BUSINESS LITIGATION: 2011 IN REVIEW

BY WILLIAM J. O'SULLIVAN*

For Connecticut business litigators, several themes can be discerned from 2011's leading caselaw: sobering reminders about how tenuous victory at trial can be; considerable focus on the law of finality of judgments, including res judicata and collateral estoppel; and a notable volume of complex, first-impression cases that stayed with the Appellate Court rather than being transferred to the Supreme Court. This article will discuss these cases, as well as other noteworthy 2011 court opinions in the realm of business law.

I. REVERSALS OF FORTUNE

We lead with the Connecticut Supreme Court's decision in *Lighthouse Landings, Inc. v. Connecticut Light and Power Company*.[1] The case illuminates (pun intended) a critical point of trial and appellate procedure: a prevailing party's duty in some cases to perfect at trial possible alternative grounds for the judgment to be affirmed on appeal. Failure to do so may cost the party dearly if the judgment is reversed.

The sublimely torturous factual background and procedural history are as follows. Lighthouse had leased a parcel of land from CL&P in Stamford for the anticipated operation of a high-speed ferry service between Stamford and New York City.[2] Article six of the lease required Lighthouse to work diligently to obtain all necessary permits, and provided that if all such permits had not been secured within 180 days of the start of the lease, Lighthouse had the option of terminating the lease or extending the contingency period for another sixty days.[3] If the necessary permits were still not secured by the close of the extension term, then

* Of the Hartford Bar

1 300 Conn. 325, 15 A.3d 601 (2011) *(Lighthouse Landings II).*

2 *Id.* at 329.

3 *Id.*

either party could terminate the lease.[4] Lighthouse ultimately failed to obtain its permits by the end of the extension term and CL&P terminated the lease.[5]

In its ensuing suit for damages, Lighthouse crafted an elaborate argument. Lighthouse claimed that after the first 180 days of the lease, it had not only the enumerated options of extending the lease for another sixty days or terminating it, but also a third, implicit option of doing nothing, and retaining its tenancy.[6] Under this theory, if Lighthouse had exercised the "do-nothing" option, CL&P apparently would have been stuck with Lighthouse indefinitely. Therefore, Lighthouse argued, CL&P needed to, and did, induce Lighthouse to formally exercise the sixty-day option, anticipating that Lighthouse would still not have all its permits by the end of that period, at which time CL&P would obtain the right to terminate the lease.[7]

More particularly, Lighthouse claimed that CL&P had made false assurances that it would not terminate the lease, which Lighthouse relied upon in exercising the sixty-day option, making CL&P's subsequent termination improper.[8] Those false assurances allegedly continued after Lighthouse exercised the option, and during the option period itself, inducing Lighthouse to make a non-refundable $236,500 deposit toward the purchase of a high-speed ferry.[9] Lighthouse alleged breach of contract, promissory estoppel, breach of the duty of good faith and fair dealing, intentional and negligent misrepresentation, and violation of the Connecticut Unfair Trade Practices Act (CUTPA).[10]

CL&P, in turn, filed a separate action, seeking a declaratory judgment that it had acted properly in terminating the lease.[11] Lighthouse responded with special defenses and

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4 *Id.*
5 *Id.* at 330.
6 279 Conn. 90, 900 A.2d 1242 (2006) *(Lighthouse Landings I); see also Lighthouse Landings II*, 300 Conn. at 337.
7 *Lighthouse Landings II,* 300 Conn. at 337-338.
8 *Id.* at 330-331.
9 *Id.* at 332.
10 *Id.*
11 *Id.* at 333.

counterclaims based on the same allegations it had raised in its damages case.[12]

Following a courtside trial in the declaratory judgment action, the court entered judgment for Lighthouse, finding that the lease had been terminated properly under its terms, but should nevertheless be reinstated under the doctrine of equitable nonforfeiture.[13] Lighthouse then sought a prejudgment remedy (PJR) in its separate action for damages, which the court granted.[14] CL&P appealed from both the final judgment in the declaratory judgment action and the PJR order in the damages action.[15]

The first round of appeals was resolved in a 2006 Supreme Court decision, *Connecticut Light and Power Co. v. Lighthouse Landings, Inc. ("Lighthouse Landings I").*[16] In *Lighthouse Landings I*, the Court rejected the premise that: (i) Lighthouse had had a "do-nothing" option at the end of the first option period and (ii) CL&P had duped them out of "doing nothing" and thereby wrongfully obtained an otherwise-unavailable right of termination sixty days later.[17] To the contrary, the Court ruled that:

> at the end of 180 days Lighthouse was required either to terminate the lease or to extend it. There was no third option of doing nothing. We thus conclude that the trial court improperly reinstated the lease under the doctrine of equitable nonforfeiture.… [I]t cannot be said that the power company wrongfully induced Lighthouse to extend the lease, and, therefore, equitable principles do not apply.[18]

The Court thus reversed the judgments entered in both cases, and further instructed the lower court to render judgment for CL&P in the declaratory judgment action.[19] The remand order in the damages case included an instruction to deny Lighthouse's PJR application,[20] with a footnote

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12 *Id.* at 333, 335.
13 *Id.* at 335.
14 *Id.* at 336.
15 *Id.*
16 279 Conn. 90, 900 A.2d 1242 (2006).
17 *Id.* at 107.
18 *Id.* at 112.
19 *Id.* at 115.
20 *Id.*

instructing the trial court, on remand, "to consider, in light of this decision, Lighthouse's claim for damages arising from the power company's alleged breach of lease, unfair trade practices, intentional misrepresentation, negligent misrepresentation and breach of duty of good faith and fair dealing."[21]

Following remand, CL&P sought summary judgment, claiming that Lighthouse's damages claims were barred by the doctrine of collateral estoppel.[22] The trial court agreed with CL&P as to the claims for breach of lease, breach of the duty of good faith and fair dealing, and promissory estoppel, and granted the motion as to those claims.[23] However, the court denied summary judgment with respect to the remaining claims for intentional and negligent misrepresentation and violation of CUTPA.[24] CL&P appealed from the denial of summary judgment as to those claims.[25] Following oral argument, the Supreme Court ordered the parties to file supplemental briefs on the issue of whether or not Lighthouse's remaining claims were barred by the trial court's judgment in the declaratory judgment action, under the doctrine of res judicata.[26]

The Supreme Court's subsequent opinion, released more than 25 months after oral argument,[27] starkly illustrates the difference between collateral estoppel, which bars relitigation of an issue that was "actually decided,"[28] and res judicata, which further bars a party from relitigating a matter "which it already has had an opportunity to litigate."[29] As for collateral estoppel, the court agreed with Lighthouse that its opinion in *Lighthouse Landings I* did not bar Lighthouse's

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21 *Id.* at 115, n. 7.

22 *Lighthouse Landings II,* 300 Conn. at 339.

23 *Id.* Lighthouse did not appeal from that aspect of the judgment below. *Id.* at n. 13.

24 *Id.*

25 *Id.* The court noted that, while the denial of a motion for summary judgment is not ordinarily an appealable event, an immediate appeal does lie when the decision is based on the doctrine of collateral estoppel or res judicata. *Id.* at 328, n. 3.

26 *Id.* at 340.

27 The appeal was argued on November 21, 2008; the court's opinion was released on January 5, 2011.

28 *Lighthouse Landings II,* 300 Conn. at 343.

29 *Id.* at 349-350.

misrepresentation and CUTPA claims.[30] The Court found that its earlier decision had focused entirely on whether or not CL&P had wrongfully induced Lighthouse to exercise the lease option.[31] CL&P's subsequent, further assurances during the sixty-day option period—the ones that allegedly prompted Lighthouse to place a deposit on the ferry boat, giving rise to its misrepresentation and CUTPA claims—had not factored into that opinion.[32] Thus, because the court had not actually ruled upon the propriety of the post-exercise conduct that gave rise to Lighthouse's tort claims, those claims were not barred by collateral estoppel.[33]

The court next considered the res judicata effect of the trial court's decision in favor of Lighthouse in the declaratory judgment action, in which Lighthouse had raised all of its damages claims as a counterclaim. The court noted that the doctrine bars a successful plaintiff (or counterclaim plaintiff) from bringing a new action on the "original claim," which in turn refers to "all or any part of the transaction, or series of connected transactions, out of which the action arose."[34]

In the *Lighthouse* case, "all of the allegations and theories in both actions were intended to support the single underlying claim that the power company wrongfully had terminated the lease."[35] That issue had been fully litigated and decided by the trial court.[36] Allowing Lighthouse to proceed with its misrepresentation and CUTPA claims would force the trial court to retry the threshold issue of improper termination, the very outcome that res judicata seeks to prevent.[37] Accordingly, the court reversed the decision below and ordered judgment for CL&P.[38] It was thus Lighthouse's short-lived win in the Superior Court—a pyrrhic victory if ever there was one—that barred it from

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30 *Id.* at 340.
31 *Id.* at 345.
32 *Id.* at 346.
33 *Id.*
34 *Id.* at 348.
35 *Id.* at 351.
36 *Id.* at 353.
37 *Id.* at 353.
38 *Id.* at 356.

moving forward after the remand.

How might Lighthouse have avoided this outcome? Upon prevailing in the trial court, Lighthouse:

> could have obtained the ruling that it now seeks by requesting an articulation from the trial court in the declaratory judgment action as to its other special defenses [which had been incorporated by reference into the counterclaim] and by presenting those defenses to this court in *Lighthouse Landings [I]* as alternative grounds for affirmance.…In particular, Lighthouse could have sought a ruling on its fourth special defense, in which it alleged waiver and estoppel on the ground that the power company had assured Lighthouse in July, 2000, as to the continued validity of the lease.[39]

The lesson of *Lighthouse Landings I and II* is that a plaintiff that pursues multiple theories, and obtains judgment on one that is novel or questionable, cannot rest on its laurels. At the risk of being whistled for piling on, the plaintiff needs to build redundancy into the judgment, "winning" as many ways as possible so as to make a record to support alternative grounds for affirmance. While this might require some prodding of the trial judge to perform additional work, the alternative is for the plaintiff to wind up completely out of court if the judgment is reversed on appeal.

Another noteworthy case reversing a judgment for the plaintiff was *American Diamond Exchange v. Alpert*.[40] The named defendant had been employed by the plaintiff, a jewelry retailer, as an estate buyer.[41] Unknown to the plaintiff, Alpert ran a side business, diverting prospective customers for his own benefit, telling them that the plaintiff was not interested in buying their jewelry but that he wanted to buy the items personally to gift to his wife.[42] He would then resell the items for profit.[43] The plaintiff sued both Alpert and his wife, co-owners of the bank account into which the illicit proceeds were deposited.[44]

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39 *Id.* at 355-356.
40 302 Conn. 494, 28 A.3d 976 (2011).
41 *Id.* at 497.
42 *Id.*
43 *Id.* at 498.
44 *Id.*

The plaintiff obtained a default judgment against the husband, and proceeded to trial against the wife.[45] The plaintiff prevailed against the wife on its counts of tortious interference and civil conspiracy, but not on its CUTPA count.[46] An essential element of a tortious interference claim is proof that the plaintiff suffered "actual loss."[47]

The trial featured little or no evidence about what specific items of jewelry Alpert had diverted, and thus no evidence about how much the plaintiff would have paid for a particular item or how much the plaintiff likely would have sold it for.[48] The trial court therefore calculated damages by relying on the defendant's bank statements, finding that the gross proceeds from diverted transactions aggregated $152,449.63.[49] Next, crediting Alpert's testimony that his average markup on diverted sales was in the range of 45% to 50%, the court used the midpoint of 47.5% and thus concluded that the acquisition cost for the diverted pieces was $103,355.68.[50] Finally, accepting the testimony of the plaintiff's president that the company realized a minimum markup of 100% on estate jewelry sales, the trial court used this figure of $103,355.68 as the measure of damages.[51]

The Supreme Court reversed. The Court noted that lost profits must be proven with "reasonable certainty,"[52] and held that the plaintiff's evidence was wholly insufficient to meet that standard. Specifically, the blanket assertion by the plaintiff's president that the company realized at least a 100% markup "every time" was inadequate:

> At a minimum, opinions or estimates of lost profits must be based on objective facts, figures, or data from which the amount of lost profits may be ascertained.... While the modern tendency is toward greater liberality in the requirements for providing lost profits, it is the unvarying rule

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45 *Id.* at 500.
46 *Id.*
47 *Id.* at 510.
48 *Id.* at 513.
49 *Id.* at 505.
50 *Id.*
51 *Id.* at 505, 506.
52 *Id.* at 510.

> that the evidence of such certainty as the nature of the case permits should be produced.[53]

The Court further stated that the plaintiff should have produced "objective, nonspeculative, documentary proof of its profit margins, such as . . . its historical earnings, or some other evidence documenting its profit margins on comparable consignment or estate jewelry pieces."[54] Without such readily available evidence, the Court found that the plaintiff had not met its burden of establishing its losses with reasonable certainty.[55]

The Appellate Court's decision in *Charter Oak Lending Group, LLC v. August*[56] illustrates the truth in the aphorism that one should "be careful what you ask for; you just might get it." When the plaintiff rested after ten days of evidence in a courtside trial involving claims of misappropriation of trade secrets, breach of fiduciary duty, and unfair trade practice, the defendants moved for a judgment of dismissal due to failure to make out a prima facie case, pursuant to Practice Book Section 15-8.[57] The court denied the motion without prejudice, whereupon the defendants presented their case in less than a day.[58]

In two subsequent memoranda of decision, the court rendered judgment for the defendants on all counts.[59] As to some of the counts, the court granted the defendants' Section 15-8 motion, but in so doing, made factual findings "based on the more credible evidence."[60]

The Appellate Court reversed, making it clear that the weighing of evidence is inappropriate for purposes of a Section 15-8 motion. The legal standard is whether or not the plaintiff made out a prima facie case, "*if* [the plaintiff's evidence was] *believed and if given the benefit of all favor-*

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53 *Id.* at 512 (citations and internal punctuation omitted).
54 *Id.*
55 *Id.*
56 127 Conn. App. 428, 14 A.3d 449, *cert. denied,* 302 Conn. 901, 23 A.3d 1241 (2011)
57 *Id.* at 432-433.
58 *Id.* at 433.
59 *Id.*
60 *Id.* at 435.

able inferences."[61] Because the trial court entered judgment on these counts using an inappropriate standard, the Appellate Court reversed, and remanded the case for a new trial.[62]

The irony is that if the defendants had not moved for dismissal, but had simply argued for judgment based on the evidence, they would have gotten a judgment that would have been much more difficult for the plaintiffs to undo on appeal. Appellate courts ordinarily are highly deferential to a trial court's conclusions based on the weight of the evidence,[63] and presumably that would have been the case here if the court had simply rendered its judgment as a trial decision, instead of granting the motion to dismiss.

II. Noteworthy Complex Cases

2011 also featured several business law opinions characterized by an unusually dense mix of weighty, novel and/or complex issues. Of the four discussed in this section, three were issued by the Appellate Court, and one was a Superior Court decision adopted *in toto* by the Supreme Court.

The first of the Appellate Court cases was *Wyatt Energy, Inc. v. Motiva Enterprises, LLC.*[64] The plaintiff, Wyatt Energy, Inc. ("Wyatt"), owner of a port terminal in New Haven Harbor, had leased its facility to Shell Oil Company, which in turn assigned its interest to the defendant Motiva.[65] Motiva then purchased another port terminal at the harbor from a third party.[66]

Wyatt claimed that its lease had been premised on the implicit understanding that Motiva would use Wyatt's facility as its sole terminal in the New Haven area, and that Motiva's acquisition of a second terminal constituted a

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61 *Id.* at 436 (emphasis in original).

62 *Id.* at 448.

63 *See, e.g.,* Inland Wetlands and Watercourses Agency of the City of Middletown v. Landmark Investment Grp., Inc., 218 Conn. 703, 708, 590 A.2d 968 (1991).

64 128 Conn. App. 666, 19 A.3d 181, *cert. granted in part,* 301 Conn. 932, 23 A.3d 726 (2011).

65 *Id.* at 668-669.

66 *Id.* at 670.

breach.[67] Wyatt therefore terminated the lease.[68] In the ensuing litigation, Wyatt sought to justify the termination based on its reasonable belief that Motiva's subsequent acquisition of a second terminal had anticompetitive implications in violation of the Connecticut Antitrust Act.[69]

The Appellate Court held that Wyatt's fear of *potential* antitrust liability did not afford sufficient grounds to terminate the lease; the relevant inquiry was whether or not Motiva's acquisition of the second terminal had *actually* rendered the lease unlawful.[70] The Court credited the trial court's factual finding that no antitrust violation had occurred, and agreed that Wyatt's argument was therefore ineffectual.[71]

Wyatt further argued that Motiva's conduct in acquiring the second terminal, while ignoring a right of first refusal provision in the lease that would have allowed it to purchase the Wyatt terminal, constituted an anticipatory repudiation of the lease, justifying Wyatt in terminating it.[72] Motiva countered, and the Appellate Court agreed, that Wyatt's anticipatory repudiation argument was trumped by language in the lease that entitled Motiva to a notice of default and opportunity to cure.[73] Wyatt had never provided such a default-and-cure notice, and thus its anticipatory repudiation argument was unavailing.[74]

Finally, Wyatt attacked the trial court's calculation of Motiva's damages. The court had included anticipated revenue[75] from a contract between Motiva and Citgo Petroleum Corporation, Motiva's primary customer at the Wyatt ter-

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67 *Id.*

68 *Id.* at 670-671.

69 *Id.* at 671-672. The relevant provisions of the Connecticut Antitrust Act are at General Statutes § 35-26 and § 35-27.

70 128 Conn. App. at 674.

71 *Id.* 679-680.

72 *Id.* at 680-681.

73 *Id.* at 683-684.

74 *Id.*

75 The trial court found, and Wyatt did not challenge on appeal, that under the law of Texas, which governed the lease between Wyatt and Motiva, gross revenue rather than lost profit was the proper measure of damage. *Id.* at 685, n. 11.

minal.[76] That contract had been set to expire about two years after Wyatt terminated Motiva's lease, but provided for five one-year renewals thereafter.[77]

The trial court found that Citgo likely would have continually renewed its contract with Motiva for the entire five-year option period, based in part on testimony from a Citgo representative that the company was satisfied with Motiva's services and likely would have maintained the relationship but for Wyatt's termination of the terminal lease.[78] The trial court therefore included, as part its calculation of damages, Motiva's projected lost revenue for the entire option period.[79] The Appellate Court found, based on the evidence in the record below, that this finding was not clearly erroneous and should thus stand on appeal.[80]

Another exceptionally meaty Appellate Court decision issued in *Bridgeport Harbour Place I, LLC v. Ganim*,[81] which arose from the bribery scandal that brought down Bridgeport mayor Joseph Ganim. The plaintiff was party to a development agreement with the City of Bridgeport, which contemplated that the plaintiff would develop a project variously known as Steel Point and Harbour Place.[82] The development agreement called for the completion of studies, compliance with financial and regulatory requirements, and procurement of approvals from various city and state entities.[83] Once the development agreement was fully performed, the parties were to negotiate a restated or new agreement that addressed actual construction of the project.[84]

Unbeknownst to the plaintiff, Ganim had a side agreement with another developer, United Properties, Ltd., whose principals had agreed to pay him a bribe if it was

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[76] *Id.* at 684-685.
[77] *Id.* at 685.
[78] *Id.* at 685-686.
[79] *Id.* at 686.
[80] *Id.* at 687-688.
[81] 131 Conn. App. 99, 30 A.3d 703, *cert. granted*, 303 Conn. 904, 31 A.3d 1179 and 303 Conn. 905, 31 A.3d 1180 (2011).
[82] *Id.* at 106.
[83] *Id.* at 107.
[84] *Id.* at 107-108.

selected to develop the project.[85] Ganim eventually caused the City to terminate the development agreement with the plaintiff before it had been fully performed.[86] The plaintiff sued Ganim, the City of Bridgeport, United Properties, its principals, and various other individuals and entities.[87] The plaintiff claimed, among other things, lost profits in excess of $100 million.[88]

The jury returned a verdict for the plaintiff against certain of the defendants, but for the relatively paltry sum of $366,254.[89] The size of the verdict was held down by the trial court's grant of a motion in limine filed by the defendants, in which they successfully sought to exclude evidence about the plaintiff's alleged lost profits.[90]

In that ruling, the trial court emphasized that the development contract that had been wrongfully terminated did not give the plaintiff the right to build the project:

> The plaintiff bases the lost profits claim on a nonexistent contract whose potential realization and returns are remote as a matter of law because its evidentiary support is contingent and speculative.... [T]he development agreement did not provide for the construction of the project; it was merely a contract to pursue a restated development agreement or a land disposition agreement where the precise costs, plans and specifications of the construction would be set forth. ... [T]he city was only required to engage in good faith negotiations to reach an agreement on a land disposition contract, and was not unequivocally bound to execute one.[91]

The Appellate Court agreed that "there was insufficient evidence that the Steel Point project would come to fruition," and that the trial court, in carrying out its gatekeeper function, had properly excluded evidence of "lost profits" that was purely speculative.[92]

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85 *Id.* at 106.
86 *Id.* at 108.
87 *Id.* at 104, n 2.
88 *Id.* at 106.
89 *Id.* at 111.
90 *Id.* at 117.
91 *Id.* at 118.
92 *Id.* at 122-124.

The *Ganim* case also featured a novel collateral estoppel issue stemming from a prior, abortive action in the U.S. District Court. In that initial suit, the plaintiffs sought relief under two federal statutes, the Racketeer Influenced and Corrupt Organizations Act (RICO) and 42 U.S.C. Section 1983, as well as various state statutes and common law theories.[93] The district court granted the defendants' motion to dismiss the federal statutory claims, finding that the plaintiff lacked standing to pursue the RICO claim and had failed to state a claim under section 1983.[94] The district court also declined to exercise pendent jurisdiction over the state law claims.[95] The plaintiff then sued on its state law claims, in Superior Court.[96]

The defendants argued that the district court dismissal had the effect of collaterally estopping the plaintiff from seeking relief in a second action.[97] Specifically, in denying the plaintiff's RICO claim, the district court had found that the plaintiff lacked standing to pursue that claim because it failed to satisfy the statute's stringent proximate cause requirement.[98] The defendants argued that, because the issue of proximate cause between the defendant's conduct and the plaintiff's alleged harm had been actually litigated and had been necessary for the district court's dismissal order, the plaintiff was collaterally estopped from relitigating that issue in Superior Court.[99]

The trial court rejected this argument, given that the proximate cause standards under RICO differ from those at common law.[100] A RICO plaintiff must show that he suffered injury proximately caused by the defendants' racketeering activity, not simply as a result of the defendants' conduct.[101] Because this differs from the showing of proximate cause required for the plaintiff's state law actions, and because the

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93 *Id.* at 150. RICO is codified at 18 U.S.C. § 1961 *et seq.*
94 131 Conn. App. at 150.
95 *Id.*
96 *Id.* at 151.
97 *Id.* at 153.
98 *Id.* at 154.
99 *Id.* at 154-155.
100 *Id.* at 156.
101 *Id.* at 160, referring to *Lerner v. Fleet Bank, N.A.,* 459 F.3d 273 (2d Cir. 2006).

application of collateral estoppel "may not be proper when the burden of proof or legal standards differ between the first and subsequent actions,"[102] the trial court ruled that the plaintiff was not collaterally estopped from beginning anew in Superior Court.[103] The Appellate Court agreed.[104]

The decision in *Ganim* is noteworthy also for a detailed and scholarly discussion about the proper approach to calculating punitive damages awards under CUTPA.[105]

A million dollar bank loan spawned years of hard-fought litigation between the assignee of the note and the executors of the borrower's estate, culminating in the Appellate Court's decision in *Cadle Co. v. D'Addario*.[106] The plaintiff had pursued prior litigation against the defendant executors, seeking to remove them as executors (removal case).[107] That effort failed in the probate court, and the plaintiff's subsequent appeal led to a dismissal order in the Superior Court, which was affirmed by the Supreme Court.[108] When the plaintiffs brought suit on the note, the executors counterclaimed for abuse of process and vexatious litigation, citing the removal case.[109] The counterclaim also included a CUTPA count,[110] based largely on Cadle's dealings with the D'Addario family in trying to collect the debt.[111] The trial court disposed of the counterclaim via orders granting the plaintiff's motion to strike and motion for summary judgment.[112]

The Appellate Court affirmed the judgment below with respect to the counterclaim. As for the abuse of process claim, the court noted that such a claim will lie only if the process was used *primarily* for an improper purpose; a

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102 131 Conn. App. at 155.
103 *Id.* at 160.
104 *Id.* at 160-161.
105 *Id.* at 138-150.
106 131 Conn. App. 223, 26 A.3d 682 (2011).
107 *Id.* at 233.
108 *Id.* The Supreme Court's affirmance of the dismissal order in the removal case is reported at *Cadle Co. v. D'Addario,* 268 Conn. 441, 844 A.2d 836 (2004).
109 *Id.*
110 CONN. GEN. STAT. § 42-110a *et seq.*
111 131 Conn. App. at 233, 234, 239, 240.
112 *Id.* at 234-235.

party's *incidental* motive is immaterial.[113] The executors pled that Cadle had pursued the removal case primarily to coerce nonparties to the litigation to pay the note, but did not plead sufficient facts to support that conclusion.[114] The Appellate Court thus agreed that the trial court had properly stricken that claim.[115]

The executors' counterclaim for vexatious litigation foundered on the need to plead and prove an absence of probable cause for Cadle's pursuit of the removal case.[116] The executors alleged that lack of probable cause could be inferred from the fact that the Superior Court had dismissed the removal case, and that the Supreme Court had affirmed the dismissal order.[117] However, lack of merit is not the same thing as lack of probable cause; the proponent of a vexatious litigation claim must not only show that the prior action terminated in his favor, but must separately show lack of probable cause.[118] Because the executors had not separately pled facts showing a lack of probable cause, the Appellate Court affirmed the trial court's order striking that claim.[119]

As for the CUTPA claim, the Appellate Court focused on the requirement that the proponent of such a claim prove it has suffered an ascertainable loss.[120] For present purposes, that required a focus on harm allegedly suffered by the estate, not by members of the D'Addario family personally.[121] Because the executors had failed to plead and prove ascertainable loss suffered by the estate, the counterclaim for CUTPA was not well founded.[122]

The executors also challenged the trial court's order, as part of its judgment for Cadle on the complaint, awarding

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113 *Id.* at 235-236.
114 *Id.* at 236.
115 *Id.* at 236-237.
116 *Id.* at 237.
117 *Id.*
118 *Id.* at 237-238.
119 *Id.*
120 *Id.* at 240.
121 *Id.* at 240.
122 *Id.* at 241.

Cadle statutory[123] post-judgment interest in the amount of ten percent per annum from the date of judgment until full payment of the debt.[124] Specifically, the executors claimed that this was improper, given that the note contained a specific provision setting forth the applicable interest rate "until the entire principal of this Note has been fully paid, whether before or after maturity, by acceleration or otherwise, and whether or not judgment is obtained…"[125] The Appellate Court agreed that the post-judgment interest rate provided for by statute must give way to the express agreement of the parties embodied in the note.[126]

On cross-appeal, Cadle complained that the trial court had erred in refusing to apply a provision in the note that bumped up the interest rate by two percent per annum following default.[127] The Appellate Court observed that, under established precedent,[128] late charges may not be assessed once a note has been accelerated and demand has been made,[129] but ruled that the default interest rate prescribed by the note did not constitute a late charge.[130] Accordingly, the trial court should have applied the enhanced interest rate post-default, and erred in failing to do so.[131]

Judge Cosgrove's decision in *Tzovolos v. Wiseman*,[132] affirmed *per curiam*[133] and adopted by the Supreme Court as its statement of the facts and applicable law, is noteworthy not because it breaks new legal ground – it does not – but because it is a virtual treatise on Connecticut business tort law. The case arose when a putative creditor of a failed restaurant seized $12,700 worth of restaurant equipment, knowing that it was subject to a perfected security interest held by another creditor. The ensuing litigation implicated

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123 CONN. GEN. STAT. § 37-3a.
124 131 Conn. App. at 243.
125 *Id.*
126 *Id.* at 248.
127 *Id.* at 249.
128 FDIC v. Napert-Boyer P'ship, 40 Conn. App. 434, 671 A.3d 1303 (1996).
129 131 Conn. App. at 249.
130 *Id.* at 249-50.
131 *Id.* at 250.
132 51 Conn. Sup. 532, 16 A.3d 819 (2007), *aff'd*, 300 Conn. 247, 12 A.3d 563 (2011).
133 300 Conn. 247, 12 A.3d 563 (2011).

the law of contract, secured transactions, conversion, civil theft, piercing of corporate veils, fraudulent transfer, tortious interference, unfair trade practice, and the shifting of attorneys' fees. The trial court's patient and thorough analysis of each theory makes the memorandum of decision a valuable reference piece for business litigators.[134]

III. Finality … Or Not

As discussed, the doctrines of res judicata and/or collateral estoppel figured prominently in the *Lighthouse Landings* and *Harbour Place I* decisions. The Appellate Court further examined res judicata in *Close, Jensen and Miller, P.C. v. Fidelity National Title Insurance Company*,[135] and concluded that the public policy underlying that doctrine—preventing repetitive litigation—may trump procedural niceties.

In prior litigation between the parties, judgment entered against Close, Jensen and Miller, a land surveying and engineering firm (the "firm"), on a professional malpractice claim arising from a faulty property survey.[136] The firm agreed to pay the full amount of the judgment plus costs, through its malpractice carrier, provided that the title companies agreed to open and vacate the judgment.[137]

The firm then brought suit against the title companies, seeking to recapture the money that had been paid to satisfy the earlier judgment.[138] When the title companies sought summary judgment on the grounds of res judicata, the firm countered that that doctrine could not apply because the earlier judgment had been vacated.[139] The trial court reject-

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[134] Judge Cosgrove's opinion does contain a statement of law that, while accurate when rendered in 2007, is no longer correct. Judge Cosgrove stated that the standard of proof in statutory theft cases is by "clear and convincing evidence." 51 Conn. Sup. at 574, 575. But in 2010, in *Stuart v. Stuart,* 297 Conn. 26,996 A.2d 259 (2010), the Connecticut Supreme Court ruled that such claims need be proven only by a preponderance of the evidence. Thus, by 2011, when the Supreme Court adopted Judge Cosgrove's decision wholesale as "a statement of the facts and the applicable law"; 300 Conn. at 253, the Court had already implicitly overruled that aspect of his decision.

[135] 130 Conn. App. 174, 21 A.3d 952 (2011).

[136] *Id.* at 179.

[137] *Id.*

[138] *Id.* at 180.

[139] *Id.*

ed that argument, holding that under these unusual circumstances the prior judgment retained the force of res judicata, and the Appellate Court agreed.[140]

Another Appellate Court decision concerning the scope of collateral estoppel was *Gateway, Kelso & Company, Inc. v. West Hartford No. 1, LLC*.[141] In that case, a judge of the Superior Court denied the plaintiff's application for a PJR, whereupon the defendant moved for summary judgment, claiming that a key finding of fact at the PJR hearing should be accorded the effect of collateral estoppel in the principal case.[142] The trial court denied the defendant's summary judgment motion.

The Appellate Court affirmed, agreeing that findings of fact at a PJR hearing should have no preclusive effect. The court found that given the limited nature of a PJR hearing, and the reality that at the time of a PJR hearing a case typically requires far more discovery and development in order to become trial-ready, a PJR hearing does not afford the opportunity to "fully and fairly" litigate a matter, which is a prerequisite for preclusive effect.[143]

The issue of finality arose in a different context in Investment *Associates v. Summit Associates, Inc.*[144] Two principles pertaining to judgments—validity and finality—clashed in that case, and finality prevailed. The plaintiff had brought suit in the Superior Court against certain defendants, including an individual named Lancia, in 1991, and obtained a judgment in 1994.[145] The plaintiff was unable to execute on Lancia's assets because he moved out of state to parts unknown.[146] The plaintiff finally learned Lancia's whereabouts, in South Carolina, many years after the entry of judgment.[147]

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[140] *Id.* at 180-81,

[141] 126 Conn. App. 578, 15 A.3d 635, *cert. denied,* 300 Conn. 929, 16 A.3d 703 (2011).

[142] *Id.* at 582.

[143] *Id.* at 584-85.

[144] 132 Conn. App. 192, 31 A.3d 820 (2011), *cert. granted,* 303 Conn. 921, 34 A.3d 396 (2012).

[145] *Id.* at 195.

[146] *Id.* at 196, n. 4.

[147] *Id.*

Because there is a ten-year time limit to enforce judgments in South Carolina,[148] in 2009 the plaintiff filed a motion in the Superior Court to revive its earlier judgment.[149] The defendant responded with a motion to dismiss, claiming that the plaintiff, a joint venture, is not a recognized legal entity under Connecticut law, and therefore lacked standing to pursue a claim against him, depriving the court of subject matter jurisdiction over the cause.[150] The trial court denied the defendant's motion to dismiss, and granted the plaintiff's motion to revive the judgment.[151]

The Appellate Court acknowledged the general and often-repeated principle that challenges to subject matter jurisdiction may be raised at any time.[152] However, the court agreed with the trial court that given the facts and procedural history of the case, the principle of validity must give way to the principle of finality.[153] The Appellate Court noted that the Superior Court is a court of general, not limited, jurisdiction, and that the defendant could have raised the standing issue when the case was first litigated in the 1990s.[154] Nor did the court perceive any miscarriage of justice, or any other strong policy reason to allow the defendant to raise his standing argument so late in the game.[155] The Appellate Court therefore affirmed the judgment below.[156]

IV. Noteworthy Contract Cases

In *Blumberg Associates Worldwide, Inc. v. Brown & Brown of Connecticut, Inc.*,[157] the Appellate Court considered an issue of first impression in Connecticut: whether a party to a contract can unlawfully hinder performance through acts or omissions that took place before the contract

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148 *Id.*

149 *Id.* at 195-96. The statute that permits such a motion is General Statutes § 52-598(c).

150 *Id.* at 196.

151 *Id.*

152 *Id.* at 198.

153 *Id.* at 200-01.

154 *Id.* at 201.

155 *Id.*

156 *Id.* at 208.

157 132 Conn. App. 85, 30 A.3d 38 (2011), *cert. granted in part,* 303 Conn. 923, 34 A.3d 395 (2012).

came into existence. The plaintiff and defendant, both of which were engaged in the insurance business, entered into a contract in 2006 that allowed the defendant to cancel in the event that the plaintiff's insurance license was lost or suspended.[158] Previously, in 2004, the defendant's parent company had acquired an affiliate of the plaintiff, and ensuing communications with the state insurance department caused the department to mistakenly believe that the plaintiff was located at the defendant's business address.[159]

In late 2005 the department mailed the plaintiff's insurance license renewal papers to the defendant's address, and as a result, the plaintiff never received them.[160] Unaware of the situation, the plaintiff inadvertently allowed its insurance license to expire in January of 2006.[161] Apparently unaware of the status of the plaintiff's license, the parties entered into their contract later in 2006.[162] In February of 2008, the defendant terminated the contract, citing the suspension of the plaintiff's insurance license.[163]

In the ensuing litigation, the plaintiff alleged that the defendant had wrongfully terminated the contract, given that the defendant's own conduct in failing to forward the license renewal papers to the plaintiff had caused the event that the defendant relied on as grounds for termination.[164] More particularly, the plaintiff cited the doctrine of prevention.[165] Under that doctrine, "if a party to a contract 'prevents, hinders or renders impossible the occurrence of a condition precedent to his or her promise to perform, or to the performance of a return promise, [that party] is not relieved of the obligation to perform, and may not legally terminate the contract for nonperformance.'"[166]

The defendant countered that its alleged failure to forward the license renewal papers had occurred many months

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158 *Id.* at 87.
159 *Id.* at 90-91.
160 *Id.* at 91.
161 *Id.*
162 *Id.* at 87.
163 *Id.* at 87-88.
164 *Id.* at 92.
165 *Id.* at 93.
166 *Id.* at 94-95, *quoting* 13 S. WILLISTON, CONTRACTS, § 39:3 at 517-518 (4th Ed. 2000).

before the parties had entered into the contract, and that as a matter of law it could not be deemed to have prevented performance of a contract that did not even exist yet.[167] The Appellate Court agreed with the defendant, and affirmed the trial court's grant of summary judgment in its favor.[168]

In Pack 2000, Inc. v. Cushman,[169] the plaintiff brought an action seeking specific performance of two option contracts for the purchase of real estate that the plaintiff had leased from the defendant for the operation of Midas muffler shops. The option contracts allowed the plaintiff to purchase the properties so long as the plaintiff meanwhile complied with certain leases and a management agreement.[170] It was undisputed that the plaintiff had rendered numerous late payments related to the latter agreements,[171] but the trial court nevertheless allowed the plaintiff to exercise its purchase options, finding "substantial compliance" with the option agreements.[172]

The Appellate Court disagreed. While "substantial compliance" is the general rule with respect to bilateral contracts, an option agreement is unilateral in nature, requiring strict compliance as a condition precedent to exercise of the option.[173] The Appellate Court found that the plaintiff's numerous payment defaults under the leases and management agreement fell far short of the compliance required by the option contract, reversed the judgment below, and ordered judgment for the defendant.[174]

V. Creditors' Rights and Remedies

The Appellate Court's decision in *Water Pollution Control Authority v. Johnson*[175] hammers home the *caveat*

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167 132 Conn. App. at 92.
168 *Id.* at 96.
169 126 Conn. App. 339, 11 A.3d 181, *cert. granted,* 301 Conn. 907, 19 A.3d 177 (2011).
170 *Id.* at 342-43.
171 *Id.* at 343-44.
172 *Id.* at 345-56.
173 *Id.* at 349.
174 *Id.* at 351.
175 130 Conn. App. 692, 26 A.3d 87 (2011).

emptor principle inherent in purchases at foreclosure auctions. The plaintiff water pollution authority (WPCA) commenced foreclosure of a lien for sewer use, and in its complaint identified the defendant Fremont Investment & Loan (Fremont) as a subsequent mortgagee.[176] The trial court entered a judgment of foreclosure by sale, and scheduled an auction at which the defendant JMP & Sons Property Management, LLC (JMP) was the high bidder.[177] The bid was approved, and JMP took title to the property.[178]

Two and a half months later, Fremont moved to open the foreclosure judgment and dismiss the complaint, asserting that while it had made a loan to the defendant property owner, Johnson, the mortgage had run to Mortgage Electronic Registration Systems, Inc. (MERS) and thus MERS rather than Fremont should have been named as the defendant mortgagee.[179] JMP objected to the motion, arguing that it held absolute title to the property.[180] The trial court denied Fremont's motion on the grounds that it lacked standing to assert the claim.[181]

Meanwhile, MERS had assigned the mortgage to LaSalle Bank, N.A., Trustee (LaSalle), which in turn brought a separate "omitted party" action[182] against JMP to foreclose its interest.[183] In the latter action, over JMP's objection, the

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[176] *Id.* at 695.
[177] *Id.*
[178] *Id.*
[179] *Id.* at 695-96.
[180] *Id.* at 696.
[181] *Id.*
[182] This remedy is provided by General Statutes § 49-30, which provides as follows: "When a mortgage or lien on real estate has been foreclosed and one or more parties owning any interest in or holding an encumbrance on such real estate subsequent or subordinate to such mortgage or lien has been omitted or has not been foreclosed of such interest or encumbrance because of improper service of process or for any other reason, all other parties foreclosed by the foreclosure judgment shall be bound thereby as fully as if no such omission or defect had occurred and shall not retain any equity or right to redeem such foreclosed real estate. Such omission or failure to properly foreclose such party or parties may be completely cured and cleared by deed or foreclosure or other proper legal proceedings to which the only necessary parties shall be the party acquiring such foreclosure title, or his successor in title, and the party or parties thus not foreclosed, or their respective successors in title."
[183] 130 Conn. App. at 696.

trial court upheld LaSalle's right to foreclose.[184] JMP thereupon returned to the first action and moved to open and vacate the foreclosure judgment and all supplemental judgments, seeking thereby to obtain the return of its bid money.[185] The trial court denied JMP's motion.[186]

The Appellate Court affirmed. The Court emphasized that by statute,[187] buyers at foreclosure auctions take the property subject to the risk that an omitted lienholder may bring a separate action to foreclose later.[188] The Court further found that JMP had received adequate notice of the *caveat emptor* nature of the sale.[189] Finally, the Appellate Court found that the trial court, in weighing the equities, had properly given weight to the fact that JMP had (i) received notice of MERS's claimed interest in the property shortly after JMP took title, (ii) opposed Fremont's motion to open the foreclosure judgment and thereby remedy the situation, and (iii) then waited fifteen months to file its own motion to open the judgment of foreclosure.[190]

The Appellate Court's decision in *Flannery v. Singer Asset Finance Company, LLC*,[191] illustrates the difference between committing fraud and fraudulently concealing a cause of action—and the difficulty of proving the latter. Flannery, who had won $3 million in a state lottery, payable in twenty annual installments of $150,000 apiece, retained an attorney to provide him with tax advice.[192] The attorney convinced Flannery to sell his lottery winnings to the defendant finance company, for whom the attorney was secretly working, for a lump-sum discount, based upon false and fraudulent tax advice.[193] Several years later, after the IRS rejected the tax gambit and billed Flannery for a significant

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184 *Id.*
185 *Id.* at 696-97.
186 *Id.* at 697.
187 CONN GEN. STAT. § 49-30.
188 130 Conn. App. at 697, 698.
189 *Id.* at 698-701.
190 *Id.* at 701-02.
191 128 Conn. App. 507, 17 A.3d 509, *cert. granted in part,* 302 Conn. 902, 23 A.3d 1242 (2011).
192 *Id.* at 509.
193 *Id.* at 509-10.

tax deficiency, he brought suit against the finance company for aiding and abetting the attorney's breach of fiduciary duty[194] and violating CUTPA.[195]

The finance company raised, by way of special defense, the three-year statutes of limitations that applied to the two counts of the complaint.[196] Flannery countered, by way of matter in avoidance, with the allegation that the finance company had fraudulently concealed his right of action, thereby tolling the running of the limitations period.[197] The trial court entered summary judgment for the finance company.[198]

The Appellate Court affirmed.[199] The court noted that Flannery's burden was to plead and prove that the finance company had actual awareness of the facts necessary to establish his cause of action, and had intentionally concealed those facts from him for the specific purpose of delaying the commencement of suit.[200] Putting aside the fraudulent behavior underlying the causes of action themselves, the court found that "[t]here is no allegation, nor is there a factual predicate, to establish that the defendant had fraudulently concealed *the existence of the plaintiff's causes of action* with the intention of delaying the plaintiff in filing the action."[201]

The Supreme Court's decision in *Connecticut National Bank v. Rehab Associates,*[202] illustrates the importance of drafting settlement agreements with care. The bank obtained a deficiency judgment against two guarantors who were jointly and severally liable for the debt of a general partnership.[203] The bank settled with one of the guaran-

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194 The Appellate Court assumed, without deciding, that such a cause of action exists under Connecticut law. 128 Conn. App. at 511, n. 4.

195 CONN GEN. STAT. § 42-110a *et seq.; see also Flannery,* 128 Conn. App. at 511.

196 The statute of limitations applicable to the fiduciary duty claim was General Statutes § 52-577; the counterpart for the CUTPA claim was General Statutes § 42-110g(f). 128 Conn. App. at 513.

197 128 Conn. App. at 513.

198 *Id.* at 508-09.

199 *Id.* at 509.

200 *Id.* at 515-16.

201 *Id.* at 517.

202 300 Conn. 314, 12 A.3d 995 (2011).

203 *Id.* at 316, 321.

tors, via a settlement agreement that recited that the compromised payment would serve as "payment in full of the indebtedness."[204] The Court found that this broad language, which was not modified by a reservation of rights against the non-settling guarantor, extinguished the latter's obligation.[205]

Sosin v. Sosin[206] was not a business law case, but addressed an issue of interest to business litigators. In this case, the Connecticut Supreme Court discussed General Statutes Section 37-3a, which authorizes the court to award prejudgment interest at a rate of up to 10% per annum "as damages for the detention of money after it becomes payable." Previous cases have characterized this statute as applying when money has been "wrongfully detained."[207]

The issue in Sosin was whether or not the court can make such an award against a defendant who had a good faith basis for nonpayment.[208] The Supreme Court, noting that the statute is aimed primarily at compensating parties who have been deprived of the use of their money rather than punishing those who wrongfully withhold it, ruled that such an award may indeed be proper.[209]

In 2010, in *Sturm v. Harb Development, LLC*,[210] the Supreme Court restated the principle (frequently misunderstood) that while the corporate veil protects officers and agents from imputed liability based on the acts of other people in the company, it does not protect them from liability for their own tortious conduct—even if they performed the act on behalf of the company. In such an instance, it is unnecessary for an aggrieved party to plead and prove the elements needed to pierce the corporate veil; the plaintiff can simply state a direct claim against the corporate actor. In its 2011 decision in *Cohen v. Roll-A-Cover, LLC*,[211] the

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[204] *Id.* at 317.
[205] *Id.* at 322.
[206] 300 Conn. 205, 14 A.3d 307 (2011).
[207] *Id.* at 244, n. 25.
[208] *Id.* at 243.
[209] *Id.* at 245.
[210] 298 Conn. 124, 2 A.3d 859 (2010).
[211] 131 Conn. App. 443, 27 A.3d 1, *cert. denied,* 303 Conn. 915, 33 A.3d 739 (2011).

Appellate Court built on this principle by holding specifically that it applies to claims under CUTPA.

In *Schermer v. Souza*,[212] the Appellate Court held that recovery under unjust enrichment may be permitted even if there never existed a contractual relationship between the parties. In so ruling, the court overruled several Superior Court decisions in which the court had ruled that proof of such a relationship is indeed necessary.[213]

In *Reid & Riege, P.C. v. Bulakites*,[214] the Appellate Court held that a settlement agreement placed orally on the record in open court is summarily enforceable via a motion under the procedure established in *Audubon Parking Associates Ltd. Partnership v. Barclay & Stubbs, Inc.*,[215] even though the agreement does not comply with the Statute of Frauds.

VI. Construction Cases

In *FCM Group, Inc. v. Miller*,[216] the Supreme Court affirmed the principle that a mechanic's lien provides security only for services and materials actually provided, not for damage (such as lost profit) suffered by being prevented from completing the work.[217] The Court also rejected the proposition that the homeowner's wife, who exercised "virtually complete dominion and control" over the property during the construction process[218] but who did not sign the construction contract and did not hold record title to the property, could be held liable to the builder on the theory that she owned an equitable interest in the property.[219] The husband had signed the construction contract as sole owner of the property, and the court could not find "any recognized

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212 126 Conn. App. 759, 12 A.3d 1048 (2011).
213 *Id.* at 767.
214 132 Conn. App. 209, 31 A.3d 406 (2011), *cert. denied,* 303 Conn. 926, 35 A. 3d 1076 (2012).
215 225 Conn. 804, 626 A.2d 729 (1993).
216 300 Conn. 774, 17 A.3d 40 (2011).
217 *Id.* at 806-07.
218 *Id.* at 796-97.
219 *Id.* at 795.

exception to the principle that a contract is binding only on those who are parties to it."[220]

In *Walpole Woodworkers, Inc. v. Manning*,[221] the Appellate Court clarified that a home improvement contractor who enters into a contract that is unenforceable under the Home Improvement Act[222] may nevertheless have two separate, independent routes to recovery under a theory of unjust enrichment. One is under the statutory exception[223] for contracts that contain most but not all of the disclosures required by the act, while the other is the judicially created exception that allows recovery against homeowners who invoke the act in bad faith.[224] Because this method of recovery is outside the contract, the contractor can recover only for the reasonable value of his work, not interest, costs and attorneys' fees as provided for under the contract.[225]

In *Cianci v. Originalwerks, LLC*,[226] a homeowner applied to discharge a mechanic's lien, claiming the builder had failed to record the lien within ninety days of ceasing to render services to the property, as required by statute.[227] The lien had been recorded more than ninety days after the homeowner ordered him to stop all work and vacate the property.[228] However, during that ninety-day period, the builder had returned to the property, at the owner's request, to view the house with the owner's architect and verify some claimed deficiencies in workmanship.[229] In the course of that inspection, the builder removed some plywood to inspect the beams behind it, and then replaced the plywood.[230] Observing that the builder had returned to the property at

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[220] *Id.* at 798.
[221] 126 Conn. App. 94, 11 A.3d 165, *cert. granted,* 300 Conn. 940, 17 A.3d 476 (2011).
[222] CONN GEN. STAT. § 20-429.
[223] CONN GEN. STAT. § 20-429(f).
[224] 126 Conn. App. at 105.
[225] *Id.* at 102.
[226] 126 Conn. App. 18, 16 A.3d 705, *cert. denied,* 300 Conn. 901, 17 A.3d 1043 (2011).
[227] CONN GEN. STAT. § 49-34.
[228] 126 Conn. App. at 19-20.
[229] *Id.* at 20.
[230] *Id.*

the owner's request, the court found that this constituted "services" sufficient to save the mechanic's lien.[231]

VII. CONCLUSION

Connecticut's judiciary produced an impressive number of business law decisions in 2011, aided in large part by the significant role played by the Appellate Court. Notably, a number of those Appellate Court decisions have led to petitions for certification to the state Supreme Court that have been granted.[232] The outcome of those cases bears watching, both for their impact on Connecticut law and for what they may portend about the future volume and allocation of business law cases in Connecticut's appellate system.

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[231] *Id.* at 29-30.

[232] Of the Appellate Court decisions discussed in this article, the Supreme Court granted certification to appeal in the following seven: *Wyatt Energy, Inc. v. Motiva Enters., LLC,* 128 Conn. App. 666, 19 A.3d 181, *cert. granted in part,* 301 Conn. 932, 23 A.3d 726 (2011); *Bridgeport Harbour Place I, LLC v. Ganim,* 131 Conn. App. 99, 30 A.3d 703, *cert. granted,* 303 Conn. 904, 31 A.3d 1179 and 303 Conn. 905, 31 A.3d 1180 (2011); *Investment Assocs. v. Summit Assocs., Inc.,* 132 Conn. App. 192, 31 A.3d 820 (2011), *cert. granted,* 303 Conn. 921, 34 A.3d 396 (2012); *Blumberg Assocs. Worldwide, Inc. v. Brown & Brown of Connecticut, Inc.,* 132 Conn. App. 85, 30 A.3d 38 (2011), *cert. granted in part,* 303 Conn. 923, 34 A.3d 395 (2012); *Pack 2000, Inc. v. Cushman,* 126 Conn. App. 339, 11 A.3d 181, *cert. granted,* 301 Conn. 907, 19 A.3d 177 (2011); *Flannery v. Singer Asset Finance Co., LLC,* 128 Conn. App. 507, 17 A.3d 509, *cert. granted in part,* 302 Conn. 902, 23 A.3d 1242 (2011); and *Walpole Woodworkers, Inc. v. Manning,* 126 Conn. App. 94, 11 A.3d 165, *cert. granted,* 300 Conn. 940, 17 A.3d 476 (2011).