

DOCKET NO. CV-23-6028455-S : SUPERIOR COURT
SARAH LEE GRETZKY, ADMINISTRATOR
OF THE ESTATE OF GERARD EDWARD CINQ MAR : J.D. OF TOLLAND
V. : AT ROCKVILLE
JOHN BROZEK : JUNE 10, 2024

MEMORANDUM OF DECISION

HON. CODY N. GUARNIERI, JUDGE, before this court is the defendant's motion to strike Count Two and the corresponding prayer for relief of the plaintiff's complaint (No. 104.00) and the plaintiff's objection thereto (No. 110.00). The court heard oral argument at short calendar on June 5, 2024. For the reasons discussed herein, the motion to strike is DENIED.

I. BACKGROUND

The plaintiff, Sarah Gretzky, Administrator of the Estate of Gerard Edwin Cinq Mars, filed a two-count complaint dated November 3, 2022, alleging the following facts. That on the afternoon of November 7, 2021, the defendant was driving his truck and loaded utility trailer westbound on Route 44 in Ashford. That at or near the intersection of Route 44 and Pumpkin Hill Road, the defendant swerved into the eastbound lane of Route 44 to avoid vehicles that were slowed or stopped in front of him. When the defendant swerved into the eastbound lane of Route 44, he collided head-on with the plaintiff's decedent's car, which was traveling in the eastbound lane. The collision caused the plaintiff's decedent's vehicle to spin and collide with another vehicle before coming to rest in the westbound shoulder of Route 44. The plaintiff's decedent sustained fatal injuries as a result of the collision.

In the first count of the complaint the plaintiff alleges that the injuries and losses sustained by the plaintiff's decedent were caused by the negligence and carelessness of the defendant in various ways, including by traveling unreasonably fast in violation of General Statutes § 14-218a (paragraph 5a), driving recklessly in violation of General Statutes § 14-222 (paragraph 5b), failing to drive on the right-hand lane in violation of General Statutes § 14-230 (paragraph 5c), failing to maintain his lane in violation of General Statutes § 14-236 (paragraph 5d), and following too closely in violation of General Statutes § 14-240 (paragraph 5e).

In the second count of the complaint the plaintiff alleges recklessness pursuant to General Statutes § 14-295. In this regard the plaintiff alleges the same facts as those alleged in her first count. However, in the second count the plaintiff alleges that the injuries and losses sustained by the plaintiff's decedent were caused by the defendant's deliberate or reckless violation of one or more specified general statutes: traveling unreasonably fast in violation of General Statutes § 14-

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218a (paragraph 5a), driving recklessly in violation of General Statutes § 14-222 (paragraph 5b), failing to drive in the right-hand lane in violation of General Statutes § 14-230 (paragraph 5c), and following too closely in violation of General Statutes § 14-240 (paragraph 5d).

On February 8, 2024, the defendant moved to strike the second count and corresponding prayer for relief (No. 104.00). The defendant argues that the plaintiff has failed to allege facts in support of her claim for recklessness under General Statutes § 14-295. The plaintiff filed an objection on April 4, 2024 (No. 110.00), arguing that the complaint is sufficient pursuant to General Statutes § 14-295, as she has specifically pleaded that the defendant had deliberately or recklessly operated his motor vehicle in violation of specific statutes delineated in § 14-295. Argument was heard at short calendar on June 5, 2024.

II. LEGAL STANDARD

“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 . . . [The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied . . . Moreover, [the court notes] that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . 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.) *Coppola Construction Co. v. Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013).

III. DISCUSSION

General Statutes § 14-295 reads, in part, as follows: “In any civil action to recover damages resulting from personal injury, wrongful death or damage to property, the trier of fact may award double or treble damages if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of section 14-218a, 14-219, 14-222, 14-227a or 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n or section 14-230, 14-234, 14-237, 14-239, 14-240a or 14-296aa, and that such violation was a substantial factor in causing such injury, death or damage to property.”

This court is aware of the split of superior court decisions on the issue presented in this motion to strike; that is whether the law requires a plaintiff alleging a § 14-295 violation to plead more than the bare elements of the statute. Put another way, the split is essentially a dispute as to whether the “specifically pleaded” language of Section 14-295 supplants the requirement of fact pleading.

The so-called “majority view” is that the plaintiff need not allege more than the statutory elements. In this view, the terms of General Statutes § 14-295 are clear, unambiguous and explicit and that in any civil action to recover damages resulting from personal injury, wrongful death or damage to property, the trier of fact may award double or treble damages “if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of [certain enumerated statutes], and that such violation was a substantial factor in causing such injury, death or damage to property.” See, *Ospina v. Reid*, Superior Court, judicial district of New Haven, Docket No. CV-19-6087004-S (August 26, 2019, *Pierson, J.*)

The so-called “minority view” is that facts sufficient to support the legal conclusion of recklessness are required to survive a motion to strike a recklessness count under General Statutes § 14-295. See, *Tillona v. Vassallo*, Superior Court, judicial district of Hartford, Docket No. CV-21-6149626-S (March 28, 2022, *Sicilian, J.*) (Striking a statutory recklessness count for plaintiff’s failure to allege facts sufficient to support the asserted legal conclusion that the defendant acted recklessly); *Rogers v. Dyer*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV-21-6109083-S (December 3, 2021, *Stewart, J.*)

In reviewing the decisions of superior courts relating to this issue over the last five years, it is apparent that the majority view is overwhelmingly adopted and applied by superior courts. This court adopts the reasoning of the court in *Ospina v. Reid*, supra, in finding that General Statutes § 14-295 provides – clearly, unambiguously, and explicitly, that in any civil action to recover damages resulting from personal injury, wrongful death or damage to property, the trier of fact may award double or treble damages “if the injured party has *specifically pleaded* that another party has deliberately or with reckless disregard operated a motor vehicle in violation of [certain enumerated statutes], and that such violation was a substantial factor in causing such injury, death or damage to property.” (Emphasis added.)

In this case there is no contest that the plaintiff met the pleading standard set forth by the so-called majority view by pleading that the defendant, deliberately or with reckless disregard, violated General Statutes §§ 14-218a, 14-222, 14-230 and/or 14-240, and that the violations of one or more of those statutes was a substantial factor in causing the plaintiff’s decedent’s injuries.

IV. CONCLUSION

For the reasons stated previously, the defendant’s motion to strike the second count and corresponding prayer for relief of the plaintiff’s complaint is DENIED.

SO ORDERED

BY THE COURT


Guarnieri, J.