NO. HHD CV24-6178063-S : STATE OF CONNECTICUT

HARTFORD JET CENTER,
LLC, ET AL. : SUPERIOR COURT

v. : JUDICIAL DISTRICT OF HARTFORD

LUKE BRONIN, ET AL. : MAY 28, 2024

RULING ON MOTIONS TO DISMISS

The plaintiffs, Hartford Jet Center, LLC, Pegasus Air Charter, LLC, and Hartford South Hangars, LLC, have filed a thirty-nine count complaint against the defendants, Luke Bronin, James Sanchez, Nick Lebron, and the City of Hartford (city). The plaintiffs allege that the individual defendants, who, respectively, are the prior Mayor and former city councilmen of Hartford, made false and disparaging public statements in an effort to cause the untimely closure of Brainard Airport in Hartford. The plaintiffs allege that the city breached a contract with the state to trim trees around the airport and that the plaintiffs were third party beneficiaries of that contract.

The individual defendants have moved to dismiss the counts against them based on General Statutes § 52-196a, otherwise known as the anti-SLAPP (Strategic Lawsuit Against Public Participation) statute (the statute). The city has moved to dismiss the counts against it based on lack of standing. The court held a hearing on these motions on May 6, 2024. This decision follows.

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HARTFORD J.D.

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I. THE ANTI-SLAPP STATUTE CLAIMS

A. Legal Background

Under section 52-196a, a party may file a special motion to dismiss when the opposing party's complaint is based on the moving party's exercise of its "right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern ...." General Statutes § 52-196a (b). As the Connecticut Supreme Court has explained: "Although the statutory protection against SLAPP lawsuits does not create a substantive right, the procedural mechanism that § 52-196a establishes, namely, the special motion to dismiss, provides a moving party with the opportunity to have the lawsuit dismissed early in the proceeding and stays all discovery, pending the trial court's resolution of the special motion to dismiss. See General Statutes § 52-196a (d). If the court grants the special motion to dismiss, the moving party is also entitled to costs and reasonable attorney's fees. See General Statutes § 52-196a (f) (1)." *Priore v. Haig*, 344 Conn. 636, 659, 280 A.3d 402 (2022).

Under the statute, the court "shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint, counterclaim or cross claim is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint, counterclaim or cross claim sets forth with

particularity the circumstances giving rise to the complaint, counterclaim or cross claim and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint, counterclaim or cross claim." General Statutes § 52-196a (e) (3). "When ruling on a special motion to dismiss, the court shall consider pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability or a defense, as the case may be, is based." Id., § 52-196a (e) (2).

This recitation suggests a two stage process. First, the court must determine whether the defendants have made an "initial showing" that the plaintiffs' complaint is based on the defendants' exercise of rights to free speech, petition the government, or assembly on a matter of public concern. Second, if the defendants make the initial showing, the "party that brought the complaint" must then "[set] forth with particularity the circumstances giving rise to the complaint ... *and* [demonstrate] to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint ...." (Emphasis added.) Id., § 52-196a (e) (3). In addressing this issue, the court should consider both "pleadings" and "supporting and opposing affidavits." Id., § 52-196a (e) (2). Thus, at the second stage, the plaintiffs must show, based on the pleadings and the affidavits, both that the complaint sets forth one or more causes of action with particularity and, also, that there is probable cause, considering any defenses, for these causes of action.

The statute calls for an "expedited hearing" on a special motion to dismiss, with several possible exceptions, "not later than sixty days after the filing" of the motion. General Statutes §

52-196a (e) (1).[1] The statute also provides that "[t]he court shall rule on a special motion to dismiss as soon as practicable." General Statutes § 52-196a (e) (4). The court has endeavored to comply with the spirit of these provisions by adhering to court-imposed scheduling orders and rendering a decision shortly after the hearing.

B. Analysis

Brainard Airport (the "airport" or "Brainard") is a general aviation airport located within the city on land owned by the State of Connecticut. The Connecticut Airport Authority (CAA) is a quasi-public instrumentality organized to manage Brainard along with five other airports in the state. The plaintiffs are business entities with interests in the airport. (Complaint (Compl.), Introduction (intro.), paragraphs (paras.) 7-9, 15-16, 21.)

The complaint alleges in thirty-six counts that the individual defendants committed tortious interference with business expectancies, tortious interference with contracts, fraud, and conspiracy to commit fraud.[2] The gravamen of the complaint is the alleged "false, misleading, and disparaging public statements" as well as other actions taken by the defendants "to cause the

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[1]Section 52-196a (e) (1) provides: "The court shall conduct an expedited hearing on a special motion to dismiss. The expedited hearing shall be held not later than sixty days after the date of filing of such special motion to dismiss, unless, (A) the court orders specified and limited discovery pursuant to subsection (d) of this section, in which case, the expedited hearing shall be held not later than sixty days after the date on which such specified and limited discovery must be completed, (B) the parties agree to a hearing date that is beyond the sixty-day period, or (C) the court, for good cause shown, is unable to schedule the hearing during the sixty-day period."

[2]The court will hereinafter refer to the individual defendants as "the defendants" unless otherwise noted. The court will refer to the City of Hartford as "the city." The court will refer to the plaintiffs as Hartford Jet Center, Pegasus Air, and Hartford South Hangars.

untimely closure of Brainard Airport," to the detriment of the plaintiffs. (Compl., intro, para. 1.) Allegedly, the defendants' actions ultimately led to a Hartford City Council resolution in 2021 to close the airport. (Compl., intro, para. 50.)

The plaintiffs properly concede that the defendants have satisfied the first prong of the statute by demonstrating that the defendants' activities fall within the rights of free speech, association, and petitioning the government on a matter of public concern. These activities consist of making public statements critical of the airport, publishing or promoting plans, studies, or reports about closing or reusing the airport, and advocating for resolutions or legislation to the same effect. The fact that the defendants are or were governmental officials does not preclude them from invoking the statute because governmental officials, like private citizens, may engage in public participation by expressing their own views or petitioning a different governmental agency for relief. See *Naughton v. Windsor Housing Authority*, No. HHD CV22-6162854-S, 2023 WL 2889301, at *6-7 (Conn. Super. Ct. Apr. 4, 2023). There is also no question that the future of the airport, which the plaintiffs allege to be the second busiest in Connecticut, is a matter of public concern. (Compl., intro, para. 2.)

Because the defendants have satisfied the first part of the statute, the issue turns to whether, based on the pleadings and affidavits, the plaintiffs have "[set] forth with particularity the circumstances giving rise to the complaint ... *and* [demonstrated] to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint ...." (Emphasis added.) Id., § 52-196a (e) (3). As suggested above, the use of the

word "and" in this portion of the statute implies that the plaintiffs have a two-part burden: first, to show with particularity the circumstances giving rise to the complaint and, second, to show probable cause that they will prevail on the merits. The court proceeds to analyze each cause of action to see whether the plaintiffs have met their burden.

1. Tortious Interference with Business Expectancies

In order to recover for tortious interference with business expectancies, a plaintiff "must plead and prove that: (1) a business relationship existed between the plaintiff and another party; 2) the defendant intentionally interfered with the business relationship while knowing of the relationship; and (3) as a result of the interference, the plaintiff suffered actual loss." *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 255 Conn. 20, 32–33, 761 A.2d 1268 (2000). The heart of the defendants' attack on the plaintiffs' presentation is that the plaintiffs do not identify any specific business opportunity with which the defendants interfered. Plaintiff Hartford Jet Center alleges that the defendants engaged in a public campaign to "damage the reputation and viability of Brainard Airport" at a time when the plaintiff was "negotiating with various business opportunities with various individuals and entities, including, but not limited to the use and lease of hangar and office space." (Compl., p. 19, paras. 89, 92-93.) Plaintiff Pegasus Air alleges that the defendants acted similarly while the plaintiff was "engaged in negotiating various business opportunities with various individuals and entities including, but not limited to various FAA [Federal Aviation Administration] Certified charter and jet-sharing services for which Plaintiff Pegasus Air actively advertised and was reasonably anticipating a profit." (Compl., p. 28, para.

89, 92-93.) Plaintiff Hartford South similarly claims that the defendants engaged in a long campaign to discredit Brainard while the plaintiff was "soliciting customers for leasing airplane hangars and leasing unimproved land for building airplane hangars ...." (Compl., p. 35, paras. 89, 92-93.) The plaintiffs' affidavit, written by Lindsey Rutka, the principal of all three plaintiff LLCs, avers that the defendants' conduct has "interfered with my businesses, ongoing and potential customers, and has caused ongoing harm to my businesses in the form of lost income and contracts, and good will ...." Rutka adds that the defendants have caused "loss of leasing opportunities in existing airport structures; new restrictive covenants for existing tenants; a reduced number of events; reduced landings and fees; reduced potential for jet-sharing ownership; reduced aviation gas sales; and ... prevented build out of 240,000 sq. ft. of new office and hangar space that alone caused gross loss of $43.2 million yearly." (Plaintiffs' Exhibit (Ex.) A, paras. 80 and 81.)

This recitation fails to satisfy the statutory requirement that the plaintiffs "set forth with particularity the circumstances giving rise to the complaint ...."; General Statutes § 52-196a; especially as to the first and second elements of proving that "a business relationship existed between the plaintiff and another party" and that "the defendant intentionally interfered with the business relationship."[3] The plaintiffs do not cite any specific business opportunity, identify any specific business partner, or explain how the defendants' conduct interfered with that

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[3]It is not clear whether the statutory particularity requirement means that the plaintiffs must do so in the complaint alone or whether their affidavit can supplement the complaint. The court need not decide that question in this case because a consideration of the affidavit will not change the outcome of this decision.

opportunity. If the word "particularized" is to have any meaning in this context, it must refer to a specific business opportunity with a specific company. The plaintiffs' references to "various business opportunities with various individuals and entities ..."; "my businesses, ongoing and potential customers"; or "loss of leasing opportunities in existing airport structures" and other similar phrases are general allegations, not particularized. Accordingly, the plaintiffs have not satisfied the particularity requirement with regard to the tortious interference with business expectancies counts.[4]

2. Tortious Interference with Contractual Relations

The elements of tortious interference with contractual relations are: "(1) the existence of a contractual or beneficial relationship, (2) the defendants' knowledge of that relationship, (3) the defendants' intent to interfere with the relationship, (4) the interference was tortious, and (5) a loss suffered by the plaintiff that was caused by the defendants' tortious conduct." (Internal quotation marks omitted.) *Landmark Investment Group, LLC v. CALCO Construction & Development Co.*, 318 Conn. 847, 864, 124 A.3d 847 (2015). These elements are similar to those of tortious interference with business expectancies except that the interference is with an actual contract rather than just an expectancy of business.

The plaintiffs' allegations on the contractual interference counts differ somewhat from the business expectancy interference allegations. To begin with, only plaintiff Hartford Jet

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[4]The defendants set forth detailed arguments that the plaintiffs have not satisfied the particularity or probable cause requirements on the other elements of interference with business expectancies, such as whether the interference was "tortious" and "knowing" and whether there was "actual loss." In view of the decision above, the court need not reach those arguments.

Center alleges tortious interference with contractual relations. In addition, although the plaintiff repeats the general allegation that the defendants interfered with contractual relations with "various individuals and entities," the plaintiff does identify three specific entities. (Compl., count three, para. 89.) First, the complaint cites "a contract executed in March of 2018" in which "Plaintiff Hartford Jet executed a new FBO [fixed base operator] contract and a new land lease contract with the CAA [Connecticut Airport Authority]" to "upgrade and maintain the Brainard Airport terminal building ... offer numerous concierge services to pilots and passengers; operate an onsite restaurant; perform hangar and office leasing; and provide aircraft fueling and runway ground support." (Compl., count three, para. 89.) However, other than alleging that the defendants campaigned for a closure of the airport, Hartford Jet does not identify the specific manner in which the defendants interfered with the plaintiff's ability to perform the contract.[5] Did the defendants prevent the plaintiff from obtaining the necessary supplies? Did the defendants propose regulations or ordinances that would make compliance with the contract more expensive or difficult? Did the defendants encourage the CAA to do business with a different entity? The complaint and affidavit contain no answers to these questions or similar ones. The plaintiff's argument suggests that the defendants may have made use of the airport more controversial or less popular, but the plaintiff does not allege anything

[5]Although the statement above of the elements of tortious interference with contractual relations does not expressly make interference with the contract an element of the tort, the requirement to prove that "the interference was tortious" necessarily assumes that the plaintiff must prove that the defendants interfered with the contract. (Internal quotation marks omitted.) *Landmark Investment Group, LLC v. CALCO Construction & Development Co.*, supra, 318 Conn. 864.

that reveals that the defendants interfered with the plaintiff's ability to perform its contract with the CAA. Thus, the plaintiff's allegations concerning this contract do not meet the particularity requirement.

Second, as to defendant Bronin alone, the plaintiff alleges that the former mayor told the Hartford City Council that it could delay performing its contractual obligations [with the CAA] to clear and trim trees surrounding Brainard Airport, "despite knowing that ... the failure to perform this tree trimming in turn caused ... an interruption of business and further loss of business for Plaintiff Hartford Jet." (Compl., count three, para. 96.) The first problem here is that the plaintiff is not a party to the contract between the city and the CAA with which Bronin allegedly interfered.[6] Second, in Connecticut, the rule is that "[a]n agent acting legitimately within the scope of his authority cannot be held liable for interfering with or inducing his principal to breach a contract between his principal and a third party, because to hold him liable would be, in effect, to hold the corporation liable in tort for breaching its own contract...." (Internal quotation marks omitted.) *Metcoff v. Lebovics*, 123 Conn. App. 512, 520–21, 2 A.3d 942 (2010). Thus, former Mayor Bronin, as an agent of the city, cannot be held liable for causing the city to breach its own contract with the CAA.

Third, again as to Bronin only, the plaintiff alleges that "the contract with the New Jersey tenant was terminated and not executed due to the fear of the airport's closure and economic non-viability – lies perpetuated by Defendant Bronin." (Compl., count three, para. 99.) Neither

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[6]In section II of this memorandum, the court addresses the question of whether the plaintiffs are third party beneficiaries of that contract.

the complaint nor the affidavit provides any further detail. The plaintiff's materials do not even identify "the New Jersey tenant," much less describe the contract that the plaintiff had with it or cite any facts concerning the termination or inability to execute the contract. Under these circumstances, the plaintiff has failed to satisfy the particularity requirement on the tortious interference with contractual relations count.[7]

3. Fraud

All three plaintiffs allege fraud against all three defendants. The gravamen of the fraud allegations is that the defendants made material misrepresentations to the "Hartford City Council [council], the general public, and the news media" that the airport is "not economically or financially viable and that the land is better used as public space, despite .... knowing that the land is contaminated and the City cannot pay to remediate said contamination, the City cannot afford to install appropriate infrastructure to support residential and/or public space, and the City cannot afford to purchase the lease." (Compl., count five, para. 90.) The plaintiffs then allege that "[a]s a direct and proximate result of [each defendant's] statements, [each plaintiff] has incurred losses in the form of lost profits and monies from customers who have foregone using Brainard Airport under the mistaken belief that the Airport is closing or has closed." (Compl., count five, para. 98.)

The essential elements of a claim for fraud in Connecticut are: "(1) a false representation

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[7]Again, the defendants set forth detailed arguments that the plaintiffs have not satisfied the particularity or probable cause requirements on the other elements of interference with contractual relations, such as whether the interference was "tortious" and "knowing" and whether there was "actual loss." In view of the decision above, the court need not reach those arguments.

was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) it was made to induce the other party to act upon it; and (4) the other party did so act upon that false representation to his injury." (Internal quotation marks omitted.) *Capp Industries, Inc. v. Schoenberg*, 104 Conn. App. 101, 116, 932 A.2d 453, cert. denied, 284 Conn. 941, 937 A.2d 696-97 (2007). Our Supreme Court has added that when "the allegedly false representation was not made to the plaintiff and the plaintiff did not act in reliance on the representation ... [t]he plaintiff ... has not alleged facts sufficient to support a claim for common-law fraud." *Suffield Development Associates Ltd. Partnership v. National Loan Investors, L.P.*, 260 Conn. 766, 778, 802 A.2d 44 (2002). In other words, the third and fourth elements of a fraud claim require that "the party to whom the false representation was made" must have "relied on that representation and to have suffered harm as a result of the reliance." Id., 777-78.

Under these standards, the plaintiffs' fraud claims do not state a cause of action for which the court could grant relief. The plaintiffs allege that the defendants' false representations were made not to the plaintiffs but to third parties such as the council, the public, and the news media. Further, the plaintiffs certainly did not rely on these misrepresentations; on the contrary, they believe that the defendants' statements were untrue. Thus, the plaintiffs, at a minimum, have not alleged facts that could satisfy the third and fourth elements of fraud.

The plaintiffs admit that "the Plaintiffs never relied/acted on the Defendants [sic] misrepresentations, but instead allege that third parties acted resulting in damage to the Plaintiffs." (Plaintiffs' Brief (Pls. Br.) (#104.00), p. 10.) They rely on the Supreme Court's

statement in *Gulf Oil Corp. v. Newton*, 130 Conn. 37, 40, 31 A.2d 462 (1943), that "[i]t is sufficient to afford ground for relief based on fraudulent representations that the person making them contemplated that they would be communicated to others as a basis for action by them" and that "[a] representation made to one person with the intention that it shall reach the ears of another, and be acted upon by him and which does reach him, and is acted upon by him to his injury, gives the person so acting upon it the same right to relief or redress as if it had been made to him directly." (Internal quotation marks omitted.) Id., 40. But this proposition by its own terms does not apply when, as here, the plaintiffs concede that they did not rely on the defendants' misrepresentations. The court concludes that, given these deficient allegations, the plaintiffs cannot establish "probable cause ... that [they] will prevail on the merits of the complaint ...." on the fraud counts. General Statutes § 52-196a (e) (3).

4. *Conspiracy claims*

The plaintiffs allege various counts of conspiracy to commit tortious interference with business expectancies, conspiracy to commit tortious interference with contractual relations, and conspiracy to commit fraud. The law in Connecticut is that "technically speaking, there is no such thing as a civil action for conspiracy. The action is for damages caused by acts committed pursuant to a formed conspiracy rather than by the conspiracy itself ... A claim of civil conspiracy, therefore, is insufficient unless based on some underlying cause of action ... Consequently, for a plaintiff to recover on a conspiracy claim, the court must find the facts necessary to satisfy the elements of an independent underlying cause of action... More

specifically, where the plaintiff is unable to establish the underlying cause of action ..., the cause of action for conspiracy ... must also fail. (Citations omitted; internal quotations omitted.) *Litchfield Asset Management Corp. v. Howell*, 70 Conn. App. 133, 140, 799 A.2d 298, cert. denied, 261 Conn. 911, 806 A.2d 49 (2002). Applying this rule, it follows that, because, as discussed above, the plaintiffs have not alleged or provided evidence of viable substantive claims on the underlying causes of action that the defendants allegedly conspired to commit, they have also failed to present valid claims of conspiracy to commit those actions.

5. *The Noerr-Pennington Defense*

The anti-SLAPP statute requires that the party bringing the complaint "[set] forth with particularity the circumstances giving rise to the complaint ... and [demonstrate] to the court that there is probable cause, *considering all valid defenses*, that the party will prevail on the merits of the complaint ...." (Emphasis added.) Id., § 52-196a (e) (3). As an alternate or additional basis of proving that the plaintiffs have not met their burden of establishing probable cause to prevail, the defendants raise the defense of the Noerr-Pennington doctrine. This doctrine, which evolved from antitrust cases and which the Appellate Court has adopted, now "shields individuals from liability for petitioning a governmental entity for redress." (Internal quotation marks omitted.) *Zeller v. Consolini*, 59 Conn. App. 545, 550-51, 758 A.2d 376 (2000). The United States Supreme Court has reasoned that "it would be destructive of rights of association and of petition to hold that groups with common interests may not, without violating the antitrust laws, use the channels and procedures of state and federal agencies and courts to advocate their causes and

points of view respecting resolution of their business and economic interests vis-a-vis their competitors." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510–11 (1972), quoted in *Zeller v. Consolini*, supra, 59 Conn. App. 550. The Appellate Court has recognized the doctrine's applicability to a variety of civil actions including tortious interference with business relations. See *Zeller v. Consolini*, supra, 551. The doctrine applies fully to municipal officials petitioning governmental agencies. See *Manistee Town Center v. City of Glendale*, 227 F.3d 1090, 1094 (9th Cir. 2000).[8]

The plaintiffs do not challenge the general applicability of the Noerr-Pennington doctrine to this type of case, but instead rely on the "sham" exception to the doctrine. The United States Supreme Court has stated: "There may be situations in which a publicity campaign, ostensibly directed toward influencing governmental action, is a mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor and the application of the Sherman Act would be justified." *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 144 (1961), quoted in *Zeller v. Consolini*, supra, 59 Conn. App. 551–52. "In short, petitioning activity is not protected if such activity is a mere sham or pretense to interfere with no reasonable expectation of obtaining a favorable ruling." *Zeller v. Consolini*, supra, 552. The Appellate Court has concluded that a

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[8]The Noerr-Pennington doctrine is perhaps narrower than the anti-SLAPP statute because, unlike the statute, the Noerr-Pennington doctrine does not encompass activities that implicate the right of free speech or right of association without involving the right to petition the government. Here, however, all of the alleged improper actions of the defendants involved petitioning the government.

"sham involves a defendant whose activities are not genuinely aimed at procuring favorable governmental action in any form." Id.

Applying this test, the plaintiffs contend that the defendants' campaign to close the airport had no chance of success because the city lacked both the funds and the legal authority to buy the airport and change its use. The plaintiffs provide some evidence to show that the defendants knew, or at least should have known, that the city had no authority to close the airport. (Ex. A, paras. 28-29, 36.)

In addition, however, the plaintiffs claim that the defendants acted "for the purpose of damaging the Plaintiffs and benefitting the Defendants, Senator Fonfara, the MDC, and DiBella, and not for any realistic or true public benefit." (Compl., intro, para. 50.)[9] On this point – that the defendants' real motive was to harm the plaintiffs' businesses – the plaintiffs do not cite any evidence. They produce no statements of the defendants, for example, that might reveal an ulterior motive. In fact, it is the defendants – not the plaintiffs – who note a statement from Rutka, the plaintiffs' principal, that "[t]he efforts to close Brainard Airport by Luke Bronin, James Sanchez, and Nick Lebron, as well as Senator Fonfara were for the purpose of damaging me and my businesses and benefitting themselves, Senator Fonfara, the MDC, and DiBella, and not for any realistic or true public benefit." (Defendants' Reply Br. (#106.00), p. 10; Compl.,

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[9]The plaintiffs allege Senator John Fonfara to be a state senator who was running for mayor and who campaigned for closure of the airport. (Compl., intro., paras. 14, 27, 44.) The MDC is the Metropolitan District Commission, which was chaired by William DiBella. Allegedly, DiBella sought to close the airport to support Fonfara's campaign and to use the adjacent land for purposes of redevelopment and building a power plant or similar plant. (Compl., intro., paras. 46-48.)

intro, para. 40.) As the defendants then point out, however, this statement is essentially a "mere legal conclusion ... and is inadmissible as evidence." *Feuer v. Henderson*, 181 Conn. 454, 462, 435 A.2d 1011 (1980). Thus, upon close examination, there is no admissible evidence to support the claim that the defendants had an improper motive.

In sum, although the plaintiffs may be able to show that the defendants knew that their efforts to close the airport stood little or no chance of success, they cannot show that the defendants undertook these efforts for the purpose of harming the plaintiffs. The defendants could have had other motives for these efforts, such as political benefit or long run legislative change. Unless their actions sought to harm particular businesses, the defendants, as public officials, should be free to advocate for their platforms without fear of litigation. The plaintiffs' remedy is at the voting booth, not the courthouse.

Without evidence that the defendants intended to harm the plaintiffs' businesses, the plaintiffs cannot prove that the defendants' use of the political process qualifies under the sham exception to the Noerr-Pennington doctrine. Accordingly, the doctrine remains a valid defense to the plaintiffs' claims. When combined with the analysis above of the elements of the plaintiffs' causes of action, the Noerr-Pennington defense constitutes a second reason why the plaintiffs have not met the particularity and probable cause requirements of the anti-SLAPP statute.

II. THE MOTION TO DISMISS

In counts 37, 38, and 39 of the complaint, each plaintiff alleges that the city breached the

provisions of a 1959 deed in which the city transferred the land underlying the airport to the state. The alleged breach is that the city, for an extended period of time, failed to trim the trees surrounding the airport to ensure that the airport was safe for planes to land. The plaintiffs allege that the failure of the city to fulfill its tree-clearing obligations was likely to impair their revenue-generating abilities. The complaint admits that the city ultimately relented and complied with its obligations after the FAA issued a notice that the airport was unsafe for aviators. (Compl., count 37.)

Although the plaintiffs were not parties to this contract, they allege to be third party beneficiaries. The defendants move to dismiss on the ground that, in fact, the plaintiffs were not third party beneficiaries. They rely on the law that, if a third party is not an intended third party beneficiary of a contract, that third party has no standing and the court therefore lacks subject matter jurisdiction. See *Hilario's Truck Center, LLC v. Rinaldi*, 183 Conn. App. 597, 603, 193 A.3d 683 (in case in which the plaintiff lacks standing as a third-party beneficiary, "[t]he issue of standing implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss."), cert. denied, 330 Conn. 925, 194 A.3d 776 (2018).

"[T]he ultimate test to be applied [in determining whether a person has a right of action as a third-party beneficiary] is whether the intent of the parties to the contract was that the promisor should assume a direct obligation to the third party [beneficiary] and ... that intent is to be determined from the terms of the contract read in the light of the circumstances attending its making, including the motives and purposes of the parties.... Although ... it is not in all instances

necessary that there be express language in the contract creating a direct obligation to the claimed third party beneficiary ... the only way a contract could create a direct obligation between a promisor and a third party beneficiary would have to be ... because the parties to the contract so intended.... [B]oth contracting parties must intend to confer enforceable rights in a third party ... in order to give the third party standing to bring suit." (Citations omitted; internal quotation marks omitted.) Id., 604-05.

The plaintiffs argue that "the plain language of the 1959 Deed, read in conjunction with [General Statutes] § 15-34 et seq., demonstrates that the Defendant [city] incurred a direct obligation to the businesses operating on the airport property to ensure that the airport would be safe and functional." (Pl. Br. (#105.00), pp. 7-8.) But the plaintiffs do not cite any language, plain or otherwise, in the deed that confers on the businesses at the airport, much less these particular plaintiffs, a direct obligation to enforce the contract. In fact, the plaintiffs do not cite any plain language even mentioning airport businesses or any third parties.[10] The plaintiffs cite only language creating height restrictions for trees and structures and authority to create zoning regulations to enforce those restrictions. (Pl. Br. (#105.00), pp. 6-7, citing Ex. A, pp. 2-3.)[11] Nor do the General Statutes cited create a direct obligation from the city to the surrounding

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[10]Further, the 1959 deed could not have mentioned the plaintiffs by name, as the plaintiffs did not come into existence until 2015-18. (Compl., intro., paras. 7-9.)

[11]Complicating matters is that the plaintiffs' citation is not to the deed, but to the Rutka affidavit, which does not contain the language of the deed on the pages cited. The plaintiffs do not attach the deed itself as an exhibit.

businesses, or imply that such an obligation exists.[12]

Ultimately, what the plaintiffs show is that, in 1959, the City incurred an obligation to trim trees and maintain the airport as a functional entity. That obligation may benefit the plaintiffs now but, as our Supreme Court has stated, "the fact that a person is a foreseeable beneficiary of a contract is not sufficient for him to claim rights as a third party beneficiary." *Grigerik v. Sharpe*, 247 Conn. 293, 317–18, 721 A.2d 526 (1998). Rather, the plaintiff must show that the parties to the contract "intended to create a *direct obligation* from one party to the [contract] to the third party." *Gateway Co. v. DiNoia*, 232 Conn. 223, 231, 654 A.2d 342 (1995). The plaintiffs show nothing that expressly or impliedly gives them or their predecessors a right to sue the city for breach of contract. See *Connecticut Housing Finance Authority v. John Fitch Court Associates Ltd. Partnership*, 49 Conn. App. 142, 148, 713 A.2d 900 ("neither the note nor the mortgage deed referenced Carr Management, directly or indirectly, as either a direct or an intended beneficiary of the agreement between CHFA and Fitch."), cert. denied, 247 Conn. 908, 719 A.2d 901 (1998).

The plaintiffs alternatively argue that the deed is ambiguous concerning the intent of the parties and that the court should resolve this matter at the trial on the merits rather than at the motion to dismiss stage. The court, however, finds nothing ambiguous about the deed (to the

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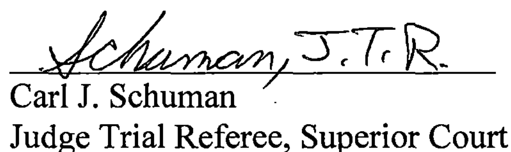
[12]General Statutes § 15-34 (7) defines "Airport" as all areas used for the landing and takeoff of aircraft, and "all appurtenant areas used or suitable for airport buildings or other airport facilities ...." Section 15-91(a) provides for municipalities with airports to adopt "airport zoning regulations" that shall "regulate and restrict the height to which structures and trees may be erected or allowed to grow ...."

extent that the parties quote it.) It simply does not mention any third party beneficiary or even suggest that any third party might have an obligation to enforce it. Under these circumstances, there is no obligation to hold a hearing. See *Gateway Co. v. DiNoia*, supra, 232 Conn. 232 ("[a]lthough ordinarily the question of contractual intent presents a question of fact for the ultimate fact finder, where the language is clear and unambiguous it becomes a question of law for the court.") (Internal quotation marks omitted.) Cf. *Anderson v. Town of Bloomfield*, 203 Conn. App. 182, 196, 247 A.3d 642 (2021) (issue left to fact-finder because "[t]he identification of the plaintiff's home as the location where the work is to be done can be read as evidencing an intent that she is a third-party beneficiary of the contract."). Accordingly, the court grants the motion to dismiss the counts against the city on the ground that the plaintiffs lack standing.

CONCLUSION

The court grants the motions to dismiss the complaint in its entirety. If the defendants wish to pursue the issue of attorney's fees, they should file a separate motion.

Judgment shall enter accordingly.



Carl J. Schuman
Judge Trial Referee, Superior Court

Checklist for Clerk

Docket Number: HHD-CV24-6178063-S

Case Name: Hartford Jet Center, LLC, Et Al. v. Luke Bronin, Et Al.

Memorandum of Decision dated: 5/28/24

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

Memo Sealed: **Yes** **No** X

This Memorandum of Decision may be released to the Reporter of Judicial Decisions for Publication XXXX

This Memorandum of Decision may NOT be released to the Reporter of Judicial Decisions for Publication

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