
APPELLATE COURT
OF THE
STATE OF CONNECTICUT

A.C. 42602

**MERIBEAR PRODUCTIONS, INC. d/b/a MERIDITH BAER and
ASSOCIATES**

v.

JOAN FRANK, ET AL.

**APPENDIX TO THE BRIEF OF DEFENDANTS-APPELLANTS
PART I OF 2**

To BE ARGUED BY:

MICHAEL S. TAYLOR

FILED: NOVEMBER 18, 2019

MICHAEL S. TAYLOR
BRENDON P. LEVESQUE
**HORTON, DOWD, BARTSCHI &
LEVESQUE, P.C.**
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State of Connecticut Judicial Branch Superior Court Case Look-up



Superior Court Case Look-up
Civil/Family
Housing
Small Claims

[☛](#) **FBT-CV12-5029855-S**

MERIBEAR PRODUCTIONS INC DBA v. FRANK, JOAN, E Et Al

Prefix/Suffix: [none] **Case Type:** C90 **File Date:** 10/03/2012 **Return Date:** 10/03/2012

Case Detail Notices History Scheduled Court Dates E-Services Login Screen Section Help ▶
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Case Look-up
By Party Name
By Docket Number
By Attorney/Firm Juris Number
By Property Address

This case is consolidated with one or more cases

Information Updated as of: 11/15/2019

Short Calendar Look-up
By Court Location
By Attorney/Firm Juris Number
Motion to Seal or Close
Calendar Notices

Court Events Look-up
By Date
By Docket Number
By Attorney/Firm Juris Number

Pending Foreclosure Sales [☛](#)

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Display of Case Information

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Comments

Case Information

Case Type: C90 - Contracts - All other
Court Location: BRIDGEPORT JD
List Type: No List Type
Trial List Claim:
Last Action Date: 10/21/2019 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date: 10/14/2014
Disposition: JUDGMENT AFTER COMPLETED TRIAL TO THE COURT FOR THE PLAINTIFF(S)
Judge or Magistrate: HON THEODORE TYMA

Party & Appearance Information

Party	No Fee Party	Category
P-01 MERIBEAR PRODUCTIONS INC Attorney: ☛ URY & MOSKOW LLC (410686) 883 BLACK ROCK TURNPIKE FAIRFIELD, CT 06825	File Date: 10/03/2012	Plaintiff
D-01 JOAN E FRANK Attorney: ☛ CHRISTOPHER CHARLES VAUGH (400641) 160 FAIRFIELD WOODS ROAD SUITE 14 FAIRFIELD, CT 06825 Attorney: ☛ HORTON DOWD BARTSCHI & LEVESQUE PC (038478) 90 GILLETT STREET HARTFORD, CT 06105	File Date: 11/26/2012 File Date: 09/24/2018	Defendant
D-02 GEORGE FRANK Attorney: ☛ CHRISTOPHER CHARLES VAUGH (400641) 160 FAIRFIELD WOODS ROAD SUITE 14 FAIRFIELD, CT 06825 Attorney: ☛ HORTON DOWD BARTSCHI & LEVESQUE PC (038478) 90 GILLETT STREET HARTFORD, CT 06105	File Date: 11/26/2012 File Date: 09/24/2018	Defendant

Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an [☛](#) in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the [Electronic Access to Court Documents Quick Card](#).
- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.*
- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.*
- An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017.*

*Any documents protected by law **A001** order that are Not open to the public cannot be viewed by the public

online And can only be viewed in person at the clerk's office where the file is located by those authorized by law or court order to see them.

Motions / Pleadings / Documents / Case Status				
Entry No	File Date	Filed By	Description	Arguable
	11/26/2012	D	APPEARANCE Appearance	
	03/25/2015	D	APPEARANCE Appearance	
	09/24/2018	D	APPEARANCE Appearance	
100.30	10/03/2012	C	NOTICE OF APPLICATION FOR PREJUDGMENT REMEDY / HEARING (JD-CV-53)	Yes
100.31	10/03/2012	C	DOCUMENT SEALED	Yes
100.32	10/03/2012	C	PROPOSED WRIT SUMMONS AND COMPLAINT	No
100.33	10/03/2012	C	PRE-SERVICE ORDER FOR HEARING AND NOTICE	No
100.34	10/03/2012	C	SUMMONS FOR HEARING	No
100.35	10/03/2012	C	AFFIDAVIT	No
101.00	10/16/2012	P	RETURN OF SERVICE RE: ORDER FOR HEARING AND NOTICE and PJR DOCUMENTS	No
102.00	10/19/2012	P	PROPOSED ORDER AMENDED ORDER FOR PJR	No
103.00	10/19/2012	P	AMENDED WRIT AND SUMMONS AMENDED SUMMONS FOR ATTACHMENT	No
104.00	10/23/2012	P	MOTION FOR DISCLOSURE OF ASSETS RESULT: Off 11/5/2012 HON RICHARD GILARDI	Yes
104.10	11/05/2012	C	ORDER  ORDER FOR MTN#104. RESULT: Off 11/5/2012 HON RICHARD GILARDI	No
105.00	01/08/2013	P	LIST OF EXHIBITS Plaintiff's	No
106.00	01/08/2013	D	MEMORANDUM IN OPPOSITION TO MOTION memo to oppose PJR	No
107.00	01/08/2013	C	ORDER  Order re P.B. 4-7 RESULT: Order 1/8/2013 HON BARBARA BELLIS	No
108.00	01/08/2013	C	ORDER  RESULT: Order 1/8/2013 HON BARBARA BELLIS	No
109.00	01/10/2013	P	APPLICATION Replacement for Entry # 101.31; App. & Order for PJR, Summons for Attachment & redacted Exhibits	No
110.00	01/23/2013	P	COMPLAINT WITH MARSHAL'S RETURN AS SERVED	No
111.00	03/07/2013	P	REQUEST TO AMEND COMPLAINT/AMENDMENT	No
112.00	03/25/2013	P	MOTION FOR DEFAULT-FAILURE TO PLEAD TO RESPOND TO PLAINTIFF'S AMENDED COMPLAINT RESULT: Granted 4/5/2013 BY THE CLERK	No
112.10	04/05/2013	C	ORDER  As to Joanne and George Frank RESULT: Denied 4/5/2013 HON THEODORE TYMA	No
113.00	03/26/2013	D	ANSWER AND SPECIAL DEFENSE ANSWER WITH SPECIAL DEFENSES TO AMENDED COMPLAINT	No
114.00	03/26/2013	P	REPLY TO SPECIAL DEFENSE	No
115.00	03/26/2013	D	ANSWER AND SPECIAL DEFENSE corrected answer to March 7, 2013 Amended Complaint	No
116.00	03/26/2013	P	TRIAL MANAGEMENT REPORT Plaintiff's	No
117.00	03/27/2013	D	TRIAL MANAGEMENT REPORT defendants' trial management report	No
118.00	03/27/2013	P	LIST OF EXHIBITS Plaintiff's	No
119.00	04/25/2013	C	LIST OF EXHIBITS (JD-CL-28/JD-CL-28a)	No
120.00	05/07/2013	P	MOTION TO MODIFY - GENERAL	No

A002

Joint Motion to Modify Prior Order of the Court RESULT: Granted 5/9/2013 HON THEODORE TYMA				
120.10	05/09/2013	C	ORDER	No
RESULT: Granted 5/9/2013 HON THEODORE TYMA				
120.20	05/15/2013	C	ORDER	No
121.00	05/07/2013	P	CASEFLOW REQUEST (JD-CV-116)	No
122.00	06/21/2013	P	BRIEF (POST TRIAL)	No
123.00	06/21/2013	P	AFFIDAVIT IN SUPPORT OF POST JUDGMENT INTEREST	No
124.00	06/21/2013	P	AFFIDAVIT RE: ATTORNEY/COUNSEL FEES	No
125.00	06/21/2013	P	BILL OF COSTS	No
125.10	08/08/2013	C	ORDER	No
GRANTED 8/8/2013 RESULT: Accepted 8/8/2013 BY THE CLERK				
125.79	08/08/2013	C	COSTS TAXED	No
126.00	06/21/2013	D	MEMORANDUM defendants' post trial memorandum	No
127.00	06/24/2013	P	OBJECTION to Post Trial Brief	No
128.00	06/24/2013	P	WITHDRAWAL OF OBJECTION 127.00	No
129.00	06/25/2013	D	MEMORANDUM defendants' transcript references for post trial memorandum	No
130.00	06/25/2013	D	MEMORANDUM defendants' statutory/case references for post trial memorandum	No
131.00	12/18/2013	P	BRIEF PLAINTIFF'S SUPPLEMENTAL POST-TRIAL BRIEF	No
132.00	12/18/2013	D	MEMORANDUM DEFENDANTS' SECOND POST TRIAL MEMORANDUM	No
133.00	12/19/2013	D	MEMORANDUM EXHIBIT LIST TO DEFENDANTS' SECOND MEMORANDUM	No
134.00	12/19/2013	C	TRIAL COMPLETED-DECISION RESERVED RESULT: HON THEODORE TYMA	No
135.00	12/20/2013	D	MOTION - SEE FILE defendants' motion for oral argument	No
136.00	02/18/2014	P	CASEFLOW REQUEST (JD-CV-116) Oral argument on post trial briefs RESULT: Order 2/28/2014 HON THEODORE TYMA	No
136.50	02/28/2014	C	ORDER	No
RESULT: Order 2/28/2014 HON THEODORE TYMA				
137.00	03/04/2014	D	CASEFLOW REQUEST (JD-CV-116) court approval for release and reissuance of pjr	No
138.00	03/04/2014	D	CERTIFICATION OF SERVICE cert. of service for cv-116	No
139.00	03/04/2014	D	AGREEMENT motion/stipulation to modify court order # 120.10 RESULT: Order 3/4/2014 HON BARBARA BELLIS	No
139.10	03/04/2014	C	ORDER	No
RESULT: Order 3/4/2014 HON BARBARA BELLIS				
140.00	03/04/2014	C	STIPULATION	No
141.00	03/04/2014	C	STIPULATION	No
142.00	05/01/2014	D	MEMORANDUM defendant's third post trial memorandum of law	No
143.00	05/01/2014	P	BRIEF (PLAINTIFF'S 2ND SUPPLEMENTAL POST-TRIAL BRIEF)	No
144.00	05/16/2014	D	REQUEST defendants request for judicial notice orf page (5) of court file item #131.00	No
145.00	05/21/2014	P	OBJECTION TO REQUEST FOR JUDICIAL NOTICE	No
146.00	10/14/2014	C	MEMORANDUM OF DECISION	No
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147.00	10/14/2014	C	JUDGMENT AFTER COMPLETED TRIAL TO THE COURT FOR THE	No

A003

PLAINTIFF(S)				
RESULT: HON THEODORE TYMA				
148.00	11/03/2014	D	MOTION TO REARGUE/RECONSIDER defendants motion reargue RESULT: Denied 12/1/2014 HON THEODORE TYMA	No
148.10	12/01/2014	C	ORDER  RESULT: Denied 12/1/2014 HON THEODORE TYMA	No
149.00	11/04/2014	D	MOTION FOR ARTICULATION RESULT: Denied 12/1/2014 HON THEODORE TYMA	No
149.10	12/01/2014	C	ORDER  RESULT: Denied 12/1/2014 HON THEODORE TYMA	No
150.00	11/04/2014	D	MOTION TO REARGUE/RECONSIDER RESULT: Denied 12/1/2014 HON THEODORE TYMA	No
150.10	12/01/2014	C	ORDER  RESULT: Denied 12/1/2014 HON THEODORE TYMA	No
151.00	11/26/2014	P	OBJECTION TO MOTION FOR ARTICULATION AND REARGUMENT	No
152.00	12/18/2014	D	APPEAL TO APPELLATE COURT	No
153.00	02/02/2015	C	APPELLATE COURT MATERIAL	No
154.00	02/02/2015	C	DRAFT JUDGMENT FILE	No
155.00	06/26/2015	C	JUDGMENT FILE	No
156.00	05/10/2016	C	APPELLATE COURT DECISION JUDGMENT/ORDER OF TRIAL COURT AFFIRMED  RESULT: BY THE COURT	No
157.00	05/31/2016	D	PETITION FOR CERTIFICATION	No
158.00	06/21/2016	C	ORDER  on Petition for Certification	No
159.00	07/08/2016	P	APPEAL TO SUPREME COURT ALL FEES PAID	No
160.00	07/14/2016	C	APPELLATE COURT MATERIAL	No
161.00	05/16/2018	C	APPELLATE COURT MATERIAL	No
162.00	05/16/2018	C	APPELLATE COURT MATERIAL	No
163.00	06/01/2018	C	APPELLATE COURT MATERIAL	No
164.00	06/18/2018	P	CASEFLOW REQUEST (JD-CV-116) re status conference	No
165.00	06/15/2018	C	APPELLATE COURT MATERIAL	No
166.00	06/21/2018	C	APPELLATE COURT MATERIAL	No
167.00	09/20/2018	P	AFFIDAVIT RE: ATTORNEY/COUNSEL FEES	No
168.00	10/02/2018	P	MOTION FOR ORDER award of attorneys fees	No
169.00	10/02/2018	P	MOTION FOR ORDER for post-judgment interest	No
170.00	01/29/2019	P	WITHDRAWAL Counts Two and Three of Amended Complaint (Entry 111.00) ONLY & solely as to Defendant George Frank	No
171.00	01/31/2019	C	MEMORANDUM OF DECISION 	No
172.00	02/15/2019	C	APPEAL TO APPELLATE COURT	No
173.00	07/01/2019	C	APPELLATE COURT MATERIAL	No
174.00	07/01/2019	C	APPELLATE COURT MATERIAL Watermark	No
175.00	07/01/2019	C	APPELLATE COURT MATERIAL	No
176.00	10/15/2019	C	OPINION BY APPELLATE COURT Motion to Dismiss Appeal - Denied Last Updated: Additional Description - 10/21/2019	No
176.10	10/15/2019	C	APPELLATE COURT MATERIAL Appellate Court Opinion - Rescript	No

Consolidated Cases			
Docket Number	Case Caption	Disp. Date	Disp. Code
FBT-CV12-5029820S	FRANK,JOAN v. MERIBEAR PRODUCTIONS	03/27/2013	JDGDACT

A004

Scheduled Court Dates as of 11/14/2019				
FBT-CV12-5029855-S - MERIBEAR PRODUCTIONS INC DBA v. FRANK,JOAN,E Et Al				
#	Date	Time	Event Description	Status
No Events Scheduled				

Judicial ADR events may be heard in a court that is different from the court where the case is filed. To check location information about an ADR event, select the **Notices** tab on the top of the case detail page.

Matters that appear on the Short Calendar and Family Support Magistrate Calendar are shown as scheduled court events on this page. The date displayed on this page is the date of the calendar.

All matters on a family support magistrate calendar are presumed ready to go forward.

The status of a Short Calendar matter is not displayed because it is determined by markings made by the parties as required by the calendar notices and the [civil](#) or [family](#) standing orders. Markings made electronically can be viewed by those who have electronic access through the Markings History link on the Civil/Family Menu in E-Services. Markings made by telephone can only be obtained through the clerk's office. If more than one motion is on a single short calendar, the calendar will be listed once on this page. You can see more information on matters appearing on Short Calendars and Family Support Magistrate Calendars by going to the [Civil/Family Case Look-Up](#) page and [Short Calendars By Juris Number](#) or [By Court Location](#).

Periodic changes to terminology that do not affect the status of the case may be made.

This list does not constitute or replace official notice of scheduled court events.

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883 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06426 • TEL: (203) 810-6303 FAX: (203) 810-6399 • JURIS NO. 410868

Pr cv 12 502 9855

RETURN DATE: : SUPERIOR COURT

MERIBEAR PRODUCTIONS, INC. d/b/a :
MERIDITH BAER and ASSOCIATES : J. D. OF FAIRFIELD
: AT BRIDGEPORT

V. :

JOAN E. FRANK and :
GEORGE A. FRANK : OCTOBER 2, 2012

APPLICATION FOR PREJUDGMENT REMEDY

TO THE MARSHAL OF THE COUNTY OF FAIRFIELD OR HIS DEPUTY OR EITHER
CONSTABLE OF THE TOWN OF WESTPORT IN SAID COUNTY:
GREETING:

The undersigned hereby represents:

1. That Meribear Productions, Inc *doing business as* Meridith Bear and Associates is about to commence an action against Joan E. Frank and George A. Frank pursuant to the attached unsigned Writ, Summons, Complaint and Affidavit.
2. That there is probable cause that a judgment in the amount of the prejudgment remedy sought, or in an amount greater than the amount of the prejudgment remedy sought, taking into account any known defenses, counterclaims or setoffs, will be rendered in the matter in favor of the Applicants, and that to secure the judgment, the Applicants seeks an order from this Court directing that the following prejudgment remedy be granted to secure the sum of TWO HUNDRED FIFTY-NINE THOUSAND SEVEN HUNDRED AND FORTY-SIX and 10/100 DOLLARS (\$259,746.10) plus post judgment

URY & MOSKOW, L.L.C.
883 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06426 • TEL: (203) 810-0360 FAX: (203) 810-0380 • JURIS NO. 410880

interest Pursuant to the California Code of Civil Procedure section 685.010(a) and 685.020 (a), et seq, from the date of the underlying Judgment entered to the present at a rate of ten percent (10%) as follows:

A. An attachment of the real estate owned by the Defendant located at 3 Cooper Lane, Westport, Connecticut, further described as follows:

All that certain piece, parcel or tract of land, together with the buildings and improvements thereon, situated in the Town of Westport, County of Fairfield and State of Connecticut, known and designated as Plot No. 2, 1.43 acres, more or less, on a certain map entitled "Survey Prepared for Alice J. Cooper, et als, Scale 1 in. = 50 ft., September 1964, Westport, Connecticut, revised October 6, 1964, certified "Substantially Correct", Charles S. Lyman, Land Surveyor", which map is on file in the Town Clerk's Office in the Town of Westport as Map No. 5911, bounded and described as follows:

NORTHERLY: 238.06 feet, by land now or formerly of Mona C. Whiteside and Leo D. Tyrrell and Frances H. Tyrrell, each in part;

EASTERLY: 239.56 feet, by land now or formerly of Alice J. Cooper;

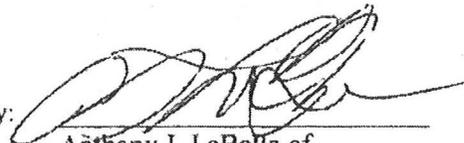
SOUTHERLY: 243.99 feet, by a twenty-five (25) foot private road, Cooper Lane, so-called; and

WESTERLY: 282.02 feet, by other land now or formerly of Alice J. Cooper.

Together with a right-of-way, in common with others, for all lawful purposes in, through, over, upon and across pent road now known as Cooper Lane to highway, Old Hill Road, so-called.

3. In support of this Application, the Plaintiffs submit the Attached Affidavit of Meridith Baer, President of the Plaintiff Corporation, and the unsigned Complaint setting forth the various claims on the Plaintiff's behalf.

By:



Anthony J. LaBella of
Ury & Moskow, .LC

Ury & Moskow, L.L.C.
883 Black Rock Turnpike, Fairfield, CT 06425 ~ Tel: (203) 610-6393 ~ Fax: (203) 610-6399 ~ Juris No. 410686

Fig CIVIL 5029855

RETURN DATE: : SUPERIOR COURT
MERIBEAR PRODUCTIONS, INC. d/b/a :
MERIDITH BAER and ASSOCIATES : J. D. OF FAIRFIELD
: AT BRIDGEPORT
V. :
JOAN E. FRANK and :
GEORGE A. FRANK : OCTOBER 2, 2012

**AFFIDAVIT IN SUPPORT OF
APPLICATION FOR PREJUDGMENT REMEDY**

The undersigned, being duly sworn, being over the age of eighteen (18) and believing in the obligations of an oath, hereby states as follows:

1. I am the Chief Executive Officer of Meribear Productions, Inc., doing business as Meridith Baer & Associates, the Plaintiff in this matter and I make this affidavit from personal knowledge of the facts contained herein.
2. On or about March 13, 2011, Meribear Productions, Inc., doing business as Meridith Baer & Associates (hereinafter, "Meribear"), entered into a written contract (the "Contract"), with the owner of the premises known as 3 Cooper Lane, Westport, Connecticut in order to undertake the design, decorating, delivery, installation and rental of furniture, antiques, fine arts, linens, rugs, lighting, temporary window treatments, potted plants and/or other furnishings at or about the premises for purposes of selling the property (hereinafter the "Project"). A true and accurate copy of the Contract is attached hereto as Exhibit A.

3. In exchange for its work, Meribear was to receive payment pursuant to the terms of the Contract for rendering such services and delivering such goods.
4. The Defendants failed, refused or neglected to make such payment and therefore breached the Contract.
5. The Defendants prevented the Plaintiff from removing the goods delivered pursuant to the Contract from the Premises, thereby breaching the Contract.
6. Pursuant to the terms of the Contract, at Paragraph 19, the parties agreed to the following:

19. General Provision. This Agreement constitutes the entire agreement between the parties. This Agreement and the rights of the parties hereunder shall be determined, governed by and construed in accordance with the internal laws of the State of California without regard to conflicts of laws principles. Any dispute under that Agreement shall only be litigated in any court having its situs within the City of Los Angeles, California, and the parties consent and submit to the jurisdiction of any court located within such venue. Each of the rights and remedies specified herein are cumulative, and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy. Any waiver, permit, consent or approval by MB&A of any breach or default hereunder must be in writing and shall be effective only to the extent set forth in such writing and only as to that specific instance. For the parties' mutual benefit, if any action is commenced to enforce or interpret, or in any way relates to this Agreement, the prevailing party is entitled to its actual attorney's fees and costs. In recognition of the higher costs associated with a jury trial, all parties hereto waive trial by jury. Although the parties prefer that any dispute between them be subject to the foregoing jury waiver, the California Supreme Court has held such contractual jury waivers to be unenforceable. Therefore, in the event that MB&A, in its sole discretion, elects to initiate litigation in the State of California, then until such time as a pre-dispute jury waivers are enforceable, any action initiated by MB&A in California (if it so elects, in its sole discretion), shall be tried through a judicial reference as provided for in the California Code of Civil Procedure Sections 638 through 645.1. NOTE: Since this is a contract for an agreement taking place in the state of Connecticut, Connecticut laws will supersede those of California.

7. On February 15, 2012, the Plaintiff filed suit in the Superior Court of California, County of Los Angeles, claiming, inter alia, breach of contract and conversion ("California Action").
8. Pursuant to the Laws of the State of California, Service of Process was effectuated on the Defendants as described in the Proofs of Service filed with the Court. True and Accurate copies of these filings are attached hereto as Exhibit B.
9. Despite notice, and the opportunity to be heard, The Defendants did not appear or defend the California Action.
10. On August 7, 2012, judgment entered in the California Action in the sum of \$259,746.10: A True and Accurate copy of the Certified Judgment is attached hereto as Exhibit C.
11. Pursuant to the California Code of Civil Procedure section 685.010(a) and 685.020 (a), et seq, post-judgment interest accrues from the date of the Judgment to the present at 10%.
12. Said interest continues to accrue at the per diem rate of \$71.16.
13. I have directed my counsel in this matter to take actions to enforce the Judgment in the State of Connecticut including the filing of the attached unsigned complaint and the filing of this Application.
14. I believe that there is probable cause that a judgment will be rendered in favor of the Plaintiff in the above-captioned matter and make this affidavit in support thereof.
15. I believe that there is probable cause that a judgment in the amount of the prejudgment remedy sought, or in an amount greater than the amount of the prejudgment remedy sought,

Joseph L.A. Felner Jr.
Connecticut State Marshal
Fairfield County
P.O.Box 596
Fairfield, CT 06824

Cell Phone
(203)209-0430

STATE OF CONNECTICUT

ss: Westport

Date: October 9, 2012

COUNTY OF FAIRFIELD

Then and there, by virtue hereof and by special direction of the plaintiffs' attorney, I made service of the within and foregoing original **Summons, Order For Hearing and Notice, Notice Of Application For Prejudgment Remedy/Claim For Hearing To Contest Application Or Claim Exemption, Notice Regarding Hearing, Application For Prejudgment Remedy, Summons For Attachment, Affidavit In Support Of Application For Prejudgment Remedy, Exhibit A, Exhibit B, Exhibit C, Complaint, Amount In Demand, and Exhibit A** by leaving a true and attested copy for **Joan E. Frank** at her usual place of abode 3 Cooper Lane, Westport, CT.

I then made further service of the within and foregoing original by leaving a true and attested copy for **George A Frank** at his usual place of abode 3 Cooper Lane, Westport, CT.

COUNTY OF FAIRFIELD

ss: Fairfield

Date: October 10, 2012

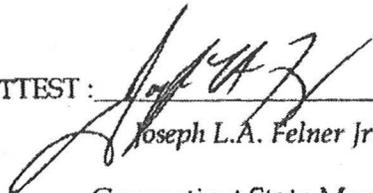
I then made further service of the within and foregoing original by leaving a true and attested copy for **Attorney Christopher C. Vaughn**, at 28 Philemon Street, Fairfield, CT.

The within and foregoing is the original **Summons, Order For Hearing and Notice, Notice Of Application For Prejudgment Remedy/Claim For Hearing To Contest Application Or Claim Exemption, Notice Regarding Hearing, Application For Prejudgment Remedy, Summons For Attachment, Affidavit In Support Of Application For Prejudgment Remedy, Exhibit A, Exhibit B, Exhibit C, Complaint, Amount In Demand, and Exhibit A** with my doings thereon endorsed.

Fees :

Travel	24.81
Service	70.00
Verified Copies	123.00
<u>Endorsement</u>	<u>6.40</u>
Total	\$ 224.21

ATTEST :



Joseph L.A. Felner Jr.

Connecticut State Marshal
Fairfield County

URY & MOJROW, L.L.C.
863 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06426 • TEL: (203) 610-4383 FAX: (203) 610-6389 • JURIS NO. 410888

DOCKET NO.: FBT-CV-12-5029855-S : SUPERIOR COURT
MERIBEAR PRODUCTIONS, INC. d/b/a :
MERIDITH BAER and ASSOCIATES : J. D. OF FAIRFIELD
: AT BRIDGEPORT

V. :
JOAN E. FRANK and :
GEORGE A. FRANK : OCTOBER _____, 2012

AMENDED SUMMONS FOR ATTACHMENT

TO THE MARSHAL OF THE COUNTY OF FAIRFIELD OR HIS DEPUTY WITHIN SAID COUNTY, GREETING:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to attach to the value of **TWO HUNDRED FIFTY-NINE THOUSAND SEVEN HUNDRED AND FORTY-SIX and 10/100 DOLLARS (\$259,746.10)** plus post judgment interest Pursuant to the California Code of Civil Procedure section 685.010(a) and 685.020 (a), et seq, from the date of the underlying Judgment entered to the present at a rate of ten percent (10%), the goods or estate of the Defendants Joan E. Frank and George A. Frank, described as follows:

A. An attachment of the real estate owned by the Defendant located at 3 Cooper Lane, Westport, Connecticut, further described as follows:

All that certain piece, parcel or tract of land, together with the buildings and improvements thereon, situated in the Town of Westport, County of Fairfield and State of Connecticut, known and designated as Plot No. 2, 1.43 acres, more or less, on a certain map entitled "Survey Prepared for Alice J. Cooper, et als, Scale 1 in. = 50 ft., September 1964, Westport, Connecticut, revised October 6, 1964, certified "Substantially Correct", Charles S. Lyman, Land Surveyor", which map is on file in the Town Clerk's Office in the Town of Westport as Map No. 5911, bounded and described as follows:

URY & MOSKOW, LLC
883 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06825 • TEL: (203) 610-6393 FAX: (203) 610-6399 • JURIS NO. 410688

NORTHERLY: 238.06 feet, by land now or formerly of Mona C. Whiteside
and
Leo D. Tyrrell and Frances H. Tyrrell, each in part;
EASTERLY: 239.56 feet, by land now or formerly of Alice J. Cooper;
SOUTHERLY: 243.99 feet, by a twenty-five (25) foot private road, Cooper Lane,
so-called; and
WESTERLY: 282.02 feet, by other land now or formerly of Alice J. Cooper.

Together with a right-of-way, in common with others, for all lawful purposes in, through,
over, upon and across pent road now known as Cooper Lane to highway, Old Hill Road,
so-called.

B. An attachment of the real estate owned by the Defendant located at 6 Winkler Lane,
Westport, Connecticut, further described as follows:

All that certain piece, parcel or tract of land, together with the buildings and
improvements thereon, situated in the Town of Westport, County of Fairfield and State of
Connecticut, being in quantity 1.189 ± Acres and designated as "Lot 3" on that certain
map entitled "Property Survey, Lots 3 and 4, Prepared for The Land Group, Inc.,
Westport, Connecticut", Scale 1 in. = 30 ft., which survey is dated October 2, 2006 and
was prepared by Ryan and Faulds, LLC, Land Surveyors, Wilton, Connecticut, and
which survey was recorded in the Westport Land Records as Map No. 9796 on December
26, 2006. The real property described herein is the same real property depicted as Lot 3
on Town of Westport record Map No. 3816.

THE PLAINTIFF,

By: _____
Anthony J. LaBella
Commissioner of the Superior Court
Ury & Moskow, LLC
883 Black Rock Turnpike
Fairfield, CT 06825
(203)610-6393

URY & MOSKOW, L.L.C.
883 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06425 • TEL: (203) 610-6393 FAX: (203) 610-6399 • JURIS NO. 410886

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, postage prepaid, this 19th day of October 2012, to the following:

Joan E. Frank
3 Cooper Lane
Westport, CT 06880

George A. Frank
3 Cooper Lane
Westport, CT 06889

Courtesy Copy:
Christopher C. Vaugh, Esq.
28 Philemon Street
Fairfield, CT 06825

/s/ 418113
Anthony J. LaBella
Commissioner of the Superior Court

LURY & MOSKOW, L.L.C.
883 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06825 • TEL: (203) 810-6383 FAX: (203) 610-0388 • JURIS NO. 410698

DOCKET NO.: FBT-CV-12-5029855-S : SUPERIOR COURT

MERIBEAR PRODUCTIONS, INC. d/b/a :
MERIDITH BAER and ASSOCIATES : J. D. OF FAIRFIELD
: AT BRIDGEPORT

V. :

JOAN E. FRANK and :
GEORGE A. FRANK : OCTOBER _____, 2012

AMENDED
ORDER FOR PREJUDGMENT REMEDY

WHEREAS, the Plaintiff in the above entitled action has made application for a prejudgment remedy to attach the goods or estate of the Defendant, and

WHEREAS, after due hearing at which the Plaintiff and Defendant appeared and were fully heard, it is found that there is probable cause that a judgment in the amount of the prejudgment remedy sought or in an amount greater than the prejudgment remedy sought taking into account any known defenses, counterclaims or set-offs will be rendered in this matter in favor of the Applicant, or

WHEREAS, after due hearing at which the Plaintiff appeared and was fully heard and the Defendant made default of appearance, it is found that there is probable cause that a judgment in the amount of the prejudgment remedy sought or in an amount greater than the prejudgment remedy sought taking into account any known defenses, counterclaims or set-offs will be rendered in this matter in favor of the Applicant;

NOW, THEREFORE, it is hereby ordered that the Plaintiff may attach the real property and/or personal property of the Defendants, Joan E. Frank and George A. Frank, to the total value of **TWO HUNDRED FIFTY-NINE THOUSAND SEVEN HUNDRED AND FORTY-SIX and 10/100 DOLLARS (\$259,746.10)** plus post judgment interest Pursuant to the California Code of Civil Procedure section 685.010(a) and 685.020 (a), et seq, from the date of the underlying Judgment entered to the present at a rate of ten percent (10%). Such real and personal property is more particularly described as follows:

A. An attachment of the real estate owned by the Defendant located at 3 Cooper Lane, Westport, Connecticut, further described as follows:

All that certain piece, parcel or tract of land, together with the buildings and improvements thereon, situated in the Town of Westport, County of Fairfield and State of Connecticut, known and designated as Plot No. 2, 1.43 acres, more or less, on a certain map entitled "Survey Prepared for Alice J. Cooper, et als, Scale 1 in. = 50 ft., September 1964, Westport, Connecticut, revised October 6, 1964, certified "Substantially Correct", Charles S. Lyman, Land Surveyor", which map is on file in the Town Clerk's Office in the Town of Westport as Map No. 5911, bounded and described as follows:

NORTHERLY: 238.06 feet, by land now or formerly of Mona C. Whiteside and Leo D. Tyrrell and Frances H. Tyrrell, each in part;

EASTERLY: 239.56 feet, by land now or formerly of Alice J. Cooper;

SOUTHERLY: 243.99 feet, by a twenty-five (25) foot private road, Cooper Lane, so-called; and

WESTERLY: 282.02 feet, by other land now or formerly of Alice J. Cooper.

Together with a right-of-way, in common with others, for all lawful purposes in, through,

over, upon and across pent road now known as Cooper Lane to highway, Old Hill Road, so-called.

B. An attachment of the real estate owned by the Defendant located at 6 Winkler Lane, Westport, Connecticut, further described as follows:

All that certain piece, parcel or tract of land, together with the buildings and improvements thereon, situated in the Town of Westport, County of Fairfield and State of Connecticut, being in quantity 1.189 ± Acres and designated as "Lot 3" on that certain map entitled "Property Survey, Lots 3 and 4, Prepared for The Land Group, Inc., Westport, Connecticut", Scale 1 in. = 30 ft., which survey is dated October 2, 2006 and was prepared by Ryan and Faulds, LLC, Land Surveyors, Wilton, Connecticut, and which survey was recorded in the Westport Land Records as Map No. 9796 on December 26, 2006. The real property described herein is the same real property depicted as Lot 3 on Town of Westport record Map No. 3816.

BY THE COURT,

Judge/Clerk

Date

URY & MOSKOWI, L.L.C.
883 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06426 • TEL: (203) 810-8383 FAX: (203) 810-8388 • JURIS NO. 410688

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, postage prepaid, this 19th day of October 2012, to the following:

Joan E. Frank
3 Cooper Lane
Westport, CT 06880

George A. Frank
3 Cooper Lane
Westport, CT 06889

Courtesy Copy:
Christopher C. Vaugh, Esq.
28 Philemon Street
Fairfield, CT 06825

/s/ 418113

Anthony J. LaBella
Commissioner of the Superior Court

URY & MOKROW, L.L.C.
983 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06426 • TEL: (203) 810-6393 FAX: (203) 810-6398 • JURIS NO. 410688

DOCKET NO.: FBT-CV-12-5029855-S : SUPERIOR COURT

MERIBEAR PRODUCTIONS, INC. d/b/a
MERIDITH BAER and ASSOCIATES : J. D. OF FAIRFIELD
: AT BRIDGEPORT

V. :

JOAN E. FRANK and
GEORGE A. FRANK : MARCH 7, 2013

AMENDED COMPLAINT

FIRST COUNT (ACTION UPON JUDGMENT)

1. The Plaintiff, Meribear Productions, Inc. doing business as Meridith Baer & Associates ("Meribear" or the "Plaintiff") is a California Corporation with its principal place of business in Los Angeles, CA.

2. The Defendant, Joan E. Frank, is an individual with a principal residence at 3 Cooper Lane, Westport, Connecticut.

3. The Defendant, George A. Frank, is an individual with a principal residence at 3 Cooper Lane, Westport, Connecticut.

4. On August 7, 2012 a Default Judgment (the "Judgment") was entered in the California Superior Court, County of Los Angeles against the above named defendants ("Defendants"), in favor of Meribear in the amount of \$259,746.10 (An original certified copy of the Judgment is attached hereto as Exhibit "A".)

5. The foregoing Judgment remains wholly unsatisfied.

6. The Plaintiff claims damages for the amount of the Judgment.

7. The Plaintiff claims interest, as it continues to accrue, from the date said Judgment entered, through the present, at the rate of ten percent per annum, pursuant to the California Code of Civil Procedure section 685.010(a) and 685.020 (a), *et seq.*

SECOND COUNT (BREACH OF CONTRACT)

1.-3. Paragraphs 1-3 of First Count are restated and realleged as Paragraphs 1-3 of this the Second Count.

4. On or about March 13, 2011, Meribear Productions, Inc., doing business as Meridith Baer & Associates (hereinafter, "Meribear"), entered into a written contract (the "Contract"), with the owner of the premises known as 3 Cooper Lane, Westport, Connecticut in order to undertake the design, decorating, delivery, installation and rental of furniture, antiques, fine arts, linens, rugs, lighting, temporary window treatments, potted plants and/or other furnishings at or about the premises for purposes of selling the property (hereinafter the "Project"). A true and accurate copy of the Contract is attached hereto as Exhibit A.

5. The Defendant, George A. Frank, personally guaranteed payments to the Plaintiff pursuant to the Contract here at issue.

6. In exchange for its work, Meribear was to receive payment pursuant to the terms of the Contract for rendering such services and delivering such goods.

7. The Defendants prevented the Plaintiff from removing the goods delivered pursuant to the Contract from the Premises, thereby breaching the Contract.

8. The Defendants failed, refused or neglected to make such payment and therefore breached the Contract.

9. The Plaintiff claims damages as a result of the breach of the contract by the Defendants

THIRD COUNT (QUANTUM MERUIT)

1.-3. Paragraphs 1-3 of Second Count are restated and realleged as Paragraphs 1-3 of this the Third Count.

4. On or about March 13, 2011, Meribear Productions, Inc., doing business as Meridith Baer & Associates (hereinafter, "Meribear"), entered into a contract (the "Contract"), with the owner of the premises known as 3 Cooper Lane, Westport, Connecticut in order to undertake the design, decorating, delivery, installation and rental of furniture, antiques, fine arts, linens, rugs, lighting, temporary window treatments, potted plants and/or other furnishings at or about the premises for purposes of selling the property (hereinafter the "Project").

5. In exchange for its work, Meribear was to receive payment for rendering such services and delivering such goods.

6. The Defendant, George A. Frank, personally guaranteed payments due to the Plaintiff pursuant to the agreement of the parties.

7. The Defendants prevented the Plaintiff from removing the goods delivered pursuant to the Contract from the Premises, thereby breaching the Contract.

8. The Defendants failed, refused or neglected to make pay the reasonable value of the services and goods provided by the Plaintiff and this rendered an injustice against the Plaintiffs.

9. The Plaintiff claims damages as a result of the Defendants' conduct and omissions as aforesaid.

###

WHEREFORE, the Plaintiff claims:

1. Monetary Damages;
2. Attorney's Fees and Costs;
3. Post Judgment Interest pursuant to California Code of Civil Procedure section 685.010(a) and 685.020 (a), *et seq*; and
4. Such other and further relief as the Court deems appropriate.

THE PLAINTIFF,
MERIBEAR PRODUCTIONS, INC.
D/B/A MERIDITH BAER & ASSOCIATES

By: /s/ 418113
Anthony J. LaBella, Esq. of
Ury & Moskow, LLC
883 Black Rock Turnpike
Fairfield, CT 06825
Juris # 410686/ (203) 610-6393

URY & MOSKOW, L.L.C.
883 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06826 • TEL: (203) 610-6393 FAX: (203) 610-6399 • JURIS NO. 410686

DOCKET NO.: FBT-CV-12-5029855-S : SUPERIOR COURT

MERIBEAR PRODUCTIONS, INC. d/b/a :
MERIDITH BAER and ASSOCIATES : J. D. OF FAIRFIELD
: AT BRIDGEPORT

V. :

JOAN E. FRANK and :
GEORGE A. FRANK : MARCH 7, 2013

AMOUNT IN DEMAND

The amount, legal interest or property in demand in this action more than \$14,999.00, exclusive of interest, costs and attorneys' fees.

THE PLAINTIFF,
MERIBEAR PRODUCTIONS, INC.
D/B/A MERIDITH BAER & ASSOCIATES

BY: _____
Anthony J. LaBella, Esq. of
Ury & Moskow, LLC
883 Black Rock Turnpike
Fairfield, CT 06825
Juris # 410686/ (203) 610-6393

CERTIFICATION

This is to certify that a copy of the foregoing has been electronically transmitted and/or sent via First Class Mail, postage prepaid, this 7th day of March 2013, to the following:

Christopher C. Vaugh, Esq.
28 Philemon Street
Fairfield, CT 06825
ccvaugh@gmail.com

/s/ 418113

Anthony J. LaBella
Commissioner of the Superior Court

URY & MOSKOW, L.L.C.
883 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06826 • TEL: (203) 810-0393 FAX: (203) 810-0288 • JURIS NO. 410888

D.N. FBT-CV-12-5029855-S
MERIBEAR PRODUCTIONS, INC.
D/B/A MEREDITH BAER & ASSOC.

SUPERIOR COURT

VS.

JUDICIAL DISTRICT OF
FAIRFIELD

JOAN FRANK, ET AL

AT BRIDGEPORT

MARCH 26, 2013

DEFENDANTS' ANSWER WITH SPECIAL DEFENSES TO MARCH 7, 2013
AMENDED COMPLAINT

FIRST COUNT:

A). The defendants admit paragraphs (1), (2), (3), (5), (6), and (7) of the First Count of the Amended Complaint.

B). The defendants leave plaintiff to its proof as to paragraph (5) of the First Count of the Amended Complaint.

SECOND COUNT:

A). The defendants incorporate the answers to paragraphs (1), (2), (3) of the First Count as the answers to paragraphs (1), (2), (3) of the Second Count of the Amended complaint.

B). The defendants admit paragraphs (4), (6) of the Second Count of the Amended Complaint.

C). The defendants deny paragraphs (5), (7), (8) of the Second Count of the Amended Complaint.

D). The defendants leave plaintiff to its proof as to paragraph (9) of the Second Count of the Amended Complaint.

Third Count:

A). The defendants incorporate the answers to paragraphs (1), (2), (3) of the Second Count as the answers to paragraphs (1), (2), (3) of the Third Count of the Amended Complaint.

B). The defendants admit paragraphs (4), (5), of the Third Count of the Amended Complaint.

C). The defendants deny paragraphs (6), (7), (8), (9) of the Third Count of the Amended Complaint.

SPECIAL DEFENSES:

FIRST COUNT:

[FIRST]:

1). The Default Judgment is void as to both defendants because the California Court lacked personal jurisdiction over the defendants. The lack of personal jurisdiction is attributable to insufficient and improper service of the California summons and complaint upon the defendants.

[SECOND]:

1). The Default Judgment is void as to both defendants because the entry of the Default Judgment deprived the defendants of the protection of the due process clause of the Federal Constitution and the Constitution of The State of Connecticut in one or more of the following respects:

a). The California Default Judgment did not apply Connecticut Law as was specified in the Contract.

b). The California Default Judgment was premised on a Contract that incorporated a choice of law and a choice of forum provision that were unenforceable because of non-compliance with Title 42a, Section 42a-2A-106 of the Connecticut General Statutes. The underlying Contract was a consumer lease within the purview of Chapter 42a, and the referenced choice of law and choice of forum violated section 42a-2A-106.

c). The California Default Judgment was premised on a Contract that was unenforceable because of non-compliance with the Connecticut Home Solicitation and Sales Act, [Chapter 740 of the General Statutes]. The Contract was a Home Solicitation Sale as defined in Chapter 740, and the Contract failed to comply with Connecticut General Statutes Sections 42-135a(1), (2), (3), (4), (5).

d). The California Default Judgment was premised on a Contract that was unenforceable because of non-compliance with the Chapter 420a of the Connecticut General Statutes. The plaintiff was a 'Second Hand Dealer' as provided at Section 21a-231(17); plaintiff's transaction with the defendants was subject to Chapter 420a of the

General Statutes, and plaintiff failed to obtain the license required by Connecticut General Statutes Section 21a-234.

[THIRD]:

1). The California Default Judgment is voidable as to both defendants because it is contrary to the laws and public policy considerations of the State of Connecticut in one or more of the following respects.

a). The Default Judgment did not apply Connecticut Law as was specified in The Contract.

b). The Default Judgment affirmed the enforceability and validity of The Contract notwithstanding non-compliance with Title 42a, Section 42a-2A-106 of the Connecticut General Statutes.

c). The Default Judgment affirmed the enforceability and validity of The Contract notwithstanding non-compliance with Chapter 740, Sections 42-135a(1), (2), (3), (4), (5) of The Connecticut General Statutes.

d). The Default Judgment affirmed the enforceability and validity of The Contract notwithstanding non-compliance with Chapter 420a, Section 21a-234 of the Connecticut General Statutes.

e). The Default Judgment affirmed the enforceability and validity of The Contract notwithstanding non-compliance with Chapter 601, Section 33-920 of the Connecticut General Statutes. The plaintiff, a foreign corporation, did not have authority to transact business in the State of Connecticut until December 23, 2011. The Contract was executed and performed prior to that date.

[FOURTH]:

a). The defendant, George A. Frank, is not a party to The Contract. He did not agree or consent to the choice of law and choice of forum provisions of The Contract, and as such the California Default Judgment is void as to him for lack of personal jurisdiction. He had no contact with the State of California in relation to the Contract and/or the transaction which is the basis of the Contract, and the Contract and underlying transaction bear no reasonable relation to the State of California.

b). The defendant, George A. Frank, is not a party to The Contract. He did not agree or consent to the choice of law and choice of forum provisions of the Contract,

and as such the California Default Judgment is void as to him because the entry of the same deprived him of the protection of protection of the Due Process clause of the Federal Constitution and the Constitution of The State of Connecticut.

SECOND COUNT:

[FIRST]:

a). The Contract is unenforceable because of non-compliance with the Connecticut Home Solicitation and Sales Act, [Chapter 740 of the General Statutes]. The Contract was a Home Solicitation Sale as defined in Chapter 740, and the Contract failed to comply with Connecticut General Statutes Sections 42-135a(1), (2), (3), (4), (5).

b). The plaintiff failed to mitigate any losses that it may have suffered and it's conduct and actions violated the implied covenant of good faith and fair dealing.

The Defendants:

BY: _____
Christopher C. Vaugh. Esq.
28 Philemon Street
Fairfield, CT 06825
Tel. (203) 515-7626
Juris No. 400641

CERTIFICATION

A copy of this Answer was mailed, faxed and e-mailed to Ury & Moskow, L.L.C. on March 26, 2013 as follows:

Ury & Moskow, LLC
Anthony LaBella, Esq.
883 Black Rock Turnpike
Fairfield, CT. 06825
Fax: 203-610-6399
E-mail: Anthony@urymoskow.com

Christopher C. Vaugh

URY & MOSKOW, LLC
883 BLACK ROCK TURNPIKE, FAIRFIELD, CT 06426 • TEL: (203) 810-6990 FAX: (203) 810-4366 • JURIS NO. 410888

DOCKET NO.: FBT-CV-12-5029855-S : SUPERIOR COURT

MERIBEAR PRODUCTIONS, INC. d/b/a
MERIDITH BAER and ASSOCIATES : J. D. OF FAIRFIELD
: AT BRIDGEPORT

V. :

JOAN E. FRANK and
GEORGE A. FRANK : MARCH 26, 2013

PLAINTIFF'S REPLY TO DEFENDANTS' SPECIAL DEFENSES

The Plaintiff denies each and every allegation contained in the Defendants' Special Defenses.

THE PLAINTIFF,
MERIBEAR PRODUCTIONS, INC.
D/B/A MERIDITH BAER & ASSOCIATES

By: /s/ 418113
Anthony J. LaBella, Esq. of
Ury & Moskow, LLC

CERTIFICATION

This is to certify that a copy of the foregoing has been electronically transmitted and/or sent via First Class Mail, postage prepaid, this 26th day of March 2013, to the following:

Christopher C. Vaugh, Esq.
28 Philemon Street
Fairfield, CT 06825
ccvaugh@gmail.com

 /s/ 418113
Anthony J. LaBella
Commissioner of the Superior Court

D.N. FBT-CV-12-5029855-S
MERIBEAR PRODUCTIONS, INC.
D/B/A MEREDITH BAER & ASSOC.

SUPERIOR COURT

VS.

JUDICIAL DISTRICT OF
FAIRFIELD

JOAN FRANK, ET AL

AT BRIDGEPORT
MARCH 26, 2013

DEFENDANTS' CORRECTED ANSWER WITH SPECIAL DEFENSES TO MARCH
7, 2013 AMENDED COMPLAINT

FIRST COUNT:

A). The defendants admit paragraphs (1), (2), (3), (5), (6), and (7) of the First Count of the Amended Complaint.

B). The defendants leave plaintiff to its proof as to paragraph (4) of the First Count of the Amended Complaint.

SECOND COUNT:

A). The defendants incorporate the answers to paragraphs (1), (2), (3) of the First Count as the answers to paragraphs (1), (2), (3) of the Second Count of the Amended complaint.

B). The defendants admit paragraphs (4), (6) of the Second Count of the Amended Complaint.

C). The defendants deny paragraphs (5), (7), (8) of the Second Count of the Amended Complaint.

D). The defendants leave plaintiff to its proof as to paragraph (9) of the Second Count of the Amended Complaint.

Third Count:

A). The defendants incorporate the answers to paragraphs (1), (2), (3) of the Second Count as the answers to paragraphs (1), (2), (3) of the Third Count of the Amended Complaint.

B). The defendants admit paragraphs (4), (5), of the Third Count of the Amended Complaint.

C). The defendants deny paragraphs (6), (7), (8), (9) of the Third Count of the Amended Complaint.

SPECIAL DEFENSES:

FIRST COUNT:

[FIRST]:

1). The Default Judgment is void as to both defendants because the California Court lacked personal jurisdiction over the defendants. The lack of personal jurisdiction is attributable to insufficient and improper service of the California summons and complaint upon the defendants.

[SECOND]:

1). The Default Judgment is void as to both defendants because the entry of the Default Judgment deprived the defendants of the protection of the due process clause of the Federal Constitution and the Constitution of The State of Connecticut in one or more of the following respects:

a). The California Default Judgment did not apply Connecticut Law as was specified in the Contract.

b). The California Default Judgment was premised on a Contract that incorporated a choice of law and a choice of forum provision that were unenforceable because of non-compliance with Title 42a, Section 42a-2A-106 of the Connecticut General Statutes. The underlying Contract was a consumer lease within the purview of Chapter 42a, and the referenced choice of law and choice of forum violated section 42a-2A-106.

c). The California Default Judgment was premised on a Contract that was unenforceable because of non-compliance with the Connecticut Home Solicitation and Sales Act, [Chapter 740 of the General Statutes]. The Contract was a Home Solicitation Sale as defined in Chapter 740, and the Contract failed to comply with Connecticut General Statutes Sections 42-135a(1), (2), (3), (4), (5).

d). The California Default Judgment was premised on a Contract that was unenforceable because of non-compliance with the Chapter 420a of the Connecticut General Statutes. The plaintiff was a "Second Hand Dealer" as provided at Section 21a-231(17); plaintiff's transaction with the defendants was subject to Chapter 420a of the

General Statutes, and plaintiff failed to obtain the license required by Connecticut General Statutes Section 21a-234.

[THIRD]:

1). The California Default Judgment is voidable as to both defendants because it is contrary to the laws and public policy considerations of the State of Connecticut in one or more of the following respects.

a). The Default Judgment did not apply Connecticut Law as was specified in The Contract.

b). The Default Judgment affirmed the enforceability and validity of The Contract notwithstanding non-compliance with Title 42a, Section 42a-2A-106 of the Connecticut General Statutes.

c). The Default Judgment affirmed the enforceability and validity of The Contract notwithstanding non-compliance with Chapter 740, Sections 42-135a(1), (2), (3), (4), (5) of The Connecticut General Statutes.

d). The Default Judgment affirmed the enforceability and validity of The Contract notwithstanding non-compliance with Chapter 420a, Section 21a-234 of the Connecticut General Statutes.

e). The Default Judgment affirmed the enforceability and validity of The Contract notwithstanding non-compliance with Chapter 601, Section 33-920 of the Connecticut General Statutes. The plaintiff, a foreign corporation, did not have authority to transact business in the State of Connecticut until December 23, 2011. The Contract was executed and performed prior to that date.

[FOURTH]:

a). The defendant, George A. Frank, is not a party to The Contract. He did not agree or consent to the choice of law and choice of forum provisions of The Contract, and as such the California Default Judgment is void as to him for lack of personal jurisdiction. He had no contact with the State of California in relation to the Contract and/or the transaction which is the basis of the Contract, and the Contract and underlying transaction bear no reasonable relation to the State of California.

b). The defendant, George A. Frank, is not a party to The Contract. He did not agree or consent to the choice of law and choice of forum provisions of the Contract,

and as such the California Default Judgment is void as to him because the entry of the same deprived him of the protection of protection of the Due Process clause of the Federal Constitution and the Constitution of The State of Connecticut.

SECOND COUNT:

[FIRST]:

a). The Contract is unenforceable because of non-compliance with the Connecticut Home Solicitation and Sales Act, [Chapter 740 of the General Statutes]. The Contract was a Home Solicitation Sale as defined in Chapter 740, and the Contract failed to comply with Connecticut General Statutes Sections 42-135a(1), (2), (3), (4), (5).

b). The plaintiff failed to mitigate any losses that it may have suffered and it's conduct and actions violated the implied covenant of good faith and fair dealing.

The Defendants:

BY: _____
Christopher C. Vaugh, Esq.
28 Philemon Street
Fairfield, CT 06825
Tel. (203) 515-7626
Juris No. 400641

CERTIFICATION

A copy of this Corrected Answer was e-mailed to Ury & Moskow, L.L.C. on March 26, 2013 as follows:

Ury & Moskow, LLC
Anthony LaBella, Esq.
883 Black Rock Turnpike
Fairfield, CT. 06825
Fax: 203-610-6399
E-mail: Anthony@urymoskow.com

Christopher C. Vaugh

D.N. FBT-CV-12-5029855-S
MERIBEAR PRODUCTIONS, INC.
D/B/A MEREDITH BAER & ASSOC.

SUPERIOR COURT

VS.

JUDICIAL DISTRICT OF
FAIRFIELD

JOAN FRANK, ET AL

AT BRIDGEPORT

FEBRUARY 19, 2014

DEFENDANTS' MOTION TO MODIFY COURT ORDER, (#120.10) AND
STIPULATION TO MODIFICATION

The defendants respectfully move this Court, (Tyma, J.), to Modify Court Order, (120.10), pursuant to the stipulation contained herein.

The defendants represent as follows:

1). On May 7, 2013, a joint motion to modify and a stipulation were filed whereby a prejudgment attachment in the amount of \$259, 764.10, together with post judgment interest from the date of judgment at the rate of 10% pursuant to California Code of Civil Procedure Secs. 685.010(a), 685.02(a) et seq., was entered against the defendant Joan Frank's real property located at 3 Cooper Lane, Westport, Connecticut. That matter is reflected as Court Order #120.10. The defendants continue to dispute and deny the applicability of California substantive and procedural law, and this stipulation is not a waiver of those claims and defenses

2). The 3 Cooper Lane real estate is under contract of sale with an anticipated closing date of March 10, 2014. The attachment is an impediment to the closing of title.

3). The parties stipulate and agree that the real estate attachment against 3 Cooper Lane, Westport, Connecticut may be released, and said attachment may enter against the real property located at 112 Georgetown Road, Weston, Connecticut. ["The Premises"]. Title to the Premises is in the name of both defendants.

4). The defendants warrant and represent that the Town of Weston appraised value of The Premises is \$434,000.00, assessed value is \$303,800.00 and the outstanding mortgage principal against the real property is \$40,507.00. The mortgage is current as are all real estate taxes.

5). The proposed orders are attached hereto. The First Proposed Order is the

issuance of a prejudgment real estate attachment against 112 Georgetown Road, Weston, CT. The Second Proposed Order is the release of the prejudgment real estate attachment against 3 Cooper Lane, Westport, Ct.

The parties so stipulate and agree.

The Defendants:

BY: _____
Christopher C. Vaugh, Esq.
28 Philemon Street
Fairfield, CT 06825
Tel. (203) 515-7626
Juris No. 400641

The Plaintiff:

By: _____
Anthony Labella
Ury & Moskow, LLC
883 Black Rock Turnpike
Fairfield, CT. 06825
Tel. (203) 610-6393
Juris No. 410686

CERTIFICATION

A copy of this Motion and stipulation was e-mailed to Anthony LaBella at Ury & Moskow, L.L.C. on March 4, 2014 as follows.

Ury & Moskow, LLC
Anthony LaBella, Esq.
883 Black Rock Turnpike
Fairfield, CT. 06825
Fax: 203-610-6399
E-mail: Anthony@urymoskow.com

Christopher C. Vaugh

FIRST PROPOSED ORDER.

D.N. FBT-CV-12-5029855-S
MERIBEAR PRODUCTIONS, INC.
D/B/A MEREDITH BAER & ASSOC.

SUPERIOR COURT

VS.

JUDICIAL DISTRICT OF
FAIRFIELD

JOAN FRANK, ET AL

AT BRIDGEPORT

FEBRUARY 28, 2014

STIPULATED ORDER OF PREJUDGMENT REAL ESTATE ATTACHMENT
[Re: 112 Georgetown Road, Weston, Ct.]

Pursuant to motion presented to and considered by the Court, (Tyma, J.), this Order is entered by stipulation and agreement of the parties.

1). The parties stipulate and agree that a real estate attachment may enter against the real property and improvements located at 112 Georgetown Road, Weston, Ct. The schedule A for the 112 Georgetown Road, Weston, Ct. real property is attached hereto. Title to the 112 Georgetown Road, Weston, Ct. real property is in the name of the defendants George Andrew Frank and Joan E. Frank.

2). The real estate attachment is in the amount of \$259,746.10 together with post judgment interest from the date of judgment at the rate of 10% pursuant to California Code of Civil Procedure Secs. 685.010(a), 685.02(a) et seq.

3). This Order shall be effective, for all purposes, as of January 8, 2013 upon the Court's entering of this Order and that until such time as this order of attachment is recorded, this Property shall be subject to the stand still order previously entered by the Court as to the 3 Cooper Lane, Westport, Connecticut.

ORDER

This Stipulated Order is approved and entered.

(The Court, _____)
(By: _____)
Dated: March _____, 2014

INDEXING:

Grantor: George Andrew Frank, and Joan E. Frank
Grantee: Meribear Productions, Inc. d/b/a Meredith Baer & Assoc.

SCHEDULE A

All that certain parcel and/or piece of real property, together with the improvements located thereon, located in the Town of Weston, County of Fairfield, and State of Connecticut, and more particularly shown as containing 3.088 acres on a certain map entitled, 'Map prepared for William A. Samuelson, Weston, Connecticut' certified substantially correct by Robert M. Henrici, L.S., which map is on file in the office of the Weston Town Clerk as Map #1771 and to which reference may be had for a more particular description .

SECOND PROPOSED ORDER.

D.N. FBT-CV-12-5029855-S
MERIBEAR PRODUCTIONS, INC.
D/B/A MEREDITH BAER & ASSOC.

SUPERIOR COURT

VS.

JUDICIAL DISTRICT OF
FAIRFIELD

JOAN FRANK, ET AL

AT BRIDGEPORT

FEBRUARY 28, 2014

STIPULATED ORDER OF RELEASE OF PREJUDGMENT REAL ESTATE
[Re: 3 Cooper Lane, Westport, Connecticut]

Pursuant to motion presented to and considered by the Court, (Tyma, J.), this Order is entered by stipulation and agreement of the parties.

This Order modifies Court Order (#120.10).

1). The prejudgment real estate attachment recorded on May 15, 2013 at Volume 3428, Page 238 of the Westport Land Records is hereby released and discharged.

ORDER

This Stipulated Order is approved and entered.

(The Court, _____)
(By: _____)
Dated: March, _____, 2014

INDEXING:

Releasor: Meribear Productions, Inc. d/b/a Meredith Baer & Assoc
Releasee: Joan E. Frank

DOCKET NO: FBTCV125029855S

MERIBEAR PRODUCTIONS INC DBA
V.
FRANK, JOAN, E Et Al

SUPERIOR COURT

JUDICIAL DISTRICT OF FAIRFIELD
AT BRIDGEPORT

ORDER 421277

3/4/2014

ORDER

ORDER REGARDING:
03/04/2014 139.00 AGREEMENT

The foregoing, having been considered by the Court, is hereby:

ORDER: APPROVED

Short Calendar Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

421277

Judge: BARBARA N BELLIS

D.N. FBT-CV-12-5029855-S
MERIBEAR PRODUCTIONS, INC.
D/B/A MEREDITH BAER & ASSOC.

SUPERIOR COURT

VS.

JUDICIAL DISTRICT OF
FAIRFIELD

JOAN FRANK, ET AL

AT BRIDGEPORT

FEBRUARY 28, 2014

STIPULATED ORDER OF PREJUDGMENT REAL ESTATE ATTACHMENT
[Re: 112 Georgetown Road, Weston, Ct.]

Pursuant to motion presented to and considered by the Court, (Tyma, J.), this Order is entered by stipulation and agreement of the parties.

1). The parties stipulate and agree that a real estate attachment may enter against the real property and improvements located at 112 Georgetown Road, Weston, Ct. The schedule A for the 112 Georgetown Road, Weston, Ct. real property is attached hereto. Title to the 112 Georgetown Road, Weston, Ct. real property is in the name of the defendants George Andrew Frank and Joan E. Frank.

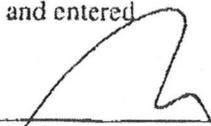
2). The real estate attachment is in the amount of \$259,746.10 together with post judgment interest from the date of judgment at the rate of 10% pursuant to California Code of Civil Procedure Secs. 685.010(a), 685.02(a) et seq.

3). This Order shall be effective, for all purposes, as of January 8, 2013 upon the Court's entering of this Order and that until such time as this order of attachment is recorded, this Property shall be subject to the stand still order previously entered by the Court as to the 3 Cooper Lane, Westport, Connecticut.

1/40

ORDER

This Stipulated Order is approved and entered



(The Court,
(By: 3/4/14)
Dated: March _____, 2014

INDEXING:

Grantor: George Andrew Frank, and Joan E. Frank
Grantee: Meribear Productions, Inc. d/b/a Meredith Baer & Assoc.

SCHEDULE A

All that certain parcel and/or piece of real property, together with the improvements located thereon, located in the Town of Weston, County of Fairfield, and State of Connecticut, and more particularly shown as containing 3.088 acres on a certain map entitled, 'Map prepared for William A. Samuelson, Weston, Connecticut' certified substantially correct by Robert M. Henrici, L.S., which map is on file in the office of the Weston Town Clerk as Map #1771 and to which reference may be had for a more particular description .

D.N. FBT-CV-12-5029855-S
MERIBEAR PRODUCTIONS, INC.
D/B/A MEREDITH BAER & ASSOC.

SUPERIOR COURT

VS.

JUDICIAL DISTRICT OF
FAIRFIELD

JOAN FRANK, ET AL

AT BRIDGEPORT

FEBRUARY 28, 2014

STIPULATED ORDER OF RELEASE OF PREJUDGMENT REAL ESTATE
[Re: 3 Cooper Lane, Westport, Connecticut]

Pursuant to motion presented to and considered by the Court, (Tyma, J.), this Order is entered by stipulation and agreement of the parties.

This Order modifies Court Order (#120.10).

1). The prejudgment real estate attachment recorded on May 15, 2013 at Volume 3428, Page 238 of the Westport Land Records is hereby released and discharged.

ORDER

This Stipulated Order is approved and entered.

(The Court, _____)
(By: _____)
Dated: March, _____, 2014

3/2/14

INDEXING:

Releasor: Meribear Productions, Inc. d/b/a Meredith Baer & Assoc
Releasee: Joan E. Frank

141-

A047

DOCKET NO. FBT-CV-12-5029855 : SUPERIOR COURT
MERIBEAR PRODUCTIONS, INC. D/B/A : J. D. OF FAIRFIELD
V. : AT BRIDGEPORT
JOAN E. FRANK, ET AL. : OCTOBER 14, 2014

MEMORANDUM OF DECISION

The plaintiff, Meribear Productions, Inc., d/b/a Meridith Baer and Associates, brings this three count action against the defendants, Joan Frank and George Frank, husband and wife, for common law enforcement of a foreign default judgment, and alternatively, for breach of contract and quantum meruit. The action arises from a residential staging agreement entered into between the parties relating to the defendants' sale of their home located at 3 Cooper Lane, Westport, Connecticut. The plaintiff provided design and decorating services, and home furnishings, to the defendants in an effort to make the defendants' residence more attractive to potential purchasers.

The defendants admit all of the allegations set forth by the plaintiff in the first count in its amended complaint seeking to enforce the default judgment rendered in California, with one exception. More particularly, despite claiming insufficient knowledge to the allegation that a default judgment was entered in favor of the plaintiff and against the defendants in the amount of \$259,746.10, the defendants admit that the judgment remains unsatisfied and that the plaintiff claims interest "pursuant to the California Code of Civil Procedure § 685.010 (a) and 685.020 (a), et seq." Additionally, the defendants have raised special defenses to the first two counts of the plaintiff's amended complaint for common law enforcement of a foreign judgment and breach of contract. For the reasons more fully set forth in this decision, the

CMW
RJD
[Signature]

only applicable defense to the first count is the defendants' challenge to the California default judgment based on a lack of personal jurisdiction. As to the second count for breach of the agreement, the defendants allege that the contract is unenforceable because it fails to comply with Connecticut's Home Solicitation and Sales Act, General Statutes § 42-134a et seq., in that it failed to contain a notice of cancellation, and the plaintiff failed to orally inform the defendants of cancellation rights.

The court finds the following facts to be credibly proven by the evidence. This action arises from an agreement, entitled "Staging Services and Lease Agreement for 3 Cooper Lane, Westport, Connecticut," entered into between the plaintiff and Joan Frank. The plaintiff is a company that is located in California, which also is its principal place of business. The agreement was signed by Joan Frank, individually, on March 13, 2011.¹ George Frank, also known as Andy Frank, is not a party to the staging agreement. He is alleged to be a guarantor of the agreement. "Addendum B" is attached to the agreement and is a credit card authorization signed by George Frank. Therein, George Frank authorized the plaintiff to charge his Visa credit card a "total amount" of \$19,000. The authorization also provided that George Frank "personally guarantee[d] to [the plaintiff]," and crossed out the remaining language "any obligations that may become due."² In entering into the agreement and in executing its terms, the plaintiff dealt with the defendants' realtor, George Frank, and his office assistant, Pamela Harvey. There is no evidence that Joan Frank, despite being the sole

¹ The agreement in evidence was not signed by the plaintiff. There is no claim, however, that the agreement is not enforceable for that reason.

² The plaintiff has not pleaded a separate count for breach of guaranty against George Frank, and the defendants did not request that the plaintiff revise its complaint in that regard. The plaintiff alleges in the second and third counts for breach of contract and quantum meruit that George Frank personally guaranteed the payments due under the agreement.

signatory on the agreement, had any meaningful dealings concerning the matter other than her execution of the agreement.

In accordance with the terms of the agreement, the \$19,000 payment represented a non-refundable "initial payment" due "prior to the delivery and installation" of the furnishings. The agreement provided that the initial term of the lease was four months or until any sale and purchase agreement's contingencies were either fulfilled or waived. If the property was not sold after the expiration of the initial four month period, then the agreement continued on a month to month basis subject to the right of either party to terminate the monthly lease period by providing timely written notice. The rental amount was \$1,900 per month payable in advance on the twenty-third of each month. The evidence established that the initial payment of \$19,000 applied to the plaintiff's design services, delivery of the equipment, the first four months of rent, and the cost relating to the plaintiff's expectation that the furnishings would be removed. The agreement defines the fifth rental month as July 23, 2011 through August 22, 2011. Further periods are not specifically delineated in the lease.

The furnishings were delivered and staged. The residence is a luxury home in an affluent community, and the furnishings appear to be appropriate for such a home. An inventory was prepared by the plaintiff, and values were ascribed to each piece listed on the inventory. Valuation was based on standard industry pricing for used furniture.³ The defendants defaulted on their rent obligation. The defendants claim that they requested that the plaintiff remove the inventory from their residence, and the plaintiff denies that such a request was made. The more credible evidence is that the defendants did not request removal. Nevertheless, the plaintiff hired a crew of movers with a truck to perform the job. The

³ Subsequently, the plaintiff sent to the defendants a written inventory of the furnishings that it delivered to the plaintiff.

movers went to the residence, but the defendants denied the movers access to the premises. The defendants demanded that the plaintiff provide a written general release of all claims. The plaintiff refused. The defendants wrongfully did not want to pay the plaintiff the balance due under the agreement above the initial \$19,000 payment, as demonstrated by the defendants' additional and unwarranted demand for proof of insurance from the plaintiff. The defendants did not want to pay to the plaintiff the balance due on the contract above the \$19,000 initial payment. The plaintiff made a few more unsuccessful attempts to remove the furnishings. The defendants made an additional and unwarranted demand upon the plaintiff for proof of insurance, which the plaintiff provided to them. The agreement states that if the defendants failed to perform their obligations under the agreement, the plaintiff may, among other remedies, repossess the furnishings. The plaintiff has not brought a legal action seeking repossession. The inventory remains in the home.

Paragraph 19 of the agreement provides a choice of law provision designating that the agreement is governed by California law, and a forum selection clause providing that any court within Los Angeles, California as the appropriate forum. George Frank unilaterally added the following language at the end of paragraph 19: "Since this is a contract for an agreement taking place in the state of Connecticut, Connecticut laws will supersede those of California."

I

JURISDICTIONAL CHALLENGES TO FOREIGN JUDGMENT

The first count of the plaintiff's complaint alleges an action for common law enforcement of a foreign judgment. The plaintiff claims that "[o]n August 7, 2012 a Default Judgment . . . was entered in the California Superior Court, County of Los Angeles against the

. . . defendants . . . in favor of Meribear in the amount of \$259,746.10 . . .” and that the “[j]udgment remains wholly unsatisfied.” In their responsive pleading, the defendants “leave plaintiff to its proof” on that allegation. The plaintiff attached to its complaint a certified copy of the judgment.

Initially, the defendants procedurally attack the foreign judgment in two ways. The defendants claim that the California court lacked personal jurisdiction over them because service of process of the foreign judgment on Joan Frank was legally insufficient, and the default judgment is void. Additionally, the defendants claim a lack of personal jurisdiction under the forum selection clause based on their contention that California was an improper venue under California Code of Civil Procedure § 410.40.

The plaintiff responds that the defendants were properly served under California civil procedure law; the defendants, as non-appearing parties in the California action, failed to raise the forum selection claim; and the code provision cited by the defendants is inapplicable.

The court finds the following facts relevant to the jurisdictional issue, and credibly proven by the evidence. The plaintiff employed Janney & Janney Attorney Service, Inc. to serve process on the defendants in Connecticut. Janney subsequently hired Allan Jones, an individual who operates a business known as Allstate Process & Legal Services, LLC, to effectuate service. Allstate’s primary business is the service of out of state judgments and subpoenas. Jones was unsuccessful in his efforts to personally serve the defendants. Consequently, Jones attempted constructive service on the defendants at an office located at 1175 Post Road East in Westport. Jones obtained the address from records filed with the Connecticut Secretary of State’s Commercial Recording Division, specifically records pertaining to LCP Homes, Inc. That entity is a corporation owned by George Frank, and in

which he and Joan Frank are corporate officers. Joan Frank has no additional duties with LCP Homes other than being listed as its secretary since the formation of the company. There was no evidence that Joan Frank was employed by the company, or used the office at that address. At the time service was attempted, Joan Frank described herself as a "homemaker." She last worked as a registered nurse in 1998. When Jones went to the office at 1175 Post Road East to serve process, he found that the name listed on the office door was Andy Frank Builders, not LCP Homes. Nevertheless, Jones served the process on Pamela Harvey, who appeared to him to be the person in charge of the office. Harvey worked in the office at the time of service, and was an assistant to George Frank in his businesses. Jones generally informed Harvey that he had documents for the defendants, and Harvey assured him that she would give the documents to them.

"The validity of the California judgment in Connecticut implicates the full faith and credit clause of the constitution of the United States, article four, § 1. . . . As a general principle, the full faith and credit clause of the United States constitution permits a creditor who has obtained a judgment in one state to enforce that judgment in this state. This principle is inapplicable, however, if the foreign judgment is a default judgment rendered by a court that did not have personal jurisdiction over the judgment debtor. . . .

"The United States Supreme Court has consistently held . . . that the judgment of another state must be presumed valid, and the burden of proving a lack of jurisdiction rests heavily upon the assailant. . . . Furthermore, the party attacking the judgment bears the burden of proof regardless of whether the judgment at issue was rendered after a full trial on the merits or after an ex parte proceeding. . . . In order to mount a successful collateral attack on the California judgment, the defendants must establish that the California judgment is void,

not merely voidable. . . . Broadly stated, this would require proof of the lack of a legally organized court or tribunal; lack of jurisdiction over the subject matter, the parties, or both; or want of power to grant the relief contained in the judgment. . . .

"Thus, a debtor who seeks to challenge the validity of a foreign judgment that has been registered properly in this state may do so only by raising [c]onstitutionally permissible defenses . . . that destroy the full faith and credit obligation owed to a foreign judgment. . . . Such defenses include lack of personal jurisdiction or lack of due process. . . . A party can therefore defend against the enforcement of a foreign judgment on the ground that the court that rendered the judgment lacked personal jurisdiction, unless the jurisdictional issue was fully litigated before the rendering court or the defending party waived the right to litigate the issue. . . .

"To determine whether a foreign court lacked jurisdiction, we look to the law of the foreign state." (Internal quotation marks omitted; citations omitted.) *J. Corda Construction, Inc. v. Zuleski*, 98 Conn. App. 518, 522-523, 911 A.2d 309 (2006). See *Maltas v. Maltas*, 298 Conn. 354, 362-63, 2 A.3d 902 (2010) ("Because a valid judgment from a sister state is entitled to full faith and credit in Connecticut, the only issue before the trial court was whether the Alaska court had jurisdiction and, hence, was empowered to render a valid judgment. Accordingly, resolving the jurisdictional question, likely after a short evidentiary hearing, would have been the court's first and only order of business. In this context, raising the jurisdictional matter as a special defense does not prolong the proceedings beyond what would be necessary had it been raised in a motion to dismiss. On the basis of the foregoing analysis, we conclude that, in an action to enforce a foreign judgment, a challenge to the foreign court's jurisdiction properly is raised as a special defense.")

It is well settled that a party may raise lack of personal jurisdiction as a defense to challenge the validity of the foreign judgment. Consequently, the court must first consider the issue of whether the California court had personal jurisdiction over the defendants such that the underlying judgment is valid and entitled to full faith and credit in Connecticut.

The parties agree that the California Code of Civil Procedure § 415.20 governs service of process. That section provides, in relevant part, as follows: "If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, *usual place of business*, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household *or a person apparently in charge of his or her office, place of business*, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing." (Emphasis added.) California Code of Civil Procedure § 415.20 (b)

The court will first consider whether service of process upon Joan Frank in the California action was valid. More particularly, the issue is whether Joan Frank was properly served by the process server, Alan Jones, who purportedly constructively served Joan Frank through a person in charge of the office of LCP Homes, a company in which Joan Frank's only association is that she is listed as a corporate officer. For the reasons hereinafter

discussed, the court finds that the service on Joan Frank was invalid, and concludes that the California court that rendered the judgment lacked personal jurisdiction over Joan Frank.

There is no evidence that 1175 Post Road East was Joan Frank's office at the time of service. The only evidence is that she is an officer of LCP Homes, which lists that address on filings with the secretary of state. Joan Frank is not an owner or operator of the company, and, moreover, there is no evidence that she was ever present at the office. The plaintiff has failed to establish that it served Joan Frank "through a person apparently in charge of . . . her office" as provided for in California Code of Civil Procedure § 415.20 (b).

The defendants next claim a lack of personal jurisdiction under the forum selection clause based on their contention that California was an improper venue under the provisions of California Code of Civil Procedure § 410.40. The defendants specifically contend that their "purported consent to California personal jurisdiction was based upon the [staging] contract and that consent was fatally flawed because the dispute does not meet the financial threshold of 410.40." The court disagrees.

The procedural law of California provides that a person may bring an action against a foreign entity or nonresident person where the action arises out of an agreement "for which a choice of California law has been made in whole or in part by the parties thereto and which . . . is a contract, agreement . . . relating to a transaction involving in the aggregate not less than one million dollars (\$1,000,000), and . . . contains a provision . . . under which the foreign corporation or nonresident agrees to submit to the jurisdiction of the courts of" California. California Code of Civil Procedure § 410.40.

"[T]he claim that a forum selection clause will strip a court of its jurisdiction over the parties, while not yet expressly considered by this court, has been solidly rejected by the great weight of courts and authorities considering the question after the Supreme Court's decision in *Bremen*. See, e.g., *Lambert v. Kysar*, 983 F.2d 1110, 1118 n. 11 (1st Cir. 1993) ("It is well established that a forum selection clause does not divest a court of jurisdiction or proper venue over a contractual dispute. Rather, a court addressing the enforceability of a forum selection clause is to consider whether it must, in its discretion, decline jurisdiction and defer to the selected forum." [Emphasis in original.]); *Manrique v. Fabbri*, 493 So. 2d 437, 439-40 (Fla. 1986) ("Forum selection clauses . . . do not oust courts of their jurisdiction. They merely present the court with a legitimate reason to refrain from exercising that jurisdiction." [Internal quotation marks omitted.]); *Smith, Valentino & Smith, Inc. v. Superior Court*, 17 Cal. 3d 491, 495, 551 P.2d 1206, 131 Cal. Rptr. 374 (1976) ("[w]hile it is true that the parties may not deprive courts of their jurisdiction over causes by private agreement . . . it is readily apparent that courts possess discretion to decline to exercise jurisdiction in recognition of the parties' free and voluntary choice of a different forum" [citation omitted; emphasis in original]); 1 Restatement (Second), *supra*, § 80." *Reiner, Reiner and Bendett, P.C. v. Cadle Company*, 278 Conn. 92, 102-03, 897 A.2d 58 (2006).

In *Reiner*, the Court held that "[t]he existence of such a clause does not deprive the trial court of personal jurisdiction over the parties, but presents the question whether it is reasonable for the court to exercise its jurisdiction in the particular circumstances of the case." *Id.* See also *GE Capital Corp. v. Metz Family Enterprises, LLC*, 141 Conn. App. 412, 423-24, 61 A.3d 1154 (2013). In view of the foregoing and the procedural circumstances of this action, the defendants' jurisdictional claim grounded on the forum selection clause fails. The

defendants were non-appearing parties in the California action and, therefore, did not assert that California was an inconvenient forum.

Therefore, the judgment is void as to Joan Frank, destroying its full faith and credit in this state. In view of the foregoing, judgment is rendered for Joan Frank on the first count of the complaint for common law enforcement of a foreign judgment.⁴

⁴ Based on the same facts, the court finds the substituted service of process on George Frank to be valid. The evidence establishes that he is an owner of LCP Homes and Andy Frank Builders, which shared the address of 1175 Post Road East; he had a presence at the office at the time of service; and he employed Pamela Harvey. In the defendants' post trial brief and at oral arguments, George Frank did not strenuously claim that the California court lacked jurisdiction over him. To the extent that George Frank claims the California court lacked sufficient minimum contacts over him, the court disagrees. "The federal due process clause permits state courts to exercise in personam jurisdiction over a nonresident corporate defendant that has 'certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 [66 S.Ct. 154, 90 L.Ed. 95] (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 [61 S.Ct. 339, 85 L.Ed. 278] (1940)." (Internal quotation marks omitted.) *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). Either 'specific' jurisdiction or 'general' jurisdiction can satisfy the constitutional requirement of sufficient minimum contacts between the defendant and the forum. A state court will have 'specific' jurisdiction over a nonresident defendant whenever the defendant 'has purposefully directed' [its] activities at residents of the forum, *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 [104 S.Ct. 1473, 79 L.Ed.2d 790] (1984), and the litigation [has] result[ed] from alleged injuries that 'arise out of or relate to' those activities, *Helicopteros Nacionales de Colombia, S. A. v. Hall*, [supra, 466 U.S. 414]. (Emphasis added.) *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). Alternatively, '[e]ven when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State, due process is not offended by a State's subjecting the corporation to its in personam jurisdiction' if the defendant has had 'continuous and systematic general business contacts' with the state. (Emphasis added.) *Helicopteros Nacionales de Colombia, S. A. v. Hall*, supra, 414, 416." *Thomason v. Chemical Bank*, 234 Conn. 281, 287-88, 661 A.2d 595 (1995). California's long arm statute states: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." Cal.Civ.Proc. Code § 410.10. "A state court's assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process clause of the federal [c]onstitution if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate 'traditional notions of fair play and substantial justice.'" *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 444, 926 P.2d 1085, 58 Cal.Rptr.2d 899 (1996), cert. denied, 522 U.S. 808, 118 S.Ct. 47, 139 L.Ed.2d 13 (1997).

II

BREACH OF CONTRACT CLAIM AGAINST JOAN FRANK

The court will next consider the merits of the plaintiff's action against Joan Frank. In the second count of the complaint, the plaintiff claims that Joan Frank breached the staging agreement. The plaintiff claims in the third count that Joan Frank is liable to it based on a theory of quantum meruit.

The plaintiff alleges that Joan Frank breached the agreement by failing to pay the rent and other amounts due and owing thereunder. The court finds the plaintiff's evidence relevant to the claimed breach to be credible, and the defendants' evidence not credible.⁵ The plaintiff performed the staging work. The defendants made the initial payment. The furnishings were delivered to, and installed in, the residence in March 2011. Joan Frank failed to make the July rent payment, and the rent payments and other charges due thereafter. In October, 2011, the plaintiff notified the defendants that it wanted to remove the inventory, and sent movers with a truck to the residence. The defendants denied the movers access to their home unless the plaintiff provided them with a full release of all claims. The plaintiff reasonably refused the request. The plaintiff sought to remove the inventory on a few more occasions, but the defendants thwarted their efforts each time.

citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945). George Frank admits that he signed a guarantee of the staging agreement with a company that has a principal place of business in California and that provides that Los Angeles is the appropriate forum. He disputes only the extent of the guaranty. The California court possessed personal jurisdiction over George Frank and its judgment is entitled to full faith and credit as to him. Therefore, judgment is rendered in favor of the plaintiff and against George Frank on the first count of the complaint for common law enforcement of a foreign judgment. The court will address the issue of damages later in this decision.

⁵ Joan offered very little evidence relevant to the agreement. As discussed, Joan was not involved in the process other than signing the agreement. George Frank took charge of the project, and dealt with the plaintiff. The court found George Frank's testimony on the procedural and substantive issues to be manufactured and lacking in truthfulness.

The credible evidence establishes that Joan breached the agreement. Next, the court will consider the defendants' special defenses to the second count.

III

SPECIAL DEFENSES TO BREACH OF CONTRACT COUNT

In her first special defense to the second count for breach of contract, Joan Frank alleges that the agreement is unenforceable because it violated the Home Solicitation Sales Act codified in General Statutes § 42-134a, et seq. Specifically, Joan Frank claims that the plaintiff failed to advise her of cancellation rights as required by the Act.

The Act provides, in part, that "[h]ome solicitation sale means a sale, lease, or rental of consumer goods or services, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "home solicitation sale" does not include a transaction . . . (5) pertaining to the sale or rental of real property. . ." (Internal quotation marks omitted.) General Statutes § 42-134a (a) (5).

This claim presents an issue of statutory interpretation. "When interpreting a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . The meaning of a statute shall, in the first instance, be ascertained from 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. General Statutes § 1-2z. . . . However, [w]hen 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. . . . A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation." (Citation omitted; internal quotation marks omitted.) *Taxis Ohr's Fuel, Inc. v. Administrator, Unemployment Compensation Act*, 309 Conn. 412, 421–22, 72 A.3d 13 (2013).

Here, the meaning of the statute is plain and unambiguous, and does not lead to an absurd result. An agreement concerning the staging of a residential home for sale in the real estate marketplace is not a "home solicitation sale" within the meaning of the Act. The transaction pertains to the defendants' sale of their real property located at 3 Cooper's Lane, Westport, Connecticut, which transaction is specifically excluded from the definition of a "home solicitation sale." Consequently, the court rejects this special defense.

In her second special defense to the second count, Joan Frank alleges that the plaintiff failed to mitigate its damages, and breached the covenant of good faith and fair dealing.

The court will first address the mitigation claim. As discussed previously discussed in part II of this decision, the court found the plaintiff's evidence more credible on the issue concerning the removal of the inventory, and that the defendants wrongfully prevented its removal. Joan Frank has failed to establish her claim of failure to mitigate.

The court will next address the breach of covenant of good faith claim. "[I]t is axiomatic that the . . . duty of good faith and fair dealing is a covenant implied into a contract or a contractual relationship. . . . In other words, every contract carries an implied duty requiring that neither party do anything that will injure the right of the other to receive the

benefits of the agreement." (Internal quotation marks omitted.) *Renaissance Management Co. v. Connecticut Housing Finance Authority*, 281 Conn. 227, 240, 915 A.2d 290 (2007). The evidence establishes that the defendants' actions have injured the rights of the plaintiff to receive the benefits of the staging agreement. Joan Frank has wrongfully withheld payments under the agreement, and wrongfully refuted the plaintiff's attempts to reclaim the inventory. Therefore, the court rejects Joan Frank's second special defenses to the second count of the plaintiff's complaint.

In view of the foregoing, judgment is rendered for the plaintiff and against Joan Frank on the second count of the complaint. The court will address the issue of damages later in this opinion.

IV

CLAIM FOR UNJUST ENRICHMENT AGAINST JOAN FRANK

In the third count of the complaint, the plaintiff alleges an action for quantum meruit against Joan. "Parties routinely plead alternative counts alleging breach of contract and unjust enrichment, although in doing so, they are entitled only to a single measure of damages arising out of these alternative claims. . . . Under this typical belt and suspenders approach, the equitable claim is brought in an alternative count to ensure that the plaintiff receives some recovery in the event that the contract claim fails. (Citations omitted; internal quotation marks omitted.) *Stein v. Horton*, 99 Conn. App. 477, 485, 914 A.2d 606 (2007). See, e.g., *United Coastal Industries v. Clearheart Construction Co.*, 71 Conn. App. 506, 511, 802 A.2d 901 (2002) ("[c]ounts two and three of the complaint, which seek damages for unjust enrichment and quantum meruit are meant to provide an alternative basis for recovery in the event of a failure to prove the breach of contract claim in count one.") The plaintiff has

proven that Joan Frank breached the contract. Therefore, the court need not consider the alternative claim for quantum meruit.⁶

V

DAMAGES

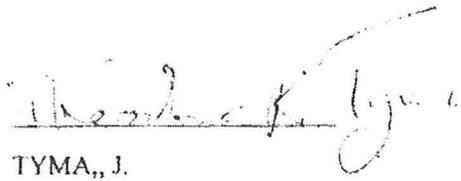
The court will next discuss the issue of damages. In part I of this decision, the court found George Frank liable to the plaintiff under the first count for common law enforcement of the California judgment. Therefore, the court awards damages on the first count in favor of the plaintiff and against the defendant, George Franks, in the amount of \$259,746.10.

In part II of this decision, the court found that Joan Frank breached the staging agreement. The court finds credible the plaintiff's uncontested evidence the schedule of values of the inventory based upon standard industry pricing for used furniture of the quality provided to the defendants. The plaintiff has lost the use of the inventory, and, moreover, the defendants have been wrongfully using the furniture in their personal residence for approximately three years. The inventory was only supposed to be there for a period of months. Consequently, the plaintiff had to replace the inventory. The essence of the staging agreement was to give the defendants' residence a showroom quality appearance, and, as noted, the inventory is reflective of that quality. Therefore, the court awards damages related to the inventory loss for the plaintiff and against Joan Frank on the first count in the amount of \$235,598. Additionally, the evidence establishes that Joan Frank is responsible to the plaintiff for the rental loss and related late fees in the amount of \$47,508.45. In view of the

⁶ In their brief, the defendants advance a cursory claim that the plaintiff is a "secondhand dealer" and failed to obtain a secondhand dealer's license in accordance with General Statutes § 21a-324. The defendants failed to produce any evidence supporting the claim. Therefore, the claim is rejected.

foregoing, the court awards damages on the second count for the plaintiff and against the defendant, Joan Frank, in the amount of \$283,106.45.

The plaintiff has made a claim for attorney's fees. Counsel are ordered to contact the court the schedule a hearing on the issues.


TYMA, J.

DOCKET NO: FBTCV125029855S

MERIBEAR PRODUCTIONS INC DBA
V.
FRANK,JOAN,E Et Al

SUPERIOR COURT

JUDICIAL DISTRICT OF FAIRFIELD
AT BRIDGEPORT

ORDER 422677

12/1/2014

ORDER

ORDER REGARDING:
11/03/2014 148.00 MOTION TO REARGUE/RECONSIDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Short Calendar Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

422677

Judge: THEODORE R TYMA
Processed by: Jason Lovallo

DOCKET NO: FBTCV125029855S

MERIBEAR PRODUCTIONS INC DBA
V.
FRANK,JOAN,E Et Al

SUPERIOR COURT

JUDICIAL DISTRICT OF FAIRFIELD
AT BRIDGEPORT

12/1/2014

ORDER 422677

ORDER

ORDER REGARDING:
11/04/2014 149.00 MOTION FOR ARTICULATION

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Short Calendar Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

422677

Judge: THEODORE R TYMA
Processed by: Jason Lovallo

DOCKET NO: FBTCV125029855S

MERIBEAR PRODUCTIONS INC DBA
V.
FRANK,JOAN,E Et Al

SUPERIOR COURT

JUDICIAL DISTRICT OF FAIRFIELD
AT BRIDGEPORT

ORDER 422677

12/1/2014

ORDER

ORDER REGARDING:
11/04/2014 150.00 MOTION TO REARGUE/RECONSIDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Short Calendar Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

422677

Judge: THEODORE R TYMA
Processed by: Jason Lovallo

STATE OF CONNECTICUT

Docket No. FBT CV12 502 98 55S

**MERIBEAR PRODUCTIONS, INC. d/b/a
MERIDITH BAER and ASSOCIATES**
420 Everett Court
Vernon, CA

Superior Court
Judicial District of
Fairfield
at Bridgeport

v.

JOAN E. FRANK
3 Cooper Lane
Westport, CT

GEORGE A. FRANK
3 Cooper Lane
Westport, CT

October 14, 2014

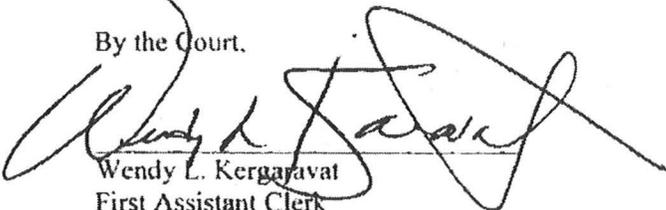
Present: Hon. Theodore R. Tynia, Judge
Judgment

This action, in the nature of an application for pre-judgment remedy, writ summons and complaint claiming damages and other relief, as on file, came to this court on October 3, 2012, and thence to the present time, when the parties appeared and were at issue to the Court, as on file.

The Court, having heard the parties, finds the issues for the plaintiff.

Whereupon it is adjudged that the plaintiff recover of the defendant Joan E. Frank \$283,106.45 damages and that the plaintiff recover of the defendant George A. Frank \$259,746.10. It is further ordered that costs are awarded in the amount of \$2,874.45.

By the Court.


Wendy L. Kergaravat
First Assistant Clerk

VFrank.doc

APPEAL - CIVIL

JD-SC-28 Rev. 12-09
P.B. §§ 3-8, 62-6, 63-3, 63-4, 63-10
C.G.S. §§ 31-301b, 51-197f, 52-470

See Instructions on Back/page 2

To Supreme Court To Appellate Court

Name of case (State full name of case as it appears in the judgment file)

MERIBEAR PRODUCTIONS, INC D/B/A V. JOAN E. FRANK, ET AL

Classification: Appeal, Cross appeal, Joint appeal, Amended appeal, Stipulation for reservation, Corrected/amended appeal form, Other (Specify)

Tried to: Court Jury Trial court location: 1061 MAIN STREET, BRIDGEPORT, CT

Trial court judges being appealed: TYMA, THEODORE List all trial court docket numbers, including all location prefixes: FBT-CV-12-5029855 AC 31501

All other trial court judge(s) who were involved with the case: NONE

Judgment for (Where there are multiple parties, specify any individual party or parties for whom judgment may have been entered): Plaintiff Defendant Other

Judgment date of decision being appealed: 10/14/2014 Date of issuance of notice on any order on any motion which would render judgment ineffective: 12/01/2014

Case type: Juvenile - Termination of Parental Rights, Juvenile - Order of Temporary Custody, Juvenile - Other

Civil/Family: Major/Minor code: C-90 Habeas Corpus, Workers compensation, Other

For habeas corpus or zoning appeals indicate the date certification was granted:

Appeal filed by (Where there are multiple parties, specify the name of the individual party or parties filing this appeal): Plaintiff(s), Defendant(s) All Defendants, Other

From (the action which constitutes the appealable judgment or decision): THE JUDGMENT ENTERED ON OCTOBER 14, 2014 BY THE TRIAL COURT, (TYMA, J.)

If to the Supreme Court, the statutory basis for the appeal (Connecticut General Statutes section 51-199)

By (Signature of attorney or self-represented party), Telephone number: 203-515-7626, Fax number: 203-333-0751, Jura number (if applicable): 400641

Type name and address of person signing above (This is your appearance, see Practice Book section 62-8): CHRISTOPHER C. VAUGH, 28 PHILEMON STREET, FAIRFIELD, CT 06825 E-mail address: CCVAUGH@GMAIL.COM

Appearance: Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court under Practice Book section 62-8. Under Practice Book section 3-8, counsel or self-represented party who files this appeal is appearing in place of:

Certification (Practice Book section 63-3): I certify that a copy of this appeal was mailed or delivered to all counsel and self-represented parties of record as required by Practice Book section 62-7 on 12/18/2014. Signed (Individual counsel/self-represented party):

To Be Completed By Trial Court Clerk: Entry Fee Paid, No Fees Required, Fees, Costs, and Security waived by Judge (enter judge's name below)

Judge, Date waived, Signed (Clerk of trial court), Date: 12/18/14

The clerk of the original trial court, if different from this court, was notified on that this appeal was filed. In habeas matters, a copy of this endorsed appeal was provided to the Office of the Chief State's Attorney, Appellate Bureau, on

Documents to be given to the Appellate Clerk with the endorsed Appeal form: 1. Preliminary Statement of the Issues, 2. Preliminary Designation of Pleadings, 3. Court Reporter's Acknowledgment/Certification re transcript, 4. Docketing Statement, 5. Statement for Preargument Conference (form JD-SC-28A), 6. Draft Judgment File, 7. Constitutionality Notice (if applicable), 8. Sealing Order form, if any, 9. List of counsel of record in trial court (DS1 received from clerk), 10. Proof of receipt of the copy of the endorsed appeal form by the original trial court clerk or the clerk of the court or courts where the case was transferred, if the case was in more than one trial court

Certification: I certify that a copy of the endorsed appeal and all documents to be given to the Appellate Clerk when the endorsed Appeal form were mailed or delivered to all counsel and self-represented parties of record as required by Practice Book section 63-3 on 12/24/14. Signed (Individual counsel/self-represented party):

Handwritten mark: K2-

D.N. FBT-CV-12-5029855-S
MERIBEAR PRODUCTIONS, INC.
D/B/A MEREDITH BAER & ASSOC.

SUPERIOR COURT

VS.

JUDICIAL DISTRICT OF
FAIRFIELD

JOAN FRANK, ET AL

AT BRIDGEPORT

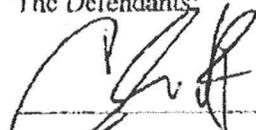
DECEMBER 18, 2014

CERTIFICATION OF SERVICE

A copy of the Endorsed Appeal was mailed on December 18, 2014 as follows:

Ury & Moskow
Anthony Labella, Esq.
883 Black Rock Turnpike
Fairfield, Ct. 06825
Tel: 877-410-7529
Fax: 203-610-6399
Email Anthony@urymoskow.com

The Defendants:



Christopher C. Vaughn
28 Philemon Street
Fairfield, CT 06825
Tel. (203) 515-7626
Juris No. 400641

APPEARANCE

JD-CL-12 Rev. 1-12
P.B. §§ 3-1 thru 3-6, 3-8, 10-13, 25A-2

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

Instructions — See Back/Page 2

Notice To Self-Represented Parties

A self-represented party is a person who represents himself or herself. If you are a self-represented party and you filed an appearance before and you have since changed your address, you must let the court and all attorneys and self-represented parties of record know that you have changed your address by checking the box below:

I am filing this appearance to let the court and all attorneys and self-represented parties of record know that I have changed my address. My new address is below.

Return date
Oct-03-2012
Docket number
FBT-CV-12-5029855-S

Name of case (Full name of Plaintiff vs. Full name of Defendant)

MERIBEAR PRODUCTIONS INC DBA v. FRANK,JOAN,E Et Al

<input checked="" type="checkbox"/> Judicial District	<input type="checkbox"/> Housing Session	<input type="checkbox"/> Small Claims	<input type="checkbox"/> Geographic Area number	Address of Court (Number, street, town and zip code)
				1061 MAIN STREET BRIDGEPORT, CT 06604
Scheduled Court date (Criminal/Motor Vehicle Matters)				

Please Enter the Appearance of

Name of self-represented party (See "Notice to Self-Represented Parties" at top), or name of official, firm, professional corporation, or individual attorney	Juris number of attorney or firm attorney
TAYLOR & SEXTON LLC	436427

Mailing Address (Number, street) (Notice to attorneys and law firms - The address to which papers will be mailed from the court is the one registered or affiliated with your juris number. That address cannot be changed in this form.)	Post office box	Telephone number (Area code first)
P.O. BOX 270139		8603250073

City/town	State	Zip code	Fax number (Area code first)	E-mail address
WEST HARTFORD	CT	06127	8608386901	mtaylor@taylorsexton.com

in the case named above for: ("x" one of the following parties; if this is a Family Matters case, also indicate the scope of your appearance)

- The Plaintiff (includes the person suing another person).
- All Plaintiffs.
- The following Plaintiff(s) only: _____
- The Defendant (includes the person being sued or charged with a crime).
- The Defendant for the purpose of the bail hearing only (in criminal and motor vehicle cases only).
- All Defendants.
- The following Defendant(s) only: _____
- Other (Specify): _____
- This is a Family Matters case and my appearance is for: ("x" one or both)
 - matters in the Family Division of the Superior Court
 - Title IV-D Child Support matters

Note: If other counsel or a self-represented party has already filed an appearance for the party or parties "x'd" above, put an "x" in box 1 or 2 below:

- This appearance is in place of the appearance of the following attorney, firm or self-represented party on file (P.B. Sec. 3-8): _____ (Name and Juris Number)
- This appearance is in addition to an appearance already on file.

I agree to accept papers (service) electronically in this case under Practice Book Section 10-13 Yes No

Signed (Individual attorney or self-represented party)	Name of person signing at left (Print or type)	Date signed
428131	JAMES PORTER SEXTON	Mar 25 2015

Certification

I certify that a copy of this document was mailed or delivered electronically or non-electronically on (date) **Mar 25 2015** to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

Name and address of each party and attorney that copy was mailed or delivered to*	For Court Use Only
CHRISTOPHER VAUGH - CHRISTOPHER C. VAUGH/28 PHILEMON STREET/FAIRFIELD, CT 06825 URY & MOSKOW LLC - 883 BLACK ROCK TURNPIKE/FAIRFIELD, CT 06825	

Signed (Signature of filer)	Print or type name of person signing	Date signed	Telephone number
428131	JAMES PORTER SEXTON	Mar 25 2015	860-325-0073

*If necessary, attach an additional sheet or sheets with the name of each party and the address which the copy was mailed or delivered to.

Continuation of JDCL12 Appearance Form for FBT-CV-12-5029855-S

Submitted By TAYLOR & SEXTON LLC (436427)

Additional Party(ies) (Continued from JDCL12)

For these party(ies)

Pty# D-01 JOAN E FRANK

Pty# D-02 GEORGE FRANK

***** End of Party List *****

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion. In no event will any such motions be accepted before the "officially released" date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

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MERIBEAR PRODUCTIONS, INC. v. JOAN E.
FRANK ET AL.
(AC 37507)

Gruendel, Alvord and Pellegrino, Js.*

Argued February 3—officially released May 10, 2016

(Appeal from Superior Court, judicial district of
Fairfield, Tyme, J.)

Michael S. Taylor, with whom were *James P. Sexton*
and, on the brief, *Matthew C. Eagan*, for the appel-
lants (defendants).

Anthony J. LaBella, with whom, on the brief, was
Deborah M. Garskof, for the appellee (plaintiff).

Opinion

ALVORD, J. The defendants, Joan E. Frank and George A. Frank, appeal from the judgment of the trial court, rendered after a trial to the court, in favor of the plaintiff, Meribear Productions, Inc. The plaintiff's three count complaint sought the common-law enforcement of a foreign judgment, and, alternatively, damages for breach of contract or quantum meruit. On appeal, the defendants claim that the court improperly (1) enforced the foreign judgment against George Frank after concluding that he had minimum contacts with California that warranted the exercise of its jurisdiction, (2) concluded that the contract signed by Joan Frank was enforceable even though it failed to comply with certain provisions of the Home Solicitation Sales Act,¹ and (3) awarded double damages to the plaintiff. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to the defendants' claims. The defendants, who are husband and wife, resided at 3 Cooper Lane in Westport. They decided to sell their home and hired the plaintiff to provide design and decorating services, which included the staging of home furnishings owned by the plaintiff, in an effort to make their residence more attractive to potential purchasers. The plaintiff is a California corporation with its principal place of business located in Los Angeles. The plaintiff's representatives met with George Frank, his office assistant, and the defendants' realtor in Connecticut to negotiate the terms of a staging services agreement.

On March 13, 2011, Joan Frank signed a "Staging Services and Lease Agreement"² after George Frank made changes to some of its provisions. The agreement expressly provided that addendum B, titled "Credit Card Authorization," was "a part of this Agreement" George Frank signed addendum B, which authorized the plaintiff to charge his credit card for \$19,000 "resulting from this staging/design agreement." Before signing the addendum, he crossed out proposed language that would have made him liable for any additional charges incurred by the plaintiff.

Under the terms of the staging services agreement, the initial payment of \$19,000 was nonrefundable and was payable prior to the delivery and installation of the furnishings. The initial lease period was for four months, but the term would expire sooner if the contingencies in any purchase agreement for the property were fulfilled or waived. The agreement further provided that if the defendants' property was not sold within the initial four month period, the lease would continue on a month-to-month basis at a rental amount of \$1900 per month. The testimony at trial established that the initial \$19,000 payment covered the plaintiff's design services, the delivery of the staging furnishings,

the first four months of the lease, and the cost of removing the furnishings upon the sale of the property or the termination of the agreement. Either party could terminate the agreement by providing a timely written notice.

The furnishings were delivered and staged. Four months passed, and the property had not been sold and neither party had terminated the staging services agreement. The plaintiff sent invoices for the additional monthly rental amounts, which never were paid by the defendants. When the plaintiff sent a crew of movers to the defendants' property to remove the furnishings, they were denied access to the home. The plaintiff's staging inventory remained in the defendants' home through the time of trial. At oral argument before this court, the plaintiff's counsel represented that the defendants' property had been sold, but the plaintiff had no knowledge as to the whereabouts of its furnishings.

The plaintiff commenced an action against the defendants in the Superior Court of California in the county of Los Angeles, and, on August 7, 2012, it obtained a default judgment against them in the amount of \$259,746.10. On October 9, 2012, the plaintiff commenced the present action in the Superior Court in Connecticut to enforce the foreign judgment.³ The plaintiff subsequently amended its complaint to include counts for breach of contract and quantum meruit. The defendants filed an answer with special defenses, claiming, *inter alia*, that the foreign default judgment was void because the California court lacked personal jurisdiction over them⁴ and that the staging services agreement was unenforceable because it failed to comply with certain provisions in the Connecticut Home Solicitation Sales Act.

Following a trial to the court, the court issued its memorandum of decision on October 14, 2014. The court made the following determinations: (1) George Frank did not sign and was not a party to the staging services agreement, but he did sign addendum B, which was attached to the agreement and authorized the plaintiff to charge \$19,000 on his Visa credit card; (2) the defendants' residence is a luxury home in an affluent community, and the furnishings provided by the plaintiff "appear[ed] to be appropriate for such a home"; (3) the defendants defaulted on their rent obligation to the plaintiff; (4) the plaintiff had prepared an inventory of the furnishings provided to the defendants, and values were ascribed to each piece based on standard industry pricing for used furniture; (5) although the defendants claimed that they asked the plaintiff to remove the inventory from their residence, the more credible evidence was that no such demand ever had been made; (6) the plaintiff sent a crew of movers to remove the inventory on more than one occasion, but the defendants denied the movers access to the premises; (7)

Joan Frank was not properly served with process in the California action, and the California Superior Court lacked personal jurisdiction over her; (8) George Frank was properly served with process in the California action, and the California Superior Court possessed personal jurisdiction over him; (9) the staging services agreement was enforceable against Joan Frank because the parties' transaction was specifically excluded by statute from the definition of a home solicitation sale; (10) "George Frank's testimony on the procedural and substantive issues [was] manufactured and lacking in truthfulness"; (11) George Frank was liable to the plaintiff under the first count of the complaint for common-law enforcement of the California judgment in the amount of \$259,746.10; and (12) Joan Frank was liable to the plaintiff under the second count of the complaint for breach of the staging services agreement in the amount of \$283,106.45.⁵ This appeal followed.

I

The defendants' first claim is that the trial court improperly enforced the California judgment against George Frank.⁶ Although they do not claim that he was not properly served with process, they argue that he did not have sufficient minimum contacts with California to warrant the exercise of its court's jurisdiction over him. Specifically, they claim that his signing of addendum B to the staging services agreement, which authorized the plaintiff to charge his Visa credit card for \$19,000, did not meet the due process requirements articulated in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), and its progeny. They also argue that, contrary to the plaintiff's position, he did not consent to jurisdiction in California by virtue of a forum selection clause in the agreement because he was not a party to that agreement. Additional facts are necessary for the resolution of this claim.

Paragraph 19 of the staging services agreement signed by Joan Frank contained the following sentences, which included a forum selection clause: "This Agreement constitutes the entire agreement between the parties. This Agreement and the rights of the parties hereunder shall be determined, governed by and construed in accordance with the internal laws of the State of California without regard to conflicts of laws principles. Any dispute under that Agreement shall only be litigated in any court having its situs within the City of Los Angeles, California, and *the parties consent and submit to the jurisdiction of any court located within such venue*" (Emphasis added.)

George Frank added an additional sentence at the end of paragraph 19 of the staging services agreement that provided: "Since this is a contract for an agreement taking place in the state of Connecticut, Connecticut laws will supersede those of California." He made no changes to the forum selection clause. As previously

mentioned, the agreement also expressly provided that addendum B was “a part of this Agreement,” and addendum B expressly references “this staging/design agreement.” It is undisputed that only Joan Frank signed the staging services agreement, and only George Frank signed addendum B.

We begin with the legal principles that govern our analysis of this jurisdictional issue. The validity of the California judgment in Connecticut implicates the full faith and credit clause of the United States constitution.⁷ “As a matter of federal law, the full faith and credit clause requires a state court to accord to the judgment of another state the same credit, validity and effect as the state that rendered the judgment would give it. . . . This rule includes the proposition that lack of jurisdiction renders a foreign judgment void. . . . A party can therefore defend against the enforcement of a foreign judgment on the ground that the court that rendered the judgment lacked personal jurisdiction, unless the jurisdictional issue was fully litigated before the rendering court or the defending party waived the right to litigate the issue.” (Citations omitted.) *Packer Plastics, Inc. v. Laundon*, 214 Conn. 52, 56, 570 A.2d 687 (1990).

“The United States Supreme Court has consistently held, however, that the judgment of another state must be presumed valid, and the burden of proving a lack of jurisdiction ‘rests heavily upon the assailant.’ . . . Furthermore, the party attacking the judgment bears the burden of proof regardless of whether the judgment at issue was rendered after a full trial on the merits or after an ex parte proceeding.” (Citations omitted.) *Id.*, 57.

“To determine whether a foreign court lacked jurisdiction, we look to the law of the foreign state.” (Internal quotation marks omitted.) *J. Corda Construction, Inc. v. Zaleski Corp.*, 98 Conn. App. 518, 524, 911 A.2d 309 (2006).⁸ “Generally speaking, a civil court gains jurisdiction over a person through one of four methods. There is the old-fashioned method—residence or presence within the state’s territorial boundaries. . . . There is minimum contacts—activities conducted or effects generated within the state’s boundaries sufficient to establish a presence in the state so that exercising jurisdiction is consistent with traditional notions of fair play and substantial justice. . . . A court also acquires jurisdiction when a person participates in a lawsuit in the courthouse where it sits, either as the plaintiff initiating the suit . . . or as the defendant making a general appearance. . . . Finally, a party can consent to personal jurisdiction, when it would not otherwise be available.” (Citations omitted; internal quotation marks omitted.) *Global Packaging, Inc. v. Superior Court*, 196 Cal. App. 4th 1623, 1629, 127 Cal. Rptr. 3d 813 (2011).

“Consent is considered as one of four traditional

bases for the exercise of personal jurisdiction over a nonresident defendant and it is separate from the minimum contacts analysis. . . . Consent is [a] traditional basis of jurisdiction, existing independently of long-arm statutes” (Citations omitted; emphasis added; internal quotation marks omitted.) *Nobel Farms, Inc. v. Pasero*, 106 Cal. App. 4th 654, 658, 130 Cal. Rptr. 2d 881 (2003). “Express consent to a court’s jurisdiction will occur by generally appearing in an action . . . or by a valid forum-selection clause designating a particular forum for dispute resolution regardless of residence. . . . Consent to a court’s jurisdiction may also be implied by conduct.” (Citations omitted.) *Id.*

“[I]t is settled . . . that parties to a contract may agree in advance to submit to the jurisdiction of a given court While subject matter jurisdiction cannot be conferred by consent, personal jurisdiction can be so conferred, and consent may be given by a contract provision (Citations omitted; internal quotation marks omitted.) *Berard Construction Co. v. Municipal Court*, 49 Cal. App. 3d 710, 721, 122 Cal. Rptr. 825 (1975).⁹ In the present case, the staging services and lease agreement expressly provided that “[a]ny dispute under [the] Agreement shall only be litigated in any court having its situs within the City of Los Angeles, California, and the parties consent and submit to the jurisdiction of any court located within such venue.”¹⁰ (Emphasis added.) The defendants argue, however, that the trial court found that Frank George had not signed the staging services agreement. They claim that he signed only the addendum, and, accordingly, he did not consent to jurisdiction as provided in the agreement. It is true, as the court found, that he did not sign the agreement. Nevertheless, the agreement incorporated the addendum that he did sign, the addendum references the agreement, and George Frank admitted that he made changes to both the agreement and the addendum.¹¹ He clearly was aware of the provisions in both the agreement and the addendum, in that he reviewed them and amended them. Under these circumstances, we agree with the plaintiff that George Frank consented to personal jurisdiction in California and that the default judgment was not void as to him.¹²

II

The defendants’ next claim is that the staging services agreement signed by Joan Frank was not enforceable because it failed to comply with certain provisions of the Home Solicitation Sales Act (act). See footnote 1 of this opinion. The defendants argue that the agreement did not contain the notice of cancellation provisions required by the act, and that the court erroneously concluded that the parties’ transaction was exempted as a home solicitation sale by General Statutes § 42-134a (a) (5).¹³ We agree with the court’s determination that this particular transaction was not

governed by the act and, accordingly, that Joan Frank was liable to the plaintiff for breach of the agreement.

It is undisputed that the plaintiff and Joan Frank entered into a staging services agreement whereby the plaintiff would provide design and decorating services, which included providing home furnishings such as furniture, fine arts, rugs and plants, for the purpose of making the defendants' residence more attractive to potential purchasers. There was testimony at trial that the defendants' real estate agent initiated the contact with the plaintiff. The parties agree that the plaintiff's representatives met with George Frank, his assistant, and his realtor at the defendants' residence. It also appears that the contract was signed at the defendants' residence. Therefore, unless the transaction is statutorily exempt from the act, the staging services agreement should have included the notice of cancellation required by the act.

The court concluded that the parties' transaction was exempt because "[t]he transaction pertain[ed] to the defendants' sale of their real property located at 3 Cooper Lane [in] Westport" In reaching that conclusion, the court found the meaning of the language in § 42-134a (a) (5) to be clear and unambiguous.¹⁴

The defendants' claim requires us to interpret § 42-134a (a) (5). The proper construction of this statutory exemption is a question of law over which we exercise plenary review. "When interpreting a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . The meaning of a statute shall, in the first instance, be ascertained from 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. General Statutes § 1-2z. . . . However, [w]hen 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 A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation." (Citation omitted; internal quotation marks omitted.) *Turris Ohr's Fuel, Inc. v. Administrator, Unemployment Compensation Act*, 309 Conn. 412, 421-22, 72 A.3d 13 (2013).

The defendants claim that the statutory language that excludes transactions "pertaining to the sale . . . of real property" is ambiguous, and that it "reasonably means that contracts for the sale or lease of a home are not included within the scope of the [a]ct. In other words, if a realtor shows up at the door, any deal ulti-

mately reached between the realtor and the homeowner need not meet [the act's] requirements." The plaintiff argues that the language is clear and unambiguous, and on its face encompasses staging services provided "solely for the purpose of selling real estate A staging contract is entirely for the purpose of improving the appearance of a residence in order to increase its appeal to potential buyers."

We agree that the language that exempts transactions "pertaining to the sale or rental of real property" is susceptible to more than one reasonable interpretation. In that regard, we disagree with the trial court's determination that the language is clear and unambiguous. Nevertheless, for the reasons that follow, we agree with the court that the parties' transaction in this case does fall within the exemption language and was not subject to the requirements of the act.

The legislative history is not particularly helpful. The exemption language at issue was introduced in 1976 when the legislature amended the provisions of the act to conform to the Federal Trade Commission's rules promulgated in 1974 that governed door-to-door sales. See 19 S. Proc., Pt. 3, 1976 Sess., p. 1241, remarks of Senator Louis Ciccarello; Public Acts 1976, No. 76-165, § 1. Connecticut's initial act was enacted by the legislature in 1967 "to protect consumers against certain practices that were carried out by door-to-door salesmen" 19 H.R. Proc., Pt. 6, 1976 Sess., p. 1031, remarks of Representative William A. Collins. The act, as amended, "[brought] our current statute into conformity with the Federal Trade Commission rules so that no longer [would] sellers and buyers be confused with having to deal with two separate and somewhat different sets of regulations." *Id.* The actual exemption language at issue in this appeal, however, was not discussed.

The defendants refer to two sentences in the Federal Register that they claim provide support for their position that the relevant exemption language was added to clarify that the act did not apply to real property transactions: "Insofar as the sale of real property itself is concerned, neither the Commission nor members of the real estate sales industry believe that such sales would be subject to the rule as land would not fall within the scope of the definition of consumer goods or services. However, transactions in which a consumer engaged a real estate broker to sell his home or to rent and manage his residence during a temporary period of absence may fall within the class of transactions to which the rule would apply." Cooling-Off Period for Door-to-Door Sales, 37 Fed. Reg. 22,948 (October 26, 1972). The defendants argue that the explanation in the Federal Register makes it clear that "transactions that are very closely related to the sale or rental of real estate, including an agreement for broker services, still

might fall under the act.”

Following the quoted language in the Federal Register was a footnote that referenced a letter from the National Association of Real Estate Boards. It is not surprising that a realtors’ association would be concerned that the Federal Trade Commission’s rule might be read broadly to include an agreement for real estate broker services. Moreover, in further explaining the rule and its exceptions, the Federal Register contains the following language: “With regard to the real property provision, it is emphasized that it is not intended to apply to the sale of goods or services such as siding, home improvements, and driveway and roof repairs.” Cooling-Off Period for Door-to-Door Sales, 37 Fed. Reg. 22,949 (October 26, 1972). This additional explanation of the exemption focuses on the particular type of door-to-door sales that target homeowners and their real estate.

Neither the Federal Register nor Connecticut’s legislative history provides a definitive interpretation of the exemption language at issue. In construing the language as written by the legislature, we note that § 42-134a (a) (5) does *not* state that only contracts for the sale or rental of real property are exempt from the provisions of the act, but, rather, it exempts a “transaction . . . *pertaining* to the sale or rental of real property.” (Emphasis added.) The word “pertaining” is not defined in the statute, and, accordingly, we look to the common and ordinary meaning of the word. Black’s Law Dictionary defines the word pertain as “[t]o relate to; to concern.” Black’s Law Dictionary (9th Ed. 2009). It is undisputed that the staging services and lease agreement in the present case was entered into for the purpose of making the defendants’ residence more appealing to prospective buyers. In other words, that transaction “related to” or “concerned” the sale of their real property in Westport.

The defendants argue that such a broad interpretation would result in exempting a myriad of services and goods that are tangentially related to the prospective sale of a property. For example, if a homeowner is approached by a door-to-door salesman who is selling siding or new windows or who provides landscaping services, a homeowner may enter into a contract with such a salesman to make his or her home more appealing to prospective buyers. According to the defendants, such goods and services would be exempt from the provisions of the act because they are related to the prospective sale of real property. We do not agree.

Landscaping, siding, and new windows inure to the continuing benefit of the property whether that property is sold or retained by the homeowner. The staging services and lease agreement in the present case was entered into for the sole purpose of selling the defendants’ home in Westport. The staging of furnishings owned by the plaintiff had no conceivable benefit to

the real estate other than making it more attractive to potential buyers. The staging services agreement itself provided that the initial lease term was four months, but that it would expire even sooner if “the buyer’s contingencies are either satisfied or waived with respect to the purchase of the Property” The singular purpose of the agreement, therefore, was to facilitate the sale of the real property, such that the agreement would terminate once that particular purpose had been achieved.

Accordingly, we agree with the trial court that the agreement in the present case was a transaction that pertained to the sale of real property. We conclude that the staging services agreement was not subject to the provisions of the act and that the court properly determined that it was enforceable against Joan Frank.

III

The defendants’ final claim is that the court improperly awarded double damages when it rendered judgment against George Frank under the first count of the complaint in the amount of \$259,746.10, and rendered judgment against Joan Frank under the second count of the complaint in the amount of \$283,106.45. The defendants claim that the two amounts represent the same loss, and that the court’s judgment violates “the principle that a litigant may recover just damages for the same loss only once.” (Internal quotation marks omitted.) *Rowe v. Goulet*, 89 Conn. App. 836, 849, 875 A.2d 564 (2005). The defendants additionally argue that the contract damages awarded against Joan Frank improperly included damages for conversion of the home furnishings.

The judgment of the trial court was not improper. “Plaintiffs are not foreclosed from suing multiple defendants, either jointly or separately, for injuries for which each is liable, nor are they foreclosed from obtaining multiple judgments against joint tortfeasors. . . . This rule is based on the sound policy that seeks to ensure that parties will recover for their damages. . . . The possible rendition of multiple judgments does not, however, defeat the proposition that a litigant may recover just damages only once. . . . Double recovery is foreclosed by the rule that only one satisfaction may be obtained for a loss that is the subject of two or more judgments.” (Citations omitted; footnotes omitted; internal quotation marks omitted.) *Gionfriddo v. Gartenhaus Cafe*, 211 Conn. 67, 71–72, 557 A.2d 540 (1989). “[I]t is still the law that satisfaction of a judgment as to one tortfeasor is satisfaction as to all. . . . [N]othing we say today in any way changes the time-honored rule that an injured party is entitled to full recovery only once for the harm suffered.” (Citation omitted; internal quotation marks omitted.) *Id.*, 74. “This rule applies equally to the law of contracts.” *Id.*, 74 n.9.

Accordingly, the plaintiff may recover the full amount awarded by the trial court based on count one or count two of its complaint. It may, however, recover only once for the harm that it suffered. There is nothing in the record to indicate that the court improperly intended that the plaintiff was entitled to recover double damages.¹⁵

The defendants' claim that the court's award of contract damages was improper is likewise without merit. "As a general rule, the determination of damages involves a question of fact that will not be overturned on appeal unless it is clearly erroneous." *Harley v. Indian Spring Land Co.*, 123 Conn. App. 800, 838, 3 A.3d 992 (2010). In calculating the amount of damages, "[t]he general rule of damages in a breach of contract action is that the award should place the injured party in the same position as he would have been in had the contract been performed." (Internal quotation marks omitted.) *Id.*, 839.

In the present case, the court determined that Joan Frank had breached the staging services agreement by failing to pay the rent due, by wrongfully using the furniture in the defendants' personal residence for approximately three years, and by thwarting the plaintiff's efforts to retrieve its inventory, thereby resulting in the total loss of that inventory to the plaintiff. The court found credible the evidence presented by the plaintiff as to the value of its inventory. Accordingly, the court awarded the plaintiff \$235,598 for the inventory loss and \$47,508.45 for the rental loss and related late fees, for a total amount of \$283,106.45.

The defendants do not challenge the court's factual findings relating to the ways in which Joan Frank breached the agreement in this appeal. They challenge only the court's calculation of damages. On the basis of the court's findings and the evidence presented by the plaintiff, the defendants have failed to establish that the court's award of contract damages was clearly erroneous.

The judgment is affirmed.

In this opinion the other judges concurred.

* The listing of the judges reflects their seniority status on this court as of the date of oral argument.

¹ General Statutes § 42-134a et seq.

² Joan Frank testified at trial that title to the property to be staged was in her name.

³ "The Uniform Enforcement of Foreign Judgments Act, General Statutes § 52-604 et seq., provides a simplified procedure to enforce foreign judgments not obtained by default. General Statutes § 52-607 provides that, notwithstanding the provisions of that act, [t]he right of a judgment creditor to proceed by an action on the judgment . . . remains unimpaired." (Internal quotation marks omitted.) *Maltas v. Maltas*, 298 Conn. 354, 357 n.3, 2 A.3d 902 (2010).

In the present case, the California foreign judgment was a default judgment, and, accordingly, the plaintiff sought the common-law enforcement of that judgment.

⁴ There is no claim that process in Connecticut was not properly served of

that the Connecticut Superior Court lacked jurisdiction over the defendants.

⁵ The court did not consider the plaintiff's alternative basis for recovery, i.e., its claim for quantum meruit. The court stated that it was not necessary to consider that count of the complaint because of its conclusion that Joan Frank had breached the contract.

⁶ The plaintiff has not challenged the court's determinations that Joan Frank was not properly served with process in the California action, and, thus, the California Superior Court lacked personal jurisdiction over her.

⁷ The full faith and credit clause of the constitution of the United States provides in relevant part that "Full Faith and Credit shall be given in each State to the . . . judicial Proceedings of every other State. . . ." U.S. Const., art. IV, § 1.

⁸ All of the parties are in agreement that this court must look to California law to determine whether the California Superior Court possessed personal jurisdiction over George Frank.

⁹ Connecticut case law is in accord. When a defendant challenged a California judgment on the ground that the California Superior Court lacked personal jurisdiction over him, this court held: "The defendant focuses on lack of jurisdiction over his person. Unlike subject matter jurisdiction, however, personal jurisdiction may be created through consent or waiver. . . . Connecticut case law is clear that the courts will uphold an agreement of the parties to submit to the jurisdiction of a particular tribunal." (Citation omitted; internal quotation marks omitted.) *Phoenix Leasing, Inc. v. Kosinski*, 47 Conn. App. 650, 653, 707 A.2d 314 (1998).

The defendant in *Phoenix Leasing, Inc.*, had argued that the forum selection clause at issue did not provide California with personal jurisdiction over him because it failed to establish the minimum contacts required by due process before a court may exercise jurisdiction over a defendant. This court disagreed: "The defendant cites no cases in which the minimum contacts rule has been relied on to void a forum selection clause. Indeed, forum selection clauses have generally been found to satisfy the due process concerns targeted by the minimum contacts analysis." *Id.*

¹⁰ This express consent to jurisdiction distinguishes this case from the holding in *Global Packaging, Inc. v. Superior Court*, supra, 196 Cal. App. 4th 1632-34, where the Court of Appeals determined a venue selection clause was not a forum selection clause that conferred jurisdiction because the clause did not explicitly state that the parties consented to the personal jurisdiction of the California Superior Court.

¹¹ An addendum is defined in Black's Law Dictionary as "[s]omething to be added, esp. to a document; a supplement." Black's Law Dictionary (9th Ed. 2009).

¹² We note that the trial court focused on the plaintiff's claim of minimum contacts rather than its argument that George Frank consented to jurisdiction. As our discussion indicates, we agree with the trial court that the California Superior Court had personal jurisdiction over George Frank, but for a different reason than that propounded by the trial court. See *Rizzo Pool Co. v. Del Grosso*, 232 Conn. 666, 682, 657 A.2d 1087 (1995).

We do not disagree with the court's conclusion that California could exercise jurisdiction pursuant to its long arm statute and that the requisite minimum contacts had been established by the facts as found by the court and as recited in this opinion. In this regard, we would add that the court expressly found that George Frank's testimony was "lacking in truthfulness," and that there was testimony at trial that it was the defendants' realtor who initiated contact with the plaintiff.

We do not, however, provide an analysis addressed to the long arm statute and minimum contacts with California because we have determined that the plaintiff's argument that George Frank had consented to jurisdiction is a more compelling argument.

¹³ General Statutes § 42-134a (a) (5) provides in relevant part: "Home solicitation sale' means a sale, lease, or rental of consumer goods or services, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term 'home solicitation sale' does not include a transaction . . . pertaining to the sale or rental of real property"

¹⁴ The defendants do not challenge the court's determinations that Joan Frank breached the agreement or that they failed to establish their special defenses of failure to mitigate damages and breach of the covenant of good faith and fair dealing. The defendants rely solely on their argument that

the failure to comply with all of the provisions of the act rendered the agreement unenforceable.

¹⁵ In fact, the plaintiff acknowledged in its appellate brief and during oral argument before this court that it may not recover double damages for its loss.

NOTICE SENT: 6.21.16
HON. THEODORE R. TYMA
CLERK, SUPERIOR COURT, FBTCV125029855S
CLERK, APPELLATE COURT
REPORTER OF JUDICIAL DECISIONS
STAFF ATTORNEYS' OFFICE
COUNSEL OF RECORD

MICHAEL S. TAYLOR AND MATTHEW C. EAGAN IN SUPPORT OF PETITION;
ANTHONY J. LABELLA, IN OPPOSITION.

Within twenty days from the issuance of notice that certification to appeal has been granted, the petitioner, who shall be considered the appellant, shall file the appeal in accordance with the procedure set forth in Section 63-3 and shall pay all required fees in accordance with the provisions of Sections 60-7 or 60-8. The appeal form generated at the time of the electronic filing will bear the Supreme Court docket number assigned to the appeal. Except for a docketing statement, parties need not file other Section 63-4 papers. The case manager assigned to this appeal is Attorney Alan M. Gannuscio. His telephone number is (860) 757-2242.

The appellant's brief is due 45 days from the issuance of notice that certification to appeal has been granted.

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

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MERIBEAR PRODUCTIONS, INC. v. JOAN E.
FRANK ET AL.
(SC 19721)

Palmer, McDonald, D'Auria, Mullins and Kahn, Js.*

Syllabus

The plaintiff, M Co., which had obtained a judgment in California against the defendants, J and G, sought to enforce that judgment in Connecticut and to recover damages from the defendants in connection with a home staging services contract between the parties. The contract was signed by J, the owner of the home where M Co. was to provide design and decorating services, including the staging of home furnishings. G signed an addendum to the contract that authorized M Co. to charge him for certain fees and that indicated his personal guarantee to M Co. When the defendants later defaulted on their payment obligations under the contract and failed to cooperate with M Co.'s attempts to repossess the furnishings, M Co. filed an action in California Superior Court. The defendants failed to appear or defend, and the California court rendered a default judgment against the defendants. In the present action, M Co. filed a three count complaint, seeking enforcement of the California judgment in count one and alleging breach of contract in count two and quantum meruit in count three. That complaint alleged no facts relating to the substantive nature of the claims on which the California judgment was based. The court found for M Co. and against G on count one, but found for J and against M Co. on that count on the ground that the California court lacked personal jurisdiction over J. The court found for M Co. and against J on count two and concluded that, because M Co. had prevailed on its breach of contract claim, the court did not need to consider the alternative claim for quantum meruit in count three. In resolving counts two and three, the trial court made no reference to G. The trial court awarded damages against G on count one and against J on count two, and rendered judgment for M Co., from which the defendants filed a joint appeal with the Appellate Court. The Appellate Court affirmed the trial court's judgment, rejecting the defendants' claims on the merits. On the granting of certification, the defendants appealed to this court. *Held* that, because the trial court's judgment was not final as to G, as that court failed to dispose of counts two and three with respect to G, the Appellate Court lacked jurisdiction over the defendants' joint appeal, and, accordingly, the judgment of the Appellate Court was reversed, and the case was remanded to that court with direction to dismiss the appeal: although the trial court's judgment as to J was final because that court expressly disposed of counts one and two as to her and implicitly disposed of count three as to her, as the breach of contract and the quantum meruit counts alleged mutually exclusive theories of recovery such that establishing the elements of one precluded recovery on the other, the trial court's judgment as to G was not final because that court disposed of count one, but not count two or three, as to him, as the court could have found G liable under either count two or three without returning a verdict that was legally inconsistent with its determination with respect to count one; moreover, because M Co. did not withdraw counts two and three as to G or give any indication that it had unconditionally abandoned those counts, those counts remained adjudicated as to G, and, accordingly, it could not be said that further proceedings could have no effect on him.

Argued November 13, 2017—officially released May 15, 2018

Procedural History

Action to, inter alia, enforce a foreign default judgment rendered against the defendants in California, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the defendants filed an answer and special defense alleging that the judg-

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ment was not enforceable due to lack of personal jurisdiction by the California court; thereafter, the matter was tried to the court, *Tyma, J.*; judgment for the plaintiff, from which the defendants appealed to the Appellate Court, *Gruendel, Alvord and Pellegrino, Js.*, which affirmed the trial court's judgment, and the defendants, on the granting of certification, appealed to this court. *Reversed; judgment directed.*

Michael S. Taylor, with whom were *James P. Sexton*, and, on the brief, *Matthew C. Eagan*, for the appellants (defendants).

Anthony J. LaBella, with whom, on the brief, was *Deborah M. Garskof*, for the appellee (plaintiff).

Opinion

McDONALD, J. A threshold jurisdictional issue in this case requires us to clarify the circumstances under which there can be an appealable final judgment when the trial court's decision does not dispose of counts advancing alternative theories of relief. The plaintiff, Meribear Productions, Inc., brought an action against the defendants, Joan E. Frank and George A. Frank, for common-law enforcement of a foreign default judgment, breach of contract and quantum meruit. Judgment was rendered in favor of the plaintiff against each of the defendants under different counts of the complaint. The Appellate Court affirmed the judgment on the merits, and this court thereafter granted the defendants' petition for certification to appeal from that judgment. Upon further review, it is apparent that the judgment was not final as to George Frank, and, therefore, the Appellate Court lacked jurisdiction over the defendants' joint appeal.

The following facts were found by the trial court or are otherwise reflected in the record. The defendants, who are husband and wife, decided to sell their Westport home. They hired the plaintiff, a home staging services provider, to provide design and decorating services, which included the staging of home furnishings owned by the plaintiff, to make the residence more attractive to potential buyers. The plaintiff is a California corporation with its principal place of business located in Los Angeles. The staging agreement was signed only by Joan Frank, the owner of the property. George Frank signed an addendum to the agreement, which authorized the plaintiff to charge his credit card for the initial staging fee, which included the first four months of rental charges, and indicated his personal guarantee to the plaintiff, but he crossed out the phrase "any obligations that may become due."

More than four months after the furnishings were delivered and staged in the defendants' home, the defendants defaulted on their payment obligations and failed to cooperate with the plaintiff's attempts to repossess the furnishings. The plaintiff filed an action against the defendants in a California Superior Court. The defendants did not appear or defend. The California court entered a default judgment against the defendants in the amount of \$259,746.10, which included prejudgment interest and attorney's fees.¹

Approximately one month later, the plaintiff commenced the present action in Connecticut seeking to hold the defendants jointly and severally liable under the foreign default judgment and to recover additional attorney's fees, costs, and postjudgment interest. In response to the defendants' assertion of a special defense that the judgment was void because the California court lacked personal jurisdiction over them, the

plaintiff amended the complaint to add two counts seeking recovery against both defendants under theories of breach of contract and quantum meruit. Prior to trial, a prejudgment attachment in the amount of \$259,764.10, together with 10 percent postjudgment interest, pursuant to provisions of the California Code of Civil Procedure, was entered against the Westport real property owned by Joan Frank.

In a trial to the court, the plaintiff litigated all three claims. In its posttrial brief, the plaintiff requested that the court give full faith and credit to the California judgment, plus postjudgment interest; "[i]n the alternative," find that the defendants had breached the contract and award damages in the same amount awarded in the California judgment, plus interest, fees and costs; and, "[f]inally, in the event [that] neither request is . . . granted," render judgment in the plaintiff's favor on the quantum meruit count in the same amount.

The court issued a memorandum of decision finding in favor of the plaintiff on count one against George Frank and on count two against Joan Frank. The court acknowledged at the outset that the three count complaint was for "common-law enforcement of a foreign default judgment, and alternatively, for breach of contract and quantum meruit." Turning first to count one, the trial court determined that, as a result of the manner in which process was served, the California court lacked personal jurisdiction over Joan Frank but had jurisdiction over George Frank. In rejecting George Frank's argument that the exercise of jurisdiction did not comply with the dictates of due process, the court cited his admission "that he signed a guarantee of the staging agreement . . . that provides that Los Angeles is the appropriate forum." Consequently, the court stated that it would render judgment on count one for Joan Frank and against George Frank.

In resolving the remaining counts, the court made no further reference to George Frank. As to count two, the court concluded that Joan Frank had breached the contract, that she could not prevail on her special defenses to enforcement of the contract, and that judgment would be rendered for the plaintiff and against Joan Frank. As to count three, the court cited case law explaining that parties routinely plead alternative counts of breach of contract and quantum meruit, but that they are only entitled to a single measure of damages. The court concluded: "The plaintiff has proven that Joan Frank breached the contract. Therefore, the court need not consider the alternative claim for quantum meruit."

The court awarded damages against George Frank on count one and against Joan Frank on count two. Although both awards covered inventory loss and lost rents, the California judgment included prejudgment

tract award included late fees related to the rental loss. The judgment file provided: "The court, having heard the parties, finds the issues for the plaintiff. Whereupon it is adjudged that the plaintiff recover of the defendant Joan E. Frank \$283,106.45 damages and that the plaintiff recover of the defendant George A. Frank \$259,746.10." The court indicated that a hearing would be scheduled on attorney's fees, but did not address the subject of postjudgment interest.

The defendants jointly appealed from the judgment to the Appellate Court, claiming that (1) the California judgment was unenforceable against George Frank because he did not have sufficient minimum contacts with California for its court to exercise personal jurisdiction over him, (2) the staging services agreement was not enforceable because it failed to comply with certain provisions of the Home Solicitation Sales Act, General Statutes § 42-134a et seq., and (3) the damage award was improper because (a) the judgment against George Frank under the first count and against Joan Frank under the second count constituted double recovery for the same loss, and (b) the award under the second count improperly included damages for conversion of the home furnishings. See *Meribear Productions, Inc. v. Frank*, 165 Conn. App. 305, 311, 316, 321-22, 140 A.3d 993 (2016). The Appellate Court affirmed the trial court's judgment, rejecting the defendants' claims on the merits. *Id.*, 307. With respect to the double damages issue, the Appellate Court noted that "the plaintiff may recover the full amount awarded by the trial court based on count one or count two of its complaint. It may, however, recover only once for the harm that it suffered." *Id.*, 322.

The defendants' certified appeal to this court followed.² During the course of oral argument, the defendants conceded that the plaintiff was entitled to some recovery under quantum meruit and asserted that, although that count had not been addressed in any manner by the trial court as to George Frank, the plaintiff could obtain a ruling on that count on remand should the defendants succeed on their appeal. In response, this court questioned whether George Frank's appeal had been taken from a final judgment when the trial court's ruling had not disposed of all counts against him. Because this issue had not been addressed in the parties' briefs, we ordered supplemental briefs on that issue. In those briefs, the parties agreed that there was a final judgment. They contended that the failure to rule on an alternative claim for relief does not affect the finality of the judgment.³ Although there is Appellate Court authority to support the parties' position, we conclude that one line of this case law, applicable to the present case, is inconsistent with our final judgment law. We conclude that the trial court's failure to dispose of either the contract count or the quantum merit count

ment. Accordingly, the Appellate Court should have dismissed the defendants' joint appeal.⁴ See *In re Santiago G.*, 325 Conn. 221, 229, 157 A.3d 60 (2017) (“the lack of a final judgment is a jurisdictional defect that [necessitates] . . . dismissal of the appeal” [internal quotation marks omitted]).

“When judgment has been rendered on an entire complaint . . . such judgment shall constitute a final judgment.” Practice Book § 61-2. As a general rule, however, a judgment that disposes of only a part of a complaint is not final, unless it disposes of all of the causes of action against the appellant. *Manifold v. Ragaglia*, 272 Conn. 410, 417–18 n.8, 862 A.2d 292 (2004); *Cheryl Terry Enterprises, Ltd. v. Hartford*, 262 Conn. 240, 246, 811 A.2d 1272 (2002); see also Practice Book § 61-3 (party may appeal if partial judgment disposes “of all causes of action . . . against a particular party or parties”).

If a party wishes to appeal from a partial judgment rendered against it, barring a limited exception not applicable to the present case, it can do so only if the remaining causes of action or claims for relief are withdrawn or unconditionally abandoned before the appeal is taken.⁵ Compare *Stroiney v. Crescent Lake Tax District*, 197 Conn. 82, 84, 495 A.2d 1063 (1985) (There was no final judgment when the trial court rendered summary judgment on a claim seeking declaratory judgment without disposing of the claims for injunctive relief and damages. “The plaintiffs have not withdrawn or abandoned their claims for relief that have not yet been adjudicated. The situation, therefore, is similar to where a judgment has been rendered only upon the issue of liability without an award of damages.”), with *Zamstein v. Marvasti*, 240 Conn. 549, 555–57, 692 A.2d 781 (1997) (final judgment after trial court granted motion to strike four of six counts because plaintiff abandoned remaining claims in motion for judgment by representing that he would withdraw counts, and plaintiff did so after court rendered judgment).

In assessing whether a judgment disposes of all of the causes of action against a party, this court has recognized that the trial court's failure to *expressly* dispose of all of the counts in the judgment itself will not necessarily render the judgment not final. Rather, the reviewing court looks to the complaint and the memorandum of decision to determine whether the trial court explicitly or *implicitly* disposed of each count. See, e.g., *Normand Josef Enterprises, Inc. v. Connecticut National Bank*, 230 Conn. 486, 488 n.1, 646 A.2d 1289 (1994) (final judgment despite absence of explicit finding on count four, alleging misrepresentation, because court implicitly rejected count four on merits when its resolution of another count found that defendant's conduct came “close to a misrepresentation” and court's judgment provided that it was entered for plain-

tiff and against defendant “on counts one, two and three of the complaint *only*” [emphasis altered; internal quotation marks omitted]); *Martin v. Martin’s News Service, Inc.*, 9 Conn. App. 304, 306 n.2, 518 A.2d 951 (1986) (final judgment when neither judgment file nor memorandum of decision specifically indicated that judgment was entered on counterclaim because “[i]t is clear that had judgment been entered specifically on the counterclaim, it would have been entered in favor of the plaintiff” when court’s decision discussed subject of counterclaim at length, and judgment provided that court “ ‘finds the issues for the plaintiff’ ”), cert. denied, 202 Conn. 807, 520 A.2d 1287 (1987); see also *Wesley v. Schaller Subaru, Inc.*, 277 Conn. 526, 529 n.1, 893 A.2d 389 (2006) (“[w]hen there is an inconsistency between the judgment file and the oral or written decision of the trial court, it is the order of the court that controls because the judgment file is merely a clerical document, and the pronouncement by the court . . . is the judgment” [internal quotation marks omitted]).

In so concluding, this court explained that, “[a]lthough it is preferable for a trial court to make a formal ruling on each count, we will not elevate form over substance when it is apparent from the memorandum of decision [whether the plaintiff prevailed on each count].” *Normand Josef Enterprises, Inc. v. Connecticut National Bank*, supra, 230 Conn. 488 n.1. Whereas the court’s memorandum of decision in *Normand Josef Enterprises, Inc.*, implicitly disposed of the count lacking a formal ruling by indicating that the proof was insufficient to establish an essential element or elements of the claim, the Appellate Court has since relied on this “form over substance” proposition in other circumstances.

The Appellate Court has held that there was a final judgment when the trial court rendered judgment “in favor of the plaintiff” and expressly found for the plaintiff on one or more counts, but did not address claims raising alternative theories of recovery. See, e.g., *Nation Electrical Contracting, LLC v. St. Dimitrie Romanian Orthodox Church*, 144 Conn. App. 808, 814–15 n.6, 74 A.3d 474 (2013) (final judgment when trial court rendered judgment for plaintiff on unjust enrichment count but made no reference to quantum meruit count; latter claim viewed “as having been resolved because the plaintiff would not have been entitled to recover under both [counts],” which raised “alternative theories of restitution,” differing only in that one remedy is available despite unenforceable contract and other is available despite absence of quasi-contractual relationship); *Carrillo v. Goldberg*, 141 Conn. App. 299, 306 n.6, 61 A.3d 1164 (2013) (The trial court rendered judgment for the plaintiffs on certain counts and for the defendants on another count, but “did not specify its rulings with respect to the plaintiffs’ breach of fiduciary duties

states, however, that the court found ‘the issues on the [c]omplaint for the [p]laintiffs,’ we conclude that this is an appealable final judgment.”); *Atelier Constantin Popescu, LLC v. JC Corp.*, 134 Conn. App. 731, 738 and n.4, 49 A.3d 1003 (2012) (The trial court rendered judgment in favor of the plaintiff, and in its decision found for the plaintiff on five of the eleven counts in the complaint, even though “[t]he court did not address explicitly the plaintiff’s restitution claim. Nevertheless, we conclude that the present appeal was taken from a final judgment.”); *Hardie v. Mistril*, 133 Conn. App. 572, 574 and n.2, 36 A.3d 261 (2012) (There was a final judgment when the trial court rendered judgment in favor of the plaintiff on the trespass count but did not render “formal” judgment on the conversion and negligence counts to recover for the same injury and did not discuss those counts in its memorandum of decision. “It is apparent from the memorandum of decision, and is reiterated in the judgment file, that the court found in favor of the plaintiff on its trespass count and awarded damages on that count.”); *Rent-A-PC, Inc. v. Rental Management, Inc.*, 96 Conn. App. 600, 604 n.3, 901 A.2d 720 (2006) (final judgment in case in which eight count complaint alleged various theories of recovery for same injury where court found issues on one count, unjust enrichment, for plaintiff, without addressing other issues); *Raudat v. Leary*, 88 Conn. App. 44, 49, 868 A.2d 120 (2005) (final judgment on two count complaint alleging intentional and negligent misrepresentation when court stated in memorandum of decision that because it had ruled in favor of plaintiff on intentional misrepresentation count, it did “‘not need to address the second count of the complaint as to negligent misrepresentation,’” and made similar statement in judgment file, when law indicated that these theories are mutually exclusive); *Union Trust Co. v. Jackson*, 42 Conn. App. 413, 416 n.2, 679 A.2d 421 (1996) (“The trial court’s memorandum of decision discusses only the action in breach of contract. The court, therefore, did not need to address the plaintiff’s alternative cause of action of unjust enrichment. The judgment file indicates judgment was rendered on the complaint and therefore there is a final judgment.”).

A closer review of these alternative theory cases reveals that they actually fall into two categories. One category involves counts alleging claims that are legally inconsistent, also referred to as mutually exclusive, such that establishing the elements of one precludes liability on the other (e.g., negligent infliction of emotional distress and intentional infliction of emotional distress, or breach of contract and promissory estoppel). See, e.g., *DaCruz v. State Farm Fire & Casualty Co.*, 268 Conn. 675, 693, 846 A.2d 849 (2004) (“[i]ntentional conduct and negligent conduct, although differing only by a matter of degree . . . are separate and mutually exclusive” [citation omitted; internal quota-

tion marks omitted]); *Harley v. Indian Spring Land Co.*, 123 Conn. App. 800, 831, 3 A.3d 992 (2010) (“[b]ecause the elements of a breach of contract include the formation of an agreement . . . which, in turn, requires the presence of adequate consideration . . . and promissory estoppel is appropriate when there is an absence of consideration to support a contract . . . we conclude that the court rendered an inconsistent judgment when it found in favor of the plaintiff on both counts” [citations omitted]). In such cases, it is fair to infer that a judgment in favor of the plaintiff on one count *legally* implies a judgment in favor of the defendant on the other count. See *Harley v. Indian Spring Land Co.*, supra, 831–32 (“Although a party may plead, in good faith, inconsistent facts and theories, a court may not award a judgment on inconsistent facts and conclusions. . . . Where a party is entitled to only a single right to recover, it is the responsibility of the trial court to determine which of the inapposite sets of facts the party has proved, and then to render judgment accordingly.” [Internal quotation marks omitted.]).

The second category involves claims that present alternative theories of recovery for the same injury, but are not legally inconsistent. In such cases, there is no legal impediment to the trier of fact finding that the plaintiff has established both claims, although the plaintiff can recover only once for the same injury. See *Rowe v. Goulet*, 89 Conn. App. 836, 849, 875 A.2d 564 (2005) (“Duplicated recoveries . . . must not be awarded for the same underlying loss under different legal theories. . . . Although a plaintiff is entitled to allege respective theories of liability in separate claims, he or she is not entitled to recover twice for harm growing out of the same transaction, occurrence or event.” [Citations omitted.]). Indeed, in some cases, the damages may be measured differently and, in turn, result in a different recovery under the alternative theories. See, e.g., *Jonap v. Silver*, 1 Conn. App. 550, 553, 561–62, 474 A.2d 800 (1984) (award reduced by \$24,000 where jury awarded plaintiff \$24,000 on counts alleging invasion of privacy for appropriating his name and \$32,000 on counts alleging invasion of privacy for placing plaintiff in false light because elements of damage establishing liability for each were duplicative). In such cases, when the court has found in favor of the plaintiff on one count, this ruling does not imply as a matter of fact or law whether the plaintiff has established the defendant’s liability under the other count.

Because of the different effect of the rulings in these categories, drawing a distinction between them for purposes of the final judgment rule advances the policies underlying that rule, “namely, the prevention of piecemeal appeals and the conservation of judicial resources.” *Niro v. Niro*, 314 Conn. 62, 78, 100 A.3d 801 (2014); see also *Canty v. Otto*, 304 Conn. 546, 554,

speedy and orderly disposition of cases at the trial court level”). At trial, the parties have expended resources to fully litigate all of the claims advanced. A rule that would allow the trial court not to dispose of counts that present alternative, legally consistent theories of recovery could lead to multiple unnecessary appeals and retrials. In exceptional circumstances in which the trial court and the parties agree that litigating only some of the alternative claims for relief and proceeding to appeal on those issues before litigating alternative claims would constitute the greater efficiency, our rules provide a mechanism to address those circumstances. See Practice Book § 61-4 (a) (set forth in relevant part in footnote 5 of this opinion).

In sum, we conclude that when the trial court disposes of one count in the plaintiff’s favor, such a determination implicitly disposes of legally inconsistent, but not legally consistent, alternative theories. When a legally consistent theory of recovery has been litigated and has not been ruled on, there is no final judgment.

That having been said, it is our view that, whenever feasible, the far better practice would be for the trial court to fully address the merits of all theories litigated, even those that are legally inconsistent.⁶ If the trial court determines that the plaintiff has established more than one theory of recovery for the same injury, the trial court would render judgment in the plaintiff’s favor on the primary count and render judgment for the defendant on the other(s), albeit solely due to the nature of the alternative claims. By so doing, we envision several economies that would inure to the benefit of the parties and the judicial system. The losing party would be able to more accurately assess the likelihood of success on appeal to decide whether to invest the resources to pursue further litigation. If the appeal proceeds, the case would typically be resolved in that appeal, thus substantially reducing the number of retrials and successive appeals.

Applying these rules to the present case, we conclude that the judgment as to Joan Frank was final. The trial court expressly disposed of counts one and two as to her. Counts two and three alleged mutually exclusive theories. See, e.g., *Walpole Woodworkers, Inc. v. Manning*, 307 Conn. 582, 587 n.9, 57 A.3d 730 (2012) (“[q]uantum meruit is an equitable remedy to provide restitution for the reasonable value of services despite an unenforceable contract”); *300 State, LLC v. Hanafin*, 140 Conn. App. 327, 330–31, 59 A.3d 287 (2013) (breach of lease and quantum meruit counts are mutually exclusive). By stating that it did not need to consider the quantum meruit claim in count three in light of its finding of liability on the breach of contract claim in count two, the court implied that Joan Frank was entitled to judgment on count three solely due to the alternative nature of the claim

The judgment as to George Frank, however, was not final. Of the three counts brought against him, the court disposed of only count one, finding him liable under the California default judgment. However, the court also could have found him liable under either, but not both, of the other counts without returning a legally inconsistent verdict. To prevail on count one, the plaintiff needed to establish only that (1) a valid default judgment had been entered in the California court against George Frank, and (2) the judgment remained unsatisfied. In fact, the complaint in the present action alleged no facts relating to the substantive nature of the claims on which judgment was rendered in California. Although the trial court relied on George Frank's admission that he had signed a guarantee of the staging agreement in rejecting his due process defense to count one, that finding would not be legally inconsistent with a finding against him on either the breach of contract count or the quantum meruit count. Insofar as the plaintiff suggests that the trial court found facts that would sustain a verdict on quantum meruit, we conclude that it is improper for us to make such a determination, especially in the context of a jurisdictional defect. See *Crowell v. Danforth*, 222 Conn. 150, 158, 609 A.2d 654 (1992) (determination of quantum meruit claim "requires a factual examination of the circumstances and of the conduct of the parties . . . that is not a task for an appellate court [but rather for the trier of fact]" [internal quotation marks omitted]). Therefore, counts two and three have not been disposed of, explicitly or implicitly.

The plaintiff has neither withdrawn counts two and three as to George Frank, nor given any indication that it has unconditionally abandoned them. Indeed, not only do these counts remain adjudicated, they present the possibility that George Frank could be found liable for additional damages. As previously noted, the damages on count two as to Joan Frank exceeded those on count one as to George Frank. Therefore, it cannot be said that further proceedings could have no effect on him.

As there was no final judgment, the Appellate Court did not have jurisdiction over the appeal.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to dismiss the defendants' joint appeal.

In this opinion the other justices concurred.

* This case originally was scheduled to be argued before a panel of this court consisting of Justices Palmer, McDonald, D'Auria, Mullins and Kahn. Although Justice Kahn was not present when the case was argued before the court, she has read the briefs and appendices, and listened to a recording of the oral argument prior to participating in this decision.

¹ The complaint alleged breach of contract, conversion and fraud, and sought total damages in the amount of \$253,000 (\$18,000 in lost rent and \$235,000 in converted inventory). For reasons that are not clear, the court awarded damages in the amount of \$248,300.

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² This court granted certification limited to the following issues: "Did the

that: (1) the foreign judgment against George A. Frank was enforceable after concluding that he had minimum contacts with California that warranted the exercise of its jurisdiction; (2) the contract signed by Joan E. Frank was enforceable notwithstanding the provisions of the Home Solicitation Sales Act; and (3) an award of double damages to the plaintiff was appropriate." *Meribear Productions, Inc. v. Frank*, 322 Conn. 903, 138 A.3d 238 (2016).

³ The discussion at oral argument focused exclusively on the trial court's failure to dispose of the quantum meruit count as to George Frank. As there was no discussion at oral argument regarding its failure to dispose of the breach of contract count as to him, we did not ask the parties to address both counts in their supplemental briefs. Nonetheless, their argument as to alternative claims applies to both counts.

The defendants did argue, however, that the judgment was final because the second and third counts of the complaint had been brought against only Joan Frank. The allegations in the complaint, the plaintiff's posttrial brief, and the trial court's decision plainly belie that argument. It is evident that the trial court did not rule on the second and third counts of the complaint as to George Frank because the plaintiff had presented these counts as alternatives should it fail to prevail on the first count. Although the trial court's findings of fact include a finding that George Frank was "not a party to the staging agreement," we do not construe that finding as a determination that George Frank could not be held liable for breach of contract. Rather, it appears that the court was emphasizing that George Frank, unlike Joan Frank, had not signed the agreement.

⁴ In the defendants' supplemental brief on this issue, there was no request for this court to consider Joan Frank's appeal separately should we conclude that the judgment is not final as to George Frank. Nor did they contend that the issues as to each defendant overlapped to such an extent that we should consider both. This court has recognized that, "[i]n some circumstances, the factual and legal issues raised by a legal argument, the appealability of which is doubtful, may be so inextricably intertwined with another argument, the appealability of which is established that we should assume jurisdiction over both." (Internal quotation marks omitted.) *Agleh v. Cadlerock Joint Venture II, L.P.*, 299 Conn. 84, 90, 10 A.3d 498 (2010). However, that circumstance is not applicable in the present case. We have previously relied on this exception when there is a final judgment as to all of the parties before the reviewing court, and the question is whether we can also consider an interlocutory ruling affecting those parties properly before us. See, e.g., *Santorso v. Bristol Hospital*, 308 Conn. 338, 354 n.9, 63 A.3d 940 (2013); *Canty v. Otto*, 304 Conn. 546, 553–56, 41 A.3d 280 (2012). In the present case, the judgment is final as to Joan Frank only. In addition, we have invoked this exception when resolution of the interlocutory ruling would control or bear on the resolution of the final judgment or the case generally. See, e.g., *Santorso v. Bristol Hospital*, supra, 354 n.9 (action was not barred by res judicata but was barred under statute of limitations); *Collins v. Anthem Health Plans, Inc.*, 266 Conn. 12, 28–30, 836 A.2d 1124 (2003) (analysis of class certification issues would equally apply to claims that are subject to immediate review and those not subject to immediate review); *Taff v. Bettcher*, 243 Conn. 380, 384 n.2, 703 A.2d 759 (1997) ("orders relating to custody and support are part of a carefully crafted mosaic such that a change to one will necessarily create a change to the other"). In the present case, our resolution of George Frank's jurisdictional challenge to the California judgment could have no bearing on Joan Frank's challenge to the judgment against her for breach of contract or on any potential liability under quantum meruit. Nor would it be dispositive of the challenge to the damages awarded.

⁵ Practice Book § 61-4 (a), setting forth the exception to that rule, provides that when partial summary judgment has been granted upon fewer than all of the causes of action against a party, "[s]uch a judgment shall be considered an appealable final judgment only if the trial court makes a written determination that the issues resolved by the judgment are of such significance to the determination of the outcome of the case that the delay incident to the appeal would be justified, and the chief justice or chief judge of the court having appellate jurisdiction concurs" [emphasis omitted].

⁶ By this, we mean that the court would make all of the findings of fact and any legally consistent conclusions of law related to the alternative claim(s), as well as the damages established in relation to that claim.

WITHDRAWAL

JD-CV-41 Rev. 1-18

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

ADA NOTICE
The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at www.jud.ct.gov/ADA.

Docket number
FBT-CV-12-5029855-S
Return date (For Civil and Housing cases only)
Oct-03-2012
Answer date (For Small Claims cases only)

Instructions:
1. Complete this form by selecting any applicable withdrawal categories below.
2. File with the clerk.

Name of case (First-named Plaintiff vs. First-named Defendant)

MERIBEAR PRODUCTIONS INC DBA v. FRANK,JOAN,E Et Al

<input checked="" type="checkbox"/> Judicial District	<input type="checkbox"/> Housing Session	Address of court (Number, street, town and zip code)
		1061 MAIN STREET BRIDGEPORT, CT 06604

Dispositive (Complete) Withdrawal

(Do not check the following two boxes if any intervening complaints, cross complaints, counterclaims, or third party complaints remain pending in this case. See below for partial withdrawal of action.)

- (WDACT) The Plaintiff's action is WITHDRAWN AS TO ALL DEFENDANTS without costs to any party.
- (WOARD) A judgment has been rendered against the following Defendant(s):

_____ and the Plaintiff's action is WITHDRAWN AS TO ALL REMAINING DEFENDANTS without costs.

Partial Withdrawal

The following pleading(s), motion(s) or other paper(s) in the case named above is or are withdrawn:

- (WDCOMP) Complaint (WAPPCOM) Apportionment Complaint
- (WOC) Counterclaim (WDINTCO) Intervening Complaint
- (WDCC) Cross Complaint (cross claim) (WDTHPC) Third Party Complaint
- (WDCOUNT) Counts of the complaint: _____
- (WOAAP) Plaintiff(s): _____
- (WOAAD) Complaint against defendant(s): _____ only without costs
- (WOM) Motion:
- Other: **Counts Two and Three of Amended Complaint (Entry 111.00) ONLY & solely as to Defendant George Frank**

Signature of Filer(s)

Party P-01 MERIBEAR PRODUCTIONS INC	; By URY & MOSKOW LLC	Attorney or Self-represented party
Party _____	; By _____	Attorney or Self-represented party
Party _____	; By _____	Attorney or Self-represented party
Party _____	; By _____	Attorney or Self-represented party

Name & Address of Filer(s): **ANTHONY JOSEPH LABELLA**
883 Black Rock Turnpike, Fairfield, CT 06825

Certification

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date) Jan-29-2019 to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was or will be mailed or delivered to*	HORTON DOWD BARTSCHI & LEVESQUE PC - 90 GILLET STREET/HARTFORD, CT 06105	<i>For Court Use Only</i>
*If necessary, attach additional sheet or sheets with name and address which the copy was or will be mailed or delivered to.		
Signed (Signature of filer)	Print or type name of person signing	Date signed
418113	ANTHONY JOSEPH LABELLA	Jan-29-2019
Mailing address (Number, street, town, state and zip code)	Telephone number	
883 BLACK ROCK TPKE FAIRFIELD, CT 06825	203-610-6393	

Continuation of JDCV41 Withdrawal for FBT-CV-12-5029855-S

Submitted By URY & MOSKOW LLC (410686)

Certification of Service (Continued from JDCV41)

Name and Address at which service was made:

CHRISTOPHER VAUGH - 160 FAIRFIELD WOODS ROAD/SUITE 14/FAIRFIELD, CT 06825

***** End of Certification of Service *****

DOCKET NO. FBT-CV-12-5029855-S : OFFICE OF THE CLERK
SUPERIOR COURT
2019 JAN 31 P 3:55
MERIBEAR PRODUCTIONS, INC. D/B/A : J. D. OF FAIRFIELD
JUDICIAL DISTRICT OF
FAIRFIELD AT BRIDGEPORT
STATE OF CONNECTICUT
V. : AT BRIDGEPORT
JOAN E. FRANK, ET AL. : JANUARY 31, 2019

MEMORANDUM OF DECISION

This action is again before the court as the result of a decision of our Supreme Court reversing the judgment of the Appellate Court affirming the decision of the trial court, with direction to dismiss the defendants' joint appeal based on the lack of a final judgment. The defendants are George Frank and Joan Frank, husband and wife. The sole issue presently before the court is the plaintiff's claim under the second count for ten percent post judgment interest in accordance with General Statutes § 37-3a. The second count is brought against Joan Frank for breach of contract. In response to the Supreme Court's conclusion that the judgment of the trial court from which the appeal was taken was not a final judgment, and in an apparent attempt to address the procedural issue, the plaintiff has filed a withdrawal of the second and third counts against George Frank. A hearing on the plaintiff's claim for post judgment interest was held on January 30, 2019.

Section 37-3a provides in relevant part: "(a) [I]nterest at the rate of ten percent a year, and no more, may be recovered and allowed in civil actions . . . as damages for the detention of money after it becomes payable . . ." General Statutes § 37-3a. The Supreme Court "recently clarified that, under § 37-3a, proof of wrongfulness is not required above and beyond proof of the underlying legal claim, a requirement that is met once the plaintiff obtains a judgment in his favor on that claim." (Citations omitted; internal quotation marks

omitted.) *DiLieto v. County Obstetrics and Gynecology Group, P.C.*, 310 Conn. 38, 52, 74 A.3d 1212 (2013). “[T]he fact that a defendant has the legal right to withhold payment under the judgment during the pendency of an appeal is irrelevant to the question of whether the plaintiff is entitled to interest under § 37-3a.” *Id.*, 49.

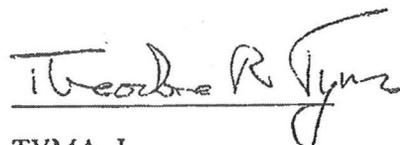
The statute “does not identify factors to be considered by the trial court in exercising discretion under the statute. Accordingly, the court is free to consider whatever factors may be relevant to its determination.” *Id.*, 54. “[A] paramount factor for the trial court to consider in deciding whether to award post-judgment interest is the purpose of such interest, namely, to compensate the prevailing party for the loss of the use of the money owed from the date of the judgment until the date that the judgment is paid. In exercising its discretion under [the statute], the trial court should identify any other factors or considerations that may militate for or against an award of postjudgment interest. In sum, the trial court should consider any and all factors that are relevant to its determination. Of course, the trial court's discretion . . . includes the discretion to choose a fair rate of interest not to exceed [ten] percent per annum.” (Citation omitted.) *Id.*, 59-60.

In the present case, the plaintiff obtained a judgment on the second count against Joan Frank in the amount of \$283,106.45, thereby establishing that she breached a staging contract with the plaintiff causing the plaintiff to sustain money damages. The plaintiff's proof of that claim at trial against Joan Frank allows the court to award discretionary interest to the plaintiff under § 37-3a.

In considering the equities and the compensatory purpose of post judgment interest, the court awards the plaintiff post judgment interest. The following factors are relevant to the court's determination. Joan Frank's conduct, either directly or through the acts of George

Frank, relating to the breach of the staging agreement militates in favor of such an award. At the very least, Joan Frank was a willing participant with her husband, George Frank, in thwarting the plaintiff's attempts to recover the furniture and monies owed. The Franks never made a payment to the plaintiff beyond the nonrefundable initial payment of \$19,000, a portion of which was applied to the first four months of rent owed for the staging furniture. The Franks failed to cooperate with the plaintiff's attempts to repossess the furniture. Their lack of cooperation included, on more than one occasion, denying movers hired by the plaintiff access to their residence. The Franks also made unreasonable demands on the plaintiff making it difficult, if not impossible, to get paid. Moreover, there is no evidence that the Franks ever returned the furniture to the plaintiff.

Under the circumstances, the court finds that the plaintiff should be compensated for being deprived of the use of its money and furniture, and awards to the plaintiff post judgment interest. Given the present economic climate, and the equitable factors considered by the court, post judgment interest is awarded at the rate of five percent per annum from the date of the final judgment until the date the judgment is paid.


TYMA, J.

Appeal Form (continued)

CASE NAME:

MERIBEAR PRODUCTIONS INC DBA v. FRANK,JOAN,E Et Al

OTHER TRIAL COURT JUDGES

HON. RICHARD P. GILARDI

HON. BARBARA N. BELLIS

JUDGMENT DATES

01/29/2019

10/14/2014

Parties & Appearances

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Appeal Form (continued)

FILING PARTY CORRECTED INFORMATION

HORTON DOWD BARTSCHI & LEVESQUE PC Michael S. Taylor, mtaylor@hdblfirm.com

A.C. 42602	:	APPELLATE COURT
MERIBEAR PRODUCTIONS, INC.	:	
D/B/A MERIDITH BAER AND ASSOCIATES	:	STATE OF CONNECTICUT
v.	:	
JOAN E. FRANK et al.	:	MARCH 28, 2019

DOCKETING STATEMENT

Pursuant to Practice Book §63-4 (a)(3), the defendant-appellants submit the following information:

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(ii) There are currently no other cases pending the Supreme Court or Appellate Court that arise from substantially the same controversy as the cause on appeal or involve issues closely related to those presented by the appeal.

(iii) There were exhibits in the trial court.

(iv) Not applicable.

Respectfully submitted,
DEFENDANT-APPELLANTS
PURSUIT MANAGEMENT INVESTMENT ET AL.

BY: /s Michael S. Taylor

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CERTIFICATION

I hereby certify: (1) on March 28, 2019, the foregoing document was emailed to the counsel of record listed below; (2) the document contains no personally identifiable information or such information has been redacted; and (3) the document complies with all applicable rules of appellate procedure.

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