DOCKET NO.: HHB-CV23-6079994-S	:	SUPERIOR COURT
ANDREW BARRETT	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	AT NEW BRITAIN
ALLIED WORLD SPECIALTY INSURANCE COMPANY, ET AL.	:	APRIL 11, 2024

MEMORANDUM OF DECISION

The defendants Allied World Specialty Insurance Company ("Allied World") and Papa's Dodge, Inc. ("Papa's Dodge") filed the pending motion to strike counts five and six of the plaintiff's substituted complaint, dated December 28, 2023. The plaintiff Andrew Barrett filed an objection.

Proceedings

A brief procedural history of the instant action is relevant. The original complaint and the substituted complaint are based on the same factual allegations. The plaintiff brought this action alleging that the defendant Allied World breached a settlement agreement in a separate civil suit, *Barrett* v. *Papa's Dodge, Inc.*, Superior Court, judicial district of New Britain, Docket No. CV20-6062498-S ("tort action"). (Substituted Compl., Para. 3, Docket Entry No. 110.00.) The plaintiff alleges that he brought a lawsuit against the defendant Papa's Dodge for injuries sustained as a result of a slip and fall on Papa's Dodge's premises. The plaintiff alleges that there was a "disagreement" as to whether the settlement was enforceable. The plaintiff further alleges that court found an enforceable agreement; however, the case was dismissed after the plaintiff failed to file a timely withdrawal of the case. (Substituted Compl., Para. 7, Docket Entry No.

#118.00

110.00).[1] The plaintiff's complaint is set forth in six counts against each of the defendants Allied World and Papa's Dodge, respectively, as follows: breach of contract, breach of the covenant of good faith and fair dealing, and a violation of the Connecticut Unfair Trade Practices Act ("CUTPA"), General Statutes § 42-110a et seq., and the Connecticut Unfair Insurance Practices Act ("CUIPA").

The defendant Allied World filed a motion to strike the plaintiff's original complaint, count five, contending, in part, that the plaintiff failed to plead a legally sufficient claim alleging a violation of the CUTPA on the grounds of violations of the CUIPA, General Statutes §§ 38a-815 and 38a-816. The court granted the motion to strike the plaintiff's original complaint, count five, as legally insufficient because the plaintiff pleaded only an isolated instance under the act and there were no allegations of general business practices as to the alleged conduct. Mem. of Decision, Docket Entry No. 109.00. The plaintiff thereafter filed a substituted complaint. The substituted complaint, count five, realleges a CUTPA/CUIPA claim with additional allegations. The defendant has filed a motion to strike on the ground that the substituted complaint, count five, is legally insufficient pursuant to Practice Book § 10-39.

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[1] The plaintiff alleges in count one, paragraph 7, that "Plaintiff's claim (HHB-CV20-6062498-S) has been dismissed." The plaintiff has, in essence, invited the court to take judicial notice of the judgment of dismissal in the tort action. The court takes judicial notice of all pleadings in the court's files and more specifically, the order expressly referenced in the plaintiff's complaint in the present matter. In *Barret* v. *Papa's Dodge, Inc.*, Superior Court, judicial district of New Britain, Docket No. CV20-6062498-S, the court (*Knox, J.*) entered an order, Docket Entry No. 147.00, as follows: "A judgment of dismissal shall enter pursuant to court order #145, for the reason that no withdrawal of action was filed." The court order, #145 which is referenced above, provides as follows: "As this case has been settled, it must be withdrawn on or before August 12, 2022. If it is not withdrawn By (sic) August 12, 2022, the case will be dismissed and a judgment of dismissal shall enter." Id., at Docket Entry No. 145.00.

The defendants also move to strike count six of the substituted complaint, which is entitled a CUTPA claim against the defendant Papa's Dodge. Docket Entry No. 110.00. Count six is limited to prior allegations of the complaint. Most notably, it realleges paragraphs 13 through 23 of the fifth count, which allege a CUTPA/CUIPA against the defendant Allied World.

Discussion

The court relies on the well-established principles governing the court's consideration of a motion to strike. See Mem. of Decision, Docket Entry No. 109.00.

A. Count Five

The defendants contend that counts five and six should be stricken as they lack actual facts to support the claims alleged. The plaintiff contends that the fifth count sufficiently alleges a violation of § 38a-816 (6) if the court adopts "a broad, realistic and lenient approach to the pleadings." The plaintiff contends that there is no heightened pleading requirement for a CUTPA claim,[2] that the plaintiff sufficiently alleges a violation of CUTPA and that conduct by the defendant is performed with such frequency as to constitute a general business practice under CUIPA.

A violation of CUIPA may form the basis of a claim pursuant to CUTPA "[b]ecause CUIPA provides the exclusive and comprehensive source of public policy with respect to general insurance practices . . . ." *State* v. *Acordia, Inc.*, 310 Conn. 1, 37, 73 A.3d 711 (2013); *H & L*

[2] The court finds this argument to be without merit as well-established law, as applied herein, provides that a conclusory statement is insufficient to survive a motion to strike. *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003).

Chevrolet, Inc. v. *Berkley Ins. Co.*, 110 Conn. App. 428, 441, 955 A.2d 565 (2008). The Supreme Court in *Acordia, Inc.* held that unless "an insurance related practice violates CUIPA or, arguably, some other statute regulating a specific type of insurance related conduct, it cannot be found to violate any public policy and, therefore, it cannot be found to violate CUTPA." *State* v. *Acordia, Inc.*, supra, 310 Conn. 37. Section 38a-816 specifically enumerates practices that are defined as unfair insurance practices in Connecticut. *State* v. *Acordia, Inc.*, supra, 310 Conn. 26. As such, there can be no CUIPA violation if the practice is not within the enumerated list. Id. Section 38a-816 (6) of CUIPA defines unfair insurance claim settlement practices and further provides that the enumerated acts must be committed or performed "with such frequency as to indicate a general business practice. . . ." § 38a-816 (6). The Supreme Court has recognized, therefore, that "a CUTPA claim based on an alleged unfair claim settlement practice prohibited by § 38a-816 (6) require[s] proof, as under CUIPA, that the unfair settlement practice had been committed or performed by the defendant with such frequency as to indicate a general business practice." (Internal quotation marks omitted.) *Lees* v. *Middlesex Ins. Co.*, 229 Conn. 842, 850, 643 A.2d 1282 (1994). An insurer's alleged conduct in the handling of a single insurance claim, without other allegations or evidence of misconduct by the insurer in the processing of any other claim, does not rise to the level of a "general business practice" as required by § 38a-816 (6). Id

Both parties contend that there is a split of authority by the superior courts in the determination of the sufficiency of a CUTPA/CUIPA claim, an issue which was not previously directly reached by the court in this matter. Docket Entry No. 109.00. That issue is now directly presented to the court in the motion to strike the substituted complaint due to the additional allegations.

The defendants contend that there is a "general trend among Superior Court judges to grant a motion to strike a CUTPA claim when the plaintiff has inserted the magic words of other acts of insurance conduct by the defendant, although not stated the factual basis for that claim." *Caminiti* v. *Travelers Home & Marine Ins. Co.,* Superior Court, judicial district of New Britain, Docket No. CV-12-6016611-S (March 7, 2013, *Gleeson, J.*). The analysis under this standard is consistent with Connecticut law regarding motions to strike, namely that allegations of legal conclusions are insufficient factual allegations to support a claim. As such, "the bald statement that the defendant has, as a matter of business policy, failed to settle . . . claims of other persons is a legal conclusion, particularly since the other claimants are not identified." (Internal quotation marks omitted.) Id.

The plaintiff contends the court should apply a more lenient approach in which specific instances of unfair claims practices as to other insureds are not required to survive a motion to strike for failure to allege a general business practice. See, e.g., *Dadura* v. *NGM Ins. Co.*, Superior Court, judicial district of New Britain, Docket No. CV-10-6004690-S (April 15, 2011, *Swienton, J.*). The plaintiff relies on the well-established principles governing motions to strike that "allegations in a complaint must be construed in a manner most favorable to sustaining their legal sufficiency, and that allegations may be implied when reasonable." *Kowalchuk* v. *Travelers Personal Security Ins. Co.*, Superior Court, judicial district of New Britain, Docket No. CV-11-6012608-S (June 14, 2014, *Shortall, J.T.R.*).

The "general trend," noted above, has continued to find support in recent superior court decisions. In *Gomez* v. *Nationwide Ins. Co.*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-22-6047023-S (February 1, 2023, *Bellis, J.*), the court adopted the reasoning of

the "emerging majority" of superior courts that have required the plaintiff to plead more than broad business practices in order to survive a motion to strike. "Although there is currently a split of authority among the judges of the Superior Court as to the degree of factual specificity required to allege a general business practice in violation of § 38a-816 (6), the trend is to strike CUTPA/CUIPA claims where . . . the plaintiff has merely inserted the magic words of other acts of insurance misconduct by the defendant without stating any factual basis for that claim. . . . *Belamose Business Park, LLC* v. *Peerless Ins.*, Superior Court, judicial district of Hartford, Docket No. CV-12-6036488-S (August 31, 2015, *Huddleston, J.*); see, e.g., *Currie* v. *Aetna Casualty & Surety Co.*, Superior Court, judicial district of Hartford, Docket No. CV-96-0558900-S (August 12, 1999, *Mulcahy, J.*) (court granted defendant's motion to strike where the plaintiffs alleged [the defendant has] continued to commit the acts referred to above as to the plaintiffs . . . and *as to other insureds and policy holders of the defendants*. . . . concluding that the allegations were insufficient and conclusory . . .)." (Emphasis in original; internal quotation marks omitted.) *Gomez* v. *Nationwide Ins. Co.*, supra, Superior Court, Docket No. CV-22-6047023-S.

The court, in *Gomez*, recognized that in pleading a general business practice under CUIPA, "a plaintiff must plead facts that demonstrate insurer misconduct that goes beyond the plaintiff's immediate claim." Id. The court relied on the principle that "[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. In applying these well-established principles, the court rejected vague and broad allegations that contain the magic words – "and others" – or vague allegations referring to "insureds" which failed to

provide any factual circumstances supporting the notion that the defendant engaged in other instances of misconduct with other insureds. Id.

Similarly, the court, in *Mendez* v. *State Farm Mutual Automobile Insurance Co.*, Superior Court, judicial district of New Haven, Docket No. CV-21-6112146-S (January 11, 2022, *Abrams, J.*), held "[a]lthough the plaintiff mentions the existence of other policyholders facing unfair settlement practices by the defendants, the reference is very limited and non-specific. These allegations are insufficient to provide factual circumstances of others facing alleged unfair settlement misconduct besides the plaintiff. The plaintiff must allege specific acts to establish more than one instance of specific misconduct to demonstrate that the defendant's conduct is a general business practice." Id.

In the present case, the plaintiff fails to allege any factual bases to support his contention that Allied World's specific conduct constitutes a general business practice. Rather the plaintiff alleges conclusory statements that Allied World enters into settlement agreements without intending to comply with the agreements. As noted in *Mendez*, the plaintiff's factual allegation is limited and non-specific. Further, the allegation of specific misconduct arises from his isolated claim, which is insufficient to state a claim. *Lees* v. *Middlesex Ins. Co.*, supra, 229 Conn. 850. For example, the plaintiff alleges "the defendant has committed the acts described in the preceding paragraphs [negotiations of plaintiff's own claim] repeatedly over several months for various and different reasons resulting in bad faith negotiations techniques in order to effectuate multiple settlements with claimants/plaintiffs that the defendant engaged in bad faith to effectuate settlements with claimants/plaintiffs for sums less than what is fair and reasonable." (Substituted Compl., Count Five, Para. 13 (a), Docket Entry No. 110.00). The plaintiff merely

added other "claimants/plaintiffs" to his isolated claim without any factual bases. Similarly, the plaintiff alleges that "Defendant and entities related to defendant, including parent companies, subsidiaries, and sister companies, frequently negotiate settlements it has no intention to pay and only get a plaintiff's claim dismissed." Id., Para. 13 (c). There are no factual allegations which support the conclusion. Nor do the broad and conclusory allegations that the defendant's actions "were standardized and formulaically applied" or "were performed as part of a company policy" provide sufficient allegations to withstand a motion to strike. "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.) *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 588, 693 A.2d 293 (1997). In sum, the plaintiff's bald and conclusory allegations of misconduct in various types of business practices, without any factual predicate, cannot survive a motion to strike. It is insufficient to allege that the defendant "had a general business practice of unfair claim practices in violation of C.G.S. §38a-816 (6)." (Substituted Compl., Count Five, Para. 19 (a), Docket Entry No. 110.00.). Under the circumstances of this case, and the controlling precedent in *Lees v. Middlesex Ins. Co.*, supra, 229 Conn. 850, an isolated claim of misconduct arising from the plaintiff's claim does not allege a legally sufficient CUTPA/CUIPA claim.

B. Count Six

The court grants the motion to strike count six for three reasons.[3] First, since count six incorporates all the allegations of count five, which is stricken for the reasons stated, this count

[3] The court, in the exercise of its discretion, considers the motion to strike on the merits. The plaintiff's claim of prejudice by the timeliness of the motion is unsupported and without legal

does not survive a motion to strike. Second, the plaintiff does not allege that Papa's Dodge is an insurer, which is necessary to state a claimed violation of CUIPA. Section 38a-816 states, in relevant part, the "following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance[.]" CUIPA specifically "prohibits unfair business practices in the insurance industry and defines what constitutes such practices in that industry[.]" *Harrigan* v. *Fidelity National Title Ins. Co.*, 214 Conn. App. 787, 797, 282 A.3d 495, cert. denied, 345 Conn. 964, 285 A.3d 388 (2022). "From the outset, therefore, the legislative intent in passing CUIPA was to occupy the field with regard to unfair trade practices in the insurance industry." *State* v. *Acordia, Inc.*, supra, 310 Conn. 25. The plain language of the statute demonstrates that it applies to an insurer's claim handling, and there is nothing in the language of the statute that provides it applies to a non-insurer, such as Papa's Dodge. As Papa's Dodge is not an insurer, the plaintiff's CUTPA claim as to Papa's Dodge fails as a matter of law. Finally, the allegations of count one, as incorporated into count six, which alleges breach of contract against Allied World, fails to state legally sufficient claim of CUTPA as to Papa's Dodge, a wholly separate party.

Conclusion

For all the foregoing reasons, the motion to strike counts five and six is hereby granted.

Knox, J.

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authority or analysis. Moreover, the plaintiff has responded to the substantive arguments on the motion to strike. See *Lawrence* v. *Commodore Commons Condominium Assn.*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV 98063281 (September 8, 2000, *Curran, J.*) (28 Conn. L. Rptr. 56).