DOCKET NO.: TTD-CV23-6027454-S		SUPERIOR COURT
NICOLE CAMMAROTA	:	J.D. OF TOLLAND
V.		AT ROCKVILLE
FALLS MILL OF VERNON CONDOMINIUM ASSOCIATION INC., ET. AL.	:	MAY 9, 2024

MEMORANDUM OF DECISION REGARDING DEFENDANT'S MOTION TO STRIKE (NO. 113.00)

This is a property damage/insurance coverage dispute between the plaintiff, Nicole Cammarota, and the defendants, Falls Mill of Vernon Condominium Association, Inc. (Falls Mill), Metro Property Management, LLC (Metro Property), Underwriters at Lloyd's London c/o Lloyd's America, Inc. (Lloyd's), and Travelers Personal Insurance Company (Travelers) regarding a damaged floor in the plaintiff's condominium unit. The plaintiff's revised complaint alleges that Lloyd's breached an insurance contract with Falls Mill under which she is an additional insured by denying her claim on the basis that the damage was caused by moisture in the crawlspace under the floor and that rot, deterioration, wear and tear, and mold are not covered under the policy. In addition to breach of contract, the plaintiff's revised complaint alleges bad faith (count seven), a violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a (count eight), and unjust enrichment (count nine), each of which Lloyd's has moved to strike. For the reasons explained, the motion to strike is granted.

Atty Wilson Alexandra Wilson, 306

DISCUSSION

"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

Memorandum of Decision sent on 5/10/2024:
All counsel of record
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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 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).

A. Count Seven Implied Covenant of Good Faith and Fair Dealing

Lloyd's contends that the plaintiff's claim of bad faith set forth in count seven of her revised complaint should be stricken because count seven does not allege that Lloyd's acted with a dishonest purpose, moral obliquity, furtive design, or ill will.

"[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. . . ." *Capstone Building Corp.* v. *American Motorists Ins. Co.*, 308 Conn. 760, 794, 67 A.3d 961 (2013). "An action for breach of the covenant of good faith and fair dealing requires proof of three essential elements: (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 (June 6, 2017, *Brazzel-Massaro, J.*).

The Connecticut Supreme Court has made it clear that within the context of a claim alleging breach of the implied covenant of good faith and fair dealing, "[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 the original.) *Dorfman* v. *Smith*, 342 Conn. 582, 606, 271 A.3d 53, 71 (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 (February 8, 2018, *Wilson, J.*) (66 Conn. L. Rptr. 4, 7). See also, *Brickhouse* v. *Progressive Casualty Ins. Co.*, Superior Court, judicial district of New Haven, Docket No. CV-14-6048681-S (December 2, 2014, *Wilson, J.*) (noting that "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 count seven of the plaintiff's revised complaint is legally insufficient to support a claim of bad faith because it does not allege conscious wrongdoing,

dishonest purpose, or sinister motive. Instead, count seven simply incorporates the breach of contract allegations set forth in count six and then alleges in paragraphs fifteen, sixteen, and seventeen, respectively, that: 1) "The [p]olicy was a contract between the [d]efendant, [Lloyd's], and [the] [p]laintiff, under which the [p]laintiff reasonably expected to receive the benefits of property insurance coverage;" 2) "The [d]efendant [Lloyd's] engaged in conduct that damaged the [p]laintiff's rights to receive that benefit, by denying coverage of the [p]laintiff's claim, when such claim should have been covered under the [p]olicy;" and 3) "The forgoing actions constitute a breach of the covenant of good faith and fair dealing." Without more, these allegations, do not properly support a claim of bad faith. See *Sullivan* v. *Allstate*, Superior Court, judicial district of Hartford, Docket No. CV-05-4008548 (March 28, 2006, *Tanzer, J.*) (granting insurer's motion to strike bad faith claim on the grounds the complaint "failed to allege a dishonest purpose, evil motive, or malice required for breach of duty of good faith and fair dealing claim"). See also *Connecticut Community Bank, N.A.* v. *Strickland Road, LLC, et al.*, Superior Court, judicial district of Danbury, Docket No. CV-12-6008381-S (December 4, 2014, *Shaban, J.*) (noting that "This court joins the majority of Superior Court decisions that require the plaintiff to plead specific allegations establishing a dishonest purpose or malice. Support for this position is found in the Appellate Court's recent opinion that '[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.) *Hirschfeld* v. *Machinist*, 151 Conn. App. 414, 421 n. 2, 95 A.3d 1167 (2014)."). The court in *Community Bank* also noted that "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) Id.

The court concludes that as in *Community Bank*, the plaintiff's claim of bad faith set forth in count seven is legally insufficient and that count seven must therefore be stricken.

B. Count Eight CUTPA/CUIPA

Count eight of the plaintiff's revised complaint alleges that Lloyd's violated the Connecticut Unfair Trade Practices Act General Statutes § 42-110a *et seq* (CUTPA) in that when it denied the plaintiff's claim "it knew or should have known that the reason stated for such denial lacked a proper basis in fact or law, was made falsely or with reckless disregard for its truth or falsity, and otherwise was not supported by substantiated facts pertaining to the [p]olicy." Compl. Count Eight, ¶ 18. Count eight further alleges that Lloyd's violated the Connecticut Unfair Insurance Practices Act, General Statutes § 38-815 *et seq* (CUIPA), in that it: 1) misrepresented pertinent facts or policy provisions relating to the insurance coverage issue; 2) refused to pay the plaintiff's claim without conducting a reasonable investigation based on all available information; 3) failed to act in good faith to "effectuate prompt, fair, and equitable settlements of the claim in which liability has become reasonably clear;" and 4) compelled the plaintiff to "instigate litigation to recover amounts due under the [p]olicy by offering substantially less than the amount that will ultimately be recovered in the action." Compl. Count Eight, ¶ 19 a-d. Count eight further alleges that "The outrageous conduct and wrongful actions of the [d]efendant, [Lloyd's] in ignoring and/or not complying with [p]olicy provisions, denying coverage when it knew or should have known that the reason stated for such denial lacked a proper basis in fact or law, was made falsely or with reckless disregard for its truth or falsity, and otherwise was not supported by substantiated facts pertaining to the [p]olicy has occurred with

such frequency as to constitute a general business practice of insurance misconduct, in violation of General Statutes § 38-815 et seq." Compl. Count Eight, ¶ 20. Finally, count eight alleges that "The aforementioned conduct of the [d]efendant, [Lloyd's], denying the [p]laintiff full coverage under the [p]olicy without a proper basis for doing so constitutes the commission of an unfair act or practice within the spirit of CUPTA insofar as it is immoral, unethical, oppressive, or unscrupulous, offensive to public policy and causes injury to consumers." Compl. Count Eight, ¶ 23.

To allege a legally viable CUPTA violation in the context of an insurance coverage dispute it is incumbent upon the plaintiff to allege one or more specific violations of CUIPA. See *State* v. *Acordia, Inc.*, 310 Conn. 1, 37, 73 A.3d 711, 732 (2013). "Because CUIPA provides the exclusive and comprehensive source of public policy with respect to general insurance practices, we conclude that, unless an insurance related practice violates CUIPA or, arguably, some other statute regulating a specific type of insurance related conduct, it cannot be found to violate any public policy and, therefore, it cannot be found to violate CUTPA." In addition, General Statutes § 38a-816 (6), requires that the alleged acts of unfair insurance claim settlement practices be performed "with such frequency as to indicate a general business practice."

Although count eight does contain some conclusory language that Lloyd's engaged in its allegedly wrongful conduct "with such frequency as to constitute a general business practice of insurance misconduct, in violation of [General Statutes] § 38-815 et seq.," the court concludes that this broad and nonspecific language is insufficient to withstand the defendant's motion to strike. See *Gomez* v. *Nationwide Ins. Co.*, Docket No. CV-22-6047023, 2023 WL 1794375, at *5 (Conn. Super. Ct. Feb. 1, 2023, *Bellis, J.*). "Although there is currently a split of authority among the judges of the Superior Court as to the degree of factual specificity required to allege a general business practice in violation of § 38a-816 (6), the trend is to strike CUTPA/CUIPA claims

where . . . the plaintiff has merely inserted the magic words of other acts of insurance misconduct by the defendant without stating any factual basis for that claim." (Quoting *Belamose Business Park, LLC* v. *Peerless Ins.*, Superior Court, judicial district of Hartford, Docket No. CV-12-6036488-S (August 31, 2015, *Huddleston, J.*). See also *Barrett* v. *Allied World Specialty Ins. Co.*, Docket No. CV23-6079994-S, 2024 WL 1635428, at *3 (Conn. Super. Ct. Apr. 11, 2024, *Knox, J.*) (noting that "[t]he 'general trend' noted above, has continued to find support in recent superior court decisions" and concluding that the plaintiff's "bald and conclusory allegations of misconduct in various types of business practices, without any factual predicate, cannot survive a motion to strike").[1]

Because count eight does not reference the handling of any other insurance claims, and because the plaintiff has failed to allege any facts to support her broad and conclusory claim that Lloyd's engaged in conduct violative of CUIPA with such frequency as to constitute a "general business practice," the court concludes that count eight is legally insufficient and must therefore be stricken.

C. Count Nine Unjust Enrichment

Lloyd's contends that the plaintiff's claim for unjust enrichment fails as a matter of law because unjust enrichment is an equitable doctrine that only applies in the absence of a contractual remedy. According to Lloyd's, because the plaintiff has a viable claim for breach of the insurance contract, the plaintiff cannot recover under a theory of unjust enrichment.

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[1] Additionally, in *Lees* v. *Middlesex Ins. Co.*, 229 Conn. 842, 643 A.2d 1282, 1286 (1994), the Connecticut Supreme Court concluded that "the defendant's alleged improper conduct in the handling of a single insurance claim, without any evidence of misconduct by the defendant in the processing of any other claim, does not rise to the level of a 'general business practice' as required by § 38a–816 (6)." Id. 849.

This court previously denied a motion to strike a count alleging unjust enrichment in *Beaton* v. *Spaces, LLC*, Superior Court, judicial district of Tolland, Docket No. CV-23-6026539-S (February 28, 2024, *Gordon, J.*) even though, as in this case, there was a separate count alleging that the defendant had breached the terms of an express contract. However, in *Beaton* the unjust enrichment count did not allege that the defendant had breached the contract; plus, there were a variety of other factors leading the court to conclude that an unjust enrichment recovery might be appropriate *if* the plaintiff's breach of contract claim failed. Here, however, count nine of the plaintiff's revised complaint specifically alleges that Lloyd's was unjustly enriched precisely because it obtained premium payments for coverage under the policy, and yet "unjustly denied the [p]laintiff the full insurance coverage afforded to her under the [p]olicy." Compl. Count nine, ¶ 6. In other words, count nine alleges that Lloyd's breached the insurance contract. Although it presents a close question, the court concludes that because the plaintiff's revised complaint clearly states that Lloyd's breached its insurance contract and that the plaintiff is entitled to compensatory damages as a result, there is no basis for the plaintiff's unjust enrichment claim. In other words, if the plaintiff's breach of contract claim fails because the trier of fact concludes that Lloyd's correctly determined that its policy does not cover the plaintiff's insurance claim due to "rot, deterioration, wear and tear, and mold," the plaintiff would not be entitled to compensatory damages either for breach of contract *or* unjust enrichment.

The court notes that its ruling is limited to the specific facts of this case involving an insurance coverage dispute where the sole issue is whether the carrier correctly denied coverage based on specific exclusionary language in the policy. Under a different set of facts, the court might reach a different conclusion. For example, if Lloyd's had denied coverage based on late payment of premiums, there *might* be some basis for the plaintiff to

recover under a theory of unjust enrichment. However, the court believes it would set a dangerous precedent to conclude, *within the context of an insurance coverage dispute in which the sole issue is whether the insurance carrier correctly determined that its policy excludes damage caused by "rot, deterioration, wear and tear, and mold,"* that the insured should be permitted to allege a claim of unjust enrichment even though a final decision regarding the plaintiff's breach of contract claim will definitely resolve the dispute between the parties on that issue.

CONCLUSION

Having carefully considered the plaintiff's revised complaint, the defendant's motion to strike and supporting memorandum of law, and the plaintiff's objection; and having entertained oral argument at which all parties were afforded an opportunity to present their respective views, the court concludes, for all of the reasons previously explained, that the seventh, eighth, and ninth counts of the plaintiff's revised complaint are legally insufficient and that the defendant's motion to strike those counts must therefore be and is hereby granted.

BY THE COURT

MATTHEW DALLAS GORDON, J.