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| **DOCKET NO. CV22-6027868S** | : | **SUPERIOR COURT** |
| **LATISHA BELIN** | : | **J.D. OF NEW HAVEN** |
| **V.** | : | **AT MERIDEN** |
| **THE CONNECTION FUND, INC., ET AL** | : | **JUNE 11, 2024** |

**MEMORANDUM OF DECISION RE:**
**DEFENDANT'S OBJECTION TO PLAINTIFF'S REQUEST FOR LEAVE TO AMEND**

**Introduction.**

The plaintiff claims injuries and losses arising from an incident which occurred on January 28, 2021 when, while on premises of the defendant, The Connection Fund, Inc. ("TFC"), she slipped and fell on "an accumulation of ice" in the parking lot. Count one of her two-count complaint is directed to defendant TFC. She now requests leave to amend[1] that count by adding to paragraph 6 proposed subparagraphs h – k:

> 6. Said occurrence was due to the negligent and careless acts and/or omissions of Defendant Connection Fund, its servants, agents and/or employees, in one or more of the following ways:

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[1] In failing to accompany the request for leave to amend with "a separate document showing the portion or portions of the original, writ, complaint or petition so amended by using underlining to indicate new language and by using either brackets or strikethrough to indicate deleted language", the plaintiff has failed to comply with Practice Book Section 10-59. Rather than rejecting the filing because of this procedural defect but anticipating a refiling which cures the defect, the court will, in the interest of judicial economy, address the merits of the defendant's objection to the request for leave to amend at this time.

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h. IN THAT, it maintained poor initial design of the gutter discharge, in violation of the Building Code section 825.4 Floor surface, and Fire Safety Code 7.1.6.4* Slip Resistance;

i. IN THAT, it failed to provide a safe slip-resistant walking surface, in violation of the Building Code section 825.4 Floor surface;

j. IN THAT, it failed to provide a safe slip-resistant walking surface, in violation of the Fire Safety Code 7.1.6.4 Slip Resistance; and

k. IN THAT, it failed to provide and maintain a slip-resistant walking surface, in violation of ANSI F1637 – 21 Standard Practice for Safe Walking Surfaces sections 5.1.3, 5.7.1 and 5.7.1.1.

TFC objects to the request for leave to amend, arguing that (1) the proposed amendment, filed after the filing of the defendant's motion for summary judgment, is untimely; and (2) that it "constitutes a new cause of action which does not relate back to the date of the filing of the initial complaint" and, therefore, is time-barred.

As to the defendant's first argument, the court disagrees. Amendments to pleadings are liberally allowed and may be permitted up to and through the time of trial to make them conform with the proof. cf. Practice Book Section 10-62, *Voll* v. *Lafavette Bank & Trust Co.*, 223 Conn. 419, 433 (1992). That the proposed amendment has been filed after the filing of the defendant's motion for summary judgment does not render it impermissible. Indeed, the facts alleged in an amended complaint filed after the filing of a motion for summary judgment may be offered to

defeat the motion for summary judgment. As to the defendant's second argument, the court agrees.

**I.**

The court in *Briere* v. *Greater Hartford Orthopedic Grp., P.C.*, 325 Conn. 198, 207–11, 157 A.3d 70, 77–79 (2017), articulated the relation back doctrine, and that articulation bears repeating here:

> "The relation back doctrine has been well established by this court." *Alswanger* v. *Smego*, 257 Conn. 58, 64, 776 A.2d 444 (2001). There is a " 'well settled' body of case law holding that 'a party properly may amplify or expand what has already been alleged in support of a cause of action, provided the identity of the cause of action remains substantially the same. ... If a new cause of action is alleged in an amended complaint ... it will [speak] as of the date when it was filed. ... A cause of action is that single group of facts which is claimed to have brought about an unlawful injury to the plaintiff and which entitles the plaintiff to relief. ... *A change in, or an addition to, a ground of negligence or an act of negligence arising out of the single group of facts which was originally claimed to have brought about the unlawful injury to the plaintiff does not change the cause of action....* It is proper to amplify or expand what has already been alleged in support of a cause of action, provided the identity of the cause of action remains substantially the same, but [when] an entirely new and different factual situation is presented, a new and different cause of action is stated.' ... *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, 297 Conn. 105, 140, 998 A.2d 730 (2010)." (Emphasis in original; footnote omitted.) *Finkle* v. *Carroll*, 315 Conn. 821, 837–38, 110 A.3d 387 (2015).
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> "Our relation back doctrine provides that an amendment relates back when the original complaint has given the party fair notice that a claim is being asserted stemming from a particular transaction or occurrence, thereby serving the objectives of our statute of limitations, namely, to protect parties from having to defend against stale claims .... *Barrett* v. *Danbury Hospital*, 232 Conn. 242, 263–64, 654 A.2d 748 (1995)." (Internal quotation marks omitted.) *Alswanger* v. *Smego*, supra, 257 Conn. at 65, 776 A.2d 444. "[I]n the cases in which we have determined that an amendment does not relate back to an earlier pleading,

the amendment presented different issues or depended on different factual circumstances rather than merely amplifying or expanding upon previous allegations." *Grenier* v. *Commissioner of Transportation*, 306 Conn. 523, 560, 51 A.3d 367 (2012).

More specifically, where the proposed allegations promote a change in or an addition to a ground of negligence arising out of a single group of facts we have allowed use of the relation back doctrine. *Gurliacci* v. *Mayer*, 218 Conn. 531, 549, 590 A.2d 914 (1991) ("new allegations did not inject two different sets of circumstances and depend on different facts ... but rather amplified and expanded upon the previous allegations by setting forth alternative theories of liability" [citation omitted; internal quotation marks omitted] ); see *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, supra, 297 Conn. at 139–43, 998 A.2d 730 (allegation that defendant physician failed to ensure that specific surgeon participated in surgery related back to allegation that defendant physician failed to communicate pathology results to that surgeon prior to surgery); *Wagner* v. *Clark Equipment Co.*, 259 Conn. 114, 119, 788 A.2d 83 (2002) (allegation that forklift was defective because backup alarm failed to sound when forklift was engaged in reverse did relate back to allegations that forklift was defective because it lacked, inter alia, backup alarm that sounded sufficiently distinct to warn plaintiff); *Barnicoat* v. *Edwards*, 1 Conn.App. 652, 654, 474 A.2d 808 (1984) (allegations of different defects in house construction related back to other claims of defect in house construction in breach of contract claim); *Miller* v. *Fishman*, 102 Conn.App. 286, 299–300, 925 A.2d 441 (2007) (allegations describing specific manner in which defendant obstetrician delivered minor plaintiff and precise injuries minor plaintiff sustained related back to allegations that defendant negligently managed delivery of minor plaintiff), cert. denied, 285 Conn. 905, 942 A.2d 414 (2008). On the other hand, where new allegations *directly contradict* those in the operative complaint we have held that they do not relate back to those in the operative complaint. *Dimmock* v. *Lawrence & Memorial Hospital, Inc.*, 286 Conn. 789, 806–808, 945 A.2d 955 (2008) (allegation that defendant surgeons used incorrect spinal fusion material during surgery contradicted, and therefore did not relate back to, allegation that surgeons should not have performed surgery at all on plaintiff); see also *Alswanger* v. *Smego*, supra, 257 Conn. at 61, 776 A.2d 444 (allegation of lack of informed consent regarding surgical resident's participation in surgery did not relate back to allegation that defendant physician and defendant hospital had failed to disclose all material risks in connection with plaintiff's surgery, care and treatment); *Keenan* v. *Yale New Haven Hospital*, 167 Conn. 284, 285–86, 355 A.2d 253 (1974) (allegation of lack of informed consent to surgery did not relate back to allegation of negligence in performing surgery).

"When comparing [the original and proposed amended] pleadings, we are mindful that, '[i]n Connecticut, we have long eschewed the notion that pleadings should be read in a hypertechnical manner. Rather, [t]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically. ... [T]he complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory upon which it proceeded, and do substantial justice between the parties. ... Our reading of pleadings in a manner that advances substantial justice means that a pleading must be construed reasonably, to contain all that it fairly means, but carries with it the related proposition that it must not be contorted in such a way so as to strain the bounds of rational comprehension.' ... *Deming* v. *Nationwide Mutual Ins. Co.*, [279 Conn. 745, 778, 905 A.2d 623 (2006)]." *Dimmock* v. *Lawrence & Memorial Hospital, Inc.*, supra, 286 Conn. at 802, 945 A.2d 955.

We acknowledge that in our prior cases applying the relation back doctrine we perhaps have not provided as much clarity as necessary for the trial court to apply the doctrine consistently. After a careful review of our case law, it is apparent that in order to provide fair notice to the opposing party, the proposed new or changed allegation of negligence must fall within the scope of the original cause of action, which is the *transaction or occurrence* underpinning the plaintiff's legal claim against the defendant. Determination of what the original cause of action is requires a case-by-case inquiry by the trial court. In making such a determination, the trial court must not view the allegations so narrowly that any amendment changing or enhancing the original allegations would be deemed to constitute a different cause of action. But the trial court also must not generalize so far from the specific allegations that the cause of action ceases to pertain to a specific transaction or occurrence between the parties that was identified in the original complaint. While these guidelines are still broad, a bright line rule would not serve the purpose of promoting substantial justice for the parties.

If new allegations state a set of facts that contradict the original cause of action, which is the transaction or occurrence underpinning the plaintiff's legal claim against the defendant, then it is clear that the new allegations do not fall within the scope of the original cause of action and, therefore, do not relate back to the original pleading. But an absence of a direct contradiction must not end the trial court's inquiry. The trial court must still determine whether the new allegations support and amplify the original cause of action or state a new cause of action entirely. Relevant factors for this inquiry include, but are not

> limited to, whether the original and the new allegations involve the same actor or actors, allege events that occurred during the same period of time, occurred at the same location, resulted in the same injury, allege substantially similar types of behavior, and require the same types of evidence and experts.

*Briere* v. *Greater Hartford Orthopedic Grp., P.C.*, 325 Conn. 198, 207–11, 157 A.3d 70, 77–79 (2017).

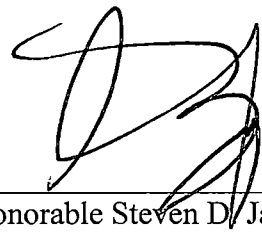
The plaintiff's original cause of action claimed injuries and losses arising from a slip and fall on ice in the defendant's parking lot and alleged that the plaintiff's injuries and losses were proximately caused by the defendant's negligence in allowing the icy condition to come about and exist; in failing to inspect for that condition; in failing to remedy that condition; in failing to warn of that condition; and, generally, in maintaining that parking lot in a condition that was not reasonably safe. While the proposed new allegations do not contradict the allegations of the original complaint, they purport to introduce to the case, more than three years after the alleged slip and fall, claims of design defects, i.e. a defectively designed gutter discharge and the failure to provide a "slip-resistant walking surface" in violation of various building, housing code, and ANSI standards. While the new allegations involve the same actors as in the case as originally framed, they concern structural aspects of the defendant's premises that are separate and distinct from the "accumulation of ice on the Premises' parking lot" which, according to the complaint, caused the plaintiff to slip and fall. Furthermore, the claims of design defect and structural omission are not substantially similar to the original claim - that the defendant was negligent in

allowing the icy condition to come about and exist, in failing failed to inspect for, discover, and warn of that icy condition, and in failing to remedy that icy condition - and will require different types of evidence and experts. They would inject a different set of circumstances and depend on a different set of facts from those alleged in the original complaint. cf. *Gurliacci* v. *Mayer*, infra. Lastly, the plaintiff cannot fairly state that the claim of a slip and fall on an accumulation of ice in a parking lot gave the defendant fair notice that the plaintiff would also be claiming that the building's gutter discharge was defectively designed and that the premises was structurally deficient in that its walking surface was not "slip-resistant."

Accordingly, the court concludes that the plaintiff's proposed amendments to the complaint do not relate back to the filing of the complaint and, as such, are barred by the applicable statute of limitations, Conn. Gen. Stat. §52-584.

**Conclusion.**

For the foregoing reasons, defendant TFC's objection to the plaintiff's request for leave to amend the complaint is hereby SUSTAINED.



Honorable Steven D. Jacobs