SUPERIOR COURT
STAMFORD-NORWALK
JUDICIAL DISTRICT
2024 APR 19 P 3:02

DOCKET NO.: FST-CV-22-6056827-S	:	SUPERIOR COURT
NICHOLAS SKROUBELOS AND	:	JUDICIAL DISTRICT OF
HARRIET SKROUBELOS	:	STAMFORD/NORWALK
V.	:	AT STAMFORD
SIMON VOLYNSKY AND	:	
ELEANORA VOLYNSKY ET AL.	:	April 19, 2024

MEMORANDUM OF DECISION

The defendants, Max Perez Landscaping and Tree Work LLC and Nestor Lopez Chacon (hereinafter "the landscaping defendants") have moved to strike counts six, seven, and ten in their entirety and to strike the allegations contained in subsection (6) (c) of count three, and subsection (5) (b) of count eight of the plaintiff's substituted complaint. The landscaping defendants claim that these counts fail to state sufficient facts to support the allegations that the landscaping defendants violated the Connecticut Unfair Trade Practices Act ("CUTPA") or that they committed intentional infliction of emotional distress.

FACTS

The plaintiffs have alleged in their substituted complaint that the defendants trespassed on their property located at 91 Dogwood Lane in Stamford on diverse dates between April 2021 and May 15, 2022. Specifically, the plaintiffs claim that the individual defendants Jeffrey Weisel and Regina Volynsky (hereinafter "the Volynsky defendants") who reside at 101 Dogwood Lane, authorized, instructed, or employed the landscaping defendants to enter the plaintiffs' property without permission, knowledge, or consent to cut, trim, and remove from the plaintiffs' property multiple valuable trees, including old growth oak trees. They further allege that the landscaping defendants disposed of these trees for their own profit which then left the

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plaintiffs' property in decrepitude, and with a smaller and less protective tree canopy. The plaintiffs allege that this diminished the value of their property and compromised their privacy, security, and enjoyment.

The plaintiffs have filed a twelve count complaint in which they allege that: (1) they have suffered the loss of the value of their property, conversion of the trees, and destruction of a nature preserve that had existed on the property; (2) the defendants have violated Connecticut General Statutes § 52-560 which provides for three times the reasonable value of each tree for each tree that was illegally cut; (3) the landscaping defendants' removal of trees from the plaintiffs' property caused the plaintiffs to suffer emotional distress; (4) the landscaping defendants violated Connecticut General Statutes § 52-560 which provides for three times the reasonable value of each tree for each tree that was illegally cut; (5) the landscaping defendants committed conversion; (6) the landscaping defendants verbally abused and humiliated plaintiff Harriet Skroubelos and caused her emotional distress; (7) the landscaping defendants violated CUTPA under General Statutes § 42-110g, that they violated public policy under Connecticut General Statutes § 52-560, and that they committed trespass and conversion in violation of Connecticut General Statutes § 53a-108; (8) the landscaping defendants commission of trespass and their removal of trees on the plaintiffs' property resulted in the diminishment of their property value and caused the plaintiffs to suffer emotional distress; (9) the landscaping defendants committed conversion; (10) the landscaping defendants verbally abused and humiliated plaintiff Harriet Skroubelos and caused her emotional distress; (11) defendant Nestor Lopez Chacon violated Connecticut General Statutes § 52-560 which provides for three times the reasonable value of each tree for each tree that was illegally cut; and (12) that the Volynsky defendants, through their actions and the actions of their agents, caused the plaintiffs to suffer a

diminishment in the value of their property, committed conversion by removing the trees, destroyed the nature preserve that was located on the plaintiffs' property, and caused the plaintiffs emotional distress as a result of these actions.

PROCEDURAL HISTORY

On August 31, 2023, the plaintiffs filed a substituted complaint. On September 19, 2023, the landscaping defendants filed a motion to strike and a memorandum of law in support of their motion to strike. On November 2, 2023, plaintiffs filed their objection to the landscaping defendants' motion to strike and a supporting memorandum of law in support of their objection to the landscaping defendants' motion to strike.

On November 27, 2023, the landscaping defendants filed a reply brief. On December 24, 2023, the plaintiff filed a response to the landscaping defendants reply brief without having obtained leave from the court to file a surreply brief. On December 27, 023, the landscaping defendants filed a motion to strike the plaintiffs' surreply brief for failure to obtain leave from the court prior to filing their surreply. On December 29, 2023, the plaintiffs filed a motion for permission to file a reply to the landscaping defendants' reply brief. On January 1, 2024 the court granted this motion. The matter was scheduled for a hearing on the short calendar on January 2, 2024.

LEGAL PRINCIPLES

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, 594 A.2d 1 (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, 63 A.3d 940 (2013).

B. CONNECTICUT UNFAIR TRADE PRACTICES ACT

Connecticut General Statutes § 41-110b(a) contains the Connecticut Unfair Trade Practices Act which, in relevant part, provides: "No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade of commerce." Connecticut General Statutes § 41-110a(4) further provides that "Trade or commerce means the advertising, the sale or rent or lease, the offering for sale or rent or lease, or the distribution of any services

and any property, tangible or intangible, real, personal, or mixes, and any other article, commodity, or thing of value in this state."

"It is well settled that in determining whether a practice violates CUTPA we have adopted the criteria set out in the cigarette rule by the federal trade commission for determining when a practice is unfair: (1) [W]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers, [competitors or other businesspersons].... All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three.... Thus a violation of CUTPA may be established by showing either an actual deceptive practice ... or a practice amounting to a violation of public policy." (Citation omitted; internal quotation marks omitted.)." *Ramirez v. Health Net of the Northeast, Inc.,* 285 Conn. 1, 18-19, 938 A. 2d 576 (2008); see also *McClancy v. Bank of America, N.A.*, 176 Conn. App. 408, 168 A.3d 658, 665 (2017).

"In determining whether a practice violates CUTPA we use the criteria of whether a practice offends public policy or comes within some established concept of unfairness, whether the practice is immoral, unethical, oppressive or unscrupulous or whether it causes substantial injury to consumers, competitors or other businessmen." *Muniz v. Kravis*, 59 Conn. App. 704, 713, 757 A.2d 1207 (2000). Thus, CUTPA includes a broader standard of conduct that is more flexible than the traditional common law claims and the statute does not require proof of intent to deceive, to mislead or to defraud. A violation of CUTPA may be found by showing either an

actual deceptive practice or a practice that violates public policy. See *Associated Investment Co. Ltd. Partnership v. Williams Associates IV*, 230 Conn. 148, 156, 645 A. 2d 505 (1994).

"Although our Supreme Court repeatedly has stated that CUTPA does not impose the requirement of a consumer relationship ... the court also has indicated that a plaintiff must have at least *some* business relationship with the defendant in order to state a cause of action under CUTPA." (Citation omitted; emphasis in original; internal quotation marks omitted.)" *Pinette v. McLaughlin*, 96 Conn. App. 769, 778, 901 A.2d 1269, cert. denied, 280 Conn. 929, 909 A.2d 958 (2006). In addition, [t]he policy behind CUTPA is to encourage litigants to act as private attorneys general and to bring actions for unfair or deceptive trade practices." *Gill v. Petrazzuoli Bros., Inc.,* 10 Conn. App. 22, 33, 521 A. 2d 212 (1987).

"CUTPA, however, is limited to "[a]ny person who suffers any ascertainable loss of money or property, real or personal, *as a result of* the use or employment of a [prohibited] method, act or practice...." (Emphasis added.) General Statutes § 42-110g (a). The plain language of § 42-110g (a) requires that the plaintiff suffer an ascertainable loss that was caused by the alleged unfair trade practice." *Suarez v. Sordo*, 43 conn. App. 756, 772, 685 A. 2d 1144 (1996); see also *Haesche v. Kissner*, 229 Conn. 213, 223-24, 640 A. 2d 89 (1994). Finally, "a claim under CUTPA must be pleaded with particularity to allow evaluation of the legal theory upon which the claim is based." *Keller v. Beckenstein*, 117 Conn. App. 550, 569 n. 7, cert. denied, 294 Conn. 913 (2009).

C. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

"For the plaintiff to prevail on a claim of intentional infliction of emotional distress, four elements must be established. It must be shown: (1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his

conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe...Liability for intentional infliction of emotional distress requires conduct exceeding all bounds usually tolerated by decent society, of a nature which is especially calculated to cause, and does cause, mental distress of a very serious kind." (Citation omitted; internal quotation marks omitted.) *Dollard v. Board of Education*, 63 Conn. App. 550, 553-54, 777 A.2d 714 (2001). "Conduct on the part of the defendant that is merely insulting or displays bad manners or results in hurt feelings is insufficient to form the basis for an action based upon intentional infliction of emotional distress." *Mellaly v. Eastman Kodak Co.,* 42 Conn. Supp. 17, 19, 597 A. 2d 846 (1991). "Mere embarrassment, humiliation and hurt feelings do not constitute severe emotional distress." *Maselli v. Regional School District Number 10*, 198 Conn. App. 643, 664-65, 235 A.3d 559, cert denied, 335 Conn. 947, 238 A. 3d 19 (2020).

"Liability for intentional infliction of emotional distress requires conduct that exceeds all bounds usually tolerated by decent society...Liability has been found only where the conduct has been so outrageous in character , and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, Outrageous!... " *Appleton v. Board of Education*, 254 Conn. 205, 210-11, 757 A.2d 1059 (2000) (Internal quotation marks omitted.) *Reyes v. Bridgeport*, 152 Conn. App. 528, 543 n. 13, 100 A.3d 50 (2014). "Whether a defendant's conduct is sufficient to satisfy the requirement that it be extreme and outrageous is initially a question for the court to determine. Only where reasonable

minds could disagree does it become an issue for the jury. *Appleton v. Board of Education*, 254 Conn. 205, 210-11, 757 A.2d 1059 (2000). (Internal quotation marks omitted.)

DISCUSSION

A. THE PLAINTIFF'S CUTPA CLAIMS ARE LEGALLY INSUFFICIENT AS PLED

The landscaping defendants claim in their motion to strike that because CUTPA does not apply to trespass cases where there is no business relationship between the parties, the plaintiffs' CUTPA claim is legally insufficient. The plaintiffs allege in their objection that the landscaping defendants' violations go beyond mere trespass because of the increase in business and profits that the landscaping defendants experienced as a result of cutting and removing the plaintiffs' valuable old growth trees. Relying on Connecticut General Statutes § 52-560, the plaintiffs claim that the state's policy in permitting punitive damages for improper removal of trees indicates that such conduct is immoral and offensive. They further claim that because "the Plaintiffs were victimized by Chacon and Perez's oppressive and immoral practice of taking down old growth trees on their property violative of Connecticut's public policy", the fact that the plaintiffs suffered injuries from this conduct sustains their CUTPA claim.

In reviewing the CUTPA statute and relevant caselaw, it is evident to the court that while the Connecticut Supreme court has ruled that CUTPA does not require a consumer relationship, it has found that the statute does require at least some business relationship with the defendant in order to state a cause of action under CUTPA. See *Pinette v. McLaughlin*, 96 Conn. App. 769, 778, 901 A.2d 1269, cert. denied, 280 Conn. 929, 909 A. 2d 958 (2006). For instance, in *Angiolillo v. Buckmiller*, 102 Conn. App. 697, 927 A. 2d 312 (2007), the Connecticut Appellate

Court found that because the owner of a family burial plot had no business relationship with the funeral home, the funeral home was not liable under CUTPA for burying the decedent's cremated remains alongside one of the plots without the owner's permission.

Moreover, the Connecticut Supreme Court has held that a CUTPA claim cannot be predicated on a trespassing action between neighboring landowners because a landowner and trespasser are not in a consumer relationship. *Ventres v. Goodpseed Airport, LLC*, 275 Conn. 105, 157-58, 881 A.2d 937 92005), cert,. denied, 547 U.S. 1111, 126 S. Ct. 1913, 164 L. Ed. 2d 664 (2006).

In this case, the plaintiffs appear to be relying on an allegation of a violation of Connecticut General Statutes § 52-560 as the basis for establishing that they have satisfied the criteria of the Federal Trade Commission's cigarette rule. However, the plaintiffs are ignoring the broader underlying policy behind the enactment of CUTPA. The purpose behind this statute's enactment was to enable consumers to act as private attorneys general in bringing claims for unfair or deceptive trade practices. Thus while there is no requirement of privity of contract to have standing under CUTPA, a claimant must possess at least some type of consumer relationship with the party who allegedly caused harm to him or her. See *Jackson v. R.G. Whipple, Inc.*, 225 Conn. 705, 725-26 (1993). "There must be at least some business relationship with the defendant, in order to assert a CUTPA claim." *Pinette v. McLaughlin*, 96 Conn. App. 769, 778 (2006).

In this case, the landscaping defendants were hired by the Volynsky defendants and acted in accordance with the directions that they were given by the Volynsky defendants. The only involvement and interaction with the plaintiffs that the landscaping defendants had arose during the ill-fated encounters that are alleged to have occurred when Harriet Skroubelos

confronted the landscaping defendants about their allegedly improper removal of old growth trees from her property. Thus, the plaintiffs were not just unknown to the landscaping defendants but the plaintiffs' actions in trying to prevent the landscaping defendants from completing the work for which they were hired by the Volynsky defendants were insufficient to create the type of business relationship required for CUTPA to be implicated.

Ultimately, the landscaping defendants were engaged by the Volynsky defendants for the specific business purpose of removing trees at the behest and direction of the Volynsky defendants. Therefore, the only potential business relationship that existed in this case was between the landscaping defendants and the Volynsky defendants who hired them to do landscaping on what the Volynsky defendants claim to be their own property . Thus, it would be contrary to the policy behind CUTPA to allow a party that purportedly acted in good faith and under the belief that it was complying with the law to then be held liable under a statue that seeks to address and remediate consumer violations merely because that party completed the job for which it was hired. If anything, failing to complete the task may have in itself exposed the landscaping defendants to liability vis a vis the Volynsky defendants. Therefore, the fact that this party then became inadvertently and through no fault of its own embroiled in a dispute between two neighbors (one of whom hired that party to do a job) does not create a legally sufficient CUTPA claim.

Also, given that it is yet to be determined whether the landscaping defendants or the Volynsky defendants violated Connecticut General Statutes § 52-560, it is also insufficient to rely on this statute as the basis for an otherwise already defective CUPTA claim. The landscaping defendants, whether they violated Connecticut General Statutes § 52-560 or not, ultimately did not have any direct relationship with the plaintiffs. The mere fact that they are

alleged to have violated Connecticut General Statutes § 52-560 does not overcome the requirement that they must have had some type of business relationship with the plaintiffs in order to be found liable under CUPTA.

Furthermore, there is no competitor or consumer relationship between the plaintiffs and the landscaping defendants. The landscaping defendants do not even have the relationship of neighboring landowners who allegedly trespassed as seen in *Ventres v. Goodspeed Airport, LLC.*, 275 Conn. 105, 109, 881 A. 2d 937, 943 (2005). In *Ventres*, even where there was such a relationship between the parties as neighboring landowners, the court found that the CUTPA claim was insufficient. The court found that even conduct that constitutes an incursion of real property by a defendant and which may amount to trespass is insufficient to implicate CUTPA. See *Spencer v. Foisie*, No. MMXCV095007648-S, 2011 WL 2150571 at * 5 (Conn. Super. Ct. May 3, 2011). Thus, if the relationship between neighboring landowners is insufficient to create the type of relationship required to sustain a CUTPA claim, then the relationship between a landscaper and a neighbor who is in a property dispute with the people who hired the landscaper is also insufficient to sustain a valid CUTPA claim. For these reasons, the plaintiffs' CUTPA claim as alleged in the substituted complaint fails to state a legally sufficient claim.

B. THE PLAINTIFFS' INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIMS ARE LEGALLY INSUFFICIENT

In their motion to strike, the landscaping defendants have further alleged that the plaintiffs' claims for intentional infliction of emotional distress are legally insufficient because the plaintiffs have failed to allege sufficient facts to support these claims. Specifically, they claim that their alleged behavior during their encounters with Harriet Skroubelos did not rise to the level of conduct that a reasonable fact finder could find to be extreme or outrageous as required by law. In their complaint, the plaintiffs have alleged that the act of trespass by the landscaping

defendants caused them emotional distress, as did the conduct of the landscaping defendants in during their interactions with Harriet Skroubelos when she confronted them about the trespass.

The court makes several observations here regarding the allegations of intentional infliction of emotional distress as laid out in the substituted complaint. First, in their objection to the motion to strike, the plaintiffs have alleged additional details that they failed to include in their substituted complaint. Specifically, in their objection they have alleged that the landscaping defendants were verbally abusive, used profanity, shouted in a bullying manner and that "the threatening cacophony of their chainsaws originating on *her* property where they were trespassing while *her* trees were being clearcut are details to put forth in evidence, not outline in a complaint."

Second, in reviewing the emotional distress claims alleged by the plaintiff, the court notes that the plaintiffs did not specify whether the allegations stated in the substituted complaint were in support of claims of intentional infliction of emotional distress, whether they were in support of claims of negligent infliction of emotional distress, or whether the plaintiffs were alleging both. Rather, the plaintiffs summarily and repeatedly alleged in their complaint that "the plaintiffs suffered emotional distress" as a result of the conduct of the landscaping defendants but did not specify what type of emotional distress the plaintiffs are alleging. While they have also alleged that the landscaping defendants "ignored the direction and demand of Harriet Skroubelos to leave and discontinue their activities on her property, and verbally abused and humiliated and caused her emotional distress", this is the extent of the specificity of their emotional distress claims as alleged in their complaint. It is only upon review of the motion to strike and the objection that the court became aware that the specific claims alleged here are claims of intentional infliction of emotional distress.

Third, it is also only in their objection to the motion to strike that the plaintiffs first identify with any specificity the alleged conduct that they believe supports their claim of intentional infliction of emotional distress. In fact, the plaintiffs have summarily dismissed the requirement of notice pleading by explicitly stating in their objection to the motion to strike that "the precise words of their verbal abuse, many of them profane, directed to Ms. Skroubelos, when they were carrying chain saws and other equipment to cut her trees on her property, has an appropriate place in evidence, not in the complaint." However, this is an erroneous assertion that is ultimately fatal to their position regarding the validity of their intentional infliction of emotional distress claims.

While it is true that the plaintiffs do not need to recite chapter and verse of the exact language used by the landscaping defendants nor must they specify the specific words of profanity used by the landscaping defendants, they do need to establish that the conduct alleged, either in words or deeds or some combination thereof rose to the level of extreme and outrageous conduct so as to satisfy the elements of intentional infliction of emotional distress. Here, they have failed to do so in their complaint.

In reviewing claims of intentional infliction of emotional distress, "[t]he issue of whether the conduct was sufficiently extreme and outrageous is the "threshold inquiry." *Di Teresi v. Stamford Health System, Inc.*, 142 Conn. App. 72, 87, 63 A. 3d 1011 (2013). "Moreover, the court must perform a "gatekeeping function": [W]hether a defendant's conduct is sufficient to satisfy the requirement that it be extreme and outrageous is initially a question for the court to determine....[I]n assessing a claim for intentional infliction of emotional distress, the court performs a gatekeeping function. In this capacity, the role of the court is to determine whether

the allegations of a complaint...set forth behaviors that a reasonable fact finder could find to be extreme or outrageous." *Id.*

Even when viewing the allegations in the substituted complaint in the light most favorable to sustaining the claims, the court cannot find that the alleged conduct of the landscaping defendants rose to the level of extreme and outrageous conduct. Certainly, if it is true, the verbal abuse, the humiliation, the presence of the landscaping defendants on her property while carrying chain saws, and the removal of her trees may have been upsetting, troubling, and may have caused Harriet Skroubelos discomfort and concern. This alleged conduct may even have been insulting, demeaning, and uncouth. However, what it is not, is extreme or outrageous in nature so as to satisfy the requirements of the tort of intentional infliction of emotional distress. See *Coleman v. Cislo*, Superior Court, judicial district of New Haven, Docket No. Cv-17-6069259-A (November 23, 2021, *Wilson, J.*).

Aside from the sparse facts offered by the plaintiffs in support of their claims of intentional infliction of emotional distress in this case, the claims of emotional distress as alleged in this case present a scenario often seen throughout Connecticut and which is often found to be inadequate to sustain a claim of intentional infliction of emotional distress.

Indeed, allegations of neighbors trespassing on property, hiring landscapers and other professionals to remove fences, trees, shrubs, and destroying their neighbors' personal property abound in all parts of our state. In such cases, courts have found that such conduct does not arise to the level of extreme and outrageous conduct when it is solely based on the destruction of personal property. See generally *Caulkins v. Meade*, Superior Court, judicial district of Danbury, Docket No. CV-00-0340513 (October 17, 2001, *Holden. J.)* [30 Conn. L. Rptr. 595]; *DeLeo v. Reed*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-99-0172435

(January 3, 1997, *Hickey, J.*) [26 Conn. L. Rptr,. 213]; *Hixon v. Eilers*, Superior Court, judicial district of Hartford, Docket No. CV-990592937- S (February 14, 2001, *Fineberg, J.*) [29 Conn. L. Rptr. 254].

In this case, the plaintiffs allege that the intentional infliction of emotional distress they have suffered at the hands of the landscaping defendants is based both on the behavior and conduct of the landscaping defendants during their confrontations with Harriet Skroubelos, as well as on the alleged acts of trespass committed by the landscaping defendants when they entered the plaintiffs' property to remove trees at the direction of the Volynsky defendants. The logical conclusion that the court draws from these allegations is that if the landscaping defendants had not entered the plaintiffs' property at the behest of the Volynsky defendants, and had the landscaping defendants not removed trees from the property, Harriet Skroubelos would not have had reason to confront the landscaping defendants. Consequently, there would not have been any actions taken by either party to give rise to whatever unpleasant, unfortunate, and offending acts that the landscaping defendants are alleged to have committed during these confrontations.

Based on the claims asserted and the insufficient facts alleged in the substituted complaint, there is nothing to support the plaintiffs claim of intentional infliction of emotional distress. See generally *Duffy v. Wallingford*, 49 Conn. Supp. 109, 121-22. 862 A. 2d 890 (2004); see also *Moskowitz v. Edgerton, Inc,* Superior Court , judicial district of Stamford-Norwalk, Docket No. CV-12-6013017-S (December 9, 2013, *Adams, J.*) (57 Conn. L. Rptr, 313, 315, 2013 WL 6978802, 2013 Conn. Super. LEXIS 2863).

Additionally, although the motion to strike, the objection, and the supplemental pleadings focus on one aspect of the plaintiffs' emotional distress claims, there is no factual basis in the substituted complaint to satisfy the remaining requirements that the plaintiffs must allege and

prove in connection with their claims of intentional infliction of emotional distress. In their complaint, the plaintiffs have not explicitly alleged that the landscaping defendants intended to inflict emotional distress or that these defendants even knew or should have known that they would cause Harriet Skroubelos emotional distress by the trespass, the manner in which they worked on the property, or the manner in which they interacted with this plaintiff.

The landscaping defendants were hired to remove trees at the property, which includes portions of the property which are the source of a dispute between the parties in this case. Presumably, based on the instructions, directions, information, and scope of work provided to them by the Volynsky defendants, the landscaping defendants completed the job for which they were hired. As such, there is nothing in the complaint to suggest that the landscaping defendants knew or should have known that there was an ongoing property dispute between the parties so that by completing the task for which they were hired they had committed trespass on the plaintiffs' property and caused the plaintiffs emotional distress.

Since there are no allegations contained in the complaint to suggest that the landscaping defendants knew that the property from which they were removing trees was a source of dispute between the people who hired them and the neighbors, there is also no basis to support the trespass claim as the source of the plaintiffs' emotional distress. In particular, there are no facts in the complaint to suggest that the landscaping defendants had ever met Harriet Skroubelos before the confrontations or even that they knew who she was prior to the confrontations. Thus, as far the landscaping defendants were concerned, at the time of the alleged trespass, there was every possibility that it was Harriet Skroubelos who was trespassing and not them.

Moreover, there is nothing in the allegations that state that there was any documentation of property ownership presented or that any other evidence of the plaintiffs' purported ownership

of this property was shown to the landscaping defendants when they were present on the property. There is no allegation that Harriet Skroubelos called the police when she encountered the landscaping defendants on her property, that she contacted the Volynsky defendants to address this issue, or that there was even any physical demarcation or boundary on the property to indicate to the landscaping defendants that they were trespassing. Consequently, there is nothing in the language of the complaint that is sufficient to support the allegations that the landscaping defendants committed trespass and in doing so, intentionally caused the defendants emotional distress in the process.

In addition, the plaintiffs have not alleged that the emotional distress sustained by Harriet Skroubelos was severe, which is an element of the alleged tort. Here, the only allegations pertaining to intentional infliction of emotional distress contain the vague and inexact phrase that the plaintiffs suffered "emotional distress", but contain no additional supporting facts or details. Thus, it seems that the plaintiffs assume that the alleged trespass and the circumstances pertaining to it are sufficient to form a legal basis for their claim of intentional infliction of emotional distress. However, this is an incorrect assumption.

In count three subsection 6 (c), the plaintiffs have alleged that the landscaping defendants "wreaked havoc upon and despoiled the nature preserve that the Plaintiffs had created on their property", that the plaintiffs were deprived of "the relaxation, satisfaction, and pleasures the nature preserve and their property afforded them, and that they "suffered emotional distress." In count eight subsection 5(b), the plaintiffs have alleged that the landscaping defendants "wreaked havoc upon the Plaintiffs' property and left it in decrepitude, and with smaller and less protective canopy, thereby diminishing its value and compromising the Plaintiffs' privacy, security, and enjoyment". They also allege that "As a result of the aforesaid actions of the

Defendant Nestor Lopez Chacon and those employees he supervised", the Plaintiffs suffered emotional distress.

In count six and count ten, the plaintiffs allege that the landscaping defendants "ignored the direction and demand by the Plaintiff Harriet Skroubelos to leave and discontinue their activities upon her property, and verbally abused and humiliated her and caused her emotional distress."

When construing all these allegations in the manner most favorable to sustaining the legal sufficiency of these claims, it is clear that these facts, even if provable, would not support a cause of action for intentional infliction of emotional distress because they are insufficient to establish the severity of the alleged emotional distress that the plaintiffs are required to prove. Even if the court takes all the facts as pled as being admitted, these facts do not allege anything that established the requisite level of severity required to prove intentional infliction of emotional distress. There is not even a minimal mention of the severity of the emotional distress that the plaintiffs suffered so that the court cannot find even a cursory reference to satisfy the requirement that the plaintiffs must have experienced emotional distress that was severe. At best, these facts suggest that the plaintiffs may have been upset or angered by the perceived intrusion on and destruction of their property, but there is nothing specifically alleged in the complaint to support the element of severity required to sustain a claim of emotional distress.

Moreover, the claim that "a group of men lugging chainsaws and engaging in verbal abuse toward a woman on her own property while cutting down trees and mocking her behavior is threatening, outrageous, and severe" was never even pled in the substituted complaint and was only mentioned for the first time in the plaintiffs' objection to the motion to strike. Even if taken as true, these allegations are legally insufficient as they should have been pled in the complaint

and not merely mentioned as support for the plaintiffs' assertion that the plaintiffs "will provide ample evidence that the behavior of Perez and Chacon resulted in severe emotional distress."

The plaintiffs' assertion in their objection to the motion to strike that "the bullying shouts directed to Ms. Skroubelos, and the threatening cacophony of their chainsaws originating on *her* property where they were trespassing while *her* trees were being clearcut are details to put forth in evidence, not outline in a complaint" is also inaccurate. As has been well established, Connecticut is a notice pleading state and while the plaintiffs are not required to provide a step-by-step account of what they allege to have transpired, they must at least provide sufficient details to support the allegations they have made in their complaint. The "details" that they claim do not need to be asserted in a complaint are in fact, the very thing that the plaintiffs should have provided in their factual allegations to support their claim of intentional infliction of emotional distress. Therefore, based on the extremely limited facts alleged in the substituted complaint, the court cannot conclude that the conduct of the landscaping defendants was much more than an unfortunate misunderstanding that escalated into a rather unpleasant encounter for everyone involved.

Finally, the plaintiffs claim in their surreply that *Oakes v. New England Dairies, Inc.*, 219 Conn. 1, 591 A. 2d 1261 (1991) "is squarely on point" and that it "stated without qualification that damages, including emotional distress, which are proximately caused by a tort, are recoverable without pleading or proof of the special allegations of the tort known as intentional infliction of emotional distress". Based on *Oakes*, the plaintiffs believe that they do not need to independently prove the elements of intentional infliction of emotional distress that arose out of the trespass as alleged in count three subsection 6(c) and count eight subsection 5(b) in order to recover damages. The court finds this argument unpersuasive as the plaintiffs have

misinterpreted *Oakes* and have extended its reasoning to apply to this case when it is evident from a plain reading of *Oakes* that is has limited applicability based on the specific facts and the specific statute at issue in that case.

In *Oakes v. New England Dairies, Inc.*, 219 Conn. 1 (1991), 591 A. 2d 1261 (1991), a terminated employee sued his former employer alleging that he was discharged because he had exercised his rights under the worker's compensation statute. The specific statute at issue in that case was Connecticut General Statutes § 31-290a, which permitted a plaintiff who establishes his or her employer's liability under that statute to recover "other damages", including damages for emotional distress, that are "caused by such discrimination or discharge."

The defendant in *Oakes* claimed that the plaintiff was not entitled to recover damages for emotional distress under this statute unless he also proved the defendant's common law liability for the tort of intentional infliction of emotional distress. The court interpreted the particular statute at issue, Connecticut General Statutes § 31-290a(b) and found that the term "caused' as stated in the statutory language did not mean that the plaintiff had to also prove the additional and distinct tort of intentional infliction of emotional distress. The Connecticut Supreme Court found that "[i]n a § 31-290a action, the employer's tortious conduct is that which is proscribed by the statute." *Id.*

It is evident from this court's reading of *Oakes*, that the Supreme Court's ruling in that case was based on its interpretation of the specific statute at issue in that case and that its holding applied only in that context. There is nothing in the decision to suggest that it stands for the broader principle that the plaintiffs are attempting to extract from their misreading and misunderstanding of *Oakes.* The plaintiffs allege that *Oakes* stands for the principle "that damages, including emotional distress, which are proximately caused by a tort, are recoverable