SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 20418

TOWN OF LEDYARD
Plaintiff - Appellant

v.

WMS GAMING, INC.
Defendant - Appellee

BRIEF OF THE PLAINTIFF-APPELLANT TOWN OF LEDYARD WITH SEPARATEY BOUND APPENDIX PART ONE AND PART TWO

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STATEMENT OF THE ISSUE

I. DID THE APPELLATE COURT CORRECTLY CONCLUDE THAT GENERAL STATUTES § 12-161A, WHICH ALLOWS TRIAL COURTS TO AWARD ATTORNEY'S FEES INCURRED BY A MUNICIPALITY 'AS A RESULT OF AND DIRECTLY RELATED TO' STATE COURT PROCEEDINGS TO COLLECT UNPAID PERSONAL PROPERTY TAXES, DID NOT AUTHORIZE THE AWARD OF ATTORNEY'S FEES INCURRED BY A MUNICIPALITY IN DEFENDING A COLLATERAL ACTION IN FEDERAL COURT THAT CHALLENGED THE MUNICIPALITY'S AUTHORITY TO COLLECT THE PERSONAL PROPERTY TAXES AT ISSUE IN THE STATE COURT ACTION?

NATURE OF THE PROCEEDINGS AND STATEMENT OF FACTS

General Statutes § 12-161a provides that, when a municipality brings a proceeding "to enforce collection of any delinquent tax on personal property from the owner of such property," the municipality is entitled to reasonable attorney's fees incurred "as a result of and directly related to" the collection proceeding. The question in this case is whether the statute authorizes an award of attorney's fees incurred by the Town of Ledyard ("Town") in defending a related action in federal court that was brought to enjoin the collection action and prevent the Town from collecting the personal property taxes at issue in this case.

This is a certified appeal from the judgment of the Appellate Court in Town of Ledyard v. WMS Gaming, Inc., 192 Conn. App. 836 (2019). The Town commenced this tax collection proceeding against the Defendant, WMS Gaming, Inc., on July 7, 2008. On December 29, 2008, the court (*Martin, J.*) granted the Defendant's motion to stay this case pending the outcome of Mashantucket Pequot Tribe v. Town of Ledyard, 3:08-CV-1355 ("WMS Federal Action"). After the WMS Federal Action was conclusively decided by the United States Court of Appeals for the Second Circuit, the stay in this case was lifted. The parties then stipulated that the Defendant was liable for taxes, interest, and penalties in the amount of $372,629.44. The parties agreed that the Town was entitled to an award of attorney's fees, but disagreed about the scope of the attorney's fees that could be awarded. The Town understood General Statutes § 12-161a to permit the recovery of attorney's fees that it had to incur in order to prevail in this case, including those expended in the WMS Federal Action. The defendant took a more restrictive view of the statute, claiming that fees incurred in the WMS Federal Action could not be awarded. The parties filed cross-motions for summary judgment on the issue of what fees General Statutes § 12-161a authorized the

trial court to award. On October 6, 2016, the trial court (*Vacchelli, J.*) granted the Town's motion and denied the Defendant's motion.

The Defendant appealed, and the Appellate Court dismissed the appeal for lack of a final judgment, but this Court granted certification and reversed. 171 Conn. App. 624 (2017), rev'd, 330 Conn. 75 (2018). On September 17, 2018, on remand from this Court, the Appellate Court reversed the judgment of the trial court, and directed the trial court to deny the Town's motion for summary judgment and grant the Defendant's motion for summary judgment. 192 Conn. App. at 849-50. The Town filed a motion for re-argument en banc and/or reconsideration by the panel, which was denied. Thereafter, the Town petitioned for certification to appeal, and this Court granted certification to answer the following question:

> Did the Appellate Court correctly conclude that General Statutes § 12-161a, which allows trial courts to award attorney's fees incurred by a municipality 'as a result of and directly related to' state court proceedings to collect unpaid personal property taxes, did not authorize the award of attorney's fees incurred by a municipality in defending a collateral action in federal court that challenged the municipality's authority to collect the personal property taxes at issue in the state court action?

334 Conn. 904 (2019).

I. WMS GAMING WORKS WITH THE MASHANTUCKET PEQUOT TRIBAL NATION TO AVOID PAYING PROPERTY TAXES

This case involves the Town's efforts to collect personal property taxes imposed on slot machines owned by the Defendant, WMS Gaming, Inc., and leased to the Mashantucket Pequot Tribal Nation ("MPTN"). Pursuant to the leases that govern the Defendant's relationship with MPTN, the Defendant, in reliance on MPTN's representation that the leased equipment was not subject to state and local taxes, agreed not to file a personal property tax declaration and not to pay any taxes with respect to the leased

equipment. Aff. of Margaret L. Kraus in Support of Mot. to Stay ("Kraus Aff.") (Dkt. No. 106.00), ¶¶ 4, A14; see also Mashantucket Pequot Tribe v. Town of Ledyard, 722 F.3d 457, 462 (2d Cir. 2013). The Defendant also agreed that, if it became obligated to pay taxes on the leased equipment, it would notify MPTN and cooperate with MPTN in contesting that obligation. Mashantucket Pequot Tribe, 722 F.3d at 462. In exchange, MPTN agreed to indemnify the Defendant for all taxes applicable to the leased equipment, as well as any related costs and expenses. Aff. of Alex Rodriguez in Support of Mot. to Stay ("Rodriguez Aff.") (Dkt. No. 106.00), ¶ 5, A17; Mashantucket Pequot Tribe, 722 F.3d at 462. In its decision, the Second Circuit noted that the average amount of taxes annually owed by the Defendant to the Town was approximately $10,000. Mashantucket Pequot Tribe, 722 F.3d at 474. The Court further noted that the Defendant received $12,900,000 in revenue annually from its leases with MPTN. Id.

In 2005, the Defendant "mistakenly" filed a personal property tax declaration with the Town identifying the leased equipment. Kraus Aff., ¶ 5, A15. The Town assessed property taxes on the leased equipment for the 2005 tax year, and the Defendant paid the tax bill under protest. Id. The following year, the Defendant did not file a personal property tax declaration, but the Town still assessed personal property taxes on the leased equipment. Ex. A to Pl. Mot. for Summary Judgment ("Pl. Ex. A"), A48. Upon receiving the bill from the Town, the Defendant reached out to MPTN to discuss how "to respond to [the tax] bill[.]" Id. The Defendant failed to pay the taxes due, and the Town initiated this action, seeking unpaid personal property taxes in the amount of $18,251.23 plus interest, penalties, and attorney's fees pursuant to General Statutes § 12-161a. See Complaint (7/7/08).

After the Town initiated this action, the Defendant sent a letter to MPTN, enclosing a copy of the complaint and a proposed indemnification agreement. Pl. Ex. A, A52. The letter made clear that, unless MPTN agreed to the indemnification, the Defendant intended to pay the taxes owed to the Town in order to settle this action:

> While WMS would like to continue to cooperate with the Mashantucket Pequot Tribe on this issue, as we have previously discussed, we cannot absorb the costs of litigation along with additional interest and penalties. If the Mashantucket Pequot Tribe would like to defend the legality of these taxes, we have enclosed an Indemnification Agreement whereby the Mashantucket Pequot Tribe will indemnify and hold harmless WMS from all costs above and beyond the taxes that are purportedly owed to the town of Ledyard.
>
> If we do not receive a signed Indemnification Agreement on or before July 11, 2008, WMS will be forced to make a payment to settle this matter with the town of Ledyard.

Id. MPTN responded to the letter confirming that, pursuant to the leases that governed the parties' relationship, it would indemnify the Defendant for the costs of litigation, including attorney's fees. Id., A64.

II. WMS GAMING AND MPTN COORDINATE TO ENJOIN THIS ACTION AND PREVENT THE TOWN FROM COLLECTING THE UNPAID PROPERTY TAXES

At the time the Town commenced this action, MPTN and the Town were involved in an action pending in the United States District Court for the District of Connecticut, in which MPTN was challenging the Town's authority to tax Atlantic City Coin, another company that leased slot machines to MPTN. See Mashantucket Pequot Tribe v. Town of Ledyard, No. 3:06-CV-1212 ("A.C. Coin Action"). When the Defendant received the tax bill for the 2005 tax year, it asked MPTN whether it should join the A.C. Coin Action, but MPTN responded that the Defendant should not join that lawsuit. Pl. Ex. A, A44-45.

In response to the Town filing this action (and after MPTN agreed to indemnify the Defendant for the costs associated with this action), MPTN brought a separate action in

federal court, in which it sought to enjoin the Town from taking any action to collect or enforce property taxes imposed on the Defendant, "including but not limited to prosecution of the WMS State Court action [i.e., this action]." Compl., Prayer for Relief ¶ 5, Mashantucket Pequot Tribe v. Town of Ledyard, 3:08-CV-1355 ("WMS Federal Action"). That action was consolidated with the A.C. Coin Action ("Consolidated Federal Action").

Almost immediately after MPTN filed the WMS Federal Action, the Defendant moved to stay this action on the basis that the outcome of the Consolidated Federal Action would be determinative of this case. Specifically, the Defendant argued that the action should be stayed because "[t]he sole issue involved in this case [is] whether the Town is entitled to collect the personal property taxes imposed on the gaming equipment leased by [MPTN]," Mem. in Support of Mot. to Stay, Dkt. (No. 106.00), p. 9, and "[a]n adjudication in the WMS Federal Action will determine the rights of all the parties in this case." Id., p. 10. The Defendant further made plain that its attorney's fees to defend this action would be borne by MPTN, arguing that MPTN was "the real party in interest with respect to the Town's effort to tax the leased gaming machines," id., p. 6, and that "[i]t makes no sense for [the Defendant] (and ultimately [MPTN] based on the indemnification provision in the operative lease agreements) to have to incur the costs to defend this action ..., at the same time that the court in the [Consolidated Federal Action] may very well determine that the Town has no right to impose this tax." Id., pp. 10-11. In support of the motion, the Defendant submitted affidavits affirming, among other things, that the Defendant refused to pay taxes at the request of MPTN, that MPTN agreed to indemnify the Defendant for all such taxes, and that the same attorney that represented MPTN in the Consolidated Federal Action had been retained to represent the Defendant in this proceeding. Kraus Aff., ¶ 4, A14;

Rodriguez Aff., ¶ 5, A17; Aff. of Skip Durocher ("Durocher Aff.") (Dkt. No. 106.00), ¶ 1, A18. The trial court granted the motion to stay over the Town's objection.

III. TRIAL COURT PROCEEDINGS

Ultimately, the Consolidated Federal Action was decided in the Town's favor when the Second Circuit held that federal law did not preclude the Town from imposing personal property taxes on the Defendant's gaming equipment.[1] Mashantucket Pequot Tribe v. Town of Ledyard, 722 F.3d 457 (2d Cir. 2013). After the Second Circuit's decision, the Town and the Defendant resumed litigation in this action. As the Defendant had represented in its Motion to Stay, the outcome of the Consolidated Federal Action was determinative of the Defendant's liability for the unpaid taxes. The only remaining dispute was the amount of attorney's fees to which the Town was entitled pursuant to General Statutes § 12-161a. In particular, the parties disputed whether, under § 12-161a, the Town was eligible to recover any of the attorney's fees that it incurred defending the WMS Federal Action. On June 12, 2014, the parties stipulated that (1) WMS had tendered payment for all outstanding taxes, interest, and penalties, and (2) pursuant to § 12-161a, the Town was entitled to reasonable attorney's fees and costs incurred in prosecuting this action, the amount of which would be determined by the trial court. Stipulation (Dkt. No. 121.00).

The parties then filed cross motions for summary judgment on the issue of the scope of the attorney's fees that the Town was eligible to recover. The Town argued that, because it was forced to defend the WMS Federal Action in order to prevail in this action, it was eligible to recover its reasonable attorney's fees from the WMS Federal Action, in an

[1] In so holding, the Second Circuit reversed the judgment of the District Court, which had concluded the Town's authority to tax WMS's property was preempted by federal law. Mashantucket Pequot Tribe v. Town of Ledyard, 2012 WL 1069342 (D. Conn. March 27, 2012), rev'd, 722 F.3d 457 (2013).

amount to be determined at a hearing. The Defendant argued that, as a matter of law, the Town could not recover any of the fees it incurred in defending the WMS Federal Action.

The trial court ruled in favor of the Town, holding that the attorney's fees incurred in defense of the WMS Federal Action were "as a result of and directly related to" this action. Recognizing that no Connecticut court previously had interpreted § 12-161a, the trial court looked to other sources to determine the meaning of the statute. As directed by General Statutes § 1-1(a), the court looked to the dictionary definitions of the terms "directly" and "related" and noted that case law has recognized "as a result of" to denote a showing of proximate cause:

> In the absence of statutory definitions, we look to the common understanding of terms and their dictionary definitions in construing statutes. General Statutes § 1–1(a); Lombardo's Ravioli Kitchen, Inc. v. Ryan, 268 Conn. 222, 232, 842 A.2d 1089 (2004). Utilizing those resources, the phrase "as a result of" has been understood as requiring a showing of proximate cause. Abrahams v. Young and Rubicam, Inc., 240 Conn. 300, 306, 692 A.2d 709 (1997) citing Haesche v. Kissner, 229 Conn. 213, 223–24, 640 A.2d 89 (1994). The term "directly" means "exactly or totally," and the term "related" means "being connected, associated." American Heritage Dictionary of the English Language (Fifth Ed., 2016). Applying those meanings to the facts in the instant case, the court finds that the attorneys fees incurred by the Town in the related federal action were "as a result of and directly related to" the collection proceedings in the instant case.

Mem. Dec., p. 11.

Noting that the federal action was instituted specifically "to prevent the Town from taxing the same WMS gaming machines that were the subject of the instant case," and "was directly aimed at stopping the collection proceedings," the trial court concluded that attorney's fees incurred by the Town in defending the WMS Federal Action "were directly related to and a result of the Town's collection proceedings." Mem. Dec., pp. 11-12.

The trial court also found that "WMS's attempt to disassociate itself from the federal action" was "unconvincing," because "the federal lawsuit was a mutually agreed upon and coordinated effort between WMS and [MPTN]." Id., p. 12. The trial court recognized that, although the Defendant was not a named party to the federal action, there was significant cooperation between the Defendant and MPTN in both lawsuits, including the indemnification agreement pursuant to which MPTN agreed to pay the Defendant's tax liabilities and attorney's fees if the efforts to enjoin the Town from collecting the taxes were unsuccessful. In its summary judgment decision, the trial court noted the close relationship between the Defendant and MPTN in the litigation:

> [T]he federal lawsuit was a mutually agreed upon and coordinated effort between WMS and the Tribe. Based on the materials supplied and undisputed facts, the court finds that WMS and the Tribe were in regular communication with regard to the Tribe's interest in challenging the Town's taxation of its leased slot machines, and that WMS supported and cooperated with the Tribe's litigation efforts. In fact, WMS and the Tribe were represented by the same attorney in the both cases at times, and WMS had certain indemnification agreements with the Tribe with respect to the tax liabilities at stake in the event that the federal litigation was unsuccessful.

Mem. Dec., p. 12. Accordingly, the trial court concluded that the Town was eligible for attorney's fees that it incurred defending the WMS Federal Action in an amount to be determined at a hearing.

IV. APPELLATE PROCEEDINGS

On appeal, the Appellate Court reversed the judgment of the trial court.[2] Though the Appellate Court agreed with the trial court that the phrase "as a result of" generally requires a proximate cause analysis, the Appellate Court interpreted the phrase "directly related" to

[2] Initially, the Appellate Court dismissed WMS's appeal for lack of an appealable final judgment, but this Court reversed and remanded back to the Appellate Court to address WMS's claims. 171 Conn. App. 624 (2017), rev'd, 330 Conn. 75 (2018).

mean that "only litigation fees incurred in the prosecution of the collection action itself would qualify as attorney's fees directly related to the collection proceeding as contemplated by § 12-161a." Town of Ledyard v. WMS Gaming, Inc. 192 Conn. App. at 844-45 (emphasis added). The Appellate Court then erroneously concluded—contrary to the Defendant's express representations in its motion for stay—that the federal action "did not result directly in a final determination of the rights and obligations of the parties relative to the claimed delinquent tax." Id. at 845. The Appellate Court also concluded that, because the A.C. Coin Action was already pending at the time MPTN initiated the WMS Federal Action, none of the attorney's fees incurred by the Town in the WMS Federal Action possibly could have been incurred "as a result of and directly related to" this action. Id. at 846. The Appellate Court did not evaluate the plain meaning of all of the words used in the statute, but rather limited its statutory construction analysis to the word "direct." Id. at 844-45. Based on this erroneous analysis, the Appellate Court reversed and directed the trial court to deny the Town's motion for summary judgment and grant the Defendant's motion for summary judgment. This certified appeal followed.

ARGUMENT

I. THE APPELLATE COURT ERRED IN CONCLUDING THAT GENERAL STATUTES § 12-161a DID NOT AUTHORIZE THE TRIAL COURT TO AWARD THE TOWN ATTORNEY'S FEES INCURRED IN DEFENDING THE WMS ACTION

This appeal requires this Court to determine whether the Town was precluded from recovering any of the attorney's fees that it incurred in defending the WMS Federal Action under General Statutes § 12-161a. Section 12-161a provides:

> **In the institution of proceedings by any municipality to enforce collection of any delinquent tax on personal property from the owner of such property**, through (1) levy and sale with respect to any goods or chattels owned by such person, (2) enforcement of a lien, established and

> perfected in accordance with sections 12-195a to 12-195g, inclusive, upon any such goods or chattels or (3) any other proceeding in law in the name of the municipality for purposes of enforcing such collection, such person shall be required to pay any court costs, reasonable appraiser's fees or **reasonable attorney's fees incurred by such municipality as a result of and directly related** to such levy and sale, enforcement of lien or other collection proceedings.

(Emphasis added). The trial court concluded that the statute authorized an award of attorney's fees paid by the Town to defend the WMS Federal Action because they were "incurred ... as a result of and directly related to ... [the] collection proceeding." Mem. Dec., pp. 9-10. The Appellate Court disagreed and held that the attorney's fees that the Town could recover were, as a matter of law, only those fees that were incurred in this specific docketed case. Town of Ledyard v. WMS Gaming, Inc. 192 Conn. App. at 844. The Appellate Court's decision misinterprets and misapplies General Statutes § 12-161a.

A. Standard of Review and Relevant Legal Principles

Whether General Statutes § 12-161a authorizes an award of the attorney's fees incurred by the Town in defending the WMS Federal Action is a question of law subject to plenary review because it requires this Court to construe the meaning of the statute. See Colangelo v. Heckelman, 279 Conn. 177, 182 (2006). Statutory construction is governed by General Statutes § 1-2z:

> The 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.

Pursuant to General Statutes § 1-2z, the court must first determine whether the text is "plain and unambiguous." To make this determination, it must consider the text of the statute itself and its relationship to other statutes. After making this preliminary evaluation,

the court moves to the second part of the test and considers whether the "plain and unambiguous" meaning would lead to an absurd or unworkable result. See Desrosiers v. Diageo N. Am., Inc., 314 Conn. 773, 785 (2014).

A court's decision to grant or deny summary judgment is also subject to plenary review. Recall Total Info. Mgmt., Inc. v. Fed. Ins. Co., 317 Conn. 46, 51 (2015); Doucette v. Pomes, 247 Conn. 442, 452 (1999). Practice Book § 17-49 provides that summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law ... and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact." Romprey v. Safeco Ins. Co. of Am., 310 Conn. 304, 312 (2013).

B. Under the Plain Meaning of General Statutes § 12-161a, the Town was Entitled to Recover Attorney's Fees Proximately Caused by this Tax Collection Proceeding.

The parties agree that, as relevant here, to be entitled to an award of fees under § 12-161a, the Town had to demonstrate that the fees were "incurred ... as a result of and directly related to ... [the] collection proceeding[]." Because the issue of liability was resolved on summary judgment, the question for this Court is whether, as a matter of law, the attorney's fees that the Town paid to defend the WMS Action could not have been incurred "as a result of and directly related to" this proceeding.

The phrase "as a result of and directly related to" is quintessential proximate cause language; in fact, until the Appellate Court released its opinion, everyone in this case who had addressed the issue—the Town, the trial court, **and** the Defendant—agreed with that proposition.[3] As the trial court and the Appellate Court recognized, the phrase "as a result of" is "synonymous with 'proximate cause.'" Town of Ledyard v. WMS Gaming, Inc., 192 Conn. App. at 844 (citing Abrahams v. Young & Rubicam, Inc., 240 Conn. 300, 306 (1997) (interpreting "as a result of" under CUTPA, General Statutes § 42-110g(a), to "require[] a showing that the prohibited act was the proximate cause of a harm to the plaintiff").[4]

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[3] As the Defendant argued in its brief to the Appellate Court, "the phrase 'incurred as a result of and directly related to' requires the Town to show that the fees it seeks were *proximately caused* by this collection against WMS." Def. AC Br., pp. 14-15.

[4] This Court has explained the meaning of "proximate cause" as follows:

> Proximate cause establishes a reasonable connection between an act or omission of a defendant and the harm suffered by a plaintiff.... Proximate cause serves to temper the expansive view of causation in fact by the pragmatic shaping of rules which are feasible to administer, and yield a workable degree of certainty.... In other words, legal cause can be portrayed pictorially as a Venn diagram, with the circle representing cause in fact completely subsuming the smaller circle representing proximate cause, which specifically focuses on that which we define as legal causation. This court has defined proximate cause, as an actual cause that is a substantial factor in the resulting harm....

(Internal citations, quotation marks, and alterations omitted.) Stewart v. Federated Dept. Stores, Inc., 234 Conn. 597, 606 (1995). See also Ruiz v. Victory Properties, LLC, 315 Conn. 320, 329 (2015) ("The test for proximate cause is whether the defendant's conduct was a substantial factor in producing the plaintiff's injury. This substantial factor test reflects the inquiry fundamental to all proximate cause questions, namely, whether the harm that occurred was of the same general nature as the foreseeable risk created by the defendant's negligence.") (Internal citation, quotation marks, and alteration omitted.).

The Appellate Court, however, rejected the consensus of the trial court and the parties that § 12-161a allows recovery for attorney's fees proximately caused by the collection proceeding. Instead, the Appellate Court held that the phrase "directly related to" requires a "more restrictive proximal nexus to the collection proceeding in which the attorney's fees are requested than the phrase 'as a result of.'" 192 Conn. App. at 845. However, the opinion of the Appellate Court contains virtually no analysis explaining how it arrived at that interpretation. The Court did not consider all of the words in the statute, address whether other statutes shed light on the meaning of the phrase, how similar phrases have been interpreted in other contexts, or whether that interpretation is consistent with the purpose of the statute. Instead, the Court simply quoted the dictionary definition of the word "directly," and jumped from that definition to the conclusion that "only litigation fees incurred in the prosecution of the collection action itself would qualify as attorney's fees directly related to the collection proceeding as contemplated by § 12-161a." Id. The Court did not even define the word "related," much less explain why the phrase should be interpreted to carry such an overly restrictive meaning.

As the Defendant itself argued in its brief to the Appellate Court, courts have long recognized that "the word 'direct' or 'directly' denotes proximate cause." Def. AC Br., p. 15. In fact, this Court and the Appellate Court have recognized "that the words 'direct cause' ordinarily are synonymous in legal intendment with 'proximate cause'" ...." Steiner v. Middlesex Mut. Assur. Co., 44 Conn. App. 415, 434 (1997). As this Court noted in examining its past use of the phrase, "[t]he prevalent type of 'direct cause' references equates the concept of direct cause with the concept of proximate cause." Elliott v. City of Waterbury, 245 Conn. 385, 404 (1998); see also Sanders v. Officers Club of Connecticut,

Inc., 196 Conn. 341, 349 (1985) ("A proximate cause is a direct cause. It is an act or failure to act, followed in its natural sequence by a result without the intervention of any other superseding cause.").

1. Dictionary definitions support the Town's reading of the statute

The words "directly" and "related" are not specialized terms defined by the statute and, therefore, they are given their common understanding. See General Statutes § 1-1(a) ("In the construction of statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly.") To determine the common understanding of a word, it is proper to consider dictionary definitions. See Rutter v. Janis, 334 Conn. 722, 730–31 (2020) ("[w]here a statute does not define a term, it is appropriate to look to the common understanding expressed in the law and in dictionaries") (internal citation and quotation marks omitted).

When General Statutes § 12-161a was enacted in 1983, dictionaries contained the following definitions of the relevant terms. See Kuchta v. Arisian, 329 Conn. 530, 537 (2018) ("when a term is not defined in a statute, we begin with the assumption that the legislature intended the word to carry its ordinary meaning, as evidenced in dictionaries in print at the time the statute was enacted.") (internal citation and quotation omitted.). Webster's defined "result" when used as a noun to mean "something that results as a consequence, issue, or conclusion." Webster's New Collegiate Dictionary (8th Ed. 1981). "Directly" was defined as "in a direct manner" and "direct" in this context means "natural, straightforward." Id. "Related" was defined as "connected by reason of an established or

discoverable relation." Id. The American Heritage Dictionary defined the noun "result" as "[t]he consequence of a particular action, operation, or course; outcome." The American Heritage Dictionary (2nd Ed. 1982). "Directly" was defined as "in a direct line or manner; straight." Id. "Related" was defined as "[c]onnected; associated." Id. Around the same time period, The Random House Dictionary defined "result" when used as a noun to mean "something that happens as a consequence; outcome." The Random House Dictionary (2nd Ed. 1987). "Directly" was defined as "in a direct manner line, way or manner; straight." Id. "Related" was defined as "associated; connected." Id. These definitions have not substantively changed over the past almost forty years.[5]

Given the dictionary definitions of the words "result," "direct," and "related," the only reasonable reading of the plain meaning of General Statutes § 12-161a is that it permits recovery of the municipality's attorney's fees that were proximately caused by the collection proceeding.

2. Case law supports the Town's reading of the statute

It is also appropriate to consider the common usage of certain words by looking to case law. See Rutter v. Janis, 334 Conn. at 732 n.8. This Court has interpreted language that is similar to the phrase "directly related to" to mean "proximately caused by." For example, when an insurance policy insures against "direct loss by fire" or a "loss directly caused by ... fire," this Court has held that the insurer's liability "is not confined to loss by actual burning and consuming," but extends to "all losses which are the immediate

[5] Merriam-Webster currently defines "result" when used as a noun to mean "something that results as a consequence, issue, or conclusion." Merriam-Webster Online Dictionary, available at https://www.merriam-webster.com/dictionary/result. "Directly" is defined to mean "in a direct manner," and "direct" means "stemming immediately from a source," or "characterized by close logical, causal, or consequential relationship." Id. "Related" is defined to mean "connected by reason of an established or discoverable relation." Id.

consequences of fire or burning, or for **all losses of which fire is the proximate cause**." Frontis v. Milwaukee Ins. Co., 156 Conn. 492, 496 (1968) (emphasis added); see also Steiner v. Middlesex Mutual Assurance Co., 44 Conn. App. at 434-35 ("In an insurance policy that stated that it insured against '[l]oss ... directly caused by,' the court held that directly caused was fairly synonymous with proximately caused." (quoting O'Doan v. Ins. Co. of North America, 243 Cal. App. 2d 71, 78 (1966)).

In addition, for close to a century, this Court has used the terms "proximate cause" and "direct cause" interchangeably in describing the causation requirement for a work-related injury to be compensable under the Workers' Compensation Act, General Statutes § 31-275 et seq. To be compensable under the Workers' Compensation Act, an injury must "aris[e] out of" the claimant's employment. As early as 1926, this Court held that, to meet that requirement, there must be "a **direct causal connection** between the injury ... and the employment. The question [that] must [be] answer[ed] is: Was the employment a **proximate cause** of the disablement, or was the injured condition merely contemporaneous or coincident with the employment?" Madore v. New Departure Manufacturing Co., 104 Conn. 709 (1926) (emphasis added). In expounding on the meaning of proximate cause, the Court further explained that "[a]n injury is proximately caused by the employment when the chain of causation between it and the employment is so closely related as to be **directly caused by it**, or by the conditions under which it is required to be performed." Id. (emphasis added).

Finally, in determining whether a plaintiff has suffered a "direct injury" sufficient to provide the plaintiff standing to sue, this Court has noted that the determination is akin to a proximate cause analysis. In Ganim v. Smith & Wesson Corp., 258 Conn. 313, 349-50

(2001), the Court relied on decisions of the United States Supreme Court and the Second Circuit holding that the standing inquiry requires a plaintiff to demonstrate that the defendant's conduct proximately caused the plaintiff's injury. In that context, the United States Supreme Court has described the proximate cause inquiry in terms almost identical to the phrase "directly related" that appears in § 12-161a, requiring the plaintiff to establish "some **direct relation** between the injury asserted and the injurious conduct alleged." Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc., 191 F.3d 229, 235-36 (2d Cir. 1999) (emphasis added) (quoting Holmes v. Securities Investor Protection Corp., 503 U.S. 258, 268–70 (1992)).

3. Other statutes show how the legislature limits attorney's fees to a specific docket number when that's what it intends to do

The Appellate Court's conclusion that the mere use of the word "directly" in § 12-161a means that a municipality may only recover attorney's fees "incurred in the prosecution of the collection action itself," Town of Ledyard v. WMS Gaming, Inc., 192 Conn. App. at 845, is an unduly restrictive reading of the statute that is contrary to how courts have interpreted similar language. If the legislature so intended to limit the scope of recovery, it knew how to say as much and would have done so. See State v. King, 249 Conn. 645, 684 (1999) ("if the legislature had sought to distinguish between the different degrees of kidnapping for purposes of [the capital felony statute], it knew how to do so."). Other statutes allowing recovery of attorney's fees expressly limit such fees to those incurred "in defense of" a particular action. E.g. General Statutes § 12-140 ("attorney's fees, for all fees and costs **incurred by the municipality in defending any civil action** brought as a result of a tax sale or an alias tax warrant or which seeks to enjoin or declare unlawful any tax sale or alias tax warrant ... shall be paid by the delinquent taxpayer or as provided

in section 12-157" (emphasis added)); General Statutes § 36a-237h ("Attorneys' fees and any related expenses **incurred in defending a legal action** for which immunity or indemnity is available under this section shall be paid from the assets of the trust bank or uninsured bank ...."(emphasis added)). These statutes demonstrate that, if the legislature intended § 12-161a to be so restrictive, it would have expressly said so by limiting municipalities to recovery of attorney's fees incurred "in the prosecution of the collection action."

4. The Appellate Court's interpretation leads to bizarre results

"It is a fundamental principle of statutory construction that courts must interpret statutes using common sense and assume that the legislature intended a reasonable and rational result." Longley v. State Employees Retirement Commission, 284 Conn. 149, 171-72 (2007). In other words, "[s]tatutes are to be read as contemplating sensible, not bizarre, results." Bennett v. New Milford Hosp., Inc., 300 Conn. 1, 28 (2011). In this context, the Supreme Court has set forth the following three fundamental principles of statutory interpretation: (1) "it is axiomatic that those who promulgate statutes ... do not intend to promulgate statutes ... that lead to absurd consequences or bizarre results;" (2) "in construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended"; and (3) "if there are two asserted interpretations of a statute, we will adopt the reasonable construction over the one that is unreasonable." State v. Courchesne, 296 Conn. 622, 710 (2010).

The most sensible way to read General Statutes § 12-161a is that it allows the Town to recover any attorney's fees that it had to expend in order to prevail in the collection proceeding, even if that work was done in a case with a different docket number.

Otherwise, the Town's collection efforts would be fruitless because the revenue that is recouped by collecting the tax would be eliminated by the attorney's fees expended pursuing that effort. As the Second Circuit observed, the Town relies on the taxes at issue in this case to fund municipal government operations, including education, police and emergency services, road maintenance, and trash collection. See Mashantucket Pequot Tribe v. Town of Ledyard, 722 F.3d at 460. Excluding from recovery attorney's fees that the municipality needed to incur in order to succeed in the collection proceeding creates the bizarre result of successful litigation with a delinquent tax payer resulting in an actual loss of revenue to the municipality that adversely impacts its ability to provide municipal government services. This Court must "construe a statute in a manner that will not thwart its intended purpose or lead to absurd results.... We must avoid a construction that fails to attain a rational and sensible result that bears directly on the purpose the legislature sought to achieve..." Turner v. Turner, 219 Conn. 703, 712–13 (1991). Frustration of government administration is properly considered to be an unreasonable or bizarre result. See First Union Nat. Bank v. Hi Ho Mall Shopping Ventures, Inc., 273 Conn. 287, 294 (2005). The Appellate Court's interpretation of General Statutes § 12-161a must be rejected because it leads to the Town suffering a significant financial loss in order to prevail in collecting overdue taxes from a delinquent taxpayer. The legislature could not have intended for this irrational and bizarre result.

Indeed, even the Defendant acknowledged before the Appellate Court that limiting General Statutes § 12-161a to only those attorney's fees incurred under a specific docket number could create bizarre results:

> Rarely will a town's fees from a separate lawsuit be incurred as a result of and directly related to a tax-collection proceeding. But there may be unusual

> circumstances where this is arguably the case. For example, a town may bring a bill of discovery to uncover a delinquent taxpayer's assets so that it can more effectively pursue a tax-collection case. Or a town may need to bring a separate action for an injunction to prevent a taxpayer from disposing of assets that could be levied to satisfy the taxpayer's outstanding liability. In situations like these where a town brings another legal proceeding *to advance* an already pending or contemplated tax-collection proceeding, it is at least arguable that the town's fees in the separate suit were incurred "as a result of and directly related to" the tax-collection action.

Def. A.C. Br. at 15-16 (emphasis in original). Precluding the Town from recovering the attorney's fees it expended in the WMS Federal Action, which was brought to prevent the Town from succeeding in this collection action, would create an even more bizarre result than the two scenarios described by the Defendant above.[6] "Where a statute is capable of two constructions, one that is rational and effective in accomplishing the evident legislative object, and the other leading to 'bizarre results' destructive of that purpose, the former should prevail." West Hartford Interfaith Coal., Inc. v. Town Council of Town of W. Hartford, 228 Conn. 498, 534 (1994). "If there are two possible interpretations of a statute or statutory scheme and one alternative proves unreasonable or produces the possibility of bizarre results, then the more reasonable alternative should be adopted." State Board of Labor Relations v. Freedom of Info. Comm'n, 244 Conn. 487, 499–500 (1998) (internal brackets omitted). Here, the Town's reading of General Statutes § 12-161a as providing recovery for those attorney's fees proximately caused by the municipality's collection effort—or, put differently, necessary for the municipality's success in the collection lawsuit—is the only reasonable one.

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[6] In particular, both examples described by the Defendant involve actions taken by a municipality to preserve its ability to collect on a judgment, not to advance its ability to prevail in the tax collection proceeding itself. In this case, the Town's defense of the WMS Federal Action was necessary "to advance an already pending ... tax-collection proceeding," which the Defendant has conceded should trigger the Town's right to recover its attorney's fees. Def. A.C. Br. at 16.

Finally, it is worth noting that the Second Circuit reached this same conclusion when it was confronted with a similar case about whether attorney's fees could be awarded for work performed in related proceedings. See Trustees of Eastern States Health & Welfare Fund v. Crystal Art Corp., 132 Fed. Appx. 390, 391 (2d Cir. 2005). That case involved the Employee Retirement Income Security Act (ERISA) and, specifically, 29 U.S.C. § 1132(g), which provides, in relevant part, that

> In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan...
>
> (D) reasonable attorney's fees and costs of the action, to be paid by the defendant...

29 U.S.C. § 1132(g)(2). The federal district court, acting on the defendant's motion, stayed the ERISA action pending resolution of proceedings before the National Labor Relations Board as well as arbitration proceedings. After these related proceedings resolved any question about the defendant's liability, the plaintiff filed a motion for attorney's fees, seeking to recover the costs of the ERISA litigation as well as the arbitration and NLRB proceedings. The defendant countered that attorney's fees could only be awarded for work specifically performed in the ERISA case. The federal district court agreed with the plaintiff that, based on the plain meaning of the statute and the bizarre results that would follow from a contrary ruling, fees incurred in the related proceedings was recoverable where the work was "useful" and "ordinarily necessary" to secure the final result in the ERISA case:

> [E]ven where an administrative proceeding is not pursuant to court order, but rather is a forum choice pursued by a party, the time devoted to such proceedings may properly "be included in the calculation of a reasonable attorney's fee, [if] the work [was] 'useful and of a type ordinarily necessary' to secure the final result...." Delaware Valley Citizens Council, [478 U.S. 546, 561 (1986)]. In the instant case, the results from the arbitration proceeding propelled the NLRB settlement. Specifically, by prevailing at the arbitration,

plaintiffs' counsel was able to establish certain facts, including the pivotal issue of the contractual violation committed by Crystal Art. See Kennedy Aff. Ex. C at 21 (opinion of arbitrator finding that Crystal Art and Perfect Art violated Article 24 of the CBA by wrongfully transferring work). Plaintiff's counsel specifically incorporated the results of the arbitration proceedings in his submissions to the NLRB. See id. Ex. E (Counsel's letters to the NLRB).

The settlement before the NLRB included an agreement by the defendants to pay the delinquent ERISA contributions, and it is therefore work that contributed to an end which is compensable under ERISA. See Former Employees of Motorola Ceramic Products v. United States, 336 F.3d 1360 (Fed.Cir.2003) ("where administrative proceedings are intimately tied to resolution of judicial action and necessary to attainment of the results Congress sought to promote by providing for fees, they should be considered part and parcel of the action for which fees should be awarded") (citing Sullivan v. Hudson, 490 U.S. 877 (1989)). Further, defendants' argument that plaintiffs engaged in duplicative efforts is rebutted by this Court's Order, which stayed the current action to permit resolution of the administrative proceedings.

Moreover, although the administrative proceedings were not ordered by this Court, our October 10, 2002 Order prohibited plaintiffs from proceeding in this forum until the conclusion of the NLRB proceedings. **It would be contrary to the plain language of Section 1132(g)(2) to hold that defendants could avoid liability for costs and fees merely by securing a stay of the applicable district court action pending resolution of related proceedings at the administrative level.**

Finally, the fact that the arbitration and the NLRB proceedings also resulted in recoveries to plaintiffs that are not subject to the attorney's fees provisions of ERISA does not make the award of fees pursuant to ERISA inappropriate. This is because the underlying facts supporting the various claims were essentially identical. We note that defendants have not pointed to any specific time spent on clearly irrelevant issues. Thus, the arbitration led to a determination of liability, and the NLRB proceeding resulted in a determination of damages. Taken together, these two proceedings served to resolve plaintiffs' ERISA claims which otherwise would have had to be litigated in this Court. Accordingly, plaintiffs may properly be compensated for the fees that they incurred in connection with the arbitration and the NLRB proceeding.

(Emphasis added.) Trustees of Eastern States Health & Welfare Fund v. Crystal Art Corp., 2004 WL 1118245, at *4–5, aff'd, 132 Fed. Appx. 390 (2d Cir. 2005).

The Second Circuit affirmed, relying on the facts that: (1) the attorney's fees were incurred after the ERISA case had been filed; and (2) the ERISA action had been stayed:

> Additionally, we see no reason to disturb the district court's decision to award attorneys' fees associated with the related arbitration and NLRB proceedings, given that those proceedings occurred after this action had been filed and while this action had been stayed. See Trustees of Eastern States Health and Welfare Fund, 2004 WL 1118245, at *5 ("It would be contrary to the plain language of Section 1132(g)(2) to hold that defendants could avoid liability for costs and fees merely by securing a stay of the applicable district court action pending resolution of related proceedings ...").

Trustees of Eastern, 132 Fed. Appx. at 391.

In the case *sub judice*, the attorney's fees in the WMS Federal Action were incurred after this case was filed and while this case was stayed. As in Trustees of Eastern, those attorney's fees should be recoverable under the plain language of § 12-161a because they were useful and of a type ordinarily necessary to secure the final result in this case.

C. The Town Incurred Attorney's Fees in the WMS Federal Action "as a result of and directly related to" This Proceeding.

When the meaning of § 12-161a is properly understood, there is no question that the trial court was correct in concluding that the attorney's fees paid by the Town to defend the WMS Federal Action were recoverable under the statute. Because the statute speaks in terms of proximate cause, the Town is entitled to recover its attorney's fees from the WMS Federal Action if the commencement of this proceeding resulted in "a sequence of events unbroken by a superseding cause" that led to the WMS Federal Action. Barry v. Quality Steel Prod., Inc., 263 Conn. 424, 433 (2003). In other words, the question is whether this collection proceeding was "a substantial factor" causing the Town to incur attorney's fees in the WMS Federal Action. Ruiz v. Victory Properties, LLC, 315 Conn. 320, 329 (2015). The

undisputed facts established that this collection proceeding was not just a substantial factor leading to the filing of the WMS Federal Action, but was the only causal predicate.

In fact, the record is replete with statements by the Defendant acknowledging that the WMS Federal Action was instituted as a direct result of this proceeding, and for the express purpose of stopping this proceeding. First, in its Motion to Stay, the Defendant admitted that MPTN filed the WMS Federal Action "[u]pon learning of the filing of this lawsuit." Mot. to Stay, p. 2. In support of that motion, the Defendant's attorney swore in an affidavit that, "[s]hortly after the Town filed the current proceeding against WMS," he asked the Town to agree to stay this case, because MPTN "intended to file an action in federal court seeking [a] declaratory judgment with respect to the taxes that are the subject of this suit." Durocher Aff.", ¶ 2, A18. In addition, the complaint in the WMS Federal Action expressly sought "[a]n injunction prohibiting the [Town] from taking any steps to collect personal property taxes with respect to the leased gaming machines, including but not limited to **prosecution of the WMS State Court Action**." Compl., Prayer for Relief, ¶ 5, Mashantucket Pequot Tribe v. Town of Ledyard, 3:08-CV-1355 (emphasis added). It makes no sense to say, as the Appellate Court did, that the WMS Federal Action was a "collateral deviation or diversion" from this proceeding when the express purpose of the WMS Federal Action was to enjoin the Town from pursuing this action. Town of Ledyard v. WMS Gaming, Inc., 192 Conn. App. at 846. Indeed, based on the factual record before it, the trial court properly observed the relationship between the WMS Federal Action and this case. Mem. Dec., p. 12.

The record clearly demonstrates, as the trial court concluded, that the WMS Federal Action "was a mutually agreed upon and coordinated effort between [the Defendant] and

[MPTN]" that "was directly aimed at stopping the collection proceedings ..." Id. As noted above, the Defendant agreed not to pay any taxes to the Town in exchange for MPTN agreeing to indemnify the Defendant for all such taxes and related costs. After the Town first issued a tax bill to the Defendant, but prior to the commencement of this proceeding, MPTN expressly rejected the idea of instituting a separate federal action to enjoin the Town from taxing the Defendant. Pl. Ex. A, A46. MPTN only initiated the WMS Federal Action after the Town commenced this action, and did so with the Defendant's express cooperation and agreement. Upon receiving the complaint, the Defendant told MPTN that it intended to pay the Town for the unpaid taxes at issue in this proceeding unless MPTN agreed to indemnify the Defendant, to which MPTN quickly agreed. Id., A52, A64. MPTN then filed the WMS Federal Action seeking to enjoin the Town from prosecuting this action, and the Defendant (represented by the same attorney that represented MPTN in the WMS Federal Action) moved to stay this proceeding, arguing that the WMS Federal Action would control the outcome of this case.

Finally, the Defendant's Motion to Stay makes abundantly clear that, contrary to the Appellate Court's conclusion, the WMS Federal Action did result "in a final determination of the rights and obligations of the parties relative to the claimed delinquent tax." Town of Ledyard v. WMS Gaming, Inc., 192 Conn. App. at 845. The Defendant expressly and repeatedly argued as much in its Motion to Stay. Mem. in Support of Mot. to Stay, p. 10 (WMS Federal Action would "determine the rights of all the parties in this case."); id. at p. 1 (issue decided in WMS Federal Action "will be determinative of the issues presented in this case"); id. at p. 9 ("sole issue involved in this case ... will be heard and resolved in both the AC Coin and WMS Federal Actions"); Mot. to Stay (Dkt. No. 106.00), p. 1 (WMS Federal

Action "will be determinative of this case" and "control the outcome of this dispute"). Thus, the trial court was correct in concluding that the Town incurred attorney's fees in the WMS Federal Action as "a result of and directly related to" this proceeding. The Appellate Court's conclusion to the contrary must be reversed.[7]

D. The Appellate Court Erred in Concluding that, as a Matter of Law, the Town Could Not Recover Any of Its Attorney's Fees from the WMS Federal Action.

As discussed above, the Appellate Court adopted an overly restrictive interpretation of § 12-161a that is inconsistent with the words actually used in the statute. In addition, the Appellate Court's rationale for concluding that the Town could not recover its attorney's fees from the WMS Federal Action was based on a failure to appreciate the extent to which the Defendant and MPTN worked in concert to bring about the WMS Federal Action in order to stop the Town from prosecuting this case, as well as a misapplication of cases interpreting other statutory provisions allowing the recovery of attorney's fees.

First, the Appellate Court stated that its conclusion was supported by the fact that, in the Consolidated Federal Action, the Second Circuit concluded that MPTN had standing to sue because, apart from any monetary interest in challenging the Town's right to tax the

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[7] The Defendant's summary judgment motion argued only that, as a matter of statutory interpretation, the Town could not recover any of its attorney's fees incurred in a separate action. The Defendant did not submit any affidavits or other evidence in support of its motion, did not object to or oppose the evidence submitted in support of the Town's motion, and did not even argue that the Town's attorney's fees from the WMS Federal Action were not caused by this action. Because the Defendant failed to meet its summary judgment burden to establish the absence of a material fact, at a minimum, the Town is entitled to a hearing on that issue. See Grenier v. Comm'r of Transportation, 306 Conn. 523, 558 (2012) ("[T]he issue of proximate causation is ordinarily a question of fact for the trier.... It becomes a conclusion of law only when the mind of a fair and reasonable man could reach only one conclusion; if there is room for a reasonable disagreement, the question is one to be determined by the trier as a matter of fact.").

Defendant, MPTN had "an interest in protecting tribal self-government." Town of Ledyard v. WMS Gaming, Inc., 192 Conn. App. at 846. The Appellate Court also relied on the Second Circuit's conclusion that MPTN's claims were not barred by the Tax Injunction Act ("TIA"), 28 U.S.C. § 1341, which generally prohibits federal courts from enjoining state tax collection actions, because an exception to the TIA "permit[s] Indian tribes to vindicate interests protected by federal legislation and federal programs." Id. Based on those statements, the Appellate Court concluded that the WMS Federal Action was only about MPTN protecting its own sovereign interests, rather than the Defendant's tax liability, and that "the attorney's fees in the federal action can hardly be viewed as directly related to the tax delinquency proceeding involving the defendant if they would have been incurred regardless of whether that proceeding had been initiated." Id. The Appellate Court's conclusion misunderstands the significance of the standing and TIA issues decided by the Second Circuit, and overlooks that the WMS Federal Action was brought as a direct result of the Defendant seeking the assistance of MPTN.

The Second Circuit's conclusion that MPTN had standing to sue and that its action was not barred by the TIA does not mean that the WMS Federal Action was not a result of and directly related to this proceeding. The Second Circuit's standing and TIA inquiries did not assess what caused MPTN to bring the WMS Federal Action or whether MPTN's ultimate motive was to protect its vendors from taxation. That MPTN alleged a colorable claim of injury to its tribal sovereignty sufficient to satisfy Article III's standing requirements does not negate the fact that MPTN's ultimate motivation was to protect its vendors from taxation. See Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 225-26 (1974) ("[T]he essence of standing ...'is not a question of motivation but of possession of

the requisite . . . interest that is, or is threatened to be, injured by the unconstitutional conduct.'" (quoting Doremus v. Board of Education, 342 U.S. 429, 435 (1952)). Similarly, the Second Circuit's conclusion that MPTN's lawsuit was allowed under the "tribal exception" to the TIA only meant that MPTN claimed that the tax "conflicts with the federal measures enacted for the Tribe's protection." Mashantucket Pequot Tribe v. Town of Ledyard, 722 F.3d at 465. Neither of these conclusions mean that the attorney's fees incurred by the Town in the WMS Federal Lawsuit were not as a result of and directly related to this tax collection proceeding.

In fact, MPTN expressly argued in the Second Circuit that its purpose in bringing the federal lawsuit was to redress the alleged economic injury caused by the Town's commencement of this collection action. Specifically, MPTN argued that it suffered a "direct economic injury" because its indemnification agreement required MPTN "to pay any taxes, as well as costs incurred by the Vendors in this litigation **and in the related state court litigation** brought by the Town." Br. for MPTN, p. 28-29, Mashantucket Pequot Tribe v. Town of Ledyard, Nos. 12-1727, 12-1735, 2012 WL 5894271 (2d Cir. Nov. 8, 2012) (emphasis added). MPTN went on to argue that it had standing because "[t]he Town and State's enforcement actions ... **caused this injury** ...." Id., p. 32 (emphasis added). Thus, far from demonstrating that the WMS Federal Action had nothing to do with this proceeding, MPTN's own arguments make clear that its ultimate goal was to prevent the Town collecting taxes from the Defendant.

In addition, the Appellate Court also misunderstood the significance of Superior Court decisions involving General Statutes § 12-193,[8] pursuant to which a municipality is entitled to recover attorney's fees incurred "as a result of any foreclosure action brought pursuant to section 12-181 or 12-182 and directly related thereto ...." The Appellate Court cited five cases interpreting § 12-193, four of which denied requests for attorney's fees incurred either in defense of counterclaims or in separate but allegedly "related" proceedings, and one that awarded attorney's fees incurred in defense of counterclaims in a tax foreclosure proceeding. Town of Ledyard v. WMS Gaming, Inc., 192 Conn. App. at 847-48 & n.5. The Appellate Court concluded that these decisions supported its restrictive interpretation of § 12-161a, and, in particular, that the decision awarding attorney's fees for defending a counterclaim supported the Appellate Court's interpretation "because the related attorney's fees were incurred in the same action as the foreclosure." Id. at 848 n.5. A close reading of the cases cited by the Appellate Court demonstrates that those cases actually support the Town's position in this case.

Specifically, the cases cited by the Appellate Court demonstrate that, to be entitled to attorney's fees, the municipality must demonstrate (as the Town did in this case) that the fees were incurred as a result of the collection proceeding, not just the municipality's efforts to collect the tax. In all of the cases cited by the Appellate Court in which the courts refused to award attorney's fees, the fees in question were not incurred to advance the pursuit of the foreclosure proceeding in particular, but instead related to the municipality's tax

[8] General Statutes § 12-193 provides in relevant part: "Court costs, reasonable appraiser's fees, and reasonable attorney's fees incurred by a municipality as a result of any foreclosure action brought pursuant to section 12-181 or 12-182 and directly related thereto shall be taxed in any such proceeding against any person or persons having title to any property so foreclosed and may be collected by the municipality once a foreclosure action has been brought pursuant to section 12-181 or 12-182."

collection efforts more generally. Thus, in Groton v. Groton, 2011 WL 1470809, at *4 (Conn. Super. Mar. 25, 2011), where the municipality commenced the action in 2008 but sought "legal fees and costs starting in 2003, when work commenced on the collection of the back taxes and other foreclosure matters," the court limited the award of attorney's fees to those incurred from the date that the foreclosure action commenced. Similarly, in Milford Tax LLC v. Paradigm Milford LLC, 2015 WL 3875386, at *1, 4 (Conn. Super. May 28, 2015), the court refused to award attorney's fees incurred in a bankruptcy proceeding that was commenced 10 years before the tax foreclosure proceeding at issue. In White Sands Beach Ass'n, Inc. v. Bombaci, 2009 WL 1622788, at *1 (Conn. Super. May 12, 2009), the court refused a request for attorney's fees related to the defense of a counterclaim, because the counterclaim did not contest the validity of the tax lien at issue, but instead "sought reimbursement for taxes **previously paid** to the [municipality]." (Emphasis added).[9] In contrast, the court in Town of Monroe v. Mandanici, 1995 WL 107185, at *2 (Conn. Super. March 2, 1995), awarded the municipality attorney's fees incurred in defense of a set-off and counterclaim that the defendant alleged "constituted a defense **to the foreclosure action**." (Emphasis added). Thus, contrary to the Appellate Court's conclusion that § 12-161a only permits the recovery of attorney's fees "incurred in the prosecution of the collection action itself," Town of Ledyard v. WMS Gaming, Inc., 192 Conn. App. at 845, these cases support the Town's position that it is entitled to attorney's fees incurred as a result of (i.e., proximately caused by) the collection action.

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[9] The last case relied on by the Appellate Court, Town of Redding v. Elfire, LLC, 2004 WL 3090656, at *9 (Conn. Super. Dec. 1, 2004), in which the court simply declined to award attorney's fees incurred in a separate quiet title action brought by the taxpayer without explaining the nature of that action, shines no light on the proper interpretation of § 12-161a.

The Appellate Court was further wrong in concluding that its interpretation is supported by what it perceived to be a distinction between § 12-161a and General Statutes § 49-7,[10] which validates agreements providing for payment of attorney's fees in private debt collection and foreclosure proceedings. The Appellate Court reached that conclusion without addressing significant aspects of the legislative history of § 12-161a and similar statutes. That legislative history demonstrates that, to the extent § 49-7 and the cases applying it are relevant at all, they further support the Town's position in this case.

Section 49-7 validates agreements in notes and mortgages providing for payment of attorney's fees incurred by a creditor in collection and foreclosure proceedings, as well as in "protecting or sustaining the lien of the mortgage ...." Applying that provision in Mechanics Savings Bank v. Tucker, 178 Conn. 640, 647-48 (1979), this Court held that, where a note and mortgage obligated the debtor to pay attorney's fees incurred "in protecting this mortgage as a first lien on said premises for sustaining the lien thereof," the trial court properly awarded the creditor attorney's fees incurred in bankruptcy and antitrust proceedings brought by the debtor "to negate [his] obligations under the note and mortgage." Relying on § 49-7 and Tucker, the Appellate Court determined that, because § 12-161a does not expressly provide that municipalities may recover attorney's fees incurred in "actions collateral to collection proceedings," the legislature used "more

[10] 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."

restrictive wording" in order "to bar such a possibility." Town of Ledyard v. WMS Gaming, Inc., 192 Conn. App. at 849.

As an initial matter, the distinction between § 12-161a and § 49-7 is of slight (if any) relevance to this case. The Town is not attempting to recover all attorney's fees incurred in collecting back taxes or protecting a lien, but instead is only seeking attorney's fees that it needed to incur in order to prevail in this collection proceeding. While the distinction identified by the Appellate Court may be relevant to municipalities seeking to protect a tax lien before the institution of a foreclosure action (as in the case of Milford Tax LLC, discussed above), that is not the issue in this case. Here, there is no question that the commencement of this collection proceeding resulted in the Town incurring attorney's fees to defend the WMS Federal Action, so the distinction identified by the Appellate Court simply is not relevant.

Moreover, a close examination of the legislative history suggests that the legislature intended § 12-161a to grant municipalities the same right to recover attorney's fees as creditors in private debt collection actions. The language that now appears in § 49-7 has been part of the General Statutes since at least 1949. General Statutes (1949 Rev.) § 7193. As this Court noted in City of Danbury v. Dana Investment Corp., 249 Conn. 1, 27-28 (1999), the General Assembly first amended § 12-193 to provide municipalities the right to recover attorney's fees in tax foreclosure cases in 1975. Public Acts 1975, No. 75-73. The legislature's purpose in passing P.A. 75-73 was "to give municipalities the same rights to costs and fees as were afforded to private parties in foreclosure cases." Id. As Representative Tulisano stated in support of the amendment, "at any other foreclosure, plaintiffs have the ability to collect such costs," and the purpose of the legislation was to

ensure "that municipalities be given the same rights" as private parties. 18 H.R. Proc., Pt. 3, 1975 Sess., p. 1347, remarks of Representative Richard D. Tulisano. In 1982, the General Assembly amended § 12-161a to provide municipalities the same right to recover attorney's fees in tax collection proceedings, and did so using language that is materially indistinguishable from § 12-193. Given that Connecticut law did not limit the right of private creditors to collect attorney's fees solely to those fees incurred in the foreclosure or collection proceeding itself, see Mechanics Savings Bank v. Tucker, 178 Conn. at 647-48, and that the express purpose of P.A. 75-73 was to put municipalities on the same footing as private creditors, it is unlikely that the legislature intended § 12-161a to mean that "only litigation fees incurred in the prosecution of the collection action itself would qualify as attorney's fees directly related to the collection proceeding ...." Town of Ledyard v. WMS Gaming, Inc., 192 Conn. App. at 845. Thus, to the extent § 49-7 is relevant at all to this case, it supports the Town's position that it was entitled to attorney's fees incurred in the WMS Federal Action.

In sum, General Statutes § 12-161a's use of the phrase "as a result of and directly related to" connotes a proximate cause standard for determining the attorney's fees that may be recovered by a municipality under the statute. The Appellate Court's conclusion to the contrary was error and must be reversed.[11]

[11] The Appellate Court's decision directs the trial court to grant the defendant's motion for summary judgment. However, even under the Appellate Court's own analysis, the municipality must be entitled to recover some of its attorney's fees under General Statutes § 12-161a. The parties disagreed below about the scope of the attorney's fees that could be recovered, but not about the right to an attorney's fees award. The Appellate Court's direction to the contrary is, in and of itself, error.

CONCLUSION

For any and all of the reasons set forth herein, the Appellate Court's decision must be reversed.

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CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2, that on March 13, 2020:

(1) the electronically submitted brief and appendix has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and

(2) the electronically submitted brief and appendix and the filed paper brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and

(3) a copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the writ of error, in compliance with Section 62-7; and

(4) the brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and

(5) the brief complies with all provisions of this rule.

Proloy K. Das, Esq.

CERTIFICATION OF FORMAT AND SERVICE

I hereby certify that a copy of the Plaintiff's Appellant Brief and Separately Bound Appendix were sent via electronic mail and mailed, first-class postage-prepaid, this 13th day of March, 2020 to:

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