CONNECTICUT LAW JOURNAL

Published in Accordance with General Statutes Section 51-216a

VOL. LXXXII No. 51 June 22, 2021 158 Pages

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CONNECTICUT LAW JOURNAL
(ISSN 87500973)

Published by the State of Connecticut in accordance with the provisions of General Statutes § 51-216a.

Commission on Official Legal Publications
Office of Production and Distribution
111 Phoenix Avenue, Enfield, Connecticut 06082-4453
Tel. (860) 741-3027, FAX (860) 745-2178
www.jud.ct.gov

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Published Weekly – Available at https://www.jud.ct.gov/lawjournal

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The deadline for material to be published in the Connecticut Law Journal is Wednesday at noon for publication on the Tuesday six days later. When a holiday falls within the six day period, the deadline will be noon on Tuesday.

CONNECTICUT REPORTS

Vol. 336

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

777 RESIDENTIAL, LLC *v.* THE METROPOLITAN DISTRICT COMMISSION
(SC 20339)

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

Syllabus

Pursuant to statute (§ 7-249), after the acquisition or construction of a sewerage system, a municipality's water pollution control authority may levy benefit assessments on the owners of properties and buildings that are benefited thereby, and "[b]enefits to buildings or structures constructed or expanded after the initial assessment may be assessed as if the new or expanded buildings or structures had existed at the time of the initial assessment."

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

The plaintiff appealed to the trial court, challenging a supplemental sewerage benefit assessment levied pursuant to § 7-249 by the defendant, the Metropolitan District Commission, against certain real property owned by the plaintiff after the plaintiff converted a commercial office building on the property into a 285 unit residential condominium community. The plaintiff claimed that the defendant lacked authority to levy the supplemental assessment, reasoning that, since the initial assessment against the owners of the property when it was a two-story building in 1849, there had been no new construction or expansion of the building or structures on the property, as required by § 7-249 for the levying of a supplemental assessment. The plaintiff further claimed that the defendant violated § 7-249 by using a different method for calculating the supplemental assessment than was used for calculating the initial assessment. The parties filed motions for summary judgment with respect to the issue of whether the defendant had authority to levy the challenged assessment. The trial court denied the plaintiff's motion for summary judgment and granted the defendant's motion, agreeing with the defendant that the creation of the residential units constituted the construction of structures within the meaning of § 7-249, thereby authorizing it to levy a supplemental assessment. After a trial to the court, however, the court rendered judgment for the plaintiff, concluding that the defendant's calculation of the supplemental assessment violated § 7-249 because the defendant did not use the street frontage method in calculating the supplemental assessment, which was the method used to calculate the initial assessment. The court ordered the defendant to recalculate the assessment in accordance with the foregoing method and to return the amount paid by the plaintiff if the property's street frontage remained unchanged since the initial assessment or, if the street frontage had changed, to assess accordingly. Thereafter, the defendant appealed, claiming that the trial court incorrectly determined that it was required to use the same method to calculate the amount of the supplemental assessment as the method that had been used to calculate the initial assessment in 1849. The plaintiff cross appealed, claiming that the trial court improperly granted the defendant's motion for summary judgment because the conversion of the building into residential units did not constitute the construction of structures within the meaning of § 7-249. *Held*:

1. The trial court properly granted the defendant's motion for summary judgment, as there was no genuine issue of material fact with respect to the defendant's authority's to levy the supplemental assessment against the plaintiff's property: having reviewed dictionary definitions of the term "structure" and the treatment of that term in prior case law, this court determined that the term "structure," as used in § 7-249, is broader than the term "building," and that the trial court correctly concluded, under the broad definition of "structure," that the interior renovations to the existing building on the plaintiff's property, namely, the creation of 285 residential units, constituted the construction of

structures within the meaning of § 7-249, as new units were constructed on each floor of the existing building with each unit containing a new kitchen, bathroom, bedroom and living area, such that each unit was artificially built up or composed of parts joined together to create separate residences inside the existing building; moreover, there was no merit to the plaintiff's claim that the broad definition of "structure" should not apply because that term had acquired a peculiar meaning in real property law that was coextensive with the term "building," as the statutes governing real property on which the plaintiff relied did not have a consistent definition of "structure" or consistently define those terms as being coextensive, thereby indicating that the term "structure" had not acquired a peculiar meaning in real property law.

2. The trial court incorrectly determined that § 7-249 required the defendant to use the same method to calculate the supplemental assessment as was used to calculate the initial assessment: the plaintiff could not prevail on its claim that this court's analysis of § 7-249 in *Tower Business Park Associates Number One Ltd. Partnership* v. *Water Pollution Control Authority* (213 Conn. 112) required that the method used to calculate the initial assessment be the same one used for calculating the supplemental assessment, as that case never addressed whether new or expanded buildings or structures could be assessed using a different method of calculation than that used for the initial assessment; moreover, a review of the language of § 7-249 led this court to conclude that § 7-249 must grant water pollution control authorities discretion in deciding the method to apply in assessing supplemental benefits, and that method may be different from the one utilized for the initial assessment, provided that that method would have been authorized under the rules applicable at the time of the initial assessment; furthermore, the plaintiff failed to offer any evidence to indicate that the defendant used a method that would not have been authorized under the rules governing such assessments in 1849, when the initial assessment was levied.

Argued April 29—officially released September 4, 2020**

Procedural History

Appeal from a supplemental sewer assessment levied against certain of the plaintiff's real property, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Noble*, *J.*, granted the defendant's motion for summary judgment and rendered judgment thereon; thereafter, the court granted the plaintiff's motion for reconsideration, vacated the judgment in part and restored the case to the trial docket;

** September 4, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

subsequently, the case was tried to the court, *Budzik*, *J.*; judgment for the plaintiff, from which the defendant appealed and the plaintiff cross appealed. *Reversed in part*; *further proceedings*.

John W. Cerreta, with whom, on the brief, were *Carl R. Nasto*, assistant district counsel, and *William J. Sweeney*, for the appellant-cross appellee (defendant).

Joseph E. Faughnan, with whom were *Philip G. Kent* and, on the brief, *Caleb F. Hamel* and *Jason L. Stevenson*, for the appellee-cross appellant (plaintiff).

Opinion

D'AURIA, J. In this appeal and cross appeal, we must construe General Statutes § 7-249 to determine whether the defendant, The Metropolitan District Commission, had authority to levy a supplemental sewerage benefit assessment (supplemental assessment) against the property at 777 Main Street, Hartford, owned by the plaintiff, 777 Residential, LLC, and, if so, whether it used a proper methodology in calculating that assessment. Since at least 1849, there has been a property located at 777 Main Street. In 1849, a two-story building used as a bank was at that address. At that time, a new sewerage line was constructed under Main Street, connecting the property to the Hartford sewerage system. As a result of that construction, a predecessor of the defendant levied a sewerage benefit assessment against the owners of this property in the amount of $215, calculated on the basis of the street frontage[1] of the two-story building. The

[1] Testimony at trial established that, to calculate an assessment on the basis of street frontage, the number of feet that the property occupies on the public street is multiplied by a set rate. Evidence admitted at trial showed that, since 1968, the defendant had adopted schedules of flat rate assessments. In 1968, the defendant calculated assessments that were based on flat rates for street frontage, area charge, and acreage. The schedule of flat rate assessments was amended in 1995 and again in 2017. The record, however, does not establish what methods other than street frontage, if any, were authorized or used in 1849, or the flat rates, if any were adopted, for calculating assessments under those methods. Additionally, although the plaintiff offered some evidence that the property occupied the same

assessment was paid in a onetime lump sum payment. In 1966, this building was demolished, and a new twenty-six story commercial office building was constructed at 777 Main Street. No supplemental assessment was levied as a result of this construction.

In 2012, the plaintiff purchased the property at 777 Main Street. After receiving the necessary building permits and approvals, the plaintiff converted the property from a commercial office building into a 285 unit residential condominium community. For each residential unit, the plaintiff constructed a kitchen, bathroom, bedroom, and living area, creating 285 separate residences inside the already existing building. In 2015, after construction had begun, the defendant notified the plaintiff that it was levying a supplemental assessment on the property in the amount of $473,330, calculated on the basis of the schedule of flat rates the defendant had adopted in 1995, setting a flat rate of $1655 per residential unit. The defendant arrived at the $473,330 figure by multiplying this flat rate by the number of residential units, which it set at 286 units, rather than 285 units.

After the supplemental assessment was approved following a public hearing, the plaintiff paid the supplemental assessment under protest in a single lump sum and appealed to the Superior Court pursuant to General Statutes § 7-250.[2] In its appeal, the plaintiff challenged the defendant's authority to levy the supplemental assessment on the ground that, after the initial assessment, there had been no "new construction or expansion of

number of feet on the public street in 1849 as it does today, the trial court made no finding in this regard.

[2] General Statutes § 7-250 provides in relevant part: "(a) . . . [A]ny person aggrieved by any assessment may appeal to the superior court for the judicial district wherein the property is located and shall bring any such appeal to a return day of said court not less than twelve nor more than thirty days after service thereof and such appeal shall be privileged in respect to its assignment for trial. . . ."

the buildings or structures on the property," as required under § 7-249 for the levying of a supplemental assessment. The plaintiff also claimed that the defendant had improperly used a different method for calculating the assessment than was used for calculating the initial assessment in violation of § 7-249. It is these arguments that the parties present to us on appeal.[3]

The parties filed motions for summary judgment as to the plaintiff's claim regarding the defendant's authority to levy the supplemental assessment, with both parties arguing that there was no genuine issue of material fact as to whether the defendant had authority to levy the supplemental assessment. The plaintiff argued that the defendant had no authority to levy the supplemental assessment because conversion of the property from a commercial space to residential units did not constitute construction or expansion of a building or structure

[3] In addition to challenging the defendant's authority to levy the supplemental assessment, the plaintiff claimed in its original appeal to the Superior Court that the supplemental assessment (1) was excessive, as it was calculated on the basis of 286 dwelling units, not 285 dwelling units, and (2) violated the fair and reasonable standard under General Statutes § 7-255, which governs sewerage connection and use charges. Although the plaintiff, in its initial pleading on appeal to the Superior Court, did not challenge the propriety of the method used by the defendant to calculate the supplemental assessment, the plaintiff argued at trial that the supplemental assessment was improper because it was calculated through the use of an incorrect method. Following the close of evidence and closing argument, the plaintiff requested permission to amend its appeal to conform the allegations to the evidence presented at trial. The trial court granted the plaintiff's request over the defendant's objection. The plaintiff then added a new count, claiming that the supplemental assessment "was improperly calculated using the incorrect methodology in violation of the requirements of [§ 7-249]." It is this count on which the trial court rendered judgment in favor of the plaintiff and that is the subject of the defendant's appeal to this court. The trial court found in the defendant's favor on the "fair and reasonable" issue under § 7-255, an issue the plaintiff has not challenged on appeal. Although the trial court found that the proper number of residential units was 285, it determined that it did not need to decide whether the supplemental assessment was excessive because it determined that the defendant used an improper method to calculate the supplemental assessment.

under § 7-249, as the size of the building remained unchanged. The defendant argued to the contrary that it had authority because creation of 285 residential units constituted construction of new "structures," namely, the residential units. Interpreting the term "structures" to have a "wide meaning,"[4] the trial court agreed with the defendant that the creation of the residential units constituted construction of structures, thereby authorizing the defendant to levy a supplemental assessment. Thus, the trial court granted the defendant's motion for summary judgment and denied the plaintiff's motion for summary judgment on this issue.[5] A bench trial was set to determine all remaining claims.

After trial, the trial court concluded that the defendant's supplemental assessment calculation violated § 7-249 because it should have been calculated on the basis of street frontage, as was the initial assessment. The trial court therefore invalidated the assessment and ordered the defendant to recalculate the supplemental assessment using the proper method. The court further ordered that, "[i]f the street frontage associated with 777 Main Street has remained unchanged since the initial assessment, the [defendant] is directed to return the amount paid by [the plaintiff] . . . [and, if] the street frontage . . . has changed since the initial assessment, [the defendant] is directed to make the

[4] Because § 7-249 does not define the term "structure," the trial court looked to both the dictionary definition of the term and this court's prior case law defining the term, concluding that the term "structure" is broadly defined as "[a]ny construction, production, or piece of work artificially built up or composed of parts purposefully joined together . . . ." (Internal quotation marks omitted.)

[5] Subsequent to its rulings on the parties' motions for summary judgment, the trial court granted the plaintiff's motion for reargument or reconsideration and vacated only that portion of its summary judgment ruling as to the amount of the supplemental assessment. The court stated that its ruling as to the amount was based on a misapprehension of fact. The court thus restored the case to the trial docket for a hearing on the issue of whether the assessment was fair and reasonable, as required by General Statutes § 7-255.

appropriate calculation in compliance with this memorandum of decision."

The defendant appealed to the Appellate Court, claiming that the trial court incorrectly determined that it had to use the same method to calculate the supplemental assessment as had been used to calculate the initial assessment in 1849. The plaintiff cross appealed, claiming that the trial court improperly rendered summary judgment in favor of the defendant on the ground that the defendant had authority to levy the supplemental assessment because the plaintiff argued that conversion of the building into residential units did not constitute construction of structures under § 7-249. The appeal and cross appeal were transferred to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

We agree with the defendant both that the trial court correctly determined that the defendant had authority to levy the supplemental assessment and that the trial court incorrectly determined that it used an improper method in calculating the supplemental assessment. Accordingly, we uphold the trial court's decision to render summary judgment in favor of the defendant and reverse the trial court's judgment regarding the claim of improper methodology. Additional facts will be set forth as required.

I

The claims raised by both parties center on the proper interpretation of § 7-249[6]—whether the creation of the

[6] General Statutes § 7-249 provides in relevant part: "At any time after a municipality, by its water pollution control authority, has acquired or constructed, a sewerage system or portion thereof, the water pollution control authority may levy benefit assessments upon the lands and buildings in the municipality which, in its judgment, are especially benefited thereby, whether they abut on such sewerage system or not, and upon the owners of such land and buildings, according to such rule as the water pollution control authority adopts, subject to the right of appeal as hereinafter provided. Benefits to buildings or structures constructed or expanded after the initial assessment may be assessed as if the new or expanded buildings or structures had existed at the time of the initial assessment. Such benefits and

residential units constituted construction of "structures," and, if so, what method was required to calculate the supplemental assessment. We are therefore faced with "an issue of statutory construction requiring a conclusion of law. When construing a statute, we adhere to fundamental principles of statutory construction . . . over which our review is plenary." (Citations omitted; footnote omitted.) *Forest Walk, LLC* v. *Water Pollution Control Authority*, 291 Conn. 271, 281, 968 A.2d 345 (2009).

In construing § 7-249, our analysis is guided by General Statutes § 1-2z, the plain meaning rule, which requires that we "first . . . consider the text of the

benefits to anticipated development of land zoned for other than business, commercial or industrial purposes or land classified as farm land, forest land or open space land on the last completed grand list of the municipality in which such land is located, pursuant to the provisions of sections 12-107a to 12-107e, inclusive, shall not be assessed until such construction or expansion or development is approved or occurs. . . . The sum of initial and subsequent assessments shall not exceed the special benefit accruing to the property. Such assessment may include a proportionate share of the cost of any part of the sewerage system, including the cost of preliminary studies and surveys, detailed working plans and specifications, acquiring necessary land or property or any interest therein, damage awards, construction costs, interest charges during construction, legal and other fees, or any other expense incidental to the completion of the work. The water pollution control authority may divide the total territory to be benefited by a sewerage system into districts and may levy assessments against the property benefited in each district separately. In assessing benefits against property in any district the water pollution control authority may add to the cost of the part of the sewerage system located in the district a proportionate share of the cost of any part of the sewerage system located outside the district but deemed by the water pollution control authority to be necessary or desirable for the operation of the part of the system within the district. In assessing benefits and apportioning the amount to be raised thereby among the properties benefited, the water pollution control authority may give consideration to the area, frontage, grand list valuation and to present or permitted use or classification of benefited properties and to any other relevant factors. . . . Revenue from the assessment of benefits shall be used solely for the acquisition or construction of the sewerage system providing such benefits or for the payment of principal of and interest on bonds or notes issued to finance such acquisition or construction. No assessment shall be made against any property in excess of the special benefit to accrue to such property. . . ."

statute itself and its relationship to the broader statutory scheme. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Citation omitted; internal quotation marks omitted.) *State* v. *Dudley*, 332 Conn. 639, 645, 212 A.3d 1268 (2019).

In determining whether statutory language contains ambiguity, "we must carefully examine the entire text of the statute. . . . [I]t is a basic tenet of statutory construction that [w]e construe a statute as a whole and read its subsections concurrently in order to reach a reasonable overall interpretation . . . ." (Citation omitted; internal quotation marks omitted.) Id., 647. "[T]he legislature is always presumed to have created a harmonious and consistent body of law . . . ." (Internal quotation marks omitted.) *Stone-Krete Construction, Inc.* v. *Eder*, 280 Conn. 672, 678, 911 A.2d 300 (2006).[7]

"Although we generally begin with the text of the statute, we note that we are not writing on a clean slate . . . ." *Stiffler* v. *Continental Ins. Co.*, 288 Conn. 38, 43, 950 A.2d 1270 (2008). Although this court has not addressed either of the claims raised by the parties, we

[7] The plaintiff argues that, to the extent § 7-249 is ambiguous, the statute should be strictly construed in its favor because a supplemental assessment is a tax. See, e.g., *Consolidated Diesel Electric Corp.* v. *Stamford*, 156 Conn. 33, 36, 238 A.2d 410 (1968) ("[w]hen a taxing statute is being considered, ambiguities are resolved in favor of the taxpayer"). In light of our determination, however, that the statute, when read as a whole, is plain and unambiguous, we do not need to address whether this canon of interpretation applies in this circumstance. See, e.g., *Key Air, Inc.* v. *Commissioner of Revenue Services*, 294 Conn. 225, 241, 983 A.2d 1 (2009) (presumption of strict construction in favor of taxpayer does not apply when statute is not ambiguous).

have construed § 7-249 for other purposes, which we briefly review prior to addressing the parties' claims.

The defendant "is a municipal corporation created in 1929 by a special act of the General Assembly. 20 Spec. Acts 1204, No. 511 [1929]. It was given broad powers relating to sewage disposal, water supply and regional planning as well as powers limited to certain highways." *Rocky Hill Convalescent Hospital, Inc.* v. *Metropolitan District*, 160 Conn. 446, 450, 280 A.2d 344 (1971). The defendant has been designated the water pollution control authority for the metropolitan district, which includes "eight member and five nonmember towns in the greater Hartford area . . . ." *Glastonbury* v. *Metropolitan District Commission*, 328 Conn. 326, 327, 179 A.3d 201 (2018); see General Statutes § 7-246. The defendant's authority is limited to "those powers that have been expressly granted to it by the state or that are necessary for it to discharge its duties and to carry out its objects and purposes." (Internal quotation marks omitted.) *Wright* v. *Woodridge Lake Sewer District*, 218 Conn. 144, 148, 588 A.2d 176 (1991).

Section 7-249 authorizes the defendant, like any other water pollution control authority, to levy special benefit assessments—including supplemental assessments—against the property benefited by the sewerage system. "The benefit to a property owner is measured solely according to the amount by which the improvement causes the property to increase in market value. . . . Under § 7-249, [t]he monetary value of the special benefit conferred upon a piece of property by the presence of a sewerage system must be calculated by the difference between the market value of the realty with and without the sewerage system . . . ." (Citations omitted; internal quotation marks omitted.) *Shoreline Care Ltd. Part-*

nership v. *North Branford*, 231 Conn. 344, 351, 650 A.2d 142 (1994).[8]

II

The plaintiff claims that the trial court incorrectly concluded that the defendant had authority to levy the supplemental assessment because creation of the residential units did not constitute construction of structures under § 7-249. It argues that, although the term "structure" may have a broad definition in other areas of the law, it has acquired a particular meaning within the context of property law, which the trial court and the defendant ignored. Specifically, the plaintiff submits that the term "structure" is equivalent to the term "building" under this state's property laws and should be so defined under § 7-249. We disagree.

"The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . ." (Internal quotation marks omitted.) *Liberty Mutual Ins. Co.* v. *Lone Star Industries, Inc.*, 290 Conn. 767, 787, 967 A.2d 1 (2009). Our review of a trial court's decision to grant a motion for summary judgment is plenary. See, e.g., *Grimm* v. *Fox*, 303 Conn. 322, 329, 33

[8] Although a special benefit assessment is not at issue in the present case, we note that, when a property owner appeals a special benefit assessment, "there is a presumption as to the regularity, validity and correctness of a special benefit assessment that imposes the burden of proof on the property owner challenging the assessment." *Shoreline Care Ltd. Partnership* v. *North Branford*, supra, 231 Conn. 350. "[T]o overcome the presumption of validity of the benefit assessment, a property owner must introduce competent evidence that the assessment is greater than the increase in market value to the property caused by the improvement." Id., 353. When the special benefit assessment is supplemental, "[t]he sum of initial and subsequent assessments shall not exceed the special benefit accruing to the property." (Internal quotation marks omitted.) *Tower Business Park Associates Number One Ltd. Partnership* v. *Water Pollution Control Authority*, 213 Conn. 112, 117, 566 A.2d 696 (1989).

A.3d 205 (2012). More particularly, in the present case, because the plaintiff's claim that the trial court erroneously rendered summary judgment in favor of the defendant distills to an issue of statutory interpretation—whether the alterations to the property constituted construction of "structures" under § 7-249—our review is limited to that legal conclusion. See, e.g., *Mortgage Electronic Registration Systems, Inc.* v. *White*, 278 Conn. 219, 226, 896 A.2d 797 (2006).

Section 7-249 authorizes a water pollution control authority to levy a supplemental assessment for benefits to "buildings or structures constructed or expanded" after the initial assessment. See *Tower Business Park Associates Number One Ltd. Partnership* v. *Water Pollution Control Authority*, 213 Conn. 112, 121, 566 A.2d 696 (1989) (*Tower Business*). The parties agree that the interior renovations to the property at issue—the creation of 285 residential units—did not constitute construction or expansion of the building and did not constitute expansion of the existing structures. The issue is whether these renovations constituted construction of "structures."

The term "structures" is not defined in § 7-249, and this court never has interpreted this term in the context of § 7-249. When a statute does not define a term, "General Statutes § 1-1 (a) directs that we construe the term according to its commonly approved usage, mindful of any peculiar or technical meaning it may have assumed in the law. We may find evidence of such usage, and technical meaning, in dictionary definitions, as well as by reading the statutory language within the context of the broader legislative scheme." *State* v. *Menditto*, 315 Conn. 861, 866, 110 A.3d 410 (2015). Additionally, we may look to prior case law defining the term at issue. See *Nationwide Mutual Ins. Co.* v. *Pasiak*, 327 Conn. 225, 246, 173 A.3d 888 (2017) (looking to case law to construe phrase "arising out of" to determine whether

insurer was obligated to indemnify business owner for tortious conduct committed against employee); *Standard Oil of Connecticut, Inc.* v. *Administrator, Unemployment Compensation Act*, 320 Conn. 611, 635–36, 134 A.3d 581 (2016) (looking to case law when construing "invoice" in context of payments to contractors).

Black's Law Dictionary defines the term "structure" as "[a]ny construction, production, or piece of work artificially built up or composed of parts purposefully joined together . . . ." Black's Law Dictionary (11th Ed. 2019) p. 1721. This definition is consistent with the definition of this term contained in dictionaries at and near the time that § 7-249 was amended in 1973 to include the phrase "building or structures."[9] See Black's Law Dictionary (4th Ed. 1968) p. 1592 ("[a]ny construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner"); The American College Dictionary (1962) ("anything composed of parts arranged together in some way"); see Black's Law Dictionary (5th Ed. 1979) p. 1276 ("Any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner. That which is built or constructed; an edifice or building of any kind. A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land."); see also *Andrew B. Hendryx Co.* v. *New Haven*, 104 Conn.

[9] In 1971, § 7-249 was amended to include the portion of the statute at issue, although with some variations: "Benefits to *buildings constructed or expanded* after the initial assessment may be assessed *as if the new or expanded structures* had existed at the time of the initial assessment." (Emphasis added.) Public Acts 1971, No. 699. In 1973, this portion of the statute was amended to read as it does today: "Benefits to *buildings or structures* constructed or expanded after the initial assessment may be assessed as if the new or expanded *buildings or structures* had existed at the time of the initial assessment." (Emphasis added.) Public Acts 1973, No. 73-523, § 1.

632, 639–40, 134 A. 77 (1926) (noting that dictionaries in 1920s defined "structure" as " 'something constructed or built, as a building, a dam, a bridge' " or " 'any production or piece of work artificially built up, or composed of parts and joined together in some definite manner' "); cf. *State* v. *Menditto*, supra, 315 Conn. 866 ("dictionaries in print at [the] time [of enactment] are especially instructive").

Our appellate courts consistently have applied this dictionary definition in other contexts, such as zoning, insurance coverage, and criminal cases, and, in doing so, explained that this definition encompasses, but is not confined to, buildings. See *Andrew B. Hendryx Co.* v. *New Haven*, supra, 104 Conn. 640 (defining "structure," in context of assessment for taxation, as "not confined to an independent building but . . . to include anything which is built or constructed, an edifice or building of any kind, any piece of work artificially built up or composed of parts joined together in some definite manner"); see also *Alderman* v. *Hanover Ins. Group*, 169 Conn. 603, 608–609, 363 A.2d 1102 (1975) (defining "structure" for insurance coverage purposes to include buildings, certain freestanding constructions, and "devices which are not in any strict sense independent buildings" but not pieces of equipment (internal quotation marks omitted)); *State* v. *Perez*, 78 Conn. App. 610, 644–45, 828 A.2d 626 (2003) (defining "structure" for purposes of burglary statute consistent with definition in sixth edition of Black's Law Dictionary), cert. denied, 271 Conn. 901, 859 A.2d 565 (2004).

In contrast, the term "building" has been defined more narrowly as "a fabric or edifice, framed or constructed, designed to stand more or less permanently, and covering a space of land, for use as a dwelling, storehouse, factory, shelter for beasts, or some other useful purpose." (Internal quotation marks omitted.) *Katsoff* v. *Lucertini*, 141 Conn. 74, 77, 103 A.2d 812 (1954); see

also *Tine* v. *Zoning Board of Appeals*, 308 Conn. 300, 307, 63 A.3d 910 (2013) (defining "building" as "a constructed edifice designed to stand more or less permanently, covering a space of land, [usually] covered by a roof and more or less completely enclosed by walls . . . distinguished from structures not designed for occupancy" (internal quotation marks omitted)); *State* v. *Ruocco*, 151 Conn. App. 732, 753, 95 A.3d 573 (2014) ("[a] structure with walls and a roof, esp[ecially] a permanent structure"), aff'd, 322 Conn. 796, 144 A.3d 354 (2016). As this court has explained, "while a building is always a structure, all structures are not buildings." *Katsoff* v. *Lucertini*, supra, 78; *Andrew B. Hendryx Co.* v. *New Haven*, supra, 104 Conn. 640 (same). Thus, this court has recognized that, on the basis of its dictionary definition, the term "structure" is broader than the term "building."

The trial court, under this broad definition of "structure," correctly concluded that the interior renovations to the property in the present case—the creation of 285 residential units—constituted construction of structures under § 7-249. There is no genuine issue of material fact that creation of the residential units was "construction, production, or piece[s] of work artificially built up or composed of parts purposefully joined together . . . ." Black's Law Dictionary (11th Ed. 2019) p. 1721. The exhibits attached to the plaintiff's appeal to the Superior Court, upon which the defendant relied in support of its motion for summary judgment, showed that new units were constructed on each floor of the building, with each unit containing a new kitchen, bathroom, bedroom, and living area so that each unit was "artificially built up or composed of parts joined together" to create separate residences inside the already existing building. *Andrew B. Hendryx Co.* v. *New Haven*, supra, 104 Conn. 640.

Notably, the plaintiff does not argue that, if this dictionary definition applies, there is a genuine issue of fact regarding whether the construction of the residential units constitutes construction of structures. Rather, the plaintiff contends that this broad definition should not apply at all because dictionary definitions are not applicable when a term is accorded a peculiar meaning under the law and "where the context indicates that a different meaning was intended."[10] (Internal quotation marks omitted.) The plaintiff asserts that the term "structure" has acquired a peculiar meaning in real property law that trumps the common dictionary definition and that real property law and benefit assessments are intertwined so that the definition of "structure" under real property law must govern benefit assessments. The plaintiff asserts that the term "structure" is defined under real property statutes to be "somewhat coextensive" with the term "building" and, thus, is limited to "those things that are built upon the vacant land, such as buildings, landmarks, historical sites or other historic structures."

[10] The plaintiff also looks to the legislative history of § 7-249 to show that "context indicate[d] that a different meaning was intended." The plaintiff relies on a single statement that the purpose of the 1973 amendment; see footnote 9 of this opinion; was to "clarify the definition of a building in this act," which, it argues, proves that the legislature intended the terms "building" and "structure" to be coextensive. 16 H.R. Proc., Pt. 11, 1973 Sess., p. 5401, remarks of Representative Morton J. Blumenthal. Section 1-2z, however, prohibits this court from looking to legislative history in the absence of a finding of ambiguity in a statute. See, e.g., *Stone-Krete Construction, Inc.* v. *Eder*, supra, 280 Conn. 677–78 (court may not consider legislative history in construing statute unless it first establishes that statute is ambiguous). Nevertheless, we note that the legislative history does not support the plaintiff's interpretation of the statute. Although this statement shows that the amendment was attempting to clarify the term "buildings," it does not shed light on whether these two terms should be defined synonymously. Rather, the fact that the two terms appeared to originally be used interchangeably in No. 699 of the 1971 Public Acts, after which this language was amended in No. 73-523, § 1, of the 1973 Public Acts, shows an intent for these two terms to be separate and distinct. See footnote 9 of this opinion.

It is true that, if a term acquires a unique meaning within the confines of a certain statutory scheme, that definition will control over the general dictionary definition or a definition found in case law involving other unrelated statutes. See, e.g., *State* v. *Vickers*, 260 Conn. 219, 224, 796 A.2d 502 (2002) ("[w]ords in a statute must be given their plain and ordinary meaning . . . unless the context indicates that a different meaning was intended" (internal quotation marks omitted)); see also *Dattco, Inc.* v. *Commissioner of Transportation*, 324 Conn. 39, 48, 151 A.3d 823 (2016) ("[i]n addition to considering the dictionary definition of the term [at issue] we must consider its meaning also in the context that it is used in the provision at issue and in related provisions").

Even if we assume that the definition of "structure" under real property law governs benefit assessments, the plaintiff is wrong that the statutes governing real property require limiting the definition of the term "structure" so that it is coextensive with the term "building" in all statutes that involve real property. In fact, the statutes the plaintiff cites do not explicitly define "structure" as coextensive with "building." Rather, the statutes either provide no definition at all or merely provide that a building is a certain kind of structure, or that a structure includes buildings, which is consistent with the recognized principle that, while all buildings are structures, not all structures are buildings. See General Statutes § 47-18a (using term "structure" in regulating "any historic structure or landmark" without defining this term); General Statutes § 47-35 ("[t]obacco poles used in any structure utilized for the curing of tobacco in the leaf shall be deemed for all purposes an integral part of such structure"); General Statutes § 47-42a (b) (using phrase "historically significant structures or sites" without any definition); General Statutes § 47-68a (p) ("'[b]uilding' means a structure or structures

containing one or more units and comprising a part of the property"); General Statutes § 47-202 (28) (defining "real property" as "any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements").

General Statutes § 47-300 (1) is the only statute the plaintiff cites requiring that the term "structure" be limited to structures used as a residence, which shows that this limitation of the term "structure" is unique to this statute and is not generally applicable to all statutes involving real property. See General Statutes § 47-300 (1) (defining "[e]ligible housing" as "any building, structure or portion thereof which is used or occupied, or intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more persons or families of very low income, low income or moderate income"). This also shows that the legislature knew how to limit the definition of the term "structure" but chose not to do so in the context of § 7-249.

Even if some statutes relating to real property treat the terms "building" and "structure" synonymously, other real property statutes list them as separate and distinct terms. See General Statutes § 4b-133 (a) (regarding security audits for "any building or structure"); General Statutes § 4b-135 (security requirements for leasing of "any building or structure"). The fact that statutes governing real property do not have a consistent definition of "structure" shows that this term has not acquired a unique meaning in real property law.

To the extent that the statutes cited by the plaintiff treat the terms "building" and "structure" equivalently, these statutes are distinguishable. None of these statutes uses the disjunctive, "or," as used in § 7-249. When a statute has used the phrase, "building or structure," this court has interpreted the term "structure" as broader than "building." See *Andrew B. Hendryx Co.*

v. *New Haven*, supra, 104 Conn. 642 (disjunctive reference to "building or structure" in provision at issue signaled intent to reach both independent buildings affixed to land and other structures artificially built up). This court has explained that "[o]ther provisions in our statutes demonstrate that the legislature is aware that there is a difference between a building and other types of structures, and that it knows how to make specific reference to all structures [for broader applicability or to just buildings for more narrow applicability] when it intends to do so." *Tine* v. *Zoning Board of Appeals*, supra, 308 Conn. 307; see id., 307–308 (listing statutes in which both terms, "structure" and "building" are used, showing intent that these terms are to have separate meanings). When the legislature has intended to limit a statute's applicability to buildings, and not to the broader category of structures, the legislature has done so by using only the term "building." Id., 308 (explaining that statutes show that legislature knows how to extend applicability to all structures and use of only term "building" shows intent for narrower applicability).

The plaintiff counters that the term "or" may be construed in the conjunctive, not the disjunctive. Ordinarily, "[t]he use of the disjunctive 'or' between the two parts of the statute indicates a clear legislative intent of separability." *State* v. *Dennis*, 150 Conn. 245, 248, 188 A.2d 65 (1963). Nevertheless, the plaintiff is correct that "[t]he disjunctive 'or' can be construed as 'and' where such construction clearly appears to have been the legislative intent." *D'Occhio* v. *Connecticut Real Estate Commission*, 189 Conn. 162, 170, 455 A.2d 833 (1983). The present case, however, is distinguishable from cases in which we have interpreted "or" to mean "and," because, in those cases, the words separated by the term "or" in the statute at issue were defined synonymously, which clearly is not the case here. See *State* v. *Allen*, 216 Conn. 367, 380, 579 A.2d 1066 (1990)

(clear intent for term "or" in phrase, "licensed or privileged," in certain criminal statutes is to be construed in conjunctive due to definition of term "licensed" as "a personal, revocable, and unassignable privilege" (emphasis omitted; internal quotation marks omitted)).

Finally, the plaintiff counters that, if construction of structures includes interior improvements, renovations, or remodeling, like the creation of residential units, a supplemental assessment could be levied for any improvement made to a property, which would improperly expand the scope of the statute. We disagree.

As explained previously, § 7-249 prohibits the total amount of the assessments—including both the initial and any supplemental assessments—from exceeding the value of the benefit to the property from accessing the sewerage system. See *Tower Business*, supra, 213 Conn. 117 ("[t]he sum of initial and subsequent assessments shall not exceed the special benefit accruing to the property" (internal quotation marks omitted)). A supplemental assessment is limited to the value of the "[*b*]*enefits* to buildings or structures constructed or expanded after the initial assessment . . . ." (Emphasis added.) General Statutes § 7-249; *Tower Business*, supra, 121. Thus, the new or expanded building or structures must increase the benefit to the property before the defendant can levy a supplemental assessment. If the altered property receives the same benefit from accessing the sewerage system as did the initial property, then § 7-249 prohibits a supplemental assessment because the benefit already has been paid for through the initial assessment, and any additional assessment would cause the total amount of the assessments to exceed the benefit accruing to the property. Not all interior improvements and renovations will increase the "benefit" the property receives from the sewerage system. As a result, not all interior improvements made to a property will justify a supplemental assessment,

and, thus, our definition of the term "structure" does not impermissibly expand the scope of § 7-249.

Therefore, the trial court correctly interpreted the term "structures" in § 7-249 to include any "construction, production, or piece of work artificially built up or composed of parts purposefully joined together . . . ." Black's Law Dictionary (11th Ed. 2019) p. 1721. Accordingly, we conclude that the trial court properly granted the defendant's motion for summary judgment because there was no genuine issue of material fact that the defendant had authority to levy the supplemental assessment on the ground that the creation of the 285 residential units constituted construction of structures under this statute, properly construed.

III

Having determined, with respect to the plaintiff's cross appeal, that the defendant had authority to levy the supplemental assessment, we turn to the defendant's challenge on appeal to the trial court's determination that the defendant incorrectly calculated the supplemental assessment by failing to use the same method as was used for the initial assessment because the benefit to new structures may only be "assessed as if the new . . . structures had existed at the time of the initial assessment"; General Statutes § 7-249; if the same method was used. The defendant argues that § 7-249 clearly and unambiguously provides it with discretion to determine the proper method to apply in calculating both initial and supplemental assessments. We agree with the defendant.

The following additional facts and procedural history are necessary to our review of this claim. At trial, the plaintiff offered the testimony of Allen King, a real estate administrator employed by the defendant, who testified that, in 1849, the property at 777 Main Street was assessed by the predecessor to the defendant, which did not exist in 1849, using the street frontage method, although King

did not know why this method was used and was uncertain as to whether the taxing authority at the time used or permitted the use of any other method besides street frontage or lateral charge. King explained that a lateral charge is the fee that the defendant assesses when it brings the street line to the sewer line after the building owner has brought a sewer line from its building to the street line. King further testified that the supplemental assessment was levied in 2015 because the use of the building had changed from commercial to residential. He testified that the supplemental assessment was calculated using the schedule of flat rates the defendant adopted in 1995. This schedule considers three components: the frontage charge, the lateral charge, and the area charge, with the area charge broken into three additional categories—acreage, number of dwelling units, and number of rooms. Only certain categories apply to certain kinds of buildings. For example, the number of dwelling units is only a factor in determining the amount of the assessment for single unit and multiunit dwellings; the number of rooms is only a factor in determining the amount of the assessment for hospitals, hotels, motels, and convalescent homes; and acreage is only a factor in determining the amount of the assessment for commercial buildings, schools, and churches.

King also testified that the defendant had incurred no costs from the plaintiff's conversion of the property into residential units. There had, however, been systemwide upgrades, changes, and improvements to the Hartford sewerage system, although he was unaware of any new construction to the Main Street sewerage line connecting the property to the Hartford sewerage system since 1849.

The plaintiff offered no evidence regarding the market value of the property, originally or as altered, from any time period. Nor did the plaintiff offer any evidence, expert or otherwise, showing that the amount of the

supplemental assessment exceeded the benefit to the property from accessing the sewerage system.

The defendant presented the testimony of Richard Michaud, a real estate appraiser, who valued the property as altered at $53 million. Michaud testified that, without access to the sewerage system, the property could not function as a residential building, so it would be worthless. Additionally, he testified that the use of any other type of system, such as a septic system or a storage tank system, was more expensive than the price of the assessment.

In its decision, the trial court determined that it did not need to decide whether the supplemental assessment was excessive[11] because it concluded that the defendant had incorrectly calculated the supplemental assessment, which should have been calculated on the basis of street frontage, as was the 1849 assessment. The crux of the trial court's decision regarding methodology was that, if § 7-249 required improvements or alterations to properties to be "assessed as if the new . . . structures had existed at the time of the initial assessment," the only way to do so would be to use the same method that was used during the initial assessment. The trial court relied on this court's decision in *Tower Business*, supra, 213 Conn. 112, in support of its rationale. Specifically, the trial court reasoned that, in *Tower Business*, this court characterized the use of the same method in calculating both the initial and supplemental assessments as the "prescribed method for calculating the amount of a special assessment . . . ." Id., 118. The trial court explained that, given that the frontal

[11] Nevertheless, as to the plaintiff's claim that the supplemental assessment was excessive because it was based on 286 residential units, not 285, the trial court found that the proper number of residential units was 285. Additionally, the trial court found that the plaintiff failed to offer any evidence establishing that the sum of the initial and supplemental assessments exceeded the benefit to the property.

footage *may not* have changed since 1849—an issue on which it made no finding—its decision was not unreasonable or absurd, even if it prevented the defendant from levying a supplemental assessment at all because there was no evidence that, since 1849, there had been any improvements to the sewerage line connecting the property at 777 Main Street to the sewerage system, and, thus, there were no costs for the defendant to recoup through the supplemental assessment. Although there was evidence that the defendant had made improvements to the Hartford sewerage system generally, the trial court determined that there was no evidence of how these improvements affected or benefited the subject property.

To resolve this claim, we begin with the text of § 7-249 and apply the principles of statutory construction that we previously discussed. See footnote 7 of this opinion and accompanying text. The parties dispute whether the statute's second sentence, governing supplemental assessments, regulates the method to be used in calculating supplemental assessments: "Benefits to buildings or structures constructed or expanded after the initial assessment may be assessed as if the new or expanded buildings or structures had existed at the time of the initial assessment." General Statutes § 7-249. This language does not explicitly refer to any particular method for arriving at such an assessment.

Nevertheless, the plaintiff argues that, in *Tower Business*, this court construed this language to require use of the same method in calculating both the initial and supplemental assessment. See *Tower Business*, supra, 213 Conn. 116. In *Tower Business*, a one-story factory building initially had been assessed in 1974 using the grand list valuation method. Id. Subsequently, in the 1980s, the plaintiff converted this one-story factory building into a two-story commercial office building. Id. As a result of the renovations, the defendant levied

a supplemental assessment that was calculated by using the same grand list valuation method that was in effect in 1974. Id.

The plaintiff in *Tower Business* appealed the supplemental assessment, claiming that it was excessive because the volume of sewage generated by the two-story office building was less than when the former one-story factory building was in operation. Id., 118–19. In determining whether the supplemental assessment was excessive, this court examined the same second sentence of the statute at issue in the present case and explained: "The evident purpose of this provision of § 7-249 is to allow a municipality to impose a supplemental assessment for new or improved buildings in an amount that, together with the initial assessment, will equal the assessment that would have been made *if these improvements had existed at the time of the initial assessment*. In order to defeat the supplemental assessment that has been imposed on its property, therefore, the plaintiff must prove that, together with the initial assessment, it exceeds *the benefit that access to the sewers would have conferred upon the property as a whole at the time of the initial assessment if the present office building had then been erected* [with the benefit being] . . . calculated by the difference between the market value of the realty with and without the sewerage system . . . ." (Emphasis added; internal quotation marks omitted.) Id., 118.

In evaluating the plaintiff's claim in *Tower Business*, this court noted that "[t]he plaintiff [did] not claim that *this prescribed method* for calculating the amount of a special assessment [had] not been followed by the defendant." (Emphasis added.) Id. Rather, the plaintiff's claim in *Tower Business* was premised on the argument that a supplemental assessment may not be imposed if there is no evidence that the changes to the property

will cause additional use of the sewerage system. Id., 119–20. This court rejected that argument. Id.

The plaintiff in the present case, however, makes an altogether different argument than the argument raised in *Tower Business*. As stated, *Tower Business* involved whether sewerage use factored into whether a supplemental assessment was proper, not whether the defendant had to use the same method to calculate both the initial and supplemental assessments. Nonetheless, the plaintiff in the present case argues that, although methodology was not at issue in *Tower Business*, this court's analysis of § 7-249 in *Tower Business* requires the same method to be used for the supplemental assessment as was used for the initial assessment because that practice occurred in *Tower Business* and we described it as the "prescribed method for calculating the amount of a special assessment . . . ." Id., 118.

Contrary to the plaintiff's contention, however, this court did not characterize the use of the same method for calculating the initial and supplemental assessments as the "prescribed method" but, rather, the phrase, "this prescribed method for calculating the amount of a special assessment," referred to the court's statement that § 7-249 requires the defendant to value the altered property as if it existed at the time of the initial assessment. Specifically, this court was referring to its determination that supplemental assessments of "new or improved buildings [or structures] [cannot exceed] an amount that, together with the initial assessment, will equal the assessment that would have been made if these improvements had existed at the time of the initial assessment." Id. The "method" that *Tower Business* referred to is the method for calculating the date of valuation, not the factors the defendant considers in calculating the assessments, such as street frontage, acreage, lateral charge, grand list valuation, and use. The defendant in *Tower Business* assessed the expan-

sion of the building as if the expanded building had existed in 1974; id., 116; in conformance with this "prescribed method" regarding the date of valuation. There is no reference, however, in *Tower Business* about whether the defendant must consider the same factors in calculating the initial and supplemental assessments. Because this issue was not raised in *Tower Business*, the court never addressed whether new or expanded buildings or structures could be assessed using a different method, as if they existed at the time of the initial assessment.[12]

Therefore, we are not convinced that our decision in *Tower Business* compels a conclusion that the second sentence of § 7-249 requires that a certain method apply to supplemental assessments. In the absence of any controlling interpretation of the second sentence of the statute, we turn back to the language of the statute, examined as a whole, to determine whether it clearly and unambiguously addresses the proper method that a water pollution control authority must employ in calculating a supplemental assessment. See, e.g., *Vibert* v. *Board of Education*, 260 Conn. 167, 176, 793 A.2d 1076 (2002). Because § 7-249 is a lengthy statute (fourteen sentences) packed with content, an examination of the statute sentence by sentence is both unavoidable and useful.

[12] We note that, although the plaintiff relies on this language in support of its argument that the defendant was required to use the same method as was used at the time of the initial assessment, the plaintiff never has raised a claim that the supplemental assessment was invalid because it was not assessed as if the altered property existed in 1849. The defendant assessed the altered property using the flat rate schedule adopted in 1995. The only testimony as to the proper date of valuation was testimony from Patrick J. Wellspeak, a commercial real estate appraiser and consultant, that valuation of the altered property as if it existed in 1849 was nearly impossible because high-rise condominium complexes did not exist in 1849. Nevertheless, we note that not only was this claim not raised, but also that it is the plaintiff's burden to show that the amount of the combined initial and supplemental assessments exceeds the benefit to the altered property as if it existed in 1849.

The statute begins with a general grant of power to water pollution control authorities to levy assessments, so long as the property is benefited by the sewerage system and the assessment conforms to the rules adopted by the water pollution control authority.[13] The statute then specifies certain circumstances in which the water pollution control authority may levy specific kinds of assessments, such as supplemental assessments,[14] as is principally at issue in the present case, and deferred assessments for land not yet developed.[15]

After explaining the different types of assessments, § 7-249 sets forth a limitation on the total amount of the assessment levied on a property, including "[t]he

[13] The first sentence of § 7-249 provides: "At any time after a municipality, by its water pollution control authority, has acquired or constructed, a sewerage system or portion thereof, the water pollution control authority may levy benefit assessments upon the lands and buildings in the municipality which, in its judgment, are especially benefited thereby, whether they abut on such sewerage system or not, and upon the owners of such land and buildings, according to such rule as the water pollution control authority adopts, subject to the right of appeal as hereinafter provided."

[14] The second sentence of § 7-249 provides: "Benefits to buildings or structures constructed or expanded after the initial assessment may be assessed as if the new or expanded buildings or structures had existed at the time of the initial assessment."

[15] The third, fourth and fifth sentences of § 7-249 provide: "Such benefits and benefits to anticipated development of land zoned for other than business, commercial or industrial purposes or land classified as farm land, forest land or open space land on the last completed grand list of the municipality in which such land is located, pursuant to the provisions of sections 12-107a to 12-107e, inclusive, shall not be assessed until such construction or expansion or development is approved or occurs. In case of a property so zoned or classified which exceeds by more than one hundred per cent the size of the smallest lot permitted in the lowest density residential zone allowed under zoning regulations or, in the case of a town having no zoning regulations, a lot size of one acre in area and one hundred fifty feet in frontage, assessment of such excess land shall be deferred until such time as such excess land shall be built upon or a building permit issued therefor or until approval of a subdivision plan of such excess property by the planning commission having jurisdiction, whichever event occurs first at which time assessment may be made as provided herein. No lien securing payment shall be filed until the property is assessed."

sum of initial and subsequent assessments . . . .''[16] The next three sentences of the statute then set forth costs that may be considered in determining the amount of the assessment, stating that ''[s]uch assessment''—referring to the use of the phrase, ''sum of initial and subsequent assessments,'' in the previous sentence—may include a variety of costs, such as ''a proportionate share of the cost of any part of the sewerage system . . . .''[17] The plain and unambiguous language of the statute therefore makes clear that, in these three sentences of the statute regarding costs to be considered in determining the amount of the assessments, the phrase ''[s]uch assessment'' includes all of the types of assessments previously set forth, including the initial assessments, any supplemental assessment, and any deferred assessment.

Only after these three sentences does § 7-249 establish the required method for calculating assessments. The statute's tenth sentence provides: ''In assessing benefits and apportioning the amount to be raised thereby among the properties benefited, the water pollution control authority may give consideration to the area, frontage, grand list valuation and to present or

[16] The sixth sentence of § 7-249 provides: ''The sum of initial and subsequent assessments shall not exceed the special benefit accruing to the property.''

[17] The seventh, eighth, and ninth sentences of § 7-249 provide: ''Such assessment may include a proportionate share of the cost of any part of the sewerage system, including the cost of preliminary studies and surveys, detailed working plans and specifications, acquiring necessary land or property or any interest therein, damage awards, construction costs, interest charges during construction, legal and other fees, or any other expense incidental to the completion of the work. The water pollution control authority may divide the total territory to be benefited by a sewerage system into districts and may levy assessments against the property benefited in each district separately. In assessing benefits against property in any district the water pollution control authority may add to the cost of the part of the sewerage system located in the district a proportionate share of the cost of any part of the sewerage system located outside the district but deemed by the water pollution control authority to be necessary or desirable for the operation of the part of the system within the district.''

permitted use or classification of benefited properties and to any other relevant factors." We have described this portion of the statute as "broad," granting water pollution control authorities discretion to determine the method to apply in calculating initial assessments. *Gaynor-Stafford Industries, Inc.* v. *Water Pollution Control Authority*, 192 Conn. 638, 645, 474 A.2d 752 ("§ 7-249 contains broad provisions, permitting the [water pollution control authority] to 'give consideration to the area, frontage, grand list valuation and to present or permitted use or classification of benefited properties and to any other relevant factors' "), cert. denied, 469 U.S. 932, 105 S. Ct. 328, 83 L. Ed. 2d 265 (1984). Unless we conclude that a certain method is unreasonable, we defer to the water pollution control authority's discretion in setting the method. See id., 646 ("where the formula adopted bears a reasonable relationship to the benefits conferred the method of assessment would be upheld"). We have not, however, determined whether this discretion extends to the method employed in calculating *supplemental* assessments, as opposed to initial assessments.

The plaintiff argues that the clause, "assessing benefits," "pertains to the method by which initial assessments are formulated," not to supplemental assessments, because of the distance between the two sentences. This argument, however, ignores the statute's context. First, the term "assessing" is not limited in any way. Second, we note that, if textual proximity were relevant or determinative, the portion of the statute regarding initial assessments is located even farther from this section on methodology—it is the first sentence of the statute. Third, as we have explained, immediately prior to this portion on methodology, the phrase, "[s]uch assessments," refers to both "initial and subsequent assessments" in regard to the costs that may be considered in calculating assessments. The statute then sets forth how "[s]uch assessments" may be calculated. In con-

text, the phrase, "[i]n assessing benefits," is reasonably susceptible to only one interpretation—it means "in assessing benefits for such assessments, including both initial and subsequent assessments." As a result, we conclude that § 7-249 must grant water pollution control authorities discretion in deciding the method to apply in assessing supplemental benefits. Thus, in the present case, although the total amount of the initial and supplemental assessments could not exceed the value of the benefit that access to the sewerage system would have conferred on the altered property if it had existed in 1849, the defendant retained discretion to determine the method to apply in calculating the supplemental assessment. The plaintiff, which bears the burden in this case, however, has not maintained any claims before this court or the trial court[18] that either the assessment exceeded the benefit to the property or that the method was unreasonable.

The plaintiff counters that, even if the portion of § 7-249 regarding methodology is not explicitly limited to calculating the initial assessment, other portions of § 7-249 require use of the same method for calculating the initial and supplemental assessments. The plaintiff contends that § 7-249 requires the defendant to adopt rules regarding levying assessments and to comply with those rules, and interprets this portion of the statute to prevent the defendant from changing the rules applicable to a certain property once it levies the initial assessment, thereby requiring the defendant to apply the same rules to the supplemental assessment as existed at the time of

[18] Although the plaintiff did claim in its appeal to the trial court that the supplemental assessment was excessive because it was based on 286 units, not 285, the plaintiff never claimed that the total of the initial and supplemental assessments exceeded the value of the benefit to the altered property as if it existed in 1849. The defendant never had notice that it had to rebut any evidence that the assessment amount exceeded the benefit to the property. Moreover, the parties and the trial court concede that the plaintiff never attempted to meet its burden in this regard.

the initial assessment. Specifically, the plaintiff argues that, because the method used has to conform with the rules adopted by the defendant, and because the supplemental assessment has to be based on the benefit to the property as of the time of the initial assessment, the method used for calculating the supplemental assessment must be a method authorized at the time of the initial assessment and not a method authorized by rules adopted after 1849. The plaintiff contends that the only methods authorized in 1849 were street frontage and lateral charge, and, thus, the defendant was limited to those methods in calculating the supplemental assessment because, as the trial court determined, it would be impossible to assess the altered property as if it existed in 1849 by using a method that did not exist at that time.

The plaintiff is correct that the first sentence in § 7-249 requires the defendant to set rules regarding benefit assessments and to comply with those rules. See General Statutes § 7-249 ("the water pollution control authority may levy benefit assessments upon the lands and buildings in the municipality which, in its judgment, are especially benefited thereby . . . according to such rule as the water pollution control authority adopts"). Even if this sentence prevents the defendant from changing the rules applicable to a particular property once it levies the initial assessment, and thus limits the defendant's choice in method to the same extent limited in 1849, nothing in the statute prevents the defendant from using a different method for calculating the initial and supplemental assessments, as long as that method was authorized under the rules applicable at the time of the initial assessment. The plaintiff has failed to offer any evidence that the defendant used a method not authorized under the rules governing benefit assessments in 1849. Evidence at trial showed that, at the time of the initial assessment, which predated § 7-249, a predeces-

sor to the defendant was in charge of levying sewerage benefit assessments, and no evidence was offered as to the extent of its authority. Although there is evidence in the record that the initial assessment was calculated on the basis of street frontage, there is no evidence that the authority of the defendant's predecessor was limited to considering only street frontage and no other factors, such as present use. Rather, the testimony at trial resulted in uncertainty as to which methods were permitted to be used in calculating sewerage benefit assessments in 1849. It was the plaintiff's burden to establish that a particular method was improper. See *Gaynor-Stafford Industries, Inc.* v. *Water Pollution Control Authority*, supra, 192 Conn. 646.

Moreover, to interpret § 7-249 as the plaintiff argues would be unworkable and absurd. See, e.g., *Tappin* v. *Homecomings Financial Network, Inc.*, 265 Conn. 741, 758–59, 830 A.2d 711 (2003) ("[w]e will not construe a statute so as to effect an absurd result"). Because water pollution control authorities have discretion to consider a variety of factors, only some of which apply to certain kinds of property, the method used for calculating an initial assessment may not apply for calculating a supplemental assessment if the use of the property has changed. For example, if a property used for multiunit residential dwellings is initially assessed on the basis of the number of residential units, and the property is later converted into a single, large commercial building (the opposite of what happened at 777 Main Street), the initial methodology might not apply for purposes of calculating the supplemental assessment. Under the plaintiff's interpretation of the statute, in these kinds of circumstances, § 7-249 prohibits the levying of a supplemental assessment.

The plaintiff argues that this court has recognized that, under § 7-249, the defendant may not recoup all of its costs for construction of the sewerage system through benefit assessments, so that interpreting the

statute as it contends would not be unworkable even if such an interpretation would prevent the levying of a supplemental assessment in this case or in other cases. Although this court has explained that § 7-249 limits the defendant's ability to recoup its costs for sewerage system construction in that an assessment cannot exceed the benefit to the property; *Shoreline Care Ltd. Partnership* v. *North Branford*, supra, 231 Conn. 352; we never have interpreted this portion of § 7-249 as limiting the method that may be used to calculate supplemental assessments. If levying a supplemental assessment would lead to the total amount of assessments to exceed the benefit to the property, the supplemental assessment is prohibited. Nevertheless, that does not require this court to interpret other portions of § 7-249 to prevent the defendant from levying a supplemental assessment, even if the assessment is not excessive. The statute imposes a limitation, not on the method used, but on the result of its calculation.

In sum, we conclude that the trial court incorrectly determined that § 7-249 required the defendant to use the same method to calculate the supplemental assessment as was used to calculate the initial assessment.[19]

[19] The plaintiff contends that, even if the supplemental assessment was calculated using a proper method, because the defendant has not challenged the trial court's finding that improvements to the Hartford sewerage system since 1849 have not benefited or affected the property, the supplemental assessment was unlawful ab initio. Specifically, the trial court found: "[T]here is no evidence of any improvements to the [sewerage line] serving 777 Main Street. [The defendant] did present evidence that it made improvements to the Hartford [sewerage] system generally over the years, and the court credit[ed] that evidence, but there is no evidence as to how those improvements may have affected [the property]."

The plaintiff's argument does not relate to the plaintiff's claim regarding methodology but is relevant to whether the supplemental assessment exceeds the benefit to the property—an issue not raised by the plaintiff in its appeal to the Superior Court, not decided by the trial court, and not supported by any evidence presented by the plaintiff, which "did not present any evidence that the sum of the initial and supplemental assessments exceeded the special benefit accruing to the property." Thus, we do not address this issue.

Accordingly, we reverse the trial court's judgment as to this issue and direct the trial court on remand to decide any remaining claims.

The judgment is reversed only as to the trial court's determination of the defendant's method of calculating the supplemental assessment and the case is remanded for further proceedings consistent with this opinion; the judgment is affirmed in all other respects.

In this opinion the other justices concurred.

Nevertheless, we note that the trial court relied on this lack of evidence not to show that the supplemental assessment was excessive, but to show that its interpretation of § 7-249 did not place an undue hardship on the defendant because the defendant had not incurred any new construction costs since 1849, which it assumed had "long since been paid." Even if that is true, this court consistently has stated that it is not the cost to the defendant but the benefit to the property that matters for determining whether a sewerage benefit assessment may be levied. See, e.g., *Shoreline Care Ltd. Partnership* v. *North Branford*, supra, 231 Conn. 352–54.

Additionally, the plaintiff argues that this finding invalidates the supplemental assessment because it shows that the defendant did not incur any additional costs for constructing the Main Street sewerage line connecting the property to the sewerage system after 1849. According to the plaintiff, a lack of costs incurred by the defendant invalidates the supplemental assessment because § 7-249 requires revenue from sewerage benefit assessments to be used only to recoup the cost of construction of the sewer; therefore, according to the plaintiff, if there are no costs to recoup, there is no authority to levy an assessment. See General Statutes § 7-249 ("[r]evenue from the assessment of benefits shall be used solely for the acquisition or construction of the sewerage system providing such benefits or for the payment of principal of and interest on bonds or notes issued to finance such acquisition or construction"). Again, this is an issue that does not involve methodology but is an unraised, unpreserved issue that the trial court did not address. The defendant had no notice of this issue, and, if it had, it may have presented different evidence at trial regarding subsequent construction to the Hartford sewerage system and whether any construction affected the sewerage line to the property, assuming that the plaintiff's argument is correct. Thus, we also do not address this issue. Nevertheless, we note that, although there was no evidence of construction to the Main Street sewerage line since 1849, there was evidence of construction to the Hartford sewerage system since 1849, and § 7-249 permits assessment revenue to be used to recoup costs for construction of the *sewerage system* benefiting the property.

ORDERS

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M. S. *v.* P. S.

The defendant's petition for certification to appeal from the Appellate Court, 203 Conn. App. 377 (AC 41790), is denied.

KAHN, J., did not participate in the consideration of or decision on this petition.

Logan A. Carducci, in support of the petition.

Danielle J. B. Edwards, in opposition.

Decided June 8, 2021

ANTHONY CARTER *v.* COMMISSIONER OF CORRECTION

The petitioner Anthony Carter's petition for certification to appeal from the Appellate Court, 203 Conn. App. 794 (AC 43372), is denied.

Justine F. Miller, assigned counsel, in support of the petition.

Jonathan M. Sousa, deputy assistant state's attorney, in opposition.

Decided June 8, 2021

STATE OF CONNECTICUT *v.* MAXINE THORNE

The defendant's petition for certification to appeal from the Appellate Court, 204 Conn. App. 249 (AC 43120), is denied.

Raymond L. Durelli, assigned counsel, in support of the petition.

Linda F. Currie-Zeffiro, senior assistant state's attorney, in opposition.

Decided June 8, 2021

LAJEUNE POLLARD *v.* CITY OF BRIDGEPORT ET AL.

The plaintiff's petition for certification to appeal from the Appellate Court, 204 Conn. App. 187 (AC 43260), is denied.

John T. Bochanis and *Bruce L. Levin*, in support of the petition.

John P. Bonanno, in opposition.

Decided June 8, 2021

A. G. *v.* C. G.

The plaintiff's petition for certification to appeal from the Appellate Court (AC 43446) is denied.

A.G., self-represented, in support of the petition.

Decided June 8, 2021

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CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

THE RESERVE REALTY, LLC, ET AL. *v.* WINDEMERE RESERVE, LLC, ET AL. (AC 38167)

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THE RESERVE REALTY, LLC, ET AL. *v.* WINDEMERE RESERVE, LLC, ET AL. (AC 38442)

Alvord, Prescott and Suarez, Js.

Syllabus

The plaintiffs, R Co., a real estate marketing company, and H, the executor of the estate of J, a real estate broker who was a founding member of R Co., sought to recover damages from the defendants W Co. and B Co., for, inter alia, breach of certain real estate listing agreements that allegedly would have entitled the plaintiffs to certain brokerage fees and commissions. In 2002, a group of real estate developers, D Co., engaged the services of J and another real estate brokerage firm, S Co., to negotiate the purchase of a large parcel of undeveloped land. D Co. thereafter entered into an agreement which, inter alia, gave J and S Co. the exclusive right to sell and/or lease any property that was to be developed on that land, and also required D Co. to inform any subsequent purchasers of any part or individual lots on the land that the exclusivity provision applied to them. After D Co. purchased the land, it sold two separate parcels of the land to W Co. and B Co., who, pursuant to their respective purchase agreements, executed a buyer's agreement and listing agreements with J and S Co., who had formed R Co. for the purpose of marketing the properties. Thereafter, B Co. constructed a rental apartment complex on its parcel, and W Co. planned to develop a commercial office building on its parcel. Neither B Co. nor W Co. used R Co. as the listing agent for its respective project, and the plaintiffs

brought an action alleging a breach of the buyer's agreement and the listing agreements. The plaintiffs also brought two actions seeking to foreclose real estate broker's liens on the parcels of property that are the subject of the breach of contract action. The trial court rendered judgments discharging the liens in the foreclosure actions and judgment in favor of W Co. and B Co. in the breach of contract action, concluding, inter alia, that the purchase and sale agreements containing the exclusivity provision on which the plaintiffs based their claim for commissions under the listing agreements constituted illegal tying arrangements and violated the Connecticut Antitrust Act (§ 35-24 et seq.), and the listing agreements did not satisfy statutory requirements (§ 20-325a) as to the duration of the authorization. The court further concluded that the agreements did not substantially comply with the statutory requirements and that it was not inequitable to deny commissions to the plaintiffs despite the lack of compliance. The plaintiffs appealed to this court, which affirmed the trial court's judgments, concluding that the defendants' antitrust special defense, under which the exclusivity provisions in the purchase and sale agreements constituted illegal tying arrangements, barred the plaintiffs' claims, pursuant to the governing standard set forth in *State* v. *Hossan-Maxwell, Inc.* (181 Conn. 655). The plaintiffs, on the granting of certification, appealed to our Supreme Court, which overruled its decision in *Hossan-Maxwell, Inc.*, and concluded that the trial court had incorrectly determined that the defendants prevailed on their antitrust special defense and reversed this court's decision, remanding the cases to this court with direction to consider the plaintiffs' remaining claims. *Held*:

1. The trial court properly determined that the listing agreements were unenforceable because they failed to comply with the requirement of § 20-325a that they specify the duration of the broker's authorization to act on behalf of W Co. and B Co.

   a. The trial court erred in finding that the buyer's agreement and the listing agreements were ambiguous as to their intended duration; although the buyer's agreement had a stated duration of years, between September 10, 2003, and September 10, 2010, and the listing agreements had a stated duration of ten years from the date of the first sale or lease, the intent of the parties was to create different durations for different transactions, thus, effect can be given to both provisions, which used definitive language, and this court did not consider extrinsic evidence regarding the parties' intent.

   b. The trial court correctly determined that the listing agreements did not strictly comply with the duration requirements of § 20-325a (b) and/or (c) and such failure was contrary to public policy and custom in the commercial real estate industry, as the agreements failed to set forth a measurable, definite duration; although the agreements specified a ten year period, it was unclear, at the time the agreements were executed, how far into the future the parties would be bound by the provision, and the provision did not provide a ceiling on the ultimate amount of

time the agreements could last, as the amount of time for which the parties could be bound by the agreements was indeterminate because it could only be calculated by reference to an uncertain future event, the conveyance of an individual unit or executed lease.

2. The trial court's finding that it would not be inequitable to deny the plaintiffs' recovery was not clearly erroneous: the listing agreements did not substantially comply with § 20-325a (b) and/or (c), as they were indefinite as to the key element of the duration of the agreement, which was imperative to the parties' understanding of their respective rights under the contracts; moreover, it was not inequitable to deny recovery of commissions under the circumstances in which there was no sale or lease with regard to either parcel of property until almost ten years after the listing contracts were executed, the evidence having supported conclusions that the plaintiffs failed to use best efforts to market the properties and that the defendants did not wrongfully prevent the plaintiffs from performing their obligations under the listing agreements, and, once the plaintiffs became aware of the rental apartment complex constructed by B Co., they made no effort to lease the apartments.

Argued December 2, 2020—officially released June 22, 2021

Procedural History

Action, in the first case, to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Danbury, where the case was tried to the court, *Truglia*, *J.*; judgment for the named defendant et al., from which the plaintiffs appealed to this court, *Alvord*, *Sheldon* and *Schaller*, *Js.*, which affirmed the trial court's judgment; thereafter, in the second and third cases, the court, *Truglia*, *J.*, rendered judgments discharging broker's liens on certain real property of the named defendant in each case in accordance with the parties' stipulations, from which the plaintiffs filed separate appeals to this court, *Alvord*, *Sheldon* and *Schaller*, *Js.*, which affirmed the judgments of the trial court, and the plaintiffs, on the granting of certification, filed separate appeals from all three cases with the Supreme Court, which reversed this court's judgments and remanded the cases to this court for further proceedings. *Affirmed.*

Daniel E. Casagrande, with whom, on the brief, was *Lisa M. Rivas*, for the appellants (plaintiffs in each case).

J. Christopher Rooney, with whom were *Drew J. Cunningham*, and, on the brief, *Brian A. Daley*, for the appellees in Docket No. AC 38167 (defendants).

J. Christopher Rooney, with whom were *Drew J. Cunningham*, and, on the brief, *Brian A. Daley*, for the appellees in Docket Nos. AC 38440 and AC 38442 (named defendant et al.).

David F. Bennett submitted a brief for the appellee in Docket Nos. AC 38440 and AC 38442 (defendant Century 21 Scalzo Realty, Inc.).

Opinion

PRESCOTT, J. These appeals, which return to us on remand from our Supreme Court, presently require us to determine whether certain real estate listing agreements are unenforceable because they fail to comply with the requirement contained in General Statutes § 20-325a that such agreements specify the duration of the authorization. Specifically, the plaintiffs, The Reserve Realty, LLC (Reserve Realty), and Theodore Haddad, Sr., as executor of the estate of Jeanette Haddad, seek to recover real estate brokerage fees (commissions) in connection with the sale and/or lease of (1) units in an apartment complex constructed and leased by the defendant BLT Reserve, LLC (BLT), and (2) commercial office space not yet constructed by the defendant Windemere Reserve, LLC (Windemere).[1] For the reasons

[1] Docket No. AC 38167 arises from the underlying breach of contract action. Docket Nos. AC 38440 and AC 38442 pertain to two actions that the plaintiffs commenced seeking to foreclose liens that they had recorded on the parcels of property that are the subject of the breach of contract action (foreclosure actions). See footnote 18 of this opinion. The plaintiffs' claims on appeal in the foreclosure actions are identical to the claims the plaintiffs make in the breach of contract action. As such, we conclude, consistent with the per curiam opinions previously issued by this court in those appeals, that the disposition of the claims in the foreclosure actions is controlled by the disposition of the claims in the breach of contract action. See *Reserve Realty, LLC* v. *BLT Reserve, LLC*, 174 Conn. App. 150, 165 A.3d 159 (2017), rev'd on other grounds, 335 Conn. 174, 229 A.3d 708 (2020); *Reserve Realty, LLC* v. *Windemere Reserve, LLC*, 174 Conn. App. 153, 165 A.3d 160 (2017),

we set forth, we conclude that the trial court properly determined that the listing agreements are unenforceable because they fail to comply with § 20-325a and, accordingly, affirm the judgments of the trial court.[2]

The following facts and procedural history, as set forth in this court's opinion in *Reserve Realty, LLC* v. *Windemere Reserve, LLC*, 174 Conn. App. 130, 165 A.3d 162 (2017) (*Reserve Realty I*), rev'd, 335 Conn. 174, 229 A.3d 708 (2020), or which are otherwise undisputed in the record, are relevant to our resolution of these appeals. "The plaintiff, Theodore Haddad, Sr., is the duly appointed executor of the estate of his wife, Jeanette Haddad. Prior to her death in January, 2013, Jeanette Haddad was a successful and highly regarded real estate broker in the Danbury real estate market, performing brokerage services under the business name, 'Jeanette Haddad, Broker.'[3] She employed several

rev'd on other grounds, 335 Conn. 174, 229 A.3d 708 (2020). Accordingly, because we conclude that the plaintiffs are not entitled to commissions in the breach of contract action, the plaintiffs' claims in the foreclosure actions also fail. See footnote 18 of this opinion.

[2] The plaintiffs initially raised three claims on appeal. Specifically, they claimed that the trial court improperly determined that (1) the purchase and sale agreements on which they based their claims for commissions constituted part of an illegal tying arrangement, (2) the listing agreements entered into pursuant to such purchase and sale agreements are unenforceable because they did not comply with § 20-325a, and (3) such listing agreements were unenforceable by the plaintiffs because they were personal service contracts of Jeanette Haddad. This court initially affirmed the judgment of the trial court on the ground that the purchase and sale agreements constituted part of an illegal tying arrangement under applicable antitrust law and did not address the plaintiffs' remaining two claims. See *Reserve Realty, LLC* v. *Windemere Reserve, LLC*, 174 Conn. App. 130, 141, 165 A.3d 162 (2017), rev'd, 335 Conn. 174, 229 A.3d 708 (2020). Our Supreme Court reversed the decision of this court, however, and remanded the case to us with direction to consider the plaintiffs' remaining claims. *Reserve Realty, LLC* v. *Windemere Reserve, LLC*, 335 Conn. 174, 204, 211, 229 A.3d 708 (2020). Because we now affirm the trial court's decision with respect to the plaintiff's second claim, we do not address the sole remaining claim.

[3] "To the extent that 'Jeanette Haddad, Broker' is distinct from Jeanette Haddad, those distinctions are not material to our resolution of the claims on appeal." *Reserve Realty I*, supra, 174 Conn. App. 132 n.1.

licensed salespersons, including Theodore Haddad, Sr., and she engaged the services of her son, Theodore Haddad, Jr., who was a licensed real estate broker with his own broker's license and business. The plaintiff, Reserve Realty, a limited liability company organized and existing pursuant to the laws of Connecticut, was founded by Jeanette Haddad and Paul Scalzo on September 15, 2003.[4] The defendants, BLT and Windemere, are limited liability companies, the principals and owners of which include Carl Kuehner, Jr., and Paul Kuehner.[5]

"In early 2002, a group of real estate developers, later known as Woodland Group II, LLC (Woodland), contacted Jeanette Haddad and Century 21 Scalzo Realty, Inc. (Scalzo Realty), a real estate franchise owned by Scalzo,[6] to engage their brokerage services in connection with the negotiations for the purchase of a 546 acre parcel known as the Reserve. As part of the broker/client relationship, the 'Exclusive right to Sell–Listing Agreement' (Woodland agreement) was executed by and between Jeanette Haddad and Scalzo, and two of the Woodland real estate developers. Pursuant to the Woodland agreement, Jeanette Haddad and Scalzo Realty had the exclusive right to sell and/or lease property in the Reserve, and the real estate developers were required to 'make aware to the new purchaser of any

[4] "When formed, Reserve Realty was named UC Properties, LLC (UC Properties). On July 22, 2004, Scalzo filed articles of amendment, changing the name of the company from UC Properties to Reserve Realty." *Reserve Realty I*, supra, 174 Conn. App. 133 n.2. The trial court found that the limited liability company was formed "to market and sell portions of the Reserve property as it became subdivided and sold to various new owners."

[5] "The Kuehner and Haddad families have been personal friends and business associates since the late 1970s." *Reserve Realty I*, supra, 174 Conn. App. 133 n.3.

[6] "The plaintiffs moved to add Scalzo Realty as a necessary party to the action. The trial court granted the motion . . . . Thereafter, Scalzo Realty was defaulted for failure to plead. Subsequently, the plaintiffs withdrew this action as to Scalzo Realty." *Reserve Realty I*, supra, 174 Conn. App. 133 n.4.

part, or of individual lots, or of land, that this Agreement shall apply to that new purchaser and [Jeanette Haddad and Scalzo Realty].'

"On or about June 28, 2002, Woodland purchased the Reserve. Woodland, which wished to develop the Reserve, continued to use the services of Jeanette Haddad and Scalzo thereafter to market the property. Woodland also proposed a master plan for the entire 546 acres, which the Danbury Zoning Commission approved on or about November 26, 2002. Shortly thereafter, Windemere filed an administrative appeal of the plan's approval in the Superior Court, which effectively stayed the approval of the master plan and prevented Woodland from moving forward with the development and sale of the Reserve. Thereafter, representatives of Woodland, Windemere, and BLT met to negotiate the sale of two tracts of land, later known as parcel 13 and parcel 15. Part of the negotiation resulted in Windemere's withdrawal of the administrative appeal.

"On July 17, 2003, Woodland entered into the purchase and sale agreement with BLT for the purchase of parcel 13 and the purchase and sale agreement with Windemere for the purchase of parcel 15 (purchase and sale agreements). Paragraph eight of the purchase and sale agreement for parcel 13 obligated BLT to enter into a listing agreement with Jeanette Haddad and Scalzo Realty, pursuant to which Jeanette Haddad and Scalzo Realty would receive a 3 percent commission on any subsequent sale and/or lease of parcel 13, either as a whole or as individual lots. Similarly, paragraph eight of the purchase and sale agreement for parcel 15 obligated Windemere to enter into a listing agreement with Jeanette Haddad and Scalzo Realty, pursuant to which Jeanette Haddad and Scalzo Realty would receive a $1 million commission for their efforts in the leasing of office space that Windemere intended to develop on the parcel.

"Woodland, BLT, and Windemere also executed an escrow agreement, pursuant to which the purchase and sale agreements would be held in escrow by Woodland's counsel for ninety days until several conditions were met. One of the conditions was the execution of listing agreements . . . to be executed by Jeanette Haddad and Scalzo Realty. This condition was included to satisfy the requirement in the Woodland agreement . . . that Woodland 'make aware to the new purchaser of any part, or of individual lots, or of land, that this Agreement shall apply to that new purchaser and [Jeanette Haddad and Scalzo Realty.]'

"Between July 17 and September 10, 2003, representatives of Woodland, BLT, Windemere, and Jeanette Haddad[7] negotiated the terms of the listing agreements. On September 10, 2003, a meeting was held, at which several documents were executed,[8] including the exclusive right to represent buyer/tenant (buyer's agreement);[9] the consent agreements;[10] the exclusive right to sell–listing agreement for parcel 13;[11] the exclusive right to

[7] "Theodore Haddad, Jr., acted on behalf of Jeanette Haddad." *Reserve Realty I*, supra, 174 Conn. App. 135 n.7.

[8] "The trial court determined that it was not clear precisely how the final, fully executed hard copies of the agreements came to be executed by Jeanette Haddad. . . . The trial court found, however, that Carl Kuehner, Jr., executed the agreements on behalf of both BLT and Windemere with the intent that the defendants be legally bound." *Reserve Realty I*, supra, 174 Conn. App. 135 n.8.

[9] "In the buyer's agreement, the defendants appointed Scalzo Realty, UC Properties [LLC], and Jeanette Haddad as their exclusive agents to assist in the purchase of parcel 13 and parcel 15." *Reserve Realty I*, supra, 174 Conn. App. 135 n.9. UC Properties, LLC, which later became Reserve Realty, was not formed until five days after this agreement was executed (i.e., September 15, 2003).

[10] "The consent agreements did not address the defendants' obligation to use the plaintiffs' brokerage services." *Reserve Realty I*, supra, 174 Conn. App. 135 n.10.

[11] "In the exclusive right to sell–listing agreement for parcel 13, BLT granted Jeanette Haddad and Scalzo Realty the exclusive right to sell and/or lease parcel 13." *Reserve Realty I*, supra, 174 Conn. App. 136 n.11.

sell/lease–listing agreement for parcel 13;[12] the exclusive right to sell/lease–listing agreement for parcel 15;[13] and the exclusive right to sell–listing agreement for parcel 15[14] (listing agreements).[15]

"Despite having executed the listing agreements, the defendants at no time desired to retain Jeanette Haddad as the broker for the sale and/or lease of units to be built on parcel 13 and parcel 15. Rather, the defendants entered into the listing agreements only to satisfy the requirements of paragraph eight of the purchase and sale agreements, and the only reason that the parties included paragraph eight in the purchase and sale agreements was to allow Woodland to comply with its contractual obligation under the Woodland agreement to require subsequent purchasers of the Reserve to retain Jeanette Haddad and Scalzo Realty as their brokers.

"Beginning in early 2006, representatives of Jeanette Haddad and Scalzo Realty, including Theodore Haddad, Sr., and Theodore Haddad, Jr., diligently marketed and contacted possible buyers and lessees for the Reserve. At some point, however, the defendants decided that the listing agreements were a ' "bad marriage,' " and, in January, 2007, Paul Kuehner and Theodore Haddad, Jr., met to discuss terminating the broker/client relationship. A buyout figure was offered to Jeanette Haddad and Scalzo, which they both refused. . . . [Although

[12] "In the exclusive right to sell/lease–listing agreement for parcel 13, BLT granted UC Properties [LLC], Scalzo Realty, and Jeanette Haddad the exclusive right to sell and/or lease parcel 13 or any portion of parcel 13." *Reserve Realty I*, supra, 174 Conn. App. 136 n.12.

[13] "In the exclusive right to sell/lease–listing agreement for parcel 15, Windemere granted UC Properties [LLC], Scalzo Realty, and Jeanette Haddad the exclusive right to sell and/or lease parcel 15 or any portion of parcel 15." *Reserve Realty I*, supra, 174 Conn. App. 136 n.13.

[14] "In the exclusive right to sell–listing agreement for parcel 15, Windemere granted Jeanette Haddad and Scalzo Realty the exclusive right to sell and/or lease parcel 15." *Reserve Realty I*, supra, 174 Conn. App. 136 n.14.

[15] The trial court, in its memorandum of decision, refers to all of the agreements executed on September 10, 2003, as "the listing agreements."

Jeanette Haddad and Scalzo Realty continued to make good faith efforts to find prospective buyers or lessees for parcel 13 and parcel 15 until mid-2007, the real estate market softened, and those efforts ultimately were unsuccessful.] The defendants began to explore other available options, including the development of parcel 13 into a luxury apartment rental complex.

"On or about April 18, 2011, the Danbury Planning and Zoning Department issued a site plan approval to BLT for the construction of a rental apartment complex on parcel 13, which would later be known as Abbey Woods. Shortly thereafter, the defendants began construction. BLT subsequently leased the apartment units in Abbey Woods through its own on-site leasing agent, with the first lease being entered into in March, 2013." (Footnotes in original; footnote added; footnotes omitted.) *Reserve Realty I*, supra, 174 Conn. App. 132–37.

The defendants did not notify the Haddads[16] or Scalzo of the site plan approval for, or the construction of, the Abbey Woods apartments. Theodore Haddad, Jr., upon learning about Abbey Woods in 2013, shortly after his mother had died, contacted Carl Kuehner, Jr., and asked him if the defendants intended to honor the listing agreements. Carl Kuehner, Jr., refused to discuss the issue with Theodore Haddad, Jr., claiming that the listing agreements for parcel 13 were personal service agreements between BLT and Jeanette Haddad.

In July, 2013, the plaintiffs brought this action alleging breach of contract and anticipatory breach with regard to the buyer's agreement and listing agreements[17] for

[16] We refer to Jeanette Haddad, Theodore Haddad, Sr., and Theodore Haddad Jr., collectively as the Haddads and individually where appropriate.

[17] The plaintiffs filed two separate complaints, one with respect to parcel 13 and the other with respect to parcel 15. In both complaints, the plaintiffs alleged that the parties intended that the buyer's agreement and the listing agreements executed on September 10, 2003, "should be read together as a whole and to confirm the brokers' rights to commissions from" the defendants. The plaintiffs further alleged that those agreements "taken either separately or together complied with the provisions of [§] 20-325a of the Connecticut General Statutes . . . ."

both parcel 13 and parcel 15.[18] Specifically, the plaintiffs (1) claimed that they are entitled to their percentage of commission of gross rentals from the Abbey Woods units already leased, and a percentage of estimated gross rental receipts yet to be realized by BLT for this development over the ten year term of the agreement that began on the date of the first lease; (2) asked the court to recognize their claim for a $1,000,000 commission for office space that will be due and payable when Windemere constructs and begins leasing office space on parcel 15; and (3) sought a declaratory judgment recognizing their right to serve as the exclusive listing agents henceforward for the sale and/or lease of any Abbey Woods units and office space on parcel 15.

"The defendants raised five special defenses: (1) the listing agreements were entered into pursuant to an illegal tying arrangement; (2) there was a lack of consideration in that the plaintiffs had failed to perform brokerage services entitling them to compensation; (3) the listing agreements were personal service contracts; (4) the listing agreements, by their express terms, expired on September 10, 2010; and (5) the listing agreements were unenforceable because the necessary conditions precedent had not been satisfied." *Reserve Realty I*,

[18] "Subsequently, on May 6, 2014, the plaintiffs commenced two actions seeking to foreclose liens that they had recorded as to parcel 13 and parcel 15 (foreclosure actions). On September 28, 2015, the parties filed a stipulation in each of the foreclosure actions, stipulating that the memorandum of decision in the [breach of contract] action required the conclusion that the plaintiffs could not establish probable cause to sustain the validity of the liens, as required by General Statutes § 20-325e. The parties, therefore, stipulated that judgment be rendered against the plaintiffs in the foreclosure actions, but that all appellate rights be reserved. The plaintiffs . . . appealed from the judgments ordering the discharge of the liens." *Reserve Realty I*, supra, 174 Conn. App. 137 n.15. This court, in separate per curiam opinions, affirmed the judgments in the foreclosure actions, stating that the disposition of the claims therein was governed by the disposition of the claims in the breach of contract action. See *Reserve Realty, LLC* v. *BLT Reserve, LLC*, 174 Conn. App. 150, 165 A.3d 159 (2017), rev'd on other grounds, 335 Conn. 174, 229 A.3d 708 (2020); *Reserve Realty, LLC* v. *Windemere Reserve, LLC*, 174 Conn. App. 153, 165 A.3d 160 (2017), rev'd on other grounds, 335 Conn. 174, 229 A.3d 708 (2020).

supra, 174 Conn. App. 138. After hearing twelve days of evidence, the trial court rendered judgment in favor of the defendants, concluding that the purchase and sale agreements created an illegal tying arrangement that violates the Connecticut Antitrust Act, General Statutes § 35-24 et seq., and that the plaintiffs had not carried their burden of proof by a preponderance of the evidence that the defendants breached the listing agreements or are liable for an anticipatory breach because such listing agreements (1) did not satisfy the requirements of § 20-325a, and (2) were personal service contracts with Jeanette Haddad.

With regard to the issue of compliance with § 20-325a, the court first found that the parties intended for the buyer's agreement and the listing agreements to be read and interpreted together as one contract "notwithstanding the integration clauses of the preprinted form agreements and the discrepancies between which of the plaintiffs are parties to the respective agreements," because the documents were signed by the defendants at the same time and date.[19] The court then went on to

[19] The plaintiffs do not challenge on appeal the trial court's determination that all of the agreements executed on September 10, 2003, were intended to be read and interpreted together. As previously mentioned, the plaintiffs alleged in their complaint and argued to the trial court that the buyer's agreement and listing agreements should be read together as a whole, as that was the parties' intent. See footnote 17 of this opinion. In support thereof, the plaintiffs point to the fact that the agreements expressly reference one another. Specifically, the buyer's agreement states: "Buyer agrees to enter into a listing agreement dated 9/10/03 with Broker—Jeanette Haddad Broker, [Scalzo Realty], UC Properties, LLC." See *McCutcheon & Burr, Inc.* v. *Berman*, 218 Conn. 512, 523–24, 590 A.2d 438 (1991) ("[S]eparate documents will be deemed to constitute a valid contract under § 20-325a (b) if they collectively satisfy the statutory requirements *and relate to the same agreement*. . . . The burden of establishing a valid listing agreement in this manner is great, however, and must consist of more than a reference to the [listing] contract in the sales agreement. . . . Parole evidence will be considered if it convincingly shows that the signed and unsigned writings are connected to one another and have been assented to by the parties." (Citations omitted; emphasis in original; internal quotation marks omitted.)). Because the parties do not challenge the trial court's determination that

conclude that the agreements were ambiguous and incomplete as to the duration of the authorization, which is a term that must be included in any agreement for commissions in a commercial real estate transaction pursuant to § 20-325a. Specifically, the court stated that "[t]he evidence adduced at trial was evenly balanced between two findings: (1) that all of the agreements were intended to expire on September 10, 2010 . . . and (2) that the term of the agreements began with the date of the first sale or lease of a unit and continue[s] for a period of ten years thereafter. . . . In other words, the agreements either expire by their express terms on September 10, 2010, or the agreements have no fixed expiration date and are, therefore, invalid for failure to comply with § 20-325a."[20]

the agreements should be read together, we do not review the propriety of that conclusion.

[20] The court reasoned: "In support of the defendants' argument that the agreements expire by their terms on September 10, 2010, the court accepts the plaintiffs' argument that the parties intended that the term of the agreements had to be at least several years in duration because of the size of the project, the potential for delays, and the possibility of upswings and downturns in real estate markets overall. A term of seven years is consistent with this argument. Secondly, September 10, 2010, has the virtue of being a definite date (plaintiff's [exhibit] 6). The court does not accept the plaintiffs' argument that the deadline of plaintiffs' [exhibit] 6 [buyer's agreement] refers only to the time within which the defendants were required to execute plaintiffs' exhibits 7, 8, 9 & 10 [the listing agreements]. The court rejects this reading because paragraph 4 of [the buyer's agreement] expressly requires the other agreements [listing agreements] to be signed on September 10, 2003, and because a period of seven years within which simply to sign the other agreements seems excessive and unlikely to have been the parties' intent.

"On the other hand, if one reads only [the listing agreements], and excludes [the buyer's agreement], the listing agreements could conceivably last for an indefinite period of time. This reading of the agreement is equally unavailing to the plaintiffs, because listing agreements that continue for an indefinite period of time are inherently unreasonable and unenforceable. In other words, the agreements either expire by their express terms on September 10, 2010, or the agreements have no fixed expiration date and are, therefore, invalid for failure to comply with § 20-325a. Ambiguities in written agreements are construed against the drafting party. . . . In the present case, the court construes these ambiguities against the plaintiffs, who had primary

In addition, the court rejected the plaintiffs' further arguments that they were entitled to commissions because (1) the agreements substantially comply with the statutory requirements, (2) the plaintiffs substantially performed their obligations under the agreements or were prevented from doing so, thereby excusing further performance, and (3) the court should intervene in equity to find that a commission is due and payable despite a lack of compliance. The court reasoned that, "[f]irst, Jeanette Haddad did not, prior to her death, interest a ready, willing, and able buyer or lessee in any of the [p]arcel 13 units, nor did Theodore Haddad, Sr., Theodore Haddad, Jr., or [Garland] Warren,[21] acting on her behalf or on behalf of Reserve Realty. Second, the lack of a definite expiration date is too significant a lapse in the statutory requirements to overlook."

Furthermore, with respect to the plaintiffs' argument that they were prevented from performing their obligations under the agreements, the court stated: "The court does not find that [after the fall of 2007], the defendants 'land banked' the parcels, as suggested by the plaintiffs, that is, taking the property off the market and thereby excusing the plaintiffs from further performance. The court finds, rather, that had Jeanette Haddad or Scalzo found a valuable and qualified prospect during this time, the defendants would have been happy to entertain it. The court further finds that the defendants simply waited for a prospective buyer to meet their demands, and in the meantime employed all available options."

responsibility for drafting the agreements and, arguably, superior knowledge of the law relating to listing agreements. Jeanette Haddad and Scalzo could have inserted a definite expiration date in the agreements; they did not, however, and the listing agreements are unenforceable for their failure to comply with the requirements of § 20-325a." (Citations omitted; footnote omitted.)

[21] Garland Warren, as an employee of Scalzo, worked with Theodore Haddad, Sr., and Theodore Haddad, Jr., to compile a list of possible buyers and/or lessees for the parcels, to create marketing materials to promote interest in the parcels, and, between early 2006 and the fall of 2007, to contact possible buyers and lessees.

The plaintiffs appealed, claiming that the trial court improperly concluded that (1) the purchase and sale agreements constituted part of an illegal tying arrangement in violation of the Connecticut Antitrust Act, (2) the listing agreements did not comply with § 20-325a because they were ambiguous and incomplete as to the duration of the authorization, and (3) the listing agreements were unenforceable by the plaintiffs because they were personal service contracts of Jeanette Haddad. As previously noted, this court affirmed the judgment of the trial court on the ground that the defendants' antitrust special defense barred the plaintiffs' claims, pursuant to the governing standard set forth in *State* v. *Hossan-Maxwell, Inc.*, 181 Conn. 655, 436 A.2d 284 (1980). See *Reserve Realty I*, supra, 174 Conn. App. 141. Our Supreme Court, in *Reserve Realty, LLC* v. *Windemere Reserve, LLC*, 335 Conn. 174, 204, 211, 229 A.3d 708 (2020) (*Reserve Realty II*), overruled *Hossan-Maxwell, Inc.*, reversed this court's decision with regard to the defendants' antitrust special defense, and remanded the case to this court with direction to consider the plaintiffs' remaining claims. Additional facts will be set forth as needed.

The plaintiffs' claim that the trial court improperly concluded that the listing agreements do not satisfy the requirements of § 20-325a is twofold. Specifically, the plaintiffs contend that the listing agreements strictly comply with the duration requirement set forth in § 20-325a (b) and/or (c) (2). The plaintiffs also maintain that, even if the listing agreements do not strictly comply with § 20-325a (b) and/or (c) (2), they are nevertheless entitled to commissions pursuant to § 20-325a (d) because the listing agreements substantially comply with subsections (b) and/or (c) (2), and it would be inequitable to deny them recovery. For the reasons that follow, we disagree with the plaintiffs and, accordingly, affirm the judgment of the trial court.

I

"The right of a real estate broker to recover a commission is dependent upon whether the listing agreement meets the requirements of § 20-325a (b). . . . It is well established that the requirements of § 20-325a (b) are mandatory rather than permissive and that *the statute is to be strictly construed*. . . . A broker who does not follow the mandate of [§ 20-325a (b)] does so at his [own] peril." (Emphasis added; internal quotation marks omitted.) *NRT New England, LLC* v. *Jones*, 162 Conn. App. 840, 848, 134 A.3d 632 (2016).

Section 20-325a (b) provides in relevant part: "No person, licensed under the provisions of this chapter, shall commence or bring any action with respect to any acts done or services rendered after October 1, 1995 . . . unless the acts or services were rendered pursuant to a contract or authorization from the person for whom the acts were done or services rendered. To satisfy the requirements of this subsection any contract or authorization shall . . . *contain the conditions of such contract or authorization* . . . ." (Emphasis added.) In addition, with specific regard to commercial real estate transactions,[22] § 20-325a (c), which is not a model

[22] Pursuant to General Statutes § 20-311 (9), " '[c]ommercial real estate transaction' " is defined as "any transaction involving the sale, exchange, lease or sublease of real property other than real property containing any building or structure occupied or intended to be occupied by no more than four families or a single building lot to be used for family or household purposes." The transactions at issue here are properly characterized as commercial real estate transactions because there is no evidence to suggest that parcel 13 and/or parcel 15 were ever intended to be occupied by fewer than four families, or to contain a single building lot to be used for family or household purposes. Specifically, the master plan, which was approved by the Danbury Zoning Commission in November, 2002, before the defendants began negotiating with Woodland to purchase parcel 13 and parcel 15, provided that 470 residential rental units were to be built on parcel 13 and up to 650,000 square feet of office space was to be built on parcel 15. In fact, parcel 13 now contains a luxury apartment complex with 470 units, and parcel 15, which was still not developed as of the date of oral argument to this court, is still intended to be commercial office space. See *Reserve Realty I*, supra, 174 Conn. App. 149.

of grammatical clarity, essentially provides that a licensed real estate broker cannot bring any action to recover commissions for acts or services rendered unless the acts or services were rendered pursuant to either a contract or authorization meeting the requirements of subsection (b), *or* a writing stating (1) for whom the licensee will act or has acted, signed by the party for whom the licensee will act or has acted, (2) the *duration of the authorization*, and (3) the amount of any compensation payable to the licensee. Similarly, the pertinent regulation; Regs., Conn. State Agencies § 20-328-6a (d); provides in relevant part that a "licensee attempting to negotiate or negotiating a sale, exchange, or lease of a commercial real estate transaction shall obtain a listing, buyer or tenant representation agreement, memorandum, letter or other writing stating . . . *the duration of the authorization* . . . ." (Emphasis added.) See also General Statutes § 20-328 (statutory authority for regulation). Therefore, for the listing agreements at issue to comply with § 20-325a (b) and/or (c) (2), and, thus, entitle the plaintiffs to recover commissions, they must specify the duration of the authorization.

"To the extent that we are required to review conclusions of law or the interpretation of the relevant statute by the trial court, we engage in plenary review. . . . We review the court's factual findings, however, under a clearly erroneous standard. . . . [W]hether a particular listing agreement complies with § 20-325a (b) is a question of law." (Citation omitted; internal quotation marks omitted.) *NRT New England, LLC* v. *Jones*, supra, 162 Conn. App. 846.

A

We begin by construing the agreements at issue to determine the parties' intent as to the duration of the authorization. When the trial court construed the agreements, it determined that they were ambiguous as to

duration and that the evidence adduced at trial was evenly balanced between a finding that (1) all of the agreements were intended to expire on September 10, 2010, and (2) the term of the agreements began with the date of the first sale or lease of a unit and continues for a period of ten years thereafter. The plaintiffs dispute these findings, arguing that it was improper for the court to conclude that the agreements were ambiguous as to duration because the different provisions in the buyer's agreement and the listing agreements are not in conflict, and the court's determination in this regard was based on a purported inconsistency that no party had ever found or voiced. We agree with the plaintiffs that the agreements are not ambiguous as to the intended duration.

"The law governing the construction of contracts is well settled. When a party asserts a claim that challenges the trial court's construction of a contract, we must first ascertain whether the relevant language in the agreement is ambiguous." (Internal quotation marks omitted.) *Ramirez* v. *Health Net of the Northeast, Inc.*, 285 Conn. 1, 13, 938 A.2d 576 (2008). "The court's determination as to whether a contract is ambiguous is a question of law; our standard of review, therefore, is de novo." (Internal quotation marks omitted.) *Santos* v. *Massad-Zion Motor Sales Co.*, 160 Conn. App. 12, 18, 123 A.3d 883, cert. denied, 319 Conn. 959, 125 A.3d 1013 (2015). "The intent of the parties as expressed in a contract is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction." (Internal quotation marks omitted.) *Connecticut Light & Power Co.* v. *Lighthouse Landings, Inc.*, 279 Conn. 90, 109, 900 A.2d 1242 (2006).

"[A] contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . The contract must be viewed in its entirety,

with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous. . . . The fact that the parties interpret the terms of a contract differently, however, does not render those terms ambiguous. . . . [W]e accord the language employed in the contract a rational construction based on its common, natural, and ordinary meaning and usage as applied to the subject matter of the contract. . . . Moreover, in construing contracts, we give effect to all the language included therein, as the law of contract interpretation . . . militates against interpreting a contract in a way that renders a provision superfluous." (Citation omitted; internal quotation marks omitted.) *A.C. Consulting, LLC* v. *Alexion Pharmaceuticals, Inc.*, 194 Conn. App. 316, 326–27, 220 A.3d 890 (2019). "Each word must be considered along with not only all the other words that surround it, but also the history and education of the parties, the nature of the contract, the purposes of the parties, and all other relevant circumstances." (Footnote omitted.) 5 M. Kniffin, Corbin on Contracts (Rev. Ed. 1998) § 24.21, p. 210. With these principles in mind, we turn to the language of the agreements at issue.

The buyer's agreement provides, inter alia, that "You (BUYER(S)/TENANT(S): BLT Reserve, LLC and Windemere Reserve, LLC appoint us . . . Jeanette Haddad, Broker, [Scalzo Realty], and UC Properties, LLC as your exclusive agent to assist you to locate and purchase/option/exchange/lease real property acceptable to you. . . . The type of property you would like to purchase/option/exchange/lease is: GENERAL PROPERTY DESCRIPTION: Parcels #13 and #15—Portions of The Reserve." There are four documents that comprise the listing agreements. Two of the documents provide, inter alia, that BLT and Windemere "hereby [grant] to Broker the Exclusive Right to Sell and/or Lease the Property

[more particularly described as parcel 13 and parcel 15]. [BLT and Windemere] shall not on [their] own or in conjunction with others sell and/or lease the Property without written approval from Broker, nor shall [they] grant any such rights to anyone else during the term of this Agreement." The other two documents comprising the listing agreements provide, inter alia, that "Buyer hereby grants to Broker the Exclusive Right to Sell and/or Lease the Property [defined as parcel 13 and parcel 15 in the respective documents] and any portion thereof pursuant to the terms and conditions set forth herein and in the attached Agreement."

The listing agreements at issue are exclusive right to sell listing agreements.[23] "[T]hree types of real estate listing agreements have traditionally been used in this state . . . . Those categories are: the open listing, under which the property owner agrees to pay the listing broker a commission if that broker effects the sale of the property but retains the right to sell the property himself as well as the right to procure the services of any other broker in the sale of the property; the exclusive agency listing, which is for a time certain and authorizes only one broker to sell the property but permits the property owner to sell the property himself without incurring a commission . . . and *the exclusive right to sell listing, under which the sale of the property during the contract period, no matter by whom negotiated, obligates the property owner to pay a commission to the listing broker*." (Citations omitted; emphasis added.) *Real Estate Listing Service, Inc.* v. *Connecticut Real Estate Commission*, 179 Conn. 128, 132, 425 A.2d 581 (1979).[24]

[23] For simplicity, we will refer to this type of contract as an "exclusive right to sell listing agreement." We recognize, however, that the agreements at issue are "exclusive right to sell/*lease* listing agreement[s]." (Emphasis added.) The fact that the listing agreements gave the brokers the exclusive right to procure tenants, as well as buyers, does not impact the analysis in any way.

[24] Neither party contends that these agreements are not exclusive right to sell–listing agreements. In addition, we note that the listing agreements

With regard to the provisions in the agreements that relate to duration, the buyer's agreement states: "Term: This agreement is in effect from 9/10/03, through and including 9/10/10." By contrast, two of the documents comprising the listing agreements state: "Term: The term of this Agreement shall begin at the time Developer becomes the owner . . . and be for a period of One Hundred and Twenty, (120), months from the date of the first conveyance of an individual unit or executed lease to an unrelated party of Developer and shall be renewable by mutual agreement by both parties."

(1) are clearly labeled "Exclusive Right to Sell–Listing Agreement" and "Exclusive Right to Sell/Lease–Listing Agreement," (2) the court refers to them as "exclusive" on numerous occasions in its findings of fact, (3) there is no determination by the court that, despite the label, the agreements truly are one of the other two types of listing agreements, and (4) the substance of the agreements is characteristic of exclusive right to sell–listing agreements. Specifically, they state: "Developer hereby grants to Broker the Exclusive Right to Sell and/or Lease the Property. Developer shall not on its' own or in conjunction with others sell and/or lease the Property without written approval from Broker, nor shall it grant any such rights to anyone else during the term of this Agreement." By contrast, it is characteristic of an open listing to permit the property owner to obtain the services of other real estate brokers to effect the sale of the property. See *Real Estate Listing Service, Inc.* v. *Connecticut Real Estate Commission*, supra, 179 Conn. 134. There is also no provision in the agreements at issue specifically stating that to be entitled to commissions the brokers had to procure a ready, willing and able buyer. See id., 132, 133 (under exclusive right to sell listing, "the sale of the property during the contract period, no matter by whom negotiated, obligates the property owner to pay a commission to the listing broker," whereas under open listing, "the property owner promises to pay the listing broker his commission when he produces a ready, willing and able buyer").

To the extent that the trial court seemingly analyzed the agreements here as if they were open listing agreements, essentially stating that broker's commissions would be due and payable to Jeanette Haddad and Scalzo pursuant to the listing agreements only "*if Jeanette and/or Scalzo procured ready, willing, and able buyers* or lessees for parcel 13 or parcel 15," and then citing to a case that involved an open listing agreement; *New England Retail Properties, Inc.* v. *Maturo*, 102 Conn. App. 476, 925 A.2d 1151, cert. denied, 284 Conn. 912, 931 A.2d 932 (2007); such analysis was improper. (Emphasis added.) Despite the trial court's purported error in this regard, our ultimate conclusion that the court's judgment should be affirmed does not change.

The plaintiffs argue that, contrary to the trial court's findings, the intent of the parties, which is definitively expressed in the agreements, was "to create different durations for different transactions." That is, the buyer's agreement, by its terms, obligated the defendants to use the named brokers as their representatives in *purchasing* parcels 13 and 15 from Woodland, while the listing agreements obligated the defendants to use the named brokers as their exclusive agents in the subsequent *marketing and sale and/or leasing* of the parcels. In response, the defendants argue that when reading and interpreting the five agreements together as one contract, the court correctly concluded that they were conflicting as to the time frame governing the parties' relationship, and thus ambiguous. We agree with the plaintiffs.

When viewed in isolation, the two durational provisions seem to be contradictory. When viewed, however, in the context of the entirety of the documents in which they are contained, it is clear that there is a way to give effect to both provisions, as we must. See *A.C. Consulting, LLC* v. *Alexion Pharmaceuticals, Inc.*, supra, 194 Conn. App. 327. That is to say that the buyer's agreement and the listing agreements governed different aspects of the relationship between the parties. Specifically, the buyer's agreement granted the named brokers the exclusive right to represent BLT and Windemere in purchasing parcels 13 and 15 from Woodland, and such authorization expired on September 10, 2010. The listing agreements, by contrast, granted the named brokers the exclusive right to sell/lease parcels 13 and 15, or portions thereof, on behalf of BLT and Windemere for a period of ten years from the date of the first conveyance of an individual unit or executed lease to an unrelated party, after BLT and Windemere had acquired ownership of the parcels.

As of the September 10, 2003 meeting, at which the buyer's agreement and listing agreements were executed, the defendants already had executed purchase

and sale agreements for parcels 13 and 15 that were being held in escrow by Woodland's counsel for ninety days until certain conditions were met. One such condition was that the defendants enter into listing agreements with the brokers named in the purchase and sale agreements. It strains credulity that the defendants would have granted the brokers seven years to assist with a sale that was essentially finalized on September 10, 2003. On the other hand, these are commercial contracts made by sophisticated parties with the advice of counsel. Accordingly, we presume that "the parties meant what they said and said what they meant, in language sufficiently definitive to obviate any need for deference to the trial court's factual findings as to the parties' intent." *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.*, 252 Conn. 479, 497, 746 A.2d 1277 (2000). As our Supreme Court explained in *Tallmadge Bros., Inc.*, when the contracts at issue are commercial in nature and were made by sophisticated commercial parties with the advice of counsel, there is "a presumption of definitiveness,"[25] meaning that in interpreting such contracts we presume that the parties used definitive language to describe their agreement. Id., 496–97; see also *Schwartz* v. *Family Dental Group, P.C.*, 106 Conn. App. 765, 773, 943 A.2d 1122 ("[C]ourts do not unmake bargains unwisely made. Absent other infirmities, bargains moved on calculated considerations, and

[25] There is no evidence in the record that rebuts the presumption of definitiveness of the language of the agreements at issue. None of the individuals who testified at trial indicated that they perceived any conflict between the buyer's agreement and the listing agreements when executed. Moreover, to the extent that the trial court reasoned that it was sensible to conclude that the parties intended that all of the agreements between them expire on September 10, 2010, because the agreements "had to be at least several years in duration because of the size of the project, the potential for delays, and the possibility of upswings and downturns in real estate markets overall," that same reasoning likewise supports the conclusion that the parties intended for the duration to be for a period of ten years from the date of the first conveyance of an individual unit or executed lease to a party unrelated to the defendants.

whether provident or improvident, are entitled nevertheless to sanctions of the law.'' (Internal quotation marks omitted.)), cert. denied, 288 Conn. 911, 954 A.2d 184 (2008). Indeed, because the language in the listing agreements is definitive, we do not consider any extrinsic evidence regarding the parties' intent.[26]

B

Having concluded that the agreements are unambiguous as to the parties' intent that the September 10, 2010 expiration date set forth in the buyer's agreement only pertains to the brokers' authority to represent the defendants in purchasing parcels 13 and 15 from Woodland, we now turn to the issue of whether the provision governing the duration of the brokers' authority to act as the defendants' exclusive listing agent to market and sell and/or lease parcels 13 and 15, or portions thereof, strictly complies with the requirement of § 20-325a (b) and/or (c). This determination presents a question of law. See *NRT New England, LLC* v. *Jones*, supra, 162 Conn. App. 846.

[26] We note that, even if we were to conclude that the duration provisions in the buyer's agreement and the listing agreements are conflicting and thus create ambiguity with regard to the parties' intent, our ultimate conclusion that the plaintiffs cannot prevail on their claim for commissions would be the same. See 11 R. Lord, Williston on Contracts (4th Ed. 1999) § 30:4, p. 46 (''[a]mbiguity may exist when two contractual provisions are in conflict with each other''). Specifically, assuming arguendo that we determined that the parties intended for all of the agreements to expire on September 10, 2010, the legal import of such conclusion would be that the parties' agreements complied with the duration requirement of § 20-325a, and were thus legally enforceable. Nevertheless, because the agreements are exclusive right to sell listing agreements and no sale or lease occurred with regard to parcel 13 or parcel 15 before the expiration date, the plaintiffs would not be entitled to a commission. See *Colliers, Dow & Condon, Inc.* v. *Schwartz*, 77 Conn. App. 462, 473–74, 823 A.2d 438 (2003) (''By its terms, the listing agreement was to provide the plaintiff with the exclusive right to offer the property for sale or lease. Under such an agreement, the sale or lease of the property *during the contract period*, no matter by whom negotiated, obligates the property owner to pay a commission to the listing broker.'' (Emphasis added.)).

For ease of reference, we restate the language of the provision at issue, and the relevant statutory and regulatory provisions. The agreement provision at issue states, "Term: The term of this Agreement shall begin at the time Developer becomes the owner . . . and be for a period of One Hundred and Twenty, (120), months from the date of the first conveyance of an individual unit or executed lease to an unrelated party of Developer, and shall be renewable by mutual agreement by both parties." Section 20-325a (b) provides in relevant part: "No person, licensed under the provisions of this chapter, shall commence or bring any action with respect to any acts done or services rendered . . . unless the acts or services were rendered pursuant to a contract or authorization from the person for whom the acts were done or services rendered. To satisfy the requirements of this subsection any contract or authorization shall . . . *contain the conditions of such contract or authorization* . . . ." (Emphasis added.) In addition, § 20-325a (c), which specifically governs commercial real estate transactions, provides that a licensed real estate broker cannot bring any action to recover commissions for acts or services rendered unless the acts or services were rendered pursuant to either a contract or authorization meeting the requirements of subsection (b), *or* a writing stating (1) for whom the licensee will act or has acted, signed by the party for whom the licensee will act or has acted (2) the *duration of the authorization*, and (3) the amount of any compensation payable to the licensee. Similarly, the pertinent regulation provides in relevant part that a "licensee attempting to negotiate or negotiating a sale, exchange or lease of a commercial real estate transaction shall obtain a listing, buyer or tenant representation agreement, memorandum, letter, or other writing stating . . . *the duration of the authorization* . . . ." (Emphasis added.) Regs., Conn. State Agencies § 20-328-6a (d).

The trial court, when addressing this issue, reasoned, inter alia, that the language in § 20-235a (b) providing that a listing agreement must include "the conditions of such contract or authorization" means that a listing agreement must contain "all of the terms and conditions of the sale, exchange or lease, including . . . the date on which the agreement is entered into and its *expiration date*." (Emphasis added; internal quotation marks omitted.) For the latter proposition, the court improperly relied upon § 20-328-6a (a) (1) of the Regulations of Connecticut State Agencies, which, by its terms, does not apply if a broker is attempting to negotiate a commercial real estate transaction.[27] Although the Abbey Woods complex on parcel 13 is comprised of residential apartments, it is properly characterized as a "commercial real estate transaction" as that term is defined in General Statutes § 20-311 (9) because there are 470 units in the complex and, thus, it is not a "building or structure occupied or intended to be occupied by no more than four families or a single building lot to be used for family or household purposes." See footnote 21 of this opinion.

Subsection (d) of § 20-328-6a of the Regulations of Connecticut State Agencies applies to commercial real estate transactions, and it provides that listing agreements must state "the duration of the authorization." Therefore, to the extent that the trial court concluded that the listing agreements in the present case were invalid for failure to comply with § 20-235a because they did not contain an expiration date, we disagree. The proper inquiry is not whether the listing agreements contain an expiration date, but rather whether they specify the "duration" of the broker's authorization to act on behalf of the defendants. See *Location Realty, Inc.* v. *Colaccino*, 287 Conn. 706, 718, 949 A.2d 1189

[27] Specifically, § 20-328-6a (a) (1) of the Regulations of Connecticut State Agencies provides that it is applicable to situations "*other than a commercial real estate transaction*." (Emphasis added.)

(2008) ("there is a more flexible standard for a writing in commercial real estate transactions than that which applies to noncommercial transactions"). To answer this question, we must interpret the meaning of the term "duration" as it is used in § 20-235a. "This presents a question of statutory interpretation over which our review is plenary." *Casey* v. *Lamont*, Conn. , , A.3d (2021).

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In seeking to determine that meaning, General Statutes § 1-2z[28] directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Footnote added; internal quotation marks omitted.) *Donahue* v. *Veridiem, Inc.*, 291 Conn. 537, 547, 970 A.2d 630 (2009). "In interpreting statutes, words and phrases are to be construed according to their commonly approved usage . . . . Generally, in the absence of statutory definitions, we look to the contemporaneous dictionary definitions of words to ascertain their commonly approved usage." (Citations omitted; internal quotation marks omitted.) *Ledyard* v. *WMS Gaming, Inc.*, Conn. , , A.3d (2021).

The term "duration" is not defined in § 20-325a, chapter 392 of the General Statutes, nor in title 20 of the

[28] General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

Regulations of Connecticut State Agencies. Accordingly, we look to its common dictionary definition. See *Casey* v. *Lamont*, supra, Conn. . Webster's Dictionary defines "duration" as "1: the quality or state of lasting for a period of time . . . 2: a portion of time which is measurable or during which something exists, lasts, or is in progress . . . ." Webster's Third New International Dictionary (1961) p. 703. Similarly, Black's Law Dictionary defines duration as "the length of time something lasts." Black's Law Dictionary (9th Ed. 2009) p. 578. Each of these definitions indicates that "duration" refers to an amount of time that is capable of being measured.

We recognize that the provision at issue here is written in such a way that the amount of time for which the listing agreements would be in effect is capable of being measured in some sense because it specifies a ten year period that begins to run from the time of the first conveyance or lease of a unit. The problem, however, is that when the listing agreements were executed, it was entirely unclear how far into the future the parties would be bound by the provision. That is because no party, at the time the agreements were consummated, knew if or when "the first conveyance of an individual unit or executed lease" would occur with respect to parcel 13 or parcel 15. In other words, the amount of time for which the parties were bound by the agreements was indeterminate because it could be calculated only by reference to an uncertain future event. Moreover, the problem is compounded by the fact that the provision also does not provide a ceiling on the ultimate amount of time the listing agreements could last. Accordingly, as written, the parties could be bound by the provision indefinitely.

What has transpired with respect to parcel 15 is illustrative of the indefinite nature of the duration provision at issue. Namely, according to the representations of the parties, as of the date of oral argument to this court

(i.e., December 2, 2020), the term of the contract as to parcel 15 had not begun, nor had development of the office space started. It has been more than seventeen years since the listing agreements were executed, yet the parties still cannot say with any degree of certainty when the term will begin or end. Under these circumstances, we cannot conclude that the listing agreements strictly complied with the plain meaning of the duration requirement of § 20-325a (b) and/or (c) (2).

In light of our conclusion that the term "duration," as used in § 20-325a, is not ambiguous, it is unnecessary to look to extratextual sources. We note, however, that practically speaking our conclusion that listing agreements with an indefinite duration do not comply with § 20-325a is consistent with public policy and custom within the commercial real estate industry. See 2A N. Singer & J. Singer, Sutherland Statutory Construction (7th Ed. 2007) § 45:2, p. 15 ("It is only through custom, usage, and convention that language acquires established meanings.") Specifically, with regard to exclusive right to sell–listing agreements in particular, a definite and measurable duration term is integral because during that time, so long as the broker uses best efforts to procure a buyer, the broker is entitled to a commission if the property sells, regardless of whether he or she is the one to actually procure the buyer. See *Real Estate Listing Service, Inc.* v. *Connecticut Real Estate Commission*, supra, 179 Conn. 133–34. In other words, for the duration of the contract, the broker is entitled to a commission even if the owner sells the property himself or herself.

Because these types of agreements implicate a property owner's right to alienate freely his or her own property and are highly favorable to the brokers named in the agreement, in that they allow the brokers potentially to reap the fruit of another person's labor, it is critical that the precise duration of such agreements

is specifically delineated. See id., 133 ("[u]nder [the exclusive right to sell listing], the property owner relinquishes to some extent the right, although not the power, to alienate his real property" (footnote omitted)); see also *Harris* v. *McPherson*, 97 Conn. 164, 167–68, 115 A. 723 (1922) ("The owner, in a contract giving a broker the exclusive sale of property, makes the broker the only medium through which a purchaser can be procured during the life of the contract. The owner agrees, in such a contract, not only to exclude another agent, but also himself from procuring a purchaser. Ordinarily in this class of contracts, the exclusive sale is given to the broker *for a definite time*." (Emphasis added.)); 23 R. Lord, Williston on Contracts (4th Ed. 2002) § 62:20, p. 393 ("[a]n exclusive right to sell may be created only by clear and unambiguous language since the owner of property should not lightly be held to have surrendered the right to sell [the owner's] property unless that right is expressly negated by the contract").

Moreover, exclusive right to sell listing agreements of an indefinite duration do not tend to promote the legitimate interests of the parties involved or of the general public. As one California court of appeal observed in discussing that state's legislatively expressed public policy against open-ended exclusive real estate listing contracts: "[T]he evil which the legislature had in mind was the practice of some brokers to obtain contracts which placed themselves in a position to claim commissions for an indefinite time without performing any services, nor, perhaps ever intending to. . . . Besides being invariably disadvantageous to the property owner, open-ended exclusive listing contracts undoubtedly were seen as tending to promote disputes and lawsuits among parties affected and as generally being contrary to the legitimate interests of not only buyers and sellers of real estate but brokers as well. For instance, as long as a listing of this kind had not been cancelled by mutual

agreement, the property owner could not employ another broker except at the risk of having to pay double commissions." (Citation omitted; internal quotation marks omitted.) *Nystrom* v. *First National Bank of Fresno*, 81 Cal. App. 3d 759, 765–66, 146 Cal. Rptr. 711 (1978).

Furthermore, as to custom, the testimony of Scalzo, a licensed, experienced commercial real estate broker in Connecticut, who owns his own real estate franchise, indicates that it is considered best practices for a commercial real estate broker to set forth a measurable, definite duration for exclusive right to sell–listing agreements. Specifically, he testified that with regard to the "Exclusive Right to Sell–Listing Agreement" document that was used for the Woodland agreement and then photocopied and altered to serve as two of the documents comprising the listing agreements[29]: "I wouldn't know if it is [a legal and proper agreement] or not. I only use the [Connecticut Association Realtor (CAR)] forms because they teach us it has to have certain font. It's got to have a beginning date, end date." At another point during his testimony, Scalzo explained that it is his company's policy to use CAR forms "because we go to real estate class, and they tell us that we have to have the right font, we have to have a beginning date, end date and all those items that a realtor would have. And so our policy is that we use forms that we know will stand up." Moreover, upon review of the CAR form for an exclusive right to sell–listing agreement, it is clear that the form prompts the parties to specify a beginning date and ending date for the listing period.[30]

[29] Theodore Haddad, Jr., testified that he brought the photocopies to the September 10, 2003 meeting and that Paul Kuehner made handwritten changes to the documents, including, inter alia, crossing out the first paragraph that stated: "AGEEMENT, made this 4th day of February, 2002 between Jeanette Haddad, Broker and [Scalzo Realty] . . . and Anthony O. Lucera and Glenn Tatangelo, their heirs and assigns . . . ."

[30] We also note that prior to the enactment of § 20-325a, our Supreme Court stated, when interpreting an exclusive right to sell–listing agreement that contained no provision as to its duration, "[w]here the agency is for the accomplishment of a particular transaction or specific purpose, the law

For these reasons, we conclude that the listing agreements here, which fail to set forth a measurable, definite duration, did not strictly comply with § 20-325a (b) and/or (c), and such failure is contrary to public policy and custom in the commercial real estate industry. This conclusion, however, does not end our analysis. We must still consider whether the plaintiffs are nevertheless entitled to recover commissions pursuant to subsection (d) of § 20-325a, which creates an exception to the requirements of subsections (b) and (c).

II

Section 20-325a (d) provides in relevant part: "Nothing in . . . subdivisions (2) to (7), inclusive, of subsection (b) of this section or subsection (c) of this section shall prevent any licensee from recovering any commission . . . *if it would be inequitable to deny such recovery and the licensee* . . . with respect to a commercial real estate transaction, *has substantially complied* with subdivisions (2) to (6), inclusive, of subsection (b) of this section or subdivision (2) of subsection (c) of this section." (Emphasis added.) "Therefore, subsection (d) provides that, when . . . there is no strict compliance with the requirements of subsections (a), (b) and (c), an action for a real estate commission under § 20-325a nonetheless may proceed if two preconditions are met: (1) there has been substantial compliance with the requirements relevant to the transaction; *and* (2) the facts and circumstances of a case would make it inequitable to deny recovery." (Emphasis added.) *Location Realty, Inc.* v. *Colaccino*, supra, 287 Conn. 719. "The use

implies its continuance for at least a reasonable time. . . . A reasonable time in this connection is in effect *a definite time*, to be fixed as a matter of fact by a court in case of controversy." (Citations omitted; emphasis added; internal quotation marks omitted.) *Harris* v. *McPherson*, supra, 97 Conn. 168. This suggests that, in this state, the notion that an exclusive right to sell agreement must be for a definite length of time has existed for nearly a century.

of the conjunctive 'and' in § 20-325a (d) indicates that, even if denial of recovery would be inequitable, a licensed broker may not recover a commission in a commercial real estate transaction if there is not substantial compliance with the specific requirements under subsections (b) or (c)." Id., 719 n.11.

First, we address whether the listing agreements here substantially complied with the requirements of § 20-325 (b) and/or (c). As previously mentioned, "[w]hether a particular listing agreement complies with § 20-325a . . . is a question of law." (Internal quotation marks omitted.) *NRT New England, LLC* v. *Jones*, supra, 162 Conn. App. 846. "The doctrine of substantial compliance is closely intertwined with the doctrine of substantial performance. . . . Pursuant to the doctrine of substantial performance, a technical breach of the terms of a contract is excused, not because compliance with the terms is objectively impossible, but because actual performance is so similar to the required performance that any breach that may have been committed is immaterial." (Citation omitted; internal quotation marks omitted.) *Pack 2000, Inc.* v. *Cushman*, 311 Conn. 662, 675, 89 A.3d 869 (2014). "[S]ubstantial performance is the antithesis of material breach; if it is determined that a breach is material, or goes to the root or essence of the contract, it follows that substantial performance has not been rendered . . . ." (Internal quotation marks omitted.) *21st Century North America Ins. Co.* v. *Perez*, 177 Conn. App. 802, 815, 173 A.3d 64 (2017), cert. denied, 327 Conn. 995, 175 A.3d 1246 (2018).

In the present case, we conclude that the listing agreements did not substantially comply with § 20-325a (b) and/or (c) because they were indefinite as to a key element of the agreement, namely the duration. See id. ("the doctrine of substantial performance applies only where performance of a *nonessential* condition is lacking" (emphasis in original; internal quotation marks

omitted)). As previously discussed, the duration of an exclusive right to sell–listing agreement goes to the root or essence of the agreement because, during that specified period, so long as the broker uses best efforts to procure a buyer, the broker is entitled to a commission if the property sells, regardless of whether he or she actually procured the buyer. See *Real Estate Listing Service, Inc.* v. *Connecticut Real Estate Commission*, supra, 179 Conn. 133–34.

Failing to specify the duration of a listing agreement when that term is imperative to the parties' understanding of their respective rights under the contract is a shortcoming of much greater magnitude than the type that this court previously has concluded constituted substantial compliance with § 20-325a (d). See *NRT New England, LLC* v. *Jones*, supra, 162 Conn. App. 851–52 (holding that parties' agreement substantially complied with § 20-325a (b) notwithstanding reference to wrong subsection of statute, which court characterized as "essentially a scrivener's error"); see also *Sunset Gold Realty, LLC* v. *Premier Building & Development, Inc.*, 133 Conn. App. 445, 454–56, 36 A.3d 243 (holding that there was substantial compliance with § 20-325a notwithstanding that assignee of original party to listing agreement, which specified that it was "binding upon . . . assigns," was not signatory to agreement because assignee sent e-mail explicitly acknowledging its duty to compensate broker (emphasis omitted)), cert. denied, 304 Conn. 912, 40 A.3d 319 (2012). Therefore, we conclude that the listing agreements did not substantially comply with § 20-325a.

Even if we were to conclude that the listing agreements did substantially comply with § 20-325a (b) and/or (c), subsection (d) also requires, as a precondition to the application of the exception, that the facts and circumstances are such that it would be inequitable to deny recovery. See *NRT New England, LLC* v. *Jones*, supra, 162 Conn. App. 849. In the present case, the trial

court found that equity did not require that the plaintiffs be granted commissions under the circumstances presented. We review the trial court's equitable determination under the clearly erroneous standard. See id., 852 ("[t]he determination of whether a particular set of circumstances was unjust is essentially a factual finding for the trial court" (internal quotation marks omitted)). In doing so, we are mindful that "[t]he credibility of the witnesses and the weight to be accorded to their testimony is for the trier of fact. . . . [An appellate] court does not try issues of fact or pass upon the credibility of witnesses. . . . A finding of fact is clearly erroneous 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. . . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great deference to its findings." (Citation omitted; internal quotation marks omitted.) *Gaughan* v. *Higgins*, 186 Conn. App. 618, 626, 200 A.3d 1161 (2018), cert. denied, 330 Conn. 968, 200 A.3d 188 (2019), and cert. denied, 330 Conn. 968, 200 A.3d 699 (2019).

The plaintiffs argue that the court improperly found that equitable considerations do not entitle them to recovery. Specifically, the plaintiffs contend that they worked hard to market the parcels over several years before Jeanette Haddad's death and that the defendants wrongfully prevented them from marketing the Abbey Woods units. We disagree with the plaintiffs that the court improperly concluded that equity does not entitle them to recovery.

There is evidence in the record to support the court's determination that it would not be inequitable to deny the plaintiffs relief; therefore, the finding was not clearly erroneous. Specifically, there was no sale or lease with

regard to either parcel until March, 2013. Because exclusive right to sell/lease–listing agreements are inherently results driven, in that a commission is only due if a sale or lease is accomplished, it is not inequitable to deny recovery in an instance where a result was not achieved until nearly ten years after the listing contract was executed, and approximately two months after one of the named brokers had died.

In addition, as the court noted in its findings, after the fall of 2007, the real estate market conditions "[softened] to the point where the parties no longer felt that monthly, or even quarterly, in person meetings were necessary. In the words of Paul Kuehner, 'things went quiet,' and there were very few, if any, communications between the parties [after 2007]." Moreover, with regard to the efforts made by the brokers to procure buyers or tenants for the subject parcels, the court found that (1) "[f]rom early 2006 through the fall of 2007, [Garland Warren, Theodore Haddad, Sr., and Theodore Haddad, Jr., on behalf of Jeanette Haddad and Scalzo] diligently contacted possible buyers and lessees of the site in discharge of the broker's duties pursuant to the listing agreements" and (2) "[f]rom early to mid-2007, Jeanette Haddad and Scalzo continued to make best efforts to find prospective buyers or lessees . . . ."

These findings support the contention that the plaintiffs' diligent effort with regard to marketing parcels 13 and 15 only lasted for approximately two years. After the fall of 2007, the brokers were not expending much time or energy on this project,[31] they did not prepare

[31] At trial, Theodore Haddad, Jr., testified that, as of mid-2007, "[t]he prospect list that we developed came to a standstill. We couldn't add any new prospects to the list, we couldn't cultivate the existing prospects, nothing—there was no activity, there was no expansion, no development, no relocation of any office users into the area because the economy was very soft." In addition, when asked, "And how long did the economy stay soft as far as you recall," he responded, "Some would say it still is." Furthermore, Theodore Haddad, Jr., testified that with regard to parcel 15, between 2007 and the date of his testimony (i.e., April 9, 2015), his mother, his father, and he all did "nothing" to seek office tenants for the property.

any prospect lists,[32] and they did not spend any money advertising for parcel 15 or the Abbey Woods apartment complex on parcel 13. See 23 Williston on Contracts (4th Ed. 2021) § 62:20 ("[b]est efforts with which a broker is required to perform in order to collect a commission under an exclusive selling agreement include evidence of expenditure of time, effort, or money"). Although we acknowledge that the economic downturn undoubtedly contributed to the plaintiffs' reduced marketing activity, the evidence also supports the notion that, even under such circumstances, after 2007, the plaintiffs' effort left much to be desired.[33]

Furthermore, with regard to the plaintiffs' contention that the defendants wrongfully prevented them from performing their obligations under the listing agreements, the court made explicit findings to the contrary. Specifically, it found that (1) the defendants did not take the property off the market, (2) if Jeanette Haddad or Scalzo found a valuable and qualified prospect, the defendants would have been happy to entertain it, and (3) the defendants waited for a prospective buyer to meet their demands, and in the meantime explored all

[32] On cross-examination, Theodore Haddad, Jr., stated that he created prospect lists for two months, and the last list he created was on April 20, 2007.

[33] Carl Kuehner testified, inter alia, that when the market changed in 2007, "the pool of buyers changed," and that, "[i]n a downward trending market . . . the apartment product actually becomes more valuable because that's where the consumer should theoretically go." In addition, he expressed his dissatisfaction with the brokers' performance after 2007, stating, "I had few, if any, meetings with any potential buyer that they brought forth to meet with me to discuss buying or building on that asset." Likewise, he stated, "[D]uring the best apartment market that we've seen in a decade, [the Haddads] weren't able to show up with a single buyer to—single's harsh—a single credible buyer to acquire that asset during the best apartment market we've seen in an awful long time." Furthermore, there is evidence that Paul Keuhner communicated to an individual working with the brokers named in the agreements that the brokers "can't expect to do nothing with the listing and get paid a commission."

available options. These findings are supported by the evidence and, thus, are not clearly erroneous.

We further acknowledge that, as the plaintiffs point out, the evidence is uncontroverted that the defendants did not notify the Haddads or Scalzo of the site plan approval for, or construction of, the Abbey Woods apartments. It is likewise uncontroverted, however, that after Theodore Haddad, Jr., learned of Abbey Woods in 2013, at which point it was already constructed, neither he, nor his father, made any effort to seek out potential tenants. They did not bring any potential tenants to the property, spend any time or money marketing the property, or even reach out to the defendants to discuss acting as a broker for the apartment units. As such, even if it was improper for the defendants not to notify the Haddads or Scalzo of Abbey Woods, in light of all of the facts, we are not convinced that it is inequitable to deny the plaintiffs commissions with respect to these apartments because, once they became aware of the apartments, they made no effort to lease them. Moreover, the fact that Theodore Haddad, Jr., was "shocked" to learn of Abbey Woods in 2013, is indicative of the lack of attention that was being given to this property, a property that the brokers would have needed to use best efforts to lease or sell to be entitled to commissions in the first place. See *Real Estate Listing Service, Inc.* v. *Connecticut Real Estate Commission*, supra, 179 Conn. 133–34 (under exclusive right to sell listing, "the broker incurs an obligation to use his best efforts during the contract period to procure a buyer").

Because the listing contract did not strictly or substantially comply with § 20-325a (b) and/or (c), and the trial court's finding that it would not be inequitable to deny the plaintiffs' recovery is not clearly erroneous, we affirm the judgment of the trial court in the breach of contract action. Moreover, in light of our conclusion that the plaintiffs cannot prevail in the breach of contract action, the plaintiffs' claims in the foreclosure

actions also must fail. See footnote 1 of this opinion. Therefore, we affirm the trial court's judgment in each of those actions as well.

The judgments are affirmed.

In this opinion the other judges concurred.

HAROLD T. BANKS, JR. *v.* COMMISSIONER OF CORRECTION
(AC 43187)

Cradle, Alexander and Suarez, Js.

Syllabus

The petitioner, who had been convicted of various crimes in 2012, filed a petition for a writ of habeas corpus in December, 2017, collaterally attacking his conviction. The respondent Commissioner of Correction filed a request for an order to show cause why the petition should be permitted to proceed. Following an evidentiary hearing, the habeas court dismissed the petition pursuant to the applicable statute (§ 52-470 (c) and (e)), concluding that it was untimely and that the petitioner, having declined to present any evidence of the reason for the delay in filing the petition, failed to rebut the presumption that the delay was without good cause. Thereafter, the habeas court denied the petitioner's petition for certification to appeal, and the petitioner appealed to this court. *Held* that this court declined to review the petitioner's unpreserved claims that the habeas court abused its discretion in denying his petition for certification to appeal because his habeas counsel provided ineffective assistance and he was denied his constitutional right to counsel because the habeas court failed to intervene when counsel did not present any evidence in support of his claim that good cause existed to rebut the presumption of unreasonable delay in the filing of his petition; contrary to the petitioner's contention, the petitioner was not entitled to appellate review of his claims under *State* v. *Golding* (213 Conn. 233) or for plain error, the petitioner having failed to raise them as grounds for appeal in his petition for certification to appeal.

Argued March 15—officially released June 22, 2021

Procedural History

Petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the court, *Newson*, *J.*, rendered judgment dismissing

the petition; thereafter, the court denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

Deren Manasevit, assigned counsel, for the appellant (petitioner).

Jennifer F. Miller, assistant state's attorney, with whom, on the brief, were *Stephen J. Sedensky III*, state's attorney, and *Leah Hawley*, senior assistant state's attorney, for the appellee (respondent).

Opinion

CRADLE, J. The petitioner, Harold T. Banks, Jr., appeals following the denial of his petition for certification to appeal from the judgment of the habeas court dismissing his petition for a writ of habeas corpus as untimely pursuant to General Statutes § 52-470 (c) and (e).[1] The petitioner claims that the habeas court abused

[1] General Statutes § 52-470 provides in relevant part: "(a) The court or judge hearing any habeas corpus shall proceed in a summary way to determine the facts and issues of the case, by hearing the testimony and arguments in the case, and shall inquire fully into the cause of imprisonment and thereupon dispose of the case as law and justice require. . . .

"(c) Except as provided in subsection (d) of this section, there shall be a rebuttable presumption that the filing of a petition challenging a judgment of conviction has been delayed without good cause if such petition is filed after the later of the following: (1) Five years after the date on which the judgment of conviction is deemed to be a final judgment due to the conclusion of appellate review or the expiration of the time for seeking such review; (2) October 1, 2017; or (3) two years after the date on which the constitutional or statutory right asserted in the petition was initially recognized and made retroactive pursuant to a decision of the Supreme Court or Appellate Court of this state or the Supreme Court of the United States or by the enactment of any public or special act. The time periods set forth in this subsection shall not be tolled during the pendency of any other petition challenging the same conviction. . . .

"(e) In a case in which the rebuttable presumption of delay . . . applies, the court, upon the request of the respondent, shall issue an order to show cause why the petition should be permitted to proceed. The petitioner or, if applicable, the petitioner's counsel, shall have a meaningful opportunity to investigate the basis for the delay and respond to the order. If, after such opportunity, the court finds that the petitioner has not demonstrated good cause for the delay, the court shall dismiss the petition. For the purposes

its discretion in denying his petition for certification to appeal because (1) it should have been obvious to the court that his habeas counsel provided constitutionally ineffective assistance and (2) he was denied his constitutional right to counsel because the court failed to intervene when his counsel did not present any evidence in support of his claim that good cause existed to rebut the presumption of unreasonable delay in the filing of his petition. We dismiss the appeal.

The following facts and procedural history, as set forth by the habeas court, are relevant to the petitioner's claims on appeal. "The petitioner was the defendant in a matter pending in the Danbury Superior Court. Pursuant to guilty pleas on multiple files, he was sentenced to a total effective sentence of [twelve] years [of incarceration] on May 30, 2012. On December 13, 2017, the petitioner filed the present habeas action, his first, collaterally attacking his conviction. On December 20, 2018, the respondent [the Commissioner of Correction] filed a request for an order to show cause [why the petition should be permitted to proceed], and the petitioner filed a timely objection. The parties were before the court for an evidentiary hearing on March 8, 2019. At [the] hearing, however, the petitioner declined the opportunity to present evidence or exhibits in opposition to the motion."

In a memorandum of decision dated May 21, 2019, the court, *Newson*, *J.*, dismissed the habeas petition under § 52-470 (c) and (e), concluding that the deadline to file the petition was October 1, 2017. The court further concluded that the petition was filed on December 13, 2017, and that "[o]nce the rebuttable presumption [that no good cause existed for the delay] arose, the petitioner was obligated to provide *some* evidence of

of this subsection, good cause includes, but is not limited to, the discovery of new evidence which materially affects the merits of the case and which could not have been discovered by the exercise of due diligence in time to meet the requirements of subsection (c) . . . of this section. . . ."

the reason for the delay, which he declined to do." (Emphasis in original.) The court thereafter denied the petition for certification to appeal, and this appeal followed.

Section 52-470 (g) provides in relevant part: "No appeal from the judgment rendered in a habeas corpus proceeding brought by or on behalf of a person who has been convicted of a crime in order to obtain such person's release may be taken unless the appellant, within ten days after the case is decided, petitions the judge before whom the case was tried . . . to certify that a question is involved in the decision which ought to be reviewed by the court having jurisdiction and the judge so certifies."

"As our Supreme Court has explained, one of the goals our legislature intended by enacting this statute was to limit the number of appeals filed in criminal cases and [to] hasten the final conclusion of the criminal justice process . . . . [T]he legislature intended to discourage frivolous habeas appeals." (Internal quotation marks omitted.) *Stephenson* v. *Commissioner of Correction*, 203 Conn. App. 314, 322, 248 A.3d 34, cert. denied, 336 Conn. 944, A.3d (2021).

"Faced with a habeas court's denial of a petition for certification to appeal, a petitioner can obtain appellate review of the dismissal of his petition for [a writ of] habeas corpus only by satisfying the two-pronged test enunciated by our Supreme Court in *Simms* v. *Warden*, 229 Conn. 178, 640 A.2d 601 (1994), and adopted in *Simms* v. *Warden*, 230 Conn. 608, 612, 646 A.2d 126 (1994). First, [the petitioner] must demonstrate that the denial of his petition for certification [to appeal] constituted an abuse of discretion. . . . Second, if the petitioner can show an abuse of discretion, he must then prove that the decision of the habeas court should be reversed on the merits. . . . To prove that the denial of his petition for certification to appeal constituted

an abuse of discretion, the petitioner must demonstrate that the [resolution of the underlying claim involves issues that] are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further. . . .

"In determining whether the habeas court abused its discretion in denying the petitioner's request for certification, we necessarily must consider the merits of the petitioner's underlying claims to determine whether the habeas court reasonably determined that the petitioner's appeal was frivolous." (Internal quotation marks omitted.) *Haywood* v. *Commissioner of Correction*, 194 Conn. App. 757, 763–64, 222 A.3d 545 (2019), cert. denied, 335 Conn. 914, 229 A.3d 729 (2020). "In other words, we review the petitioner's substantive claims for the purpose of ascertaining whether those claims satisfy one or more of the three criteria . . . adopted by [our Supreme Court] for determining the propriety of the habeas court's denial of the petition for certification [to appeal]." (Internal quotation marks omitted.) *Villafane* v. *Commissioner of Correction*, 190 Conn. App. 566, 573, 211 A.3d 72, cert. denied, 333 Conn. 902, 215 A.3d 160 (2019).

On appeal, the petitioner does not challenge the habeas court's decision on the merits—he does not claim that the court erred in dismissing his habeas petition as untimely. Rather, he claims that the habeas court abused its discretion in denying his petition for certification to appeal because (1) his habeas counsel obviously provided constitutionally ineffective assistance and (2) he was denied his constitutional right to counsel because the habeas court failed to intervene when his counsel did not present any evidence in support of his claim that good cause existed to rebut the presumption of unreasonable delay in the filing of his petition. The

respondent argues, inter alia, that, because the petitioner failed to raise these issues as grounds for appeal in his petition for certification to appeal, he is unable to claim on appeal that the court abused its discretion in denying his petition for certification to appeal on these grounds. We agree with the respondent.

It is well established that a petitioner cannot demonstrate that a habeas court abused its discretion in denying a petition for certification to appeal on the basis of claims that were not raised distinctly before the habeas court at the time that it considered the petition for certification to appeal. See *Tutson* v. *Commissioner of Correction*, 144 Conn. App. 203, 216–17, 72 A.3d 1162, cert. denied, 310 Conn. 928, 78 A.3d 145 (2013), and cases cited therein.

In the present case, the petitioner's petition for certification to appeal stated only the following ground for appeal: "Whether the habeas court erred in finding that there was not good cause to allow the petitioner's petition for [a writ of] habeas corpus to proceed on the grounds that he filed outside the applicable time limits." The petition for certification to appeal did not include grounds related to any claims regarding ineffective assistance of habeas counsel or the habeas court's alleged duty to intervene in the face of the alleged ineffective assistance. In fact, the petitioner concedes that he failed to preserve those claims by stating them in his petition for certification to appeal.

Notwithstanding these failings, the petitioner argues that his failure to list the aforementioned grounds in his petition for certification to appeal, as required by § 52-470 (g), does not preclude this court from reviewing his claims under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015), or for plain error. This court previously has addressed and rejected

requests for extraordinary review of claims not raised in petitions for certification to appeal.

With respect to the petitioner's argument that he is entitled to *Golding* review of his claims, this court has stated: "Section 52-470 (g) conscribes our appellate review to the issues presented in the petition for certification to appeal . . . . Permitting a habeas petitioner, in an appeal from a habeas judgment following the denial of a petition for certification to appeal, to seek *Golding* review of a claim that was not raised in, or incorporated into, the petition for certification to appeal would circumvent the requirements of § 52-470 (g) and undermine the goals that the legislature sought to achieve in enacting § 52-470 (g)." (Internal quotation marks omitted.) *Solek* v. *Commissioner of Correction*, 203 Conn. App. 289, 299, 248 A.3d 69, cert. denied, 336 Conn. 935, 248 A.3d 709 (2021); see also *Whistnant* v. *Commissioner of Correction*, 199 Conn. App. 406, 418–19, 236 A.3d 276 (noting that review pursuant to *Golding* was not available for claim raised for first time on appeal and not raised in or incorporated into petition for certification to appeal), cert. denied, 335 Conn. 969, 240 A.3d 286 (2020). Accordingly, the petitioner is not entitled to *Golding* review of his claims.

This court likewise has rejected the argument that claims not set forth in a petition for certification to appeal may be reviewed for plain error.[2] See *Villafane* v. *Commissioner of Correction*, supra, 190 Conn. App. 577–78; *Sanders* v. *Commissioner of Correction*, 169 Conn. App. 813, 818 n.2, 153 A.3d 8 (2016), cert. denied,

[2] The plain error doctrine, codified in Practice Book § 60-5, "is not . . . a rule of reviewability . . . [but] a rule of reversibility. That is, it is a doctrine that [appellate courts invoke] in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment, for reasons of policy." *State* v. *Cobb*, 251 Conn. 285, 343 n.34, 743 A.2d 1 (1999), cert. denied, 531 U.S. 841, 121 S. Ct. 106, 148 L. Ed. 2d 64 (2000).

325 Conn. 904, 156 A. 3d 536 (2017). In declining to afford plain error review to a claim not set forth in a petition for certification to appeal, this court has reasoned that "[t]he [habeas] court could not abuse its discretion in denying the petition for certification about matters that the petitioner never raised." *Mercado* v. *Commissioner of Correction*, 85 Conn. App. 869, 872, 860 A.2d 270 (2004), cert. denied, 273 Conn. 908, 870 A.2d 1079 (2005).

In support of his argument that he is entitled to plain error review, the petitioner relies on this court's opinion in *Foote* v. *Commissioner of Correction*, 151 Conn. App. 559, 96 A.3d 587, cert. denied, 314 Conn. 929, 102 A.3d 709 (2014), and cert. dismissed, 314 Conn. 929, 206 A.3d 764 (2014), in which this court afforded the petitioner plain error review of a claim not listed in his petition for certification to appeal without articulating its reason for doing so. The majority in *Foote* cited, without analysis, to our Supreme Court's decision in *Ajadi* v. *Commissioner of Correction*, 280 Conn. 514, 526, 911 A.2d 712 (2006).[3] *Foote* v. *Commissioner of Correction*, supra, 566–67. *Ajadi* involved a claim of plain error that called into question the fairness and impartiality of the entire habeas trial.[4] *Ajadi* v. *Commissioner of Correction*, supra, 525. In *Ajadi*, the petitioner did not become aware of the issue underlying the claim of plain error until after the habeas proceedings had concluded. Id., 522. In other words, because this issue did not come to the attention of the parties, counsel, or the habeas

[3] The court also cited, without analysis, to *Melendez* v. *Commissioner of Correction*, 141 Conn. App. 836, 62 A.3d 629, cert. denied, 310 Conn. 921, 77 A.3d 143 (2013). *Foote* v. *Commissioner of Correction*, supra, 151 Conn. App. 567. In *Melendez*, the court afforded plain error review of the petitioner's unpreserved claim with no discussion as to why it was doing so. *Melendez* v. *Commissioner of Correction*, supra, 841.

[4] In *Ajadi*, the petitioner argued that the habeas judge who presided over his habeas trial and denied his petition for certification to appeal should have disqualified himself based on the judge's prior representation of the petitioner. *Ajadi* v. *Commissioner of Correction*, supra, 280 Conn. 525–29.

court until sometime after the petitioner brought the appeal in that case, he could not have included it in his petition for certification to appeal. The petitioner in *Ajadi*, therefore, sought, and was afforded, plain error review of his claim.[5] Id., 525–30.

In this case, the claim of plain error is based on events that occurred during the petitioner's habeas trial and, therefore, could have been raised in his petition for certification to appeal. The scope of appellate review is restricted to an examination of the court's denial of the petition for certification to appeal. A plain error analysis of claims never raised in connection with a petition for certification to appeal expands the scope of review and undermines the goals that the legislature sought to achieve by enacting § 52-470 (g). If this court were to engage in plain error review, it would invite petitioners, who have been denied certification to appeal, to circumvent the bounds of limited review simply by couching wholly unpreserved claims as plain error.

On the basis of the foregoing, we conclude that, if the petitioner desired appellate review of his claims of ineffective assistance of habeas counsel and/or whether the habeas court had a duty to address counsel's deficient performance to prevent prejudice to the petitioner, he was required to include those issues as grounds for appeal in his petition for certification to appeal. See *Villafane* v. *Commissioner of Correction*, supra, 190 Conn. App. 577–78. Because he failed to do so, we decline to review the petitioner's claims.

The appeal is dismissed.

In this opinion the other judges concurred.

[5] The holding in *Ajadi*, in our view, is best limited to the unique facts of that case. Because the majority in *Foote* did not provide a reason for departing from the settled jurisprudence, we likewise limit the holding in *Foote* to its facts.

STATE OF CONNECTICUT *v.* ANTHONY SINCHAK (AC 42348)

Lavine, Elgo and Palmer, Js.*

Syllabus

The defendant, who had been convicted of murder and two counts of kidnapping in the first degree, appealed to this court from the judgment of the trial court denying his motion to correct an illegal sentence. The judge who presided over the defendant's probable cause hearing offered the defendant a plea deal at a pretrial conference, proposing a thirty year term of imprisonment if the defendant agreed to plead guilty to murder. The defendant rejected the deal and it was withdrawn. A jury found the defendant guilty of all charges and, at his sentencing hearing, the judge who had presided over the trial imposed a sentence of sixty years of imprisonment on the murder count and eighteen years on each of the kidnapping counts, to run consecutively, for a total effective sentence of ninety-six years of imprisonment. The defendant filed an application with the sentence review division of the Superior Court, requesting a reduction of his sentence, which he claimed was excessive. His request was denied and the sentence was upheld. The defendant then filed a motion to correct an illegal sentence, claiming that, by imposing a sentence substantially longer than that which was proposed pretrial, the sentencing judge was punishing the defendant for rejecting the plea deal and, in doing so, violated the defendant's constitutional right to due process. Following a hearing, the trial court denied the defendant's motion and the defendant appealed to this court. *Held* that the trial court properly denied the defendant's motion to correct an illegal sentence because the record did not contain any indication of vindictiveness on behalf of the sentencing judge: the fact that the length of the sentence imposed greatly exceeded the length of the sentence proposed prior to trial did not give rise to an inference of vindictiveness when the record was considered as a whole, including the defendant's background, his long and violent criminal history, and evidence that the defendant posed such a grave danger to the community that he should spend the remainder of his life in prison; moreover, there were legitimate bases for the disparity between the sentence proposed pretrial and the sentence imposed posttrial, including that the trial provided the sentencing judge with the opportunity to gain a greater appreciation of the evidence and of the effect of the defendant's actions on his victims and their families, that a guilty plea would have shown evidence of the defendant's willingness to accept responsibility for his crimes, which is a mitigating factor

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

for sentencing, whereas his refusal to accept responsibility even after his trial demonstrated a lack of remorse and dim prospects for rehabilitation, and that the sentences were considered by two different judges, with different sentencing philosophies and priorities, at different stages of the case; furthermore, the sentencing judge was not required to expressly disavow a vindictive or retaliatory motive for the sentencing because the facts of the case did not give rise to a presumption of vindictiveness.

Argued October 6, 2020—officially released June 22, 2021

Procedural History

Substitute information charging the defendant with one count of the crime of murder and two counts of the crime of kidnapping in the first degree, brought to the Superior Court in the judicial district of Waterbury and tried to the jury before *Murray*, *J.*; verdict and judgment of guilty; thereafter, the court, *Hon. Ronald D. Fasano*, judge trial referee, denied the defendant's motion to correct an illegal sentence, and the defendant appealed to this court. *Affirmed.*

W. Theodore Koch III, assigned counsel, for the appellant (defendant).

Ronald G. Weller, senior assistant state's attorney, with whom, on the brief, were *Maureen Platt*, state's attorney, and *John J. Davenport*, senior assistant state's attorney, for the appellee (state).

Opinion

PALMER, J. The defendant, Anthony Sinchak, appeals from the judgment of the trial court, *Hon. Ronald D. Fasano*, judge trial referee, denying his motion to correct an illegal sentence, which, he claims, was imposed in violation of his right to due process guaranteed by the fourteenth amendment to the United States constitution.[1] The defendant contends that the trial court

[1] The fourteenth amendment to the United States constitution provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

improperly rejected his claim that the ninety-six year prison sentence he received in 1995, after a jury found him guilty of murder and kidnapping, was imposed in retaliation for his refusal to forgo a trial and accept a plea deal, offered at a judicial pretrial conference by the judge who conducted the conference, pursuant to which he would be sentenced to a term of imprisonment of thirty years if he agreed to plead guilty to the murder charge. We disagree with the defendant's claim and, accordingly, affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to our resolution of this appeal. On August 4, 1992, the state charged the defendant with one count of murder in violation of General Statutes § 53a-54a and two counts of kidnapping in the first degree in violation of General Statutes § 53a-92 (a) (2) (B); the defendant subsequently pleaded not guilty to all three counts. On September 23, 1992, a probable cause hearing was held on the murder charge, following which the court, *Kulawiz*, *J.*, made a finding of probable cause to proceed on that charge. A judicial pretrial conference was conducted on January 24, 1995, at which Judge Kulawiz extended a plea offer to the defendant of a sentence of thirty years of imprisonment in exchange for his guilty plea to murder. The defendant rejected the offer, however, and it was withdrawn. Several days later, the case proceeded to a trial by jury, *Murray*, *J.*, presiding.

At trial, the state adduced evidence that, in the early morning hours of July 27, 1992, the defendant was at the Freight Street Social Club, an illegal after-hours social club in Waterbury, when he shot and killed Kathleen Gianni, a bartender there, because he suspected Gianni of being a police informant against several members of the Helter Skelter Motorcycle Club, of which the defendant was a member. In an effort to secure the silence of two witnesses to the shooting, Jo Orlandi and Laura Ryan, the defendant threatened and abducted

them at gunpoint and did not release them until the next day. The defendant later disposed of Gianni's body and attempted to burn down the social club. On the basis of that evidence, the jury found the defendant guilty as charged, and Judge Murray rendered judgment in accordance with the jury's verdict.

The defendant's sentencing hearing took place on July 20, 1995. Before imposing sentence, Judge Murray reviewed a five page written statement signed and submitted by the defendant that made three primary points: (1) the defendant was innocent of the charges notwithstanding the guilty verdicts; (2) the state's case against him was unreliable and based on knowingly false and coerced testimony; and (3) a sentence greater than the thirty years that, he asserted, he had been offered by the state in return for pleading guilty to murder, would constitute impermissible retaliation for exercising his right to a trial.[2]

Judge Murray then heard remarks from the state as well as from Gianni's mother and daughter. On behalf of the state, the prosecutor first made reference to the presentence investigation report (PSI), explaining that it conveyed "a sense of [the defendant as] a man who possesses a most dangerous combination of character traits . . . in that [he] appears to be set off with little or no provocation . . . he appears obsessed with weapons, and . . . he appears to repeatedly put himself above the law." The PSI also revealed that the defendant had compiled a lengthy criminal record over more than two decades, which, the prosecutor explained, consisted of a "variety of offenses primarily involving weapons and assaultive, violent behavior," some of which entailed "armed . . . attack[s] [against] defenseless individuals," including "complete strangers . . . who

[2] The defendant's assertion that the *state* had offered him the plea deal was incorrect; rather, it was Judge Kulawiz who made that offer.

simply had the misfortune of running into the defendant on the street." According to the prosecutor, the defendant's record "illustrates a . . . man [who is] not a stranger to the court system. He has been given the opportunity to straighten out his life time and time again. He's been fined a total of nine times. He has been given probation five times. He has had a taste of jail twice. All of those to no avail. The first step in rehabilitation . . . is to admit your wrongdoing and accept responsibility for your actions. To this day, the defendant has not even taken that first step. . . . [H]is refus[al] to do so in the face of the evidence against him and the rarity of having two eyewitnesses [Orlandi and Ryan] . . . relate [to the jury] the horrific details of his crimes, illustrate[s] most clearly his continuing refusal to acknowledge his antisocial behavior."

The prosecutor next spoke about the offenses of which the defendant had been convicted, explaining that they included the defendant's "brutal ambush" of Gianni, whom he shot multiple times. As the prosecutor further explained, when the defendant learned, from Gianni's moaning, that the first shots had not killed her, he walked closer to her, stood directly over her body, and fired three more shots. At that point, realizing that Orlandi and Ryan had witnessed the entire incident, the defendant turned his gun on them and threatened to kill them if they said anything about the shooting. Although they tried to convince the defendant that they would not do so, the defendant abducted and held them and did not free them until the next day.

The prosecutor concluded his remarks by stating: "The defendant's actions on that day speak of a total disregard of human life. Not only for the life he took but for the lives of [Gianni's family] that were devastated and the lives of the eyewitnesses who are now permanently [scarred] by having to relive this murderous nightmare forever. Jo Orlandi and Laura Ryan related their ordeal at the trial and have made their

remarks in the PSI. Both indicated their positive belief that they would be the next to be killed. And three years later as we look at their lives they . . . both have lives where they must continuously look over their shoulders. . . .

"Kathleen Gianni was a woman in the prime years of her life. She was close to her family. She had friends and she had every reason and every right to live out all of the years to which she was entitled. At the time of her death Miss Gianni had a seventeen year old daughter, a daughter who testified at trial, a daughter that has been left to forge into the world without her mother's advice, without her care and without her guiding hand. Kathleen Gianni may never have realized what she lost because of the defendant, but it's her family which lives that loss and suffers the consequences and anguish every day."

Gianni's mother and daughter next addressed the court. They spoke lovingly of her and poignantly of their unbearable loss, explaining how their lives and the lives of other family members had been profoundly and permanently affected by her shocking, senseless and tragic death at the hands of the defendant. Both women requested that the defendant be sentenced to the maximum term of imprisonment of 110 years.

The prosecutor then spoke again briefly, underscoring that the defendant's "crimes could not be more heinous or offensive to our judicial process" and expressing the state's view that a severe sentence was warranted because, inter alia, the defendant had killed Gianni for "speak[ing] up and cooperat[ing] against criminal activity . . . ." The prosecutor further informed Judge Murray that the state also was seeking the imposition of the maximum possible sentence of 110 years. He stated that he hoped that such a sentence would "bring some sense of peace for the family of Kathleen Gianni, some sense of security for Jo Orlandi and

Laura Ryan and some protection for all of the people who [comprise] the city of Waterbury."

Finally, the prosecutor stated with respect to the statement that the defendant had submitted to the court: "[T]he defendant refers to a plea agreement which was offered to him by the state and that agreement never occurred. It was never offered by the state. That particular [thirty year] amount which is stated was offered by one of the courts that was involved in plea agreement negotiations and it is my belief that that is a matter that should not be considered by the sentencing court who'll make his determination on the facts and the evidence that were presented and not on the interest in moving cases prior to their trial."

Judge Murray then asked the defendant if he wished to address the court. The defendant declined, stating only that, "I have nothing to say outside of what's in my statement there." Judge Murray responded: "I've read your statement and I understand what you say. I'll rely upon the body of evidence that I received and that the jury has deemed credible in terms of rendering these verdicts here against you."[3]

Before imposing sentence, Judge Murray made the following statement: "Well then, Mr. Sinchak, it becomes my awesome duty to impose sentence here in the case involving the rendition of verdicts of murder and kidnapping against you—kidnapping in the first degree. The evidence presented during this trial, Mr. Sinchak, persuaded the jury to find you guilty of murder—[of] the murder of Kathleen Gianni and also kidnapping—guilty of kidnapping in the first degree of Jo Orlandi and Laura Ryan.

"This court after having heard all the evidence presented is of the opinion that the killing of Kathleen Gianni by you was a premeditated, heartless and cold-blooded murder. Also, the kidnapping of Jo Orlandi and

[3] At no time did defense counsel address the court on behalf of the defendant.

Laura Ryan at gunpoint puts each of those two women in real and substantial fear of losing their own lives and, of course, denied them the opportunity to come to the aid of the victim, Kathleen Gianni. The body of evidence received by the court during this trial, the presentence investigation reports submitted by the probation officer and your past record of convictions reveals you, Mr. Sinchak, to this court to be a man given to violence to solve your problems with others, with little respect of the lives of other human beings. Based on what has been presented to me at this time, this body of evidence, I am reluctant but persuaded to say that you should never again be a free man." Judge Murray thereupon sentenced the defendant to consecutive prison terms of sixty years on the murder count and eighteen years on each of the kidnapping counts, for a total effective sentence of ninety-six years of imprisonment.[4]

The defendant appealed and this court affirmed the judgment of conviction. *State* v. *Sinchak*, 47 Conn. App. 134, 136, 703 A.2d 790 (1997), appeal dismissed, 247 Conn. 440, 721 A.2d 1193 (1999), cert. denied, 319 Conn. 926, 125 A.3d 201 (2015). Our Supreme Court granted the defendant's petition for certification; see *State* v. *Sinchak*, 243 Conn. 964, 707 A.2d 1266 (1998), appeal dismissed, 247 Conn. 440, 721 A.2d 1193 (1999);[5] but subsequently determined that the petition had been improvidently granted and, accordingly, dismissed the appeal. See *State* v. *Sinchak*, 247 Conn. 440, 442, 721 A.2d 1193 (1999) (per curiam).

[4] Judge Murray also sentenced the defendant for certain offenses unrelated to the present case, in particular, one count of assault in the second degree and three counts of reckless endangerment in the first degree. Those sentences, which, in accordance with a plea agreement between the defendant and the state, were imposed to run concurrently with the total effective sentence of ninety-six years imposed in the present case, are not at issue in this appeal.

[5] The grant of certification by our Supreme Court was limited to two issues unrelated to the issue raised by this appeal.

The defendant thereafter filed an application with the sentence review division of the Superior Court under General Statutes § 51-195 seeking a reduction of his sentence on the ground that it was excessive. The sentence review division denied the defendant's request, however, and upheld his sentence. See *State* v. *Sinchak*, Superior Court, judicial district of Waterbury, Docket No. CR-92-207969 (November 23, 2004). In reaching its decision, the sentence review division observed that "[t]he sentencing court was privy to the detailed, explicit testimony of a gangland execution. All the facts [and] surrounding circumstances leading up to this offense were carefully considered by the sentencing court. Moreover, the sentencing court was well aware [that] the [defendant's] criminal history dated back to 1973 and was replete with crimes of violence. The [sentencing] court had no doubt [the defendant] would never conform his behavior and sentenced him accordingly. . . . The sentence imposed was neither inappropriate [n]or disproportionate."[6] Id.

On August 18, 2017, the defendant filed a motion as a self-represented party under Practice Book § 43-22[7] to correct his allegedly illegal sentence. He thereafter was appointed counsel, who filed an amended motion

[6] Commencing in 2000, the defendant also sought habeas corpus relief, claiming, inter alia, that his sentence was unduly severe. *Sinchak* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-00-0800827-S (June 29, 2007), appeal dismissed, *Sinchak* v. *Commissioner of Correction*, 126 Conn. App. 670, 14 A.3d 348, cert. denied, 301 Conn. 901, 17 A.3d 1045 (2011). The habeas court rejected the defendant's contention, however, on both procedural and substantive grounds. Id. Although the defendant appealed from the judgment of the habeas court to the Appellate Court, which rejected his claims; see *Sinchak* v. *Commissioner of Correction*, 126 Conn. App. 670, 671, 14 A.3d 348, cert. denied, 301 Conn. 901, 17 A.3d 1045 (2011); he did not challenge the habeas court's decision with respect to his claim concerning the excessiveness of his sentence.

[7] Practice Book § 43-22 provides: "The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner."

to correct, which the state opposed. In support of his motion, the defendant filed a number of exhibits, including the transcript of the July 20, 1995 sentencing hearing, the PSI that had been prepared for purposes of that sentencing, the written statement that the defendant submitted to the court at the time of sentencing, a transcript of the probable cause hearing conducted on September 25, 1992, and the written decision of the sentence review division dated November 23, 2004.

On September 14, 2018, the trial court[8] heard argument on the defendant's motion to correct.[9] The defendant asserted that the ninety-six year sentence imposed by Judge Murray was "unconscionable" because it was so much greater than the offer of thirty years that had been made to him by Judge Kulawiz, who, the defendant further maintained, understood the gravity of the defendant's offenses and was aware of his extensive criminal history because she had conducted the defendant's probable cause hearing and had available to her a prior PSI relating to the defendant.[10] According to the defendant, the ninety-six year prison term "amount[ed] to vindictive sentencing to punish [him] not just for the crime but for electing to exercise his state and federal constitutional right to a jury trial and therefore is an illegal sentence." In response, the state, after underscoring the fact that the defendant himself had alerted Judge Murray of Judge Kulawiz's offer, asserted that there was nothing in the record to substantiate the defendant's claim that Judge Murray, in imposing a sentence substantially longer than that offered by Judge Kulawiz, was punishing the defendant for rejecting the proposed plea deal.

[8] Unless otherwise noted or apparent from the context, all references hereinafter to the trial court are to Judge Fasano.

[9] Neither the defendant nor the state presented any testimony at the hearing, relying, instead, on the exhibits submitted by the defendant in connection with the motion to correct.

[10] It appears that this earlier PSI was provided to Judge Kulawiz in connection with the offenses referred to in footnote 4 of this opinion.

Following the hearing, the trial court denied the defendant's motion in a memorandum of decision dated September 24, 2018. That decision reads in its entirety as follows:

"By way of [his] amended motion to correct [an] illegal sentence, [the defendant] claims that his sentence of ninety-six years, imposed after convictions by jury, was imposed vindictively and in an illegal manner, since the presiding judge at pretrial had offered a sentence of thirty years for a plea to one count of murder.

"[The defendant] cites *North Carolina* v. *Pearce*, 395 U.S. 711 [89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969) (adopting rebuttable presumption of judicial vindictiveness if court imposes more severe sentence on defendant following retrial after defendant's successful appeal from conviction at original trial)] and *Alabama* v. *Smith*, 490 U.S. 794 [109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989) (*Pearce* presumption of vindictiveness inapplicable to greater sentence imposed after jury trial following successful challenge to guilty plea; presumption applies only when circumstances show reasonable likelihood that increased sentence is product of actual vindictiveness)] in support of [his] position that he was penalized for exercising his federal and state constitutional right by going to trial. Additionally, [the defendant] claims he was, further, penalized when the state, for the purposes of trial, added additional counts of kidnapping.[11]

[11] Contrary to the suggestion of the memorandum of decision, the record reflects that the state already had charged the defendant with kidnapping when Judge Kulawiz tendered her plea offer to the defendant. Indeed, as the state points out, the defendant acknowledged as much during argument on the motion to correct. In any event, "[b]efore the commencement of trial, a prosecutor has broad authority to amend an information under Practice Book § [36-17]"; (internal quotation marks omitted) *State* v. *Ayala*, 324 Conn. 571, 585, 153 A.3d 588 (2017); and the defendant makes no claim on appeal that the filing of the kidnapping charges by the state was vindictive or otherwise improper.

"*Pearce* and *Smith* involve situations where, following successful appeals, [defendants] were retried and convicted and resentenced to greater sentences than they received when first convicted, without any change in circumstances that would have warranted the more severe sentences.

"Here, [the defendant] had been offered a significantly discounted pretrial number of thirty years to serve for one count of murder by the presiding judge, *Kulawiz*, *J.*, in order to resolve the case and avoid putting the families and victims through, what was sure to be, a terrific ordeal at trial given the alleged factual scenario.

"[The defendant] rejected the offer and the state, as is its right, added, prior to trial, other counts it believed it could prove at trial. [The defendant] was convicted of all counts. The sentencing court, *Murray*, *J.*, set out in detail the reasons for imposing its sentence of ninety-six years; a sentence that comes as no surprise to anyone who heard or read the trial testimony in this case. Judge Murray was aware of the pretrial offer only because it was brought to his attention by the [defendant] himself. Clearly, it played no role in determining the sentence imposed based on the court's sentencing remarks.

"There is absolutely no evidence of vindictiveness on the part of the sentencing judge nor is there support for the proposition that the state was vindictive for filing, pretrial, additional charges it could prove in preparation for trial. Petition is denied." (Footnote added.) This appeal followed.

The defendant claims on appeal that the trial court improperly rejected his contention regarding the constitutional impropriety of the sentence imposed by Judge Murray.[12] In the defendant's view, "the sheer magni-

[12] The defendant's claim of a due process violation is limited to the federal constitution; he makes no claim under the due process provisions of the state constitution.

tude" of that ninety-six year sentence "raises the inference that [it] was [imposed] vindictive[ly]" to punish the defendant for refusing Judge Kulawiz's offer and, because Judge Murray "never explicitly disavowed a retaliatory intent" in imposing that lengthy sentence, he is entitled to a new sentencing hearing. The state contends that the defendant's claim is without merit because the trial court correctly concluded that the record contains no indication whatsoever of any such vindictiveness on the part of Judge Murray. We agree with the state.[13]

We begin by setting forth the applicable standard of review. "[A] claim that the trial court improperly denied a defendant's motion to correct an illegal sentence [ordinarily] is reviewed pursuant to the abuse of discretion standard. . . . In reviewing claims under [that] standard, we have stated that the ultimate issue is whether the court could reasonably conclude as it did." (Citation omitted; internal quotation marks omitted.) *State* v. *Mitchell*, 195 Conn. App. 199, 206, 224 A.3d 564, cert. denied, 334 Conn. 927, 225 A.3d 284 (2020). Thus, for purposes of determining whether the trial court properly denied the motion to correct, "great weight is given to the trial court's decision and every reasonable presumption is given in favor of its correctness." (Internal quotation marks omitted.) *State* v. *Anderson*, 187 Conn. App. 569, 584, 203 A.3d 683, cert. denied, 331 Conn. 922, 206 A.3d 764 (2019).

The principles governing claims of judicial vindictiveness in sentencing are well established. "[A] trial

[13] The state also argues in the alternative that the defendant's claim of a vindictive sentence is barred by principles of res judicata because he unsuccessfully raised a substantially similar claim both in the habeas court and before the sentence review division. The record reveals, however, that the state did not make that argument in the trial court and, as a result, the trial court did not address it. Our determination that the defendant cannot prevail on the merits of his claim makes it unnecessary for us to address the state's res judicata defense.

court possesses, within statutorily prescribed limits, broad discretion in sentencing matters. On appeal, we will disturb a trial court's sentencing decision only if that discretion clearly has been abused. . . . In exercising its discretion, the trial court may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information [it] may consider, or the source from which it may come. . . . A defendant's demeanor, criminal history, [PSI], prospect for rehabilitation and general lack of remorse for the crimes of which he has been convicted are all factors that the court may consider in fashioning an appropriate sentence." (Citations omitted; internal quotation marks omitted.) *State* v. *Angel M.*, Conn. , , A.3d. (2020).

Nevertheless, "the trial court's discretion in regard to sentencing is not unfettered. . . . [A] [sentencing] court generally is not prohibited from denying leniency to a defendant who elects to exercise a statutory or constitutional right. . . . Principles of due process, however, forbid a court from retaliating against a defendant by increasing his sentence merely because of the exercise of such a right." (Citations omitted.) Id., ; see also *State* v. *Revelo*, 256 Conn. 494, 513, 775 A.2d 260 ("[a]lthough a court may deny leniency to an accused who . . . elects to exercise a statutory or constitutional right, a court may not penalize an accused for exercising such a right by increasing his or her sentence solely because of that election"), cert. denied, 534 U.S. 1052, 122 S. Ct. 639, 151 L. Ed. 2d 558 (2001); *State* v. *Kelly*, 256 Conn. 23, 81, 770 A.2d 908 (2001) ("the [a]ugmentation of sentence based on a defendant's decision to stand on [his or her] right to put the [state] to its proof rather than plead guilty is clearly improper" (internal quotation marks omitted)). Although the United States Supreme Court has identified a narrow category of cases in which a rebuttable presumption

of vindictiveness attaches when the court imposes a greater sentence on the defendant following his retrial after a successful appeal;[14] see *North Carolina* v. *Pearce*, supra, 395 U.S. 726; as a general rule, the defendant bears the burden of demonstrating, on the basis of the totality of the circumstances, that the court increased his sentence as punishment for exercising his right to a trial. See, e.g., *State* v. *Kelly*, supra, 82. In other words, ordinarily, a defendant must prove actual vindictiveness on the part of the sentencing court. See *Wasman* v. *United States*, 468 U.S. 559, 569, 104 S. Ct. 3217, 82 L. Ed. 2d 424 (1984) ("where the presumption does not apply, the defendant must affirmatively prove actual vindictiveness"). As the defendant acknowledges, that is the burden that he shoulders in the present case.[15]

The merits of the defendant's claim can best be evaluated by first identifying what he does not claim. He does not contend that Judge Murray participated in any plea discussions with the defendant, nor does he maintain that the state played any role in alerting Judge Murray to the terms of the plea deal that Judge Kulawiz offered to him. Indeed, the defendant acknowledges that he alone brought the proposed plea arrangement to Judge Murray's attention and that Judge Murray oth-

[14] We note that when the presumption does apply, it may be overcome by "objective information in the record justifying the increased sentence." *United States* v. *Goodwin*, 457 U.S. 368, 374, 102 S. Ct. 2485, 73 L. Ed. 2d 74 (1982).

[15] The defendant does not claim that he is entitled to a presumption of vindictiveness under *Pearce*. His concession in this regard is well-founded in view of the fact that the United States Supreme Court has "limited [the application of the *Pearce* presumption] . . . to circumstances where its objectives are thought most efficaciously served . . . . Such circumstances are those in which there is a reasonable likelihood . . . that the increase in sentence is the product of actual vindictiveness on the part of the sentencing authority." (Citations omitted; internal quotation marks omitted.) *Alabama* v. *Smith*, supra, 490 U.S. 799. As the defendant recognizes, this is not such a case.

erwise would have had no knowledge of that proposal.[16] Finally, the defendant does not maintain that the ninety-six year sentence imposed by Judge Murray was excessive as a matter of law, either on the ground that it was impermissibly severe or because it was so much longer than the sentence offered by Judge Kulawiz. His claim, rather, is a much narrower one, namely, that the sentence gives rise to an inference of vindictiveness that could have been overcome only by an explicit statement by Judge Murray at the time of sentencing that he was not punishing the defendant for refusing the plea deal. In other words, the defendant makes no claim that Judge Murray's sentence was improper in any way except insofar as Judge Murray, having been made aware of the plea offer tendered by Judge Kulawiz, did not affirmatively state that he was not penalizing the defendant for exercising his right to a trial.

With respect to the defendant's underlying contention that Judge Murray's sentence gives rise to an inference of vindictiveness, the defendant asserts that such an

[16] In Connecticut, "[i]t is a common practice . . . for the presiding criminal judge to conduct plea negotiations with the parties. If plea discussions ultimately do not result in a plea agreement, *the trial of the case is assigned to a second judge who was not involved in the plea discussions and who is unaware of the terms of any plea bargain offered to the defendant*. The judge responsible for trying the case also is responsible for sentencing the defendant in the event the defendant is convicted after trial." (Emphasis added.) *State* v. *Revelo*, supra, 256 Conn. 508 n.25. Our Supreme Court repeatedly has recognized the propriety of this procedure, explaining that, "[a]s long as the defendant is free to reject the plea offer [made after negotiations conducted by one judge] and *go to trial before a* [*second*] *judge who was not involved in or aware of those negotiations*, [the defendant] is not subject to any undue pressure to agree to the plea agreement, and the impartiality of the judge who will sentence him in the event of conviction after trial is not compromised." (Emphasis added; internal quotation marks omitted.) Id., 507–508. Thus, the rule prohibiting a sentencing judge from learning about the substance of unsuccessful plea negotiations is designed to protect the accused. In the present case, however, the defendant himself *affirmatively requested* that Judge Murray consider Judge Kulawiz's thirty year offer, albeit in support of his appeal for leniency.

inference is warranted by two considerations: first, the severity of the sentence actually imposed as compared to the sentence offered under the proposed plea agreement and second, that, according to the defendant, "[n]o material considerations that were available to [Judge Murray] were *not* available to [Judge Kulawiz]." (Emphasis in original.) With respect to the defendant's further assertion that Judge Murray was required to expressly disavow a vindictive or retaliatory motive, the defendant argues that Judge Murray's failure to make such a statement leaves the inference of excessiveness unrebutted, thereby entitling him to a new sentencing hearing.

The primary flaw in the defendant's argument is that, in light of the totality of the circumstances, there is no valid reason to assign an improper motive to Judge Murray due to the length of the sentence he imposed relative to the length of the sentence offered by Judge Kulawiz.[17] There is no doubt that the sentence the defendant received far exceeds the sentence proposed by Judge Kulawiz. On the basis of the record as a whole, however, that fact simply does not give rise to an inference of vindictiveness. Indeed, it appears quite clear from the record that Judge Murray gave no consideration to the thirty year offer extended by Judge Kulawiz in imposing the sentence that he did. As we have explained, after the defendant submitted his written statement informing Judge Murray of that offer, the prosecutor stated that the proposed plea bargain was a matter "that should not be considered by" Judge Murray, who, the prosecutor further asserted, should "make his determination on the facts and the evidence that

[17] Although the defendant has disavowed any reliance on the presumption of vindictiveness adopted in *North Carolina* v. *Pearce*, supra, 395 U.S. 726; see footnote 15 of this opinion; it is difficult, as a practical matter, to distinguish the inference of vindictiveness on which the defendant *does* rely from the *Pearce* presumption of vindictiveness.

were presented . . . .'' The defendant then declined Judge Murray's invitation to address the court, stating that he had nothing to add to his written statement, to which Judge Murray responded: ''I've read your statement and I understand what you say. I'll rely upon the body of evidence that I received and that the jury has deemed credible in terms of rendering these verdicts here against you.'' That brief colloquy indicates quite clearly that Judge Murray agreed with the state that the plea deal offered by Judge Kulawiz had no bearing on the appropriate sentence, which, consistent with the position of the prosecutor, was to be based solely on the relevant facts and the evidence.

This reading of the record is buttressed by Judge Murray's relatively brief sentencing remarks, in which he characterized the murder of Gianni as ''premeditated, heartless and cold-blooded'' and the ''kidnapping[s] of Jo Orlandi and Laura Ryan at gunpoint'' as having placed ''those two women in real and substantial fear of losing their own lives . . . .'' Judge Murray then explained that the sentence he was about to impose—a sentence that, he stated, was designed to ensure that the defendant would ''never again be a free man'' because he was ''given to violence'' and had ''little respect [for] the lives of other human beings''—was based on ''[t]he body of evidence received by the court during this trial, the presentence investigation reports submitted by the probation officer and your past record of convictions . . . .'' There is not the slightest suggestion in Judge Murray's comments that he imposed his sentence on the basis of anything but entirely proper considerations, and it is apparent that the lengthy term of imprisonment that he ultimately imposed was predicated on his belief, reasonably founded on the evidence and the defendant's background, including the defendant's long and violent

criminal history, that the defendant posed such a grave danger to the community that he should spend the remainder of his life in prison.[18]

It is true that Judge Kulawiz extended her plea offer to the defendant after having presided over the defendant's probable cause hearing,[19] and Judge Kulawiz also had available to her a PSI prepared in connection with certain other offenses that the defendant had committed some time prior to the offenses that are the subject of this appeal. Under the circumstances, however, the fact that Judge Kulawiz believed that a thirty year sentence was appropriate for purposes of a plea bargain has no bearing on the propriety of the sentence imposed by Judge Murray following a trial. Because that trial lasted approximately one month, and the probable cause hearing was completed in just one day, Judge Murray had the opportunity to gain a much fuller appreciation of the defendant's offenses than did Judge Kulawiz, and the PSI reviewed by Judge Murray was more recent and more comprehensive than the PSI that was available to Judge Kulawiz. In addition, at trial, Judge Murray heard extensive firsthand testimony from both of the kidnapping victims and, at sentencing, he learned about the impact of Gianni's death from the compelling in-court statements of her mother and daughter, thereby enabling Judge Murray to gauge the devastating effect of the defendant's offenses on the victims and their families. Furthermore, and significantly, a plea of guilty to murder in accordance with Judge Kulawiz's offer would have evinced the defendant's willingness to accept responsibility for his hor-

[18] It bears emphasis that, despite the length of the sentence imposed by Judge Murray, the sentence review division determined that that sentence was neither inappropriate nor disproportionate in light of the nature of the defendant's offenses, the defendant's extensive criminal record, and the high likelihood that the defendant would reoffend if given the opportunity.

[19] It is also true, however, that the probable cause hearing was held in September, 1992, and the plea offer was not made until well over two years later, in January, 1995.

rific crimes, an important mitigating factor for sentencing purposes, whereas his refusal to take any such responsibility following his trial spoke of a complete lack of remorse for those crimes and reflected adversely on his already dim prospects for rehabilitation. Finally, the fact that different judges, with different sentencing philosophies and priorities, were involved at two entirely different stages of the defendant's case, provides further support for the conclusion that the propriety of the ninety-six year sentence imposed by Judge Murray after trial cannot be evaluated on the basis of the thirty year offer made to the defendant by Judge Kulawiz as part of a proposed plea bargain. These considerations, when coupled with the defendant's long history of and propensity for violence, provided a legitimate basis for the disparity in the sentence offered by Judge Kulawiz and the sentence imposed by Judge Murray. Put differently, these factors belie the defendant's claim that the disparity reasonably may be attributed to a vindictive motivation on the part of Judge Murray.

The defendant relies on a number of cases from other jurisdictions to support his claim that, even in the absence of a presumption of vindictiveness, Judge Murray was required to explicitly disavow any such vindictive or retaliatory motive. Those cases are inapposite for several reasons, most significantly because in each such case, the sentencing judge had been actively involved in the plea discussions that took place before trial and the record was devoid of any nonvindictive reason why the sentence imposed by that same judge following a trial was so much greater than the sentence that had been offered and rejected. See *United States* v. *Stockwell*, 472 F.2d 1186, 1187 (9th Cir.) (following trial, court sentenced defendant to seven years of imprisonment, having informed defendant prior to trial that he would receive three year sentence if he pleaded guilty but would receive sentence of between five and

seven years if he chose to stand trial; court violated defendant's right to due process by placing such burden on his decision to stand trial), cert. denied, 411 U.S. 948, 93 S. Ct. 1924, 36 L. Ed. 2d 409 (1973); *Longley* v. *State*, 902 So. 2d 925, 930 (Fla. App. 2005) (defendant's due process rights were violated when court initiated plea negotiations and offered plea deal to defendant, who rejected offer, and then, following trial, court imposed sentence five times greater than pretrial offer without placing reasons for harsher sentence on record); *Cambridge* v. *State*, 884 So. 2d 535, 538 (Fla. App. 2004) (after engaging in plea negotiations with defendant and urging him to accept plea offer of time served, court violated defendant's right to due process when, after defendant rejected proposed deal, court imposed seven year sentence following trial with no explanation of grounds for sentence); *People* v. *Dennis*, 28 Ill. App. 3d 74, 78, 328 N.E.2d 135 (1975) (inference of constitutional violation was drawn when court participated in pretrial conference at which defendant was offered plea deal of not more than two to six years of imprisonment and, after defendant rejected deal and was convicted following trial, court sentenced defendant to forty to eighty years of imprisonment, with no explanation for harshness of sentence); *People* v. *Morton*, 288 App. Div. 2d 557, 557–59, 734 N.Y.S.2d 249 (2001) (due process violation existed when, prior to trial, court offered plea deal to defendant of indeterminate term of imprisonment of two to four years in return for guilty plea, which defendant rejected, and then, upon defendant's conviction after trial, court sentenced defendant to indeterminate term of imprisonment of twelve and one-half to twenty-five years, because record contained nothing to justify substantial disparity between pretrial offer and sentence actually imposed), appeal denied, 97 N.Y.2d 758, 769 N.E.2d 365, 742 N.Y.S.2d 619, cert. denied, 537 U.S. 860, 123 S. Ct. 237, 154 L. Ed. 2d 99 (2002); *People*

v. *Patterson*, 106 App. Div. 2d 520, 521, 483 N.Y.S.2d 55 (1984) (record established that, in imposing sentence, trial court impermissibly increased defendant's punishment solely for asserting his right to trial). Under the facts of those cases, a presumption or inference of vindictiveness was appropriate; in the present case, by contrast, no such presumption or inference is warranted in light of the totality of the circumstances.[20] Because the facts do not give rise to an inference of vindictiveness, the defendant had no right or reason to expect that Judge Murray would, sua sponte, expressly disavow a vindictive or retaliatory motive. Accordingly, we conclude that the trial court properly denied the defendant's motion to correct an illegal sentence.

The judgment is affirmed.

In this opinion the other judges concurred.

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[20] We note that in *State* v. *Coleman*, 242 Conn. 523, 700 A.2d 14 (1997), our Supreme Court considered "whether a defendant who has been sentenced under the terms of a plea agreement but who later is permitted to withdraw his guilty plea and allowed to proceed to trial is entitled, following his conviction after trial, to an explanation from the trial court setting forth its reasons for imposing a greater sentence than had been imposed under the plea agreement." Id., 525. Invoking its supervisory authority over the administration of justice, the court concluded that, in those circumstances, a trial court should provide such an explanation following a timely request by the defendant. Id., 539. The defendant makes no claim under *Coleman*, which, unlike the present case, involved a sentence imposed following the withdrawal of a guilty plea. Id., 527. Even if *Coleman* were applicable, however, the defendant would have been entitled to an explanation from Judge Murray setting forth his reasons for imposing a greater sentence than that offered by Judge Kulawiz only if the defendant had made a timely request for such an explanation; see id., 539; which, of course, he did not do.

TOWING AND RECOVERY PROFESSIONALS OF CONNECTICUT, INC. *v.* DEPARTMENT OF MOTOR VEHICLES ET AL.
(AC 43464)

Elgo, Alexander and DiPentima, Js.

Syllabus

The plaintiff, a towing company, appealed to the Superior Court from the decision of the Commissioner of Motor Vehicles (commissioner) granting certain towing and storage rate increases, which were generally less than what the plaintiff requested in its petition filed pursuant to statute (§ 14-66 (a) (2)). The plaintiff claimed that the final decision of the commissioner was not supported by substantial evidence in the record. The court rendered judgment dismissing the plaintiff's appeal, from which the plaintiff appealed to this court. *Held*:

1. The commissioner's balancing of the relevant statutory and regulatory factors was within the commissioner's discretion and the exercise of this discretion was not unreasonable, arbitrary or illegal; both § 14-66 (a) (2) and the regulation (§ 14-63-36a) governing tow and storage rates included the word "may," and provided the commissioner with the discretion to consider and weigh certain factors as the commissioner saw fit in order to achieve a just and reasonable result, and, if the commissioner were required to weigh the factors in a particular manner, the term "may" would effectively be rendered meaningless, depriving the commissioner of the discretion vested in the commissioner by the legislature; moreover, it was not for this court to substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact.

2. The plaintiff could not prevail on its claim that the commissioner's decision was not supported by substantial evidence in the record: in light of the record and the considerable discretion granted to the commissioner, and contrary to the plaintiff's argument, the commissioner did in fact consider implementing a rate increase beyond the Consumer Price Index; moreover, because the plaintiff merely challenged the manner in which the commissioner weighed the facts, it asked this court to retry the case and substitute its judgment for that of the commissioner, which this court could not do as this court's review was limited to a determination of whether the conclusions drawn by the commissioner from those facts were reasonable.

Argued April 20—officially released June 22, 2021

Procedural History

Administrative appeal from the decision of the named defendant adjusting certain towing and storage rates for motor vehicles, brought to the Superior Court in the judicial district of New Britain and tried to the court, *Cordani*, *J.*; judgment dismissing the appeal, from which the plaintiff appealed to this court. *Affirmed*.

Jesse A. Langer, with whom, on the brief, was *Jeffrey D. Bausch*, for the appellant (plaintiff).

Drew S. Graham, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellee (named defendant).

James J. Healy, for the appellee (defendant Insurance Association of Connecticut, Inc.).

Opinion

DiPENTIMA, J. This appeal arises from a petition for an adjustment of towing and storage rates that the plaintiff, Towing & Recovery Professionals of Connecticut, Inc., filed with the named defendant, the Department of Motor Vehicles (department).[1] After the Commissioner of Motor Vehicles (commissioner) granted certain rate increases, the plaintiff filed an administrative appeal in the Superior Court. The court dismissed the plaintiff's administrative appeal, and the plaintiff now appeals. We affirm the judgment of the court.

The following undisputed facts and procedural history were found by the Superior Court: "On October 10, 2017, the plaintiff filed a petition with the commissioner for a declaratory ruling seeking a revision of the rates established by the commissioner for noncon-

[1] The Insurance Association of Connecticut, Inc., is also a defendant in this action and adopted the brief of the department in this appeal. Connecticut Legal Services, Inc., was a defendant in the administrative appeal before the Superior Court, but is not a party to this appeal.

sensual towing and storage services within the state.[2] On December 6, 2017, the commissioner held a public hearing on the issue of the requested rate increase and received evidence from the plaintiff and other interested parties. On March 6, 2018, the commissioner's hearing officer issued a decision granting certain rate increases. The rate increases granted were generally less than the increases requested by the plaintiff. Following the decision, the plaintiff filed a timely administrative appeal on April 23, 2018. Subsequently, on September 28, 2018, the parties requested that [the Superior Court] remand the matter back to the commissioner for further consideration. In accordance with the parties' request, [the] court remanded the matter. On December 12, 2018, the commissioner held the remand hearing. On February 15, 2019, the commissioner issued his final decision where he maintained the rate increases provided for in the initial decision." (Footnote added; footnote omitted.)

The plaintiff then brought a second administrative appeal before the Superior Court, pursuant to General Statutes § 14-66 (a),[3] claiming that the final decision of the commissioner was not supported by substantial evidence in the record. The court dismissed the plaintiff's administrative appeal, and this appeal followed. Additional facts will be set forth as necessary.

[2] The plaintiff filed the petition pursuant to General Statutes § 14-66 (a) (2), which provides in relevant part: "The commissioner shall establish and publish a schedule of uniform rates and charges for the nonconsensual towing and transporting of motor vehicles and for the storage of motor vehicles which shall be just and reasonable. Upon petition . . . the commissioner shall reconsider the established rates and charges and shall amend such rates and charges if the commissioner, after consideration of the [prescribed] factors . . . determines that such rates and charges are no longer just and reasonable. . . ."

[3] General Statutes § 14-66 (a) (3) provides in relevant part: "Any person aggrieved by any action of the commissioner under the provisions of this section may take an appeal therefrom in accordance with section 4-183 . . . ."

General Statutes § 4-183 (a) provides in relevant part that "[a] person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court . . . ."

"Our analysis begins with the appropriate standard of review. [J]udicial review of the commissioner's action is governed by the Uniform Administrative Procedure Act [(UAPA), General Statutes §§ 4-166 through 4-189], and the scope of that review is very restricted. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . .

"The substantial evidence rule governs judicial review of administrative fact-finding under the UAPA. . . . An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . ." (Citations omitted; internal quotation marks omitted.) *Murphy* v. *Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000).

The plaintiff presents four claims on appeal. The first is that the court erred in affirming the legal interpretation of the commissioner that "[a] regulation is given less weight than a statute when assessing a petition for an increase in . . . towing and storage rates." The second is that the court erred in affirming the legal interpretation of the commissioner that "the cost of a wrecker[4]

[4] A " '[w]recker' " is "a vehicle which is registered, designed, equipped and used for the purposes of towing or transporting wrecked or disabled motor vehicles for compensation or for related purposes by a person, firm

is only a factor if considered with the statutory factor of [the Consumer Price Index (CPI)]." (Footnote added.) The third is that the court erred in affirming the decision of the commissioner because it was an abuse of discretion for the commissioner "either [to] ignor[e] . . . or improperly minimiz[e] operating costs . . . as a factor because of the misconception that a statutory factor trumps a regulatory factor," and to "[ignore] undisputed expert evidence, which [was] beyond [the commissioner's] specialized knowledge." The plaintiff's final claim is that the court erred in affirming the commissioner's decision to limit the increase to the CPI because this decision was not supported by substantial evidence. We note that the plaintiff at no point challenges the admissibility of any of the evidence before the commissioner; it takes issue only with the manner in which the commissioner weighed the facts and evidence and applied the relevant statutory and regulatory factors. Therefore, for ease and clarity, we resolve the plaintiff's four claims by answering these two questions: (1) whether the commissioner's balancing of the relevant statutory and regulatory factors was unreasonable, arbitrary, illegal, or an abuse of discretion, and (2) whether the commissioner's decision was supported by substantial evidence in the record.

I

The first question is whether the commissioner's balancing of the relevant statutory and regulatory factors was unreasonable, arbitrary, illegal, or an abuse of his discretion. According to the plaintiff, the court erred in affirming the commissioner's legal interpretation that, in the context of a petition for an adjustment to towing and storage rates, a regulation is given less weight than a statute, and that "the cost of a wrecker is

or corporation licensed in accordance with the provisions of . . . this chapter or a vehicle contracted for the consensual towing or transporting of one or more motor vehicles to or from a place of sale, purchase, salvage or repair." General Statutes § 14-1 (109).

only a factor if considered with the statutory factor of CPI." The department counters that the commissioner had the discretion to weigh the statutory and regulatory factors in determining what constitutes a just and reasonable rate increase. We agree with the department.

Section 14-66 (a) (2) provides in relevant part that, "[i]n establishing and amending . . . rates and charges, the commissioner *may* consider factors, including, but not limited to, the [CPI], rates set by other jurisdictions, charges for towing and transporting services provided pursuant to a contract with an automobile club or automobile association . . . and rates published in standard service manuals. . . ." (Emphasis added.) Section 14-63-36a of the Regulations of Connecticut State Agencies provides in relevant part that in determining what is just and reasonable, "[t]he commissioner *may* consider factors such as rates set by other jurisdictions, towing services provided by contract with automobile clubs and associations, operating costs of the towing and recovery industry in Connecticut, single source contracts resulting from competitive bids on behalf of municipalities and business entities, and rates published in standard service manuals. . . ." (Emphasis added.)

To support its position, the plaintiff relies on two cases decided by our Supreme Court. The first is *Connecticut Podiatric Medical Assn.* v. *Health Net of Connecticut, Inc.*, 302 Conn. 464, 474, 28 A.3d 958 (2011), in which our Supreme Court held that "[i]t is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . . [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous. . . . Because [e]very word and phrase [of a statute] is presumed to have meaning . . . [a statute] must be construed, if possible, such that no clause, sentence

or word shall be superfluous, void or insignificant." (Internal quotation marks omitted.) The second is *Sarrazin* v. *Coastal, Inc.*, 311 Conn. 581, 603, 89 A.3d 841 (2014), in which our Supreme Court held that "[a]dministrative regulations have the full force and effect of statutory law and are interpreted using the same process as statutory construction . . . ." (Internal quotations marks omitted.) These cases, in fact, undermine the plaintiff's position.

According to the plaintiff, the manner in which the commissioner weighed the relevant statutory and regulatory factors violated the rules of statutory and regulatory construction by rendering certain factors insignificant. The plaintiff further claims that the commissioner failed to consider undisputed expert evidence, "presumably based on an erroneous interpretation of the applicable statutory and regulatory authorities." Given the inclusion of the word "may" in both the statute and state regulation, however, the opposite is true. Our Supreme Court has held that "the word [may, when used in a statute or regulation] generally imports permissive conduct and the conferral of discretion." *Office of Consumer Counsel* v. *Dept. of Public Utility Control*, 252 Conn. 115, 122, 742 A.2d 1257 (2000). Therefore, both the statute and the state regulation provide the commissioner with the discretion to consider and weigh the factors as the commissioner sees fit in order to achieve a just and reasonable result. This grant of discretion defeats the plaintiff's claim in two ways.

First, our acceptance of the plaintiff's argument would actually result in the violation of the rules of statutory and regulatory construction. This is true because if we were to require the commissioner to weigh the factors in a particular manner, we would effectively render meaningless the term "may," thereby depriving the commissioner of the discretion that was vested in the commissioner by the legislature. Second, it is not the role of this court to "substitute its own

judgment for that of the administrative agency on the weight of the evidence or questions of fact." (Internal quotation marks omitted.) *Murphy* v. *Commissioner of Motor Vehicles*, supra, 254 Conn. 343. This is especially true where, as here, the commissioner had clear discretion in weighing the factors. Accordingly, we conclude that the commissioner's balancing of the relevant statutory and regulatory factors was clearly within the commissioner's discretion, and that the exercise of that discretion was not unreasonable, arbitrary, or illegal.

II

We next consider whether the commissioner's decision was supported by substantial evidence in the record. According to the plaintiff, the court erred in affirming the commissioner's decision to limit the increase to the CPI because this decision was not supported by substantial evidence. The department counters that the commissioner's decision was supported by substantial evidence, and that the rate increase was just and reasonable. We agree with the department.

The plaintiff claims that "[t]he record unequivocally demonstrates that the operating costs . . . associated with a licensed wrecker service have increased substantially since the [last] [r]ate [i]ncrease. . . . Ultimately, to be . . . 'just and reasonable,' the [commissioner] must have incorporated wrecker costs (above and beyond the CPI) into the nonconsensual towing and storage rates." The plaintiff again attacks the manner in which the commissioner weighed the facts, without challenging the facts themselves. This attack fails for two reasons: first, because the commissioner did in fact consider implementing a rate increase beyond the CPI, and second, because, as established previously, "this court . . . may [not] retry [a] case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact." (Internal quotation marks omitted.) *Murphy* v. *Commissioner*

of Motor Vehicles, supra, 254 Conn. 343. Because the plaintiff merely challenges the manner in which the commissioner weighed the facts, it is asking this court to retry the case and substitute its judgment for that of the commissioner. This we cannot do. See id. Our review is limited to a determination of "whether the conclusions drawn [by the commissioner] from those facts are reasonable." (Internal quotation marks omitted.) Id. In light of the record and the considerable discretion granted to the commissioner, we reject the plaintiff's claim and conclude that the commissioner's decision was supported by substantial evidence.

The judgment is affirmed.

In this opinion the other judges concurred.

ELISE ZEALAND *v.* SCOTT BALBER
(AC 43650)

Elgo, Cradle and Harper, Js.

Syllabus

The plaintiff sought a partition by sale, pursuant to statute (§ 52-500 (a)), of certain real property that she and the defendant had purchased as tenants in common. The parties, who never married, shared a principal residence in New York, where they were employed as attorneys. After the parties had a child together, the plaintiff left her employment to be the child's primary caregiver, after which the defendant was the sole source of support for her and the child. The parties thereafter purchased what they intended to be a country home that would accommodate them and their child as well as the defendant's other children when he had visitation with them. Although both parties were obligors on the note and mortgage, the defendant funded the purchase and carrying costs for the home. The parties made improvements and repairs to the property, many of which the plaintiff managed, and the defendant purchased artwork for the home, including an item referred to as "punching bag art." The trial court found that the plaintiff had a relatively minimal interest in the property as compared to that of the defendant and declined to order a partition sale because a lump sum payment by the defendant to the plaintiff in exchange for her quitclaim to him of her interest in the property would better promote the relative interests of the parties. The court rendered judgment, ordering, inter alia, that

the plaintiff quitclaim her interest in the property to the defendant, at which time he was to pay her $25,000 and complete a sale or refinance of the home, or other transaction, that would relieve her of liability under the mortgage note and deed. *Held*:

1. The trial court did not abuse its discretion in determining the parties' respective interests in the property, as it reasonably could have determined, in balancing the equities of the parties, that the plaintiff possessed a relatively minimal interest in the property as compared to that of the defendant: the evidence supported the court's findings that the defendant alone obtained preapproval and a mortgage commitment for the property, that he was the sole source of the money to purchase the property, as well as furnishings, artwork and other artifacts, and to carry the mortgage debt and other property expenses; moreover, the court found that the parties had not reached an agreement as to the property's disposition in the event that they were to part ways, that it was uncontroverted that the defendant paid for the punching bag artwork with his personal funds, and that the plaintiff's testimony that she had no recollection of signing the note and mortgage was incredible, as the court was in a superior position to assess the parties' testimony and to credit the defendant's testimony over that of the plaintiff, as was its exclusive prerogative.
2. The trial court did not abuse its discretion in precluding evidence the plaintiff sought to offer regarding her nonmonetary contributions to the defendant and the children, as it permitted her to present a full day of testimony in narrative form with respect to her care of the children, management of the home, and commitment to the defendant and nonmonetary contributions to his career; moreover, her proffered evidence about a discounted price on the purchase of the punching bag artwork was irrelevant, as it was cumulative of evidence that already had been admitted, and the plaintiff did not show that the preclusion of the testimony was prejudicial to her.
3. The plaintiff's claim that the trial court exceeded its authority under § 52-500 (a) was unavailing, as the evidence substantiated the court's determination that the plaintiff had a minimal interest in the property and that an order requiring its sale would not promote the parties' relative interests; contrary to the plaintiff's assertion that the court's conclusion that a sale was necessary undermined and was inconsistent with its conclusion that a sale would not promote the parties' interests, the court never concluded that a sale was necessary but merely ordered the defendant to complete a sale, refinance or like transaction so as to absolve the plaintiff of any legal obligation with respect to the existing note and mortgage.
4. The trial court did not abuse its equitable discretion in awarding the plaintiff $25,000 as just compensation pursuant to § 52-500 (a); the court reasonably could have concluded that the plaintiff was not entitled to compensation for the punching bag artwork, as there was uncontroverted evidence that the defendant paid for it with funds from his personal account, which was not shared with the plaintiff, and, although

it was beyond dispute that the defendant was the sole source of money to buy the property, make improvements to it and carry the mortgage debt and other property expenses, the court made its award of compensation to the plaintiff in light of her nonmonetary contributions to the property, which included her work with a broker, follow up on matters for mortgage funding, handling of some preclosing inspections and, after the closing, making arrangements for many repairs and purchasing general furnishings.

Argued April 12—officially released June 22, 2021

Procedural History

Action for, inter alia, the partition of certain of the parties' real property, and for other relief, brought to the Superior Court in the judicial district of Fairfield and transferred to the judicial district of Stamford-Norwalk, where the defendant filed a counterclaim; thereafter, the plaintiff withdrew the complaint in part; subsequently, the case was tried to the court, *Kavanewsky, J.*; judgment for the defendant on the complaint and for the plaintiff on the counterclaim; thereafter, the court granted in part the plaintiff's motion for reargument and for reconsideration, and issued certain corrected orders, and the plaintiff appealed to this court. *Affirmed.*

James C. Riley, with whom were *Trevor J. Larrubia* and, on the brief, *Thomas P. O'Connor* and *John M. Hendele IV*, for the appellant (plaintiff).

Ari J. Hoffman, for the appellee (defendant).

Opinion

ELGO, J. The plaintiff, Elise Zealand, appeals from the judgment of the trial court in this partition by sale action. On appeal, the plaintiff claims that the court improperly (1) concluded that she had a minimal interest in the property at issue, (2) excluded certain evidence that she sought to admit at trial, (3) exceeded its statutory authority under General Statutes § 52-500 (a) and (4) concluded that a payment of $25,000 by the defendant, Scott Balber, to the plaintiff constituted just

compensation for her interest in that property. We affirm the judgment of the trial court.

In its September 23, 2019 memorandum of decision, the court found the following relevant facts. The parties "are attorneys who practiced law in New York and who had a common background in civil litigation. . . . The parties first became socially acquainted in 2007 . . . . They began dating. . . . In 2008, the defendant . . . began living with the plaintiff. In 2010, the parties had a child together.

"At or about the same time, the defendant proposed marriage to the plaintiff and gave her a diamond ring. The plaintiff accepted the ring in contemplation of marriage, but the marriage never occurred. The plaintiff wanted the financial security she felt that the defendant could provide, but, at the same time, she had misgivings about marrying him. The defendant never truly pressed the situation, and he gave the plaintiff a large part of the financial security she wanted. After the birth of their child, the plaintiff left her employment. She continued as the child's primary caregiver. The defendant was the sole source of support for the plaintiff and their child. The defendant also funded and regularly contributed to a joint checking account which was used by the plaintiff and himself.

"In December, 2012, the parties purchased a home at 112 Hillspoint Road in Westport [Westport property]. It was intended to be a 'getaway' or 'country home.' It was to accommodate the parties and their own child, and also the defendant's two [older] children when he had visitation with them. The closing price was $1.16 million. Title to the [Westport] property was taken by the parties as tenants in common. It was financed with a mortgage for $925,000.[1] The equity needed to close,

[1] "Title to the [Westport] property was originally to be solely in the name of the defendant. However, when the plaintiff learned of this, she voiced concerns to the defendant, and title was ultimately taken in both of the parties' names. Likewise, the mortgage note and deed were signed by both

$235,000, and the closing costs . . . were completely funded by the defendant. The costs to carry the [Westport] property (i.e., payments on the mortgage, taxes and insurance) have been approximately $5300 per month, and utilities and regular property maintenance costs have been approximately $8000 per month. These amounts, too, have been funded solely by the defendant's earnings.

"The parties made improvements and repairs to the [Westport] property. The plaintiff was generally 'on-site' more regularly than the defendant, so she arranged for or managed many of these [repairs]. Also, in addition to customary and necessary home furnishings, the parties purchased certain artwork. One of the pieces was referred to as a 'Punching Bag' by Jeffrey Gibson. . . . The defendant had a particular interest in the item, and he purchased it from a dealer with whom he had a close relationship. The dealer waived his customary markup, leaving the defendant to pay $36,000 for this piece. The plaintiff claims that it is worth 'well into the six figures.' She bases that upon the fact that the piece was loaned out to a gallery for exhibition and on her opinion that the artist's career was on the rise. The court does not find that the plaintiff's valuation is credible. Moreover, there was no reliable valuation by either party for other home furnishings. Finally, the court finds that, at the time of trial, the fair market value of the [Westport] property was approximately $1.2 million, and the mortgage debt was approximately $765,000.

"In the court's view, the relationship between the parties has been precarious. The tone and demeanor of each of the parties to one another during the trial corroborated this. The parties used [the Westport property] on the basis stated previously for not quite four

parties . . . . [A]t trial, when the plaintiff was confronted with the fact that she had signed the mortgage note and deed, she expressed complete astonishment. The court finds that reaction to have been somewhat incredible."

years. In mid-2016, the plaintiff and the parties' child moved out of the [Westport] property. The defendant locked its doors. The plaintiff sold the diamond ring, which had been purchased by the defendant for $70,000, for $18,000. She retained the proceeds of the sale." (Footnote in original.)

On November 13, 2017, the plaintiff commenced this action seeking a partition by sale of the Westport property and the punching bag artwork.[2] In response, the defendant filed an answer accompanied by two special defenses.[3] A court trial was held over the course of three days, at which both parties testified.[4]

In its subsequent memorandum of decision, the court found that "[i]t is beyond dispute that the defendant was the sole source of providing the moneys to purchase the [Westport] property, to make improvements, to purchase furnishings, artwork and other artifacts, and to

[2] Although the plaintiff in her complaint also requested a partition by sale of "all [of] the personal property other than clothing" located in the Westport property, little mention was made of that personal property at trial, and the court specifically found that "there was no reliable valuation by either party" for such property. In the first sentence of her principal appellate brief, the plaintiff states that "[t]his case involves the partition of real property and artwork owned by the parties as tenants in common." Moreover, neither party has raised any issue on appeal with respect to personal property apart from the punching bag artwork. We, therefore, confine our review accordingly.

In addition, we note that the plaintiff's complaint contained counts sounding in civil theft, breach of fiduciary duty, and conversion. On February 20, 2018, the plaintiff filed a withdrawal of those counts.

[3] In his special defenses, the defendant raised the doctrines of unclean hands and estoppel. The defendant also filed a counterclaim alleging conversion, statutory theft, and unjust enrichment as a result of the plaintiff's retention of the diamond ring. In its memorandum of decision, the court concluded that the ring was a conditional gift to the plaintiff and that the defendant had "abandoned or waived any intention attached to the initial giving of the ring." The court, therefore, concluded that the plaintiff was "entitled to the ring or to any proceeds from its sale." The propriety of that determination is not at issue in this appeal.

[4] The plaintiff appeared before the Superior Court in a self-represented capacity. She is represented by legal counsel in this appeal.

carry the mortgage debt and other property expenses. However, the plaintiff assisted in several ways. She worked with a broker to find the property, she followed up on matters for mortgage funding and she handled some preclosing inspections. After the closing, she was responsible for making arrangements for many repairs and for purchasing general furnishings. Both parties had a hand in identifying possible purchases." The court further found that the plaintiff had a "relatively minimal interest [in the property at issue] compared to that of the defendant. . . . [T]he plaintiff can receive an equitable and just compensation for that interest by means of a payment from the defendant, and . . . a sale is not necessary and would not better promote the relative interests of the plaintiff and of the defendant. This is not a situation that demands a sale of these assets. There appears to be ample equity in the [Westport] property. A sale would carry with it attendant costs and expenses. A court-ordered sale would also likely signify that it is being sold under 'distress' conditions, which would most likely result in a lower price than one achieved on an open market. In the court's view, a lump sum payment to the plaintiff would equitably compensate her and would allow the defendant to control the retention or disposition of these assets without unnecessary penalty to him." The court thus ordered in relevant part that "the defendant shall have sole right, title [to] and interest [in] the [Westport] property, and to all furnishings and artwork therein . . . . The plaintiff shall have sole right, title [to] and interest [in] the diamond ring or to any proceeds from its sale. . . . The defendant shall pay the plaintiff the sum of $25,000 at the time of the plaintiff's transfer to the defendant of the plaintiff's right, title [to] and interest [in] the [Westport] property."

The plaintiff thereafter filed a motion to reargue, which the court granted, "limited to [the] claim that, under the present orders of the court, she continues to

remain an obligor on the mortgage note, and what relief, if any, should be extended to her incident thereto." Following a hearing on October 29, 2019, the court entered a set of corrected orders that obligated the defendant, inter alia, to "complete a sale, a refinance or a like transaction that results in the satisfaction of the note and the recording of the lender's release of the mortgage deed such that [the] plaintiff bears no liability or exposure on or arising under said documents . . . ." The court also ordered the plaintiff to tender a quitclaim deed to the defendant, after which the defendant was required to make the previously ordered payment to the plaintiff in the amount of $25,000. The court rendered judgment accordingly, and this appeal followed.

As a preliminary matter, we note certain well established principles. "The right to partition has long been regarded as an absolute right, and the difficulty involved in partitioning property and the inconvenience to other tenants are not grounds for denying the remedy. No person can be compelled to remain the owner with another of real estate, not even if he become[s] such by his own act; every owner is entitled to the fullest enjoyment of his property, and that can come only through an ownership free from dictation by others as to the manner in which it may be exercised. Therefore the law afford[s] to every owner with another relief by way of partition . . . ." (Internal quotation marks omitted.) *Fernandes* v. *Rodriguez*, 255 Conn. 47, 55, 761 A.2d 1283 (2000). The statutory authority for "the power of our courts to order a sale in partition proceedings was enacted in 1844. . . . The early decisions of this court dealing with the new statutory remedy of partition by sale emphasized that [t]he statute giving the power of sale introduces . . . no new principle; it provides only for an emergency, when a division cannot be well made, in any other way. . . . [A] sale of one's property without

his consent is an extreme exercise of power warranted only in clear cases." (Citations omitted; internal quotation marks omitted.) Id., 56–57.

The authority to order a partition by sale is codified in § 52-500 (a), which provides: "Any court of equitable jurisdiction may, upon the complaint of any person interested, order the sale of any property, real or personal, owned by two or more persons, when, in the opinion of the court, a sale will better promote the interests of the owners. If the court determines that one or more of the persons owning such real or personal property have only a minimal interest in such property and a sale would not promote the interests of the owners, the court may order such equitable distribution of such property, with payment of just compensation to the owners of such minimal interest, as will better promote the interests of the owners." In her operative complaint, the plaintiff sought a partition by sale of certain real and personal property.

As this court has observed, "[a] partition action is equitable in nature. Accordingly, [t]he determination of what equity requires is a matter for the discretion of the trial court. . . . In determining whether the trial court has abused its discretion, we must make every reasonable presumption in favor of the correctness of its action. . . . Our review of a trial court's exercise of the . . . discretion vested in it is limited to the questions of whether the trial court correctly applied the law and could reasonably have reached the conclusion that it did." (Internal quotation marks omitted.) *DiCerto* v. *Jones*, 108 Conn. App. 184, 188–89, 947 A.2d 409 (2008); see also *Fernandes* v. *Rodriguez*, supra, 255 Conn. 59 ("[b]ecause a partition by sale, although a creature of statute, is an equitable action . . . it is within the trial court's discretion to order a partition by sale"). With those precepts in mind, we turn to the plaintiff's claims.

I

The plaintiff first claims that the court improperly concluded that she had a minimal interest in the property at issue. We disagree.

In a partition action, the court's determination of a party's interest is equitable in nature and, thus, governed by the abuse of discretion standard. See, e.g., *DiCerto* v. *Jones*, supra, 108 Conn. App. 191 (concluding that "the court did not abuse its discretion in finding the equitable interests of the plaintiff and the defendant as it did"); *Fernandes* v. *Rodriguez*, 90 Conn. App. 601, 612, 879 A.2d 897 (same), cert. denied, 275 Conn. 927, 883 A.2d 1243 (2005), cert. denied, 547 U.S. 1027, 126 S. Ct. 1585, 164 L. Ed. 2d 312 (2006); cf. *Kakalik* v. *Bernardo*, 184 Conn. 386, 395, 439 A.2d 1016 (1981) ("[t]he determination of what equity requires in a particular case, the balancing of the equities, is a matter for the discretion of the trial court").

Underlying the court's determination as to the equitable interests of the parties were several factual findings, all of which are supported by the evidence in the record before us. The court found that "[i]t is beyond dispute that the defendant was the sole source of providing the moneys to purchase the [Westport] property, to make improvements, to purchase furnishings, artwork and other artifacts, and to carry the mortgage debt and other property expenses." The court also emphasized that the Westport property was a " 'getaway' " home in Connecticut for the parties, who, at all relevant times, maintained a principal residence in New York.[5] The court found that the parties utilized the Westport property in that limited capacity for approximately three and one-half years. In addition, the court found that the parties

[5] At trial, the defendant testified that the parties "were not in the [Westport] house very frequently. It was a weekend house. . . . [D]uring the school year, the children had activities, so we'd go up periodically."

had not reached an agreement as to the disposition of the property in the event that they were to part ways.

Those factual findings make the present case readily distinguishable from *Fusco* v. *Austin*, 141 Conn. App. 825, 64 A.3d 794 (2013), on which the plaintiff heavily relies. *Fusco* did not involve a getaway home but, rather, concerned the partition of real property that served as the parties' principal residence for almost one-quarter century. Id., 827–28. Unlike the present case, the parties in *Fusco* had "entered [into] an agreement [regarding] their relative rights and responsibilities relating to the property," which provided that, "if the property is sold, the defendant will receive 55 percent of the net proceeds and the plaintiff will receive 45 percent of the net proceeds, subject to either party's claim for verified costs for property improvements." (Internal quotation marks omitted.) Id., 827; see also *DiCerto* v. *Jones*, supra, 108 Conn. App. 190–91 (emphasizing that trial court "found that there was an agreement between the parties . . . that the defendant was to pay for various expenses without reimbursement from the plaintiff"). Equally significant, the court in *Fusco* found that, "during the period of the parties' cohabitation, their contributions to the property were relatively equal"; *Fusco* v. *Austin*, supra, 834; a stark contrast to findings made by the trial court in the present case.

Furthermore, although it is undisputed that the parties both were obligors on the note and mortgage on the Westport property, the plaintiff testified at trial that she had no recollection of signing either instrument and was shocked to learn of her status as a mortgagor. In its memorandum of decision, the court found her testimony incredible. See footnote 1 of this opinion. The court also was presented with uncontroverted evidence that the defendant alone obtained both preapproval and a mortgage commitment from the mortgage broker for

the Westport property; the plaintiff thus was not essential to securing that mortgage. Contra *Fernandes* v. *Rodriguez*, supra, 90 Conn. App. 612 (trial court specifically found that "the defendant's participation had been essential to securing the mortgage").

Moreover, with respect to the punching bag artwork, the court found that the defendant possessed "a particular interest in the item, and he purchased it from a dealer with whom he had a close relationship." The court was presented with uncontroverted evidence that the defendant paid for that piece of art entirely with funds from his personal Wells Fargo account, which was not shared with the plaintiff. In addition, an invoice for that purchase was admitted into evidence at trial, which lists the defendant as the sole purchaser of that artwork. The court was free to credit that evidence. See *Wethersfield* v. *PR Arrow, LLC*, 187 Conn. App. 604, 646, 203 A.3d 645, cert. denied, 331 Conn. 907, 202 A.3d 1022 (2019).

As our Supreme Court has "stated on other occasions, it is not always true that each tenant in common . . . is entitled to equal shares" in the property. *Fernandes* v. *Rodriguez*, supra, 255 Conn. 60; see also *Levay* v. *Levay*, 137 Conn. 92, 96, 75 A.2d 400 (1950) ("Although each party was the owner of an undivided one-half interest in the property, it does not follow that he or she will necessarily be entitled to equal shares of the moneys obtained from the sale. Equities must be considered . . . ."). *Fernandes* v. *Rodriguez*, supra, 90 Conn. App. 601, is instructive in this regard. In that case, like the one presently before us, the parties possessed a one-half interest in the real property as joint tenants. Id., 609 n.5. For that reason, the defendant argued that the trial court was "required . . . to award him one half of the proceeds of the partition sale." Id., 609. This court disagreed, noting that the defendant's contention "finds no support in the case law." Id. To the contrary,

we emphasized that the trial court specifically had found that, "although the defendant had been essential to the purchase of the property in that he had signed and executed the mortgage and note, this constituted his only activity on the mortgage. The plaintiff made all payments and assumed full responsibility for the management of the property. The court concluded that, although the defendant's participation had been essential to securing the mortgage, it had been minimal after this initial step. On the basis of these findings, the court found the defendant's equitable interest in the property to be 5 percent and the plaintiff's to be 95 percent." Id., 612. Because those findings were substantiated by the record, this court concluded that the trial court "did not abuse its discretion in finding the equitable interests of the [parties] as it did." Id.

We likewise conclude that the court in the present case reasonably could have determined, in balancing the equities of the parties with respect to the property in question, that the plaintiff possessed a "relatively minimal interest compared to that of the defendant." Moreover, the court was in a superior position to assess the testimony offered by both parties and, in several instances, chose to credit the defendant's testimony over that of the plaintiff, as was its exclusive prerogative. See, e.g., *Rissolo* v. *Betts Island Oyster Farms, LLC*, 117 Conn. App. 344, 354–55, 979 A.2d 534 (2009) ("[t]he trier of fact . . . is the sole arbiter of credibility, and thus is free to accept or reject, in whole or in part, the testimony offered by either party" (internal quotation marks omitted)). On our review of the record, we conclude that the court did not abuse its discretion in determining the respective interests of the parties in the property at issue.

II

The plaintiff next claims that the court abused its discretion by declining to admit certain testimony regarding nonmonetary contributions. We do not agree.

We begin by noting that "[t]he trial court's ruling on the admissibility of evidence is entitled to great deference. . . . [T]he trial court has broad discretion in ruling on the admissibility . . . of evidence. . . . The trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion. . . . We will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. . . . Moreover, evidentiary rulings will be overturned on appeal only where there was an abuse of discretion and a showing by the defendant of substantial prejudice or injustice. . . . When reviewing claims under an abuse of discretion standard, the unquestioned rule is that great weight is due to the action of the trial court and every reasonable presumption should be given in favor of its correctness . . . . In determining whether there has been an abuse of discretion, the ultimate issue is whether the court could reasonably conclude as it did." (Citations omitted; internal quotation marks omitted.) *PSE Consulting, Inc.* v. *Frank Mercede & Sons, Inc.*, 267 Conn. 279, 328–29, 838 A.2d 135 (2004).

The following undisputed facts are relevant to the plaintiff's claim. The plaintiff, a licensed attorney and experienced litigator, appeared in a self-represented capacity at trial. Over the objection of the defendant, the court permitted the plaintiff to present a full day of testimony in narrative form. In that testimony, the plaintiff discussed her nonmonetary contributions to the defendant and the children.

For example, the plaintiff testified that "after I gave birth to our child in 2010 . . . [the defendant and I] determined that I would leave my job, stay home, take care of our child and, when we had the older [children] from [the defendant's] first marriage, that I would care for them, as well." She testified that "I paid for groceries. I paid for diapers. I purchased . . . furniture for the

children. I bought their clothing. When I had resources, I devoted my resources to the well-being and the upkeep of our family." With respect to nonmonetary contributions to the defendant's career, the plaintiff testified: "I took the role of supporting [the defendant] in his career very seriously. I took the role, my role as a caregiver for our children extremely seriously. I devoted my time and my . . . attention, and my energy to managing our household, to ensuring the children had everything they needed, and to being a constant support for [the defendant] . . . ." The plaintiff also testified that, at the time that the Westport home was purchased, she "was working to support [the defendant] in his career and managing our home." The plaintiff further testified that she contributed to the defendant's career by "using not only my background as an attorney, but the contacts that I had made through many, many years of practice." She testified that she "was committed" to the defendant, who "often held me out as his wife to clients. He held me out as his wife to business associates, including a recruiter who was helping him find a position in a new firm. . . . He often referred to me as his wife in front of his colleagues, as well."

The plaintiff nonetheless claims that the court abused its discretion by precluding her from introducing evidence that she helped further the defendant's career by "caring for his children," by "introducing him to her contacts," and by "hosting work-related events" for the defendant. Because such testimony was cumulative of that already offered by the plaintiff in her narrative testimony, she cannot establish reversible evidentiary error. See, e.g., *DeNunzio* v. *DeNunzio*, 320 Conn. 178, 204, 128 A.3d 901 (2016).

The plaintiff also claims that the court improperly granted the defendant's objection to her testimony regarding the discount obtained on the purchase of the punching bag artwork. At trial, the plaintiff testified

in relevant part that "the discount [on the purchase of that artwork] was based upon our personal relationship with [the art dealer] and his wife. . . . We attended anniversary parties with them. We went to art openings with them. I went to dinners with them, and I did that, again, in support of [the defendant] and his career." The defendant raised an objection on relevance grounds, which the court sustained, stating: "What has been admitted is that this artwork was purchased under the circumstances you recited at a discount, apparently, by a client of the defendant or a mutual acquaintance . . . [and that] there was a discounted value given to it because of that relationship." In light of the court's explanation of its ruling, the plaintiff has not demonstrated how the preclusion of her testimony was prejudicial to her. Making every reasonable presumption in favor of the correctness of that ruling, and mindful that an evidentiary ruling will be overturned only when a substantial prejudice is shown; *PSE Consulting, Inc.* v. *Frank Mercede & Sons, Inc.*, supra, 267 Conn. 328–29; we conclude that the court did not abuse its discretion in precluding the evidence in question and that the plaintiff has not shown any harm from such preclusion.

III

The plaintiff also contends that the court exceeded its statutory authority under § 52-500 (a). She is mistaken.

As this court has observed, "§ 52-500 (a) permits the court to order an equitable distribution of the property *if* it determines that one or more of the persons owning the property have only a minimal interest in the property *and* a sale would not promote the interest of the owners. Under these circumstances, the court may order the payment of just compensation to the owners of the minimal interest, as will better promote the interests of the owners." (Emphasis in original.) *Fusco* v. *Austin*, supra,

141 Conn. App. 833. The court in the present case determined that the plaintiff had a minimal interest in the property in question, as discussed in part I of this opinion. The court also determined that an order requiring the sale of the property would not promote the interests of the owners, stating in relevant part: "[T]he plaintiff can receive an equitable and just compensation for that interest by means of a payment from the defendant, and that a sale is not necessary and would not better promote the relative interests of the plaintiff and of the defendant. This is not a situation that demands a sale of these assets. There appears to be ample equity in the [Westport] property. A sale would carry with it attendant costs and expenses. A court-ordered sale would also likely signify that it is being sold under 'distress' conditions, which would most likely result in a lower price than one achieved on an open market. In the court's view, a lump sum payment to the plaintiff would equitably compensate her and would allow the defendant to control the retention or disposition of these assets without unnecessary penalty to him." The evidence in the record before us substantiates that determination.

The plaintiff nonetheless claims that the court's "conclusion that a sale was necessary undermined and was inconsistent with its . . . conclusion that a sale would not promote the interests of the parties." Contrary to that assertion, the court never concluded that a sale was necessary. The court merely ordered the defendant to "complete a sale, a refinance or a like transaction that results in the satisfaction of the note and the recording of the lender's release of the mortgage deed such that [the] plaintiff bears no liability or exposure on or arising under said documents . . . ." The plain intent of that order was to absolve the plaintiff of any legal obligation with respect to the existing note and mortgage on the property; the defendant was not obligated to sell the property to effectuate that intent. We

therefore reject the plaintiff's contention that the court exceeded its statutory authority pursuant to § 52-500 (a).

IV

As a final matter, the plaintiff claims that the court abused its discretion in awarding her $25,000 as just compensation pursuant to § 52-500 (a). We do not agree.

With respect to the punching bag artwork, the court was presented with uncontroverted evidence that the defendant paid for that piece of art entirely with funds from his personal Wells Fargo account, which was not shared with the plaintiff. In addition, an invoice for that purchase was admitted into evidence at trial, which lists the defendant as the sole purchaser of that artwork. In light of that evidence, the court reasonably could have concluded, in exercising its equitable discretion, that the plaintiff was not entitled to compensation for that piece of art.

With respect to the Westport property, the court found that "[i]t is beyond dispute that the defendant was the sole source of providing the moneys to purchase the [Westport] property, to make improvements, to purchase furnishings, artwork and other artifacts, and to carry the mortgage debt and other property expenses." The court also found that the Westport property was purchased for $1,160,000 and that it had a fair market value of $1,200,000 at the time of trial, reflecting an increase of $40,000. In its memorandum of decision, the court recognized the plaintiff's nonmonetary contributions to the property, stating: "She worked with a broker to find the property, she followed up on matters for mortgage funding and she handled some preclosing inspections. After the closing, she was responsible for making arrangements for many repairs and for purchasing general furnishings." In light of those contributions, the court awarded the plaintiff $25,000 as just compen-

sation. On the record before us, we cannot say that the court abused its equitable discretion in so doing.

The judgment is affirmed.

In this opinion the other judges concurred.

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NOTICE OF CONNECTICUT STATE AGENCIES

CONNECTICUT PORT AUTHORITY

Notice of Intent to Adopt Awarding of Grants, Subsidies and Other Financial Assistance Policies & Procedures

In accordance with Conn. Gen. Stat. § 1-121, the Connecticut Port Authority (the ''Port Authority'') hereby gives notice that it intends to adopt an Awarding of Grants, Subsidies and Other Financial Assistance Policies & Procedures document.

Statement of the substance and purpose of the proposed policies and procedures:

Awarding of Grants, Subsidies and Other Financial Assistance Policies & Procedures

Subject to the availability of funds, the Authority may award grants, subsidies and other financial assistance to any person or entity for projects which are eligible for such grants, subsidies and/or other financial assistance pursuant to applicable law. Applications for such grants and subsidies shall be in such form as the Executive Director shall determine from time to time. Each applicant shall file an application for said grants and/or subsidies with the Authority staff. The Authority shall be under no obligation to act on such application until it is deemed accurate and complete by the Authority staff and in compliance with all other requirements of the Authority. The Authority staff shall be responsible for processing each application for a grant and/or subsidy in accordance with applicable law governing said funds and applicable Authority procedures which may be adopted or amended from time to time by the Board of Directors of the Authority. The Executive Director, in his sole and absolute discretion, shall approve such applications as he deems to be accurate and complete and in compliance with applicable law governing such grants and subsidies and any applicable Authority procedures which may be adopted or amended from time to time by the Board of Directors of the Authority; provided, however, the Authority, in its sole and absolute discretion, may reject any and all applications.

A copy of the above proposed Awarding of Grants, Subsidies and Other Financial Assistance Policies and Procedures document will also be made available on the Port Authority's website (https://ctportauthority.com/rfqs-rfps-3/) under ''Public Notices.''

Manner of presenting views: All interested persons are invited to present their views in writing no later than ***July 23, 2021***. Comments are to be submitted to the Connecticut Port Authority, Andrew Lavigne either by e-mail to alavigne@ctportauthority.com (please put ''Public Comment re: Grant Policy'' in the subject line) or by postal mail addressed to him at:

Connecticut Port Authority
ATTN: Andrew Lavigne
455 Boston Post Road, Suite 204
Old Saybrook, CT, 06475

NOTICES

Notice of Certification as Authorized House Counsel

Upon recommendation of the Bar Examining Committee, in accordance with § 2-15A of the Connecticut Practice Book, notice is hereby given that the following individuals have been certified by the Superior Court as Authorized House Counsel for the organization named:

Certified as of May 10, 2021:

Christopher A. Deiotte — NBC Sports Group, Inc.

Certified as of May 20, 2021:

Mark L. Landis — GE Capital & GE Treasury

Hon. Patrick L. Carroll III
Chief Court Administrator

NOTICE OF PENDENCY OF REINSTATEMENT APPLICATION

In accordance with Section 2-53 of the Connecticut Practice Book, notice is hereby given that the following individual has filed an application for reinstatement to the bar:

JEFFREY L. WEISMAN

The Standing Committee on Recommendations for Admission to the Bar of Fairfield County will commence a hearing on the above application on Friday, July 9, 2021 at 9:30 am at Bridgeport Superior Court, 1061 Main Street, Bridgeport, CT 06604 and such future dates as are necessary to conclude the matter.

Please contact Kathleen M. Dunn, Chairperson (203-375-1433) for further information regarding the matter or if you have an objection to the application.

Supreme Court Sessions

Notice is hereby given that the calendar of sessions for the next court year has been adopted.

Sessions last approximately two weeks and are subject to change. Any deviation from the calendar as adopted, will be noticed in the court's Docket.

The first day of each of the sessions for the 2021–2022 court year is as follows: September 8, 2021; October 12, 2021; November 15, 2021; December 13, 2021; January 10, 2022; February 14, 2022; March 21, 2022; and April 25, 2022.

Carl D. Cicchetti
Chief Clerk

Appellate Court Sessions

Notice is hereby given that the calendar of sessions for the next court year has been adopted.

Sessions last approximately three weeks and are subject to change. Any deviation from the calendar as adopted, will be noticed in the court's Docket.

The first day of each of the sessions for the 2021–2022 court year is as follows: September 1, 2021; October 4, 2021; November 8, 2021; January 3, 2022; January 31, 2022; February 28, 2022; April 4, 2022; and May 9, 2022.

Carl D. Cicchetti
Chief Clerk

Docket and Assignment Posting Dates for Supreme and Appellate 2021–2022 Court Years

Docket and case assignment information is available on the Judicial Branch website and at http://appellateinquiry.jud.ct.gov. The electronic posting on the Judicial Branch website is the official notice of the dockets and assignments except for incarcerated self-represented parties and individuals who have an exemption from e-filing who will continue to receive notice by mail. See Practice Book sections 69-1 and 69-3. Notice of the cases the Appellate Court determines should be considered onthe court's motion calendar for dismissal or sanction will also be by mail. The information below provides docket and assignment posting dates for both courts for the 2021 – 2022 court year.

Supreme Court Docket	**Information available on or about**
First Term Docket	Posted to the website June 28, 2021
Second Term Docket	Posted to the website August 20, 2021
Third Term Docket	Posted to the website September 24, 2021
Fourth Term Docket	Posted to the website October 25, 2021
Fifth Term Docket	Posted to the website November 29, 2021
Sixth Term Docket	Posted to the website January 6, 2022
Seventh Term Docket	Posted to the website February 7, 2022
Eighth Term Docket	Posted to the website March 14, 2022
Supreme Court Assignment	**Information available on or about**
First Term Assignment	Posted to the website July 29, 2021
Second Term Assignment	Posted to the website September 16, 2021
Third Term Assignment	Posted to the website October 15, 2021
Fourth Term Assignment	Posted to the website November 19, 2021
Fifth Term Assignment	Posted to the website December 23, 2021
Sixth Term Assignment	Posted to the website January 27, 2022
Seventh Term Assignment	Posted to the website March 2, 2022
Eighth Term Assignment	Posted to the website April 8, 2022
Appellate Court Docket	**Information available on or about**
First Term Docket	Posted to the website July 13, 2021
Second Term Docket	Posted to the website August 23, 2021
Third Term Docket	Posted to the website September 28, 2021
Fourth Term Docket	Posted to the website November 9, 2021
Fifth Term Docket	Posted to the website December 14, 2021
Sixth Term Docket	Posted to the website January 20, 2022
Seventh Term Docket	Posted to the website February 28, 2022
Eighth Term Docket	Posted to the website April 4, 2022

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Appellate Court Assignment	**Information available on or about**
First Term Assignment	Posted to the website August 13, 2021
Second Term Assignment	Posted to the website September 21, 2021
Third Term Assignment	Posted to the website October 26, 2021
Fourth Term Assignment	Posted to the website December 7, 2021
Fifth Term Assignment	Posted to the website January 13, 2022
Sixth Term Assignment	Posted to the website February 17, 2022
Seventh Term Assignment	Posted to the website March 25, 2022
Eighth Term Assignment	Posted to the website April 28, 2022