DOCKET NO: FST-CV23-6060617 S		**SUPERIOR COURT**
DOE, JANE		**JUDICIAL DISTRICT OF**
V.		**STAMFORD/NORWALK**
DOE, JOHN		**AT STAMFORD**
		APRIL 23, 2024

MEMORANDUM OF DECISION

Defendants have moved to strike Counts Seven through Nine on the ground that C.G.S. § 30-89a does not provide a private right of action and these counts also do not state common law claims for social host liability. Defendants have moved to strike Counts Twelve and Thirteen for failure to allege facts that would support a claim of parental liability for a minor who willfully or maliciously causes damage or injury under C.G.S. § 52-572.

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, 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

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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).

Counts Seven Through Nine Fail to State a Cause of Action.

In this case the minor plaintiff alleged that she was sexually assaulted by an inebriated or stoned minor guest[1] at a party hosted by the defendant minor son, James Doe, at the home of the defendant parents. The Seventh, Eighth and Ninth Counts purport to allege social host liability against the host and his parents citing C.G.S. § 30-89a, which provides:

> "(a) No person having possession of, or exercising dominion and control over, any dwelling unit or private property shall (1) knowingly or recklessly permit any minor to possess alcoholic liquor in violation of subsection (b) of section 30-89 in such dwelling unit or on such private property, or (2) knowing that any minor possesses alcoholic liquor in violation of subsection (b) of section 30-89 in such dwelling unit or on such private property, fail to make reasonable efforts to halt such possession. For the purposes of this subsection, "minor" means a person under twenty-one years of age.

[1] The revised complaint alleged the assailant defendant John Doe was intoxicated by alcohol and marijuana. Only his possession of alcohol in defendants' home would trigger criminal culpability under Section 30-89a if defendants' violative conduct and scienter were proven.

(b) Any person who violates the provisions of subsection (a) of this section shall be guilty of a class A misdemeanor."

The revised complaint does not allege that defendants served or furnished intoxicants to the intoxicated assailant, which precludes a claim of social host liability at common law because there is no allegation that James Doe, or his parents, furnished the intoxicants to John Doe.[2] See *Karzoun v. Rapo*, 2014 WL 2259361 *3 (Conn.Super. 2014) (Lee, J.).[3] Instead, plaintiff relied on the language of C.G.S. § 30-89a, which turns on permitting "any minor to possess alcoholic liquor ..." under certain circumstances.

Plaintiff argued that the Court should hold that there is an implied private right of action under C.G.S. § 30-89a citing *Ely v. Murphy*, 207 Conn. 88, 95 (1988).[4] Plaintiff's objection addressed the three factors for determining whether a criminal statute includes a private right of action held by the Supreme Court in *Provencher v. Town of Enfield*, 284 Conn. 772, 777-79 (2007), first announced in *Napoletano v. CIGNA Healthcare of Connecticut, Inc.*, 238 Conn. 216, 249 (1996): "'First, is the plaintiff one of the class for whose ... benefit the statute was enacted ...? Second, is there any indication of legislative intent, explicit or implicit,

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[2] Plaintiff alleged defendant James Doe "caused the events complained of herein by virtue of his violation of C.G.S. §30-89a, by permitting minors in his home to possess and consume alcohol, and by failing to take reasonable steps to halt such possession when known to him." Plaintiff alleged his parents, who were not present, permitted [their] son, the Defendant, JAMES DOE, the Defendant, JOHN DOE, and other teenagers, to be in possession of alcohol, in violation of C.G.S. §30-89a." The allegations fail to state subsidiary facts to support the conclusory allegations that merely track the language of the statute.

[3] "Under Connecticut case law, in order to hold a defendant liable as a social host for negligently providing alcohol to a minor, the defendant must have either purveyed or supplied such alcohol." 2014 WL 2259361 *3. Accord, *Rangel v. Parkhurst*, 64 Conn.App. 372, 380 (2001).

[4] In *Ely* the Supreme Court held there could be social host liability for negligently serving alcohol to a minor. "The stricken portions of the second count purported to state a common law cause of action in tort based on negligence in serving alcohol to minors who were known to be or should have been known to be intoxicated." 207 Conn. at 92. "In view of the legislative determination that minors are incompetent to assimilate responsibly the effects of alcohol and lack the legal capacity to do so, logic dictates that their consumption of alcohol does not, as a matter of law, constitute the intervening act necessary to break the chain of proximate causation and does not, as a matter of law, insulate one who provides alcohol to minors from liability for ensuing injury." 207 Conn. at 95.

either to create such a remedy or to deny one? ... Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?'"[5] Plaintiff argued that she was within the protected class and there was no indication the Legislature intended to preclude an implied private right of action under C.G.S. § 30-89a.

Although arguably plaintiff may be regarded as a member of the class to be protected, plaintiff has failed to persuade the Court that the second and third *Napolitano* factors are met. "[T]he ultimate question is whether there is sufficient evidence that the legislature intended to authorize [this plaintiff] to bring a

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[5] "We begin our analysis with the well settled fundamental premise that there exists a presumption in Connecticut that private enforcement does not exist unless expressly provided in a statute. In order to overcome that presumption, the plaintiff bears the burden of demonstrating that such an action is created implicitly in the statute. ... 'In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff one of the class for whose ... benefit the statute was enacted ...? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? ... Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?' ...

Consistent with the dictates of General Statutes § 1–2z, however, we do not go beyond the text of the statute and its relationship to other statutes unless there is some textual evidence that the legislature intended, but failed to provide expressly, a private right of action. Textual evidence that would give rise to such a question could include, for example, language granting rights to a discrete class without providing an express remedy or language providing a specific remedy to a class without expressly delineating the contours of the right.

'[T]he *Napoletano* test essentially applies our well-established process of statutory interpretation, under which we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.' ...

Finally, we note that '[i]n examining [the three *Napoletano*] factors, each is not necessarily entitled to equal weight. Clearly, these factors overlap to some extent with each other, in that the ultimate question is whether there is sufficient evidence that the legislature intended to authorize [this plaintiff] to bring a private cause of action despite having failed expressly to provide for one. ... Therefore, although the [plaintiff] must meet a threshold showing that none of the three factors weighs against recognizing a private right of action, stronger evidence in favor of one factor may form the lens through which we determine whether the [plaintiff] satisf[ies] the other factors. Thus, the amount and persuasiveness of evidence supporting each factor may vary, and the court must consider all evidence that could bear on each factor. It bears repeating, however, that the [plaintiff] must meet the threshold showing that none of the three factors weighs against recognizing a private right of action.' ...

The stringency of the test is reflected in the fact that, since this court decided *Napoletano*, we have not recognized an implied cause of action despite numerous requests...."284 Conn. at 777-79.

private cause of action despite having failed expressly to provide for one." 284 Conn. at 779. The burden is on plaintiff to make a "threshold showing that none of the three factors weighs against recognizing a private right of action." 284 Conn. at 779. That threshold has not been met here. There is appellate authority that indicates the Legislature did not intend to imply a private right of action under another provision of the Liquor Control Act, in which the Supreme Court noted the only section that expressly conveyed a private right of action was the Dram Shop Act, which regulates commercial purveyors of alcohol. In *Eder Bros., Inc. v. Wine Merchants of Connecticut, Inc.*, 275 Conn. 363, 373 (2005), the Supreme Court observed: "... the only provision in the Liquor Control Act that expressly does authorize a private right of action is General Statutes § 30–102, more commonly known as the Dram Shop Act." Nothing in the text or legislative history has been presented to this Court that would imply a private right of action under C.G.S. § 30-89a. The penalty provided is criminal and the Liquor Control Act specified express private rights in another provision passed as part of the same legislation. This case is similar to *Estate of Jackson v. Kos*, 2012 WL 3641812 *5 (Conn.Super. 2012) (Young, J.), in which Judge Young granted a motion to strike a claim of an implied private right of action under C.G.S. § 30–86[6] and held "[t]he plaintiffs have not met their burden to demonstrate that the legislature intended to create an implicit private right of action in § 30–86. To the contrary, this statute explicitly provides a criminal liability remedy." The same is true here.

[6] Section 30-86 provides, in pertinent part: "(b) (1) Any permittee or any servant or agent of a permittee who sells or delivers alcoholic liquor to any minor ... shall be subject to the penalties of section 30-113."

Moreover, even if the Court were to imply such right, no subordinate facts were alleged in support of the conclusory allegations that defendants violated Section 30-89a.

Counts Twelve and Thirteen Fail to State a Cause of Action.

Plaintiff argued that leaving James Doe, a minor, home alone with alcohol at their residence is sufficient to state a claim under C.G.S. § 52-572 of parental liability for the conduct of a minor under their care who "willfully or maliciously cause damage to any property or injury to any person.... if the minor or minors would have been liable for the damage or injury if they had been adults."[7] No facts were alleged related to willful or malicious conduct violative of the statute on the part of James Doe that would result in vicarious liability to his parents.[8]

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Krumeich, J.T.R.

Decision entered in accordance with the foregoing 4/23/2024
Notice sent to all counsel of record 4/23/2024
Victoria Cucci
Victoria Cucci
Temporary Assistant Clerk

[7] No facts were alleged related to any causal connection between the sexual assault by John Doe and any conduct by defendant James Doe or his parents, which, as to the minor would also seem to be required to satisfy the scienter element of C.G.S. § 52-572. Mere negligence by James Doe would not expose his parents to liability under C.G.S. § 52-572. Compare, *Lamb v. Peck*, 183 Conn. 470, 473 (1981) ("The applicable statutory requirement for parental liability is that the minor wilfully or maliciously causes injury to a person. General Statutes s 52-572. We conclude that this requirement is met where a minor intentionally aids another who intentionally injures a third person."). His intention to hold a party at which someone is attacked by an inebriated minor guest would not suffice by itself to state willful or malicious conduct sufficient to trigger parental liability under C.G.S. § 52-572.
[8]Nor were facts alleged that would state a claim of direct liability against the parents. Compare Rangel v. Parkhurst, 64 Conn.App. 372, (2001) ("our case law does not impose liability on parents who know of and acquiesce in their minor child's storage of alcoholic beverages in their home") and Geise v. Lee, 2011 WL 590627 *5 (Conn.Super. 2011) (Martin, J.) ("the defendant in the present case served as a social host to minor guests"). On a motion to strike the Court is limited to facts alleged in the complaint and inferences from the allegations. See *Coppola Construction Co. v. Hoffman Enterprises Ltd. Partnership*, 309 Conn. at 350. The Court is mindful that no discovery has taken place at this early stage of the case, but that does not relieve the plaintiff from the burden of fact-pleading even if only pled on information and belief based on the limited facts available to plaintiff.