DOCKET NO. CV-22-6126384-S	:	STATE OF CONNECTICUT
	:	
DOUGLAS SHERIDAN	:	SUPERIOR COURT
	:	
	:	JUDICIAL DISTRICT OF NEW HAVEN
V.	:	
	:	AT NEW HAVEN
	:	
ALLEN D'ANTONIO, ET AL	:	MAY 6, 2024

MEMORANDUM OF DECISION
MOTION TO STRIKE (# 146)

STATEMENT OF CASE AND PROCEDURAL HISTORY

On September 6, 2022, the plaintiff, Douglas Sheridan, filed his eight count complaint against the defendants, Allen D'Antonio, Gloria Mei, Deborah Rowe, and William Raveis Real Estate, Inc (William Raveis). On August 2, 2023, the plaintiff filed a summons and return in addition to an amended, ten count complaint against the defendants. The plaintiff's summons and amended complaint named as an additional defendant Noah Eisenhandler, an attorney.

The plaintiff alleges the following facts in his amended complaint. At all relevant times, D'Antonio was the principal, sole member, and manager for Complete Building & Mechanicals, LLC (the company). On April 3, 2020, D'Antonio showed the plaintiff building plans which he claimed were town-approved. On August 11, 2020, the plaintiff entered into a contract with the company through D'Antonio, whereby D'Antonio agreed to sell property located at 388 Three Corners Road, Guilford, Connnecticut (premises). Pursuant to the contract, the company, through D'Antonio, agreed to construct a residential dwelling on the premises and agreed to obtain all permits, furnish all materials for, and perform all of the work necessary for the delivery and installation of the residential dwelling on the premises in a good, workmanlike manner. The company, through D'Antonio, also agreed to substantially complete construction of the

residential dwelling at the premises on or before February 1, 2021, and the parties agreed to the purchase price of $850,000, $170,000 of which the plaintiff paid as a deposit.

The plaintiff further alleges the following. Paragraph twenty-two of the contract provided that "in the event that Seller [the defendant] is unable to obtain any such licenses, permits or approvals within sixty (60) days of the execution of this Agreement [the Contract], Seller shall notify Buyer [the defendant must notify Mr. Sheridan]." See Pl. Amended Compl., ¶ 10. Under the same paragraph, the company, through D'Antonio, was to notify the plaintiff on or before October 12, 2020, if D'Antonio was unable to obtain all licenses, permits and approvals relevant to their performance under the contract. The plaintiff did not have further contact with D'Antonio until D'Antonio called him on November 19, 2020. During the call, D'Antonio failed to inform the plaintiff that the town of Guilford had reviewed the permit applications submitted by Mei and refused to approve them on October 13, 2020. Thereafter, the company, through D'Antonio and Mei, intentionally delayed the completion of the project by requesting postponements for the review of the building application on November 8, 2020, December 9, 2020, January 13, 2021, and February 10, 2021, at Guilford Town Hall meetings.

The plaintiff further alleges the following. The company, through D'Antonio, failed to substantially complete the building on or before February 1, 2021, and failed to notify the plaintiff of the delays in the licensing and permitting process.[1] The August 11, 2020 contract signed by D'Antonio provides that the company, as the seller of the premises, is the owner of the premises. But, on September 3, 2008, D'Antonio conveyed the premises for one dollar and other

[1]A separate lawsuit against the company has been filed in the Superior Court, and the cases have been consolidated. See *Sheridan* v. *Complete Building & Mechanicals, LLC*, Superior Court, judicial district of New Haven, Docket No. CV-21-5051417-S.

valuable consideration to Mei with quitclaim covenants. Attorney Eisenhandler served and signed the quitclaim deed as both witness and notary. On December 30, 2010, Mei, as owner of the premises, executed a mortgage deed for $75,000 in favor of Rock Creek KAR, LLC, with mortgage covenants on the premises. Attorney Eisenhandler served as notary and signed the mortgage deed.

Counts one, two, eight and nine of the plaintiff's amended complaint are the subject of the present motion to strike. Count one of the plaintiff's amended complaint alleges a violation of the New Home Construction Contractors Act (act). In particular, the plaintiff alleges that Attorney Eisenhandler represented the company and D'Antonio concerning the contract and the premises. The plaintiff further alleges the following. Under General Statutes § 20-417a (7), D'Antonio, William Raveis, Rowe, and Attorney Eisenhandler are subject to the New Home Construction Contractors Act individually, as an "organized group of persons," or both. Upon information and belief, the company, through D'Antonio, did not register as a new home construction contractor until May 5, 2020. Through, *inter alia*, the premises listing, communications, negotiations, and meetings with the plaintiff, D'Antonio engaged in the business of new home construction and held himself and the company out as a new home construction contractor in violation of § 20-417b (a) and § 20-417d (d) (5) prior to the issuance of a certificate of registration. Additionally, through, *inter alia*, the premises listing, communications, negotiations, and meetings with the plaintiff, William Raveis, Rowe, and Attorney Eisenhandler held D'Antonio and the company out as a new home construction contractor in violation of § 20-417b (a) and § 20-417d (d) (5) prior to the issuance of a certificate of registration. Such communications included that the company/D'Antonio was an experienced,

"custom," financially-secure, and established new home construction contractor. See Pl. Amended Compl., Count One, ¶ 29. These communications also included that the company/D'Antonio had a draft contract and "approved building plans" in 2019 and later that "Builder ha[d] two approved building plans available–one contemporary and one traditional." See Pl. Amended Compl., Count One, ¶ 29. Upon information and belief, William Raveis and Rowe, on the one hand, and D'Antonio and Attorney Eisenhandler, on the other hand, have a longstanding business relationship.

The plaintiff further alleges the following in count one. Prior to and through the execution of the contract, D'Antonio, William Raveis, Rowe, and Attorney Eisenhandler failed or refused to provide the plaintiff with the written notice required by § 20-417d (a) and a list of consumers. Had the written notice been provided, it would have disclosed that D'Antonio was a shareholder, member, partner, or owner of approximately twenty-five different LLCs and companies, and the plaintiff would not have entered into the contract. A significant majority of the LLCs list Attorney Eisenhandler, counsel for D'Antonio and the company, as agent. Had D'Antonio, William Raveis, Rowe, and/or Attorney Eisenhandler provided a list of consumers as required, the plaintiff would not have entered into the contract. Upon information and belief, William Raveis, Rowe, and Attorney Eisenhandler represented D'Antonio in a separate transaction which was subject to litigation.[2]

[2]The plaintiff alleges that D'Antonio's former customers included at least one couple in litigation adverse to D'Antonio in *Snyder* v. *Chestnut Grove, LLC*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-07-5004785-S (December 23, 2009, *D'Andrea, J.T.R.*).

As of April 13, 2021, no substantial portion of the contract had been performed by the company and D'Antonio, and both the company and D'Antonio were in material breach of the contract. D'Antonio, Attorney Eisenhandler, and Rowe failed to provide a reasonable explanation to the plaintiff for the material breach of the contract and the failure to perform under the contract. On September 13, 2021, Rowe emailed Attorney Eisenhandler to inform him that, although the contract was still in effect, the premises had been relisted on May 26, 2021. Rowe also inquired with Attorney Eisenhandler whether the contract had been terminated. On September 13, 2021, Attorney Eisenhandler replied that a lawsuit had been filed, but no termination had been signed. Subsequently, Rowe inquired with Attorney Eisenhandler about the possibility of selling the premises in the absence of a termination agreement.

The plaintiff further alleges the following. On August 12, 2021, the plaintiff made an application for a prejudgment remedy against the company for a writ of attachment on the premises. On September 2, 2021, Attorney Eisenhandler entered an appearance for the company. The court held an initial status conference on September 17, 2021. At the status conference, Attorney Eisenhandler did not apprise the court or counsel that the company was never the owner of the premises under the contract. The court then set the hearing for the plaintiff's application for a prejudgment remedy on November 29, 2021, which was subsequently rescheduled to January 25, 2022. Attorney Eisenhandler filed no opposition to the plaintiff's prejudgment remedy hearing nor did he offer any testimony at the hearing.

In count two of his amended complaint, the plaintiff alleges a violation of the Connecticut Unfair Trade Practices Act (CUTPA) and incorporates the facts as alleged in paragraphs one through forty-five of his amended complaint. The plaintiff also alleges that under § 20-417g, the

violations of the act pleaded in the plaintiff's amended complaint are unfair and/or deceptive trade practices under General Statutes § 42-110b (a)[3] for which the defendants are liable. The plaintiff further alleges that as a direct and proximate result of the defendants' unlawful conduct, the plaintiff was caused to suffer damages, including the ascertainable loss of money.

Count eight of the plaintiff's amended complaint alleges negligent misrepresentation. The plaintiff alleges the following facts. Before and after the execution of the contract, Attorney Eisenhandler represented that the company was the owner of the premises. Attorney Eisenhandler's representations included both those made in negotiating the contract through its execution on August 11, 2020, and those made specifically to the plaintiff's counsel on or about July 28, 2020, and August 5, 2020. Attorney Eisenhandler's false misrepresentations continued up to, and throughout, the sale of the premises to another LLC, entity, and/or person on November 23, 2021. These false representations were material to the plaintiff in inducing action, including negotiating and entering into the contract. Attorney Eisenhandler knew, had the means to know, should have known, or had a duty to know that these representations were false and that the company was not the owner of the premises. The plaintiff reasonably and justifiably relied on Attorney Eisenhandler's false representations, and Attorney Eisenhandler thereby failed to exercise reasonable care or competence in the course of his business, profession, or employment as a Connecticut attorney. As a direct and proximate result of Attorney Eisenhandler's unlawful conduct, the plaintiff was caused to suffer pecuniary damages.

[3]General Statutes § 42-110b provides in relevant part: "(a) No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. . . ."

In count nine of his amended complaint, the plaintiff alleges innocent misrepresentation and incorporates paragraphs one through eighty-eight of his amended complaint. The plaintiff further alleges that as a direct and proximate result of Attorney Eisenhandler's unlawful conduct, the plaintiff was caused to suffer damages.

On September 21, 2023, Attorney Eisenhandler filed a motion to strike counts one, two, eight, and nine of the plaintiff's amended complaint insofar as each count is alleged against him. In his motion, Attorney Eisenhandler argues that the act does not provide a private cause of action and that the act does not apply to him because he is not, and has never been, engaged in the business of constructing residential homes. He further argues that, because he is not subject to the act, he is not subject to the act's disclosure requirements, and, therefore, count two is legally insufficient because it derives from the alleged violation of the act. With regard to counts eight and nine, Attorney Eisenhandler argues that he was not a party to the transaction, owed no duty to the plaintiff, and is not alleged to have invited reliance on his opinion, and, therefore, counts eight and nine are legally insufficient.

On October 20, 2023, the plaintiff filed a memorandum in opposition to Attorney Eisenhandler's motion to strike, arguing that the first and second counts of his amended complaint are well-pleaded and co-dependent insofar as the express provisions of the act provide that a violation thereof is a per se CUTPA violation, and that the eight and ninth counts plead all the requisite elements of negligent misrepresentation and innocent misrepresentation. The defendant filed a reply to the plaintiff's objection on November 3, 2023, arguing that a violation of the act must be pleaded as a CUTPA claim, that the act does not apply to Attorney

Eisenhandler, that Attorney Eisenhandler did not owe the plaintiff any duty, and that Attorney Eisenhandler had no pecuniary interest in the transaction.

LEGAL ANALYSIS

"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 . . . requires no factual findings by the trial court . . . . [The court construes] 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." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016). "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). But, "[a] motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital,* 308 Conn. 338, 349, 63 A.3d 940 (2013).

I. Count One - New Home Construction Contractors Act

In count one of his amended complaint, the plaintiff alleges that under § 20-417a (7), Attorney Eisenhandler, in addition to Rowe and William Raveis, is subject to the act individually, as part of an "organized group of persons," or both. The remaining paragraphs in count one of the plaintiff's amended complaint allege violations of §§ 20-417b (a), 20-417d (a) and 20-417d (d) (5) of the act.[4]

A. Whether Attorney Eisenhandler is Subject to the Act as a Legal Representative or as Part of an Organized Group of Persons

General Statutes § 20-417a provides in relevant part: "(7) 'Person' means one or more individuals, partnerships, associations, corporations, limited liability companies, business trusts, legal representatives or any organized group of persons . . . ." The phrases "legal representatives" and "organized group of persons" are not defined by the act. "When a statute does not provide a definition, words and phrases in a particular statute are to be construed according to their common usage. . . . To ascertain that usage, we look to the dictionary definition of the term." (Internal quotation marks omitted.) *Potvin* v. *Lincoln Service & Equipment Co.*, 298 Conn. 620, 633, 6 A.3d 60 (2010).

Black's Law Dictionary defines "legal representative" as "[a] lawful representative . . . a legal heir . . . [a]n executor, administrator, or other legal representative," or "[a] personal

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[4]The plaintiff also alleges a violation of § 20-417d (d) (7). General Statutes § 20-417d provides in relevant part: "(d) No person shall . . . (7) fail to refund a deposit paid to a new home construction contractor not later than ten days after a written request mailed or delivered to the new home construction contractor's last-known address . . . ." The plaintiff alleges only that D'Antonio violated § 20-417d (d) (7). Because the plaintiff does not allege that Attorney Eisenhandler violated this section, the court will not address the plaintiff's arguments with respect to this section.

representative . . . [s]omeone who manages the legal affairs of another because of incapacity or death, such as an executor of an estate." Black's Law Dictionary (11th Ed. 2019). Similarly, Merriam-Webster defines "legal representative" as "one who represents or stands in the place of another under authority recognized by law especially with respect to the other's property or interests." Merriam-Webster's Collegiate Dictionary (11th Ed. 2003).

There is no dictionary definition for the phrase "organized group of persons," and the phrase does not appear elsewhere in chapter 399a. Although the phrase "organized group of persons" appears in other statutes; see, e.g., General Statutes §§ 22a-47 and 31-40j; it is not defined by those statutes and has not been defined in case law. Accordingly, the statutory language is ambiguous, and, pursuant to General Statutes § 1-2z,[5] the court may examine the statute's legislative history. The legislative history of the statute provides no definition for organized group of persons (or legal representative), but states that "[t]his bill applies only to those persons . . . who contract directly with the consumer." 42 H.R. Proc., Pt. 9 1999 Sess., p. 3315. At minimum, the phrase "organized group of persons" is broad and may include any organized group of persons that contracted with the consumer for the purpose of new home construction.

In the present case, the plaintiff has alleged that Attorney Eisenhandler was acting in the capacity of an attorney representing D'Antonio and the company concerning the contract and the premises. The plaintiff also alleges that Attorney Eisenhandler was part of an organized group

[5]General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

of persons in that he acted as a legal representative for D'Antonio and the company and that he, in addition to Rowe and William Raveis, made certain misrepresentations about D'Antonio and the company. Although the plaintiff has alleged that Attorney Eisenhandler acted in the capacity of a legal representative for D'Antonio, the plaintiff does not allege facts that describe the nature of Attorney Eisenhandler's relationship with Rowe and William Raveis beyond an allegation that D'Antonio and Attorney Eisenhandler, on the one hand, and William Raveis and Rowe, on the other hand, have a longstanding business relationship. The plaintiff's amended complaint can be read to imply that the defendants were each involved in the sale of the premises in some capacity; however, the plaintiff does not allege facts that explain how the defendants acted in an organized manner. In other words, the plaintiff has not alleged facts to describe what makes the defendants an organized group as opposed to several individuals involved in a transaction with one another. Accordingly, the facts as alleged do not establish that Attorney Eisenhandler was part of an organized group of persons.[6]

Furthermore, on the basis of the language of each section, it is clear that Attorney Eisenhandler does not fall under the purview of §§ 20-417b (a), 20-417d (a) and 20-417d (d) (5). General Statutes § 20-417d (a) provides in relevant part: "(a) A *new home construction contractor* shall (1) prior to entering into a contract with a consumer for new home construction,

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[6]It is unclear whether a legal representative falls under the umbrella of an "organized group of persons" when the terms are separately listed in § 20-417a. Moreover, the facts alleged establish that Attorney Eisenhandler represented only D'Antonio and the company, and did not provide any legal services to or for the other named defendants. Therefore, it would be difficult for this court to determine that Attorney Eisenhandler was part of an organized group of persons solely on the basis of his involvement in contract negotiations on behalf of his client, D'Antonio/the company, or on the basis of the plaintiff's allegation that Attorney Eisenhandler made identical misrepresentations to those made by other named defendants.

provide to the consumer a copy of the new home construction contractor's certificate of registration and a written notice . . . ." (Emphasis added.) A new home construction contractor is "any person who contracts with a consumer to construct or sell a new home or any portion of a new home prior to occupancy." General Statutes § 20-417a (5). The plaintiff fails to allege that Attorney Eisenhandler, in his capacity as a legal representative, had a contract with or was signatory to a contract with the plaintiff for the purpose of constructing or selling a new home. Rather, the parties to the contract, as alleged in the amended complaint, were D'Antonio and the plaintiff. Therefore, Attorney Eisenhandler does not qualify as a new home construction contractor, and under § 20-417d (a) it was not incumbent upon Attorney Eisenhandler to provide any certificate of registration or written notice to the plaintiff. Moreover, as discussed above, the plaintiff has not pleaded sufficient facts to establish that Attorney Eisenhandler is part of an organized group of persons; accordingly, he is not subject to the act under that definition.

The plaintiff also alleges that through the premises listing, communications, negotiations, and meetings with the plaintiff, Attorney Eisenhandler, along with Rowe and William Raveis, held D'Antonio and the company out as a new home construction contractor in violation of § 20-417b (a) and § 20-417d (d) (5) prior to the issuance of a certificate of registration. General Statutes § 20-417b provides in relevant part: "(a) No person shall engage in the business of new home construction or hold himself or herself out as a new home construction contractor unless such person has been issued a certificate of registration by the commissioner in accordance with the provisions of sections 20-417a to 20-417j, inclusive . . . ." General Statutes § 20-417d provides in relevant part: "(d) No person shall . . . (5) engage in the business of a new home construction contractor or hold himself or herself out as a new home construction contractor

without having a current certificate of registration under sections 20-417a to 20-417j, inclusive . . . ." In the present case, the plaintiff has not alleged that Attorney Eisenhandler, in his individual capacity as a legal representative, engaged in the business of new home construction or held himself out as a new home construction contractor. Accordingly, Attorney Eisenhandler is not subject to the act as an individual and, as discussed above, the plaintiff has not pleaded sufficient facts to establish that Attorney Eisenhandler is part of an organized group of persons; accordingly, he is not subject to the act under that definition.

B. Whether the Act Provides for a Private Cause of Action

"A violation of [the act] is a per-se violation of CUTPA . . . ." *Kaeser Construction Co.* v. *Schimmeck*, Superior Court, judicial district of Bridgeport, Docket No. CV-13-6035639-S (June 8, 2015, *Jennings, J.T.R.*) (60 Conn. L. Rptr. 503, 505). In the present case, the plaintiff pleads violations of the act and his CUTPA claim pursuant to the act as separate counts.

Although our courts of appeal have not yet considered the question of whether a consumer may bring a private cause of action against a contractor who has violated the act, several trial courts have determined that there is no private cause of action under the act. See *Wells* v. *New House Resource Group, LLC*, Superior Court, judicial district of Middlesex, Docket No. CV-06-5000789-S (April 20, 2009, *Jones, J.*) (47 Conn. L. Rptr. 627, 630) ("the plaintiffs' right of action under the act is limited to a CUTPA claim"); *Boyd Building* v. *Brewster*, Superior Court, judicial district of New London, Docket No. CV-06-5001652-S (July 8, 2008, *Martin, J.*) (45 Conn. L. Rptr. 751, 752) ("the court must assume that if the legislature had intended to create a direct right of action under [the] NHCCA, it would have done so explicitly" [footnote omitted]); *Sturm* v. *Harb Development, LLC*, Superior Court, judicial

district of New Britain, Docket No. CV-07-6001058-S (January 2, 2008, *Pittman, J.*) ("the cited statute does not provide for a private right of action"), aff'd, 298 Conn. 124, 2 A.3d 859 (2010); *Hugman Co., Inc.* v. *Mallozzi*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-14-5014276-S (March 6, 2015, *Lee, J.*) ("although [the] defendants raised the issue of [the] plaintiff's non-compliance with the New Home Construction Contractors Act, they concede that the Act does not provide for a private cause of action . . .").

"[T]here exists a presumption in Connecticut that private enforcement does not exist unless expressly provided in a statute. In order to overcome that presumption, the [plaintiff bears] the burden of demonstrating that such an action is created implicitly in the statute . . . In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff one of the class for whose . . . benefit the statute was enacted . . . ? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? . . . Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? . . . Consistent with the dictates of [General Statutes] § 1-2z, however, we do not go beyond the text of the statute and its relationship to other statutes unless there is some textual evidence that the legislature intended, but failed to provide expressly, a private right of action. Textual evidence that would give rise to such a question could include, for example, language granting rights to a discrete class *without providing an express remedy* or language providing a specific remedy to a class without expressly delineating the contours of the right." (Emphasis in original; internal quotation marks omitted.) *Drew* v. *Yale New Haven Hospital*, Superior Court, judicial district of New Haven,

Docket No. CV-19-5046645-S (July 7, 2021, *Wilson, J.*) (71 Conn. L. Rptr. 207, 209) (finding no implicit private cause of action within General Statutes § 17a-502).

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply . . . In seeking to determine that meaning . . . § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) Id.

"The Supreme Court discussed the penalty provisions of the New Home Construction Contractors Act in *D'Angelo Development & Construction Co.* v. *Cordovano*, 278 Conn. 237, 897 A.2d 81 (2006), in which the court decided that a contractor's failure to comply with the requirements of the New Home Construction Contractors Act should not be subjected to the additional penalties of being precluded from enforcing his contract with the consumer or maintaining a lien on the consumer's property. As the court noted, [t]he New Home Construction Contractors Act, which took effect on October 1, 1999, regulates the activities of new home construction contractors. *D'Angelo Development & Construction Co.* v. *Cordovano*, supra, 278 Conn. 243. The act . . . provides three distinct penalties for a violation of its provisions. First, the act empowers the commissioner to impose a civil penalty on . . . any person who violates any of the provisions of [the act] . . . General Statutes § 20-417f. Second, the act provides that any person who violates any provision of subsection (d) of section 20-417d shall be

guilty of a class A misdemeanor. General Statutes § 20-417e. Finally, the act provides that a violation of any of its provisions shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b; General Statutes § 20-417g; thereby exposing the violator to a private lawsuit under the Connecticut Unfair Trade Practice Act (CUTPA), General Statutes § 42-110a et seq." (Internal quotation marks omitted; footnotes omitted.) *Wells* v. *New House Resource Group, LLC*, supra, Superior Court, Docket No. CV-06-5000789-S.

"In *D'Angelo Development & Construction Co.* v. *Cordovano*, the court specifically concluded that . . . [t]he act's penal and remedial scheme provides sufficient recourse to aggrieved consumers to effectuate the act's underlying public policy. [*D'Angelo Development & Construction Co.* v. *Cordovano*, supra, 278 Conn. 248 n.17]. Accordingly, the sufficient remedies provided by the act do not necessitate the recognition of an independent cause of action for violation of the statute . . . ." (Internal quotation marks omitted.) Id. Rather, "the court must assume that if the legislature had intended to create a direct right of action under [the New Home Construction Contractors Act], it would have done so explicitly. *Boyd Building* v. *Brewster*, Superior Court, [judicial district of New London, Docket No. CV-06-5001652-S (July 8, 2008, *Martin, J.*) (45 Conn. L. Rptr. 751, 752)]. Instead, [the] act is devoid of any language providing a [direct] private right of action to consumers." (Internal quotation marks omitted.) Id.[7]

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[7]By comparison, "the Home Improvement Act also contains a provision that provides that a violation of any of the provisions of this chapter shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b. General Statutes § 20-427 (c). Again, the Supreme Court has not decided whether a consumer is precluded from bringing a private cause of action against a home improvement contractor other than pursuant to a CUTPA claim under § 20-427 (c), although it has used language that indicates that it would be inclined to hold that a consumer cannot do so. See *Hees* v. *Burke Construction, Inc.*, 290 Conn. 1, 12-13, 961 A.2d 373 (2009) . . . Moreover, . . . numerous other judges of the Superior Court have held that the Home Improvement Act does not provide an independent cause of action." (Internal quotation marks

Accordingly, the act does not provide for a private cause of action, and insofar as the plaintiff alleges a private cause of action under the act, the defendant's motion to strike count one of the plaintiff's amended complaint as to Attorney Eisenhandler is hereby granted.

II. Count Two - Violation of CUTPA Pursuant to § 20-417g

In count two, the plaintiff incorporates the facts as alleged in paragraphs one through forty-five of his amended complaint. The plaintiff also alleges that under § 20-417g, the violations of the act are unfair and/or deceptive trade practices under § 42-110b (a) for which the defendants are liable. Section 20-417g provides: "A violation of any of the provisions of sections 20-417a to 20-417j, inclusive, shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b."

The plaintiff alleges that, under § 20-417a (7), Attorney Eisenhandler is subject to the act individually, as part of an "organized group of persons," or both. The plaintiff further alleges that Attorney Eisenhandler held D'Antonio out as a new home construction contractor prior to the issuance of a certificate of registration in violation of §§ 20-417b (a) and 20-417d (d) (5), and that Attorney Eisenhandler failed or refused to provide the plaintiff with the written notice required by § 20-417d (a) and a list of consumers. As discussed in part I A of this opinion, the plaintiff has not alleged sufficient facts to demonstrate that Attorney Eisenhandler is part of an organized group of persons, and Attorney Eisenhandler is not a party subject to §§ 20-417b (a),

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omitted.) Id.

20-417d (a) and 20-417d (d) (5) of the act. Therefore, Attorney Eisenhandler's motion to strike count two of the plaintiff's amended complaint as alleged against him is hereby granted.[8]

III. Count Eight - Negligent Misrepresentation

"[Our Supreme Court] has long recognized liability for negligent misrepresentation. . . . The governing principles are set forth in . . . § 552 of the Restatement Second of Torts [1977]: One who, in the course of his business, profession or employment . . . supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. . . . [T]he plaintiff need not prove that the representations made by the [defendants] were promissory. It is sufficient . . . that the representations contained false information. . . . There must be a justifiable reliance on the misrepresentation for a plaintiff to recover damages." (Internal quotation marks omitted.) *Bernblum* v. *Grove Collaborative, LLC*, 211 Conn. App. 742, 762, 274 A.3d 165, cert. denied, 343 Conn. 925, 275 A.3d 626 (2022).

[8]Even if the second count of the plaintiff's amended complaint survived the motion to strike on the grounds discussed above, the second count still fails because the plaintiff's allegations against Attorney Eisenhandler do not implicate the entrepreneurial aspects of the practice of law. See *Suffield Development Associates Ltd. Partnership* v. *National Loan Investors, L.P.*, 260 Conn. 766, 781, 802 A.2d 44 (2002) ("only the entrepreneurial aspects of the practice of law are covered by CUTPA"). "The entrepreneurial aspects of law include solicitation of business and billing practices, as opposed to claims directed at the competence of and strategy employed . . . ." (Internal quotation marks omitted.) *Hurowitz* v. *Garbinski*, Superior Court, judicial district of New Haven, Docket No. CV-14-6048288-S (October 1, 2015, *Nazzaro, J.*) (citing *Haynes* v. *Yale-New Haven Hospital*, 243 Conn. 17, 35-36, 699 A.2d 964 [1997]). The plaintiff has not alleged facts pertaining to the entrepreneurial or commercial aspects of Attorney Eisenhandler's activities.

"Traditionally, an action for negligent misrepresentation requires the plaintiff to establish (1) that the defendant made a misrepresentation of fact (2) that the defendant knew or should have known was false, and (3) that the plaintiff reasonably relied on the misrepresentation, and (4) suffered pecuniary harm as a result. . . . In other words, in addition to proving that a defendant negligently made a misrepresentation of fact, a plaintiff must also demonstrate that any claimed demonstrable harm was a direct result of his reasonable reliance on that misrepresentation." Id., 762-63.

In the present case, the plaintiff alleges the following. Attorney Eisenhandler negligently misrepresented that the company owned the premises before and after the execution of the contract, while negotiating the contract, and up to and throughout the sale of the premises to another LLC, entity, and/or person on November 23, 2021. Such misrepresentations were made to the plaintiff's counsel on July 28, 2020, and August 5, 2020, and the misrepresentations made were material to the plaintiff in inducing action, including negotiating and entering into the contract. Attorney Eisenhandler knew, had the means to know, should have known, or had a duty to know that his misrepresentations were false, and the plaintiff reasonably and justifiably relied on Attorney Eisenhandler's false misrepresentations and suffered pecuniary damages as a result of Attorney Eisenhandler's conduct.

Attorney Eisenhandler contends that the plaintiff has not alleged that he was a party to the transaction and has not alleged that he invited reliance on any opinion. Particularly, Attorney Eisenhandler asserts that the plaintiff has failed to allege facts that indicate that he made any specific representations to the plaintiff regarding the premises, that he did not represent the plaintiff in negotiating or executing the contract, and that none of his services were solicited for

the benefit of the plaintiff; therefore, it was not reasonably foreseeable that the plaintiff would rely on any misrepresentations made. Attorney Eisenhandler further argues that any such reliance in this circumstance would be unreasonable given that, at all times relevant, the plaintiff was represented by his own counsel.

Importantly, "[i]n order to be liable for its innocent or negligent misrepresentations, a party must owe a duty of care." *Dworkin Construction Corp.* v. *Shremshock-Yoder Architects*, Superior Court, judicial district of New Haven, Docket No. 380352 (July 1, 1997, *Licari, J.*) (20 Conn. L. Rptr. 81, 82); see *Lappostato* v. *Terk*, Superior Court, judicial district of Hartford, Docket No. CV-10-6009815-S (January 18, 2012, *Domnarski, J.*) (considering duty of care with respect to negligent misrepresentation claim).

"The existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand. . . . We have stated that the test for the existence of a legal duty of care entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case. . . . In *Krawczyk* v. *Stingle*, 208 Conn. 239, 543 A.2d 733 (1988), we addressed the issue of when attorneys have a duty of care to persons other than their clients. *Krawczyk* concerned a malpractice action brought by relatives of a decedent against an attorney and a law firm hired by the decedent to prepare documents for the disposition of his estate. . . . In that case, we stated that [d]etermining when attorneys should be held liable

to parties with whom they are not in privity is a question of public policy. . . . In addressing this issue, courts have looked principally to whether the primary or direct purpose of the transaction was to benefit the third party." (Citations omitted; internal quotation marks omitted.) *Gould* v. *Mellick & Sexton*, 263 Conn. 140, 153-54, 819 A.2d 216 (2003).

"Additional factors considered have included the foreseeability of harm, the proximity of the injury to the conduct complained of, the policy of preventing future harm and the burden on the legal profession that would result from the imposition of liability. . . . Courts have refrained from imposing liability when such liability had the potential of interfering with the ethical obligations owed by an attorney to his or her client." (Citations omitted.) *Krawczyk* v. *Stingle*, 208 Conn. 239, 245-46, 543 A.2d 733 (1988).

"As a general rule, attorneys are not liable to persons other than their clients for the negligent rendering of services." Id., 244. "To the extent that the courts have found an exception to the above general rule, the third party seeking to recover from the attorney must show he or she was the intended or foreseeable beneficiary of the attorney's services. . . . Another exception . . . is when the attorney engages in an undertaking for the joint benefit of the two parties to the real estate transaction, or where the attorney expressly contracts with one person who compensates him to perform certain services for another. . . . Finally, attorneys have been held liable to non-clients when they have expressly, voluntarily assumed a gratuitous undertaking. In such cases, the lawyer volunteers to perform a definitive service on behalf of the non-client. . . . However, this last exception does not create liability to a third party for negligence if the attorney never dealt directly with the third party and did not agree to perform a definitive service on its

behalf." *Chicago Title Insurance Co.* v. *Bologna*, Superior Court, judicial district of Hartford, Docket No. CV-03-0825830-S (November 9, 2006, *Keller, J.*).

These exceptions do not apply to the facts of the present case.[9] The plaintiff argues that his allegations can be fairly read to allege that Attorney Eisenhandler invited reliance on a provision of his legal services by drafting and negotiating the contract and making misrepresentations in the course thereof;[10] however, the plaintiff has not alleged in his amended complaint that Attorney Eisenhandler took part in drafting the contract. Because the amended complaint is the operative complaint, the court may consider only the allegations contained therein. A fair reading of the amended complaint suggests that Attorney Eisenhandler took part in negotiations for the sale of the premises. The plaintiff has not alleged that, in the course of these negotiations, any of Attorney Eisenhandler's services were solicited for the benefit of the plaintiff. Rather, Attorney Eisenhandler represented only the interests of his clients, D'Antonio and the company, and goal of the sale of the premises involved the mutual benefit of both

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[9]Moreover, although the plaintiff argues that the rules of professional conduct provide guidance with respect to whether a cause of action for negligent misrepresentation extends to attorneys, the rules of professional conduct do not provide a basis for civil liability. *Mozzochi* v. *Beck*, 204 Conn. 490, 501 n.8, 529 A.2d 171 (1987).

[10]The plaintiff points to the Restatement (Third) of the Law Governing Lawyers. "Section 51 of the Restatement (Third) of [the Law Governing Lawyers] (2000), provides that for purposes of liability for professional negligence a lawyer owes a duty to use care to a nonclient when the lawyer invites the nonclient to rely on the lawyer's opinion, p. 356-57. The cause of action in such a case is substantively identical to a claim of negligent misrepresentation, p. 360." *Distinctive Home Builders, LLC* v. *Copar Construction, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-05-4019423-S (August 9, 2006, *Scholl, J.*).

parties.[11] Attorney Eisenhandler also asserts that any purported reliance on his opinions would be unreasonable because the plaintiff was represented by his own counsel and that because his services were not solicited for the benefit of the plaintiff, it was not reasonably foreseeable that the plaintiff would rely on any representations made.

Indeed, the plaintiff alleges only that misrepresentations were made to his counsel, rather than to the plaintiff directly. Although it may be true that an attorney could reasonably anticipate that information shared with counsel for the opposing party would be shared with that client, at the same time, it is true that an attorney may reasonably be expected to verify the veracity of information pertinent to his or her client's matter; however, in some cases, an attorney must be able to rely on representations made to him so as to facilitate certain transactions. See *Rodrigues* v. *Padilla*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-04-085784-S (December 22, 2004, *Shluger, J.*) ("Attorney Levinson was justified in acting in reliance upon the fax transmittal and in fact, real estate transactions as they are commonly undertaken would be impossible unless attorneys could so rely").

Nevertheless, in cases in which a party has raised a claim for negligent misrepresentation, our courts have declined to uphold such claims where the plaintiff had its own attorney(s).[12] See *Chicago Title Insurance Co.* v. *Bologna*, supra, Superior Court, Docket No. CV-03-0825830-S;

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[11]See *Chicago Title Insurance Co.* v. *Bologna*, supra, Superior Court, Docket No. CV-03-0825830-S (stating "[t]he primary purpose here was to transfer property for the mutual benefit of the Longos and Saturno").

[12]By contrast, where the plaintiff was a self-represented non-client, at least one court determined that a cause of action for negligent misrepresentation could lie. See *Distinctive Home Builders, LLC* v. *Copar Construction, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-05-4019423-S (August 9, 2006, *Scholl, J.*).

Connecticut Resources Recovery Authority v. *Murtha Cullina, LLP*, Superior Court, judicial district of Waterbury, Docket No. X02-CV-02-0174569-S (October 31, 2005, *Eveleigh, J.*); see also *Gould v. Mellick & Sexton*, supra, 263 Conn. 155 (concluding defendant law firm did not owe duty of care to plaintiff, a non-client, for negligence).

In *Chicago Title Insurance Co.*, the issue before the court was whether an attorney representing the seller in a real estate closing could be liable for a tortious breach of duty to the buyers and thereby be liable to their attorney under principles of indemnity. *Chicago Title Insurance Co.* v. *Bologna*, supra, Superior Court, Docket No. CV-03-0825830-S. The court concluded that "[t]he facts clearly allege that [the seller's attorney] was only retained to represent . . . the seller. [The buyer's attorney] represented the buyers, the bank, and also served as an agent for [the title insurance company]. Therefore, absent certain recognized exceptions, [the seller's attorney] owed [the seller]–and no one else –his undivided duty of loyalty and care." Id. Most importantly, our courts of appeal have not yet decided whether "Connecticut law recognizes a third-party cause of action in negligent misrepresentation against attorneys . . . ." *Doe* v. *Cochran*, 332 Conn. 325, 344 n.8, 210 A.3d 469 (2019). Although in *Updike, Kelly & Spellacy, P.C.* v. *Beckett*, 269 Conn. 613, 648, 850 A.2d 145 (2004) the court concluded that the "defendants established a prima facie case of negligent misrepresentation with respect to the [law firm's] cost estimate," a distinguishing factor is that attorney's fees for services rendered is not an issue directly related to the attorney's ability to represent his client.

"[A] central dimension of the attorney-client relationship is the attorney's duty of entire devotion to the interest of the client." (Internal quotation marks omitted.) *Chicago Title Insurance Co.* v. *Bologna*, supra, Superior Court, Docket No. CV-03-0825830-S. "[A] client's

interest must be recognized as adverse, or potentially adverse, to the other party. To find a duty of care to the other party interferes with the undivided loyalty owed the client and could undermine confidentiality and the goal of achieving the most advantageous position for the client. A broader duty to the other side could potentially affect future attorney-client relations and undermine an attorney's ethical obligation of independent judgment." Id.

On balance, the factors enumerated in *Krawczyk* as applied to the facts of this case do not support the imposition of a third-party duty of care. Accordingly, the plaintiff's claim is legally insufficient, and Attorney Eisenhandler's motion to strike count eight of the plaintiff's amended complaint as alleged against him is hereby granted.

IV. Count Nine - Innocent Misrepresentation

"The elements of [innocent misrepresentation] are (1) a representation of material fact, (2) made for the purpose of inducing the purchase, (3) the representation is untrue, and (4) there is justifiable reliance by the plaintiff on the representation by the defendant and (5) damages." (Internal quotation marks omitted.) *Peterson* v. *McAndrew*, 160 Conn. App. 180, 204, 125 A.3d 241 (2015). "An innocent misrepresentation may be actionable if the declarant has the means of knowing, ought to know, or has the duty of knowing the truth." *Richard* v. *A. Waldman & Sons, Inc.*, 155 Conn. 343, 346, 232 A.2d 307 (1967) (concluding plaintiffs had alleged all facts material to support claim where contract was between plaintiff and defendant).

"[I]n Connecticut, the tort of innocent misrepresentation generally is governed by § 552C of the Restatement (Second), which requires a sale, rental or exchange transaction with another before liability attaches. . . . The commentary to the Restatement (Second) illuminates this language further, explaining that it encompasses any sale, rental or exchange of land, chattels,

securities or anything else of value, such as copyrights, patents and other valuable intangible rights. . . . The few courts that have considered this issue have concluded that the provision of professional services is not a commercial transaction for purposes of § 552C of the Restatement (Second)."[13] (Citations omitted; footnote omitted; internal quotation marks omitted.) *Farrell* v. *Johnson & Johnson*, 335 Conn. 398, 419-20, 238 A.3d 698 (2020).

In the present case, the plaintiff alleges that Attorney Eisenhandler represented that the company owned the premises, and that Attorney Eisenhandler made these representations both while negotiating the contract through its execution on August 11, 2020, and to the plaintiff's counsel on July 28, 2020, and August 5, 2020. The plaintiff further alleges that Attorney Eisenhandler's false representations were material to the plaintiff in inducing action, including negotiating and entering into the contract, and that Attorney Eisenhandler knew, had the means to know, should have known, or had a duty to know that these representations were false and that the company did not own the premises. The plaintiff has also alleged that he reasonably and justifiably relied on Attorney Eisenhandler's false representations and that as a direct and proximate result of Attorney Eisenhandler's unlawful conduct, the plaintiff suffered pecuniary damages.

Attorney Eisenhandler contends that he was not personally involved in a sale, rental or exchange transaction with the plaintiff, and that he had no direct business relationship with the

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[13]"In Connecticut, a claim of innocent misrepresentation . . . is based on principles of warranty . . . We have held that an innocent misrepresentation is actionable, even though there [is] no allegation of fraud or bad faith, because it [is] false and misleading, in analogy to the right of a vendee to elect to retain goods which are not as warranted, and to recover damages for the breach of warranty. . . ." (Internal quotation marks omitted.) *Gibson* v. *Capano*, 241 Conn. 725, 730, 699 A.2d 68 (1997) (determining that resolution of plaintiff's innocent misrepresentation claim "is guided by the general principles governing the construction of contracts").

plaintiff. Rather, the plaintiff was engaged in a sale or transaction with the company. In his reply, the plaintiff asserts that the sale of the premises was a business transaction and that Attorney Eisenhandler acted as an agent for D'Antonio and/or the company, the seller. In response, Attorney Eisenhandler argues that he had no pecuniary interest in the transaction and did not receive any financial compensation or commission in connection with the transaction. Attorney Eisenhandler also argues that he owed the plaintiff no duty of care and that he did not ratify the deal or execute the contract; instead, D'Antonio and the company remained in control of the contracting process, and, therefore, the plaintiff's arguments as to agency are unavailing.

"Liability outside of a sale, rental or exchange transaction is not categorically excluded by the Restatement, as that provision includes a caveat declining to opine on other types of business transactions . . . in which strict liability may be imposed . . . ." *Farrell* v. *Johnson & Johnson*, supra, 335 Conn. 419-21. But, comment d to the Restatement (Second) provides that "[t]he rule stated is limited to the immediate parties to the sale, rental or exchange transaction itself." 1 Restatement (Second), Torts § 552C (1981), comment d, p. 144. Likewise, comment g to the Restatement (Second) provides that "[u]nder the rule stated in this Section, the strict liability for innocent misrepresentation is limited to sale, rental or exchange transactions between the plaintiff and the defendant. . . . In a few other instances agents selling for their principals have been held to the strict liability for innocent misrepresentation, when they have received a commission or had some other pecuniary interest in the transaction." 1 Restatement (Second), Torts § 552C (1981), comment g, p. 145. Comment d therefore makes clear that the alleged sale, rental or exchange transaction, or other business transaction, must be between the plaintiff and the defendant; only in limited circumstances has strict liability been imposed where an agent was

selling for its principal. In the present case, the plaintiff has not alleged that Attorney Eisenhandler was a party to the transaction, or that he had a direct business relationship with the plaintiff. Instead, the transaction was between the plaintiff and D'Antonio/the company.

The plaintiff asserts, however, that Attorney Eisenhandler was involved in a business transaction because he was acting as the agent of D'Antonio/the company, the seller, in the negotiations for the sale of the premises. Generally, "[w]here . . . an agent or officer commits or participates in the commission of a tort, whether or not he acts on behalf of his principal or corporation, he is liable to third persons injured thereby." *Scribner* v. *O'Brien, Inc.*, 169 Conn. 389, 404, 363 A.2d 160 (1975). Although the plaintiff is correct "that the attorney-client relationship is one of agency;" *Kubeck* v. *Foremost Foods Co.*, 190 Conn. 667, 673 n.6, 461 A.2d 1380 (1983); our courts of appeal have not yet recognized strict liability for innocent misrepresentation for an attorney acting as an agent negotiating a contract on behalf of his client in a real estate transaction.

The plaintiff does not raise claims against Attorney Eisenhandler in his capacity as an agent for the company, nor does the plaintiff allege that Attorney Eisenhandler acted in the capacity of an agent in that he was authorized to enter the agreement on behalf of his client and did so. Accordingly, this is not an issue of whether the attorney's actions may bind his client. Rather, the plaintiff's theory of liability for misrepresentation rests on Attorney Eisenhandler's attorney-client relationship with D'Antonio/the company.[14] On the basis of *Farrell* v. *Johnson &*

[14]It should be noted that the cases upon which the plaintiff relies in support of this argument; *Gibson* v. *Capano*, 241 Conn. 725, 699 A.2d 68 (1997) and *Langlois* v. *Johnson*, Superior Court, judicial district of New London Docket No. 508851 (August 28, 1990, *O'Connell, Attorney Trial Referee*); did not involve attorneys acting as agents, and are therefore distinguishable from the issue before this court.

Johnson, supra, 335 Conn. 419-20, it is clear that the provision of professional services is not a commercial transaction for purposes of a claim for intentional misrepresentation.

Moreover, the relationship between an attorney acting as an agent for his client differs slightly from that of the typical agent and principal because an attorney, although he or she may be an agent of the client, does not typically owe a duty to non-clients. See *Krawczyk* v. *Stingle*, supra, 208 Conn. 244. Accordingly, following the court's analysis of the *Krawczyk* factors in part IV of this opinion, the plaintiff's theory that Attorney Eisenhandler's attorney-client relationship creates an agency role that renders him liable for misrepresentations to a non-client is unavailing. Furthermore, even though the tort of intentional misrepresentation is based on principles of warranty; see *Gibson* v. *Capano*, 241 Conn. 725, 730, 699 A.2d 68 (1997); public policy would dictate against opening attorneys up to civil liability for such claims in most cases, as holding attorneys strictly liable for innocent misrepresentation to non-clients would result in a flood of litigation.[15]

Lastly, Attorney Eisenhandler asserts that he had no pecuniary interest in the contract or the subject property. It can be assumed that Attorney Eisenhandler might have expected to be paid for his representation of his client(s), but absent any allegation or evidence that Attorney Eisenhandler stood to benefit financially from the sale of the premises, the facts as alleged do not demonstrate that Attorney Eisenhandler had a pecuniary interest in the transaction. Furthermore, Attorney Eisenhandler asserts that he did not receive any financial compensation or commission in connection with the transaction, and the plaintiff has not alleged any facts to the contrary.

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[15]The plaintiff is not left without recourse, and may be able to pursue a grievance complaint for purported violations of the rules of professional conduct.

Accordingly, the plaintiff's claim is legally insufficient, and Attorney Eisenhandler's motion to strike count nine of the plaintiff's amended complaint as alleged against him is hereby granted.

CONCLUSION

On the basis of the foregoing, the court hereby grants Attorney Eisenhandler's motion to strike counts one, two, eight, and nine of the plaintiff's amended complaint insofar as they are alleged against him.

Juris No. 421279
Wilson, J.