



**America's Wholesale Lender v. Silberstein**

Appellate Court of Connecticut

October 15, 2004, Argued ; February 15, 2005, Officially Released  
(AC 24592)

**Reporter**

87 Conn. App. 485; 866 A.2d 695; 2005 Conn. App. LEXIS 66

AMERICA'S WHOLESale LENDER v.  
LINDA K. SILBERSTEIN ET AL.

**Prior History:** [\*\*\*1] (Appeal from Superior Court, judicial district of New Haven, Hon. Donald W. Celotto, judge trial referee.) Action to foreclose a mortgage on certain real property, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, Hon. Donald W. Celotto, judge trial referee, denied the motion to dismiss filed by the named defendant et al., and granted the plaintiff's motions to substitute Mortgage Electronic Registration Systems, Inc., as the plaintiff, and for summary judgment as to liability only; thereafter, the court granted the substitute

plaintiff's motion for judgment of foreclosure and rendered judgment of foreclosure by sale, from which the named defendant et al. appealed to this court.

**Disposition:** Reversed and remanded.

**Core Terms**

trade name, Mortgage, entity, commencement of the action, legal capacity, defendants', substituted

**Case Summary**

**Procedural Posture**

Defendant mortgagors appealed from decisions of the Superior Court, Judicial District of New Haven (Connecticut), which denied the mortgagors' motion to dismiss a foreclosure action, granted

plaintiff lender's motion to substitute an assignee as the party plaintiff, and granted the assignee's motion for judgment of foreclosure.

## Overview

The foreclosure action was filed under the lender's trade name. The mortgagor's filed a motion to dismiss, arguing that the trial court lacked subject matter jurisdiction because the trade name had no capacity to sue. The trial court allowed the lender to substitute the assignee of the mortgagor's note and mortgage. The trial court concluded that the lender had commenced the action in the name of the wrong person and allowed the substitution under *Conn. Gen. Stat. § 52-109*. The judgment of foreclosure was granted because there was no dispute as to the mortgagor's default. The court reversed. The trade name was not a recognized legal entity or person and thus, it had no standing to file the foreclosure action. As the trade

name never legally existed, there was no legally recognized entity for which there could be a substitute. Thus, the jurisdictional defect could not be cured through a substitution of the assignee as plaintiff. Further, as the trade name had no standing to bring the foreclosure action, no action was ever actually commenced.

## Outcome

The trial court's was reversed and the case was remanded with direction that the mortgagor's motion to dismiss be granted and that judgment be rendered dismissing the complaint.

## LexisNexis® Headnotes

Civil Procedure > ... > Subject Matter

Jurisdiction > Jurisdiction Over

Actions > General Overview

Civil Procedure > Parties > General Overview

Civil Procedure > Parties > Capacity of Parties > General Overview

Civil Procedure > Parties > Real Party in

Interest > Fictitious Names

Trademark Law > Special

Marks > General Overview

Trademark Law > Special Marks > Trade  
Names > General Overview

Trademark Law > ... > Particular Subject  
Matter > Names > General Overview

**HN1** Parties to litigation may not use fictitious names except in the rarest of cases, in which the issues litigated and the interests of the parties demand the use of a fictitious name.

Civil Procedure > Parties > Capacity of  
Parties > General Overview

Civil

Procedure > Parties > Substitution > Gen  
eral Overview

Trademark Law > ... > Federal Unfair

Competition Law > Lanham

Act > Standing

Trademark Law > Special Marks > Trade  
Names > General Overview

**HN2** Conn. Gen. Stat. § 52-109, which provides in part that a court may allow

the substitution of a party plaintiff when any action has been commenced in the name of the wrong person. Such a person, while perhaps not aggrieved in the manner necessary to have standing, possesses the legal capacity to sue. A trade name is not a recognized legal entity or person.

Civil Procedure > Parties > Capacity of  
Parties > General Overview

Civil

Procedure > Parties > Substitution > Gen  
eral Overview

Trademark Law > Trademark

Cancellation &

Establishment > Conveyances > General  
Overview

Trademark Law > Special Marks > Trade  
Names > General Overview

Trademark Law > ... > Particular Subject  
Matter > Names > General Overview

**HN3** An assignee may not commence an action solely in a trade name, regardless of the entity to which the trade name applies, because a trade

name is not an entity with the legal capacity to sue. Nor can an entity cure the jurisdictional defect by substituting a party with the legal capacity to sue on behalf of the trade name.

**Counsel:** Patrick W. Boatman, with whom, on the brief, was John H. Grasso, for the appellants (named defendant et al.).

Peter A. Ventre, for the appellee (substitute plaintiff).

**Judges:** Schaller, Dranginis and Berdon, Js. In this opinion SCHALLER, J., concurred. BERDON, J., dissenting.

**Opinion by:** DRANGINIS

### Opinion

[\*486] [\*\*695] DRANGINIS, J. This appeal is similar to the appeal in *America's Wholesale Lender v. Pagano*, 87 Conn. App. 474, [\*\*696] 866 A.2d 698, 2005 Conn. App. LEXIS 56 (2005) [\*\*\*2], which we released on the same date as this opinion. The

dispositive issue is whether a corporation that brings an action solely in its trade name, without the corporation being named as a party, has standing so as to confer jurisdiction on the court. We conclude that because a trade name is not an entity with legal capacity to sue, the corporation has no standing to litigate the merits of the case. We therefore reverse the judgment of the trial court.

[\*487] The following facts and procedural history are relevant to our disposition of this appeal. On October 16, 1998, the defendants Linda K. Silberstein and Morton H. Silberstein<sup>1</sup> [\*\*\*4] executed and delivered to the original plaintiff in this action, America's Wholesale Lender (America's), a note in the amount of \$ 440,000 and a mortgage on the defendants' real property. America's is the trade name

---

<sup>1</sup>The other defendants in the underlying action, Konover Construction Company, Larry M. Loeb and Linda R. Silberstein, did not appeal. We therefore refer in this opinion to Linda K. Silberstein and Morton H. Silberstein as the defendants.

for Countrywide Home Loans, Inc. (Countrywide), a corporation with its principal place of business in California.

<sup>2</sup> On April 22, 2003, America's commenced this action, alleging that the defendants were in default on the note and seeking to foreclose on the defendants' property. On July 9, 2003, the defendants filed a motion to dismiss, arguing [\*\*\*3] that the court lacked subject matter jurisdiction because America's did not have the legal capacity to sue. On July 28, 2003, America's filed a motion to substitute Mortgage Electronic Registration Systems, Inc. (Mortgage Systems), as the plaintiff to reflect an assignment of the note and mortgage that Countrywide had made to Mortgage Systems on October 16, 1998. The court, on July 28, 2003, denied the defendants' motion to dismiss and granted the motion to

substitute Mortgage Systems as the plaintiff. The court concluded that Countrywide had commenced an action in the name of the wrong person and, therefore, substituted Mortgage Systems pursuant to General Statutes § 52-109. The court ultimately rendered summary judgment in favor of the substitute plaintiff, the defendants' default on the note not being disputed. This appeal followed.

[\*488] On appeal, the defendants claim that the trial court improperly denied their motion to dismiss challenging Countrywide's standing to bring an action solely in a trade name. The defendants argue that because the action was brought under a trade name, which is a fictitious name, the court lacked subject matter jurisdiction to decide the merits of Countrywide's claim. The defendants further argue that Countrywide could not cure this jurisdictional defect by substituting Mortgage Systems as the plaintiff.

---

<sup>2</sup> America's, in its complaint, alleged that it was incorporated in Texas. On the mortgage, New York is indicated as the state of incorporation. These inconsistencies, however, do not inform our decision in this case, as all parties agree that America's is a trade name by which Countrywide does business and not a corporation organized under the laws of any state.

This case is controlled by our decision in America's Wholesale Lender v. Pagano, supra, 87 Conn. App. \_\_\_\_\_, 2005 Conn. App. LEXIS 56, in which we held that the court lacked subject matter jurisdiction because Countrywide had commenced an action solely in its [\*\*\*5] trade name. Our decision in that case rested primarily on the mandate that **HN1** parties not use fictitious names except in the rarest of cases, in which the issues litigated and the interests of the parties demand [\*\*697] the use of a fictitious name. Id., \_\_\_\_\_, 2005 Conn. App. LEXIS 56; see also Buxton v. Ullman, 147 Conn. 48, 60, 156 A.2d 508 (1959), appeal dismissed sub nom. Poe v. Ullman, 367 U.S. 497, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (1961). We also recognize the heightened interest of the public in knowing who is financially and personally liable for the actions of entities doing business under trade names. America's Wholesale Lender v. Pagano, supra, \_\_\_\_\_, 2005 Conn. App. LEXIS 56. These interests are no less

important whether the argument is that the initial filing contained a circumstantial error, as in America's Wholesale Lender v. Pagano, supra, \_\_\_\_\_, 2005 Conn. App. LEXIS 56, or that the initial filing was in the name of the "wrong person," as the substitute plaintiff claims on appeal in this case. In reaching this conclusion, we look to the language of **HN2** § 52-109, which provides in relevant part that the court may allow the substitution of a party plaintiff "when any action has been commenced in the name of the [\*\*\*6] wrong person. . . ." Such a person, while perhaps not aggrieved in the manner necessary [\*489] to have standing, *possesses the legal capacity to sue*. No such person commenced the action in this case, as a trade name is not a recognized legal entity or person.

Mortgage Systems, the holder of the mortgage and the note at the time the action was commenced, <sup>3</sup> claims,

<sup>3</sup>In a foreclosure action, the assignee may commence an action either in its name or in the name of its assignor. See,

however, that any jurisdictional defect was cured when it was substituted as the plaintiff. **HN3** An assignee, however, may not commence an action solely in a trade name either, regardless of the entity to which the trade name applies, because a trade name is not an entity with the legal capacity to sue. Nor could Countrywide cure the jurisdictional defect by substituting a party with the legal capacity to sue on behalf of the trade name. The named plaintiff in the original complaint never existed. As a result, there was no legally recognized entity for which there could be a substitute. See Isaac v. Mount Sinai Hospital, 3 Conn. App. 598, 602, 490 A.2d 1024, cert. denied, 196 Conn. 807, 494 A.2d 904 (1985). Furthermore, because America's had no standing to bring an action, no action in this [\*\*\*7] case ever was commenced, as it was void ab initio. In the absence of standing on the part of the plaintiff, the court has

---

e.g., Jacobson v. Robington, 139 Conn. 532, 539, 95 A.2d 66 (1953); Dime Savings Bank of Wallingford v. Arpaia, 55 Conn. App. 180, 184, 738 A.2d 715 (1999).

no jurisdiction. Golden Hill Paugussett Tribe of Indians v. Southbury, 231 Conn. 563, 570-71, 651 A.2d 1246 (1995).

The judgment is reversed and the case is remanded with direction to grant the defendants' motion to dismiss and to render judgment dismissing the complaint.

In this opinion SCHALLER, J., concurred.

**Dissent by: BERDON**

**Dissent**

---

BERDON, J., dissenting. For the reasons set forth in my dissent to the companion case of America's Wholesale Lender v. Pagano, 87 Conn. App. 474, 866 A.2d 698, 2005 Conn. App. LEXIS 56 [\*490] (2005), I am unable to distinguish this case from Dyck O'Neal, Inc. v. Wynne, 56 Conn. App. 161, 742 A.2d 393 (1999). [\*\*\*8] Accordingly, I believe we should affirm the judgment of the trial court. I

therefore respectfully dissent.

---

End of Document







## Citing Decisions (20)

Narrow by: Analysis: Cited By




Analysis: "Cited by" (20)

Headnotes: HN3 (11), HN2 (7), HN1 (2)

### Connecticut Appellate Court

1. **Bozelko v. Milici**, 139 Conn. App. 536, 57 A.3d 762, 2012 Conn. App. LEXIS 589   
**LB Cited by:** 139 Conn. App. 536 p.540; 57 A.3d 762 p.765  
... standing to be determined at time action commenced where motion to dismiss challenged standing to bring action); *Cimmino v. Household Realty Corp.*, 104 Conn. App. 392, 395, 933 A.2d 1226 (2007) (determining standing at time action commenced), cert. denied, 285 Conn. 912, 943 A.2d 470 (2008); **America's Wholesale Lender v. Silberstein**, 87 Conn. App. 485, 488-89, 866 A.2d 695 (2005) (same). Accordingly, the court did not err in granting the defendant's motion to dismiss the ...  
**Discussion:**  | **Court:** Conn. App. Ct. | **Date:** 2012
2. **Fairchild Heights Residents Ass'n v. Fairchild Heights, Inc.**, 131 Conn. App. 567, 27 A.3d 467, 2011 Conn. App. LEXIS 497   
**LB Cited by:** 131 Conn. App. 567 p.572; 27 A.3d 467 p.474  
... , 872, 10 A.3d 38 (2010), cert. denied, 299 Conn. 924, 11 A.3d 150 (2011). In the absence of standing, the court has no jurisdiction, as "no action in this case ever was commenced, as it was void ab initio." **America's Wholesale Lender v. Silberstein**, 87 Conn. App. 485, 489, 866 A.2d 695 (2005). "[I]t is clear that, HN5 Under the common law, a trial court has inherent authority to open and modify a judgment it rendered without jurisdiction. Such a judgment is void ab initio ...  
**Discussion:**  | **Court:** Conn. App. Ct. | **Date:** 2011

### Other Connecticut Decisions

3. **Allied Assocs. v. Q-Tran, Inc.**, 2014 Conn. Super. LEXIS 1860   
**LB Cited by:**  
... The first issue is whether the plaintiff, at the time this action was commenced in 2009, was a partnership with standing to bring this action or a nonexistent entity using a fictitious or trade name. If the latter is true, this suit would be void ab initio because a motion to substitute is no cure for situations in which the plaintiff was not a valid legal entity at the time it commenced suit. **America's Wholesale Lender v. Silberstein**, 87 Conn.App. 485, 489, 866 A.2d 695 (2005). The plaintiff's ...  
**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** July 28, 2014 | **Headnotes:** HN2, HN3
4. **Jp Morgan Chase Bank Nat'l Ass'n v. Simoulidis**, 2013 Conn. Super. LEXIS 2880   
**LB Cited by:**  
... is a trade name. The defendants cite *Isaac v. Mount Sinai Hospital* case for the well known proposition that certain entities cannot bring a lawsuit. A trade name is one of the entities that cannot file a lawsuit. **America's Wholesale Lender v. Silberstein**, 87 Conn.App. 485, 488-89, 866 A.2d 695

(2005) . The defendants correctly cite that proposition of law and point the case to America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 477 , 866 A.2d 698 (2005) . The Pagano s ...

**Discussion:** ■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Dec. 13, 2013 | **Headnotes:** HN3

5. **Bozelko v. D'Albro**, 2013 Conn. Super. LEXIS 791

**LB Cited by:**

... 104 Conn.App. 392 , 395 , 933 A.2d 1226 (2007) ; LaSalle Bank National Assoc. v. Bialobrzeski , 123 Conn.App. 781 , 790 , 3 A.3d 176 (2010) ; **American Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 488-89 , 866 A.2d 695 (2005)** . Bozelko v. Milici ruled the plaintiff had no standing to file a petition for a new trial. The same reasoning would apply to require the court to find an absence of standing if instead a petition for a new trial an entirely separate claim was brought by ...

**Discussion:** ■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Apr. 8, 2013

6. **Sheriff v. Joseph**, 2012 Conn. Super. LEXIS 2521 ▲

**LB Cited by:**

... Richardson v. Commissioner of Correction , 298 Conn. 690 , 696 , 6 A.3d 52 (2010) . In the absence of standing, the court has no jurisdiction, as "no action in this case ever was commenced, as it was void ab initio." **America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 489 , 866 A.2d 695 (2005)** . HN2 It is the burden of the party who seeks the exercise of jurisdiction in his favor clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of ...

**Discussion:** ■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Oct. 5, 2012

7. **Goldblatt, Marquette & Rashba, P.C. v. Ford**, 2012 Conn. Super. LEXIS 1638 ⓘ

**LB Cited by:**

... "When 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." The defendant relies on **America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 489 , 866 A.2d 695 (2005)** , in which the plaintiff filed a complaint under its trade name, which "is not ...

**Discussion:** ■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** June 25, 2012 | **Headnotes:** HN2, HN3

8. **Anderson v. Bridgewater Planning & Zoning Comm'n**, 2012 Conn. Super. LEXIS 259 ⓘ

**LB Cited by:**

... In the absence of standing, the trial court has no jurisdiction, as no action in the case ever was commenced, as it is void ab initio. In the absence of standing, the court has no jurisdiction, as "no action in this case ever was commenced, as it was void ab initio." **America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 489 , 866 A.2d 695 (2005)** . " [I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that ...

**Discussion:** ■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Jan. 24, 2012

9. **McEvoy v. Palumbo**, 2011 Conn. Super. LEXIS 2939 ⓘ

**LB Cited by:**

... Richardson v. Commissioner of Correction , 298 Conn. 690 , 696 , 6 A.3d 52 (2010) . In the absence of standing, the court has no jurisdiction, as "no action in this case ever was commenced, as it was void ab initio." **America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 489 , 866 A.2d 695 (2005)** . HN3 It is the burden of the party who seeks the exercise of jurisdiction in his favor clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Nov. 15, 2011

10. **State v. Lamar Adver. of Hartford**, 2011 Conn. Super. LEXIS 846 

**LB Cited by:**

... (2008) . II. ANALYSIS In support of its Motion, the defendant relies principally upon two recent decisions from our Appellate Court, *America's Wholesale Lender v. Pagano* , 87 Conn.App. 474 , 866 A.2d 698 (2005) and **America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 866 A.2d 695 (2005)** , in which it was held that HN5 A suit cannot be brought by or on behalf of a trade name because a trade name is not an entity with legal capacity to sue. Because the plaintiff in any such lawsuit ...


**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Apr. 5, 2011 | **Headnotes:** HN2, HN3

11. **ProBuild East, LLC v. Maple Oak Reserve, LLC**, 2011 Conn. Super. LEXIS 852 

**LB Cited by:**

... the determination of the real matter in dispute so to do, allow any other person to be substituted or added as plaintiff." The plaintiff argues that this case is similar to other cases in which the court exercised its discretion to substitute parties in the interest of justice, including *Wickes Mfg. Co. v. Currier Electric Co .* , 25 Conn.App. 751 , 596 A.2d 1331 (1991) . Maple Oak counters that according to **America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 866 A.2d 695 (2005)** ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Apr. 1, 2011 | **Headnotes:** HN2, HN3

12. **J.E. Robert Co. v. Signature Props., LLC**, 2010 Conn. Super. LEXIS 3479 

**LB Cited by:**

... cited by the defendants discuss jurisdiction and standing. No determination was made concerning the effect of substitution of a party plaintiff in order to address a defect in standing of the original plaintiff. **America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 488-89 , 866 A.2d 695 (2005)** , cited by the defendants, also is not applicable here. There, the Appellate Court determined that General Statutes §52-109 did not apply since the action was not commenced by a "person" possessing ...









**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Nov. 19, 2010 | **Headnotes:** HN2, HN3

13. **Coldwell Banker Manning Realty, Inc. v. Computer Scis. Corp.**, 2010 Conn. Super. LEXIS 2915 

**LB Cited by:**

... provide some protection to persons transacting business under a trade name, it is primarily intended to protect [those doing business with the trade name] by giving them constructive notice of the contents of the trade name certificate." (Internal quotation marks omitted.) *America's Wholesale Lender v. Pagano* , supra , 87 Conn.App. 479 . As the Appellate Court explained in the companion case to **Pagano, America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 488 , 866 A.2d 695 (2005)** ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Nov. 12, 2010 | **Headnotes:** HN1

14. **Coldwell Banker Manning Realty, Inc. v. Cushman & Wakefield of Conn., Inc.**, 2010 Conn. Super. LEXIS 2912   
**LB Cited by:**  
... provide some protection to persons transacting business under a trade name, it is primarily intended to protect [those doing business with the trade name] by giving them constructive notice of the contents of the trade name certificate." (Internal quotation marks omitted.) *America's Wholesale Lender v. Pagano*, supra, 87 Conn.App. 479. As the Appellate Court explained in the companion case to **Pagano, America's Wholesale Lender v. Silberstein**, 87 Conn.App. 485, 488, 866 A.2d 695 (2005) ...  
**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Nov. 12, 2010 | **Headnotes:** HN1
- 
15. **Davila v. Morris**, 2009 Conn. Super. LEXIS 3318   
**LB Cited by:**  
... , the Appellate Court found that Countrywide Home Loans, Inc. , lacked standing to proceed in a foreclosure action in which it originally initiated proceedings using only its trade name, " America 's Wholesale Lender." Id. ; see also **America's Wholesale Lender v. Silberstein** , 87 Conn.App. 485 , 489 , 866 A.2d 695 (2005) ("because [ America 's Wholesale Lender] had no standing to bring an action, no action in this case ever was commenced, as it was void ab initio"). The argument that the ...  
**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Dec. 4, 2009 | **Headnotes:** HN2, HN3
- 
16. **Leshine Carton Co. v. Matik of N. Am.**, 2008 Conn. Super. LEXIS 3022, 67 U.C.C. Rep. Serv. 2d (CBC) 742   
**LB Cited by:**  
... this action when it was brought. The Bank could have brought it in its name or in Leshine's name but Leshine brought the action, not the Bank. Exhibit 47, referred to previously, proves both these assertions. The final lynchpin in the defendant's argument is the assertion that "where a plaintiff lacks standing to commence an action, it cannot subsequently (acquire) standing to correct that deficiency." **America's Wholesale Lender v. Silberstein** , 87 Conn.App. 485 , 489 , 866 A.2d 695 (2005) ...  
**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** 2008 | **Headnotes:** HN3
- 
17. **Simpson v. D&L Tractor Trailer Sch.**, 2007 Conn. Super. LEXIS 3363   
**LB Cited by:**  
... 87 Conn.App. 474 , 477-80 , 866 A.2d 698 (2005) (assessing Connecticut case law and drawing a sharp line between cases where defendants were identified by trade name and where plaintiffs sued as fictitious entities); **America's Wholesale Lender v. Silberstein** , 87 Conn.App. 485 , 866 A.2d 695 (2005) . Even when a plaintiff sues as an individual doing business as a trade name, the defect may be considered circumstantial or a mere misnomer that does not deprive the court of subject matter ...  
**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Dec. 19, 2007 | **Headnotes:** HN3
- 
18. **Sovereign Bank v. Silberstein**, 2006 Conn. Super. LEXIS 3688  
**LB Cited by:**  
... Sovereign Bank is listed as a Pennsylvania Corporation having an address of c/o Countrywide Home

Loans , located in Texas . DISCUSSION America 's Wholesale Lender is the trade name of Countrywide Home Loans, Inc. (Countrywide) . **America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 866 A.2d 695 (2004)** and America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2004). HN1 An action must be brought in the name of a corporation and not the trade name. An action ...

**Discussion:** ■■■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Dec. 5, 2006 | **Headnotes:** HN3

---

19. **Century 21 Access Am. v. McGregor-Mclean**, 2005 Conn. Super. LEXIS 1846 ⓘ

**LB Cited by:**

... The plaintiff argues that typing its trade name on the complaint was a misnomer, it should be allowed to amend its complaint and the motion to dismiss should be denied. It asserts that *Dyck O'Neal, Inc. v. Wynne* , 56 Conn.App. 161 , 742 A.2d 393 (1999) is factually similar and controlling. In *America's Wholesale Lender v. Pagano* , supra , 87 Conn.App. 474 , 1 See also **America's Wholesale Lender v. Silberstein, 87 Conn.App. 485 , 866 A.2d 695 (2005)** . the plaintiff instituted an action ...

**Discussion:** ■■■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** July 20, 2005 | **Headnotes:** HN2, HN3

---

20. **Tine v. Colello**, 2005 Conn. Super. LEXIS 679 ⓘ

**LB Cited by:**

... In the Counterclaim the defendants seek to recover on the promissory note with which Wendy Tine paid \$ 1,000 of her tuition. The note was payable to Nirvana Salon Academy, which was not a person, but rather, a tradename. Therefore it is unenforceable under **America's Wholesale Lender v. Silberstein, 87 Conn. App. 485 , 866 A.2d 695 (2005)** . The interest rate charged under the note was 15%, violating Connecticut General Statutes § 37-4 , which prohibits lending of money at an interest rate ...

**Discussion:** ■■■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Mar. 3, 2005

## Other Citing Sources: (14)

### Annotated Statutes

1. **Conn. Gen. Stat. sec. 52-109**  
... lender under a trade name because the trade name was not a legal entity with the capacity to sue; as the trade name never legally existed, there was no legally recognized entity for which there could be a substitution pursuant to Conn. Gen. Stat. § 52-109 , and thus, an attempt to cure the jurisdictional defect by substituting the assignee of the mortgage had no effect. **America's Wholesale Lender v. Silberstein, 87 Conn. App. 485 , 866 A.2d 695 , 2005 Conn. App. LEXIS 66 (Conn. App. Ct. 2005)**  
...

**Content:** Statutes

### Briefs

2. **INVESTMENT ASSOCS. v. SUMMIT ASSOCS.**, 2012 CT S. Ct. Briefs 18910, 2012 CT S. Ct. Briefs LEXIS 93  
... designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented. Fort Trumbull Conservancy, LLC v. Alves, 286 Conn. 264 , 272 (2008). Any judgment rendered in an action brought by a party that lacked standing is void ab initio . **America's Wholesale Lender v. Silberstein, 87 Conn.App. 485 , 489 (2005).** ...

**Content:** Court Documents | **Date:** Apr. 18, 2012

3. **INVESTMENT ASSOCIATES v. SUMMIT ASSOCIATES, INC., ET AL.**, 2011 CT App. Ct. Briefs 32227, 2011 CT Sup. Ct. Briefs LEXIS 28  
... therein. The plaintiff's brief does not address the jurisdictional concept of standing and, therefore, does not consider that the defect in the plaintiff's legal capability to sue implicates subject matter jurisdiction. To this end, the plaintiff does not attempt to distinguish this Court's decisions in Isaac v. Mount Sinai Hospital, 3 Conn. App. 598 (1985), America's Wholesale Lender v. Pagano, 87 Conn. App. 474 (2005), or **America's Wholesale Lender v. Silbertstein, 87 Conn. App. 485 (2005)**, ...

**Content:** Court Documents | **Date:** Mar. 7, 2011

4. **INVESTMENT ASSOCIATES v. SUMMIT ASSOCIATES, INC., ET AL.**, 2011 CT App. Ct. Briefs 32227, 2011 CT Sup. Ct. Briefs LEXIS 26  
... Because standing implicates jurisdiction, a challenge to whether a plaintiff is a proper party to bringing an action may be raised at any time and any judgment rendered in an action brought by a party that lacked standing is void ab initio. **America's Wholesale Lender v. Silberstein, 87 Conn.App. 485 , 489 (2005)**. "No principle is more universal than that the judgment of a court without jurisdiction is a nullity ... Such a judgment, whenever and wherever declared upon as a source of a right, may ...

**Content:** Court Documents | **Date:** Jan. 20, 2011

5. **BANKERS TRUST CO. OF CAL. v. VANECK**, 2005 CT App. Ct. Briefs 5E, 2005 CT App. Ct. Briefs LEXIS 72

... (concluding that a party instituting a foreclosure action solely in its trade name, a fictitious name that is not a legal entity, lacks standing to bring the action, and therefore, the court lacks subject matter jurisdiction to decide the merits of the claim); **America's Wholesale Lender v. Silberstein 87 Conn. App. 485 , 488** (same). In its brief, the named Plaintiff now suggests that the testimony of Ms. Delaney is being mischaracterized. However, a review of the transcript, page 123, shows ...

**Content:** Court Documents | **Date:** Dec. 27, 2005

- 
6. **BANKERS TRUST CO. OF CAL. v. VANECK**, 2005 CT App. Ct. Briefs 5E, 2005 CT App. Ct. Briefs LEXIS 71

... foreclosure action, produced the original Note endorsed to the Plaintiff during trial, the Defendant failed to dispute Plaintiff's allegation in its Complaint as to its position/standing, and the Defendant's failure to deny such in Plaintiff's Requests to Admit which became Judicial Admissions. The Defendant also cites to America's Wholesale Lender v. Pagano, 87 Conn. App. 474 (2005) and its companion case decided at the same time **America's Wholesale Lender v. Silberstein, 87 Conn. App. 485 (2005)** ...

**Content:** Court Documents | **Date:** Dec. 5, 2005

7. **BANKERS TRUST CO. OF CAL. v. VANECK**, 2005 CT App. Ct. Briefs 5E, 2005 CT App. Ct. Briefs LEXIS 70

... This year, the Appellate Court determined that a corporation that brings an action in solely in a trade name, without including the corporation itself as a party, lacks standing to bring a foreclosure action. America's Wholesale Lender v. Pagano, 87 Conn. App. 474 , 477 (2005); **America's Wholesale Lender v. Silberstein, 87 Conn. App. 485 , 488 (2005)**. The Court clarified that a fictional entity has no right to start an action. "It is elemental that in order to confer jurisdiction on the ...

**Content:** Court Documents | **Date:** Nov. 7, 2005

- 
8. **SARASOTA CCM v. GOLF MKTG.**, 2005 CT App. Ct. Briefs 26181, 2005 CT App. Ct. Briefs LEXIS 27

... The use of fictitious, non-existent, entities as if they were real, legally created, entities creates serious legal difficulties. This Court recently held that a plaintiff commencing suit in its trade name deprives the court of subject matter jurisdiction. America's Wholesale Lender v. Pagano, 87 Conn. App. 474 (2005); **America's Wholesale Lender v. Silberstein, 87 Conn. App. 485 (2005)**. This Court stated: "It is elemental that in order to confer jurisdiction on the court the plaintiff must ...

**Content:** Court Documents | **Date:** May 23, 2005

- 
9. **BANK OF NEW YORK MELLON v. OQUENDO**, 2015 FL Cir. Ct. Briefs LEXIS 201

... 35. Tomlinson v. GMAC Mortg., LLC, 173 So. 3d 1121 (Fla. 2d DCA 2015) 36. Harper v. HSBC Bank USA, N.A., 148 So. 3d 1285 (Fla. 1st DCA 2014) 37. Harris v. HSBC Bank USA, N.A., 174 So. 3d 600 (Fla. 4th DCA 2015) 38. **America Wholesale Lender v. Silberstein, 87 Conn. App. 485 , 866 A.2d 695 (2005)** 39. Bank of New York v. Silverberg, 926 N.Y.S. 2d 532 , 86 A. D. 3d 274 (2011) 40. Farkas v. U.S. Bank, 165 So. 3d 796 (Fla. 4th DCA 2015) 41. Focht v. Wells Fargo Bank, N.A., 124 So. ...

**Content:** Court Documents | **Date:** Nov. 14, 2015

10. **THOMAS ZIMMERMAN and PATRICIA ZIMMERMAN, Plaintiffs, v. GREG LOGEMANN, et al., Defendants.**, 2009 U.S. Dist. Ct. Motions 348487, 2010 U.S. Dist. Ct. Motions LEXIS 55832  
... determined, in both cases, that "because a trade name is not an entity with legal capacity to sue, the corporation has no standing to litigate the merits of the case." *America's Wholesale Lender v. Pagano*, 866 A.2d 698 , 699 (Conn.App.Ct. 2005), **America's Wholesale Lender v. Silberstein**, **866 A.2d 695 , 696 (Conn.App.Ct. 2005)**. The cases were both decided on standing and subject matter jurisdiction grounds when AWL initiated a foreclosure action. However, this isn't a foreclosure action ...

**Content:** Court Documents | **Date:** Dec. 9, 2010

11. **NATIONWIDE v. AFRICAN GLOBAL, LTD.**, 2004 U.S. Dist. Ct. Motions 656718, 2006 U.S. Dist. Ct. Motions LEXIS 41610  
... it does not have legal standing to bring these claims. As set forth above, African Global Ltd. does not exist as a legal entity. It is merely a trade name Neil Atkinson used in connection with his sole proprietorship. Because a trade name is not a recognized legal entity or person, it does not have legal capacity to sue, and therefore has no standing to bring an action. **America's Wholesale Lender v. Silberstein**, **87 Conn. App. 485 , 489 , 866 A.2d 695 , 697 (2005)**. In the absence of standing, ...

**Content:** Court Documents | **Date:** Oct. 20, 2006

12. **T ST. DEV. v. DEREJE & DEREJE**, 2005 U.S. Dist. Ct. Motions 359416, 2005 U.S. Dist. Ct. Motions LEXIS 72801  
... is not the only jurisdiction where contrary to the Plaintiff's assertion the legal consequence of using a fictitious corporate name, where no corporation by that name is formed, is to preclude either Hart or his assignee, the Plaintiff LLC from appropriating the contract and suing thereon. See, e.g., **America's Wholesale Lender v. Silberstein**, **87 Conn. App. 485 , 866 A.2d 695 , 697 (2005)**. B. The Promoter Theory Is Unavailable As A Matter Of Law Where The So-Called "Promoter" Routinely Engages ...

**Content:** Court Documents | **Date:** Sept. 13, 2005

13. **T ST. DEV. v. DEREJE & DEREJE**, 2005 U.S. Dist. Ct. Motions 359416, 2005 U.S. Dist. Ct. Motions LEXIS 72799  
... The legal consequence of using a fictitious corporate name, where no corporation by that name is formed, is to preclude either Hart or his assignee, the Plaintiff LLC , from appropriating the contract and suing thereon. Most recently, in **America's Wholesale Lender v. Silberstein**, **87 Conn. App. 485 , 866 A.2d 695 , 697 (2005)**, the court (i) pronounced as fatally defective a mortgage foreclosure suit brought by a mortgagee in its trade name only (ii) held that an assignee of the mortgage and ...

**Content:** Court Documents | **Date:** Aug. 26, 2005

## Pleadings














14. **ZIMMERMAN v. LOGEMANN**, 2009 U.S. Dist. Ct. Pleadings 613239, 2009 U.S. Dist. Ct. Pleadings LEXIS 47092  
... Wholesale Lender a security interest in the property. 74. America 's Wholesale Lender is not an actual entity. It is only a trade name. See *America's Wholesale Lender v. Pagano*, 866 A.2d 698 , 87 Conn. App. 474 (2005); **America's Wholesale Lender v. Silberstein**, **866 A.2d 695 , 87 Conn. App. 485 (2005)**. America 's Wholesale Lender was not licensed to conduct banking or lending activities in



Wisconsin . 75. America 's Wholesale Lender and Countrywide misrepresented that America 's Wholesale ...

**Content:** Court Documents | **Date:** Dec. 21, 2009

## Legend

	Warning - Negative Treatment is Indicated		Red - Warning Level Phrase
	Questioned - Validity questioned by citing references		Orange - Questioned Level Phrase
	Caution - Possible negative treatment		Yellow - Caution Level Phrase
	Positive - Positive treatment is indicated		Green - Positive Level Phrase
	Analysis - Citing Refs. With Analysis Available		Blue - Neutral Level Phrase
	Cited - Citation information available		Light Blue - No Analysis Phrase
	Warning - Negative case treatment is indicated for statute		

---

End of Document

**America's Wholesale Lender v. Pagano**

Appellate Court of Connecticut

October 15, 2004, Argued ; February 15, 2005, Officially Released

(AC 24447)

**Reporter**

87 Conn. App. 474; 866 A.2d 698; 2005 Conn. App. LEXIS 56

AMERICA'S WHOLESale LENDER v.  
GAIL M. PAGANO ET AL.

**Prior History:** [\*\*\*1] (Appeal from Superior Court, judicial district of New Britain, Quinn, J.; Cohn, J.; Dunnell, J.) Action to foreclose a mortgage on certain real property, and for other relief, brought to the Superior Court in the judicial district of New Britain, where the court, Quinn, J., denied the named defendant's motion to dismiss; thereafter, the court, Cohn, J., granted the plaintiff's motion for summary judgment as to liability only; subsequently, the court, Dunnell, J., granted the plaintiff's motions for judgment of foreclosure and to substitute the Bank of New York,

trustee, as the plaintiff, and rendered judgment of foreclosure by sale, from which the named defendant appealed to this court.

**Disposition:** Reversed; judgment directed.

**Core Terms**

trade name, Statutes, doing business, legal entity, Transportation, misnomer, amend, fictitious name, circumstantial, certificate, designation, notice, subject matter jurisdiction, bringing action, commencing, mortgage, remedial, Lender

**Case Summary**

**Procedural Posture**

Appellee mortgagee sued appellant

mortgagor alleging a mortgage default, but the mortgagor contended that the court lacked subject matter jurisdiction since the mortgagee sued in its trade name rather than its legal corporate name. The mortgagor appealed the orders of the Superior Court, judicial district of New Britain (Connecticut), which denied the mortgagor's motion to dismiss and entered judgment against the mortgagor.

## Overview

The mortgagor contended that the mortgagee initiated the lawsuit as a fictitious entity with no legal existence or standing to sue, and thus the court lacked jurisdiction to consider the merits of the action. The mortgagee argued that the use of the trade name was merely a circumstantial error within the meaning of *Conn. Gen. Stat. § 52-123* and thus jurisdiction was not precluded. The appellate court held that while mislabeling or misnaming of a defendant in an action constituted a

circumstantial error that was curable under § 52-123, the statute did not apply to cure the mortgagee's misnaming of itself as the plaintiff in the action. Further, the mortgagee was entitled to do business under a fictitious name, but court documents were a means by which the public could ascertain the identity and character of those with whom they did business, and the potential for fraud on the public also warranted requiring the mortgagee to sue only as a legal entity.

## Outcome

The judgment against the mortgagor was reversed, and the case was remanded with instructions to dismiss the complaint.

## LexisNexis® Headnotes

Civil Procedure > ... > Subject Matter  
Jurisdiction > Jurisdiction Over  
Actions > General Overview

**HN1** Whenever the absence of jurisdiction is brought to the notice of

the court or tribunal, cognizance of it must be taken and the matter passed upon before it can move one further step in the cause, as any movement is necessarily the exercise of jurisdiction.

Civil Procedure > ... > Subject Matter

Jurisdiction > Jurisdiction Over

Actions > General Overview

Civil Procedure > Parties > Capacity of

Parties > General Overview

**HN2** It is elemental that in order to confer jurisdiction on the court the plaintiff must have an actual legal existence, that is he or it must be a person in law or a legal entity with legal capacity to sue.

Business & Corporate

Law > ... > Corporate

Formation > Corporate Existence,

Powers & Purpose > General Overview

Civil Procedure > Parties > Capacity of

Parties > General Overview

Trademark Law > Special Marks > Trade

Names > General Overview

Trademark Law > ... > Particular Subject  
Matter > Names > General Overview

**HN3** Although a corporation is a legal entity with legal capacity to sue, a fictitious or assumed business name, a trade name, is not a legal entity; rather, it is merely a description of the person or corporation doing business under that name.

Civil Procedure > ... > Subject Matter

Jurisdiction > Jurisdiction Over

Actions > General Overview

Civil Procedure > Parties > Capacity of

Parties > General Overview

Trademark Law > Special Marks > Trade

Names > General Overview

**HN4** Because the trade name of a legal entity does not have a separate legal existence, a plaintiff bringing an action solely in a trade name cannot confer jurisdiction on the court.

Civil Procedure > Pleading &

Practice > Pleadings > Rule Application &  
Interpretation

Governments > Legislation > Interpretation

**HN5** Conn. Gen. Stat. § 52-123 is a remedial statute and therefore it must be liberally construed in favor of those whom the legislature intended to benefit.

Civil Procedure > Pleading & Practice > Pleadings > Rule Application & Interpretation

**HN6** Conn. Gen. Stat. § 52-45a is read by the Connecticut Supreme Court to require the use of legal names, not fictitious ones, when commencing an action. The privilege of using fictitious names in actions should be granted only in the rare case where the nature of the issue litigated and the interest of the parties demand it and no harm can be done to the public interest.

Civil Procedure > Pleading & Practice > Pleadings > Rule Application & Interpretation

Trademark Law > Special Marks > Trade

Names > General Overview

Trademark Law > ... > Particular Subject Matter > Names > General Overview

**HN7** The mislabeling or misnaming of a defendant constitutes a circumstantial error that is curable under Conn. Gen. Stat. § 52-123 when it does not result in prejudice to either party. This is true even when the plaintiff uses only the defendant's trade name and not the defendant's legal name.

Business & Corporate Law > ... > Corporate Formation > Corporate Names > General Overview

Business & Corporate Law > ... > Corporate Names > Fictitious Names > General Overview

Business & Corporate Law > ... > Corporate Names > Fictitious Names > Conducting Business Under Fictitious Names

Business & Corporate Law > ... > Corporate Names > Fictitious Names > Registration Requirements

Trademark Law > Trademark  
Cancellation &  
Establishment > Registration  
Procedures > General Overview  
Business & Corporate  
Compliance > ... > Registration  
Procedures > Federal  
Registration > Constructive Notice of  
Registration  
Trademark Law > ... > Registration  
Procedures > Federal  
Registration > Degree of Protection  
Trademark Law > Special  
Marks > General Overview  
Trademark Law > Special Marks > Trade  
Names > General Overview  
Trademark Law > Special Marks > Trade  
Names > Registration of Trade Names  
Trademark Law > ... > Particular Subject  
Matter > Names > General Overview

**HN8** Conn. Gen. Stat. § 35-1, the trade name regulation statute, requires legal entities doing business in Connecticut under an assumed or fictitious name to file a trade name certification in the

town in which such business is to be conducted prior to engaging in such business. While § 35-1 may provide some protection to persons transacting business under a trade name, it is primarily intended to protect those doing business with the trade name by giving them constructive notice of the contents of the trade name certificate. The object of the registration requirement is to enable a person dealing with another trading under a name not his own, to know the man behind the name, that he may know or make inquiry as to his business character or financial responsibility.

Business & Corporate  
Law > ... > Corporate Names > Fictitious  
Names > General Overview  
Civil Procedure > Pleading &  
Practice > Pleadings > Rule Application &  
Interpretation  
Civil Procedure > Parties > Capacity of  
Parties > General Overview  
Civil Procedure > Parties > Real Party in

Interest > Fictitious Names

**HN9** Both Conn. Gen. Stat. § 52-45a and the policy of protecting consumers and creditors from the potential fraud that can arise when legal entities do business under assumed names that may or may not be revealed to those consumers or creditors mandate that plaintiffs not commence an action under a fictitious name except in those extreme circumstances recognized by the Connecticut Supreme Court.

Civil Procedure > ... > Subject Matter

Jurisdiction > Jurisdiction Over

Actions > General Overview

Trademark Law > Special Marks > Trade Names > General Overview

**HN10** A lack of subject matter jurisdiction requires dismissal, regardless of whether prejudice exists.

**Counsel:** Stephen P. Wright, for the appellant (named defendant).

Peter A. Ventre, for the appellee (substitute plaintiff).

**Judges:** Schaller, Dranginis and Berdon, Js. In this opinion SCHALLER, J., concurred. BERDON, J. dissenting.

**Opinion by:** DRANGINIS

### Opinion

[\*475] [\*\*699] DRANGINIS, J. The dispositive issue in this appeal is whether a corporation that brings an action solely in its trade name, without the corporation itself being named as a party, has standing so as to confer jurisdiction on the [\*\*\*2] court. We conclude that, because a trade name is not an entity with legal capacity to sue, the corporation has no standing to litigate the merits of the case. We, therefore, reverse the judgment of the trial court.

The following facts and procedural history are relevant to our disposition of this appeal. On January 22, 2001, the defendant Gail M. Pagano <sup>1</sup> executed

---

<sup>1</sup>The Knollwood Homeowners Association, Inc., also was named as a defendant at trial. Because only Pagano has appealed, we refer to her as the defendant.

and delivered a note in the amount of \$ 45,000 and a mortgage on her real property to the original plaintiff in this action, America's Wholesale Lender (America's). America's is the trade name of Countrywide Home Loans, Inc. (Countrywide), a corporation with its principal place of [\*476] business in California. <sup>2</sup> [\*\*\*4] On November 27, 2002, America's commenced this action, alleging that the defendant had defaulted on the note and seeking to foreclose on the defendant's property. On February 11, 2003, America's filed a motion to substitute the Bank of New York, as trustee, as the plaintiff in order to reflect an assignment of the note and mortgage that Countrywide had made to the Bank of New York. <sup>3</sup> On February

27, 2003, the defendant filed an objection to the motion to substitute the Bank of New York, as trustee, as the plaintiff, [\*\*\*3] as well as a motion to dismiss. In both the objection and the motion to dismiss, the defendant argued that the court lacked subject matter jurisdiction because America's did not have the legal capacity to sue. The court reserved judgment on the motion to substitute until after it ruled on the defendant's motion to dismiss. <sup>4</sup> The court denied the defendant's motion to dismiss and later granted America's motion to substitute the Bank of New York as the plaintiff. Ultimately, the court rendered summary judgment as to liability in favor of the substitute plaintiff, the defendant's default on the note not being disputed. This appeal followed.

On appeal, the defendant claims that

---

<sup>2</sup> The substitute plaintiff, the Bank of New York, indicated in its brief that it did not know in which state Countrywide was incorporated, though, at different times throughout the proceedings, it alleged that Countrywide and America's were incorporated in New York and California. These inconsistencies, however, do not inform our decision in this case, as all parties agree that America's is a trade name by which Countrywide does business and is not a corporation organized under the laws of any state.

<sup>3</sup> Under the law of our state, the assignee of a note may bring an action either in its name or the name of its assignor. See e.g. *Jacobson v. Robington*, 139 Conn. 532, 539, 95 A.2d 66 (1953); *Dime Savings Bank of Wallingford v. Arpaia*, 55 Conn.

---

*App. 180, 184, 738 A.2d 715 (1999).*

<sup>4</sup> *HN1* "Whenever the absence of jurisdiction is brought to the notice of the court or tribunal, cognizance of it must be taken and the matter passed upon before it can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction." (Internal quotation marks omitted.) *Statewide Grievance Committee v. Rozbicki*, 211 Conn. 232, 245, 558 A.2d 986 (1989).



the court improperly denied her motion to dismiss on the basis [\*477] of Countrywide's [\*\*700] lack of standing to bring an action solely in a trade name. The defendant relied on America's motion to substitute the Bank of New York, as trustee, as the plaintiff, in which America's identified itself as "Countrywide Home Loans, Inc., d/b/a America's Wholesale [\*\*\*5] Lender." The defendant argues that because Countrywide initiated suit solely in its trade name, which is a fictitious name and not a legal entity, Countrywide lacked standing and, consequently, the court lacked subject matter jurisdiction to decide the merits of Countrywide's claim. We agree.

**HN2** "It is elemental that in order to confer jurisdiction on the court the plaintiff must have an actual legal existence, that is he or it must be a person in law or a legal entity with legal capacity to sue." (Internal quotation marks omitted.) Isaac v. Mount Sinai

Hospital, 3 Conn. App. 598, 600, 490 A.2d 1024, cert. denied, 196 Conn. 807, 494 A.2d 904 (1985). **HN3** Although a corporation is a legal entity with legal capacity to sue, a fictitious or assumed business name, a trade name, is not a legal entity; rather, it is merely a description of the person or corporation doing business under that name. Bauer v. Pounds, 61 Conn. App. 29, 36, 762 A.2d 499 (2000). **HN4** Because the trade name of a legal entity does not have a separate legal existence, a plaintiff bringing an action solely in a trade name cannot confer jurisdiction on the court.

On appeal [\*\*\*6] the substitute plaintiff claims, however, that bringing an action in the name of America's rather than in the name of Countrywide was a misnomer or circumstantial error that, pursuant to General Statutes § 52-123, should not deprive the court of jurisdiction. **HN5** "Section 52-123 is a remedial statute and therefore it must

be liberally construed in favor of those whom the legislature intended to benefit." (Internal quotation marks omitted.) Andover Ltd. Partnership I v. Board of Tax Review, 232 Conn. 392, 396, 655 A.2d 759 (1995). [\*478] In interpreting this statute, however, we are mindful of the broader statutory scheme. Specifically, we must compare § 52-123 with **HN6** § 52-45a, which our Supreme Court has read to require the use of legal names, not fictitious ones, when commencing an action. Buxton v. Ullman, 147 Conn. 48, 60, 156 A.2d 508 (1959) ("the privilege of using fictitious names in actions should be granted only in the rare case where the nature of the issue litigated and the interest of the parties demand it and no harm can be done to the public interest"), appeal dismissed sub nom. Poe v. Ullman, 367 U.S. 497, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (1961). [\*\*\*7] We recognize that this court, as well as our Supreme Court, has held in numerous circumstances that **HN7** the mislabeling or misnaming of a *defendant* constituted a circumstantial error that is curable under § 52-123 when it did not result in prejudice to either party. See, e.g., Andover Ltd. Partnership I v. Board of Tax Review, *supra*, 232 Conn. 392 (permitting plaintiff to amend citation in order to name town instead of board of tax review as defendant); Lussier v. Dept. of Transportation, 228 Conn. 343, 636 A.2d 808 (1994) (permitting action to stand when summons indicated action against state instead of action against commissioner of transportation and commissioner of transportation received actual notice). This is true even when the plaintiff used only the defendant's trade name and not the defendant's legal name. See, e.g., Motiejaitis v. Johnson, 117 Conn. 631, 169 A. 606 (1933) (permitting plaintiff to substitute individual for nonexistent corporation under which individual was doing business); World Fire & Marine Ins. Co. v. Alliance Sandblasting Co., 105 Conn. 640, 136 A. 681 (1927)

(permitting [\*\*\*8] plaintiff to [\*\*701] amend writ to include individual doing business as named defendant). We decline, however, to extend the use of § 52-123 in this manner to a *plaintiff* that has used a fictitious name for *itself* when commencing an action. <sup>5</sup>

[\*479] In reaching our decision, we are mindful of the policies underlying our legislature's [\*\*\*9] requirements for legal entities doing business under fictitious names. **HN8** General Statutes § 35-1, our trade name regulation statute, requires legal entities doing business in this state under an assumed or fictitious name to file a trade name certification in the town in which such business is to be conducted prior to engaging in such business. <sup>6</sup> We have

---

<sup>5</sup> In Dyck O'Neal, Inc. v. Wynne, 56 Conn. App. 161, 742 A.2d 393 (1999), we concluded that the court properly permitted the substitute plaintiff to amend his designation from Dyck O'Neal individually to Dyck O'Neal, Inc. That case is distinguishable from the present case for two reasons. First, at no time was the plaintiff's true identity concealed; rather, the omission of its designation amounted to an incorrect description of the plaintiff. Furthermore, the record in that case suggested the omission of the plaintiff's designation was a typographical error in the court's judgment file, not an action necessarily attributable to the plaintiff. *Id.*, 164 n.4.

<sup>6</sup> The record in this case shows that Countrywide either did not

recognized that while § 35-1 "may provide some protection to persons transacting business under a trade name, it is primarily intended to protect [those doing business with the trade name] by giving them constructive notice of the contents of the trade name certificate." Metro Bulletins Corp. v. Soboleski, 30 Conn. App. 493, 500, 620 A.2d 1314, cert. granted on other grounds, 225 Conn. 923, 625 A.2d 823 (1993) (appeal withdrawn June 4, 1993). The "object [of the registration requirement] is to enable a person dealing with another trading under a name not his own, to know the man behind the name, that he may know or make inquiry as to his business character or financial responsibility . . . ." DiBiase v. Garnsey, 103 Conn. 21,

27, 130 A. 81 (1925). As [\*\*\*10] Judge Schaller noted in his dissent in Metro Bulletins Corp. v. Soboleski, *supra*, 503,

---

file a trade name certificate in the town of Berlin, where it conducted business with the defendant, or could not locate such a certificate. The substitute plaintiff claims that filing a trade certificate in the town of Hartford was sufficient. These circumstances further support our decision.

the trade regulation statute, by itself, however, provides only minimal protection to the public because trade name certificates are recorded in any one of the many [\*480] towns across the state. That fact highlights the importance of placing on those who use a trade name the burden of making their identities known to the public. As court filings are a matter of public record, we cannot conclude that *no harm* would come to the public by permitting legal entities to commence actions under fictitious names, as court documents are another means by which the public may ascertain the identity and the character of those with whom they do business. **HN9** Both § 52-45a and the policy of protecting consumers and creditors from the potential fraud that can arise when legal entities do business under assumed names that may or may not be revealed to those consumers or creditors mandate that plaintiffs not commence an action under a fictitious name except in those

extreme circumstances recognized by our Supreme Court in *Buxton v. Ullman*, *supra*, 147 Conn. 48.

[\*\*\*11] The defendant does not argue, nor could she, that she suffered prejudice as a result of Countrywide's commencing this action solely under its trade name. Since the beginning of her relationship with [\*\*702] Countrywide, the defendant has conducted business with Countrywide only under its trade name. **HN10** A lack of subject matter jurisdiction, however, requires dismissal, regardless of whether prejudice exists.<sup>7</sup>

The judgment is reversed and the case is remanded with direction to grant the defendant's motion to dismiss and to render judgment dismissing the complaint.

In this opinion SCHALLER, J.,

---

<sup>7</sup>When the statute of limitations for an action has not run in an action commenced under a trade name, we question the reasonableness of that plaintiff pursuing an action in a trade name, possibly at a defendant's expense, when the plaintiff could withdraw the action and recommence the action under its legal name.

concurring.

**Dissent by: BERDON**

**Dissent**

---

BERDON, J. dissenting. I am unable to distinguish this case from *Dyck O'Neal, Inc. v. Wynne*, 56 Conn. App. 161, [\*481] 742 A.2d 393 (1999). [\*\*\*12]

Indeed, this case presents a scenario even more suitable to the application of General Statutes § 52-123<sup>1</sup> than that presented by *Dyck O'Neal, Inc.* In *Dyck O'Neal, Inc.*, the court put its stamp of approval on the plaintiff's name being amended *after* judgment, finding that it was a circumstantial error within the purview of § 52-123. Indeed, in this case, the mistake was corrected prior to judgment. It is quite obvious, and in fact the trial court found that the original plaintiff in this action, America's Wholesale Lender (America's), intended

---

<sup>1</sup> General Statutes § 52-123 provides: "No writ, pleading, judgment or any kind of proceeding in court or course of justice shall be abated, suspended, set aside or reversed for any kind of circumstantial errors, mistakes or defects, if the person and the cause may be rightly understood and intended by the court."

to bring suit under the name of the owner of the note, which was the Bank of New York, as trustee.<sup>2</sup>

[\*\*\*13] [\*482] Our Supreme Court held in *Andover Ltd. Partnership I v. Board of Tax Review*, 232 Conn. 392, [\*\*703] 655 A.2d 759 (1995), the following: "We

---

<sup>2</sup> In its memorandum of decision denying the motion to dismiss filed by the defendant Gail M. Pagano, the court found: "The defendant's motion is based on its claim that [America's] was not a corporation organized under the laws of the state of California, as alleged in paragraph one of the complaint, and therefore it had no standing to bring this suit. At the hearing held on March 24, 2003, it was conceded that America's is a trade name for Countrywide Home Loans, Inc. (Countrywide), and the exact and full title for the plaintiff is America's Wholesale Lender d/b/a Countrywide Home Loans, Inc. From the record, the court concludes that Countrywide Home Loans, Inc. is a valid, legal entity licensed by the department of banking of the state of Connecticut as a first and second mortgage lender. Trade name certificates as required by General Statutes § 35-1 had been filed in some towns within the state, although it was unknown at the time of argument whether one had been filed in the town of Berlin, the location of the real property being foreclosed. The mortgage and note underlying this foreclosure action were in the name of America's and were owned by it until the time of the assignment [to the substitute plaintiff, the Bank of New York, as trustee]. The court also notes that in this instance [that] the defendant received funds from the plaintiff in the trade name now at issue. The plaintiff in the same name received as security for the pledge of repayment of those funds a promissory note as well as the mortgage now being foreclosed that was secured by real property owned by the defendant. Upon the failure of the defendant to pay as provided, the plaintiff instituted a foreclosure action. These facts were uncontroverted.

"The only contrary evidence provided by the defendant in support of her motion to dismiss is attached to the affidavit filed by her. It is a certified copy of the corporate registration in California as of 1995, which evidence the court finds outdated and of no assistance in this inquiry. The court concludes, based on the record, that the entity represented by the trade name had a very real interest in the cause of action and an equitable interest in the subject matter of the controversy."

previously have explained that § 52-123 or whether it had erroneously replaces the common law rule that misdirected its action. *Id.*, 385; see also deprived courts of subject matter *Motiejaitis v. Johnson*, 117 Conn. 631, 636, 169 A. 606 (1933) (plaintiff jurisdiction whenever there was a permitted to amend writ after verdict, misnomer or misdescription in an but before judgment to properly name original writ, summons or complaint. intended defendant). Second, we *Pack v. Burns*, [212 Conn. 381, 562 A.2d 24 (1989)]. In *Pack*, the plaintiff considered three factors to determine initially named as the defendant the whether the error was a misnomer and 'State of Connecticut Transportation therefore a circumstantial defect under Commission,' a nonexistent entity, but § 52-123: (1) whether the proper then properly served notice of the claim defendant had actual notice of the on the commissioner of transportation, institution of the action; (2) whether the as required by *General Statutes § 13a-144*. We determined that 'the effect proper defendant knew or should have given to such a misdescription usually known that it was the intended depends upon the question whether it is defendant in the action; and (3) whether the interpreted as merely a misnomer or the proper defendant was in any way defect in description, or whether it is misled to its prejudice. *Pack v. Burns*, *supra*, 385. We concluded in *Pack* that deemed a substitution or entire change the plaintiff was entitled to [\*483] of party; in the former case an amend the named defendant under § 52-123 amendment will be allowed, in the latter because the plaintiff had it will not be allowed.' . . . [*Pack v. intended to sue the commissioner, and Burns, supra* 384-85]. In *Pack*, we first because the commissioner, who was considered whether the plaintiff had not prejudiced by the error, knew he intended to sue the proper [\*\*\*14] party was the intended defendant. *Id.*, 385-

86.

"Similarly, in Lussier v. Dept. of Transportation, [228 Conn. 343, 636 A.2d 808 (1994)], we permitted the plaintiff to amend a summons that misnamed [\*\*\*15] the intended defendant. In *Lussier*, the plaintiff named the 'State of Connecticut, Department of Transportation' as the defendant on the civil summons form instead of the commissioner, as required by § 13a-144. The commissioner was properly named in the complaint, however, and was provided with proper notice of the action. As in the case before us, the plaintiff argued that it merely had stated the defendant's name incorrectly. The defendant argued that the wrong entity had been named as defendant and that the court, therefore, had no subject matter jurisdiction. *Id.*, 350. We distinguished these two categories of error, stating that 'the first, involving a defendant designated by an incorrect

name, is referred to as "misnomer." It is a circumstantial defect anticipated by General Statutes § 52-123 that can be cured by an amendment. A misnomer must be distinguished from a case in which the plaintiff has misconstrued the identity of the defendant, rather than the legal nature of his existence. When the correct party is designated in a way that may be inaccurate but which is still sufficient for identification purposes, the misdesignation is [\*\*\*16] a misnomer. Such a misnomer does not prevent the exercise of subject matter jurisdiction if the defendant was actually served and knew he or she was the intended defendant.' [Lussier v. Dept. of Transportation, supra, 350]; see also 1 E. Stephenson, [Connecticut Civil Procedure (2d [\*\*704] Ed. 1970)] § 105e, p. 433 (designation of correct party in way which may be inaccurate [\*484] but which is still sufficient for identification purposes may be amended).

"Furthermore, we recently determined that an error in the process that failed to comply with a statutory mandate may be corrected under a remedial statute. In Concept Associates, Ltd. v. Board of Tax Review, [229 Conn. 618, 642 A.2d 1186 (1994)], the plaintiffs, who erroneously specified a return date that fell on a Thursday, sought to amend the return date to fall on a Tuesday, as required under General Statutes § 52-48. We concluded that amendment of process to correct a return date must be permitted as a remedial measure under General Statutes § 52-72. [Concept Associates, Ltd. v. Board of Tax Review, supra] 623. In addition, [\*\*\*17] we concluded that the language 'any court shall allow a proper amendment to civil process' is mandatory rather than directory and we directed the trial court to grant the plaintiff's request to amend process. Id., 626. Section 52-123 is a comparably worded, remedial statute to which the same principles apply. 1 E. Stephenson, supra, § 35, pp. 137-38

n.608.

"We, therefore, have refused to permit the recurrence of the inequities inherent in eighteenth century common law that denied a plaintiff's cause of action if the pleadings were technically imperfect. As Professor Edward L. Stephenson points out, remedial statutes such as § 52-123 were intended to soften the otherwise harsh consequences of strict construction under the common law: 'Over-technical formal requirements have ever been a problem of the common law, leading [legislative bodies] at periodic intervals to enact statutes . . . which, in substance, told the courts to be reasonable in their search for technical perfection.' [Id.] § 35, p. 137.

"In sum, we decline to interpret § 52-123 in so strict a manner as to deny the plaintiff the pursuit of its complaint. See, e.g., Hartford National Bank & Trust [\*\*485] Co. v. Tucker, 178 Conn. 472, 477-78, 423 A.2d 141 (1979), [\*\*\*18] cert. denied, 445 U.S. 904, 100 S. Ct.



1079, 63 L. Ed. 2d 319 (1980) (court should avoid interpreting rules and statutes so strictly that litigant is denied pursuit of its complaint due to mere circumstantial defects); Johnson v. Zoning Board of Appeals, 166 Conn. 102, 111, 347 A.2d 53 (1974) (court does not favor termination of proceedings without determination on merits); Greco v. Keenan, 115 Conn. 704, 705, 161 A. 100 (1932) (same)."

Andover Ltd. Partnership I v. Board of Tax Review, supra, 232 Conn. 396-400.

In this case, the court found that the intended plaintiff was Countrywide Home Loans, Inc., which was doing business under the trade name, America's, in this action, and that the defendant was not misled. Accordingly, I believe we should affirm the trial court's judgment. I therefore respectfully dissent.

---

End of Document


## Citing Decisions (63)

**Narrow by:**Analysis: Cited By


**Analysis:**Followed by (2), Harmonized by (1), Cited in Dissenting Opinion at (1), "Cited by" (63)

**Headnotes:**HN4 (32), HN3 (31), HN8 (28), HN7 (23), HN2 (19), HN10 (11), HN5 (5), HN6 (5), HN9 (5), HN1 (1)


### Connecticut Appellate Court

1. **Coldwell Banker Manning Realty, Inc. v. Cushman & Wakefield of Conn., Inc.**, 136 Conn. App. 683, 47 A.3d 394, 2012 Conn. App. LEXIS 332 
  - G** Followed by: 136 Conn. App. 683 p.694; 47 A.3d 394 p.401
  - B** Harmonized by: 136 Conn. App. 683 p.690; 47 A.3d 394 p.399
  - LB** Cited by: 136 Conn. App. 683 p.688; 47 A.3d 394 p.398


... fictitious or assumed business name, a trade name, is not a legal entity; rather, it is merely a description of the person or corporation doing business under that name. . . . Because the trade name of a legal entity does not have a separate legal existence, a plaintiff bringing an action solely in a trade name cannot confer jurisdiction on the court." (Citations omitted; internal quotation marks omitted.) **America's Wholesale Lender v. Pagano** , 87 Conn. App. 474 , 477 , 866 A.2d 698 (2005) ...

**Discussion:**  | **Court:** Conn. App. Ct. | **Date:** 2012 | **Headnotes:** HN2, HN3, HN4, HN6, HN7, HN8, HN10


---

2. **Chalikonda Enters. v. Northpoint Computer Sys., LLC**, 136 Conn. App. 560, 46 A.3d 308, 2012 Conn. App. LEXIS 319 
  - LB** Cited by: 136 Conn. App. 560 p.563; 46 A.3d 308 p.310


... Chalikonda established the plaintiff on July 7, 2008. On August 6, 2010, Chalikonda, as the plaintiff's president, registered the trade name IrisIntelli Solutions, Inc., in Stamford. The defendant argued that the court lacked subject matter jurisdiction because IrisIntelli is not a legal entity, citing **America's Wholesale Lender v. Pagano** , 87 Conn. App. 474 , 477 , 866 A.2d 698 (2005) , which states that "a plaintiff bringing an action solely in a trade name cannot confer jurisdiction on ...

**Discussion:**  | **Court:** Conn. App. Ct. | **Date:** 2012 | **Headnotes:** HN4

---

3. **America's Wholesale Lender v. Silberstein**, 87 Conn. App. 485, 866 A.2d 695, 2005 Conn. App. LEXIS 66 
  - G** Followed by: 87 Conn. App. 485 p.488; 866 A.2d 695 p.696
  - B** Cited in Dissenting Opinion at: 87 Conn. App. 485 p.489; 866 A.2d 695 p.697
  - LB** Cited by: 87 Conn. App. 485 p.486; 866 A.2d 695 p.695

... , Dranginis and Berdon , Js. In this opinion SCHALLER, J., concurred. BERDON , J., dissenting. DRANGINIS DRANGINIS , J. This appeal is similar to the appeal in **America's Wholesale Lender v. Pagano** , 87 Conn. App. 474 , 866 A.2d 698 , 2005 Conn. App. LEXIS 56 (2005) , which we released on the same date as this opinion. The dispositive issue is whether a corporation that brings an action solely in its trade name, without the corporation being named as a party, has standing so as ...

**Discussion:**  | **Court:** Conn. App. Ct. | **Date:** 2005 | **Headnotes:** HN3, HN8

## Other Connecticut Decisions

4. **Carlson Constr., LLC v. A&B Mech., LLC**, 2016 Conn. Super. LEXIS 530

**LB Cited by:**

... , our trade name regulation statute, requires legal entities doing business in this state under an assumed or fictitious name to file a trade name certification in the town in which such business is to be conducted prior to engaging in such business." **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 479 , 866 A.2d 698 (2005) . Section "35-1 does not provide for an independent cause of action, but rather, states that failure to comply with the requirements of Section 35-1 shall be ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Mar. 22, 2016 | **Headnotes:** HN3, HN8

5. **Conn. Yankee Realty, Inc. v. Garden Iron, LLC**, 2016 Conn. Super. LEXIS 578

**LB Cited by:**

... In addition, the lease was not between the instant parties but was between the plaintiff and the previous lessor. Nothing before the court suggests the parties in this action ever entered into a written agreement. The defendant's reliance on **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 866 A.2d 698 (2005) is misplaced. The issue in that case involved whether the plaintiff corporation could bring an action solely under a trade name. The court held that since a corporation is a legal ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Mar. 14, 2016 | **Headnotes:** HN2, HN3, HN4

6. **Lend Am. v. Macdougall**, 2016 Conn. Super. LEXIS 407

**LB Cited by:**

... a legal entity; rather, it is merely a description of the person or corporation doing business under that name . . . . Because the trade name of a legal entity does not have a separate legal existence, a plaintiff bringing an action solely in a trade name cannot confer jurisdiction on the court. (Citation omitted.) **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 477 , 866 A.2d 698 (2005) . A number of trial courts have held that a registered trade name is not a legal entity and a plaintiff ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Feb. 18, 2016 | **Headnotes:** HN4, HN7, HN8, HN10

7. **CED Techs. Int'l, Inc. v. Chen**, 2016 Conn. Super. LEXIS 307

**LB Cited by:**

... is distinguishable because the plaintiffs never registered the trade name that was a party to the agreement. This argument is now moot given that the plaintiff has registered the trade name referenced in the contract. 1 Had the plaintiff brought the case solely under a trade name, the court would not have jurisdiction. **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474 , 477 , 866 A.2d 698 (2005) ("Although a corporation is a legal entity with legal capacity to sue, a fictitious or assumed ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Feb. 16, 2016 | **Headnotes:** HN2, HN3, HN4

8. **Lexington Ins. Co. v. TJ Constr. Corp.**, 2015 Conn. Super. LEXIS 2260

**LB Cited by:**

... . "The object [of the registration requirement] is to enable a person dealing with another trading under a name not his own, to know the man behind the name, that he may know or make inquiry as to his

business character or financial responsibility . . ." (Internal quotation marks omitted.) **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 479 , 866 A.2d 698 (2005) . The present motion highlights the public policy necessitating the registration of trade names pursuant to §35-1 . TJ ...

**Discussion:** ■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Aug. 25, 2015 | **Headnotes:** HN8

---

9. **Brookdale Senior Living, Inc. v. TJ Constr. Corp.**, 2015 Conn. Super. LEXIS 2254

**LB** Cited by:

... . "The object [of the registration requirement] is to enable a person dealing with another trading under a name not his own, to know the man behind the name, that he may know or make inquiry as to his business character or financial responsibility . . ." (Internal quotation marks omitted.) **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 479 , 866 A.2d 698 (2005) . The present motion highlights the public policy necessitating the registration of trade names pursuant to §35-1 . TJ ...

**Discussion:** ■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Aug. 25, 2015 | **Headnotes:** HN8

---

10. **Mariani v. Town of Winsted**, 2015 Conn. Super. LEXIS 649

**LB** Cited by:

... Isaac, Admx. v. Mt. Sinai Hosp. , 3 Conn.App. 598 , 490 A.2d 1024 , cert denied 196 Conn. 807 , 494 A.2d 904 (1985) (suit bought by plaintiff who claimed to have been appointed as the administratrix of the decedent's estate when she had not), and **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 866 A.2d 698 (2005) (corporation brought suit solely in its trade name, without the corporation itself being named as a party). The plaintiff relies on several arguments. First, the plaintiff ...

**Discussion:** ■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Mar. 26, 2015 | **Headnotes:** HN8

---

11. **Jp Morgan Chase Bank Nat'l Ass'n v. Simoulidis**, 2013 Conn. Super. LEXIS 2880 ▲

**LB** Cited by:

... A trade name is one of the entities that cannot file a lawsuit. **America's Wholesale Lender v. Silberstein** , 87 Conn.App. 485 , 488-89 , 866 A.2d 695 (2005) . The defendants correctly cite that proposition of law and point the case to **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 477 , 866 A.2d 698 (2005) . The Pagano s successfully defended the plaintiff's foreclosure by noting that the lawsuit was commenced in the name of America 's Wholesale Lender, which is a trade name ...

**Discussion:** ■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Dec. 13, 2013 | **Headnotes:** HN4, HN8

---

12. **Hardy v. Global Inv.**, 2013 Conn. Super. LEXIS 2209 ⓘ

**LB** Cited by:

... in order to confer jurisdiction on the court the plaintiff must have an actual legal existence, that is he or it must be a person in law or a legal entity with legal capacity to sue." (Internal quotation marks omitted.) Isaac v. Mount Sinai Hospital , 3 Conn.App. 598 , 600 , 490 A.2d 1024 , cert. denied, 196 Conn. 807 , 494 A.2d 904 (1985) . Citing **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 866 A.2d 698 (2005) , the defendant likens the situation here to one in which a ...

**Discussion:** ■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Oct. 3, 2013 | **Headnotes:** HN2, HN3, HN4, HN8

---

13. **Vermont Mut. Ins. Co. v. Troiano Oil Co.**, 2013 Conn. Super. LEXIS 934

**LB Cited by:**

... The defendant relies on several cases to support its claim that a trade name is not a legal entity and therefore cannot be sued, i.e., in *Isaac v. Mount Sinai Hospital*, 3 Conn.App. 598, 600, 490 A.2d 1024 (1985); **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 475, 866 A.2d 698 (2005). The cases relied upon by the defendant are inapposite to the present case as each involved a plaintiff seeking to institute in its trade name capacity an action against a defendant. Here, ...

**Discussion:** ■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Apr. 25, 2013 | **Headnotes:** HN3, HN4, HN5, HN6, HN8, HN9

14. **Bavedas v. Middlesex Health Sys.**, 2012 Conn. Super. LEXIS 3209 **I**

**LB Cited by:**

... involved the court's jurisdiction over the subject matter of a suit commenced by an estate, an entity that lacked the capacity to sue, such that the issue was one of the plaintiff's standing. See *id.*, 601. It is therefore inapposite to the present matter. Compare with **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474, 478, 866 A.2d 698 (2005) (declining to extend § 52-123 to plaintiff that used fictitious name for itself when commencing action); see also *Greco Construction* ...

**Discussion:** ■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Dec. 4, 2012 | **Headnotes:** HN6

15. **Teh v. Gandhi**, 2012 Conn. Super. LEXIS 2141 **I**

**LB Cited by:**

... Supreme Court has held in numerous circumstances that the mislabeling or misnaming of a defendant constituted a circumstantial error that is curable under §52-123 when it did not result in prejudice to either party." **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 478, 866 A.2d 698 (2005). See also *Commissioner of Human Resources v. Mitchell*, Superior Court, judicial district of Fairfield, Docket No. 92 0292460 (July 1, 1992, Karazin, J.) [7 Conn. L. Rptr. 751, 1992 Conn. ...

**Discussion:** ■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Aug. 20, 2012 | **Headnotes:** HN7

16. **Pinos v. Kanabis**, 2012 Conn. Super. LEXIS 1726 **I**

**LB Cited by:**

... had actual notice of the institution of the action; (2) whether the proper defendant knew or should have known that it was the intended defendant in the action; and (3) whether the proper defendant was in any way misled to its prejudice. the mislabeling or misnaming of a defendant constitute[s] a circumstantial error that is curable under §52-123 when it [does] not result in prejudice to either party.' **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 478, [866 A.2d 698] (2005) ...

**Discussion:** ■■■■■ | **Court:** Conn. Super. Ct. | **Date:** July 3, 2012 | **Headnotes:** HN7

17. **Bria v. Powers**, 2012 Conn. Super. LEXIS 992 **I**

**LB Cited by:**

... Supreme Court has held in numerous circumstances that the mislabeling or misnaming of a defendant constituted a circumstantial error that is curable under §52-123 when it did not result in prejudice to either party." **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 478, 866 A.2d 698 (2005). "[T]he policy of the law today is to correct not to dismiss this type of defect and permit plaintiffs

to amend, by means of §52-72 ." Ryan v. Depamphilis , Superior Court, judicial district ...

**Discussion:** ■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Apr. 11, 2012 | **Headnotes:** HN7

---

18. **Doe v. Yale Univ.**, 2012 Conn. Super. LEXIS 725

**LB** Cited by:

... appearance had been accepted by the court on behalf of the defendant. The plaintiff's request was to substitute the plaintiff's true name for that of Jane Doe. The defendant then immediately filed the present motion to dismiss for lack of subject matter jurisdiction and/or personal jurisdiction. The record is clear that the plaintiff did not follow the proper procedure under Practice Book §11-20A(h) . The defendant cites **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2005) ...**

**Discussion:** ■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Mar. 14, 2012 | **Headnotes:** HN2, HN4

---

19. **US Bank, N.A. v. Sekulski**, 2012 Conn. Super. LEXIS 628 ⓘ

**LB** Cited by:

... . The defendant also asserts that neither an amended complaint nor any other pleading was ever filed providing the defendant with notice as to who was suing him, its address, place of business, state of residence or any other identifying information. In support of his argument, the defendant relies on **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2005)** and **Coldwell Banker Manning Realty, Inc. v. Computer Sciences Corp ., Superior Court, judicial district of Hartford, ...**

**Discussion:** ■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Mar. 2, 2012 | **Headnotes:** HN5, HN7

---

20. **Evans v. Regency at Prospect**, 2012 Conn. Super. LEXIS 558 ⓘ

**LB** Cited by:

... This statute requires people doing business in this state under an assumed or fictitious name to file a trade name certification in the town in which such business is conducted prior to engaging in such business. **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 477 , 866 A.2d 698 (2005)** . Indeed, the purpose of the trade name regulation is primarily "to protect [those doing business with the trade name] by giving them constructive notice of the contents of the trade name certificate." ...

**Discussion:** ■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Mar. 1, 2012 | **Headnotes:** HN3, HN8

---

21. **Washington v. Tracey**, 2011 Conn. Super. LEXIS 1994

**LB** Cited by:

... Practice Book §143 , which is now §10-31 . DISCUSSION The defendant argues that it is not a proper party to the lawsuit because the plaintiff brought suit against its trade name. To support its argument, the defendant relies on **America Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2005)** , in which it was held that a suit cannot be brought by or on behalf of a trade name because a trade name "is not an entity with legal capacity to sue." Id ., 475 . The Appellate Court noted ...

**Discussion:** ■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Aug. 3, 2011 | **Headnotes:** HN2, HN3, HN4

---

22. **Custom Midget Club, Inc. v. Ferreira**, 2011 Conn. Super. LEXIS 2076

**LB** Cited by:

... positions lack any authority to perform any corporate acts. The plaintiffs refuse to recognize the

legitimacy of the rump club over which the defendants, in the plaintiffs' view, pretend to exercise power. That is, the plaintiffs specifically allege that no such corporate entity exists. Not every entity or organization is sui juris. For example, a business operating under a trade name cannot sue under that trade name. **America's Wholesale Lender v. Pagano, 87 Conn.App. 474, 866 A.2d 698 (2005)** ...

**Discussion:** ■■■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** July 28, 2011 | **Headnotes:** HN4, HN8

23. **Indymac Fed. Bank v. Trudeau**, 2011 Conn. Super. LEXIS 6098

**LB Cited by:**

... The court clarified that an assignee has the right to sue in his own name or conversely, "to maintain an action in the name of his assignor." *Id.* at 184 . Thus, One West Bank, as the assignee, and proper plaintiff-in-interest, had standing and could rightfully pursue the foreclosure action in the name of the assignor. See **America's Wholesale Lender v. Pagano, 87 Conn. App. 474, 481 n.2, 866 A.2d 698, (2005)** (the assignee of a note may bring an action either in its name or the name ...

**Court:** Conn. Super. Ct. | **Date:** July 5, 2011

24. **Flynn v. Scaramela**, 2011 Conn. Super. LEXIS 1782 ⓘ

**LB Cited by:**

... when it did not result in prejudice to either party . . . This is true even when the plaintiff used only the defendant's trade name [which is not a legal entity] and not the defendant's legal name.' (Citations omitted; emphasis in original.) **America's Wholesale Lender v. Pagano, 87 Conn.App. 474, 478, 866 A.2d 698 (2005)** ." (Emphasis in original.) *Id.* , 845, 2008 Conn. Super. LEXIS 1789 . Accordingly, Judge Zoarski concluded that a party's capacity to be sued "raises the issue of the ...

**Discussion:** ■■■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** June 28, 2011 | **Headnotes:** HN7

25. **Chalikonda Enters. v. Northpoint Computer Sys.**, 2011 Conn. Super. LEXIS 5405

**LB Cited by:**

**Court:** Conn. Super. Ct. | **Date:** May 24, 2011 **Headnotes**HN4

- 
26. **Greco Constr. v. Edelman**, 2011 Conn. Super. LEXIS 5404

**LB Cited by:**


... writ of summons. While devoting most of the opinion to the error in the defendant's name the court found a circumstantial defect in the fact that the action was brought in an incorrect corporate name. The court said "when the correct party is designated in a way that may be inaccurate, but which is still sufficient for identification purposes, the misdesignation is a misnomer." *Id.* at 414 . In February of the same year the court decided **American Wholesale Lender v. Pagano, 87 Conn. App. 474** ...

**Discussion:** ■■■■■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** May 24, 2011 | **Headnotes:** HN2, HN4, HN7, HN10

27. **Chalikonda Enters. v. Northpoint Computer Sys.**, 2011 Conn. Super. LEXIS 5403


**LB Cited by:**

**Court:** Conn. Super. Ct. | **Date:** May 24, 2011 **Headnotes**HN4

28. **Greco Constr. v. Edelman**, 2011 Conn. Super. LEXIS 1426 

**LB** Cited by:

... "when the correct party is designated in a way that may be inaccurate, but which is still sufficient for identification purposes, the misdesignation is a misnomer." Id . at 414 . In February of the same year the court decided **American Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 866 A.2d 698 . In this case a corporate entity named " Countrywide Home Loans, Inc. " commenced a foreclosure action in the name of " America 's Wholesale Lender." The writ of summons did not list Countrywide Home ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** May 24, 2011 | **Headnotes:** HN2, HN4, HN7, HN10

29. **Chalikonda Enters. v. Northpoint Computer Sys., LLC**, 2011 Conn. Super. LEXIS 1421 

**LB** Cited by:


... . Entry 103.00) Ex. C. Chalikonda Enterprises, through Mr. Chalikonda as its president, filed a certificate registering a trade name of Irisintelli Solutions, Inc. in Stamford on August 6, 2010. Id . Ex.D. II. Discussion Northpoint contends that this court lacks jurisdiction because the plaintiff Irisintelli is not a legal entity. Northpoint relies on **America's Wholesale Lender v. Pagano** , 87 Conn. App. 474 , 866 A.2d 698 (2005) which states clearly that HN3 A plaintiff must have an actual ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** May 24, 2011

30. **State v. Lamar Adver. of Hartford**, 2011 Conn. Super. LEXIS 846 

**LB** Cited by:

... of the record, the court is without jurisdiction." (Internal quotation marks omitted.) Caruso v. Bridgeport , 285 Conn. 618 , 627 , 941 A.2d 266 (2008) . II. ANALYSIS In support of its Motion, the defendant relies principally upon two recent decisions from our Appellate Court, **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 866 A.2d 698 (2005) and America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 866 A.2d 695 (2005) , in which it was held that HN5 A suit cannot ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Apr. 5, 2011 | **Headnotes:** HN2, HN3, HN4, HN8, HN9

31. **Bailey Hill Lending Trust v. Eramian**, 2011 Conn. Super. LEXIS 388 

**LB** Cited by:

... because "the reach of these types of savings provisions is limited to situations where the erroneously-named plaintiff is, itself, a legal entity capable of starting legal actions." One of the cases cited for that proposition, **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 866 A.2d 698 (2005) is inapposite. The substitution of plaintiffs in that case was not pursuant to §52-109 , but was a routine substitution of an assignee of the note and mortgage in a foreclosure case. The purpose ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Feb. 22, 2011 | **Headnotes:** HN3

32. **Coldwell Banker Manning Realty, Inc. v. Computer Scis. Corp.**, 2010 Conn. Super. LEXIS 2915 


**LB** Cited by:

... Secretary of the State's Office . Instead, it argues that the true corporate name is Manning Realty,



Inc. , and that the inclusion of the phrase " Coldwell Banker " is a circumstantial defect within the meaning of § 52-123 . In **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2005)** , our Appellate Court drew the HN6 Connecticut courts have a bright line rule that a plaintiff that has used a fictitious name for itself when commencing an action may not avail itself ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Nov. 12, 2010 | **Headnotes:** HN2, HN3, HN4, HN7, HN8, HN10

- 
33. **Coldwell Banker Manning Realty, Inc. v. Cushman & Wakefield of Conn., Inc.**, 2010 Conn. Super. LEXIS 2912 

**LB Cited by:**

... Secretary of the State's Office . Instead, it argues that the true corporate name is Manning Realty, Inc., and that the inclusion of the phrase "Coldwell Banker" is a circumstantial defect within the meaning of § 52-123 . In **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2005)** , our Appellate Court drew HN6 Connecticut courts have a bright line rule that a plaintiff that has used a fictitious name for itself when commencing an action may not avail itself of Conn. ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Nov. 12, 2010 | **Headnotes:** HN2, HN3, HN4, HN7, HN8, HN10

- 
34. **Irisintelli Solutions, Inc. v. Northpoint Computer Sys., LLC**, 2010 Conn. Super. LEXIS 2748 

**LB Cited by:**

... . Entry 103.00) Ex. C. Chalikanda Enterprises, through Mr. Chalikanda as its president, filed a certificate registering a trade name of Irisintelli Solutions, Inc. in Stamford on August 6, 2010. Id . Ex D. II. Discussion Northpoint contends that this court lacks jurisdiction because the plaintiff Irisinteili is not a legal entity. Northpoint relies on **America's Wholesale Lenders v. Pagano , 87 Conn. App. 474 , 866 A.2d 698 (2005)** which states clearly that a plaintiff must have an actual ...


**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Oct. 21, 2010 | **Headnotes:** HN4, HN6, HN7, HN9

- 
35. **Reilly v. Joni's Childcare & Preschool**, 2010 Conn. Super. LEXIS 1206 

**LB Cited by:**

... The situation where the defendant is sued under a fictitious business name is distinguishable from the situation where the plaintiff attempts to bring an action under its assumed name. While "a plaintiff bringing an action in a trade name cannot confer jurisdiction on the court"; **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 477 , 866 A.2d 698 (2005)** ; our courts have held in numerous circumstances that the mislabeling or misnaming of a defendant is not necessarily fatal where ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** May 13, 2010 | **Headnotes:** HN3, HN4, HN7, HN8

- 
36. **Palmeri v. Metlife Ins. Co.**, 2010 Conn. Super. LEXIS 897 

**LB Cited by:**

... , may be corrected by amendment. The plaintiff further cites cases where courts have permitted amendments to pleadings under § 52-123 where a misnomer of the defendant constituted

circumstantial error that was not prejudicial to either party. See, e.g., **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 478, 866 A.2d 698 (2005). Standard Fire contends that the plaintiff's error cannot be cured by amendment or substitution because the plaintiff failed to serve the correct party.

...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Apr. 9, 2010 | **Headnotes:** HN7

37. **SCG Capital Corp. Profit Sharing Trust v. Green**, 2010 Conn. Super. LEXIS 787 

**LB** Cited by:


... . Because a decedent's estate is not sui juris, the daughter's filing was a nullity which required dismissal without consideration of her motion to substitute herself in a representative capacity once she was so appointed, Id., 602. Similarly, in **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 866 A.2d 698 (2005), a plaintiff mistakenly brought suit under a trade name rather than its true, corporate name. "Although a corporation is a legal entity with legal capacity to sue, a fictitious ...


**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Mar. 25, 2010 | **Headnotes:** HN2, HN3

38. **Atl. Credit & Fin., Inc. v. Langdo**, 2009 Conn. Super. LEXIS 3449

**LB** Cited by:


... permits the addition of a proper plaintiff where the action was "commenced in the name of the wrong person," through mistake. It is abundantly clear that the parent corporation in this case mistakenly sued in its own name when the proper plaintiff ought to have been its subsidiary. The defendant places great reliance in its argument on the case of **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 866 A.2d 698 (2005), to support its position that § 52-109, and its counterpart Rule ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Dec. 15, 2009 | **Headnotes:** HN3, HN5

39. **Davila v. Morris**, 2009 Conn. Super. LEXIS 3318 

**LB** Cited by:

... a consequence, there was no legally recognized entity for which there could be a substitute." Id., 602. The holding in *Isaac* has been applied by the Appellate Court more recently in situations where a plaintiff commences an action under a fictitious trade name. See **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 477, 866 A.2d 698 (2005) HN4 Because the trade name of a legal entity does not have a separate legal existence, a plaintiff bringing action solely in the trade name ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Dec. 4, 2009 | **Headnotes:** HN2, HN4, HN5, HN6, HN7, HN10

40. **McGhee-Fichtner v. Kusek**, 2009 Conn. Super. LEXIS 3078 

**LB** Cited by:

... requirement] is to enable a person dealing with another trading under a name not his own, to know the man behind the name, that he may know or make inquiry as to his business character or financial responsibility." (Citations omitted; internal quotation marks omitted.) **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 479, 866 A.2d 698 (2005). Therefore, a trade name, by itself, cannot be a named plaintiff because it is merely a fictitious name. Accordingly, this court would not ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Nov. 12, 2009 | **Headnotes:** HN3, HN4, HN8

41. **Ventura Apts. v. Abucewicz**, 2008 Conn. Super. LEXIS 3351

**LB** Cited by:

... a fictitious or assumed business name, a trade name, is not a legal entity; rather, it is merely a description of the person or corporation doing business under that name . . . Because the trade name of a legal entity does not have a separate legal existence, a plaintiff bringing an action solely in a trade name cannot confer jurisdiction on the court." (Citations omitted; internal quotation marks omitted.) **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 477 , 866 A.2d 698 (2005) ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Dec. 5, 2008

42. **Murphy v. City of New Haven**, 2008 Conn. Super. LEXIS 1789 ⓘ

**LB** Cited by:

... when it did not result in prejudice to either party . . . This is true even when the plaintiff used only the defendant's trade name [which is not a legal entity] and not the defendant's legal name." (Citations omitted; emphasis in original.) **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 478 , 866 A.2d 698 (2005) . This certainly suggests that the issue does not pertain to HN8 The subject matter jurisdiction of the court implicates the authority of the court to adjudicate the type ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** July 9, 2008 | **Headnotes:** HN3, HN4, HN7, HN8

43. **Hartford Apts. v. Walton**, 2008 Conn. Super. LEXIS 429 ⓘ

**LB** Cited by:

... sue, a fictitious or assumed business name, a trade name, is not a legal entity; rather, it is merely a description of the person or corporation doing business under that name. Because the trade name of a legal entity does not have a separate legal existence, a plaintiff bringing an action solely in a trade name cannot confer jurisdiction on the court." (Citations omitted; internal quotation marks omitted.) **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 477 , 866 A.2d 698 (2005) ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Feb. 22, 2008 | **Headnotes:** HN2, HN3, HN4

44. **Simpson v. D&L Tractor Trailer Sch.**, 2007 Conn. Super. LEXIS 3363 ⓘ

**LB** Cited by:

... has brought suit under a trade name, thereby implicating policy concerns such as protecting consumers and creditors from the potential fraud that can arise when legal entities do business under assumed names. See **America's Wholesale Lender v. Pagano** , 87 Conn.App. 474 , 477-80 , 866 A.2d 698 (2005) (assessing Connecticut case law and drawing a sharp line between cases where defendants were identified by trade name and where plaintiffs sued as fictitious entities); **America's Wholesale** ...


**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Dec. 19, 2007 | **Headnotes:** HN3, HN4, HN8, HN9

45. **Erikson Group v. Berman**, 2007 Conn. Super. LEXIS 2963 ⓘ

**LB** Cited by:

... it shall not apply to any limited liability provided the limited liability company filed articles of


organization or registered with the Secretary of State and conducts business under the name so registered with the Secretary of State. Section 35-1 is primarily intended to "protect [those doing business with the trade name] by giving them constructive notice of the contents of the trade name certificate." **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474, 479, 866 A.2d 698 (2005) ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Nov. 1, 2007 | **Headnotes:** HN8

46. **Coulombe v. Aaron Manor, Inc.**, 2007 Conn. Super. LEXIS 2240 

**LB Cited by:**

... designation [d/b/a] ... is merely descriptive of the person who does business under some other name." (Internal quotation marks omitted.) **Bauer v. Pounds**, 61 Conn.App. 29, 36, 762 A.2d 499 (2000). Accordingly, this court does not have subject matter jurisdiction over an action that is brought by or against a party in its trade name. See **American Wholesale Lender v. Pagano**, 87 Conn.App. 474, 477, 866 A.2d 698 (2005); **Greenwood v. Thomas**, Superior Court, judicial district of Hartford, ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Aug. 20, 2007 | **Headnotes:** HN3, HN7, HN8

47. **CIT Group v. Quality Design & Mfg., LLC**, 2007 Conn. Super. LEXIS 1091 

**LB Cited by:**


... , Docket No. CV 01 0446146 (May 12, 2003, Hadden, J.T.R.). This analysis is consistent with the public policy behind enacting the statute, that is, "protecting consumers and creditors from the potential fraud that can arise when legal entities do business under assumed names that may or may not be revealed to those consumers or creditors ..." **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 480, 866 A.2d 698 (2005). In both **Bordieri** and **Carbonella**, the court held that the plaintiffs ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** May 3, 2007 | **Headnotes:** HN8

48. **54-56 Broadway, LLC v. Smithfield Assoc., LLC**, 2007 Conn. Super. LEXIS 646 

**LB Cited by:**

... "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." (Internal quotation marks omitted.) **Lewis v. Planning & Zoning Commission**, 275 Conn. 383, 390, 880 A.2d 865 (2005). "A lack of subject matter jurisdiction . . . requires dismissal, regardless of whether prejudice exists." **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 480, 866 A.2d 698 (2005). HN2 The jurisdiction of the trial court in summary process actions ...

**Discussion:**  | **Court:** Conn. Super. Ct. | **Date:** Mar. 5, 2007 | **Headnotes:** HN2, HN3, HN4, HN7, HN10

49. **Aesthetic Treatment Ctrs., Inc. v. Aesthetic Lasers, Inc.**, 2007 Conn. Super. LEXIS 134 

**LB Cited by:**

... of the claim, due to the designation of "Catherine Hinds Manufacturing" as the defendant. Bioesthetic Corporation argues that the plaintiff cannot institute suit against a trade name, and claim that the designation was a misnomer. It cites the Appellate Court case of **America's Wholesale Lender v. Pagano**, 87 Conn.App. 474, 866 A.2d 698 (2005) in support of the proposition. Pagano involved an action brought by a trade name, rather than in the name of the corporation, Countrywide Home Loans, ...

**Discussion:** ■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Jan. 16, 2007 | **Headnotes:** HN3, HN8

50. **Sovereign Bank v. Silberstein**, 2006 Conn. Super. LEXIS 3688

**LB Cited by:**

... Countrywide Home Loans , located in Texas . DISCUSSION America 's Wholesale Lender is the trade name of Countrywide Home Loans, Inc. (Countrywide) . America's Wholesale Lender v. Silberstein , 87 Conn.App. 485 , 866 A.2d 695 (2004) and **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2004)**. HN1 An action must be brought in the name of a corporation and not the trade name. An action must be brought in the name of the corporation and not the trade name. HN2 In a ...

**Discussion:** ■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Dec. 5, 2006 | **Headnotes:** HN3, HN8

51. **Whyte v. Williams**, 2006 Conn. Super. LEXIS 1473 ⓘ

**LB Cited by:**

... Concept Associates, Ltd. v. Board of Tax Review, supra ] 623 . . . [T]he language ' [a]ny court shall allow a proper amendment to civil process' is mandatory rather than directory" and a trial court must grant a plaintiff's request to amend process. Id. , 626 ." **America's Wholesale Lender v. Pagano , 87 Conn. App. 474 , 484 , 866 A.2d 698 (2005)** ; Kobyluck v. Planning & Zoning Commission, 84 Conn. App. 160 , 167 , 852 A.2d 826 (2004). The Supreme Court in Concept Associates Ltd., ...

**Discussion:** ■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** May 17, 2006

52. **Seidel v. City of Waterbury**, 2006 Conn. Super. LEXIS 1250 ⓘ

**LB Cited by:**

... "Whenever the absence of jurisdiction is brought to the notice of the court or tribunal, cognizance of it must be taken and the matter passed upon before it can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction." (Internal quotation marks omitted.) **America's Wholesale Lender v. Pagano , 87 Conn. App. 474 , 476 , n.4, 866 A.2d 698 (2005)**. "Summary judgment may be granted where the claim is barred by the statute of limitations." Doty v. Mucci, ...

**Discussion:** ■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Apr. 27, 2006 | **Headnotes:** HN1

53. **First Franklin Fin. Corp. v. Davis**, 2006 Conn. Super. LEXIS 1010 ⓘ

**LB Cited by:**

... is a remedial statute and therefore is to be applied liberally, the mistake made by the plaintiff in this matter rises beyond the level of those defects contemplated by the statute and it is therefore inapplicable. See **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2005)** . For the foregoing reasons the court finds it has no subject matter jurisdiction over the instant action and it is therefore ordered dismissed. BY THE COURT Shaban , J. ...

**Discussion:** ■■■■■■ | **Court:** Conn. Super. Ct. | **Date:** Mar. 24, 2006 | **Headnotes:** HN5

54. **Century 21 Access Am. v. McGregor-Mclean**, 2005 Conn. Super. LEXIS 1846 ⓘ

**LB Cited by:**

... can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction."

Schaghticoke Tribal Nation v. Harrison, 264 Conn. 829 , 839 n.6, 826 A.2d 1102 (2003) . The defendant relies exclusively on **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2005)** to support its argument that the case must be dismissed for lack of subject matter jurisdiction. The defendant argues that the present case is identical to America 's. The plaintiff ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** July 20, 2005 | **Headnotes:** HN2, HN3, HN4, HN7, HN8, HN10

55. **Century 21 Access Am. v. Garcia**, 2005 Conn. Super. LEXIS 1891 ⓘ

**LB Cited by:**

... PLAINTIFF SHOULD BE PERMITTED TO SUBSTITUTE PROPER PARTY The defendant claims that the court lacks subject matter jurisdiction, because the action was initiated in the name of a fictitious entity. She cites the Appellate Court decision in **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2005)** in support of her claim. In Pagano , a divided court held that the plaintiff could not substitute the party in whose name a mortgage had been negotiated, Countrywide Home Loans, ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** June 24, 2005 | **Headnotes:** HN7, HN10

56. **Gregory v. Ga. Pac. Corp.**, 2005 Conn. Super. LEXIS 1416 ⓘ

**LB Cited by:**

... because Joseph Gregory, assuming he was a minor, never possessed the legal capacity to sue on his own. As a result, Joseph Gregory did not have the authority to commence and does not have the authority to maintain this action. An analogous issue was addressed recently in **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2005)** . Therein, the court had to determine "whether a corporation that brings an action solely in its trade name, without the corporation itself being ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** May 19, 2005 | **Headnotes:** HN2, HN3, HN4, HN8, HN10

57. **Ryan v. Depamphilis**, 2005 Conn. Super. LEXIS 1178 ⓘ

**LB Cited by:**

... Weiss v. Weiss , Superior Court, docket no. 0065932S. In each of the cases cited above which involve a correction of a circumstantial error, the court denied a motion to dismiss and permitted an amendment of the complaint. In **America's Wholesale Lender v. Pagano , 87 Conn.App. 474 , 866 A.2d 698 (2005)**, the court stated: We recognize that this court as well as our Supreme Court has said in numerous circumstances that the mislabeling or misnaming of a defendant constitute a circumstantial ...

**Discussion:** ██████████ | **Court:** Conn. Super. Ct. | **Date:** Apr. 28, 2005 | **Headnotes:** HN7

**2nd Circuit - U.S. District Courts**

58. **TicketNetwork, Inc. v. Darbouze**, 133 F. Supp. 3d 442, 2015 U.S. Dist. LEXIS 126400 ⓘ

**LB Cited by:** 133 F. Supp. 3d 442 p.450

... 762 A.2d 499 , 503 (Conn. App. Ct. 2000)) ; Pacheco v. Joseph McMahon Corp. , 698 F. Supp.2d 291 , 295 (D. Conn. 2010) (" [T]he trade name of a legal entity does not have a separate legal existence." ) (citing **America's Wholesale Lender v. Pagano , 87 Conn. App. 474 , 477 , 866 A.2d 698 (Conn. App. Ct. 2005)**) ; Trustees of the Mason Tenders, Dist. Council Welfare Fund, Pension

Shepard's®: America's Wholesale Lender v. Pagano, 87 Conn. App. 474

Fund, Annuity Fund and Training Prog. Fund v. Faulkner , 484 F. Supp.2d 254 , 257 (S.D.N.Y. 2007) ("Doing ...

**Discussion:**  | **Court:** D. Conn. | **Date:** 2015 | **Headnotes:** HN3, HN4, HN8

59. **Corsair Special Situations Fund, L.P. v. Engineered Framing Sys.**, 2013 U.S. Dist. LEXIS 138204



**LB Cited by:**

... (1927); **Am.'s Wholesale Lender v. Pagano** , 87 Conn. App. 474 , 477-78 , 866 A.2d 698 (2005) . 8 The liberal application of misnomer, however, cuts only one way. Suit brought against a trade name is easily explained by the plaintiff's ignorance of the identity of the underlying entity. Permitting a plaintiff to amend its complaint in these cases serves the broad remedial purpose of section 52-123 . See **Am.'s Wholesale Lender v. Pagano** , 87 Conn. App. 474 , 477-78 , 866 A.2d 698 (2005) ...

**Discussion:**  | **Court:** D. Conn. | **Date:** Sept. 26, 2013 | **Headnotes:** HN3, HN4, HN7, HN8

60. **Pacheco v. Joseph McMahon Corp.**, 698 F. Supp. 2d 291, 2010 U.S. Dist. LEXIS 28579 ▲

**LB Cited by:** 698 F. Supp. 2d 291 p.295

... legal entity with legal capacity to sue, a fictitious or assumed business name, a trade name, is not a legal entity; rather, it is merely a description of the person or corporation doing business under that name. . . . Because the trade name of a legal entity does not have a separate legal existence, a plaintiff bringing an action solely in a trade name cannot confer jurisdiction on the court." **America's Wholesale Lender v. Pagano** , 87 Conn. App. 474 , 477 , 866 A.2d 698 (Conn. App. 2005) ...

**Discussion:**  | **Court:** D. Conn. | **Date:** 2010 | **Headnotes:** HN2, HN3, HN4

61. **In re Heating Oil Partners**, 2010 U.S. Dist. LEXIS 9900 Ⓐ

**LB Cited by:**

... GMA Yacht Sales v. Skagit Marine Distributing, Inc ., 2000 Conn. Super. LEXIS 2486 , 2000 WL 1475551 , at \* 1 (Conn. Super. 2000) . Generally, an action may not be maintained with a mere trade name or with no legal personality as plaintiff. Id.; see also **America's Wholesale Lender v. Pagano** , 87 Conn. App. 474 , 477 , 866 A.2d 698 (2005) . Similarly, an action may not be maintained against a trade name as an entity because such a proceeding is a nullity. GMA Yacht Sales , 2000 Conn. ...

**Discussion:**  | **Court:** D. Conn. | **Date:** Feb. 5, 2010 | **Headnotes:** HN2, HN3, HN4

62. **O'Keefe & Assoc. v. Theme Co-Op Promotions, Inc.**, 2009 U.S. Dist. LEXIS 64332

**LB Cited by:**

... Connecticut courts have permitted amendments to pleadings and judgments under section 52-123 , stating that "the mislabeling or misnaming of a defendant constitute[s] a circumstantial error that is curable under § 52-123 when it d[oes] not result in prejudice to either party." **America's Wholesale Lender v. Pagano** , 87 Conn. App. 474 , 478 , 866 A.2d 698 (2005) (emphasis in original); see also, e.g., Maulucci v. St. Francis Hospital & Medical Center Foundation, Inc ., 1996 Conn. ...

**Discussion:**  | **Court:** D. Conn. | **Date:** July 27, 2009 | **Headnotes:** HN7

63. **Andreoni v. Forest City Enters.**, 660 F. Supp. 2d 254, 2009 U.S. Dist. LEXIS 52708 ⓘ

**LB** Cited by: 660 F. Supp. 2d 254 p.259

... stated that "Sterling Glen of Stamford was not organized as a corporate entity. It was created as a d/b/a for FC Stamford II LLC." (Defs.' Interrogatory Responses, Att. 1 to Pl.'s Reply, at 16 (Interrogatory 24).) HN8 Under Connecticut law, a fictitious or assumed business name a d/b/a is not a legal entity. Under Connecticut law, as "a fictitious or assumed business name" a d/b/a "is not a legal entity." **America's Wholesale Lender v. Pagano , 87 Conn. App. 474 , 477 , 866 A.2d 698 (2005) ...**

**Discussion:** ██████████ | **Court:** D. Conn. | **Date:** 2009 | **Headnotes:** HN3, HN9



## Other Citing Sources: (32)

### Annotated Statutes

1. **Conn. Gen. Stat. sec. 35-1**

**Content:** Statutes

2. **Conn. Gen. Stat. sec. 52-45a**

... Where a mortgagee brought a foreclosure action in its trade name rather than its legal corporate name, the court lacked subject matter jurisdiction since the mortgagee initiated the lawsuit as a fictitious entity with no legal existence or standing to sue. **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474 , 866 A.2d 698 , 2005 Conn. App. LEXIS 56 (Conn. App. Ct. 2005) . Civil Procedure: Parties: Fictitious Names 44. As the appellate court concluded that plaintiff corporation's use of ...

**Content:** Statutes

3. **Conn. Gen. Stat. sec. 52-123**

... did not apply to cure the mortgagee's misnaming of itself as the plaintiff in the action, since the mortgagee initiated the lawsuit as a fictitious entity with no legal existence or standing to sue, and thus the court lacked jurisdiction to consider the merits of the action. **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474 , 866 A.2d 698 , 2005 Conn. App. LEXIS 56 (Conn. App. Ct. 2005) . Civil Procedure: Parties: Fictitious Names 45. As the appellate court concluded that plaintiff corporation's ...

**Content:** Statutes

### Briefs

4. **ROCK v. STATE / UNIV. OF CONNECTICUT**, 2014 CT S. Ct. Briefs 19465, 2015 CT S. Ct. Briefs LEXIS 179

... existence, the authority to sue and be sued. It would overturn years of precedent. As the Appellate Court has explained, a trade name that is affixed to a legal entity does not have the standing to sue and does not perfect a merger of the two. They remain legally separate. The underlying corporation is a legal entity with the power to sue. The trade name is merely a label that has no standing to sue or be sued. **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474 , 477 , 866 A.2d 698 (2005). ...

**Content:** Court Documents | **Date:** Sept. 11, 2015

5. **INVESTMENT ASSOCS. v. SUMMIT ASSOCS.**, 2012 CT S. Ct. Briefs 18910, 2012 CT S. Ct. Briefs LEXIS 93

... of the decedent's estate. After learning of the defect, the plaintiff was formally appointed administratrix of the decedent's estate and moved to substitute, in her capacity as administratrix, as party plaintiff. The action was dismissed for lack of subject matter jurisdiction because the estate, itself, was not a legal entity capable of initiating the lawsuit. The Isaac rule was applied in the context of corporate plaintiffs in **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474 (2005), ...

**Content:** Court Documents | **Date:** Apr. 18, 2012

6. **J.E ROBERT CO. v. SIGNATURE PROPS.**, 2011 CT S. Ct. Briefs 19050, 2011 CT S. Ct. Briefs LEXIS 162

... and did not involve the misidentification of a party that had a justiciable interest in this action. J.E. Robert did not inaccurately name itself, instead it intentionally commenced a foreclosure action in its own name when it had no interest in the note or mortgage. Since this is not a situation where the intended plaintiff was misnamed, there was no circumstantial error and § 52-123 does not apply. See, generally, **American Wholesale Lender v. Pagano**, 87 Conn. App. 474 , 866 A.2d 698 (2005) ...

**Content:** Court Documents | **Date:** Sept. 29, 2011

7. **INVESTMENT ASSOCIATES v. SUMMIT ASSOCIATES, INC., ET AL.**, 2011 CT App. Ct. Briefs 32227, 2011 CT Sup. Ct. Briefs LEXIS 28

... There is no dispute between the parties that, at common law, a joint venture could not maintain a lawsuit. See Pl. Br. at 4-5 (claiming that joint venture's ability to bring suit based on right of partnership to bring suit by statute or court rule); Def. Br. at 15-16 (citing *Fidelity Trust Co. v. BVD Associates*, 196 Conn. 270 (1985); **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474 (2005); *Isaac v. Mount Sinai Hospital*, 3 Conn. App. 598 (1985); *Scott Co. of Cal. v. Enco Cost. Co.*, ...

**Content:** Court Documents | **Date:** Mar. 7, 2011

8. **INVESTMENT ASSOCIATES v. SUMMIT ASSOCIATES, INC., ET AL.**, 2011 CT App. Ct. Briefs 32227, 2011 CT Sup. Ct. Briefs LEXIS 26

... the defect, the plaintiff was formally appointed administratrix of the decedent's estate and moved to substitute, in her capacity as administratrix, as party plaintiff. This Court affirmed the trial court's dismissal of the action for lack of subject matter jurisdiction because the estate, itself, was not a legal entity capable of initiating the lawsuit. This Court applied the *Isaac* rule in the context of corporate plaintiffs in **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474 (2005), ...

**Content:** Court Documents | **Date:** Jan. 20, 2011

9. **BANKERS TRUST CO. OF CAL. v. VANECK**, 2005 CT App. Ct. Briefs 5E, 2005 CT App. Ct. Briefs LEXIS 72

... It is plain from the testimony of the Plaintiff's own witness that at the time of trial, if not long before, the named Plaintiff was not a corporate entity as alleged in Plaintiff's Complaint. As such, it could have no standing to bring of to prosecute this foreclosure action. See **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474 , 477 (2005) (concluding that a party instituting a foreclosure action solely in its trade name, a fictitious name that is not a legal entity, lacks standing ...

**Content:** Court Documents | **Date:** Dec. 27, 2005

10. **BANKERS TRUST CO. OF CAL. v. VANECK**, 2005 CT App. Ct. Briefs 5E, 2005 CT App. Ct. Briefs LEXIS 71

... it was the owner and holder of the Note prior to commencement of the foreclosure action, produced the original Note endorsed to the Plaintiff during trial, the Defendant failed to dispute Plaintiff's allegation in its Complaint as to its position/standing, and the Defendant's failure to deny such in Plaintiff's Requests

to Admit which became Judicial Admissions. The Defendant also cites to **America's Wholesale Lender v. Pagano, 87 Conn. App. 474 (2005)** and its companion case decided at the same ...

**Content:** Court Documents | **Date:** Dec. 5, 2005

11. **BANKERS TRUST CO. OF CAL. v. VANECK**, 2005 CT App. Ct. Briefs 5E, 2005 CT App. Ct. Briefs LEXIS 70

... it's a misstatement, Your Honor perhaps, that it certainly is a trust as Ms. Deloney indicated on the stand. It's a trust. It's a company that's created as a trust to maintain loans for other companies." [Tr. 123: 7-14] This year, the Appellate Court determined that a corporation that brings an action in solely in a trade name, without including the corporation itself as a party, lacks standing to bring a foreclosure action. **America's Wholesale Lender v. Pagano, 87 Conn. App. 474 , 477 (2005); ...**

**Content:** Court Documents | **Date:** Nov. 7, 2005

12. **SARASOTA CCM v. GOLF MKTG.**, 2005 CT App. Ct. Briefs 26181, 2005 CT App. Ct. Briefs LEXIS 27

... The use of fictitious, non-existent, entities as if they were real, legally created, entities creates serious legal difficulties. This Court recently held that a plaintiff commencing suit in its trade name deprives the court of subject matter jurisdiction. **America's Wholesale Lender v. Pagano, 87 Conn. App. 474 (2005);** America's Wholesale Lender v. Silberstein, 87 Conn. App. 485 (2005). This Court stated: "It is elemental that in order to confer jurisdiction on the court the plaintiff must ...

**Content:** Court Documents | **Date:** May 23, 2005

- 
13. **MULTICARE v. WONG**, 2005 CT Sup. Ct. Briefs 17005, 2006 CT Sup. Ct. Briefs LEXIS 21

... Thereafter, Multicare Medical Center filed a Trade Name Certificate in the Town of Milford, in accordance with Conn. Gen. Stat. § 35-1. (Exhibit 34). The purpose of registering a trade name with the town in which one is transacting business under a name that is not his own is to enable a person dealing with that business to know what entity is behind the name, so that he may know or make inquiry as to the business character. **America's Wholesale Lender v. Pagano, 87 Conn. App. 474 , 479 (2005). ...**

**Content:** Court Documents | **Date:** Apr. 17, 2006

14. **MOON, PLASTER & SWEERE, L.L.P., Respondent vs. EDWIN MITCHEL KELLEY, Appellant**, 2013 MO App. Ct. Briefs 32500, 2013 MO App. Ct. Briefs LEXIS 991

... , a non-existent legal entity, the trial court should have granted Defendant's motion to dismiss. Other jurisdictions have treated the instant situation as depriving the trial court of subject matter jurisdiction. Greco Construction vs. Alison Edelman Et Al, ( Conn. Ct. App. AC 33556, 2012); **America's Wholesale Lender vs. Pagano Et Al, 866 A.2d 698 (Conn.App. 2004)** A review of the Missouri cases reveal none on point, but there are cases where former LLP's have properly sued former partners ...

**Content:** Court Documents | **Date:** July 26, 2013

## Motions

15. **ASAD SAMMI NIYAZ, Plaintiff, v. BANK OF AMERICA, et.al., Defendants**, 2010 U.S. Dist. Ct. Motions 428324, 2011 U.S. Dist. Ct. Motions LEXIS 31975

... WHOLESALE LENDER FICTIOUS TRADE NAME OF COUNTRYWIDE 33. AMERICA 'S WHOLESALE LENDER v. LINDA K. SILBERSTEIN ET AL. (AC 24592) Argued October 15, 2004-officially released February 15, 2005, opinion by Hon. DRANGINIS , J. "This appeal is similar to the appeal in **America's Wholesale Lender v. Pagano, 87 Conn. App. 474** , A.2d (2005), which we released on the same date as this opinion. The dispositive issue is whether a corporation that brings an action solely in its trade name, without the ...

**Content:** Court Documents | **Date:** Jan. 5, 2011

16. **ASAD SAMMI NIYAZ, Plaintiff, v. BANK OF AMERICA, et.al., Defendants**, 2010 U.S. Dist. Ct. Motions 428324, 2010 U.S. Dist. Ct. Motions LEXIS 76608

... County of: Los Angeles 37. AMERICA 'S WHOLESALE LENDER v. LINDA K. SILBERSTEIN ET AL. (AC 24592) Argued October 15, 2004-officially released February 15, 2005, opinion by Hon. DRANGINIS , J. "This appeal is similar to the appeal in **America's Wholesale Lender v. Pagano, 87 Conn. App. 474** , A.2d (2005), which we released on the same date as this opinion. The dispositive issue is whether a corporation that brings an action solely in its trade name, without the corporation being named as a ...

**Content:** Court Documents | **Date:** Dec. 28, 2010

- 
17. **THOMAS ZIMMERMAN and PATRICIA ZIMMERMAN, Plaintiffs, v. GREG LOGEMANN, et al., Defendants.**, 2009 U.S. Dist. Ct. Motions 348487, 2010 U.S. Dist. Ct. Motions LEXIS 55832

... Wholesale Lender. Dkt. #90, at P73. Both cases are foreclosure actions where the corporation initiated a foreclosure action under the trade name. The appellate court of Connecticut determined, in both cases, that "because a trade name is not an entity with legal capacity to sue, the corporation has no standing to litigate the merits of the case." **America's Wholesale Lender v. Pagano, 866 A.2d 698 , 699 (Conn.App.Ct. 2005)**, *America's Wholesale Lender v. Silberstein, 866 A.2d 695 , 696 (Conn.App.Ct. ...*

**Content:** Court Documents | **Date:** Dec. 9, 2010

- 
18. **In re HEATING OIL**, 2008 U.S. Dist. Ct. Motions 931293, 2009 U.S. Dist. Ct. Motions LEXIS 64856

... 61 Conn.App. 29 , 36 , 762 A.2d 499 (2000). Because the trade name of a legal entity does not have a separate legal existence, a plaintiff bringing an action solely on trade name cannot confer jurisdiction on the court." **Americas Wholesaler Lender v. Pagano, 87 Conn.App. 474 , 477 , 866 A.2d 698 (2005)**. Pursuant to C.G.S. § 35-1 the Trade Name Regulation Statute requires legal entities doing business in this state under an assumed or fictitious name to file a trade name certificate in ...

**Content:** Court Documents | **Date:** Dec. 24, 2009

- 
19. **PACHECO v. JOSEPH McMAHON CORP.**, 2009 U.S. Dist. Ct. Motions 353797, 2009 U.S. Dist. Ct. Motions LEXIS 80691

... in a trade name has no legal significance. "[A] fictitious or assumed business name, a trade name, is not a legal entity; rather, it is merely a description of the person or corporation doing business under that name." **America's Wholesale Lender v. Pagano, 87 Conn. App. 474 , 477 , 866 A.2d 698 (2005)**. III. MILLER VIOLATED THE FDCA Miller's self-serving arguments that the email was not deceptive or misleading are not persuasive. Doc. No. 27 at 7-8. He is a college graduate with an accounting ...

**Content:** Court Documents | **Date:** July 9, 2009

20. **O'KEEFE & ASSOCS. v. THEME CO-OP PROMOTIONS**, 2000 U.S. Dist. Ct. Motions 678, 2009 U.S. Dist. Ct. Motions LEXIS 33131

... (permitting plaintiff to substitute individual for nonexistent corporation under which individual was doing business); *World Fire & Marine Ins. Co. v. Alliance Sandblasting Co.*, 105 Conn. 640 , 136 A. 681 (1927) (permitting plaintiff to amend writ to include individual doing business as named defendant). **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474 ; 866 A.2d 698 ; 700-701 (2005). Because Connecticut law expressly allows such amendments, the requested amendment is authorized ...

**Content:** Court Documents | **Date:** Feb. 18, 2009

- 
21. **BIRDELL v. MARINER HEALTH CARE, INC.**, 2006 U.S. Dist. Ct. Motions 80840, 2006 U.S. Dist. Ct. Motions LEXIS 3156

... ) "Although a corporation is a legal entity with legal capacity to sue, a fictitious or assumed business name, a trade name, is not a legal entity; rather, it is a merely a description of the name of the person or corporation doing business under that name." **America's Wholesale Lenders v. Pagano**, 866 A.2d 698 , 700 (Conn.App. 2005). It is well settled in Mississippi that a trade name is not a legal entity. See *Parsons v. Marshall*, 139 So.2d 833 (Miss. 1962). If a lawsuit cannot be maintained ...

**Content:** Court Documents | **Date:** Mar. 27, 2006

- 
22. **DANIELE v. NIGHTCLUB**, 2005 U.S. Dist. Ct. Motions 471156, 2005 U.S. Dist. Ct. Motions LEXIS 45605

... Plaintiff has failed to properly named or served the real parties in interest in this matter. Connecticut Courts have held that where a defendant has no legal existence, the action is a nullity and cannot confer jurisdiction on a Court. *Isaac v. Mt. Sinai Hospital*, 3 Conn. App. 598 , 600 (1985). In **America's Wholesale Lender v. Pagano**, 87 Conn. App. 474 (2005) the Court held: "In order to confer jurisdiction on the Court, the plaintiff must have an actual legal existence, that is he or ...

**Content:** Court Documents | **Date:** Dec. 15, 2005

- 
23. **RUCKER v. INDIANOLA HEALTH & REHABILITATION CTR.**, 2005 U.S. Dist. Ct. Motions 75252, 2005 U.S. Dist. Ct. Motions LEXIS 45333

... ). "Although a corporation is a legal entity with legal capacity to sue, a fictitious or assumed business name, a trade name, is not a legal entity; rather, it is merely a description of the name of the person or corporation doing business under that name." **America's Wholesale Lender v. Pagano**, 866 A.2d 698 , 700 (Conn. App. 2005). It is well settled in Mississippi that a trade name is not a legal entity. See *Parsons v. Marshall*, 139 So.2d 833 (Miss. 1962). If a lawsuit cannot be maintained ...

**Content:** Court Documents | **Date:** May 12, 2005

- 
24. **ASSOCIATION RESOURCES v. WALL**, 2005 CT Sup. Ct. Motions 906424, 2008 CT Sup. Ct. Motions LEXIS 412

... The motion to dismiss is a proper method to challenge the Wall's lack of standing because the court had no jurisdiction over his counterclaims from the commencement. A lack of subject matter jurisdiction

requires dismissal **America's Wholesale Lender v Pagano, 87 Conn. App. 474 , 480 (2005)** [A lack of subject matter jurisdiction ... requires dismissal, regardless of whether prejudice exists.] Standing must exist at the time Wall commenced his counterclaims. 11 The doctrine of standing set in ...

**Content:** Court Documents | **Date:** June 20, 2008

- 
25. **TAYLOR v. KING**, 2007 CT Sup. Ct. Motions 2674, 2008 CT Sup. Ct. Motions LEXIS 385  
... business in this state under an assumed or fictitious name to file a trade name certification in the town where such business is to be conducted prior to engaging in such business...The object [of the registration requirement] is to enable a person dealing with another trading under a name not his own, to know the man behind the name, that he may know or make inquiry as to his business character or financial responsibility. **America's Wholesale Lender v, Pagano, 87 Conn. App. 474 , 479 (2005)** ...  
**Content:** Court Documents | **Date:** Apr. 22, 2008
26. **WILLIAMS v. VILLAGE MED. ASSOCS.**, 2008 CT Sup. Ct. Motions 16778, 2008 CT Sup. Ct. Motions LEXIS 402  
... A court is bound to dismiss a case if it lacks jurisdiction over the subject matter. See, Practice Book § 10-33. Prejudice is not a consideration because a trial court is required to dismiss the case regardless of whether it prejudices any party. See, **America's Wholesale Lender v. Pagano, 87 Conn. App. 474 , 480 (2005)**. B. The plaintiff lacked the capacity to bring a wrongful death claim under Connecticut General Statutes Section 52-555. The Court is without subject matter jurisdiction ...  
**Content:** Court Documents | **Date:** Mar. 7, 2008
27. **FANNIE MAE v. SOUTH MARSHALL ASSOCIATES, LLC ET AL.**, 2016 CT Sup. Ct. Motions LEXIS 666  
... "Whenever the absence of jurisdiction is brought to the notice of the court or tribunal, cognizance of it must be taken and the matter passed upon it before it can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction". *Statewide Grievance Committee v. Rozbicki*, 211 Conn. 232 , 245 (1989) cited in **America's Wholesale Lender v. Pagano, 87 Conn. App. 474 , 476 , note 2 (2005)**(" America 's Wholesale Lender "). B. A Plaintiff that is merely a "Trade ...  
**Content:** Court Documents | **Date:** Apr. 27, 2016
28. **KRISTIN SKELLY, ET AL. VS. BERNARD JAY, M.D., ET AL**, 2016 CT Sup. Ct. Motions LEXIS 675  
... (2011); *Wilcox*, 303 Conn. at 643 . Prejudice to the plaintiff is not a consideration when deciding a motion to dismiss because a trial court is required to dismiss the case regardless of whether it prejudices any party. See **America's Wholesale Lender v. Pagano, 87 Conn. App. 474 , 480 (2005)**. B. The Purpose of Conn. Gen. Stat § 52-190a Is To Prevent The Filing of Frivolous Medical Malpractice Cases It is axiomatic that Connecticut General Statutes § 52-190a was enacted for the protection ...  
**Content:** Court Documents | **Date:** Mar. 28, 2016
29. **THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-14, Plaintiff/ vs. NANCY USZKO; et al., Defendants/**, 2014 FL Cir. Ct. Motions LEXIS 11652

... that court distinguished its ruling from simple misnomer. The parties bringing this claim before the court, Bank of America and Bank of New York Mellon were the parties behind American Wholesale Lender . Therein they asserted in **America's Wholesale Lender v. Pagano, 866 A.2d 698** (Feb. 15, 2005), that the named Plaintiff, " America 's Wholesale Lender" , a non-entity, was a "misnomer" and they should be allowed to amend. [It should be noted that the parties did not claim a right to proceed ...

**Content:** Court Documents | **Date:** Sept. 3, 2014

30. **THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-14, Plaintiff/ vs. NANCY USZKO; et al., Defendants/, 2014 FL Cir. Ct. Motions LEXIS 11643**

... 8. First, parties directing the herein named Plaintiff were on notice of the fatal error of filing complaints in fictitious names. The parties directing this complaint, Bank of America Corporation and Bank of New York Mellon, a New York banking corporation, raised the same argument in **America's Wholesale Lender v. Pagano, 866 A.2d 698** (Feb. 15, 2005). The designation of " America 's Wholesale Lender" was found by the court to be a trade name with no legal existence. The court held, "A lack ...

**Content:** Court Documents | **Date:** July 7, 2014

## Pleadings

31. **ZIMMERMAN v. LOGEMANN, 2009 U.S. Dist. Ct. Pleadings 613239, 2009 U.S. Dist. Ct. Pleadings LEXIS 47092**

... for repayment of \$ 172,000.00 to America 's Wholesale Lender and granting America 's Wholesale Lender a security interest in the property. 74. America 's Wholesale Lender is not an actual entity. It is only a trade name. See **America's Wholesale Lender v. Pagano, 866 A.2d 698 , 87 Conn. App. 474 (2005);** America's Wholesale Lender v. Silberstein, 886 A.2d 695 , 87 Conn. App. 485 (2005). America 's Wholesale Lender was not licensed to conduct banking or lending activities in Wisconsin ...

**Content:** Court Documents | **Date:** Dec. 21, 2009

32. **THE APPLE IPOD ITUNES ANTITRUST LITIGATION; This Document Relates To: ALL ACTIONS, 2014 U.S. Dist. Ct. Pleadings LEXIS 1941**

... Delaware Computer Exchange, as simply a trade name, is not a legal entity and thus has no capacity to bring any claim. Diesel Mach. v. Manitowoc Crane Grp., 777 F.Supp.2d 1198 , 1213 (D.S.D. 2011) ("It is well-established that a trade name can neither sue nor be sued") (collecting cases); **America's Wholesale Lender v. Pagano, 866 A.2d 698 , 700 (Conn. Ct. App. 2005)** ("It is elemental that in order to confer jurisdiction on the court the plaintiff must have an actual legal existence, that ...

**Content:** Court Documents | **Date:** Nov. 11, 2014

## Legend



Warning - Negative Treatment is Indicated



Red - Warning Level Phrase



Questioned - Validity questioned by citing references



Orange - Questioned Level Phrase



Caution - Possible negative treatment



Yellow - Caution Level Phrase



Positive - Positive treatment is indicated



Green - Positive Level Phrase



Analysis - Citing Refs. With Analysis Available



Blue - Neutral Level Phrase



Cited - Citation information available



Light Blue - No Analysis Phrase



Warning - Negative case treatment is indicated for statute

---

End of Document





**Jordan v. Metro-North Commuter R.R. Co.**

United States District Court for the District of Connecticut  
September 28, 2015, Decided; September 28, 2015, Filed  
Civil No. 3:13cv749 (JBA)

**Reporter**

2015 U.S. Dist. LEXIS 129723; 2015 WL 5684027

XILIN JORDAN, as Administrator of the Estate of Paul Jordan, Plaintiff, v. METRO-NORTH COMMUTER RAILROAD COMPANY, Defendant.

For Chantal B. Jones, Lourdes Davila, Consol Plaintiffs: Joel Thomas Faxon, LEAD ATTORNEY, Jason Kenneth Gamsby, Timothy P. Pothin, Faxon Law Group, LLC, New Haven, CT.

**Prior History:** Bauer v. Metro-North Commuter R.R. Co., 2015 U.S. Dist. LEXIS 78653 (D. Conn., June 17, 2015)

For Hector Navarro, Consol Plaintiff: Michael J. Rosnick, LEAD ATTORNEY, Miller, Rosnick, D'Amico August & Butle, Bridgeport, CT.

**Core Terms**

deceased, entity, legal entity, courts, cure, appointed, lack of subject matter jurisdiction, substitution, nullity

For Lina Pacelli, Francesco Pacelli, Consol Plaintiffs: Marisa A. Bellair, Steven J. Errante, LEAD ATTORNEY, Lynch, Traub, Keefe & Errante, New Haven, CT;

**Counsel:** [\*1] For Robert Washington, Consol Plaintiff: Joel Thomas Faxon, LEAD ATTORNEY, Jason Kenneth Gamsby, Timothy P. Pothin, Faxon Law Group, LLC, New Haven, CT.

For Natalie Anderson, Consol Plaintiff: Kevin M. Godbout, LEAD ATTORNEY,

Neubert, Pepe & Monteith, New Haven, CT.

For Marthe Medor, Gesner Pierre Charles, Consol Plaintiffs: Jeremy G. Vishno, LEAD ATTORNEY, Vishno Law Firm, Fairfield, CT.

For Berwyn Kelley, Carmen Kelley, Consol Plaintiffs: Scott E. Perry, LEAD ATTORNEY, Cahill Goetsch & Perry, P.C., New Haven, CT.

For Mary Anderson-Plummer, Consol Plaintiff: George W. Ganim, Sr., LEAD ATTORNEY, Ganim, Ganim & Ganim, Bridgeport, CT.

For Roxanne Oliveras, Annie Mikem, Consol Plaintiffs: John J. Kennedy, Jr., LEAD ATTORNEY, Kennedy, Johnson, D'Elia [\*2] & Gillooly, New Haven, CT.

For Susan Dobyms, Consol Plaintiff: Frederick Joseph Trotta, LEAD ATTORNEY, Halloran & Sage LLP, New Haven, CT.

For Michael Ellis, Consol Plaintiff: Robert R. Cooney, LEAD ATTORNEY, Robert C. Mirto, Law Offices of Mirto & Rasile, West Haven, CT.

For Dorothy Corrigan, Consol Plaintiff: Robert R. Cooney, LEAD ATTORNEY, Robert C. Mirto, Steven B. Rasile, Law Offices of Mirto & Rasile, West Haven, CT.

For Steven Bauer, Consol Plaintiff: Steven Lawrence Kantor, LEAD ATTORNEY, Kantor & Godwin, PLLC, Williamsville, NY; Jeffrey M. Cooper, Cooper Sevillano, LLC, Bridgeport, CT.

For Rishawna Snow, Consol Plaintiff: Marisa A. Bellair, LEAD ATTORNEY, Lynch, Traub, Keefe & Errante, New Haven, CT.

For Steven Young, Consol Plaintiff: Michael E. Skiber, Law Office of Michael E. Skiber, LLC, Bridgeport, CT.

For Sonia Ochoa-Garcia, Consol Plaintiff: Marisa A. Bellair, Steven J. Errante, LEAD ATTORNEYS, Lynch,

Traub, Keefe & Errante, New Haven, CT.

For Vincent Ferrara, Consol Plaintiff: Agron Etemi, LEAD ATTORNEY, Trantolo & Trantolo LLC, Waterbury, CT.

For Jessica Moreno, Consol Plaintiff: Philip D. Russell, LEAD ATTORNEY, Todd Douglas Haase, Philip Russell, LLC, Greenwich, CT.

For [\*3] Kenroy Cornwall, Julissa Arroyo, Consol Plaintiffs: James Owens Gaston, LEAD ATTORNEY, Bridgeport, CT.

For Thalma Maignan, Consol Plaintiff: Charles Samuel Harris, LEAD ATTORNEY, Harris, Harris & Schmid, Norwalk, CT.

For Bradley Agar, Cynthia Clarke, Gabrielle Baron, Xilin Jordan, Administrator of the Estate of Paul Jordan, Consol Plaintiffs: J. Craig Smith, LEAD ATTORNEY, Koskoff, Koskoff & Bieder, P.C., Bridgeport, CT.

For John Mancinelli, Erik Ljunggren, Gregory Doyon, Jessica Pellegrino, Consol Plaintiffs: George J. Cahill, Jr., Scott E. Perry, LEAD ATTORNEYS, Cahill & Perry, P.C., New Haven, CT.

For Nancy Worsham, Consol Plaintiff: George W. Ganim, Jr., LEAD ATTORNEY, Milford, CT.

For Enid Pagan, Consol Plaintiff: Ryan Kent Miller, LEAD ATTORNEY, Rosenberg and Press LLC, Stratford, CT.

For Kenneth McAllister, Consol Plaintiff: Danielle E. Duprey, LEAD ATTORNEY, Goldman, Gruder & Woods, LLC, Trumbull, CT.

For Metro-North Commuter Railroad Company, Defendant: Beck S. Fineman, Charles A. Deluca, Robert O. Hickey, LEAD ATTORNEYS, Gina M. Von Oehsen, Thomas S. Lambert, Ryan Ryan Deluca, LLP - Stamford, Stamford, CT.

For Metro-North Commuter Railroad Company, Intervenor Defendant: Charles A. [\*4] Deluca, LEAD ATTORNEY, Robert O. Hickey, Ryan Ryan Deluca, LLP - Stamford, Stamford, CT.

**Judges:** Janet Bond Arterton, United States District Judge.

**Opinion by:** Janet Bond Arterton

### Opinion

## **RULING GRANTING DEFENDANT'S MOTION TO DISMISS**

This is one of many consolidated cases arising out of the derailment of a Metro-North train in Bridgeport, Connecticut on May 17, 2013. One of the passengers on the train who was injured in the crash, Paul Jordan, passed away on March 1, 2015. Two months later, on May 1, 2015, the complaint in this case, originally captioned *Paul Jordan v. Metro-North Commuter Railroad*, was filed. Defendant agreed to waive service of summons on May 6, 2015. The

following day, Plaintiff filed an amended complaint, changing the caption to *Xilin Jordan, as Administrator of the Estate of Paul Jordan v. Metro-North*. On June 10, 2015, Xilin Jordan was appointed the administrator of Paul Jordan's estate, and on June 11, 2015, she moved to substitute herself for Mr. Jordan as the plaintiff. That motion was granted on June 16, 2015. Defendant now moves [Doc. # 313] to dismiss this case, on the grounds that the Court lacks subject matter jurisdiction to hear it. Oral argument was held on September 21, 2015. For [\*5] the following reasons, Defendant's motion to dismiss is granted.

### **I. Discussion<sup>1</sup>**

---

<sup>1</sup>"[A] claim is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Morrison v. Nat'l Australia Bank Ltd.*, 547 F.3d 167, 170 (2d Cir. 2008) (quoting *Arar v. Ashcroft*, 532 F.3d 157, 168 (2d Cir. 2008)). "When considering a motion to dismiss pursuant to Rule 12(b)(1), the court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of plaintiff." *Sweet v. Sheahan*, 235 F.3d 80, 83 (2d Cir. 2000). In response to a motion to dismiss pursuant to Rule 12(b)(1), "[a] plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000).

Defendant contends that this case should be dismissed for lack of subject matter jurisdiction because when the case was originally filed, it was filed in the name of Mr. Jordan, who was already deceased. (Def.'s Mem. Supp. Mot. to Dismiss [Doc. # 314] at 4.) Because a deceased individual is not a "legal entity," it does not have the capacity to sue, and therefore, Defendant argues, the Court does not have subject matter jurisdiction to hear this case. (*Id.*) Further, Defendant asserts, "the plaintiff's multiple attempts to amend the complaint and substitute in a new party after the [\*6] filing of the complaint cannot cure the defect of a lawsuit having been brought by a nonexistent entity" because the case "is a nullity, voided from the onset." (*Id.* at 7, 8.) Plaintiff responds that "[t]he Court's order of Substitution renders the Defendant's Motion to Dismiss moot." (Pl.'s Opp'n Mot. to Dismiss [Doc. # 328] at 2.)

There is no dispute that Mr. Jordan was

deceased when this action was filed. It is similarly undisputed that a deceased individual does not have the capacity to file a lawsuit. The only contested issue is whether a motion to amend and/or a motion to substitute can cure a suit erroneously filed in the name of a deceased plaintiff.

Under Federal Rule of Civil Procedure 17(b), the capacity of an individual to sue is determined by the law of the state where the court is located—here, Connecticut. Connecticut law provides that "[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." Conn. Gen. Stat. § 52-109.

Where, as here, a federal court is called upon to decide a question of state law,

in the absence [\*7] of binding precedent from the state's supreme court, the court must "'predict how the state's highest court would resolve' any identified uncertainty or ambiguity." Avedisian v. Quinnipiac Univ., 387 F. App'x 59, 60 (2d Cir. 2010) (quoting Santalucia v. Sebright Transp., Inc., 232 F.3d 293, 297 (2d Cir. 2000)). In doing so, federal courts should give "'proper regard to relevant rulings of other courts of the State.'" Travelers Ins. Co. v. 633 Third Associates, 14 F.3d 114, 119 (2d Cir. 1994) (quoting Commissioner of Internal Revenue v. Estate of Bosch, 387 U.S. 456, 465, 87 S. Ct. 1776, 18 L. Ed. 2d 886 (1967)). However, "while the decrees of lower state courts should be attributed some weight[,] the decision is not controlling where the highest court of the State has not spoken on the point" but rather "is a datum for ascertaining state law which is not to be disregarded by a federal court unless it is convinced by other persuasive data that the highest court of the state would decide otherwise." Estate of Bosch, 387 U.S. at 465 (internal quotation marks and alterations omitted).

Because the Connecticut Supreme Court has not ruled on the precise issue presented here—specifically, whether a motion to substitute can cure subject matter jurisdiction where the suit was originally brought in the name of a deceased plaintiff—the Court examines relevant caselaw from other Connecticut courts.

In America's Wholesale Lender v. Silberstein, 87 Conn. App. 485, 489, 866 A.2d 695 (2005), the Connecticut Appellate Court answered the different, but related, question of whether, where a suit is commenced under a "trade name," which [\*8] is "not a recognized legal entity or person," the jurisdictional defect can be cured "by substituting a party with the legal capacity to sue." The court held that such a defect cannot be cured because "[t]he named plaintiff in the original complaint never existed,"

and "[a]s a result, there was no legally recognized entity for which there could be a substitute." *Id.*

In so holding, the court expressly relied on its prior decision in *Isaac v. Mount Sinai Hosp.*, 3 Conn. App. 598, 600, 490 A.2d 1024 (1985). The plaintiff in that case filed suit as administratrix, under the mistaken belief that she had been appointed administratrix of the decedent's estate. When she was later appointed administratrix, she sought to amend her complaint and to substitute parties. But, the court denied her motions and dismissed the case, on the grounds that it lacked subject matter jurisdiction. The court reasoned:

It is elemental that in order to confer jurisdiction on the court the plaintiff must have an actual legal existence, that is he or it must be a person in law or a legal entity with legal capacity to sue. An estate is not a legal entity. It is neither a natural nor artificial person, but is merely a

name to indicate the sum total of the assets and liabilities of the decedent or [\*9] incompetent. Not having a legal existence, it can neither sue nor be sued.

*Id.* (internal quotation marks and citations omitted).

Plaintiff here asserted at oral argument that *Silberstein* is distinguishable from this case on the grounds that in *Silberstein*, the plaintiff filed under a fictitious name of an entity that never existed with the intent to mislead the public, whereas the plaintiff here did not use a fake name and was once a legal entity. However, that contention is belied by the Appellate Court's reliance on *Isaac*, which was not premised on whether the plaintiff was ever a legal entity (as opposed to whether it was a legal entity at the time when it filed suit) or the intent of the plaintiff in filing in the name of a non-legal entity or the interest of the public. Moreover, although a few courts have drawn the

distinction Plaintiff urges, the majority of Connecticut courts have not. See, e.g., State v. Lamar Adver. of Hartford, No. CV085020325S, 2011 Conn. Super. LEXIS 846, 2011 WL 1566981, at \*3 (Conn. Super. Ct. Apr. 5, 2011) ("The upshot of [the passage of *Isaac* cited by *Silberstein*] is that when a party, such as an estate, is not a legally recognized entity, it can neither sue nor be sued, and thus that any claim brought by it or for it must be dismissed [\*10] for lack of subject-matter jurisdiction for lack of standing."); ProBuild East LLC v. Maple Oak Reserve LLC, No. CV106014560S, 2011 Conn. Super. LEXIS 852, 2011 WL 1565895, at \*6 (Conn. Super. Ct. Apr. 1, 2011) ("Similar to the trade name in *America's Wholesale Lender* the plaintiff at the time of the commencement of the action was not a recognized legal entity or person possessing the capacity to sue. Therefore, there is no legally recognized entity for which there could be a substitute under § 52-109."); SCG Capital Corp. Profit Sharing Trust v. Green, No. TTDCV095005139, 2010 Conn. Super. LEXIS 787, 2010 WL 1665268, at \*2 (Conn. Super. Ct. Mar. 25, 2010) ("[T]he named plaintiff in the present case, a common-law trust, possessed no capacity to sue. In the absence of such capacity, the lawsuit is a nullity, and no substitution can occur."); 54 56 Broadway LLC v. Smithfield Assoc. LLC, No. 15549, 2007 Conn. Super. LEXIS 646, 2007 WL 865826, at \*3 (Conn. Super. Ct. Mar. 5, 2007) ("In the present case, it is clear from the parties' submissions that 54-56 Broadway LLC was not a legal entity in existence at the time the notice to quit was issued and at the time this action was commenced. Therefore, the plaintiff lacked the legal capacity to sue . . . .").

Furthermore, while the parties have not cited, and the Court is not aware of any appellate cases applying this precedent in the specific circumstances present here—namely, where a suit is filed in



the name of a deceased plaintiff, the vast majority [\*11] of superior courts in Connecticut to have addressed the issue have held that substitution under § 52-109 cannot cure the jurisdictional defect in such cases. See Freese v. Dep't of Soc. Servs., No. CV146047417S, 2015 Conn. Super. LEXIS 1517, 2015 WL 3974218, at \*2 (Conn. Super. Ct. June 1, 2015) ("[S]ubstitution under § 52-109 cannot retroactively validate . . . a suit [by a deceased plaintiff]. To assert such a right of action, the executor or administrator must bring his own action as executor or administrator. He cannot bootstrap litigation of the right to an invalid action." (internal citations omitted)); Gust v. Comm'r Dep't of Soc. Servs., No. CV064012310S, 2007 Conn. Super. LEXIS 2680, 2007 WL 3173685, at \*2-3 (Conn. Super. Ct. Oct. 17, 2007) ("The plaintiff, as a deceased person, cannot be a party to a lawsuit because she is a nonexistent entity and does not have standing. Nor may the defect . . . be remedied by granting the motion to substitute." (internal quotation marks omitted)); Williams v. Travelers Prop. & Cas. of Am., No. CV044003632S, 2007 Conn. Super. LEXIS 957, 2007 WL 1299245, at \*1 (Conn. Super. Ct. Apr. 13, 2007) ("[Section 52-109] is not . . . applicable or appropriate where . . . a case has been initiated by an entity that is not recognized at all as a 'person' for the purposes of bringing suit."); Diaz v. PARCC Health Care Inc., No. CV054006901, 2006 Conn. Super. LEXIS 286, 2006 WL 337351, at \*3 (Conn. Super. Ct. Jan. 30, 2006) ("In the present action, the plaintiff is not a legal entity with the ability to sue, and therefore § 52-109 is inapplicable [\*12] because the initial complaint is a nullity."); Noble v. Corkin, 45 Conn. Supp. 330, 333, 717 A.2d 301 (Conn. Super. Ct. 1998) ("[A] dead person is a nonexistent entity and cannot be a party to a suit. Therefore, proceedings instituted against an individual who is

deceased at the time of the filing of suit are a nullity. Such proceedings are void *ab initio* and do not invoke the jurisdiction of the trial court." (internal quotation marks omitted)); *Boulais v. Boulais*, No. CV940368009, 1995 Conn. Super. LEXIS 327, at \*4 (Conn. Super. Ct. Feb. 3, 1995) ("It does not appear that [Conn. Gen. Stat. § 52-109] has been applied where . . . the case has been initiated by an entity that is not recognized at all as a 'person' for purposes of bringing suit . . ."). *But see Slater v. Mount Sinai Hosp.*, No. CV94-0542007S, 1996 Conn. Super. LEXIS 2837, 1996 WL 649316, at \*2 (Conn. Super. Ct. Oct. 28, 1996) ("It is recognized that several Superior Court decisions have regarded complaints by estate fiduciaries not yet appointed as nullities and therefore not subject to amendment of any kind. Such a harsh rule serves no useful purpose when the putative fiduciary can be clearly identified by name, is appointed within a relatively short time and the

appointment is confirmed by amendment filed within thirty days of the return date . . .").

Because the Appellate Court has held that a motion to substitute cannot cure the jurisdictional defect present [\*13] when a suit is brought in the name of a non-legal entity, and the majority of superior courts in Connecticut to have addressed the question have held that a motion to substitute cannot cure a suit brought in the name of a deceased individual, this Court concludes that were the Connecticut Supreme Court to rule on this motion, it would rule in Defendant's favor. The Court thus finds that under Connecticut law, this suit is void *ab initio*, and the Court lacks subject matter jurisdiction over it.

## II. Conclusion

For the foregoing reasons, Defendant's Motion [Doc. # 313] to Dismiss is GRANTED without prejudice.

IT IS SO ORDERED.

/s/ Janet Bond Arterton

Dated at New Haven, Connecticut this

Janet Bond Arterton, U.S.D.J.

28th day of September, 2015.

---

End of Document