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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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BERDON, J. dissenting. I am unable to distinguish this case from *Dyck O'Neal, Inc.* v. *Wynne*, 56 Conn. App. 161, 742 A.2d 393 (1999). Indeed, this case presents a scenario even more suitable to the application of General Statutes § 52-123[1] than that presented by *Dyck O'Neal, Inc.* In *Dyck O'Neal, Inc.*, the court put its stamp of approval on the plaintiff's name being amended *after* judgment, finding that it was a circumstantial error within the purview of § 52-123. Indeed, in this case, the mistake was corrected prior to judgment. It is quite obvious, and in fact the trial court found that the original plaintiff in this action, America's Wholesale Lender (America's), intended to bring suit under the name of the owner of the note, which was the Bank of New York, as trustee.[2]

Our Supreme Court held in *Andover Ltd. Partnership I* v. *Board of Tax Review*, 232 Conn. 392, 655 A.2d 759 (1995), the following: "We previously have explained that § 52-123 replaces the common law rule that deprived courts of subject matter jurisdiction whenever there was a misnomer or misdescription in an original writ, summons or complaint. *Pack* v. *Burns*, [212 Conn. 381, 562 A.2d 24 (1989)]. In *Pack*, the plaintiff initially named as the defendant the 'State of Connecticut Transportation Commission,' a nonexistent entity, but then properly served notice of the claim on the commissioner of transportation, as required by General Statutes § 13a-144. We determined that '[t]he effect given to such a misdescription usually depends upon the question whether it is interpreted as merely a misnomer or defect in description, or whether it is deemed a substitution or entire change of party; in the former case an amendment will be allowed, in the latter it will not be allowed.' . . . [*Pack* v. *Burns*, supra] 384–85. In *Pack*, we first considered whether the plaintiff had intended to sue the proper party or whether it had erroneously misdirected its action. Id., 385; see also *Motiejaitis* v. *Johnson*, 117 Conn. 631, 636, 169 A. 606 (1933) (plaintiff permitted to amend writ after verdict, but before judgment to properly name intended defendant). Second, we considered three factors to determine whether the error was a misnomer and therefore a circumstantial defect under § 52-123: (1) whether the proper defendant had actual notice of the institution of the action; (2) whether the proper defendant knew or should have known that it was the intended defendant in the action; and (3) whether the proper defendant was in any way misled to its prejudice. *Pack* v. *Burns*, supra, 385. We concluded in *Pack* that the plaintiff was entitled to amend the named defendant under § 52-123 because the plaintiff had intended to sue the commissioner, and because the commissioner, who was not prejudiced by the error, knew he was the intended defendant. Id.,

385–86.

"Similarly, in *Lussier* v. *Dept. of Transportation*, [228 Conn. 343, 636 A.2d 808 (1994)], we permitted the plaintiff to amend a summons that misnamed the intended defendant. In *Lussier*, the plaintiff named the 'State of Connecticut, Department of Transportation' as the defendant on the civil summons form instead of the commissioner, as required by § 13a-144. The commissioner was properly named in the complaint, however, and was provided with proper notice of the action. As in the case before us, the plaintiff argued that it merely had stated the defendant's name incorrectly. The defendant argued that the wrong entity had been named as defendant and that the court, therefore, had no subject matter jurisdiction. Id., 350. We distinguished these two categories of error, stating that '[t]he first, involving a defendant designated by an incorrect name, is referred to as "misnomer." It is a circumstantial defect anticipated by General Statutes § 52-123 that can be cured by an amendment. A misnomer must be distinguished from a case in which the plaintiff has misconstrued the identity of the defendant, rather than the legal nature of his existence. When the correct party is designated in a way that may be inaccurate but which is still sufficient for identification purposes, the misdesignation is a misnomer. Such a misnomer does not prevent the exercise of subject matter jurisdiction if the defendant was actually served and knew he or she was the intended defendant.' [*Lussier* v. *Dept. of Transportation*, supra, 350]; see also 1 E. Stephenson, [Connecticut Civil Procedure (2d Ed. 1970)] § 105e, p. 433 (designation of correct party in way which may be inaccurate but which is still sufficient for identification purposes may be amended).

"Furthermore, we recently determined that an error in the process that failed to comply with a statutory mandate may be corrected under a remedial statute. In *Concept Associates, Ltd.* v. *Board of Tax Review*, [229 Conn. 618, 642 A.2d 1186 (1994)], the plaintiffs, who erroneously specified a return date that fell on a Thursday, sought to amend the return date to fall on a Tuesday, as required under General Statutes § 52-48. We concluded that amendment of process to correct a return date must be permitted as a remedial measure under General Statutes § 52-72. [*Concept Associates, Ltd.* v. *Board of Tax Review*, supra] 623. In addition, we concluded that the language '[a]ny court shall allow a proper amendment to civil process' is mandatory rather than directory and we directed the trial court to grant the plaintiff's request to amend process. Id., 626. Section 52-123 is a comparably worded, remedial statute to which the same principles apply. 1 E. Stephenson, supra, § 35, pp. 137–38 n.608.

"We, therefore, have refused to permit the recurrence of the inequities inherent in eighteenth century common

law that denied a plaintiff's cause of action if the pleadings were technically imperfect. As Professor Edward L. Stephenson points out, remedial statutes such as § 52-123 were intended to soften the otherwise harsh consequences of strict construction under the common law: 'Over-technical formal requirements have ever been a problem of the common law, leading [legislative bodies] at periodic intervals to enact statutes . . . which, in substance, told the courts to be reasonable in their search for technical perfection.' [Id.] § 35, p. 137.

"In sum, we decline to interpret § 52-123 in so strict a manner as to deny the plaintiff the pursuit of its complaint. See, e.g., *Hartford National Bank & Trust Co.* v. *Tucker*, 178 Conn. 472, 477–78, 423 A.2d 141 (1979), cert. denied, 445 U.S. 904, 100 S. Ct. 1079, 63 L. Ed. 2d 319 (1980) (court should avoid interpreting rules and statutes so strictly that litigant is denied pursuit of its complaint due to mere circumstantial defects); *Johnson* v. *Zoning Board of Appeals*, 166 Conn. 102, 111, 347 A.2d 53 (1974) (court does not favor termination of proceedings without determination on merits); *Greco* v. *Keenan*, 115 Conn. 704, 705, 161 A. 100 (1932) (same)." *Andover Ltd. Partnership I* v. *Board of Tax Review*, supra, 232 Conn. 396–400.

In this case, the court found that the intended plaintiff was Countrywide Home Loans, Inc., which was doing business under the trade name, America's, in this action, and that the defendant was not misled. Accordingly, I believe we should affirm the trial court's judgment. I therefore respectfully dissent.

[1] General Statutes § 52-123 provides: "No writ, pleading, judgment or any kind of proceeding in court or course of justice shall be abated, suspended, set aside or reversed for any kind of circumstantial errors, mistakes or defects, if the person and the cause may be rightly understood and intended by the court."

[2] In its memorandum of decision denying the motion to dismiss filed by the defendant Gail M. Pagano, the court found: "The defendant's motion is based on its claim that [America's] was not a corporation organized under the laws of the state of California, as alleged in paragraph one of the complaint, and therefore it had no standing to bring this suit. At the hearing held on March 24, 2003, it was conceded that America's is a trade name for Countrywide Home Loans, Inc. (Countrywide), and the exact and full title for the plaintiff is America's Wholesale Lender d/b/a Countrywide Home Loans, Inc. From the record, the court concludes that Countrywide Home Loans, Inc. is a valid, legal entity licensed by the department of banking of the state of Connecticut as a first and second mortgage lender. Trade name certificates as required by General Statutes § 35-1 had been filed in some towns within the state, although it was unknown at the time of argument whether one had been filed in the town of Berlin, the location of the real property being foreclosed. The mortgage and note underlying this foreclosure action were in the name of America's and were owned by it until the time of the assignment [to the substitute plaintiff, the Bank of New York, as trustee]. The court also notes that in this instance [that] the defendant received funds from the plaintiff in the trade name now at issue. The plaintiff in the same name received as security for the pledge of repayment of those funds a promissory note as well as the mortgage now being foreclosed that was secured by real property owned by the defendant. Upon the failure of the defendant to pay as provided, the plaintiff instituted a foreclosure action. These facts were uncontroverted.

"The only contrary evidence provided by the defendant in support of her motion to dismiss is attached to the affidavit filed by her. It is a certified copy of the corporate registration in California as of 1995, which evidence the court finds outdated and of no assistance in this inquiry. The court

concludes, based on the record, that the entity represented by the trade name had a very real interest in the cause of action and an equitable interest in the subject matter of the controversy.''