SUPREME COURT PENDING CASES

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

STATE *v.* LORI T., SC 20520
Judicial District of Stamford-Norwalk

Criminal; Whether General Statutes § 53a-98 (a) (3) was Unconstitutionally Vague as Applied to Defendant; Whether Evidence was Sufficient to Prove that Defendant "Otherwise Refuse[d] to Return" Children under § 53a-98 (a). The defendant's four minor children visited the defendant at her Glastonbury home during Memorial Day weekend in 2015 and decided that they did not want to go with their father and custodial parent when he was scheduled to pick them up on Memorial Day. When the children's father arrived, the defendant came out and told him that "she wasn't sending the children out . . . [t]he children didn't want to come out, and she was going to do what the children wanted to do." The children's father went to the Glastonbury police department, and a Glastonbury police officer went to the defendant's home, after which he decided not to arrest the defendant. The children's father returned to Norwalk and contacted a Norwalk police officer who was the children's school resource officer. The Norwalk police officer in turn contacted the defendant, who expressed that "the kids didn't want to come out to [their father]" and that "she wo[uld]n't make the children come out to him." The defendant indicated that she would return the children to school, but when they still had not appeared one week later, the Norwalk police officer sought an arrest warrant for custodial interference in the second degree. The defendant was ultimately charged with four counts of custodial interference in the second degree under General Statutes § 53a-98 (a) (3), which provides in relevant part that "[a] person is guilty of custodial interference in the second degree when . . . knowing that he has no legal right to do so, he . . . otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child." The state dropped one of the counts, as the child at issue had been staying with the defendant for several months, and proceeded to trial on the remaining three counts. The defendant was convicted after a jury trial, and she appealed to the Appellate Court (197 Conn. App. 675), which affirmed the judgment of conviction. The Appellate Court rejected the defendant's claim that § 53a-98 (a) (3) was unconstitutionally vague as applied to her because it lacked definitional precision as to the term "otherwise refuses to return," such that (1)

she was given no notice that her failure to force the children to go with their father was actionable under the statute and (2) the statute impermissibly delegated the interpretation of the term to judicial and law enforcement authorities on an ad hoc and subjective basis. The court concluded that the defendant's conduct amounted to an abdication of her parental role and a conscious decision not to return the children to their custodial parent that fell within the core meaning of § 53a-98 (a) (3). It further declined to address the defendant's arbitrary enforcement argument on this basis. The court also rejected the defendant's claim that there was insufficient evidence to support her conviction, determining that the evidence showed that she "had the ability to compel her children to go with their father" and "refused to take any steps to comply with the court's custody and visitation orders by returning the children to him upon his request." In this certified appeal by the defendant, the Supreme Court will decide whether the Appellate Court correctly concluded (1) that § 53a-98 (a) (3) was not unconstitutionally vague as applied to the defendant and (2) that the evidence presented was sufficient to prove that she "otherwise refuse[d]to return" her children.

JOHN B. CLINTON *v.* MICHAEL E. ASPINWALL et al.,
SC 20543/SC 20544
Judicial District of Hartford

Breach of Contract; Whether Appellate Court Properly Construed LLC's Operating Agreement; Whether Appellate Court Correctly Found That Agreement Imposes Affirmative Duty on Managers to Exercise Best Judgment But Not To Act in Good Faith. The plaintiff and the defendants organized CCP Equity Partners, LLC (CCP), pursuant to an operating agreement governed by Delaware law. CCP managed private equity funds and maintained a $3 million capital reserve fund. The agreement provided that the company was manager-managed, with the plaintiff as well as the defendants named as member-managers, and that each manager had a seat on the Board of Managers, which managed the company by majority vote. Section 2.5 of the agreement provided that, "[i]n addition to the other matters specified hereunder, subject to prior approval by the Board of Managers," the consent of members holding 60 percent of the interest in CCP was required to amend the operating agreement or to remove members. The defendants, who controlled 61 percent of CCP, voted to amend the agreement such that all members could consent to a distribution and later voted to remove the plaintiff as a member. The

plaintiff thereafter brought this action alleging that the defendants had breached their contractual and fiduciary duties by amending the agreement, removing him as a member, and maintaining the $3 million capital reserve. He specifically alleged that the defendants breached § 3.4 of the agreement, which provided that "[t]he managers shall exercise their best judgment in conducting [CCP's] operations and in performing their other duties hereunder. The [m]anagers shall not incur any liability . . . provided, however, that the managers . . . acted in good faith . . . ." The trial court instructed the jury that § 3.4 required the managers to exercise their best judgment and that they were prohibited from taking actions in bad faith. The jury found in favor of the plaintiff on the breach of contract claims, awarding over $1 million in damages. The defendants appealed to the Appellate Court (200 Conn. App. 205), which concluded that the agreement was unambiguous and that the trial court had misinterpreted it. The court found that, as a matter of law, the defendants could not have breached § 3.4, which governs the acts of managers, by amending the agreement and removing the plaintiff because those actions were undertaken by the defendants in their capacities as members pursuant to § 2.5. Moreover, the Appellate Court rejected the assertion that approval from the Board of Managers was required for all actions taken pursuant to § 2.5, finding that the relevant language was a reference to other provisions in the agreement that specifically required board approval. As a result, the court directed judgment for the defendants with respect to those claims. As to the claim regarding the capital reserve, the Appellate Court determined that the trial court had improperly instructed the jury regarding § 3.4, as that section did not impose an affirmative duty on the managers to act in good faith but rather was an exculpatory clause. Although it found that the instruction was incorrect, the Appellate Court held that the error was harmless because, if the jury had found that the defendants acted in bad faith, then those actions would not have been in the managers' best judgment as well. The Supreme Court granted the plaintiff's and the defendants' cross petitions for certification to appeal and will decide whether the Appellate Court properly interpreted the agreement and correctly concluded that the instructional error was harmless.

KIRSTEN SOLONIEWICZ *v.* SUGAR FACTORY, LLC, SC 20640
Judicial District of Hartford

Tribal Sovereignty; Whether Trial Court Properly Denied Defendant Restaurant Owner's Motion to Dismiss Plaintiff

Server's Wage and Hour Action on Tribal Sovereignty Grounds Where Defendant Argued That State Wage and Hour Laws Do Not Apply to Businesses Operated on Tribal Reservations. The plaintiff was employed by the defendant as a server at the defendant's restaurant located at the Foxwoods Resort and Casino, which in turn is located on land owned by the Mashantucket Pequot Tribal Nation (tribe). She brought an action alleging that the defendant had violated state wage and hour laws due to its tip credit and distribution policies and procedures for servers. The defendant filed a motion to dismiss the action, arguing that the trial court lacked subject matter jurisdiction on tribal sovereignty grounds because the state wage and hour laws on which the plaintiff relied did not apply to the restaurant as a business operating on a tribal reservation. The trial court denied the defendant's motion to dismiss, concluding that the defendant's reliance on tribal sovereignty was misplaced pursuant to both state law as articulated in *Ellis* v. *Allied Snow Plowing, Removal & Sanding Services Corp.*, 81 Conn. App. 110, cert. denied, 268 Conn. 910 (2004), and federal law as articulated in *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136 (1980). The trial court determined that the underlying action involved non-tribal parties and did not "directly affect the tribe's political integrity, economic security, health, or welfare" per *Ellis*. The trial court also determined that the tribe had "consciously chosen not to exercise any power it might have in this area" where it had established its own law to address certain types of employment issues but not wage and hour disputes. Furthermore, the trial court determined that "a particularized inquiry into the nature of the state, federal, and tribal interests at stake . . . to determine whether . . . the exercise of state authority would violate federal law" per *White Apache Mountain Tribe* favored the state under the circumstances. The defendant accordingly filed an appeal from the trial court's denial of the motion to dismiss in the Appellate Court, and the Supreme Court thereafter transferred the appeal to itself under Practice Book § 65-2. The Supreme Court will decide the threshold issue of whether the defendant's appeal is jurisdictionally proper where the Office of the Attorney General argues in an amicus brief filed as of right under Practice Book § 67-7 that, while *Ellis* states that the denial of a motion to dismiss based on a colorable claim of sovereign immunity is an appealable final judgment, the defendant's tribal sovereign immunity claim is not colorable. If the Supreme Court decides that it has jurisdiction over the appeal, it will also decide the defendant's claims. The defendant first claims that the trial court erred in denying its motion to dismiss because federal and state legislation divest the state of civil regulatory jurisdiction

over non-tribal businesses operating on tribal land, arguing that such legislation must be read to provide that the state has such jurisdiction only if affirmatively assented and consented to by the tribe and that neither of those scenarios occurred here. The defendant also claims that the trial court erred in denying its motion to dismiss because tribal interests of self-government and economic development outweigh the state's interest in imposing its wage and hour laws on tribal land.

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

Jessie Opinion
Chief Staff Attorney
