STATE OF CONNECTICUT

Docket No. X10-UWY-CV-10-6011711 S

JOHN GIROLAMETTI, ET AL.	:	SUPERIOR COURT
v.	:	COMPLEX LITIGATION DOCKET AT WATERBURY
THE CITY OF DANBURY, ET AL.	:	MARCH 27, 2024

MEMORANDUM OF DECISION RE POST-VERDICT MOTIONS: DEFENDANT EDWARD SCHULLERY'S MOTION TO SET ASIDE VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT (No. 507), DEFENDANT THE CITY OF DANBURY'S MOTION TO SET ASIDE VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT (No. 508), AND OBJECTIONS (Nos. 515 & 516)

STATEMENT OF THE CASE

This action, which has a long history, involves the construction of a commercial building at 43 South Street, Danbury, Connecticut (property), used for operating a wholesale and retail party goods store.[1] The plaintiffs allege that in June 2007, a nonparty—Rizzo Corporation (Rizzo)—contracted with the plaintiff, John Girolametti, Jr., to provide construction, professional engineering, and architectural services for the construction of a building at the property, known as the "Party Depot Building." Rizzo filed documents with the city Department of Buildings for the

[1] This action was consolidated for all purposes, including trial, with three other cases, as follows: (1) *Girolametti* v. *Test-Con Incorporated*, Docket No. X10-UWY-CV-11-6011712 S; (2) *Girolametti* v. *Michael Horton Associates, Inc.,* Docket No. X10-UWY-CV-11-6011734 S; and (3) *Girolametti v. Larrabee,* X10-UWY-CV-14-6025392 S.

purpose of obtaining building permits, required inspections, and a certificate of occupancy for the Party Depot Building. The plaintiffs contend that, despite the inadequacy of these filings—including without limitation the failure to meet requirements imposed by the Connecticut General Statutes and building code of the state of Connecticut (Code)—the city Department of Buildings issued building permits for construction of the Party Depot Building, and issued certificates of occupancy and compliance.

The plaintiffs further allege that the defendants, Leo P. Null,[2] as the city's Chief Building Inspector, and Edward Schullery, as the city's Deputy Building Inspector, administered the Code and issued building permits, inspected work, and reviewed construction documents relating to the property. The plaintiffs also claim that Null and Schullery had a continuing duty to enforce the Code, at least from the time the construction project documents were received for review through the time a certificate of occupancy was issued, and further, that they had a continuing duty to respond to inquiries and notices relating to health, safety, and noncompliance with the Code, following the issuance of the certificate of occupancy. The plaintiffs relied upon the defendants to carry out their duties as required by the Code and other applicable law.

In the First Count, the plaintiffs contend that the defendants acted in reckless disregard for the health and safety of the plaintiffs, their employees, and others

[2] Following his death, the claims against the defendant, Leo P. Null, were withdrawn. See Docket Entry Nos. 306 and 324.

entering upon the property, under General Statutes § 52-557n (b) (7),[3] in a variety of ways, including by failing to require the timely and complete filing of permit

[3] General Statutes § 52-557n reads, in part, as follows: "(a) (1) Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties; (B) negligence in the performance of functions from which the political subdivision derives a special corporate profit or pecuniary benefit; and (C) acts of the political subdivision which constitute the creation or participation in the creation of a nuisance; provided, no cause of action shall be maintained for damages resulting from injury to any person or property by means of a defective road or bridge except pursuant to section 13a-149. (2) Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by: (A) Acts or omissions of any employee, officer or agent which constitute criminal conduct, fraud, actual malice or wilful misconduct; or (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law. Notwithstanding the provisions of subparagraph (B) of this subdivision, governmental immunity shall not be a defense in a civil action for damages to person or property caused by the negligent operation of a motor vehicle owned by a political subdivision of the state. The elimination of the defense of governmental immunity as provided for in this subsection shall not be construed as limiting or expanding the rights, duties and exemptions granted to the operator of an emergency vehicle under section 14-283.

"(b) Notwithstanding the provisions of subsection (a) of this section, a political subdivision of the state or any employee, officer or agent acting within the scope of his employment or official duties shall not be liable for damages to person or property resulting from: . . . (7) the issuance, denial, suspension or revocation of, or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization, when such authority is a discretionary function by law, *unless such issuance, denial, suspension or revocation or such failure or refusal constitutes a reckless disregard for health or safety*; (8) failure to make an inspection or making an inadequate or negligent inspection of any property, other than property owned or leased by or leased to such political subdivision, to determine whether the property complies with or violates any law or contains a hazard to health or safety, unless the political subdivision had notice of such a violation of law or such a hazard or *unless such failure to inspect or such inadequate or negligent inspection constitutes a reckless disregard for health or safety under all the relevant circumstances . . . .*" (Emphasis added.)

application documents prior to issuing permits; issuing a foundation permit when the design of the foundation was incomplete and not coordinated with the design of the structure above the foundation; issuing a building permit when the building design was incomplete; failing to require the filing of adequate construction documentation prior to the performance of construction work; failing to inspect ongoing construction work properly; issuing a certificate of occupancy despite incomplete documentation, when the work performed failed to conform with documentation on file, and despite improper inspections; failing and refusing to investigate fully and in a timely manner numerous instances of noncompliance with the Code; stating that the building was constructed properly when it was not so constructed; and failing to administer the Code. Further according to the plaintiffs, by failing to perform their duty to enforce the provisions of the Code, the defendants knew that various aspects of the project did not meet basic Code standards, and they knew—or it was foreseeable to them—that the overall structure failed to meet basic standards for the applicable building type under the Code.

In the Second Count, the plaintiffs allege that the defendants failed to inspect the property, or made inadequate or negligent inspections of the property, where such failure constituted a reckless disregard for health and safety under all the relevant circumstances, under General Statutes § 52-557n (b) (8),[4] repeating some of the specifications of wrongdoing alleged in the First Count, and further, claiming that the defendants withheld information, including an evaluation by a city-retained

[4] See footnote 3, supra.

engineer, that confirmed the existence of Code violations, as well as the defective design and construction of the project.

The plaintiffs argued and presented evidence at trial in support of a finding that the Party Depot Building developed extensive cracking in the concrete slab of the second floor of the new portion of the building, and was otherwise plagued by structural problems and design defects, all of which posed a risk to public health and safety, thereby limiting the plaintiffs' use of the Party Depot Building and causing them to suffer economic damages.

The consolidated actions were tried before a jury, every weekday, over a period of five weeks, in September and October, 2023. During the trial numerous witnesses—both lay and expert—testified, and hundreds of documents were received into evidence. At the conclusion of the plaintiffs' case, both the city and Schullery moved for a directed verdict; the court reserved decision on the motions. See Practice Book § 16-37. Following the conclusion of evidence and the court's charge to the jury on the applicable law, the jury returned verdicts in favor of the plaintiffs on the First and Second Counts of the complaint against the city and Schullery, having found (1) that the defendants acted with reckless disregard for health and safety in issuing building permits and/or a certificate of occupancy for the construction project, in violation of § 52-557n and (2) that the defendants acted with reckless disregard for health and safety in undertaking or conducting inspections and/or failing to conduct inspections, also in violation of § 52-557n. See Docket Entry No. 499. The jury

awarded a total of $16,843,750 to the plaintiffs, as follows: (1) $16,593,750 against the city and (2) $250,000 against Schullery. Id.[5]

Following the jury verdict, the defendants moved to set aside the verdict and for judgment notwithstanding the verdict, renewing arguments made in the motions for directed verdict. See Docket Entry Nos. 507 and 508. In its motion, the city argued, inter alia, that a municipality is "legally incapable" of committing acts in reckless disregard of health or safety when issuing permits or conducting inspections; alternatively, the city contended that any theory of liability based on reckless disregard for health or safety would have to be based on a formal, city-wide policy, or a practice so pervasive that it was the functional equivalent of a formal policy, and that no evidence of such policies or practices was introduced at trial. The defendants also argued that insufficient evidence was introduced to support a finding that the defendants acted with reckless disregard for health and safety, as provided by § 52-557n (b) (7) and (8). The plaintiffs objected. See Docket Entry Nos. 515 and 516. The court heard oral argument on the motions and objections on January 8, 2024, on which date it took these matters under advisement.

[5] Prior to the trial of this case, the court, *Bellis, J.*, entered summary judgment in favor of the defendants on the third count of the Third Amended Complaint. See Docket Entry No. 360. The jury found in favor of Schullery on the fourth and final count of the complaint.

DISCUSSION

I

The defendants move the court to set aside the jury's verdict. "[A] trial court may set aside a verdict on a finding that the verdict is manifestly unjust because the jury, on the basis of the evidence presented, mistakenly applied a legal principle or because there is no evidence to which the legal principles of the case can be applied. . . . Under the general verdict rule, the jury is presumed to have found all issues in favor of the defendants. . . . [The trial court] should not set aside a verdict where it is apparent that there was some evidence upon which the jury might reasonably reach their conclusion, and should not refuse to set it aside where the manifest injustice of the verdict is so plain and palpable as clearly to denote that some mistake was made by the jury in the application of legal principles, or as to justify the suspicion that they or some of them were influenced by prejudice, corruption or partiality. . . . Ultimately, [t]he decision to set aside a verdict entails the exercise of a broad legal discretion . . . ." (Citations omitted; internal quotations omitted.) *Melendez* v. *Spin Cycle Laundromat, LLC*, 188 Conn. App. 807, 811, 205 A.3d 759 (2019). "A jury's verdict should not be set aside and a new trial ordered unless it is apparent that injustice either was, or might have been, done [at] trial. . . . The verdict's manifest injustice [must be] so plain as to clearly indicate that the jury has disregarded the rules of law applicable to the case, or were influenced by prejudice, corruption, or partiality in reaching a decision." (Citation omitted; internal quotation marks omitted.) Id., 813. "The role of the trial court on a motion to set aside the jury's verdict

is not to sit as a seventh juror, but, rather, to decide whether, viewing the evidence in the light most favorable to the prevailing party, the jury could reasonably have reached the verdict that it did. . . . A verdict is not defective as a matter of law as long as it contains an intelligible finding so that its meaning is clear. . . . A verdict will be deemed intelligible if it clearly manifests the intent of the jury." *Weihing* v. *Preto-Rodas*, 170 Conn. App. 880, 884, 155 A.3d 1278 (2017).

The defendants also move for judgment notwithstanding the verdict. The standard of review for a motion for judgment notwithstanding the verdict is the same as that applicable to a motion for directed verdict "because a motion for judgment notwithstanding the verdict is not a new motion, but the renewal of a motion for directed verdict." (Internal quotation marks omitted.) *Gagne* v. *Vaccaro*, 255 Conn. 390, 400-01, 766 A.2d 416 (2001). "Directed verdicts are not favored. . . . A trial court should direct a verdict only when a jury could not reasonably and legally have reached any other conclusion. . . . In reviewing the trial court's decision [to deny the defendant's motion for a directed verdict] we must consider the evidence in the light most favorable to the plaintiff. . . . Although it is the jury's right to draw logical deductions and make reasonable inferences from the facts proven . . . it may not resort to mere conjecture and speculation. . . . A directed verdict is justified if . . . the evidence is so weak that it would be proper for the court to set aside a verdict rendered for the other party. . . . The foregoing standard of review also governs the trial court's denial of the defendant's motion for judgment notwithstanding the verdict because that motion is not a new motion, but [is] the renewal of [the previous] motion for a

directed verdict." (Internal quotation marks omitted.) *Cockayne* v. *Bristol Hospital, Inc.*, 210 Conn. App. 450, 458, 270 A.3d 713, cert. denied, 343 Conn. 906, 272 A.3d 1128 (2022).

II

The court begins with the arguments advanced by the city that, in the circumstances of this case, it is immune from liability under General Statutes § 52-557n, or, alternatively, that if such liability may be imposed, it must be based upon a formal, city-wide policy or pervasive practice. As a result, the city contends that the court's instructions to the jury regarding the city's liability in recklessness was erroneous, and the jury's verdict in favor of the plaintiff upon a finding of recklessness against the city should be set aside accordingly.[6] The court disagrees.

The question presented here turns on the court's interpretation of General Statutes § 52-557n (7) and (8), as informed by our Supreme Court's decision in *Williams* v. *Housing Authority*, 327 Conn. 338, 174 A.3d 137 (2017). "As with all issues of statutory construction, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature." (Internal quotation marks omitted.)

[6] "Jury instructions are to be read as a whole, and instructions claimed to be improper are read in the context of the entire charge. . . . A jury charge is to be considered from the standpoint of its effect on the jury in guiding it to a correct verdict. . . . The test is to determine if a jury charge is proper is whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law. . . . Instructions to the jury need not be in the precise language of a request. . . . Moreover, jury instructions need not be exhaustive, perfect or technically accurate, so long as they are correct in law, adapted to the issues and sufficient for the guidance of the jury." (Citations omitted; internal quotation marks omitted; brackets omitted.) *McDermott* v. *Calvary Baptist Church*, 263 Conn. 378, 383-84, 819 A.2d 795 (2003).

Dominguez v. *New York Sports Club*, 198 Conn. App. 854, 875, 234 A.3d 1017 (2020). "The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case . . . . When construing a statute, [the court's] 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 . . . ." *Stewart* v. *Watertown*, 303 Conn. 699, 710, 38 A.3d 72 (2012).

By law, "[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes." General Statutes § 1-2z. "General Statutes § 1-2z directs this court to first consider the text of the statute and its relationship to other statutes to determine its meaning. If, after such consideration, the meaning is plain and unambiguous and does not yield absurd or unworkable results, we shall not consider extratextual evidence of the meaning of the statute. . . . Only if we determine that the statute is not plain and unambiguous or yields absurd or unworkable results may we consider extratextual evidence of its meaning such as the legislative history and circumstances surrounding its enactment . . . the legislative policy it was designed to implement . . . its relationship to existing legislation and common law principles governing the same general subject matter . . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . We presume that the legislature did not intend to enact meaningless provisions. . . . [S]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void

or insignificant . . . ." (Internal quotation marks omitted.) *L. L.* v. *M. B.*, 216 Conn. App. 731, 740, 286 A.3d 489 (2022); see also *Westport Taxi Service, Inc.* v. *Westport Transit District*, 235 Conn. 1, 40, 664 A.2d 719 (1995) ("[N]o statutory phrase or word will be interpreted as superfluous . . . .").

In addressing the issue before the court, "it is helpful to look at § 52-557n as a whole. As a matter of Connecticut's common law, the general rule, is that a municipality is immune from liability for negligence unless the legislature has enacted a statute abrogating that immunity. . . . The tort liability of a municipality has been codified in § 52-557n. . . . [S]ubsection (a) . . . sets forth general principles of municipal liability and immunity, [whereas] subsection (b) sets forth [ten] specific situations in which both municipalities and their officers are immune from tort liability. . . . Thus, § 52-557n, as a whole, is designed to set forth the circumstances in which municipalities and their employees are immune from liability for their negligent acts or omissions and creates certain exceptions to that immunity for some of their negligent acts, omissions and criminal *or reckless conduct*." (Citations omitted; emphasis added; internal quotation marks omitted.) *Costanzo* v. *Plainfield*, 344 Conn. 86, 106-07, 277 A.3d 772 (2022).

While § 52-557n (a) (2) provides that, as a general principle, and "[e]xcept as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by: (A) Acts or omissions of any employee, officer or agent which constitute criminal conduct, fraud, actual malice or willful misconduct . . . " subsection (b) reads: "*Notwithstanding the provisions of subsection*

(a) . . . *a political subdivision of this state* or any employee, officer or agent acting within the scope of his employment or official duties shall not be liable for damages to person or property resulting from . . . (7) the issuance, denial, suspension or revocation of, or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization, when such authority is a discretionary function by law, *unless such issuance, denial, suspension or revocation or such failure or refusal constitutes a reckless disregard for health or safety*; (8) failure to make an inspection or making an inadequate or negligent inspection of any property, other than property owned or leased by or leased to such political subdivision, to determine whether the property complies with or violates any law or contains a hazard to health or safety, unless the political subdivision had notice of such a violation of law or such a hazard or *unless such failure to inspect or such inadequate or negligent inspection constitutes a reckless disregard for health or safety under all the relevant circumstances* . . . ." (Emphasis added.)

A

By its express terms, subsection (b) contemplates the imposition of liability on a "a political subdivision of the state" in cases where a permit, license certificate, approval, order or other similar authorization issues in "reckless disregard for health or safety" (subsection 7), or where there is a failure to inspect or inadequate or negligent inspection of property in "reckless disregard for health or safety under all the relevant circumstances" (subsection 8). The plain language of the statute is consistent with the legislative history of § 52-557n, which reflects that the legislature

intended to allow for the imposition of liability in recklessness on municipalities such as the city. See, e.g., 29 H.R. Proc., Pt. 16, 1986 Sess., pp. 5899-900, remarks of Representative Robert G. Jaekle ("[I]f I were the attorney for the children . . . I would certainly make a case that the driving of [a] school bus with tread below the legal limit was more than mere negligence and would probably cite some statutes or . . . regulations about tread on tires as an indication that that was reckless. . . . [T]hat I believe would at least get me into court to try that issue and see whether I could prove how bad that negligence was and whether that crossed the line into *reckless action on the part of the municipality*." [Emphasis altered.] (Cited in *Williams* v. *Housing Authority*, supra, 327 Conn. 360). Moreover, in *Williams*, our Supreme Court affirmed the Appellate Court's determination that "a jury reasonably could find that the conduct of the municipal defendants demonstrated 'a reckless disregard for health or safety under all the relevant circumstances,' and, therefore, that they were potentially liable pursuant to § 52-557n (b) (8)." Id., 341. The court rejects the city's argument that, under § 52-557n (b), a municipality is categorically immune from liability in recklessness when issuing permits or conducting inspections.

B

The court also rejects the city's alternative argument, to the effect that, in order to impose liability in recklessness on a municipality, such liability must be based upon a formal, city-wide policy or pervasive practice. To begin, the court observes that such a requirement is wholly absent from the language of General Statutes § 52-557n (b) (7) and (8) pertaining to the imposition of liability in

recklessness. Moreover, and in the court's view, the argument is based on an unduly narrow reading of the majority opinion in *Williams*.

Williams involved a fire that broke out at an affordable housing unit owned by the defendant, Housing Authority of the city of Bridgeport, killing four residents. "Pursuant to General Statutes § 29-305 (b), the Bridgeport fire marshal's office [was] required to conduct annual inspections of all multifamily residential units within Bridgeport. It is undisputed that neither the municipal defendants nor their employees conducted the mandatory inspection of [the subject unit] in the year prior to [the fire.]" (Footnote omitted.) Id., 342-43. Based upon these and other facts, and as noted above, the *Williams* court found that "a jury reasonably could find that the conduct of the municipal defendants demonstrated 'a reckless disregard for health or safety under all the relevant circumstances' and, therefore, that they were potentially liable pursuant to § 52-557n (b) (8)." Id., 341.

While *Williams* was decided upon a record that involved the "defendants' long-standing policy of not inspecting any of Bridgeport's public or three-family housing facilities for fire risks and not educating themselves as to the adequacy of the housing authority's own internal inspections;" id., 359; the language of *Williams* does not limit the imposition of liability in recklessness to cases involving established municipal policies or practices. Rather, *Williams* focuses on the expansive nature of the phrase, "under all the relevant circumstances," as it appears in subsection (8) of § 52-557n (b)—"[which] suggests that we are to view the exception [in subsection (8)] through a

broad lens" (id., 358)—and, more generally, on established principles of recklessness under our common law, as modified by the legislature in enacting § 52-557n (b).

For purposes of this case, the most important teaching of *Williams* is that a determination of "reckless disregard for health or safety" is one for the trier of fact. Thus, and as stated by the court in *Williams*, "the question of whether the violation of a statutory obligation constitutes reckless disregard for public health or safety for purposes of municipal immunity ordinarily would be one for the trier of fact. . . . The legislative history of the municipal immunity statute . . . supports the . . . argument that recklessness ordinarily presents a question of fact for the jury . . . . [T]he apparent legislative intent with respect to municipal inspections is consistent with the general rule that, when a defendant's conduct represents more than mere momentary thoughtlessness or inadvertence, whether it rises to the level of reckless or wanton misconduct on any given state of facts [ordinarily] is a question of fact for the jury." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Williams* v. *Housing Authority*, supra, 327 Conn. 359-361. In so holding, the *Williams* court affirmed the Appellate Court's conclusion that "the common-law definition of recklessness [is] instructive for purposes of interpreting the exception for recklessness in § 52-557n (b) (8)." *Williams* v. *Housing Authority*, 159 Conn. App. 679, 694, 124 A.3d 537 (2015), aff'd, 327 Conn. 338, 174 A.3d 137 (2017). While noting that common law principles of recklessness are instructive in applying § 52-557n (b), in light of the statute's focus on "reckless disregard for health or safety," the *Williams* court modified these principles, holding that, "regardless of what standards govern .

. . recklessness in other contexts, we conclude that, in the context of § 52-557n (b) (8), a municipal actor may demonstrate reckless disregard for heath or safety when it is clear that the failure to inspect *may result in a catastrophic harm, albeit not a likely one*." (Emphasis added.) *Williams* v. *Housing Authority*, supra, Conn. 364.

In accordance with *Williams*, the court submitted this case to the jury to determine whether the defendants' conduct constituted a reckless disregard for health or safety, and charged the jury on the law of recklessness in accordance with well-established common law principles, as modified by the *Williams* decision, to the effect that a municipal actor may demonstrate reckless disregard for health or safety under § 52-557n (b) (8) when it is clear that the failure to inspect may result in catastrophic harm. Thus, the court's instruction was in keeping with the Supreme Court's decision in *Williams*, and the court rejects the city's contention that, in order for liability in recklessness to be imposed on a municipality under § 52-557 (b) (7) or (8), it must be based upon a proven city-wide policy or pervasive practice.

III

The defendants also argue that there was insufficient evidence of reckless disregard for health or safety when issuing permits or conducting inspections to support the jury's verdict. The court disagrees. More than sufficient evidence—both testimonial and documentary, fact and expert—was introduced to support the jury's conclusion that the defendants acted in reckless disregard for health and safety in connection with the subject property. The defendants' remaining claims are rejected.

CONCLUSION

For the foregoing reasons, the defendants' motions to set aside the verdict and for judgment notwithstanding the verdict (Nos. 507 and 508) are hereby DENIED; the objections thereto (Nos. 515 and 516) are SUSTAINED.

PIERSON, J.