

DOCKET NO: FBT-CV22-6119574-S

MARIANNE ARMENO

V.

TOWN OF STRATFORD, ET AL.

OFFICE OF THE CLERK
SUPERIOR COURT

2024 APR 19 P. 12: 22

JUDICIAL DISTRICT
OF BRIDGEPORT

SUPERIOR COURT

J.D. OF BRIDGEPORT

AT BRIDGEPORT

APRIL 19, 2024

MEMORANDUM OF DECISION

A hearing on the defendants Stratford Board of Education and Richard Ruggiero's, hereinafter referred to as "the defendants," motion to strike counts two and four of the plaintiff's complaint was heard before the undersigned on April 1, 2024.

This lawsuit results from an incident that allegedly occurred on November 3, 2022 at Wilcoxson Elementary School in Stratford, Connecticut, which was being used as a polling place on that day.

The plaintiff alleges that she was on the premises to vote that day and, as she was exiting a door at the rear of the gymnasium where the voting took place, she tripped and fell as the result of a defect between the door and the concrete slab.

In the first count of his complaint, the plaintiff alleges that the co-defendant, Town of Stratford, breached its duty to maintain the subject exit doorway to allow safe egress for persons with physical disabilities, such as the plaintiff, while the location was being used as a polling place, pursuant to C.G.S. Sec. 9-168-d; a duty to maintain the property per C.G.S. Sec. 10-220 et seq., as well as a duty to inspect and repair the area.

In the second count of his complaint, the plaintiff makes the same allegations against the defendant, Stratford Board of Education.

4/19/24: JDNO sent. Notice to RJD.
Jean Jones Asst. Clerk

In the fourth count of his complaint, the plaintiff alleges that the defendant Ruggiero, the director of facilities for the Stratford public schools, was responsible for maintaining, repairing and inspecting the subject property and he was negligent in failing to remedy the defect prior to the plaintiff's fall down.

The defendants have moved to strike count two and count four on the grounds of governmental immunity. The plaintiff opposes the instant motion.

The purpose of a motion to strike is to test the legal sufficiency of the allegations set forth in the challenged pleading. *Ferryman v. Groton*, 212 Conn. 138, 142 (1989); Conn. Practice Book § 10-39.

A motion to strike may be used to challenge the legal sufficiency of a complaint or of any one of the counts thereof. Conn. Practice Book § 10-39(a)(1); *Ivey, Barnum & O'Mara v. Indian Harbor Properties*, 190 Conn. 528 (1983).

In ruling on a motion to strike, the trial court may only consider those grounds raised in the motion. *Blancato v. Feldstar Corp.*, 203 Conn. 34, 44 (1987).

Additionally, in ruling on such a motion, the court must construe the facts "in a manner most favorable to the pleader." *Amodio v. Cunningham*, 182 Conn. 80, 82 (1980). "[A]ll well pleaded facts necessarily implied from the allegations are taken as admitted." *Id.* at 83.

The court, when ruling on a motion to strike, may not be aided by assumptions of fact not therein alleged. *Lifedahl Bros., Inc. v. Grisby*, 215 Conn. 345, 348 (1990).

The concept of governmental immunity is that a municipal employee is liable for the performance of ministerial acts, but has a qualified immunity in the performance of

governmental acts, the latter of which are performed wholly for the direct benefit of the public, and are supervisory or discretionary in nature. *Borelli v. Renaldi*, 336 Conn.1 (2020).

Further, municipal officials are immunized from liability for negligence arising out of their discretionary acts in part because of the danger that a more expansive exposure to liability would cramp the exercise of official discretion beyond the limits desirable in our society, free from second guessing and retaliatory lawsuits. *Borelli, supra*.

However, municipal officers are not immune from liability for negligence arising out of their ministerial acts, defined as acts to be performed in a prescribed manner without the exercise of judgment or discretion. *Borelli, supra*.

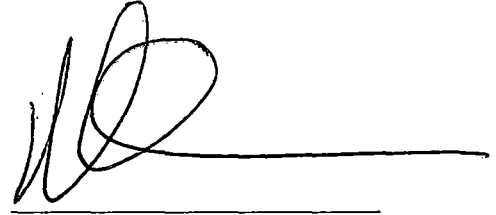
Moreover, that same discretionary act immunity that applies to municipal officials applies to the municipalities themselves in that municipalities are not liable for damages caused by negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law. C.G.S. Sec. 52-557n(a)(2)(B).

“A ministerial act is one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or in the exercise of his own judgment or discretion upon the property of the act being done.

“In contrast, when an official has a general duty to perform a certain act, but there is no provision, ordinance, regulation, rule, policy or any other directive requiring the government official to act in a prescribed manner, the duty is deemed discretionary.” *Northrup v. Witkowski*, 332 Conn. 158, 169-70, 210 A 3rd 29 (2019). *Borelli, supra*.

In the instant matter, the plaintiff's complaint, specifically counts two and four, do not allege any duty that was ministerial in nature, nor does she cite any provision, ordinance, regulation, rule, policy, or other directive that would meet the *Borelli* and *Northrup* tests above.

For those reasons, governmental immunity applies and the defendants' motion to strike counts two and four of the plaintiff's complaint is granted.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a large loop and a horizontal line extending to the right.

GOULD, J.