

NNH CV22-6124350 S : SUPERIOR COURT
509 BRANFORD, LLC : JUDICIAL DISTRICT OF
 : NEW HAVEN
V. : AT NEW HAVEN
STONY CREEK MEDICAL CENTER, LLC : JUNE 12, 2024

MEMORANDUM OF DECISION RE:
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT No. 121.00

This matter comes before the Court on the plaintiff's motion for summary judgment as to liability with respect to all four counts of its complaint, as well as with respect to all four counts of the defendant's counterclaim. The complaint alleges that water runoff from the defendant's property is causing flooding on the plaintiff's property. The defendant's counterclaim alleges that water runoff from the plaintiff's property is causing flooding on the defendant's property.

The plaintiff seeks summary judgment on the grounds that after it disclosed an expert, the defendant failed to disclose an expert to rebut the plaintiff's expert or to meet the burden of proof required to succeed on its counterclaim.

The plaintiff failed to provide an affidavit or any documentation in support of its motion for summary judgment, and the defendant failed to file any opposition to the motion for summary judgment.

The Court has considered filings #121.00 and 122.00, as well as the arguments of counsel made at the hearing on May 20, 2024.

The plaintiff's motion for summary judgment as to its complaint and the defendant's counterclaim is denied for all of the reasons detailed below.

At oral argument on May 20, 2024, plaintiff's counsel stated that he was no longer pursuing summary judgment on his complaint because the defendant disclosed an expert on March 11, 2024 (before the scheduling order deadline of April 1, 2024 to do so). However, plaintiff's counsel stated that he was still pursuing summary judgment on the defendant's counterclaim because the expert disclosed by the defendant solely related to the plaintiff's claims in the complaint, and not to the defendant's counterclaim.

Of note, a representative of the defendant previously signed interrogatory responses stating that the defendant was no longer pursuing the counterclaim, but the defendant has not withdrawn the counterclaim. At oral argument on the motion for summary judgment, the defendant's counsel stated that he had recommended that his client withdraw the counterclaim, but that he had not received approval to do so. At a status conference held on June 7, 2024, defendant's counsel indicated that he did not have permission from his client to withdraw the counterclaim, and as of this date, the counterclaim has not yet been withdrawn. If the defendant withdrew the counterclaim, the motion would be moot. But it has not been withdrawn and it is unclear if it will be. Accordingly, the Court will rule on the motion for summary judgment with respect to the counterclaim which remains in the case.

LEGAL ANALYSIS

I. Standards and Law

Summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Practice Book § 17-49; see also *Provencher v. Enfield*, 284 Conn. 772, 790-91, 936 A.2d 625 (2007). A "material fact" is one

that would make a difference in the outcome of the case. *Hammer v. Lumberman's Mutual Casualty Co.*, 214 Conn. 573, 578, 573 A.2d 699 (1990).

“In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law.” (Internal quotation marks omitted.) *Romprey v. Safeco Ins. Co. of America*, 310 Conn. 304, 312, 77 A.3d 726 (2013).

II. Summary Judgment Is Denied Because The Plaintiff Failed To Provide An Affidavit Or Any Documentation In Support Of Its Motion For Summary Judgment

The Court is unable to grant the motion for summary judgment without a proper affidavit in support of the motion. *Sequiera v. West*, Superior Court, judicial district of Stamford-Norwalk at Norwalk, No. CV-96 0152802 S, 1998 WL 233189, at *1 (Apr. 28, 1998, *D'Andrea, J.*). As the party moving for summary judgment, the plaintiff is required to support its motion with supporting documentation, including affidavits. *Heyman Assocs. No. 1 v. Ins. Co. of State of Pa.*, 231 Conn. 756, 796, 653 A.2d 122, 142 (1995).

“On a motion by [the] defendant for summary judgment the burden is on [the] defendant to negate each claim as framed by the complaint” *Mott v. Wal-Mart Stores E., LP*, 139 Conn. App. 618, 626, 57 A.3d 391, 396 (2012). Here, where the plaintiff is moving for summary judgment on the defendant’s counterclaim, the burden is on the plaintiff to negate each claim as framed by the counterclaim.

The plaintiff has failed to do so because it did not submit an affidavit or any other supporting documentation in support of its motion. Even if the plaintiff were correct regarding

the defendant's need for an expert witness, the plaintiff did not provide the Court with any evidentiary basis to meet its burden. The Court does not reach the issue of whether expert testimony is required in this matter because of the lack of documentation supporting the motion.

For all of the foregoing reasons, the motion for summary judgment is denied.

BY THE COURT,


Wax-Krell, J.