

Audita Querela

A Guide to Resources in the Law Library

- “. . . the writ of audita querela was found to be for use in civil matters when enforcement of a judgment would be contrary to the ends of justice due to matters that have arisen since its rendition.” State v. Cotto, 111 Conn. App. 818, 820 (2008).
- “The ancient writ of audita querela has been defined as ‘a writ issued to afford a remedy to a defendant against whom judgment had been rendered, but who had new matter in defense (e.g., a release) arising, or at least raisable for the first time, after judgment.’ A. Leff, “The Leff Dictionary of Law: A Fragment,” 94 Yale L. J. 1855, 2101 (1985); see also Black’s Law Dictionary (5th Ed. 1979) p. 120; 7 J. Moore, Federal Practice (1987) 60.13; E. Stephenson, Connecticut Civil Procedure (1981) 209.” Ames v. Sears, Roebuck & Company, 206 Conn. 16, 20, 536 A.2d 563 (1988).
- “Audita querela is a remedy granted in favor of one against whom execution has issued on a judgment, the enforcement of which would be contrary to justice because of (1) matters arising subsequent to its rendition, (2) prior existing defenses that were not available to the judgment debtor in the original action, or (3) the judgment creditor’s fraudulent conduct or circumstances over which the judgment debtor had no control.” Oakland Heights Mobile Park, Inc. v. Simon, 668 A.2d 737, 40 Conn.App. 30 (Conn.App. 1995).
- “Reference to the writ is made most frequently in cases where payment has been made after the judgment or where subsequent protection of the bankruptcy court has been invoked.” Cohen v. MBA Financial Corp, 25 Conn. L. Rptr. 3, 1999 Ct. Sup. 8770, 1999 WL 509814, 1999 Conn. Super. LEXIS 1770 (Jul. 2, 1999).
- “Audita querela is a limited and extraordinary legal remedy, based on equity, to inhibit the unconscionable use of a lawful judgment because of matters arising subsequent to the judgment. . . . The broad issue becomes not comparative inconvenience but comparative hardship Courts have a longstanding general power of equity to afford relief against unreasonable conduct even when the activity is otherwise lawful Equity is a system of positive jurisprudence founded on established principles and adaptable to new circumstances not remediable at law. Westfarms Associates v. Kathy-John’s, Inc., Superior Court Housing Session/ Hartford-New Britain, No. 733, p. 4, 1986 WL 400555, 1987 Conn. Super. LEXIS 50 (Conn.Super. 1986).

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Application for the Writ of Audita Querela

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the application of the writ of audita querela.

CURRENCY: • 2009 Edition

SEE ALSO: • [Table 1. Housing Court Decisions](#)
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DEFINITION :

- "'Because the writ impairs the finality of judgments, the common law precluded its use in cases in which the judgment debtor sought to rely on a defense such as payment or a release that he had the opportunity to raise before the entry of judgment against him.' *Wintle v. Wright*, 151 Me. 212, 213-14, 117 A.2d 68 (1955). 'The writ of audita querela provides relief from a judgment at law because of events occurring subsequently which should cause discharge of a judgment debtor.' *Lapin v. Shulton, Inc.*, 333 F.2d 169, 171 (9th Cir.), cert. denied, 379 U.S. 904, 85 S.Ct. 193, 13 L.Ed.2d 177 (1964)." *Ames v. Sears, Roebuck & Company*, 206 Conn. 16, 20-21, 536 A.2d 563 (1988)
- "A writ of audita querela is a post-judgment motion designed to postpone or prevent enforcement of a judgment because of equitable considerationsAudita querela is an extraordinary remedy arising in equity to prevent the unconscionable use of a lawful judgment because of matters arising subsequent to the judgmentThe issue for the Court is that of comparative hardship." *Lee v. Connor*, 2 Conn. L. Rptr 716, 1990 WL 261923, 1990 Conn. Super. LEXIS 1582 (1990).

FORMS: • PAUL J. MARZINOTTO, CONNECTICUT SUMMARY PROCESS MANUAL (2002).

Form 8.14. Writ of Audita Querela (p. 98).

- 15A AM. JUR. PLEADING & PRACTICE *Judgments* (2005).
§ 416. Petition or application—For writ of audita querela—Following levy of execution (pp. 36-37).

§ 417. Petition or application—for writ of audita querela—Claim paid before entry of judgment (pp. 57-58).
§ 418. Writ of audita querela—To sheriff or constable—Summons (pp. 39-40).
§ 419. Writ of audita querela—Statutory form(p. 40).

RECORDS & BRIEFS:

- CONNECTICUT SUPREME COURT RECORDS & BRIEFS (December 1987), Ames v. Sears, Roebuck & Company, 206 Conn. 16, 20, 536 A.2d 563 (1988). [Figure 5](#).
Includes: Application for Writ of Audita Querela (with certification and order).
- CONNECTICUT APPELLATE COURT RECORDS & BRIEFS (March 2003), Young v. Young, 78 Conn. App. 394, 827 A.2d 722 (2003). [Figure 4](#). Housing Court case.
Includes: Application for Ex Parte Temporary Injunction, Order to Show Cause, and Application for Writ of Audita Querela

CASES:

- Anthony Julian RR Const. v. Mary Ellen Dr. Assoc., 50 Conn. App. 289, 294-295, 717 A.2d 294 (1998). “ This case provides an appropriate context for the application of this common law writ. Here, matters have arisen subsequent to the entry of the judgment that render it inequitable to allow the plaintiff to execute on the defendant's property. These subsequent events consist of a negotiated settlement with two of the defendants in this action after the judgment of strict foreclosure was rendered, along with the release of the mechanic's lien, which is the sole means of recovery that was pleaded by the plaintiff in this action. Thus, while the writ of audita querela was not specifically sought by the defendant in this case, the existence of such a writ provides analogous authority that enables a court of equity to supervise its judgments and to control the issuance of executions. We conclude, therefore, that the trial court properly conducted a hearing with respect to the plaintiff's application for a property execution.”
- Oakland Heights Mobile Park, Inc. v. Simon, 40 Conn. App. 30, 32, 668 A.2d 737 (1995). “Audita querela is a remedy granted in favor of one against whom execution has issued on a judgment, the enforcement of which would be contrary to justice because of (1) matters arising subsequent to its rendition, or (2) prior existing

defenses that were not available to the judgment debtor in the original action, or (3) the judgment creditor's fraudulent conduct or circumstances over which the judgment debtor had no control."

- Ames v. Sears, Roebuck & Co., 206 Conn. 16 at 17 (1988). "This appeal entails an examination of the circumstances under which a judgment debtor, by use of a writ of audita querela, can obtain relief from a final judgment awarding monetary damages to a judgment creditor."

**WEST KEY
NUMBERS:**

- AUDITA QUERELA
 - # 1. Nature and scope of remedy
 - # 2. Judgments subject to review
 - # 3. Grounds for review
 - # 4. Proceedings to procure review, and effect thereof
 - # 5. Writ and service
 - # 6. Pleading
 - # 7. Evidence
 - # 9. Judgment
 - # 10. Appeal or error
 - # 11. Costs
 - # 12. Liabilities on bonds and recognizances

ENCYCLOPEDIAS:

- 7 AM. JUR. 2d Audita Querela (2007).
 - § 1. Generally; definitions and distinctions
 - § 2. Modern status of writ
 - § 3. Availability of remedy
 - § 4. — in criminal cases
 - § 5. Practice and procedure
- 7A C.J.S. Audita Querela (2004).
 - I. In general
 - II. Modern status of writ
 - III. Judgments and executions subject to review
 - IV. Grounds for review
 - V. Practice and procedure

**TEXTS &
TREATISES:**

- Nobel F. Allen, CONNECTICUT LANDLORD AND TENANT LAW WITH FORMS (2008).
 - § 8-8:4. Writ of Audita Querela, p. 77
- RALPH P. DUPONT, DUPONT ON CONNECTICUT CIVIL PRACTICE (2008-2009 ed.)
 - Chapter 17. Judgments
 - § 17-43.4 Audita Querela, Writ of, Use and Effect of
- PAUL J. MARZINOTTO, CONNECTICUT SUMMARY PROCESS MANUAL (2002).
 - VIII. Summary process motions—Defendant
 - E. Post-Execution relief—Writ of *audita querela* (pp. 81-82).

- 2 EDWARD L. STEPHENSON. CONNECTICUT CIVIL PROCEDURE (2d ed., 1981).
Chapter 15. Motions after verdict; New trials
§ 209. Writs of audita querela

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Table 1 Housing Court

<i>Housing Court</i>	
<p><u>East Hartford Housing Authority v. Kendrick</u>, Superior Court Housing Session/ Hartford-New Britain, No. H-1037, 1991 WL 86259, 1994 Conn. Super. LEXIS 3393 (December 6, 1994).</p>	<p>"Our Supreme Court has recognized the viability of the writ of audita querela in a non-housing matter, namely, <u>Ames v. Sears, Roebuck & Co.</u>, 206 Conn. 16 (1988). There, the court cited out of state authority as well as Connecticut treatises in explaining the writ as one "issued to afford a remedy to a defendant against whom judgment had been rendered, but who had new matter in defense (e.g., a release) arising, or at least raisable for the first time, after judgment." 206 Conn. at 20.</p> <p>Because the writ of audita querela is regularly filed in the housing courts of Connecticut, judges there have had occasion to develop the doctrine further."</p>
<p><u>BCE Associates v. Barbizon of Hartford-Springfield, Inc.</u>, Superior Court Housing Session/ Hartford-New Britain, No. H-839, 1987 WL 348965, 1987 Conn. Super. LEXIS 118 (August 19, 1987).</p>	<p>"[F]or some time it has been common in this housing session to refer to all post judgment requests for equitable relief as audita querela. These requests usually fall into two general patterns: avoidance of forfeiture of some type of agreement/stipulation or avoidance of the harsh effects of immediate enforcement of a judgment of possession in a non-consensual situation. Cases illustrating the second pattern are of limited usefulness in resolving the first pattern. The facts of this case fit the first pattern; the court can prevent the forfeiture of the benefits of the stipulation, including reinstatement of a commercial lease. "</p>
<p><u>Housing Authority of Town of East Hartford v. Melanson</u>, Superior Court Housing Session/ Hartford-New Britain, No. H-948, 1991 WL 86259, 1991 Conn. Super. LEXIS 1219 (April 4, 1991).</p>	<p>"When this case is examined in light of the tenant's hardship, her inability to meet a reinstatement plan which exceeded her income, her ability to meet a reasonable repayment plan (and clearly not unreasonable in light of other repayment plans for similarly situated public housing tenants), the landlord's indication of her valued tenancy evidenced by both the initial offer of reinstatement, albeit at terms beyond her means, and by offering her a position of some stature at the facility, equity requires, through the writ of audita querela, that relief be granted. Professor Stephenson noted that the writ could be used to postpone or prevent the enforcement of the</p>

Housing Court

	<p>execution. It has already been used in this case to postpone the execution. This court now for a third time grants the relief by allowing the tenant to reinstate through the continuing monthly payment of use and occupancy together with a monthly payment of \$85.00 on the arrearage."</p>
<p><u>Wheeler v. Jones</u>, Housing Session, Judicial District of Stamford-Norwalk, No. SNBR-434, 1995 WL 476573, 1995 Conn. Super. LEXIS 2273 (July 31, 1995).</p>	<p>"A Writ of Audita Querela is a common law remedy not a statutory remedy. There is no right of appeal from a Writ of Audita Querela and there is, therefore, no stay of execution on a Writ of Audita Querela."</p>
<p><u>Pope v. Dean</u>, Judicial District of New Haven Housing Session, NH-731, pp. 5-6, 1997 WL 375017 (May 22, 1997).</p>	<p>"The plaintiff claims that matters arising subsequent to the entry of a judgment cannot logically be a defense to the judgment. But see <u>Pettit v. Seaman</u>, 2 Root 178 (1795). In a scenario such as this, however, audita querela indeed provides 'a remedy ... in favor of one against whom execution has issued on a judgment, the enforcement of which [judgment] would be contrary to justice because of ... matters arising subsequent to its rendition ...' <u>Oakland Heights Mobile Park, Inc. v. Simon</u>, supra, 40 Conn.App. 32. In a case such as this, it is to the enforcement of the judgment--by way of execution--to which the writ is addressed.</p> <p>Support for the defendants' utilization of the writ of audita querela is found in one of the first reported cases in Connecticut, <u>Lothrop v. Bennet</u>, Kirby (1786). In that case, a judgment debtor, facing an outstanding execution, paid part of the judgment to the creditor himself and the balance to the sheriff. The creditor refused to endorse payment of the portion paid to him, obtained possession of the execution and sought an alias execution for the balance claimed by the debtor to have been paid. The creditor then levied on the debtor's property. The debtor brought a bill in equity to enjoin all proceedings on the execution. The court held, in this era before the merger of law and equity, that the debtor could not maintain such an equitable proceeding because he had an adequate remedy at law by, inter alia, a writ of audita querela.</p> <p>Just as the debtor in <u>Lothrop v. Bennet</u>, supra, claimed that the creditor had subverted his efforts to</p>

Housing Court

satisfy the judgment as a matter of law, so the defendants claim here. An execution here would be based on the stipulated judgment between the parties. "A stipulated judgment is a contract between the parties ..." State v. Phidd, 42 Conn.App. 17, 29, 681 A.2d 310 (1996), cert. denied, 238 Conn. 907, 679 A.2d 2 (1996). "Normally, a duty to satisfy a condition precedent is excused if the other party does not cooperate. E. Farnsworth, Contracts (1982) § 8.6, pp. 565-66." Christophersen v. Blount, 216 Conn. 509, 513 n. 6, 582 A.2d 460 (1990). This court holds that the defendants may maintain an application for a writ of audita querela. See 7A C.J.S., Audita Querela, § 3, p. 902.

Figure 1 Application for Writ of Audita Querela in Housing

DOC NO: CV1006640

SUPERIOR COURT

ROSEMARY YOUNG

HOUSING SESSION

VS.

AT BRIDGEPORT

DOUGLAS S. YOUNG, ET AL.

May 3, 2002

**APPLICATION FOR EX PARTE TEMPORARY
INJUNCTION AND ORDER TO SHOW CAUSE**

Pursuant to C.G.S. § 52-471, et seq., the defendant Douglas S. Young hereby asks this Court or a Judge of the Superior Court, to prohibit the Plaintiff from executing upon the judgment until the Court or a Judge of the Superior Court hears and decides the accompanying Application for Writ of Audita Querella filed herewith and that the Plaintiff be summoned to Court to Answer same. In support of this

Application, the Defendant files herewith:

1. An Application for Writ of Audita Querella;
2. An Affidavit;
3. A Cashier's Check for a Bond;
4. A Motion to Open; and
5. A Motion to Substitute Party Plaintiff.

Finally, the Defendant points out that the subject premises is the home of himself and his family, including his minor daughter and that if they are evicted they will be homeless.

THE DEFENDANT DOUGLAS S. YOUNG

BY:

Name
Phone Number
Juris No.
Address

Certification

This is to certify that a copy of the foregoing has been mailed postage prepaid, faxed or hand-delivered to:

DOC NO: HBR 97-34276

SUPERIOR COURT

ROSEMARY YOUNG

HOUSING SESSION

VS.

AT BRIDGEPORT

DOUGLAS S. YOUNG, ET AL.

May 3, 2002

APPLICATION FOR WRIT OF AUDITA QUERELA

Pursuant to the doctrine recently restated in Anthony Julian Railroad Construction Co., Inc. Mary Ellen Drive Associates, 50 Conn. App. 289, 294, 717 A. 2d 294, 296 (1998) and C.G.S. § 47a-26h which provides in pertinent part that "[n]othing in this section shall in any way limit other remedies available in law or equity to any person including remedies available after issuance of execution," the Defendant Douglas S. Young hereby moves for a writ of audita querela prohibiting enforcement of an execution issued in this matter.

A copy of the last execution served on the defendants is attached hereto as Exhibit A. It was served on Saturday, January 26, 2002 and the Plaintiff attempted to carry this out beginning on Monday, January 28, 2002 at 6 AM. Court was obviously not open between the time of service and the time of dispossession. In fact, the last execution was only stopped by a Bankruptcy filing at 9:30 AM on January 28, 2002. The bankruptcy was dismissed and a copy of that dismissal is attached hereto. Counsel for the Plaintiff has indicated that he will pursue a new execution and "this time we will get there at 5:00 AM."

The execution is based upon a judgment rendered on April 17, 1998. Subsequently, Owens & Nicola released the Quitclaim deed executed by the Plaintiff to the Defendant. The Defendant Douglas S. Young has paid \$12,000.00 to the Law Offices of Owens & Nicola, Trustees. This is significant because according to the Appellate Court decision in this matter:

... the defendant's attorney held the quitclaim deed in escrow for the benefit of both the plaintiff and Douglas Young, subject to the agreed on conditions. The court further found that the attorney ... would have returned the deed to the plaintiff when it was clear that the agreed on conditions were not being fulfilled. Young v. Young, 64 Conn. App. 651, 655-6, 781 A. 2d 342, 345 (2001).

The Plaintiff apparently did not so request the return of the deed. Instead, it was delivered to Mr. Young. The deed was recorded on the Fairfield land records on October 1, 2001. A copy of the deed as recorded on the Fairfield land records is attached as an Exhibit to the Affidavit filed herewith. Douglas S. Young is now the holder of legal record title to the premises.

Summary process is a remedy available to an "owner." This is defined as one who holds "legal title to the property." C.G.S. § 47a-1 (e). The Defendant now holds legal record title to the property. That being the case the execution cannot be effectuated and must be withdrawn.

The Plaintiff as much as acknowledges that Douglas Scott Young holds legal title by the separate lawsuit she filed after the last hearing before this Court. That separate action is entitled Young v. Young (J.D. of Fairfield, DOC NO: CV 01 - 0387962 S). A copy of that lawsuit is also attached hereto. The Plaintiff having decided to litigate ownership in that forum, that is where both title and possession should be litigated. Allowing the execution to go forward in this matter could produce the bizarre result that Mr. Young will be evicted from his own home.

THE DEFENDANT DOUGLAS S. YOUNG

BY: _____

Name

Phone No.

Juris No.

Address

Order

The foregoing Application having been presented to the Court, it is hereby ordered: GRANTED / DENIED that the Plaintiff, Marshal Sara Laden and any other Marshal the Plaintiff may retain who is given a copy of this order are prohibited from attempting to effectuate the execution.

THE COURT BY _____ Judge / Temporal

Table 2 Other Unreported Decisions (Audita Querela)

Other Unreported Decisions	
<p><u>Utica First Insurance v. McGuire</u>, No. 400522, 1998 Ct. Sup. 14578, 1998 WL 867375 (Dec. 4, 1998). (Blue, J.)</p>	<p>“The writ of audita querela has long since been abolished in the country of its birth; 37 Halsbury's Laws of England ¶ 90 n. 1 (4th ed. 1982); and in federal practice on this side of the Atlantic; Fed.R.Civ.P. 60(b). Blackstone opined more than two centuries ago that the writ was "almost useless" and had, even in his day, been "driven . . . quite out of practice." 3 William Blackstone, Commentaries on the Laws of England 405 (1768). It is something of a mystery why the writ continues to exist in Connecticut. The plain intention of the 1879 Practice Act was to abolish the old common law forms of action. Conn. Gen. Stat. § 52-91 provides that, "There shall be one form of civil action." The only exceptions to this rule are affirmatively created by statute. Conn. Gen. Stat. § 52-122 , also derived from the Practice Act, provides that § 52-91 "shall not affect flowage petitions, or proceedings in paternity, replevin, summary process, habeas corpus, mandamus, ne exeat, quo warranto, forcible entry and detainer or peaceable entry and forcible detainer, or for the payment of awards." See <i>Hinckley v. Breen</i>, 55 Conn. 119, 121-22, 9 A. 31 (1887). Audita querela is not among the enumerated forms of action thus saved from the sweep of § 52-1. In spite (and without discussion) of this significant statutory problem, our courts have continued to hold that audita querela remains a viable proceeding. But the fact that this ancient writ remains a viable option does not mean that it must be considered an exclusive remedy. "When these ghosts of the past stand in the path of justice clanking their medieval chains the proper course for the judge is to pass through them undeterred." <u><i>United Australia, Ltd. v. Barclays Bank, Ltd.</i></u>, [1941] A.C. 1, 29 (H.L. 1940) (Atkin, L.J.). This court will consequently be undeterred by the fact that Utica has not proceeded in audita querela and turn to the merits.”</p>
<p><u>Cohen v. MBA Financial Corp.</u>, 25 Conn. L. Rptr. 3, 1999 WL 509814, 1999 Conn. Super. LEXIS 1770 (1999).</p>	<p>“The writ of audita querela is issued to afford a remedy to one against whom a judgment has been entered, but who has new matter in defense arising, or at least raisable for the first time, after judgment. <u><i>Ames v. Sears, Roebuck & Co.</i></u>, 206 Conn. 16, 20, 536 A.2d 563 (1988). Reference to the writ is made most frequently in cases where payment has been made after the judgment or where subsequent protection of the bankruptcy court has been invoked.</p> <p style="text-align: center;">A motion to open the judgment is the usual vehicle to</p>

	correct a 'judicial' error as opposed to a 'clerical' error in the entry of a judgment."
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Figure 2 Application for writ of audita querela

NO. 81-66362 : SUPERIOR COURT
LAURIE L. AMES, PPA, : J. D. NEW LONDON
ET AL
VS. : AT NEW LONDON
SEARS, ROEBUCK AND CO. : DECEMBER 1, 1986

APPLICATION FOR WRIT OF AUDITA QUERELA

1. Applicant is the defendant in the above entitled action. Heretofore, on July 9, 1984 the above-named plaintiff secured and caused to be entered a judgment against petitioner as defendant for the sum of \$175,000. By decision dated August 26, 1986 said judgment was affirmed by the Appellate Court.

2. The claim and cause of action of the plaintiff upon which this action was brought was fully settled and satisfied, to wit:

a) Prior to the entry of the judgment, plaintiff received payment in the amount of \$25,000 from Wallace and Gladys Nordstrom, formerly defendants in this action, in consideration for releasing the Nordstroms from liability (Trial Transcript, pp. 157-160);

b) Subsequent to the Appellate Court decision, plaintiff received from petitioner \$150,000, plus interest, thereby fully settling and satisfying the judgment of \$175,000 entered herein.

3. Plaintiff threatens to sue out and cause to be issued a writ of execution and to levy upon property of the petitioner and to proceed under the writ and levy and to

cause the property of this petitioner to be sold to petitioner's manifest damage and, grievance.

WHEREFORE, petitioner prays that:

- a) The Court direct the issuance of the writ of audita querela against plaintiff, and hearing on such writ be set and heard on December 10, 1986;
- b) Pending hearing hereon, and pursuant to the writ herein prayed for, all proceedings under the writ of execution aforesaid be stayed; and
- c) On that hearing, the judgment aforesaid be adjudged and declared to be wholly satisfied and discharged, and all proceedings under any writ of execution be stayed;
- d) Such other and further order may enter as may be just in the premises.

DEFENDANT, SEARS, ROEBUCK & COMPANY

By

Name
For

/s/ _____

CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing has been mailed, this date to _____

_____ /s/

NO. 81-66362 : SUPERIOR COURT
LAURIE L. AMES, PPA, : J.D. NEW LONDON
ET AL
VS. : AT NEW LONDON
SEARS, ROEBUCK AND CO. : DECEMBER 1, 1986

ORDER

12-12-86

The foregoing Application for Writ of Audita Querela having been heard, it is hereby ORDERED: DENIED -See Memo of Decision filed this date.
Dated at New London, Connecticut, this ___ day of December, 1986.

By the Court, _____, J.

/s/ _____

Chief Clerk

Filed December 3, 1986

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