DOCKET NO: HHD-CV22-6156442-S	:	SUPERIOR COURT
DAWNA SIRARD	:	J.D. OF HARTFORD
V.	:	AT HARTFORD
WESTFORD REAL ESTATE MANAGEMENT, LLC, ET AL	:	APRIL 16, 2024

MEMORANDUM OF DECISION

INTRODUCTION

In the present action, the plaintiff, Dawna Sirard, alleges in count thirteen of her complaint that the defendant, Town of South Windsor (town), created a public nuisance by approving the development where she purchased her home despite the development's location on a watercourse, which led to significant water damage to the plaintiff's property. The town moved for summary judgment on three grounds: statute of limitations, governmental immunity, and failure to state a claim. For the reasons set forth below, the town's motion for summary judgment based on the statute of limitations is granted.

FACTS AND PROCEDURAL HISTORY

On June 7, 2022, the plaintiff filed a thirteen-count complaint against the defendants, Westford Real Estate Management, LLC (Westford), Victorian Woods Association, Inc. (Victorian Woods), the town, John D. Scully, and Chritrawattie R. Brooks-Scully. The complaint alleges the following. On May 26, 2021, the plaintiff closed on the purchase of her home at 19 Arrowwood Circle, South Windsor, Connecticut, also known as Unit 11, at the Victorian Woods planned unit development (property). After purchasing her property the plaintiff discovered that it was built on a marsh, and that the entire Victorian

166.00

Woods development suffered from water drainage issues. Her yard was perpetually saturated, water pooled around her yard, and her deck became unstable and appeared to be sinking. Her contractor later determined that the deck had completely rotted from standing water that also abutted the foundation slab. The plaintiff spent over $10,000 to remove the rotted deck and regrade her yard. She received an estimate of $20,000 to replace her deck and patio. The regrading efforts proved unsuccessful. The plaintiff later learned that a water drainage system had been constructed throughout the development and that water drainage had been an ongoing problem for years. Pl.'s Complt., 4-5.

In count thirteen of the complaint (the sole count directed to the town), sounding in public nuisance, the plaintiff alleges that the town approved the development despite knowing that it would significantly impact wetland areas. The town had also recommended that the plans be modified so that buildings and roadways were not constructed across existing watercourses, and called for the removal of certain building lots that were proposed to be constructed in problematic areas, including the plaintiff's property. Id., 28. The plaintiff alleges that building homes and roadways on existing watercourses and in inland-wetland areas with high water tables created a dangerous situation that had an obvious and natural tendency to inflict injury to persons or property, a condition that had worsened over the years. Id., 28-29. The plaintiff alleges that the town's positive act of approving the development created a nuisance that has continued and escalated over the years, resulting in extensive damage to the plaintiff's property, including the cost to remediate the property, costs to restore her deck and patio, a reduction in the property's value, loss of enjoyment of

her home, and worsening conditions at the property that will require future costs to repair them. Id., 30-31.

On October 11, 2023, the town filed its motion for summary judgment, asserting that the plaintiff's claim is barred on statute of limitations and/or governmental immunity grounds. The town submitted a supporting memorandum of law and five exhibits.[1] On January 10, 2024, the defendant filed a supplemental motion for summary judgment based on the plaintiff's failure to state a claim upon which relief may be granted, together with seven additional exhibits. Docket entry no. 152. On February 22, 2024, the plaintiff filed an objection to the defendant's motion for summary judgment as supplemented, together with a supporting memorandum of law and exhibits.[2] The defendant filed a reply on February 23, 2024, attaching as exhibit A certain documents from the town's building department. The court heard oral argument on the town's motion for summary judgment at a remote hearing on February 26, 2024.

---

[1] The exhibits include the Affidavit of Michele Lipe, the town's director of planning, dated October 10, 2023 (exhibit A); a letter dated March 19, 1985 from the town's conservation commission to Frank Mannarino approving a conservation plan for application no. 308 (exhibit B); a letter dated April 16, 1985, from the town's inland wetlands agency denying without prejudice Mannarino's application no. 308 (exhibit C); the town's inland wetlands agency's legal notice dated May 21, 1985 (exhibit D); and a letter dated May 21, 1985, from the town's conservation commission to Frank Mannarino approving application no. 323 (exhibit E).

[2] The exhibits included the following: an affidavit of the plaintiff dated January 26, 2024 (exhibit B), to which was appended as exhibit A an email exchange between the plaintiff and the town; a letter dated April 26, 1983, from the Hartford County Soil and Water Conservation District to the town's deputy engineer, with attachments (exhibit D). Exhibits A and C are copies of unreported cases.

DISCUSSION

Pursuant to Practice Book § 17-49, summary judgment is properly rendered only where "the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Internal quotation marks omitted.) *Graham* v. *Commissioner of Transportation*, 330 Conn. 400, 414-15, 195 A.3d 664 (2018). "[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way. . . . [A] summary disposition . . . should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party. . . . [A] directed verdict may be rendered only where, on the evidence *viewed in the light most favorable to the nonmovant*, the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Dugan* v. *Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003).

"A genuine issue of material fact must be one which the party opposing the motion is *entitled to litigate under his pleadings* and the mere existence of a factual dispute apart from the pleadings is not enough to preclude summary judgment. . . . *The facts at issue* [*in the context of summary judgment*] *are those alleged in the pleadings*. . . ." (Emphasis in original; internal quotation marks omitted.) *Straw Pond Associates, LLC* v. *Fitzpatrick, Mariano & Santos, P.C.*, 167 Conn. App. 691, 728-29, 145 A.3d 292, cert. denied, 323 Conn. 930, 150 A.3d 231 (2016). "A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case." (Internal quotation marks

omitted.) *Buell Industries, Inc.* v. *Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002).

"In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact . . . but rather to determine whether any such issues exist." (Internal quotation marks omitted.) *RMS Residential Properties, LLC* v. *Miller*, 303 Conn. 224, 233, 32 A.3d 307 (2011). "A motion for summary judgment is properly granted if it raises at least one legally sufficient defense that would bar the plaintiff's claim and involves no triable issue of fact." (Internal quotation marks omitted.) *Thivierge* v. *Witham*, 150 Conn. App. 769, 773, 93 A.3d 608 (2014). Therefore, "[w]hen a court, in ruling on a motion for summary judgment, is confronted with conflicting facts, resolution and interpretation of which would require determinations of credibility, summary judgment is not appropriate." *Straw Pond Associates, LLC* v. *Fitzpatrick, Mariano & Santos, P.C.*, supra, 167 Conn. App. 710.

"The movant has the burden of showing the nonexistence of such issues but the evidence thus presented, if otherwise sufficient, is not rebutted by the bald statement that an issue of fact does exist. . . . To oppose a motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant's affidavits and documents. . . . The opposing party to a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue." (Internal quotation marks omitted.) *Parnoff* v. *Aquarion Water Co. of Connecticut*, 188 Conn. App. 153, 165, 204 A.3d 717 (2019).

The town argues that summary judgment is warranted on three grounds: (1) the action is time-barred by the applicable statute of limitations; (2) the action is barred by governmental immunity; and (3) the plaintiff fails to set forth a claim that establishes the essential elements of a nuisance claim. The plaintiff argues that the action is not time-barred because a genuine issue of material fact exists as to whether she alleges a continuing nuisance. She further argues that governmental immunity is inapplicable because there is a genuine issue of material fact whether the town acted with reckless disregard. Finally, she asserts that the complaint sets forth a legally sufficient nuisance claim.

I. Statute of Limitations

"Summary judgment may be granted where the claim is barred by the statute of limitations. . . . Summary judgment is appropriate on statute of limitations grounds when the material facts concerning the statute of limitations [are] not in dispute . . . ." (Citation omitted; internal quotation marks omitted.) *Romprey* v. *Safeco Ins. Co. of America*, 310 Conn. 304, 313, 77 A.3d 726 (2013).

The town argues that the plaintiff's nuisance claim is barred by the three year general tort statute of limitations set forth in General Statutes § 52-577.[3] The parties' submissions on summary judgment establish that the town approved the construction of the development in 1985, and the plaintiff's property was approved in 1986. See docket entry no. 144, exhibit B; docket entry no. 164, exhibit D, p. 6. The plaintiff instituted this action against the town in 2022, some thirty-five years after the final approval. Therefore, the

[3] General Statutes § 52-577 provides that: "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of."

action was brought well past the expiration of the three-year deadline in § 52-577. The town thus met its initial burden in connection with its motion for summary judgment.

In her opposition memorandum, the plaintiff argues that her nuisance claim alleges a continuing nuisance such that each injury causes a new cause of action to accrue. Pl.'s Opposition Mem., 8-9. "Generally, whether a nuisance is deemed to be continuing or permanent in nature determines the manner in which the statute of limitations will be applied. . . . If a nuisance is not abatable, it is considered permanent. . . . A nuisance is deemed not abatable, even if possible to abate, if it is one whose character is such that, from its nature and under the circumstances of its existence, it presumably will continue indefinitely. . . . However, a nuisance is not considered permanent if it is one which can and should be abated. . . . In this situation, every continuance of the nuisance is a fresh nuisance for which a fresh action will lie, and the statute of limitation will begin to run at the time of each continuance of the harm." (Citation omitted; internal quotation marks omitted.) *Rickel* v. *Komaromi*, 144 Conn. App. 775, 788, 73 A.3d 851 (2013) (denying motion for summary judgment brought on statute of limitations ground against nuisance claim because question of whether alleged nuisance was permanent or continuing presented a genuine issue of material fact).

The plaintiff's complaint alleges that the town's approval of the development, which permitted homes (including the plaintiff's home) to be constructed on existing watercourses, was a positive act that created a dangerous condition that has worsened over the years. Pl.'s Complt., count thirteen, ¶¶ 11, 12, 18. The plaintiff's affidavit submitted in opposition to the motion for summary judgment establishes that the issues giving rise to her

nuisance claim have been ongoing since she first purchased the property. Docket entry no. 164, exhibit B, ¶¶ 2, 5, 6, 7, 8.

The town argues that the continuing course of conduct doctrine does not toll the statute of limitations because the plaintiff cannot establish the three prerequisites to invocation of the doctrine: (1) that the defendant committed an initial wrong against the plaintiff; (2) that the defendant owed a continuing duty to the plaintiff related to the initial wrong; and (3) that the defendant breached that continuing duty. *Flannery* v. *Singer Asset Finance Co., LLC*, 312 Conn. 286, 313, 94 A.3d 553 (2014).

In order to find a continuous course of conduct sufficient to toll the statute of limitations "there must be evidence of the breach of a duty that remained in existence after commission of the original wrong related thereto. That duty must not have terminated prior to the commencement of the period allowed for bringing an action for such a wrong. . . . *Where we have upheld a finding that a duty continued to exist after the cessation of the act or omission relied upon, there has been evidence of either a special relationship between the parties giving rise to such a continuing duty or some later wrongful conduct of a defendant related to the prior act.*" (Emphasis added; internal quotation marks omitted.) Id., 312.

In *Essex Ins. Co.* v. *William Kramer & Associates, LLC*, 331 Conn. 493, 205 A.3d 534 (2019), the Supreme Court "examine[d] the parameters of special relationships governed exclusively by the . . . continuing course of conduct doctrine. As this court previously has explained, [u]sually, such a special relationship is one that is built upon a fiduciary or otherwise confidential foundation. A fiduciary or confidential relationship is

characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other. . . . The superior position of the fiduciary or dominant party affords him great opportunity for abuse of the confidence reposed in him. . . . Fiduciaries appear in a variety of forms, including agents, partners, lawyers, directors, trustees, executors, receivers, bailees and guardians." (Internal quotation marks omitted.) Id., 506–07.

In the present case, the plaintiff did not allege or prove the existence of a special relationship between the plaintiff and the town giving rise to a continuing duty. Nor did she allege or prove that the town engaged in some later wrongful conduct related to its initial approval of the development. The plaintiff failed to satisfy the elements of the continuing course of conduct doctrine, and therefore there is no genuine issue of material fact that her claim against the town is time-barred. Accordingly, the town's motion for summary judgment on this ground is granted.[4]

CONCLUSION

For the foregoing reasons, the defendant's motion for summary judgment is granted.

BY THE COURT

Rosen, J.

[4] Having so ruled, the court need not address the town's alternative grounds for summary judgment.

Checklist for Clerk

Docket Number: HHD CV22-6156442

Case Name: Sirard v. Westford

Memorandum of Decision dated: 4/16/2024

File Sealed: **Yes** **No** X

Memo Sealed: **Yes** **No** X

This Memorandum of Decision may be released to the Reporter of Judicial Decisions for Publication XXXX

This Memorandum of Decision may NOT be released to the Reporter of Judicial Decisions for Publication

\\CO95\Common\Hartford JD Policy Manual\Sealed files\MOD memo.doc

Superior Court Case Look-up
Civil/Family
Housing
Small Claims
-
Attorney/Firm Juris Number Look-up
-
Case Look-up
By Party Name
By Docket Number
By Attorney/Firm Juris Number
By Property Address
-
Short Calendar Look-up
By Court Location
By Attorney/Firm Juris Number
Motion to Seal or Close
Calendar Notices
-
Court Events Look-up
By Date
By Docket Number
By Attorney/Firm Juris Number
-
Legal Notices
-
Pending Foreclosure Sales
-
Understanding
Display of Case Information
-
Contact Us

Comments

HHD-CV22-6156442-S SIRARD, DAWNA v. WESTFORD REAL ESTATE MANAGEMENT, LLC Et Al

Prefix: HD2 **Case Type:** C90 **File Date:** 06/07/2022 **Return Date:** 07/05/2022

Case Detail | Notices | History | Scheduled Court Dates | E-Services Login | Screen Section Help | Exhibits

To receive an email when there is activity on this case, click here.

Information Updated as of: 04/16/2024

Case Information

Case Type: C90 - Contracts - All other
Court Location: HARTFORD JD
List Type: No List Type
Trial List Claim:
Last Action Date: 02/23/2024 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	**DAWNA SIRARD** **Attorney:** KEILY MIRA LAW (433252) 968 FARMINGTON AVENUE SUITE 208 WEST HARTFORD , CT 06107 File Date: 06/07/2022		Plaintiff
D-01	**WESTFORD REAL ESTATE MANAGEMENT, LLC** **Attorney:** FELDMAN PERLSTEIN & GREENE LLC (412715) 10 WATERSIDE DRIVE SUITE 303 FARMINGTON , CT 06032 File Date: 07/01/2022		Defendant
D-02	**VICTORIAN WOODS ASSOCIATION, INC.** **Attorney:** FELDMAN PERLSTEIN & GREENE LLC (412715) 10 WATERSIDE DRIVE SUITE 303 FARMINGTON , CT 06032 File Date: 07/01/2022		Defendant
D-03	**TOWN OF SOUTH WINDSOR** **Attorney:** HOWD & LUDORF LLC (028228) 100 GREAT MEADOW ROAD SUITE 201 WETHERSFIELD , CT 061091121 File Date: 06/20/2022		Defendant
D-04	**JOHN D. SCULLY** **Attorney:** O'MALLEY DENEEN LEARY MESSINA & OSWECKI (044526) 20 MAPLE AVENUE WINDSOR , CT 06095 File Date: 06/30/2022		Defendant
D-05	**CHRITRAWATTIE R. BROOKS-SCULLY** **Attorney:** O'MALLEY DENEEN LEARY MESSINA & OSWECKI (044526) 20 MAPLE AVENUE WINDSOR , CT 06095 File Date: 06/30/2022		Defendant

Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the Electronic Access to Court Documents Quick Card.
- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.*