

## Rasimas v. Kemper Indep. Ins. Co.

Superior Court of Connecticut, Judicial District of Stamford-Norwalk, Complex Litigation Docket At Stamford

November 18, 2021, Decided; November 18, 2021, Filed

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### Reporter

2021 Conn. Super. LEXIS 1943 \*; 2021 WL 5911550

Kathy Rasimas v. Kemper Independence Insurance Co.  
et al.

**Notice:** THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

### Core Terms

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alleges, exemplary damages, quotation, marks, fiduciary duty, breach of fiduciary duty, motion to strike, claim for breach, punitive, fiduciary relationship, legal sufficiency, damages, confidence, fiduciary, coverage

**Judges:** [\*1] Sheila A. Ozalis, J.

**Opinion by:** Sheila A. Ozalis

### Opinion

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*MEMORANDUM OF DECISION RE MOTION TO STRIKE (Docket No. 127.00)*

I.

#### FACTUAL AND PROCEDURAL BACKGROUND

The defendants MAC Insurance Services, LLC and Josh J. Maciorowski (hereinafter "defendants") have moved to strike Count Six of the Complaint, which asserts a claim for breach of fiduciary duty, and its corresponding claim for exemplary damages. Defendants contend that plaintiff has failed to sufficiently allege a claim for breach of fiduciary duty and has failed to properly plead a claim for exemplary damages. In its memorandum in opposition, plaintiff contends that she has sufficiently plead both her

breach of fiduciary duty claim and her claim for exemplary damages.

A brief statement of the allegations made in plaintiff's complaint is as follows. Plaintiff alleges that in September 2012, she sought the assistance of defendants in their capacity as insurance brokers to procure homeowners, automobile, and uninsured/underinsured motorist coverage. Plaintiff alleges that on or about October 25, 2019, she was riding as a passenger on her husband's motorcycle when she was injured in an accident. Plaintiff alleges that she exhausted the motor vehicle liability [\*2] policy providing coverage and such policy was inadequate to fully compensate her for her injuries and losses. She also alleges that the automobile insurance policy which defendants procured for her that provided uninsured/underinsured motorist coverage was inadequate to fully compensate her for the same. Plaintiff alleges that defendants had superior skill and knowledge regarding the highly technical and complex insurance policies and the coverage provided therein and that there was a relationship of trust and confidence between her and defendants. Plaintiff alleges that defendants abused her trust and the confidential, special, and fiduciary relationship between them by acting in their own interests and intentionally failing to recommend appropriate levels of uninsured/underinsured motorist coverage to her. Plaintiff alleges a number of acts which comprise this intentional conduct.

II.

#### DISCUSSION

Defendants have moved to strike Count Six of the Complaint, which asserts a claim for breach of fiduciary duty and its corresponding claim for exemplary damages on the grounds that such claims are insufficiently pled.

Under *Practice Book* §10-39(a), "whenever any party wishes to contest: (1) the legal sufficiency of [\*3] the

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allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted; or (2) the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint; or (3) the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof . . ."

"The proper method to challenge the legal sufficiency of a complaint is to make a motion to strike prior to trial." [Gulack v. Gulack, 30 Conn.App. 305, 309, 620 A.2d 181 \(1993\)](#). "It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted." (Internal quotation marks omitted.) [Violano v. Fernandez, 280 Conn. 310, 318, 907 A.2d 1188 \(2006\)](#). "If any facts provable under the express and implied allegations in the [plaintiffs'] complaint support a cause of action . . . the complaint is not vulnerable to a motion to strike." [Bouchard v. People's Bank, 219 Conn. 465, 471, 594 A.2d 1 \(1991\)](#). The court must "construe the complaint in the manner most favorable to sustaining its legal sufficiency." (Internal quotation marks omitted.) [Sullivan v. Lake Compounce Theme Park, Inc., 277 Conn. 113, 117, 889 A.2d 810 \(2006\)](#).

In ruling on a motion to strike, "[t]he role of the trial court [is] to examine the [complaint], construed in favor of the [\*4] plaintiffs, to determine whether the [pleading party has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) [Dodd v. Middlesex Mutual Assurance Co., 242 Conn. 375, 378, 698 A.2d 859 \(1997\)](#). A motion to strike "admits all facts well pleaded; it does not admit legal conclusions or the truth or accuracy of opinions stated in the pleadings." (Emphasis omitted; internal quotation marks omitted.) [Faulkner v. United Technologies Corp., 240 Conn. 576, 588, 693 A.2d 293 \(1997\)](#). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) [Fort Trumbull Conservancy, LLC v. Alves, 262 Conn. 480, 498, 815 A.2d 1188 \(2003\)](#).

The defendants argue in support of their Motion to Strike that to state a claim for breach of fiduciary duty the complaint must contain allegations of fraud, self-dealing or conflict of interest. The defendants argue that the plaintiff alleges only professional negligence and the complaint lacks any allegations that implicate the morality of the defendants. Accordingly, the complaint does not state a cognizable claim for breach of fiduciary duty. The defendants further argue that no fiduciary relationship

exists in the typical ***insurance agent***-client relationship. The plaintiff claims that Connecticut courts have held that the ***insurance agent***-client relationship can, and in [\*5] this case does, create a fiduciary relationship. The plaintiff further argues that where the role of the ***insurance agent*** requires superior knowledge and skill, and where the client relies on the advice and knowledge of the ***insurance agent***, a fiduciary relationship exists.

"A fiduciary or confidential relationship is characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other . . . The superior position of the fiduciary or dominant party affords him great opportunity for abuse of the confidence reposed in him." (Citations omitted.) [Dunham v. Dunham, 204 Conn. 303, 322, 528 A.2d 1123 \(1987\)](#), overruled on other grounds by, [Santopietro v. New Haven, 239 Conn. 207, 213, 682 A.2d 106 \(1996\)](#). "Professional negligence alone, however, does not give rise automatically to a claim for breach of fiduciary duty." [Beverly Hills Concepts, Inc. v. Schatz & Schatz, Ribicoff & Kotkin, 247 Conn. 48, 56, 717 A.2d 724 \(1998\)](#). "Professional negligence implicates a duty of care, while breach of a fiduciary duty implicates a duty of loyalty and honesty." *Id.*, 57. The application of traditional principles of fiduciary duty have not been expressly limited to cases involving only fraud, self-dealing or conflict of interest, though those types of cases are the most common. See [Murphy v. Wakelee, 247 Conn. 396, 400, 721 A.2d 1181 \(1998\)](#).

"[T]he plaintiff . . . [has] the [\*6] burden of establishing four essential elements with respect to [a] claim of breach of fiduciary duty: (1) [t]hat a fiduciary relationship existed which gave rise to . . . a duty of loyalty . . . an obligation . . . to act in the best interests of the plaintiff, and . . . an obligation . . . to act in good faith in any matter relating to the plaintiff; (2) [t]hat the defendant advanced his or her own interests to the detriment of the plaintiff; (3) [t]hat the plaintiff sustained damages; [and] (4) [t]hat the damages were proximately caused by the fiduciary's breach of his or her fiduciary duty." (Emphasis omitted; internal quotation marks omitted.) [Rendahl v. Peluso, 173 Conn.App. 66, 100, 162 A.3d 1 \(2017\)](#).

"[T]o survive a motion to strike framed as a breach of fiduciary duty, a pleader must allege facts which implicate the morality of [the defendant's] conduct." (Internal quotation marks omitted.) [J.S.T. Development Corp. v. Vitrano, Superior Court, judicial district of New Britain, Docket No. CV-03-0521186 \(June 22, 2004, McWeeny, J.\) \(37 Conn. L. Rptr. 590, 2004 Conn. Super. LEXIS](#)

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2136). With respect to the relationship between an **insurance agent** and a client, a number of Superior Court judges have held that "[b]ecause of the increasing complexity of the insurance industry [\*7] and the specialized knowledge required to understand all of its intricacies, the relationship between the **insurance agent** and his client is often a fiduciary one." (Internal quotation marks omitted.) Thompson & Peck v. Reliance Ins. Co., Superior Court, judicial district of New Haven, Docket No. CV-99-0267491, 2005 Conn. Super. LEXIS 1153 (April 28, 2005, Tanzer, J.); Putnam Resources v. Frenkel & Co., Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-92-0123838 (July 20, 1993, Lewis, J.) (9 Conn. L. Rptr. 420, 1993 Conn. Super. LEXIS 1851); see Pitts v. Carabillo, Superior Court, judicial district of Danbury, Docket No. CV-99-0334727, 2000 Conn. Super. LEXIS 1308 (May 22, 2000, Carroll, J.) (denying motion to strike alleging breach of fiduciary duty of insurance broker.); Wyrick v. Stone Agency, Superior Court, judicial district of Hartford, Docket No. CV-05-4014927 (January 18, 2008, Wagner, J.) (44 Conn. L. Rptr. 801, 2008 Conn. Super. LEXIS 114) (finding plaintiffs provided sufficient evidence to show . . . a unique degree of trust and confidence between the parties, one of whom [has] superior knowledge, skill or expertise and is under a duty to represent the interests of the other [internal quotation marks omitted]).

The **insurance agent**-client relationships which give rise to [\*8] a fiduciary duty and those which are merely professional in nature are distinguished by the conduct of the parties. "[W]here the agent holds himself out as a consultant and counselor . . . and is acting as a specialist," and where the client trusts and relies on the agent as a specialist, a fiduciary duty is present. (Internal quotation marks omitted.) Putnam Resources v. Frenkel & Co., Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV-92-0123838, 1993 Conn. Super. LEXIS 1851 (July 20, 1993, Lewis, J.) The Connecticut Supreme Court has specifically refused to define "a fiduciary relationship in precise detail and in such a manner as to exclude new situations, choosing instead to leave the bars down for situations in which there is a justifiable trust confided on one side and a resulting superiority and influence on the other." (Internal quotation marks omitted.) Alaimo v. Royer, 188 Conn. 36, 41, 448 A.2d 207 (1982). "[C]ourts have characterized the issue of whether or not a fiduciary relationship exists between an insured and an insurance broker as a question of fact." Putnam Resources v. Frenkel & Co., supra, 9 Conn. L. Rptr. 422, 1993 Conn. Super. LEXIS 1851.

In reviewing the allegations set forth in plaintiff's breach of fiduciary duty claim in the manner most favorable to sustaining its legal sufficiency, this Court finds that the plaintiff has sufficiently [\*9] plead a claim for breach of fiduciary duty. Accordingly, defendant's Motion to Strike Count Six of the Complaint is denied.

Defendants have also moved to strike the plaintiff's claim for exemplary damages in her prayer for relief on the grounds such claim is insufficiently plead. Our Connecticut Supreme Court has "consistently stated that [i]n order to award punitive or exemplary damages, evidence must reveal a reckless indifference to the rights of others or an intentional and wanton violation of those rights." (Internal quotation marks omitted.) Berry v. Loiseau, 223 Conn. 786, 811, 614 A.2d 414 (1992). "Although some cases speak [of punitive damages] instead of exemplary damages, the same test is invoked and there can be little doubt that the two terms are merely alternate labels for the same remedy." Alaimo v. Royer, supra, 188 Conn. 42; see also United Aircraft Corporation v. International Assn. of Machinists, 161 Conn. 79, 106, 285 A.2d 330 (1971) ("punitive or exemplary damages"); Triangle Sheet Metal Works, Inc. v. Silver, 154 Conn. 116, 127, 222 Conn. A.2d 220 (1966) ("punitive or exemplary damages").

A breach of fiduciary duty may warrant an award of exemplary damages. Breach of fiduciary duty is a tort and punitive damages may result from a breach of fiduciary duty. See Rendahl v. Peluso, supra, 173 Conn.App. 100-01. Because an award of punitive damages may arise from a breach of fiduciary duty an award of attorneys fees is not a matter of right. "Whether any award is to be made and the amount thereof [\*10] lie within the discretion of the trial court, which is in the best position to evaluate the particular circumstances of a case." (Internal quotation marks omitted.) LaMontagne v. Musano, Inc., 61 Conn.App. 60, 63-64, 762 A.2d 508 (2000). In order for a court to award punitive damages, "the pleadings must allege and the evidence must be sufficient to allow the trier of fact to find that the defendant exhibited a reckless indifference to the rights of others or an intentional and wanton violation of those rights." (Internal quotation marks omitted.) Landmark Investment Group, LLC v. CALCO Construction & Development Co., 318 Conn. 847, 878, 124 A.3d 847 (2015).

In reviewing the allegations set forth in plaintiff's breach of fiduciary duty claim alleged in Count Six, and its corresponding claim for exemplary damages, this Court finds that plaintiff has sufficiently plead a claim for breach of fiduciary duty that would warrant a claim for exemplary

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damages. Accordingly, defendants' Motion to Strike Count the claim for exemplary damages in plaintiff's prayer for relief is denied.

III.

CONCLUSION

Based on the foregoing, defendants' Motion to Strike Count Six of the Complaint and its corresponding claim for exemplary damages in plaintiff's prayer for relief is denied.

BY THE COURT

OZALIS, J.

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