BUSINESS LITIGATION: 2010 IN REVIEW

BY WILLIAM J. O'SULLIVAN*

For Connecticut business litigators, 2010 was noteworthy in two respects. First, in a pair of Connecticut Supreme Court opinions—one for the majority, one in concurrence—Justice Peter T. Zarella pointedly challenged bench and bar to rethink well entrenched principles of business tort law. Second, a number of court decisions demonstrated how the practice of mortgage foreclosure law has struggled to keep up with changes in the mortgage industry, particularly the bundling and securitization of home mortgages. This article will discuss these developments, as well as other significant judicial opinions that were issued in 2010 in the realm of business law.

The first of the Justice Zarella cases, *Naples v. Keystone Building & Development Corporation*,[1] contains a useful discussion, in the majority opinion, about piercing corporate veils. Of greater interest are the disparate discussions, in the majority opinion and Justice Zarella's concurrence, about the plaintiff's claim under the Connecticut Unfair Trade Practices Act ("CUTPA").[2]

The majority's summary of the legal framework for evaluating a CUTPA claim consists largely of familiar language about the Federal Trade Commission's "cigarette rule,"[3] which the court has been citing for more than twenty-five

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* Of the Hartford Bar.

1 295 Conn. 214, 990 A.2d 326 (2010).

2 CONN. GEN. STAT. §§ 42-110a *et seq.*

3 "It is well settled that in determining whether a practice violates CUTPA we have adopted the criteria set out in the cigarette rule by the Federal Trade Commission for determining when a practice is unfair: (1) Whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise-in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers, competitors or other businesspersons. All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." *Naples*, 295 Conn. at 227-28. (Citations and internal punctuation omitted.)

years.[4] But in his concurrence, Justice Zarella takes the entire Supreme Court (himself included) to task for failing to stay abreast of evolving FTC law—namely, major policy statements and decisions issued by the FTC, and caselaw pertaining to the same—in construing CUTPA.[5] In failing to do so, Justice Zarella suggests, the court has not fulfilled CUTPA's mandate that "the courts of this state shall be guided by interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended."[6]

Justice Zarella notes that the *Naples* case did not lend itself to a comprehensive review of CUTPA. However, his language can be construed as a clear warning that, when briefing a CUTPA claim, it may not suffice for an attorney to cut and paste from old briefs containing boilerplate "cigarette rule" language from decisions from the 1980s. Given the right case, the Connecticut Supreme Court seems open to a fresh analysis of the proper framework for a CUTPA claim.

The second of the Justice Zarella opinions of interest was issued in *Stuart v. Stuart*,[7] in which he wrote for a unanimous panel. The narrow holding in *Stuart*, in a significant issue of first impression, was that the standard of proof for a claim for treble damages under the civil theft statute[8] is by a preponderance of the evidence. In so ruling, the Supreme Court reversed the Appellate Court, which had held in the same case that the applicable standard is by "clear and convincing evidence."[9]

Much like Justice Zarella's concurrence in *Naples*, the Supreme Court's opinion in *Stuart* also contains a broad

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[4] The court has cited the three-prong "cigarette rule" for purposes of a CUTPA analysis since at least 1983, in *Conaway v. Prestia*, 191 Conn. 484, 464 A.3d 847 (1983). A year later, in *McLaughlin Ford, Inc. v. Ford Motor Co.,* 192 Conn. 558, 473 A.2d 1185 (1984), the court added the proviso that a CUTPA violation may be founded on a serious breach of one of the three prongs.

[5] For a thorough discussion of these subsequent developments, *see* David L. Belt, *Unresolved Issues under the Unfair Trade Practices Act*, 82 CONN. B.J. 389 (2008).

[6] *Naples*, 295 Conn. at 239, quoting CONN. GEN. STAT. § 42-110b(b).

[7] 297 Conn. 26, 996 A.2d 259 (2010).

[8] CONN. GEN. STAT. § 52-564.

[9] Stuart v. Stuart, 112 Conn. App. 160, 962 A.2d 842 (2009).

invitation to re-examine a seemingly settled area of the law—the requirement that a party prove common-law fraud by clear and convincing evidence. The court observed that "a review of our case law on the development of the standard of proof in fraud actions compels us to question the soundness of those prior decisions,[10] although we need not decide in the present case whether they should be overruled."[11] The court quoted at great length from its decision from 1991 in *Kilduff v. Adams*,[12] in which the court had considered, but dismissed as unpersuasive, the various rationales for requiring fraud to be proven by the higher standard.[13] Apparently the court continues to find that body of law unpersuasive, and accordingly was "loath to extend the application of the clear and convincing standard of proof further, to claims brought pursuant to § 52-564."[14] The court thus appears open to a wholesale examination of the "clear and convincing evidence" rule as applied to civil fraud cases.

In the realm of foreclosure law, several cases illustrate how attorneys and judges have lately been struggling with a basic question that used to have a simple answer: who has standing to foreclose? The issue arises from the relatively recent development of a vigorous secondary market for residential mortgages, in which they are repeatedly re-assigned and/or securitized. This raises the question of who owns, and thus has standing to foreclose, a given mortgage at a given time.

In a pair of decisions involving the same pro se defendant but different lenders and different properties, *Deutsche Bank National Trust v. Bialobrzeski*[15] and *LaSalle Bank, National Association v. Bialobrzeski*,[16] as well as a third case involving different parties, *Equity One, Inc. v. Shivers*,[17] the Appellate Court affirmed the principle that a foreclosing

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[10] The author analyzed the relevant history in an earlier article. *See* William J. O'Sullivan, *Proving Fraud: The History and Future of Connecticut's Clear and Convincing Evidence Rule,* 14 CONNECTICUT LAWYER No. 7, April 2004.

[11] *Stuart*, 297 Conn. at 42.

[12] 219 Conn. 314, 593 A.3d 478 (1991).

[13] *Stuart*, 297 Conn. at 42, n. 11.

[14] *Id.* at 42, 44.

[15] 123 Conn. App. 791, 3 A.3d 183 (2010).

[16] 123 Conn. App. 781, 3 A.3d 176 (2010).

[17] 125 Conn. App. 201, 9 A.3d 379 (2010).

bank must prove that it had ownership of the promissory note at the time it commenced foreclosure. This requires evidence not only of the chain of title to the note, but of the date on which the foreclosing lender acquired ownership of the instrument. In all three of these cases, the trial court had denied the defendant's motion to dismiss without conducting an evidentiary hearing, and in all three cases, the Appellate Court ordered such a hearing after remand.

The Appellate Court emphasized that the critical inquiry is the date on which the lender acquired the note, not the date it took an assignment of the mortgage. Evidence of the latter would not suffice to meet the bank's evidentiary burden. The court reaffirmed the principle that "the mortgage follows the note."[18]

Another case relying upon that principle was *Chase Home Finance, LLC v. Fequiere*.[19] The borrower signed a note payable to BNC Mortgage, Inc., and a mortgage to MERS (Mortgage Electronic Registration Systems), Inc.[20] as nominee for BNC Mortgage, Inc., its successors and assigns. BNC Mortgage, Inc. endorsed the note in blank, and MERS assigned the mortgage to the plaintiff, U.S. Bank National Association, Trustee, a non-MERS member, by a mortgage assignment recorded on the land records. At the time of foreclosure, the plaintiff U.S. Bank was in possession of the note.

The defendant argued that the designation of MERS as mortgage 'nominee' for BNC Mortgage Inc. had not given MERS sufficient title to the mortgage to empower MERS to assign it to U.S. Bank. Thus, went the argument, the plaintiff lacked standing to foreclose.

The Appellate Court disagreed with the defendant, based on General Statutes Section 49-17, which allows the holder of a promissory note secured by a mortgage to foreclose even though the mortgage has not yet been assigned to him. The

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[18] *Deutsche Bank*, 123 Conn. App. at 797.

[19] 119 Conn. App. 570, 989 A.2d 606, *cert. denied,* 295 Conn. 922, 991 A.2d 564 (2010).

[20] The opinion contains a useful explanation of how the MERS mortgage registration system works. 119 Conn. App. at 572, n. 2.

statute codifies the common-law rule that "the mortgage follows the note."[21] The note had been endorsed in blank by the originally obligee, and under General Statutes Section 42a-3-205(a), a note endorsed in blank "becomes payable to bearer and may be negotiated by transfer of possession alone."[22] The plaintiff, possessor of the note at the time the foreclosure was commenced, therefore had standing.

Another foreclosure case of interest was *R.F. Daddario & Sons, Inc. v. Shelansky*.[23] The plaintiff, holder of a second mortgage on a condominium unit, refrained from commencing foreclosure for seventeen years after the defendant's first payment default. The defendant asserted that the action should be barred by the doctrine of laches, but the Appellate Court affirmed the trial court's rejection of that defense. The plaintiff's agent testified that the plaintiff had held off because for an extended period of time there was no apparent equity to support the second mortgage, and later because the defendant was attempting to sell the property. The trial court found, and the Appellate Court agreed, that under the circumstances, the delay was not unreasonable, and that the defendant had failed to prove he had been prejudiced by the delay.[24]

In another case in the realm of creditors' rights, *Lestorti v. DeLeo*,[25] the Supreme Court divided, 3-2, on an issue pertaining to the right of contribution between guarantors. The counterclaim plaintiff and counterclaim defendant ("plaintiff" and "defendant," for ease of reference), guarantors of a commercial mortgage loan, had been named as defendants in an earlier foreclosure action. In that first case, the bank failed to make proper service upon the defendant, and the case was dismissed as to him. (By operation of General Statutes Section 49-1, the bank was barred from thereafter pursuing the defendant.) The bank continued to pursue the plaintiff, and following judgment of foreclosure,

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[21] *Id.* at 576.
[22] *Id.* at 577.
[23] 123 Conn. App. 725, 3 A.3d 957 (2010).
[24] *Id.* at 737-739.
[25] 298 Conn. 466, 4 A.3d 269 (2010).

they stipulated to a deficiency judgment in the amount of $275,000, even though the debt and appraisal figures tendered at the foreclosure judgment hearing suggested a possible deficiency in excess of $2 million. The plaintiff paid the stipulated deficiency judgment, and then sued the defendant for contribution.

In a majority opinion penned by Justice Zarella, the court concluded that the plaintiff would be entitled to contribution only to the extent that he had paid more than his contributive share of the entire outstanding obligation—that is, more than half of the deficiency balance.[26] The court held that the stipulated deficiency of $275,000 was not the appropriate measure; the proper benchmark was the "actual" debt. Because that issue had not been decided by the trial court—as noted, the bank and the plaintiff had resolved that issue between them by stipulation—the Supreme Court remanded the case to the trial court for calculation of the deficiency balance.[27]

Thus, for the plaintiff to obtain relief, he would need to prove that the "actual" deficiency was less than $550,000, in which case his payment of $275,000 would prove to be "excessive," entitling him to contribution for one-half of his overpayment. The court acknowledged the unlikelihood of the plaintiff making that proof.

In a footnote, the court noted that under the RESTATEMENT OF THE LAW OF RESTITUTION, the plaintiff would have been entitled to contribution for half of the settlement that he paid if he had thereby procured the defendant's release.[28] However, the plaintiff had not procured the defendant's release; the defendant had been released by operation of law, through the bank's failure to make proper service upon him in the underlying foreclosure case. This principle thus had no application to the case at bar, and the court reserved judgment on whether or not it even exists under Connecticut law.[29]

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[26] *Id.* at 474.
[27] *Id.* at 486, 487.
[28] *Id.* at 477, n. 11.
[29] *Id.*

In a dissent joined by Justice Palmer, Chief Justice Rogers opined that the plaintiff was entitled to contribution for half of the $275,000 settlement that he had paid.[30]

Connecticut's appellate courts also issued several opinions of interest in the area of business torts. In *Sturm v. Harb Development, LLC*,[31] the state Supreme Court reaffirmed the principle that an agent or officer of a business entity may be personally liable in tort for acts that he or she personally committed while acting on behalf of the business entity. In such a case it is unnecessary for the plaintiff to pierce the corporate veil. This fact pattern should be distinguished from an instance where the plaintiff seeks to hold an agent or officer personally liable solely by virtue of the latter's affiliation with the company, for acts performed by other people.

Sturm was an action against a homebuilding company and its principal in connection with the construction of a new home. In the counts of the complaint directed against the LLC, the plaintiffs claimed breach of contract, violation of CUTPA, and breach of the New Home Construction Contractors Act.[32] In the counts against the principal, the plaintiffs claimed breach of the latter two statutes, negligence, and fraudulent and negligent misrepresentation.

The court ruled that where the tortious conduct at issue was allegedly performed by the company's principal himself, it was unnecessary for the plaintiff to plead facts that would pierce the corporate veil. However, the court further ruled that the counts against the individual defendant should nevertheless be stricken due to other pleading deficiencies.

Of particular interest is the court's discussion of the negligence count, which was built in large part on the contract claim against the LLC. The court found that the plaintiffs had failed to plead adequately the alleged source of the individual defendant's duty to the plaintiffs. The duty could not be found in the contract, since the individual defendant was

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[30] *Id.* at 494.
[31] 298 Conn. 124, 2 A.3d 859 (2010).
[32] CONN. GEN. STAT. § 20-417a *et seq.*

not a party to the contract, and the plaintiffs did not identify any other legal duty that would provide the predicate for a negligence claim.[33]

This appears to suggest that in some cases the corporate form equally protects a business owner from claims in contract and also from claims in negligence. This is in contrast to claims for fraud and other intentional torts under statutory and common law, in which the duty to refrain from bad conduct arises as a matter of law, and the corporate form will not protect a company's principal from the consequences of his or her own behavior.

In *Blackwell v. Mahmood*,[34] the Appellate Court extended liability for treble damages under the civil theft statute[35] beyond what many attorneys might expect. The plaintiff sued for the return of a security deposit for the purchase of commercial property owned by the defendant. The purchase contract required the plaintiff, within thirty days of the contract, to obtain a mortgage commitment; failing that, the plaintiff could obtain a return of his deposit if, within the same thirty-day period, the plaintiff furnished the defendant with a copy of a mortgage denial letter.

The plaintiff provided evidence of a mortgage denial after the thirty-day deadline, and the defendant refused to return the deposit. The evidence at trial established that the defendant had agreed to orally extend the thirty-day deadline, and that the plaintiff's late tender of the letter had been in reliance on that agreement. The trial court ruled that the defendant was estopped to enforce the deadline, and held that the plaintiff was entitled to a return of the deposit. The trial court further ruled for the plaintiff on his claim of civil theft, ordering treble damages, and violation of CUTPA, ordering punitive damages and attorneys' fees.[36]

The Appellate Court affirmed on all counts. On the civil theft claim, the court upheld the trial court's finding that the

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[33] 298 Conn. at 139-141.
[34] 120 Conn. App. 690, 992 A.2d 1219 (2010).
[35] CONN. GEN. STAT. § 52-564.
[36] 120 Conn. App. at 692, 693.

defendant, in keeping possession of the plaintiff's money, had not acted "under an honestly held claim of right," and thus had larcenous intent.[37] The defendant claimed that his attorney had advised him he could hold onto the deposit money, but the court pointedly observed that the attorney had not testified at trial to corroborate this.

In *Metcoff v. Lebovics*,[38] the Appellate Court wrestled with the issue of what is and what is not intracorporate conduct for the purposes of CUTPA and tortious interference. The plaintiffs, majority shareholders of Midcore Software Inc., agreed to merge that entity into NCT Midcore Inc. in exchange for a promise of future payment from NCT Midcore's parent company, NCT Group, Inc. When NCT Group reneged, the plaintiffs sued its officers and directors, claiming they had systematically looted NCT Group and rendered it insolvent and unable to pay its obligation to the plaintiffs. The trial court struck both counts of the plaintiffs' complaint, and rendered judgment for the defendants.

The Appellate Court agreed that the plaintiff had failed to state a claim under CUTPA, holding that the case was in the nature of an intracorporate dispute that did not implicate trade or commerce as defined by the statute. The court also held, by a 2-1 vote, that the trial court had properly stricken the tortious interference count as well. According to the majority, the complaint described conduct that, while infected by "sinister motivations," was "in the normal course of corporate management."[39] The claim thus fell victim to the rule that a company—and its agents—cannot tortiously interfere with its own contract.[40]

Judge Lavery, dissenting, opined that the plaintiffs had pled conduct by the defendants aimed wholly at furthering their own interests, not the company's.[41] Thus, he reasoned, they were acting as strangers to the contract and could be held liable for tortiously interfering with its performance.

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[37] *Id.* at 702.
[38] 123 Conn. App. 512, 2 A.3d 942 (2010).
[39] *Id.* at 523.
[40] *Id.* at 520.
[41] *Id.* at 528, 529.

In another case involving a closely held business, *Gorelick v. Montanaro*,[42] the Appellate Court addressed the issue of what is and what is not partnership property. Five family members each held a twenty percent interest in commercial property, and formed a partnership to develop it. Two family members later conveyed their interests in the real estate to others, such that the land records reflected ownership as 40/40/20.

In an order dissolving the partnership and partitioning the real estate, the trial court ordered the net proceeds to be distributed in twenty percent interests, reflecting ownership of partnership interests. One partner appealed, claiming the proceeds should be distributed based on ownership of the property as shown on the land records.

The Appellate Court noted that under the Uniform Partnership Act, the issue of whether or not property titled to a partner is actually partnership property (as among themselves) is an issue of fact, based on the intent of the partners. The partnership agreement described the real estate as partnership property, and the lease of the property named the partnership as the landlord. The Appellate Court ruled that it was not error to distribute the proceeds based on ownership in the partnership.

The courts also issued several noteworthy opinions on the law of trade regulation. In *Brown & Brown, Inc. v. Blumenthal*,[43] the Supreme Court broadly affirmed the privacy rights of businesses that are subject of antitrust investigatory subpoenas pursuant to General Statutes Section 35-42. The statute provides that documents and information obtained thereunder by the Attorney General may not be disclosed to the public. The Attorney General argued that the bar on disclosures to the "public" did not prevent disclosure to individuals. Therefore, goes the argument, the AG could use documents subpoenaed from a target company —even documents containing trade secrets—in the course of deposing officials from other companies in the industry.

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[42] 119 Conn. App. 785, 990 A.2d 371 (2010).
[43] 297 Conn. 710, 1 A.3d 21 (2010).

The court rejected this argument. Furthermore, the court ruled that materials subpoenaed under this statute cannot be used in court proceedings unless they have initially been "lodged" with the court pursuant to Practice Book Sections 7-4B and 7-4C, thus giving the target an opportunity to have the documents sealed or their disclosure restricted. Finally, in construing the provision of General Statutes Section 35-42 that allows the Connecticut Attorney General's office to share subpoenaed materials with its counterparts in other states and the federal government, the court ruled that this is permissible only if the recipient agency provides the same level of privacy protection as is required in Connecticut.[44]

Connecticut v. Sunrise Herbal Remedies, Inc.[45] was a trade regulation case in which the Supreme Court weighed the application of the hearsay rule to third-party consumer complaints. The state Department of Consumer protection, through the Attorney General's office, brought a civil enforcement action under CUTPA, based on 260 consumer complaints. After commencement of the case, the state obtained an ex parte prejudgment remedy, based on an affidavit signed by an assistant attorney general, averring to the consumer complaints and the average claimed financial loss per consumer. The defendants moved to dissolve the attachment, claiming that the application was fatally defective. More particularly, they claimed that because the affidavit was based entirely on inadmissible hearsay, the state had failed to fulfill the PJR statute's requirement that an application be accompanied by an affidavit from a "competent affiant."[46]

The opinion features an extended discussion about the nature of hearsay and "personal knowledge." The court noted "the rule that a witness must testify from personal knowledge," which is knowledge "gained through firsthand observation or experience as distinguished from a belief based on what someone else has said."[47] The discussion appears to presage a ruling against the state, given that the

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[44] *Id.* at 731, 732.
[45] 296 Conn. 556, 2 A.3d 843 (2010).
[46] *Id.* at 560; CONN. GEN. STAT. § 52-278e.
[47] *Id.* at 573.

affiant indisputedly had no personal knowledge about the facts supporting the consumer complaints.

But the opinion then takes a surprise twist, with the court concluding that the Assistant Attorney General's personal knowledge of the filing of the complaints—not the facts underlying them—sufficed to make him a competent affiant. "It is clear … that although he lacked personal knowledge to aver to the *truth* of the allegations underlying the complaints, [the affiant] nonetheless was competent to represent the *nature and extent* of those complaints."[48] On that basis, the Supreme Court concluded the trial court indeed had subject matter jurisdiction over the PJR application.

It is important to note that the Supreme Court did not rule that the State had established probable cause, or that hearsay testimony by the affiant at the remanded PJR hearing would be admissible. (The court did note a split in the out-of-state authority on whether or not consumer complaints are admissible under the residual exception of the hearsay rule.) The ruling was limited to the issue of whether or not the affidavit was sufficient to give the court jurisdiction over the application. Left unaddressed is the question of what other kind of cases, aside from state enforcement actions, lend themselves to obtaining an ex parte PJR based on "personal knowledge" that somebody has a quarrel with the defendant, as opposed to firsthand knowledge of the facts underlying the quarrel itself.

The Appellate Court's decision in *D'Angelo Development and Construction Corporation v. Cordovano*[49] brings into question just how much leverage a homeowner can obtain against a builder who fails to comply with the disclosure requirements of the New Home Construction Contractors Act.[50] The defendants, who had hired the plaintiff to build a new house for them, counterclaimed on a number of theories, including violation of CUTPA due to the plaintiff's noncompliance with the Act.

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[48] *Id.* at 575.

[49] 121 Conn. App. 165, 995 A.2d 79, *cert. denied,* 297 Conn. 923, 998 A.2d 167 (2010).

[50] CONN. GEN. STAT. § 20-417a *et seq.*

It was undisputed that the builder had failed to comply with the Act's disclosure requirement, a per se violation of CUTPA. But the trial court entered judgment for the builder, holding that the property owners had failed to show they had suffered an ascertainable loss from the breach. In affirming, the Appellate Court observed "[i]t would require speculation to conclude that the Cordovanos would have acted differently had D'Angelo Development made the disclosures required by the act before the parties executed a written contract or even while construction was ongoing."[51]

The Appellate Court issued another important ruling under CUTPA in *Landmark Investment Group, LLC v. Chang Family Realty Partnership, LLC*.[52] The court held that, in determining possible liability under the statute, the acts of the defendant's attorney may be imputed to the defendant. This is so even though the attorney himself may be exempt from CUTPA liability, under the principle that CUTPA applies to the entrepreneurial aspects of legal practice but generally not to an attorney's representational conduct. That exemption notwithstanding, the acts of an agent—with no exception for attorneys—may be imputed to a principal for purposes of CUTPA.

In *Pinard v. Dandy Lions, LLC,*[53] the Appellate Court demonstrated that the courts' considerable willingness to find that parties have an enforceable agreement to arbitrate does have its limits. In the proceedings below, the parties had put onto the record, in open court, an agreement to present their case privately to a judge in chambers, who would thereupon issue a decision that would be treated as an arbitrator's award. At the conclusion of that process, the judge issued an award, which the defendant then moved to vacate on the grounds that there had been no written agreement to arbitrate, as required by General Statutes Section 52-408.

The trial court granted the motion to vacate. The plaintiff argued on appeal that (i) the court transcript, in which

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[51] *D'Angelo Development,* 121 Conn. App. at 183.

[52] 125 Conn. App. 678, 10 A.3d 61 (2010), *cert. denied,* 300 Conn. 914, 13 A.3d 1100 (2011).

[53] 119 Conn. App. 368, 987 A.2d 406, *cert. denied,* 295 Conn. 921, 991 A.2d 566 (2010).

the attorneys confirmed the agreement to arbitrate, constituted a writing to sufficient to satisfy General Statutes Section 52-408, and (ii) the totality of the circumstances established that the parties had an agreement to arbitrate. The Appellate Court disagreed, and affirmed the judgment below vacating the award.[54]

It should be noted that the decision does not indicate that the plaintiff ever argued that the defendant had waived the writing requirement. Any such argument, however, would surely have been unavailing, as the authority of an arbitrator is a matter of subject matter jurisdiction[55] and thus principles of waiver would have no effect on the writing requirement.

The Connecticut Supreme Court's decision in *Association Resources, Inc. v. Wall*[56] was noteworthy for two things. First, it is the first decision in which that court expressly adopted and applied the doctrine of judicial estoppel. Second, the court found that a nondiscretionary bonus, calculated on a formula based on company profitability, constitutes "wages" for the purposes of Connecticut's unpaid wage statutes,[57] subjecting nonpayment of such a bonus to an award of double damages and legal fees for the employee.[58]

For Connecticut's business litigators and other court-watchers, 2010 was an intriguing year in which numerous important issues were resolved, while other ostensibly settled ones were called into question. The judiciary has invited the business bar to think creatively in challenging seemingly settled principles of law. The bar's response to that challenge will play a major role in charting the course of Connecticut business law in 2011 and beyond.

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[54] *Id.* at 376, 377.

[55] The Supreme Court so held in *Bennett v. Meader,* 208 Conn. 352, 545 A.2d 553 (1988).

[56] 298 Conn. 145, 2 A.3d 873 (2010).

[57] CONN. GEN. STAT. § 31-71a.

[58] CONN. GEN. STAT. § 31-72.