

Ruiz v. Victory Properties, LLC. (AC 39381)

Brief Summary: Plaintiff was injured when a neighbor dropped a cinder block from their third-floor apartment, landing on her head. The plaintiffs filed a negligence action against their landlord and two other defendants. The latter claims were dependent on the success of the former claims. After the appellate court reversed summary judgment in favor of the defendant on the former claims, the plaintiff filed a motion to open the summary judgment in favor of the other two defendants. The court held that the automatic stay provision of Practice Book § 61-11 (a) does not operate to toll the four month period for filing a motion to open. Thus, the trial court properly denied the motion to open as untimely.

The plaintiffs, Adriana Ruiz and Olga Rivera, initiated a personal injury action against Victory Properties, LLC (Victory) in January 2009. Counts one and two of the complaint alleged that Ruiz, who was seven years old at the time, suffered serious head injuries when her ten year old neighbor took a piece of a cinder block from the backyard, carried it up to his family's third-floor apartment and dropped it onto Ruiz' head. The plaintiffs asserted that Victory was negligent because it failed to remove loose concrete from the building's backyard where it knew or should have known that children were likely to play, and that Victory's negligence was the proximate cause of Ruiz' injuries. On November 30, 2009, the plaintiffs filed a motion to cite in as additional defendants in the action, John R. Kovalcik, who was the managing member of Victory, and Intepros Inc., a company for which Kovalcik was the president and a director. The court granted the motion and the plaintiffs filed and served an amended complaint containing two additional counts. Counts one and two of the amended complaint continued to sound in negligence against Victory. Count three alleged violations of the Uniform Fraudulent Transfer Act, General Statutes § 52-552a et seq., against Victory and Intepros, and in count four the

plaintiffs sought to hold Kovalcik personally liable for any wrongful conduct alleged in count three against Victory or Intepros. On April 23, 2010, Victory filed a motion for summary judgment, arguing that it had no legal duty to protect a tenant from injuries caused by the intentional act of another tenant. That same day, Kovalcik and Intepros filed a motion seeking summary judgment with respect to the fraudulent transfer counts. They argued that those counts were derivative of the negligence counts. Thus, the plaintiffs would be precluded from recovering against Kovalcik and Intepros if the court rendered summary judgment in favor of Victory on the negligence claim. On October 5, 2010, the court granted Victory's motion for summary judgment, finding that there was no evidence from which a reasonable trier of fact could conclude that the type of incident that led to Ruiz' injuries was reasonably foreseeable by Victory. The next day, the court granted summary judgment in favor of Kovalcik and Intepros, holding that because the derivative negligence claims were dismissed, the remaining claims cannot survive.

The plaintiffs appealed the summary judgment granted in favor of Victory. The court clarified that the appeal was only from the summary judgment in favor of Victory when it denied Kovalcik and Intepros' motion to dismiss the appeal against them. The plaintiffs failed to indicate that in the event they were successful in overturning summary judgment on the negligence counts, they also sought to overturn the other counts. On May 1, 2012, the appellate court reversed the trial court's granting of summary judgment in favor of Victory. On January 20, 2015, the Supreme Court of Connecticut affirmed the appellate court's decision.

On April 24, 2015, the plaintiffs filed a motion pursuant to Practice Book § 17-48 and General Statutes § 52212a, asking the trial court to open the October 6, 2010 summary judgment rendered in favor of Kovalcik and Intepros. The court denied the plaintiff's motion, concluding

that the judgment entered against Kovalcik and Intepros was a final judgment from which the only remedy would have been to file an appeal.

The sole issue on appeal was whether the court abused its discretion by denying the motion to open as untimely because the four month period for filing a motion to open pursuant to § 52-212a was tolled by the filing of their prior appeal and, contrary to the assertion of the trial court, had not yet run when the plaintiffs filed the motion to open.

The court held that the automatic stay provision of Practice Book § 61-11 (a) does not operate to toll the four-month limitation period for filing a motion to open. Thus, the trial court properly denied the motion to open as untimely.

The doctrine of finality of judgments recognizes that there is a compelling interest in the finality of judgments. Finality is essential because it enables parties to rely on judgments. In accordance with the doctrine, judgments should be set aside or opened for strong and compelling reasons. The doctrine of finality is exemplified in § 52-212a. § 52-212a constrains the trial court's general authority to grant relief from a final judgment, providing that "...a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed." The date a judgment is deemed final shifts from the date the judgment was rendered until the time the court disposes of any post judgment motions that, if granted, would affect the substantive rights of the parties.

On October 6, 2010, the court rendered summary judgment in favor of Kovalcik and Intepros. A motion to reargue was filed and denied on October 21, 2010. Thus, the four-month

period to file a motion seeking relief from that judgment under § 52-212a began to run on October 21, 2010 and expired in February 2011.

The plaintiff argued that the four-month period was tolled upon the filing of the prior appeal. However, the court rejected this argument as being contrary to existing case law and the plain language of Practice Book § 61-11 (a).

First, the court found that construing the automatic stay provision in the expansive manner suggested by the plaintiff directly conflicts with existing case law. Filing an appeal does not divest the trial court of jurisdiction or authority to continue to act on the matter. Trial courts continue to have the power to conduct proceedings and act on motions filed while the appeal is pending, provided they take no action to enforce or carry out the judgment while an appellate stay is in effect. The court cited *RAL Management, Inc. v. Valley View Associates*, 278 Conn. 672, 682, 691–92, 899 A.2d 586 (2006), holding that a trial court properly may open judgment despite a pending appeal and may even reverse itself rendering the appeal moot. And *Ahneman v. Ahneman*, 243 Conn. 471, 482, 706 A.2d 960 (1998), holding that it is well established that a trial court maintains jurisdiction over an action subsequent to the filing of an appeal. Thus, the automatic stay provision does not toll the four-month period to file a motion to open because the court still has the authority to act on a motion to open while the appeal is pending.

Practice Book § 61-11 (a) provides that proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to file an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause.

The court stated that the plain language of Practice Book § 61-11 (a) indicates that the automatic stay provision creates only a stay of execution regarding the judgment. Meaning that

the stay temporarily denies the successful litigant the “fruits of their victory” until the appeal is finished—such as an award of damages. Thus, the court concluded that there is no language in the provision supporting the plaintiff’s notion that the automatic stay provision tolls the four-month period in which one must file a motion to open.

Finally, the court stated that because the plaintiffs did not appeal the judgments rendered in favor of Kovalcik and Intepros, any protection afforded to them by the automatic appellate stay does not extend to the Kovalcik and Intepros judgments. It does not extend because the automatic stay applies only to the judgment that is appealed—in this case the judgment against Victory.

For the above reasons, the court concluded that the trial court properly denied the plaintiffs’ motion to open as being untimely.

The key takeaway from this case is that the automatic appellate stay provision does not toll the four-month limitation period to file a motion to open. Thus, one whose wishes to challenge the judgment on a derivative claim ought to appeal each count, rather than appeal one claim and then attempt to open the other afterwards—as the plaintiffs in this case did.