

STATE OF CONNECTICUT
OFFICE OF THE CLERK
SUPERIOR COURT

DOCKET NO. FBT-CV-23-6126511-S : SUPERIOR COURT
ERIC ROTHSTEIN : JUDICIAL DISTRICT OF BRIDGEPORT
v. : AT BRIDGEPORT
ELISANGELO SILVA : MAY 24, 2024

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JUDICIAL DISTRICT
OF BRIDGEPORT

MEMORANDUM OF DECISION
RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (#104.00) AND
REQUEST TO AMEND (#109.00)

I. PROCEDURAL HISTORY AND FACTS

On 1-29-24 the court heard oral argument on the record related to this summary judgment (#104.00) and the opposition thereto. In response to the motion for summary judgment the plaintiff filed a request to amend (#106.00) as well as a response to the summary judgment (#107.00) which essentially ask the court to allow the amended complaint to be the operable complaint with the additional argument being that the amended complaint resolves the issues raised in the summary judgment. The defendant objected to the request to amend (#109.00), and the plaintiff responded with a memorandum in support of its request for leave to amend complaint (#111.00). In the interests of judicial economy and efficiency, the court permitted argument on all the above motions, requests, and objections/opposition.

The court has considered the arguments of counsel, reviewed the relevant pleadings and law. Based on that review the Motion for Summary Judgment is GRANTED and the Request for Leave to Amend is DENIED.

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Notice to RJD. *Jean Louren Asst. Clerk* 1

The plaintiff commenced this action against defendant Elisangela Silva via writ summons and complaint with a return date of September 19, 2023. (See generally Pl.'s Compl.) In his complaint, the plaintiff alleges a single cause of action against the defendant sounding in negligence. (See Id.) More specifically, the plaintiff alleges that on August 17, 2021, the defendant drove into the rear of his vehicle and was negligent in doing so in various ways. (See Pl.'s Compl., ¶¶2-3.) The plaintiff did not allege any additional causes of action or name any other individuals in his complaint. (See generally Pl.'s Compl.) Pursuant to Connecticut General Statutes §52-584, the statute of limitations applicable to this matter expired on August 17, 2023.

On November 14, 2023, the defendant filed a motion for summary judgment and accompanying memorandum of law. (See Court Docket Entry, ##104, 105.) The defendant moved for summary judgment on the ground that she owed no duty to the plaintiff because notwithstanding the plaintiff's allegations to the contrary, she was not the operator of the vehicle involved in the accident, but rather, she was the registered owner of the vehicle.

On December 27, 2023, the plaintiff filed a Request for Leave to File an Amended Complaint, presumably in response to the defendant's motion for summary judgment. (#106.) In his Request for Leave, the plaintiff seeks to replace his original claim of negligence against the defendant with three new, separate, and distinct causes of action. In addition, the plaintiff has opposed to the defendant's motion for summary judgment but did not set forth any substantive arguments to counter or defeat the defendant's motion. (See Court Docket Entry, ##104, 105.) Rather, the plaintiff simply argues that summary judgment should be denied because the defect in the original complaint has now been corrected with the new causes of action in the amended complaint.

The defendant objected to the Plaintiff's Request for Leave to File an Amended Complaint on the ground that the three new causes of action alleged do not relate back to the plaintiff's original complaint, and therefore, are time barred by the statute of limitations in Connecticut General Statutes §52-584. The defendant challenges the entire amended complaint pursuant to Practice Book §10-60(a)(3).

II. LEGAL DISCUSSION AND ANALYSIS

Summary judgment is an appropriate remedy when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Practice Book § 17-49. The procedure of summary judgment is designed to expedite a litigation proceeding and eliminate delay and expense where there is no real issue to be tried. See *Wilson v. New Haven*, 213 Conn. 277, 567 A.2d 829 (1989). "However, since the litigants ordinarily have a constitutional right to have issues of fact decided by a jury . . . the moving party for summary judgment is held to a strict standard of demonstrating [its] entitlement to summary judgment." (Citations omitted; internal quotation marks omitted.) *Kakadelis v. DeFabritis*, 191 Conn. 276, 282, 464 A.2d. 57 (1983). Both the moving party and the party in opposition may rely on pleadings, affidavits and discovery materials, and the moving party shall, and the opposing party may, file appropriate memoranda of law. See Practice Book §§ 11-19, 17-45 and 17-46. The party seeking summary judgment has the burden of showing that no issue of material fact exists, and the party opposing the motion must substantiate its claim that a material fact issue exists. See *Home Insurance Co. v. Aetna Life & Casualty*, 235 Conn. 185, 663 A.2d 1001 (1995). In deciding a motion for summary judgment, the trial court must view the evidence in the light

most favorable to the nonmoving party.” (Internal quotation marks omitted.) *Graham v. Commissioner of Transportation*, 330 Conn. 400, 414-15, 195 A.3d 664 (2018).

"In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact.... As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent...." *Zielinski v. Kotsoris*, 279 Conn. 312, 318, 901 A.2d 1207 (2006).

Once the movant for summary judgment has satisfied the initial burden of showing the absence of a material issue of fact, the burden shifts to the opponent to establish that there is a genuine issue of material fact: "it is then 'incumbent upon the party opposing summary judgment to establish a factual predicate from which it can be determined, as a matter of law, that a genuine issue of material fact exists.'" *Iacurci v. Sax*, 313 Conn. 786, 799, 99 A.3d 1145 (2014), quoting *Connell v. Colwell*, 214 Conn. 242, 251, 571 A.2d 116 (1990). The nonmoving party, however, has no obligation to submit documents establishing the existence of a genuine issue of material fact until the moving party has met its burden of "showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any [such] issue of material fact." *State Farm Fire & Casualty Co. v. Tully*, 322 Conn. 566, 573, 142 A.3d 1079 (2016).

In the present case, the plaintiff alleges that the defendant “was operating his (sic) motor vehicle travelling behind the Plaintiff’s vehicle” and that she “drove into the rear of the Plaintiff’s vehicle. . . .” (Pl.’s Compl., ¶2.) The plaintiff further alleges that the defendant was negligent in various ways, all of which specifically relate to operation of the motor vehicle in question. (See Pl.’s Compl., ¶3.) The plaintiff further alleges that as a result of the defendant’s negligence during the operation of her motor vehicle, he was injured and suffered losses. (See Pl.’s Compl., ¶¶6-9.)

After the accident occurred, the Stratford Police Department responded. As part of its investigation, the Stratford Police Department prepared a Connecticut Uniform Police Crash Report, a copy of which is attached hereto as Exhibit A. (See also Silva Aff., attached as Exhibit B, at ¶5.) Page 3 of Exhibit A lists a 2007 Nissan Altima bearing VIN#N4AL21E67N446D013 as a motor vehicle involved in the accident. (See Exhibit A at p.3.) At the time of the accident, defendant Elisangela Silva was the registered owner of the 2007 Nissan Altima bearing VIN#N4AL21E67N446D013 that was involved in the subject accident. (See Exhibit B at ¶¶2-3, 6; Exhibit A at p.4.) The police report also identifies the operators of the motor vehicles involved in the accident. (See Exhibit A at pp.7-8.)

The police report does not list or identify defendant Elisangela Silva as the operator of the 2007 Nissan Altima bearing VIN#N4AL21E67N446D013. (See generally Exhibit A; Exhibit B at ¶7.) Contrary to the plaintiff’s allegations, defendant Elisangela Silva was not the operator of the 2007 Nissan Altima bearing VIN#N4AL21E67N446D013 that was involved in the collision with the plaintiff on August 17, 2021. (See Exhibit B at ¶¶4, 8.)

As established by the content of Exhibit A and Exhibit B, defendant Elisangela Silva was the owner of the vehicle involved in the collision with the plaintiff, but she was not the operator

of the vehicle at the time of the collision. Because defendant Elisangela was not the operator of the vehicle involved in the collision with the plaintiff, and the plaintiff's allegations claims of negligence solely relate to defendant Elisangela Silva's operation of the motor vehicle involved in the accident, she owed no duty to the plaintiff at the time of the collision. Since she owed no duty to the plaintiff at the time of the collision, defendant Elisangela did not breach any duty owed to the plaintiff at the time of the collision.

Considering the state of the pleadings (including the proposed revised complaint which abandons any claim that the defendant was the driver who caused the collision), the uncontroverted evidence and affidavits presented by the defendant, and arguments of counsel, there appears to be no dispute of fact that the defendant was not the driver as alleged in the original complaint. Absent any dispute on that point the motion for summary judgment is well stated and is GRANTED.

The next question for the court is whether the request for leave to amend the complaint creates a scenario where the court should reconsider or not move forward with its granting of the motion for summary judgment on the original complaint in order to allow for the amended complaint to become the operable complaint.

The Defendant argues that the Plaintiff's Request for Leave to File an Amendment should be denied as the claims are time barred by the statute of limitations in C.G.S. §52-584 because the new claims do not relate back to the original complaint for the reasons contained herein. The court agrees.

"There is a well settled body of case law holding that "[A] party properly may amplify or expand what has already been alleged in support of a cause of action, provided the identity of the cause of action remains substantially the same. . . . If a new cause of action is alleged in an

amended complaint . . . it will [speak] as of the date when it was filed. . . . A cause of action is that single group of facts [*14] which is claimed to have brought about an unlawful injury to the plaintiff and which entitles the plaintiff to relief . . . It is proper to amplify or expand what has already been alleged in support of a cause of action, provided the identity of the cause of action remains substantially the same, but *[when] an entirely new and different factual situation is presented, a new and different cause of action is stated. Briere v. Greater Hartford Orthopedic Group, P. C, 325 Conn. 198, 207, 157 A.3d 70 (2017).*" (Citations omitted; emphasis added; internal quotation omitted.) *Tetteh v. Barnes.*" *Edwards v. Nagorska*, 2022 Conn. Super. LEXIS 2184, *13-14, 2022 WL 6390631

"Applying the relation back doctrine to an amended complaint involves a two-stage inquiry. First, the court must determine whether the new allegations state a set of facts that contradict the original cause of action, which is the transaction or occurrence underpinning the plaintiff's legal claim against the defendant. The original complaint must provide the opposing party with notice of a cause of action that encompasses the proposed amended allegations. Second, where the new allegations do not contradict the original cause of action, [t]he trial court must still determine whether the new allegations support and amplify the original cause of action or state [*15] a new cause of action entirely. Relevant factors for this inquiry include, but are not limited to, whether the original and the new allegations involve the same actor or actors, allege events that occurred during the same period of time, occurred at the same location, resulted in the same injury, allege substantially similar types of behavior, and require the same types of evidence and experts." (Citations omitted; internal quotations omitted.) *Tetteh v. Barnes.* "[N]egligence as been found to be a separate cause of action, *distinct from* an action for *vicarious liability.*"

(Emphasis added.) *Chen v. Gutierrez*, 2007 Conn. Super. LEXIS 3031, 2007 WL 5305474 *2.
Edwards v. Nagorska, 2022 Conn. Super. LEXIS 2184, *14-15, 2022 WL 6390631

“While both complaints allege that the collision causing the plaintiffs injuries occurred at the same time and place, the [*11] similarities end there. In short, the claims of the two complaints are inconsistent and contradictory because a person cannot be vicariously liable for another person's negligent operation of a motor vehicle and simultaneously be liable for his own operation of this same motor vehicle. Therefore, for these reasons, the relation back doctrine is inapplicable. The plaintiff's arguments to the contrary are rejected.

Furthermore, the court's analysis of the relation back doctrine in favor of the defendant's motion is supported by trial court decisions involving similar circumstances. *Kolek v. Welch Enterprises, Inc.*, Superior Court, judicial district of Hartford, Docket N. CV-98-0584406 (June 18, 2002, *Beach, J.*) (amendment introduced new cause of action claiming specific acts of negligence by defendant previously identified solely as owner of vehicle); *Cran v. Rankins*, Superior Court, judicial district of New Haven, DocketNo. CV-15-6057426-S (December 1, 2016, *Wilson, J.*) (amended complaint alleging defendant was negligent in various ways is "new and different" from prior allegation that defendant was principal of allegedly negligent driver); *Chen v. Gutierrez*, Superior Court, judicial [*12] district of Hartford, Docket No. CV-07-5009030 (November 9, 2007, *Tamer, J.*) (negligence claims based on negligent conduct and vicarious liability involve different causes of action requiring different evidence to defend); *Miller v. Natchaug Hospital, Inc.*, Superior Court, judicial district of New London, Docket No. 126723 (September 3, 2004, *Hurley, J.T.R.*) (same).” *Richitelli v. Falcioni*, 2018 Conn. Super. LEXIS 8908, *10-12

The proposed amended complaint seeks to assert three new causes of action. No longer does the plaintiff claim that the defendant was the operator of the vehicle as originally alleged. Rather the first two counts focus on the defendant as the owner of the vehicle and assert vicarious liability through the alleged driver, who the plaintiff now alleges is the spouse of the defendant. The spouse of the defendant was not named in the initial claim and the plaintiff is well beyond the applicable statute of limitations to pursue such a claim now. The effort to assert new claims and theories, which are based on the alleged negligence of a non-defendant and vicarious liability flowing from such alleged actions fail because they do not relate back to the original complaint which alleged the defendant was the driver and sole negligent actor.

As with the vicarious liability claims in Counts One and Two, the plaintiff's claim in Count Three alleging negligent entrustment against the defendant do not relate back to the original complaint. Although the new claim alleges direct negligence against the defendant, as does the original complaint, the proposed new causes of action are entirely different in that they are based on a different factual predicate, involve different sets of evidence, actors, and different sets of proof.

The court finds that these proposed claims are new causes of action that are entirely different from the original claim and are attempting to be filed well beyond the applicable statute of limitations. As such, the request to revise is DENIED.

III. Conclusion

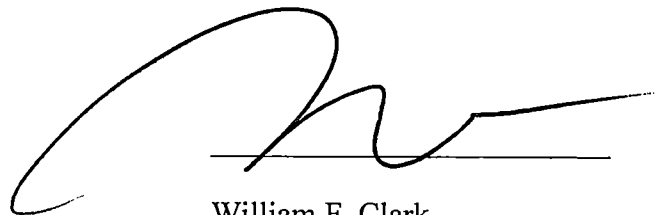
The plaintiff filed his original complaint alleging that the defendant negligently operated her vehicle and caused the accident and resulting injuries. The defendant subsequently answered the

complaint, denying that she was the operator of the vehicle, that she negligently operated her vehicle and caused the accident and that her negligence caused the alleged injuries. The defendant then moved for summary judgment on the ground that she was not the operator of the vehicle. The plaintiff has offered no evidence to dispute this fact. Rather, in response, the plaintiff has requested leave to amend his complaint, which seeks to replace the original negligence claim with three separate and distinct causes of action.

As a matter of law, the court concludes that the defendant was not the driver, as alleged in the original complaint. As such, the motion for summary judgment as to the original complaint is GRANTED.

The Plaintiff's Request for Leave to File an Amendment Complaint is DENIED because the new claims do not relate back to the original complaint for the reasons contained herein.

Because the claims are different causes of action in each of the three counts of the proposed revised complaint, each of the claims are time barred by the statute of limitations in C.G.S. §52-584. The objection to the request is SUSTAINED.

A handwritten signature in black ink, consisting of a large, stylized initial 'W' followed by a horizontal line and a short tail.

William F. Clark
Superior Court Judge