

**AT STAMFORD**  
**123 HOYT STREET**  
**STAMFORD, CT 06905**

DOCKET NO. FST-CV-23-6063296-S : SUPERIOR COURT

CANDACE GARTHWAITE & : 2024 MAY 23 P 12: 31 : JUDICIAL DISTRICT OF

ERNEST GARTHWAITE : STAMFORD-NORWALK

V. : AT STAMFORD

DYLAN MORLEY ET AL. : MAY 23, 2024

**MEMORANDUM OF DECISION AS TO MOTIONS TO DISMISS # 102 & #106**

Defendants Dylan Morley and Bianca Stauffer (“Morley and Stauffer”) and defendants Rebecca Dybas and Jeffrey Dybas (“the Dybas defendants”) have moved to dismiss the complaint on the basis that the court lacks personal jurisdiction as a result of the plaintiffs’ failure to properly serve the complaint that was filed in this action. Specifically, these defendants assert that the complaint that the plaintiff served on them was missing numerous pages alleging the facts that relate to the claims that the plaintiffs have asserted as to these defendants. As both motions allege the same basis for dismissal, this memorandum of decision shall serve as a ruling as to both pending motions. As detailed below, both motions to dismiss are granted and the plaintiffs’ objection is overruled.

**FACTS**

On August 28, 2023, state marshal Robert Wolfe served defendants Morley and Stauffer each with a writ of summons and a copy of a partial complaint that purported to state the claims being alleged against all the named defendants in this case. These copies were left at Morley and Stauffer’s place of abode and these copies have been filed as attachments to the Affidavits filed by Morley and Stauffer in support of their motion to dismiss. Both copies were twenty-six pages in length but were missing five non-consecutive pages. The defendants allege that these pages

contain the specific factual allegations that pertain to them and that as a result, these pages are vital to their understanding of the claims that the plaintiffs have alleged against them.

Moreover, the copy of the complaint that was electronically filed with the court was also not the same version as the copies of the complaint that were served on Morley and Stauffer. The copy of the complaint that was filed with the court was the complete and accurate copy of the complaint and included the necessary pages that were missing from the copies served on Morley, Stauffer, and the Dybas defendants.

The Dybas defendants have alleged essentially the same facts in their motion to dismiss and have submitted the affidavit of Rebecca Dybas in support of their motion.

#### **PROCEDURAL HISTORY**

The plaintiffs filed the summons and complaint on September 22, 2023. On October 23, 2023, the plaintiffs filed an amended writ, summons, and complaint. On November 2, 2023, defendants Morley and Stauffer filed their motion to dismiss as did the Dybas defendants. On November 3, 2023, the plaintiff filed an amended return of service. On November 15, 2023, the plaintiff filed a request for leave to amend the complaint and defendants Morley and Stauffer and the Dybas defendants filed their objections on November 30, 2023. On December 4, 2023, the plaintiffs filed their memorandum in opposition to both motions to dismiss.

These matters were placed on the short calendar on February 26, 2024, at which time oral argument on these matters was held.

#### **LEGAL PRINCIPLES**

“A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the

record, the court is without jurisdiction.” (Internal quotation marks omitted.) *Weiner v. Clinton*, 100 Conn. App. 753, 756-57, 919 A.2d 1038, cert. denied, 282 Conn. 982, 926 A.2d 669 (2007), quoting *Filippi v. Sullivan*, 273 Conn. 1, 8, 866 A.2d 599 (2005). “A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide.” (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014). “If a defendant challenges the court’s personal jurisdiction, the plaintiff bears the burden of proving the court’s jurisdiction.” (Internal quotation marks omitted.) *Golodner v. Women’s Center of Southeastern Connecticut, Inc.*, 281 Conn. 819, 825-26, 917 A.2d 959 (2007).

“[T]he grounds which may be asserted in [a motion to dismiss] are: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper avenue; (4) insufficiency of process; and (5) insufficiency of service of process.” *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985). “A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Housatonic Railroad Co. v. Commissioner of Revenue Services*, 301 Conn. 268, 274, 21 A.3d 759 (2011). “The motion to dismiss . . . admits all facts which are well pleaded . . . .” (Internal quotation marks omitted.) *Cogswell v. American Transit Ins. Co.*, 282 Conn. 505, 516, 923 A.2d 638 (2007).

“A motion to dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction.” *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 626 (2013). Such a motion “admits all facts which are well pleaded, invokes the existing record and must be decided upon

that alone.” Id. When a motion to dismiss “is accompanied by supporting affidavits containing undisputed facts, the court may look to their content for determination of the jurisdictional issue and need not conclusively presume the validity of the allegations of the complaint.” *Wilcox v. Webster Ins. Inc.*, 294 Conn. 206, 209 (2009).

“A motion to dismiss shall be used to assert ... insufficiency of service of process.” Practice Book §10-30(a)(4). “[J]urisdiction over the person, jurisdiction over the [subject matter], and jurisdiction to render the particular judgment are three separate elements of the jurisdiction of a court.” (Internal quotation marks omitted.) *Morgan v. Hartford Hospital*, 301 Conn. 388, 401, 21 A. 3d 451 (2011). “Jurisdiction over the person is the legal power and authority of a court to render a personal judgment against a party to an action or proceeding.” *Talenti v. Morgan & Brother Manhattan Storage Co.*, 113 Conn. App. 845, 853-54, 968 A. 2d 933, cert. denied, 292 Conn. 908, 973 A. 2d 105 (2009).

“Failure to comply with the statutory requirements of service [of process] renders a complaint subject to a motion to dismiss on the ground of lack of personal jurisdiction ... Facts showing the service of process in time, form, and manner sufficient to satisfy the requirements of mandatory statutes in that regard are essential to jurisdiction over the person.” (Internal quotation marks omitted.) *Morgan, supra*, 301 Conn. 401. “Because service of process implicates a court's personal jurisdiction, an action commenced by ... improper service must be dismissed.” (Internal quotation marks omitted.) *Alldred v. Alldred*, 132 Conn. App. 430, 431 31 A. 3d 1185 (2011), cert. dismissed, 303 Conn. 926, 35 A. 3d 1075 (2012).

“[A]ny claim of lack of jurisdiction over the *person* as a result of an insufficiency of service of process is *waived* unless it is raised by a motion to dismiss filed within thirty days in the sequence required by Practice Book § 10-6...” (Emphasis in original.) *Pitchell v. Hartford*,

247 Conn. 422, 433, 711 A. 2d 797 (1999). “Facts showing the service of process in time, form, and manner sufficient to satisfy the requirements of mandatory statutes in that regard are essential to jurisdiction *over the person*.” (Citation omitted; emphasis in original; internal quotation marks omitted.) *Bridgeport v. Debek*, 210 Conn. 175, 179-80, 554 A. 2d 728 (1989).

“One who is not served with process does not have the status of a party to the proceeding ... A court has no jurisdiction over persons who have not been made parties to the action before it.” (Citation omitted; internal quotation marks omitted.) *Security Ins. Co. of Hartford v. Lumbermens Mutual Casualty Co.*, 264 Conn. 688, 722, 826 A. 2d 107 (2003); *Exley v. Connecticut Yankee greyhound Racing, Inc.*, 59 Conn. App. 224, 234-35, 755 A. 2d 990, cert. denied, 254 Conn. 939, 761 A. 2d 760 (2000).

Under General Statutes § 52-57(a), “process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state.” The statute's “chief purpose is to ensure actual notice to the defendant that the action is pending.” *Smith v. Smith*, 150 Conn. 15, 20, 183 A. 2d 848 (1962).

### DISCUSSION

In their motions to dismiss, Morley and Stauffer and the Dybas defendants have alleged that because the plaintiffs served them with a copy of the complaint that was missing five pages and which thus differed from the copy that was filed with the court, the copy that was filed with the court is an inaccurate representation of what was served on them. Moreover, they allege that the copies of the complaints that were served on these defendants was incomplete so that these copies failed to adequately inform these defendants of the nature of the claims against them. For

these reasons, they allege that the service of process in this case was deficient and leaves the court with no jurisdiction over them as defendants in this case.

In their objection, the plaintiffs allege that they cured the defective service by serving each defendant a second time on November 2, 2023, as of right and filed an Amended Return of Service on that same date. They argue that the defect was technical in nature, they cured the defect as of right by serving the defendants with a complete copy of the complaint a second time, and that the service of the second copy of the complaint is functionally equivalent to adding new counts to the complaint so that the motion to dismiss should be denied. They further argue that serving a complaint with pages missing is not the basis for a claim of lack of personal jurisdiction as this is not a material alteration as would typically rise to the level of a jurisdictional issue, and that the defendants were provided sufficient notice of the claims being asserted against them.

In reviewing the copy of the complaint that the plaintiff had initially served upon Morley and Stauffer (one of these copies was attached as an exhibit to the Affidavit of Dylan Morley) it is obvious that the missing pages from the complaint contain material information that apprises these defendants of the exact claims that the plaintiffs have alleged against them. In reading the contents of the complaint that was initially served on Morley and Stauffer, it is clear that in the absence of the missing pages, the complaint fails to adequately apprise the defendants of the claims alleged against them. This is even more problematic in light of the fact that there are numerous named defendants in this lawsuit and the allegations alleged against each of them are distinct and pertain to the specific conduct of each defendant.

Moreover, even a cursory review of the pages in the versions of the complaint that were initially served on Morley and Stauffer and the copies served on the Dybas defendants

demonstrates that not only are several pages missing, but the contents of these pages is vitally necessary in order to understand what is being alleged in the complaint as a whole as well as in the individual counts. In addition, as Connecticut is a notice pleading state, the complaint must be adequate in form and substance so as to provide adequate notice of the allegations to the opposing party and to counsel, as well as to the court. Thus, filing the complete and accurate version of the complaint with the court prior to serving the defendants with the complete and accurate version of the complaint is insufficient since, in Connecticut, service of process commences the lawsuit. See General Statutes §52-45a and Practice Book § 8-1. Here, the missing pages from the versions of the complaint that were initially served on these defendants resulted in the plaintiffs having failed to satisfy this requirement. Thus, the court disagrees with the plaintiffs' claim that the complaint as served provided sufficient notice to these defendants of the claims asserted against them.

In addition, the court is not persuaded by the plaintiffs' claim that the defective service challenge raised by the defendants amounts to a sufficiency of the pleading claim and that the claim is not a jurisdictional one. A sufficiency of the pleading argument attacks the technical propriety of a claim. See *Patel v. Flexo Converters Meriden, Inc., et al.*, Superior Court, judicial district of New Haven, Docket No. CV 096000516 (June 22, 2011, *Fischer, J.*) (2011 WL 3215392). To the contrary, the defendants' claims in their motions to dismiss are based on the theory that because the complaints that were served on them were incomplete due to material omissions by way of the missing pages and the allegations contained therein, the complaint effectively failed to accomplish what the complaint is intended to do.

Namely, these defendants have alleged that the complaint failed to apprise the defendants of the allegations that the plaintiffs have made against them. Thus, these defendants

are not claiming that the allegations made against them are legally insufficient. Rather, they are claiming that they were never adequately apprised of the allegations made against them in the first place.

The defendants have also expressly alleged and argued in their motions to dismiss that the court lacks personal jurisdiction over them precisely because the complaint that was served on them was missing pages, and it has been established that a claim of a lack of personal jurisdiction is an issue that must be raised in a motion to dismiss. See *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985).

Furthermore, superior court judges have previously found that when a complaint has been served with pages missing, this amounts to a failure to serve the defendant with the operative pleading and thus renders service ineffective and deprives the court of personal jurisdiction over the defendant who was improperly served. See *Flynn v. Kohler*, Superior Court, judicial district of Stamford, Docket No. FSTCV 225027404, (May 16, 2023, *Clark, J.*), 2023 WL 3596298 at \* 5.

“Because service of process implicates a court's personal jurisdiction, an action commenced by improper service must be dismissed.” *Alldred v. Alldred*, 132 Conn. App. 430, 431, 31 A. 3d 1185 (2011), cert. dismissed, 303 Conn. 926, 35 A. 3d 1075 (2012) (internal quotation marks omitted). “[T]he Superior Court ... may exercise jurisdiction over a person *only if that person has been properly served with process*, has consented to the jurisdiction of the court or has waived any objection to the court's exercise of personal jurisdiction.” *Id.* at 434. (internal quotation marks omitted; emphasis in original).

In this matter, the defendants have not consented to the jurisdiction of the court nor have they waived their objections to the court's exercise of jurisdiction over them. To the contrary,



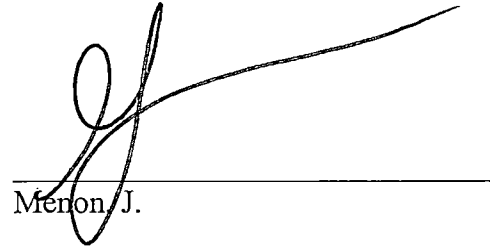
they have challenged the court's jurisdiction by moving to dismiss the action. "If a defendant challenges the court's personal jurisdiction, the plaintiff bears the burden of proving the court's jurisdiction." *Golodner v. Women's Center of Southeastern Connecticut, Inc.*, 281 Conn. 819, 825, 917 A. 2d 959 (2007).

Finally, the plaintiffs' reliance on the argument that no other court has held that missing pages deprives it of personal jurisdiction over defendants that were served a defective complaint is misplaced. The plaintiffs have relied on Judge Sicilian's decision in *Richey v. Newsome* but have misunderstood the court's reasoning in that case. In *Richey*, Judge Sicilian found that the court need not decide whether the missing pages from the complaint amounted to ineffective service as to one specific defendant simply because the court had already found that the service was ineffective as to all the defendants except one.

Moreover, the court found in that case that the service of process on all defendants except for one was ineffective as a matter of law to confer personal jurisdiction over them. Thus, the *Richey* decision undermines the plaintiffs' argument. See *Richey v. Newsome*, Superior Court, judicial district of Tolland at Rockville, Docket No. TTDCv1950115953, (March 15, 2019, *Sicilian, J.*), 2019 WL 1766164. Here, the plaintiffs have failed to meet their burden of proof and have not established that this court has personal jurisdiction over Morley and Stauffer, or over the Dybas defendants.

CONCLUSION

For the foregoing reasons, the court grants the motions to dismiss filed by defendants Morley and Stauffer and the Dybas defendants and overrules the plaintiffs' objections.



Menon, J.

DECISION ENTERED IN  
ACCORDANCE WITH THE  
FOREGOING ON 5/23/24.  
JD NO SENT 5/23/24  
Ryan [Signature] DCC