

NNH CV23-6137539 S

: SUPERIOR COURT

ADAM ZARET, EXECUTOR OF THE ESTATE OF
DR. BARRY ZARET

: JUDICIAL DISTRICT OF
: NEW HAVEN

V.

: AT NEW HAVEN

RENEE DRELL, ET AL

: MAY 22, 2024

MEMORANDUM OF DECISION
ON DEFENDANT'S MOTION TO STRIKE No. 105.00

This action involves a prenuptial agreement entered into by Dr. Barry Zaret and the defendant (Renee Drell), and issues which have arisen since Dr. Zaret's death in 2022. The plaintiff is the executor of Dr. Zaret's estate.

The plaintiff's revised complaint alleges seven causes of action, but only two are relevant here. The defendant has moved to strike the first and third counts of plaintiff's revised complaint, which allege breaches of the prenuptial agreement.¹

The defendant argues that the first count and third count are legally insufficient because they fail to state a claim upon which relief may be granted. More specifically, the defendant alleges that the contract provisions upon which plaintiff relies fail on their face to support the plaintiff's claims.

The Court has considered filings #105.00, 106.00, 107.00, and 108.00, as well as the arguments of counsel made at a hearing on May 13, 2024.

For all of the reasons detailed below, the Court denies the motion to strike.

¹ There is a second defendant in this case (Brenner, Saltzman & Wallman LLP), which is a defendant solely in its capacity as an escrow agent holding funds which are the subject of a declaratory judgment count. It is not a party to the Motion to Strike. When the Court refers to the defendant in this decision, it is referring solely to defendant/movant Renee Drell.

MATERIAL FACTS AND PROCEDURAL HISTORY

This case arises out of a 2013 prenuptial agreement between Dr. Zaret and the defendant (the "Prenuptial Agreement"). Dr. Zaret and the defendant owned a home together located at 37 Spoke Drive, Woodbridge, Connecticut (the "Property"). Following Dr. Zaret's death on October 20, 2022, the defendant owned the Property as tenant in common with the plaintiff (as Executor of Dr. Zaret's Estate).

The plaintiff filed a seven-count complaint against the defendants alleging breach of contract, conversion, use and occupancy, statutory theft, and seeking a declaratory judgment against the defendants.

The defendant filed a request to revise the Complaint asking the plaintiff to cite to specific sections and provisions of the Prenuptial Agreement for their breach of contract allegations, and the plaintiff revised the complaint accordingly.

The defendant has now moved to strike the first and third counts of the revised complaint, both alleging breaches of contract. The first count alleges that the defendant failed to make certain payments to the plaintiff for "household expenses," as required by Prenuptial Agreement. The third count alleges that that the defendant has kept certain funds which the parties allegedly agreed in the Prenuptial Agreement were to be the separate property of Dr. Zaret.

LEGAL ANALYSIS

I. Standards and Law

"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). This court must presume that “all well-plead allegations of fact” set forth in the complaint are “deemed to be true.” *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 588, 693 A.2d 293 (1997). Furthermore, this court must 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 ...” *Coppola Construction Co. v. Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013). If, however, the plaintiff has failed to allege a valid cause of action, the motion to strike is properly granted. See *Sturm v. Harb Development, LLC*, 298 Conn. 124, 127, 2 A.3d 859 (2010). Consistent with Connecticut's fact pleading requirements, “a motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged.” (Citation omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 349, 63 A.3d 940 (2013).

II. The Prenuptial Agreement Was Not Incorporated Into The Complaint

As a preliminary matter, the parties disagree on whether the Court can consider all of the terms of the Prenuptial Agreement to determine whether the provisions cited by the plaintiff in the first and third counts support the plaintiff's claims.

The defendant cites to *Donar v. King Associates, Inc.*, for the proposition that when a written contract has been incorporated into a challenged pleading and the contract can be interpreted as a matter of law, courts are free to consider the entire contract when determining the legal sufficiency of a claim that depends on the contract. See *Donar v. King Associates, Inc.*, 67 Conn. App. 346, 350, 786 A.2d 1256 (2001).

In *Donar*, however, the terms of the contract were actually quoted in the counterclaim, which is not the case here. And in many of the other cases cited by the defendant, the contract was specifically incorporated into the complaint and/or attached as an exhibit to the complaint. In this case, the Prenuptial Agreement was not attached to the revised complaint as an exhibit, nor was it incorporated into the revised complaint. The plaintiff's revised complaint in this case does not even quote from the agreement. Here, the plaintiff merely references certain provisions of the agreement.

Numerous cases that have reviewed the merits of a breach of contract claim at the motion to strike stage, have done so only after specifically noting that the contract was incorporated into the complaint, which is not the case here. See, e.g. *Johnson v. Bank of Am., N.A.*, No. X04HHDCV156066060S, 2016 WL 7974180, at *7 (Conn. Super. Ct. Dec. 12, 2016) (Sheridan, J.) (“A motion to strike may be decided based on a comparison of *incorporated* contractual terms to the factual allegations of a complaint.”) (emphasis added); and *Li Poa v. Stamford Hosp.*, No. 095027372, 2010 WL 5188450, at *4 (Conn. Super. Ct. Dec. 1, 2010) (Levin, J.) (“Because Poa *incorporates* the terms of the primary agreement into his pleadings, and because they are unambiguous, the court may rely on it to determine whether he has alleged, beyond a legal conclusion, that Columbia University breached the primary agreement.”) (emphasis added).

Here, the Prenuptial Agreement was not incorporated into the revised complaint, and therefore, the Court cannot analyze whether the terms of the agreement support the plaintiff's claims.

“It is well established that a motion to strike must be considered within the confines of the pleadings and not external documents ...” *Zirinsky v. Zirinsky*, 87 Conn. App. 257, 268 n.9, 865 A.2d 488, cert. denied, 273 Conn. 916, 871 A.2d 372 (2005). The trial court may not rely upon evidence outside the four corners of a challenged pleading in determining its legal sufficiency. *Beck & Beck, LLC v. Costello*, 159 Conn. App. 203, 207-08, 122 A.3d 269 (2015).

III. The Motion To Strike Is Denied Because The First and Third Counts Of The Complaint Adequately Allege The Requisite Elements Of A Breach Of Contract Claim

Turning to the merits of the motion, the relevant inquiry on a motion to strike a breach of contract claim is whether the plaintiff has sufficiently alleged a valid breach of contract claim. “If a complaint contains the necessary elements of a cause of action, it will survive a motion to strike.” *Malizia v. Anderson*, 42 Conn. Sup. 114, 116, 602 A.2d 1076 (1991).

“When a plaintiff pleads a cause of action for breach of contract by setting forth a specific contractual obligation and alleges that it has not been met, this is sufficient to sustain a motion to strike....” *Golek v. St. Mary's Hospital*, Superior Court, judicial district of Waterbury, Docket No. CV-08-5007118 (August 22, 2008, *Roche, J.*).

“Whether the terms of the contract support that allegation is a factual question to be determined by the fact finder and, therefore, is not at issue when the trial court considers a motion to strike.” *Commissioner of Labor v. C.J.M. Services, Inc.*, 268 Conn. 283, 293-94, 842 A.2d 1124 (2004) (emphasis added).

Finally, “[w]hether there was a breach of contract is ordinarily a question of fact.” *Rent-A-PC, Inc. v. Rental Management, Inc.*, 96 Conn. App. 600, 607, 901 A.2d 720 (2006).

Accordingly, the only question before the Court on a motion to strike (where the contract has not been incorporated) is whether the plaintiff pled a cause of action for breach of contract by adequately alleging the requisite elements.

“To survive a motion to strike, the plaintiff's complaint must allege all of the requisite elements of a cause of action.” *Stancuna v. Schaffer*, 122 Conn. App. 484, 489, 998 A.2d 1221 (2010). “The elements of a breach of contract action are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages.” (Internal quotation marks omitted.) *Hawley Avenue Associates v. Russo*, 130 Conn. App. 823, 832, 25 A.3d 707 (2011).

As to the first count, the plaintiff has alleged all of the requisite elements of a breach of contract claim. In paragraphs 6 through 9 of the first count of the revised complaint, the plaintiff alleges that pursuant to Sections 4 and 10 of the Prenuptial Agreement, the defendant had the option to purchase Dr. Zaret's one-half interest in the Property following his death; or she could (and did) elect to sell the Property, with the net proceeds being equally divided between the parties. Section 4(d) of the Prenuptial Agreement further provided that the defendant was obligated to pay 100% of the household expenses (as defined in the agreement) for the Property beginning on the first day of the month following the death of Dr. Zaret, and continuing through the closing. Plaintiff alleges that the defendant has wrongfully refused to pay the household expenses during that period in breach of the agreement, causing the plaintiff to have to make those payments.

As to the third count, the plaintiff has also alleged all of the requisite elements of a breach of contract claim. In paragraphs 16 through 25 of the third count of the revised

complaint, the plaintiff alleged that Dr. Zaret maintained insurance with USAA and that following his death and the sale of the Property, there was a balance of funds in Dr. Zaret's subscriber's account with USAA. The plaintiff alleges that, pursuant to Section 2 of the Prenuptial Agreement, all property identified in Schedule B to the agreement remained the separate property of Dr. Zaret. The revised complaint further alleges that the subscriber's account with USAA was to be the separate property of Dr. Zaret. Finally, the revised complaint alleges that the funds from the subscriber account were distributed to the defendant after Dr. Zaret's death, in violation of Section 2 of the Prenuptial Agreement.

In the motion to strike, the defendant argues that the contract provisions cited by the plaintiff do not support the allegations of the first and third counts.

In particular, with regard to the first count, the defendant argues that, pursuant to the terms of the Prenuptial Agreement, the defendant was only required to pay the household expenses if she purchased Dr. Zaret's one-half interest in the Property within one year of his death (pursuant to Section 4(d) of the agreement). The defendant argues that because she elected to sell the Property pursuant to Section 4(e) (which did not contain a similar provision as 4(d) regarding payment of household expenses), she was not required to do so. As a result, the defendant claims that the first count has failed to state a claim upon which relief may be granted because the contract provisions cited fail to support the plaintiff's claims.

With regard to the third count, the defendant argues that the USAA subscriber account was not listed on Schedule B and therefore, was not the separate property of Dr. Zaret. As a result, the defendant claims that the third count has failed to state a claim upon

which relief may be granted because the contract provisions cited fail to support the plaintiff's claims.

However, as noted above, whether the terms of the contract support the breach of contract allegations is a factual question to be determined by the factfinder and is not at issue when a court considers a motion to strike. See *Commissioner of Labor*, supra, 268 Conn. at 293-94.

Accordingly, the arguments raised in the motion to strike are premature and the Court cannot consider, at this stage of the case, the defendant's arguments regarding whether the terms of the Prenuptial Agreement support the breach of contract allegations.

CONCLUSION

Because the plaintiff adequately alleged the elements of a claim for breach of contract in the first and third counts, the motion strike the first and third counts of the revised complaint is denied.



Wax-Krell, J.