

DOCKET NO.: FBT-CV23-6123447-S

: SUPERIOR COURT

SUSAN TREGLIA

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SUPERIOR COURT

J. D. OF BRIDGEPORT

V.

2024 MAY 31 P 2:49

AT BRIDGEPORT

OLD GATE REALTY, LLC and
TRANS-CLEAN CORP.

JUDICIAL DISTRICT
OF BRIDGEPORT

MAY 31, 2024

MEMORANDUM OF DECISION RE:
DEFENDANT TRANS-CLEAN CORP'S MOTION TO STRIKE
(#121.00, 3/6/24)

A hearing on the defendant Tans-Clean Corp's, hereinafter referred to as "the defendant's," motion to strike count two of the plaintiff's second amended complaint was heard before the undersigned on May 20, 2024.

This lawsuit results from an alleged slip and fall on January 5, 2022 at premises owned by the co-defendant Old Gate Realty LLC, located at 125 Old Gate Lane in Milford, Connecticut.

The co-defendant was the only party sued in the original action, which was filed on April 6, 2023. The plaintiff filed an amended complaint on September 26, 2023, which delineated with more specificity the alleged injuries she suffered as a result of her fall.

On November 16, 2023, the co-defendant moved to implead the defendant, which motion was granted by the undersigned on December 1, 2023. The third-party complaint against the defendant was filed on January 10, 2024.

On March 6, 2024, the plaintiff filed her second amended complaint, including a count for negligence, essentially a "sue over," against the defendant.

On that date, the defendant filed the instant motion to strike that claim, specifically count two of the plaintiff's second amended complaint, on the grounds that the filing violated the statute of limitations.

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. *Liffedahl Bros., Inc. vs. Grisby*, 215 Conn. 345, 348 (1990).

The relevant statute of limitations for this matter is governed by C.G.S. § 52-584, which holds that "no action to recover damages for injury to the person ... shall be brought but within two years from the date when the injury is

first sustained or discovered ..."

C.G.S. §52-102a(c) provides that "[t]he plaintiff, within twenty days after the third-party defendant appears in the action, may assert any claim against

the third-party defendant arising out of the transaction or occurrence that is the subject matter of the original complaint ...”

The question, then, is whether the latter statute acted as a toll on the relevant statute of limitations.

In *Banks v. Target Corp.*, Superior Court, Judicial District of New Britain, Docket No. CV166032378S (August 31, 2017, Wiese, J.), the court held that that §52-102a(c) does not extend the statute of limitations set by §52-584.

In *Banks*, the plaintiff sought to amend her complaint to add a count against a third-party defendant, Snow Pros LLC (“Snow Pro”), after the two-year statute of limitations for her alleged slip and fall had expired.

The original incident occurred on February 14, 2014, and the plaintiff filed the request to amend on March 30, 2017, which was more than three years after the incident. The plaintiff argued that General Statutes §52-102a(c) allowed her to assert direct actions against third-party defendants within twenty days after their appearance in the action and sought to use this as a basis to extend the statute of limitations prescribed by §52-584.

In denying the plaintiff’s request to amend the complaint, the court, Wiese, J., cited *Vincent v. Litchfield Farms, Inc.*, 21 Conn.App. 524, 525, cert denied, 215 Conn. 815 (1990), to emphasize that the twenty-day filing requirement of §52-102a(c) does not extend the statute of limitations under §52-584.

In *Vincent*, the appellate court noted that the legislative intent behind §52-102a(c) was to adopt the federal impleader procedure for the sake of judicial


economy, not to enlarge the rights of an original plaintiff or extend the time in which a direct action might be brought against a third-party defendant. *Vincent v. Litchfield Farms, Inc.*, supra, at 527.

As a result, a plaintiff's compliance with §52-102a(c) did not protect them from a defendant's claim that the amended complaint is time-barred pursuant to §52-584. Id. at 528.

In the instant case, the co-defendant and third-party plaintiff filed its claim against the defendant on January 10, 2024. The plaintiff then filed her second amended complaint naming the defendant on March 6, 2024, after requesting to amend the complaint on February 7, 2024.

The two-year statute of limitations noted above ran on January 5, 2024. The plaintiff's argument that the defendant was unknown to them until after the statute ran flies in the face of their own investigator's report which named and noted the defendant as early as January 25, 2022.

For those reasons, the defendant's motion to strike count two of the plaintiff's second amended complaint is granted.



GOULD, J.