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FIORITA, KORNHAAS & COMPANY, P.C. *v.* JOSEPH VILELA ET AL.
(AC 45366)

Suarez, Clark and Seeley, Js.

Syllabus

Pursuant to statute (§ 49-51 (a)), "[a]ny person having an interest in any real or personal property described in any certificate of lien, which lien is invalid but not discharged of record, may give written notice to the lienor" requesting that the lienor discharge the lien. If the lien is not discharged within thirty days, the person requesting the discharge may apply to the Superior Court for such a discharge.

The plaintiff accounting corporation sought to foreclose a mortgage on certain real property owned by the defendant. In 2008, the defendant's aunt, A, who then owned the property, executed a mortgage with respect to the property in favor of the plaintiff to secure a note payable to it for a debt related to unpaid accounting fees. In 2019, prior to the commencement of the plaintiff's action, A transferred the property to the defendant by way of a quitclaim deed. The defendant filed a counterclaim against the plaintiff, alleging, inter alia, that the plaintiff had fraudulently induced A to execute the mortgage and note and had violated the code of professional conduct for the accounting profession, thus rendering the mortgage and note void or voidable. The trial court granted the plaintiff's motion to dismiss the defendant's counterclaim on the ground that the defendant had not complied with the notice provisions of § 49-51 pertaining to the discharge of invalid liens, thus depriving the court of subject matter jurisdiction. The defendant appealed to this court, claiming, inter alia, that the trial court improperly determined that § 49-51 applied to mortgages as well as liens and that the statute provided the exclusive path for his counterclaim. *Held* that the trial court improperly determined that the defendant was required to assert the allegations contained in the counterclaim via an action filed pursuant to § 49-51: as the language of § 49-51 does not include the word "mortgage" or define the terms "certificate of lien" or "lien," this court looked to the commonly approved usage of those terms and determined that there is no indication in the language that the legislature intended for the phrase "certificate of lien" to include a mortgage; moreover, the plaintiff could not prevail on its claim that references in other statutes that specifically described a mortgage as a type of lien indicated a legislative intent to include mortgages within the ambit of § 49-51.

Argued January 9—officially released June 13, 2023

Procedural History

Action to foreclose on a mortgage on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of New Britain, where the named defendant filed a counterclaim; thereafter, the court, *Hon. Joseph M. Shortall*, judge trial referee, dismissed the named defendant's counterclaim, and the named defendant appealed to this court. *Reversed*; *further proceedings*.

John R. Weikart, with whom were *Emily Graner Sexton*, and, on the brief, *James P. Sexton*, for the appellant (named defendant).

Robert Wojciechowski, for the appellee (plaintiff).

Opinion

SEELEY, J. In this foreclosure action, the defendant Joseph Vilela appeals from the judgment of the trial court dismissing his counterclaim against the plaintiff, Fiorita, Kornhaas & Company, P.C.[1] On appeal, the defendant claims that the court improperly determined that his failure to comply with the notice provisions of General Statutes § 49-51, which pertains to the discharge of invalid liens, deprived the court of subject matter jurisdiction over his counterclaim seeking to void the mortgage that is central to this appeal. In particular, the defendant argues that § 49-51 applies only to liens and that a mortgage is not a lien for purposes of that statute. The defendant further claims that the court improperly concluded that it lacked subject matter jurisdiction to consider his challenge to the validity of the mortgage on the grounds of fraud and a violation of public policy and that it exceeded the scope of the plaintiff's motion to dismiss by exercising its discretion to conclude, sua sponte, that the defendant's declaratory judgment claim should not be permitted to proceed. We agree with the defendant's first claim and reverse the judgment of the trial court.

The record reveals the following facts and procedural history. In March, 2020, the plaintiff commenced a foreclosure action against the defendant. In its revised complaint dated September 22, 2021, the plaintiff set forth the following allegations. The plaintiff is a professional corporation with a place of business in Danbury, and the defendant is the current owner of commercial property located in Newington (property). On December 22, 2008, Roberta Aronheim[2] was indebted to the plaintiff in the amount of $62,375, as evidenced by a note payable to the plaintiff. To secure that note, Aronheim executed a mortgage in favor of the plaintiff with respect to the property. The final maturity date of the note was December 22, 2011. The note is in default and payable in the full amount, plus interest and attorney's fees. The defendant is the owner and in possession of the property by way of a quitclaim deed dated July 15, 2019. The plaintiff requested a foreclosure of the mortgage, immediate possession of the property, interest, costs of the suit, attorney's fees and any other relief deemed to be appropriate.

On October 6, 2021, the defendant filed an answer, special defenses,[3] and a counterclaim. In the counterclaim, he alleged that the plaintiff had been Aronheim's personal and business accountant and provided her with accounting services for many years. He further alleged that, on or before December 22, 2008, the plaintiff made representations to Aronheim that, if the mortgage and note were signed, it would advance loan proceeds to her for use in her business. The defendant specifically alleged that the plaintiff failed to disclose that the mortgage and note were for unpaid fees for

past accounting services it provided to Aronheim and alleged that the plaintiff fraudulently induced Aronheim to execute the mortgage and note. As a result, the defendant claimed that the mortgage and note are void or voidable.

The defendant further alleged that the plaintiff's conduct impaired its independence in providing accounting services in violation of the code of professional conduct for the accounting profession, subordinated public trust and service to personal gain and advantage, and created an adverse interest to its client. The defendant claimed, therefore, that the mortgage and note are contrary to public policy and, thus, void.

Finally, the defendant alleged that the outstanding balance had been paid in full on August 12, 2019, and that the debt was deemed to be paid in full as a result of a lengthy lapse during which no payment had been received or applied to the note and mortgage by the plaintiff. In his request for relief, the defendant sought a declaration that "(1) . . . said mortgage and note were given to the plaintiff in violation of public policy and/or were induced by fraud and misrepresentation and/or have been paid in full . . . (2) [the trial court] order said note be cancelled and that the mortgage be released on the land records [and] (3) . . . such further relief as this court may deem fair, just and equitable."

On November 16, 2021, the plaintiff filed a motion to dismiss the defendant's counterclaim, alleging that the court lacked subject matter jurisdiction.[4] Specifically, it argued: "The counterclaim seeks a discharge of a mortgage, which is a statutory proceeding with specific requirements that must be followed to maintain the action. Failure to comply with the statutory provisions, as [the defendant] has, deprives the court of subject matter jurisdiction." In the memorandum of law attached to its motion to dismiss, the plaintiff stated that an action to discharge a mortgage must be brought pursuant to either General Statutes § 49-13 or § 49-51.[5] It then contended that the court lacked subject matter jurisdiction with respect to § 49-13 as a result of the parties' dispute regarding the validity of the mortgage.[6] Turning to § 49-51, the plaintiff noted that this statute required the defendant to provide it with written notice to discharge the lien on the property. As the defendant failed to comply with this requirement, the plaintiff claimed that the court lacked subject matter jurisdiction to consider his claim to discharge the mortgage.[7]

On December 14, 2021, the defendant filed an objection to the plaintiff's motion to dismiss.[8] Therein, he argued that "[t]he counterclaim is expressly claiming relief equitable in nature and is entirely appropriate in a mortgage foreclosure, the quintessential equitable proceeding under Connecticut law." He further claimed that the counterclaim sought a declaratory judgment and noted that the Superior Court has subject matter

jurisdiction over such suits, despite the adequacy of other legal remedies. Finally, he stated that, "[i]n addition to declaratory relief, as a court of equity, this court has the power to cancel the note, discharge the mortgage and in the case of mutual mistake, [order] repayment to the mortgagor."

The court, *Hon. Joseph M. Shortall*, judge trial referee, heard argument on the plaintiff's motion on January 31, 2022. At the outset, the plaintiff's counsel argued that the claims and relief sought in the counterclaim could be raised only pursuant to § 49-51, and not merely by invoking the court's equitable powers. The defendant's counsel acknowledged that he had not proceeded under § 49-51, but contended that the equitable powers of the court remained a viable path for the counterclaim. The court replied: "Well, how do you—how do you get around—I mean I—the court does have broad equitable powers in [a] foreclosure action but in—in a situation where there's a specific statute that sets out a procedure by which mortgages are—are requested or are made to—to void or discharge a mortgage, how does the court act in . . . in ignorance of that statute? Which I think is what you're asking the court to do."[9] The defendant's counsel replied that § 49-51 was not "mandatory" and that the equitable powers of the court provided it with subject matter jurisdiction to address the matters raised in the counterclaim. The defendant's counsel further stated that, in addition to seeking cancellation and discharge of the mortgage, the defendant also sought a declaratory judgment.[10]

Later that day, the court issued the following written order granting the plaintiff's motion to dismiss: "While the equitable powers of the court are broad in a foreclosure action, they are not so broad as to allow it to ignore the fact that the legislature has established a statutory procedure to accomplish what the defendant seeks via his counterclaim; namely, [§] 49-51. See *Guilford Yacht Club Assn., Inc.* v. *Northeast Dredging, Inc.*, 192 Conn. 10, 13 [468 A.2d 1235] (1984). Moreover, treating the defendant's counterclaim as a declaratory judgment action, the court notes that, when there is 'another form of proceeding that can provide the party seeking the declaratory judgment immediate redress,' such as [§] 49-51, [Practice Book §] 17-55 (3)[11] requires that the court be of the opinion that the party 'should be allowed to proceed with the claim for declaratory judgment despite the existence of such alternate procedure.' The court is not of that opinion in this case." (Footnote added.)

On February 16, 2022, the defendant filed a motion to reargue and for reconsideration pursuant to Practice Book § 11-11 and the "court's inherent equitable powers." The plaintiff objected to that motion, and, on February 24, 2022, the court, treating the defendant's motion as one for reconsideration, granted it but saw

"no reason to depart from its decision on the plaintiff's motion to dismiss the defendant's counterclaim." This appeal followed.[12]

The defendant contends in his appellate brief that "[t]he ultimate question before this court on appeal is whether the trial court lacked subject matter jurisdiction over the . . . counterclaim." The defendant presents three arguments in support of his claim that the trial court did not lack jurisdiction. First, the defendant argues that the court improperly determined that § 49-51 applies to mortgages as well as liens and that this statute provided the exclusive path for his counterclaim. The defendant contends that, as a result of this improper analysis, the court incorrectly determined that noncompliance with § 49-51[13] required dismissal of the counterclaim. Second, he argues that "the Superior Court has, and always had, jurisdiction to adjudicate the validity of mortgages" and, therefore, even if § 49-51 applied to the present case, it did not constitute the sole procedural method for raising his counterclaim alleging that the mortgage was invalid on grounds including fraud and a violation of public policy. Third, the defendant maintains that the court improperly exceeded the scope of the plaintiff's motion to dismiss and exercised its discretion, sua sponte, to conclude that the defendant's declaratory judgment action should not be permitted to proceed. We agree with the defendant's first argument regarding the inapplicability of § 49-51 and, accordingly, reverse the judgment of the trial court.

"The standard of review for a court's decision on a motion to dismiss [under Practice Book § 10-30 (a) (1)] is well settled. A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . [O]ur review of the court's ultimate legal conclusion and resulting [determination] of the motion to dismiss will be de novo. . . . When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the [counterclaim] in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the [counterclaim], including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone. . . . In undertaking this review, we are mindful of the well established notion that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Pickard* v. *Dept. of Mental Health & Addiction Services*, 210 Conn. App. 788, 792–93, 271 A.3d 178 (2022); see also *Derblom* v. *Archdiocese of Hartford*, 346 Conn. 333, 341, 289 A.3d 1187 (2023); *Fitzgerald* v. *Bridgeport*, 187 Conn. App. 301, 314, 202 A.3d 385

(2019). Additionally, we note that the Superior Court has jurisdiction to entertain both legal and equitable claims. See, e.g., *C & H Management, LLC* v. *Shelton*, 140 Conn. App. 608, 617, 59 A.3d 851 (2013); see also General Statutes § 52-1;[14] *Investment Associates* v. *Summit Associates, Inc.*, 132 Conn. App. 192, 201, 31 A.3d 820 (2011) (Superior Court is court of general jurisdiction), aff'd, 309 Conn. 840, 74 A.3d 1192 (2013).

In the present case, the court concluded that § 49-51 provided the exclusive procedure for the defendant's counterclaim alleging that, for various reasons, the mortgage and note are void or voidable, or that it had been repaid. It further reasoned that, as a result of his failure to comply with the requirements of § 49-51, it lacked jurisdiction to consider the defendant's counterclaim. The defendant argues on appeal, inter alia, that the court's jurisdictional conclusion is flawed because § 49-51 applies only to liens and not mortgages. We agree.

The issue presented, whether § 49-51 applies to mortgages, presents a question of statutory interpretation, subject to plenary review. "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, *including the question of whether the language actually does apply*. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Emphasis added; internal quotation marks omitted.) *Cerame* v. *Lamont*, 346 Conn. 422, 426, 291 A.3d 601 (2023); *Centrix Management Co., LLC* v. *Fosberg*, 218 Conn. App. 206, 210, 291 A.3d 185 (2023).

We begin our analysis with the relevant statutory language. Section 49-51, titled "Discharge of invalid lien," provides in relevant part: "(a) Any person having an interest in any real or personal property described in any certificate of lien, which lien is invalid but not discharged of record, may give written notice to the lienor sent to him at his last-known address by registered mail or by certified mail, postage prepaid, return receipt requested, to discharge the lien. Upon receipt of such notice, the lienor shall discharge the lien by sending a release sufficient under section 52-380d, by first class mail, postage prepaid, to the person requesting the discharge. If the lien is not discharged within thirty days of the notice, that person may apply to the Superior Court for such a discharge, and the court may adjudge the validity or invalidity of the lien

and may award the plaintiff damages for the failure of the defendant to make discharge upon request. . . .''

A review of the statutory language reveals two important details. First, § 49-51 does not include the word ''mortgage.'' Second, § 49-51 does not define the terms ''certificate of lien'' or ''lien.'' We therefore look to the commonly approved usage of the relevant terms. See, e.g., *O'Dell* v. *Kozee*, 307 Conn. 231, 243, 53 A.3d 178 (2012); *K. D.* v. *D. D.*, 214 Conn. App. 821, 828, 282 A.3d 528 (2022). Our Supreme Court has instructed that ''[w]e may find evidence of such usage, and technical meaning, in dictionary definitions, as well as by reading the statutory language within the context of the broader legislative scheme. . . . Further, [i]t is well established that, to construe technical legal terms, we look for evidence of their familiar legal meaning in a range of legal sources, including other statutes, judicial decisions, and the common law.'' (Citation omitted; internal quotation marks omitted.) *Shoreline Shellfish, LLC* v. *Branford*, 336 Conn. 403, 411, 246 A.3d 470 (2020); see also *L. H.-S.* v. *N. B.*, 341 Conn. 483, 491, 267 A.3d 178 (2021) (court may look to prior case law defining term at issue); see generally General Statutes § 1-1 (a) (in construction of statutes, ''technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly''); 3A S. Singer, Sutherland Statutes and Statutory Construction (8th Ed. 2018) § 70:2, pp. 1006–13 (language of lien statutes construed in view of its purpose and language used given natural, plain, ordinary, contemporary commonly understood meaning unless term has acquired specific, peculiar or technical meaning as result of statutory definition, specialized usage, or judicial construction).

The plain language of § 49-51 provides that any person having an interest in real property described in a certificate of lien may request the discharge of an invalid lien. There is no indication in the language that the legislature intended for the phrase ''certificate of lien'' to include mortgages. See, e.g., *Carpenter* v. *Daar*, 346 Conn. 80, 107, 287 A.3d 1027 (2023); see generally *Mazzei* v. *Cantales*, 142 Conn. 173, 176, 112 A.2d 205 (1955) (statutory provisions concerning residence and domicile and service by order of notice, by their terms, pertained only to actions for divorce, and legislature manifested no intention they applied to actions for annulment).

Additionally, our plain language analysis is supported by precedent from our Supreme Court. See *New England Road, Inc.* v. *Planning & Zoning Commission*, 308 Conn. 180, 186, 61 A.3d 505 (2013) (courts bound by prior judicial interpretation of language and purpose of statute when interpreting statutory language); *Marandino* v. *Prometheus Pharmacy*, 294 Conn. 564, 576–77, 986 A.2d 1023 (2010) (same). In *Stein* v. *Hillebrand*, 240 Conn. 35, 43 n.7, 43–44, 688 A.2d 1317 (1997),[15] the

court explained the distinction between a mortgage and a lien. In that case, the defendant and her husband obtained a divorce, and, as part of the dissolution judgment, the court ordered the husband to mortgage his one-half interest in certain property located in Westport to the defendant as security for his unallocated alimony and child support obligation. Id., 37. The plaintiff, the husband's brother, also owned this property interest as a tenant in common. Id., 36. A mortgage deed was placed on the land records and specifically authorized the defendant to foreclose on the mortgage if her former husband defaulted on his support and alimony obligations. Id., 38.

The plaintiff subsequently filed an action to invalidate the defendant's mortgage. Id. In affirming the judgment of the trial court rendered in favor of the defendant, our Supreme Court addressed, inter alia, the plaintiff's claim that the statutes pertaining to postjudgment procedures limited the authority of the court to order a mortgage as security. Id., 42. The plaintiff argued that chapter 906 of the General Statutes, specifically §§ 52-350a through 52-400f, permitted the execution and foreclosure of a lien against a judgment debtor's property only if a judgment creditor obtained an unsatisfied money judgment. Id. The statutory definition of " 'money judgment' " found in § 52-350a (13) specifically excluded family support judgments. Id. "The plaintiff [contended] that, because these statutes do not allow a party to obtain a postjudgment lien to secure alimony or [child] support payments, the dissolution court violated chapter 906 by ordering [the former husband] to mortgage his property to secure these payments." Id. In its analysis, the court stated that it presumed "that the legislature [used] the terms 'mortgage' and 'lien' to connote their different legal meanings." Id., 43. The court further stated: "*Although these terms are frequently conflated, the distinction between a mortgage and a judgment lien is more than semantic.* A mortgage is a form of contract, and, under Connecticut law,[16] immediately vests legal title in the mortgagee and equitable title in the mortgagor. . . . Foreclosure on a mortgage, moreover, is an equitable action that precludes further proceedings on the underlying debt and requires an unsatisfied mortgagee to pursue his rights through a deficiency judgment. . . . A judgment lien, on the other hand, results from the unilateral act of a creditor and does not vest him with legal title to the subject property. . . . Foreclosure of a judgment lien is an action at law that does not extinguish the underlying debt." (Citations omitted; emphasis added; footnote added; internal quotation marks omitted.) Id., 43 n.7.[17] See also *First Constitutional Bank* v. *Harbor Village Ltd. Partnership*, 230 Conn. 807, 821, 646 A.2d 812 (1994) (lien is not agreement or contract between parties, but unilateral act in which lienor bears burden of demonstrating statutory compliance).

The plaintiff points to various statutes "where the term 'mortgage' is used in conjunction with, or otherwise described as a 'lien.' " See General Statutes §§ 49-7, 49-8a (f), 49-13a, and 49-31b.[18] We note that several of these statutes expressly use the term "mortgage" to describe the "lien." In contrast, § 49-51 does not use the term "mortgage." We are cognizant that, "[w]here a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed. . . . That tenet of statutory construction is well grounded because [t]he General Assembly is always presumed to know all the existing statutes and the effect that its action or non-action will have upon any one of them." (Internal quotation marks omitted.) *Jezouit* v. *Malloy*, 193 Conn. App. 576, 593, 219 A.3d 933 (2019). Furthermore, we are not persuaded by the plaintiff's contention that references in other statutes that specifically describe a mortgage as a type of lien or are limited to a specific context indicate a legislative intent to include mortgages within the ambit of § 49-51. For these reasons, we conclude that the court improperly concluded that the defendant was required to assert the allegations contained in the counterclaim via an action filed pursuant to § 49-51.[19]

The judgment is reversed and the case is remanded for further proceedings.

In this opinion the other judges concurred.

[1] The plaintiff also named Rob Roc II, LLC, and Webster Bank, N.A., as defendants in its complaint. On November 8, 2021, these two entities were defaulted for failing to disclose a defense and have not participated in this appeal. We therefore refer to Joseph Vilela as the defendant.

[2] In its original complaint, the plaintiff set forth the following allegation: "Upon information and belief, [the defendant] is the nephew of Roberta Aronheim."

[3] The defendant filed revised special defenses on January 21, 2022.

[4] Practice Book § 10-30 provides in relevant part that "(a) A motion to dismiss shall be used to assert: (1) lack of jurisdiction over the subject matter . . . .

"(c) This motion shall always be filed with a supporting memorandum of law, and where appropriate, with supporting affidavits as to the facts not apparent on the record."

[5] General Statutes § 49-13 provides in relevant part: "(a) When the record title to real property is encumbered (1) by any undischarged mortgage, and . . . (E) the mortgage has become invalid, and in any of such cases no release of the encumbrance to secure such note or evidence of indebtedness has been given . . . the person owning the property, or the equity in the property, may bring a petition to the superior court for the judicial district in which the property is situated, setting forth the facts and claiming a judgment as provided in this section. The plaintiff may also claim in the petition damages as set forth in section 49-8 if the plaintiff is aggrieved by the failure of the defendant to execute the release prescribed in said section. . . .

"(c) Such notice having been given according to the order and duly proven, the court may proceed to a hearing of the cause at such time as it deems proper, and, if no evidence is offered of any payment on account of the debt secured by the mortgage within a period set out in subsection (a) of this section, or of any other act within such a period as provided in said subsection (a) in recognition of its existence as a valid mortgage . . . the court may render a judgment reciting the facts and its findings in relation thereto and declaring the mortgage . . . invalid as a lien against the real

estate, and may order payment of any balance of indebtedness due on the mortgage or foreclosure judgment to the clerk of the court to be held for the benefit of the mortgagee or the persons interested and to be paid to the mortgagee by the clerk of the court upon application of the mortgagee or persons interested following the execution of a release of mortgage.

"(d) Upon deposit of the balance of indebtedness with the clerk, such judgment shall issue, which judgment shall, within thirty days thereafter, be recorded in the land records of the town in which the property is situated, and the encumbrance created by the mortgage . . . shall be null and void and totally discharged. The town clerk of the town in which the real estate is situated shall, upon the request of any person interested, record a discharge of such encumbrance in the land records."

General Statutes § 49-51 provides in relevant part: "(a) Any person having an interest in any real or personal property described in any certificate of lien, which lien is invalid but not discharged of record, may give written notice to the lienor sent to him at his last-known address by registered mail or by certified mail, postage prepaid, return receipt requested, to discharge the lien. Upon receipt of such notice, the lienor shall discharge the lien by sending a release sufficient under section 52-380d, by first class mail, postage prepaid, to the person requesting the discharge. If the lien is not discharged within thirty days of the notice, that person may apply to the Superior Court for such a discharge, and the court may adjudge the validity or invalidity of the lien and may award the plaintiff damages for the failure of the defendant to make discharge upon request. If the court is of the opinion that such certificate of lien was filed without just cause, it may allow, in its discretion, damages to any person aggrieved by such failure to discharge, at the rate of one hundred dollars for each week after the expiration of such thirty days, but not exceeding in the whole the sum of five thousand dollars or an amount equal to the loss sustained by such aggrieved person as a result of such failure to discharge the lien, which loss shall include, but not be limited to, a reasonable attorney's fee, whichever is greater.

"(b) When a lien on real property is adjudged invalid or is otherwise discharged by the court, a certified copy of the judgment of invalidity or discharge recorded on the land records of the town where the certificate of lien was filed fully discharges the lien. . . ."

[6] See *Gordon* v. *Tufano*, 188 Conn. 477, 482–84, 450 A.2d 852 (1982) (purpose of § 49-13 is to provide simple method for declaring mortgage invalid and removed as cloud to title when undisputed that it is invalid, but it gives court no jurisdiction to determine validity or invalidity of mortgage); *Simonelli* v. *Fitzgerald*, 156 Conn. 49, 53–54, 238 A.2d 418 (1968) (same).

[7] See, e.g., *Metropolitan District Commission* v. *Marriott International, Inc.*, 216 Conn. App. 154, 176–77, 284 A.3d 985 (2022), cert. granted, 346 Conn. 918, 291 A.3d 108 (2023); *Commissioner of Public Works* v. *Middletown*, 53 Conn. App. 438, 443–44, 731 A.2d 749, cert. denied, 250 Conn. 923, 738 A.2d 654 (1999).

[8] See Practice Book § 10-31 (a).

[9] See, e.g., *Justin Development Corp.* v. *Donald J. Colasono Associates, P.C.*, 31 Conn. Supp. 209, 210–11, 326 A.2d 836 (1974) (plaintiff requested court to issue summary order discharging mechanic's lien on basis of equity jurisdiction of court and, in rejecting this argument, court stated that, given General Statutes §§ 49-37 and 49-51, it lacked legal authority to summarily discharge lien outside of those statutes).

[10] "The purpose of a declaratory judgment action, as authorized by General Statutes § 52-29 and Practice Book § [17-55], is to secure an adjudication of rights where there is a substantial question in dispute or a substantial uncertainty of legal relations between the parties. . . . Practice Book § 17-55 requires that the plaintiff be in danger of a loss or of uncertainty as to [his] rights or other jural relations and that there be a bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations . . . . Thus, [d]eclaratory relief is a mere procedural device by which various types of substantive claims may be vindicated. . . .

"Implicit in these principles is the notion that a declaratory judgment action must rest on some cause of action that would be cognizable in a nondeclaratory suit. . . . To hold otherwise would convert our declaratory judgment statute and rules into a convenient route for procuring an advisory opinion on moot or abstract questions . . . and would mean that the declaratory judgment statute and rules created substantive rights that did not otherwise exist." (Citations omitted; footnotes omitted; internal quotation marks omitted.) *Bysiewicz* v. *DiNardo*, 298 Conn. 748, 756–57, 6 A.3d 726 (2010).

[11] Practice Book § 17-55 provides: "A declaratory judgment action may be maintained if all of the following conditions have been met: (1) The party seeking the declaratory judgment has an interest, legal or equitable, by reason of danger of loss or of uncertainty as to the party's rights or other jural relations; (2) There is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement between the parties; and (3) In the event that there is another form of proceeding that can provide the party seeking the declaratory judgment immediate redress, the court is of the opinion that such party should be allowed to proceed with the claim for declaratory judgment despite the existence of such alternate procedure."

[12] The granting of the plaintiff's motion to dismiss disposed of all the claims set forth in the defendant's counterclaim and, therefore, constitutes a final judgment for purposes of appeal. See Practice Book § 61-2; see also *Rocque* v. *DeMilo & Co.*, 85 Conn. App. 512, 514 n.1, 857 A.2d 976 (2004) (trial court's granting of motion to dismiss entire counterclaim was final judgment for appeal purposes).

[13] The defendant did not give written notice to the plaintiff at its last known address by registered mail or certified mail, postage prepaid, return receipt requested, to discharge the lien. "Not unlike the dissolution of an attachment, the discharge of a lien is a statutory proceeding . . . . The statute confers a definite jurisdiction upon a judge and it defines the conditions under which such relief may be given . . . . In such a situation jurisdiction is only acquired if the essential conditions prescribed by [the] statute are met. If they are not met, the lack of jurisdiction is [one] over the subject-matter and not over the parties. . . . The essential condition of an action under . . . § 49-51 is written notice to the lienor sent to him at his last-known address by registered mail or by certified mail, postage prepaid, return receipt requested, to discharge the lien in the office where recorded." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Guilford Yacht Club Assn., Inc.* v. *Northeast Dredging, Inc.*, supra, 192 Conn. 13; see also *Torrance Family Ltd. Partnership* v. *Laser Contracting, LLC*, 94 Conn. App. 526, 537, 893 A.2d 460 (2006).

[14] General Statutes § 52-1 provides: "The Superior Court may administer legal and equitable rights and apply legal and equitable remedies in favor of either party in one and the same civil action so that legal and equitable rights of the parties may be enforced and protected in one action. Whenever there is any variance between the rules of equity and the rules of the common law in reference to the same matter, the rules of equity shall prevail."

[15] We note that "the legislature's passage of § 1-2z does not preclude a reviewing court from considering prior judicial interpretations of a statute that are not based on the plain meaning rule, when the case law predates the enactment of § 1-2z." *Doe* v. *West Hartford*, 328 Conn. 172, 181 n.9, 177 A.3d 1128 (2018).

[16] "Connecticut follows the title theory of mortgages, which provides that on the execution of a mortgage on real property, the mortgagee holds legal title and the mortgagor holds equitable title to the property. . . . As the holder of equitable title, also called the equity of redemption, the mortgagor has the right to redeem the legal title on the performance of certain conditions contained within the mortgage instrument. . . . The mortgagor continues to be regarded as the owner of the property during the term of the mortgage. . . . The equity of redemption gives the mortgagor the right to redeem the legal title previously conveyed by performing whatever conditions are specified in the mortgage, the most important of which is usually the payment of money. . . . Generally, foreclosure means to cut off the equity of redemption, the equitable owner's right to redeem the property." (Internal quotation marks omitted.) *U.S. Bank, National Assn.* v. *Fitzpatrick*, 206 Conn. App. 509, 513, 260 A.3d 1240 (2021); see also *Groton* v. *Mardie Lane Homes, LLC*, 286 Conn. 280, 290, 943 A.2d 449 (2008) (title theory of mortgage is series of legal fictions serving as convenient means to define various estates to which conveyance may give rise but, despite this theory, in substance and effect and except for very limited purpose, mortgage is regarded as mere security and mortgagor is regarded for most purposes as sole owner of land, and, while mortgagee gains legal title, mortgagor remains true owner).

[17] The plaintiff argues that *Stein* v. *Hillebrand*, supra, 240 Conn. 35, "is not controlling law on the distinction between mortgages and liens, or, in the alternative, the *Stein* distinction is limited in its application." In support, the plaintiff directs us to *Rockstone Capital, LLC* v. *Sanzo*, 332 Conn. 306, 210 A.3d 554 (2019). In that case, the plaintiff held judgment liens against

the defendants, and the parties later agreed to a consensual lien in the form of a mortgage to secure the debt. Id., 309. After the defendants defaulted on the mortgage payments, the plaintiff attempted to foreclose on the mortgage. Id. On appeal, the defendants claimed that they were entitled to the homestead exemption set forth in what is now General Statutes § 52-352b (21), which provides that "[t]he homestead of the exemptioner to the value of two hundred fifty thousand dollars, provided value shall be determined as the fair market value of the real property less the amount of any statutory or consensual lien which encumbers it" shall constitute exempt property.

In *Rockstone Capital, LLC*, our Supreme Court concluded that, pursuant to the plain language of the statute, the homestead exemption did not apply to a consensual lien, and that, under our law, a mortgage constituted a consensual lien. Id., 315. "Therefore, we agree . . . that the homestead exemption does not apply." Id., 316.

We conclude that the present case is distinguishable from *Rockstone Capital, LLC* v. *Sanzo*, supra, 332 Conn. 306. In that case, the homestead exemption statute plainly and unambiguously provided that it did not apply to a consensual lien, and our law established that a mortgage constituted a consensual lien. Id., 315. With respect to the present case, § 49-51 does not include the term "consensual lien" so as to bring mortgages within the ambit of this statute. Rather, § 49-51 applies to "[a]ny person having an interest in any real or personal property described in any certificate of lien, which lien is invalid . . . ." We therefore are not persuaded by the plaintiff's efforts to distinguish *Stein* v. *Hillebrand*, supra, 240 Conn. 35.

[18] General Statutes § 49-7 provides: "Any agreement contained in a bill, note, trade acceptance or other evidence of indebtedness, whether negotiable or not, or in any mortgage, to pay costs, expenses or attorneys' fees, or any of them, incurred by the holder of that evidence of indebtedness or mortgage, in any proceeding for collection of the debt, or in any foreclosure of the mortgage, *or in protecting or sustaining the lien of the mortgage*, is valid, but shall be construed as an agreement for fair compensation rather than as a penalty, and the court may determine the amounts to be allowed for those expenses and attorneys' fees, even though the agreement may specify a larger sum." (Emphasis added.)

General Statutes § 49-8a (f) provides: "Such affidavit, when recorded, shall constitute *a release of the lien of such mortgage* or the property described therein." (Emphasis added.)

General Statutes § 49-13a (a) provides: "When record title to real property remains encumbered by any undischarged mortgage, and the mortgagor or those owning the mortgagor's interest therein have been in undisturbed possession of the property for at least twenty years after the expiration of the time limited in the mortgage for the full performance of the conditions thereof, or for at least forty years from the recording of the mortgage if the mortgage does not disclose the time when the note or indebtedness is payable or the time for full performance of the conditions of the mortgage, unless a notice is recorded pursuant to subsection (b) of this section, *the mortgage shall be invalid as a further lien against the real property*, provided an affidavit, subscribed and sworn to by the party in possession, stating the fact of such possession, is recorded on the land records of the town in which the property is situated." (Emphasis added.)

General Statutes § 49-31b (a) provides: "A mortgage deed given to secure payment of a promissory note, which furnishes information from which there can be determined the date, principal amount and maximum term of the note, *shall be deemed to give sufficient notice of the nature and amount of the obligation to constitute a valid lien securing payment of all sums owed under the terms of such note*." (Emphasis added.)

[19] Given our conclusion that the court improperly dismissed the counterclaim, we need not address in detail the other claims raised by the defendant in this appeal. We note that, to the extent that the counterclaim challenges the validity of the mortgage and seeks a release on the land records, the court had jurisdiction over such matters even if § 49-51 applied under these facts and circumstances. See *Gordon* v. *Tufano*, 188 Conn. 477, 484, 484 n.6, 450 A.2d 852 (1982) (stating that plaintiff could bring equitable action to quiet title even though court lacked subject matter jurisdiction pursuant to § 49-13, which did not apply because validity of mortgage was in dispute). Furthermore, the trial court was not required, at this state of the proceedings, to exercise its discretion to determine whether to permit the defendant to proceed with his declaratory judgment action.