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ELIYAHU MIRLIS *v.* YESHIVA OF  
NEW HAVEN, INC.  
(AC 45355)

Elgo, Moll and Suarez, Js.

*Syllabus*

The plaintiff sought to foreclose a judgment lien on certain real property owned by the defendant in connection with an unsatisfied judgment of more than \$20 million from a previous sexual abuse case involving the parties. Following the granting of a motion for summary judgment as to liability only, the defendant filed its first motion to substitute a cash bond for the property in the amount of the fair market value of the property. More than a year later, the defendant filed a second motion to discharge the judgment lien on substitution of bond. Thereafter, the trial court granted the defendant's motion to substitute a cash bond, and, when the defendant did not post the cash bond pursuant to the court's order, the court rendered a judgment of strict foreclosure. The defendant appealed, challenging the trial court's valuation of the property, and this court affirmed the trial court's judgment. The plaintiff thereafter moved to reset the law day, to which the defendant filed an objection, seeking to have the court defer setting a new law day and stay the action, and which, by its title, purported to move, for a third time, to substitute a cash bond. The court rendered a judgment of strict foreclosure and set a new law day. Thereafter, the defendant filed its initial motion to open the judgment for the purpose of extending the law day, and its fourth motion to substitute a cash bond for the judgment lien, which the court denied. The defendant filed a renewed motion to open the judgment, seeking to open the judgment of strict foreclosure, extend the law day, and, for the fifth time, permit substitution of a bond for the judgment lien, which the court again denied. The defendant then appealed to this court and filed a motion to reargue the denial of its renewed motion to open on the same day. The court denied the motion to reargue, and the defendant thereafter amended its appeal. *Held:*

1. The trial court did not abuse its discretion in denying the defendant's renewed motion to open the judgment of strict foreclosure on the basis of the relevant facts and record before it: in its memorandum of decision denying the defendant's initial motion to open, the court stated that it took into consideration the entire record and all relevant facts presented by counsel, and enumerated the specific facts it considered, which included whether the defendant had enough funds to produce the cash bond, the defendant's proposed plan to sell commercial and residential property in order to secure the necessary funds and the defendant's inability to present potential buyers of that property, that the defendant had several months to produce the funds necessary to substitute the bond but did not present a plan to secure the funds to the court, that the case had been pending for more than four years, and that the defendant had failed to provide any assurances as to when and how the plaintiff would receive the cash bond or any assurances that the debt would be paid, especially in light of the defendant's representation that it was seeking to extend the law day for an additional six months, and, in the court's order denying the defendant's renewed motion to open, the court stated that the defendant's inability to produce the necessary cash bond had not changed since it denied the defendant's initial motion to open; moreover, the defendant provided this court with neither relevant legal authority nor persuasive analysis that the court committed an error of law in denying its renewed motion to open, and, to the extent the defendant argued that, because the court's valuation ruling, which had granted the defendant permission to substitute a cash bond for the value of the property and did not place a time limit on the right to substitute, was upheld on appeal, the defendant had the absolute right as a matter of law to substitute the cash bond and should be given a reasonable amount of time under the law of the case doctrine to obtain the funds needed to post the bond, the court considered the four years that had elapsed since the entry and affirmance of the valuation ruling

- to its denials of the motions to open, and specifically stated that the defendant had months to come up with a plan to pay the full cash bond but continued to request more time to come up with the funds; furthermore, the defendant misconstrued the court's finding that the defendant did not have cash on hand to secure the bond to mean that, as a matter of law, the defendant could only substitute a bond if it had the funds immediately available, as the court did not expressly make such a pronouncement, nor was the court's decision based on such a legal principle, the record clearly indicating that the court considered the fact that the defendant did not have the cash on hand to substitute the bond as one of many factors it considered in reaching its decision.
2. The trial court did not abuse its discretion in denying the defendant's motion to reargue, the court having considered the relevant facts and evidence when balancing the equities of the case; the court based its decision on the fact that the defendant still did not have the funds available to secure a bond regardless of its asserted factual developments, as well as the same conclusions reached in its denial of the motion to open that had not changed since its denial of that motion.

Argued November 14, 2022—officially released June 20, 2023

*Procedural History*

Action to foreclose a judgment lien on certain of the defendant's real property, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Spader, J.*, granted the plaintiff's motion for summary judgment as to liability only; thereafter, the court, *Baio, J.*, after a hearing, issued a ruling as to valuation and granted the defendant's motion to substitute a cash bond subject to certain conditions; subsequently, the court, *Baio, J.*, rendered a judgment of strict foreclosure, from which the defendant appealed to this court, *Alvord, Elgo and Cradle, Js.*, which affirmed the judgment; thereafter, the court, *Cirello, J.*, granted the plaintiff's motion to open the judgment, and rendered a judgment of strict foreclosure and set a new law day; subsequently, the court, *Cirello, J.*, denied the defendant's motions to open the judgment, and the defendant appealed to this court; thereafter, the court, *Cirello, J.*, denied the defendant's motion to reargue, and the defendant amended its appeal. *Affirmed.*

*David T. Grudberg*, for the appellant (defendant).

*John L. Cesaroni*, with whom, on the brief, were *Matthew K. Beatman* and *James M. Moriarty*, for the appellee (plaintiff).

*Opinion*

ELGO, J. The defendant, Yeshiva of New Haven, Inc., appeals from the denial of both (1) its renewed motion to open the judgment of strict foreclosure in favor of the plaintiff, Eliyahu Mirlis, for the purpose of extending the law day and to permit the defendant to substitute a cash bond for the judgment lien against real property located at 765 Elm Street in New Haven (property), and (2) its motion to reargue the denial of its renewed motion to open. On appeal, we construe the defendant's claims to assert that it had a right as a matter of law to substitute a cash bond for the judgment lien in the amount of the court's earlier valuation of the property. The defendant thus argues that the court improperly denied its motions because the court (1) failed to give full force and effect to the earlier findings of valuation and, relatedly, improperly required the defendant to have immediate cash on hand in that amount, and (2) ignored new evidence presented on the motion to reargue. We disagree and, accordingly, affirm the judgment.

The relevant facts and procedural history are not in dispute. "The defendant is a Connecticut corporation that operated as an orthodox Jewish high school in New Haven [where the plaintiff attended high school]. In 2016, the plaintiff brought an action in federal court against the defendant and Daniel Greer,<sup>1</sup> alleging that Greer, a rabbi and the former chief administrator of [the defendant school], sexually abused [the plaintiff] for several years while he was a student at the high school. . . . Following a trial, the jury returned a verdict in favor of the plaintiff. The United States District Court for the District of Connecticut rendered judgment accordingly and entered a total award of \$21,749,041.10, which included punitive damages and offer of compromise interest [2017 final judgment]. The United States Court of Appeals for the Second Circuit subsequently affirmed the propriety of that judgment." (Citation omitted; footnote in original; internal quotation marks omitted.) *Mirlis v. Yeshiva of New Haven, Inc.*, 205 Conn. App. 206, 207, 257 A.3d 390, cert. denied, 338 Conn. 903, 258 A.3d 91 (2021).

In July, 2017, the plaintiff recorded a certificate of judgment lien against the property and commenced the underlying foreclosure action in order to secure a portion of the final judgment. On November 8, 2017, the plaintiff filed a motion for summary judgment as to liability only, which the defendant did not oppose. The court granted the motion on January 16, 2018, and, thereafter, the defendant filed its first motion to substitute a cash bond for the property in the amount of the fair market value of the property. Thereafter, on June 5, 2019, the plaintiff filed a motion for a judgment of strict foreclosure, which included a written appraisal for the fair market value of the property. On June 12, 2019, the defendant filed an omnibus objection to the

motion for judgment of strict foreclosure, its second motion to discharge the judgment lien on substitution of bond, and a motion to continue the strict foreclosure hearing. The defendant submitted therewith a written appraisal for a different fair market value of the property.

In October, 2019, the court held an evidentiary hearing on the valuation dispute, at which it found the fair market value of the property to be \$620,000 and granted the defendant's motion to substitute a cash bond in the amount of the fair market value of the property.<sup>2</sup> The defendant did not post the cash bond pursuant to the court's order, and, on March 9, 2020, the court rendered a judgment of strict foreclosure, without opposition from the defendant, and set the law day for June 1, 2020. During the period of time between the date on which the court rendered its judgment of strict foreclosure and the law day, the defendant did not substitute a cash bond in the amount of the fair market value of the property; instead, the defendant appealed the valuation ruling, which this court ultimately affirmed in June, 2021.<sup>3</sup> *Mirlis v. Yeshiva of New Haven, Inc.*, supra, 205 Conn. App. 212.

After our Supreme Court had denied the defendant's petition for certification to appeal from this court's decision on the trial court's valuation ruling; *Mirlis v. Yeshiva of New Haven, Inc.*, 338 Conn. 903, 258 A.3d 91 (2021); the plaintiff filed a motion to reset the law day, asking the trial court to set a new law day pursuant to Practice Book § 17-10.<sup>4</sup> The plaintiff requested the shortest possible law day based on the delays experienced in the foreclosure action. On September 24, 2021, the defendant filed an objection to the plaintiff's motion to reset the law day, which sought to have the court defer setting a new law day and to stay the action and which, by its title, purported to move, for the third time, to substitute bond. After a hearing on October 25, 2021, the court rendered a judgment of strict foreclosure and set a new law day for January 31, 2022. The court at that time did not address the defendant's motion to substitute bond.

On January 18, 2022, the defendant filed its initial motion to open the judgment for the purpose of extending the law day to May 2, 2022, and its fourth motion to substitute a cash bond for the judgment lien. On January 24, 2022, the court denied the defendant's initial motion to open. Specifically, the court considered the entire record, as well as the relevant facts,<sup>5</sup> and ultimately determined that it would "need more than the representations made by [the defendant's] counsel to find that equity requires an opening of the judgment and extending of the law day. If the court were to grant [the defendant's] motion, there are no assurances provided to [the plaintiff] when and how the cash bond would come into being, or any assurances that the debt

owed would be paid. As such, the motion to open the judgment and extend the law day is denied, and the objection thereto is granted.” The court extended the law day to February 22, 2022.

On February 3, 2022, the defendant filed a renewed motion to open the judgment, seeking to open the judgment of strict foreclosure, extend the law day, and, for the fifth time, permit substitution of a bond for the judgment lien. On February 18, 2022, the court denied the defendant’s motion, stating that “[t]he plaintiff has waited long enough. The equities of this case, taking into account all relevant facts and circumstances, reviewing the pleadings, the arguments of the parties, the written briefs and the appellate record, the court finds that [the defendant] has not met [its] burden of proof and shown, by a preponderance of the evidence, that equity requires an opening of the judgment to obtain a cash bond.” The court extended the law day to March 28, 2022.

On March 10, 2022, the defendant filed both this appeal and a motion to reargue the denial of its renewed motion to open. The trial court denied the defendant’s motion to reargue on April 2, 2022, and the defendant thereafter amended its appeal to include the court’s denial of the motion to reargue. Subsequently, on May 3, 2022, the plaintiff filed a motion for articulation regarding the court’s order denying the defendant’s renewed motion to open.<sup>6</sup> On May 13, 2022, the defendant filed its response to the plaintiff’s motion for articulation, embedding its own request not only for further clarification with regard to the court’s denial of its renewed motion to open but also an articulation as to the court’s denial of its motion to reargue.<sup>7</sup> On May 24, 2022, the court issued an articulation, in which it initially addressed the plaintiff’s requests. First, the court stated that it “did not reach a consideration of whether or not, ‘as a matter of law’ the defendant could immediately substitute a bond if it had sufficient funds,” explaining that it “did not speculate to consider what could have happened if the facts were different than the facts presented.” As to the plaintiff’s request concerning the value of the property, the court explained that it “did not even entertain argument or evidence on whether or not the value [of the property] was still accurate, or whether or not it could be challenged.” In response to the defendant’s request concerning its ability to obtain cash within one week, the court stated that the legal basis for not considering the merits of a second extension was sufficiently articulated in the original decision. Regarding the second request concerning purported new evidence, the court stated that the defendant’s third argument to extend the law day to secure a bond when it did not presently have the funds to secure a bond “was a third bite at the apple,” and it further relied on the factual findings set forth in its previous orders based on the “voluminous briefs and extensive oral argument prior to that ruling.”

On appeal, the defendant first argues that the court improperly denied its renewed motion to open filed after the court denied its January 18, 2022 motion to open. The defendant's argument in support of its claim is twofold.

First, the defendant argues that the court improperly denied its renewed motion to open because the court failed to give full force and effect to its earlier valuation ruling, which granted the defendant permission to substitute a cash bond for the value of the property. Essentially, the defendant argues that the valuation ruling and permission to substitute a bond was a final judgment and the law of the case, and, because the valuation ruling was not disturbed on appeal, the defendant has the absolute right as a matter of law to substitute the cash bond. In support of this argument, the defendant asserts that the valuation ruling did not place a time limit on its right to substitute a bond. Thus, the defendant asserts that the court failed to give full force and effect to the valuation ruling when it refused to permit it to substitute a cash bond.

Second, the defendant contends that the court improperly denied its renewed motion to open the judgment because the court required it to have immediate cash on hand to post the bond. Specifically, the defendant argues that General Statutes § 52-380e<sup>8</sup> dictates that the posting of a cash bond in lieu of a judgment lien is an absolute right and requires that a reasonable time to exercise that right must be granted because the statute is silent with respect to a time limitation.<sup>9</sup> Therefore, the defendant asserts that the court improperly required it to have cash on hand in order to substitute the bond.

In response, the plaintiff contends that, pursuant to the standard governing a motion to open a judgment of foreclosure, the court properly exercised its discretion in its consideration of the defendant's claim and in weighing the relevant facts. The plaintiff argues that, because in the exercise of its discretion, the court properly considered issues of equity, it did not rule, as a matter of law, that the defendant was required to have cash on hand in order to substitute the bond. In this regard, the plaintiff emphasizes that, in balancing the relative equities, the court considered the defendant's lack of immediate funds as one of many relevant factors and not as the sole basis for denial. We agree with the plaintiff.

We begin by setting forth the applicable standard of review. "We review a trial court's ruling on motions to open under an abuse of discretion standard. . . . Under this standard, we give every reasonable presumption in favor of a decision's correctness and will disturb the decision only where the trial court acted unreason-

ably or in a clear abuse of discretion. . . . As with any discretionary action of the trial court . . . the ultimate [question for appellate review] is whether the trial court could have reasonably concluded as it did.” (Citations omitted; internal quotation marks omitted.) *GMAC Mortgage, LLC v. Ford*, 178 Conn. App. 287, 294–95, 175 A.3d 582 (2017).

“Pursuant to General Statutes § 49-15 (a) (1), a trial court may, at its discretion, open and modify a judgment of strict foreclosure upon written motion of any person having an interest in the judgment and for cause shown.” *Id.*, 295. “[G]ood cause for opening a [judgment] pursuant to § 49-15 . . . cannot rest entirely upon a showing that the original foreclosure judgment was erroneous. Otherwise that statute would serve merely as a device for extending the time to appeal from the judgment. . . . In reviewing the denial of a motion to open a judgment of strict foreclosure, we are limited to determining whether the court abused its discretion in so ruling or based its ruling on some error of law. If neither such error is established, the court’s ruling must be upheld.” (Citation omitted; internal quotation marks omitted.) *USAA Federal Savings Bank v. Gianetti*, 197 Conn. App. 814, 820, 232 A.3d 1275 (2020).

We conclude that the court did not abuse its discretion in denying the defendant’s renewed motion to open the judgment of strict foreclosure. In its January 24, 2022 memorandum of decision denying the initial motion to open filed on January 18, 2022, the court stated that it took into consideration the entire record and all relevant facts presented by counsel for the defendant and the plaintiff. The court enumerated the specific facts it considered, which included whether the defendant had enough funds to produce the cash bond at the time of the hearing, the defendant’s proposed plan to sell commercial and residential property in order to secure the necessary funds, the defendant’s inability to present potential buyers of that property, and that the defendant had several months to produce the funds necessary to substitute the bond as permitted by the court’s February 24, 2020 order but did not present a plan to secure the funds to the court at the hearing, and instead asked the court and the plaintiff to “take it on faith” that the defendant will come up with the cash to pay the bond in a timely manner. See footnote 5 of this opinion. The court also noted that the case had been pending since July, 2017, and that the parties had experienced numerous delays due to an appeal and standard motion practice. The court ultimately found that the defendant had failed to provide any assurances as to when and how the plaintiff would receive the cash bond, or any assurances that the debt would be paid, especially in light of the defendant’s representation that it was seeking to extend the law day for an additional six months. For these reasons, the court denied the January 18, 2022 motion to open.

Similarly, in the court's order denying the defendant's renewed motion to open, the court stated that the defendant's inability to produce the necessary cash bond at the time of the hearing had not changed since it denied the defendant's January 18, 2022 motion. The court again considered all relevant facts and the entire record, incorporating its reasoning enumerated in the January 24, 2022 memorandum of decision, and specifically considered the following additional factors. In particular, it emphasized that the defendant filed its first motion to substitute the judgment for the bond on January 18, 2018, four years prior. The court also emphasized that, when the defendant initially moved for permission to substitute bond in 2018, there was no temporary restraining order in effect to prohibit the sale of assets in order to secure the necessary funds to pay the cash bond. Given the court's evaluation of the record before it, we conclude that the court did not abuse its discretion in denying the defendant's renewed motion to open.

Moreover, the defendant has provided us with neither relevant legal authority nor persuasive analysis that the court committed an error of law in denying its renewed motion to open.<sup>10</sup> To the extent that the defendant argues that, because the order did not include a time limit, it should be given a reasonable amount of time under the law of the case doctrine to obtain the funds needed to post the bond, we reiterate that the court considered the four years that have elapsed since the entry and affirmance of that valuation ruling to its denials of the motions to open. The court specifically stated that the defendant "had months to come up with a plan to pay the full cash bond," but continued to request more time to come up with the funds. Given our standard of review, we conclude that the court engaged in the proper review of the relevant facts and the entire record before it and, therefore, did not abuse its discretion in denying the defendant's renewed motion to open the judgment.

We also are not persuaded that the court abused its discretion to the extent that it considered that the defendant did not have cash on hand to secure the bond. In claiming legal error, the defendant misconstrues the court's finding to mean that, as a matter of law, the defendant can only substitute a bond if it has the funds immediately available. The court did not expressly make such a pronouncement, nor do we interpret the court's decision to have been based on such a legal principle. At the outset, nothing in § 52-380e suggests that the defendant has an absolute right, as opposed to simply the opportunity, to substitute a cash bond upon the court's granting it permission to do so. Moreover, as the record makes clear, the court considered the fact that the defendant did not have the cash on hand to substitute the bond as one of many factors it

considered in reaching its decision to deny the motion. As we discussed previously, the court also considered the defendant's inability to provide a list of potential property buyers to secure those funds and the amount of time elapsed from the date of the valuation ruling granting permission to substitute a bond. Thus, it was within the court's discretion to deny the defendant's renewed motion to open on the basis of the relevant facts and record before it.

## II

The defendant next claims that the court improperly denied its motion to reargue. More specifically, the defendant argues that the court failed to consider purported new evidence showing that it would have access to the funds necessary to substitute a cash bond within one week of that hearing in light of the resolution of some related federal cases. The plaintiff, by contrast, argues that the court properly denied the defendant's motion to reargue because the court again considered the relevant facts and evidence when balancing the equities of the case, namely, that the defendant still did not have sufficient funds at the time of the motion to substitute a cash bond. We agree with the plaintiff.

“We review a trial court's decision to grant a motion to reargue pursuant to the abuse of discretion standard. . . . In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . Reversal is required only [when] an abuse of discretion is manifest or [when] injustice appears to have been done. . . . As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue . . . is whether the trial court could have reasonably concluded as it did.” (Citations omitted; internal quotation marks omitted.) *Fiano v. Old Saybrook Fire Co. No. 1, Inc.*, 180 Conn. App. 717, 729–30, 184 A.3d 1218 (2018), *aff'd*, 332 Conn. 93, 209 A.3d 629 (2019).

We conclude that the court did not abuse its discretion in denying the defendant's motion to reargue. In the court's articulation, in response to the defendant's request for an articulation of the legal and factual basis for denying its motion to reargue, the court cited relevant case law that provides that “the purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts.” (Internal quotation marks omitted.) *Jaser v. Jaser*, 37 Conn. App. 194, 202, 655 A.2d 790 (1995). A motion to reargue “also may be used to address alleged inconsistencies in the trial court's memorandum of decision as well as claims of law that the [movant] claimed were not addressed by the court. . . . [A] motion to reargue [however] is not to be used as an opportunity

to have a second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument.” (Citation omitted; internal quotation marks omitted.) *Opoku v. Grant*, 63 Conn. App. 686, 692–93, 778 A.2d 981 (2001). Here, the court based its decision to deny the defendant’s motion to reargue on the fact that the defendant still did not have the funds available to secure a bond regardless of its asserted factual developments, as well as the same conclusions reached in its denial of the motion to open that had not changed since its denial of the motion to open. In light of these facts, the court reasoned that granting the motion to reargue would serve only to give the defendant a “third bite at the apple” and, therefore, denied the motion. On our review of the court’s factual findings and the relevant supporting case law, we conclude that the court did not abuse its discretion in denying the defendant’s motion to reargue.

The judgment is affirmed.

In this opinion the other judges concurred.

<sup>1</sup>“Greer is not a party to this foreclosure action.” *Mirlis v. Yeshiva of New Haven, Inc.*, 205 Conn. App. 206, 207 n.2, 257 A.3d 390, cert. denied, 338 Conn. 903, 258 A.3d 91 (2021).

<sup>2</sup>The trial court, in its memorandum of decision, specifically stated that “[t]he lien on the property may be discharged by a cash only bond deposited with the court in the amount of \$620,000.”

<sup>3</sup>Prior to the trial court’s valuation ruling, the plaintiff commenced a reverse veil piercing action in the United States District Court for the District of Connecticut in May, 2019. The plaintiff brought this veil piercing action against several nonprofit entities that were controlled by Greer (veil piercing defendants). In that action, the plaintiff sought to enforce the 2017 final judgment against the veil piercing defendants, and the court granted the plaintiff’s request for a temporary restraining order (TRO) in order to prevent the veil piercing defendants from transferring and encumbering their property. In October, 2021, after the resolution of the valuation appeal in this court, the veil piercing defendants moved to modify the TRO to permit use of corporate assets to provide the funds necessary to post the bond and substitute collateral for the defendant’s property. See *Mirlis v. Edgewood Elm Housing, Inc.*, 581 F. Supp. 3d 394, 398 (D. Conn. 2022). On January 21, 2022, the court entered the TRO modification order permitting the veil piercing defendants to provide assets to the defendant to substitute for the judgment lien. *Id.*, 404. The court specifically determined that “[the veil piercing defendants] may make the requested transfer if, but only if: (1) the Connecticut Superior Court rules that the [defendant] has the right to make a substitution in the [f]oreclosure [a]ction; (2) the transfer is made to the [defendant] in accordance with the Connecticut Superior Court’s instructions regarding the form and preservation of any such substitution; (3) if [the veil piercing defendants] must transfer assets to obtain the substitution (for example, the sale of property for funds to substitute for the judgment lien), they must do so only to the extent necessary to obtain the substitution; and (4) the effect of a substitution, followed by a final judgment in [the] [p]laintiff’s favor in the [f]oreclosure [a]ction, will be immediate partial satisfaction of [the] [p]laintiff’s judgment against the [defendant], in the amount determined by the Connecticut Superior Court in the [f]oreclosure [a]ction.

“Finally, if the Connecticut Superior Court authorizes the [defendant] to substitute cash for the judgment lien in the [f]oreclosure [a]ction, [the veil piercing defendants] must transfer funds to the [defendant] only in the precise amount the Connecticut Superior Court authorizes.” *Id.*

Thereafter, the plaintiff filed a motion for reconsideration of the TRO modification order with regard to bond substitution, and the District Court granted reconsideration and added the condition that the “[veil piercing] defendants ultimately retain title to the [defendant’s property] to compensate for the reduction in [the veil piercing] defendants’ assets resulting from the

transfer.” (Emphasis omitted.) The defendant and Greer’s appeal regarding a second motion for relief to set aside the final judgment was dismissed by the United States Court of Appeals for the Second Circuit in April, 2023. See *Mirlis v. Greer*, Docket No. 22-961, 2023 WL 3149528 (2d Cir. April 20, 2023).

<sup>4</sup> Practice Book § 17-10 provides that “[i]f a judgment fixing a set time for the performance of an act is affirmed on appeal by the Supreme Court and such time has elapsed pending the appeal, the judicial authority which rendered the judgment appealed from may, on motion and after due notice, modify it by extending the time.”

<sup>5</sup> The court enumerated the following facts it considered in reaching its determination:

“1. [The defendant] currently does not have enough funds to produce the cash bond.

“2. [The defendant] currently has cash on hand to put up 20 [percent] of the cash needed for the bond. Counsel for [the defendant] was unable to give the court an exact figure of how much cash would be produced and speculated that it would be about 20 [percent].

“3. [The defendant] is requesting a new law day, [six] months from now in order for the affiliated nonprofits to sell assets in order to pay the cash bond. [Counsel for the veil piercing defendants] testified that the affiliated nonprofits were commercial and residential rental properties that had an estimated value of \$10,000,000. He was unaware of the current value of the schoolhouse which is the subject of this action. He did not present evidence as to which buildings would be sold in order to produce the funds to pay for the cash bond.

“4. [The defendant’s] counsel did not present potential buyers for the assets mentioned above or a plan on how the bond would be paid for.

“5. [The defendant’s] counsel did not know how many students attended the school and could not speculate as to the number of active students. [The defendant] did state that all the students were adults and there were not minor students at the school.

“6. [The defendant’s] counsel could not provide the current market value of the school and relied upon the appraised value of the subject property which was \$620,000 pursuant to Judge Baio’s decision of February 24, 2020.

“7. [The defendant] has had months to come up with a plan to pay the full cash bond. As of today’s argument, no plan has been presented to the court. In the alternative, [the defendant] is asking the court and the plaintiff to take it on faith, that [it] will do what is necessary to come up with the cash to pay the bond in a timely manner.

“8. This case has been pending since July of 2017. There have been numerous delays due to an appeal and standard motion practice.

“9. The plaintiff . . . has been waiting through these delays and is anxiously awaiting a final resolution of this matter.”

<sup>6</sup> The plaintiff’s motion for articulation sought clarification as to (1) “whether the trial court ruled in the order denying second motion to open that the defendant could have had the right to substitute a bond for the plaintiff’s judgment lien as a matter of law if the defendant had sufficient funds on hand to immediately substitute a bond at the time the trial court heard the second motion to open,” and (2) “whether the trial court ruled that the defendant could have had the right to substitute a bond for the plaintiff’s judgment lien in the amount of the more than two year old value of the \$620,000 as a matter of law if the defendant had sufficient funds on hand at the time the trial court heard the second motion to open to immediately substitute a bond.”

<sup>7</sup> The defendant’s embedded request for articulation sought clarification as to (1) “[t]he legal basis for not considering the merits of the second extension motion, even though the [defendant] did not have the requisite cash on hand on the day [of] the hearing, but could obtain funds within less than one week,” and (2) “[t]he legal and factual basis of denying the motion for reargument, even though the [defendant] presented new evidence that the buyer of the property was prepared to close immediately, the buyer’s lawyer was holding the cash necessary to close in his trust account, and the sale had been stalled by the plaintiff’s threats of sanctions against the defendant.”

<sup>8</sup> General Statutes § 52-380e provides: “When a lien is placed on any real or personal property pursuant to section 52-355a or 52-380a, the judgment debtor may apply to the court to discharge the lien on substitution of (1) a bond with surety or (2) a lien on any other property of the judgment debtor which has an equal or greater net equity value than the amount

secured by the lien. The court shall order such a discharge on notice to all interested parties and a determination after hearing of the sufficiency of the substitution. The judgment creditor shall release any lien so discharged by sending a release sufficient under section 52-380d by first class mail, postage prepaid, to the judgment debtor.”

<sup>9</sup> The defendant also raises a procedural due process claim concerning its alleged right, as a matter of law, to substitute a bond. Because this claim is being raised for the first time on appeal and was not preserved for appellate review, we decline to consider it. See Practice Book § 60-5 (“[t]he court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial”); see also *USAA Federal Savings Bank v. Gianetti*, 197 Conn. App. 814, 819, 232 A.3d 1275 (2020).

<sup>10</sup> In its principal appellate brief, the defendant directs our attention to our Supreme Court’s decision in *Gary Excavating Co. v. North Haven*, 163 Conn. 428, 430, 311 A.2d 90 (1972), for the premise that, in carrying out a mandate from our Supreme Court on remand for judgment, the trial court “is limited to the specific direction of the mandate as interpreted in the light of the opinion,” and to *Patron v. Konover*, 43 Conn. App. 645, 685 A.2d 1133 (1996), cert. denied, 240 Conn. 911, 690 A.2d 400 (1997), in which this court stated that “[t]he trial court cannot adjudicate rights and duties not within the scope of the remand. . . . It is the duty of the trial court on remand to comply strictly with the mandate of the appellate court according to its true intent and meaning. No judgment other than that directed or permitted by the reviewing court may be rendered, even though it may be one that the appellate court might have directed. The trial court should examine the mandate and the opinion of the reviewing court and proceed in conformity with the views expressed therein.” (Internal quotation marks omitted.) *Id.*, 650–51. This precedent is irrelevant to the issue in the present case. This court affirmed the valuation ruling with regard to the court’s determined fair market value. *Mirlis v. Yeshiva of New Haven, Inc.*, supra, 205 Conn. App. 212. However, in reaching our conclusion, we specifically declined to address the defendant’s argument concerning its asserted absolute right to substitute a bond in lieu of the judgment lien. *Id.*, n.6. Therefore, the defendant’s argument in the present appeal that this court issued a mandate with respect to creating an absolute right to substitute a cash bond is without merit.

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