DOCKET HHD CV 10 5034498S	:	SUPERIOR COURT
METROPOLITAN DISTRICT COMMISSION	:	JUDICIAL DISTRICT OF HARTFORD
VS.	:	AT HARTFORD
CONNECTICUT RESOURCES RECOVERY AUTHORITY	:	OCTOBER 1, 2013

MEMORANDUM OF DECISION RE: PLAINTIFF'S APPLICATION FOR A PREJUDGMENT REMEDY AND DEFENDANT'S MOTION TO DISMISS

Before the court is the plaintiff's application for a prejudgment remedy pursuant to General Statutes § 52–422 as well as the defendant's motion to dismiss the plaintiff's application. This case has a complex and extensive procedural history, the following of which is relevant to the resolution of this motion. The plaintiff, Metropolitan District Commission (MDC), commenced this action to compel arbitration by service of process on the defendant, Connecticut Resources Recovery Authority (CRRA) on December 1, 2009. In the complaint,[1] the plaintiff alleged the following facts. On October 4, 1984, the plaintiff and the defendant entered into a contract (the contract), which contained an agreement to arbitrate. Article VII of the contract provides, in relevant part: "Each party shall give written notice to the other of the existence and nature of any dispute in sufficient detail. If, within fifteen (15) days, the dispute is not resolved to the satisfaction of both parties, then either

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[1] The complaint is more properly characterized as a motion or application to compel arbitration. This is discussed in further detail *infra* at note 4.

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party may initiate arbitration by appointing a person to serve as one of the arbitrators and so advising the other party in writing. Within ten (10) days thereafter, the other party shall by written notice appoint a second person as an arbitrator and the two thus appointed shall select a third arbitrator to serve as Chairman of the panel of arbitrators . . . ." On September 21, 2009, the plaintiff served the defendant with a written notice of dispute and on October 7, 2009, the plaintiff served the defendant with formal notice for demand for arbitration. On October 7, 2009, the plaintiff appointed Attorney John F. Droney as its arbitrator and on October 16, 2009, the defendant appointed Attorney Richard W. Bowerman as its arbitrator. On October 26, 2009, the parties then mutually selected the Honorable Alan H. Nevas as the neutral arbitrator. On November 23, 2009, after the parties had selected their panel of three arbitrators, the defendant raised the claim that the parties did not agree that the arbitrators would be non-neutral, party-appointed arbitrators, even though there had been an ongoing understanding between the parties that the two separately appointed party arbitrators would be non-neutral and that the third arbitrator chosen by both parties would be a neutral arbitrator. Based on the foregoing facts, the plaintiff petitioned the court to compel arbitration "in compliance with the contract, which mandates the presence of a two party-appointed, non-neutral arbitrators and one neutral arbitrator."

In its answer, the defendant raised a special defense, alleging that the rules of the American Arbitration Association (the association) would apply to the selection of party-appointed arbitrators and, therefore, that in accordance with these rules, the

arbitrators would have to be impartial and independent. The defendant also asserted two counterclaims. In the first count, the defendant echoed the allegations that the rules of the association would apply to the selection of the party-appointed arbitrators. In the second count, the defendant alleged that Attorney Droney's appointment as an arbitrator would deprive the defendant of a fair arbitration proceeding, given Attorney Droney's relationship with the plaintiff.

On March 9, 2010, the court, *Scholl J.*, heard arguments and received exhibits in connection with the plaintiff's complaint. On April 28, 2010, the court entered judgment in favor of the plaintiff, finding that the language of the contract was clear and unambiguous in permitting each party to appoint a non-neutral arbitrator. *Metropolitan District Commission* v. *Connecticut Resources Recovery Authority*, Superior Court, judicial district of Hartford, Docket No. CV-10-5034498-S (April 28, 2010, *Scholl, J.*). The defendant appealed Judge Scholl's decision. The Appellate Court affirmed and reversed the decision in part. Agreeing with the trial court's interpretation of the contract's language, the Appellate Court found that the contract did allow for the parties to appoint a non-neutral arbitrator; however, it found that the trial court abused its discretion by failing to conduct an evidentiary hearing to ascertain whether Attorney Droney's appointment as arbitrator would thwart his ability to carry out his ethical duties and to participate in the arbitration process in a good faith manner. *Metropolitan District Commission* v. *Connecticut Resources Recovery Authority*, 130 App. 132, 138–46, 22 A.3d 651 (2011).

On remand, this court, *Robaina, J.*, presided over an evidentiary hearing and ultimately found Attorney Droney suitable as an arbitrator and accordingly declined to order disqualification. *Metropolitan District Commission* v. *Connecticut Resources Recovery Authority*, Superior Court, judicial district of Hartford, Docket No. CV-10-5034498-S (August 20, 2012, *Robaina, J.*). The defendant appealed this decision. Attorney Droney subsequently withdrew as an arbitrator and, accordingly, the defendant withdrew its appeal.

On January 30, 2013, the plaintiff in the present case filed a motion to compel arbitration and a memorandum in support thereof. Therein, the plaintiff argued that upon Attorney Droney's resignation, it appointed a new arbitrator and, therefore, that the defendant should be compelled to arbitrate in accordance with the contract and in accordance with Judge Scholl's decision that the plaintiff could appoint a non-neutral arbitrator, which was affirmed in part by the Appellate Court. The defendant filed an objection, wherein it argued inter alia that the plaintiff has failed to comply with the contractual requirements for the appointment of an arbitrator and for filing an amended claim for arbitration, and that court should permit the defendant to obtain a declaratory judgment clarifying the rights of the parties on the issues presented in the defendant's declaratory judgment action.[2] See *Connecticut Resources Recovery*

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[2] On January 28, 2013, the defendant in this action commenced a separate and distinct action, namely, a declaratory judgment action based on the events that transpired following Attorney Droney's resignation. See *Connecticut Resources Recovery Authority* v. *Metropolitan District Commission*, Superior Court, judicial district of Hartford, Docket No. CV-13-6038918-S. In that action, the defendant sought a declaratory ruling that the contract required the parties to "(a) give written

Authority v. *Metropolitan District Commission*, Superior Court, judicial district of Hartford, Docket No. CV-13-6038918-S. The court, *Robaina J.*, sustained the defendant's objection. The defendant's action for declaratory judgment subsequently was withdrawn.

On February 26, 2013, the plaintiff in the present action filed an application for prejudgment remedy pursuant to General Statutes § 52–422.[3] In its application and accompanying memorandum of law, the plaintiff seeks to attach and/or garnish the defendant's assets based on the claim that there is probable cause that a monetary award will be entered in the plaintiff's favor when the dispute over liability for various employment related costs is arbitrated. On April 2, 2013, the defendant filed a motion to dismiss the application, which is presently before this court. In the accompanying memorandum of law, the defendant argues first that the court does not

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notice to CRRA of MDC's claims for payment of: (I) all sums due and owing to MDC under the contract; (ii) money damages; (iii) damages; (iv) interest; and (v) attorney's fees; and (b) to allow 15 days for the parties to resolve those claims before seeking the contest of the arbitrators to submit its new claims." The defendant also sought a declaratory ruling that MDC was obligated by the contract to comply with the association's rules in filling a vacancy resulting from the resignation of Attorney Droney. On June 27, 2013, the defendant in the present case withdrew its action for declaratory judgment.

[3] Section 52–422 provides: "At any time before an award is rendered pursuant to an arbitration under this chapter, the superior court for the judicial district in which one of the parties resides or, in a controversy concerning land, for the judicial district in which the land is situated or, when said court is not in session, any judge thereof, upon application of any party to the arbitration, may make forthwith such order or decree, issue such process and direct such proceedings as may be necessary to protect the rights of the parties pending the rendering of the award and to secure the satisfaction thereof when rendered and confirmed."

have jurisdiction to entertain the plaintiff's application because there is already a final judgment on the plaintiff's complaint, second that the court does not have jurisdiction to entertain the plaintiff's application because the complaint does not seek money damages, and finally that the court cannot grant a prejudgment remedy against a quasi-public agency such as the defendant. On April 11, 2013, the plaintiff filed an objection to the defendant's motion, wherein it argues first that the court has jurisdiction over the plaintiff's pending application and second that the defendant is subject to an attachment regardless of its purported status as a quasi-public agency.

DISCUSSION

"Pursuant to the rules of practice, a motion to dismiss is the appropriate motion for raising a lack of subject matter jurisdiction." *St. George* v. *Gordon*, 264 Conn. 538, 545, 825 A.2d 90 (2003). "In general, a motion to dismiss is the proper procedural vehicle to raise a claim that the court lacks subject matter jurisdiction over the action." *Bellman* v. *West Hartford*, 96 Conn. App. 387, 392, 900 A.2d 82 (2006).

"The allegations of a complaint limit the issues to be decided on the trial of a case and are calculated to prevent surprise to opposing parties. . . . It is fundamental in our law that the right of a plaintiff to recover is limited to the allegations of his complaint. . . . A plaintiff may not allege one cause of action and recover upon another. Facts found but not averred cannot be made the basis for a recovery." (Citations omitted; internal quotation marks omitted.) *Lundberg* v. *Kovacs*, 172 Conn. 229, 232–33, 374 A.2d 201 (1977); *Savin* v. *National Personnel*

Consultants, Inc., 4 Conn. App. 563, 566–67, 495 A.2d 1109 (1985). "It is fundamental that a judgment or decree cannot be rendered if pleadings on which to found it are lacking." (Internal quotation marks omitted.) *Johnson's Nurseries, Inc.* v. *Ratick*, 32 Conn. Sup. 553, 556, 343 A.2d 647 (1975).

At the outset, the scope of relief sought in the present case must be addressed inasmuch as it affects the resolution of the defendant's motion to dismiss. From the complaint,[4] the answer, and Judge Scholl's decision on the complaint, it can be gleaned that, in the present action, the main issue over which the parties argued was whether a non-neutral arbitrator, specifically Attorney Droney, was an appropriate arbitrator given the terms of the parties' contract. The court was called upon to address the threshold issue of whether a specific arbitrator could be appointed—an issue which is entirely distinct from the issue of whether the parties must be called to arbitrate their underlying dispute over employment related costs at all. See, e.g., *Hartford Steam Boiler Inspection & Ins. Co.* v. *Industrial Risk Insurers*, Superior Court, judicial district of Hartford-New Britain, Docket No. CV-94-705105-S (September 21, 1994, *Corradino, J.*) (12 Conn. L. Rptr. 464, 468) ("[I]n addition to

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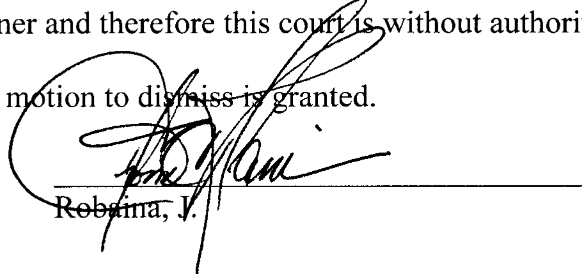
[4] While the plaintiff entitled the filing a "complaint," the substance of the allegations and prayer for relief suggest that the filing is more properly characterized as a motion or application to compel arbitration pursuant to General Statutes § 52–410. Under § 52–410, "a party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with arbitration can apply to the trial court for an order directing the parties to proceed with the arbitration in compliance with their agreement." (Internal quotation marks omitted.) *Success Centers, Inc.* v. *Huntington Learning Centers, Inc.*, 223 Conn. 761, 768, 613 A.2d 1320 (1992).

cases where there are claims of overt acts of bias and collusion on the arbitrator's part, in the narrow case where it is claimed arbitrators were not chosen in the specific manner agreed to by the parties, the resolution of that claim is a jurisdictional one which the courts should decide before the arbitrators hear the case on the merits."). Once the court deemed Attorney Droney an appropriate arbitrator under the terms of the contract, Attorney Droney resigned and this court was once again called upon to determine the suitability of the newly selected arbitrator. In particular, once the plaintiff appointed a new arbitrator, it filed a motion to compel arbitration in accordance with the contract and in accordance with Judge Scholl's decision that the plaintiff could appoint a non-neutral arbitrator. This court, *Robaina J.*, however, sustained the defendant's objection to the plaintiff's motion to compel and, in effect, denied the only relief that the plaintiff sought in the present action. It therefore constitutes a final judgment on the plaintiff's complaint. *Success Centers, Inc.* v. *Huntington Learning Centers, Inc.*, 223 Conn. 761, 766–67 n.8, 613 A.2d 1320 (1992) ("Because an application for an order to compel arbitration is a separate and distinct proceeding, an order directing a party to arbitrate terminates that proceeding and is deemed a final judgment and appealable. For the same reason, *an order refusing to direct arbitration would also seem final and appealable*." [Emphasis added]). In the same action, the plaintiff nevertheless proceeded to file the instant application for an order to secure a prejudgment remedy. For the reasons that follow, the plaintiff's application for a prejudgment remedy does not come before this court in a proper manner and therefore this court is without authority to rule on its merits.

First, the court at this time has ruled on the specific relief requested by the plaintiff. The only relief requested in the plaintiff's complaint and subsequent motion to compel was for this court to compel the defendant to arbitrate with the non-neutral arbitrator selected by the plaintiff. The court unequivocally has ruled on the plaintiff's plea for equitable relief. Second, the relief requested in the application for prejudgment remedy relates specifically to the dispute over employment related costs that is subject to arbitration and does not in any way relate to the specific relief in requested in the present case, namely, for the court to compel arbitration with a specific non-neutral arbitrator. Indeed "[t]he purpose of the prejudgment remedy of attachment is security for the satisfaction of the plaintiff's judgment;" (Internal quotation marks omitted.) *Lewis Truck & Trailer, Inc.* v. *Jandreau*, 11 Conn. App. 168, 170, 526 A.2d 532 (1987); and this court is hard pressed to ascertain how the plaintiff's plea for an attachment of the defendant's assets would serve to secure the plaintiff's interest in selecting a specific, non-neutral arbitrator. Stated simply, the prejudgment remedy relief requested simply is not a logical extension of the relief requested in the present case. Given the fundamental tenet that a judgment or decree cannot be rendered if pleadings on which to found it are lacking, this court is without authority to rule on the merits of the plaintiff's prejudgment remedy application. For these reasons, the court is unable to reach the merits of the plaintiff's application for prejudgment remedy.

CONCLUSION

Based on the foregoing, the plaintiff's application does not come before this court in a procedurally proper manner and therefore this court is without authority to rule on its merits. The defendant's motion to dismiss is granted.



Robaina, J.

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Docket Number HHD CV 10 5034485

Case Name MDC vs. Ct. Resources Recovery

Memorandum of Decision dated 10/1/13

File Sealed: yes_______ no ✓

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HHD-CV10-5034498-S METROPOLITAN DISTRIC v. CONN RESOURCES RECOV

Prefix: WAG **Case Type:** M40 **File Date:** 12/04/2009 **Return Date:** 01/05/2010

Case Detail Notices History Scheduled Court Dates E-Services Login Screen Section Help

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Case Information

Case Type: M40 - MISC - ARBITRATION
Court Location: HARTFORD
List Type: REMOVED FROM TRIAL LIST (00)
Trial List Claim:
Referral Judge or Magistrate:
Last Action Date: 07/24/2013 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date: 08/20/2012
Disposition: JUDGMENT WITHOUT TRIAL-GENERAL
Judge or Magistrate: HON ANTONIO ROBAINA

Party & Appearance Information

Party			No Fee Party
P-01	**METROPOLITAN DISTRICT COMMISSION**		
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	Attorney: CLENDENEN & SHEA LLC (009775) 400 ORANGE STREET NEW HAVEN, CT 06511	File Date: 01/19/2010	
D-50	**CONNECTICUT RESOURCES RECOVERY AUTHORITY**		
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	Attorney: KAINEN ESCALERA & MCHALE PC (418003) 21 OAK STREET HARTFORD, CT 06106	File Date: 12/16/2009	
	Attorney: HALLORAN & SAGE LLP (026105) ONE GOODWIN SQUARE 225 ASYLUM STREET HARTFORD, CT 06103	File Date: 05/09/2013	
D-51	**RICHARD W BOWERMAN NON-PARTY**		
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D-96	**APPELLATE COURT #32418** Non-Appearing		
D-97	**APPELLATE COURT DOCKET #35000** Non-Appearing		

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