

AT STAMFORD
120 HOYT STREET

DOCKET NO: FST CV 23-6063740 S : SUPERIOR COURT
2024 MAY 22 P 3:48

RAMOUTAR, EON : JUDICIAL DISTRICT OF
V. : STAMFORD/NORWALK
RDS ENTERPRISES VII LIMITED : AT NORWALK
PARTNERSHIP D/B/A LAMB : MAY 22, 2024

MEMORANDUM OF DECISION

Defendant has moved to strike the following counts of the complaint: One (declaratory judgment), Seven (civil forgery), Nine (CUTPA) and Ten (promissory estoppel). For the reasons stated below, the motion is denied as to Counts Seven and Nine, but granted as to Counts One and Ten.

The Standards 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 (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).

Declaratory Judgment

This action arises out of certain work performed by the Defendant on the Plaintiff's 2007 Lamborghini Gallardo (the "Vehicle"). Plaintiff has alleged that defendant negligently performed work on the Vehicle that was never authorized. When plaintiff refused to pay for the work and demanded return of the Vehicle, defendant refused and produced an estimate purported to be signed by plaintiff and asserted a mechanics lien over the Vehicle. Plaintiff alleged that he never saw the estimate before the work was done and his signature was forged.

Plaintiff seeks a declaratory judgment in Count One: "A judgment should enter declaring that Lamborghini Greenwich does not have any right to retain possession of the Vehicle." Defendant argues that the declaratory

judgment count should be stricken as superfluous and unnecessary because the conversion and civil theft claims would ascertain the rights of possession, citing *Wittmann Battenfeld, Inc. v. United Refrigeration, Inc.*, 2010 WL 4276755 *5 (Conn.Super. 2010) (Pickard, J.) and *Shelbourne CT Holdings v. RT Specialty, LLC*, 2022 WL 1566467 *3 (Conn.Super. 2022) (Baio, J.).

The Court disagrees. “[A] plaintiff may request other relief . . . [including] monetary damages in conjunction with an action for a declaratory judgment.” *Coscina v. Coscina*, 24 Conn. App. 190, 193 (1991). See also Conn. Gen. Stat. § 52-29(a) (“The Superior Court in any action or proceeding may declare rights and other relations on request for such a declaration, whether or not further relief is or could be claimed.”) The Practice Book “allows the trial court wide discretion to render a declaratory judgment unless another form of action clearly affords a speedy remedy as effective, convenient, appropriate, and complete.” *England v. Town of Coventry*, 183 Conn. 362, 365 (1981). “[A] successful motion to strike an action for a declaratory judgment upon the ground of available means of redress . . . must show that the court could not in the exercise of sound discretion permit the action to proceed.” *Id.* (emphasis added). “[T]he [declaratory judgment] statute and rules should be interpreted liberally to carry out the remedial purpose of such [declaratory] judgments.” *Elec. Cable Compounds, Inc. v. Town of Seymour*, 95 Conn. App. 523, 528 (2006). Neither monetary claim offers “as effective, convenient, appropriate, and complete” relief as the declaratory judgment sought. 183 Conn. at 365.

Alternatively, defendant argued the declaratory judgment count should be stricken because the prayer for relief violates Practice Book § 17-56(a)(2), which requires in declaratory judgment actions that “the prayer for relief shall state with precision the declaratory judgment desired . . .” Defendant contended violation of Practice Book § 17-56(a)(2) requires a striking of the claim citing *Neighborhood Builders, Inc. v. Town of Madison*, 2008 WL 2313378 *4 (Conn. Super. 2008) (Cremins, J.). That was at best dicta in a decision that did “not treat plaintiffs’ complaint as seeking declaratory relief....” *Id.* The allegations in the body of the count describe the declaration sought, however, the prayer for relief does not comply with P.B. § 17-56(a)(2). The motion to strike Count One may be granted on that ground.¹

Civil Forgery (C.G.S. § 52-565)

“Any person who falsely makes, alters, forges or counterfeits any document, or knowingly utters, as true, any document falsely made, altered, forged or counterfeited, shall pay double damages to any party injured thereby.” C.G.S. § 52-565.

Plaintiff alleged that his signature was forged on the estimate form required by C.G.S. § 14-65f:

“(a) (1) Prior to performing any repair work on a motor vehicle, a motor vehicle repair shop shall obtain a written authorization to perform the work, on an invoice signed by the customer, that includes an estimate in writing of the maximum cost to the customer of the parts and labor necessary for the specific job authorized. A repair shop shall not charge for work done or parts supplied without a written authorization or in

¹ Any substitute complaint that seeks a declaratory judgment must satisfy P.B. § 17-56(a)(2) and state in the prayer for relief “with precision the declaratory judgment desired....”

excess of the estimate unless the customer gives consent orally or in writing.”

Defendant has argued that the forgery count should be stricken because plaintiff has not alleged reliance by plaintiff on the forged document or that any action or inaction by plaintiff was caused by the forged document and thus has not alleged facts to show the alleged forgery caused him injury. Defendant argued that justified reliance is a required element of common law fraud that many courts have held to be required to maintain a civil forgery claim.²

Defendant has misread the cases that have held that forgery is a variant of fraud. In those cases, the facts alleged were such that reliance on the forged instrument or document was necessary to show actionable injury. Here, pursuant to C.G.S. § 14-65f, defendant could not charge for any work done or lien the Vehicle without an estimate provided to and signed by the customer. The injury to plaintiff from the allegedly forged estimate is that defendant is relying upon the forged document to charge plaintiff and to lien the Vehicle.

In *Henderson v. Benson*, 2014 WL 3715132 *4 (Conn.Super. 2014) (Provodator, J.), Judge Provodator explained why reliance is not a required element for civil forgery under C.G.S. § 52-565:

“Defendant's interpretation of a cause of action based on forgery effectively disqualifies perhaps half of all possible forgery-claimants. At the risk of oversimplification, there are two possible classes of people

² Defendant asserts there is a split in Superior Court authority and argued for the majority viewpoint is reflected in *Benvenuti Oil Co., Inc. v. Foss Consultants, Inc.*, 2003 WL 21977974 *16-21 (Conn.Super. 2003) (Corradino, J.), which held that the elements of fraud and forgery are the same, including reliance. Note, however, that in *Benvenuti* Judge Corradino observed: “the plaintiff would rely on the same factual allegations to prove civil forgery as it does to prove civil fraud.”

harmful by forgery—those who receive (and rely upon) forged documents, and those whose signature, identity, etc. are appropriated by the forgery. “Victims” in the latter category are not on the receiving end of the forged documents but more on the sending or generation end. Almost by definition, people in the latter category have no reliance involvement in the forged documents; in most instances in the latter category, the forger's goal is likely to involve keeping the victim unaware that anything has happened at all, for as long as possible. An obvious example: The latter category would include people whose checks have been forged—such a person has no reliance interest on the forgery, but clearly is harmed by the consequences (money drawn from his/her account). The broader area of identity theft typically encompasses forged documents, again without any reliance by the persons whose identities are being stolen.

Defendant has cited no authority suggesting that all forgery matters come within the scope of fraud and require reliance, even when the victim is a person whose signature or other aspect of identity has been forged. Defendant has cited no cogent analysis or argument why that should be the case—no case evaluating the burden of proof (elements to be proved) in a case involving forgery from the perspective of the person whose signature or identity has been appropriated or misrepresented. As discussed above, the court has no trouble identifying scenarios with forgery and resulting harm, with no reliance aspect whatsoever. This statute is available to ‘any party injured thereby,’ and defendant has provided no basis—certainly, no convincing basis—to interpret ‘any party’ as being subject to a reliance condition (other than through the flawed intermediary of fraud).” (Footnote omitted).

This Court agrees with *Henderson* and the modern trend of cases that hold reliance is not a required element of civil forgery under C.G.S. § 52-565. See e.g., *Lundgren v. Greco*, 2024 WL 686673 *3 (Conn.Super. 2024) (Golger, J.); *Cummings v. Liberty Mutual Group*, 2022 WL 1051223 *4 n.3 (Conn.Super. 2022) (Parkinson, J.) (elements of fraud need not be alleged). The motion to strike Count Seven is denied.

CUTPA (C.G.S. § 42-110a)

Count Nine of the complaint alleged that defendant violated the Connecticut Unfair Trade Practices Act, C.G.S. § 42-110a et seq. (“CUTPA”). The allegations recite many aggravating circumstances attendant to the alleged breach of contract and unfairness in the transaction, including misrepresentation, forgery, and conduct that would violate the consumer protection provisions in C.G.S. § 14-65f. These allegations sufficiently state a CUTPA claim.³ See generally *Pointe Residential Builders BH, LLC v. TMP Construction Group, LLC*, 213 Conn.App. 445, 454-55 (2022). See also *Adler L. Grp., LLC v. Thorpe*, 2018 WL 8017299 *2 n.1 (Conn.Super. 2018) (Krumeich, J.) (there is no requirement “that a claim track the elements of CUTPA or invoke specific factors under the ‘cigarette rule . . . to withstand a motion to strike so long as the facts alleged would constitute a violation of CUTPA”). The motion to strike Count Nine is denied.

Promissory Estoppel

In *Kent Literary Club of Wesleyan University at Middletown v. Wesleyan University*, 338 Conn. 189, 209 (2021), the Supreme Court reiterated the elements of promissory estoppel:

“To prevail in a cause of action sounding in promissory estoppel, a plaintiff must convince the jury that (1) the promisor has failed to honor a clear and definite promise that (2) the promisor reasonably should expect

³ These allegations clearly distinguish this complaint from the CUTPA count struck in *Vaillancourt v. Cunliffe Motor Sales, Inc.*, 2024 WL 164915 *3 (Conn.Super. 2024) (Parkinson, J.), that merely alleged claims of negligence and breach of contract related to the vehicle repair without allegations of aggravating circumstances that bear on the “cigarette rule” by which CUTPA claims are typically gauged. See generally *Gianetti v. Neigher*, 214 Conn.App. 394, 451 (2022) (“CUTPA was intended to provide a remedy that is separate and distinct from the remedies provided by contract law when the defendant's contractual breach was accompanied by aggravating circumstances”).

to induce detrimental action or forbearance on the part of the promisee or a third person, and (3) the promise does, in fact, induce detrimental action or forbearance in reasonable reliance on the promise. ... The trial court also must find, as a matter of law, that injustice can be avoided only by enforcement of the promise.”

The Tenth Count repeated and realleged only paragraphs one through five of the previous count, which through the repeats and reallegations in the various counts may be traced back to paragraphs one through five of the First Count. These alleged facts do not support a claim for promissory estoppel. Plaintiff asked the Court to look to allegations that were not included in the Tenth Count and to sustain the claim by inferring facts related to the second and third elements that were not alleged. Although a court may reasonably infer facts drawn from the facts alleged, see e.g., *Hill v. State Farm Mutual Automobile Insurance Company*, 2019 WL 3546422 *3 (Conn.Super. 2019) (Wilson, J.), the facts alleged in the paragraphs actually incorporated in the Tenth Count do not permit such inferences. The Tenth Count is stricken because the claim is conclusory without allegation of subordinate facts that would satisfy the second and third required elements of promissory estoppel.

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Krumeich, J.T.R.

DECISION ENTERED IN
ACCORDANCE WITH THE
FOLLOWS ON 5/22/24.
JENNIFER S/22/24

