DOCKET NUMBER: LLICV236034845	:	**SUPERIOR COURT**
FERNANDO GARCIA-NUNEZ SANDRA CALDAS & LUIS GARCIA-CALDAS	:	**J.D. OF LITCHFIELD**
V.	:	**at TORRINGTON**
SCOTT MCCARTHY, ADMINISTRATOR OF THE ESTATE OF FREDERICK WILDER	:	**MAY 6, 2024**

MEMORANDUM OF DECISION

The plaintiffs have brought this six-count action alleging that the defendant's decedent was negligent and reckless in his operation of a motor vehicle on or about March 27, 2022. The defendant moves to strike the common law recklessness counts, (the Second, Fourth and Sixth Counts) and the plaintiffs object. For the following reasons, the court grants the motion to strike the common law claims.

FACTS

The plaintiffs allege that they were involved in a motor vehicle collision on or about March 27, 2022, caused by the decedent. The plaintiffs allege that they were either operating or occupying a vehicle traveling in a northbound direction on Danbury Road and at the same time and place, the decedent (Frederick Wilder) was operating a motor vehicle on Danbury Road in a southbound direction. The plaintiffs allege that the decedent "turned his motor vehicle into the Plaintiff's travel lane, causing a collision, resulting in the injuries and losses claimed by the plaintiffs..." set forth in the complaint. (Pl. Compl., pg. 2).

The plaintiffs claim that the decedent was negligent:

"[I]n that he: a. Failed to keep the motor vehicle he was operating under reasonable and proper control; b. Failed to keep a proper and reasonable lookout for other motor vehicles upon

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the roadway; c. Failed to apply the brakes of the motor vehicle he was operating in time to avoid a collision, although by a proper and reasonable exercise of his faculties, he could and should have done so; d. Failed to turn the motor vehicle he was operating to the right or left so as to avoid a collision, although by a proper and reasonable exercise of his faculties, he could have, and should have done so; e. Failed to comply with C.G.S. 14-242, in that he made a restricted turn; f. Failed to comply with C.G.S. 14-231, in that he failed to operate his motor vehicle on the right side of the roadway to oncoming traffic, g. Knew he was not feeling well while operating the motor vehicle, and despite said knowledge, he continued to operate the motor vehicle when it was unsafe to do so due to his medical condition." (Pl. Compl., pg. 3).

The plaintiffs allege that the decedent was reckless in that he "[r]ecklessly turned his motor vehicle into the Plaintiff's [sic] lane of travel, when he knew doing so would cause a significant risk of harm to others on the road, including a collision with the Plaintiff's [sic] motor vehicle, however, he ignored those risks and did so regardless." (Pl. Compl., pg.s 5-6).

Because the plaintiffs have failed to set forth legally sufficient claims of recklessness, the court strikes counts two, four and six of the plaintiff's complaint.

LAW

A. Motion to Strike and Pleading Standard

A pleading must "contain a plain and concise statement of the material facts on which the pleader relies, but not of the evidence by which they are to be proved . . . ." Practice Book § 10-1. "The purpose of fact pleading is to put the defendant and the court on notice of the *important and relevant facts* claimed and the issues to be tried." (Emphasis added.) *A.C. Consulting, LLC* v. *Alexion Pharmaceuticals, Inc.*, 194 Conn. App. 316, 330, 220 A.3d 890 (2019).

"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 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). "A motion to strike shall be used whenever any party wishes to contest: (1) the legal sufficiency of the allegations of any complaint . . . or of any one or more counts thereof, to state a claim upon which relief can be granted . . . ." Practice Book § 10-39 (a). "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.*, supra, 322 Conn. 398. "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). In considering the legal sufficiency of a complaint, a court "take[s] the facts to be those alleged in the [pleading] . . . and [it] construe[s] the [pleading] in the manner most favorable to sustaining its legal sufficiency." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, supra, 262 Conn. 498. "[I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied..." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, supra, 322 Conn. 398.

While "[a] motion to strike admits all *facts* well pleaded; it does not admit *legal conclusions or the truth or accuracy of opinions* stated in the pleadings." (Emphasis in original; internal

quotation marks omitted.) *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 588, 693 A.2d 293 (1997).

B. **The Plaintiffs' Common Law Recklessness Claims are Legally Insufficient**

Under common law, a plaintiff's claim of recklessness may survive a motion to strike if the facts allege that the defendant consciously engaged in highly unreasonable conduct that involved an extreme departure from ordinary care. See *Elliott* v. *Waterbury*, 245 Conn. 385, 415 A.2d 27 (1998).

"A plaintiff cannot transform a negligence count into a count for willful and wanton misconduct merely by appending a string of adjectives that clearly sound in negligence." *Brown* v. *Branford*, 12 Conn. App. 106, 110, 529 A.2d 743 (1987). Reckless conduct is conduct that is more than mere negligence and more than gross negligence. See *Craig* v. *Driscoll*, 64 Conn. App. 699, 720 96 A.L.R. 5th 625 (2001). "It is such conduct as indicates a reckless disregard of just rights or safety of others or of the consequences of the action." *West Haven* v. *Hartford Ins. Co.*, 221 Conn. 149, 160-161, 602 A.2d 988 (1992). Recklessness requires a state of consciousness that surpasses negligence or even gross negligence. See *Shay* v. *Rossi*, 253 Conn. 134, 181 749 A.2d 1147 (2000). Reckless conduct involves an "extreme departure from ordinary care, in a situation where a high degree of danger is apparent." Id.

In *Colangero* v. *Holgerson*, Superior Court, judicial district of Stamford, Docket No. CV07-5004291 (October 11, 2007, Robinson, J.), the court found that the plaintiff, insufficiently plead common-law recklessness because her allegations were "merely a recasting of the allegations of common-law negligence ... with the addition of the words *'deliberately and/or recklessly.'*" (Emphasis added). To state a claim of recklessness ... the [plaintiff] must allege *facts* demonstrating both egregious conduct and the requisite state of mind." (Emphasis added.) Id.

"Fifty-seven years ago in *Dumond* v. *Denehy*, 145 Conn. 88, 91, 139 A.2d 58 (1958), our Supreme Court stated the often repeated proposition that where a party seeks to plead a reckless claim, '[s]imply using the word 'reckless' or 'recklessness' is not enough. A specific allegation setting out the conduct that is claimed to be reckless or wanton must be made.' The Appellate Court rephrased the proposition as '[m]erely using the term 'recklessness' to describe conduct previously alleged as negligence is insufficient as a matter of law.' (Internal citation omitted, internal quotations omitted.) *Collier* v. *Nixon*, Superior Court, judicial district of Hartford, Docket No. CV-20-6126971 (October 13, 2020, Lynch, J.).

"A reckless actor is one who recognizes a substantial risk of harm to others and consciously chooses to act despite such knowledge. There is a wide difference between negligence and a reckless disregard of the rights or safety of others, and a complaint should employ language explicit enough to clearly inform the court and opposing counsel that reckless misconduct is relied on.... A cause of action in recklessness may be sufficiently alleged upon the same facts that would support a cause of action in negligence provided the allegations are independently sufficient to support a cause of action in recklessness. [T]here is no reason why the plaintiff, relying on the same set of facts in negligence counts, cannot set forth in separate counts, causes of action arising out of those same facts alleging recklessness.... It is frequently urged on this Court that the similarity of allegations renders one cause of action (usually, of course, the recklessness one) invalid. But similarity cannot be the sole focus.... Focus must instead primarily rest on the recklessness-sufficiency of that count.... Rather than follow a mechanistic approach ... it seems more appropriate ... to examine instead whether the facts that are alleged could, under any set of facts admissible under the pleadings, support a conclusion of recklessness. . . . [However] [t]o

withstand a motion to strike, a plaintiff must allege that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk." (Internal citations omitted).

Wendy Mongillo, Administratrix of the Estate of Audrey Childress v. *Harborside Connecticut Limited Partnership D/B/A Arden House, et. al*, Superior Court, Judicial District of New Haven, Docket No. CV-17-6070699-S (April 1, 2024, Wilson, J.).

"[A]t the motion to strike stage, the injured party cannot merely commit himself or herself proving recklessness at some unspecified time in the future. Rather, the plaintiff must set forth a plain and concise statement of the material facts on which [he or she] relies Practice Book § 10-1 and must allege more than mere conclusions of law that are unsupported by the facts alleged" to defeat a motion to strike." *Gillon* v. *Sentinel Real Est. Corp.*, Superior Court, Judicial District of Stamford, Docket No. CV 22-6058083-S (January 19, 2024, Menon, J.).

"[A]llegations regarding the defendant's mental state are conclusory." *Franz* v. *St. Mark*, Superior Court Judicial District of Bridgeport, docket number CV216104322S (September 23, 2021 Stewart, J.).

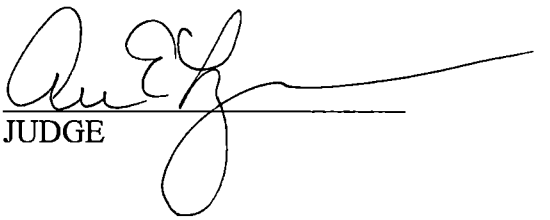
Here, the plaintiffs' allegations do not rise to the level of recklessness. In *Collier*, the plaintiff alleged specific facts that could support a finding of recklessness. Specifically in Collier, the plaintiff alleged that the defendant moved between lanes at a high rate of speed while distracted by electronics and/or other passengers. Relying upon three other Superior Court decisions, this court held that said allegations were sufficient to support a common law recklessness claim. In contrast, here, the plaintiffs set forth only conclusory allegations about the decedent's state of mind as support for their recklessness claims. Specifically, here, the plaintiffs allege that the decedent recklessly turned his motor vehicle into the plaintiff's travel lane, when he knew doing so would cause a significant risk of harm to others on the road including a collision with the plaintiff's motor

vehicle. Similar allegations were found to be legally sufficient for a recklessness claim in *Colangelo*. Claims that the decedent acted deliberately or recklessly are conclusory allegations, insufficient upon which to base claims for recklessness. Because the plaintiff has not alleged facts that could support a conclusion of recklessness, the defendant's motion to strike is granted counts two, four and six.

CONCLUSION

Wherefore all the foregoing reasons, the court grants the defendant's motion to strike counts two, four and six.

BY THE COURT



JUDGE