COMMISSIONER OF ENVIRONMENTAL PROTECTION ET AL. *v.* JOSEPH J. FARRICIELLI ET AL.
(SC 18596)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Harper, Js.*

*Argued October 31, 2012—officially released February 19, 2013*

*Kenneth A. Votre*, for the plaintiff in error (Modern Materials Corporation).

*Kimberly P. Massicotte*, assistant attorney general, with whom were *Matthew I. Levine*, assistant attorney general, and, on the brief, *George Jepsen*, attorney general, and *Krista E. Trousdale*, assistant attorney general, for the defendant in error (commissioner of environmental protection).

*Opinion*

NORCOTT, J. This is the latest chapter in the efforts of the plaintiffs, including the named plaintiff and defendant in error, the commissioner of environmental protection (commissioner),[1] to close and remediate an area commonly known as the "tire pond," a solid waste disposal area straddling the Hamden and North Haven town boundaries that is on land owned by the defendants, Joseph Farricielli and various corporate entities that he owns or controls (corporations).[2] The nonparty plaintiff in error, Modern Materials Corporation (Modern), which conducts its business on land leased from State Five Industrial Park, Inc. (State Five), that contains a portion of the tire pond, brings this writ of error[3] from the judgment of the trial court ordering it to vacate that land in order to effectuate the environmental remediation that the trial court had ordered in the action underlying this writ of error (underlying action). Modern contends that the trial court improperly ordered it to vacate because: (1) the trial court lacked the authority to enforce the injunctions ordered in the underlying action against Modern because it has never been a party to that action or acted in privity with a party thereto; (2) such an order was not necessary to effectuate the remediation; and (3) the trial court violated Modern's due process rights under the federal and state constitutions when it enforced the orders in the underlying action without first giving Modern the opportunity to contest the validity of those orders at a hearing. We disagree and, accordingly, dismiss the writ of error.

The record, as described in part by our previous opinions in various appeals concerning the tire pond, reveals the following background facts and procedural history. Farricielli "and his corporations own four contiguous parcels of property, three of which are located in the town of Hamden and one in the town of North Haven [parcels]. The parcels are bordered by the Quinnipiac River on the east and by State Street on the west. Tidal marshes abut the properties to the north and south, and two of the parcels contain ponds. One of the ponds, which is known as the ['tire pond'] because [Farricielli] and his corporations used it for the unauthorized disposal of approximately 15 million used tires, is separated from the Quinnipiac River and adjoining marshlands by a narrow dike. Since the 1970s, [Farricielli] and his corporations maintained various solid waste disposal operations on these properties, and, on occasion, leased the parcels to other businesses for similar uses. [Farricielli's] corporations and his various tenants used the land for, among other things, the sorting, recycling, reduction and disposal of construction and demolition waste, pumice, used tires and other refuse. One tenant operated a landfill on one of the parcels, and [Farricielli] and his corporations maintained offices and scales on another of the parcels." *Rocque* v. *Farri-*

*cielli*, 269 Conn. 187, 192, 848 A.2d 1206 (2004).

"Beginning as early as 1974, the plaintiffs in this case became concerned over the unauthorized and otherwise illegal activities of [Farricielli], his corporations and his tenants.[4] Several attempts were made to bring [Farricielli], his corporations and tenants into compliance with state statutes and town ordinances, which, among other things, required [Farricielli] and his corporations to secure the appropriate permits and to abide by their requirements. In December, 1995, [Hamden] obtained a temporary injunction against [Farricielli] and his corporations, and it was on this order that the stipulated judgment involved in this case was based. In March, 1999, [Hamden] obtained a cease and desist order, which it also requested the court to enforce in the present case.

"In February, 1998, the commissioner issued a consent order designed to go into effect on May 28, 1998, which was signed by [Farricielli] on behalf of himself individually and on behalf of his corporations [consent order]. Simply stated, the consent order required [Farricielli] and his corporations to cease the operation of all unpermitted solid waste facilities and to remediate the tire pond. Their subsequent failure to comply adequately, or, in some cases, at all, with the terms of the consent order, along with the violation of the stipulated judgment and the cease and desist order obtained by [Hamden], constitute the basis of [the underlying action]." Id., 192–94.

The commissioner commenced the underlying action on July 9, 1999, by filing "a complaint, which subsequently was amended four times, against [Farricielli] and his corporations alleging flagrant and persistent violations of General Statutes §§ 22a-44 (b), 22a-108, 22a-208a, 22a-208b, 22a-208c and 22a-430, concerning the operation of their unpermitted solid waste disposal areas. Specifically, the commissioner sought: an order from the trial court enforcing the terms of the commissioner's 1998 consent order with [Farricielli] and his corporations, which was designed to end ongoing statutory violations; a temporary and permanent injunction requiring [Farricielli] and his corporations to cease their illegal activities; and an order requiring [Farricielli] and his corporations to pay civil penalties for each day of each alleged violation. The town and its zoning enforcement officer subsequently intervened as party plaintiffs in the action, and the plaintiffs filed a joint amended complaint seeking, in addition to all of the aforementioned remedies, enforcement of an existing cease and desist order and the stipulated judgment in effect between [Hamden] and [Farricielli] and his corporations, which was designed to end ongoing violations of various zoning ordinances." Id., 191–92.

"Following a lengthy court trial [before *Hon. Robert Hale*, judge trial referee][5] and the filing of posthearing

briefs, the trial court found for the plaintiffs on all counts and ordered [Farricielli] to comply with the terms of the consent order, the stipulated judgment, and the cease and desist order, and to pay civil penalties for his ongoing violations of state and local laws [2001 judgment]. [Farricielli] subsequently filed motions for reargument and for a stay of the injunctions ordered by the court pending an appeal, both of which were denied."[6] Id., 194. This court affirmed the underlying judgment in an opinion released on June 1, 2004. Id., 190–91.

With respect to the three specific parcels of the defendants' land at issue herein, known as parcels A, B and C, the tire pond is located on parcel B, which lies in both North Haven and Hamden, and which is bordered on the east by the Quinnipiac River and on the west by State Street. Parcel A lies south of parcel B and is entirely in Hamden. Parcel C, which is located between parcels A and B, is a narrow strip that lies entirely in Hamden. Parcel C is owned by State Five, who, in turn, received its interest in that parcel from its corporate predecessor, Look Investment Agency, Inc. (Look). In February, 2000, Farricielli, through one of his corporations, the defendant Tire Salvage, Inc. (Tire Salvage), conveyed a 6.8 acre strip of land in the southern portion of the tire pond on parcel B to Look, causing it to become part of parcel C.[7] Further, in June, 2003, Farricielli licensed a three acre portion of the tire pond in parcel B to Look for the sum of $1 (license agreement).

Modern became involved with this property in June, 2003, while the appeal to this court in the underlying action was pending. Specifically, on June 11, 2003, State Five leased the 6.8 acre strip on parcel C to Modern for an initial five year plus seven month term, ending on February 28, 2009. The lease also included a five year renewal option, which Modern since has exercised. Modern subsequently recorded this lease on the Hamden land records pursuant to General Statutes § 47-19.[8] State Five also assigned to Modern a portion of the license agreement, thus permitting Modern to occupy the three acre strip of land on parcel B as a sublicensee. Modern currently uses its leased premises on parcel C and this small portion of parcel B to recycle, screen and resell construction materials such as gravel, concrete, asphalt and earth materials.

Subsequent to the execution of Modern's lease, the commissioner filed a motion for contempt in 2004, alleging that the defendants had failed to complete the remediation of the tire pond as required by the 2001 judgment and that Farricielli had engaged in personal conduct that directly had interfered with the commissioner's efforts to complete the remediation. Although the trial court denied the commissioner's motion for contempt, despite "evidence that [Farricielli] engaged in serious harassment" of the commissioner and two of its con-

tractors engaged in remediation, the court also determined that "further clarification, guidance and strengthening of its injunction [was] required" and issued numerous supplemental orders as an amendment to the underlying judgment. These supplemental orders, issued by memorandum of decision on October 7, 2004 (2004 order), inter alia, "enjoin[ed] *all persons who are given notice thereof*, from preventing the commissioner, his agents, employees and contractors from having full and complete access to the [t]ire [p]ond and/or [p]arcel A, and from interfering with actions taken by the commissioner pursuant to paragraph 3 of the September 21, 2001 judgment."[9] (Emphasis added.) In October, 2004, the commissioner served Modern with a notice of judgment containing both the 2001 judgment and the 2004 order.

In October, 2007, in the interest of continuing to close and remediate the tire pond after complications had resulted from the loss of fill material from a major construction project in Boston, Massachusetts, and in the interest of resolving both the underlying action and a separate civil action that the commissioner had commenced against State Five seeking to hold State Five and its president, Jean L. Farricielli, Farricielli's wife, liable for the defendants' financial obligations pursuant to the underlying judgment; see generally *Commissioner of Environmental Protection* v. *State Five Industrial Park, Inc.*, 304 Conn. 128, 37 A.3d 724 (2012);[10] the parties negotiated and consented to the entry of the first supplementary postjudgment order (2007 order) by the trial court, *Sheldon, J.* The 2007 order specifically and permanently enjoined the defendants from interfering with the closure of the tire pond, as well as directly or indirectly "deriving any monetary gain from parcel B"; and "participating in the management or control of parcel B, except as directed by the commissioner." The 2007 order did, however, specifically contemplate Modern's role as a lessee of premises at the tire pond, as it permitted the defendants "until otherwise ordered by the court, [to] continue to receive lease payments from Modern . . . for its lawful occupancy of parcel B. [The defendants shall not] accept from Modern . . . any lease payments in advance of greater than one month."[11]

Subsequently, in June, 2009, upon the commissioner's application, the trial court ordered Modern to appear and show cause why the commissioner's motion for the enforcement of court orders should not be granted. In its motion for enforcement, the commissioner sought an order directing Modern to vacate, within sixty days of the court's order, the portions of the tire pond that Modern occupies, including that portion of the property it occupied pursuant to its lease agreement with State Five. The commissioner argued that the closure plan could not be effectuated with Modern's operations in place because they interfered with the placement of

fill material and drainage through the installation of sediment traps. Modern argued in response, however, that it was not a party to the underlying action, that its lease predates any of the applicable orders therein and that its closure is not necessary for the remediation of the tire pond.

The trial court granted the commissioner's motion, concluding that Modern was on notice of the consent order and the various judgments in the underlying action because: (1) the consent order had been recorded on the land records prior to the execution of the lease and that Modern had entered into that lease in 2003 while litigation was pending against the property; (2) Modern had been served with the 2004 order enjoining "all persons who are given notice thereof" from interfering with access to the tire pond or parcel A; (3) the portions of the 2007 order referring to Modern's lease emphasize that the parties to the lease are subject to the court's orders and that it is a temporary arrangement; and (4) due process was satisfied, despite the fact that Modern was not made a party to the underlying action, because Modern had been properly served in connection with the commissioner's motion to show cause and had participated at the hearings on the motion to enforce the orders in the underlying action. Thus, the trial court granted the commissioner's motion and enjoined Modern and its "officers, employees, attorneys, agents and anyone acting in concert with it or on its behalf . . . from interfering with the closure of the property known as the tire pond," and further directed Modern, within sixty days of an order by the commissioner, to "vacate the space it is occupying that is defined as 'the lease premises' in the notice of lease recorded on the town of Hamden land records in volume 2626, page 204." This writ of error followed.[12]

In this writ of error, Modern contends that the trial court improperly enforced the injunctions ordered in the underlying action against it because: (1) Modern is not and never has been a defendant therein, and the trial court never found it in privity or acting in concert with a party thereto; (2) it was not necessary to order Modern to vacate its leased premises to effectuate the remediation; and (3) Modern's due process rights were violated when the trial court, in essence, terminated its lease without first affording it an opportunity to be heard as to the validity of its lease and the underlying court orders. We address each claim in turn.

I

We begin with the principal issue in this writ of error, namely, Modern's claim that the trial court improperly enforced the previously ordered injunctions against it because it was not a party to the underlying action. Modern contends that, because it was never made a party to the underlying action, the court had personal jurisdiction over it only in relation to the commission-

er's 2009 motion to show cause that is the subject of this writ of error. Relying on the common law discussed in, inter alia, *DeMartino* v. *Monroe Little League, Inc.*, 192 Conn. 271, 471 A.2d 638 (1984), and *Clancy* v. *Clancy*, 26 Conn. Sup. 46, 212 A.2d 79 (1965), Modern further contends that, because it was not a party to the underlying action and had only an arm's-length business relationship with any of the defendants, the trial court lacked the authority to enforce the previously ordered injunctions against it in the absence of a factual finding that it was in privity or acted in concert with any of the defendants in this case. Finally, Modern argues in its reply brief that the commissioner's recordation of the 1998 consent order did not create an encumbrance that would affect its rights because the terms of that order did not prohibit the leasing of the property or refer specifically to the parcels occupied by Modern and, moreover, that this case is about the enforcement of the 2001 judgment in the underlying action and that the 2001 judgment was not recorded prior to Modern obtaining its property interest from State Five.

In response, the commissioner, relying on, inter alia, *Beach* v. *Osborne*, 74 Conn. 405, 412, 50 A. 1019 (1902), contends that Modern is bound by the injunctions ordered in the underlying action because it entered into its 2003 lease with State Five with notice of pending proceedings that could affect its interest, given that the consent order had been recorded on the Hamden land records, thus providing notice of the terms thereof to the defendants' "heirs, successors and assigns" pursuant to General Statutes § 22a-225 (e),[13] relating to solid waste management, and General Statutes § 22a-434,[14] relating to water pollution control. The commissioner emphasizes further that it was imperative for Modern to act cautiously in leasing its property because the 2001 judgment in the underlying action was still the subject of litigation at the time that the lease was executed. Finally, the commissioner contends that the trial court has the inherent authority to protect and vindicate its prior judgments by fashioning orders that bind nonparties, such as Modern, who have notice of the proceedings and possessory rights that are coextensive with parties to the proceedings. As a corollary, the commissioner posits that the facts as found by the trial court are sufficient to sustain the legal conclusion that Modern's identity of interest has rendered it in privity with the defendants for purposes of determining its right to occupy the tire pond. We agree with the commissioner, and conclude that, regardless of whether the recorded consent order operated as a legal encumbrance on Modern's leased property, based on the facts of this case, the trial court had the inherent authority to vindicate its judgment in the underlying action ordering injunctive relief and remediation of the environmental hazard on the defendants' land by enforcing those orders against a tenant who took possession of the land

during the pendency of the litigation.

We begin by setting forth the applicable standard of review. As the parties agree, whether a trial court has the power to issue an order binding a nonparty to previous injunctions is a question of law subject to plenary review, albeit one that is dependent on the particular facts of the case. See *AvalonBay Communities, Inc.* v. *Planning & Zoning Commission*, 260 Conn. 232, 239–40, 796 A.2d 1164 (2002) ("[w]hether the trial court had the power to issue the order, as distinct from the question of whether the trial court properly exercised that power, is a question involving the scope of the trial court's inherent powers and, as such, is a question of law"); *DeMartino* v. *Monroe Little League, Inc.*, supra, 192 Conn. 276 and n.8 ("[w]hether one not named in an injunctive decree may nevertheless be bound by it depends on the facts of each case" [internal quotation marks omitted]), quoting *Vuitton et Fils S.A.* v. *Carousel Handbags*, 592 F.2d 126, 130 (2d Cir. 1979).

The parties further agree as to the generally applicable governing principles, namely, that "[p]ersons who are beyond the scope of an injunction are, of course, not bound by it and are free to ignore it. . . . *At common law an injunction decree bound not only the parties defendant but also those identified with them in interest, in privity with them, represented by them or subject to their control. . . . The law is clear that a person may be bound by the terms of an injunction, even though not a party to the action, if he has notice or knowledge of the order and is within the class of persons whose conduct is entitled to be restrained or who acts in concert with such persons.*" (Citations omitted; emphasis added; internal quotation marks omitted.) *DeMartino* v. *Monroe Little League, Inc.*, supra, 192 Conn. 276–77, discussing, inter alia, *Regal Knitwear Co.* v. *National Labor Relations Board*, 324 U.S. 9, 14, 65 S. Ct. 478, 89 L. Ed. 661 (1945); *Alemite Mfg. Corp.* v. *Staff*, 42 F.2d 832, 833 (2d Cir. 1930); *Clancy* v. *Clancy*, supra, 26 Conn. Sup. 50.

Modern does *not* argue in its principal brief that it lacked actual or constructive notice of the operative judgments or orders herein for purposes of the notice element of this general legal principle. Instead, Modern contends that it was not made a party to the underlying action for purposes of affording the trial court personal jurisdiction over it.[15] Thus, we turn instead to the question of whether Modern's status as a tenant of State Five renders it identified in interest, in privity with, represented by or subject to the control of the defendants, in a manner sufficient to render an injunction enforceable against it as a nonparty. Our analysis begins, then, with the "difficult to define" concept of privity, which "exists to ensure that the interests of the party against whom collateral estoppel [or res judicata] is being asserted have been adequately represented

because of his purported privity with a party at the initial proceeding. . . . A key consideration in determining the existence of privity is the *sharing of the same legal right* by the parties allegedly in privity." (Emphasis added; internal quotation marks omitted.) *Joe's Pizza, Inc.* v. *Aetna Life & Casualty Co.*, 236 Conn. 863, 868, 675 A.2d 441 (1996); see also authorities cited in footnote 21 of this opinion.

Application of this principle demonstrates that Modern's status as a tenant of State Five renders it in privity with the defendants in the underlying action as a matter of law. Put differently, there is a key legal right that is shared by State Five and Modern, namely, the right to occupy and use certain portions of the tire pond. Black letter principles of landlord-tenant law establish that Modern's possessory rights under the lease derive from those of its landlord, State Five, which, in turn, derived its interest in the property from the prior transfers by Farricielli and Tire Salvage to Look, State Five's corporate predecessor. See, e.g., *Message Center Management, Inc.* v. *Commissioner of Revenue Services*, 50 Conn. Sup. 317, 327, 927 A.2d 378 (2006), aff'd, 282 Conn. 706, 923 A.2d 735 (2007); see also 49 Am. Jur. 2d, Landlord and Tenant § 1 (2006) ("[a] landlord-tenant relationship is created when there is: [1] a reversion in the landlord; [2] creation of an estate in the tenant either at will or for a term less than that which the landlord holds; [3] transfer of exclusive possession and control to the tenant; and [4] a contract"); 49 Am. Jur. 2d, supra, § 3 ("[i]n a lessor-lessee relationship, the lessor relinquishes physical possession of the property to the lessee, while retaining legal title to the property").

Indeed, not to view Modern as aligned in interest with its landlord, State Five, who took possession of significant portions of parcels B and C and the tire pond *while the underlying action was pending*, through its corporate predecessor Look, who had taken its possession from the corporate defendant Tire Salvage, would operate to frustrate the trial court's power to order injunctive relief to address an environmental hazard on the defendants' land. We find guidance in a well established line of nuisance cases that recognize the legal interests shared by landlords and tenants and, assuming proper notice, treat injunctions, like that issued in this case, as in rem orders that bind nonparties with possessory rights to the property. Those courts recognize that to decide otherwise would eviscerate the courts' power to vindicate their judgments by permitting defendants to evade injunctions by simply transferring an interest in the subject property to a third party through a lease or other similar conveyance.

The seminal case on this point is *Silvers* v. *Traverse*, 82 Iowa 52, 55, 47 N.W. 888 (1891), wherein the Iowa Supreme Court upheld a finding of contempt against a nonparty lessee of a party who had been enjoined from

using the leased premises for liquor sales, despite the fact that the nonparty lacked actual knowledge of the injunction. The court observed that the underlying "action for an injunction pertained to and affected real estate . . . . This action is notice to all the world of the matter involved therein; and all persons dealing with the property, or acquiring an interest therein, after the proceedings were instituted, are charged with notice of the proceedings. . . . *The decree was against* [*the*] *plaintiff's lessor, who was the defendant in the suit. It affected his right and interest in the property; that is, it limited and cut off his power to use the property for the unlawful keeping and sale of intoxicating liquors. The decree was a restriction upon the use of the property which followed it as a burden, and, as it were, an incumbrance. Surely the plaintiff, in taking the property, took it subject to this restriction and burden.*" (Citation omitted; emphasis added.) Id., 55–56. The court emphasized that viewing the injunction as anything other than an encumbrance on the lessor's right and interest in the property would render "vain" "the attempt to enforce injunctions to abate nuisances of all kinds . . . . The defendant perpetrating the nuisance could wholly defeat the law by leasing or transferring the property to one who had no notice thereof. *He could begin anew the perpetration, and could only be enjoined by a new action, and when so enjoined he could in a like manner transfer the property and so on indefinitely, defeating the law, to the scandal of public justice, and the oppression of the people.*" (Emphasis added.) Id., 56.

Similarly, in *State* v. *Porter*, 76 Kan. 411, 413–14, 91 P. 1073 (1907), the Kansas Supreme Court followed *Silvers* v. *Traverse*, supra, 82 Iowa 52, and upheld the nonparty tenants' contempt convictions, despite their lack of actual knowledge or notice of the underlying order against the maintenance of a nuisance in the building, namely, the violation of state liquor laws. In so concluding, the Kansas court observed that the tenants "had possession of the building in which, but a few months before, the owner, his codefendants 'and all other persons whomsoever' were enjoined from maintaining just such a nuisance as [tenants] were maintaining. In wilfully embarking upon an unlawful business they might well be presumed to have scanned every possible source of danger and to have not overlooked so public a proceeding as the injunction suit. It is more probable that they thought they had cunningly evaded it. *It matters not. The proceedings of the courts for the maintenance of order and the enforcement of law are not thus to be trifled with. The decree of injunction was against the defendants in that suit, and in a sense was ad rem—against the property, or rather against a certain illegal use of the property.* It cut off perpetually the use of the property for any of the purposes which the prohibitory liquor law of this state

denounces as a nuisance. *Thereafter not only the parties to that suit but all persons using the property for any of such unlawful purposes did so at their peril. The judgment is a limitation upon the use of the property of which all subsequent owners or occupants must take notice.*" (Emphasis added.) *State* v. *Porter*, supra, 413–14; see also *State ex rel. Knittle* v. *Will*, 86 Kan. 561, 562, 121 P. 362 (1912) ("An injunction against the owner of property is not only binding upon him but also upon those who may take or hold under him. It is, in one sense, an incumbrance on the property, and the owner who has been enjoined can not, by transferring it to another, by grant, lease or otherwise, free it from the limitation imposed by the injunction."); *State* v. *Terry*, 99 Wash. 1, 3, 6, 168 P. 513 (1917) (upholding nonparty tenant's contempt conviction for violating injunction prohibiting landlord from operating brothel because when "the decree of injunction is not only in personam against the defendants in the injunction suit, but also operates in rem against specific property, or rather against a given illegal use of such property, the decree is a limitation upon the use of the property of which all subsequent owners, lessees, or occupants must take notice" and to "hold otherwise would be to render the perpetual injunction authorized by our statute an empty formality through the ease with which it might be avoided by the mere leasing of the property"); cf. *Swetland* v. *Curry*, 188 F.2d 841, 843 (6th Cir. 1951) (nonparty county commissioners could not be held in contempt for violating injunction forbidding use of land for airport purposes because acquisition of that land by eminent domain eliminated "[t]he element of contract and meeting of the minds necessary to derivative title"); *Savage* v. *Winfield*, 152 Fla. 165, 167–68, 11 So. 2d 302 (1943) (Chapman, J., dissenting) (contempt conviction against nonparty tenant for operation of boatyard in violation of injunction should be reversed because tenant was not properly served with injunction or made party to suit and tenancy preexisted litigation and filing of lis pendens).[16] These common-law principles remain good law today. See *Meyer* v. *Jones*, 696 N.W.2d 611, 616 (Iowa 2005) (doctrine applicable through lis pendens statute applicable to court proceedings rather than findings by municipal hearing officers); *Hutcheson* v. *Iowa District Court*, 480 N.W.2d 260, 264 (Iowa 1992) ("[t]he thrust of these holdings, that a nonparty to an injunction or order may still be held to be in contempt of the injunction or order, is consistent with contempt law in other jurisdictions"); see generally annot., 7 A.L.R.4th 893 (1981) (collecting cases).

This venerable line of state cases providing for the in rem enforcement of injunctions against the maintenance of nuisances or other statutory violations is consistent with federal case law applying rule 65 (d) of the Federal Rules of Civil Procedure,[17] which "is derived from the common-law doctrine that a decree of injunc-

tion not only binds the parties defendant but also those identified with them in interest, in privity with them, represented by them or subject to their control." (Internal quotation marks omitted.) *Golden State Bottling Co.* v. *National Labor Relations Board*, 414 U.S. 168, 179, 94 S. Ct. 414, 38 L. Ed. 2d 388 (1973); see also *United States* v. *Paccione*, 964 F.2d 1269, 1275 (2d Cir.) (concluding that, in a federal racketeering case, district court had authority to hold nonparty in contempt who had "interfered with the res, the disposition of which the district court had specifically restricted, and who consciously impeded the rights, obligations and efforts of the parties bound by the court's order from attempting to comply with valid court orders"), cert. denied, 505 U.S. 1220, 112 S. Ct. 3029, 120 L. Ed. 2d 900 (1992); *United Food & Commercial Workers Local 545 Health & Welfare Fund* v. *Health Enterprises of America, Inc.*, 543 F. Sup. 340, 347 (E.D. Mo. 1982) ("Geriatric Center, as sublessee, is in privity with [the defendant], and it had notice of this [c]ourt's judgment . . . . Accordingly, [Geriatric Center] is bound [under rule 65 (d)] to comply with the terms of the injunction issued therein.").

Moreover, the United States Supreme Court has recognized that District Courts' equitable authority to enforce injunctions against nonparties under rule 65 (d) of the Federal Rules of Civil Procedure is broader "in furtherance of the public interest than . . . when only private interests are involved." (Internal quotation marks omitted.) *Golden State Bottling Co.* v. *National Labor Relations Board*, supra, 414 U.S. 180; see also id. ("a bona fide purchaser, acquiring, with knowledge that the wrong remains unremedied, the employing enterprise which was the locus of the unfair labor practice, may be considered in privity with its predecessor for purposes of rule 65 [d]"); *United States* v. *Hall*, 472 F.2d 261, 267 (5th Cir. 1972) (describing rule 65 [d] as "a codification rather than a limitation of courts' common-law powers, [which] cannot be read to restrict the inherent power of a court to protect its ability to render a binding judgment").

Indeed, in *United States* v. *Hall*, supra, 472 F.2d 267, the United States Court of Appeals for the Fifth Circuit emphasized that rule 65 (d) of the Federal Rules of Civil Procedure does not preclude the issuance of in rem injunctions because it "was intended to embody rather than to limit . . . common law powers." The court then concluded that the District Court had the inherent power to protect its judgment ordering the desegregation of a school by holding a nonparty protester, "in a position to upset the court's adjudication"; Id.; in contempt for violating an injunction of which he had notice because his "[d]isruption of the orderly operation of the school system, in the form of a racial dispute, would thus negate the plaintiffs' constitutional right and the defendant's constitutional duty. In short, the

activities of persons contributing to racial disorder at [the school] imperiled the court's fundamental power to make a binding adjudication between the parties properly before it." Id., 265. Put differently, the key to permitting the enforcement of injunctions against nonparties under rule 65 (d) is whether failure to do so will "interfere with court's power" over the public interest or the parties to the case. See *Doctor's Associates, Inc.* v. *Reinert & Duree, P.C.*, 191 F.3d 297, 303 n.4 (2d Cir. 1999) (injunction precluding nonparty franchisees from bringing civil actions was not permissible under rule 65 [d] because it "precludes nonparties from bringing actions that in no way interfere with the court's power over [the] defendants").

This public interest extends to the environment, as the United States District Court, in enjoining nonparty city agencies from interfering with previous court orders granting relief in an action brought under the federal Clean Water Act, 33 U.S.C. § 1365, observed that it "has broad discretion to fashion remedies that will protect and effectuate its judgments, particularly when the public interest is involved. . . . Persons who were not parties to the original action may be enjoined from interfering with the implementation of court orders which establish and protect public rights." (Citations omitted.) *Mumford Cove Assn.* v. *Groton*, 647 F. Sup. 671, 691 (D. Conn. 1986); see also *Natural Resources Defense Council, Inc.* v. *Texaco Refining & Marketing, Inc.*, 719 F. Sup. 281, 291 (D. Del. 1989) (water pollution injunction issued under federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., is enforceable pursuant to rule 65 [d] of the Federal Rules of Civil Procedure against nonparty who became partner in operation of party's refinery after initiation of action because holding otherwise "would have the effect of enabling a successor permit holder which had acquired the refinery with knowledge of ongoing violations to evade enforcement"), vacated on other grounds, 906 F.2d 934 (3d Cir. 1990); *Mumford Cove Assn., Inc.* v. *Groton*, supra, 691 ("[t]he actions of the [c]ity, its agencies and officials, and some of its residents, threaten to interfere with this court's efforts to remedy pollution of federally-protected waters of the United States").

Under these lines of cases, we conclude that, consistent with due process and Modern's notice of the trial court's orders rendered in the underlying action, the trial court had the inherent power to enforce its previously ordered injunctions against Modern despite its nonparty status.[18] Consistent with the trial court's apt observation that, "it would certainly frustrate our judicial system if one subject to an injunction were able to avoid that injunction by simply transferring the parcel subject also to such injunction to a new corporation,"[19] we conclude that the injunctions in this case must be viewed as in rem in nature with respect to subsequent tenants such as Modern, even when rendered in perso-

nam against the defendants in the underlying action.[20] Thus, tenants who subsequently enter properties affected by injunctions imposed by courts to protect the public interest share the necessary identity of legal interest with the owners of such properties to render those orders enforceable against them as nonparties.[21] Moreover, to conclude otherwise would relieve the defendants from their assurances to the trial court, made in 1999, that it was not necessary to join Look, State Five's corporate predecessor, as a party in this case because Look and other corporate defendants would not interfere with any subsequent court orders requiring the remediation of the tire pond. See footnote 18 of this opinion. Accordingly, the trial court properly determined that it had the authority to vindicate its previous orders directing the remediation of the tire pond by: (1) enjoining "Modern . . . and its officers, employees, attorneys, agents and anyone acting in concert with it or on its behalf [from] interfering with the closure of the property known as the tire pond"; and (2) directing Modern to vacate the leased premises within sixty days of an order by the commissioner.

II

Modern next contends that the trial court improperly found that it was necessary for Modern to move its operations in order for the commissioner to accomplish the remediation of the tire pond. Specifically, Modern relies on the testimony of Coy Angelo, the chief of operations for Gateway Terminal, who was responsible for coordinating the transportation and placement of fill material for the tire pond site and Earl Tucker, Modern's president, to establish that no remediation work presently is occurring or imminent on the tire pond site, which has been secured, and that making Modern move its operations off the site would cause it to experience financial hardship that would drive it out of business. In response, the commissioner contends that Modern has not established that the trial court's findings of necessity are clearly erroneous, based on the fact that the only currently existing remediation plan that is presently in effect, namely, the remediation and closure plan crafted by Fuss & O'Neill, Inc.; see footnote 11 of this opinion; cannot be accomplished until Modern moves. The commissioner also emphasizes that Modern complicated matters by increasing the amount of material brought onto its premises as soon as it received a letter from the commissioner informing it that it would need to move its operations.[22] We agree with the commissioner, and conclude that the trial court's findings of necessity were not clearly erroneous.

At the outset, we agree with the commissioner that the trial court's finding as to whether it was necessary for Modern to move in order to effectuate the remediation plan that implements the trial court's judgments

in a question of fact subject to review only for clear error. See *Kelo* v. *New London*, 268 Conn. 1, 88–90, 843 A.2d 500 (2004) (reviewing trial court's evaluation of agency determination of land "reasonably necessary" for effectuation of economic development plan under clearly erroneous standard), aff'd, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005). "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great deference to its findings. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court's ruling." (Internal quotation marks omitted.) *Ackerman* v. *Sobol Family Partnership, LLP*, 298 Conn. 495, 507–508, 4 A.3d 288 (2010).

Having reviewed the record, we conclude that the trial court's finding that it is necessary for Modern to move in order for the commissioner to implement the remediation and closure plan presently in effect; see footnote 11 of this opinion; is not clearly erroneous. Although Modern accurately notes a stipulation and testimony to the effect that future phases of the closure plan may well be revised by new contractors in a way that would obviate the need for it to move until after the expiration of its lease, the trial court was entitled, as finder of fact, to decline to credit this evidence as speculative.[23] This was particularly so in light of the testimony of Diane Duva, an assistant director in the bureau of materials management and compliance assurance, who is the commissioner's assigned manager in charge of the remediation of the tire pond, to the effect that the presence of Modern's facilities on the site had created significant obstacles to the completion of the only approved closure plan presently in effect and would continue to do so for any future closure plan under the commissioner's regulatory scheme. The trial court also reasonably considered the testimony of the engineers responsible for creating the closure plan, including Christopher Klemmer, an environmental engineer and the senior vice president of Fuss & O'Neill, Inc., indicating that Modern's location had impeded the construction of drainage ponds and pipes, negatively affecting the success of efforts to stabilize the land around the tire pond.

Further, in discounting the economic hardship that Modern would experience as a result of moving, the trial court was entitled to consider the fact that Modern was aware of the implementation of the closure plan, yet continued to bring increasing amounts of materials

onto the site. To this effect, the trial court also properly considered the time-consuming aspect of moving Modern's operations and the delay that would be caused by implementing subsequent phases of any closure plan if Modern remained on the site. Accordingly, we conclude that the trial court's factual conclusion that it was necessary to order Modern to vacate the site in order to complete the closure of the tire pond is not clearly erroneous.

III

Finally, we turn to Modern's claim that the trial court's decision to enforce its previous orders against Modern, without first affording it notice and the opportunity to be heard regarding the validity of those orders, violated its right to due process under the federal and state constitutions[24] by effectively terminating the leasehold interest it had obtained from State Five and validly recorded pursuant to § 47-19.[25] In response, the commissioner contends that Modern's due process rights were protected by the procedures utilized in this case, namely, the issuance of an order to show cause that gave Modern the opportunity to appear before the trial court for a two day evidentiary hearing to determine the necessity of moving Modern's operations away from the tire pond. We agree with the commissioner, and conclude that the enforcement of the injunctive orders rendered in the underlying action against Modern did not violate its due process rights.

It is well settled that, "[w]hether [a party] was deprived of his due process rights is a question of law, to which we grant plenary review." (Internal quotation marks omitted.) *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 489, 500, 970 A.2d 570 (2009) (indirect contempt hearing). Further, we note that the "fundamental requisite of due process of law is the opportunity to be heard . . . . The hearing must be at a meaningful time and in a meaningful manner." (Internal quotation marks omitted.) *Giaimo* v. *New Haven*, 257 Conn. 481, 512, 778 A.2d 33 (2001). "Inquiry into whether particular procedures are constitutionally mandated in a given instance requires adherence to the principle that due process is flexible and calls for such procedural protections as the particular situation demands. . . . There is no per se rule that an evidentiary hearing is required whenever a [property] interest may be affected. Due process . . . is not a technical conception with a fixed content unrelated to time, place and circumstances." (Citation omitted; internal quotation marks omitted.) *State* v. *Lopez*, 235 Conn. 487, 492–93, 668 A.2d 360 (1995).

We agree with Modern that the concept of the enforcement of court orders against nonparties to civil actions raises a "substantial issue" of due process, particularly insofar as they affect property interests like Modern's validly recorded leasehold.[26] *United States* v.

*Paccione*, supra, 964 F.2d 1274; see also, e.g., *National Spiritual Assembly of Baha'is of United States under Hereditary Guardianship, Inc.* v. *National Spiritual Assembly of Baha'is of United States*, 628 F.3d 837, 840–41 (7th Cir. 2010) ("[t]he 'legal identity' component of this rule often operates to bind a party's successors and assigns, and sometimes other nonparties as well, but only when doing so is consistent with due process"). Indeed, the United States Supreme Court has held that such orders cannot be enforced against nonparties without "necessary procedural safeguards," namely, "due notice and a fair hearing" prior to the issuance of an enforcement order. *Golden State Bottling Co.* v. *National Labor Relations Board*, supra, 414 U.S. 180–81.

Nevertheless, contrary to Modern's rather conclusory arguments, it is well settled that due process does not require that the nonparty be afforded the opportunity to contest the underlying judgment. In addressing whether an order remedying unfair labor practices could be enforced against a nonparty bona fide purchaser of a business, the Supreme Court stated that "[t]here will be no adjudication of liability against a bona fide successor 'without affording [it] a full opportunity at a hearing, after adequate notice, to present evidence on the question of whether it is a successor which is responsible for remedying a predecessor's unfair labor practices. The successor [will] also be entitled, of course, to be heard against the enforcement of any order issued against it.' " Id., 180, quoting *In re Perma Vinyl Corp.*, 164 N.L.R.B. 968, 969 (1967); see also *Golden State Bottling Co.* v. *National Labor Relations Board*, supra, 414 U.S. 181 ("In this case, All American [Beverages, Inc.] has no complaint that it was denied due notice and a fair hearing. It was made a party to the supplemental backpay specification proceeding, given notice of the hearing, and afforded full opportunity, with the assistance of counsel, to contest the question of its successorship for purposes of the [National Labor Relations Act] and its knowledge of the pendency of the unfair labor practice litigation at the time of purchase.").

To this effect, the United States Court of Appeals for the Seventh Circuit has emphasized that, once properly served with process, the nonparty's "day in court . . . *refers to* [*its*] *opportunity to contest whether he acted in concert with a party contemnor or was in privity and therefore bound by the injunction*. If after an appropriate hearing the court concludes that the nonparty was in privity with the enjoined party, [*Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100, 112, 89 S. Ct. 1562, 23 L. Ed. 2d 129 (1969)] does not require relitigation of the underlying controversy." (Emphasis added.) *National Spiritual Assembly of Baha'is of United States under Hereditary Guardianship, Inc.* v. *National Spiritual Assembly of Baha'is of United*

*States*, supra, 628 F.3d 853; see also id., 853 n.5 ("The proceedings in this case fully complied with *Zenith Radio* [*Corp.*]. The respondents were served with process, and the court held an evidentiary hearing offering them ample and complete opportunity to contest whether they came within [r]ule 65 [d] [2] [of the Federal Rules of Civil Procedure."); *Waffenschmidt* v. *MacKay*, 763 F.2d 711, 718 (5th Cir. 1985) ("In the case at bar, the respondents were made parties to the show cause order and were given an opportunity to prove that they did not aid or abet [the defendant]. When the court decided that [the respondents] fell within the ambit of its injunction, it could then exercise jurisdiction over them and adjudicate whether they violated the court's injunction."), cert. denied, 474 U.S. 1056, 106 S. Ct. 794, 88 L. Ed. 2d 771 (1986); *Natural Resources Defense Council, Inc.* v. *Texaco Refining & Marketing, Inc.*, supra, 719 F. Sup. 291 (The court emphasized that the issuance of an "injunction . . . against [the] defendant will in no way unfairly prejudice [the nonparty], which will be provided with notice of the injunction at the time it is issued. [The nonparty] will be given an opportunity to be heard if and when a contempt proceeding to enforce the order becomes necessary."); cf. *St. Bernard Federal Savings & Loan Assn.* v. *Patterson*, 502 So. 2d 1133, 1134 (La. App. 1987) (tenant may not be held in contempt for violating court order requiring assignment of rents from landlord because tenant was not served with ruling or judgment assigning rents).

Under the facts of this case, we conclude that Modern received ample due process protections prior to the trial court's issuance of the order requiring it to vacate the tire pond. As noted previously, it is undisputed in this writ of error that Modern had notice of the injunctions rendered in the underlying action. See footnote 15 of this opinion and accompanying text. Further, the commissioner served the order to show cause and the motion for enforcement of the trial court's order on Modern on June 30, 2009. The trial court subsequently conducted a two day evidentiary hearing in September, 2009, at which Modern was represented by counsel with the opportunity to examine witnesses, introduce documents into evidence and argue, both orally and in posttrial briefs, that it was not necessary for it to vacate the tire pond site in order to effectuate the trial court's order. Accordingly, we conclude that the trial court's order directing Modern to vacate the premises did not violate its due process rights.

The writ of error is dismissed.

In this opinion the other justices concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] The other plaintiffs are: the town of Hamden; Hamden's zoning enforcement officer, Joseph J. Venditto; the Hamden Economic Development Corporation; and the town of North Haven. These plaintiffs have not filed appearances in this writ of error. Hereinafter, references to the plaintiffs are to the commissioner and the aforementioned parties collectively.

[2] The corporations are Hamden Salvage, Inc., Tire Salvage, Inc., North Haven Tire Disposal, Inc., Quinnipiack Real Estate & Development Corporation, and Hamden Sand & Stone, Inc. Neither Farricielli nor these corporations have appeared in this writ of error. Hereinafter, Farricielli and the corporations will be referred to collectively as the defendants.

[3] Modern brings this writ of error directly to this court pursuant to General Statutes § 51-199 (b) (10).

[4] "The commissioner and [Hamden] testified at trial that they had filed, separately and in concert, a seemingly endless litany of enforcement actions against [Farricielli], his corporations and his tenants. In 1974, the commissioner issued an administrative order to [Farricielli] and his corporations requiring them to correct conditions at one of the landfills on the property. In 1981, the commissioner obtained a cease and desist order requiring [Farricielli] and his corporations to end all unpermitted solid waste operations and suspended [Farricielli's] overall site permit for the southernmost parcel. In 1984, that site permit was revoked entirely. In 1992, the commissioner obtained a stipulated judgment regarding conditions at the tire pond, and in 1995 and 1996, the commissioner pursued an administrative action against [Farricielli] and his corporations seeking to end all unauthorized dumping of used tires in the tire pond and the implementation of a plan for the pond's eventual closure to prevent its contents from contaminating the adjacent river and marshland. It was upon this action that the 1998 consent order involved in the present case was based. In 1996, the commissioner ordered one of [Farricielli's] tenants to cease its landfill operations due to various environmental infractions. In February, 1998, in addition to the consent order relating to the tire pond, the commissioner and [Farricielli] entered into a second consent order regarding additional unauthorized activities. [Farricielli's] compliance with that order, however, is not at issue in the present case.

"In December, 1995, [Hamden] obtained a temporary injunction against [Farricielli] and his corporations, which eventually evolved into the stipulated judgment at issue in the present case. In March, 1999, [Hamden] obtained a cease and desist order against [Farricielli] and his corporations in relation to their unauthorized processing and storage of pumice and fragmented metals, and the storage of trucks and truck parts on the [Farricielli's] Hamden properties. [Farricielli's] subsequent failure to comply with this order, in addition to his failure to comply with the terms of the stipulated judgment, was the basis of [Hamden's] complaint in the present case.

"On December 3, 1999, nearly six months after the first complaint was filed in the present case, the commissioner moved the trial court for an immediate temporary injunction to prevent [Farricielli] and his corporations from engaging in any unauthorized activities in relation to the tire pond, pending adjudication of the merits of the commissioner's claim. The motion went unopposed, and the trial court granted it on January 3, 2000. Less than one month later, however, the commissioner filed a motion for contempt, claiming that [Farricielli] and his corporations failed to comply with the temporary injunction. The motion was still pending at the time the case went to a hearing, and the trial court granted it along with all other forms of relief sought by the plaintiffs, including the imposition of a permanent injunction in lieu of the existing temporary injunction." *Rocque* v. *Farricielli*, supra, 269 Conn. 192–93 n.3.

[5] Unless otherwise noted, all references herein to the trial court are to Judge Hale.

[6] "The 2001 judgment [also] required [Farricielli] and his corporations to, inter alia, post bonds, fund the closure of two illegal solid waste landfills and pay approximately $3.8 million in civil penalties to the commissioner and [Hamden]. The judgment also required [Farricielli] and his corporations to reimburse the commissioner for amounts expended in addressing environmental conditions at the landfills." *Commissioner of Environmental Protection* v. *State Five Industrial Park, Inc.*, 304 Conn. 128, 132, 37 A.3d 724 (2012).

[7] This conveyance was intended to permit parcel C to "meet the requisite regulatory requirements for construction of the cellular telephone tower." *Commissioner of Environmental Protection* v. *State Five Industrial Park, Inc.*, 304 Conn. 128, 133–34, 37 A.3d 724 (2012).

[8] General Statutes § 47-19 provides: "No lease of any building, land or tenement, for life or for any term exceeding one year or which provides for the renewal thereof or an option to purchase such building, land or tenement, shall be effectual against any persons other than the lessor and lessee and their respective heirs, successors, administrators and executors, unless it

is in writing, executed, attested, acknowledged and recorded in the same manner as a deed of land, provided a notice of lease in writing, executed, attested, acknowledged and recorded in the same manner as a deed of land and containing (1) the names and addresses, if any are set forth in the lease, of the parties to the lease, (2) a reference to the lease, with its date of execution, (3) the term of the lease with the date of commencement and the date of termination of such term, (4) a description of the property contained in the lease, (5) a notation if a right of extension or renewal is exercisable, (6) if there is an option to purchase, a notation of the date by which such option must be exercised and (7) a reference to a place where the lease is to be on file shall be sufficient."

[9] The trial court's 2004 order also, inter alia: (1) enjoined Farricielli from demanding that the commissioner or its contractors pay rent or fees for their use or occupation of parcel B or the tire pond, or contacting the commissioner or its contractors or suppliers except through counsel, (2) enjoined Farricielli from transferring any legal or equitable interest in the tire pond or parcels A or C without approval of the commissioner or the court until the completion of the remediation work, and (3) authorized the commissioner to monitor and secure the remediation sites, including control of entry and egress.

[10] In *Commissioner of Environmental Protection* v. *State Five Industrial Park, Inc.*, supra, 304 Conn. 128, the commissioner had sought to use the doctrine of reverse corporate veil piercing to hold State Five and Jean Farricielli (Jean) liable for the defendants' financial obligations in the underlying action. The trial court, *Bentivegna, J.*, rendered judgment for the commissioner, concluding that "reverse veil piercing . . . was warranted because the parties, following the 2001 judgment, 'were occupied with the appeal and remediation efforts,' and because Jean and [Farricielli] made unspecified misrepresentations in postjudgment interrogatories, 'attempted to use State Five to hide assets' and used State Five 'funds to pay thousands of dollars in personal expenses, complicating any normal collection efforts.' " Id., 137. On appeal, we reversed the judgment of the trial court and ordered judgment for the defendants, concluding that the "trial court's application of the equitable remedy of reverse veil piercing was based in part on unsupported factual findings, and additionally, the court employed improper reasoning when analyzing other facts such that we are left with the definite and firm conviction that a mistake has been made." Id., 151. In light of this conclusion, we declined to express an opinion "on the continued viability of *Litchfield Asset Management Corp.* v. *Howell*, [70 Conn. App. 133, 799 A.2d 298, cert. denied, 261 Conn. 911, 806 A.2d 49 (2002)]," which had adopted the reverse veil piercing doctrine because "the factual scenario presented by that case differs substantially from the factual scenario in the present appeal" and "potential unfair effects of applying the reverse veil piercing doctrine" can "be addressed adequately, in the appropriate case, by recognition of the doctrine only when it is proven that it achieves its equitable purpose without harming third parties." *Commissioner of Environmental Protection* v. *State Five Industrial Park, Inc.*, supra, 138 n.13.

[11] The 2007 order contemplated that the defendants, including Farricielli and State Five, would enter into an agreement with Gateway Terminal to close the tire pond by executing a plan prepared by the environmental engineering firm Fuss & O'Neill, Inc. Under this agreement, Gateway Terminal would close the tire pond and stabilize the banks of the Quinnipiac River, while reserving 300,000 cubic yards of space therein for the placement of materials by the commissioner, including soil pile originating from the construction of a new middle school in Hamden.

[12] Modern also filed an appeal from the decision of the trial court to the Appellate Court. The Appellate Court, acting sua sponte, dismissed that appeal for lack of appellate subject matter jurisdiction on October 20, 2010, because Modern is not a party to the underlying action as is required by General Statutes § 52-263. See, e.g., *State* v. *Salmon*, 250 Conn. 147, 152, 735 A.2d 333 (1999).

[13] General Statutes § 22a-225 provides in relevant part: "(a) The commissioner may issue, modify or revoke orders correcting or abating violations under this chapter or adopting other remedial measures as are necessary to correct or abate such violations. Such orders may be issued to any person who violates any provision of this chapter or any regulation adopted or permit issued pursuant to this chapter, or to the owner of any land on which the violation occurs regardless of whether the owner of the land participated in the violation. If two or more persons are issued an order pursuant to this section for the same violation, such persons shall be jointly and severally

liable for complying with such order.

* * *

"(e) When the commissioner issues an order pursuant to this chapter, he shall cause a certified copy or notice thereof to be filed on the land records in the town wherein the land is located, and such certified copy or notice shall constitute a notice to the owner's heirs, successors and assigns. When the order has been fully complied with or revoked, the commissioner shall issue a certificate showing such compliance or revocation, which certificate the commissioner shall cause to be recorded on the land records in the town wherein the order was previously recorded. . . ."

[14] General Statutes § 22a-434 provides: "When the commissioner issues a final order to any person to correct potential sources of pollution or to abate pollution, the commissioner shall cause a certified copy thereof to be filed on the land records in the town wherein the land is located, and such order shall constitute a notice to the owner's heirs, successors and assigns. When the order has been fully complied with, the commissioner shall issue a certificate showing such compliance, which certificate the commissioner shall cause to be recorded on the land records in the town wherein the order was previously recorded. A certified copy of the certificate shall be sent to the owner of the land at such owner's last-known post office address."

[15] In an abundance of caution occasioned by a statement made in Modern's statement of the issues in its brief; see Practice Book § 67-4 (a); but ultimately not pursued in the argument section therein; see Practice Book § 67-4 (d); the commissioner argues that Modern had both actual and constructive knowledge of the underlying orders at issue herein for purposes of their enforcement against it as a nonparty. For constructive notice, the commissioner relies on the recording of the consent order as required by §§ 22a-225 (e) and 22a-434. The commissioner further posits that the 1998 consent order specifically provides that the defendants' "obligations [thereunder] shall not be affected by the passage of title to any property to any other person or municipality. Any future owner of the site may be subject to the issuance of an order from the [c]ommissioner." The state emphasizes that the 2001 judgment in the underlying action, although not itself recorded, simply enforces the 1998 consent order that already had been recorded on the land records.

For actual notice, the commissioner relies on: (1) service of court orders in 2004 and 2009 informing Modern that its leased premises were part of the tire pond that is subject to closure; (2) a letter sent by Fuss & O'Neill, Inc., the commissioner's contracted environmental consulting firm, to Earl Tucker, Modern's president, along with a copy of the final grading plan for the tire pond that demonstrated that Modern needed to vacate the premises to permit the filling and grading of the land; and (3) the fact that the attorney who represented Modern in the 2003 lease negotiations, also represented Gateway Terminal, the state's remediation contractor, in its 2007 contract negotiations.

Nevertheless, because Modern failed to argue the issue of notice adequately in its main brief, we address that issue only insofar as it is part and parcel of Modern's properly briefed due process claim, addressed in part III of this opinion, which includes our extensive discussion of notice issues at oral argument before this court. See, e.g., *Plante* v. *Charlotte Hungerford Hospital*, 300 Conn. 33, 59, 12 A.3d 885 (2011) (appellate claims are abandoned when raised for first time in reply brief).

[16] Accord *Gillespie Land & Irrigation Co.* v. *Gonzalez*, 93 Ariz. 152, 169–70, 379 P.2d 135 (1963) (concluding in negligence action awarding damages and injunction requiring modifications to canal, that injunction against "the transfer of the canal system until such time that the required alterations would be completed" was not necessary because "[b]y its terms and under the law, the injunction is binding upon successors in interest to the property in privity with the defendant"); *Lackaff* v. *Bogue*, 158 Neb. 174, 178–79, 62 N.W.2d 889 (1954) (following principle in concluding that appellate remedy was not necessary with respect to trial court's failure to grant motion, in action alleging improper diversion of waters, to amend injunction directing plaintiffs to fill and maintain level of ditches to include plaintiffs' successors in title because "the judgment is, for all practical purposes, as effective without the amendment desired by [the] defendants and interveners as it would be if included"); cf. *Alger* v. *Peters*, 88 So. 2d 903, 906 (Fla. 1956) (tenants not subject to contempt when their leaseholds preexisted action and they were not made parties to action); *Ex parte Davis*, 470 S.W.2d 647, 649 (Tex. 1971) (subsequent nonparty grantee not bound to terms of

temporary injunction restricting property to residential use only because property grant did not by itself create sufficient privity, particularly when terms of temporary injunction did not "attempt to include [grantor's] successors in ownership of the property").

[17] Rule 65 (d) of the Federal Rules of Civil Procedure provides in relevant part: "(2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:

"(A) the parties;

"(B) the parties' officers, agents, servants, employees, and attorneys; and

"(C) other persons who are in active concert or participation with anyone described in Rule 65 (d) (2) (A) or (B)."

[18] Modern suggests that the commissioner's failure to join it as a defendant to this case under General Statutes § 52-102 and Practice Book § 9-3 suggests that it is not a necessary party to this case. Modern further suggests that its lack of necessity as a party is belied by the commissioner's previous attempts to amend his complaint "to include parties, *other than Modern*, who they felt were necessary to the implementation of the remediation plan then in effect." (Emphasis added.) We disagree. First, as a practical matter, we observe that Modern was neither incorporated nor present on the land at issue in this case until 2003—four years *after* the initiation of the underlying action.

Second, Modern's argument ignores the fact that the commissioner sought to avoid necessary party issues like that presented in this writ of error by moving—albeit unsuccessfully—to join additional corporate defendants after the commencement of the underlying action. Indeed, among the parties that the commissioner had sought to join in this case was Look, the corporate predecessor to State Five, as owner of parcel C. The defendants opposed this motion to amend the complaint, and the trial court, *Booth*, *J.*, denied the motion in December, 1999, "*with assurance by the defendants that access . . . would be allowed*" via parcel C to the tire pond on parcel B, and parcel A in order to render injunctive relief effective. (Emphasis added.) Indeed, this denial properly was recognized in the trial proceedings that gave rise to this writ of error when the court sustained the commissioner's objection and precluded Farricielli's counsel from pursuing a line of cross-examination about the propriety of the closure plan and whether Modern's presence interfered with it.

[19] Modern emphasizes that its only relationship with the defendants is its "arm's-length" business relationship with State Five. This is, however, irrelevant. Modern's status as a tenant, with possessory rights that derive from those of State Five, the legitimacy of that business relationship does not preclude the enforcement against Modern of the previously imposed injunctions against the defendants. See *Natural Resources Defense Council, Inc.* v. *Texaco Refining & Marketing, Inc.*, supra, 719 F. Sup. 291 (rejecting claim that "rule 65 [d] [of the Federal Rule of Civil Procedure] applies only to partners in sham transactions designed to avoid injunctive orders" because "[n]othing in the language of the [rule] indicates that such a limitation was intended"); see also *Eli Lilly & Co.* v. *Gottstein*, 617 F.3d 186, 193 (2d Cir. 2010) ("a court's inquiry into the fact of aiding and abetting is 'directed to the actuality of concert or participation, without regard to the motives that prompt the concert or participation' "); *New York State National Organization for Women* v. *Terry*, 961 F.2d 390, 397 (2d Cir. 1992) (Rejecting nonparties' claims "that they were not 'in active concert or participation' with [the] defendants, as required by [r]ule 65 [d], because their actions 'were independently motivated by their political, social and moral positions on the subject of . . . abortion.' We have no reason to doubt this representation, but it is unavailing as an escape hatch from rule 65 [d]. The rule is directed to the actuality of concert or participation, without regard to the motives that prompt the concert or participation."), vacated on other grounds sub nom. *Pearson* v. *Planned Parenthood Margaret Sanger Clinic (Manhattan)*, 507 U.S. 901, 113 S. Ct. 1233, 122 L. Ed. 2d 640 (1993).

[20] Modern also relies on the general rule stated § 54 of the Restatement (Second) of Judgments, namely: "When two or more persons have concurrent ownership interests in property, a judgment for or against one of them concerning his interest does not have effects under the rules of res judicata on another such owner, except that: (1) When there is a further relationship between the co-owners from which preclusion may arise, such as that specified in §§ 37, 39-44, 52, 57, or analogous rules, a judgment for or against one of them is binding on the other in accordance with those rules; and (2) The determination of issues against the opposing party in the action is preclusive against him in accordance with § 29." 2 Restatement (Second), Judgments § 54 p. 65 (1982); see also 47 Am. Jur. 2d, Judgments § 618 (2006) ("The title and interest of cotenants or owners of property, whether their

relationship is technically that of joint tenants or of tenants in common, is not derived from or dependent upon the title or ownership of each other, and there is not any agency relationship between cotenants. Because of lack of privity essential to the application of the doctrine of res judicata, a judgment in an action or proceeding to which one or more cotenants are parties, affecting the status, title, or rights in the common property of those who are parties to the suit, will not operate to affect the rights of cotenants not made parties or their privies.'').

Modern's reliance on these general rules is, however, misplaced, given more specific provisions in the Restatement (Second) and American Jurisprudence, Second Edition, which both define privity in the context of property transfers that occur during the pendency of litigation that concerns land. See 2 Restatement (Second), supra, § 44 p. 18 (1982) (''[a] successor in interest of property that is the subject of a pending action to which his transferor is a party is bound by and entitled to the benefits of the rules of res judicata to the same extent as his transferor, unless: (1) [a] *procedure exists for notifying potential successors in interest of pending actions concerning property, the procedure was not followed, and the successor did not otherwise have knowledge of the action*; or (2) [t]he opposing party in the action knew of the transfer to the successor and knew also that the successor was unaware of the pending action'' [emphasis added]); 47 Am. Jur. 2d, supra, § 591 (''[t]he general rule is that although one to whom an assignment is made or property is granted by a party to an action during the pendency of the action is regarded as in privity with such party within the meaning of the doctrines of res judicata and collateral estoppel, *a judgment is regarded as conclusive only as between the parties and their successors in interest by title acquired subsequent to the commencement of the action*, so that a person to whom a party to an action has made an assignment or has granted property or an interest therein before the commencement of the action is not regarded as in privity with the assignor or grantor so as to be affected by a judgment rendered against the assignor or grantor in the action, unless that person is made a party to the action'' [emphasis added]).

[21] Modern accurately observes that the trial court did not expressly decide this case on the basis of ''privity'' or make any findings to that effect. The trial court did, however, conclude that the 2004 ''injunction was designed to prevent persons from interfering with the commissioner's closure of the tire pond. Modern . . . is within the class of persons whose conduct is entitled to be restrained and Modern . . . is bound not to interfere.'' This conclusion is legally consistent with the common-law analysis of, for example, *Silvers* v. *Traverse*, supra, 82 Iowa 52, which is founded on privity of the right of possession between landlord and tenant. Thus, inasmuch as there are no disputed factual issues with respect to the relationship between Modern and State Five, we conclude that privity existed between them as a matter of law, without need for a remand to the trial court for a factual determination. See *National Spiritual Assembly of Baha'is of United States under Hereditary Guardianship, Inc.* v. *National Spiritual Assembly of Baha'is of United States*, 628 F.3d 837, 841 (7th Cir. 2010) (deciding privity question as matter of law because ''the judge's findings are thorough enough to permit us to resolve the privity question without a remand'').

[22] The state also posits that Modern has not adequately briefed this claim for review because of its failure to include it in its statement of the issues or identify the appropriate standard of review. Notwithstanding these deficiencies; see Practice Book § 67-4 (a) and (d); we exercise our discretion to review these claims because Modern otherwise has provided sufficient record citations and analysis to enable our review.

[23] The parties had stipulated that the commissioner had received a proposal ''for closing and capping of the [t]ire [p]ond . . . that leaves open the option of modifying the June, 2007 closure plan, approved by the commissioner on September 20, 2007, to re-sequence and re-time the filling and capping of the [t]ire [p]ond. Under this suggested option, the area of the [t]ire [p]ond currently occupied by Modern . . . might not need to be filled or capped until after the end of [Modern's] . . . lease in February 2014.'' Other aspects of the stipulation, however, indicate that the trial court properly deemed this likelihood of this occurring to be speculative because the parties also stipulated that: (1) the commissioner's preference and current intention is to complete the closure of the tire pond as soon as possible; (2) that proposal ''is not the only proposal the commissioner received in response to the invitation to bid''; (3) ''the commissioner has neither accepted nor rejected [that] proposal''; and (4) ''if the commissioner were to accept the proposal . . . modifications to the June, 2007 closure plan would have to be proposed to and approved by the commissioner.''

[24] "Although [Modern] refers to its due process rights under the federal and state constitutions, it has not provided a separate analysis of this claim under the state constitution or asserted, as relevant to this claim or otherwise, that the state constitution affords it greater constitutional safeguards than its federal counterpart. Consequently, we will confine our review to the rights afforded by the federal constitution." *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 489, 491 n.5, 970 A.2d 570 (2009); see also, e.g., *Greater New Haven Property Owners Assn.* v. *New Haven*, 288 Conn. 181, 196 n.9, 951 A.2d 551 (2008) (discussing requirement of separate state constitutional analysis pursuant to *State* v. *Geisler*, 222 Conn. 672, 684–86, 610 A.2d 1225 [1992]).

[25] See footnote 8 of this opinion for the text of § 47-19.

[26] Although Modern's leasehold interest constitutes a property right, that property right is necessarily circumscribed in the context of this case, wherein Modern was neither incorporated nor had executed its lease with State Five until 2003—two years after the trial court rendered the underlying judgment in 2001 and five years after the entry and recordation of the commissioner's consent order that gave rise thereto.