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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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PETERS, J., concurring and dissenting. This case concerns the timeliness of a complaint by a mortgagor that her mortgagee improperly failed to provide a timely release of her mortgage. I agree with the majority that the plaintiff waited too long to pursue the claim stated in the second count of her complaint, in which she sought relief under the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. That claim is expressly barred by the CUTPA statute of limitations, General Statutes § 42-110g (f), and is not saved by the continuing course of conduct doctrine. I also agree with the majority that the plaintiff stated a timely claim for relief in the third count of her complaint, in which she sought a remedy for breach of the covenant of good faith and fair dealing that is an implied clause in Connecticut contracts. As a claim for breach of contract, that claim is governed by the contracts statute of limitations, General Statutes § 52-576. It follows that the plaintiff is not time barred from relief if she can prove the damages caused by the defendant's delay in providing her the mortgage release to which she was entitled.

I disagree, however, with the majority's conclusion that the claim stated in the first count of the plaintiff's complaint, in which she sought the statutory remedy stated in General Statutes § 49-8, is no longer sustainable because it is governed by the three year tort statute of limitations stated in General Statutes § 52-577. In my view, the fact that the legislature has provided an additional remedy for a breach of contract does not convert a contract action into a tort action.

I recognize that, as a matter of tort law, statutory remedies often are characterized as penal. When that characterization fits, a tort statute of limitations unquestionably determines the appropriate measure of the time span during which an injured person may pursue a claim at law.

The law of contracts is, however, more nuanced. As does the law of contracts generally, our case law recognizes that contracting parties may decide on a specified monetary remedy for an unexcused failure to perform a contractual obligation. Whether such a stipulated remedy is enforceable depends on whether it was intended to be punitive or compensatory. As our Supreme Court recently has reiterated, "[a] contractual provision for a penalty is one the prime purpose of which is to prevent a breach of the contract by holding over the head of a contracting party the threat of punishment for a breach. . . . A provision for liquidated damages, on the other hand, is one the real purpose of which is to fix fair compensation to the injured party for a breach of the

contract. In determining whether any particular provision is for liquidated damages or for a penalty, the courts are not controlled by the fact that the phrase liquidated damages or the word penalty is used. Rather, that which is determinative of the question is the intention of the parties to the contract. Accordingly, such a provision is ordinarily to be construed as one for liquidated damages if three conditions are satisfied: (1) The damage which was to be expected as a result of a breach of the contract was uncertain in amount or difficult to prove; (2) there was an intent on the part of the parties to liquidate damages in advance; and (3) the amount stipulated was reasonable in the sense that it was not greatly disproportionate to the amount of the damage which, as the parties looked forward, seemed to be the presumable loss which would be sustained by the contractee in the event of a breach of the contract. [*Berger* v. *Shanahan*, 142 Conn. 726, 731–732, 118 A.2d 311 (1955)].'' (Internal quotation marks omitted.) *American Car Rental, Inc.* v. *Commissioner of Consumer Protection*, 273 Conn. 296, 306–307, 869 A.2d 1198 (2005); see also 3 E. Farnsworth, Contracts (3d Ed. 2004) § 12.18, p. 305.

Applying these principles to the circumstances of this case, I am persuaded that, under the law of contracts, there would have been no jurisprudential obstacle to the enforceability of a clause in a mortgage requiring a mortgagee to pay $5000 in the event of a substantial unexcused delay in releasing a mortgage after payment of an underlying mortgage debt of $31,729.34. The clause would have met each of the criteria that identify a liquidated damages clause. The timeliness of an action to enforce the clause would be governed by the terms of the contracts statute of limitations.

As a matter of economic reality, however, mortgages rarely, if ever, contain provisions that sanction the failure to release a mortgage in timely fashion. By way of contrast, standard form mortgages frequently include provisions that add late fees to a mortgagor's indebtedness if periodic payments are not made as scheduled. Surely, a mortgagee's action to recover the amount of the unpaid debt, including late fees, is governed in its entirety by the contract statute of limitations.

The question then becomes whether it is proper to construe the statutory remedy provided to mortgagors by § 49-8 as a statutory provision for a liquidated damages clause or a penalty. Our legislature has elsewhere described statutory remedies as liquidated damages. See, e.g., General Statutes §§ 7-349,[1] 13a-70,[2] 31-52[3] and 42a-2-718.[4] It seems to me, therefore, that it is not a given that any and every Connecticut statutory remedy is necessarily penal in nature. Instead, the issue is one of statutory construction.

The principles that govern statutory construction are well established. General Statutes § 1-2z provides that

''[t]he meaning of a statute shall, in the first instance, be ascertained from 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.'' If the meaning of the statute is not plain and unambiguous, then ''we [also] look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter for [interpretative guidance].'' (Internal quotation marks omitted.) *State* v. *Boyd*, 272 Conn. 72, 76, 861 A.2d 1155 (2004).

On its face, § 49-8 describes a remedy for the failure of a ''mortgagee or a person authorized by law to release the mortgage'' to ''execute and deliver a release . . . [u]pon the satisfaction of the mortgage . . . .'' The statute requires the mortgagee to ''execute and deliver a release within sixty days from the date a written request for a release of such encumbrance . . . .'' General Statutes § 49-8 (c). It provides that ''[t]he mortgagee or plaintiff shall be liable *for damages* to any person aggrieved at the rate of two hundred dollars for each week after the expiration of such sixty days up to a maximum of five thousand dollars *or in an amount equal to the loss sustained by such aggrieved person* as a result of the failure of the mortgagee . . . to execute and deliver a release, whichever is greater, plus costs and reasonable attorney's fees.'' (Emphasis added.) General Statutes § 49-8 (c).

With deference, this language strikes me as indicative of a legislative intent to liquidate damages, i.e., ''to fix fair compensation to the injured party for a breach of the contract.'' (Internal quotation marks omitted.) *American Car Rental, Inc.* v. *Commissioner of Consumer Protection*, supra, 273 Conn. 306. The obligation to provide a release upon receipt of full satisfaction of a mortgage debt arises out of the contractual obligation that the mortgage memorializes. Even without the statute, a mortgagor has a common-law cause of action in the nature of a breach of contract if the agreement contained in the mortgage expressly or impliedly so provides. See *Skorpios Properties, Ltd.* v. *Waage*, 172 Conn. 152, 154–56, 374 A.2d 165 (1976); see also *Webster Bank* v. *Oakley*, 265 Conn. 539, 547, 830 A.2d 139 (2003) (construction of mortgage deed governed by same rules of interpretation that apply to contracts generally), cert. denied, 541 U.S. 903, 124 S. Ct. 1603, 158 L. Ed. 2d 244 (2004).[5]

My interpretation of the statute as providing a remedy for breach of contract is buttressed by the statute's

express linkage of the stipulated monetary remedy to the mortgagor's right alternatively to recover "*an amount equal to the loss*" actually suffered by the mortgagor. General Statutes § 49-8 (c). Surely, pursuit of actual damages, with or without reliance on the implied contractual covenant of good faith and fair dealing, is governed by the contracts statute of limitations. It strikes me as odd to interpret a statute in such a way that two different statutes of limitation govern one and the same sentence.

Furthermore, contrary to the majority, I am persuaded that *Gazo* v. *Stamford*, 255 Conn. 245, 765 A.2d 505 (2001), supports the position of the plaintiff in this case. In *Gazo*, our Supreme Court held that, to determine whether a litigant has pleaded a contracts claim, "we look beyond the language used in the complaint to determine what the plaintiff really seeks." Id., 263. The court concluded that the plaintiff in that case had not really stated a claim as a third party beneficiary of a contract because the allegations in the complaint "sound[ed]" in tort. Id., 264. It was a personal injury action. The plaintiff sought to recover for his physical and mental pain and suffering, lost wages and medical bills resulting from a fall on ice and snow that he attributed to negligent performance of a contractor's snow removal obligations. Id., 264–65.

Unlike *Gazo*, this is a contract action and *not* a personal injury action. The gravamen of *this* complaint is that the plaintiff seeks compensation for the defendant's failure to perform its obligation to provide a timely mortgage release. The duty to provide a release is inextricably related to the contractual terms of the underlying mortgage, which, for example, may or may not permit prepayment of the mortgage debt. See, e.g., *Dugan* v. *Grzybowski*, 165 Conn. 173, 176, 332 A.2d 97 (1973); see also *Skorpios Properties, Ltd.* v. *Waage*, supra, 172 Conn. 154–55.

Respectfully, I would reverse the summary judgment not only with respect to the third count of the plaintiff's complaint but also with respect to the first count.

[1] General Statutes § 7-349 provides: "Any officer who, in violation of any provision of this chapter, expends or causes to be expended any money of such town, except for the purpose of paying judgments rendered against such town, shall be liable in a civil action in the name of such town, and the amount so drawn from the treasury of such town shall be liquidated damages in such action against any such officer."

[2] General Statutes § 13a-70 provides in relevant part that "any person interested . . . may execute a penal bond with surety . . . binding upon the obligors therein to the full amount of such penal sum, as liquidated damages . . . ."

[3] General Statutes § 31-52 (d) provides for statutory recovery of liquidated damages for "wages paid to any employees employed in violation of this section or section 31-52a . . . ."

[4] General Statutes § 42a-2-718 (2) provides: "Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds (a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or (b) in the absence of such terms, twenty per cent of the value of the total

performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.''

[5] Unfortunately, our appellate record does not include a copy of the mortgage.