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SCHALLER, J., dissenting. The majority reverses the judgment of the trial court and determines that the plaintiff Scott Porter should prevail despite the fact that he assigned his interest in the defendants' written guarantees to Iboport, LLC (Iboport). In doing so, the majority appears to adopt the plaintiff's argument that the capital contribution made to Iboport did not represent a legal transfer of interest in the guarantees and, consequently, may be ignored as mere "tax treatment." Because the plaintiff assigned his rights under the guarantees to Iboport as a capital contribution and, therefore, lacked standing to seek enforcement of them in the present action, I respectfully dissent and conclude that the trial court should have dismissed the case due to the absence of subject matter jurisdiction.

In addition to the facts recited in the majority opinion, the following undisputed facts, as found by the trial court, are relevant to the present appeal. On its 2008 tax return, Iboport reported a $300,000 capital contribution from the plaintiff. In turn, also on its 2008 tax return, One Country, LLC (One Country) reported a $300,000 capital contribution from Iboport. This transfer of assets occurred in order to allow the plaintiff to take a $300,000 business loss and to receive a corresponding tax deduction. In its memorandum of decision, the court determined that "[t]he obligation for which the defendants provided their backstop guarantees was the obligation of One Country . . . to the plaintiff that arose when the plaintiff was required to pay $300,000 to the bank pursuant to his guarantee. After that obligation arose, the plaintiff chose to contribute the obligation to Iboport . . . . In this process, the plaintiff first divested himself of the title to the obligation, so that Iboport . . . rather than the plaintiff became the party entitled and empowered to enforce the defendants' backstop guarantees."

In view of this determination by the trial court, I believe that this court must address the issue of standing. "The issue of standing implicates the trial court's subject matter jurisdiction and therefore presents a threshold issue for our determination." (Internal quotation marks omitted.) *D'Amato Investments, LLC* v. *Sutton*, 117 Conn. App. 418, 421, 978 A.2d 1135 (2009). "Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy." (Internal quotation marks omitted.) *Wilcox* v. *Webster Ins. Inc.*, 294 Conn. 206, 214, 982 A.2d 1053 (2009). "[T]he court has a duty to dismiss, even on its own initiative, any appeal

that it lacks jurisdiction to hear. . . . Moreover, [t]he parties cannot confer subject matter jurisdiction on the court, either by waiver or by consent." (Citation omitted; internal quotation marks omitted.) *Webster Bank* v. *Zak*, 259 Conn. 766, 774, 792 A.2d 66 (2002). "Our review of the question of . . . standing is plenary." (Internal quotation marks omitted.) *Ulster Savings Bank* v. *28 Brynwood Lane, Ltd.*, 134 Conn. App. 699, 705, 41 A.3d 1077 (2012).

"It is a well established principle of contract law that assignment of one's rights under a contract results in [s]uccession by an assignee to exclusive ownership of all or part of the assignor's rights respecting the subject matter of the assignment, and a corresponding extinguishment of those rights in the assignor . . . . It is [also] well settled that one who [is] neither a party to a contract or a contemplated beneficiary thereof cannot sue to enforce the promise of the contract . . . ." (Citation omitted; internal quotation marks omitted.) *Shenkman-Tyler* v. *Central Mutual Ins. Co.*, 126 Conn. App. 733, 742–43, 12 A.3d 613 (2011).

In order to determine whether the plaintiff has standing to enforce the guarantees, the court must first examine whether the plaintiff was permitted to assign his interest in the guarantees to a third party. "[A] guarantee is a promise to answer for the debt, default or miscarriage of another. . . . It is simply a species of contract." (Citations omitted.) *Regency Savings Bank* v. *Westmark Partners*, 59 Conn. App. 160, 164, 756 A.2d 299 (2000). "The question of the parties' intent is [o]rdinarily . . . a question of fact [subject to appellate review under the clearly erroneous standard]. . . . If however, the language of the contract is clear and unambiguous, the court's determination of what the parties intended in using such language is a conclusion of law. . . . In such a situation our scope of review is plenary, and is not limited by the clearly erroneous standard. . . . Thus, in the absence of a claim of ambiguity, the interpretation of [a] contract presents a question of law. . . . Well established principles guide our analysis in determining whether the language of a contract is ambiguous. [A] contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . In contrast, [a] contract is unambiguous when its language is clear and conveys a definitive and precise intent. . . . The court will not torture the words to impart ambiguity. . . . Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous." (Internal quotation marks omitted.) *D'Amato Investments, LLC* v. *Sutton*, supra, 117 Conn. App. 423–24.

In *Hudson United Bank* v. *Endeavor Group*, 96 Conn.

App. 447, 449–50, 901 A.2d 64 (2006), this court examined a case in which the plaintiff sought to enforce a continuing personal guarantee from the defendant which had been assigned to it through a merger with another bank. In that case, the guarantee explicitly provided that "[t]his guarant[ee] shall inure to the benefit of [the predecessor bank], its successors, legal representatives and assigns." (Internal quotation marks omitted.) Id., 453. On the basis of this language, this court concluded that "the guarantee clearly provides that its benefit would continue to any and all successors . . . ." Id.

Likewise, in *D'Amato Investments, LLC* v. *Sutton*, supra, 117 Conn. App. 420–21, this court examined a case in which the assignee of a landlord sought to enforce a personal guarantee in order to recover amounts allegedly due pursuant to a commercial lease. In that case, the guarantee provided that "[t]he undersigned guarantees to Landlord, *Landlord's successors and assigns*, the full performance and observance of all covenants, conditions and agreements . . . ." (Emphasis in original; internal quotation marks omitted.) Id., 422. In light of this language, this court rejected the defendant's claim the assignee lacked standing to enforce his personal guarantee. Id., 423.

In the present case, each of the guarantees provides that they "shall inure to the benefit of [the plaintiff], his successors and assigns, and shall be binding on [the guarantor] and his heirs, successors and permitted assigns." This language is equivalent to the terms present in *Hudson United Bank* and *D'Amato Investments, LLC*. Accordingly, I conclude that the guarantees properly may be assigned.

Having concluded that the guarantees were capable of being assigned, I next discuss whether the plaintiff did, in fact, assign his rights to Iboport by treating the $300,000 as a capital contribution. The plaintiff argues that this constituted "mere tax treatment" and was not the result of any transfer of assets. I believe the plaintiff is mistaken. "Tax treatment" does not exist in isolation but, rather, constitutes a reporting of underlying transactions or events that have taken place previously, namely, in this case, a capital contribution and a corresponding assignment of the plaintiff's interests in the guarantees.

General Statutes § 34-150, which governs capital contributions made to limited liability companies, provides: "An interest in a limited liability company may be issued in exchange for property, services rendered or a promissory note or other obligation to contribute cash or to perform services." Thus, under Connecticut law, the existence of a capital contribution requires the member to transfer something of value to the company. If this court were to assume, as the plaintiff concedes, that he made a capital contribution in the present case,

it must logically follow that the plaintiff transferred something of value to Iboport, namely, his right to be paid under the personal guarantees.[1] Because the plaintiff assigned his interest in the guarantees to Iboport, I conclude that he lacks standing to seek enforcement of them in court. *See Shenkman-Tyler* v. *Central Mutual Ins. Co.*, supra, 126 Conn. App. 742–43.

Although I agree with the trial court's conclusion that the plaintiff's decision to transfer his rights under the guarantees to Iboport as a capital contribution must prevent him from recovering under those contracts in the present case, I believe that rendering judgment in favor of the defendants was improper because the court lacked subject matter jurisdiction to entertain the plaintiff's cause of action. I would, therefore, reverse the judgment of the trial court and remand the case with direction to render judgment dismissing the plaintiff's action. For the foregoing reasons, I respectfully dissent.

[1] The absence of a formal contract transferring the right to payment under the personal guarantees to Iboport is inapposite to this conclusion. In prior cases decided by this court, the assignment of the guarantee was valid, even though the guarantee was not explicitly assigned. In *Hudson United Bank*, we concluded that the guarantee was assigned to the successor when the original beneficiary merged with the successor, even though the merger documents did not specifically assign the guarantee. *Hudson United Bank* v. *Endeavor Group*, supra, 96 Conn. App. 453. Likewise, in *D'Amato Investments, LLC*, we concluded that the personal guarantee of a lease was assigned to the plaintiff even though the " 'assignment of lease' did not explicitly incorporate or mention the guarantee . . . ." *D'Amato Investments, LLC* v. *Sutton*, supra, 117 Conn. App. 422.