STEVEN WALLERSTEIN *v.* STEW LEONARD'S DAIRY
(SC 16459)

Sullivan, C. J., and Borden, Norcott, Vertefeuille and Zarella, Js.

Argued March 14—officially released October 9, 2001

Counsel

David S. Golub, with whom, on the brief, was *Brad C. Gustafson*, for the appellant (plaintiff).

Royce Vehslage, with whom, on the brief, was *Robert M. LaRose*, for the appellee (defendant).

Opinion

NORCOTT, J. The dispositive issue in this products liability case is whether, after the defendant, Stew Leonard's Dairy, had made an offer of judgment pursuant to General Statutes § 52-193[1] and the plaintiff, Steven Wallerstein, had accepted the offer pursuant to General Statutes § 52-194,[2] the plaintiff was the prevailing party and was entitled to an award of attorneys' fees pursuant to General Statutes § 52-240a.[3] We conclude that the plaintiff was the prevailing party. We also conclude that the case must be remanded to the trial court for a hearing in order to determine whether the defense pre-

sented by the defendant was frivolous and, accordingly, if the plaintiff is entitled to an award of attorneys' fees.

The plaintiff made the following allegations in his complaint. This products liability action arose in January, 1995, when the plaintiff's wife bought a package of rolls that was baked and sold on the defendant's premises. The plaintiff allegedly bit into one of the rolls, which had a metal screw embedded in it. As a result, he allegedly fractured several teeth, damaged certain nerves and had to undergo extensive dental procedures. The defendant denied liability, asserting no special defenses, and claimed its right to a jury trial.

In January, 1999, the trial court scheduled the case for trial. One week before the trial was scheduled to begin, the defendant filed an offer of judgment pursuant to § 52-193 in the amount of $15,000. The plaintiff timely filed an acceptance of the defendant's offer pursuant to § 52-194. Thereafter, on February 4, 2000, the court endorsed, in writing, at the bottom of the plaintiff's acceptance, ''[j]udgment may enter in accord with this acceptance of offer for $15,000,'' and, on the same date issued the following written order: ''The court hereby enters judgment in accordance with the acceptance of offer for $15,000.''

The plaintiff then filed a motion to amend the judgment to include an award of attorneys' fees pursuant to § 52-240a. See footnote 3 of this opinion. He claimed that he was a prevailing party in a products liability action and that the defendant's denial of liability was frivolous. The defendant objected, claiming only that an evidentiary hearing was required before the court could determine whether its claim was frivolous. Although the defendant had not made such a claim, the trial court nonetheless ruled, as a matter of law, that a plaintiff who accepts an offer of judgment cannot seek attorneys' fees under § 52-240a. In its ruling, the trial court stated: ''The offer of judgment was made by pleading no. 110 dated 1/10/00 [and] filed 1/12/00. The offer was accepted by pleading no. 114 dated 1/21/00 and filed 1/21/00. [General Statutes §] 52-192[4] is self-executing. It requires no court action. In this district we enter an order of judgment although we deem it unnecessary. In any event, if the plaintiff wanted attorneys' fees, then [he] should not have accepted the offer. The court finds the acceptance to conform with the offer. Fifteen thousand dollars is fifteen thousand dollars, not fifteen thousand dollars plus attorneys' fees.''

Thereafter, the court rendered judgment for the plaintiff in the amount of $15,000, specifically noting ''the judgment of February 4, 2000, shall stand, unmodified.'' The plaintiff appealed to the Appellate Court from the judgment of the trial court, challenging the ruling denying him attorneys' fees pursuant to § 52-240a. We transferred the appeal to this court pursuant to General Statutes § 51-199 and Practice Book § 65-1. We reverse

the trial court's judgment insofar as it precluded an award of attorneys' fees.

The plaintiff claims that he was a ''prevailing party'' under § 52-240a because he secured a judgment against the defendant and, therefore, that he was entitled to seek an award of attorneys' fees. The defendant claims, to the contrary, that the offer of judgment statutes do not contemplate an attorneys' fees proceeding under § 52-240a and, therefore, that in order for the plaintiff to have been a ''prevailing party'' within the meaning of that statute, he must have prevailed by securing a favorable verdict after a trial. We agree with the plaintiff.

Our task is to construe the meaning of §§ 52-194 and 52-240a. ''Statutory interpretation is a matter of law over which this court's review is plenary. . . . In construing statutes, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.'' (Internal quotation marks omitted.) *Doyle* v. *Metropolitan Property & Casualty Ins. Co.*, 252 Conn. 79, 84, 743 A.2d 156 (1999).

First, the language of § 52-194 unambiguously provides that the written acceptance of a party's offer of judgment must result in the court's rendering of judgment against the defendant. ''Upon the filing of the written acceptance [of the defendant's filed offer of judgment], the court *shall* render judgment against the defendant as upon default for the sum so named and for the costs accrued at the time of the defendant's giving the plaintiff notice of the offer. . . .'' (Emphasis added.) General Statutes § 52-194. Thus, contrary to the trial court's assertion that § 52-194 ''is self-executing . . . [and] requires no court action,'' the statute mandates a formal rendition of judgment by the court following the acceptance of an offer of judgment. Consequently, judgment in the amount of $15,000 was rendered by the court in favor of the plaintiff.

Pursuant to the statute, the plaintiff was the prevailing party of record because a judgment had been ordered in his favor. Insofar as the language of the statute is concerned, it is difficult to see why one who has secured a judgment of the court in his favor should not be viewed as a party who has prevailed in the action in question, irrespective of the route by which he received that judgment. Indeed, ''prevailing party'' has been defined as ''[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded . . . . Also termed 'successful party.' '' Black's Law Dictionary (7th Ed. 1999). Moreover, the

United States Supreme Court has determined, in construing the attorneys' fees provision of the Fair Housing Amendments Act; 42 U.S.C. § 3613 (c) (2); and the Americans with Disabilities Act; 42 U.S.C. § 12205; that the term ''prevailing party'' is a ''legal term of art . . . [referring to] one who has been awarded some relief by the court . . . .'' *Buckhannon Board & Care Home, Inc.* v. *West Virginia Dept. of Health & Human Resources*, 532 U.S. , 121 S. Ct. 1835, 1839, 149 L. Ed. 2d 855 (2001). Other courts have held that, under various federal fee shifting statutes, the term ''prevailing party'' includes a plaintiff who has secured ''actual relief on the merits of his claim [that] materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff''; *Farrar* v. *Hobby*, 506 U.S. 103, 111–12, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992); including a consent decree; *Maher* v. *Gagne*, 448 U.S. 122, 129, 100 S. Ct. 2570, 65 L. Ed. 2d 653 (1980); and specifically including the acceptance of an offer of a monetary judgment, and the consequent entry of judgment by the court, under rule 68 of the Federal Rules of Civil Procedure. *Lyte* v. *Sara Lee Corp.*, 950 F.2d 101, 102 (2d Cir. 1991); see also *Weyel* v. *Catania*, 52 Conn. App. 292, 301, 728 A.2d 512, cert. denied, 248 Conn. 922, 733 A.2d 846 (1999) (plaintiff who prevailed at trial is prevailing party under federal Civil Rights Act). Indeed, the defendant has not cited any authority limiting the term ''prevailing party'' under a fee shifting statute to one who prevailed following a trial.

Furthermore, our conclusion that § 52-240a permits attorneys' fees to be awarded following the acceptance of an offer of judgment under § 52-194 is consistent with the policy of § 52-240a. The purpose of the statute is to discourage frivolous claims and defenses in products liability actions by awarding attorneys' fees to the prevailing party in such cases. This conclusion will further that policy by discouraging a defendant in a products liability action from asserting a frivolous defense, thereby requiring the plaintiff to accrue additional expenses, only to make a reasonable offer of judgment immediately prior to the onset of trial. Conversely, a contrary conclusion could serve as a disincentive to the acceptance of what otherwise would be a satisfactory offer of judgment, because it would mean that the plaintiff, as a matter of law, would be required to forfeit what he might regard as a legitimate claim for attorneys' fees.

We need not decide, in the present case, whether the term ''prevailing party'' contained in § 52-240a also includes a settlement of a dispute that is not reflected by the rendition of a judgment or other judicial order. We decide only that where, as in the present case, the plaintiff accepts an offer of judgment that the court then renders, he is the ''prevailing party'' under § 52-240a.

Furthermore, we do not preclude the fashioning of an offer of judgment that specifically rules out an award of attorneys' fees. Certainly, a defendant is free to make such an offer of judgment and a plaintiff is free to accept it. We conclude, however, that unless a party fashions its offer of judgment explicitly to preclude an award of attorneys' fees, the court may not read such a preclusion into the offer. In the present case, the defendant was silent as to the issue of attorneys' fees in its offer of $15,000 to the plaintiff. The defendant, in fact, never made the claim that the plaintiff was not legally entitled to such an award if he was the prevailing party. Therefore, we cannot read the offer of judgment so as to have precluded a subsequent award of attorneys' fees.[5]

Finally, we note that, at oral argument before this court, the plaintiff conceded that, if he prevailed on his first claim, namely, that he was a ''prevailing party'' within the meaning of § 52-240a, the case would have to be remanded for a hearing on his claim that the defendant's defense was frivolous. The trial court did not consider that question, and there is no record in this court on which we could make such a determination as a matter of law. In order to fulfill the requirements of § 52-240a and be entitled to an award of attorneys' fees, the plaintiff, as the prevailing party, must prove that the defendant's claim or defense was frivolous. The defendant claims that because the trial court did not conduct a hearing and consider evidence regarding its alleged conduct during the pending litigation, it is not possible for the court to determine the nature of its defense. We agree with the defendant.

The plaintiff's argument for an award of attorneys' fees relies upon the allegations set forth in his complaint, his motion for attorneys' fees and the accompanying memorandum. The defendant's answer to the plaintiff's complaint denies each of these allegations. There are, therefore, no facts before the court regarding the nature of the defendant's defenses to the plaintiff's claims. In order to determine these facts, there must be an evidentiary hearing. The plaintiff conceded at oral argument before this court that such a hearing is necessary and that he would have agreed to the request for such a hearing.

It is critical to keep in mind that the issue before the trial court in such an evidentiary hearing is not that of liability. The issue of the defendant's liability was resolved by virtue of the accepted offer of judgment and the subsequent filing of the trial court's notice of judgment. We already have considered that such judgment constituted a determination that the plaintiff was, indeed, the prevailing party. The issue at this evidentiary hearing in question is whether the plaintiff also is entitled to attorneys' fees as set forth in § 52-240a, which requires that to be so entitled, the plaintiff must prove only that the defendant's defense to that liability was

frivolous. We conclude that an evidentiary hearing is necessary in order to assess the nature of the defendant's defense and to determine whether the plaintiff is entitled to an award of attorneys' fees.

The judgment is reversed with respect to the trial court's determination that the plaintiff was not the prevailing party for purposes of § 52-240a, and the case is remanded to that court for further proceedings according to law.

In this opinion BORDEN and VERTEFEUILLE, Js., concurred.

[1] General Statutes § 52-193 provides: "In any action on contract, or seeking the recovery of money damages, whether or not other relief is sought, the defendant may before trial file with the clerk of the court a written notice signed by him or his attorney, directed to the plaintiff or his attorney, offering to allow the plaintiff to take judgment for the sum named in such notice."

[2] General Statutes § 52-194 provides in relevant part: "In any action, the plaintiff may, within ten days after being notified by the defendant of the filing of an offer of judgment, file with the clerk of the court a written acceptance of the offer signed by himself or his attorney. Upon the filing of the written acceptance, the court shall render judgment against the defendant as upon default for the sum so named and for the costs accrued at the time of the defendant's giving the plaintiff notice of the offer. . . ."

[3] General Statutes § 52-240a provides: "If the court determines that the claim or defense is frivolous, the court may award reasonable attorney's fees to the prevailing party in a products liability action."

[4] The trial court referred to General Statutes § 52-192, which governs the precedence of other cases in order of trial, instead of § 52-194, the statute at issue here. We assume that this reference was an inadvertent clerical error.

[5] The dissent first asserts that the principal issue in the present case is whether the trial court abused its discretion in denying the plaintiff's motion to open the judgment, and that there was no abuse. Although it is ordinarily true that our review of a trial court's decision whether to open a stipulated judgment is limited to a determination of whether the trial court abused its discretion or reached an unreasonable result; *Housing Authority* v. *Lamothe*, 225 Conn. 757, 767, 627 A.2d 367 (1993); in the present case, that scope of review is not applicable. The question before the trial court, namely, whether the plaintiff was a prevailing party under § 52-240a, was purely a legal one, and, therefore, our review is not limited to the abuse of discretion standard.

The dissent next asserts that when the plaintiff accepted the defendant's offer of judgment, he essentially contracted away his right to make a subsequent claim for attorneys' fees. The dissent fails to consider, however, that: (1) the defendant never made such a claim in the trial court; and (2) the defendant has never claimed, in either this court or the trial court, that the plaintiff's claim for attorneys' fees was barred by any principle of surprise or finality.