LAVINE, J., dissenting. I respectfully dissent from the majority opinion, which affirms the judgment of the trial court on a ground not raised by either of the parties. See footnote 4 of this dissent. To date, the defendant, the town of North Branford (town), has not remediated the property as ordered by the court, and therefore it has incurred no debt. I would reverse the judgment of the trial court and order the subject lien discharged.

On appeal, the plaintiff, Joseph Kopylec, claims the court, *Corradino*, *J.*, erred when it failed to grant his application to discharge the lien on the subject property. More specifically, the plaintiff claims that (1) the lien (order 109) as drafted and filed by counsel for the town is in excess of that authorized by the court, *Pittman*, *J.*, on November 22, 2004, and (2) order 109 is in excess of the municipal enforcement powers of General Statutes § 8-12. I agree with both of the plaintiff's claims.

I agree with the underlying facts and procedural history recited by the majority. The facts that need to be highlighted, however, are Judge Pittman's order of November 22, 2004, and order 109, entitled "ORDER RE# 109," that was filed on the town land records. On November 22, 2004, in the case of *Labulis* v. *Kopylec*, Superior Court, judicial district of New Haven, Docket No. CV-02-0463204-S, Judge Pittman ordered: "[T]here's a court order that there be remediation; it hasn't happened. I am entering an order that the [town] be entitled to enter upon the property and undertake the necessary remediation and that the reasonable and necessary charges for the remediation be charged to [Phyllis Kopylec] and may be lodged in the form of a lien against the property." The court asked the defendant's counsel to draft the necessary order and informed Phyllis Kopylec that she did not need to return to court unless there was further dispute about the matter. Eight months later on July 29, 2005, although the remedial work on the property had not been completed, the defendant's counsel filed order 109 and Judge Pittman signed it. Thereafter, the defendant's counsel filed order 109 on the town land records before any remedial work had been performed.[1] At the present time, the court's November 22, 2004 order has been stayed until such time as the plaintiff is joined as a party defendant in *Labulis* v. *Kopylec*, supra, Superior Court, Docket No. CV-02-0463204-S. The record does not indicate that the stay has been recorded on the land records.

On November 27, 2006, the plaintiff filed an application to discharge the lien on the subject property. In his memorandum in support of the application to discharge, the plaintiff cited General Statutes §§ 49-13,[2] 49-51 and 49-59.[3] In his memorandum, the plaintiff argued

that Judge Pittman's order, issued from the bench, did not authorize the filing of a lien until a debt was incurred. It gave the defendant authority to incur reasonable and necessary charges to remediate the subject property, create a debt and file a lien on the basis of the debt. Significantly, the plaintiff noted that order 109 itself states "all other work or services necessary and reasonable in association with such task, *shall be charged to* [*Phyllis Kopylec*] *as a debt due and owing from* [*Phyllis Kopylec*] *to the* [*town*] . . . *said debt* to be secured by the recordation of this order on the land records . . . ." (Emphasis added.) The plaintiff argued that, on the face of the order, Judge Pittman did not authorize that order 109 be recorded without the existence of an incurred debt. Judge Corradino denied the plaintiff's application to discharge the lien. This appeal followed.

I

The plaintiff's first claim is that Judge Corradino improperly denied his application to discharge the lien because order 109 exceeds the scope of Judge Pittman's November 22, 2004 order. Moreover, the plaintiff argues that order 109 is invalid because it fails to comply with General Statutes § 52-380a. I agree with the plaintiff.

"[T]he construction of a judgment is a question of law for the court. . . . As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . The interpretation of a judgment may involve the circumstances surrounding the making of the judgment. . . . Effect must be given to that which is clearly implied as well as that which is expressed. . . . In doing so, it assists a reviewing court to keep in mind the theory on which the case was tried and on which the trial court decided it." (Citations omitted; internal quotation marks omitted.) *Steiner* v. *Middlesex Mutual Assurance Co.*, 44 Conn. App. 415, 428, 689 A.2d 1154 (1997); see also *Maguire* v. *Maguire*, 222 Conn. 32, 46, 608 A.2d 79 (1992) (construing court order). The plenary standard applies to questions of law. *State* v. *Jenkins*, 298 Conn. 209, 222, 3 A.3d 806 (2010).

On the basis of my review of the order Judge Pittman articulated on November 22, 2004, and order 109, I conclude that they are two distinct things with separate purposes. Phyllis Kopylec failed or was unable to comply with her obligations under the stipulated judgment. In lieu of further contempt citations against Phyllis Kopylec, the court issued an order to enforce the stipulated judgment. To enforce the judgment, the court ordered the defendant to perform the required remediation of the subject land. Order 109, which was placed on the town land records, does not achieve that goal. Moreover, given the language of the court's order, the town filed the lien prematurely. As the plaintiff pointed

out in his application for discharge of lien "[a]s of the date of the stay, the town of North Branford has expended no sums for the 'reasonable and necessary charges for such remediation . . . .' " Until the town completed the remediation, no lien should have been filed on the land records until it knew the cost of the remediation. See General Statutes §§ 52-285 and 52-380a (1). In fact, under the terms of the stay, the remedial work may never be completed. For these reasons, I conclude that the court's oral order to enforce the stipulated judgment and order 109 that appears on the town land records are at odds. I conclude therefore that order 109 exceeds the scope of the November 22, 2004 court order.

Moreover, the plaintiff argues that order 109 is not a valid lien. "Whether a judgment lien is valid generally involves a mixed question of fact and law." *PNC Bank, N.A.* v. *Kelepecz*, 289 Conn. 692, 697, 960 A.2d 563 (2008). In this case, the parties do not dispute the underlying facts. The issue is whether order 109 conforms to the statutory requirements for judgment liens codified in § 52-380a. Construction of a statute and its applicability to a particular set of facts requires plenary review. *Wright* v. *Teamsters Local 559*, 123 Conn. App. 1, 5, 1 A.3d 207 (2010).

General Statutes § 52-380a (a) provides in relevant part: "[a] judgment lien, securing the unpaid amount of any money judgment . . . may be placed on any real property by recording, in the town clerk's office in the town where the real property lies, a judgment lien certificate, signed by the judgment creditor or his attorney . . . containing: (1) A statement of the names and last-known addresses of the judgment creditor and judgment debtor, the court in which and the date on which the judgment was rendered, and the original *amount of the money judgment* and the amount due thereon; and (2) a description . . . of the real property on which a lien is to be placed . . . ." (Emphasis added.)

There is no question that order 109, which was filed on the town land records, does *not* set forth the original amount of the money judgment. Indeed, as of yet, no debt has been incurred. In denying the plaintiff's application for discharge of the lien, Judge Corradino concluded that the failure to include the amount of the money judgment "does not invalidate the lien generally or by its own terms . . . ." In *PNC Bank, N.A.*v. *Kelepecz*, supra, 289 Conn. 692, our Supreme Court considered whether a judgment lien is valid "when . . . the judgment lien certificate fails to set forth the original amount of the money judgment secured by the lien as required by . . . § 52-380a (a)." Id., 694. To resolve the issue, the court had to determine whether the judgment lien at issue complied with § 52-380a.

There was no dispute in the *PNC Bank, N.A.*, case that the lien certificate did not contain the original

amount of the judgment. Id., 699. "A judgment lien is based on a judicial determination of the amount of the debt owed by the debtor to the creditor and can be independently verified by checking judicial records." Id., 701. In *PNC Bank, N.A.*, the lien certificate contained the names and last known addresses of the judgment creditor and debtor, the court, and its street address, in which the judgment was rendered and the date of the judgment. Id., 702. Our Supreme Court concluded that "with this information in hand, a party acting with common prudence and ordinary diligence would be able to ascertain the original amount of the judgment secured by the lien, most likely by going to the courthouse identified in the lien and obtaining the information from the file in the clerk's office"; id.; and therefore "the omission of the judgment amount from the lien certificate is not a sufficient reason to invalidate the lien where it is challenged by a third party who had sufficient information available on the face of the lien certificate to discover the amount of the judgment secured by the lien." Id., 704.

Unlike the judgment lien at issue in *PNC Bank, N.A.*, order 109 clearly fails to provide a third party with sufficient information to discover the amount of the money judgment and the amount due through the exercise of common prudence and ordinary diligence. Order 109 does not contain the names and last known addresses of the judgment creditor and debtor, the amount of a money judgment, the date it was rendered and the amount due; and also it is not signed by the judgment creditor or its attorney. Order 109, therefore, fails to comply with the judgment lien statute, § 52-380a. Moreover, order 109 states that "[t]he amount due and owing shall be established by way of affidavit, with appropriate attached statement or receipts . . . ." It is undisputed that the defendant has not performed any remedial work on the property, and thus has not established "[t]he amount due and owing." It is therefore impossible for a third party to verify independently the amount of the judgment by examining the available judicial records. I therefore conclude that order 109 is not a valid judgment lien on the town land records.[4]

II

The plaintiff also claims that Judge Corradino improperly denied his application to discharge order 109 as it is in excess of the municipal enforcement powers granted by § 8-12. In denying the plaintiff's application to discharge order 109, Judge Corradino concluded that Judge Pittman had the right to order the lien placed on the land records given the broad language of § 8-12 and *Cabinet Realty, Inc.* v. *Planning & Zoning Commission*, 17 Conn. App. 344, 552 A.2d 1218, cert. denied, 210 Conn. 813, 556 A.2d 610 (1989). I disagree with the court's conclusion.[5]

General Statutes § 8-12 provides in relevant part: "If

any building or structure has been erected . . . or land has been used, in violation of any provision of this chapter . . . ordinance, rule or regulation made under authority conferred hereby, any official having jurisdiction, in addition to other remedies, may institute an action . . . to prevent such unlawful . . . alteration . . . or to restrain . . . or abate such violation . . . or to prevent any illegal act . . . or use in or about such premises. Such regulations shall be enforced by the officer . . . who shall be authorized to cause any . . . premises to be inspected . . . and . . . when the violation involves grading of land, the removal of earth or soil erosion and sediment control, to issue, in writing, a cease and desist order to be effective immediately. . . . Any person who, having been served with . . . a cease and desist order with respect to a violation involving grading of land, removal of earth or soil erosion and sediment control, fails to comply with such order immediately . . . shall be subject to a civil penalty not to exceed two thousand five hundred dollars, payable to the treasurer of the municipality. . . .''

The case of *Cabinet Realty, Inc.*, is inapposite to the facts here. In that case, the zoning commission found that the condominiums under construction did not conform to the site plan. *Cabinet Realty, Inc.* v. *Planning & Zoning Commission*, supra, 17 Conn. App. 346. The commission directed the zoning officer to record a notice of its findings on the town land records.[6] Id., 347. In resolving the appeal in the context of a challenge to jury instructions, this court stated that ''a municipality may, under the authority of § 8-12, direct its zoning enforcement officer to record a notice on the land records as a means by which to enforce compliance with its zoning regulations. Such a notice on the land records will alert prospective purchasers to zoning problems affecting the property and may discourage purchasers from buying property when a builder has not complied with the zoning regulations.'' Id., 351. In the case before this court now, order 109 does not put anyone on notice of the zoning violation at issue but would lead a person searching the land records to believe that there is an unspecified lien on the property, which, as I have concluded in part I of this dissent, is invalid. Moreover, § 8-12 details the powers of a zoning board and court with regard to zoning violations and sets forth the penalties that may be imposed for illegal grading of land. Order 109 is in excess of the statute.

Notwithstanding the majority's desire to resolve this case, I do not think it should do so by resorting to grounds not raised, or briefed, by the parties. For the foregoing reasons, I would reverse the judgment and remand the case to the trial court with direction to grant the application for discharge of the lien.

[1] The order states in relevant part: ''The court, in lieu of any further finding of contempt, orders that the [town] be entitled to enter upon the subject property and undertake the necessary remediation of it pursuant to this court's judgment of June 13, 2002, and that the reasonable and necessary

charges for such remediation . . . and any and all other work or services necessary and reasonable in association with such task, shall be charged to [Phyllis Kopylec] as a debt due and owing from [Phyllis Kopylec] to the [town], said debt to be secured by the recordation of this order on the land records of the Town of North Branford in which the subject property is situated. The effect of this order, and the intent of this court, is that this order shall constitute a lien on the subject property, which may be foreclosed by the [town] upon [Phyllis Kopylec's] failure to pay said debt within thirty (30) days after its presentation for payment to [her] or to [her] attorney in the same manner as is provided for the foreclosure of judgment liens. The amount due and owing shall be established by way of affidavit, with appropriate attached statement or receipts, to be presented as an exhibit in any foreclosure action commenced by the [town]. Similarly, any dispute by [Phyllis Kopylec] as to the reasonableness or necessity of any charges may be raised in the context of such foreclosure hearing. . . ." Importantly, order 109 does not include the amount of the lien or the amount due and owing.

[2] General Statutes § 49-13 is an enabling statute for the discharge of an ineffective lien, among others.

[3] General Statutes § 49-59 concerns the discharge of liens and penalty for failure to discharge.

[4] The majority also concludes that order 109 is not a valid judgment lien. See footnote 15 of the majority opinion. I disagree, however, that order 109 has any validity and conclude it should be discharged. Until the stay is lifted and the defendant performs the remedial work ordered, which may never occur, there is no basis for the lien.

Although the majority concludes that order 109 is not a valid judgment lien, it concludes that it is an inchoate lien. It describes an inchoate lien as "one that attaches to property by operation of a statute or the entry of a judgment . . . ." 51 Am. Jur. 2d 125, Liens § 8 (2000). The majority, however, fails to cite the statute or judgment that supports its contention that order 109 is an inchoate lien. The majority also describes order 109 as an equitable lien. "An equitable lien creates merely a charge upon the property and when the person entitled to it is not in possession of that property . . . his remedy to enforce the lien is by a proceeding in equity to bring about its sale and the application of the proceeds to the satisfaction of the obligation secured . . . ." *Hansel* v. *Hartford-Connecticut Trust Co.*, 133 Conn. 181, 194, 49 A.2d 666 (1946). Again, there is no debt owed the defendant because it has not remediated the subject property. There can, therefore, be no charge against the property. Without an amount certain, there can be no lien on real property. Unlike order 109, a prejudgment remedy is an example of an inchoate lien.

"In Connecticut, a prejudgment attachment is a provisional remedy afforded to a claimant to secure satisfaction of a judgment in the future. . . . The right to a prejudgment attachment in Connecticut is statutory. General Statutes § 52-285 . . . . The requirements for an attachment of real property include recordation of the certificate of attachment on the land records. . . . Upon recordation, a claimant obtains an inchoate lien until the time of the judgment." (Citations omitted.) *Shawmut Bank* v. *Brooks Development Corp.*, 46 Conn. App. 399, 410, 699 A.2d 283 (1997).

General Statutes § 52-285 provides in relevant part: "Real estate shall be attached by the officer leaving in the office of the town clerk of the town in which it is situated a certificate that he has made such attachment . . . . The certificate shall . . . describe the land attached with reasonable certainty and shall specify the parties to the suit, the authority issuing the writ, the court to which the process is returnable and *the amount of damages claimed* . . . ." (Emphasis added.)

"The trial court may grant a prejudgment remedy upon a finding that there is probable cause that a judgment *in the amount of the prejudgment remedy sought*, or in an amount greater than the amount of the prejudgment remedy sought, taking into account any defenses, counterclaims or set-offs, will be rendered in the matter in favor of the plaintiff . . . ." (Emphasis added; internal quotation marks omitted.) *Caciopoli* v. *Howell*, 124 Conn. App. 273, 277, 5 A.3d 509 (2010). I conclude that no lien may be placed on real property, choate or inchoate, unless there is an amount certain named in the lien certificate.

[5] Although only one ground is needed to reverse the judgment of the trial court, I address the plaintiff's second claim as an alternate basis for reversal, should a petition for certification to appeal filed in our Supreme Court be granted. See Practice Book § 84-11.

[6] The commission directed the zoning enforcement officer "to prevent the occupancy of the . . . units by recording a notice of the commission's conclusions on the land records." *Cabinet Realty, Inc.* v. *Planning & Zoning Commission*, supra, 17 Conn. App. 347.