

*JONO sent to all agency  
 parties of record a to Polinsky Law Group  
 and Morrison Mulvey  
 Hartford CT  
 and Haggerty + Donnelly  
 Hartford CT on  
 4-29-24 by S. Strickland AC.*

Judicial District of New Britain  
 SUPERIOR COURT  
 FILED

APR 29 2024

ASSISTANT CLERK

DOCKET NO. HHB-CV23-6080550-S : SUPERIOR COURT

JANIXA LAMONACO : JUDICIAL DISTRICT OF  
 : NEW BRITAIN

v. : AT NEW BRITAIN

LEASEHOLD CAPITAL-BRISTOL, LLC,  
 ET AL : APRIL 29, 2024

**MEMORANDUM OF DECISION RE: MOTION TO STRIKE**

The plaintiff, Janixa Lamonaco, has filed an action for injuries and damages resulting from a fall on snow or ice at a property owned by defendant Federal Realty OP Limited Partnership (Federal Realty). The plaintiff further alleges that Federal Realty contracted with Jeffrey Scott for snow and ice removal at the property, which was negligently performed. Jeffrey Scott is now deceased. Therefore, in his stead, the “personal representatives” of the Estate of Jeffrey Scott (Estate representatives) are defendants in the action.

The Estate representatives were initially brought in as apportionment defendants by Federal Realty which subsequently added a cross complaint seeking damages for breach of contract (second count) and indemnification (third count). Thereafter, the plaintiff pled over as to the Estate representatives.

Breach of the written contract by Jeffrey Scott is asserted in Federal Realty’s second count. Because the written contract has no provision for indemnification by Jeffrey Scott for any breach of such contract or underlying negligent performance, Federal Realty makes a claim of “implied contractual indemnification” in the third count.

As cross claim defendants, the Estate representatives seek to strike the third count and related prayer for relief of the amended apportionment and cross

#138

complaint brought against them by Federal Realty. The basis of the Estate representatives' motion to strike is that the claim of implied contractual indemnification is insufficiently alleged. Federal Realty objects to the motion, arguing that the claim is legally recognized and sufficiently pled. The parties presented oral argument on April 29, 2024. For the reasons articulated below, the motion to strike is denied.

The Estate representatives appear to argue that there can exist no implied contract where an express contract exists. That argument is uncontested. However, a careful reading of the third count reveals no claim of an implied contract. Rather, Federal Realty asserts "implied contractual indemnification." Implied contractual indemnification requires a contract. Therefore, if the Estate representatives are arguing that there is an implied contract, that argument is unavailing.

To the extent that Jeffrey Scott breached his contract with Federal Realty, his estate would be responsible for the resultant damages to Federal Realty. These presumably would include the costs incurred by Federal Realty in defending the action and for any damages awarded against Federal Realty for the plaintiff's injuries and losses. All of these claims to be made whole, despite the lack of indemnity language in the contract, would be proper damages for breach of the written contract as asserted in the second count. In fact, such damages are claimed in ¶ 11 of the second count.

Nevertheless, while the award of such damages may make Federal Realty whole in defending against the plaintiff's action, the breach of contract claim is not necessarily the equivalent of a judgment of indemnification. Our Supreme Court has impliedly recognized an independent claim of implied contractual indemnification. See *Burkert v. Petrol Plus of Naugatuck*, 216 Conn. 65, 74, 579

A.2d 26 (1990); *Kaplan v. Merberg Wrecking Corporation*, 152 Conn. 405, 411, 207 A.2d 732 (1965).

“We take the facts to be those alleged in the complaint . . . and we construe 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.” (Citations omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). The independent claim of implied contractual indemnification is recognized, and such a claim is sufficiently alleged in the third count of the cross complaint. The motion to strike is denied.

Lastly, the court is troubled by Federal Realty’s assertion in the second and third counts that the Estate representatives would be liable for Federal Realty’s “settlement” of the plaintiff’s action against it. A settlement is not an adjudication of the merits of the plaintiff’s claims and, consequently, such a settlement could not be enforceable against the Estate representatives in the absence of such adjudication. That issue, although noted, is not before the court today.

**ORDER**

The motion to strike (129.00) is denied. The objection to same (133.00) is sustained.

The Court,



---

Robert E. Young, Senior Judge