

NNH CV23-6137042-S

: SUPERIOR COURT

JULIE FERRUCCI

: JUDICIAL DISTRICT OF
: NEW HAVEN

V.

: AT NEW HAVEN

SALVATORE DECOLA, ET AL

: MAY 22, 2024

MEMORANDUM OF DECISION ON MOTIONS TO STRIKE Nos. 111.00 and 114.00

Two of the defendants, Salvatore DeCola and Brian McDermott, move to strike the claims against them in the complaint filed by the plaintiff, Julie Ferrucci. Specifically, DeCola moves to strike counts one (deprivation of constitutional rights) and four (civil conspiracy), and McDermott moves to strike counts three (deprivation of constitutional rights) and four (civil conspiracy). They argue that the plaintiff does not have the constitutional rights she alleges in counts one and three, and even if she does, there is no private cause of action for any of those violations of the constitutional rights, statutes or ordinances alleged in counts one and three. They further argue that because there was no deprivation of constitutional rights, the civil conspiracy claim in count four based on that alleged deprivation is legally insufficient too. The plaintiff opposes the motions to strike. She argues that the rights she has are set forth in the Victim's Rights Amendment to the Connecticut constitution, and that she should have a remedy for a violation of those rights. For the reasons set forth below, this court grants the motions 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.” (Citation omitted). *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). This court must construe 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. ... [A]ll well pleaded facts and those facts necessarily implied from the allegations are admitted.” (Citations omitted.) *Coppola Construction Co. v. Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013). If, however, the plaintiff has failed to allege a valid cause of action, the motion to strike is properly granted. See *Sturm v. Harb Dev., LLC*, 298 Conn. 124, 127, 2 A.3d 859 (2010). “In ruling on a motion to strike, the court is limited to the facts alleged in the complaint.” (Citation omitted.) *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 580, 693 A.2d 293 (1997).

According to counts one and three of the complaint, DeCola is a member of the New Haven Board of Alders. DeCola was driving his vehicle under the influence of alcohol in violation of General Statutes § 14-227a, and he was driving his vehicle recklessly. DeCola struck and damaged the plaintiff’s parked car, but he fled the scene without leaving a note or any other information. After being informed by neighbors that someone had struck her car and fled the scene, the plaintiff called the New Haven police. She spoke to co-defendant Mark Salvati, who told her that the police could not assist her without more information. When the plaintiff obtained the address for DeCola’s car, she called Salvati to relay the address. He told her that the driver worked for the City of New Haven and that the matter had been turned over to McDermott. Count one, but not count three against McDermott, alleges that McDermott told the plaintiff “the New Haven Police Department won’t press charges against this man, that’s up to you and you don’t want to do that because he’s a very powerful and influential politician here in New Haven.” Count one, ¶ 16.

In both counts one and three, the plaintiff alleges that DeCola solicited and obtained special treatment from McDermott and Salvati, which treatment would not be available to any other person or group. Counts one and three, ¶ 9. The complaint further alleges that this conduct

violates General Statutes § 53a-161 and New Haven Code of Ordinances §§ 12 5/8-4(b), (d) and (g). Both counts also allege that DeCola received special treatment in that no police investigation was conducted, no police report was generated, and DeCola was not arrested. Counts one and three, ¶ 17. In that paragraph, the plaintiff also claims she was deprived of the following rights that she was guaranteed by Article first, Section 8(b) of the Connecticut constitution:

- a. be treated with fairness and respect throughout the criminal justice process;
- b. timely disposition of the case following arrest of the accused, provided no right of the accused is abridged;
- c. be reasonably protected from the accused throughout the criminal justice process;
- d. notification of court proceedings;
- e. attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person's testimony would be materially affected if such person hears other testimony;
- f. communicate with the prosecution;
- g. object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or *nolo contendere* by the accused;
- h. make a statement to the court at sentencing;
- i. restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law; and
- j. to information about the arrest, conviction, sentence, imprisonment and release of the accused.

Count four incorporates all of the substantive allegations from counts one, two and three and then alleges that all three defendants engaged in a civil conspiracy "to do illegal and/or unlawful acts in order to impede, hinder, obstruct, or defeat the due course of justice and deny the plaintiff of rights guaranteed to her by the Connecticut Constitution." Count four, ¶ 26.

Article first, section 8 of the Connecticut constitution sets forth the rights of the accused in criminal prosecutions. It was amended by the Victim Rights Amendment, Article XXIX, to set forth rights for victims. Those rights are those that are listed in paragraph 17 a.-j. of counts one and three. Although the court agrees with the plaintiff that those rights are set forth in the constitution, as amended, the court agrees with the defendants that a victim does not have a constitutional right to have the putative defendant investigated, arrested and prosecuted.

Furthermore, the court agrees with the defendants that there is no private cause of action to enforce the constitutional rights that are listed.

The United States constitution does not create a right for a victim to have the putative defendant investigated, arrested and prosecuted. See, e.g., *Linda R.S. v. Richard D. and Texas*, 410 U.S. 614, 618, 93 S. Ct. 1146 (1973); *Leeke v. Timmerman*, 454 U.S. 83, 86-87, 102 S. Ct. 69 (1981); *Osuch v. Gregory*, 303 F. Supp. 2d 189, 194 (D. Conn. 2004). There is no mention of those rights in Article XXIX, and the plaintiff does not identify any authority that recognizes such rights under the Connecticut constitution.

The state and federal trial courts have, on a number of occasions, held that there is no private cause of action for violations of article first, section eight of the Connecticut constitution. See, e.g., *Belton v. Wydra*, slip op. at *16, Docket No. 3:17cv2006(KAD) (D. Conn. May 17, 2019) (2019 WL 2162718) (collecting cases). Our Supreme Court declined to recognize an implied right of action for the plaintiff to recover monetary damages for an alleged violation of the Connecticut constitution's due process clause. *Kelley Property Development, Inc. v. Lebanon*, 226 Conn. 314, 627 A.2d 909 (1993).

As for the victim's rights under the Connecticut constitution, even the plaintiff acknowledges that the amendment does not provide a remedy for any violation of those rights. See memorandum in opposition no. 117.00 at 8. She then cites the dissent in *Kelley Property Development, Inc. v. Lebanon*, supra, for the proposition that "[i]f the legislature has not provided a remedy or if the remedy is not reasonably adequate, however, in view of the facts of a particular case, a private cause of action is constitutionally available to right the wrong." 226 Conn. at 355.

The plaintiff provides no analysis whatsoever that would demonstrate that there should be an implied right of action for her claim here. "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.” *Asylum Hill Problem Solving Revitalization Assn. v. King*, 277 Conn. 238, 246-47, 890 A.2d 522 (2006). Based on her failure to even set forth the test for implying a private cause of action and then to adequately brief this argument, it is rejected.

The allegation that DeCola violated General Statutes § 53a-161 also does not provide the plaintiff with a private cause of action. Section 53a-161 is a criminal statute. There is no private right of action based on a criminal statute. See, e.g., *Desmond v. Yale New Haven Hospital*, 138 Conn. App. 93, 98, 50 A.3d 910 (2012).

Finally, Sections 12 5/8-4 (b), (d) and (g) of the New Haven Ordinances regulate the standards of conduct for public officials and municipal employees. Those ordinances do not create a private cause of action. For example, superior courts have granted motions to strike claims that were based on alleged violations of municipal codes of ethics on the grounds that there was no private cause of action. *Stadler v. New Canaan*, Superior Court, judicial district of Stamford, Docket No. CV14-5014215-S (March 13, 2015, *Heller, J.*); *Massey v. Branford*, Superior Court, judicial district of New Haven, Docket No. CV04-048778 (March 28, 2006, *Munro, J.*).

None of the Connecticut Supreme Court decisions cited by the plaintiff support her argument that counts one and three state a cause of action. Indeed, the plaintiff does not really argue that she has a private cause of action. She just argues that she has some rights under the Connecticut constitution, and she ought to be able to sue to enforce them.

Finally, count four that asserts civil conspiracy must fail. A claim for civil conspiracy is legally insufficient unless it is based on some underlying cause of action. Our Supreme Court has

held that there is “no independent claim of civil conspiracy.” *Macomber v. Travelers Property and Casualty Corp.*, 277 Conn. 617, 636, 894 A.2d 240 (2006). “Rather, [t]he action is for damages caused *by acts committed pursuant to a formed conspiracy* rather than by the conspiracy itself. ... Thus, to state a cause of action, a claim of civil conspiracy must be joined with an allegation of a substantive tort.” (Emphasis in original.) *Id.* As explained above, there is no allegation of a substantive tort in counts one and three. Therefore, there is no civil conspiracy claim.

The motions to strike counts one, three and four against DeCola and McDermott are granted.

BY THE COURT,



Hon. Elizabeth J. Stewart