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ZARELLA, J., concurring in part and dissenting in part. I concur in the majority opinion insofar as it dismisses as moot the writ or error filed by the plaintiff in error, Stephanie Tappin (plaintiff). I respectfully disagree, however, with the conclusions reached in parts I and III of the majority opinion.

The primary issue in this appeal is whether a tenant who enters into a lease after a mortgagee files a lis pendens in the land records can be ejected pursuant to General Statutes § 49-22 (a)[1] without having been joined in the foreclosure action that relates to the lis pendens. In part I of its opinion, the majority concludes that although the doctrine of mootness is implicated by virtue of the plaintiff's act of voluntarily vacating the premises, the facts of the present case fall within the ''capable of repetition, yet evading review'' exception to that doctrine. I disagree with this conclusion because this case is not in the category of cases in which the challenged action or resulting injury is of an inherently limited duration, a prerequisite that this court heretofore has recognized for purposes of invoking this exception to the mootness doctrine. See, e.g., *Loisel* v. *Rowe*, 233 Conn. 370, 383–84, 660 A.2d 323 (1995).

A situation involving the ejectment of a tenant in possession of property by a foreclosing mortgagee is not of an inherently limited duration as the majority concludes. Indeed, the facts of the present case plainly contradict the majority's conclusion. In the present case, the plaintiff remained in possession of the leased property throughout the duration of the lower court proceedings notwithstanding the mortgagee's attempts to eject her, and would have been in possession at the time of this decision had she not voluntarily vacated the premises. Thus, I would dismiss this appeal as moot on the basis of the plaintiff's act of vacating the premises and would allow ''the action [to] be reviewed the next time [the challenged action] arises, when it will present an ongoing live controversy.'' Id., 384.

The majority further concludes in part III of its opinion that a tenant who enters into a lease after a lis pendens has been filed in the land records in connection with the foreclosure of the property that is being leased, is not a ''transferee of a possessory interest in the property who can be ejected under § 49-22 (a) despite not having been made a party to the foreclosure action.'' General Statutes § 49-22 (a) provides in relevant part: ''In any action brought for the foreclosure of a mortgage or lien upon land, or for any equitable relief in relation to land, the plaintiff may, in his complaint, demand possession of the land, and the court may, if it renders judgment in his favor and finds that he is entitled to

the possession of the land, issue execution of ejectment, commanding the officer to eject the person or persons in possession of the land and to put in possession thereof the plaintiff or the party to the foreclosure entitled to the possession by the provisions of the decree of said court, provided no execution shall issue against any person in possession who is not a party to the action except a transferee or lienor who is bound by the judgment by virtue of a lis pendens. . . .''

The majority cogently notes that ''[t]he language of § 49-22 (a) . . . prohibits the ejectment of any person not a party to the foreclosure unless such person is a 'transferee' or 'lienor' [who is bound by the lis pendens].'' I would conclude that the language of § 49-22 (a), when read in light of our precedent,[2] aptly demonstrates that a tenant who enters into a lease subsequent to the filing of a lis pendens is a ''transferee'' who is bound by the lis pendens and, therefore, can be ejected pursuant to § 49-22 (a) regardless of whether that tenant is joined as a party in the foreclosure action.

The execution of a lease of real property clearly qualifies the lessee as a transferee of the interests in such property. E.g., *Monarch Accounting Supplies, Inc.* v. *Prezioso*, 170 Conn. 659, 663–64, 368 A.2d 6 (1976); see also *Jo-Mark Sand & Gravel Co.* v. *Pantanella*, 139 Conn. 598, 601, 96 A.2d 217 (1953) (''A lease transfers an estate in real property to a tenant for a stated period . . . . Its distinguishing characteristic is the surrender of possession by the landlord to the tenant so that he may occupy the land or tenement leased to the exclusion of the landlord himself.''). Accordingly, if a tenant enters into a lease after a lis pendens has been filed in the land records, that tenant can be ejected from the property without having been made a party to the foreclosure action. Thus, notwithstanding the majority's conclusion to the contrary, we must refer to General Statutes § 52-325 (a) to determine who is bound by the filing of a lis pendens.

General Statutes § 52-325 (a) provides in relevant part: ''In any action in a court of this state or in a court of the United States (1) the plaintiff or his attorney, at the time the action is commenced or afterwards . . . if the action is intended to affect real property, may cause to be recorded in the office of the town clerk of each town in which the property is situated a notice of lis pendens, containing the names of the parties, the nature and object of the action, the court to which it is returnable and the term, session or return day thereof, the date of the process and the description of the property . . . . Such notice shall, from the time of the recording only, be notice to *any person thereafter acquiring any interest in such property* of the pendency of the action; and each person whose conveyance or encumbrance is subsequently executed or subsequently recorded or whose interest is thereafter

obtained, by descent or otherwise, shall be deemed to be a subsequent purchaser or encumbrancer, and *shall be bound by all proceedings taken after the recording of such notice*, to the same extent as if he were made a party to the action. . . .'' (Emphasis added.) It is clear that, because the plaintiff in the present case obtained her interest in the property subsequent to the mortgagee's filing of the lis pendens, she was bound by the foreclosure action to the same extent as if she were made a party thereto. Thus, I would not look, as the majority does, beyond the plain language of §§ 49-22 (a) and 52-325 (a) in addressing this issue.

Although I do not believe it is appropriate to refer to legislative history in resolving the primary issue in this case, the majority's use of it is noteworthy as it demonstrates the dangers inherent in the approach to statutory interpretation adopted by this court in *State* v. *Courchesne*, 262 Conn. 537, 577–78, 816 A.2d 562 (2003). The majority correctly notes that, in 1984, the legislature amended § 49-22 specifically in response to the Superior Court decision in *Hite* v. *Field*, 38 Conn. Sup. 70, 462 A.2d 393 (1982). See Public Acts 1984, No. 84-539 (P.A. 84-539). The majority fails to note, however, a key factual distinction between *Hite* and the present case, namely, that the tenants in *Hite* already had entered into the lease and had taken possession of the property prior to the filing of the lis pendens. See *Hite* v. *Field*, supra, 70–71. The court in *Hite* concluded, inter alia, that the procedure for filing a notice of lis pendens prescribed by Public Acts 1981, No. 81-8 (P.A. 81-8), violated the tenants' federal and state due process rights; id., 78; and that, consequently, the defendants were enjoined from ejecting the tenants pursuant to General Statutes (Rev. to 1981) § 49-22. Id., 79. The court in *Hite* emphasized that the tenants ''had occupied the premises continuously for many years prior to the initiation of the foreclosure proceedings . . . . As month-to-month tenants, [they] would have [had] to search the land records continuously in order to learn of foreclosure actions that could [have] result[ed] in their summary ejectment.'' (Citation omitted.) Id., 77–78. It is clear, therefore, that the court in *Hite* simply was concerned with whether month-to-month tenants in possession of property *prior* to the filing of a notice of lis pendens were afforded constitutionally adequate notice pursuant to P.A. 81-8.[3] See id., 72–73.

The legislature responded to the decision in *Hite* by enacting P.A. 84-539. Public Act 84-539 deleted from General Statutes (Rev. to 1983) § 49-22 (a) the phrase ''unless the person is bound by the judgment by virtue of a lis pendens,'' which includes a tenant like the tenants in *Hite*, and inserted in its place, ''except a transferee or lienor who is bound by the judgment by virtue of a lis pendens,'' which does not include such a tenant. As the court in *Hite* noted, a month-to-month tenant technically is bound by a lis pendens that is filed after

the tenancy initially is established because ''the interest of such tenants in the premises expires at the end of each month and, if they remain, their interest is newly obtained at the beginning of the next month.'' *Hite* v. *Field*, supra, 38 Conn. Sup. 73. Month-to-month tenants are not transferees, however, because, although a month-to-month tenancy creates a new tenancy each month, it does not effectuate a new transfer of the property each month; indeed, the tenant continues in his possession of the property. Thus, the legislature, in substituting the term ''transferee'' for the original language, rather than eliminating the original language altogether, clearly sought to protect tenants, such as the tenants in *Hite*, who acquire their interests prior to the filing of the lis pendens. The legislature apparently did not deem it necessary to shield from the ejectment process transferees who obtain their interests in property after the filing of the lis pendens.

Moreover, to require a potential lessee to check the land records just once prior to entering into a lease is a far cry from the situation presented in *Hite*. In *Hite*, the court noted that because the leasehold interest of month-to-month tenants expires at the end of every month and is reacquired at the beginning of the next month; id.; month-to-month tenants would have no choice but to check the land records every month in order to learn of the filing of a lis pendens.[4] Id., 78. Indeed, if the lis pendens had not been filed when the plaintiff in the present case had entered into the lease, § 49-22, as I understand it, would have shielded her from ejectment. As the court in *Hite* stated, ''[t]he ejectment procedure is available only against tenants whose interests arise subsequent to the [filing of the] lis pendens.'' Id., 79. Thus, I would maintain that § 49-22 (a), on its face, seeks to distinguish between the type of tenant in *Hite* and the plaintiff in the present case, especially in view of the inequities that inhere in the ejection of the former type of tenant, as the decision in *Hite* demonstrated. Such inequities were of paramount concern to the legislature when it amended General Statutes (Rev. to 1983) § 49-22 (a) in 1984. See P.A. 84-539.

Nevertheless, even if § 49-22 (a) is interpreted in accordance with *Courchesne*, the comments of legislators made during the floor debates on P.A. 84-539 are inconclusive on the issue of whether the legislature sought to extend protection to tenants other than those that enter into the lease and take possession of the property before the filing of the lis pendens, such as the tenants in *Hite*. On the basis of several of these comments, the majority concludes that the legislative history establishes that the legislature chose not to recognize a distinction between tenants whose property interests arise before and after the filing of the lis pendens. Throughout these debates, however, there never was any mention of tenants whose interests arise after the filing of the lis pendens. Rather, as the majority

notes, the changes to General Statutes (Rev. to 1983) § 49-22 (a) " 'were intended to strengthen the due process rights of a mortgagor's tenant upon foreclosure in response to [the] Superior Court decision [in *Hite*],' " which, as I have discussed, involved the unique situation of month-to-month tenants whose property interests arose prior to the filing of the lis pendens. The legislative history cited by the majority is, at best, ambiguous as to whether P.A. 84-539 was enacted with the intention of insulating from the ejectment process a tenant whose interest arises after the filing of the lis pendens, or whether P.A. 84-539 was limited to addressing the factual scenario presented in *Hite*. Thus, the legislative history on which the majority relies is insufficient to overcome the plain language of § 49-22 (a). See *State* v. *Courchesne*, supra, 262 Conn. 574 ("[t]here are cases . . . in which the extratextual sources will indicate a different meaning strongly enough to lead the court to conclude that the legislature intended the language to have that different meaning").

Additionally, an interpretation of the term "transferee" in § 49-22 (a) as including a post lis pendens tenant does not render P.A. 84-539 wholly meaningless as the majority contends. The protection that the legislature sought to afford tenants when it enacted P.A. 84-539 would still exist under the foregoing interpretation as § 49-22 (a) prohibits the ejection of a tenant who enters into the lease before the filing of the lis pendens, which was the factual scenario presented in *Hite*. Indeed, the interpretation I propose would accomplish the specific goal of the legislation, which is to prevent the party named in the foreclosure action from transferring the property to a third party in order to avoid eviction or ejectment. I am unable to fathom why the majority believes that shielding a post lis pendens lessee from ejectment under § 49-22 (a) is not in direct conflict with the legislature's effort to prevent a dilatory transfer of the property while the foreclosure action is pending.

Finally, I take particular issue with the majority's use of proposals that were made, and rejected, during the legislative drafting process. See text accompanying footnote 20 of the majority opinion. The legislature's rejection of certain language during the drafting process cannot be construed as evidence of the legislature's intent to reject the concept that the language was intended to convey. In fact, it is just as fair to presume that the legislature, in rejecting the language, "[a]ny person who, prior to the recording of a lis pendens, is in possession of the property," contained in Raised Committee Bill No. 5826, 1984 Sess., merely chose different language—the language that currently appears in § 49-22 (a)—to convey the same concept that it intended to convey in the rejected bill. According to the majority's logic, the absence of any change in the lis pendens statute, § 52-325 (a), would imply that post lis pendens tenancies remain "bound by all proceedings

taken after the recording of such [lis pendens] . . . .'' General Statutes § 52-325 (a).

On the basis of the foregoing, I would conclude that there is no need for the majority to search any further than §§ 49-22 (a) and 52-325 (a) to understand that, under the facts of the present case, the plaintiff is a transferee who is bound by the judgment of foreclosure by virtue of the mortgagee's filing of the lis pendens before the plaintiff had entered into the lease. Even if § 49-22 (a) were interpreted in accordance with the principles of statutory interpretation announced in *Courchesne*, this is not a case ''in which the extratextual sources . . . indicate a different meaning [from the plain language] strongly enough to lead the court to conclude that the legislature intended the language to have that different meaning.'' *State* v. *Courchesne*, supra, 262 Conn. 574.

Accordingly, I respectfully concur in part and dissent in part.

[1] All references to § 49-22 (a) throughout this opinion are to the current revision unless otherwise indicated.

[2] One of the underpinnings of the plain meaning rule is that litigants, among others, should be able to rely on the clearly stated language of any statute. The plain meaning rule, as well as the mode of statutory analysis adopted in *State* v. *Courchesne*, 262 Conn. 537, 816 A.2d 562 (2003), also charges people with knowledge of the holdings in prior decisions in which this court has interpreted a statute.

[3] It is worth noting that § 52-325, which the majority concludes is inapplicable in the present case, is entitled ''Notice of lis pendens.''

[4] I find it shortsighted for the majority to contend that it is not unduly burdensome to require a mortgagee who files a lis pendens to verify the occupancy of the property continuously after the filing. For example, what if a mortgagee is foreclosing on property occupied by numerous individuals, such as property on which a multiunit apartment complex is situated? The majority would place the burden on the mortgagee to check on a continuous basis possibly hundreds of individual apartment units. I believe that the burden instead should rest with the tenants to check the land records only one time prior to entering into the lease.