STATE OF VERMONT

SUPERIOR COURT
WINDHAM UNIT

CIVIL DIVISION
DOCKET NO. 219-5-15 Wmcv

FOUNDERS LODGE CONDOMINIUM ASSOCIATION, INC.

Plaintiff/Counterclaim Defendant,

v.

INTRAWEST STRATTON DEVELOPMENT CORPORATION

Defendant/Counterclaim Plaintiff.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff/Counterclaim Defendant, Founders Lodge Condominium Association, Inc. ("Founders"), by and through counsel, Hans G. Huessy, Esq., of Murphy Sullivan Kronk, respectfully submits the following Motion for Summary Judgment.

Introduction

At issue is this case is whether Defendant is obligated to construct certain improvements to the Founders Project, a condominium located in Stratton, Vermont. Vermont law imposes certain requirements on a declarant if it markets condominium units in conjunction with features or amenities that may not be built.

Within Article 4 of Title 27A, *Protection of Purchasers*, § 4-119(a), *Declarant's obligation to complete and restore*, provides that:

> Unless an improvement is labeled "need not be built," the declarant shall complete all improvements depicted on any site plan or other graphic representation, if the site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

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The Uniform Law Comments to § 4-119 provide that the duty subsection (a) imposes on the declarant is a "fundamental obligation." Uniform Law Comment 1 to § 4-119(a).

Section 4-118 of Title 27A, *Labeling of promotional material*, provides that:

> No promotional material may be displayed or delivered to prospective purchasers which describes an improvement which is not in existence unless the description of the improvement in the promotional material is conspicuously labeled or identified either as "must be built" or as "need not be built."

This section "is necessary to assure that purchasers are not deceived with respect to improvements the declarant indicates he intends to make in a common interest community." Uniform Law Comment to § 4-118.

Consistent with Article 4 and the relevant Uniform Law comments, the Superior Court of New Jersey held that:

> Statutes mandating or requiring the delivery of a Public Offering Statement by a developer to a purchaser in connection with the sale of a unit in a subdivision, condominium or planned real estate development are consumer oriented and remedial in nature. These statutes should be construed to carry out their legislative purpose.

Enfield v. FWL, Inc., 256 N.J. Super. 502, 511, 607 A.2d 685, 689 (Ch. Div. 1991) aff'd, 256 N.J. Super. 466, 607 A.2d 666 (App. Div. 1992) (citations omitted).

Plaintiff will prove that Defendant created and distributed to the public promotional materials that depicted an outdoor heated pool (the "Pool") and the second wing or Phase II of the Project (the "Birken Wing"), and that those depictions were not conspicuously labeled "need not be built." Defendant's actions misled potential buyers into believing the Birken Wing and the Pool would be built, and Defendant should be required to do so.

Factual Background

In the Spring of 2005, Defendant, who acted as Declarant, marketed and sold units in Phase I (the "Tyrol Wing") of the Founders Project. *Plaintiff's Statement of Undisputed Material Facts ("SUMF") at ¶ 2.* To market the units, Defendant prepared a bound document

that included marketing materials and legal documents (the "Purchaser Guide"). *SUMF at ¶ 3.* The Purchaser Guide included the Public Offering Statement ("POS") for the Project. *SUMF at ¶ 4.*

In the spring of 2006, Defendant marketed, but did not build, units in the Birken Wing. *SUMF at ¶ 5.* The units were not built because a pre-established pre-sale requirement was not met. *SUMF at ¶ 6.* In September 2006, Defendant wrote prospective buyers of Birken Wing units, informing them that the Birken Wing was on hold, but that further efforts to market the units would be made in the *near future,* as early as the winter of 2006. *SUMF at ¶ 7.* Despite that explicit representation, Defendant never offered the Birken Units for sale again after the Spring of 2006. *SUMF at ¶ 8.*

The Tyrol Wing was constructed and designed as part of a larger structure. The entire foundation and first floor (below ground level) of the Birken Wing was completed, including a large garage area. *SUMF at ¶ 9.* The ground floor of the Birken Wing is physically joined to the Tyrol Wing (it is part of the Tyrol Wing building). The entire project was landscaped and designed with the construction of the Birken Wing in mind. *SUMF at ¶ 10.* For ten years, owners of Tyrol units have looked out their windows at a large cement slab that adjoins their building, rather than the Birken Wing. The building appears incomplete and unfinished, looking very much out of place with the other projects at the resort. *SUMF at ¶ 11-12.*

The cover of the Purchaser Guide shows the Birken Wing fully constructed and does not include any suggestion that it will not be built. *SUMF at ¶ 13.* The Location Map, located at the first tab of the Purchaser Guide (the book is separated by tabs for ease of locating specific items), shows the footprint of the entire project, including the Birken Wing, with no qualifying language. *SUMF at ¶ 14.* The third tab in the Purchaser Guide is a map of the Building and Amenities. The map shows the footprint of the entire project, including the Birken Wing, and

the Pool, with no qualifying language. *SUMF at ¶ 15.* Further into the Purchaser Guide, the list of amenities includes a sauna to be located in the Birken Wing. While this page does include qualifying language, it refers to an artist's rendering. There is no picture or rendering on the page, so the qualifying language does not apply to the listed amenities. *SUMF at ¶ 16.* The Technical Specifications set forth in the Purchaser Guide include a heater sufficient to heat the Pool and melt the snow with radiant heat in the Pool area. This page has no qualifying language. *SUMF at ¶ 17.* A second list of amenities included in the Purchaser Guide includes the "year-round luxury of a heated outdoor swimming pool," with no qualifying language. *SUMF at ¶ 18.*

In the Connecticut Property Report (part of the Purchaser Guide), Sections 21 and 28(d), the Defendant states that the Common Areas will include the Pool. The only qualification provided is that if the project is built in two phases, the Pool will be part of the second phase, but the clear import of the language is that there will be a heated outdoor pool, the only question being whether the Pool will be part of a single building phase or Phase II of a two-phase building project. *SUMF at ¶ 19.*

In Section 4(d) of the POS, a similar statement is made, namely that if the Project is built in two phases the Pool will be part of the second phase. The clear suggestion is that if the Project is built in a single phase, it will include the Pool. *SUMF at ¶ 20.* Exhibit A to the POS is a site map that includes the Birken Wing, without any qualifying language. *SUMF at ¶ 21.* The Founders Declaration, also part of the Purchaser Guide, includes a Pool as part of the definition of General Common Elements. *SUMF at ¶ 22.* Exhibit H to the POS, the Estimated Budget for the project, advises potential buyers that their monthly assessments will be cut nearly in half once the Birken Wing is completed. The projected savings to Tyrol wing owners is $32,567 annually. There is no language included suggesting these savings will not be realized. *SUMF at*

¶ *23*. This very substantial projected savings was clearly a material consideration for potential purchasers.

Defendant also drafted rules for the Association. Those rules prohibited pets in the Pool area, again suggesting there would be a Pool. *SUMF at ¶ 24*. Until a year ago, the Defendant's web site showed the full Project footprint (both wings) and described the Birken Wing as "under construction." *SUMF at ¶ 25*. A promotional pamphlet developed for the Founders project includes a picture of a heated outdoor pool. It is on the same page as a picture of a fireplace. The pamphlet includes language informing a potential buyer that the fireplace may not be an actual depiction, but makes no similar qualification as to the Pool. *SUMF at ¶ 26*. The Defendant produced a Purchaser Guide for the Tyrol Wing. In addition, Defendant produced a Tyrol Workbook ("Workbook"). On page 2 of the Workbook, it lists the Pool as an amenity. *SUMF at ¶ 27*. Defendant produced a site plan and site map, both of which show the Pool and Birken Wing, without any qualifying language. *SUMF at ¶ 28*.

As part of its marketing effort, Defendant created a three-dimensional model of the Founders Project that included the Pool and the Birken Wing. The model was displayed to potential buyers. The model did not include any qualifying language advising buyers that the Birken Wing and/or the Pool might not be built. *SUMF at ¶ 29*.

I. Standard of Review.

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a); see also *State v. Great Ne. Prods., Inc.*, 2008 VT 13, ¶ 5, 183 Vt. 579 (mem.) (citations omitted). "Although the nonmoving party is entitled to the benefit of all reasonable doubts and inferences," an adverse party may not rest on the allegations or denials in its pleadings, but "must set forth specific facts showing that there is a genuine issue for trial."

Greene v. Stevens Gas Serv., 2004 VT 67, ¶ 9, 177 Vt. 90 (citations omitted). "If the nonmoving party fails to establish an essential element of its case on which it has the burden of proof at trial, the moving party is entitled to summary judgment as a matter of law." *Washington v. Pierce*, 2005 VT 125, ¶ 17, 179 Vt. 318 (citation omitted).

II. The Plain Language of 27A V.S.A. §§ 4-118 and 4-119(a) Obligate Defendant to Build the Birken Wing and the Pool.

The plain language of sections 4-118 and 4-119(a) of Title 27A clearly obligate the Defendant to construct the Birken Wing and the Pool. "When interpreting a statute, [the] overriding goal is to effectuate the Legislature's intent. In reaching this goal, we first look at the statute's plain language. If the statute's plain language resolves the conflict without doing violence to the legislative scheme we are bound to follow it." *Dept. of Taxes v. Murphy*, 2005 VT 84, ¶ 5, 178 Vt. 269 (citing *State v. Baron,* 2004 VT 20, ¶ 6, 176 Vt. 314) (internal quotation marks omitted).

Section 4-119(a) provides that "[u]nless an improvement is labeled 'need not be built,' the declarant shall complete all improvements depicted on **any** site plan or other graphic representation, if the site plan or other graphic representation is contained in the public offering statement or in **any** promotional material distributed by or for the declarant." 27A V.S.A. § 4-119(a) (emphasis added). Section 4-118 provides that "**[n]o** promotional material may be displayed or delivered to prospective purchasers which describes an improvement which is not in existence unless the description of the improvement in the promotional material is **conspicuously** labeled or identified either as 'must be built' or as 'need not be built.'" 27A V.S.A. § 4-118 (emphasis added).

As clearly demonstrated, the Defendant (and also the Declarant for this condominium), prepared and made available to potential buyers numerous site plans, graphic representations,

and promotional materials, including a three dimensional model, that showed both the Pool and the Birken Wing fully constructed. Neither the marketing materials nor the model were conspicuously marked "need not be built." Accordingly, per the plain language of the statute, Defendant is obligated to build the Birken Wing and construct the Pool.

This issue was addressed by the Supreme Court of Connecticut in a case very similar to the one before the Court, *Southwick at Milford Condo. Ass'n, Inc. v. 523 Wheelers Farm Rd., Milford, LLC*, 294 Conn. 311, 319, 984 A.2d 676, 681 (2009) (copy attached hereto).[1] In the *Southwick* case, the declarant had failed to mark certain proposed improvements on a site plan as "need not be built" while others were so marked. *Id.* at 678. The trial court ruled that that declarant's failure was of no import because the documents were merely promotional materials and the declarant had reserved the right to withdraw real estate from the project (as is the case in this matter). The trial court reasoned that if the land could be withdrawn, so could the proposed improvements located on that land. *Id.* at 679.

The Connecticut Supreme Court rejected the trial court's reasoning and found that the declarant and, therefore, its successor, was obligated to complete the improvements that were not labeled "need not be built." *Id.* at 680.

> We begin with the relevant language of General Statutes § 47–280(a)[2], which provides that, "[e]xcept for improvements labeled 'NEED NOT BE BUILT,' the declarant *shall* complete all improvements depicted on any site plan or other graphic representation, including any surveys or plans prepared pursuant to section 47–228, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant." (Emphasis added.) We agree with the defendant that, although it is authorized under the declaration and site plan to withdraw land from phase two of the development, § 47–280 clearly and unequivocally obligates it to complete all improvements depicted in the original

[1] The *Southwick* case involved a successor to the declarant ("Defendant") trying to exercise special declarant rights for further building while the owners' association ("Plaintiff") argued that such rights had lapsed and that Defendant had no further obligation to build.

[2] Connecticut's version of 27A V.S.A. § 4-119(a).

> site plan that are not labeled "need not be built." It is well established that the legislature's use of the word "shall" suggests a mandatory command. "As we have often stated, [d]efinitive words, such as must or shall, ordinarily express legislative mandates of a nondirectory nature."

Id. at 681 (citations omitted). The Supreme Court expressly held that the right to withdraw real estate from the project did not undercut the obligation to construct the improvements and to hold otherwise would be to read an exclusion into the statute that does not exist. *Id.*

> Moreover, if the legislature had intended to create any exception to this rule, including one for improvements that are located on land that the developer has reserved the right to remove from the development, we must assume that it would have said so expressly. "[I]t is a principle of statutory construction that a court must construe a statute as written.... Courts may not by construction supply omissions ... or add exceptions merely because it appears that good reasons exist for adding them.... The intent of the legislature, as this court has repeatedly observed, is to be found not in what the legislature meant to say, but in the meaning of what it did say.... It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is a function of the legislature."

Id. at 682 (citations omitted). "Put differently, when, as in the present case, a declarant reserves the right to withdraw land from a condominium development § 47-280(a) limits that right by holding the declarant responsible for building any improvements depicted in the site plan that are not labeled 'need not be built.'" *Id.* at 683.

For all the above reasons, Plaintiff's Motion for Summary Judgment should be granted and Defendant should be ordered to construct the Birken Wing and the Pool.

III. Defendant Failed To Make A Good Faith Effort To Meet The Presale Requirement.

Public offering statements are not contracts but statutorily mandated consumer protection measures. *Ellman v. Spruce Peak Realty, LLC*, No. 195-8-08 Lecv, slip op. at 6–7 (Vt. Super. Ct. June 26, 2009) (Reiss, J.). Failure to comply with the statutory mandate can result in civil penalties. *Id.* Given that a public offering statement is a consumer protection measure, and not a

contract, it should be construed narrowly against the party issuing the statement. Section 1-113 of Title 27A imposes a duty of good faith on every contract or duty governed by the statute, which would include the POS.

Defendant argues that it need not build the Birken Wing or Pool because the Presale Requirement was not met. Defendant made a single attempt to meet the Presale Requirement in the Spring of 2006 and has not made any further attempt to market the properties in the intervening decade. Defendant was obligated to make a good faith effort to meet the Presale Requirement. A single attempt to meet the Presale Requirement followed by nine years of inaction is not a good faith effort. Accordingly, there is no genuine issue of material fact as to whether Defendant made a good faith effort to meet the Presale Requirement and Plaintiff's Motion for Summary Judgment should be granted.

IV. Defendant Violated the Consumer Fraud Act.

The same undisputed facts submitted in support of Plaintiff's Title 27A and breach of contract claims mandate the issuance of summary judgment in Plaintiff's favor on its Consumer Fraud claim. Defendant used marketing materials that implied the Pool and Birken Wing would be built and that the completion of the Birken Wing would save individual Tyrol unit owners $32,567 annually.

"The Consumer Fraud Act makes unlawful '[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.'" *Greene v. Stevens Gas Serv.*, 2004 VT 67, ¶ 15, 177 Vt. 90, (citing 9 V.S.A. § 2453(a)). The requirements of a claim under the Consumer Fraud Act are:

> "(1) there must be a representation, practice, or omission likely to mislead [the] consumer[ ]; (2) the consumer[ ] must be interpreting the message reasonably under the circumstances; and (3) the misleading effects must be 'material,' that is,

likely to affect [the] consumer[']s conduct or decision with regard to a product." *Peabody v. P.J.'s Auto Village, Inc.*, 153 Vt. 55, 57, (citation omitted).

In the instant case, it is undisputed that the Defendant made multiple representations that it would construct both the Birken Wing and the Pool. It is also undisputed that these representations, such as a three-dimensional scale model of the Project, were likely to mislead a consumer. The consumers seeing the model and the promotional materials featuring the Pool and the Birken Wing reasonably believed they would be built as part of the Project. The effects of the misleading statements were material. The projected savings to Tyrol unit owners were very substantial and it would cost the Association as much as a million dollars to build the Pool as shown in the marketing materials. Therefore, Plaintiff is entitled to summary judgment on its consumer fraud claim.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court determine that:

1. Plaintiff is entitled to summary judgment on its Title 27A claim;
2. That Plaintiff is entitled to summary judgment on its breach of the duty of good faith contractual claim; and
3. That Plaintiff is entitled to summary judgment on its consumer fraud claim.

DATED at Burlington, Vermont this 18th day of December, 2015.

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SOUTHWICK AT MILFORD
CONDOMINIUM ASSOCIATION, INC.
v.
523 WHEELERS FARM ROAD, MILFORD, LLC.

No. 18243. | Argued Jan. 13, 2009. | Decided Dec. 22, 2009.

Synopsis

Background: **Condominium** association brought action against developer exercising special declarant rights in **condominium** community, alleging that developer's special declarant rights had lapsed. Parties cross-moved for summary judgment. The Superior Court, Judicial District of Ansonia–Milford, John W. Moran, Judge Trial Referee, 2008 WL 726125, granted summary judgment in association's favor. Developer appealed.

[Holding:] After transferring the appeal from the Appellate Court, the Supreme Court, Palmer, J., held that developer was obligated under statute to build all improvements depicted in phase two of **condominium** site plan that were not designated "**need not be built**".

Reversed and remanded.

West Headnotes (9)

[1] **Appeal and Error**
Extent of Review Dependent on Nature of Decision Appealed from

Review of the trial court's decision to grant a party's motion for summary judgment is plenary. Practice Book 1998, § 17–49.

19 Cases that cite this headnote

[2] **Appeal and Error**
Review Dependent on Whether Questions Are of Law or of Fact

Review of statutory interpretation is plenary.

[3] **Statutes**
Intent

When construing a statute, the Supreme Court's fundamental objective is to ascertain and give effect to the apparent intent of the legislature.

1 Cases that cite this headnote

[4] **Statutes**
Extrinsic Aids to Construction

If, after examining statutory text and considering statute's relationship with other statutes, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

3 Cases that cite this headnote

[5] **Statutes**
In general; factors considered

When a statute is not plain and unambiguous, the Supreme Court looks for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.

3 Cases that cite this headnote

[6] **Common Interest Communities**
Special rights reserved to declarant or developer and successors

Although declaration and site plan for **condominium** allowed developer to withdraw land from phase two of development, statute requiring declarant to complete all improvements except those labeled "**need not be built**" imposed on developer continuing obligation to unit owners to construct gazebo and clubhouse that were not so labeled. C.G.S.A. § 47–280(a).

1 Cases that cite this headnote

[7] **Statutes**
Mandatory or directory statutes

If it is a matter of substance, a statutory provision is mandatory; however, if the legislative provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory, especially when the requirement is stated in affirmative terms unaccompanied by negative words.

1 Cases that cite this headnote

[8] **Statutes**
Absent terms; silence; omissions

Statutes
Exceptions, Limitations, and Conditions

It is a principle of statutory construction that a court must construe a statute as written and may not by construction supply omissions or add exceptions merely because it appears that good reasons exist for adding them.

4 Cases that cite this headnote

[9] **Statutes**
Language and intent, will, purpose, or policy

The intent of the legislature is to be found not in what the legislature meant to say, but in the meaning of what it did say.

1 Cases that cite this headnote

Attorneys and Law Firms

****677** Gerald L. Garlick, with whom were Robert M. Shields, Jr., and, on the brief, Katherine E. Abel, Hartford, for the appellant (defendant).

Ronald J. Barba, for the appellee (plaintiff).

ROGERS, C.J., and NORCOTT, KATZ, PALMER and VERTEFEUILLE, Js.

Opinion

PALMER, J.

***312** The defendant, 523 Wheelers Farm Road, Milford, LLC, a developer exercising special declarant rights in Southwick at Milford Condominium, a common interest community created pursuant to the Common Interest Ownership Act (act), [1] ***313** General Statutes § 47–200 et seq., appeals [2] from the judgment of the trial court rendered in favor of the plaintiff, Southwick at Milford Condominium Association, Inc. The defendant contends, inter alia, ****678** that the trial court incorrectly concluded that the defendant no longer owed any obligation to the condominium unit owners under the terms of the declaration [3] pursuant to which Southwick at Milford Condominium was created and, as a consequence, that its special declarant rights had lapsed. We agree with the defendant and, accordingly, reverse the judgment of the trial court.

The following undisputed facts and procedural history are relevant to our disposition of the defendant's appeal. Southwick at Milford Condominium [4] was created as a common interest community pursuant to the provisions of the act by a June 4, 1999 declaration made by the original declarant, MDA Milford, LLC (MDA). In the declaration, MDA reserved to itself a variety of special declarant rights, including the right to "complete" improvements on the land, to exercise development rights on the land, and to grant and use easements throughout the land. Pursuant to § 7.9 of the declaration, however, the special declarant rights could be exercised only as "long as the Declarant is obligated under any warranty or obligation, owns any Units or any Security Interest on any Units, or for twenty ... ***314** years after recording the Declaration, whichever is sooner."

As part of MDA's development of the **condominium** project, it created a site plan establishing development phase boundaries. This site plan contained two phases. [5] Phase two of the site plan contains many proposed structures, including two clubhouses, a gazebo, a semi-independent living area that is divided into two wings, and an assisted living unit area. All of the structures, except for the gazebo and one of the clubhouses, are marked with the labels "**Need Not Be Built**" and "Development Rights Reserved." In both phase one and phase two of the site plan, there is a notation that provides: "Development Rights Reserved In This Area (To Add Units, Common Elements, Limited Common Elements And To Add

And/Or Withdraw Land)." In phase two, however, unlike in phase one, all of the structures, except for the previously mentioned unmarked gazebo and clubhouse, contain the additional notation of "Development Rights Reserved."

After encountering financial trouble, MDA defaulted on its mortgage with New Haven Savings Bank (bank). In 2001, the bank instituted a foreclosure action against MDA, thereby acquiring title to "all development rights and special declarant rights referenced in [the June 4, 1999 Southwick at Milford Condominium declaration]...." On December 31, 2002, the bank quitclaimed all of its rights in Southwick at Milford Condominium to the defendant, including all special declarant rights.

In August, 2005, the defendant filed an application with the planning and zoning board of the city and town of Milford to commence construction of additional condominium units on the subject property, and the *315 application was approved on **679 September 20, 2005. On April 11, 2006, the plaintiff commenced the present action on behalf of all Southwick at Milford Condominium unit owners seeking, inter alia, temporary and permanent injunctions prohibiting the defendant from entering the subject property and exercising any special declarant rights. The plaintiff also sought a judgment declaring that the defendant's special declarant rights had lapsed under the terms of the declaration because the defendant did not own any units or security interest in any units and no longer was obligated under any warranty or other obligation. The defendant filed a counterclaim seeking, inter alia, a judgment declaring that its special declarant rights had not lapsed.

The parties filed separate motions for summary judgment. Because the defendant stipulated to the fact that it owed the unit owners no warranty obligations and the fact that it owned no units or security interest in any units, the only issue presented by the parties' motions was whether the defendant owed the unit owners some other obligation that would prevent its special declarant rights from lapsing. The defendant claimed that it did owe such an obligation pursuant to General Statutes § 47–280(a),[6] which mandates the construction of any buildings or structures depicted in a site plan or survey that are not labeled " 'NEED NOT BE BUILT' ...." Specifically, the defendant contended that two structures depicted in phase two of the site plan, namely, a gazebo and one of two clubhouses, were not marked with the "need not be built" label, even though many other structures depicted in the site plan were so labeled. The defendant also maintained that, because, *316 under General Statutes § 47–246(e)(2)(A),[7] a successor declarant owes all the obligations that the original declarant owed, it was obligated to construct the gazebo and clubhouse and, therefore, owed an obligation to the unit owners such that its development rights under the declaration had not lapsed.

The trial court rejected the defendant's claim, concluding that, because the terms of the site plan and declaration authorized the declarant or its successor to withdraw the land underlying phase two of the development, then, logically, the defendant never had an obligation to build any of the structures located on that land and, therefore, owed no obligation to the individual unit owners. The court reasoned that "[t]he obligations imposed by § 47–280 are not triggered by the inclusion of a gazebo and clubhouse on the site map per se [because] the defendant had the right to, at any time, withdraw that entire portion of the development." The court further explained that the defendant's interpretation of § 47–280 would yield an unreasonable result because a developer could "extend its development rights to the maximum duration allowed [under the declaration] simply by leaving a minor improvement in a separate development **680 phase unlabeled on the site plan, thus contravening the purpose of the [declaration]." The court also observed that the defendant's interpretation of § 47–280 "fail[ed] to recognize the practical distinction between various portions of a planned development and the varying obligations a developer has with respect to each. [If], for example, the clubhouse and gazebo [had] been contained within [p]hase [one], the defendant's argument would be compelling; likewise, if the defendant had begun construction on *317 the units in [p]hase [two], the plaintiff would be hard-pressed to suggest [that] the defendant had no obligation to build the clubhouse and gazebo once [the] right to withdraw the land ... was no longer available."

In reaching its determination, the trial court also relied on the principle that an ambiguity in a declaration must be construed against the developer who drafted it. The court explained that if the land comprising phase two could be withdrawn from the development, then the structures that were intended to be built on that land also could be withdrawn and, therefore, did not "constitute unequivocal 'obligations' owed to current unit owners...." In accordance with this reasoning, the trial court concluded that the defendant's special declarant rights had lapsed, denied the defendant's motion for summary judgment, granted the plaintiff's motion for summary judgment and rendered judgment thereon for the plaintiff.

On appeal, the defendant contends that the trial court incorrectly determined that the defendant owed no obligation to the unit owners. The defendant first claims that it was obligated under § 47–280(a) to build all of the improvements depicted on the site plan that were not labeled "need not be built." The defendant asserts that the trial court's contrary interpretation reads an exception into § 47–280(a) that does not exist, namely, an exception for improvements that are listed on land that the developer has reserved the right to remove from the development. The defendant also raises a second claim, namely, that the trial court incorrectly concluded that promotional materials are irrelevant to a determination of a declarant's obligations under § 47–280(a), even though that provision specifically provides that the obligation to build improvements includes improvements depicted in "any promotional material distributed by or for the declarant." General Statutes § 47–280(a). We agree with the defendant that it was ***318** obligated under § 47–280(a) to build all improvements depicted in phase two of the site plan that were not designated "need not be built." [8]

[1] We begin our analysis by setting forth the applicable standard of review. "Practice Book § 17–49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.... The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law.... On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court.... Our review of the trial court's ****681** decision to grant [a party's] motion for summary judgment is plenary." (Internal quotation marks omitted.) *Bellemare v. Wachovia Mortgage Corp.*, 284 Conn. 193, 198–99, 931 A.2d 916 (2007).

[2] **[3]** **[4]** **[5]** The defendant's claim also presents a question of statutory interpretation over which our review also is plenary. See, e.g., *Windels v. Environmental Protection Commission,* 284 Conn. 268, 294, 933 A.2d 256 (2007). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply.... In seeking to determine that meaning, ***319** General Statutes § 1–2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.... When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter...." (Internal quotation marks omitted.) Id., at 294–95, 933 A.2d 256.

[6] We begin with the relevant language of General Statutes § 47–280(a), which provides that, "[e]xcept for improvements labeled 'NEED NOT BE BUILT', the declarant *shall* complete all improvements depicted on any site plan or other graphic representation, including any surveys or plans prepared pursuant to section 47–228, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant." (Emphasis added.) We agree with the defendant that, although it is authorized under the declaration and site plan to withdraw land from phase two of the development, § 47–280 clearly and unequivocally obligates it to complete all improvements depicted in the original site plan that are not labeled "need not be built." It is well established that the legislature's use of the word "shall" suggests a mandatory command. "As we have often stated, [d]efinitive words, such as must or shall, ordinarily express legislative mandates of a nondirectory nature." (Internal quotation marks omitted.) *Lostritto v. Community Action Agency of New Haven, Inc.*, 269 Conn. 10, 20, 848 A.2d 418 (2004).

[7] ***320** Nevertheless, we also have recognized "that the word 'shall' is not [necessarily] dispositive on the issue of whether a statute is mandatory." Id., at 22, 848 A.2d 418. Accordingly, we have explained that "[t]he test to be applied in determining whether a statute is mandatory or directory is whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of substance of a matter of convenience.... If it is a matter of substance, the statutory provision is

mandatory. If, however, the legislative provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory, especially [when] the requirement is stated in affirmative terms unaccompanied by negative words." (Internal quotation marks omitted.) Id., at 19, 848 A.2d 418; accord *Weems v. Citigroup, Inc.*, 289 Conn. 769, 790, 961 A.2d 349 (2008). Because the sole purpose of § 47–280(a) is to obligate the **682 declarant to complete all improvements except those labeled "need not be built," it is apparent that the completion requirement is a matter of substance. The fact that that requirement expressly includes improvements depicted in "any surveys or plans prepared pursuant to section 47–228," and, in addition, broadly pertains regardless of "whether ... [the] site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant"; General Statutes § 47–280(a); also supports the conclusion that the declarant's obligation is mandatory.

[8] [9] Moreover, if the legislature had intended to create any exception to this rule, including one for improvements that are located on land that the developer has reserved the right to remove from the development, we must assume that it would have said so expressly. "[I]t is a principle of statutory construction that a court must construe a statute as written.... Courts may not by construction supply omissions ... or add exceptions *321 merely because it appears that good reasons exist for adding them.... The intent of the legislature, as this court has repeatedly observed, is to be found not in what the legislature meant to say, but in the meaning of what it did say.... It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is a function of the legislature." (Internal quotation marks omitted.) *Bloomfield v. United Electrical, Radio & Machine Workers of America, Connecticut Independent Police Union, Local 14,* 285 Conn. 278, 289, 939 A.2d 561 (2008); see also *Farmers Texas County Mutual v. Hertz Corp.*, 282 Conn. 535, 546–47, 923 A.2d 673 (2007) ("declin[ing] to engraft additional requirements onto clear statutory language" [internal quotation marks omitted]); *Laliberte v. United Security, Inc.*, 261 Conn. 181, 186, 801 A.2d 783 (2002) ("[i]t is not the function of the courts to enhance or supplement a statute containing clearly expressed language").

Thus, we conclude that the defendant is obligated under the provisions of § 47–280(a) to construct all improvements depicted on the site plan that are not labeled "need not be built" and that, as a consequence, it continues to owe an obligation to the individual unit owners to construct the gazebo and the clubhouse. We note, furthermore, that the language of the site plan reinforces our conclusion. As we previously indicated, every structure depicted in phase two of the site plan, except for one of the clubhouses and the gazebo, is marked with the labels "Need Not Be Built" and "Development Rights Reserved." At the center of phase two of the site plan is a statement indicating what the reservation of development rights entails: "Development Rights Reserved In This Area (To Add Units, Common Elements, Limited Common Elements And To Add And/Or Withdraw Land)." Thus, consistent with the defendant's obligation under § 47–280(a) to build the clubhouse and the gazebo, both of which were not labeled *322 "need not be built," it appears that the defendant is not free to remove the land on which those two structures were to be built because they are not labeled "development rights reserved." If the original declarant had wished to reserve development rights as to those structures, as it did with the others, we must presume that it would have done so in a consistent manner. Cf. *Levine v. Massey,* 232 Conn. 272, 279, 654 A.2d 737 (1995) (noting that terms cannot be added to contract by interpretation).

We disagree with the plaintiff's contention that *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development,* **683 *LLC,* 273 Conn. 724, 873 A.2d 898 (2005) (*Cantonbury*), compels a different result. In *Cantonbury,* we were required to interpret a declaration in connection with our determination of "what types of obligations satisfy the condition that the declarant be under an obligation" to preserve its special declarant rights. Id., at 737, 873 A.2d 898. Like the declaration in the present case, the declaration in *Cantonbury* provided: "Unless sooner terminated by a recorded instrument executed by the Declarant, any Special Declarant Right may be exercised by the Declarant so long as the Declarant is obligated under any warranty or obligation, owns any units or any Security Interest on any Units, or for [twenty-one] years after recording the Declaration, whichever is sooner." (Internal quotation marks omitted.) Id., at 730, 873 A.2d 898. The plaintiff, an association of condominium owners, argued that only obligations to the individual unit owners qualified as "obligations" under the declaration. Id., at 737, 873 A.2d 898. The defendant developer contended that the term encompassed obligations to third parties, including, "tax, expense and liability obligations associated with its position as the declarant." Id., at 738, 873 A.2d 898. "Because each of

the parties offer [ed] a reasonable interpretation of the term in light of the origin and the purpose of the declaration, we conclude[d] that the *323 contract [was] ambiguous as to what type of obligation the declarant [had to] be under to satisfy the ... limitation on the special declarant rights." Id. We resolved the ambiguity by applying the rule of contract construction pursuant to which ambiguities are construed against the drafter; id., at 738, 742, 873 A.2d 898; and concluded, therefore, that the defendant developer's special declarant rights had lapsed because it no longer owed any obligation to the individual unit owners and did not "satisf[y] any of the other conditions necessary to preserve [its] special declarant rights...." Id., at 742, 873 A.2d 898.

The plaintiff contends that, because the defendant in the present case reserved the right to withdraw the land underlying phase two of the development, its obligation to build the gazebo and one of the clubhouses is equivocal and, therefore, that the site plan is ambiguous. The plaintiff further contends that *Cantonbury* requires this court to construe the ambiguity against the defendant, which would compel this court to conclude that the defendant owes no obligation to the unit owners. We disagree. In the present case, unlike in *Cantonbury,* we are not required to interpret the declaration. Our task, rather, is limited to interpreting § 47–280(a) as it applies to the factual scenario presented or, more specifically, to the site plan and the improvements depicted therein. As we previously explained, because § 47–280(a) imposes a duty on the defendant to complete all improvements on the site plan that are not labeled "**need not be built**," the defendant continues to owe an obligation to the unit owners that is sufficient to warrant the exercise of its special declarant rights. Put differently, when, as in the present case, a declarant reserves the right to withdraw land from a **condominium** development, § 47–280(a) limits that right by holding the declarant responsible for building any improvements depicted in the site plan that are not labeled "**need not be built**."[9]

**684 *324 The judgment is reversed and the case is remanded with direction to deny the plaintiff's motion for summary judgment, to grant the defendant's motion for summary judgment and to render judgment for the defendant.

In this opinion the other justices concurred.

Parallel Citations

984 A.2d 676

Footnotes

1 "[The act] is a comprehensive legislative scheme that governs the creation, organization and management of all forms of common interest communities." *Fruin v. Colonnade One at Old Greenwich Ltd. Partnership,* 237 Conn. 123, 130, 676 A.2d 369 (1996). "[The act] expressly aspires to serve as a 'general act intended as a unified coverage of its subject matter....' " Id., at 131, 676 A.2d 369, quoting General Statutes § 47–208.

2 The defendant appealed to the Appellate Court from the judgment of the trial court, and we transferred the appeal to this court pursuant to General Statutes § 51–199(c) and Practice Book § 65–1.

3 "A declaration is an instrument recorded and executed in the same manner as a deed for the purpose of creating a common interest community." *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development, LLC,* 273 Conn. 724, 726 n. 1, 873 A.2d 898 (2005), citing General Statutes § 47–220. "[T]he declaration operates in the nature of a contract, in that it establishes the parties' rights and obligations...." *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development, LLC,* supra, at 734, 873 A.2d 898.

4 Southwick at Milford Condominium is located in the town and city of Milford.

5 We note that phase one itself was comprised of two distinct phases, labeled "Phase I" and "Phase IA." Neither part of phase one, however, is relevant to this appeal.

6 General Statutes § 47–280(a) provides: "Except for improvements labeled 'NEED NOT BE BUILT', the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any surveys or plans prepared pursuant to section 47–228, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant."

7 General Statutes § 47–246(e) provides in relevant part: "(2) A successor to any special declarant right ... is subject to the obligations and liabilities imposed by [the act] or the declaration: (A) On a declarant which relate to the successor's exercise or nonexercise of special declarant rights...."

8 We therefore need not address the defendant's second claim.

9 The plaintiff also contends that our interpretation of § 47–280(a) leads to an untenable result, namely, that a developer can be obligated to complete all improvements depicted in a site plan in perpetuity, without leeway to change its mind or to withdraw land from a

financially unfeasible project. As we have explained, however, a declarant may avoid such a result simply by labeling improvements on the site plan "need not be built." As a general matter, therefore, when a developer fails to include this statutorily prescribed label on the site plan, obligating a declarant to complete the project as represented on the site plan appears to be precisely what the act was intended to accomplish.

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Citing References (41)

Treatment	Title	Date	Type	Depth	Headnote(s)
—	**1. GHOST NEIGHBORHOODS, 41 Real Est. L.J. 145, 157+** Ghost neighborhoods have sprung up throughout the United States. These are Common Interest Developments (CIDs) that have not been completed. What was once supposed to be a CID with...	2012	Law Review	—	6 A.2d
—	**2. Sutherland Statutes and Statutory Construction s 78:1, Statutes relating to condominiums** Sutherland Statutes and Statutory Construction A condominium unit is a hybrid interest in real estate, entitling an owner both to the exclusive ownership and possession of a unit and an undivided interest as a tenant in common...	2012	Other Secondary Source	—	5 A.2d
Cited by	**3. State v. Lombardo Bros. Mason Contractors, Inc.** 54 A.3d 1005, 1011 , Conn. EDUCATION - Torts. State's tort claims regarding construction of law school's library were not barred by limitation-of-remedies provision.	Nov. 13, 2012	Case	■■	—
Cited by	**4. Rettig v. Town of Woodbridge** 41 A.3d 267, 273 , Conn. LABOR AND EMPLOYMENT - Workers' Compensation. Employee of district animal control was employee of the towns served by district for purposes of workers' compensation law.	Apr. 24, 2012	Case	■■	1 A.2d
Cited by	**5. Stewart v. Town of Watertown** 38 A.3d 72, 78 , Conn. GOVERNMENT - Towns. Town clerk did not have a clear legal right to receive her salary without performing her duties of office.	Feb. 21, 2012	Case	■■	1 A.2d
Cited by	**6. Brooks v. Sweeney** 9 A.3d 347, 357 , Conn. TORTS - Malicious Prosecution. Health district employee had probable cause to seek arrest of property owner for refusing to obey an outstanding order of health district.	Dec. 14, 2010	Case	■■	1 A.2d
Cited by	**7. In re Shanaira C.** 1 A.3d 5, 18+ , Conn. FAMILY LAW - Child Protection. Father's girlfriend, who intervened in neglect proceedings, had a statutory right to participate fully at hearing to revoke child's commitment with...	Aug. 10, 2010	Case	■■	4 5 A.2d
Cited by	**8. Brown and Brown, Inc. v. Blumenthal** 1 A.3d 21, 30 , Conn. ANTITRUST - Conspiracy. Attorney general was barred from disclosing material obtained in antitrust investigation when taking oral testimony.	Aug. 10, 2010	Case	■■	8 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**9. State v. Pentland** 994 A.2d 147, 152 , Conn. CRIMINAL JUSTICE - Sex Offenders. Defendant, convicted of unlawful restraint, was required to register as sex offender pursuant to Megan's Law.	May 18, 2010	Case		7 A.2d
Cited by	**10. Cornelius v. Rosario** 51 A.3d 1144, 1148 , Conn.App. TAXATION - Real Property. City's notice of tax levy on property owner's predecessor in title substantially complied with statutory notice requirements.	Sep. 11, 2012	Case		1 A.2d
Cited by	**11. Billboards Divinity, LLC v. Commissioner of Transp.** 35 A.3d 395, 400 , Conn.App. GOVERNMENT - Highways and Roads. Owner did not have a clear legal right to replace its nonconforming billboard signs.	Feb. 07, 2012	Case		1 A.2d
Cited by	**12. Marinos v. Poirot** 33 A.3d 282, 285 , Conn.App. E-COMMERCE - Crimes. Evidence that plaintiff incurred data recovery costs in trial preparation failed to support claim under computer crime statute.	Dec. 27, 2011	Case		1 A.2d
Cited by	**13. Jason Roberts, Inc. v. Administrator** 15 A.3d 1145, 1150 , Conn.App. LABOR AND EMPLOYMENT - Unemployment Compensation. Employer failed to satisfy all of prongs of ABC test, and consequently, employer's licensed dealer was employee for unemployment...	Apr. 12, 2011	Case		8 9 A.2d
Cited by	**14. Abreu v. Leone** 992 A.2d 331, 338 , Conn.App. FAMILY LAW - Foster Care. Foster parent could not be compelled to answer questions on his observations of foster child in personal injury action arising from child's alleged...	Apr. 13, 2010	Case		—
Cited by	**15. Wilcox v. Schwartz** 990 A.2d 366, 369+ , Conn.App. HEALTH - Malpractice. Medical opinion accompanying malpractice complaint involving laparoscopic gallbladder surgery was sufficiently detailed.	Mar. 16, 2010	Case		4 5 A.2d
Cited by	**16. Ferrigno v. Hamden Volunteer Fire Dept.** 2012 WL 1871273, *2 , Conn.Super. On April 21, 2010, the plaintiffs, Debra Ferrigno, commenced this action by service on the defendants, the Hamden Volunteer Fire Department (fire department), the Hamden Volunteer...	May 02, 2012	Case		1 A.2d
Cited by	**17. Joseph McMahon Corp. v. Pacheco** 2011 WL 2417211, *4 , Conn.Super. A preliminary issue is whether the plaintiff Marilyn Miller has any complaint pending against the defendant. This action was brought in the name of the named plaintiff and Miller ...	May 13, 2011	Case		1 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**18. Horne-Marino v. Denhup** 2011 WL 783601, *2 , Conn.Super. The plaintiffs, Lisa Horne–Marino and Rose Horne, filed a five-count complaint against the defendants, David Denhup, Colleen Denhup, Leonard Addario, JMJ Builders, LLC and Mortgage...	Feb. 09, 2011	Case		1 A.2d
Cited by	**19. State v. Banks** 2011 WL 783605, *4 , Conn.Super. Section 54–102g(a) provides in relevant part: "Any person who has been convicted of # a felony, and has been sentenced on that conviction to the custody of the [c]ommissioner of...	Feb. 08, 2011	Case		3 4 A.2d
Cited by	**20. Thompson v. Rizzitelli** 2010 WL 5491291, *2 , Conn.Super. The plaintiff pro se litigant, Melvin Thompson, commenced the present action against the defendants, Samuel Rizzitelli, Sandy Watson, Dan Sexton, Joe Kubic, Harlow, Adams &...	Dec. 06, 2010	Case		1 A.2d
Cited by	**21. Guerrera v. Signore's Place, LLC** 2010 WL 5188630, *1 , Conn.Super. This case is a suit to recover unpaid rent allegedly due under a written lease of restaurant property to the defendant, Signore's Place, LLC. ("Signore's"). By way of a...	Dec. 02, 2010	Case		1 A.2d
Cited by	**22. Recycling Inc. v. City of Milford** 2010 WL 4884923, *2 , Conn.Super. The plaintiff, Recycling, Inc., a corporation organized under the laws of Connecticut, commenced the present action for declaratory judgment against the defendants, city of...	Nov. 02, 2010	Case		1 A.2d
Cited by	**23. Hodgate v. Ferraro** 3 A.3d 92, 103 , Conn.App. LABOR AND EMPLOYMENT - Workers' Compensation. Under Massachusetts law, workers compensation law was exclusive remedy for employee's death in car accident in Connecticut while...	Aug. 31, 2010	Case		8 A.2d
Cited by	**24. Terracino v. Buzzi** 1 A.3d 115, 120 , Conn.App. COMMERCIAL LAW - Judgment. Findings in action for deficiency judgment against guarantors had collateral estoppel effect.	Jun. 22, 2010	Case		8 A.2d
Cited by	**25. Depretis v. Lynch** 2010 WL 4943088, *1 , Conn.Super. This is an action for defamation and tortious interference with business expectancy. The defendant, Michael Lynch, has filed a motion for summary judgment (# 134) based upon the...	Nov. 18, 2010	Case		1 A.2d
Cited by	**26. Wells Fargo Bank, N.A. v. Toth** 2010 WL 4353805, *1 , Conn.Super. This is the plaintiff's motion for summary judgment (# 120) as to liability in this mortgage foreclosure. For the reasons given, the motion must be denied. On January 7, 2010, the...	Oct. 15, 2010	Case		1 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**27. R.S. Silver Enterprises Co., Inc. v. Pascarella** 2010 WL 3259869, *15 , Conn.Super. This action has been brought by a Connecticut corporation, R.S. Silver Enterprises, Inc., formerly known as R.S. Silver & Co. Inc. ("Plaintiff," or "Silver Co.") against Henry...	Jul. 14, 2010	Case		5 A.2d
Cited by	**28. Pasciucco v. Greenwich Planning and Zoning Bd. of Appeals** 2010 WL 3025842, *4 , Conn.Super. This is an administrative appeal from the approval of a five-lot subdivision located at 487 North Street, Greenwich, Connecticut. The court finds that the plaintiffs, Gerard...	Jul. 02, 2010	Case		6 A.2d
Cited by	**29. Mcqueeney v. Digiorgio Roofing and Siding, Inc.** 2010 WL 2822714, *2 , Conn.Super. The court heard oral argument on May 4, 2010 concerning the motion for summary judgment (# 382) filed by third-party defendant Guardian Home Improvement, LLC (Guardian) as to the...	Jun. 18, 2010	Case		—
Cited by	**30. Wiretek, Inc. v. J.M. Taraerin Enterprises, LLC** 2010 WL 2593271, *1 , Conn.Super. This matter is before the court concerning the defendant's motion for summary judgment (# 147) as to the second and third counts of the plaintiff's amended complaint, dated March...	May 25, 2010	Case		1 A.2d
Cited by	**31. Crow & Sutton Associates, Inc. v. C.R. Klewin Northeast, LLC** 2010 WL 2573954, *3 , Conn.Super. This matter is before the court concerning the defendants C.R. Klewin Northeast, LLC (Klewin) and United States Fidelity and Guaranty Company's (USF & G) motions for summary...	May 21, 2010	Case		1 A.2d
Cited by	**32. Blumberg Associates Worldwide, Inc. v. Brown & Brown of Connecticut, Inc.** 2010 WL 2817222, *3 , Conn.Super. The court heard argument on March 22, 2010 concerning the defendants' motion for summary judgment. After considering the parties' arguments, the court issues this memorandum of...	May 11, 2010	Case		1 A.2d
Cited by	**33. Memorandum of Decision** McQueeney v. Digiorgio Roofing and Siding, Inc. 2010 WL 5607043, *5607043 , Conn.Super. The court heard oral argument on February 17, 2010 concerning the cross motions for summary judgment filed by defendant/third party plaintiff DiGiorgi Roofing And Siding, Inc....	Apr. 12, 2010	Case		1 A.2d
Cited by	**34. Hilb Rogal & Hobbs Co. v. Siech** 2010 WL 1050540, *2 , Conn.Super. LABOR AND EMPLOYMENT - Contracts. Collateral estoppel did not bar consideration of whether agreement was enforceable under Connecticut law when Georgia Court found it was...	Feb. 16, 2010	Case		1 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	**35. 18 Connecticut Practice Series s 3:77, Summary judgment-Generally** Connecticut Practice Series Marut v. M. Ferrara & Sons, 2010 WL 4516875, *2 (Conn. Super. Ct. 2010) ("A motion for summary judgment is designed to eliminate the delay and expense of litigating an issue where...	2013	Other Secondary Source	—	1 A.2d
—	**36. 18 Connecticut Practice Series s 3:88, Summary judgment-Summary judgment in specific cases-Miscellaneous** Connecticut Practice Series C.R. Klewin Northeast, LLC v. Fleming, 284 Conn. 250, 932 A.2d 1053, 1060, 224 Ed. Law Rep. 808 (2007) (reversing grant of summary judgment in favor of contractor who sought writ...	2013	Other Secondary Source	—	6 A.2d
—	**37. 18 Connecticut Practice Series s 3:101, Burden of proof-Generally** Connecticut Practice Series Vestuti v. Miller, 124 Conn. App. 138, 3 A.3d 1046, 1049 (2010) (reversing summary judgment initially granted in favor of defendant police officer in excessive force action; party...	2013	Other Secondary Source	—	1 A.2d
—	**38. 18 Connecticut Practice Series s 3:126, Appellate review** Connecticut Practice Series For general authorities on the bringing of appeal after the grant of a summary judgment motion, see § 3:75, supra. Stewart v. Town of Watertown, 303 Conn. 699, 2012 WL 447154, *4...	2013	Other Secondary Source	—	1 A.2d
—	**39. Real Estate Law Digest, Fourth Edition s 4:12, Liability of developer** Real Estate Law Digest, Fourth Edition Eleventh Circuit. Several purchasers of condominium units sued developer Harborage Cottages—Stuart, LLLP (Harborage), alleging that Harborage violated the Interstate Land Sales...	2012	Other Secondary Source	—	6 A.2d
—	**40. Subdivision Law & Growth Management s 9:10, Sanctions-Lot purchaser remedies** Subdivision Law & Growth Management State statutes and local ordinances typically provide that purchasers of lots illegally subdivided may obtain damages from the subdivider and may obtain rescission of the contract...	2012	Other Secondary Source	—	6 A.2d
Mentioned by	**41. Harbour Pointe, LLC v. Harbour Landing Condominium Ass'n, Inc.** 14 A.3d 284, 288 , Conn. Background: Owner of land that was slated for development as part of expandable condominium, but that was never developed and added to condominium before development rights...	Feb. 22, 2011	Case	[redacted]	—