

DOCKET NO. NNI-CV24-6031368S : SUPERIOR COURT
JAYDAKUS CANNON : J.D. OF NEW HAVEN
VS. : AT NEW HAVEN
LISA ANTALIK : JUNE 12, 2024

**MEMORANDUM OF DECISION RE:
PLAINTIFF'S MOTION TO STRIKE (ENTRY NO. 110.00)**

Introduction.

The plaintiff claims to have suffered injuries and losses as a result of a motor vehicle collision which he claims was caused by the defendant's negligence. The defendant's special defense alleges "The accident and injuries and damages alleged to have been suffered by the plaintiff were the result of an [sic] a sudden emergency situation, not of the defendant's making, and that in the face of the emergency, the defendant acted reasonably under the circumstances then and there existing." The plaintiff now moves to strike that special defense.

Discussion.

I.

"A [m]otion to [s]trike is the proper vehicle to use to attack the sufficiency of a special defense or cross claim." *Nevers v. Trans Am Trucking, Inc.*, Superior Court, judicial district of Fairfield, Docket No. CV-01-0384504-S (July 27, 2004, *Dewey, J.*). "[A] motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings

Judicial District of New Haven at Meriden
SUPERIOR COURT
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counsel. S. Henrick, A.C.

by the trial court ... [The court] construe[s] the [pleading] in the manner most favorable to sustaining its legal sufficiency ... It is fundamental that in determining the sufficiency of a [special defense] challenged by a [plaintiff'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.) *Coppola Construction Co. v. Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013). “ “A motion to strike is properly granted if the [pleading] 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).

II.

“The purpose of a special defense is to plead facts that are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action.” (Internal quotation marks omitted.) *Fidelity Bank v. Krenisky*, 72 Conn.App. 700, 705, 807 A.2d 968, cert. denied, 262 Conn. 915, 811 A.2d 1291 (2002). “The emergency doctrine modifies the standard of reasonable conduct ordinarily expected of reasonable men and women by allowing the occurrence of a sudden or unexpected event to be taken into account as one of the circumstances determining what conduct is reasonable. Prosser, *Torts* (4th Ed.1971) § 33, pp. 168–69. Restatement (Second),

1 Torts § 296 (1966), as cited in *Rotolo v. Cowin*, No. DBDCV106003574S, 2011 WL 2177100, at *1–2 (Conn. Super. Ct. May 11, 2011).

In an emergency not due to his own negligence, one is not relieved of all obligations to exercise care but is required to exercise the care of an ordinarily prudent person acting in such an emergency ... *Mei v. Alterman Transport Lines, Inc.*, 159 Conn. 307, 312, 268 A.2d 639 (1970). The question is not whether there was a sudden emergency but, rather, whether the plaintiff acted reasonably in response to it. A person faced by such an emergency has some leeway when deciding rapidly between alternative courses of action. (Citations omitted; internal quotation marks omitted.) *Oberempt v. Egri*, 176 Conn. 652, 656, 410 A.2d 482 (1979).” *Abramova v. Huang*, Superior Court, judicial district of New Haven, Docket No: CV 04 4001197 (September 12, 2005, *Tanzer, J.*) [39 Conn. L. Rptr. 918], as cited in *Rotolo v. Cowin*, *supra*.

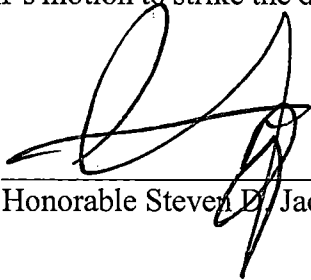
A majority of courts have held that in negligence claims, a claim of sudden emergency is properly raised by way of a general denial and not by way of special defense. See *Pinsker v. Fleming*, Superior Court, judicial district of Fairfield, Docket No. CV 01 0382908 (April 12, 2002, *Gallagher, J.*) (31 Conn. L. Rptr. 675); *Mazza v. Alcock*, Superior Court, judicial district of Fairfield, Docket No. CV 95 0320421 (June 17, 1996, *Grogins, J.*) (17 Conn. L. Rptr. 221); *Gold v. American Economy Ins. Co.*, Superior Court, judicial district of New Haven, Docket No. CV 95 0380475 (April 26, 1996, *Freedman, J.*) (16 Conn. L. Rptr. 641); *Abramova v. Huang*, Superior

Court, judicial district of New Haven, Docket No. CV 04 4001197 (September 12, 2005, *Tanzer, J.*) (39 Conn. L. Rptr. 918); *Pagoni v. Kreider*, Superior Court, judicial district of Waterbury, Docket No. CV 05 4004373 (November 1, 2005, *Matasavage, J.*). *Rotolo v. Cowin*, supra.

This court sides with the majority. While a defendant in a negligence case may claim, by way of special defense, that the plaintiff failed to exercise reasonable care under the circumstances then and there existing, e.g. in the presence of a sudden emergency, the sudden emergency itself will not avoid liability on the part of the defendant. Thus, the defendant's special defense is legally insufficient.

Conclusion.

For the foregoing reasons, the plaintiff's motion to strike the defendant's special defense is GRANTED.



Honorable Steven D. Jacobs