DOCKET NO.: CV-22-6007492-S	:	SUPERIOR COURT
STAMFORD RPM RACEWAY, LLC	:	HOUSING SESSION
v.	:	J.D. STAMFORD/NORWALK
600 WEST AVENUE INDUSTRIAL, LLC	:	APRIL 16, 2024

MEMORANDUM OF DECISION
MOTION TO STRIKE NO.: 141.00, 142.00
OBJECTION TO MOTION NO.: 146.00
REPLY: NO.: 147.00

Defendant, 600 WEST AVENUE INDUSTRIAL, LLC moves to strike counts one, four, and five of the plaintiff's amended complaint, on the grounds that the plaintiff fails to state a claim that relief can be granted. Specifically, in count one, the plaintiff fails to allege a sufficient breach of contract claim, count four does not sufficiently plead a claim of breach of the covenant of good faith and fair dealing, and count five does not allege a sufficient CUTPA claim. After reviewing the oral and written arguments of the parties, the court file, the relevant law, and equitable positions of the parties, the court denies the motion to strike count one and grants the motion to strike counts four and five.

ALLEGED FACTS AND PROCEDURAL HISTORY

On May 27, 2022, the plaintiff, RPM Raceway, LLC (plaintiff), filed a two count complaint[1] against the defendants, 600 West Avenue Industrial, LLC (600 West),[2] and Clearbrook Stamford, LLC (Clearbrook), alleging the following facts. On or about May 12,

[1] The original complaint, filed on May 22, 2022, consisted of two counts. However, the subsequent amended complaint, filed November 11, 2023, consists of five counts and is the operative complaint in the defendant's present motion to strike.
[2] The plaintiff withdrew their complaint against 600 West Industrial, LLC, on March 13, 2024, leaving Clearbrook Stamford, LLC as the singular defendant.

2017, the plaintiff entered into a short form net lease agreement with a non-party entity, West Avenue Realty Associates, LLC (WARA) for the commercial premises located at 600 West Avenue in Stamford, Connecticut. On or about May 1, 2019, WARA assigned the lease to Clearbrook.

On or about early 2022, Clearbrook made the decision to sell the premises to 600 West. In anticipation of the sale, the plaintiff inquired whether Clearbrook wanted the plaintiff to pay an additional security deposit of $347,650.68 owed before the sale closed. Clearbrook advised the plaintiff not to pay the additional security deposit. Despite being told not to pay the deposit and there being an agreement between the parties that the plaintiff would pay a reduced rental rate during the COVID-19 pandemic, Clearbrook claimed the plaintiff owed additional rent from this time yet did not dispute the prior agreement. Clearbrook stated that if the plaintiff paid the deposit amount at this time it would be applied to the amounts in dispute and not the deposit, thereby resulting in the deposit still being owed. On or about May 1, 2022, the sale of the premises from Clearbrook to 600 West closed, and on May 2, 2022, 600 West notified the plaintiff that they were the new landlord under the lease.

On May 6, 2022, 600 West sent the plaintiff a notice of default for alleged nonpayment under the lease. On or about May 9, 2022, the plaintiff sent a letter to 600 West, disputing the amounts claimed to be due. On May 17, 2022, 600 West sent a letter to the plaintiff, by which 600 West stated that it had elected to terminate the lease. However, on May 20, 2022, 600 West sent the plaintiff an account statement and request for fixed basic rent and additional rent due for June 2022. By May 26, 2022, the plaintiff had all amounts allegedly due by 600 West through the end of May. The plaintiff did so under protest and notified 600 West that their payments were being made under a full reservation of rights. By May 31, 2022, the plaintiff paid all amounts

600 West alleged were due through the end of June 2022. 600 West accepted all payments. On June 2, 2022, 600 West served a notice to quit on the plaintiff, claiming that the plaintiff had failed to pay rent. The plaintiff alleges, upon information and believe, that 600 West and Clearbrook know that the plaintiff is in compliance with its obligations under the lease, and that 600 West served the notice to quit in retaliation for the plaintiff's commencement of this action and in an attempt to strong-arm the plaintiff into withdrawing this action.

Furthermore, the plaintiff alleges these additional facts. Pursuant to the lease, the defendant Clearbrook was obligated to maintain security of the commercial premises, the cost of which would be paid from additional rent paid by the plaintiff and other tenants of the premises. However, Clearbrook did not provide security, nor reduced the rent meant to be paid towards security at that time. On April 18, 2021, a teenage boy was shot and killed, and two others were injured in the parking lot of the premises. As a result of the shooting, the business at the premises immediately stalled and the plaintiff faced a loss of revenue. Furthermore, the community impact of the shooting was significant and created substantial concerns about the safety of the area. Clearbrook pledged to compensate the plaintiff for their losses but ultimately did not do so.

Following the summons and complaint, the plaintiff filed an amended complaint on July 5, 2022. The plaintiff filed a second revised complaint on October 5, 2022, and then filed a third amended complaint on April 25, 2023. The defendant filed a motion to strike counts four and five of the second revised complaint on July 17, 2023, which was granted by this court on August 15, 2023. The plaintiff filed a fourth amended complaint on August 30, 2023,[3] and then

[3] A motion to strike count three of the fourth amended complaint was filed by the defendant 600 West on September 6, 2023, and was granted by this court on October 18, 2023. However, this procedural history is not relevant to the matter at hand.

filed a fifth amended complaint, the operative complaint in the present action, on November 2, 2023. The defendant filed the motion to strike counts one, four, and five of the operative complaint with a supporting memorandum on January 29, 2024. The plaintiff filed their objection to the motion on February 28, 2024, and the defendant filed their reply on March 1, 2024.

DISCUSSION

"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." (Citations omitted; internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 580, 693 A.2d 293 (1997). "[A] motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court . . . ." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016).

"Practice Book § [10-39 (b)] requires that a motion to strike raising a claim of insufficiency shall separately set forth each such claim of insufficiency and shall distinctly specify the reason or reasons for each such claimed insufficiency. Motions to strike that do not specify the grounds of insufficiency are fatally defective and, absent a waiver by the party opposing the motion, should not be granted. . . . Practice Book § [10-39 (c)], which requires a motion to strike to be accompanied by an appropriate memorandum of law citing the legal authorities upon which the motion relies, does not dispense with the requirement of [Practice Book § 10-39 (b)] that the reasons for the claimed pleading deficiency be specified in the motion itself." (Internal quotation marks omitted.) *Stuart* v. *Freiberg*, 102 Conn. App. 857, 861, 927 A.2d 343 (2007).

"The role of the trial court in ruling on a motion to strike is to examine the [complaint], construed in favor of the [plaintiff], to determine whether the [pleading party has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) *Coe* v. *Board of Education*, 301 Conn. 112, 117, 19 A.3d 640 (2011). "[I]f a motion to strike is granted, the party whose pleading is stricken is given an opportunity to replead in order to avoid a harsh result." *Pratt* v. *Town of Old Saybrook,* 225 Conn. 177, 185, 621 A.2d 1322 (1993). See also *American Progressive Life & Health Ins. Co. of New York* v. *Better Benefits, LLC*, 292 Conn. 111, 121, 971 A.2d 17 (2009) ("[The] granting of a motion to strike allows the plaintiff to replead his or her case"). "When the allegations of an amended complaint appear to be the same in substance as those of an earlier complaint that was stricken, the defendant may challenge the amended complaint by filing a request to revise . . . or a second motion to strike." (Citation omitted.) *St. Amand* v. *Kromish*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-95-051663-S (April 17, 1998, *Flynn, J.*) (22 Conn. L. Rptr. 85).

In the present case, the defendant outlines three arguments as to why counts one, four, and five should be stricken. The defendant first argues that count one is legally insufficient because the plaintiff claims the defendant Clearbrook breached the lease by failing to provide roving security, which this court previously held does not impose any obligation on Clearbrook to perform. Additionally, the defendant argues that, in count one, the plaintiff has failed to allege facts to support any allegation that they fully performed all their obligations under the lease. The defendant contends that counts four and five should be stricken because they do not meet the factual pleading requirements to state legally viable claims. Specifically, the defendant alleges that count four is devoid of allegations of bad faith, actual or constructive fraud, or intent to mislead, deceive, or defraud. Similar to count four, the defendant alleges that count five,

sounding in the Connecticut Unfair Trade Practices Act (CUTPA) lacks any allegations that Clearbrook's actions were immoral, unethical, oppressive, unscrupulous, or engaged in any kind of unfair or deceptive practice.

The plaintiff argues that the motion to strike should be denied because count one sufficiently pleads the facts supporting a claim for breach of contract. The plaintiff also argues that Clearbrook has waived its right to strike count one, as it is unchanged from the prior iteration of the complaint, and Clearbrook did not contest its sufficiency in their prior motion to strike. The plaintiff further states that the arguments to strike counts four and five lack merit and that the entire motion to strike was untimely filed.[4]

A. Count One

In their motion to strike count one, the defendant argues that the plaintiff has failed to sufficiently plead a breach of contract claim and that count one's breach of contract claim is barred under the law of the case doctrine. "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. It is not necessary to allege specific terms of the contract. . . . Whether the terms of the contract support that allegation is a factual question to be determined by the factfinder and, therefore, is not at issue when the trial court considers a motion

[4] The plaintiff's argument that the motion to strike was untimely filed fails because the untimeliness of filing is within the courts discretion and there was not an unreasonable delay. See *Blaskower* v. *Tennis Club of Trumbull*, Superior Court, judicial district of Fairfield, Docket No. CV-03-0406597-S (February 24, 2005, *Skolnick, J.*) ("Although Practice Book § 10-42 requires that a motion be accompanied by a memorandum, generally courts are not inclined to require rigid adherence to rules as to when a memorandum must be filed"); *Southern New England/SBC* v. *The Balf Co.*, Superior Court, judicial district of New Haven, Docket No. CV-03-0482272-S (August 4, 2004, *Skolnick, J.*) ("The court will exercise its discretion to consider the untimely objection and address the merits of the motion to dismiss").

to strike." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Shelbourne CT Holdings* v. *RT Specialty, LLC*, Superior Court, judicial district Hartford, Docket No. CV-20-6016663-S (February 28, 2022, *Baio, J.*). "A motion to strike requires no factual findings by the trial court. . . ." (Internal quotation marks omitted.) Id. See also *Geysen* v. *Securitas Security Services USA, Inc.*, supra, 322 Conn. 398; *Golek* v. *St. Mary's Hospital*, Superior Court, judicial district of Waterbury, Docket No. CV-08-5007118-S (August 22, 2008, *Roche, J.*).

The defendant argues that count one does not sufficiently allege a breach of contract claim. Specifically, the defendant alleges that the plaintiff has not sufficiently alleged facts to support the allegation that it fully performed all obligations under the lease. "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.) *Keller* v. *Beckenstein*, 117 Conn. App. 550, 558, 979 A.2d 1055, cert. denied, 294 Conn. 913, 983 A.2d 274 (2009). "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). See also *A.C. Consulting, LLC* v. *Alexion Pharmaceuticals, Inc.*, 194 Conn. App. 316, 329, 220 A.3d 890 (2019). In the operative complaint, the plaintiff alleges that there was a contractual agreement between the parties regarding security at the premises and that the plaintiff performed their portion of the agreement. The plaintiff further alleges that the defendant Clearbrook breached their contractual obligations and that this contractual breach caused the plaintiff to incur damages. Whether or not the plaintiff can prove these allegations is not under scrutiny in motion to strike. The plaintiff need only demonstrate that they have sufficiently plead the elements of a breach of contract claim.

The defendant further argues that count one is barred by the law of the case doctrine. "The law of the case is not written in stone but is a flexible principle of many facets adaptable to the exigencies of the different situations in which it may be invoked. . . . In essence it expresses the practice of judges generally to refuse to reopen what has been decided and is not a limitation on their power." (Citation omitted.) *Breen* v. *Phelps*, 186 Conn. 86, 99, 439 A.2d 1066 (1982). "New pleadings intended to raise again a question of law which has been already presented on the record and determined adversely to the pleader are not to be favored. . . . But a determination so made is not necessarily to be treated as an infallible guide to the court in dealing with all matters subsequently arising in the cause." (Internal quotation marks omitted.) Id.

In the plaintiff's objection to the motion to strike, the plaintiff argues that count one should survive because the plaintiff has sufficiently plead a breach of contract claim against the defendant Clearbrook. The plaintiff argues that the allegations put forth in count one are clearly plead. "Whether the plaintiff can prove his case is not before the court on a motion to strike." *Barrett* v. *Allied World Specialty Ins. Co.*, Superior Court, judicial district of New Britain, Docket No. CV-23-6079994-S (December 13, 2023, *Knox, J.*). The court need only determine whether there is a sufficient claim in which relief can be granted.

The plaintiff contends that there was a contractual lease between the plaintiff and both defendants. The plaintiff contends that they performed all of their obligations under the lease, but both Clearbrook and 600 West breached the lease by not providing any security at the premises. As a result of the breach, the plaintiff has been forced to provide their own security and has incurred additional costs for doing so. The plaintiff further alleges that they have been damaged in an amount to be determined at trial.

The plaintiff further argues that the defendant's opportunity to challenge count one expired months prior and that the defendant should have challenged count one in their first motion to strike. The plaintiff relies on *Sloane* v. *Bhatia*, Superior Court, judicial district of Waterbury, Docket No. CV-14-6023186-S (April 28, 2016, *Roraback, J.*) and *Kaithamattam* v. *Walnut Hill, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-11-6022262-S (September 11, 2013, *Peck, J.*) (56 Conn. L. Rptr. 821), to substantiate this argument.

In *Sloane* and *Kaithamattam*, both courts held that, under the rule of the case doctrine, a party may not file successive motions to strike when the grounds raised in a later motion could have been raised in the initial motion, making a second motion to strike appropriate only in limited circumstances. However, this caselaw is not binding and this court does not find this argument persuasive. Furthermore, this court's decision on the defendant's previous motion to strike specifically spoke of roving security patrols, not generalized security. See *Stamford RPM Raceway LLC* v. *600 West Avenue Industrial, LLC,* Housing Session, Superior Court, judicial district of Stamford/Norwalk, Docket No. CV-22-6007633-S (August 16, 2023, *Cirello, J.*) (Order at Docket No. 115.10). Finally, the plaintiff, when filing the amended complaint after the defendant's previous motion to strike, thereby restarted the filing of pleadings as set forth in Practice Book § 10-6, § 10-7, and § 10-8.[5] Therefore, the plaintiff's and the defendant's rule of the case argument for count one fails.

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[5] Practice Book § 10-6 provides that "[t]he order of pleading shall be as follows: (1) The plaintiff's complaint. (2) The defendant's motion to dismiss the complaint. (3) The defendant's request to revise the complaint. (4) The defendant's motion to strike the complaint. (5) The defendant's answer (including any special defenses) to the complaint. (6) The plaintiff's request to revise the defendant's answer. (7) The plaintiff's motion to strike the defendant's answer. (8) The plaintiff's reply to any special defenses."
Practice Book § 10-7 provides that "[i]n all cases, when the judicial authority does not otherwise order, the filing of any pleading provided for by the preceding section will waive the right to file

The plaintiff has raised issues that involve factual determinations that cannot be resolved by a motion to strike. See *Shelbourne CT Holdings* v. *RT Specialty, LLC*, supra, Superior Court, Docket No. CV-20-6016663-S. The plaintiff has sufficiently stated a claim sounding in breach of contract in which relief can be granted and should be determined at trial. As such, the motion to strike count one is denied.

B. Counts Four and Five

In the present case, the defendant alleges that counts four and five of the amended complaint, previously stricken in the defendant's first motion to strike, are substantially similar to the original complaint and therefore should be stricken again. "The law of the case doctrine applies where a motion to strike is directed to an amended complaint that is substantially the same as a previous version thereof which was already stricken." *Haven Health Center* v. *Parente*, Superior Court, judicial district of Litchfield, Docket No. CV-03-0091743-S (January 18, 2006, *Bozzuto, J.*). "As the Appellate Court has stated, a party may either use a motion to strike or a request to revise when the amended complaint merely restates the original cause of action that was stricken . . . If the amended complaint state[s] a new cause of action, the [motion to strike] should [be] denied. If, however, the amended complaint merely restate[s] the original cause of action, without curing the defect, the [motion to strike] [is] properly granted." (Citation omitted;

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any pleading which might have been filed in due order and which precedes it in the order of pleading provided in that section."
Practice Book § 10-8 provides in relevant part that "[c]ommencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of thirty days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the time period shall be fifteen days."

emphasis omitted; internal quotation marks omitted.) Id. See also *Melfi* v. *City of Danbury*, 70 Conn. App. 679, 800 A.2d 582, cert. denied, 261 Conn. 922, 806 A.2d 1061 (2002).

In *Haven*, the court held that the defendant's amended counter claim did not cure the defects upon which the previous motion to strike was granted. Instead, they simply rephrased the allegations. "The plaintiff's motion to strike count two of the defendant's substituted counterclaim is granted under the law of the case doctrine in that the allegations contained therein do not substantially differ from those in the previously stricken counterclaim and the defendant has failed to cure the defects subject of the court prior memorandum of decision." (Emphasis omitted.) *Haven Health Center* v. *Parente*, supra, Superior Court, Docket No. CV-03-0091743-S. See also *State* v. *Mariano*, 152 Conn. 85, 91, 203 A.2d 305 (1964), cert. denied, 380 U.S. 943 (1965) (discussing law of the case doctrine); *S.M.S. Textile Mills* v. *Brown, Jacobson, Tillinghast, Lahan & King, P.C.*, 32 Conn. App. 786, 798, 631 A.2d 340, cert. denied, 228 Conn. 903, 634 A.2d 296 (1993) (same).

"When a plaintiff merely expands upon the allegations of a previously stricken complaint but does not do so in a way in which sets forth a cause of action, a second motion to strike should be granted." (Emphasis omitted; internal quotation marks omitted.) *Petner* v. *Electrical Contractors, Inc.*, Superior Court, judicial district of New London, Docket No. CV-04-0569450-S (March 18, 2005, *Jones, J.*).

In the present matter, counts four and five of the amended complaint have previously been stricken in the defendant's first motion to strike. This court previously held, regarding the facts of the case relating to count four, that the "[p]laintiff failed to plead facts that Clearbrook abused its discretion when it decided security patrols were not necessary. These facts do not satisfy the pleading requirements for a claim of bad faith. The complaint does not allege facts of

actual or constructive fraud. The complaint does not plead facts to show the defendants intended to mislead or deceive the plaintiff. Finally, the complaint does not allege facts to show that the defendant had a sinister motive when it failed to provide security patrols." *Stamford RPM Raceway LLC* v. *600 West Avenue Industrial, LLC,* supra, Superior Court, Docket No. CV-22-6007633-S (Order at Docket No. 115.10).

As to count five, this court held in their decision on the defendant's first motion to strike that "the plaintiff has not plead a cause of action in CUTPA upon which relief could be granted and as such the fifth count of the complaint is stricken." Id. The plaintiff, in their amended complaint, has not introduced any substantially different arguments than in their original complaint to support their claims. This court finds persuasive the previous ruling of counts four and five. As such, the motion to strike counts four and five is granted.

CONCLUSION

For the above reasons, the motion to strike count one is denied and the motion to strike counts four and five is granted.

BY THE COURT:

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Judge: JOHN A. CIRELLO