

# LEGAL DEVELOPMENTS

March 29, 2004

---

## **AV&H Wins Unanimous Reversal by Connecticut Supreme Court on Prejudgment Remedy Procedure**

**Cahaly v. BENISTAR Property Exchange Trust Co., Inc.**  
**268 Conn. 264 (2004)**

AV&H has won a unanimous ruling in the Connecticut Supreme Court narrowing the scope of Connecticut's prejudgment remedy statute. In a case of first impression, the Supreme Court held that the prejudgment remedy statute did not authorize the attachment of property as security for a potential judgment in a case pending in an out-of-state court. This ruling provides significant protections within Connecticut to Connecticut businesses and their executives who may be sued in other states or foreign countries.

After three years of litigation at each level of the Connecticut judicial system, AV&H attorneys succeeded in dissolving a prejudgment remedy attachment of a client's bank account and prevented an anticipated onslaught of similar litigation tactics by plaintiffs in out-of-state cases against defendants with property in Connecticut. In a unanimous decision on March 23, 2004, five justices of the Supreme Court reversed the rulings of three Superior Court judges and three Appellate Court judges.

In January 2001, the plaintiff, a Massachusetts resident, filed an action in Massachusetts Superior Court against AV&H's client and others arising out of a business transaction. Because the client resides in Connecticut, the Massachusetts court lacked jurisdiction to attach the Connecticut assets pending the outcome of that case. Consequently, a month later, the plaintiff started a new suit in Connecticut against the client seeking to enforce a judgment she anticipated obtaining in Massachusetts and applied for the prejudgment remedy of attachment to secure that possible judgment.

The Superior Court judges treated the plaintiff's application as a routine prejudgment remedy application in a typical Connecticut case and permitted the attachment. On the initial appeal, the Appellate Court agreed and affirmed in a 3-0 decision.

On appeal to the Connecticut Supreme Court, AV&H argued that Connecticut's prejudgment

---

### **Axinn, Veltrop & Harkrider LLP**

1370 Avenue of the Americas  
New York, NY 10019  
Tel: 212 728 2200  
Fax: 212 728 2201

90 State House Square  
Hartford, CT 06103  
Tel: 860 275 8100  
Fax: 860 275 8101

1801 K Street, N.W., Suite 411  
Washington, DC 20006  
Tel: 202 912 4700  
Fax: 202 912 4701

Axinn, Veltrop & Harkrider LLP practices in the areas of antitrust and trade regulation, intellectual property and complex commercial litigation. The firm provides ongoing advice and services to Fortune 500 clients in the antitrust aspects of M&A transactions. The firm also counsels clients in a wide range of other areas, including deceptive acts and practices, health care, consumer protection, FDA law and various regulatory areas.

remedy statutes do not empower the courts to permit a plaintiff in a pending out-of-state lawsuit to attach a defendant's Connecticut property simply on the basis of a complaint alleging that the plaintiff had commenced an action in another state that might be enforced someday in Connecticut.

The Supreme Court agreed, concluding that “[s]ince that [out-of-state] judgment has not yet been obtained, [the plaintiff’s] action to enforce that judgment is not yet ripe” and that, as a matter of law, “an action seeking to enforce a *potential* foreign judgment cannot satisfy the requirements of” the prejudgment remedy statute. The Supreme Court reversed and remanded the case with a directive to deny the plaintiff’s prejudgment remedy application.

Before the Supreme Court’s reversal, plaintiffs in other out-of-state cases were starting similar unripe actions in Connecticut merely to tie up their defendants’ Connecticut property, relying on the Appellate Court decision. AV&H’s victory has made life a little easier for the many Fortune 500 companies and their executives in Connecticut who are or may become defendants in suits around the country and the world.

The appeal was argued by Richard S. Order with assistance from Eric D. Beal of the Hartford office.

For further information about this case and related issues, please contact: Richard S. Order, (860) 275-8140, [rso@avhlaw.com](mailto:rso@avhlaw.com).