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AAA ADVANTAGE CARTING & DEMOLITION  
SERVICE, LLC *v.* JOSEPH CAPONE  
(AC 45318)

Alvord, Prescott and Moll, Js.

*Syllabus*

The plaintiff, a single-member limited liability company, sought to recover damages from the defendant for, inter alia, conversion and statutory theft in connection with a dispute involving the sale of the defendant's membership interest in the plaintiff. The defendant and B, who previously each owned a 50 percent membership interest in the plaintiff, executed a binding term sheet in August, 2012, which provided in relevant part that B would purchase the defendant's interest in the plaintiff for a certain sum and that their agreement would become enforceable on the date that the binding term sheet was signed. The morning after the defendant and B signed the binding term sheet, without providing notice to or receiving authorization from B, the defendant withdrew \$17,000 from a corporate checking account belonging to the plaintiff. The defendant and B executed a settlement agreement several days later, and the defendant signed an assignment of his membership interest to B. In September, 2012, after learning of the \$17,000 withdrawal, B commenced a civil action against the defendant, asserting claims of, inter alia, breach of contract, conversion, and statutory theft in violation of statute (§ 52-564). In February, 2017, the trial court rendered judgment for B on his claims of breach of contract and statutory theft, and awarded B \$17,000, plus prejudgment interest, as to his breach of contract claim, and \$34,000 as to his statutory theft claim. The court concluded that B's conversion claim was moot because damages for conversion and statutory theft cannot be separately awarded as to the same sum of money. The defendant appealed to this court, which concluded that B had standing to assert his breach of contract claim insofar as he alleged that the \$17,000 withdrawal harmed him personally because of the diminution in value of the 50 percent interest in the plaintiff that the defendant had agreed to sell to him, but he lacked standing to pursue his statutory theft claim because damages suffered by a limited liability company cannot be recovered by a member of the limited liability company bringing the case in an individual capacity, the plaintiff owned the checking account from which the money was taken, and B had not demonstrated a specific, personal and legal interest in the money separate from that of the plaintiff. This court reversed the judgment rendered for B on his statutory theft claim and directed the trial court on remand to render judgment dismissing that claim for lack of subject matter jurisdiction and to adjust the award for B's breach of contract claim from \$17,000 to \$8500 to account for the fact that B's contract with the defendant was to purchase only a 50 percent interest in the plaintiff. In May, 2019, the plaintiff commenced the present action against the defendant, asserting claims of conversion and statutory theft and alleging that it had commenced the present action pursuant to two savings statutes (§§ 52-591 and 52-592). The defendant filed a motion for summary judgment, claiming that the present action was time barred by the three year limitation period of the applicable statute (§ 52-577) and that § 52-592 was inapplicable. The trial court denied the defendant's motion for summary judgment, concluding that § 52-592 applied to save the present action, and the present action was subsequently tried to the court. The day of the trial, with leave of the court, the defendant amended his special defenses, asserting as special defenses that the present action was time barred pursuant to § 52-577 and barred pursuant to the doctrine of res judicata. The trial court rejected the defendant's defenses and rendered judgment for the plaintiff, awarding \$17,000, plus prejudgment interest pursuant to statute (§ 37-3a), on its conversion claim and \$17,000 on its statutory theft claim, which the court trebled to \$51,000 pursuant to § 52-564. On the defendant's appeal to this court, *held*:

1. Contrary to the defendant's claim, the trial court properly determined that the action was not time barred pursuant to the statute of limitations

because it was saved pursuant to § 52-591: § 52-591 expressly provides that, in order for the savings provision to apply, the prior action must have been commenced by a plaintiff suing in a representative character or for the benefit of third persons, and, because the object of B's 2012 action was to recover the funds withdrawn without authorization from the plaintiff's checking account, it could be viewed as having been brought for the benefit of a third person, the plaintiff, notwithstanding that B brought the 2012 action in his individual capacity and not derivatively; moreover, contrary to the defendant's assertion that § 52-591 was inapplicable because the 2012 action did not fail upon a mistake in the proper parties, this court, mindful of B's status as the sole member of the plaintiff when he commenced the 2012 action and bound by the Supreme Court's reasoning in *Saunders v. Briner* (334 Conn. 135), construed the judgment rendered on B's statutory theft claim in the 2012 action as having been reversed as a result of B's mistake with regard to the failure to assert that claim in the name of the proper party; furthermore, although the trial court in the 2012 action concluded that B's conversion claim was moot and, strictly speaking, the judgment rendered on B's conversion claim was therefore not reversed on the ground of a mistake in the proper parties, in light of the overlap between B's statutory theft and conversion claims in the 2012 action, the same rationale necessarily would have applied to B's conversion claim, had that claim not been resolved on mootness grounds.

2. The defendant could not prevail on his claim that the trial court improperly concluded that the present action was not barred pursuant to the doctrine of res judicata: in the 2012 action, because B's statutory theft claim was dismissed for lack of standing and the trial court concluded that his conversion claim was moot, B's statutory theft and conversion claims were never actually litigated or determined in the 2012 action, and the defense of res judicata did not apply.
3. The defendant could not prevail on his claim that the trial court improperly rendered judgment for the plaintiff on the merits of the statutory theft claim: the court's finding that the defendant did not have a good faith basis to justify the \$17,000 withdrawal was not clearly erroneous, the defendant having failed to sustain his burden of proving that the withdrawal was predicated on a good faith belief that he was owed the money he withdrew from the plaintiff's checking account and he was authorized to make the withdrawal, and the credible evidence of his conduct under the totality of the circumstances demonstrated that the defendant intentionally and without authorization withdrew the funds from the plaintiff's checking account with the intention to deprive the plaintiff of its funds for his personal benefit; moreover, to determine the plaintiff's value for the purposes of the purchase and sale transaction, B and the defendant took into account the plaintiff's assets, which included the \$17,000 withdrawn by the defendant from the plaintiff's checking account, and the binding term sheet did not indicate that the defendant was to acquire any of the plaintiff's assets, including any funds in its checking account, as part of the sale of his membership interest in the plaintiff.
4. The trial court erred in its award of certain damages to the plaintiff:
  - a. The trial court improperly allowed the plaintiff to recover the full amount of damages on both its conversion and statutory theft claims, which were predicated on the same occurrence, namely, the \$17,000 withdrawal, and failed to account for B's recovery of \$8500 in damages on his breach of contract claim in the 2012 action: Connecticut courts consistently have upheld and endorsed the principle that a litigant may recover just damages for the same loss only once and is not entitled to recover twice for harm growing out of the same transaction, occurrence or event, and, given the overlap between the plaintiff's claims of conversion and statutory theft, both of which were based on the \$17,000 withdrawal, the plaintiff was compensated twice for the same loss as a result of the court permitting the plaintiff to recover the full amount of its damages on both its conversion and statutory theft claims; moreover, B's recovery of \$8500 on his breach of contract claim in the 2012 action capped the actual damages recoverable by the plaintiff on its conversion and statutory theft claims in the present action at \$8500; moreover, although this court recognized that B and the plaintiff were distinct legal entities, B's status as the sole member of the plaintiff created a unique situation that prevented this court from completely separating the relief awarded to B in the 2012 action and the relief awarded to the plaintiff

in the present action.

b. The trial court's award of prejudgment interest pursuant to § 37-3a with regard to the plaintiff's conversion claim was improper: although the trial court did not commit error in determining that prejudgment interest began to accrue on August 29, 2012, the date that the defendant had wrongfully withdrawn the \$17,000 from the plaintiff's checking account, this court concluded that, because the plaintiff was entitled to \$8500, rather than \$17,000, on its conversion claim, it necessarily followed that the trial court should have calculated prejudgment interest on the principal amount of \$8500, such that the trial court's award calculated on the principal amount of \$17,000 could not stand.

Argued April 4—officially released August 22, 2023

*Procedural History*

Action to recover damages for, inter alia, conversion, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Hon. Edward T. Krumeich II*, judge trial referee; judgment for the plaintiff, from which the defendant appealed to this court. *Reversed in part; judgment directed.*

*Richard J. Rapice*, with whom, on the brief, was *Peter V. Lathouris*, for the appellant (defendant).

*James H. Lee*, for the appellee (plaintiff).

*Opinion*

MOLL, J. The defendant, Joseph Capone, appeals from the judgment of the trial court rendered in favor of the plaintiff, AAA Advantage Carting & Demolition Service, LLC, on its amended complaint asserting claims of (1) conversion and (2) statutory theft in violation of General Statutes § 52-564. The defendant claims that the court (1) improperly concluded that two savings statutes, General Statutes § 52-591 and/or General Statutes § 52-592, applied to save the present action from being time barred pursuant to the three year limitation period of General Statutes § 52-577, (2) improperly concluded that the plaintiff's claims were not barred pursuant to the doctrine of res judicata, (3) made a clearly erroneous factual finding in concluding that the defendant had committed statutory theft, and (4) erred in awarding damages, including prejudgment interest pursuant to General Statutes § 37-3a, to the plaintiff. We conclude that the trial court committed error only with respect to its award of damages to the plaintiff and, therefore, we reverse the judgment as to damages only.

The following facts, as found by the trial court, and procedural history are relevant to our resolution of this appeal. Prior to 2012, the defendant and Frank Bongiorno, who are brothers-in-law, each owned a 50 percent membership interest in the plaintiff. In 2012, the defendant and Bongiorno decided to terminate their business relationship as a result of their personal animosity toward one another and their inability to agree on the management of the plaintiff. On August 28, 2012, the defendant and Bongiorno executed a "binding term sheet," which immediately became operative and enforceable and which provided in relevant part that the defendant and Bongiorno would execute a "settlement agreement" no later than September 7, 2012, at which time the defendant would transfer his interest in the plaintiff to Bongiorno in exchange for \$200,000. The defendant and Bongiorno understood that, following the execution of the binding term sheet, the defendant's involvement in the management of the plaintiff and his financial interest in the plaintiff would be "suspended," notwithstanding that the defendant would not surrender his membership interest in the plaintiff to Bongiorno until after the execution of the settlement agreement. The defendant and Bongiorno "also understood and agreed that, except for certain personal property of [the defendant] that he was to remove from [the plaintiff's] premises by August 31, 2012, the assets of [the plaintiff] were to remain company assets as of the effective date of the binding term sheet, August 28, 2012."

On the morning of August 29, 2012, without providing notice to or receiving authorization from Bongiorno, the defendant withdrew \$17,000 from a corporate checking account belonging to the plaintiff (\$17,000 withdrawal). Later in the day, the defendant entered the plaintiff's

offices to remove his personal items from his desk and to “wipe” his office computer.

On September 7, 2012, the defendant and Bongiorno executed the settlement agreement, which expressly incorporated the terms of the binding term sheet. The defendant further signed an assignment of his membership interest in the plaintiff, transferring his rights, title, and interest in the plaintiff to Bongiorno. At that time, Bongiorno was unaware of the \$17,000 withdrawal. After the sale had closed, Bongiorno balanced the plaintiff’s checkbook and reviewed its account records, whereupon Bongiorno discovered the \$17,000 withdrawal.

On September 28, 2012, Bongiorno commenced a civil action against the defendant. See *Bongiorno v. Capone*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-12-6015733-S (2012 action). In his operative complaint filed in the 2012 action, Bongiorno asserted claims of (1) breach of contract, (2) conversion, and (3) statutory theft in violation of § 52-564, all of which were predicated on allegations that the defendant had made the \$17,000 withdrawal without Bongiorno’s permission or consent.<sup>1</sup> During the pendency of the 2012 action, the defendant filed a motion to dismiss Bongiorno’s operative complaint for lack of subject matter jurisdiction, arguing in relevant part that Bongiorno, having filed the 2012 action in his individual capacity, lacked standing to claim harm stemming from the \$17,000 withdrawal. The trial court, *Hon. Kevin Tierney*, judge trial referee, denied the defendant’s motion to dismiss, concluding that Bongiorno had pleaded “a ‘colorable claim of direct injury’ ” vis-à-vis the \$17,000 withdrawal.

The 2012 action was referred to an attorney trial referee, who tried the matter in 2015. On February 27, 2017, the court accepted a second revised report<sup>2</sup> filed by the attorney trial referee, adopted the attorney trial referee’s findings, and rendered judgment in accordance with the report. The court concluded that the attorney trial referee’s findings, including that the defendant withdrew \$17,000 from the plaintiff’s checking account (1) without advising Bongiorno of his intention to withdraw said amount, (2) with the intent to deprive Bongiorno of said amount, and (3) without a legitimate basis, established that the defendant had breached the binding term sheet and had committed statutory theft.<sup>3</sup> Ostensibly in support of its adjudication of Bongiorno’s statutory theft count, the court further found that “[t]he binding term sheet and [the] settlement agreement were entered into by [Bongiorno] and the defendant, and [those documents] passed title to the [plaintiff’s] business assets from the defendant to [Bongiorno].” As relief, the court awarded Bongiorno a total of \$58,659, exclusive of postjudgment interest and attorney’s fees, which comprised (1) \$17,000, plus

prejudgment interest in the amount of \$7659, as to his breach of contract count, and (2) \$34,000 as to his statutory theft count.<sup>4</sup>

The defendant appealed from the judgment rendered in the 2012 action to this court. See *Bongiorno v. Capone*, 185 Conn. App. 176, 196 A.3d 1212, cert. denied, 330 Conn. 943, 195 A.3d 1134 (2018). On appeal, the defendant claimed that the trial court improperly had determined that Bongiorno had standing, in his individual capacity, to assert his breach of contract and statutory theft counts against the defendant.<sup>5</sup> *Id.*, 194. This court concluded that Bongiorno (1) had standing to assert his breach of contract count insofar as he alleged that the \$17,000 withdrawal harmed him personally because of the diminution in value of the 50 percent interest in the plaintiff that the defendant had agreed to sell to him;<sup>6</sup> *id.*, 180; but (2) lacked standing to pursue his statutory theft claim. *Id.*, 194. Regarding Bongiorno's statutory theft count, this court stated that it "has repeatedly held that damages suffered by a limited liability company cannot be recovered by a member of the limited liability company bringing the case in an individual capacity. . . . In the present case, the statutory theft count is based entirely on the defendant's withdrawal of \$17,000 from the [plaintiff's] checking account. The facts demonstrate that it is the [plaintiff], and not [Bongiorno], that would have standing to assert a statutory theft claim on the basis of the defendant's conduct. [Bongiorno] has not demonstrated a specific, personal and legal interest in the money separate from that of the [plaintiff]. The [plaintiff] owned the checking account from which the money was taken. The trial court's finding that the [binding] term sheet and the settlement agreement passed title to the [plaintiff's] business assets from the defendant to [Bongiorno] is incorrect; only the defendant's membership interest in the [plaintiff] was thereby transferred. Under these allegations, the only injuries resulting from the defendant's conduct, as stated in [Bongiorno's] statutory theft count, were suffered by the [plaintiff], not by [Bongiorno] personally. The [plaintiff] is a limited liability company and is, therefore, a distinct legal entity from [Bongiorno], who is simply a member of that entity. Even after [Bongiorno] became the sole member of the [plaintiff], the [plaintiff] remained a distinct legal entity. Because a member of a limited liability company cannot recover for an injury allegedly suffered by the limited liability company, we conclude that [Bongiorno] lacked standing to pursue a claim of statutory theft in this case. Accordingly, we conclude that the trial court lacked subject matter jurisdiction over [Bongiorno's] statutory theft claim." (Citations omitted.) *Id.*, 200–202. Accordingly, this court reversed the judgment rendered in Bongiorno's favor on his statutory theft count and directed the trial court on remand to render judgment dismissing that count for lack of subject matter jurisdiction. *Id.*,

On remand, the trial court, *Genuario, J.*, (1) dismissed Bongiorno's statutory theft count and (2) rendered judgment in Bongiorno's favor on his breach of contract count, awarding him \$13,055.06 in damages, comprising \$8500 plus prejudgment interest in the amount of \$4555.06.<sup>7</sup> In addition, on remand, the plaintiff filed a motion to join the 2012 action because it asserted that it was a necessary party. The court denied that motion on February 7, 2019, on the basis that such relief was outside of the scope of this court's remand order.

On May 14, 2019, the plaintiff commenced the present action against the defendant. In its original complaint, in one unlabeled count, the plaintiff asserted claims of conversion and statutory theft chiefly predicated on the allegation that the defendant had withdrawn \$17,000 from the plaintiff's checking account without its permission or consent.<sup>8</sup> The plaintiff further alleged that it had commenced the present action pursuant to § 52-592,<sup>9</sup> the accidental failure of suit statute.

On July 18, 2019, the defendant filed a motion for summary judgment, claiming that (1) the present action was time barred by the three year limitation period of § 52-577<sup>10</sup> and (2) § 52-592 was inapplicable. On August 26, 2019, the plaintiff filed a memorandum of law in opposition to the defendant's motion for summary judgment, and, on October 17, 2019, the defendant filed a reply memorandum. On October 25, 2019, the court, *Krumeich, J.*, denied the defendant's motion for summary judgment, concluding that § 52-592 applied to save the present action. On November 13, 2019, the defendant filed a motion for reargument and for reconsideration, which the court denied on November 19, 2019.

The present action was tried to the court, *Hon. Edward T. Krumeich II*, judge trial referee, on September 29, 2021. The court admitted exhibits into the record and heard testimony from Bongiorno;<sup>11</sup> the defendant did not testify. The same day, with leave of the court, the defendant filed an amended answer and special defenses, denying the material allegations of the plaintiff's original complaint and asserting as special defenses that the present action was (1) time barred pursuant to § 52-577 and (2) barred pursuant to the doctrine of res judicata.<sup>12</sup> On December 13, 2021, with leave of the court, the plaintiff filed an amended complaint (operative complaint), which was substantively similar to the original complaint except that it additionally alleged in relevant part that the plaintiff had commenced the present action pursuant to § 52-591, in addition to § 52-592.<sup>13</sup> Thereafter, the parties filed posttrial briefs and reply briefs.

On February 3, 2022, the court issued a memorandum of decision rendering judgment in favor of the plaintiff



on its operative complaint. The court rejected the defendant's statute of limitations defense, concluding that the savings provisions of § 52-591 and/or § 52-592 applied to save the present action from otherwise being time barred pursuant to § 52-577. The court also rejected the defendant's res judicata defense, concluding that, "[b]ecause [this court in *Bongiorno v. Capone*, supra, 185 Conn. App. 176] held that Bongiorno lacked standing to raise a conversion or statutory theft claim on behalf of [the plaintiff], these claims were never actually litigated or determined in the [2012 action], so they are not subject to the [defense] of res judicata . . . ." As to the merits of the plaintiff's claims, the court determined that the plaintiff had met its burden to demonstrate that the \$17,000 withdrawal constituted conversion and statutory theft by the defendant. As relief, the court awarded the plaintiff a total of \$84,044.38, comprising (1) \$17,000, plus \$16,044.38 in prejudgment interest pursuant to § 37-3a, on its conversion claim and (2) \$17,000 on its statutory theft claim, which the court trebled to \$51,000 pursuant to § 52-564. This appeal followed. Additional facts and procedural history will be set forth as necessary.

## I

The defendant first claims that the trial court improperly concluded that the savings provisions of § 52-591 and/or § 52-592 applied to save the present action from being time barred pursuant to § 52-577. We conclude that the court properly determined that the present action was not time barred by the statute of limitations because it was saved pursuant to § 52-591.<sup>14</sup>

We begin by setting forth the applicable standard of review and relevant legal principles. We deem the standard of review governing claims concerning §§ 52-591 and 52-592 to be one and the same. Thus, a determination of the applicability of § 52-591 "depends on the particular nature of the conduct involved. . . . This requires the [trial] court to make factual findings, and [a] finding of fact will not be disturbed unless it is clearly erroneous." (Internal quotation marks omitted.) *Riccio v. Bristol Hospital, Inc.*, 341 Conn. 772, 779, 267 A.3d 799 (2022). Whether the court properly applied § 52-591, however, "presents an issue of law over which our review is plenary." (Internal quotation marks omitted.) *Id.*

Moreover, we exercise plenary review when tasked with interpreting a statute. *Myers v. Commissioner of Correction*, 215 Conn. App. 592, 620–21, 284 A.3d 309 (2022), cert. denied, 346 Conn. 1021, 293 A.3d 897 (2023), and cert. denied, 346 Conn. 1021, 293 A.3d 897 (2023). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case,

including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.” (Internal quotation marks omitted.) *Id.*, 621.

Section 52-591 provides: “When a judgment in favor of a plaintiff suing in a representative character, or for the benefit of third persons, has been reversed, on the ground of a mistake in the complaint or in the proper parties thereto, and, while the action was pending, the time for bringing a new action has expired, the parties for whose special benefit the action was brought may commence a new action in their individual names at any time within one year after the reversal of the judgment, if the original action could have been so brought.”

Like § 52-592, § 52-591 “is a savings statute that is intended to promote the strong policy favoring the adjudication of cases on their merits rather than the disposal of them on the grounds enumerated” in the statute. (Internal quotation marks omitted.) *Riccio v. Bristol Hospital, Inc.*, supra, 341 Conn. 780. Section 52-591 “is remedial in nature and, therefore, warrants a broad construction.” *Ruddock v. Burrowes*, 243 Conn. 569, 575, 706 A.2d 967 (1998). In addition, because § 52-591 is a remedial statute, “any ambiguities should be resolved in a manner that furthers, rather than thwarts, the [statute’s] remedial purposes.” (Internal quotation marks omitted.) *Dunn v. Northeast Helicopters Flight Services, LLC*, 346 Conn. 360, 373, 290 A.3d 780 (2023). Nevertheless, although § 52-591 “is remedial in nature, passed to avoid hardships arising from an unbending enforcement of limitation statutes . . . it should not be construed so liberally as to render statutes of limitation[s] virtually meaningless.” (Internal quotation marks omitted.) *Kinity v. US Bancorp*, 212 Conn. App. 791, 838, 277 A.3d 200 (2022).

In concluding that § 52-591 applied to save the present action, the court stated that, “[i]n the [2012 action], Bongiorno sued [the defendant] to recover for conversion and statutory theft from [the plaintiff’s checking] account but failed to bring the suit in the name of the ‘proper party’ within the meaning of . . . § 52-591. [*Bongiorno v. Capone*, supra, 185 Conn. App. 180]. Although [Bongiorno] commenced suit [in the 2012

action] individually and not derivatively, the object of the [2012 action] was to recover the [\$17,000 in] funds withdrawn without authorization from the [plaintiff's checking] account and the penalty for statutory theft of [the plaintiff's] funds. For this reason, [the 2012 action] can be viewed as brought 'for the benefit of' a third person, [the plaintiff], although Bongiorno, as the [plaintiff's] sole member, was not the proper party and did not have standing to pursue claims of harm to [the plaintiff], as [this court] held [in *Bongiorno v. Capone*, supra, 176]. The judgment [in the 2012 action] finding [the defendant] liable for statutory theft was reversed by [this court] because Bongiorno in his individual capacity was not the 'proper party' to raise the claim."

The defendant contends that § 52-591 is inapplicable to save the present action because Bongiorno brought the 2012 action in his individual capacity only and did not assert a derivative claim on the plaintiff's behalf. Section 52-591, however, expressly provides that the prior action must have been commenced by "a plaintiff suing in a representative character, *or for the benefit of third persons . . .*" (Emphasis added.) We construe the use of the disjunctive "or" to reflect that the legislature intended for § 52-591 to be applicable when the plaintiff in the prior action sued either (1) in a representative capacity *or* (2) for the benefit of another person or entity. See *State v. Dennis*, 150 Conn. 245, 248, 188 A.2d 65 (1963) ("[t]he use of the disjunctive 'or' between the two parts of the statute indicates a clear legislative intent of separability"); see also *Pasco Common Condominium Assn., Inc. v. Benson*, 192 Conn. App. 479, 490, 218 A.3d 83 (2019) ("It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . . [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous. . . . Because [e]very word and phrase [of a statute] is presumed to have meaning . . . [the statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." (Internal quotation marks omitted.)). Accordingly, broadly construed, § 52-591 is applicable to save the present action if Bongiorno, notwithstanding having brought the 2012 action in his individual capacity only, sued "for the benefit of" the plaintiff in the 2012 action.

It is apparent that, through the 2012 action, Bongiorno sought the recovery of the \$17,000 withdrawn by the defendant from the *plaintiff's* checking account. See *Bongiorno v. Capone*, supra, 185 Conn. App. 201 ("[i]n the [2012 action], [Bongiorno's] statutory theft count [was] based entirely on the defendant's withdrawal of \$17,000 from the [plaintiff's] checking account"). Bongiorno was the sole member of the plaintiff at the time that he commenced the 2012 action. Although the plaintiff and Bongiorno are distinct legal entities; see *id.*; we

cannot ignore the reality that, as a matter of law, since this court's 2018 decision in *Bongiorno v. Capone*, supra, 176, the ability of the sole member of a single-member limited liability company to bring a derivative claim as a direct action under certain circumstances has indeed changed.<sup>15</sup> See *Saunders v. Briner*, 334 Conn. 135, 167, 221 A.3d 1 (2019) (concluding "that, when the unique circumstance arises in which the sole member of a limited liability company seeks to remedy a harm suffered by it, a trial court may permit such a member to bring his claims in a direct action, as long as doing so does not implicate the policy justifications that underlie the distinct and separate injury requirement").<sup>16</sup> We are bound by *Saunders*, which, if it had been released at the time, likely would have compelled a different result in *Bongiorno v. Capone*, supra, 176, on the issue of Bongiorno's standing to claim harm caused to the plaintiff as a result of the \$17,000 withdrawal. Under these unique circumstances, we conclude that the claims of statutory theft and conversion in the 2012 action in their essence were asserted "for the benefit of" the plaintiff notwithstanding that Bongiorno brought the 2012 action in his individual capacity only.<sup>17</sup> See *Bongiorno v. Capone*, supra, 201 ("[u]nder these allegations, the only injuries resulting from the defendant's conduct, as stated in [Bongiorno's] statutory theft count,<sup>18</sup> were suffered by the [plaintiff], not by [Bongiorno] personally" (footnote added)).

The defendant further asserts that § 52-591 is inapplicable because the 2012 action did not fail upon a "mistake in [the] proper parties." We are not persuaded. As the trial court noted, in *Bongiorno v. Capone*, supra, 185 Conn. App. 176, this court stated that "it is the [plaintiff], and not [Bongiorno], that would have standing to assert a statutory theft claim on the basis of the defendant's conduct"; id., 201; and, on that basis, this court reversed the judgment rendered in Bongiorno's favor on his statutory theft claim. Id., 202. Mindful of Bongiorno's status as the sole member of the plaintiff when he commenced the 2012 action, and bound by our Supreme Court's reasoning in *Saunders*, we construe the judgment rendered on Bongiorno's statutory theft claim in the 2012 action as having been reversed as a result of Bongiorno's "mistake"<sup>19</sup> vis-à-vis the failure to assert that claim in the name of the "proper party."

As noted in footnote 3 of this opinion, the trial court in the 2012 action concluded that Bongiorno's conversion count was moot because "damages for conversion and [statutory] theft cannot be separately awarded as to the same sum of money." Strictly speaking, the judgment rendered on Bongiorno's conversion count was not "reversed . . . on the ground of a mistake . . . in the proper parties . . ." In light of the overlap between Bongiorno's statutory theft and conversion claims in the 2012 action, however, we conclude that the rationale set forth in the preceding paragraph necessarily would

have applied to Bongiorno's conversion claim, had that claim not been resolved on mootness grounds.<sup>20</sup> Given the unique circumstances of the present case, and mindful of the remedial nature of § 52-591, we deem the plaintiff's conversion claim to be within the scope of the saving provision of § 52-591.

In sum, we conclude that the court properly concluded that § 52-591 saved the present action from being time barred pursuant to § 52-577.

## II

The defendant next claims that the trial court improperly concluded that the present action was not barred pursuant to the doctrine of res judicata. This claim merits little discussion.

“[T]he doctrine of res judicata, or claim preclusion, [provides that] a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action on the same claim. . . . The doctrine of res judicata applies if the following elements are satisfied: the identity of the parties to the actions are the same; the same claim, demand or cause of action is at issue; the judgment in the first action was rendered on the merits; and the parties had an opportunity to litigate the issues fully. . . . Judgments based on the following reasons are not rendered on the merits: want of jurisdiction; pre-maturity; failure to prosecute; unavailable or inappropriate relief or remedy; lack of standing.” (Citation omitted; emphasis omitted; internal quotation marks omitted.) *U.S. Bank, N.A. v. Foote*, 151 Conn. App. 620, 626, 94 A.3d 1267, cert. denied, 314 Conn. 930, 101 A.3d 952 (2014). “The issue of whether the [doctrine] of res judicata . . . appl[ies] to the facts of this case presents a question of law. Our review, therefore, is plenary.” *Id.*, 625.

In the 2012 action, Bongiorno's statutory theft claim was dismissed for lack of standing, and the trial court concluded that his conversion claim was moot.<sup>21</sup> Thus, we agree with the conclusion of the trial court in the present action that Bongiorno's statutory theft and conversion claims “were never actually litigated or determined in the [2012 action] . . . .” Accordingly, the court correctly rejected the defendant's res judicata defense.<sup>22</sup>

## III

The defendant next claims that the trial court improperly rendered judgment in the plaintiff's favor on the merits of its statutory theft claim.<sup>23</sup> The defendant contends that the court erred in finding that the \$17,000 withdrawal was not predicated on a good faith belief that he was entitled to withdraw the funds. We disagree.

The following legal principles and standard of review govern our resolution of this claim. “The elements of a claim of statutory theft under § 52-564 provide that

‘[a]ny person who steals any property of another, or knowingly receives and conceals stolen property, shall pay the owner treble his damages.’ [Our Supreme Court] has explained that ‘[s]tatutory theft under . . . § 52-564 is synonymous with larceny [as defined in] General Statutes § 53a-119 . . . .’” *Scholz v. Epstein*, 341 Conn. 1, 18, 266 A.3d 127 (2021). Section 53a-119 provides in relevant part: “A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. . . .”<sup>24</sup>

“Because statutory theft is synonymous with larceny . . . a good faith belief that one owns the property at issue will negate the required intent. One who takes property in good faith, under fair color of claim or title, honestly believing that . . . he has a right to take it, is not guilty of larceny even though he is mistaken in such belief, since in such case the felonious intent is lacking. . . .

“Our Supreme Court has stated that the term good faith has a well defined and generally understood meaning, being ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one’s duty or obligation. . . . It has been well defined as meaning [a]n honest intention to abstain from taking an unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious. . . . It is a subjective standard of honesty of fact in the conduct or transaction concerned, taking into account the person’s state of mind, actual knowledge and motives. . . . Whether good faith exists is a question of fact to be determined from all the circumstances. . . . Accordingly, we apply the clearly erroneous standard to the court’s fact-finding.

“The trial court’s findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . We cannot retry the facts or pass on the credibility of the witnesses. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed . . . .” (Citations omitted; internal quotation marks omitted.) *Fernwood Realty, LLC v. AeroCision, LLC*, 166 Conn. App. 345, 367–69, 141 A.3d 965, cert. denied, 323 Conn. 912, 149 A.3d 981 (2016). It was the defendant’s burden to prove that the \$17,000 withdrawal was made in good faith. *Id.*, 368.

At trial, Bongiorno testified in relevant part as follows. While Bongiorno and the defendant were both

members of the plaintiff, they received compensation from the plaintiff in the form of distributions. Except when the plaintiff issued individual reimbursements for business expenses paid by one of them personally, Bongiorno and the defendant received distributions from the plaintiff in equal amounts, with the distributions disbursed upon their mutual authorization.<sup>25</sup> When the plaintiff had sufficient funds to allow for it, Bongiorno and the defendant each received weekly \$1000 distributions; however, there were weeks when neither of them received a distribution, and there was no practice in place providing for retroactive payments for weeks when no distributions were disbursed. Prior to making the \$17,000 withdrawal, the defendant did not inform Bongiorno that he believed that he was owed an arrearage for any unpaid weekly distributions. According to a document admitted into evidence at trial that reflected the plaintiff's distributions to Bongiorno and the defendant in 2012, the last weekly \$1000 distribution disbursed to Bongiorno and the defendant occurred on June 29, 2012.

Bongiorno further testified that (1) in arriving at the \$200,000 purchase price for the defendant's membership interest in the plaintiff, he and the defendant took into consideration the plaintiff's "accounts receivable, accounts payable, money in the checkbook, and assets," which included the plaintiff's checking account holding approximately \$60,000, (2) the defendant never informed him of the defendant's intention to withdraw \$17,000 from the plaintiff's checking account, (3) he did not authorize the defendant to do so, and (4) the defendant had ceased acting as a manager of the plaintiff on August 28, 2012, when the binding term sheet was executed.

In rendering judgment for the plaintiff on its statutory theft claim, the court stated in relevant part: "[The defendant] did not testify at trial and offered no direct evidence as to the reason for the [\$17,000] withdrawal."<sup>26</sup> In his posttrial brief, the defendant sought to justify receipt of the funds as past due distributions to which he claimed to be entitled as a member [of the plaintiff] and noted that as of August 29, 2012, he was still a member of the [plaintiff] until September 7, 2012, and was authorized to withdraw funds from the [plaintiff's checking] account.

"The court finds that the [defendant's] withdrawal of \$17,000 from the [plaintiff's checking] account was not authorized and [the defendant] intended to take funds to which he knew he was not entitled under the terms of his agreement with Bongiorno. The court finds that [the defendant] did not have a good faith belief he was entitled to receive distributions that were not provided in the binding term sheet, and he understood that the buyout price was set based on a valuation of [the plaintiff's] estimated assets as of August 28, 2012, includ[ing]

the balance of the checking account from which he withdrew \$17,000 the next day.

“The court credits the testimony of Bongiorno that the members’ practice had been to withdraw \$1000 per [week] each as compensation by matching checks to each member on the express authority of both members, who approved each withdrawal for compensation when funds were available and not needed for other purposes. There were weeks when no funds were withdrawn for members’ compensation; there was not any agreement among the members for funds to be withdrawn automatically weekly or to repay arrears from weeks in which members’ draw[s] [were] not taken. Both members understood and agreed that member compensation would only be withdrawn from the [plaintiff’s checking] account when both members agreed to do so.

“As of August 28, 2012, neither Bongiorno nor [the defendant] understood that [the defendant] would receive any assets of [the plaintiff], and the only funds he was to receive by virtue of his membership were limited to the purchase price of his interest set in the binding term sheet. There was no agreement for [the plaintiff] to pay any past or future compensation to [the defendant] at the time of his de facto withdrawal from the management of the business on August 28, 2012, when the binding term sheet was executed.<sup>27</sup> Bongiorno did not discuss with [the defendant] any claim for compensation, and [the defendant] did not disclose his intention to take any funds out of the [plaintiff’s checking] account, [which] balance had been considered during negotiation of the buyout for valuation of the corporate assets and setting the purchase price of [the defendant’s] interest. The parties understood and agreed that [the defendant] would receive nothing for his interest in [the plaintiff] other than the agreed buyout price in the binding term sheet payable upon closing of the settlement. [The defendant] had no right to withdraw any funds from [the plaintiff’s] checking account after the binding term sheet was executed.

“[The defendant] did not disclose his intention to take funds out of the [plaintiff’s checking] account after the binding term sheet was executed because [the defendant] knew that Bongiorno would not authorize the withdrawal or would have adjusted the purchase price of [the defendant’s] interest in [the plaintiff] accordingly to deduct the amount withdrawn. [The defendant’s] plan was to keep the withdrawal secret from Bongiorno until after the buyout was closed and he received the \$200,000 payment from him. The \$17,000 withdrawn from the [plaintiff’s checking] account was not withdrawn by [the defendant] for payment of any debts or obligations of [the plaintiff], including compensation owed by [the plaintiff], which compensation to [the defendant] was not authorized or permitted under



the binding term sheet, but was withdrawn and kept by [the defendant] for his personal use without authority.” (Footnotes in original.)

In summary, the court determined that “[a]ll the elements of a statutory theft claim are satisfied here . . . based on [the defendant’s] intentional and unauthorized withdrawal of \$17,000 from [the plaintiff’s] checking account that harmed the [plaintiff] by depriving it of specifically identified cash owned by [it] . . . . The court finds that [the defendant] did not withdraw the money based on a reasonable, good faith belief the funds were due [to] him but with the intention to deprive [the plaintiff] of its funds for his personal benefit. The burden was on [the defendant] to prove that he had a good faith belief he was owed the money he withdrew from [the plaintiff’s checking] account and he was authorized to make the withdrawal. . . . The defendant chose not to testify and the credible evidence of his conduct under the totality of the circumstances indicated he did not withdraw the funds in good faith but did so to receive a benefit to which [the defendant] knew he was not entitled to receive under the buyout agreement.” (Citations omitted; footnotes omitted.)

We conclude that the court’s finding that the defendant did not have a good faith basis to justify the \$17,000 withdrawal is not clearly erroneous. As the court reasonably determined, the binding term sheet, which was admitted into the record as a full exhibit, did not indicate that the defendant was to acquire any of the plaintiff’s assets, including any funds in its checking account, as part of the sale of his membership interest in the plaintiff. In addition, Bongiorno’s testimony, as credited by the court; see *Delena v. Grachitorena*, 216 Conn. App. 225, 231, 283 A.3d 1090 (2022) (“[i]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness’ testimony” (internal quotation marks omitted)); supports the court’s subordinate findings that (1) to determine the plaintiff’s value for the purposes of the purchase and sale transaction, Bongiorno and the defendant took into account the plaintiff’s assets, which included the \$17,000 withdrawn by the defendant from the plaintiff’s checking account, (2) authorization by both Bongiorno and the defendant was required for either individual to access the plaintiff’s funds, and Bongiorno did not authorize the defendant to make the \$17,000 withdrawal, (3) Bongiorno and the defendant were not guaranteed to receive weekly \$1000 distributions from the plaintiff, and (4) there was no policy in effect that provided for retroactive payments of any weekly distributions that were not disbursed. The court’s subordinate findings, as supported by the record, adequately buttress the court’s finding that the defendant lacked a good faith basis to believe that he was entitled to the \$17,000 that he withdrew from the

plaintiff's checking account. Accordingly, we reject the defendant's claim.

#### IV

Last, the defendant claims that the trial court committed error in awarding certain damages, including prejudgment interest pursuant to § 37-3a, to the plaintiff. For the reasons that follow, we agree.

“Our standard of review applicable to challenges to damages awards is well settled. . . . [T]he trial court has broad discretion in determining damages. . . . The determination of damages involves a question of fact that will not be overturned unless it is clearly erroneous. . . . [If], however, a damages award is challenged on the basis of a question of law, our review [of that question] is plenary.” (Internal quotation marks omitted.) *RCN Capital, LLC v. Chicago Title Ins. Co.*, 196 Conn. App. 518, 523, 230 A.3d 740 (2020).

The following additional procedural history is relevant to our resolution of the defendant's claim. In its posttrial briefs, the plaintiff requested the following relief vis-à-vis its operative complaint: (1) \$17,000, plus prejudgment interest accrued dating back to August 29, 2012, on its conversion claim; and (2) \$17,000, trebled to \$51,000 pursuant to § 52-564, on its statutory theft claim. As the “[t]otal damage award requested” on its claims, however, the plaintiff sought \$51,000, plus prejudgment interest accrued on the amount of \$17,000. In other words, the plaintiff's request for relief recognized that the plaintiff could not recover \$17,000 on its conversion claim in addition to that amount trebled on its statutory theft claim. In his posttrial briefs, the defendant argued that, in the event the court reached the issue of damages, the common-law rule against double recovery would limit the plaintiff's actual (i.e., pre-trebled) damages as to its statutory theft claim to \$8500 because Bongiorno had recovered \$8500 in damages on his breach of contract claim in the 2012 action, which represented one half of the \$17,000 in actual damages sought by the plaintiff in the present action.<sup>28</sup>

The court awarded the plaintiff damages in the total amount of \$84,044.38, which consisted of the following: (1) on the conversion count, \$17,000, plus \$16,044.38 in prejudgment interest pursuant to § 37-3a, which the court calculated at a rate of 10 percent per year from August 29, 2012, to the date of the judgment, and (2) on the statutory theft count, \$17,000, which the court trebled to \$51,000 pursuant to § 52-564. The court rejected the defendant's argument that Bongiorno's recovery of \$8500 in damages on his breach of contract claim in the 2012 action had any bearing on the plaintiff's damages in the present action, explaining that “[t]he measure of compensatory damages imposed . . . on Bongiorno's breach of contract award [in the 2012 action] has no application to the damages awardable

to [the plaintiff] for conversion and statutory theft [in the present action]. Bongiorno's claim that the interest [in the plaintiff that] he purchased [from the defendant] was diminished by [the \$17,000 withdrawal] is a separate claim from that asserted by [the plaintiff] in this case for conversion of its funds and a different measure of damages applies. Bongiorno was compensated for his loss caused by [the defendant's] breach of contract that reduced the value of the interest Bongiorno purchased from [the defendant]. Bongiorno's recovery was as an individual for his personal losses, not as an agent of the [plaintiff] or for losses to the [plaintiff] for which [this court] ruled he had no standing. [The plaintiff] has the right to recover the full amount of its losses, including interest, from funds withdrawn without authorization from [its checking account] and converted by [the defendant] and to treble those damages from the withdrawal under . . . § 52-564 . . . . Had these funds not been withdrawn, they would have been available to pay [the plaintiff's] debts and obligations, which would not have included any compensation to [the defendant]." (Footnote omitted.)

In a footnote, the court further stated that awarding the plaintiff damages without adjusting for Bongiorno's \$8500 recovery in the 2012 action would not violate the common-law rule against double recovery "because the injuries are different, and the damages are not awarded to the same party. [The defendant] has cited no authority to offset the damages award to [the plaintiff] by payments he may have made to Bongiorno. Any windfall to Bongiorno as sole member of [the plaintiff] because he personally received funds to satisfy the judgment in the [2012] action, and assuming [the plaintiff] recovered the full amount withdrawn from its [checking] account awarded as damages in this action so he would benefit from the increase in [the plaintiff's] assets, is purely incidental to the damages awarded in separate actions for losses sustained by different parties. There are no equitable reasons [that] any payment to Bongiorno in satisfaction of the judgment in his favor [in the 2012 action] should be set off against the recovery by [the plaintiff] in this action to benefit [the defendant], the wrongdoer found liable in both actions."

With respect to the court's damages award, the defendant claims that the court (1) violated the common-law rule against double recovery in (a) allowing the plaintiff to recover the full amount of damages on both its conversion and statutory theft claims, which were predicated on the same occurrence, namely, the \$17,000 withdrawal, and (b) failing to account for Bongiorno's recovery of \$8500 in damages on his breach of contract claim in the 2012 action, and (2) abused its discretion in calculating the prejudgment interest awarded pursuant to § 37-3a vis-à-vis the plaintiff's conversion claim. We address these claims in turn.

We first consider the defendant's claims predicated on the common-law rule against double recovery. "[T]he rule precluding double recovery is a simple and time-honored maxim that [a] plaintiff may be compensated only once for his just damages for the same injury. . . . Connecticut courts consistently have upheld and endorsed the principle that a litigant may recover just damages for the same loss only once. The social policy behind this concept is that it is a waste of society's economic resources to do more than compensate an injured party for a loss and, therefore, that the judicial machinery should not be engaged in shifting a loss in order to create such an economic waste." (Internal quotation marks omitted.) *Mahon v. B.V. Unitron Mfg., Inc.*, 284 Conn. 645, 663, 935 A.2d 1004 (2007). "Duplicate recoveries must not be awarded for the same underlying loss under different legal theories. . . . Although a plaintiff is entitled to allege alternative theories of liability in separate claims, he is not entitled to recover twice for harm growing out of the same transaction, occurrence or event." (Citation omitted.) *Catalina v. Nicolelli*, 90 Conn. App. 219, 225, 876 A.2d 588 (2005).

We agree with the defendant that the plaintiff was compensated twice for the same loss as a result of the court permitting the plaintiff to recover the full amount of its damages on both its conversion and statutory theft claims.<sup>29</sup> "Our Supreme Court has distinguished the tort of conversion from statutory theft as follows: The tort of [c]onversion occurs when one, without authorization, assumes and exercises ownership over property belonging to another, to the exclusion of the owner's rights. . . . Thus, [c]onversion is some unauthorized act which deprives another of his property permanently or for an indefinite time; some unauthorized assumption and exercise of the powers of the owner to his harm. The essence of the wrong is that the property rights of the plaintiff have been dealt with in a manner adverse to him, inconsistent with his right of dominion and to his harm. . . . Conversion can be distinguished from statutory theft as established by § 53a-119 in two ways. First, statutory theft requires an intent to deprive another of his property; second, conversion requires the owner to be harmed by a defendant's conduct. Therefore, statutory theft requires a plaintiff to prove the additional element of intent over and above what he or she must demonstrate to prove conversion." (Internal quotation marks omitted.) *Hospital of Central Connecticut v. Neurosurgical Associates, P.C.*, 139 Conn. App. 778, 789-90, 57 A.3d 794 (2012). Given the overlap between the plaintiff's claims of conversion and statutory theft, both of which were based on the \$17,000 withdrawal, we conclude that the damages that the court awarded on these claims were

duplicative.

We further agree with the defendant that Bongiorno's recovery of \$8500 on his breach of contract claim in the 2012 action capped the actual damages recoverable by the plaintiff on its conversion and statutory theft claims in the present action at \$8500. The \$17,000 withdrawal was the crux of Bongiorno's breach of contract claim in the 2012 action, as well as the plaintiff's statutory theft and conversion claims in the present action. As we discussed in part I of this opinion, although we recognize that Bongiorno and the plaintiff are distinct legal entities; *Bongiorno v. Capone*, supra, 185 Conn. App. 201; Bongiorno's status as the sole member of the plaintiff creates a unique situation that prevents us from completely separating the relief awarded to Bongiorno in the 2012 action and the relief awarded to the plaintiff in the present action. See *Saunders v. Briner*, supra, 334 Conn. 174 ("the concept of a corporate injury that is distinct from any injury to [its sole member] approaches the fictional" (internal quotation marks omitted)). Applying the rationale of *Saunders* to the unique history and circumstances of the present case, the inescapable conclusion is that a windfall resulted from the court awarding the plaintiff \$17,000 in actual damages on both its statutory theft and conversion claims in the present action, notwithstanding Bongiorno's recovery of \$8500 on his breach of contract claim in the 2012 action.

Synthesizing the foregoing determinations, we conclude that the court improperly awarded the plaintiff \$17,000 on its conversion claim and \$51,000 in trebled damages on its statutory theft claim. Putting aside the court's award of prejudgment interest vis-à-vis the plaintiff's conversion claim, which we address in part IV B of this opinion, we conclude that the plaintiff was entitled to (1) \$8500 on its conversion claim and (2) \$17,000 on its statutory theft claim, calculated by (a) trebling \$8500 to \$25,500 pursuant to § 52-564 and (b) subtracting \$8500 from the trebled amount to avoid duplicative damages.

## B

We next turn to the defendant's claim that the court abused its discretion in awarding the plaintiff prejudgment interest pursuant to § 37-3a on the plaintiff's conversion claim in the amount of \$16,044.38, which the court calculated on the principal amount of \$17,000 at a rate of 10 percent per year from August 29, 2012, to the judgment date. The defendant maintains that the court improperly (1) calculated prejudgment interest on the principal amount of \$17,000 and (2) determined that prejudgment interest began to accrue on August 29, 2012, the date of the \$17,000 withdrawal, rather than the date on which the plaintiff commenced the present action.<sup>30</sup> We address each claim in turn.

Section 37-3a (a) provides in relevant part that “interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions . . . as damages for the detention of money after it becomes payable. . . .” “[A] court’s determination [as to whether interest should be awarded under § 37-3a] should be made in view of the demands of justice rather than through the application of any arbitrary rule. . . . Whether interest may be awarded depends on whether the money involved is payable . . . and whether the detention of the money is or is not wrongful under the circumstances. . . . [T]he primary purpose of § 37-3a . . . is not to punish persons who have detained money owed to others in bad faith but, rather, to compensate parties that have been deprived of the use of their money.” (Citations omitted; internal quotation marks omitted.) *Sosin v. Sosin*, 300 Conn. 205, 229–30, 14 A.3d 307 (2011).

“We review an award of prejudgment interest under the abuse of discretion standard. The allowance of prejudgment interest as an element of damages is an equitable determination and a matter lying within the discretion of the trial court. . . . Under the abuse of discretion standard of review, [w]e will make every reasonable presumption in favor of upholding the trial court’s ruling, and only upset it for a manifest abuse of discretion.” (Citation omitted; internal quotation marks omitted.) *Hamann v. Carl*, 196 Conn. App. 583, 601, 230 A.3d 803, cert. denied, 335 Conn. 949, 238 A.3d 22 (2020), and cert. denied, 335 Conn. 949, 238 A.3d 22 (2020).

In part IV A of this opinion, we concluded that the plaintiff was entitled to \$8500, rather than \$17,000, on its conversion claim. It necessarily follows that the trial court should have calculated prejudgment interest on the principal amount of \$8500, such that the court’s award of \$16,044.38, calculated on the principal amount of \$17,000, cannot stand.

We further conclude that the court did not commit error in determining that prejudgment interest began to accrue on August 29, 2012. “The date the interest begins to run pursuant to § 37-3a is factual because it necessarily involves a determination of when the wrongful detention began.” (Emphasis omitted.) *Paulus v. LaSala*, 56 Conn. App. 139, 150, 742 A.2d 379 (1999), cert. denied, 252 Conn. 928, 746 A.2d 789 (2000); see also *Patron v. Konover*, 35 Conn. App. 504, 517, 646 A.2d 901 (“Th[e] allowance [of prejudgment interest under § 37-3a] turns on whether the detention of the money is or is not wrongful under the circumstances. . . . If the trial court determines that one party has wrongfully detained funds, it must next determine the date the wrongful detention began.” (Citations omitted; internal quotation marks omitted.)), cert. denied, 231 Conn. 929, 648 A.2d 879 (1994). In the present case, the

court found that the defendant had wrongfully withheld the \$17,000 since August 29, 2012, when he withdrew that amount from the plaintiff's checking account. Thus, we discern no error by the court in identifying August 29, 2012, as the date on which prejudgment interest began to accrue.<sup>31</sup>

In sum, we conclude that the court's award of damages, including the prejudgment interest awarded pursuant to § 37-3a vis-à-vis the plaintiff's conversion claim, is improper. On remand, the court is directed to award the plaintiff damages as follows. As to the plaintiff's conversion claim, the court shall award \$8500, plus prejudgment interest calculated at a rate of 10 percent per year from August 29, 2012, to the date of judgment.<sup>32</sup> As to the plaintiff's statutory theft claim, the court shall award \$17,000, comprising \$25,500 (\$8500 multiplied by three) in trebled damages pursuant to § 52-564 less the \$8500 awarded on the plaintiff's conversion claim.

The judgment is reversed only as to damages and the case is remanded with direction to award the plaintiff damages consistent with this opinion; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

<sup>1</sup> Bongiorno's operative complaint also set forth claims alleging a violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq., and a second breach of contract claim, but Bongiorno later withdrew those claims.

<sup>2</sup> The court had declined to accept two prior reports filed by the attorney trial referee.

<sup>3</sup> The court found in favor of the defendant as to Bongiorno's conversion count on the basis of its conclusion that the conversion count was moot because "damages for conversion and [statutory] theft cannot be separately awarded as to the same sum of money." As we discuss subsequently in this opinion, we have reservations regarding the court's (1) conclusion that Bongiorno's conversion count was moot and (2) decision to find for the defendant on the conversion count on the basis of mootness. See part I of this opinion; see also footnotes 20 and 21 of this opinion.

In addition, as part of his breach of contract count, Bongiorno alleged that the defendant had failed to transfer to him two cell phone numbers of the plaintiff. The attorney trial referee found in favor of the defendant as to that discrete claim, and the trial court upheld that determination.

<sup>4</sup> The court calculated the damages on Bongiorno's statutory theft count by (1) trebling \$17,000 to \$51,000 pursuant to § 52-564 and (2) subtracting \$17,000 from the trebled amount, which the court determined to be duplicative of the damages that were awarded and left undisturbed by the court on Bongiorno's breach of contract count.

<sup>5</sup> The defendant also claimed on appeal that the trial court had improperly rendered judgment for Bongiorno on his breach of contract count "without making conclusions of law as to the applicability of the waiver-of-suit provisions in the contractual documents." *Bongiorno v. Capone*, supra, 185 Conn. App. 202. This court declined to address that claim because the defendant had failed to preserve it. *Id.*, 203.

<sup>6</sup> As to Bongiorno's breach of contract count, this court determined that "[Bongiorno] did not seek damages from the defendant for losses he allegedly caused to the [plaintiff] by making an unauthorized withdrawal of money from it, but rather sought damages for the resulting failure of the defendant to give him full consideration for the \$200,000 he had paid for the defendant's 50 percent interest in the [plaintiff], with the understanding that the [plaintiff's] aggregate assets at the time of transfer would be those owned by the [plaintiff] on August 28, 2012. [Bongiorno and the defendant's] contract for the defendant to sell that membership interest to [Bongiorno] was a personal undertaking between them to which the [plaintiff] was not itself a party. The membership interest thereby purchased was personal property that the

defendant had the right to sell to [Bongiorno], and [Bongiorno] had the right to receive, own, enjoy, and dispose of as he wished. . . . Therefore, if and to the extent that the defendant, by taking unilateral action to diminish the value of that membership interest before transferring it to [Bongiorno] in exchange for his agreed upon payment for it, denied [Bongiorno] the benefit of his bargain under the contract, [Bongiorno] had standing, in his individual capacity, to sue the defendant for breach of contract to recover compensatory damages for that lost benefit.” (Citation omitted; footnote omitted.) *Bongiorno v. Capone*, supra, 185 Conn. App. 197. This court further determined that, “[b]ecause . . . [Bongiorno’s] contract with the defendant was to purchase only a 50 percent interest in the [plaintiff], the loss of consideration suffered by [Bongiorno] due to the [plaintiff’s] loss of \$17,000 in aggregate value was only one half of that amount, or \$8500. [Bongiorno’s] damages for breach of contract must, therefore, be reduced to \$8500.” *Id.*, 198. Moreover, this court determined that, insofar as Bongiorno alleged in his breach of contract count that he was entitled to compensatory damages as a result of the diminution of value of his own preexisting 50 percent interest in the plaintiff, that portion of the breach of contract count had to be dismissed for lack of subject matter jurisdiction. *Id.*, 180. Accordingly, this court reversed the judgment on Bongiorno’s breach of contract claim as to damages only and directed the trial court on remand “to render judgment for [Bongiorno] on his claim of breach of contract in the modified amount of \$8500, plus prejudgment statutory interest on that sum from the time the settlement agreement was executed until the time of judgment, at the rate of 10 percent per annum . . . .” *Id.*, 203.

<sup>7</sup> See footnote 6 of this opinion.

<sup>8</sup> In his posttrial reply brief filed in the present action, the defendant argued that the plaintiff’s operative complaint later filed, which was substantively similar to its original complaint, alleged one claim sounding in statutory theft only. The court rejected this argument, determining that the plaintiff had raised claims of statutory theft and conversion. The defendant, on appeal, does not challenge this determination.

<sup>9</sup> General Statutes § 52-592 (a) provides: “If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because of insufficient service or return of the writ due to unavoidable accident or the default or neglect of the officer to whom it was committed, or because the action has been dismissed for want of jurisdiction, or the action has been otherwise avoided or defeated by the death of a party or for any matter of form; or if, in any such action after a verdict for the plaintiff, the judgment has been set aside, or if a judgment of nonsuit has been rendered or a judgment for the plaintiff reversed, the plaintiff, or, if the plaintiff is dead and the action by law survives, his executor or administrator, may commence a new action, except as provided in subsection (b) of this section, for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment.”

<sup>10</sup> General Statutes § 52-577 provides: “No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of.”

<sup>11</sup> The only other witness to testify at trial was Frankie Bongiorno, who was an employee of the plaintiff. Any references to Bongiorno in this opinion are to Frank Bongiorno only.

<sup>12</sup> The defendant filed his original answer and special defenses on June 5, 2020, which asserted these two special defenses. On July 7, 2020, the plaintiff filed a reply denying the two special defenses. The plaintiff did not file a reply to the defendant’s amended special defenses. See Practice Book § 10-61 (“[i]f the adverse party fails to plead further [following an amendment to a pleading], pleadings already filed by the adverse party shall be regarded as applicable so far as possible to the amended pleading”).

In his amended answer and special defenses, the defendant asserted a third special defense alleging that, pursuant to the settlement agreement executed by Bongiorno and him, the plaintiff had waived and released its right to bring the present action. The third special defense was not addressed by the parties at trial, in their respective posttrial briefs, or in the court’s decision adjudicating the plaintiff’s operative complaint. Moreover, although the defendant notes in his principal appellate brief that he had asserted the third special defense, he does not raise any claim of error as to this defense. Accordingly, we consider it abandoned and do not discuss it further.

<sup>13</sup> On December 16, 2019, the defendant filed a motion to strike, *inter alia*, a portion of the prayer for relief in the plaintiff’s original complaint requesting a declaratory judgment that the 2012 action had “failed accidentally as



prescribed by . . . [§] 52-592.” On February 3, 2020, the court, *Krumeich, J.*, granted in part the defendant’s motion to strike, striking the plaintiff’s request for a declaratory judgment.

Prior to the start of the evidentiary portion of trial on September 29, 2021, the defendant’s counsel stated that the plaintiff had not filed an amended complaint following the court’s granting of the defendant’s motion to strike. The court, *Hon. Edward T. Krumeich II*, judge trial referee, then instructed the plaintiff to file an amended complaint. In addition, the court (1) noted that the defendant had filed an amended answer and special defenses directed to the plaintiff’s original complaint and (2) stated that the defendant did not need to file an amended responsive pleading directed to the amended complaint that the plaintiff would later file.

<sup>14</sup> Sections 52-591 and 52-592 are distinct statutes with independent savings provisions. In light of our conclusion that the court correctly determined that § 52-591 applied to save the present action, we need not address the merits of the defendant’s separate claim that the court’s analysis of § 52-592 was incorrect.

In its posttrial briefs, the plaintiff argued that both §§ 52-591 and 52-592 applied to save the present action. In its appellate brief, the plaintiff argues that the trial court properly concluded that the present action was saved pursuant to § 52-592; however, the plaintiff does not respond to the defendant’s claim challenging the trial court’s application of § 52-591. During oral argument before this court, the plaintiff’s counsel agreed with the defendant that the trial court erred in concluding that § 52-591 applied to save the present action; however, counsel maintained that the error was harmless because the trial court correctly had concluded that the present action was saved pursuant to § 52-592. It is of no moment that both parties now share the position that the court’s application of § 52-591 was flawed. “The general rule that a judgment, rendered by a court with jurisdiction, is presumed to be valid and not clearly erroneous until so demonstrated raises a presumption that the rendering court acted only after due consideration, in conformity with the law and in accordance with its duty. . . . The correctness of a judgment of a court of general jurisdiction is presumed in the absence of evidence to the contrary. [Our appellate courts] do not presume error. The burden is on the appellant to prove harmful error.” (Internal quotation marks omitted.) *Equity One, Inc. v. Shivers*, 310 Conn. 119, 132, 74 A.3d 1225 (2013). As the appellant, the defendant must demonstrate that the court improperly concluded that § 52-591 applied to save the present action. We will not presume that the court committed error, even if both parties now submit that error occurred.

<sup>15</sup> The defendant notes that Bongiorno, in a memorandum of law in opposition to a motion to dismiss filed in the 2012 action, represented that “[t]he defendant . . . breached the binding term sheet . . . and stole [\$17,000] from . . . Bongiorno.” (Emphasis added.) We do not construe this representation to undermine our conclusion that Bongiorno’s attempt to prosecute claims for conversion and statutory theft in the 2012 action was “for the benefit of” the plaintiff for purposes of the saving provision of § 52-591.

<sup>16</sup> Our Supreme Court further stated that “[a] trial court may permit the member of a single-member limited liability company to bring an action raising derivative claims as a direct action and may order an individual recovery if it finds that to do so will not (1) unfairly expose the company or defendants to a multiplicity of actions, (2) materially prejudice the interests of creditors of the company, or (3) negatively impact other owners or creditors of the company by interfering with a fair distribution of the recovery among all interested parties.” *Saunders v. Briner*, supra, 334 Conn. 176.

<sup>17</sup> In his principal appellate brief, the defendant also asserts that § 52-591 cannot be applicable to save the present action because (1) § 52-591 requires the judgment in the prior action to have been reversed in toto and (2) the judgment in the 2012 action was rendered on the merits in favor of Bongiorno vis-à-vis his breach of contract claim, such that the judgment was not reversed in full. During oral argument before this court, however, the defendant’s counsel modified this position, indicating that § 52-591 would be applicable if (1) Bongiorno had brought the statutory theft claim in a representative capacity, (2) the trial court had rendered judgment in Bongiorno’s favor on the statutory theft claim, and (3) this court had reversed the judgment on the statutory theft claim for lack of standing. Thus, counsel appeared to acknowledge that § 52-591 could apply even if the prior judgment was reversed in part only, such that a total reversal of the 2012 action was not a necessary predicate for the application of § 52-591.

<sup>18</sup> Bongiorno’s statutory theft and conversion claims were predicated on

the same allegations.

<sup>19</sup> We deem the term “mistake” in § 52-591 to be defined in accordance with its ordinary meaning, namely, “ ‘error, misunderstanding or misconception’ ”; *Freese v. Dept. of Social Services*, 176 Conn. App. 64, 82 n.13, 169 A.3d 237 (2017); which parallels our Supreme Court’s interpretation of that term as used in General Statutes § 52-109. *Id.*, citing *Fairfield Merrittview Ltd. Partnership v. Norwalk*, 320 Conn. 535, 553 and n.21, 133 A.3d 140 (2016); see also General Statutes § 52-109 (“[w]hen any action has been commenced in the name of the wrong person as plaintiff, the court may, if satisfied that it was so commenced through *mistake*, and that it is necessary for the determination of the real matter in dispute so to do, allow any other person to be substituted or added as plaintiff” (emphasis added)).

<sup>20</sup> We express doubt as to the trial court’s conclusion in the 2012 action that the prohibition against awarding damages for conversion and statutory theft with respect to the same sum of money rendered Bongiorno’s conversion count moot; rather, the proper course for the court to follow would have been to render judgment for Bongiorno on the conversion count and to adjust the damages awarded to him to avoid a double recovery. See part IV of this opinion. Had the trial court rendered judgment in Bongiorno’s favor on the conversion count, it logically follows that this court in *Bongiorno v. Capone*, *supra*, 185 Conn. App. 176, would have reversed that portion of the judgment for lack of standing.

<sup>21</sup> The trial court in the present action stated that in *Bongiorno v. Capone*, *supra*, 185 Conn. App. 176, this court concluded that Bongiorno lacked standing to bring a statutory theft or a conversion claim in the 2012 action. As we set forth in this opinion, however, the trial court in the 2012 action concluded that Bongiorno’s conversion claim was moot; thus, whether Bongiorno had standing to bring his conversion claim was not decided by this court. See footnote 3 of this opinion; see also *Bongiorno v. Capone*, *supra*, 185 Conn. App. 180 n.2 (rejecting defendant’s contention that trial court improperly rendered judgment in Bongiorno’s favor on his conversion claim on grounds that (1) defendant did not mention conversion claim in his argument and (2) trial court had determined that conversion claim was moot). Nevertheless, because mootness implicates a court’s subject matter jurisdiction; see *In re Probate Appeal of Tunick*, 215 Conn. App. 551, 558, 284 A.3d 26 (2022); it necessarily follows that Bongiorno’s conversion claim was not disposed of on the merits for purposes of the doctrine of res judicata. We note that, upon concluding that Bongiorno’s conversion count was moot, the trial court in the 2012 action should have dismissed that count for lack of subject matter jurisdiction rather than resolving it in the defendant’s favor. We do not construe this procedural discrepancy as to the form of the judgment to affect our analysis, as the trial court made clear that it had determined that Bongiorno’s conversion count was moot.

In addition, as we explain in footnote 20 of this opinion, we question the propriety of the trial court’s conclusion in the 2012 action that Bongiorno’s conversion count was moot. If, instead of determining that Bongiorno’s conversion count was moot, the trial court had found in Bongiorno’s favor on that count and awarded damages to avoid a double recovery, then, necessarily, this court in *Bongiorno v. Capone*, *supra*, 185 Conn. App. 176, would have reversed that portion of the judgment on the basis that Bongiorno lacked standing. Had the history of the present case unfolded in this manner, the doctrine of res judicata would not bar the plaintiff’s conversion claim for the same reason that it does not bar the plaintiff’s statutory theft claim.

In short, regardless of which jurisdictional ground applied to dispose of Bongiorno’s conversion count, the doctrine of res judicata is inapplicable to the plaintiff’s conversion claim.

<sup>22</sup> The defendant argues that the trial court’s rejection of his res judicata defense was inconsistent with its conclusion that § 52-592 applied to save the present action. As we explain in footnote 14 of this opinion, we need not consider whether the trial court’s application of § 52-592 was proper. The defendant further argues that the trial court improperly relied on this court’s decision in *Strazza Building & Construction, Inc. v. Harris*, 207 Conn. App. 649, 262 A.3d 996 (2021), *aff’d*, 346 Conn. 205, 288 A.3d 1017 (2023). Our review of the trial court’s decision reveals that the court cited *Harris* for the purpose of setting forth the elements of the doctrine of res judicata. Thus, we do not discern any improper reliance on that case by the trial court.

We note that the court also concluded that the doctrine of collateral estoppel was not applicable to the present action. The defendant does not raise any claim of error on appeal regarding the court’s collateral estoppel

analysis. Accordingly, we need not discuss the court's determination regarding the doctrine of collateral estoppel further.

<sup>23</sup> The defendant does not claim on appeal that the court committed error vis-à-vis the merits of the plaintiff's conversion claim.

<sup>24</sup> The \$17,000 withdrawal occurred in 2012. Section 53a-119 was amended by No. 13-282, § 2, of the 2013 Public Acts, and by No. 14-199, § 4, of the 2014 Public Acts, both of which made changes to the statute that are not relevant to our analysis. Accordingly, our reference here is to the current revision of the statute.

<sup>25</sup> As Bongiorno explained in his testimony, "if a check was written out to [the defendant], there was a check to match for myself, unless . . . we had to buy something for the business and we had to be reimbursed . . . . [Except for reimbursements], it was always if [the defendant] got a check, I got a check. We would talk about it, we'd agree upon it, and [the defendant] would write out the check. . . . [I]f we needed a check, [the defendant] and I would discuss it, and, if we agreed, we would make out the check in equal amounts."

<sup>26</sup> "The defendant offered records related to the distributions by [the plaintiff] to its members that included weekly distributions of \$1000 to each member through June 29, 2012, and no distributions thereafter before the sale closed on September 7, 2012."

<sup>27</sup> "The evidence disclosed that [Bongiorno and the defendant] were at odds for a considerable period that culminated in the settlement reflected in the binding term sheet and subsequent settlement agreement. No member compensation had been paid since June 29, 2012. The failure to continue the weekly compensation payments is evidence [Bongiorno and the defendant] did not agree on continuing the practice of weekly draws and had suspended members' compensation while the parties were in dispute and the buyout was in contemplation and negotiation."

<sup>28</sup> At the time that he filed his posttrial briefs, the defendant maintained that the sole claim asserted by the plaintiff in the present action sounded in statutory theft. See footnote 8 of this opinion.

<sup>29</sup> The plaintiff does not address this issue in its appellate brief. During oral argument before this court, the plaintiff's counsel agreed with the defendant that the plaintiff should not have recovered damages on its conversion claim in addition to trebled damages vis-à-vis its statutory theft claim.

<sup>30</sup> The defendant also asserts that "the plaintiff's dilatory actions in bringing suit caused the interest to grow exponentially," such that any award of prejudgment interest should "[factor] in the plaintiff's diligence in pursuing its claim." The defendant does not identify any dilatory conduct by the plaintiff in the record. Moreover, the plaintiff timely filed the present action pursuant to § 52-591. See General Statutes § 52-591 ("the parties for whose special benefit the action was brought may commence a new action in their individual names at any time within one year after the reversal of the judgment"). Thus, this assertion is unavailing.

<sup>31</sup> The defendant contends that his "retention of [the] money could not be deemed 'wrongful' prior to [the plaintiff] making demand through the [present] action . . . ." We are not persuaded that the \$17,000 withdrawal was not "wrongful" for purposes of § 37-3a until the commencement of the present action. See, e.g., *Patron v. Konover*, supra, 35 Conn. App. 517 ("[w]here the claim rests on a breach of contract, statutory interest [pursuant to § 37-3a] accrues from the date the contract was breached").

<sup>32</sup> "[P]ursuant to *Paulus v. LaSala*, [supra, 56 Conn. App. 150], § 37-3a provides interest to the date final judgment is rendered." *Bongiorno v. Capone*, supra, 185 Conn. App. 198 n.15.

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