DOCKET NO. CV-23-6130737-S	:	STATE OF CONNECTICUT
ALBERT CARFORA	:	SUPERIOR COURT
V.	:	JUDICIAL DISTRICT OF NEW HAVEN
	:	AT NEW HAVEN
TOWN OF EAST HAVEN	:	June 10, 2024

MEMORANDUM OF DECISION

MOTION TO STRIKE (#101)

STATEMENT OF CASE AND PROCEDURAL HISTORY

The plaintiff, Albert Carfora, in the one count complaint filed on March 3, 2023, alleges the following facts. The plaintiff is a retired firefighter, previously employed by the defendant Town of East Haven. The plaintiff was hired by the defendant in 1987 and retired in 1997 due to a disabling injury incurred in the line of duty. The plaintiff's brother, Joseph Carfora, is the mayor of the defendant town and has held the position since being elected in 2019. The plaintiff married his wife, Carolyn Rossi-Carfora, on May 7, 2021. Pursuant to Article 17 § 2 (b) of the plaintiff's contract with the defendant, in effect at the time of his retirement, the defendant is required to provide employees who retire because of a disabling injury with the same insurance and medical coverage that it provides for active employees, regardless of length of service. Section 2 (c) of the contract requires that the defendant provide that same coverage to spouses and dependents of a retired employee until the retiree reaches the age of sixty-five. When the retiree reaches sixty-five, the defendant will provide and pay for a Blue Cross/Blue Shield supplement to Medicare in lieu of the previously mentioned insurance coverage and the retiree's spouse will be covered until remarriage, death, or divorce. Relying on his contract with the defendant, the plaintiff requested insurance coverage for his wife in or around June 2021. The

plaintiff's brother subsequently asked the plaintiff to postpone his request for coverage until after the November 2021 election, in which the brother was running for re-election as mayor of the defendant town. On January 13, 2022, the plaintiff's counsel submitted a request for coverage for the plaintiff's wife with the defendant's benefits risks manager, Danelle Feeley. Counsel for the defendant replied to the request to say the plaintiff's wife was ineligible for coverage. The defendant's counsel purportedly promised to follow-up with the plaintiff's counsel on the matter, but never did. The defendant's failure to provide coverage for the plaintiff's wife is an alleged breach of contract. The plaintiff has and will continue to suffer financial harm because of this alleged breach and seeks compensatory damages, interest, attorney's fees, costs, and such other relief as the court may deem equitable.

The defendant filed a motion to strike on March 17, 2023. The defendant seeks to strike attorney's fees from the plaintiff's prayer for relief on grounds that the plaintiff has not identified any statutory authority or a contractual basis for attorney's fees, as required by the American Rule. The defendant's motion is accompanied by a memorandum of law.

The plaintiff filed an objection to the defendant's motion to strike on April 17, 2023. The plaintiff argues that the bad faith exception to the American rule allows for recovery of attorney's fees in this case. The court heard oral argument on the motion on February 26, 2024.

LEGAL ANALYSIS

A.

Standard of Review

"A motion to strike shall be used whenever any party wishes to contest . . . the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint . . . ." Practice Book § 10-39 (a) (2). "Practice Book . . . § 10-39, allows for a claim for relief to be

stricken only if the relief sought could not be legally awarded." *Pamela B.* v. *Ment*, 244 Conn. 296, 325, 709 A.2d 1089 (1998), abrogated on other grounds by *Gold* v. *Rowland*, 296 Conn. 186, 214, 994 A.2d 106 (2010). "[A] motion to strike . . . is the only pretrial method to attack a prayer for relief." (Internal quotation marks omitted.) *Trantolo & Trantolo, LLC* v. *Rowe*, Superior Court, judicial district of Windham, Docket No. CV-22-6023233-S (August 9, 2023, *Lohr, J.*). "The role of the trial court in ruling on a motion to strike is to examine the [complaint], construed in favor of the [plaintiff] . . . ." (Internal quotation marks omitted.) *Coe* v. *Board of Education*, 301 Conn. 112, 117, 19 A.3d 640 (2011). "In ruling on a motion to strike, the court is limited to the facts alleged in the complaint." (Internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 580, 693 A.2d 293 (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 in original; internal quotation marks omitted.) Id., 588.

B.

Attorney's Fees

The plaintiff argues that the defendant's failure to provide insurance coverage for his wife constitutes a breach of the contract in effect at the time of the plaintiff's retirement as a firefighter for the defendant town. Included in the plaintiff's prayer for relief are attorney's fees.

The defendant argues that the plaintiff is not entitled to attorney's fees, because attorney's fees are ordinarily not allowed to a party, even if successful, absent a contractual basis or statutory authority, pursuant to the American Rule followed in Connecticut. Not only has the plaintiff failed to cite any statutory authority for attorney's fees in his complaint, but there is no provision for attorney's fees in the contract between the plaintiff and the defendant. The

defendant argues that because attorney's fees cannot be legally awarded, they should be struck from the plaintiff's prayer for relief.

In his objection to the defendant's motion, the plaintiff acknowledges that the defendant's recitation of the American Rule is correct. The plaintiff, however, relies on the bad faith exception to the rule to maintain his claim for attorney's fees. The plaintiff argues that his brother, as mayor of the defendant town, acted in bad faith by asking him to defer his request for political purposes. The plaintiff claims that when the request was renewed, he received no "meaningful response" and was forced to take legal action to assert coverage for his wife under the contract. In the alternative, the plaintiff argues that the court can award attorney's fees using its equitable powers. The plaintiff further argues it is too early to strike attorney's fees from the prayer for relief because a decision to award attorney's fees would be made only after trial and the defendant is not prejudiced from the inclusion of attorney's fees in the prayer for relief.

At oral argument, the defendant argued that the bad faith exception is inapplicable because the exception is limited to bad faith litigation practices, which were never alleged by the plaintiff. In response, the plaintiff argued that because the defendant's bad faith conduct forced the plaintiff to file an action, the bad faith exception is applicable.

"The general rule of law known as the American rule is that attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception. . . . This rule is generally followed throughout the country. . . . Connecticut adheres to the American rule. . . . There are few exceptions." (Internal quotation marks omitted.) *Broadnax* v. *New Haven*, 270 Conn. 133, 178, 851 A.2d 1113 (2004); see, e.g., *Rizzo Pool Co.* v. *Del Grosso*, 240 Conn. 58, 73, 689 A.2d 1097 (1997) (a case in which a statute allowed for attorney's fees); *Niantic CT DG Store, LLC* v. *MCG Niantic, LLC*, Superior Court, judicial

district of New London, Docket No. CV-20-6048423-S (April 13, 2023, *Goodrow, J.*) (the contract between the parties provided for attorney's fees). "That rule does not apply . . . where the opposing party [or his attorney] has acted in bad faith . . . . It is generally accepted that the court has the inherent authority to assess attorneys fees when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons . . . . This bad faith exception applies, not only to the *filing of an action, but also in the conduct of the litigation* . . . . Moreover, the trial court must make a specific finding as to whether . . . [a party or his attorney's] conduct . . . constituted or was tantamount to bad faith, a finding that would have to precede any sanction under the court's inherent powers to impose attorneys fees for engaging in bad faith litigation practices." (Emphasis added; internal quotation marks omitted.) *Keller* v. *Keller*, Superior Court, judicial district of Middlesex, Docket No. FA-11-4014330-S (July 9, 2014, *Adelman, J.*) (quoting *Richter* v. *Richter*, 137 Conn. App. 231, 235–36, 48 A.3d 686, cert. denied, 307 Conn. 926, 55 A.3d 568 (2012)), aff'd, 167 Conn. App. 138, 142 A.3d 1197, cert. denied, 323 Conn. 922, 150 A.3d 1151 (2016).

"[W]e have declined to uphold awards under the bad-faith exception [to the American rule] absent both clear evidence that the challenged actions are entirely without color *and* [are taken] for reasons of harassment or delay or for other improper purposes . . . ." (Emphasis added; internal quotation marks omitted.) *CFM of Connecticut, Inc.* v. *Chowdhury*, 239 Conn. 375, 394, 685 A.2d 1108 (1996), overruled in part on other grounds by *State* v. *Salmon*, 250 Conn. 147, 154–55, 735 A.2d 333 (1999); see also *Berzins* v. *Berzins*, 306 Conn. 651, 663, 51 A.3d 941 (2012) ("*Maris* makes clear that in order to impose sanctions pursuant to its inherent authority, the trial court must find *both* that the litigant's claims were entirely without color *and* that the litigant acted in bad faith" [emphasis in original]). "Colorability focuses on the merits of

the claim." *Lederle* v. *Spivey*, 332 Conn. 837, 845, 213 A.3d 481 (2019). "Whether a claim is colorable, for purposes of the bad-faith exception, is a matter of whether a reasonable attorney could have concluded that facts supporting the claim might be established, not whether such facts had been established." (Internal quotation marks omitted.) *Fleet Services Corp.* v. *ASA Real Estate Services*, Superior Court, judicial district of Waterbury, Docket No. CV-99-0156591-S (August 14, 2000, *Wiese, J.*) (quoting *CFM of Connecticut, Inc.* v. *Chowdhury*, supra, 394–95). Improper purposes refer to "the [bad faith] conduct of the party in instigating or maintaining the litigation. . . . [T]he court may infer the subjective intent of the person against whom sanctions are sought." (Citation omitted; internal quotation marks omitted.) *Lederle* v. *Spivey*, supra, 845. "To determine whether the bad faith exception applies, the court must assess whether there has been substantive bad faith as exhibited by, for example, a party's use of oppressive tactics or its wilful violations of court orders; [t]he appropriate focus for the court is the conduct of the party in *instigating* or *maintaining* the litigation." (Emphasis added; internal quotation marks omitted.) *Fleet Services Corp.* v. *ASA Real Estate Services*, supra.

Specific conduct which has satisfied the bad faith exception includes untruthful testimony; *Maris* v. *McGrath*, 269 Conn. 834, 839, 850 A.2d 133 (2004), abrogated on other grounds by *Lederle* v. *Spivey*, supra, 332 Conn. 837[1]; filing false claims; *Richter* v. *Richter*, supra, 137 Conn. App. 236[2]; filing frivolous claims; *Hirschfeld* v. *Machinist*, 131 Conn. App.

[1]"The court specifically found that such fees should be awarded to the defendant for defending a case which the court finds to be totally without merit." (Internal quotation marks omitted.) *Maris* v. *McGrath*, supra, 269 Conn. 842.

[2]"[T]he court explicitly found that the plaintiff had caused substantive legal costs to the defendant by filing false claims and that the plaintiff had initiated the case in order to get even with the defendant." (Internal quotation marks omitted.) *Richter* v. *Richter*, supra, 137 Conn. App. 236.

364, 370, 27 A.3d 395, cert. denied, 302 Conn. 947, 30 A.3d 1 (2011)[3]; pursuing claims with the knowledge that they lack merit; *Lederle* v. *Spivey*, supra, 849; maintaining an action without a scintilla of evidence; *Schoonmaker* v. *Lawrence Brunoli, Inc.*, 265 Conn. 210, 255, 828 A.2d 64 (2003); and repeatedly being held in contempt of court; *Keller* v. *Keller*, supra, Superior Court, Docket No. FA-11-4014330-S.[4] The party's conduct in filing or maintaining an action must demonstrate an absence of good faith. See, e.g., *Maris* v. *McGrath*, supra, 848 ("*[t]his was not a matter of two good faith litigants as claimed by the plaintiff*" [emphasis in original; internal quotation marks omitted]); *Sabrina C.* v. *Fortin*, 176 Conn. App. 730, 755, 170 A.3d 100 (2017) ("[t]he standard definition of bad faith is the absence of good faith" [internal quotation marks omitted]).

"Frequently, the subordinate factual findings that support bad faith [conduct] will also provide support for lack of colorability. Rather than requiring a rigid structure in the trial court's analysis, [the Supreme Court will] merely examine the court's findings to determine whether they are *sufficiently specific* to support the conclusion that the court did not abuse its discretion in arriving at its ultimate findings of bad faith [conduct] *and* lack of colorability." (Emphasis added; internal quotation marks omitted.) *Applied Advertising, Inc.* v. *Jacobs*, Superior Court, judicial district of Hartford, Docket No. CV-15-6059689-S (June 8, 2022, *Peck, JTR*). "The court must make these findings with a high degree of specificity . . . ." (Internal quotation marks

[3]"[I]n its decision, [the court] found the plaintiff's claim to be meritless, outrageous, designed to harass the defendant and that it border[ed] on the frivolous." (Internal quotation marks omitted.) *Hirschfeld* v. *Machinist*, supra, 131 Conn. App. 370.

[4]The plaintiff had demonstrated bad faith in a number of ways, including untruthful testimony. "It is evident that the plaintiff has caused substantive legal costs to the defendant in this regard without any useful purpose to the defendant." *Keller* v. *Keller*, supra, Superior Court, Docket No. FA-11-4014330-S (citing *Richter* v. *Richter*, supra, 137 Conn. App. 236).

omitted.) *Lederle* v. *Spivey*, supra, 332 Conn. 844; see also *Maris* v. *McGrath*, supra, 269 Conn. 848 ("there must be a high degree of specificity in the factual findings of the trial court").

"This bad faith exception applies, not only to the filing of an action, but also in the conduct of the litigation . . . ." *Fleet Services Corp.* v. *ASA Real Estate Services*, supra, Superior Court, Docket No. CV-99-0156591-S. The court in *Fleet Services Corp.* v. *ASA Real Estate Services*, supra, concluded, "[i]n this case, the exception does *not* apply because the purported bad faith conduct allegedly arose *prior* to the filing of the present action and there is no evidence of bad faith litigation practice by the defendant." (Emphasis added.). "[T]he bad faith exception *only* applies to litigation conduct, whether in bringing an action or in the course of maintaining it." (Emphasis added.) *Blue* v. *Carbonaro*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-14-6015705-S (May 11, 2015, *Iannotti, J.*) (citing *Maris* v. *McGrath*, supra, 269 Conn. 844–48). "The *Chowdhury* case specifically addressed the issue of a court's inherent authority to impose sanctions of attorneys fees against counsel and/or a party for engaging in bad faith practices during the course of the litigation. *[The bad faith exception] therefore has no relevance to the present case where plaintiff is seeking attorneys fees based on the alleged facts that gave rise to the causes of action contained in the complaint*. Because plaintiff has failed to allege any contractual or statutory exception to the American Rule, the motion to strike the prayer for relief for attorneys fees is also granted." (Emphasis added.) *Hall* v. *Errichetti Development Group, Inc.*, Superior Court, judicial district of Waterbury, Docket No. CV-00-0159640-S (July 17, 2001, *Rogers, J.*); see also *Puglia* v. *Westbrook*, Superior Court, judicial district of Middlesex, Docket No. CV-06-5000446 (August 3, 2006, *Dubay, J.*) (alleged breach of covenant of good faith and fair dealing which gave rise to action not to be confused with bad faith for purposes of applying bad faith exception).

"Even if we were to assume that the plaintiffs were the 'prevailing party' in the present case, the plaintiffs have not cited any statutory or contractual authority that would *permit* an award of attorney's fees, nor have the plaintiffs claimed that the present case falls within any exception to the American rule." (Emphasis in original.) *Broadnax* v. *New Haven*, supra, 270 Conn. 178–79 (finding trial court did not abuse discretion by not awarding attorney's fees). "[A] litigant seeking an award of attorney's fees for the bad faith conduct of the opposing party faces a high hurdle." *Berzins* v. *Berzins*, supra, 306 Conn. 662. "When a plaintiff has not sufficiently pleaded any basis for . . . extreme bad faith conduct on the part of the defendant . . . [and] . . . there is no statutory or contractual basis for an award of attorney's fees . . . any part of a complaint which seeks attorneys fees as damages in a breach of contract action must be stricken." (Internal quotation marks omitted.) *Ahmed* v. *Tower Ins. Co. of New York*, Superior Court, judicial district of Waterbury, Docket No. CV-14-6025032-S (August 4, 2015, *Roraback, J.*).

The plaintiff's complaint fails to cite any statutory authority or contractual basis for attorney's fees in this case. The plaintiff's objection alleges the defendant acted in bad faith when it denied his request for insurance coverage for his wife. In particular, the plaintiff cites his brother's conduct as mayor of the defendant town, asking the plaintiff to defer his request for political purposes. But the bad faith exception is limited to the filing of an action or the conduct during litigation. See *Fleet Services Corp.* v. *ASA Real Estate Services*, supra, Superior Court, Docket No. CV-99-0156591-S. It does not apply to conduct which occurred prior to the litigation, or which gave rise to the litigation. See Id. The conduct alleged – a mayor's request of his brother to defer seeking insurance coverage from the town – is not the type for which the bad faith exception applies. It is never alleged in the plaintiff's complaint that the defendant

engaged in bad faith litigation conduct intended to harass, delay, or for some other improper purpose. See *Lederle* v. *Spivey*, supra, 332 Conn. 846. Nor can it be said that the defendant initiated an action with colorless claims. See Id., 845. Simply put, there is nothing alleged to suggest this is a case without two good faith litigants. See *Maris* v. *McGrath*, supra, 269 Conn. 848. Therefore, the court is precluded from making the specific findings necessary to apply the bad faith exception to the American rule. See Id., 845. Contrary to the plaintiff's claim, it would not be too early to strike attorney's fees from his prayer for relief. There is no contractual basis or statutory authority to support attorney's fees and the bad faith exception is inapplicable. Thus, pursuant to the American rule, the plaintiff is not entitled to attorney's fees. See *Ahmed* v. *Tower Ins. Co. of New York*, supra, Superior Court, Docket No. CV-14-6025032-S.

CONCLUSION

Accordingly, for the foregoing reasons, the defendant's motion to strike is granted.

Juris No. 421279
Wilson, J.