47a-35), which was then vacated by the trial court following the plaintiff's motion to vacate because the defendant failed to provide security as set forth in § 47-35a, and this court denied the defendant's motion to stay eviction and, thus, there was no practical relief that this court could afford the defendant by reviewing his claim regarding the propriety of the limited stay granted in December, 2018; moreover, the defendant's challenge to the court's ruling granting a limited stay was procedurally improper as issues regarding a stay of execution cannot be raised on direct appeal.
3. This court lacked subject matter jurisdiction over the defendant's claim that the trial court improperly dismissed the claim of exemption for eviction that he filed on behalf of C Co. because the defendant lacked standing; the defendant was not an attorney licensed to practice law in this state and, therefore, he lacked standing to maintain any claim on behalf of C Co.

Argued November 20, 2019—officially released April 14, 2020

Procedural History

Summary process action brought to the Superior Court in the judicial district of Tolland, where the defendant was defaulted for failure to plead; thereafter, the court, *Macierowski*, *J.*, rendered a judgment of possession in favor of the plaintiff; subsequently, the defendant filed motions to open the judgment, for a stay of execution, and for exemption from eviction on behalf of a corporate occupant of the premises; thereafter, the court, *Macierowski*, *J.*, denied the motion to open, granted a limited, final stay of thirty days, and dismissed the claim of exemption, and the defendant appealed to this court. *Appeal dismissed in part*; *affirmed in part*.

Edward W. Cook, self-represented, the appellant (defendant).

George M. Purtill, with whom was *Kirk D. Tavtigian*, for the appellee (plaintiff).

Opinion

ELGO, J. This case concerns a summary process action commenced by the plaintiff, George M. Purtill, the successor administrator of the estate of Adelma Grenier Simmons (decedent). The self-represented defendant, Edward Werner Cook, appeals from the judgment of the trial court (1) denying his motion to open a judgment of default for failure to plead, (2) granting a limited stay of execution in his favor, and (3) dismissing a claim for exemption from eviction that he filed on behalf of "Caprilands Institute, Inc." (corporation). We affirm the judgment of the trial court denying the defendant's motion to open and dismiss the remainder of his appeal.

The record reveals the following relevant facts. The decedent previously owned real property located at 534 Silver Street in Coventry (property) that contained a residence, various outbuildings, and approximately sixty-two acres of land. The decedent died in 1997, and

the defendant thereafter was appointed executor of her estate. Pursuant to the terms of her will, a charitable entity was to operate an herb farm on the property "for the improvement of public health and human life." The will also granted the defendant a life estate in the decedent's "personal residence" on the property. It further obligated the defendant to maintain the property and operate it as a charitable entity.

On September 29, 2017, the Probate Court removed the defendant as the executor of the decedent's estate pursuant to General Statutes § 45a-242, concluding that he had failed to manage the assets of the estate properly and that he was embroiled in multiple conflicts of interest, including his positions as creditor, life tenant, trustee, and executor. See *Cook* v. *Purtill*, 195 Conn. App. 828, 829, A.3d (2020). The court then appointed the plaintiff as successor administrator of the decedent's estate.

In 2018, the Probate Court concluded that the defendant had "allowed the entire property to fall into a state of disrepair, rendering it useless as a charitable entity without the infusion of a substantial amount of money. . . . [T]he estate is without any liquid assets and in fact owes a significant amount of money to various creditors. . . . [The defendant's] continued control over the entire property has rendered it impossible for the current administrator to exercise the necessary control . . . to develop it into the charitable enterprise the [decedent] had envisioned." The Probate Court further found that the life estate in question "was not an absolute grant of either title or authority. It came to him together with the obligation both to maintain the property *and* to use it for charitable purposes. [The defendant] has done neither. The court concludes that no one will be able to advance the charitable purpose as long as [the defendant] is in the residence and has the ability to exert any control over the property." (Emphasis in original.) The Probate Court thus terminated the

defendant's life estate in the personal residence on the property and authorized the plaintiff "to seek and procure whatever orders are necessary to have [the defendant] removed from the premises." The defendant appealed from that judgment to the Superior Court, which rendered a judgment of dismissal on August 27, 2018.[1]

A notice to quit possession of the property was served on the defendant on September 19, 2018. When the defendant failed to vacate the property, the plaintiff commenced this summary process action. The plaintiff thereafter filed a motion for default for failure to plead, which the court granted, and a judgment of possession was entered in favor of the plaintiff on November 21, 2018.

The defendant filed a motion to open on November 26, 2018, which stated in its entirety: "I request that the judgment in the case named above be opened because: Plaintiff filed two notices and then withdrew one and Defendant thought both were withdrawn." On that same date, the defendant filed an application for a stay of execution. The corporation then filed a claim of exemption from eviction on December 3, 2018. That filing listed the corporation as the occupant of the property and the defendant as its attorney. Following a hearing held on December 7, 2018, the court denied the defendant's motion to open and dismissed the corporation's claim of exemption. With respect to the application for a stay of execution, the court granted "a limited, final stay of execution for a period of thirty days to allow the defendant to move animals, antiques, and whatever other possessions that need to be removed from the

[1] The defendant did not appeal from that judgment of dismissal. Although the defendant now alleges, in both his appellate brief and at oral argument before this court, that the Probate Court acted "lawlessly," the propriety of the Probate Court proceedings is not properly before this court. See *Boisvert* v. *Gavis*, 332 Conn. 115, 137 n.11, 210 A.3d 1 (2019); *Russell* v. *Russell*, 61 Conn. App. 106, 107 n.1, 762 A.2d 523 (2000).

property," subject to certain conditions. On December 12, 2018, the defendant filed the present appeal, in which he challenges the propriety of all three rulings.

I

On appeal, the defendant claims that the court improperly denied his motion to open the November 21, 2018 judgment of default for failure to plead. We disagree.

Our review of a ruling on a motion to open a default judgment is governed by the abuse of discretion standard. See *Ruddock* v. *Burrowes*, 243 Conn. 569, 571 n.4, 706 A.2d 967 (1998). "[T]he determination of whether to set aside [a] default [for failure to plead] is within the discretion of the trial court . . . and will not be disturbed unless that discretion has been abused or where injustice will result. In the exercise of its discretion, the trial court may consider not only the presence of mistake, accident, inadvertence, misfortune or other reasonable cause . . . factors such as [t]he seriousness of the default, its duration, the reasons for it and the degree of contumacy involved . . . but also, the totality of the circumstances, including whether the delay has caused prejudice to the nondefaulting party." (Internal quotation marks omitted.) *Bohonnon Law Firm, LLC* v. *Baxter*, 131 Conn. App. 371, 381, 27 A.3d 384, cert. denied, 303 Conn. 902, 31 A.3d 1177 (2011). In reviewing the trial court's exercise of its discretion, we must "make every reasonable presumption in favor of its action. . . . The manner in which [this] discretion is exercised will not be disturbed so long as the court could reasonably conclude as it did." (Internal quotation marks omitted.) *Chapman Lumber, Inc.* v. *Tager*, 288 Conn. 69, 106, 952 A.2d 1 (2008).

In its February 15, 2019 memorandum of decision, the court articulated the basis of its decision to deny the defendant's motion to open, stating: "In denying the motion to open, the court found that the defendant

failed to articulate a good defense and also failed to demonstrate that he had been prevented by mistake, accident or other reasonable cause from making his defense as required by General Statutes § 52-212. Nor could the court find other reasonable cause to open the judgment. The sole defense set forth in the defendant's answer stated that he purportedly leased his life tenancy to the [corporation] but this did not provide him with a good defense to this summary process action brought against him individually based upon the termination of his life tenancy. At the hearing, the defendant's arguments once again focused on alleged errors and improprieties in the Probate Court proceedings. The defendant did not raise a defense or allege a right to occupy, separate from his life tenancy which was terminated by a final judgment not reviewable by this court. The court was also not persuaded that the plaintiff's mistaken filing of both a motion for default for failure to appear and a motion for default for failure to plead, followed by a withdrawal of the former, was such an accident or mistake as to prevent the defendant from filing a timely answer. The withdrawal clearly related to only the one motion. The filing of the motions in the first instance, put the defendant on notice of his obligation to answer the complaint. Furthermore, the defendant had appeared and actively participated in pleadings, yet still failed to timely file his answer. Accordingly, the court found that the defendant had not met the standard for opening the judgment pursuant to . . . § 52-212."

On appeal, the defendant has provided no good basis to disturb that conclusion. We therefore conclude that the court did not abuse its discretion in denying the defendant's motion to open.

II

The defendant also challenges the December 7, 2018 order of the trial court granting a limited stay of execution in his favor "for a period of thirty days to allow

the defendant to move animals, antiques, and whatever other possessions that need to be removed from the property . . . .'' In light of intervening circumstances that arose subsequent to the commencement of this appeal, we conclude that this claim is moot.

''Mootness presents a circumstance wherein the issue before the court has been resolved or had lost its significance because of a change in the condition of affairs between the parties. . . . Since mootness implicates subject matter jurisdiction . . . it can be raised at any stage of the proceedings. . . . A case becomes moot when due to intervening circumstances a controversy between the parties no longer exists. . . . An issue is moot when the court can no longer grant any practical relief.'' (Internal quotation marks omitted.) *Statewide Grievance Committee* v. *Burton*, 88 Conn. App. 523, 529, 871 A.2d 380 (2005), aff'd, 282 Conn. 1, 917 A.2d 966 (2007). Our review of the question of mootness is plenary. *Wozniak* v. *Colchester*, 193 Conn. App. 842, 852, 220 A.3d 132, cert. denied, 334 Conn. 906, 220 A.3d 37 (2019).

The following undisputed procedural facts are relevant to this claim. Subsequent to the commencement of this appeal, the defendant filed an additional motion for a stay of execution, which the trial court denied. The defendant then filed a motion for review of that order with this court. This court granted review and vacated the trial court's order, noting that an automatic stay arose under General Statutes § 47a-35.

On January 22, 2019, the plaintiff filed a motion to vacate that automatic stay, claiming that (1) the defendant's appeal was taken solely for purposes of delay and (2) the defendant had failed to post a bond, as required under § 47a-35. The trial court held a hearing on February 1, 2019, at which the defendant acknowledged that he no longer resided at the property. In its subsequent memorandum of decision, the trial court

found that "the defendant has taken an appeal solely for the purpose of delay and that the due administration of justice requires that any appellate stay be terminated." The court further found that "any prolonged stay of the November 21, 2018 judgment of possession will impede efforts to secure and care for the [property] and fulfill [the decedent's] charitable intentions. Further delay will cause continuing harm to the estate, whose property the Probate Court found the defendant neglected and squandered over the course of twenty years, undermining the Probate Court's order." In addition, the court found that the defendant had "failed to post a bond and also failed to move to set a bond or to make use and occupancy payments. Having failed to comply with the affirmative duty to provide security, as set forth in § 47a-35a, the stay of execution provided for in [that statute] does not apply." (Internal quotation marks omitted.) The court thus granted the plaintiff's motion to terminate the automatic appellate stay.

The defendant filed a motion seeking reconsideration and reargument of that decision, which the trial court denied. The defendant then filed a motion to stay eviction with this court on March 1, 2019. By order dated March 20, 2019, this court denied the defendant's motion.

As a result, there is no practical relief that this court can afford the defendant by reviewing his claim regarding the propriety of the limited stay that the court granted in December 2018. Because it has become moot, this court lacks subject matter jurisdiction over that claim.[2]

[2] We further note that the defendant's challenge to the court's ruling on his application for a stay of execution is procedurally improper. As this court has explained, "[p]ursuant to Practice Book § 61-14, [t]he sole remedy for any party desiring the court to review an order concerning a stay of execution shall be by motion for review under Section 66-6. Issues regarding a stay of execution cannot be raised on direct appeal." (Internal quotation marks omitted.) *Chief Disciplinary Counsel* v. *Rozbicki*, 150 Conn. App. 472, 486 n.10, 91 A.3d 932, cert. denied, 314 Conn. 931, 102 A.3d 83 (2014).

III

The defendant also contends that the court improperly dismissed the claim of exemption from eviction that he filed on behalf of the corporation. That claim requires little discussion.

In dismissing the claim of exemption, the court stated that it "cannot accept a pleading on behalf of a corporation from anyone other than its attorney." That ruling comports with well established precedent. As this court observed in dismissing a similar claim, "the defendant's first claim is improper because he is not an attorney and, therefore, may not raise claims on behalf of an entity or individual other than himself. Any person who is not an attorney is prohibited from practicing law, except that any person may practice law, or plead in any court of this state in his own cause. General Statutes § 51-88 (d) (2). The authorization to appear [as a self-represented party] is limited to representing one's own cause, and does not permit individuals to appear . . . in a representative capacity. In Connecticut, a corporation may not appear pro se. . . . A corporation may not appear by an officer of the corporation who is not an attorney." (Internal quotation marks omitted.) *Certo* v. *Fink*, 140 Conn. App. 740, 747 n.4, 60 A.3d 372 (2013); see also *Henderson* v. *Lagoudis*, 148 Conn. App. 330, 333 n.1, 85 A.3d 53 (2014) ("[a] nonattorney does not have authority to represent a corporation").

The defendant in the present case is not an attorney licensed to practice law in this state. He, therefore, lacks standing to maintain any claim on behalf of the corporation. Accordingly, this court lacks subject matter jurisdiction over the defendant's claim. See *J.E. Robert Co.* v. *Signature Properties, LLC*, 309 Conn. 307, 318, 71 A.3d 492 (2013) ("[w]here a party is found to lack standing, the court is consequently without subject matter jurisdiction to determine the cause" (internal quotation marks omitted)); *Connecticut Assn. of*

Boards of Education, Inc. v. *Shedd*, 197 Conn. 554, 557, 499 A.2d 797 (1985) ("[i]f no standing exists, this court lacks jurisdiction to decide the [claim] on its merits").

The appeal is dismissed with respect to the defendant's challenge to the court's determinations regarding the stay of execution and the corporation's claim for exemption; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

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