DOCKET NO.: MMX-CV-23-6037152-S	: SUPERIOR COURT
LEO D. CALDARELLA	: JUDICIAL DISTRICT OF MIDDLESEX
v.	: AT MIDDLETOWN
ALLEN RIVES POTTS, ET AL	: JUNE 5, 2024

MEMORANDUM OF DECISION
REGARDING DEFENDANTS' MOTIONS TO STRIKE (#207.00, 210.00, 222.00)

The defendants Allen Rives Potts (Potts), 142 Ferry Road, LLC, Thomas Walker Potts and Ferry Landing LLC (defendants) move to strike the second revised complaint (complaint) dated February 20, 2024 (Entry No. 193). See Docket Entry No. 207. The defendants Thomas Walker Potts (Walker), 54 Ferry Road #2 (CT), LLC and RRM2 (CT), LLC (collectively, ragged rock defendants) move to strike counts sixteen (aiding and abetting) and seventeen (declaratory judgment) of the complaint. See Docket Entry No. 210. Defendant Valerie Votto (Votto) moves to strike counts nine through fifteen of the complaint. See Docket Entry No. 222. The plaintiff opposes each of the motions and claims their allegations are legally sufficient to support each of the counts of the complaint. The court heard the motions on May 8, 2024.

I
FACTUAL BACKGROUND

The plaintiff's complaint sets forth nineteen causes of action against the defendants, the ragged rock defendants, and Votto that arise from an alleged partnership between the plaintiff Leo D. Caldarella (Caldarella) and Potts. As set forth by the complaint, the present matter concerns an alleged agreement to develop certain marina property located in Old Saybrook. The plaintiff, Leo Caldarella (Caldarella), through a variety of strategies and holdings, has been trying to develop "Marina Village," a mixed-use development concept that would use several properties on Ferry Road along the Connecticut River in Old Saybrook. See Compl., ¶¶ 19-23. After acquiring the

South Yard through one of his entities, Stack Marina, LLC, Caldarella hoped to use an option that he had secured to eventually acquire the North Yard, which would complete the portfolio of interests needed to develop Marina Village. Id. That option was not feasible, however, when the North Yard became the subject of foreclosure proceedings commenced by Guilford Savings Bank. Id., ¶ 24.

At this time, Ferry Landing was controlled by its member Dort Cameron. Caldarella and Brodeur negotiated with Dort Cameron to acquire Ferry Landing's mortgage or Ferry Landing itself so that they could then secure title to the North Yard and 163 Ferry Road (foreclosure properties) via a redemption in the foreclosure proceedings. In July of 2022, Caldarella and Brodeur, through South Yard Marina LLC, paid $50,000 to Cameron. In July of 2022, Brodeur also individually provided a $125,000 promissory note to pay Cameron. The payment and promissory note were in exchange for Cameron's promise to not further seek a foreclosure by sale, which would have threatened Caldarella and Brodeur's ability to secure title to the foreclosure properties. Id., ¶¶ 25-30.

Caldarella needed additional capital to acquire Ferry Landing and complete the redemption and also planned to seek an investor. Id., ¶ 31. Caldarella and Brodeur met with Potts and his counsel, Votto, on or about October 18, 2022, to discuss partnering in the acquisition of the foreclosure properties and Marina Village development. Id., ¶ 32. At the meeting, Caldarella and Brodeur explained the Marina Village development opportunity and the strategy for acquiring the Foreclosure Properties. Id., ¶ 33. At the meeting, Potts said he wanted to partner with Caldarella on securing the foreclosure properties and pursuing the Marina Village development. At this point, Caldarella could not contribute the South Yard, but Potts said he would still like to partner, and he and Caldarella agreed that it would be fair for Potts and Caldarella to be equal 50/50 partners. Id.,

¶¶ 34-36. Shortly after the meeting, however, Potts insisted that the South Yard had to be part of any deal. At that time, Caldarella did not feel he could contribute the South Yard to a partnership with Potts and continued to look for other investors. Nonetheless, in the hopes of keeping the potential deal alive, Brodeur continued to discuss the potential deal with Potts and Votto. Id., ¶¶ 37-39.

While discussions continued, the court in the GSB Foreclosure set a hearing date on Ferry Landing's motion for foreclosure by sale for Monday, November 22, 2022. This meant that any deal to acquire Ferry Landing and its mortgage had to be reached prior to the hearing or the opportunity to acquire the foreclosure properties via a redemption in a strict foreclosure might be lost. Id., ¶¶ 40-42.

On Tuesday, November 15, Caldarella determined that a deal with Potts involving the South Yard was preferential to selling the South Yard to a third party due to the substantial tax consequences such a sale would cause. On Friday, November 18, Caldarella and Potts had an in-person meeting wherein Caldarella informed Potts that he was prepared to partner with him, whereby Caldarella would contribute the South Yard, Potts would fund the acquisition of Ferry Landing and the Foreclosure Properties, and the partnership would pursue the Marina Village development opportunity. Potts accepted and agreed to partner with Caldarella. Potts confirmed the agreement in an email sent on Saturday, November 19. Id., ¶¶ 42-45.

On Saturday, November 19, Votto was informed of the agreement and instructed by Potts to work on drafting the documentation necessary to acquire the Ferry Landing membership interests. Votto prepared a draft agreement (11/19 version) that would have Cameron assign the Ferry Landing membership interests only to Potts. Votto prepared this draft agreement, had Potts sign it, and sent it to Cameron's attorney, Thomas Gugliotti, without review or approval by

Caldarella. Upon learning of Votto's drafting and transmission of the 11/19 version the same day, Caldarella and Caldarella's attorney, David Shaiken, instructed Votto to revise the agreement so that Caldarella would also be a signatory and a designated assignee of the membership interests in Ferry Landing, and specifically stated that there was no agreement between Potts and Caldarella if this did not happen. Id., ¶¶ 46-49. Potts told Caldarella he had instructed Votto to revise the agreement so that Caldarella would also be a signatory and designated assignee of the membership interests in Ferry Landing. Votto agreed to revise the 11/19 version to include Caldarella as a signatory and a designated recipient of the membership interests in Ferry Landing. Id., ¶¶ 50-51.

On Sunday November 20, 2022, after Potts's attorney originally drafted a proposed assignment that named only Potts as the assignee, Potts and Caldarella both signed a revised assignment (11/20 version) that would have them each be assignees of 50 percent of the membership interests in Ferry Landing. Id., ¶¶ 47-52. Votto then informed Thomas Gugliotti that there was an agreement between Potts and Caldarella to acquire the Ferry Landing membership interests. At that time, Cameron had not signed or otherwise accepted the 11/19 version. Attorney Gugliotti then requested a copy of the signed 11/20 Version. Attorney Shaiken then instructed Votto to provide Attorney Gugliotti with a copy of the signed 11/20 Version. Votto stated to Attorney Shaiken that "[n]o one on my side is cutting anyone out. My client realizes what this project means to Cal and has no desire to not continue to work with him. Id., ¶¶ 54-57.

Without any notice or approval to Caldarella, Attorney Shaiken, or Brodeur, Votto submitted or otherwise had the 11/19 version, not the 11/20 version, presented to Cameron for his signature. Cameron did not accept the 11/19 version, but instead made a handwritten revision to a term and then signed it (11/21 version A). The signed 11/21 version was provided to Votto prior to the hearing in the GSB Foreclosure concerning Cameron's motion for foreclosure by sale. Prior

to the hearing, Potts and Votto did not disclose to Caldarella that the 11/19 version had been presented to Cameron instead of the 11/20 version and that Cameron had signed the 11/21 version A and not the 11/20 version. Prior to the hearing, Potts and Votto also did not disclose to Caldarella that they had removed Caldarella from the proposed agreement presented to Cameron. Id., ¶¶ 58-63. At the hearing, Cameron's motion for foreclosure by sale was withdrawn. After the hearing, Potts and Cameron signed another version of the agreement with Cameron that incorporated the change made by Cameron (11/21 version B). After the hearing, Potts and Votto did not disclose to Caldarella that the 11/19 version had been presented to Cameron instead of the 11/20 version. After the hearing, Potts and Votto did not disclose to Caldarella that Cameron had signed 11/21 version A and not the 11/20 version. After the hearing, Potts and Votto did not disclose to Caldarella that Potts and Cameron signed 11/21 version B. Id., ¶¶ 64-68.

Caldarella believed that Potts and his agent Votto had faithfully performed Potts's agreement with Caldarella to acquire the interests in Ferry Landing together as the first step in their partnership to develop Marina Village, by submitting the 11/20 version to Cameron for signature such that Caldarella now was a 50 percent member in Ferry Landing. Based upon that belief, Caldarella worked with Potts to complete the acquisition of the foreclosure properties via redemption in the GSB Foreclosure. Id., ¶ 72. On November 23, 2022, Potts, Votto, Caldarella, Brodeur, Attorney Shaiken, and Attorney Mark Shipman (a lawyer from Attorney Shaiken's firm) met to discuss and agree upon a strategy for completing the redemption and agreed to acquire the position of a junior creditor, Aguiar, which Attorney Shaiken successfully negotiated. As a result, on November 30, 2022, Votto filed an appearance on behalf of Ferry Landing in the GSB Foreclosure, and Ferry Landing redeemed from the Aguiar position and took title to the foreclosure properties. Id., ¶¶ 73-77.

Shortly after the foreclosure properties were acquired, Potts and Caldarella discussed acquiring Ragged Rock marina, which Potts previously was interested in but was unsuccessful. Caldarella used his personal relationship with the owners to delay a sale of the marina to a third party, negotiate a price for Potts's consideration, and schedule a meeting with Potts and Caldarella. Prior to the meeting with the owners, Potts agreed that he had the funds to finance the entire acquisition of Ragged Rock Marina and that he and Caldarella should acquire it. They discussed being equal partners and that Caldarella would operate the property. Id., ¶¶ 78-84. Caldarella assisted in obtaining an oral agreement between the owners, Potts and Caldarella; Potts signed a letter of intent that included Caldarella as a buyer.

During December of 2022, as the parties were working on these acquisitions, Potts and Caldarella discussed limiting Votto's role in the Ragged Rock acquisition to preparing the contract documents. Thus, Caldarella requested an engagement letter from Votto. At the same time, Potts and Caldarella also agreed to hire Shipman, Shaiken & Schwefel, LLC to represent Ferry Landing, LLC. Id., ¶¶ 89-90. During this time, Potts and Caldarella met with Attorney Shaiken and Attorney Shaiken met with third parties on behalf of Ferry Landing, LLC. Id., ¶¶ 92-95.

In January, Votto requested information on how title to Ragged Rock marina would be taken and Caldarella advised it would be by an LLC owned equally by Potts and Caldarella. Id., ¶¶ 97-98. During this month, there soon was a shift in Potts' behavior towards Caldarella and Potts began communicating through Votto. He changed the deal on Ragged Rock Marina from a partnership to Potts owning it and Caldarella being a tenant-operator. After Caldarella had taken steps to record his interest in Ferry Landing with the Secretary of State, Potts told Caldarella that he was not a member of Ferry Landing. Id., ¶¶ 97-109.

Thereafter, there were no more dealings between Caldarella and Potts as partners in Ferry Landing, and this action was commenced on March 20, 2023. Id., ¶ 109.

II
LEGAL 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). "[The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency." (Internal quotation marks omitted.) *Coppola Construction Co.* v. *Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013). "A motion to strike admits all *facts* well pleaded; it does not admit *legal conclusions or the truth or accuracy of opinions* stated in the pleadings." (Emphasis in original; internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 588, 693 A.2d 293 (1997). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 349, 63 A.3d 940 (2013). "If facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp.*, supra, 240 Conn. 580. "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 complaint." (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).

III
ANALYSIS

A
POTTS COUNTS

Count One - Breach of Fiduciary Duty as Partner

Potts alleges that the plaintiffs have failed to plead facts sufficient to allege a partnership under General Statutes § 34-314. The plaintiffs contend that the complaint clearly alleges the formation of a partnership, the plan and agreement as partners to acquire certain LLC interests, and the fraud of Potts in taking those LLC interests for himself in violation of his agreements and duties as a partner. Moreover, they contend that § 34-314 does not apply to the present circumstances.

The court finds that the plaintiffs have adequately pleaded a claim for breach of fiduciary duty. They have alleged both a verbal and written partnership agreement. See, e.g., General Statutes § 34-301 (13) (partnership agreement may be written, oral, or implied); *Balzer* v. *Millward*, United States District Court, Docket No. 3:10CV1740 (HBF) (D. Conn. Apr. 21, 2011) ("written contract of partnership is not necessary to the formation of a partnership," quoting 59A Am. Jur. 2d Partnership § 90).

"The elements which must be proved to support a conclusion of a breach of fiduciary duty are: [1] [t]hat a fiduciary relationship existed which gave rise to . . . a duty of loyalty . . . an obligation . . . to act in the best interests of the plaintiff, and . . . an obligation . . . to act in good faith in any matter relating to the plaintiff; [2] [t]hat the defendant advanced his or her own interests to the detriment of the plaintiff; [3] [t]hat the plaintiff sustained damages; [and] [4] [t]hat the damages were proximately caused by the fiduciary's breach of his or her fiduciary duty." (Internal quotation marks omitted.) *Chioffi* v. *Martin*, 181 Conn. App. 111, 138, 186 A.3d 15 (2018). "[T]his

court has recognized that some actors are per se fiduciaries by nature of the functions they perform. These include . . . partners, . . ." (Internal quotation marks omitted.) *Iacurci* v. *Sax*, 313 Conn. 786, 800, 99 A.3d 1145 (2014).

Count Two - Breach of Contract

Potts alleges that the plaintiffs have failed to plead facts to show a meeting of the minds as to material terms, there is no consideration, and fail to allege facts that any claimed damages were foreseeable. "The elements of a breach of contract action are formation of an agreement, performance by one party, breach of the agreement by the other party and damages." (Internal quotation marks omitted.) *Summerhill, LLC* v. *Meriden*, 162 Conn. App. 469, 474, 131 A.3d 1225 (2016).

In count two, the court finds that the plaintiffs have sufficiently pleaded a claim for breach of contract. The plaintiffs have pleaded each of the essential elements of an agreement: a partnership agreement to acquire Ferry Landing, LLC and the North Yard, performance by Caldarella in committing the South Yard and in engaging in other actions towards the partnership, a breach by Potts by signing the 11/19 version and submitting it, and damages. See, i.e., Compl., ¶¶ 113, 121, 135. Thus, the claim is legally sufficient.

Count Three – Fraud

Potts argues that the plaintiffs have failed to allege fraud with particularity and that they cannot show a duty to speak or reasonable reliance. The plaintiffs argue that they have adequately pleaded a count for fraud. The court finds the claim is sufficient.

The court finds that the fraud count is legally sufficient. "Fraud involves deception practiced in order to induce another to act to her detriment, and which causes that detrimental action. . . . The four essential elements of fraud are (1) that a false representation of fact was made;

(2) that the party making the representation knew it to be false; (3) that the representation was made to induce action by the other party; and (4) that the other party did so act to her detriment. . . . Because specific acts must be pleaded, the mere allegation that a fraud has been perpetrated is insufficient." (Internal quotation marks omitted.) *Asnat Realty, LLC* v. *United Illuminating Co.*, 204 Conn. App. 313, 321, 253 A.3d 56, cert. denied, 337 Conn. 906, 252 A.3d 366 (2021).

Here, the plaintiffs have pleaded each of the elements: Potts and Caldarella agreed to be partners and pursue Marina Village, step one of which was acquiring Ferry Landing, id., ¶¶ 34, 43-44; Caldarella stated in no uncertain terms that it was critical he be included on the assignment of Ferry Landing membership interests, Complaint, ¶ 49; in response, Potts told Caldarella that Votto, Potts's attorney and agent, would revise the assignment to include Caldarella, id., ¶ 50-51; Potts and Caldarella then signed that revised assignment, id., ¶ 52; Votto informed the seller of Ferry Landing that Potts and Caldarella had reached an agreement to acquire Ferry Landing, id., ¶ 53; on the critical morning of November 21, Votto specifically told Caldarella's attorney that "[n]o one on my side is cutting anyone out"; Potts and his agent failed to disclose what they had done before or after the hearing, id., ¶¶ 61-71; and that fraud was relied upon to Caldarella's detriment. Caldarella did not push for a foreclosure by sale, assisted in securing the redemption for Ferry Landing, operated the Foreclosure Properties, and negotiated the Ragged Rock transaction. Thus, the court finds the claim is sufficient.

Count Four – Conversion

The defendants contend that no claim for conversion may lie where the plaintiffs did not first possess ownership of either Ferry Landing, LLC's membership or any part of Ragged Rock. The court agrees. The plaintiffs have not sufficiently alleged a claim for conversion.

"Conversion is an unauthorized assumption and exercise of the right of ownership over goods belonging to another, to the exclusion of the owner's rights. . . . It is some unauthorized act which deprives another of his property permanently or for an indefinite time. . . . The essence of the wrong is that the property rights of the plaintiff have been dealt with in a manner adverse to him, inconsistent with his right of dominion and to his harm. . . . To establish a valid claim of conversion, a plaintiff must establish legal ownership or right to possession in the particular thing . . . that the defendant is alleged to have converted." (Citations omitted; internal quotation marks omitted.) *Marut* v. *IndyMac Bank, FSB*, 132 Conn. App. 763, 768-69, 34 A.3d 439 (2012).

Count Five – Statutory Theft

Again, Potts claims that the plaintiffs cannot maintain a claim for statutory theft because they have not alleged ownership of Ferry Landing or Ragged Rock. The court agrees. The plaintiffs have not sufficiently alleged a claim for statutory theft.

"The elements of statutory theft are largely the same as the elements to prove the tort of conversion, but theft requires a plaintiff to prove the additional element of the defendant's intent, and intent that is over and above what must be demonstrated to prove conversion." *Blake* v. *Sims Metal Management*, Superior Court, judicial district of Bridgeport, Docket No. CV-20-6101021-S (March 28, 2024, *Clark, J.*). Because the court has found that the plaintiffs have not adequately pleaded a count for conversion, the court also finds that the statutory theft count is insufficient.

Count Six – Unjust Enrichment

Potts argues that the plaintiffs improperly incorporate breach of contract allegations into their unjust enrichment count and that any alleged payments or benefits they provided preceded the time that they met Potts, and thus, were not made for his benefit.

"Plaintiffs seeking recovery for unjust enrichment must prove (1) that the defendants were benefited, (2) that the defendants unjustly did not pay the plaintiffs for the benefits, and (3) that the failure of payment was to the plaintiffs' detriment." (Internal quotation marks omitted.) *Jo-Ann Stores, Inc.* v. *Property Operating Co., LLC*, 91 Conn. App. 179, 194, 880 A.2d 945 (2005).

The plaintiffs have sufficiently alleged a claim for unjust enrichment. They allege that the defendants were benefitted by Caldarella's involvement and that the defendants acquired interests in Ferry Landing and subsequently title to the foreclosure properties as a result; Compl., ¶¶ 27-30; and secured the judgment lien position from which Ferry Landing ultimately redeemed the title to the foreclosure properties. Id., ¶¶ 73-77. Finally, they allege that the plaintiffs have been harmed as a result. Id., ¶¶ 148-150.

Count Seven – Breach of Duty of Loyalty

Potts alleges the same deficiencies as the breach of fiduciary duty count because the plaintiffs have not adequately pleaded a partnership. The court relies on its previous analysis under count one and finds the count is legally sufficient.

Count Eight – CUTPA

Potts contends that this claim fails because the complaint does not allege that Potts' business is the acquisition of marinas. The plaintiffs object and argue that they have alleged that Potts was engaged in the business of marinas. The court cannot find any statement in the second revised complaint that identifies the business that Potts engages in, as pointed out by the defendants.

General Statutes § 42–110b (a) provides: "No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." The phrase "trade or commerce" is defined as "the advertising, the sale or rent or lease, the offering

for sale or rent or lease, or the distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value in this state." General Statutes § 42–110a (4). "It is well settled that in determining whether a practice violates CUTPA we have adopted the criteria set out in the cigarette rule by the federal trade commission for determining when a practice is unfair: (1) [W]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise – in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers, [competitors or other business persons] . . . . All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." (Internal quotation marks omitted.) *Updike, Kelly & Spellacy, P.C.* v. *Beckett*, 269 Conn. 613, 655-56, 850 A.2d 145 (2004).

Here, the plaintiffs' allegations concern the interactions and events that support their overall claims that the parties had entered into a partnership agreement for the development of a mixed use marina, which Potts breached. "We have held that not every contractual breach rises to the level of a CUTPA violation." *Hudson United Bank* v. *Cinnamon Ridge Corp.*, 81 Conn. App. 557, 571, 845 A.2d 417 (2004); see also *Paulus* v. *LaSala*, 56 Conn. App. 139, 153, 742 A.2d 379 (1999), cert. denied, 252 Conn. 928, 746 A.2d 789 (2000) ("[e]ven if, as the plaintiffs claim, the defendants breached a contract, such a breach is not sufficient to establish a CUTPA violation"). Thus, the CUTPA count is deficient.

B
VOTTO COUNTS

Count Nine – Fraud

Votto contends that count nine lacks specific factual allegations required to allege a viable claim for fraud and thus the court must strike it. She argues that the plaintiffs claim that Votto made statements to Caldarella knowing they were false, failed to disclose information to Caldarella "and his agents" despite having a duty to do so, and that she did these things with the intent that Caldarella would rely on them. Compl., ¶¶ 167-69. Votto contends, however, that the plaintiffs do not allege specific facts to support their conclusory allegations.

"[I]t is well settled that the essential elements of fraud are: (1) a false representation was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) it was made to induce the other party to act upon it; and (4) the other party did so act upon that false representation to his injury." (Internal quotation marks omitted.) *Leonard* v. *Commissioner of Revenue Services*, 264 Conn. 286, 296, 823 A.2d 1184 (2003). "All of these ingredients must be found to exist; and the absence of any one of them is fatal to a recovery . . . ." (Internal quotation marks omitted.) *Harold Cohn & Co.* v. *Harco International, LLC*, 72 Conn. App. 43, 51, 804 A.2d 218, cert. denied, 262 Conn. 903, 810 A.2d 269 (2002). As a matter of law, "[b]ecause specific acts must be pleaded, the mere allegation that a fraud has been perpetuated is insufficient . . . ." (Internal quotation marks omitted.) *Whitaker* v. *Taylor*, 99 Conn. App. 719, 730, 916 A.2d 834 (2007); see also *Maruca* v. *Phillips*, 139 Conn. 79, 81, 90 A.2d 159 (1952) ("[w]here a claim for damages is based upon fraud, the mere allegation that a fraud has been perpetrated is insufficient; the specific acts relied upon must be set forth in the complaint").

The court finds that count nine sufficiently alleges a claim for fraud. There are certain allegations that identify specific conduct and representations made by Votto that allegedly induced

the plaintiffs to rely on the actions and statements. These allegations are set forth in paragraphs 57-68.

Count Ten - Breach of Fiduciary Duty

Votto contends that the plaintiffs' claim that she breached her fiduciary duty to the plaintiffs must allege facts that would support a finding of fraud, self-dealing or conflict of interest and the count fails to allege such facts. The court agrees. Our Supreme Court has expressly held that "[p]rofessional negligence alone . . . does not give rise automatically to a claim for breach of fiduciary duty. Although an attorney-client relationship imposes a fiduciary duty on the attorney . . . not every instance of professional negligence . . . implicates a duty of care, while breach of a fiduciary duty implicates a duty of loyalty and honesty." (Citations omitted; internal quotations marks omitted.) *Beverly Hills Concepts, Inc.* v. *Schatz & Schatz, Ribicoff & Kotkin*, 247 Conn. 48, 56-57, 717 A.2d 724 (1998).

Here, the plaintiff has not alleged all the necessary elements for its claim. See Compl., ¶¶ 80-84. As Votto sets forth, the only engagement letter to which the complaint refers pertains to the Ragged Rock transaction, and this representation ended less than a month later. Id., ¶ 99. The plaintiffs base this claim primarily on Votto's improper use of confidential information to Caldarella's detriment but provide no allegations regarding the confidential information. See *Manere* v. *Collins*, 200 Conn. App. 356, 368, 241 A.3d 133 (2020) (finding that "a party must allege breach of fiduciary duty with specificity before liability can attach on such grounds"). Thus, the court finds this count legally deficient.

Count Eleven - Breach of Contract

Votto contends that the breach of contract claim fails because the plaintiffs have not alleged a breach of contract claim but rather a negligence action. The court agrees that the breach of

contract claim is deficient and is thus stricken. "Connecticut courts have concluded that claims alleging that the defendant attorney had performed the required tasks but in a deficient manner sounded in tort rather than in contract. . . . The decisions in these cases are consistent with the well-established principle that an action in tort is for a breach of duty imposed by law." (Citations omitted; internal quotation marks omitted.) *Meyers* v. *Livingston, Adler, Pulda, Meiklejohn & Kelly, P.C.*, 311 Conn. 282, 294-95, 87 A.3d 534 (2014). Absent an allegation that the defendant breached an agreement to obtain a specific result or to perform a specific task, there can be no breach of contract claim. This is true even though there was a written retainer agreement between the attorney and the client which constituted a contract. Id. Thus, the court finds this count legally insufficient.

Count Twelve - Tortious Interference with Business Relations

Votto argues that this count contains no factual allegations that rise to the level of specificity required to allege fraud, misrepresentation, intimidation, or that Votto acted maliciously. She contends that the plaintiffs merely allege in conclusory fashion that Caldarella had business expectancies concerning the acquisition of Ferry Landing, the foreclosure properties, and Ragged Rock Marina; that Votto interfered with those expectancies; that Votto acted maliciously; and that Votto is guilty of fraud and misrepresentation. Compl., ¶¶ 178-81.

"[N]ot every act that disturbs a contract or business expectancy is actionable." (Internal quotation marks omitted.) *Landmark Investment Group, LLC* v. *CALCO Construction & Development Co.*, 318 Conn. 847, 868, 124 A.3d 847 (2015). "[A] claim [for tortious interference] is made out [only] when interference resulting in injury to another is wrongful by some measure beyond the fact of the interference itself." (Internal quotation marks omitted.) *Downes-Patterson Corp.* v. *First National Supermarkets, Inc.*, 64 Conn. App. 417, 429, 780 A.2d 967, appeal

dismissed, 258 Conn. 917, 782 A.2d 1242 (2001). Thus, "the plaintiff must plead and prove at least some improper motive or improper means." (Internal quotation marks omitted.) Id.

Here, the plaintiffs have not sufficiently pleaded a claim for tortious interference of contract. They merely allege conclusory actions on the part of Votto without the required specificity. Thus, the count is stricken.

Count Thirteen – Aiding and Abetting Tortious Conduct

Votto contends that this count is insufficient because it fails to state a cognizable claim for aiding and abetting tortious conduct. She explains that the complaint alleges six torts against Potts but does not specify which counts pertain to Votto or how her conduct assisted in committing the tortious conduct. The court agrees that this count is deficient in its lack of specificity. To successfully allege a claim of aiding and abetting, the plaintiffs must allege the following elements: "(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; (3) [and] the defendant must knowingly and substantially assist the principal violation . . . ." (Internal quotation marks omitted.) *Efthimiou* v. *Smith*, 268 Conn. 499, 505, 846 A.2d 222 (2004). Here, the plaintiffs fail to satisfy these elements and thus the count is legally insufficient.

Count Fourteen - Civil Conspiracy

The defendants and Votto argue that the plaintiffs' complaint is insufficient as a matter of law because they fail to allege a criminal or unlawful act occurred and how Votto conspired with Potts in furtherance of that unlawful act. The plaintiffs aver that because there are valid underlying tort claims, the count need not be stricken.

"The [elements] of a civil action for conspiracy are: (1) a combination between two or

more persons, (2) to do a criminal or an unlawful act or a lawful act by criminal or unlawful means, (3) an act done by one or more of the conspirators pursuant to the scheme and in furtherance of the object, (4) which act results in damage to the plaintiff." (Internal quotation marks omitted.) *Macomber* v. *Travelers Property & Casualty Corp.*, 277 Conn. 617, 635-36, 894 A.2d 240 (2006). "The essence of a civil conspiracy . . . [is] two or more persons acting together to achieve a shared goal that results in injury to another." Id., 636. "[T]he purpose of a civil conspiracy claim is to impose civil liability for damages on those who agree to join in a tortfeasor's conduct and, thereby, become liable for the ensuing damage, simply by virtue of their agreement to engage in the wrongdoing." Id..

Here, the plaintiffs merely allege that "Votto combined with Potts to carry out the unlawful acts described above" without identifying any of the unlawful acts and alleges that "Votto and Potts did in fact carry out many acts pursuant to their schemes and in furtherance of their objectives." Compl., ¶¶ 186-187. The plaintiffs have failed to couple the conspiracy count with a sufficiently pleaded tort claim. See *Harp* v. *King*, 266 Conn. 747, 779 n. 37, 835 A.2d 953 (2003) ("to state a cause of action, a claim of civil conspiracy must be joined with an allegation of a substantive tort"). Thus, the claim is deficient.

Count Fifteen - CUTPA

Regarding the CUTPA claim, Votto contends that it is insufficient as a matter of law because it fails to plead facts to support imposition of CUTPA liability against an attorney for her "entrepreneurial" conduct of practicing law, as distinct from the ordinary conduct of Votto as a lawyer. The plaintiffs argue their claim under CUTPA is that Votto—knowing that Potts and Caldarella were shifting their partnership's lucrative work to Caldarella's attorney's firm—acted tortiously and betrayed Caldarella to exclude him from the partnership so she could keep the work

for herself. Compl., ¶¶ 190-91. Stated differently, Votto committed the torts to retain the business she was afraid of losing to a competitor.

General Statutes § 42–110b (a) provides: "No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." The phrase "trade or commerce" is defined as "the advertising, the sale or rent or lease, the offering for sale or rent or lease, or the distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value in this state." General Statutes § 42–110a (4). With respect to attorneys, "CUTPA covers only the entrepreneurial or commercial aspects of the profession of law. The noncommercial aspects of lawyering -- that is, the representation of the client in a legal capacity -- should be excluded for public policy reasons." *Haynes* v. *Yale-New Haven Hospital*, 243 Conn. 17, 35, 699 A.2d 964 (1997).

Here, the plaintiffs have not sufficiently alleged a claim for CUTPA violations. The plaintiffs allege 124 paragraphs of conduct on the part of Votto that does not necessarily address the commercial aspects of practicing law. Although they claim the conduct was intended to avoid losing lucrative legal work, the conduct itself as alleged implicates her role as an attorney. Thus, the court finds that the claim is deficient, and the court strikes the claim.

C
RAGGED ROCK DEFENDANTS

Count Sixteen – Aiding and Abetting

The only count alleged against the ragged rock defendants is count sixteen, alleging aiding and abetting of tortious conduct. The ragged rock defendants contend that the plaintiffs have failed to allege, beyond legal conclusions, facts supporting this claim. They argue that this count would need to allege facts supporting the necessary elements of aiding and abetting, i.e., that the ragged rock defendants were aware of the underlying putative torts or substantially assisted in the

commission of such torts. In order to sustain a cause of action for aiding and abetting, a plaintiff is required to plead: (1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; and (3) the defendant must knowingly and substantially assist the principal violation. See *Efthimiou* v. *Smith*, supra, 268 Conn. 505. Here, the plaintiffs have not alleged any facts that would satisfy the necessary elements for aiding and abetting. Thus, the court finds the count is legally insufficient.

D
STATUTORY COUNTS

Count Seventeen – Declaratory Judgment

The defendants contend that the plaintiffs' claim for declaratory relief must be stricken because an unsigned oral agreement concerning real estate violates the Statute of Frauds (and the alleged oral agreement is insufficient). Even if an oral agreement was sufficient, they argue the plaintiffs have not alleged material terms evidencing an agreement. Finally, the defendants argue that the plaintiffs' claim for declaratory relief fails where they have failed to join indispensable parties.[1]

"A declaratory judgment action may be maintained if all of the following conditions have been met: (1) The party seeking the declaratory judgment has an interest, legal or equitable, by reason of danger of loss or of uncertainty as to the party's rights or other jural relations; (2) There is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement between the parties; and (3) In the event that there is another form of proceeding that can provide the party seeking the declaratory judgment immediate redress,

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[1] The defendants move to strike all counts based on a lack of joinder of necessary parties. The court does not find that the defendants have met their burden of proof and thus the motion is denied on this basis. See *Biro* v. *Hill*, 214 Conn. 1, 570 A.2d 182 (1990).

the court is of the opinion that such party should be allowed to proceed with the claim for declaratory judgment despite the existence of such alternate procedure." Practice Book § 17-55.

Moreover, "[t]he purpose of a declaratory judgment action, as authorized by . . . [General Statutes] § 52-29 and Practice Book § [17-55], is to secure an adjudication of rights [when] there is a substantial question in dispute or a substantial uncertainty of legal relations between the parties." (Internal quotation marks omitted.) Travelers Casualty & Surety Co. of America v. Netherlands Ins. Co., 312 Conn. 714, 726 (2014). Our Supreme Court "ha[s] recognized that our declaratory judgment statute is unusually liberal. An action for declaratory judgment . . . is a statutory action as broad as it well could be made. . . . Indeed, our declaratory judgment statute is broader in scope than . . . the statutes in most, if not all, other jurisdictions . . . and [w]e have consistently construed our statute and the rules under it in a liberal spirit, in the belief that they serve a sound social purpose. . . . [Although] the declaratory judgment procedure may not be utilized merely to secure advice on the law . . . it may be employed in a justiciable controversy where the interests are adverse, where there is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement, and where all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof." Id., 727.

Here, the court cannot find that the defendants sufficiently challenge the legal sufficiency of this count. In the light of reading the complaint in the manner most favorable to sustaining its legal sufficiency, there is a substantial question in dispute or a substantial uncertainty of legal relations between the parties, which requires settlement, and the defendants have not sufficiently refuted that there is no need for determination of the matter. The motion is denied with respect to this count. See *Calve Brothers Co.* v. *Massachusetts Bonding & Ins. Co.*, 22 Conn. Supp. 44, 46,

159 A.2d 819, (1959) ("This provision means no more than that there must appear a sufficient practical need for the determination of the matter").

Counts Eighteen and Nineteen – Petition for Dissolution of Ferry Landing

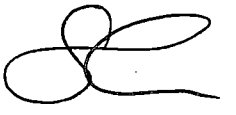
The defendants contend that the plaintiffs' claims fail because neither plaintiff became a member of Ferry Landing, LLC. The court agrees. Pursuant to General Statutes § 34-267 (a) "A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following: . . . (4) On application by a member . . . (5) On application by a member . . . ." (Emphasis added.) Because the plaintiffs are not members of Ferry Landing, LLC, they cannot pursue a dissolution. See e.g., *Gilbertie* v. *Gilbertie Properties, LLC*, Superior Court, judicial district of Stamford-Norwalk, Docket No. 23-6062271-S (November 22, 2023, Krumeich, J.T.R.) (plaintiff lacked authority to pursue dissolution where status was transferee not member, as only members "have statutory authority to apply for dissolution"). Both of these counts shall be stricken.

IV
CONCLUSION

For the reasons provided herein, the motion to strike is granted with respect to counts four, five, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, eighteen and nineteen. The motion is denied with respect to the remaining counts.

So ordered.

BY THE COURT



Hon. Rupal Shah