AT STAMFORD
123 HOYT STREET
STAMFORD, CT 06905

DOCKET NO: FST CV 23-6063789-S : SUPERIOR COURT

DOMENIK MERDITA 2024 JUN -4 A 10:52 : JUDICIAL DISTRICT OF

V. : STAMFORD/NORWALK

: AT STAMFORD

ELSER SOLIS ET AL. : JUNE 4, 2024

MEMORANDUM OF DECISION

The defendants, Elser Solis and Gilma Fuentes ("defendants") have moved to strike count three of the plaintiff's complaint as well as the plaintiff's corresponding claim for punitive damages. The defendants claim that the conduct alleged in count three does not rise to the level of either common law recklessness or statutory recklessness. As detailed, below, the court denies the motion to strike.

FACTS

This case arises from a motor vehicle accident that occurred on June 9, 2022 when the plaintiff was travelling as a passenger in a motor vehicle driven by defendant Solis as he was driving westbound on Grange Hall Road in Dalton, Massachusetts. The vehicle was owned by defendant Fuentes. At all relevant times, defendant Solis was the operator. The plaintiff further alleges that defendant Solis was driving at an excessive rate of speed and as a result, defendant Solis lost control of the vehicle and collided with a telephone pole. As a result, the plaintiff suffered injuries and damages from the motor vehicle accident that he alleges to have been caused by the plaintiff's manner of driving at the time of the accident.

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In his complaint, which he filed on September 28, 2023, the plaintiff has alleged negligence against defendant Solis in count one, negligence against defendant Fuentes in count two, and recklessness against defendant Solis in count three. On December 6, 2023, the defendants filed a Motion To Strike and accompanying memorandum of law, and the plaintiff filed his objection on December 20, 2023. The matters were placed on the short calendar and argument on the motion and the objection was held on February 26, 2024.

LEGAL PRINCIPLES

A. Legal Standard For Deciding A Motion To Strike

"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." *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 (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." *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 349 (2013).

B. Common Law Recklessness

The Connecticut Supreme Court stated the well-established principle that where a party seeks to plead a reckless claim, "[s]imply using the word 'reckless' or 'recklessness' is not enough. A specific allegation setting out the conduct that is claimed to be reckless or wanton must be made." *Dumond v. Denehy*, 145 Conn. 88, 139 A. 2d 58 (1958). The Appellate Court rephrased the proposition as "[m]erely using the term 'recklessness' to describe conduct previously alleged as negligence is insufficient as a matter of law." *Angiolillo v. Buckmiller*, 102 Conn. App. 697, 705, 927 A. 2d 312, cert. denied, 284 Conn. 927, 934 A. 2d 243 (2007), citing *Dumond* v. *Denehy*, 145 Conn. at 91, 139 A. 2d 58.

Thus, "[r]ecklessness 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 substantially greater...than that which is necessary to make his conduct negligent. (Internal quotation marks omitted.) *Bishop v. Kelly*, 206 conn. 608, 614-15, 539 A.2d 108 (1988). "It is at least clear...that such 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.) *Dubay v. Irish*, 207 Conn. 518, 533, 542 A.2d 711 (1988).

"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. . . . 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 any danger to others or to take reasonable precautions to avoid injury to them. . . . [In sum, 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." (Citations omitted; internal quotation marks omitted.) *Northrup* v. *Witkowski*, 175 Conn. App. 223, 247-48, 167 A.3d 443 (2017), aff'd, 332 Conn. 158, 210 A.3d 29 (2019).

A state of mind that amounts to recklessness may be inferred from conduct, but "in order to infer it, there must be something more than a failure to exercise reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them. (Internal quotation marks omitted.) *Matthiessen v. Vanech*, 266 Conn. 822, 832, 836 A. 2d 394 (2003). Thus the conduct must be "more than mere thoughtlessness or inadvertence, or simply in attention". *Craig v. Driscoll*, 262 Conn. 312, 343, 824 A. 2d 1003 (2003).

C. Statutory Recklessness Under Connecticut General Statutes § 14-295

Connecticut General Statutes § 14-295 states: "[i]n any civil action to recover damages from personal injury ... the trier of fact may award double or treble damages if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of section 14-218a, ... 14-219, ... [or] 14-222 ... and that such violation was a substantial factor in causing such injury ...". While neither the Connecticut Supreme Court nor the Connecticut Appellate Court has addressed what is required for a statutory recklessness claim to survive a motion to strike based on allegation of statutory

recklessness under General Statutes § 14-295, there is agreement that, at a minimum, a plaintiff must allege three elements: (1) that the defendant deliberately or with reckless disregard operated his motor vehicle, (2) in violation of one of the predicate statutes, and (3) that the violation was a substantial factor in causing the plaintiff's injury. See General Statutes § 14-295.

Neither the Connecticut Supreme Court nor the Connecticut Appellate Court has as yet addressed what is required for a plaintiff to prove a legally sufficient claim of statutory recklessness. "There exists a split of authority in the Superior Court over the meaning of the term "specifically pleaded." *Pyka* v. *Popielase*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-05-50000166-S (May 30, 2006, *Hartmere, J.*). The minority view is that a claim under § 14-295, should be similar to the standard for a claim under common law recklessness, and thus "should employ language explicit enough to clearly inform the court and opposing counsel that reckless misconduct is relied on." (Internal quotation marks omitted.) *Kostiuk v. Queally*, 159 Conn. 91, 94, 267 A. 2d 452 (1970). Therefore, "under the minority view, a plaintiff must plead the specific facts constituting recklessness above and beyond the facts constituting mere negligence." *Termini* v. *Taylor*, Superior Court, judicial district of New Haven at Meriden, Docket No. CV-05-5000171-S (November 28, 2005, *Taylor, J.)* (40 Conn. L. Rptr. 424, 425)." *Creigh v. Morsey*, Superior Court, judicial district of Litchfield at Torrington, Docket No. CV-22-6030932-S (June 1, 2023, *Roraback, J.)*, 2023 WL 3840309.

"In contrast, the majority approach is that § 14-295 does not mandate the same level of specificity as necessary for a claim under common law recklessness. The majority view requires "that a plaintiff, in addition to pleading facts constituting negligence, need only make the general allegations mentioned in § 14-295: that the defendant has deliberately or with reckless

disregard violated one of the enumerated statutes, and that the violation was a substantial factor in causing the plaintiff's injuries." (Internal quotation marks omitted.) *Colon* v. *SNET*, Superior Court, judicial district of Fairfield, Docket No. CV-01-0385673-S (May 22, 2002, *Gallagher, J.*). "The majority view is based both on an analysis of the legislative history as well as a review of the statutory language of § 14-295 itself. These cases conclude that as long as the general requirements of the statute are met, such pleading is enough to survive a motion to strike and to state a cause of action under § 14-295." (Footnote omitted.) *Ferens* v. *Brown*, Superior Court, judicial district of New Britain, Docket No. CV-00-0509116-S (October 11, 2001, *Quinn, J.*).

DISCUSSION

A. The Plaintiff's Claim for Recklessness Is Legally Sufficient

As a preliminary matter, the court notes that although the plaintiff has alleged recklessness in count three of his complaint, he has failed to specify whether he is alleging statutory recklessness, common law recklessness, or both. Specifically, there is no citation to Connecticut General Statutes § 14-295 nor is there a specific reference to common law recklessness in the complaint. However, in his memorandum of law in opposition to the motion to strike filed by the defendants, the plaintiff has alleged that the claims asserted in the complaint include allegations that support both claims of recklessness. As such, while the court agrees with the defendant that this failure to properly specify the nature of his claims is improper, the court will address both claims of recklessness herein.

As alleged in his complaint, the plaintiff claims that the collision that is subject of this case resulted in injuries and damages to him and that these injuries and damages were caused by the deliberate and/or reckless disregard of the defendant when he recklessly operated his motor

vehicle at an unreasonable, illegal, and highly dangerous rate of speed. The plaintiff further specifies that based on the traffic, the use of the highway, the intersection of the streets and the weather conditions at the time, the defendant operated his motor vehicle recklessly despite having knowledge that doing so was illegal, highly dangerous, and with the knowledge that this conduct would likely cause serious injury or death. As a result of this reckless manner of driving, the plaintiff alleges that he suffered numerous injuries from the ensuing collision, including a traumatic injury to his head, brain, neck, abdomen, spine and pelvis, soft tissue chest contusion, cervical sprain, strain, and pain, lumbar sprain, strain, and sprain, lumbar disc herniation, and lumbosacral disc herniation.

In their motion to strike, the defendants argue that the plaintiff's claims of recklessness are legally insufficient because (1) the plaintiff failed to delineate his claim of statutory recklessness under Connecticut General Statutes § 14-295 and (2) his claim of common law recklessness is based on the exact same allegations that the plaintiff has made in support of his negligence claims with the only change being the addition of the words "willful" and "reckless". The defendants argue that since the underlying basis is the same as for the negligence claim, this is legally insufficient since recklessness requires a conscious choice of a course of action either with the knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable person. Since recklessness requires an allegation of conduct that is highly unreasonable, exhibiting a departure from ordinary care, and in a situation where a high degree of danger is apparent, the defendants argue that the plaintiff has failed to satisfy this requirement.

In his objection, the plaintiff argues that he is not required to plead divergent facts in order to support his recklessness claim so long as the allegations are, in and of themselves,

detailed and specific enough to support a claim of recklessness. The plaintiff further argues that as there is a split among the superior courts, that under the majority view, he has satisfied the pleading requirements for recklessness because he has alleged deliberate violations of statutes enumerated in Connecticut General Statutes § 14-295. He also argues that even if the court were to adopt the minority view, his claims are legally sufficient because there is caselaw from the superior court where the court has found that the pleading requirements were satisfied simply by alleging that the defendant acted deliberately or with reckless disregard. Moreover, with respect to his claim for common law recklessness, the plaintiff argues that the acts he has alleged in support of his recklessness claim, when taken as true, show that the defendant's conscious disregard for an unreasonably high risk.

Here, although the plaintiff has alleged the same facts in support of his negligence claim and his recklessness claim, these allegations are legally sufficient to independently support the plaintiff's recklessness claim. Specifically, the allegations state that defendant Solis acted deliberately and/or with reckless disregard when he deliberately, willfully, and/or recklessly operated his motor vehicle at an unreasonable, illegal, and highly dangerous speed given the amount of traffic that existed at the time, the weather conditions, the use of the highway and the intersection of the streets, and that he did so with the knowledge that driving in this manner was both illegal and highly dangerous enough to cause serious injury or death. This allegation clearly states a legally sufficient claim as the plaintiff has expressly alleged that defendant Solis made a conscious decision to drive in a dangerous manner, at a speed that was unsafe for the conditions

and with the knowledge that doing so could cause serious injury or death under the circumstances that existed at the time of the accident.

In viewing these allegations in the light most favorable to the plaintiff, these facts are legally sufficient to support the plaintiff's recklessness claims. Given the specific circumstances that have been alleged (the weather conditions, the traffic conditions, and the excessive and dangerous speed at which the defendant is alleged to have driven at the time of the accident), the plaintiff has alleged sufficient facts to support his claim that the defendant made a conscious choice to behave in this manner despite having knowledge of the serious danger presented by his decision to operate his motor vehicle at an excessive rate of speed that was at the very least, too fast for the conditions that existed at the time of the accident.

Thus, the allegations regarding the defendant's conduct do demonstrate that he acted with a conscious disregard of the rights and safety of the plaintiff , that he exhibited a highly unreasonable conduct involving an extreme departure from ordinary care in a situation where a high degree of danger was apparent. See *Ryan v. Tedesco*, Superior Court of Connecticut, judicial district of Waterbury at Waterbury, Docket No. UWY CV 206052781 S, 2020 WL 4333823 at * 2 (June 19, 2020, *Gordon, J.*).

Moreover, the allegations made by the plaintiff in support of his recklessness claim are explicit in language so as to inform the court and the defendant as to the specific conduct that the plaintiff if relying on in support of this claim. See *Dumond v. Denehy*, 145 Conn. 88, 91, 139 A. 2d 58 (1958). Thus, merely because the same facts alleged are offered in support of both a

negligence claim and a recklessness claim, this does not make the plaintiff's recklessness claim invalid.

There is no reason why a plaintiff, relying on the same set of facts in a negligence count cannot set forth in a separate count a cause of action arising out of those same facts alleging recklessness. As the Connecticut Supreme Court has found, reckless conduct is an aggravated form of negligence but included in this definition is a claimed departure from ordinary care which forms the basis of a negligence claim. If the negligence count sets forth facts that support a negligence claim, a motion to strike is not appropriate with respect to the recklessness claim which incorporates those facts if those also support a theory of liability that rests on reckless conduct. See *Dubay v. Irish*, 207 Conn. 518, 532, 542 A. 2d 711 (1988). Thus, the plaintiff's recklessness case is legally sufficient under the common law.

B. The Plaintiff's Statutory Recklessness Claim Is Legally Sufficient

In count three of the complaint, the plaintiff has alleged that defendant Solis operated his motor vehicle in a manner so as to cause the collision that was a substantial factor in causing the plaintiff's injuries. Specifically, the plaintiff has alleged that the defendant "deliberately, willfully and/or recklessly operated his motor vehicle at an unreasonable, illegal, and highly dangerous rate of speed for the width, traffic, and use of the highway, the intersection of streets and weather conditions then and there in place despite the knowledge that doing so was illegal and highly dangerous and likely to cause serious injury or death."

In their motion to strike, the defendants claim that the plaintiff's statutory recklessness claim is legally insufficient because (1) it fails to cite the statute that encompasses statutory recklessness, Connecticut General Statutes § 14-295, and (2) because the claim is based on the

same allegations that the plaintiff has alleged in support of his common law recklessness claim with the addition of the words "willful" and "reckless" to describe the defendant's speed. Because the underlying basis for the statutory recklessness claim is the same as the plaintiff's basis for his negligence claim, the defendants allege that the statutory recklessness claim is legally insufficient in the absence of sufficient facts to support recklessness claims beyond the facts alleged in support of plaintiff's negligence claim.

As no higher court in Connecticut has articulated the degree of specificity required to prove statutory recklessness under Connecticut General Statutes §14-295, the split among the superior courts in our state between those that follow the majority view and those that follow the minority view still exists.

Pursuant to the majority view, the plaintiff, in addition to pleading facts constituting negligence, only needs to allege general allegations mentioned in § 14-295, that the defendant has deliberately or with reckless disregard violated one of the enumerated statutes, and that the violation was a substantial factor in causing the plaintiff's injuries. As the majority view suggests, a claim under Connecticut General Statutes § 14-295 may be asserted without the plaintiff pleading subordinate and supporting facts if the assertion alone otherwise satisfies the provisions of the statute. The majority approach is that § 14-295 does not mandate the same level of specificity as necessary for a claim under common law recklessness.

The majority view requires only that a plaintiff, in addition to pleading facts supporting a negligence claim, also states the general allegations mentioned in § 14-295. Namely, the plaintiff only needs to allege that the defendant has deliberately or with reckless disregard violated one of the enumerated statutes, and that the violation was a substantial factor in causing

the plaintiff's injuries. See *Colon* v. *SNET*, Superior Court, judicial district of Fairfield, Docket No. CV-01-0385673-S May 22, 2002, *Gallagher, J.*). So long as the broad requirements of the statute are met, such a pleading is enough to survive a motion to strike and to state a cause of action under § 14-295.

Here, the plaintiff has satisfied the pleading requirements under the majority view as he has clearly alleged that defendant Solis knowingly and deliberately operated his motor vehicle in a manner in which he violated statutes pertaining to the appropriate speed at which a driver may safely operate a motor vehicle, particularly given the road and traffic conditions, and that he did so with the knowledge of the danger this conduct presented. While the plaintiff has failed to cite which specific motor vehicle statutes he believes defendant Solis violated, in construing his allegations broadly and in the light most favorable to the plaintiff, it is evident to the court that the plaintiff is alleging that the defendant violated Connecticut motor vehicle statutes related to speed and that he did so despite knowing that his conduct violated the law and despite knowing the danger posed by his conduct.

Moreover, the majority view does not require that the plaintiff plead with the same degree of specificity needed to sustain a claim for common law recklessness. General allegations are sufficient so long as the allegations include a claim that the defendant acted deliberately or with reckless disregard, that the defendant violated an enumerated statute, and that this conduct was a substantial factor in causing the plaintiff's injuries. The majority view also indicates that a claim under General Statutes § 14-295 may be asserted without the plaintiff

pleading additional subordinate and supporting facts if the assertion itself otherwise satisfies the provisions of § 14-295.

As such, the plaintiff's general allegation that defendant Solis' manner of operating his motor vehicle unreasonably, illegally, and at a highly dangerous rate of speed for the width, traffic, and use of the highway, the intersection of the streets and the weather conditions, while knowing that doing so would likely cause serious injury or death is legally sufficient under the majority view. It is clear that the allegation is that the defendant operated his motor vehicle in a manner that, at a minimum, was too fast for the conditions and also while speeding, in violation of several motor vehicle statutes.

Here, the plaintiff's statutory recklessness claim is also legally sufficient under the minority view, because based on the minority view, the standard for a claim of statutory recklessness pursuant to § 14-295 is similar to the standard for a claim of common law recklessness. Thus, a claim for statutory recklessness should use the type of language that is express enough to inform the court and counsel that the plaintiff is alleging reckless misconduct. Accordingly, the plaintiff only needs to plead specific facts constituting recklessness above and beyond the facts alleged to support the claim of negligence.

In this case, the plaintiff has satisfied the minority view requirement for adequately alleging statutory recklessness because the plaintiff has specifically pled that the defendant's conduct was deliberate, willful and/or reckless in the way that the defendant operated his motor vehicle at a highly dangerous rate of speed and under the specific circumstances that existed at the time of the accident. He has further alleged that not only was the defendant's manner of driving illegal and highly dangerous, but that he deliberately drove in this manner with the knowledge that doing so would likely result in serious injury or death. Moreover, he has pled that such

conduct caused him to sustain severe, painful, and permanent injuries that he alleges to be a direct cause of the defendant's deliberate and/or reckless disregard. As alleged, the court finds that the plaintiff has also pled a legally sufficient claim of statutory recklessness based on the minority view in Connecticut.

CONCLUSION

For the foregoing reasons, the defendant's motion to strike the plaintiff's claims for common law recklessness, the plaintiff's claim for statutory recklessness, and plaintiff's corresponding claim for punitive damages is denied.

MENON, J.

DECISION ENTERED IN
ACCORDANCE WITH THE
FOREGOING ON 6/4/24.
JDNO SENT 6/4/24.
DCC.