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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

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DUPONT, J., dissenting. I respectfully dissent because I believe that the issue of whether the defendant received the notice mailed by the plaintiff is a disputed issue of fact that requires an evidentiary hearing. In dissenting, I do not disagree with the majority that, in accordance with the dicta in *Rapid Motor Lines, Inc.* v. *Cox*, 134 Conn. 235, 56 A.2d 519 (1947), and *Brennan* v. *Fairfield*, 255 Conn. 693, 768 A.2d 433 (2001), notice must be *received* by the defendant as well as *mailed* to the defendant by the plaintiff.

The standard of review in determining whether a complaint survives a motion to dismiss requires that we take the facts to be those alleged in the complaint, including those facts necessarily implied from the plaintiff's allegations, and construe them most favorably to the plaintiff. *Pamela B.* v. *Ment*, 244 Conn. 296, 307–308, 709 A.2d 1089 (1998); *Pinchbeck* v. *Dept. of Public Health*, 65 Conn. App. 201, 208, 782 A.2d 242, cert. denied, 258 Conn. 298, 783 A.2d 1029 (2001). If no jurisdictional flaws appear on the record, and if the defendant has not filed supporting affidavits as to relevant jurisdictional facts not appearing on the record, the plaintiff has no burden of proving the allegations of the complaint, which are taken as true. If, however, jurisdictional flaws appear on the record or are alleged by the defendant in a supporting affidavit as to facts not apparent on the record, a motion to dismiss may be granted; *Ferreira* v. *Pringle*, 255 Conn. 330, 346, 766 A.2d 400 (2001); *Bradley's Appeal from Prob*ate, 19 Conn. App. 456, 461–62, 563 A.2d 1358 (1989); but only *if* the supporting affidavit contains undisputed facts that are not challenged by the plaintiff's counteraffidavit, brief or argument as to the accuracy of the defendant's affidavit. *Barde* v. *Board of Trustees*, 207 Conn. 59, 62, 539 A.2d 1000 (1988). In this case, the plaintiff challenged the defendant's affidavits by arguing that the notice could have been internally lost at the Meriden city hall.

The key to the granting or denial of the motion, as described in the previously cited cases, is whether there still remains an issue of fact after the filing of affidavits and briefs and the arguments of both parties. There is no necessity for an evidentiary hearing if there is no disputed issue of fact. *Amore* v. *Frankel*, 228 Conn. 358, 636 A.2d 786 (1994). If there is a jurisdictional issue of fact in dispute, however, a hearing must be held to allow the presentation of evidence and the cross-examination of witnesses.[1] *Henriquez* v. *Allegre*, 68 Conn. App. 238, 247–48, 789 A.2d 1142 (2002).

Where important decisions are factual, due process affords a party an opportunity to confront and to cross-examine witnesses. *Standard Tallow Corp.* v. *Jowdy*,

190 Conn. 48, 56, 459 A.2d 503 (1983). ''When issues of fact are necessary to the determination of a court's jurisdiction, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses.'' Id.

In this case, there is a question as to a jurisdictional issue of fact, namely, whether the defendant received the notice mailed by the plaintiff. In prior cases involving General Statutes § 13a-149, there was no disputed issue of fact. Those cases do not involve the actual receipt of the notice, but rather, concern the resolution of questions of law such as the sufficiency of the notice or its timeliness; see *Brennan* v. *Fairfield*, supra, 255 Conn. 697–98; *Rapid Motor Lines, Inc.* v. *Cox*, supra, 134 Conn. 236–37; or whether a defendant had an obligation of maintenance. *Ferreira* v. *Pringle*, supra, 255 Conn. 340–41; *Novicki* v. *New Haven*, 47 Conn. App. 734, 739–40, 709 A.2d 2 (1998).

Here, it is possible that cross-examination of the affiants of the defendant as to the defendant's procedure for receipt of incoming mail, as to the defendant's procedure for investigating claims of ''lost letters,'' and whether temporary employees were retained by the city clerk's office during the relevant period of time might establish the fact that the defendant had received notice. In a close case, I would rather err on the side of giving a plaintiff a day in court, complete with the opportunity of live testimony and the cross-examination of witnesses. See *Henriquez* v. *Allegre*, supra, 68 Conn. App. 247. Accordingly, I would remand the matter for an evidentiary hearing.

[1] At oral argument on the defendant's motion to dismiss for lack of jurisdiction, the trial court asked; ''Why couldn't I, at most, schedule an evidentiary hearing, let [the plaintiff] put on whatever evidence you have of whether there was or was not notice given and then make a ruling.'' The court at one point asked: ''What is the vehicle for determining a disputed fact in a motion to dismiss?'' The defendant responded by stating that there was no disputed fact, and, subsequently, the plaintiff noted that if the court believed that there is a factual dispute, a hearing was necessary ''because I have got some other evidence other than my assertion that it was mailed.'' The plaintiff, however, never filed an additional affidavit or offered any other evidence. The court in its memorandum of decision, however, made no reference to the need for an evidentiary hearing, stating that the plaintiff did not provide the court ''with any evidence by way of affidavit or otherwise that this notice was received by the [defendant].''