NO. AC 27515	:	SUPREME COURT
JAMES P. PURCELL ASSOC., INC.	:	
VS.	:	
J. MARTIN HENNESSEY, ET AL.	:	FEBRUARY 25, 2008

MOTION FOR RECONSIDERATION EN BANC OF ORDER DENYING PLAINTIFF'S PETITION TO SUPREME COURT FOR CERTIFICATION FOR REVIEW FROM APPELLATE COURT

Pursuant to Practice Book §71-5, the plaintiff in the above-captioned matter , James P. Purcell Associates, Inc., respectfully moves the court to reconsider *en banc*[1] its Order on Petition for Certification to Appeal dated February 14, 2008, denying the plaintiff's Petition to Supreme Court for Certification for Review from Appellate Court. In support thereof, the defendant states as follows:

1. **BRIEF HISTORY**

The underlying action brought by the plaintiff was for collection of a commercial debt for professional engineering services rendered at the defendant's request. At trial in the Hartford Superior Court on January 24, 2006, the defendant stipulated to judgment in full in favor of the plaintiff as against the corporate defendant The Hennessey Co., Inc., in the amount of $95,234.29 plus interest, attorney's fees and costs. During the trial, the plaintiff had requested the court to take judicial notice of a complaint filed by the individual defendant in another case in the same judicial district (the "Sovereign complaint), to which the defendant conceded. *See* Tr., p. 27. The plaintiff contended that the defendant Hennessey's

[1] The defendant assumes the court will consider the instant motion *en banc* in any event given the language of P.B. §84-8, which implies consideration of the underlying petition will be given by the entire court.

allegation(s) in that complaint that he individually had incurred development expenses constituted a judicial admission, and that that judicial admission was sufficient in the context of the case, as framed by the pleadings, to entitle the plaintiff to a judgment against the individual defendant. *See* Tr., p. 47.

Upon the conclusion of evidence, the court, Stengel, J., ruled from the bench and held that the plaintiff had failed to meet its burden of proof as to its unjust enrichment claim against the defendant J. Martin Hennessey individually, and entered judgment for the individual defendant accordingly. *See* Tr., pp. 52-55. Thereafter, the plaintiff timely moved for reargument, which motion was summarily denied by the court without even entertaining argument (which had been requested by the plaintiff).

The plaintiff timely appealed the trial court judgment to the Appellate Court. In its appeal, the plaintiff maintained it had proven that the individual defendant had been unjustly enriched by virtue of his leveraging of settlement funds from the SunAmerica case in which the defendant had alleged, *inter alia,* that he had incurred development costs in his **individual** capacity, which costs, notwithstanding the defendant's denial to the contrary, plainly included (at least by implication) plaintiff's invoices.

On December 18, 2007, a split Appellate Court affirmed the trial court decision, McDonald, J., dissenting. The majority found that the issue(s) on appeal turned on which entity had entered into the contract with SunAmerica. *Id.* at 4. It went on to hold that the plaintiff's failure to place the SunAmerica contract into evidence (or to offer other proof of it at trial) was fatal. *Id.* The court found that

when viewed through a prism of a clearly erroneous standard, the plaintiff had failed to offer sufficient evidence to prove the individual defendant had **alleged** he had incurred expenses individually as the result of the contract with the plaintiff entered into in a corporate capacity.[2] *Id.* at pp. 4-5. Therefore, the court held, the plaintiff could not prevail on its claim that the trial court was required to find that the individual defendant's prior pleadings were an admission that the corporation's expenses and benefits were attributable to him individually. *Id.* at 5.

2. SPECIFIC FACTS

In his dissent in the Appellate Court case, Judge McDonald pointed to the fact that the plaintiff had adduced uncontroverted evidence that Hennessey sued SunAmerica in his individual capacity **and** that he alleged individual liability for the expenses incurred in furtherance of the subject project(s). *Id.* at 6. He went on to say that by receiving a settlement in his personal capacity based on the cost of work performed by the plaintiff for the Hennessey Co., and not paid for, Hennessey unjustly received a benefit separate and distinct from the benefit conferred on the corporation. Therefore, he concluded, because the trial court's decision was contrary to the undisputed evidence, it was clearly erroneous. The gravamen of the plaintiff's Petition for Certification was that Judge MacDonald's dissent effectively

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[2]The Appellate Court directed its criticism of the plaintiff's case insofar as it failed to prove J. Martin Hennessey had **alleged** the incurrence of individual expense, not that it had failed to prove that he actually **did** incur those expenses. The plaintiff agrees completely with the court in this regard. The plaintiff has consistently maintained the issue is whether it was unjust for the defendant to leverage settlement monies for himself personally by **alleging** in the SunAmerica complaint that he had borne individual expenses in the project(s), including the plaintiff's bill in the approximate amount of $95,000.00. The defendant was never required to prove who bore the expense, as his case against SunAmerica of course was withdrawn when it settled.

pointed out the illogical conclusion reached by the majority when it found on the one hand that the plaintiff was required to prove that the individual defendant had alleged he had incurred expenses individually, and then ignored for some unexplained reason the fact that the plaintiff had placed into evidence (via judicial notice) the SunAmerica complaint containing the very allegation at issue.

3. **LEGAL BASIS**

The plaintiff relies on P.B. §71-5, which authorizes the use of the motion for reconsideration in this instance. The plaintiff also respectfully refers the court to other cases where such a motion has been relied upon in similar circumstances; *State v. Burke,* 254 Conn. 202, 203-04, 757 A.2d 524, 524-25 (2000) (petition for certification granted on reconsideration); *Caruso v. City of Milford,* 75 Conn. App. 95, 100, 815 A.2d 167, 171, *cert. denied* 263 Conn. 907, 819 A.2d 838 (2003); *Barry v. Posi-Seal Intern, Inc.,* 235 Conn. 901, 664 A.2d 1124 (1995) (motion to reconsider denial of petition for certification granted on petition filed late, shortly after Supreme Court opinion issued, arguably conflicting with Appellate Court decision); *Spears v. Garcia,* 263 Conn. 22, 818 A.2d 37 (2003) (petition for certification granted on reconsideration).

WHEREFORE, for all the foregoing reasons, the plaintiff respectfully requests the court reconsider its order of February 14, 2008, as aforesaid, and to grant the plaintiff's petition for certification for review.

PLAINTIFF, JAMES P. PURCELL ASSOCIATES, INC.

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CERTIFICATION

This is to certify that the foregoing motion is in compliance with Practice Book §§66-3 and 84-5, and that a copy of the same was mailed, postage prepaid, this 25th day of February 2008, to all counsel and pro se parties of record as follows:

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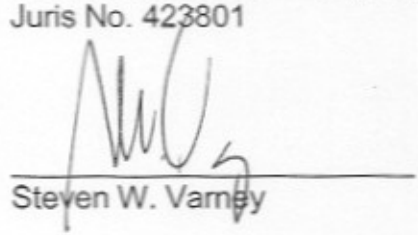

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