DOCKET NO: CV-22 6119078	:	SUPERIOR COURT
SAMOWITZ & SAMOWITZ, LLC	:	JUDICIAL DISTRICT OF BRIDGEPORT
V.	:	
SEAVIEW VILLAGE CONDOMINIUM ASSOC., INC.	:	MAY 17, 2024

MEMORANDUM OF DECISION

STATEMENT OF THE CASE

The plaintiff, Samowitz & Samowitz, LLC, instituted this action against the defendant, Seaview Village Condominium Association, Inc., on October 31, 2022. In summary, the operative amended complaint alleges that the plaintiff and the defendant executed a retainer agreement for the plaintiff to perform legal services on behalf of the defendant, and when the defendant terminated the agreement, it failed to pay the amounts owed under the contract after a demand for payment was made. Based on these facts, the plaintiff asserts four causes of action (1) contract; (2) implied contract; (3) promissory estoppel; and (4) unjust enrichment. Pending for the court is the plaintiff's motion to strike the defendant's counterclaims and special defenses. The defendant has objected to the motion. For the following reasons the motion is denied and the objection sustained.

Seaview filed its answer, special defenses, and counterclaims on September 28, 2023. (Entry No. 130.00.) Seaview asserts three special defenses and four counterclaims. It claims the special defenses of: (1) setoff; (2) recoupment; and (3) unclean hands. Its counterclaims are: (1) unjust enrichment; (2) money had and received; (3) recoupment; and (4) common law action for

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accounting.

Thereafter, on October 11, 2023, Samowitz filed the pending motion to strike all of Seaview's counterclaims and special defenses. (Entry No. 135.00.) Seaview filed its memorandum of law in opposition to the motion to strike on November 13, 2023. (Entry No. 141.00.) Subsequently, Samowitz filed a reply memorandum on December 7, 2023. (Entry No. 142.00.) The court heard oral arguments on February 6, 2024.

DISCUSSION

I
MOTION TO STRIKE

"[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 [pleading] in the manner most favorable to sustaining its legal sufficiency. . . . 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 [pleading] challenged by a [party'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." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016).

"In ruling on a motion to strike the trial court is limited to considering the grounds specified in the motion." *Meredith* v. *Police Commission*, 182 Conn. 138, 140, 438 A.2d 27 (1980); see *Hlinka* v. *Michaels,* 204 Conn. App. 537, 546, 254 A.3d 361 (2021) ("Because the defendant was not provided with reasonable notice that her special defense of laches could be

struck, we conclude that the court acted improperly when it, sua sponte, struck that defense.").

"A motion to strike tests the legal sufficiency of a cause of action and may properly be used to challenge the sufficiency of a counterclaim." (Internal quotation marks omitted.) *Cadle Co.* v. *D'Addario*, 131 Conn. App. 223, 235, 26 A.3d 682 (2011). "A counterclaim has been defined as a cause of action existing in favor of a defendant against a plaintiff which a defendant pleads to diminish, defeat or otherwise affect a plaintiff's claim and also allows a recovery by the defendant. . . . In other words, a counterclaim is a cause of action . . . on which the defendant might have secured affirmative relief had he sued the plaintiff in a separate action." (Citation omitted; internal quotation marks omitted.) *Historic District Commission* v. *Sciame*, 152 Conn. App. 161, 176, 99 A.3d 207, cert. denied, 314 Conn. 933, 102 A.3d 84 (2014). "In addition to challenging the legal sufficiency of a complaint or counterclaim, our rules of practice provide that a party may challenge by way of a motion to strike the legal sufficiency of an answer, 'including any special defenses contained therein. . . .' Practice Book § 10-39; see also Practice Book § 10-6." *GMAC Mortgage, LLC* v. *Ford*, 144 Conn. App. 165, 179–80, 73 A.3d 742 (2013).

II

As a preliminary matter, the court notes that an extraordinarily difficult task was presented in adjudicating the issues raised in the motion to strike. Its arguments were so convoluted and vague that the rules of practice were not followed. See generally, *Hlinka* v. *Michaels*, supra, 204 Conn. App. 545. (Internal quotation marks omitted.) ("Our rules of practice include Practice Book § 10-39 et seq., which governs motions to strike; its proscriptions for its purpose and use are carefully set out. Given what may be the legal consequence to a party against

whom such a motion is granted, the movants should be required to follow our rules of practice, especially as to the party or parties against whom it is directed. We cannot say that it is an unreasonable practice to condition the right to the remedy sought by a movant on a motion to strike on the requirement that the movant plead for that relief in a manner so that all parties directly concerned know that they are the object of such relief requested.") Consequently, the motion to strike is denied on its merits but also because of its violation of the following procedural requirements.

A
Compliance with Practice Book § 10-39 (b)

Practice Book § 10-39 (b) states: "Each claim of legal insufficiency enumerated in this section shall be separately set forth and shall specify the reason or reasons for such claimed insufficiency." "Practice Book § [10-39 (b)] requires that a motion to strike raising a claim of insufficiency shall separately set forth each such claim of insufficiency and shall distinctly specify the reason or reasons for each such claimed insufficiency. Motions to strike that do not specify the grounds of insufficiency are fatally defective and, absent a waiver by the party opposing the motion, should not be granted. . . . Practice Book § [10-39 (c)], which requires a motion to strike to be accompanied by an appropriate memorandum of law citing the legal authorities upon which the motion relies, does not dispense with the requirement of [Practice Book § 10-39 (b)] that the reasons for the claimed pleading deficiency be specified in the motion itself." (Internal quotation marks omitted.) *Stuart* v. *Freiberg*, 102 Conn. App. 857, 861, 927 A.2d 343 (2007). "Simply stating that all of the counts 'are legally insufficient' and that they 'fail to allege any facts that would indicate [that the] defendant is liable to [the] plaintiffs' cannot be

considered compliance with Practice Book § [10-39 (b)]." Id., 862.

The court first notes that Samowitz did not file a separate motion to strike and an accompanying memorandum of law. Instead, Samowitz filed only a motion to strike that served to act as both. Although the motion to strike in a generalized, vague way states that Seaview's counterclaims are deficient, it does so without any detailed, supporting legal arguments. Samowitz only argues that each of Seaview's counterclaims are "unusual," but not how they are insufficient as a matter of law, with the one exception that Samowitz contends that the counterclaims are "unrelated" and do not pass the 'same transaction test'.

Additionally, the motion to strike addresses Seaview's three special defenses together in a cursorily manner by stating, "Plaintiff moves to strike all defendant[']s special defense[s] because there are no factual, allegations consistent with a recognizable affirmative defense raised such as accord and satisfaction or any facts to support any claim to which Plaintiff can understand how to respond." (Entry No. 135.00.)

In short, after considering the motion to strike and the reply memorandum together, the court concludes that the motion is simply too vague and deficient to comply with the requirements of § 10-39 (b).

B
Compliance with Practice Book § 10-39 (c)

Practice Book § 10-39 (c) states: "Each motion to strike must be accompanied by a memorandum of law citing the legal authorities upon which the motion relies." Additionally, our courts hold that "[w]here a claim is asserted . . . but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned."

(Internal quotation marks omitted.) *Traylor* v. *State*, 332 Conn. 789, 805, 213 A.3d 467 (2019); see *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, 245 Conn. 1, 38, 717 A.2d 77 (1998) (issues that are not adequately briefed are deemed abandoned). "When a memorandum of law fails to cite any legal authority, the memorandum is functionally equivalent to no memorandum at all." (Internal quotation marks omitted.) *Jasmin* V. *New England Plasma Development Corp.*, Superior Court, judicial district of Windham, Docket No. CV-04-4000706-S (July 13, 2005, *Foley, J.*).

Except for references to the same transaction test (discussed below), Samowitz does not cite to any case law in the moving documents to support his arguments. Further, the discussion about the same transaction test does not actually explain why Seaview's counterclaims fail this test or why they are otherwise legally deficient. In short, the arguments as presented fail to comply with the requirements of § 10-39 (c).

C
Facts Outside of the Pleadings

"A speaking motion to strike is one improperly importing facts from outside the pleadings. . . . [They] have long been forbidden by our practice . . . ." (Citations omitted.) *Mercer* v. *Cosley*, 110 Conn. App. 283, 292 n.7, 955 A.2d 550 (2008). "It is well established that a motion to strike must be considered within the confines of the pleadings and not external documents . . . . We are limited . . . to a consideration of the facts alleged in the [pleading]." (Internal quotation marks omitted.) *Zirinsky* v. *Zirinsky*, 87 Conn. App. 257, 268–69 n.9, 865 A.2d 488, cert. denied, 273 Conn. 916, 871 A.2d 372 (2005); see also *Rowe* v. *Godou*, 209 Conn. 273, 278, 550 A.2d 1073 (1988) (in ruling on motion to strike, court cannot resort to information

outside of complaint); *Beck & Beck, LLC* v. *Costello*, 159 Conn. App. 203, 207, 122 A.3d 269 (2015) (trial court will not look beyond challenged pleading for facts not alleged, or necessarily implied).

Seaview argues that Samowitz has alleged facts outside the pleadings and that they should not be considered by the court when ruling on the motion to strike. The court agrees. The court will disregard Samowitz's attacks on the substance of the counterclaims that refer to facts outside of the pleadings.

II
Same Transaction Test

Practice Book § 10-10 provides, in relevant part: "In any action for legal or equitable relief, any defendant may file counterclaims against any plaintiff . . . provided that each such counterclaim . . . arises out of the transaction or one of the transactions which is the subject of the plaintiff's complaint . . . ." "Our Supreme Court has instructed that the [r]elevant considerations in determining whether the transaction test has been met include whether the same issues of fact and law are presented by the complaint and the [counter]claim and whether separate trials on each of the respective claims would involve a substantial duplication of effort by the parties and the courts." (Internal quotation marks omitted.) *South Windsor Cemetery Assn., Inc.* v. *Lindquist*, 114 Conn. App. 540, 547, 970 A.2d 760, cert. denied, 293 Conn. 932, 981 A.2d 1076 (2009). "In assessing the legal viability of a counterclaim and, in particular, whether it arises from the same transaction as the complaint, [courts] have not required a complete identity of issues. Rather, the claims must have a sufficient closeness that the trial of the complaint and counterclaim will not imperil judicial economy." *CitiMortgage, Inc.* v. *Rey*, 150 Conn. App. 595, 606, 92 A.3d 278,

cert. denied, 314 Conn. 905, 99 A.3d 635 (2014).

Samowitz argues that Seaview's counterclaims do not meet the same transaction test because they stem from a separate factual background. In response, Seaview argues that "[t]he counterclaims are all directly related to the plaintiff's collection action and the defendant's special defenses to that action. All of the counterclaims pertain to work allegedly performed by the plaintiff under a purported retainer agreement with the defendant (and also those under theories of unjust enrichment, promissory estoppel and implied contract) and therefore meet the transaction test." (Entry No. 141.00.) The court agrees with the defendant.

Seaview asserts four counterclaims: (1) unjust enrichment; (2) money had and received; (3) recoupment; and (4) common law action for accounting. Seaview alleges that all four of these counterclaims stem from the basis that "[t]he counterclaim defendant, Samowitz & Samowitz, LLC, provided, or purported to provide, legal services for and/or on behalf of the counterclaim plaintiff, Seaview Condominium Association, Inc." (Entry No. 130.00.) Viewing the factual allegations of the counterclaims liberally and assuming their truth as required by the court in adjudication a motion to strike, all the counterclaims are premised on the following facts. According to the counterclaims, Samowitz seeks payment for fees, pursuant to the retainer agreement, for work that was not authorized to be performed or for work that was excessive and/or unnecessary. Furthermore, this work did not actually benefit Seaview, and the fees claimed are unreasonable and/or inaccurate. The defendant further states that Samowitz has retained money that he was not entitled to, and that his actions have caused Seaview to be subject to other litigation. Comparing these allegations to the allegations of the complaint, the court must conclude that the counterclaims are sufficiently based on Samowitz's billings and legal

work for satisfaction of the same transaction test. A separate trial on the counterclaims would involve a substantial duplication of effort by both the parties and the court. Consequently, Seaview's counterclaims meet the same transaction test as required in Practice Book § 10-10.

In regard to the defendant's special defenses, the court rejects Samowitz's argument that they should be stricken for failing to satisfy the same transaction test. Pursuant to Practice Book § 10-50, a special defense is required to respond to a claim in the complaint and it is not subject to the exact same transaction test as counterclaims. Here, the facts pleaded by Seaview in its special defenses are consistent with the allegations of the complaint and they are related to the facts alleged in the complaint, which is all that is required by Practice Book § 10-50. Thus, the special defenses comply with the applicable rules of practice. The plaintiff's arguments to the contrary are meritless and rejected.

CONCLUSION

For these reasons the plaintiff's motion to strike is DENIED and the defendant's objection to the motion is SUSTAINED.

So ordered this 17th day of May 2024.

HONORABLE BARRY STEVENS
JUDGE TRIAL REFEREE