SUPREME COURT PENDING CASES

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

THE BANK OF NEW YORK MELLON *v.* ACHYUT M. TOPE et al.,
SC 20592
Judicial District of New Haven

Foreclosure; Whether Defendant's Challenge to Plaintiff's Standing Was Improper Collateral Attack on Earlier Foreclosure Judgment; Whether Appellate Court's Judgment Can Be Affirmed on Alternative Ground That Trial Court Properly Denied Defendant's Motion to Open for Lack of Standing. The plaintiff bank brought this action to foreclose a mortgage on certain real property located on Sherman Avenue in New Haven and owned by the defendant, Achyut M. Tope. The trial court rendered a judgment of foreclosure by sale in November, 2014. The defendant subsequently filed multiple motions to open the judgment and extend the sale date, which were granted by the trial court. The trial court again entered a judgment of foreclosure by sale in November, 2016. The defendant then filed several unsuccessful motions to dismiss, in which he argued that the trial court lacked subject matter jurisdiction over the action because the plaintiff did not have standing to commence it. The defendant again challenged the plaintiff's standing and the subject matter jurisdiction of the trial court in a motion to open and stay the judgment. The trial court denied the motion, and the defendant appealed from the ruling. The Appellate Court (202 Conn. App. 540) affirmed, agreeing with the plaintiff that the appeal was an improper collateral attack on the foreclosure judgment. The Appellate Court noted that the defendant never directly challenged either foreclosure judgment. The Appellate Court found that, because the defendant did not demonstrate, or even argue, that the trial court's lack of subject matter jurisdiction is entirely obvious, he failed to rebut the presumption of the validity of the foreclosure judgment. The Appellate Court noted that the defendant did not challenge the plaintiff's standing or the trial court's jurisdiction until more than two years after filing his appearance and that three different trial court judges rejected his challenge after examining the record, considering his arguments and reviewing the documents that he submitted. The Appellate Court also found that it could not reasonably be argued that the defendant was deprived of a fair opportunity to litigate the issue of standing, as he was afforded multiple opportunities to present his arguments in full to the trial court, and that the defendant failed to furnish any strong policy reason to allow the other-

wise disfavored collateral attack on the foreclosure judgment. It accordingly "decline[d] to consider this collateral attack to the subject matter of the trial court." The defendant filed a petition for certification to appeal, which the Supreme Court granted as to whether his challenge to the plaintiff's standing to prosecute this action and, thus, the trial court's subject matter jurisdiction to adjudicate the matter, was an improper collateral attack on one or more of the foreclosure judgments rendered by the trial court in favor of the plaintiff. If the answer to the first certified question is "no," the Supreme Court will also decide whether the judgment of the Appellate Court should be affirmed on the alternative ground that the trial court properly denied the defendant's motion to open and stay the judgment.

MARIE FAIN *v.* BETHANY BENAK et al., SC 20629
Judicial District of New London

Negligence; Unavoidable Accident; Whether Unavoidable Accident Doctrine Applied to Preclude Finding of Negligence Where Defendant Allegedly Had Lost Control of Her Vehicle due to Unexpected Tire Blowout. The plaintiff and the defendant Bethany Benak were driving in opposite directions on the same road when Benak's vehicle crossed into the plaintiff's lane, the southbound lane, and struck the plaintiff's vehicle. Just prior to the collision, Benak heard a popping sound, and her vehicle pulled to the left, toward the southbound lane. It was later discovered that there was a tear in Benak's front left tire, which appeared to have blown out. At the time the tire burst, Benak did not know the speed at which she was traveling, whether she had applied her vehicle's brakes, or how far she was from the plaintiff's vehicle. The plaintiff subsequently commenced the present action against the defendant Department of Administrative Services (defendant), alleging that Benak was negligent and claiming that the defendant, as Benak's employer and the owner of the vehicle that Benak had been operating, was liable for the plaintiff's damages pursuant to General Statutes § 52-556. In her operative complaint, the plaintiff alleged that Benak was negligent in a number of ways, almost all of which relate to Benak's actions after her tire blew out, including failing to remain in her lane, failing to brake, and general inattentiveness while driving. After a bench trial, the defendant submitted a posttrial brief arguing, inter alia, that the tire blowout was unforeseeable and that, therefore, a finding of negligence was precluded by the "unavoidable accident" doctrine as recognized by our Supreme Court in *Shea* v. *Tousignant*, 172 Conn. 54 (1976), which held that liability

cannot be imposed on the operator of a vehicle who has a sudden medical emergency resulting in the loss of control of the vehicle. In its memorandum of decision, the trial court determined that the plaintiff proved that Benak had "negligently operated her vehicle and caused the collision with the plaintiff's vehicle in one or more of the ways set forth in the operative complaint." The court therefore declined to apply the unavoidable accident doctrine to the facts of the case. The court further noted that there was "no claim that Benak [had] experienced a sudden medical emergency which prevented her [from] maintain[ing] control of the vehicle," and it declined to extend "by analogy . . . the doctrine to a mechanical issue with the vehicle." Accordingly, the court rendered judgment in favor of the plaintiff. The defendant appealed, claiming that the unavoidable accident doctrine precluded a finding of negligence in the absence of proof that Benak had known of the impending blowout or had negligently caused it to occur. The Appellate Court (205 Conn. App. 734) affirmed the trial court's judgment. In rejecting the defendant's claim, the Appellate Court observed that "[t]he concept of unavoidable accident does not excuse a defendant from liability," but, "[r]ather, it contextualizes the question of whether an actor has been negligent." The Appellate Court therefore concluded that, "because the [trial] court found that Benak was negligent, the accident cannot be considered unavoidable or inevitable as a matter of law." The defendant was granted certification to appeal, and the Supreme Court will decide if the Appellate Court correctly determined that the trial court had properly held that the unavoidable accident doctrine did not apply to the facts of this case.

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
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