DOCKET NO. HHD-CV-24-6179413-S	:	SUPERIOR COURT
INFINITY REAL ESTATE ADVISORS, LLC AND ZION PARK MF II, LLC	:	JUDICIAL DISTRICT OF HARTFORD
v.	:	AT HARTFORD
WESTCHESTER SURPLUS LINES INSURANCE COMPANY, ET AL	:	MAY 30, 2024

MEMORANDUM OF DECISION REGARDING DEFENDANTS' MOTION TO STRIKE

Presently before the court is an insurance coverage dispute between the plaintiffs, Infinity Real Estate Advisors, LLC and Zion Park MF II, LLC, and the defendants, Westchester Surplus Lines Insurance Company, National Fire and Marine Insurance Company, and Lexington Insurance Company, regarding a January 27, 2022 fire occurring at the plaintiffs' property located at 835 Park Street, Hartford, Connecticut. Although they paid the plaintiffs' claim relating to water, soot, and smoke damage, the defendants denied the plaintiffs' claim for expenses incurred in relocating tenants displaced by the fire. In addition to alleging that the defendants breached the insurance contract in count one, the plaintiffs allege in count two that the defendants breached the duty of good faith and fair dealing. The defendants have moved to strike count two based on the plaintiffs' failure to plead sufficient facts to support a claim of bad faith. For the reasons provided, the defendants' motion to strike count two is granted.

APPLICABLE LEGAL STANDARD

"A motion to strike shall be used whenever any party wishes to contest . . . the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted . . . ." Practice Book § 10-39 (a). "Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . 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

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allegations are taken as admitted." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 349, 63 A.3d 940 (2013).

DISCUSSION

"[I]t is axiomatic that the . . . duty of good faith and fair dealing is a covenant implied into a contract or a contractual relationship. . . . In other words, every contract carries an implied duty requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement." (Internal quotation marks omitted.) *Capstone Building Corp.* v. *American Motorists Ins. Co.*, 308 Conn. 760, 794, 67 A.3d 961 (2013). In order to recover on an action for breach of the covenant of good faith and fair dealings, the plaintiff must prove "(1) that the plaintiff and the defendant were parties to a contract under which the plaintiff reasonably expected to receive certain benefits; (2) that the defendant engaged in conduct that injured the plaintiff's right to receive benefits it reasonably expected to receive under the contract; and (3) that when committing the acts by which it injured the plaintiff's right to receive under the contract, the defendant was acting in bad faith." (Internal quotation marks omitted.) *Gombs* v. *Sentinel Ins. Co., Ltd.*, Superior Court, judicial district of Waterbury, Docket No. CV-16-6030267-S, 2017 WL 2852695, *2 (June 6, 2017, *Brazzel-Massaro, J.*).

The Supreme Court has made it clear that "[b]ad faith in general implies . . . actual or constructive *fraud*, or a design to *mislead or deceive* another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. . . . Bad faith means more than mere negligence; it

involves a dishonest purpose." (Emphasis in original; internal quotation marks omitted.) *Dorfman* v. *Smith*, 342 Conn. 582, 606, 271 A.3d 53 (2022).

There is a split of authority regarding the specificity of pleading required to support a claim of bad faith. "The first line of cases requires specific allegations establishing a dishonest purpose or malice. In alleging a breach of the covenant of good faith and fair dealing, courts have stressed that such a claim must be alleged in terms of wanton and malicious injury [and] evil motive . . . . The second line of cases generally holds parties to a less stringent standard requiring that a plaintiff need only allege sufficient facts or allegations from which a reasonable inference of sinister motive can be made. . . . Even where courts have used an inference analysis, however, they have looked to allegations that the conduct at issue was engaged in purposefully." (Citations omitted; internal quotation marks omitted.) *Benedetto* v. *Utica First Ins. Co.*, Superior Court, judicial district of New Haven, Docket No. CV-17-6070957-S, 2018 WL 1177019, *3 (February 8, 2018, *Wilson, J.*) (66 Conn. L. Rptr. 4, 6-7). See also *Mazzacane v. Hanover Ins. Co.*, Superior Court, judicial district of Hartford, Docket No. CV-23-6170795-S, 2024 WL 94330, *2 (January 2, 2024, *Klau, J.*) ("To prevail on a claim for the breach of the implied covenant of good faith and fair dealing, a complaint must allege a specific act that was performed purposefully, with a sinister intent. . . . Even if it was found that there was a breach of contract, not all contracts are breached with a sinister intent. . . . Neglect or refusal to fulfill a contractual obligation can be bad faith *only* if prompted by an interested or sinister motive. . . . In order to make [such a claim] the plaintiff must allege that the defendant did more than simply deny the plaintiff's claim for benefits. . . . Proof of bad faith in the insurance coverage context requires proof that the insurer has denied coverage without a reasonable basis and has acted with a dishonest purpose. . . . The lynchpin of a bad faith claim is a state of mind characterized by an intent to mislead or deceive or defraud." [Citations omitted; internal quotation marks omitted.]); *Brickhouse* v. *Progressive Casualty Ins. Co.*, Superior Court, judicial district of

New Haven, Docket No. CV-14-6048681-S, 2014 WL 7525594, *2 (December 2, 2014, *Wilson, J.*) ("most Connecticut trial judges have held that a plaintiff is required to plead specific facts to show how the defendant's actions were done in bad faith and in what manner the conduct was done with ill purpose . . . or bad motive").

The court concludes that the allegations set forth in count two of the plaintiffs' complaint are not sufficient to support a claim of bad faith because they do not allege conscious wrongdoing, dishonest purpose, or a sinister motive. Instead, count two incorporates the allegations set forth in count one and then alleges that the defendants "misrepresented pertinent facts and policy provisions . . . failed to provide a reasonable basis for its declination of coverage . . . erroneously denied coverage by ignoring the terms and conditions affording coverage under the applicable policy . . . [and] in its letters, misrepresented the applicable language contained in the policy by requesting certain documents from [the] [p]laintiffs . . . not required per the terms of the insurance policy." Compl., ¶¶ 24-28. Count two further alleges that the "[d]efendants represent that [the] [p]laintiffs have to provide documents reflecting a 'contractual obligation' to maintain housing for its displaced tenants . . . [t]he policy does not reflect any requirement that [the] [p]laintiffs prove a 'contractual obligation' to maintain housing for its displaced tenants . . . [d]espite the lack of a requirement in the policy to provide a 'contractual obligation' to maintain housing for the tenants of the building, [the] [p]laintiffs provided documentation reflecting that [they] are expected to find suitable temporary housing for residents when the property becomes inhabitable . . . [and] [d]espite [their] submission, [the] [d]efendants continue to refuse to provide coverage associated with the expenses incurred by Plaintiffs in housing its displaced tenants." Compl., ¶¶ 29-32. Finally, count two alleges that "[a]s a result of the actions described in the preceding paragraphs, [the] [d]efendants breached [the] duty of good faith and fair dealing . . . [and] acted intentionally, willfully, wantonly, and/or in reckless disregard of its obligation under the policy and/or applicable law." Compl., ¶¶ 33-34.

It is the court's view that the allegations of count two, without more, are insufficient to constitute bad faith within the context of a first party breach of contract action alleging wrongful denial of an insurance claim. See *Sullivan* v. *Allstate Ins. Co.*, Superior Court, judicial district of Hartford, Docket No. CV-05-4008548-S, 2006 WL 1000236, *1-2 (March 28, 2006, *Tanzer, J.*) (granting insurer's motion to strike bad faith claim on grounds that complaint does not allege dishonest purpose, evil motive, or malice). See also *Mazzacane v. Hanover Ins. Co.*, supra, 2024 WL 94330, *2; *Connecticut Community Bank, N.A.* v. *Strickland Road, LLC*, Superior Court, judicial district of Danbury, Docket No. CV-12-6008381-S, 2014 WL 7595341, *11 (December 4, 2014, *Shaban, J.*) ("[t]his court joins the majority of Superior Court decisions that require the plaintiff to plead specific allegations establishing a dishonest purpose or malice"), discussing *Hirschfeld* v. *Machinist*, 151 Conn. App. 414, 422 n.2, 95 A.3d 1167 (2014) ("[i]f the plaintiff fails to set forth factual allegations that the defendant acted in bad faith, a claim for breach of the implied covenant [of good faith and fair dealing] will not lie" [internal quotation marks omitted]). The court in *Connecticut Community Bank* further noted: "The defendant's ninth counterclaim incorporates the facts alleged in count one. It also adds the conclusory allegation that based on the plaintiff's conduct in purposefully failing to disclose and concealing material information [the defendant] thought the loan transaction process was in bad faith. The defendant further alleged that the plaintiff knew that she placed her trust in the plaintiff and expected that the loan transaction would be done in an honest and reasonable manner. *These allegations do not, in and of themselves, allege facts regarding dishonesty in the performance of the contracts.*" (Emphasis added; internal quotation marks omitted.) *Connecticut Community Bank, N.A.* v. *Strickland Road, LLC*, supra, 2014 WL 7595341, *9.

As in *Connecticut Community Bank* and the other cases referenced, the court concludes that the plaintiffs' claim of bad faith set forth in count two is legally insufficient. Although the parties

obviously disagree regarding the policy requirements, it is the court's view that that disagreement does in and of itself demonstrate or support an inference that the defendants acted with a dishonest purpose, a sinister motive, or with an intent to defraud. See *Dorfman* v. *Smith*, supra, 342 Conn. 606.

CONCLUSION

Having carefully considered the plaintiffs' complaint; the defendants' motion to strike and supporting memorandum of law; the plaintiffs' objection to the defendants' motion to strike, together with the plaintiffs' supporting memorandum of law; and having entertained oral argument at which all parties were afforded a full opportunity to present their respective views, the court concludes for the reasons stated that count two of the plaintiffs' complaint is legally insufficient and that the defendants' motion to strike must therefore be and is hereby granted.

BY THE COURT

MATTHEW DALLAS GORDON, J.

Checklist for Clerk

Docket Number: HHD-CV24-6179413-S

Case Name: Infinity Real Estate Advisors, LLC and Zion Park MF II, LLC v. Westchester Surplus Lines Insurance Company, Et Al

Memorandum of Decision dated: 5/30/24

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

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Prefix: HD6 **Case Type:** C20 **File Date:** 01/22/2024 **Return Date:** 02/20/2024

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List Type: No List Type
Trial List Claim:
Last Action Date: 05/24/2024 (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	**INFINITY REAL ESTATE ADVISORS, LLC AND ZION PARK MF II, LLC** **Attorney:** DANIEL W BALLARD (443786) File Date: 01/22/2024 125 HALF MILE ROAD, #110 RED BANK , NJ 07701		Plaintiff
D-01	**WESTCHESTER SURPLUS LINES INSURANCE COMPANY** **Attorney:** TAYLORE E KARPA SCHOLLARD (442417) File Date: 04/09/2024 800 BOYLSTON ST SUITE 2500 BOSTON , MA 02199 **Attorney:** PHV MUTCH JONATHAN D 5/16/24 (445709) File Date: 05/23/2024 NEW ROBINS KAPLAN LLP 800 BOLYSTON ST STE 2500 BOSTON , MA 02199		Defendant
D-02	**NATIONAL FIRE AND MARINE INSURANCE COMPANY** **Attorney:** TAYLORE E KARPA SCHOLLARD (442417) File Date: 04/09/2024 800 BOYLSTON ST SUITE 2500 BOSTON , MA 02199 **Attorney:** PHV MUTCH JONATHAN D 5/16/24 (445709) File Date: 05/23/2024 NEW ROBINS KAPLAN LLP 800 BOLYSTON ST STE 2500 BOSTON , MA 02199		Defendant
D-03	**LEXINGTON INSURANCE COMPANY** **Attorney:** JODI SHAWN TESSER (420023) File Date: 03/01/2024 ONE NEW YORK PLAZA 44TH FLOOR NEW YORK , NY 10004 **Attorney:** PHV HENKIND HILARY M 5/17/24 (445712) File Date: 05/17/2024 NEW MOUNT COTTON ET AL ONE NEW YORK PLZ 44TH FL NEW YORK , NY 10004		Defendant

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