DOCKET NO. CV-24-6028805-S	:	SUPERIOR COURT
THERESA MONTALVO	:	J.D. OF TOLLAND
V.	:	AT ROCKVILLE
WENDY HOLMES AND JAMES HOLMES	:	MAY 8, 2024

MEMORANDUM OF DECISION

HON. CODY N. GUARNIERI, JUDGE, before this court is the defendant's motion to strike counts two and three of the complaint. The court heard oral argument at short calendar on April 29, 2024. For the reasons discussed herein, the motion to strike counts two and three of the complaint is GRANTED.

I. BACKGROUND

On January 16, 2024, the plaintiff, Theresa Montalvo, filed a four-count complaint against the defendants, Wendy and James Holmes, alleging the following facts. On or about August 26, 2023, the plaintiff was injured when an unleashed dog, owned by the defendants, bolted across the street and attacked her, causing her to fall and sustain injuries. In count two of the complaint, the plaintiff pleads a cause of action sounding in common law negligence against the defendant Wendy Holmes (defendant). The plaintiff alleges that the defendant was negligent and careless in various ways by virtue of the defendant having known that her dog had vicious propensities and/or exhibited other behaviors that posed a risk of harm to others. The plaintiff also claims that having the dog off-leash created an unsafe and dangerous condition. In count three, the plaintiff alleges that her injuries were the result of the defendant's wanton and reckless conduct. In this regard, the plaintiff contends that that defendant knew or should have known that failing to restrain her dog resulted in an extremely high likelihood of injury to others, particularly as the defendant knew or should have known of the dog's violent propensities.

Following the summons and complaint, the defendant filed a motion to strike the second and third counts of the complaint on March 6, 2024 (entry at Docket No.

102.00). The plaintiff filed their objection on March 20, 2024 (entry at Docket No. 104.00).

II. STANDARD OF REVIEW

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). "[A] motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court . . . [The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied . . . Moreover, [the court notes] that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . 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 . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Coppola Construction Co.* v. *Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013).

"If any facts provable under the express and implied allegations in the plaintiff's complaint support a cause of action . . . the complaint is not vulnerable to a motion to strike." *Bouchard* v. *People's Bank*, 219 Conn. 465, 471, 594 A.2d 1 (1991). On the other hand, "[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).

III. DISCUSSION

a. Count Two – Common Law Negligence

"Under the common law of this state, it has been held that liability for injuries committed by a vicious animal is grounded in negligence . . . It is the duty of the owner of such an animal, having knowledge of its vicious propensities, to give notice of the propensities or to restrain the animal, and that failure to do so is negligence that makes the owner liable for its consequences . . . [T]he plaintiff must prove that the dog had

vicious propensities and that the owner or keeper had knowledge, or the means of knowledge, of them . . . A vicious propensity is any propensity on the part of a dog that is likely to cause injury under the circumstances." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Mann* v. *Regan*, 108 Conn. App. 566, 579-80, 948 A.2d 1075 (2008).

The Superior Court has repeatedly held that, to survive a motion to strike, the plaintiff must allege facts to support the legal conclusion that the owner of an animal had knowledge of its vicious propensities. See *Haight* v. *Friends of Homeless Animals*, Superior Court, judicial district of Windham-Putnam, Docket No. CV-14-6007788-S (July 16, 2014, *Riley, J.*) (58 Conn. L. Rptr. 610) (holding that the plaintiff failed to allege facts to support its legal conclusion with respect to the defendant corporation's notice of the dog's vicious propensities and granting the motion to strike); *Wilson* v. *S. Vinayak, LLC*, Superior Court, judicial district of Middlesex, Docket No. CV-03-0102745-S (September 10, 2004, *Silbert, J.*) (holding that the plaintiffs did not support the conclusory statement that the defendant knew or should have known of the dog's vicious propensities with facts and granting the defendant's motion to strike); *Schatz* v. *Frederick*, Superior Court, judicial district of New Haven, Docket No. CV-03-0474928-S (June 16, 2003, *Harper, J.*) (34 Conn. L. Rptr. 744) (holding that the complaint was legally insufficient as to the common-law negligence claim because the plaintiff had alleged that the defendant knew or should have known of the dog's vicious propensities but did not support his conclusion with the necessary facts in his complaint); *Laws* v. *Elliot*, Superior Court, judicial district of Windham, Docket No. CV-02-0067188-S, (July 15, 2002, *Foley, J.*) (granting the defendant's motion to strike on the ground that the plaintiff did not allege sufficient facts to support a claim under a theory of common-law negligence that the defendant knew or should have known of the dog's dangerous propensities).

In this case, the plaintiff's complaint alleges theories of common law negligence premised on the legal conclusion that the defendant knew the dog has vicious propensities and/or exhibited other behaviors that posed a risk of harm to others. However, the plaintiff has not supported this legal conclusion with any supporting facts. "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.) *Fort Trumbull Conservancy, LLC* v. *Alves*, supra, 262 Conn. 498. If the plaintiff's complaint "alleges no facts to support its legal conclusion with respect to the defendant's notice of the dog's vicious propensities, [the Court should reach] the

inescapable conclusion that the complaint is legally insufficient." *Schatz* v. *Frederick*, supra, 34 Conn. L. Rptr. 745.

In the absence of any factual allegations that would give support to the conclusion that the defendant knew or should have known of the dog's vicious propensities, count two fails to state a claim in which relief can be granted. Count two, therefore, is insufficient as a matter of law and the motion to strike is granted.

b. Count Three

"Recklessness requires a conscious choice of a course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man, and the actor must recognize that his conduct involves a risk substantially greater . . . than that which is necessary to make his conduct negligent . . . More recently, we have described recklessness as 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." (Citations omitted; internal quotation marks omitted.) *Doe* v. *Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 382, 19 A.3d 1462 (2015).

In count three, sounding in recklessness, the plaintiff incorporates by reference the allegations that form the basis of her counts one and two. Without alleging additional facts, the plaintiff claims that the defendant acted wantonly and recklessly in various ways, premised on the defendant's having known or should have known of the violent propensities of her dog and/or the extremely high likelihood of injury to others that her dog presented. The plaintiff further alleges that the defendant had sufficient facts to know that her dog, Zooey, posed a serious risk of danger to others prior to the attack, but the plaintiff again fails to plead any additional facts to support those conclusions.

In the absence of any factual allegations that would give support to the conclusion that the defendant knew or should have known of the dog's vicious propensities, the

plaintiff fails to state a claim in which relief can be granted. Count three, therefore, is insufficient as a matter of law and the motion to strike is granted.

IV. CONCLUSION

For the reasons stated previously, counts two and three of the plaintiff's complaint are insufficient as a matter of law. The defendant's motion to strike counts two and three is therefore GRANTED.

SO ORDERED

BY THE COURT

Guarnieri, J.