Gasser & Huget, LLC
Attorneys at Law

Client Quarterly

April 2008

Summary Judgment Remains an Uphill Battle

In *Allen v. Cox*, 285 Conn. 603, ___ A.2d ___ (2008), the Supreme Court reversed the decision of the trial court that granted summary judgment in favor of the defendants.

Sally Allen claimed that the defendants' cat injured her after the defendants negligently allowed the animal to roam free. The defendants moved for summary judgment on the ground that there was no genuine issue of material fact as to whether they owed the plaintiff a duty of care because they did not know that their cat was vicious and hence liable to attack a person. In response to the defendants' motion, the plaintiff produced evidence that the cat had a vicious disposition in that it previously attacked other cats and that her injuries were incurred while attempting to save her own cat from attack.

The trial court granted summary judgment, holding that there was no evidence that the cat had previously attacked a person. The Supreme Court disagreed and found that, "under the specific circumstances of this case, there was a genuine issue of material fact as to whether the defendants knew or should have known that their cat's vicious or mischievous propensities could lead it to injure a person." It concluded that "when a cat has a propensity to attack other cats, knowledge of that propensity may render the owner liable for injuries to people that *foreseeably* result from such behavior." It then reasoned that it was reasonably foreseeable that a person could be injured while attempting to protect her own cat from an attack by an abnormally aggressive cat. It reversed the judgment of the trial court and remanded the case to the trial court with direction to deny the defendants' motion for summary judgment.

In *Baldwin v. Curtis*, 105 Conn. App. 844, ___ A.2d ___ (2008), the Appellate Court reversed the decision of the trial court that granted the defendants' motion for summary judgment.

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News from Gasser & Huget, LLC

We are pleased to announce that Attorney Lauren Barber has become associated with the firm. Lauren did her undergraduate work at the University of Connecticut and was graduated from Quinnipiac Law School. She is admitted to practice in Connecticut and New York.

Lauren was a member of our staff before she decided to attend law school. We are very pleased to have her back.

Client Quarterly is designed to keep our clients and friends informed about new legislation, court decisions, and issues that affect them. The quarterly is published in both print and electronic formats.

Clients are encouraged to submit questions and topics of interest to be addressed in future issues.

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Shirley Baldwin claimed that she slipped and fell on ice in a parking lot maintained by the defendant. The defendant moved for summary judgment and attached to her motion an affidavit stating that she was not in possession of the parking lot when the plaintiff fell. Although the plaintiff filed an objection to the motion, she failed to produce a counter affidavit that raised a material question of fact. After argument, the court granted the defendant's motion. It found that "…in the absence of any counter affidavit, there is no issue of material fact that the defendant was not in possession." Thereafter the court denied the plaintiff's motion to reargue after concluding that the plaintiff had ample opportunity to develop contrary evidence to defeat the summary judgment.

The Appellate Court disagreed. Although the defendant produced affidavits to attest that she did not possess or maintain the parking lot, she did not identify who did. The Appellate Court reasoned that because the plaintiff fell in a parking lot common to all tenants, and because there was no dispute that the defendant owned the lot, the defendant did not meet her burden of proof "…without producing evidence tending to show that someone other than the defendant possessed and controlled the parking lot."

Connecticut Practice Book § 17-49 provides that summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The rules notwithstanding, *Allen* and *Baldwin* demonstrate that the courts continue to resist granting summary judgment.

Parents Who Did Not Procure Alcohol Not Liable for Drunken Assault

In *Pike v. Bugbee*, 07-CBAR-2778 (October 30, 2007), the court granted the defendant parents' motion to strike the plaintiff's allegations of negligence against them.

Jordan Pike, an adult, claimed that he was assaulted at a party at the Bugbee residence. He sued William and Janet Bugbee alleging that they negligently permitted their son to host a party during their absence from the residence. He alleged that his assailants voluntarily consumed alcohol and marijuanna to the point of intoxication, but did not allege that the defendant parents provided the alcohol or drugs. The complaint alleged that the defendant parents were away at the time of the party, but that they knew their son held parties while they were away.

The defendants moved to strike the negligence claim, arguing that the damages were not reasonably foreseeable and that they owed no duty to the plaintiff.

In striking the negligence claim against the defendant parents, the court recognized that the injuries to the plaintiff might have been foreseeable, but held that liability to an adult cannot extend to defendants who were not social hosts and played no active role in the procurement of alcohol.

Defendants Must Disclose Surveillance

Connecticut Practice Book § 13-3(c) became effective on January 1, 2008 and requires the disclosure and production of surveillance material within thirty days after the plaintiff's deposition or within sixty days of trial, whichever is earlier. The "standard" interrogatories and requests for production have been amended to reflect this new requirement.

Client Quarterly

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