



# House of Representatives

General Assembly

**File No. 529**

January Session, 2007

Substitute House Bill No. 7236

*House of Representatives, April 18, 2007*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING ATTORNEY'S FEES IN AN ACTION OF FORECLOSURE OR UPON A BOND SUBSTITUTED FOR A MECHANIC'S LIEN.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 52-249 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2007*):

4 (a) The plaintiff in any action of foreclosure of a mortgage or lien,  
5 upon obtaining a judgment of foreclosure, [when there has been a  
6 hearing as to the form of judgment or the limitation of time for  
7 redemption, shall be allowed the same costs, including a reasonable  
8 attorney's fee, as if there had been a hearing on an issue of fact. The  
9 same costs and fees shall be recoverable as part of the judgment] shall  
10 be allowed costs and reasonable attorney's fees. A plaintiff who  
11 prevails in any action upon a bond which has been substituted for a  
12 mechanic's lien shall be allowed costs and reasonable attorney's fees.

|   |                        |           |
|---|------------------------|-----------|
| This act shall take effect as follows and shall amend the following sections: |                        |           |
| Section 1   | <i>October 1, 2007</i> | 52-249(a) |

**JUD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill provides for the recovery of costs and reasonable attorney's fees in certain civil suits between private parties. There is no related fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sHB 7236*****AN ACT CONCERNING ATTORNEY'S FEES IN AN ACTION OF FORECLOSURE OR UPON A BOND SUBSTITUTED FOR A MECHANIC'S LIEN.*****SUMMARY:**

This bill specifies that a plaintiff who prevails in any action upon a bond which has been substituted for a mechanic's lien must be allowed costs and reasonable attorney's fees (see BACKGROUND).

It also allows the plaintiff in any action to foreclose a mortgage or lien to be awarded costs and reasonable attorney's fees when he obtains a judgment, instead of only when there has been a hearing as to the form of judgment or the limitation on the time to redeem the mortgage (see BACKGROUND).

EFFECTIVE DATE: October 1, 2007

**BACKGROUND*****Related Law and Case - Substitution of a Bond***

The mechanic's lien statute allows for the substitution of a bond for a lien (CGS § 49-35b). A recent Superior Court decision concluded that the statutes do not require that costs and attorney's fees be allowed when a bond is substituted for a lien and the claimant succeeds with a claim on the bond (*A & A Mason, LLC v. Montagno Construction, Inc.* No. CV-01-0809850S, Judicial District of Hartford, Judge Trial Referee Robert Satter, May 10, 2005).

The court inferred that, in a foreclosure action, the phrase "the form of judgment" used in the law the bill amends relates to either a strict foreclosure or a foreclosure by sale. Thus, the court concluded that, in

an action on a bond there is no hearing as to the form of the judgment or the time for redemption.

### **Attorney's Fees and Mortgage Foreclosures**

The law in Connecticut is that "attorney's fees are not allowed to the prevailing party as an element of damage unless recovery is allowed by statute or contract" (*A. Secondino & Son, Inc. v. LoRicco*, 19 Conn.App. 8, 15 (1989)).

Normally, attorney's fees are allowed in a mortgage foreclosure action because they are provided for in the mortgage note and deed (*Connecticut National Bank v. N.E. Owen II, Inc.*, 22 Conn. App. 468, 476 (1990)).

### **Related Laws - Fees of Parties in Civil Actions**

By law, the prevailing party in any such civil action must receive, by way of indemnity, the following sums (1) for all proceedings before trial, \$50; and (2) for the trial of an issue of law or fact, \$75. But if more than one issue of fact is tried at one time, only one trial fee is allowed (CGS § 52-257; see also CGS § 52-259).

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 0 (04/02/2007)