

SUPREME COURT PENDING CASES

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

STATE *v.* CHRISTOPHER CALHOUN, SC 20497
Judicial District of New Haven

Criminal; Whether Trial Court Properly Refused to Give Jury Jailhouse Informant Instruction; Whether Witnesses' Cooperation Agreements Were Properly Admitted; Whether Trial Court Properly Limited Cross-Examination of Witness Concerning Acts of Misconduct. The defendant was charged with murder in connection with the 2011 shooting of Isaiah Gantt. At trial, there was evidence that the defendant and Gantt both sold drugs in the Church Street South housing project in New Haven. Two witnesses, Eric Canty and Jules Kierce, testified that they saw the defendant shoot Gantt after Gantt approached the defendant and his associates and accused them of stealing his customers. Canty also testified that, a couple of days after the incident, the defendant admitted to him that he shot Gantt. Canty was an associate of the defendant in the drug dealing enterprise, while Kierce was an associate of Gantt. Canty and Kierce did not contact the police regarding what they knew about Gantt's murder until 2016 and 2017, respectively, when they were both incarcerated for unrelated crimes. Both men entered into cooperation agreements with the state pursuant to which they received certain benefits in exchange for their testimony. The agreements contained consequence provisions stating that "[s]hould it reasonably be determined by a judge of the Superior Court or the State's Attorney's Office that [the individual] has given false, incomplete or misleading information . . . he shall thereafter be subject to prosecution for any state criminal offense of which this office has knowledge, including, but not limited to . . . perjury and hindering prosecution." The trial court instructed the jury to carefully scrutinize the testimony of Canty and Kierce, given that they were cooperating witnesses. The trial court rejected, however, the defendant's request that it give the jury a special credibility instruction pertaining to jailhouse informants, finding that neither man satisfied the definition of a jailhouse informant set forth in our case law because they were not testifying as to incriminating statements made to them by a fellow inmate. The defendant was convicted as charged and appealed directly to the Supreme Court. The defendant claims on appeal that the trial court erred in refusing to give the jury an instruction on the reliability of jailhouse informants. The defendant also claims that the trial court erroneously permitted

the state to vouch for the credibility of Canty and Kierce by admitting their cooperation agreements during the state's case-in-chief. Specifically, the defendant claims that consequences provisions in the agreements suggested to the jury that the state believed that the witnesses' incriminating statements were truthful. The defendant also claims that the trial court improperly prohibited him from questioning Kierce on cross-examination about certain misconduct that he committed after he agreed to cooperate with the state in order to impeach Kierce's claim that he had finally come forward to testify against the defendant because of a newfound desire to put his criminal past behind him.

KEYBANK, N.A. *v.* EMRE YAZAR, et al., SC 20648
Judicial District of Stamford-Norwalk

Foreclosure; Whether Appellate Court Correctly Concluded Mortgagee's Failure to Comply with EMAP Notice Requirement Deprives Trial Court of Subject Matter Jurisdiction; Whether Appellate Court Correctly Concluded EMAP Notice Sent in Prior Dismissed Foreclosure Action Did Not Satisfy EMAP Notice Requirement in Second Foreclosure Action Based on Same Default and Mortgage. In August, 2016, pursuant to General Statutes § 8-265ee (a), First Niagara Bank, N.A. (First Niagara), sent Emergency Mortgage Assistance Program (EMAP) notices to the defendants, Emre and Ozlem Yazar, due to their failure to make payments on a promissory note executed in favor of First Niagara. The plaintiff, KeyBank, N.A., subsequently acquired First Niagara and took possession of the note. In January, 2017, the plaintiff commenced a foreclosure action against the defendants (prior foreclosure action). The prior foreclosure action was dismissed by the trial court for failure to send a mediation notice by a date certain. In August, 2017, the plaintiff commenced the present foreclosure action against the same defendants, based on the same underlying payment default. In September, 2018, the plaintiff filed a motion for summary judgment as to liability and claimed that it had complied with the EMAP notice requirement. The plaintiff was relying on the August, 2016 EMAP notices sent by First Niagara in advance of the commencement of the prior foreclosure action in support of its position. Defendant Ozlem Yazar objected to the summary judgment and argued that the plaintiff had not complied with the EMAP notice requirement because she had not received any EMAP notices with respect to the present action. On November 21, 2018, the trial court held that the mortgage note was in default and that the plaintiff had

complied with its EMAP notice obligations and granted the motion for summary judgment. On April 1, 2019, the court rendered a judgment of strict foreclosure, from which defendant Ozlem Yazar appealed. On appeal, the defendant claimed that the plaintiff's failure to comply with the EMAP notice requirement in the present foreclosure action deprived the trial court of subject matter jurisdiction. The Appellate Court (206 Conn. App. 625) held that the plaintiff had failed to comply with the jurisdictional condition precedent of the notice requirement of § 8-265ee (a) when it failed to mail the EMAP notice to the defendant in the present action, thereby depriving the trial court of subject matter jurisdiction. The Appellate Court further held that the plaintiff's reliance on the EMAP notice sent in the prior foreclosure action, which had been dismissed, did not satisfy the notice requirement of § 8-265ee (a) for the present foreclosure action. The plaintiff was granted certification to appeal, and the Supreme Court will consider the following issues: (1) Did the Appellate Court correctly conclude that a mortgagee's failure to comply with the EMAP notice requirements set forth in General Statutes § 8-265ee (a) deprives the trial court of subject matter jurisdiction over the foreclosure action? (2) Did the Appellate Court correctly conclude that an EMAP notice that had been sent by the mortgagee in the first foreclosure action, which was later dismissed, did not satisfy the notice requirements of General Statutes § 8-265ee (a) in connection with a second foreclosure action subsequently commenced against the mortgagor based on the same default under the same mortgage?

STRAZZA BUILDING & CONSTRUCTION CO. *v.* JENNIFER G.
HARRIS, TRUSTEE et al., SC 20660
Judicial District of Stamford-Norwalk

Res Judicata; Privity; Whether General Contractor Was in Privity with Subcontractor; Whether *Girolametti v. Michael Horton Associates, Inc.* Presumption of Privity Was Inapplicable. Jennifer G. Harris is the trustee of the Jennifer G. Harris Revocable Trust, which owns real property in Greenwich. Harris hired the plaintiff to renovate the property, and the plaintiff in turn hired subcontractors including Robert Rozmus Plumbing & Heating, Inc. Harris eventually terminated the plaintiff after disputes between the parties. The plaintiff claimed that it was owed for labor and materials billed prior to the termination. The plaintiff and its subcontractors filed mechanic's liens against Harris, and the plaintiff commenced an action against Harris seeking to foreclose on its lien and alleging contract-based claims.

Harris commenced a separate action against Rozmus seeking to reduce or discharge its mechanic's lien. The trial court in that action held that the mechanic's lien was not valid where the lienable fund for the plaintiff's contract was entirely exhausted by the credits owed to Harris against the various mechanic's liens and where Rozmus could only recover to the extent that the plaintiff could recover. Harris thereafter filed a motion for summary judgment in the plaintiff's action, claiming that the finding in the Rozmus action that the lienable fund had been exhausted was entitled to preclusive effect under the doctrine of res judicata, or claim preclusion. The plaintiff argued that it could not be bound by a holding in an action in which it had not been a party and that there was insufficient privity between it and Rozmus for res judicata purposes. The trial court agreed with the plaintiff and denied the motion for summary judgment, from which Harris appealed. The Appellate Court (207 Conn. App. 649) affirmed the judgment of the trial court. It disagreed with Harris that the trial court failed to properly consider the presumption of privity set forth in *Girolametti v. Michael Horton Associates, Inc.*, 332 Conn. 67 (2019), where the Supreme Court held that subcontractors were in privity with a general contractor, such that arbitration between the general contractor and property owners had a res judicata effect in the owners' subsequent action against not only the general contractor but also the subcontractors. The Appellate Court concluded that *Girolametti* was distinguishable because the presumption of privity in that case arose from the "flow down" obligation owed by a general contractor to a subcontractor and that there was no corresponding "flow up" obligation that extended from a subcontractor to a general contractor. The Appellate Court further agreed with the trial court that, under the functional relationship test to establish privity, there was a genuine issue of material fact about whether the plaintiff's interests were adequately represented in Harris' action against Rozmus where Rozmus' lien was significantly less than the plaintiff's lien and where the trial court's decision in that action considered renovations in which Rozmus was not involved. In this certified appeal by Harris, the Supreme Court will decide whether the Appellate Court properly determined that there was a genuine issue of material fact on the question of privity where the trial court in Harris' action against Rozmus found that no money was due to the plaintiff and where Rozmus was statutorily subrogated to the plaintiff's rights. The Supreme Court will also decide whether the Appellate Court properly determined that the presumption of privity set forth in *Girolametti* was inapplicable.

IFTIKAR AHMED *v.* OAK MANAGEMENT CORPORATION, SC 20677
Judicial District of Stamford-Norwalk

Arbitration; Whether Application of Fugitive Disentitlement Doctrine Violated § 52-418 and Public Policy; Whether Case Should be Remanded to Modify Award to Avoid Duplicative Recovery. Iftikar Ahmed worked for Oak Management Corporation (OMC), a venture capital firm, from 2004 to 2015. His duties included identifying and recommending investment opportunities and negotiating the terms of the investment. In April, 2015, Ahmed was arrested for insider trading unrelated to his employment. OMC subsequently terminated Ahmed's employment after an investigation uncovered fraud in connection with three of his investments and, pursuant to various contracts, seized assets valued at \$35 million earned by Ahmed but still in its possession. In May, 2015, the Securities and Exchange Commission (SEC) filed a civil enforcement action against Ahmed in federal court. Days later, Ahmed fled to India in violation of the terms of release in his criminal case. The SEC ordered under the fugitive disentitlement doctrine that Ahmed was barred from access to confidential materials produced in its proceedings. The doctrine provides that a fugitive from justice will be barred from seeking relief from the judicial system whose authority he evades. The federal court found that Ahmed had committed fraud in connection with ten companies, including the three uncovered by OMC, and ordered that he pay over \$65 million in disgorgement, civil penalties and interest. The federal court declined to credit Ahmed for the amount seized by OMC. OMC commenced arbitration seeking to recover the damages caused by Ahmed's fraud. The arbitrator ordered that, due to Ahmed's fugitive status, he was barred from contesting OMC's allegations and prohibited from accessing confidential information. His affirmative defenses were also stricken, and his counterclaim was dismissed. Following a hearing in damages, conducted remotely over Zoom in Ahmed's absence, the arbitrator awarded OMC over \$56 million in damages for gross compensation paid during Ahmed's employment, legal fees, management fees that were returned to investors as a result of his conduct, and punitive damages. Ahmed filed an application to vacate the arbitration award. The trial court denied the application, finding that, although the arbitration proceedings challenged its perspective of what a fair hearing should be, it could not conclude, given due deference to the arbitrator and Ahmed's own conduct, that the arbitrator crossed any limits when applying the fugitive disentitlement doctrine. The trial court noted Ahmed's lack of candor throughout the proceedings and repeated attempts to delay and that it was his own elective absence from the

hearing in damages, rather than any action by the arbitrator, that prevented him from presenting evidence and objecting to the claimed damages or confidentiality of certain documents. Ahmed appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. Ahmed claims on appeal that the trial court's denial of his application to vacate was improper because the arbitration award (1) violated General Statutes § 52-418, as the arbitrator exceeded his authority and committed misconduct in denying him a full and fair hearing; (2) violated the Federal Arbitration Act, which is nearly identical to § 52-418; and (3) was contrary to public policy that arbitration proceedings be fundamentally fair and that the integrity of the arbitration process be upheld. If the arbitration award is not vacated, Ahmed requests that the case be remanded to the trial court with direction to modify the award to avoid duplicative recovery.

SAIFULLAH KHAN *v.* YALE UNIVERSITY *et al.*, SC 20705
United States Court of Appeals for the Second Circuit

Absolute Immunity; Whether Proceeding before Nongovernmental Entity May Be Deemed Quasi-Judicial for Purposes of Affording Participants Absolute Immunity. In 2015, the plaintiff, who at the time was an undergraduate at Yale University (Yale), was accused by a fellow student, Jane Doe, of sexually assaulting her in her dormitory room. Yale initiated disciplinary proceedings against the plaintiff, which were subsequently stayed after the state charged the plaintiff with sexual assault. After a jury trial, the plaintiff was acquitted of all criminal charges. In 2018, Yale resumed disciplinary proceedings against the plaintiff and convened a hearing panel. Although the plaintiff and Doe testified at the hearing, they did so outside each other's presence and neither was placed under oath or subject to cross examination. Applying a preponderance of the evidence standard of proof, Yale found the plaintiff to have violated its sexual misconduct policy and expelled him. The plaintiff then brought the present action in the United States District Court for the District of Connecticut alleging, *inter alia*, claims of defamation and tortious interference with contract against Doe. The district court granted Doe's motion to dismiss these claims, concluding, *inter alia*, that Doe enjoyed absolute immunity for her statements in this quasi-judicial proceeding. Although it acknowledged that no binding Connecticut authority had extended absolute immunity to statements made during the proceedings of a nongovernmental entity, the district court concluded that extending such immunity in the present case was warranted by the

six-factor test employed by Connecticut to identify quasi-judicial proceedings and by public policy. The plaintiff then appealed to the United States Court of Appeals for the Second Circuit. Finding no binding Connecticut authority on the question of whether quasi-judicial immunity extends to proceedings by nongovernmental entities like Yale, the Second Circuit certified the following questions, which the Supreme Court accepted pursuant to General Statutes § 51-199b: (1) Can a proceeding before a nongovernmental entity ever be deemed quasi-judicial for purposes of affording absolute immunity to proceeding participants? (2) If the answer to the first question is “yes,” what requirements must be satisfied for said proceeding to be recognized as such? Specifically: (a) Must an entity apply controlling law, and not simply its own rules, to the facts at issue? (b) How, if at all, do the “powers” factors enumerated in *Kelley v. Bonney*, 221 Conn. 549, 567 (1992), and *Craig v. Stafford Construction, Inc.*, 271 Conn. 78, 85 (2004), apply to the identification of a nongovernmental entity as quasi-judicial; and, if they do apply, are these factors “in addition” to; id.; or independent of, a preliminary law-to-fact requirement?; (c) How, if at all, does public policy inform the identification of a nongovernmental entity as quasi-judicial and, if it does, is this consideration in addition to, or independent of, a law-to-fact requirement and the *Kelley/Craig* factors? (d) How, if at all, do procedures usually associated with traditional judicial proceedings inform the identification of a proceeding as quasi-judicial? (3) Was the 2018 Yale disciplinary proceeding in the present appeal properly recognized as quasi-judicial? (4) If the answer to the third question is “yes,” would Connecticut extend absolute quasi-judicial immunity to Doe for her statements in the Yale proceeding? (5) If the answer to the third question is “no,” would Connecticut afford Doe qualified immunity or no immunity at all?

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*
