DOCKET NO. NNH-CV226123112S	SUPERIOR COURT
KIMBERLY MANGINELLI, CONSERV.	J.D. OF NEW HAVEN
V.	AT NEW HAVEN
REGENCY HOUSE OF WALLINGFORD, INC., ET AL	MAY 31, 2024

MEMORANDUM OF DECISION RE DEFENDANTS' MOTION TO STRIKE (#152), PLAINTIFFS' OBJECTION (#155) AND DEFENDANTS' REPLY (#156)

The issue before this Court is the defendants' Motion to Strike and Memorandum in Support (#152), the plaintiff's Objection (#155) and the Defendants' Reply (#156). The court heard argument on the motion and objection on March 7, 2024, at which time all counsel were present. The court has considered the submissions of the parties, the arguments of counsel, relevant portions of the court file and the applicable law. For the reasons articulated herein, the defendants' Motion to Strike is denied as to those counts alleging recklessness and is granted as to those counts alleging loss of consortium. Plaintiff's Objection is sustained as to those counts alleging recklessness and is overruled as to the remaining counts.

FACTS AND PROCEDURAL HISTORY

The essence of the complaint is that the decedent, Darlene Matejeck, was admitted to a facility operated by defendant Regency House of Wallingford, Inc. for medical treatment and rehabilitative care on October 7, 2014. It is alleged that decedent was physically impaired and required physical assistance during transfers for bed and the use of a wheelchair. The decedent fell on April 26, 2020 and suffered serious injuries, during a transfer into or out of bed. In is alleged that in spite of defendants having knowledge of the decedent's condition, the fall was

caused by the defendants' disregard for decedent's physical disability and requirements for assistance. The allegations include claims that the defendants' misconduct was deliberate. It is further alleged that after decedent's fall and subsequent injuries, she was deliberately left in her bed for two days without medical treatment. Plaintiffs allege that the decedent died, in essence, as a result of the fall and defendants' deliberate failure to provide medical care.

Defendants move to strike Counts One and Three, alleging statutory and common law medical recklessness, and Counts Five, Six, Seven, Eight, Eleven and Twelve, alleging loss of consortium. Count One alleges medical recklessness pursuant to C.G.S. 52-555; Count three alleges common law negligence. The operative complaint is the revised complaint dated September 29, 2023 (#144).

DISCUSSION

Practice Book § 10-39, in relevant part, provides that a party may use a motion to strike to contest the legal sufficiency of any allegations of a complaint. For purposes of a motion to strike, the facts alleged in the complaint, but not its legal conclusions, are deemed to be admitted. *Hughes v. Board of Education of City of Waterbury*, 221 Conn. App. 325, 329-330 (2023). In deciding a motion to strike, the trial court must construe the pleadings "broadly and realistically, rather than narrowly and technically. . . ." *Edwards v. Tardif*, 240 Conn. 610, 620 (1997). "[I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . ." *Greco v. United Technologies Corp*.., 277 Conn. 337, 346 (2006), quoting *Craig v. Driscoll*, 262 Conn. 312, 321 (2003).

Defendants assert that plaintiffs have failed to allege a legally sufficient cause of action regarding the recklessness claims, and that because plaintiff (Kimberly Manginelli) is an adult child of the decedent, she cannot sustain a claim for loss of consortium. Plaintiffs agree with defendants that the present state of the law does not allow loss of consortium claims for adult children, however, plaintiffs' counsel expressed during argument a desire to allow the case to proceed on the loss of consortium claims in order to create a record on the issue. Plaintiffs' Objection asserts that a factual record is necessary "to determine the viability" of the loss of consortium counts. Plaintiffs' counsel cites no authority for this proposition. This court is, of course, bound by the present state of the law and the rules of practice. For the reasons articulated by the defendants, the motion to strike is granted as to those counts alleging loss of consortium by plaintiff Kimberly Manginelli because no cause of action exists. The objection as to those counts is overruled.

The crux of the defendants' motion regarding Count One and Count Three is that neither sufficiently alleges recklessness. "'Although there is a difference between negligence and a reckless disregard of the rights or safety of others, a complaint is not deficient so long as it utilizes language explicit enough to inform the court and opposing counsel that both negligence and reckless misconduct are being asserted.' *Craig v. Driscoll*, [262 Conn. 312, 343 (2003)], superseded by statute on other grounds as stated in *O'Dell v. Kozee*, [307 Conn. 231, 265 (2012)]. 'To determine whether [a] complaint states a cause of action sounding in recklessness, we look first to the definitions of willful, wanton and reckless behavior. Recklessness is a state of consciousness with reference to the consequences of one's acts. . . . It is more than negligence, more than gross negligence. . . . The state of mind amounting to

recklessness may be inferred from conduct. But, in order to infer it, there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them. . . . Wanton misconduct is reckless misconduct. . . . It is such conduct as indicates a reckless disregard of the just rights or safety of others or of the consequences of the action. . . . [The terms willful, wanton or reckless] in practice . . . have been treated as meaning the same thing. The result is that willful, wanton, or reckless conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent. . . . [S]uch aggravated negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simply inattention.' (Internal quotation marks omitted.) *O'Dell v. Kozee*, [307 Conn. at 342, 343.]" *Estate of Case v. Connecticut Institute for the Blind*, 2023 WL 6457549, Complex Litigation Docket at Waterbury (Bellis, J., 9/25/2023).

Plaintiffs' allegations contain claims that defendants' actions were deliberate and knowing and that they resulted in injury, and ultimately death, to the decedent. Plaintiffs allege defendants intentionally disregarded known medical conditions of the decedent, among other allegations, and that defendants' disregard and misconduct caused decedent's injuries, including death. In Count One, it is alleged that defendant Regency House and/or employees were aware of defendant's physical impairment and required assistance, but intentionally failed to follow their own care plan, resulting in decedent's fall and injuries, and subsequent death. It is also alleged that the defendant deliberately failed to obtain medical treatment for the decedent, as well as other alleged deliberate failures. Similar allegations are made in Count

Three. The court finds that, "construing the complaint in a manner most favorable to sustaining its legal sufficiency", *Bouchard v. People's Bank*, 219 Conn. 465, 471 (1991), the amended complaint alleges sufficient facts to state a claim for both statutory and common law recklessness. The motion to strike is denied as to those counts alleging recklessness, and the objection is sustained.

CONCLUSION

For the reasons articulated herein, the defendant's Motion to Strike (#152) is denied in part and granted in part and the plaintiff's Objection (#155) is sustained in part and overruled in part. The motion is granted as to Counts Five, Six, Seven, Eight, Eleven and Twelve; the objection is overruled. The motion is denied as to Counts One and Three; the objection is sustained.

GOODROW, J.

Juris Number 434439