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**Hartt v. Schwartz, No. CV 920331912S, 1997 WL 625467, at *1
(Conn. Super. Ct. Sept. 30, 1997)**

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trial court manifestly abused its authority. The court reasoned that O'Neill had a full and fair opportunity to oppose the water court's jurisdiction in O'Neill I, and on appeal of that case, but failed to do so. The court further ruled that the subject claim was substantially vexatious, and therefore, the State Engineer was entitled to attorney's fees for defending the appeal.

David A. Laird

CONNECTICUT

Hartt v. Schwartz, No. CV 920331912S, 1997 WL 625467, at *1 (Conn. Super. Ct. Sept. 30, 1997) (holding that a conveyance of property, which housed a dry cleaning operation from 1967 to 1978, was subject to Connecticut's Hazardous Waste Transfer Act).

In 1986, the Hartts purchased property from Schwartz. The property housed a dry cleaning operation from 1967 to 1978. The Connecticut Department of Environmental Protection ("DEP") then notified the Hartts that contamination from the old dry cleaning operation had migrated off-site. The Hartts were ordered to clean up the waste.

The Hartts sued Schwartz. They claimed Schwartz was responsible for disclosing the condition of the property, according to the Connecticut Hazardous Waste Transfer Act. Schwartz moved for summary judgment, arguing that the property transfer was only subject to the 1985 version and not the 1987 amendment to the Act. The summary judgment motion was examined and ruled on by the superior court.

The court held that "the 1987 amendment should be applied retroactively and that summary judgment should therefore not be granted." Additionally, it was noted that the Connecticut Environmental Protection Act ("CEPA") "appears to contemplate the possibility of a suit by a private citizen against an entity other than the state for the consequences of past pollution." Therefore, the Hartts could bring suit against Schwartz for past pollution.

The court perused the language of the amendment, as well as legislative intent and history in reaching its decision. It observed that the amendment clearly directed transferors of property to include all operations since 1967 which may have generated waste, and that dry cleaning operations were plainly included in the amendment. Likewise, the legislative intent, as asserted in the state's code, indicated that there was a "public interest to provide all persons with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution" The court pointed out that the Director of the DEP Hazardous Waste Unit testified at legislative hearings that the amendment was meant to clarify a loophole, ensuring that dry cleaning operations were included within the Act's scope. The testimony also indicated that the inclusion of the May 1967 date was designed to

clarify existing law, not to change a substantive change law.

Based on these investigations, the court found that public policy required that the amendment operate retroactively. Thus, Schwartz' conveyance was subject to the Transfer Act and summary judgment was denied.

In addition, the court noted that the language of CEPA only precluded an action against the *state* for pollution that occurred prior to a conveyance of property. Thus, it followed that an action against an *individual* or *other entity* based on prior contamination was not prohibited.

Stephanie Pickens

GEORGIA

Givens v. Ichauway, Inc., 493 S.E.2d 148 (Ga. 1997) (holding that the appellant failed to present admissible evidence demonstrating navigability and, therefore, prosecution for trespassing was appropriate).

Ichauway, Inc. sued to enjoin Givens from floating down Ichauwaynochaway Creek through its property. The trial court granted summary judgment in favor of Ichauway. On appeal, Givens asserted he had presented sufficient evidence showing a genuine issue of material fact as to the stream's navigability. The Supreme Court of Georgia held that Givens failed to establish the creek's navigability and that Ichauway, therefore, had the right to exclude the public—a right creating legally tenable grounds to charge Givens with criminal trespass.

In Georgia, the statutory definition of navigable creek is one that is "capable of transporting boats loaded with freight in the regular course of trade" The mere rafting of timber or the transporting of wood in small boats shall not make a stream navigable." Although Givens attempted to demonstrate the creek's navigability in a number of different ways (among others, Givens built a raft of styrofoam and wood, loaded it with a goat, a bale of cotton, and two passengers, and floated it through Ichauway's leasehold), the court rejected his arguments stating that he failed to present evidence showing the creek's navigability under the state's statutory definition.

Alternatively, Givens argued that an 1894 Georgia case, *Young v. Harrison*, defined three different types of rivers in the state: (1) those which are wholly private property; (2) those which are "private property subject to the servitude of the public interest, by a passage upon them"; and (3) those subject to the ebb and flow of the tide. Givens contended that the *Young* court's language supported a common law right of passage as an alternative to the state's statutory definition. The court stated that the legislature had codified the *Young* decision in the statutory definition of a navigable creek and that a court could not interpret the language of *Young* to extend a right of passage to streams not found to be navigable under the statute.