

## SUPREME COURT PENDING CASES

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

COMPANIONS AND HOMEMAKERS, INC. *v.* A&B HOMECARE SOLUTIONS, LLC, D/B/A NORTHWEST HOMECARE, SC 20642

*Judicial District of Hartford*

**Torts; Whether Trial Court Erred in Finding Tortious Interference With Contracts That Were Void as Against Public Policy; Whether Defendant Had Duty to Disclose; Whether Defendant Caused Plaintiff to Suffer Loss; Whether Finding of CUTPA Violation Based on Tortious Interference Should Be Reversed.** The plaintiff, Companions and Homemakers, Inc. (Companions), and the defendant, A&B Homecare Solutions, LLC, d/b/a Northwest Homecare (A&B), participate in the Connecticut Homecare Program for the Elderly (CHPE). The CHPE is operated by the state Department of Social Services (DSS) and utilizes medicaid funds to provide home care services to individuals who might otherwise require nursing home care. The parties employ caregivers to provide services for individuals assigned to them by DSS and receive reimbursement from the state. In March, 2016, DSS instituted an electronic system that providers would be required to use for billing and timekeeping functions. The parties joined together in legal actions, claiming that, due to operational problems with the system, they would be unable able to implement it by the January 1, 2017 deadline. When the deadline passed, DSS notified Companions that its contract would be terminated within thirty days. Companions subsequently reached an agreement with DSS that gave it additional time to implement the new system, but a number of its care recipients had already been assigned to other providers, including A&B. Unbeknownst to Companions, A&B had implemented the new system during the litigation process. Companions brought this action against A&B alleging tortious interference with contractual relations and violation of CUTPA. The trial court found that A&B tortiously interfered with Companions' contractual relations by misrepresenting to Companions throughout the course of the litigation that it had a uniform interest when, in reality, it was privately undermining Companions' position and working to implement the new system with the improper purpose of interfering with Companions' contract with DSS in order to get it removed from the CHPE. The trial court also found that A&B tortiously interfered with non-compete agreements that Companions had with its caregivers by accepting assignments of the caregivers after reassuring Companions that it would not do so

and by providing legal counsel to assist the caregivers in avoiding their obligations under the agreements. The trial court also found that A&B's tortious conduct violated CUPTA. The trial court rendered judgment in favor of Companions, A&B appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. A&B claims that the trial court erred in finding that (1) it tortiously interfered with non-compete agreements that are void as against public policy; (2) it engaged in misrepresentation by failing to disclose, where it owed Companions no duty to disclose; and (3) Companions suffered any loss caused by A&B's conduct. A&B also claims that the trial court's finding that it violated CUTPA must be reversed because it was based solely on its erroneous conclusion that A&B tortiously interfered with Companions' contracts.

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DEUTSCHE BANK AG *v.* SEBASTIAN HOLDINGS, INC., et al.,  
SC 20647

*Judicial District of Stamford/Norwalk*

**Corporations; Choice of Law; Whether Trial Court Applied Law of Proper Jurisdiction in Action Seeking to Pierce Corporate Veil; Whether Trial Court Improperly Required Proof of Specific Intent; Whether Trial Court Improperly Found Specific Intent Was Not Proven.** An English court rendered judgment in favor of the plaintiff, Deutsche Bank AG, in the amount of approximately \$243 million plus interest in a lawsuit brought against the defendant, Sebastian Holdings, Inc. (SHI), for money owed due to an unfulfilled margin call on a trading portfolio that SHI operated through the plaintiff. When SHI failed to pay the judgment, the plaintiff brought this action seeking to pierce the corporate veil and hold SHI's sole shareholder and director, defendant Alexander Vik, personally liable based on allegations that Vik knew that SHI was facing significant trading losses and liabilities and that he transferred hundreds of millions of dollars from SHI to himself and to individuals and entities associated with him in order to shield the funds from the plaintiff. The trial court found that the law of the Turks and Caicos Islands, where SHI was incorporated, governed. The trial court then found that the plaintiff established that Vik completely dominated and controlled SHI and that there was ample evidence of commingling of funds between SHI and Vik. The trial court further found, however, that the plaintiff failed to prove that Vik diverted SHI's assets with the specific intent of rendering it unable to pay its debt. In that respect, the trial court found that Vik had no reason to believe that, after he made the

transfers, SHI's liabilities would exceed the amount that he retained in the account. The trial court also noted that Vik authorized the payment of five other margin calls and that a systems error by the plaintiff had overvalued SHI's assets and left SHI with a shortfall of over \$80 million. The trial court, accordingly, concluded that the plaintiff failed to prove its claim and rendered judgment in favor of the defendants. The plaintiff appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. On appeal, the plaintiff claims that the trial court erred in failing to apply the law of the jurisdiction with the most significant relationship to the parties and the subject matter, which it argues is either Connecticut, where Vik resides and SHI operated, or New York, where it argues the brokerage relationship was based. The plaintiff also claims that, in applying the law of the Turks and Caicos Islands, the trial court improperly added a specific intent requirement, i.e., that Vik intended to produce the specific result of rendering SHI unable to pay its debt, rather than requiring the plaintiff to prove only that Vik intended to use his control over SHI for an improper purpose. The plaintiff further claims that, even if the trial court properly applied a specific intent requirement, it improperly found that the plaintiff did not establish that Vik acted with specific intent. The plaintiff additionally claims that the trial court erred in allowing Vik to testify that he made the transfers for estate planning purposes while claiming privilege over any evidence that would support that claim.

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COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES *v.*  
RICHARD CANTILLON et al., SC 20655  
*Judicial District of New Britain*

**Administrative Appeal; Damages; Discrimination. Whether Human Rights Referee Adjudicating Housing Discrimination Claim Applied Proper Legal Principles in Awarding Complainant “Garden Variety” Emotional Distress Damages against Neighbor Who Repeatedly Subjected Complainant to Racially Motivated Verbal and Physical Harassment.** The complainant filed a housing discrimination complaint with the Commission on Human Rights and Opportunities (CHRO) against her neighbor, alleging that the neighbor had subjected her to verbal and physical harassment in the form of racial slurs, obscene gestures, and threats of physical harm at the condominium complex where they both resided. After the neighbor was defaulted in the underlying administrative proceedings, a hearing in damages was held at which the CHRO requested \$75,000 in compen-

satory damages. The human rights referee (referee) awarded \$15,000 in compensatory damages for emotional distress. The CHRO appealed the decision of its own referee to the Superior Court, claiming primarily that the damages awarded were insufficient. The Superior Court disagreed and rendered a judgment dismissing the appeal and affirming the referee's decision. The CHRO then appealed to the Appellate Court, claiming that the referee misapplied *Patino v. Birken Mfg. Co.*, 304 Conn. 679 (2012), and the factors set forth in *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco (Harrison)*, CHRO No. 7930433 (June 3, 1985), in determining emotional distress damages. The CHRO first argued that the referee and the Superior Court had misinterpreted and misapplied *Patino*, which, according to the CHRO, stands for the proposition that in "garden variety" emotional distress claims, there is a presumptive monetary range of damages between \$30,000 and \$150,000 and that a tribunal calculating an award of damages should consider analogous decisions from neighboring jurisdictions in addition to awards granted in this state. The Appellate Court (207 Conn. App. 668) rejected these arguments, concluding that *Patino* did not establish a presumptive range of damages and contained no support for the proposition that out-of-state decisions should be considered. The CHRO further argued that the referee and the Superior Court had erred in interpreting and applying the factors set forth in *Harrison*. Specifically, the CHRO argued that the referee had erred in distinguishing the relationship between the complainant and the neighbor in the present case from other harassment cases involving a landlord-tenant relationship and in concluding that the discrimination in the present case was not public. The Appellate Court rejected these arguments, concluding that the referee had not acted unreasonably by considering the relationship between the complainant and the neighbor and that the referee's factual determinations related to the non-public nature of the discrimination were reasonable in view of the evidence. The CHRO was granted certification to appeal, and the Supreme Court will now decide whether the Appellate Court correctly concluded that the trial court had properly determined that the referee applied the proper legal principles in awarding the complainant "garden variety" emotional distress damages.

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JON-JAY TILSEN *v.* MIRIAN E. BENSON, SC 20664  
*Judicial District of New Haven*

**Dissolution of Marriage; Whether Trial Court Properly Denied Plaintiff's Motion to Enforce Parties' Ketubah on First**

**Amendment Grounds; Whether Trial Court’s Finding Regarding Plaintiff’s Earning Capacity Was Clearly Erroneous; Whether Trial Court Abused Discretion in Making Financial Award.** The plaintiff husband and defendant wife were married in accordance with Jewish tradition. Prior to their marriage, both parties agreed to and signed a ketubah, a traditional Jewish marriage contract. The ketubah provided, inter alia, that the parties agreed to divorce “according to Torah law.” In 2018, the plaintiff initiated this dissolution action. The plaintiff filed a motion seeking to enforce the parties’ ketubah as a prenuptial agreement and requested that the asset division and support award orders be entered accordance with Hebrew law based on the ketubah’s choice of law provision. The trial court denied the plaintiff’s motion, concluding that enforcement of the ketubah would violate the first amendment because “enforcement of the ‘Torah law’ provision of the parties’ Ketubah would require the court to choose between competing rabbinical interpretations of Jewish law. This the court cannot do without violating the first amendment.” After a contested trial on the merits, the court issued a memorandum of decision in which it granted dissolution of the marriage and issued several related financial orders. The court found the plaintiff’s gross earning capacity to be \$202,100 and awarded the defendant alimony of \$5000 per month for fifteen years. The court also ordered the plaintiff to pay the defendant 25 percent of any distributions he receives from his limited partnership interest in Westview Park Apartments Limited Partnership (“WPA”). The plaintiff then filed this appeal in the Appellate Court, and the Supreme Court transferred the appeal to itself. On appeal, the plaintiff claims that the trial court erred when it denied, on first amendment grounds, his motion to enforce the parties’ ketubah because the relevant Torah law governing the ketubah is secular, not religious. The plaintiff also claims that the trial court’s finding that he has an earning capacity of \$202,100 for fifteen years was clearly erroneous because the plaintiff’s employment had been terminated at the time of the judgment and there was no evidence in the record regarding his employability or the compensation he could earn at that time or into the future. The plaintiff further claims that the trial court abused its discretion when it ordered him to pay to the defendant alimony of \$5000 per month for fifteen years because such an order is out of proportion to the plaintiff’s current financial circumstances. Finally, the plaintiff claims that the trial court abused its discretion when it ordered him to pay the defendant 25 percent of any distributions he receives from WPA because the plaintiff’s father had gifted him the limited partnership interest in WPA, he has no enforceable

right to receive any distributions from WPA, and the court did not determine the value of the plaintiff's interest in WPA.

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CITY OF HARTFORD POLICE DEPARTMENT *v.* COMMISSION ON  
HUMAN RIGHTS AND OPPORTUNITIES *et al.*,

SC 20669, SC 20674

*Judicial District of New Britain*

**Administrative Appeal; Discrimination; Whether Human Rights Referee's Finding of Intentional Discrimination Was Supported by Substantial Evidence.** During the first several months of his employment as a police officer for the city of Hartford (city), the complainant, Khoa Phan, received satisfactory performance evaluations and his daily performance reviews were generally acceptable. Phan, who is of Vietnamese ancestry, subsequently had two negative encounters with Sergeant Steven Kessler during which Kessler criticized Phan's English language proficiency, inquired into Phan's ethnicity and nationality, and derisively called into doubt Phan's ability to effectively interact with the public. When Phan asked Kessler to stop, Kessler warned Phan that he should watch what he says or he would not "be around long." Kessler thereafter told other sergeants about his concerns regarding Phan's performance and also sent an interoffice memorandum on the subject. Subsequently, Phan's favorable ratings decreased because numerous supervisors described him as argumentative and confrontational. Phan also was involved in several incidents that resulted in unsatisfactory ratings regarding his integrity and truthfulness, his overall attitude, and his adherence to policies and procedures; Kessler, however, was not involved in any of these incidents. Chief of Police Daryl K. Roberts ultimately dismissed Phan from his position, citing his lack of truthfulness and a demonstrated need for improvement in the areas of job knowledge and skills and human relations. Phan then filed an affidavit with the Commission on Human Rights and Opportunities (CHRO) alleging that the city terminated his employment as a result of his ancestry. Following a hearing, the presiding human rights referee (referee) concluded that the city had intentionally discriminated against Phan. The city appealed to the trial court, which affirmed the referee's decision. The city then appealed to the Appellate Court, claiming that the trial court had improperly held that there was substantial evidence to support the referee's finding of intentional discrimination. The city argued that Kessler's "stray remarks" did not permit an inference of discrimination because Kessler was not involved in the decision to terminate Phan.

The city further argued that Phan's acts of dishonesty and unprofessional behavior were not mere pretexts for discrimination because some incidents occurred before his encounters with Kessler and other incidents had no connection to Kessler. The Appellate Court (208 Conn. App. 755) concluded that Phan had failed to establish a prima facie case of intentional discrimination because there was no evidentiary basis to find a causal connection between Kessler's offensive remarks and Roberts' decision to terminate Phan's employment. The Appellate Court further concluded that, even if Phan had established a prima facie case, the record lacked substantial evidence to support the referee's conclusion that the city's reasons for the termination were pretextual. Accordingly, the Appellate Court reversed the trial court's judgment and remanded the case with direction to render judgment sustaining the city's appeal. Phan and the CHRO were granted certification to appeal, and the Supreme Court will now decide whether the Appellate Court properly concluded that the evidence was insufficient to support a determination of intentional discrimination.

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GREGORY B. SMITH et al. v. AARON SUPPLE et al., SC 20730  
*Judicial District of Hartford*

**Appellate Jurisdiction; Whether the Denial of a Special Motion to Dismiss Filed Pursuant to General Statutes § 52-196a is an Appealable Final Judgment.** The plaintiffs are Gregory B. Smith, a Trinity College professor; the Churchill Institute, an organization that he founded; and Nicholas Engstrom, a Trinity College student who founded a club for which Smith served as a faculty advisor. The defendants are Trinity College students. The defendants posted flyers around the Trinity College campus featuring the Churchill Institute's logo, Smith's photograph, and the phrase "the new racism is every bit as ugly as the old." The defendants posted similar flyers with a photograph of Engstrom. The plaintiffs thereafter brought an action alleging defamation, libel per se, libel per quod, and negligent infliction of emotional distress. The defendants filed a special motion to dismiss the action under General Statutes § 52-196a, which is known as the anti-SLAPP (strategic litigation against public policy) statute and provides for a "special motion to dismiss" with respect to "any civil action in which a party files a complaint . . . against an opposing party that is based on the opposing party's exercise of its right to free speech, right to petition the government, or right of association under the" federal or state constitution. The defendants argued that the plaintiffs' claims were based on their exercise of their first amendment rights

to speak and associate freely in a public forum in connection with a matter of public concern and that they were therefore entitled to dismissal of the claims under § 52-196a. The trial court disagreed and denied the defendants' special motion to dismiss, concluding that the Trinity College campus did not qualify as a public forum and that the posting of the flyers did not constitute the exercise of either free speech or free association for purposes of the first amendment. The defendants filed an appeal from the trial court's denial of their special motion to dismiss in the Appellate Court, and the Supreme Court transferred the appeal to its own docket pursuant to General Statutes § 65-1. The Supreme Court will decide in this appeal whether the denial of a special motion to dismiss filed pursuant to General Statutes § 52-196a is an appealable final judgment. The defendants argue that § 52-196a confers upon them the right to avoid litigation based upon their exercise of their constitutionally protected free speech and free association rights. They accordingly contend that the denial of their special motion to dismiss qualifies as an appealable final judgment under the second prong of *State v. Curcio*, 191 Conn. 27 (1983), which sets forth the test for determining the finality of interlocutory orders. The second prong of *Curcio* provides that an interlocutory order is an appealable final judgment when it so concludes the rights of the parties that further proceedings cannot affect them, and the defendants argue that their rights under § 52-196a will be irretrievably lost and that they will be irreparably harmed as a result thereof if they are not able to bring this interlocutory appeal.

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MICHAEL ROBINSON et al. v. V.D., SC 20731  
*Judicial District of New London*

**Appellate Jurisdiction; Whether Denial of Special Motion to Dismiss Filed Pursuant to General Statutes § 52-196a is an Appealable Final Judgment.** The plaintiffs, Michael Robinson and Mary Robinson, were employees of the United States Coast Guard Academy in New London. The defendant, V.D., was also an employee of the Coast Guard Academy. The defendant filed a grievance after he was denied a promotion, which he alleged was based on his involvement in his labor union and a quid pro quo arrangement with the successful candidate in which the plaintiffs had participated. The parties were also involved in a separate incident, after which the defendant informed the police that he was threatened by Michael Robinson and filed an application for a protective order against him. The plaintiffs filed an action, alleging libel, slander, false light invasion of privacy,

common-law and statutory vexatious litigation, and negligent and intentional infliction of emotional distress in connection with the aforementioned incidents. The defendant filed a special motion to dismiss the action under General Statutes § 52-196a, which is known as the anti-SLAPP (strategic litigation against public policy) statute and provides for a “special motion to dismiss” with respect to “any civil action in which a party files a complaint . . . against an opposing party that is based on the opposing party’s exercise of its right to free speech, right to petition the government, or right of association under the” federal or state constitution. The defendant argued that the plaintiffs’ claims were based on his exercise of his rights of free speech and to petition the government on matters of public concern, namely, labor rights and safety issues. The trial court disagreed and denied the defendant’s special motion to dismiss. The trial court concluded that, despite the defendant’s characterizations, the conduct at issue pertained to matters of private concern that implicated only his own personal interests, such that the plaintiffs’ complaint was not subject to dismissal under § 52-196a for targeting his exercise of his rights of free speech and to petition the government. The defendant filed an appeal from the trial court’s judgment in the Appellate Court, and the Supreme Court thereafter transferred the appeal to itself. The Supreme Court will decide whether the denial of a special motion to dismiss filed pursuant to § 52-196a is an appealable final judgment. The defendant notes that § 52-196a (d) provides that “the stay of discovery shall remain in effect until the court grants or denies the special the special motion to dismiss and *any interlocutory appeal thereof*” and argues that this language, combined with the rules of statutory construction, the legislative history and public policy underlying the statute, and the interpretation of similar statutes in other jurisdictions, counsels in favor of finding finality. The defendant also argues that the judgment at issue satisfies the second prong of the test for determining the finality of interlocutory orders set forth in *State v. Curcio*, 191 Conn. 27 (1983), because it so concludes his rights under the first amendment and corresponding provisions of the state constitution, as protected by § 52-196a, that further proceedings cannot affect them. Finally, the defendant argues that the Supreme Court should exercise its supervisory authority to allow the appeal to proceed if it concludes that the judgment at issue is not final by virtue of the express language of § 52-196a or under *Curcio*.

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STATE *v.* RICHARD LANGSTON, SC 20734*Judicial District of Hartford***Criminal; Sentencing; Whether Trial Court Properly Denied Defendant’s Motion to Correct Illegal Sentence Where Sentencing Court Relied on Conduct of Which Defendant Was Acquitted; Whether Supreme Court Should Exercise Its Supervisory Authority to Create Rule Prohibiting Consideration of Acquitted Conduct in Sentencing.**

In 1999, the defendant, Richard Langston, was convicted of robbery in the first degree, criminal possession of a firearm and commission of a class A, B or C felony with a firearm but was acquitted of assault in the first degree. At the sentencing hearing, the state argued that the sentencing court could consider the conduct underlying the assault charge if the court found that the conduct had been proven by a preponderance of the evidence. Before imposing sentence, the sentencing court had stated, *inter alia*, that “the victim [had] started to walk away and was shot in the back of both legs by the defendant” and that, “because this defendant elected to fire a handgun,” the victim “has been denied the opportunity to pursue a meaningful vocational career.” The court then sentenced the defendant to twenty-five years of imprisonment. Thereafter, the defendant filed a motion to correct an illegal sentence in which he argued that the sentencing court violated his due process rights under the federal and state constitutions by taking into consideration the assault charge on which he had been acquitted when it sentenced him. The trial court denied the defendant’s motion to correct an illegal sentence, finding that, pursuant to the precedent established by *U.S. v. Watts*, 519 U.S. 148 (1997), and *State v. Huey*, 199 Conn. 121 (1986), the sentencing court was entitled to consider the conduct of which the defendant had been acquitted so long as that court found the acquitted conduct proven by a preponderance of the evidence. The defendant filed this appeal in the Appellate Court, and the Supreme Court thereafter transferred the appeal to itself. On appeal, the defendant claims that the trial court improperly denied his motion to correct an illegal sentence because the sentencing court’s consideration of conduct for which the defendant had been acquitted violated his constitutional rights to due process and trial by jury. The defendant argues that the trial court erred in its reliance on *Watts* and *Huey* because neither case examined the issue presented in this appeal, namely, whether a sentencing court’s reliance on acquitted conduct in imposing sentence is inconsistent with a defendant’s constitutional rights to due process and trial by jury. Rather, according to the defendant, *Huey* involved the question of whether, following a defendant’s guilty plea,

a sentencing court can factor in the defendant's denial of facts related to an element of a more serious originally-charged offense to which the defendant did not plead guilty. The defendant further argues that *Watts* was decided on double jeopardy grounds and that the United States Supreme Court did not consider in that case whether a sentencing court's reliance on acquitted conduct violates a defendant's rights to due process. The defendant also claims that the Supreme Court should exercise its supervisory authority to create a rule prohibiting the consideration of acquitted conduct in sentencing decisions.

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*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*

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