

AT STAMFORD
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DOCKET NO: FST CV 23-6063392 S ²⁰²⁴ MAY 15 A 9:22 SUPERIOR COURT

LIONETTI, MARK : JUDICIAL DISTRICT OF

V. : STAMFORD-NORWALK

LIONETTI, DAVID : AT STAMFORD

: MAY 15, 2024

DOCKET NO: FST CV 23-6063960 S : SUPERIOR COURT

LIONETTI, MARK : JUDICIAL DISTRICT OF

V. : STAMFORD-NORWALK

UVA, RICHARD : AT STAMFORD

: MAY 15, 2024

DOCKET NO: FST CV 23-6063963 S : SUPERIOR COURT

LIONETTI, MARK : JUDICIAL DISTRICT OF

V. : STAMFORD-NORWALK

MASOTTI & MASOTTI, LLC : AT STAMFORD

: MAY 15, 2024

MEMORANDUM OF DECISION

Plaintiff Mark Leonetti ("Mark") has commenced three actions seeking bills of discovery against his brother David Leonetti ("David"), Masotti & Masotti, LLC ("Masotti") and Richard Uva ("Uva") for information related to Shoreline Pools, Inc., a company in which Mark and David's father, Lucio Lionetti ("Lucio") was sole shareholder. On Lucio's death his shares in Shoreline were placed in a trust in which Uva and their mother, Valentina Lionetti, were trustees. In the bills of discovery Mark alleged that, although the shares of Shoreline are in the trust, David asserted he had purchased shares of Shoreline from their brother Brian Leonetti and has been acting as majority shareholder and, in that capacity, has ejected Mark from the Shoreline board of directors, installed a "puppet" board and terminated Mark's employment. Uva and Masotti are alleged to have counseled and assisted David. The bill of discovery seeks information and documents related to the transfer of shares held in trust to David, and the authority under which David carried out the above actions against Mark.

Defendants have moved to strike the complaints filed by Mark in the three actions against them. For the reasons stated below, the motions are denied.

The Standards for Deciding a Motion to Strike

"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 granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498 (2003). "[A] motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court . . . [The court] construe[s] the complaint in the manner most favorable

to sustaining its legal sufficiency . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied . . . Moreover, [the court notes] that [w]hat is necessarily implied [in an allegation] need not be expressly alleged . . . 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 . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." *Coppola Construction Co. v. Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013). "If any facts provable under the express and implied allegations in the plaintiff's 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 (1991). On the other hand, "[a] motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." *Santorso v. Bristol Hospital*, 308 Conn. 338, 349 (2013).

The Claims for Bills of Discovery Are Sufficient.

In *Nowak v. Environmental Energy Services, Inc.*, 218 Conn.App. 516, 528-30 (2023), the Appellate Court discussed bills of discovery:

"The power to enforce discovery is one of the original and inherent powers of a court of equity.' ... 'The bill of discovery is an independent action in equity for discovery and is designed to obtain evidence for use in an action other than the one in which discovery is sought. ... As a power to enforce discovery, the bill is within the inherent power of a court of equity that has been a procedural tool in use for centuries. ... The bill is well recognized and may be entertained notwithstanding the statutes and rules of court relative to discovery. ... Furthermore, because a pure bill of discovery is favored in

equity, it should be granted unless there is some well-founded objection against the exercise of the court's discretion. ...

'To sustain the bill, the petitioner must demonstrate that what he seeks to discover is material and necessary for proof of, or is needed to aid in proof of or in defense of, another action already brought or about to be brought. ... Although the petitioner must also show that [it] has no other adequate means of enforcing discovery of the desired material, [t]he availability of other remedies ... for obtaining information [does] not require the denial of the equitable relief ... sought. ... This is because a remedy is adequate only if it is one which is specific and adapted to securing the relief sought conveniently, effectively and completely. ... The remedy is designed to give facility to proof.

...

'Discovery is confined to facts material to the plaintiff's cause of action and does not afford an open invitation to delve into the defendant's affairs. ... A plaintiff must be able to demonstrate good faith as well as probable cause that the information sought is both material and necessary to [its] action. ... A plaintiff should describe with such details as may be reasonably available the material [it] seeks ... and should not be allowed to indulge a hope that a thorough ransacking of any information and material which the defendant may possess would turn up evidence helpful to [its] case. ... What is reasonably necessary and what the terms of the judgment require call for the exercise of the trial court's discretion. ...

'The plaintiff who brings a bill of discovery must demonstrate by detailed facts that there is probable cause to bring a potential cause of action. Probable cause is the knowledge of facts sufficient to justify a reasonable man in the belief that he has reasonable grounds for presenting an action. ... Its existence or nonexistence is determined by the court on the facts found. ... Moreover, the plaintiff who seeks discovery in equity must demonstrate more than a mere suspicion; he must also show that there is some describable sense of wrong. ... A distinction exists, however, between a would-be plaintiff having to demonstrate the need for the information to determine whether a particular cause of action is worthy of being pursued and a plaintiff having to prove definitively that he has a cause of action and that he will probably prevail ultimately at the trial on the merits. ... Whether particular facts constitute probable cause is a question of law.'"

Assuming that the facts alleged are true, Mark has shown that the proof sought is material and necessary in good faith for probable cause to bring a potential causes of action in his individual capacity related to his oppression by his brother David's alleged acquisition of a majority the shares supposed to be in trust and his assertion of control over Shoreline; the discovery is sought from persons likely to possess discoverable information and documents, not readily available by other means.

The motions to strike are denied.

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Krumeich, J.T.R.

DECISION ENTERED IN
ACCORDANCE WITH THE
FOREPARTON 5/15/24
JDW SENT 5/15/24

A handwritten signature in black ink, appearing to read "John T. Krumeich".