US Fuel, LLC v. Fullerton

Superior Court of Connecticut, Judicial District of Hartford At Hartford

December 21, 2021, Decided; December 21, 2021, Filed

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Reporter
2021 Conn. Super. LEXIS 2078 *

US Fuel, LLC v. Raymond Fullerton 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

fiduciary, legal insufficiency, insurance policy, legally sufficient, allegations, fiduciary duty, second count, breach of fiduciary duty, motion to strike, compliance, contracted, falsity, counts, cause of action, ***insurance agent***, quotation, induce, marks

Judges: [*1] Cesar A. Noble, Judge, Superior Court.

Opinion by: Cesar A. Noble

Opinion

MEMORANDUM OF LAW RE MOTION TO STRIKE, #107

Before the court is the motion of the defendants, Raymond Fullerton and Voldico, LLC (collectively the defendants), to strike counts one, two, three, five, six and seven of the complaint of the plaintiff, US Fuel, LLC. Because the court agrees that the second count, the third count and the corresponding counts six and seven all fail to state a legally sufficient claim, the court strikes these counts. The court holds that count one is legally sufficient and denies the motion as to this count and the corresponding count five.

The following facts are relevant to the present motion and are alleged in the plaintiff's complaint. The plaintiff contracted with Fullerton, an ***insurance agent***, for "the purpose of obtaining insurance policies on the commercial property of [the] Plaintiff . . . intending to commence business in the area of auto services, specifically fuel and repair." Plaintiff's Complaint, ¶9. Fullerton obtained an insurance policy for the plaintiff and represented that the policy was sufficient for "its needs, and that the property and business use were in compliance with all terms of **[*2]** said insurance policy." *Id.*, ¶14. The plaintiff's property sustained a fire loss resulting in substantial damage to the building structure. A claim was made to the insurer, the co-defendant, Patrons Mutual Insurance Company of Connecticut (Patrons). Patrons denied coverage because the business did not have, *inter alia*, an automatic fire alarm protecting the entire building that was connected to a central station. *Id.*, ¶16. Fullerton is alleged to have represented that all required systems were in place in compliance with the requirements of the policy of insurance. ¶18. Moreover, Fullerton "was contracted by Plaintiff to insure that all requirements of any insurance policy issued were being complied with." ¶19.

The first count of the complaint alleges a breach of contract by Fullerton. The second count asserts a claim for breach of fiduciary duty and, adds the allegation that the plaintiff relied on Fullerton, a licensed ***insurance agent***, to secure appropriate insurance coverage and advise them as to specific policy requirements. Complaint, ¶22. The third count of the complaint alleges fraud on the part of Fullerton. That count adds the allegation that Fullerton "knew or should have **[*3]** known" that the plaintiff was not in full compliance with the policy when he informed the plaintiff that it was. *Id.*, ¶24. Fullerton provided this false information to the plaintiff in order to induce him to enter into the insurance policy and the plaintiff relied on the statement to its detriment. ¶¶25-27.

The defendants claim the breach of contract alleged in

the first count is legally insufficient because the plaintiff fails to allege defendants breached a specific result in the contract. They claim that second count is legally insufficient, because the plaintiffs failed to allege a specific relationship between the defendants and the plaintiff that might create a fiduciary obligation. Moreover, the plaintiff has failed to allege any disloyalty or dishonesty on the part of the defendants, such that a breach of any such duty might be found. Lastly, the defendants argue that the third count is legally insufficient because the constructive knowledge upon which it is partially based is insufficient to assert a claim for fraud.

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be **[*4]** granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves, 262 Conn. 480, 498, 815 A.2d 1188 (2003)*. In ruling on a motion to strike, the court must accept as true the facts alleged in the pleading and construe them in the manner most favorable to sustaining their legal sufficiency. See *HSBC Bank USA, National Assn. v. Nathan, 195 Conn.App. 179, 193, 224 A.3d 1173 (2020)*. "Although the court is required to read the pleadings broadly and in the light most favorable to sustaining the legal sufficiency of the claim, it cannot read additional allegations into the pleading . . ." *Pike v. Bugbee, 115 Conn.App. 820, 827 n.5, 974 A.2d 743*, cert. granted on other grounds, *293 Conn. 923, 980 A.2d 912 (2009)*.

The court denies the motion to strike as to the first count of the complaint because the court finds that the plaintiff has sufficiently pled that a contract existed with Fullerton, an ***insurances agent***, for a specific result and that the defendants breached the contract by not achieving that result. "Connecticut recognizes a cause of action against an ***insurance agent*** for failure to obtain insurance under a theory of either professional malpractice or breach of contract. When bringing a claim against an ***insurance agent*** for failure to obtain insurance under a breach of contract theory, a plaintiff must allege that he contracted with the ***insurance agent*** to obtain a particular result. If the allegations [of a complaint] **[*5]** are couched in terms of the defendant having committed professional negligence in the procuring of the insurance policy, instead of allegations that the defendant promised the plaintiff a specific result in obtaining the insurance, the claim for breach of contract should be stricken." (Citations omitted, internal quotation marks omitted.) *O&G Industries, Inc. v. Litchfield Ins. Grp., Inc., Superior Court, judicial district of Litchfield, Docket No. 126006448S, 2013 Conn. Super. LEXIS 1492, 2013 WL 3871341, at *8* (July 1, 2013, Pickard, J.) In the present case, read in the light most favorable to finding the allegations legally sufficient, the plaintiff alleged that the defendant was contracted by the plaintiff to ensure that all requirements of any insurance policy that was obtained were being complied with. Complaint, ¶19.[1] This is an allegation that the plaintiff contracted with the defendants to obtain a specific result. Accordingly, the motion is denied as to this count.

The second count, which asserts a breach of fiduciary duty, is legally insufficient because it fails to allege a special relationship and fails to allege disloyal or dishonest conduct. "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 **[*6]** 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 . . . Fiduciaries appear in a variety of forms, including agents, partners, lawyers, directors, trustees, executors, receivers, bailees and guardians." *Essex Ins. Co. v. William Kramer & Assocs., LLC, 331 Conn. 493, 506-07, 205 A.3d 534, 542 (2019)*. "The mere fact that one business person trusts another and relies on the person to perform his obligations does not rise to the level of a confidential relationship for purposes of establishing a fiduciary duty. Not all business relationships implicate the duty of a fiduciary. A mere contractual relationship does not create a fiduciary or confidential relationship. Ostensibly, any time one party hires another to perform a service on their behalf, trust and confidence are placed in the latter party. The unique element that inheres a fiduciary duty to one party is an elevated risk that the other party could be taken advantage of—and usually unilaterally. That is, the imposition of a fiduciary duty counterbalances opportunities for self-dealing that may arise from one party's easy access to, or heightened influence regarding, another party's moneys, property, or other valuable **[*7]** resources." (Citations omitted, internal quotation marks omitted.) *Id., 508-09*.

In the present case the plaintiff has pled only that he contracted with Fullerton to obtain insurance, Complaint, ¶9, relied on Fullerton to secure the appropriate

[1] The plaintiff asserts a claim for professional negligence in the form of ***insurance agent*** malpractice as to Fullerton in the fourth count and vicariously as to Voldico in the eighth count.

insurance coverage and to advise as to specific policy requirements, *Id.*, ¶22. These allegations are insufficient to establish a fiduciary relationship that requires the fiduciary to be granted unusual trust and confidence and to possess a discretionary authority to manage another's finances or affairs. Due to this failure to plead sufficient elements of a special relationship, the second count is legally insufficient and is therefore stricken

Because it is probable that the plaintiff will replead its second count; see *Prac. Book §10-44*; the court addresses the defendants' additional argument that the plaintiff has failed to prove conduct legally sufficient to establish a breach of a fiduciary duty, even if one were to be held to exist. A claim of breach of fiduciary duty requires proof of four elements: 1. That a fiduciary relationship existed which gave rise to a duty of loyalty and obligation to act in the best interests of the plaintiff, and an obligation to act in good **[*8]** faith in any matter relating to the plaintiff; 2. that the defendant advanced his or her own interests to the detriment of the plaintiff; 3. that the plaintiff sustained damages; and 4. that the damages were proximately caused by the fiduciary's breach of his or her fiduciary duty. *Chioffi v. Martin, 181 Conn.App. 111, 138, 186 A.3d 15 (2018)*. Mere negligence alone is insufficient to breach a fiduciary duty. Under the law of negligence, the person to whom a duty is owed may be identified by public policy, contract, statute or knowledge that harm may result to the other. *Cenatiempo v. Bank of Am., N.A., 333 Conn. 769, 806, 219 A.3d 767 (2019)*. In a general sense, the duty imposed requires an actor to use the appropriate standard of due care, that is, "the care that an ordinarily prudent person would have exercised under the same or similar circumstances"; *Heisinger v. Cleary, 323 Conn. 765, 778, 150 A.3d 1136 (2016)*; so as to prevent harm to another. As noted above, a fiduciary relationship, and its attendant duty, arises from a more particularized relationship than those that are the subject of the law of negligence. Our Supreme Court has instructed that "[p]rofessional negligence alone . . . does not give rise automatically to a claim for breach of fiduciary duty . . . Professional negligence implicates a duty of care, while breach of fiduciary implicates a duty of loyalty **[*9]** and honesty. "(Citations omitted, internal quotation marks omitted.) *Beverly Hills Concepts, Inc. v. Schatz & Schatz, Ribicoff & Kotkin, 247 Conn. 48, 56-57, 717 A.2d 724, 730 (1998)*. Thus, a legally sufficient cause of action for breach of fiduciary duty requires factual allegations of disloyalty, dishonesty or self-serving conduct to the detriment of the plaintiff. *Straw Pond Associates, LLC v. Fitzpatrick, Mariano & Santos, P.C., 167 Conn.App. 691, 726, 728, 145 A.3d 292*, cert. denied, *323 Conn. 930, 150 A.3d 231 (2016)*. This is so because a cause of action for a breach of a fiduciary duty exists to address not the failure to exercise due care—the office of the tort of negligence—but to counterbalance the fiduciary's "opportunities for self-dealing that may arise from one party's easy access to, or heightened influence regarding, another party's moneys, property or other valuable resources." *Essex Ins. Co. v. William Kramer & Assocs., LLC, supra, 331 Conn. at 509*.

In the present case the plaintiff alleges no more than Fullerton failed to ensure that the plaintiff knew of the need to comply with the requirements for coverage contained in the policy. Complaint, ¶23. This conduct arises to the level legally sufficient to establish negligence or breach of contract but not a breach of fiduciary duty. On this additional basis, the motion to strike the second count is granted.

The third count purports to set out a cause of action for fraud. In this count, the plaintiff alleges that Fullerton knew or *should have **[*10]** known* of the falsity of his representation to the plaintiff that it was in full compliance with all requirements of the issued insurance policy; Complaint, ¶24; and that he provided this false information in order to induce the plaintiff to enter into the policy of insurance, which it did, to its financial loss. *Id.*, ¶¶25-7. The defendants argue that the inclusion of language indicating constructive knowledge, that is that the defendants should have known of the falsity of the representation related to policy compliance, renders the allegation legally insufficient. This is so, in the defendants' view, because fraud requires actual knowledge of the falsity of a representation. In its objection, the plaintiff argues that it has clearly alleged that Fullerton knew that he was making false statements regarding insurance requirements and that this is a legally sufficient claim.

"The essential elements of an action in common law fraud . . . are that: (1) a false representation was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) it was made to induce the other party to act upon it; and (4) the other party did so act upon that false representation **[*11]** to his injury. In contrast to a negligent representation, a fraudulent representation is one that is knowingly untrue, or made without belief in its truth, or recklessly made and for the purpose of inducing action upon it." (Citation omitted, internal quotation marks omitted.) *Kenneson v. Eggert, 176 Conn.App. 296, 303-04, 170 A.3d 14 (2017)*. The declarant's lack of actual knowledge of the falsity of a representation does not defeat a claim for fraud. "In matters susceptible of actual knowledge, if the party who

has and is known to have the best means of knowledge, makes an affirmation contrary to the truth, in order to secure some benefit to himself, the law treats him as stating that he knows that whereof he affirms, and so as guilty of a fraud, although he spoke in ignorance of the facts; because he asserts that he knows what he does not know. A fraudulent representation in law is one that is knowingly untrue, or made without belief in its truth, or recklessly made and for the purpose of inducing action upon it." *Clark v. Haggard, 141 Conn. 668, 672-73, 109 A.2d 358 (1954)*.

The third count, even if viewed in the light most favorable to sustaining its legal sufficiency, does not allege that the defendants had the best means of knowledge, that he did not believe his representations, or that the representations **[*12]** were recklessly made and thus the court finds that claim for fraud based on constructive knowledge is thus legally insufficient.

It is problematic that the legally insufficient clause "should have known" is part of a single paragraph. Its omission from the single sentence that comprises paragraph 24 would render the count legally sufficient because the allegation would then read that Fullerton knew the falsity of the representation that the plaintiff's business was in full compliance with the requirements under the policy. The weight of Superior Court judges holds that a motion to strike a paragraph that does not embody an entire cause of action; see *Davis v. Johnson, Superior Court, judicial district of Danbury, Docket No. 206036025S, 2020 Conn. Super. LEXIS 923, 2020 WL 5261278, at *2* (August 17, 2020, D'Andrea, J.); never mind a clause in a single sentence. This court construes the broader clause "knew or should have known" as an integrated assertion of a predicate scienter part of which is legally insufficient. As such it renders count three, which can only stand upon either actual knowledge of falsity or a culpable lack of knowledge, legally insufficient. Count three is therefore stricken.

For the foregoing reasons, the motion to strike is denied as to count one but granted as to counts two and three. Because counts **[*13]** five, six and seven are derivative claims against Voldico premised on Fullerton's liability, the motion is denied as to count five but granted as to counts six and seven.

THE COURT

Cesar A. Noble Judge,

Superior Court

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