WILLIAM KUMAH ET AL. *v*. LEO G. BROWN ET AL.
(SC 18777)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh,
Harper and Vertefeuille, Js.*

Argued September 25, 2012—officially released January 22, 2013

Aamina Ahmad, assistant town attorney, for the appellant (defendant town of Greenwich).

Kathleen Eldergill, for the appellees (plaintiffs).

Opinion

PALMER, J. The defendant town of Greenwich (town)[1] appeals from the judgment of the Appellate Court, which reversed the judgment of the trial court after that court granted the town's motion to strike the nuisance claims of the plaintiffs, William Kumah and Keziah Kumah.[2] On appeal, the town contends that the Appellate Court incorrectly concluded that the plaintiffs' claims are not barred by General Statutes § 52-557n (a) (1),[3] which provides in relevant part that no claim for damages arising out of a defective road or bridge may be brought against a municipality except pursuant to General Statutes § 13a-149,[4] the municipal highway defect statute. We disagree and, accordingly, affirm the judgment of the Appellate Court.

The following relevant factual allegations and procedural history are set forth in the opinion of the Appellate Court. "In the early morning of September 3, 2006, Leo G. Brown was operating a tractor trailer in a westerly direction on Interstate 95 in [the town of] Greenwich. . . . Brown lost control of the tractor trailer, struck a jersey barrier and bridge railing, and eventually came to a stop in the right and center lanes of [the roadway]. Following the accident, Robert Lucas, a member of the Cos Cob fire police patrol, a volunteer organization operating in conjunction with the Greenwich fire department, responded to the scene. While assisting with the accident cleanup, Lucas parked a . . . fire truck diagonally across the center and right lanes . . . and also placed safety cones along the road to alert oncoming vehicles of the accident. Shortly thereafter, William Kumah, who also was driving his automobile . . . on Interstate 95 in Greenwich, collided with the parked fire truck, sustaining serious physical injuries . . . .

"Subsequently, the plaintiffs commenced this action against the town [among others] based on Lucas' conduct in responding to the accident. In support of their claims, the plaintiffs maintained, inter alia, that the town was negligent and careless in that the fire truck and lane closures were marked inadequately and the positioning of the fire truck constituted a nuisance. On September 19, 2008, the town filed a motion to strike the [plaintiffs'] negligence and nuisance counts . . . . The town argued that, with respect to [the] negligence counts, the plaintiffs' claims were barred by the doctrine of governmental immunity and [that], with respect to their nuisance counts, the plaintiffs had failed to allege facts sufficient to state a claim. On January 7, 2009, the court . . . grant[ed] the town's motion to strike the plaintiffs' negligence counts on the basis of governmental immunity but den[ied] the town's motion to strike the plaintiffs' nuisance counts. Then, on September 4, 2009, after the plaintiff[s] filed an amended complaint, the town renewed its motion to strike the plaintiffs' nuisance counts in light of [the Appellate Court's] decision in *Himmelstein* v. *Windsor*, [116 Conn. App. 28, 40, 974 A.2d 820 (2009), aff'd, 304 Conn. 298, 39 A.3d 1065 (2012)].[5] On January 27, 2010, the court granted the town's renewed motion to strike the plaintiffs' nuisance counts [on the basis of *Himmelstein*] and, thereafter, granted the plaintiffs' motion for judgment in favor of the town." *Kumah* v. *Brown*, 127 Conn. App. 254, 256–57, 14 A.3d 1012 (2011).

The plaintiffs appealed to the Appellate Court from the judgment of the trial court, arguing, inter alia, that the trial court improperly had determined that their nuisance claims must be stricken in light of the Appellate Court's decision in *Himmelstein*. Id., 262. The Appellate Court agreed, concluding that its decision in *Himmelstein* did not bar the plaintiffs' nuisance claims in the present case because *Himmelstein* involved materially different factual allegations from those of the present case that render it distinguishable. Id., 262–63. Specifically, the Appellate Court concluded that *Himmelstein* does not control the plaintiffs' nuisance claims because the plaintiff in *Himmelstein*, in contrast to the plaintiffs in the present case, had alleged, in support of his nuisance claim, that the defendant municipality was the party responsible for maintaining the road on which the injury occurred, thereby bringing his nuisance claim squarely within the ambit of § 13a-149. See id.

On appeal to this court following our granting of certification,[6] the town contends that the Appellate Court improperly determined that the plaintiffs' nuisance claims do not fall within the purview of § 13a-149 and, therefore, are not barred by § 52-557n (a) (1), which provides that § 13a-149 shall be the exclusive remedy against a municipality for damages arising out of injuries to person or property caused by a "defective road of bridge . . . ." General Statutes § 52-557n (a) (1). The town maintains that, as a matter of law, the plaintiffs' allegation that William Kumah was injured by an object on or near the traveled portion of a public road automatically triggers the exclusivity provision of § 13a-149, irrespective of whether the town is the party responsible for keeping Interstate 95 in repair. According to the town, there is nothing in the exclusivity language of § 52-557n (a) (1) to suggest that the legislature intended to limit the reach of the provision to *municipal* roads and bridges. Under the town's reading of § 52-557n (a) (1), *all* roads and bridges, including *state* roads and bridges, come within the ambit of the exclusivity provision, so that, even if a municipality creates a nuisance on a road or bridge that the state, rather than the municipality, is bound to keep in repair, an injured plaintiff's sole remedy is an action against the state pursuant to General Statutes § 13a-144, the state highway defect statute. The town further asserts that both this court and the Appellate Court adopted this interpretation of § 52-557n (a) (1) in their respective decisions in *Himmelstein*. We reject the construction of § 52-557n (a) (1) that the town urges because it leads to the untenable and, we believe, wholly unintended result of relieving a municipality of liability for damages when the municipality creates a public nuisance on a state highway. We also conclude that the town's interpretation was not previously adopted either by this court or by the Appellate Court in *Himmelstein*.

Before discussing the merits of the town's claim, we set forth certain principles that guide our analysis. "A motion to strike attacks the legal sufficiency of the allegations in a pleading. . . . In reviewing the sufficiency of the allegations in a complaint, courts are to assume the truth of the facts pleaded therein, and to determine whether those facts establish a valid cause of action. . . . [I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Thus, we assume the truth of both the specific factual allegations and any facts fairly provable thereunder. . . . Moreover, [w]hether a highway is defective may involve issues of fact, but whether the facts alleged would, if true, amount to a highway defect according to the statute is a question of law . . . . Because a motion to strike challenges the legal sufficiency of a pleading . . . and, consequently, requires no factual findings by the trial court, our review of the court's ruling [on a motion to strike] is plenary." (Citations omitted; internal quotation marks omitted.) *Himmelstein* v. *Windsor*, supra, 304 Conn. 307. In addition, whether § 52-557n (a) (1) relieves the town of liability for damages caused by its creation of a nuisance on a state highway presents a question of statutory interpretation over which our review is plenary.[7] See, e.g., *Considine* v. *Waterbury*, 279 Conn. 830, 836, 905 A.2d 70 (2006).

With these principles in mind, we commence our analysis of § 52-557n (a) (1), which provides in relevant part that a municipality is liable for damages caused by certain acts of negligence by its agents and employees and for any nuisance that the municipality creates, "provided, no cause of action shall be maintained for damages resulting from injury to any person or property by means of a defective road or bridge except pursuant to section 13a-149." General Statutes § 52-557n (a) (1). This court previously has stated that "§ 52-557n, enacted as part of tort reform in 1986; Public Act 1986, No. 86-338, § 13; was 'intended, in a general sense, both to codify and to limit municipal liability . . . .' " *Conway* v. *Wilton*, 238 Conn. 653, 672, 680 A.2d 242 (1996), quoting *Sanzone* v. *Board of Police Commissioners*, 219 Conn. 179, 188, 592 A.2d 912 (1991); see also *Grady* v. *Somers*, 294 Conn. 324, 345, 984 A.2d 684 (2009) ("[Section] 52-557n codifies the standards of municipal liability and immunity from suit. The section brings together and revises a large body of pre-existing common law concerning municipal responsibilities." [Internal quotation marks omitted.]).

The town maintains that § 52-557n (a) (1) bars the plaintiffs' nuisance claims because the statute expressly provides that § 13a-149 is a plaintiff's exclusive remedy for injuries resulting from a "defective road or bridge," and William Kumah's injuries are alleged to have been caused by a defective road. In the town's view, the fact that the William Kumah's alleged injuries were sustained on Interstate 95, a state highway—a fact that shields the town from liability under § 13a-149—is irrelevant to our analysis because the language of § 52-557n (a) (1) evinces an intent by the legislature to encompass *all* roads and bridges, including those maintained by the state, within the purview of that provision. We disagree with the town's reading of § 52-557n (a) (1). In our view, it is far more reasonable to construe § 52-557n (a) (1) as pertaining to municipal roads and bridges only. This is so not simply because § 52-557n is concerned with municipal liability and immunity only; see footnote 3 of this opinion; but because § 13a-149, which, under § 52-557n (a) (1), is the plaintiffs' exclusive remedy for damages caused by a defective road or bridge, itself applies only to those roads and bridges that a municipality is "bound to keep . . . in repair." General Statutes § 13a-149. By virtue of this scheme, it is apparent that the legislature sought to ensure that a person who sustains injuries or property damage as a result of a nuisance created by a municipality may recover against the municipality either by way of an action sounding in nuisance or, if the nuisance was created on a road or bridge that the municipality was legally responsible for maintaining, under § 13a-149.

Reading § 52-557n (a) (1) to include state roads and bridges would defeat this obvious legislative purpose when, as the plaintiffs alleged, the municipality created the nuisance on a state highway. Moreover, if a plaintiff is injured on a state highway as a result of a nuisance that a municipality creates, and the plaintiff's injuries are sustained before the state had actual or constructive notice of the alleged nuisance, the plaintiff could be left without any recourse at all. This is so because, in such circumstances, the plaintiff would have no remedy against either the municipality or the state: the municipality would not be liable because the accident occurred on a state road, and the state would have no liability because it lacked notice of the defect, a condition precedent to an action under § 13a-144.[8] To adopt the town's interpretation, therefore, would require us to conclude that, in some cases, the legislature intended to eliminate *any* right of recovery in a highly cryptic, if not bizarre, fashion, namely, by making an inapplicable statute—the state highway defect statute—the plaintiff's exclusive remedy. Moreover, we cannot perceive why the legislature would have intended to carve out such an exception to the broad liability that it has imposed on municipalities under § 52-557n (a) (1) for harm to person or property resulting from a nuisance of a municipality's making; indeed, there simply is no good reason why the legislature would leave an injured plaintiff without a remedy in such a situation. If, however, the legislature *had* intended to do so, for whatever reason, it likely would have said so expressly and not in the cryptic fashion claimed by the town. See, e.g., *Foley* v. *State Elections Enforcement Commission*, 297 Conn. 764, 782, 2 A.3d 823 (2010) (legislature could have expressed itself explicitly rather than in obscure manner claimed by plaintiffs).

Our interpretation also is consistent with the principle that, "[i]n determining whether . . . a statute abrogates or modifies a common law rule the construction must be strict, and the operation of a statute in derogation of the common law is to be limited to matters clearly brought within its scope." *Vitanza* v. *Upjohn Co.*, 257 Conn. 365, 381, 778 A.2d 829 (2001); see also id. ("[i]nterpreting a statute to impair an existing interest or to change radically existing law is appropriate only if the language of the legislature plainly and unambiguously reflects such an intent" [internal quotation marks omitted]). Thus, "[a]lthough the legislature may eliminate a common law right by statute, the presumption that the legislature does not have such a purpose can be overcome only if the legislative intent is clearly and plainly expressed." (Internal quotation marks omitted.) *Lynn* v. *Haybuster Mfg., Inc.*, 226 Conn. 282, 290, 627 A.2d 1288 (1993). Prior to the enactment of § 52-557n (a) (1), a person who sustained injuries on a municipal road by means of a nuisance created by the positive acts of a municipality could recover against the municipality either by way of a common-law nuisance action or an action pursuant to the municipal highway defect statute. See, e.g., *Grady* v. *Somers*, supra, 294 Conn. 335–36 n.10 (observing that liability in nuisance represented common-law exception to governmental immunity of municipalities); *Murphy* v. *Ives*, 151 Conn. 259, 264, 196 A.2d 596 (1963) ("[i]t is true that a common-law action lies against a municipality if the action is predicated on a condition in a highway which the municipality was bound to maintain and that condition amounted to a nuisance and was created by the positive act of the municipality"); *Flynn* v. *West Hartford*, 98 Conn. 83, 85, 118 A. 517 (1922) ("[a]side from the liability under the [highway defect] statute, the defendant [town] would be liable under the common-law rule for an injury proximately resulting from the presence [on] the highway of this pile of sand and earth and excavation, because it was responsible for their existence; it made the excavation, it piled up the sand and earth and it left them inadequately guarded").

Section 52-557n (a) (1) abrogated the common law, however, by making § 13a-149 the exclusive remedy against a municipality for damages resulting from injury to any person or property caused by a defective road or bridge. In accordance with settled precedent concerning our interpretation of statutes abrogating the common law, we will not presume that the legislature intended to change the common law by barring recovery against the town in the circumstances of the present case in the absence of statutory language indicative of such intent.

We find no merit in the town's contention that the decisions of the Appellate Court and this court in *Himmelstein* compel a different result. In support of this contention, the town notes that, in *Himmelstein*, as in the present case, the defendant town of Windsor ultimately was deemed not to be the party responsible for maintaining the road on which the plaintiff was injured, but the Appellate Court nevertheless concluded that the nuisance claim in that case was barred by the exclusivity provision of § 13a-149. See *Himmelstein* v. *Windsor*, supra, 116 Conn. App. 40, 44. The town contends, therefore, that the decision of the Appellate Court in *Himmelstein* stands for the broad proposition that, "as long as a complaint alleges a physical impediment at street level, in the traveled portion of the roadway, that resulted in the roadway not being reasonably safe for travel"; (internal quotation marks omitted); then, as a matter of law, the plaintiff's exclusive remedy is an action under the state or municipal highway defect statute.

In reaching its determination in the present case, the Appellate Court explained its holding in *Himmelstein* as follows: "In *Himmelstein*, the plaintiff [Paul R. Himmelstein] brought [an action] against the town of Windsor and the Windsor police department after sustaining physical injuries when the bicycle [that] he was riding struck a Windsor police department radar trailer. [*Himmelstein* v. *Windsor*, supra, 116 Conn. App.] 31. In addition to alleging a breach of . . . § 13a-149, [Himmelstein] sought recovery against the town [of Windsor] on a theory of nuisance. Id. In support of [*both*] claims, [Himmelstein] alleged that the [t]own of Windsor . . . [was] . . . charged with the statutory duty of maintaining, repairing and otherwise rendering safe town streets, including the street on which [Himmelstein's] injuries were sustained. *Himmelstein* v. *Windsor*, Conn. Appellate Court Records & Briefs, March Term, 2009, Record p. 5. The town of Windsor filed a motion to strike [Himmelstein's] nuisance claim, arguing that, because the . . . claim fell within the ambit of § 13a-149, that statute provided the exclusive remedy available to him. *Himmelstein* v. *Windsor*, supra, 116 Conn. App. 31–32. The trial court granted the motion to strike, and [Himmelstein] appealed to [the Appellate Court]. Id., 32–33. On appeal, [Himmelstein] argued that the [trial] court improperly granted the motion to strike, as his nuisance claim was legally sufficient despite the applicability of § 13a-149. Id., 36–40. In rejecting [Himmelstein's] argument, [the Appellate Court] held that, because [Himmelstein's] nuisance claim *as pleaded* fell within the ambit of § 13a-149, that statute provided the exclusive remedy, and, thus, a motion to strike the nuisance claim was appropriately granted. Id., 40." (Emphasis added; internal quotation marks omitted.) *Kumah* v. *Brown*, supra, 127 Conn. App. 262–63.

The Appellate Court noted further: "In the present case, unlike in *Himmelstein*, the plaintiffs have not alleged that Interstate 95 is a road that the town is 'bound to keep . . . in repair' pursuant to § 13a-149. Indeed, it would be disingenuous to conclude that the town is responsible for the upkeep, maintenance and repair of Interstate 95, a major thoroughfare spanning the state. Therefore, the plaintiffs' nuisance counts are clearly distinguishable from those asserted in *Himmelstein*, as the plaintiffs' nuisance counts [in the present case] do not fall within the scope of § 13a-149. As such, [the court] conclude[s] that the trial court improperly granted the town's motion to strike the plaintiffs' nuisance counts on the basis of [the Appellate Court's] decision in *Himmelstein*." Id., 263–64. Thus, for purposes of the present case, the Appellate Court clarified its decision in *Himmelstein* as having been based solely on a pleading deficiency, namely, Himmelstein's allegation that the town of Windsor was the party responsible for maintaining the road on which his injury occurred. See id., 263.

After granting Himmelstein's petition for certification to appeal, we also concluded that the trial court properly had stricken Himmelstein's nuisance claim because Himmelstein had alleged, in support of the claim, that the town of Windsor was the party responsible for maintaining the road on which the injury occurred, thus bringing the nuisance claim squarely within the purview of § 13a-149. See *Himmelstein* v. *Windsor*, supra, 304 Conn. 311–12. By resolving Himmelstein's claim based on the manner in which that claim had been pleaded, we avoided addressing the broader question presented by *this* appeal, namely, whether a municipality is liable for nuisances that it creates on roads or bridges that the municipality itself is not required to keep in repair. For the reasons previously set forth in this opinion, we answer that question in the affirmative.[9]

Finally, we are not persuaded by the town's contention that its interpretation of § 52-557n (a) (1) finds support in our statement in *Sanzone* v. *Board of Police Commissioners*, supra, 219 Conn. 179, that "some plaintiffs who are limited to their recourse under § 13a-149 may be deprived of a remedy." Id., 198. Relying on this language, the town argues that the fact that the plaintiffs in the present case may be left without a remedy is insufficient reason to conclude that their claims are not barred by § 52-557n (a) (1). The town's reliance on *Sanzone* is misplaced. Our statement in that case merely was intended to convey the point that not all plaintiffs who are limited to their remedy under § 13a-149 will *prevail* under that statute. By way of example, we noted that a plaintiff who fails to notify the municipality of his claim within ninety days, as § 13a-149 requires, will be barred from any recovery. Id. We explained, however, that, contrary to the plaintiff's contention in *Sanzone*, this did not render the notice provision of § 13a-149 unconstitutional under the open courts provision of article first, § 10, of the Connecticut constitution. See id. Thus, our explanation in *Sanzone* does not advance the town's claim because, in contrast to the plaintiffs in the present case, the plaintiff in *Sanzone* had an available remedy under § 13a-149 but simply did not pursue it; under the town's interpretation of § 52-557n (a) (1), however, the plaintiffs in the present case would never have had a remedy to pursue against the town.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] Leo G. Brown, Sparks Finance Company and Swift Transportation Company, Inc., also were named as defendants in the plaintiffs' complaint. They, however, are not parties to the present appeal.

[2] Keziah Kumah, who is William Kumah's wife, alleged loss of consortium as a derivative claim of William Kumah's nuisance claim.

[3] General Statutes § 52-557n provides in relevant part: "(a) (1) Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties; (B) negligence in the performance of functions from which the political subdivision derives a special corporate profit or pecuniary benefit; and (C) acts of the political subdivision which constitute the creation or participation in the creation of a nuisance; provided, no cause of action shall be maintained for damages resulting from injury to any person or property by means of a defective road or bridge except pursuant to section 13a-149. . . ."

[4] General Statutes § 13a-149 provides: "Any person injured in person or property by means of a defective road or bridge may recover damages from the party bound to keep it in repair. No action for any such injury sustained on or after October 1, 1982, shall be brought except within two years from the date of such injury. No action for any such injury shall be maintained against any town, city, corporation or borough, unless written notice of such injury and a general description of the same, and of the cause thereof and of the time and place of its occurrence, shall, within ninety days thereafter be given to a selectman or the clerk of such town, or to the clerk of such city or borough, or to the secretary or treasurer of such corporation. If the injury has been caused by a structure legally placed on such road by a railroad company, it, and not the party bound to keep the road in repair, shall be liable therefor. No notice given under the provisions of this section shall be held invalid or insufficient by reason of an inaccuracy in describing the injury or in stating the time, place or cause of its occurrence, if it appears that there was no intention to mislead or that such town, city, corporation or borough was not in fact misled thereby."

[5] We affirmed the judgment of the Appellate Court in *Himmelstein* v. *Windsor*, supra, 116 Conn. App. 28; see *Himmelstein* v. *Windsor*, supra, 304 Conn. 315; after the parties filed their briefs in the present appeal but prior to oral argument before this court.

[6] We granted the town's petition for certification to appeal, limited to the following issue: "Did the Appellate Court properly determine that the plaintiffs' nuisance counts did not fall within the scope of . . . § 13a-149?" *Kumah* v. *Brown*, 300 Conn. 943, 17 A.3d 474 (2011).

[7] As this court frequently has observed, "[w]hen 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. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance 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 . . . ." (Internal quotation marks omitted.) *Picco* v. *Voluntown*, 295 Conn. 141, 147, 989 A.2d 593 (2010). Because the exclusivity provision of § 52-557n (a) (1) is not plain and unambiguous with respect to whether it applies to state roads and bridges as well as to municipal roads and bridges, we look beyond the language of the provision and other related statutes in order to resolve the issue of statutory construction posed by this appeal.

[8] As this court previously has explained, "[b]ecause the state is not an insurer of the safety of travelers on the highways, the statutory obligation under § 13a-144 to keep the highway safe from defects is a reactive obligation, not an anticipatory obligation. That is, the . . . obligation under § 13a-144 is to remedy a highway defect once [the commissioner of transportation]: (1) has actual notice of a specific defect; or (2) is deemed to have constructive notice of a specific defect." (Internal quotation marks omitted.) *McIntosh* v. *Sullivan*, 274 Conn. 262, 269–70, 875 A.2d 459 (2005).

We note that the state is not a defendant in this action, perhaps because the plaintiffs have determined that the state did not have notice of the alleged nuisance when the accident in which William Kumah was injured occurred. We also note that the plaintiffs in the present case might not be deprived of a remedy altogether under the town's interpretation of § 52-557n (a) (1), but only because there are other defendants to this action who, according to the plaintiffs, bear responsibility for the accident along with the town. But for the fortuity that one or more of those defendants potentially might be liable under the particular facts and circumstances of this case, the plaintiffs would have no remedy at all under the statutory construction urged by the town.

[9] We note that, during oral argument before this court, the town argued that whether § 52-557n (a) (1) bars a particular nuisance claim should not turn on whether the complaint alleges that the town was responsible for maintaining the roadway on which the injury occurred because, if that is the case, future plaintiffs will be able to circumvent the exclusivity provision of § 13a-149 simply by omitting the disqualifying allegation from their complaints. We disagree with the town's contention. As we have explained, "[a] motion to strike challenges the legal sufficiency of a pleading . . . and, consequently, requires no factual findings by the trial court. . . . We take the facts to be those alleged in the complaint that has been stricken and we construe the complaint in the manner most favorable to sustaining its legal sufficiency. . . . [I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Thus, we assume the truth of both the specific factual allegations and any facts fairly provable thereunder. In doing so, moreover, we read the allegations broadly . . . rather than narrowly." (Internal quotation marks omitted.) *Sylvan R. Shemitz Designs, Inc.* v. *Newark Corp.*, 291 Conn. 224, 231, 967 A.2d 1188 (2009). That a nuisance complaint might survive a motion to strike does not mean that the plaintiff will be able to circumvent the exclusivity provision of § 13a-149. If the defendant can adduce evidence establishing that the plaintiff's nuisance claim is, in fact, one arising under § 13a-149, the defendant will be entitled to judgment on that claim as a matter of law.