DOCKET NO: FST CV 23-6063230-S	: SUPERIOR COURT
CHRSITINA ARDUINI	: JUDICIAL DISTRICT OF
	2024 MAY 20 P 3:11
v.	: STAMFORD/NORWALK
FRANK MENDEZ ET AL.	: AT STAMFORD
	: MAY 20, 2024

MEMORANDUM OF DECISION

The defendant, Frank Mendez ("defendant") has moved to strike counts two and three of the plaintiffs' complaint as well as the plaintiff's claims for punitive damages, attorney's fees, and exemplary damages. The defendant alleges that the conduct alleged in count two does not rise to the level of common law recklessness and that count three fails to state sufficient allegations to support a finding of statutory recklessness under Connecticut General Statutes § 14-295. As detailed, below, the court denies the motion to strike.

FACTS

This case arises from a motor vehicle accident that occurred on Route 15 in Greenwich. The plaintiff alleges in her complaint that on or about April 23, 2022, she was a passenger in a motor vehicle that was owned and operated by the defendant, who is a driver for Lyft, Inc. The defendant was driving in a northerly direction on Route 15 when the defendant fell asleep and caused the vehicle that he was operating to strike the wooden beam guardrail and resulted in a violent collision. As a result of the defendant's carelessness and negligence, the plaintiff alleges that she suffered numerous injuries.

In her complaint, which she filed on September 20, 2023, the plaintiff has alleged negligence in count one, common law recklessness in count two, and statutory recklessness in count three as to the defendant's conduct on the date of this accident. On November 1, 2023, the defendant filed a Motion To Strike and accompanying memorandum of law, and the plaintiff filed her objection on November 30, 2023. The matters were placed on the short calendar and argument on the motion and the objection was held on February 20, 2024.

LEGAL PRINCIPLES

A. Legal Standard 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, 815 A.2d 1188 (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).

B. Common Law Recklessness

The Connecticut Supreme Court stated the well-established principle that where a party seeks to plead a reckless claim, "[s]imply using the word 'reckless' or 'recklessness' is not enough. A specific allegation setting out the conduct that is claimed to be reckless or wanton must be made." *Dumond v. Denehy*, 145 Conn. 88, 139 A. 2d 58 (1958). The Appellate Court rephrased the proposition as "[m]erely using the term 'recklessness' to describe conduct previously alleged as negligence is insufficient as a matter of law." *Angiolillo v. Buckmiller*, 102 Conn. App. 697, 705, 927 A. 2d 312, cert. denied, 284 Conn. 927, 934 A. 2d 243 (2007), citing *Dumond v. Denehy*, 145 Conn. at 91, 139 A. 2d 58.

Thus, "[r]ecklessness requires a conscious choice of a course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man, and the actor must recognize that his conduct involves a substantially greater...than that which is necessary to make his conduct negligent. (Internal quotation marks omitted.) *Bishop v. Kelly*, 206 conn. 608, 614-15, 539 A.2d 108 (1988). "It is at least clear...that such aggravated negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simply inattention..."(Internal quotation marks omitted.) *Dubay v. Irish*, 207 Conn. 518, 533, 542 A.2d 711 (1988).

"Recklessness requires a conscious choice of a course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this

danger to any reasonable man, and the actor must recognize that his conduct involves a risk substantially greater . . . than that which is necessary to make his conduct negligent. . . . The state of mind amounting to recklessness may be inferred from conduct. But, in order to infer it, there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid any danger to others or to take reasonable precautions to avoid injury to them. . . . [In sum, reckless] conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent." (Citations omitted; internal quotation marks omitted.) *Northrup* v. *Witkowski*, 175 Conn. App. 223, 247-48, 167 A.3d 443 (2017), aff'd, 332 Conn. 158, 210 A.3d 29 (2019).

A state of mind that amounts to recklessness may be inferred from conduct, but "in order to infer it, there must be something more than a failure to exercise reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them. (Internal quotation marks omitted.) *Matthiessen v. Vanech*, 266 Conn. 822, 832, 836 A. 2d 394 (2003). Thus the conduct must be "more than mere thoughtlessness or inadvertence, or simply in attention". *Craig v. Driscoll*, 262 Conn. 312, 343, 824 A. 2d 1003 (2003).

C. Statutory Recklessness Under Connecticut General Statutes § 14-295

Connecticut General Statutes § 14-295 states: "[i]n any civil action to recover damages from personal injury ... the trier of fact may award double or treble damages if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of section 14-218a, ... 14-219, ... [or] 14-222 ... and that such violation was a substantial factor in causing such injury ...". While neither the Connecticut Supreme Court nor the Connecticut Appellate Court have addressed what is required for a statutory recklessness claim to survive a motion to strike based on allegation of statutory

recklessness under General Statutes § 14-295, there is agreement that, at a minimum, a plaintiff must allege three elements: (1) that the defendant deliberately or with reckless disregard operated his motor vehicle, (2) in violation of one of the predicate statutes, and (3) that the violation was a substantial factor in causing the plaintiff's injury. See General Statutes § 14-295.

Neither the Connecticut Supreme Court nor the Connecticut Appellate Court have as yet addressed what is required for a plaintiff to prove a claim of statutory recklessness. As noted by "There exists a split of authority in the Superior Court over the meaning of the term "specifically pleaded." *Pyka* v. *Popielase*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-05-50000166-S (May 30, 2006, *Hartmere, J.*). The minority view is that a claim under § 14-295, should be similar to the standard for a claim under common law recklessness, and thus "should employ language explicit enough to clearly inform the court and opposing counsel that reckless misconduct is relied on." (Internal quotation marks omitted.) *Kostiuk v. Queally*, 159 Conn. 91, 94, 267 A. 2d 452 (1970). Therefore, "under the minority view, a plaintiff must plead the specific facts constituting recklessness above and beyond the facts constituting mere negligence." *Termini* v. *Taylor*, Superior Court, judicial district of New Haven at Meriden, Docket No. CV-05-5000171-S (November 28, 2005, *Taylor, J.)* (40 Conn. L. Rptr. 424, 425)." *Creigh v. Morsey*, Superior Court, judicial district of Litchfield at Torrington, Docket No. CV-22-6030932-S (June 1, 2023, *Roraback, J.)*, 2023 WL 3840309.

"In contrast, the majority approach is that § 14-295 does not mandate the same level of specificity as necessary for a claim under common law recklessness. The majority view requires "that a plaintiff, in addition to pleading facts constituting negligence, need only make the general allegations mentioned in § 14-295: that the defendant has deliberately or with reckless disregard violated one of the enumerated statutes, and that the violation was a substantial factor

in causing the plaintiff's injuries." (Internal quotation marks omitted.) *Colon* v. *SNET*, Superior Court, judicial district of Fairfield, Docket No. CV-01-0385673-S (May 22, 2002, *Gallagher, J.*). "The majority view is based both on an analysis of the legislative history as well as a review of the statutory language of § 14-295 itself. These cases conclude that as long as the general requirements of the statute are met, such pleading is enough to survive a motion to strike and to state a cause of action under § 14-295." (Footnote omitted.) *Ferens* v. *Brown*, Superior Court, judicial district of New Britain, Docket No. CV-00-0509116-S (October 11, 2001, *Quinn, J.*).

DISCUSSION

A. The Plaintiff's Claim for Common Law Recklessness Is Legally Sufficient

In Count two, the plaintiff has alleged that the defendant engaged in reckless conduct because he knew or should have known that by driving inattentively at a high rate of speed and failing to maintain a proper lane, his conduct would result in a high degree of risk of serious harm and despite this knowledge, acted recklessly in the numerous ways in which he allegedly violated various motor vehicle statutes under chapter 14 of the Connecticut General Statutes. The plaintiff has further alleged that the defendant operated his motor vehicle recklessly, while distracted and inattentive, by failing to keep a proper lookout, failing to maintain reasonable control of his vehicle, failing to apply the brakes in time to avoid the collision, failing to turn his vehicle, and failing to sound his horn.

The defendant has alleged in his motion to strike that these allegations merely contain the recklessness language without pleading any facts that actually sustain a separate claim of recklessness. Because the crux of plaintiff's claim is that the defendant fell asleep while driving, the plaintiff is treating the seriousness of this claim as being indicative of willful or malicious

conduct that departs extremely from ordinary care. The plaintiff alleges in her objection that it is permissible for her to allege the same facts that support her negligence claim in support of her recklessness claim so long as the facts alleged are sufficient to independently support a claim of recklessness. As the sufficiency of the recklessness claim on its own should be the basis of the court's inquiry, the plaintiff argues that the state of mind of the defendant and allegations about how the defendant's conduct was an extreme departure from ordinary care are all that is required to sustain a recklessness claim.

Here, although the plaintiff has alleged the same conduct in support of her negligence claim and her recklessness claim, the allegations are sufficient to support her recklessness claim on an independent basis. The allegations are that the defendant knew or should have known that he was driving inattentively and at a high rate of speed, and by failing to maintain a proper lane and these allegations are sufficient to support a claim of recklessness, particularly in light of the fact that the defendant was not merely an ordinary motorist but rather was working in a position where he was driving passengers. Given that he took on the obligation of driving passengers and that too as part of his job, the allegation that he knew or should have known that his conduct would result in high degree of serious harm to his passengers as well as to himself is legally sufficient.

In reviewing the allegations in light most favorable to the plaintiff, the allegations of recklessness are legally sufficient as the defendant in this case and under these circumstances must have recognized or should have recognized that his conduct involved a substantially greater risk than that which would make his conduct negligent. The defendant made a conscious choice to act with the knowledge of the serious danger to others (particularly the plaintiff as a

passenger) inherent in his act of driving inattentively as he knew that such inattentiveness affected not only himself but the passenger he deliberately chose to transport.

Thus, the allegations regarding the defendant's conduct do demonstrate that he acted with a conscious disregard of the rights and safety of the plaintiff , exhibited a highly unreasonable conduct involving an extreme departure from ordinary care in a situation where a high degree of danger was apparent. See *Ryan v. Tedesco*, Superior Court of Connecticut, judicial district of Waterbury at Waterbury, Docket No. UWY CV 206052781 S, 2020 WL 4333823 at * 2 (June 19, 2020, *Gordon, J.*). Thus, the plaintiff's recklessness case is legally sufficient.

B. The Plaintiff's Statutory Recklessness Claim Is Legally Sufficient

In court three, the plaintiff has alleged in connection with her claim of statutory reckless under Connecticut General Statutes § 14-295 that the defendant acted deliberately or with reckless disregard when he drove his motor vehicle in a manner in which he violated numerous motor vehicle statutes under Chapter 14 of the Connecticut General Statutes and when he caused the collision that caused the plaintiff to suffer injuries.

In his motion to strike, the defendant claims that this claim of statutory recklessness should be stricken because the plaintiff has failed to satisfy the requirements of notice pleading as required by Connecticut law. Specifically, the defendant argues that the plaintiff's allegations do not rise to the level of recklessness because there are no allegations that the defendant set out to cause harm or that he behaved in shocking manner. Moreover, the defendant argues that the plaintiff has failed to plead allegations that are sufficient to support her claim for punitive damages, attorney's fees, or exemplary damages because she has not alleged facts to

demonstrate that the defendant acted with a conscious choice of a course of action with either the serious knowledge of the danger posed to others or with knowledge of facts which would disclose this danger to another person. Thus, it is clear that the defendant would like the court to adopt the minority view on claims of statutory recklessness.

The plaintiff notes in her objection that as no higher court has articulated the degree of specificity required to prove statutory recklessness under Connecticut General Statutes § 14-295, that an allegation of deliberate conduct or reckless disregard in the way the defendant operated the motor vehicle and that such operation was a substantial factor in causing her injuries is sufficient to sustain her claim. Moreover, the plaintiff alleges that she has also alleged a legally sufficient claim under the minority view because the factual allegations that she has pled need only be enough to transform her negligence claim into a recklessness claim by her labeling them as such.

In this matter, the court follows the majority view and finds that the plaintiff has satisfied the pleading requirements so that she has alleged a legally sufficient claim of statutory recklessness. The court notes that the majority view does not require that the plaintiff plead with the same degree of specificity needed to sustain a claim for common law recklessness. Rather, the plaintiff, in addition to pleading facts constituting negligence, need only make the general allegations mentioned in Connecticut General Statutes § 14-295. Namely, she needs only to allege that the defendant deliberately or with reckless disregard violated one of the enumerated statutes and that this violation was a substantial factor in causing the plaintiff's injuries. See

Colon v. SNET, Superior Court, judicial district of Fairfield, Docket No. CV 01 0385673 S (May 22, 2002, *Gallagher, J*).

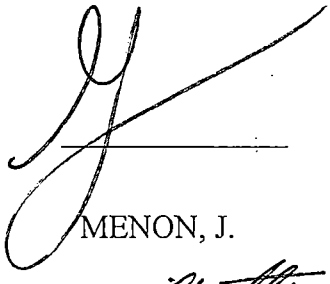
As the majority view suggests, a claim under Connecticut General Statutes § 14-295 may be asserted without the plaintiff pleading subordinate and supporting facts because the assertion otherwise satisfies the provisions of the statute. As the plaintiff has alleged, the defendant operated his motor vehicle in his capacity as a Lyft driver who was transporting the plaintiff as a paying customer and during this ride, he engaged in conduct that demonstrated a reckless disregard when he violated several motor vehicle statutes and operated the motor vehicle in such a manner as to cause the collision that was a substantial factor in causing the plaintiff's injuries.

Moreover, the facts alleged by the plaintiff also support her claim of recklessness under the minority view because she has pled sufficient facts to demonstrate that the defendant made a conscious choice to disregard the safety and rights of the plaintiff as his passenger when he chose to accept her as a passenger and transport her even though he was conscious of the serious danger involved in transporting someone else in his vehicle while he disregarded traffic rules and violated various parts of the motor vehicle statutes in his manner of driving. Clearly, the defendant knew that as a driver for Lyft he would be driving other people as part of his job and as such, these individuals would be placing their lives in his hands. Yet, he purportedly drove in a manner in which he was inattentive and violated the motor vehicle laws of our state. Therefore, the court finds that the plaintiff has pled sufficient facts to sustain her claim of

statutory recklessness as well her claims for punitive, damages, attorney's fees, and exemplary damages at this stage of the case.

CONCLUSION

For the foregoing reasons, the defendant's motion to strike counts two, three, and the claims for punitive damages, attorney's fees, and exemplary damages is denied.



MENON, J.

Decision entered in accordance with the foregoing (5/20/2024). All counsel and self-represented parties of record notified on 5/20/24

Will Bidell, JTR

Will Bidell