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VERTEFEUILLE, J., with whom SULLIVAN, J., joins, concurring. I agree with and join the majority’s conclusion that under General Statutes (Rev. to 1991) § 34-47,<sup>1</sup> a general partner of a partnership can bind the partnership to a listing agreement without an additional document that is acknowledged and witnessed pursuant to General Statutes (Rev. to 1991) § 47-5.<sup>2</sup> I therefore agree with the majority that the Appellate Court improperly affirmed the decision of the trial court to grant the defendants’ motion for summary judgment on the ground that the listing agreement in this case did not satisfy General Statutes (Rev. to 1991) § 20-325a (b) (5).<sup>3</sup> I disagree, however, with the majority’s decision to address an issue that it maintains is “subsidiary” to the dispositive issue before us, namely, the Appellate Court’s conclusion that “the listing agreement in this case was signed by the general partners in their individual capacit[ies] . . . .” *Levey Miller Maretz v. 595 Corporate Circle*, 56 Conn. App. 815, 822, 746 A.2d 803 (2000). I would not reach beyond the certified question before us to address this issue.<sup>4</sup> There are several reasons why I would not reach this issue.

First, as the majority correctly acknowledges, the defendants never made the argument on appeal that

the individual defendants, Charles E. Weber, Jr., and Alfred J. Secondino, Jr., the general partners of the named defendant partnership, 595 Corporate Circle, had signed the listing agreement in their individual capacities. The majority addresses this issue despite it not having been raised by the parties. Because we decide cases based upon the issues that are briefed and argued before this court and, generally, do not independently reach for issues beyond that scope, we should not reach the issue. See, e.g., *King v. Sultar*, 253 Conn. 429, 444 n.6, 754 A.2d 782 (2000); *State v. Colvin*, 241 Conn. 650, 661 n.8, 697 A.2d 1122 (1997); *Aetna Life & Casualty Co. v. Union Trust Co.*, 230 Conn. 779, 788 n.5, 646 A.2d 799 (1994).

Second, I disagree with the majority's contention that we must reach the issue because it was "injected into the case by the reasoning of the Appellate Court" and, therefore, "undermines the factual predicate of the first certified issue in the case . . . ." See footnote 4 of this concurrence. The Appellate Court's conclusion that "the listing agreement in this case was signed by the general partners in their individual capacit[ies]"; *Levey Miller Marez v. 595 Corporate Circle*, supra, 56 Conn. App. 822; in part because "[t]he listing agreement does not reflect that anyone signed it on behalf of 595 Corporate Circle"; *id.*, 819–20; was not essential to its decision affirming the judgment of the trial court. The crux of the Appellate Court's decision was that Weber and Secondino could not, pursuant to § 20-325 (b) (5), bind the partnership to the listing agreement without an additional document that had been acknowledged and witnessed pursuant to § 47-5. Although I agree with the majority that this conclusion is incorrect, it is clear to me that we can resolve the question of law before us without deciding, as the Appellate Court did, the capacity in which the partners signed the listing agreement. See *id.*, 821–22.

Finally, by resolving the issue of whether Weber and Secondino signed the listing agreement in their individual capacities, a *question of fact*, the majority trespasses upon the province of the trial court by engaging in fact finding.<sup>5</sup> "It is the function of the trial court, not this court, to find facts." *State v. Lafferty*, 189 Conn. 360, 363, 456 A.2d 272 (1983); *State v. Tate*, 256 Conn. 262, 287–88 n.17, 773 A.2d 308 (2001); see also *Miller v. Kirshner*, 225 Conn. 185, 199, 621 A.2d 1326 (1993).

I concur with the majority's conclusion that a general partner of a partnership can bind the partnership to a listing agreement without an additional document that is acknowledged and witnessed pursuant to § 47-5. I would reverse the judgment of the Appellate Court and remand the case to the trial court for further proceedings without reaching any other issue.

<sup>5</sup> General Statutes (Rev. to 1991) § 34-47 (1) provides: "Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any

instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.”

Section 34-47 was repealed by No. 95-341, § 57, of the 1995 Public Acts, effective July 1, 1997, however, it was in effect at the time that the listing agreement in the present case was executed in 1991. See General Statutes § 1-1 (t) and (u).

<sup>2</sup> General Statutes (Rev. to 1991) § 47-5 (a) provides: “All conveyances of land shall be: (1) In writing; (2) if the grantor is a natural person, subscribed, with or without a seal, by the grantor with his own hand or with his mark with his name annexed to it or by his attorney authorized for that purpose by a power executed, acknowledged and witnessed in the manner provided for conveyances or, if the grantor is a corporation or partnership, subscribed by a duly authorized person; (3) acknowledged by the grantor, his attorney or such duly authorized person to be his free act and deed; and (4) attested to by two witnesses with their own hands.”

<sup>3</sup> General Statutes (Rev. to 1991) § 20-325a provides in relevant part: “(a) No person who is not licensed under the provisions of this chapter, and who was not so licensed at the time he performed the acts or rendered the services for which recovery is sought, shall commence or bring any action in any court of this state . . . to recover any commission, compensation or other payment in respect of any act done or service rendered by him, the doing or rendering of which is prohibited under the provisions of this chapter except by persons duly licensed under this chapter.

“(b) No person, licensed under the provisions of this chapter, shall commence or bring any action . . . as set forth in subsection (a), unless such acts or services were rendered pursuant to a contract or authorization from the person for whom such acts were done or services rendered. To satisfy the requirements of this subsection any such contract or authorization shall (1) be in writing, (2) contain the names and addresses of all the parties thereto, (3) show the date on which such contract was entered into or such authorization given, (4) contain the conditions of such contract or authorization and (5) be signed by the owner or an agent authorized to act on behalf of the owner only by a written document executed in the manner provided for conveyances in section 47-5, and by the real estate broker or his authorized agent. . . .”

<sup>4</sup> The first of two certified questions was limited to the following: “Did the Appellate Court correctly determine that a real estate listing agreement was unenforceable under General Statutes (Rev. to 1991) § 20-325a on the ground that the signatures of the general partners of the partnership ownership of the property were not acknowledged and witnessed?” *Levey Miller Maretz v. 595 Corporate Circle*, 253 Conn. 906, 753 A.2d 940 (2000).

<sup>5</sup> It appears to me that the majority not only exceeds its appropriate appellate function by reaching this factual issue, but its findings are antithetical to both the findings of the trial court and the stipulation made by the parties. I note that the trial court stated the following in its memorandum of decision on the defendants’ motion for summary judgment: “The court finds, and the parties agree, that there are no genuine issues of material fact. For [the] purposes of this motion, the parties stipulate that there are no genuine issues of material fact with respect to the listing agreement. Both parties agree that the listing agreement was signed by [the plaintiff], Weber and Secondino, *but that no signature appears on the listing agreement on behalf of 595 [Corporate Circle]*. Additionally, there is no dispute that Weber and Secondino have not executed any separate writing in accordance with . . . § 47-5, which would expressly evidence their authority to act as agents on behalf of the partnership. *The only issue to be determined is one of law, whether the listing agreement, on its face, satisfies the applicable statutory requirement that listing agreements be signed by the ‘owner’ of the subject property in order to be enforceable.*” (Emphasis added.)

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