DOCKET NO.: DBD-CV-23-6047280-S

SUPERIOR COURT

CINDERINE PARSARD, ET AL.

J. D. OF DANBURY

V.

AT DANBURY

CHRISTOPHER JACKSON, ET AL.

MAY 1, 2024

MEMORANDUM OF DECISION
RE: MOTION TO STRIKE (# 116.00)

The Nature of the Proceedings

This is a personal injury action in which plaintiffs Cinderine Parsard ("Parsard"), Jayden Bonilla ppa Parsard ("J. Bonilla") and Marilyn Bonilla ("M. Bonilla") (collectively, Parsard, J. Bonilla and M. Bonilla are "plaintiffs") seek money damages arising out of an August 21, 2021 motor vehicle accident on Interstate - 84, near Exit 8 in Bethel, Connecticut. Parsard is alleged to have been the driver of a vehicle in which J. Bonilla and M. Bonilla were passengers. Plaintiffs' August 17, 2023 complaint ("complaint") alleges the Parsard-driven vehicle was struck in the rear by a vehicle driven by defendant Christopher Jackson ("Jackson"). Plaintiffs further allege Jackson was driving his vehicle (a) with the permission and/or authorization of the defendant The Stop & Shop Supermarket Company, LLC ("Stop & Shop") and (b) while engaged in his role as an employee, officer, agent, and/or servant of Stop & Shop. Plaintiffs assert the same vicarious liability claims against defendant Ahold Delhaize USA, Inc. ("Delhaize") that they assert against Stop & Shop.

Plaintiffs' complaint has thirty counts. Counts one through ten, asserted on behalf of Parsard, sound in:

a. negligence versus Jackson (count 1)

b. statutory recklessness versus Jackson (count 2)

c. common law recklessness versus Jackson (count 3)

d. vicarious liability, versus Stop & Shop arising out of Jackson's alleged negligence (count 4)

e. negligent hiring, training or supervision versus Stop & Shop (count 5)

f. negligence versus Stop & Shop (count 6)

g. vicarious liability versus Delhaize arising out of Jackson's alleged negligence (count 7)

h. negligent hiring, training or supervision versus Delhaize (count 8)

i. negligence versus Delhaize (count 9)

j. vicarious liability versus Stop & Shop arising out of Jackson's alleged negligence (count 10)

Counts eleven through twenty are asserted on behalf of J. Bonilla mirroring counts one through ten respectively, while counts twenty-one through thirty are asserted on behalf of M. Bonilla sounding in the same, respective causes of action.

Before the court is the defendants' motion to strike counts two, three, five, eight, twelve, thirteen, fifteen, eighteen, twenty-two, twenty-three, twenty-five and twenty-eight. Defendants seek to have the court strike those counts sounding in (a) negligent hiring, training and/or supervision (b) common law recklessness and (c) statutory recklessness. The court has reviewed and considered the motion, objection thereto and all memoranda filed in connection therewith.

Applicable Standard

"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); Practice Book § 10-39 (a)(3). When ruling upon a motion to strike, this court must accept all well-

plead facts but not legal conclusions or opinions. *Mingachos* v. *CBS, Inc.*, 196 Conn. 91, 108 (1985). Complaints are to be construed "in the manner must favorable to sustaining legal sufficiency" and if "facts provable in the complaint would support a cause of action, the motion to strike must be denied." *Battle-Homngren* v. *Commissioner of Public Health*, 281 Conn. 277, 294 (2007). "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 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). However, the court may not consider arguments or proffered inferences offered to supplement the challenged count as the court is limited to the facts actually alleged in the complaint. *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 580 (1997).

Discussion

A. Plaintiffs' Complaint

Of the fourteen paragraphs in the plaintiffs' complaint which are incorporated in their additional counts, paragraphs eight and nine asserted on Parsard's behalf [1] purport to provide a factual basis for the claims by alleging:

8. On said date and time (August 21, 2021), the defendant drove into the rear of the plaintiff's motor vehicle, causing a collision.

9. The aforesaid collision was caused by the negligence and/or carelessness of the defendant in one or more of the following respects:

[1] Those paragraphs appear verbatim in count eleven on behalf of J. Bonilla and count twenty-one on behalf of M. Bonilla.

(a) In that he was travelling too fast for traffic conditions then and there existing in violation of Connecticut General Statutes § 14-218a;

(b) In that he followed the plaintiff's motor vehicle too closely in violation of Connecticut General Statutes § 14-240;

(c) In that he failed to operate a motor vehicle in a safe and reasonable manner;

(d) In that he failed to maintain a proper lookout;

(e) In that he failed to keep proper control of the motor vehicle which he was operating;

(f) In that he failed to sound the horn or give warning of the impending collision;

(g) In that he failed to apply the brakes in time to avoid the collision;

(h) In that he failed to properly observe the plaintiff's motor vehicle; and

(i) In that he failed to turn or swerve the motor vehicle which he was operating to avoid the collision with the plaintiff's motor vehicle.

Those factual allegations are followed by additional allegations discussed further below.

B. Negligent hiring, training and/or supervision

In counts five, eight, fifteen, eighteen, twenty-five and twenty-eight, plaintiffs seek to recover from Stop & Shop and Delhaize for what they allege was their "negiligent hiring, training, and/or supervision" of defendant Jackson. In each of those counts plaintiffs rely on allegations incorporated by reference from their first count, and these additional allegations:

a. It failed to properly screen Defendant Jackson prior to hiring him;

b. It failed to properly train Defendant Jackson to operate motor vehicles when it knew or should have known that the failure to provide such training could pose a danger to others on the road, including but not limited to the plaintiff;

c. It failed to properly train Defendant Jackson to refrain from operating motor vehicles in such a manner as to cause collisions with other motor vehicles, when it knew or should have known that failure to provide such training could pose a danger to others on the road, including but not limited to the plaintiff;

d. In that it failed to properly train Defendant Jackson to refrain from operating motor vehicles in an unsafe and/or inappropriate manner, when it knew or should have known

that failure to provide such training could pose a danger to others on the road, including but not limited to the plaintiff;

e. It failed to properly monitor and/or supervise Defendant Jackson during his operation of the subject motor vehicle when it knew or should have known that Defendant Jackson posed a danger to others on the road while operating such motor vehicles.

Relying upon decisions such as *Petruzello* v. *Negron, et. al.* Superior Court, judicial district of New Haven, Docket No. NHH.CV.21.6113803-S, 2022 WL 1049200 (March 4, 2022, Abrams, J.) and *Ritacco* v. *Archila, et. al.* Superior Court, judicial district of New London, Docket No. CV-08-5006526, 2008 WL 5572956 (December 31, 2008, *Martin, J.*) where motions to strike claims of negligent hiring, training and/or supervision were granted, defendants urge this court to adopt the reasoning set forth in those precedents. In both *Petruzzello* and *Ritacco*, the court granted the motion to strike because the complaint lacked any factual assertion that the employer had ". . . notice of (the) employee's propensity for the type of behavior causing the plaintiff's harm" *Petruzzello* at 4, *Ritacco* at 3.

Plaintiff's objection argues that their allegations are sufficient to apprise the defendants of the claim asserted thereby satisfying Practice Book §10-35(1). Plaintiffs also argue that any additional facts relevant to the cause of action are evidentiary in nature and properly the subject of discovery to be conducted. Plaintiffs rely on precedents setting forth general foreseeability standards arising out of dissimilar factual contexts such as *Allen* v. *Cox,* 285 Conn 603, 610 (2008) [cat attack] and *Jaworski* v. *Kiernan* 241 Conn. 399, 405 (1997) [adult co-ed soccer match].

This court recognizes that too strict an adherence to the "propensity" standard could render the cause of action almost impossible to allege. However, limited to the four corners of the complaint, this court finds that the challenged counts in this case contain no factual assertions which satisfy *Petruzzello* or *Ritacco* both of which this court finds persuasive and elects to follow. Without any such facts in the complaint, the remaining allegations constitute the type of conclusion

or opinion that *Mingachos* v. *CBS, Inc.*, 196 Conn. 91 (1985) instructs this court to not accept when ruling upon a motion to strike. Absent any factual allegations regarding Defendant Jackson's background or history which would support the cause of action, defendants' motion to strike counts five, eight, fifteen, eighteen, twenty-five and twenty-eight is granted.

C. Statutory recklessness

In counts two, twelve and twenty-two, plaintiffs assert allegations of statutory recklessness under section 14-295 of the General Statutes. Plaintiffs specifically cite sections 14-218a and 14-222 of the General Statutes and make factual assertions such as "he (Jackson) deliberately operated his motor vehicle at a rate of speed much too fast for the traffic conditions then and there existing. . . (compl. Paragraph 9(a) and ". . . deliberately operated his motor vehicle at a rate of speed greater than was reasonable, with reckless disregard of the width, traffic and use of the highway. . . (compl. Paragraph 9(b). Both defendants' motion and plaintiff's objection acknowledge the split of authority in Superior Court decisions between the majority and minority viewpoints. The majority view allows plaintiffs to rely upon the clear language of section 14-295 while the minority view requires a greater level of specificity in identifying the specific conduct alleged to have been reckless and that such conduct be more than mere negligence.

Defendants seem to argue that this court is bound by or must follow *Cloutier* v. *Meinerth*, Superior Court, judicial district of Danbury, Docket No. 329940 (February 25, 1998, *Moraghan, J.*) which applied the minority view. This court disagrees. This court concludes the majority approach to statutory recklessness is the appropriate standard to apply and that plaintiff's allegations are sufficient under such standard. Therefore, defendants' motion to strike counts two, twelve and twenty-two is denied.

D. Common law recklessness

In counts three, thirteen and twenty-three, plaintiffs assert allegations of common law recklessness relying on exactly the same assertions in paragraphs 9 (a) and 9 (b) which support their statutory recklessness claim. Defendants argue such allegations are insufficient to withstand a motion to strike as plaintiffs ". . . essentially copied and pasted. . ." from their negligence counts and merely coupled negligence allegations with recklessness descriptors such as "deliberately" and "with reckless disregard for." Plaintiffs counter that their allegations in the challenged counts ". . . sufficiently alleged both the necessary mental state and conduct to sustain a cause of action sounding in recklessness."

It is true that a plaintiff may rely upon exactly the same conduct to support both a negligence claim and a common law recklessness claim provided the ". . . factual allegations in the negligence count are detailed and specific enough to support a claim of recklessness" *Colangelo* v. *Holgerson,* Superior Court, judicial district of Stamford-Norwalk, Docket No. CV.07.5004291 (October 11, 2007, Robinson, J). Here, this court finds and concludes that the plaintiffs' allegations are not sufficiently detailed and specific to state a claim for common law recklessness.

There are no factual allegations of a rate of speed so extraordinarily fast as to elevate the conduct to common law recklessness. There are no factual allegations of distracted driving or operating under the influence or any of the factual scenarios which, in other cases, have been deemed sufficient to constitute common law recklessness. The defendants' motion to strike counts three, thirteen and twenty-three is granted.

Conclusion

For the foregoing reasons, defendants' motion to strike is (A) granted as to counts three, five, eight, thirteen, fifteen, eighteen, twenty-three, twenty-five and twenty-eight and their corresponding prayer for relief and (B) denied as to counts two, twelve and twenty-two and their corresponding prayer for relief.

Medina, J.