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APR 17 2024

SUPERIOR COURT - NEW LONDON
JUDICIAL DISTRICT AT NEW LONDON

DOCKET NO. KNL-CV23-6060581-S	:	SUPERIOR COURT
JOSHUA S. KAHAN	:	JUDICIAL DISTRICT OF
V.	:	NEW LONDON
STATE OF CONNECTICUT	:	APRIL 17, 2024

MEMORANDUM OF DECISION RE: MOTION TO DISMISS

Before the court is the defendant's motion to dismiss. The defendant moves to dismiss the action in its entirety on the ground that the court lacks subject matter jurisdiction because the defendant is entitled to sovereign immunity. The court heard argument on this motion and opposition on March 8, 2024.

FACTS

On March 2, 2023, the plaintiff, Joshua S. Kahan, filed a one count complaint against the defendant, the State of Connecticut. In that complaint, the plaintiff alleges the following facts. The plaintiff received authorization to commence suit against the defendant on April 8, 2022, in a decision issued by the Temporary Deputy Claims Commissioner.

On October 6, 2012, at approximately 12:09 a.m., the plaintiff was a passenger in the backseat of a vehicle driven by his father, Lee Kahan.¹ The Kahan vehicle was traveling westbound on Route 2 in Colchester, Connecticut, between exits 21 and 22. At that time and place, Connecticut State Trooper Pieter Groot initiated a traffic stop of the Kahan vehicle by activating the emergency lights of his police cruiser and pulled the Kahan vehicle over to the shoulder of the road. Trooper Groot then

¹ Hereinafter the "Kahan vehicle."

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began performing field sobriety tests on Lee Kahan, at which time the plaintiff exited the Kahan vehicle. Trooper Groot ordered the plaintiff back into the Kahan vehicle and the plaintiff refused this directive several times. Trooper Groot then physically placed the claimant into the Kahan vehicle. After the plaintiff was back in the Kahan vehicle, the plaintiff used an expletive and told Trooper Groot not to touch him. After the plaintiff made the expletive comment, Trooper Groot attempted to pull the plaintiff out of the Kahan vehicle, while beating the plaintiff with a truncheon.

At all relevant times, Trooper Groot was acting within the scope of his employment with the defendant and in furtherance of its business. Trooper Groot was negligent and careless in that he forcibly took the plaintiff out of the vehicle, when he knew or should have known under the circumstances that doing so would escalate the situation in a manner that created an unreasonable risk of harm to the plaintiff. As a direct and proximate result of Trooper Groot's negligence, the plaintiff suffered physical and emotional injuries, as well as medical costs and lost wages.

On May 17, 2023, the defendant filed its answer and special defenses (Entry No. 101). On June 8, 2023, the plaintiff filed a request to revise the special defenses (Entry No. 102), to which the defendant filed its revised answer and special defenses (Entry No. 104) on September 20, 2023. The plaintiff filed a motion to strike the revised special defenses (Entry No. 105) and an accompanying memorandum of support (Entry No. 106) on October 2, 2023, which the court granted. The defendant filed the present motion to dismiss and an accompanying memorandum of support (Entry No. 108) on November 30, 2023. The plaintiff filed an objection to the motion to dismiss (Entry No. 110) on January 16, 2024.

DISCUSSION

“[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Fay v. Merrill*, 336 Conn. 432, 445, 246 A.3d 970 (2020). “A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide.” (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014). “[A] motion to dismiss pursuant to Practice Book § 10-30 (a) (1) is the appropriate procedure for challenging subject matter jurisdiction.” *Machado v. Taylor*, 326 Conn. 396, 401, 163 A.3d 558 (2017). “[T]he doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss.” (Internal quotation marks omitted.) *Housatonic Railroad Co. v. Commissioner of Revenue Services*, 301 Conn. 268, 274, 21 A.3d 759 (2011). Regarding the common-law exceptions to sovereign immunity, “[i]n the absence of a proper factual basis in the complaint to support the applicability of these exceptions, the granting of a motion to dismiss on sovereign immunity grounds is proper.” (Internal quotation marks omitted.) *Markley v. Dept. of Public Utility Control*, 301 Conn. 56, 66, 23 A.3d 668 (2011). Similarly, “[1]ack of a statutory waiver of [sovereign] immunity is a jurisdictional defect properly raised by a motion to dismiss.” *Conboy v. State*, 292 Conn. 642, 650, 974 A.2d 669 (2009).

In the present case, the defendant moves to dismiss the complaint in its entirety on the ground that the court lacks subject matter jurisdiction over the plaintiff's action. More specifically,

the defendant argues that the plaintiff brought an action against the state based on the recklessness of a state employee, which is barred by sovereign immunity. The defendant further argues that the court does not have jurisdiction pursuant to Connecticut General Statutes § 4-142(a)(2), because the Claims Commissioner cannot waive sovereign immunity for claims upon which suit is otherwise authorized by law, including suits to recover similar relief arising from the same set of facts. In his opposition to the motion, the plaintiff argues that the complaint alleges negligence, not recklessness, and therefore the action against the state is within the jurisdiction of the court.

"It is well established that intentional conduct and negligent conduct, although differing only by a matter of degree . . . are separate and mutually exclusive. . . For this reason, the same conduct cannot reasonably be determined to have been both intentionally and negligently tortious." (Citation omitted; internal quotation marks omitted). *State Farm Fire & Casualty Co. v. Bullock*, Superior Court, judicial district of New Haven, Docket No. CV97-387111-S (May 30, 1997, *Blue, J.*) (19 Conn. L. Rptr. 599, 601). "The intent itself may be actual or inferred from the nature of the act and the accompanying reasonable foreseeability of harm. . . The crucial question [is] whether [the defendant] intended, or expected, to cause any personal injury, not whether he intended to cause the precise magnitude of the injuries sustained." (Citation omitted; internal quotation marks omitted). *Id.* In certain cases, "reason mandates that from the very nature of the act, harm to the injured party must have been intended. . . The asserted fact that, while in the

course of this assault, [the defendant] negligently used excessive and unreasonable force does not change the legal character of his act." (Citation omitted; internal quotation marks omitted). *Id.*

The present case is analogous to *State Farm Fire & Casualty Co. v. Bullock*, *supra*, 19 Conn. L. Rptr. 600. In *Bullock*, the plaintiffs brought an action against the defendant and argued that the complaint alleged negligence, which was a liability that their insurance policy covered. The complaint alleged that the actions of the defendant "were negligent and careless, and caused the injuries" and that the defendant "negligently used an excessive and unreasonable amount of force when he knew or should have known that such use of force would cause substantial injury to the plaintiff" and "negligently continued to use excessive and unreasonable force after he knew or should have known that plaintiff was unconscious or semiconscious." *Id.* The court, in concluding that the complaint *did not* allege a liability that the insurance policy covered, stated that the "distinction between the alleged causes of action and the alleged facts [were] crucial in [the] case." *Id.* When discussing the allegations in the complaint, the court noted that the complaint alleged the defendant approached, threatened, and pushed the plaintiff and struck him multiple times on his face and body with his hands and fists, causing him to fall to the ground and lose consciousness. The court stated that "it is impossible to imagine any conceivable scenario under which an assault like the one described in the [plaintiff's] complaint could be done negligently" and that an "unreasonably forceful assault remains an assault. . . [the allegations] describe an act that is an intentional assault as a matter of law." *Id.* The court further concluded that "the general allegations of negligence in the third-party complaint simply cannot be reconciled as a legal matter with the

specific allegations of fact contained in the same document." (Internal quotation marks omitted).

Id.

In the present case, the plaintiff's complaint alleges negligence against the defendant. Like *Bullock*, the distinction between the alleged causes of action and the alleged facts are crucial in this case. The complaint alleges that "Trooper Groot forcibly attempted to pull the plaintiff out of the Kahan vehicle, while beating the plaintiff with a truncheon" which resulted in physical and emotional injuries, including "(a) injury to his left arm; (b) injury to his left ribs; (c) injury to his back; (d) injury to his left leg; and (e) injury to his left knee." The specific factual allegations in the plaintiff's complaint describe an act that is intentional as a matter of law, and it is "impossible to imagine any conceivable scenario under which an assault like the one described in the [plaintiff's] complaint could be done negligently." *State Farm Fire & Casualty Co. v. Bullock*, supra, 19 Conn. L. Rptr. 600. The defendant may have negligently used excessive and unreasonable force when attempting to pull the plaintiff from the Kahan vehicle and then repeatedly hitting the plaintiff with a truncheon, but "reason mandates that from the very nature of the act, harm to the injured party must have been intended," and the legal character of the defendant's act does not change. Id. Although the cause of action in the plaintiff's complaint alleges negligence, the factual allegations describe an act that is intentional.

"The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law . . . It has deep roots in this state and our legal system in general, finding its origin in ancient common law. . . . Not only have we recognized the state's

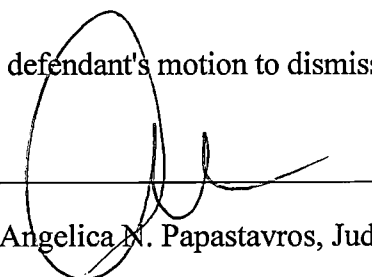
immunity as an entity, but [w]e have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state. . . . *Exceptions to this doctrine are few and narrowly construed under our jurisprudent.*" (Emphasis in original.) *Chief Information Officer v. Computers Plus Center, Inc.*, 310 Conn. 60, 79-80, 74 A.3d 1242 (2013).

Sovereign immunity may be waived only by either statute or by the claims commissioner. See *Krozser v. New Haven*, 212 Conn. 415, 421, 562 A.2d 1080, cert. denied, 493 U.S. 1036, 110 S. Ct. 757, 107 L. Ed. 2d 774 (1989). "[S]tatutes in derogation of sovereign immunity should be strictly construed. . . . [When] there is *any doubt* about their meaning or intent [statutes] are given the effect which makes the least rather than the most change in sovereign immunity." (Emphasis in original; internal quotation marks omitted.) *Envirotest Systems Corp. v. Commissioner of Motor Vehicles*, 293 Conn. 382, 388, 978 A.2d 49 (2009). When making a monetary claim against the state, the only exception to the state's sovereign immunity is when "the legislature, either expressly or by force of a necessary implication, statutorily waive[s] the state's sovereign immunity." *Allen v. Commissioner of Revenue Services*, 324 Conn. 292, 299, 152 A.3d 488 (2016), cert. denied, 137 S. Ct. 2217 (2017). When sovereign immunity has not been waived, the claims commissioner is authorized by statute to hear monetary claims against the state and determine whether the claimant has a cognizable claim. See General Statutes §§ 4-141 through 4-165b. "This legislation expressly bars suits upon claims cognizable by the claims commissioner except as he may authorize, an indication of the legislative determination to preserve sovereign immunity as a defense to

monetary claims against the state not sanctioned by the commissioner or other statutory provisions." *Doe v. Heintz*, 204 Conn. 17, 35-36, 526 A.2d 1318 (1987). However, "the claims commissioner does not have the power to waive claims against the state for reckless, wanton or malicious acts, only negligence." *Benedict v. Connecticut Dept. of Energy and Environmental Protection*, Superior Court, judicial district of Middlesex, Docket No. CV22-6034848-S (May 3, 2023, J. *Shah*). "[T]he legislature would not have excluded willful, reckless or malicious acts from the immunity provided by § 4-165 if it had intended the claims commissioner to have jurisdiction to grant permission to sue the state for such claims." *Id.*

In the present case, the cause of action alleged is negligence, the factual allegations, however describe an act that is intentional as a matter of law. The claims commissioner can only waive claim against the state for negligence, which is not alleged here, and no waiver of immunity occurred under the power of the claims commissioner, pursuant to § 4-160. For this reason, the court lacks subject matter jurisdiction to hear the present action and the defendant's additional ground for the motion, under Connecticut General Statute § 4-142(2), need not be addressed.

For the foregoing reasons, the court grants the defendant's motion to dismiss.



Angelica N. Papastavros, Judge