Cited
As of: Dec 05, 2013

Seven Bridges Foundation v. Wilson Agency, Inc. et al.

FSTCV116009707S

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF STAMFORD-NORWALK AT STAMFORD

2012 Conn. Super. LEXIS 564

March 2, 2012, Decided
March 2, 2012, Filed

NOTICE: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

CASE SUMMARY:

OVERVIEW: While plaintiff sufficiently alleged the existence of a fiduciary duty between the parties, plaintiff did not allege a breach of that duty because defendants' alleged omission of failing to advise plaintiff of the risks of altering coverage under a builders' risk insurance policy, while possibly negligent, did not implicate disloyalty or dishonesty.

OUTCOME: Motion to strike granted.

JUDGES: [*1] David R. Tobin, J.

OPINION BY: David R. Tobin

OPINION

MEMORANDUM OF DECISION

On May 25, 2011, the plaintiff, Seven Bridges Foundation, Inc., commenced this action seeking recovery for damages it suffered as a result of insufficient builders' risk insurance when a building it owned was destroyed by fire. On October 31, 2011, the plaintiff filed an amended four-count complaint for (1) negligence by the defendant, Wilson Agency, Inc., (2) negligence by the defendant, Charles J. Wilson, Jr., (3) breach of fiduciary duty by Wilson Agency, Inc., and (4) breach of fiduciary duty by Charles J. Wilson, Jr. The defendants filed this motion to strike counts three and four of the amended complaint for breach of fiduciary duty and to strike the prayer for relief for interest, disbursements and attorneys fees. In its amended complaint, the plaintiff alleges the following facts.

The defendants served as the plaintiff's insurance broker for many years, "handling all of their insurance

needs during that time, and [the plaintiff] relied exclusively upon [the defendants'] advice and recommendations regarding insurance issues." The defendants knew that the plaintiff "was not knowledgeable about insurance and relied exclusively [*2] upon [the defendants'] stated expertise in providing [the plaintiff] with insurance products to fulfill its insurance needs as [the defendants] always assured [the plaintiff] that it could rely on [the defendants'] advice."

The plaintiff had entered a construction contract to build a new building located at 71 North Porchuk Road in Greenwich. The plaintiff approached the defendant to obtain builders' risk insurance as required by the construction contract. The plaintiff explained the nature of the construction project and relied on the defendants to "obtain appropriate insurance to cover its risks for the construction of the premises and to cover its obligations in the [construction] contract." The defendants never requested a copy of the construction contract and they never requested any additional information regarding appropriate insurance coverage for the project. The defendants then procured a $6.5 million builders' risk insurance policy from Travelers Insurance Company.

Around January 2009, when "certain aspects of the construction project had been completed," the plaintiff contacted the defendants to request a reduction in the amount of insurance coverage commensurate with the [*3] completed work. The defendants complied, reducing the insurance coverage from $6.5 million to $3 million. The defendants never requested a copy of the construction contract or the insurance requirements for the project. The defendants never explained the risks or benefits which would accompany the proposed reduction in coverage.

Under the terms policy issued by Travelers Insurance Company include an insurance principle known as coinsurance. That principle states that when a building is insured for less than its full value, and is damaged by risk covered by the policy, the insurance company is only responsible for the portion of the loss which bears the same relationship as the full value of the building bears to the policy limits. The plaintiff claims that it was unaware of the existence and implications of coinsurance. Following the reduction in coverage requested by the plaintiff, the building suffered severe fire damage requiring $5.2 million in repairs. The reduction in insurance coverage and the application of the coinsurance principle led Travelers Insurance Company to pay only $2.1 million to the plaintiff for the loss. As a result the plaintiff had to bear the remaining $3.1 [*4] million of the loss. The plaintiff claims had it been advised of the risks associated with lowering the level of insurance coverage, and the concept of coinsurance, the plaintiff would not have reduced its level of insurance coverage and would not have suffered the loss. The plaintiff claims that the defendants had a fiduciary duty to provide "sound advice and appropriate insurance recommendations and policies for [the plaintiff's] insurance needs" and the defendants' failure to provide such advice constituted a breach of that fiduciary duty.

On November 2, 2011, the defendants filed a motion to strike counts three and four of the amended complaint on the ground that the plaintiff failed to plead a legally sufficient claim for breach of fiduciary duty, and to strike the prayer for relief for interest, disbursements and attorneys fees. The defendants filed a memorandum of law in support of the motion. On December 19, 2011, the plaintiff filed a memorandum of law in opposition. The defendants filed a reply memorandum on January 5, 2012. The matter was heard at short calendar on January 9, 2012.

DISCUSSION

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the [*5] 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)*. "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.) *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell, 295 Conn. 240, 252-53, 990 A.2d 206 (2010)*. "The proper method to challenge the legal sufficiency of a complaint is to make a motion to strike prior to trial." *Gulack v. Gulack, 30 Conn.App. 305, 309, 620 A.2d 181 (1993)*. "*Practice Book . . . §10-39*, allows for a claim for relief to be stricken only if the relief sought could not be legally awarded." *Pamela B. v. Ment, 244 Conn. 296, 325, 709 A.2d 1089 (1998)*. "In ruling on a motion to strike, the court is limited to the facts alleged in the

complaint." (Internal quotation marks omitted.) *Faulkner v. United Technologies Corp., 240 Conn. 576, 580, 693 A.2d 293 (1997)*.

The defendants' [*6] argument in support of the motion to strike is that to state a claim for breach of fiduciary duty the complaint must contain allegations of "fraud, self-dealing or conflict of interest." The defendants argue that the plaintiff alleges only professional negligence and the complaint lacks any allegations that implicate the morality of the defendants. Accordingly, the complaint does not state a cognizable claim for breach of fiduciary duty. The defendants further argue that no fiduciary relationship exists in the "typical insurance agent-client relationship." The defendants argue that the plaintiff is required to allege both that the defendant had superior knowledge and skill, and that the relationship involved a "unique degree of trust and confidence between the parties." The defendants argue that the plaintiff's allegations are insufficient to establish a fiduciary duty. Separately, the defendants argue that prejudgment interest under *General Statutes §37-3a* is not available for claims of negligence or breach of fiduciary duty. Lastly, the defendants argue that disbursements and attorneys fees are available only for "reckless or intentional conduct" and the allegations of the complaint [*7] are only "claims of unintentional conduct."

The plaintiff claims that Connecticut courts have held that the insurance agent-client relationship can, and in this case does, create a fiduciary relationship. The plaintiff further argues that where the role of the insurance agent requires superior knowledge and skill, and where the client relies on the advice and knowledge of the insurance agent, a fiduciary relationship exists. The plaintiff claims that whether a breach of fiduciary duty has occurred is a matter of fact not suitable for resolution by a motion to strike. The plaintiff also claims that prejudgment interest, disbursements and attorneys fees are appropriate under a claim for breach of fiduciary duty, but concedes that these forms of relief are only sought for the claim for breach of fiduciary duty. The defendant replies that the plaintiff is relying on obsolete cases not applicable here.

"A fiduciary or confidential relationship is characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other. The superior position of the fiduciary or dominant party [*8] affords him great opportunity for abuse of the confidence reposed in him." (Citations omitted.) *Dunham v. Dunham, 204 Conn. 303, 322, 528 A.2d 1123 (1987)*, overruled on other grounds by, *Santopietro v. New Haven, 239 Conn. 207, 213, 682 A.2d 106 (1996)*. "Professional negligence alone, however, does not give rise automatically to a claim for breach of fiduciary duty." *Beverly Hills Concepts, Inc. v. Schatz and Schatz, Ribicoff and Kotkin, 247 Conn. 48, 56, 717 A.2d 724 (1998)*. "Professional negligence implicates a duty of care, while breach of a fiduciary duty implicates a duty of loyalty and honesty." *Id., 57*. The application of traditional principles of fiduciary duty have not been expressly limited to cases involving only fraud, self-dealing or conflict of interest, though those types of cases are the most common. See *Murphy v. Wakelee, 247 Conn. 396, 400, 721 A.2d 1181 (1998)*. "[T]o survive a motion to strike framed as a breach of fiduciary duty, a pleader must allege facts which implicate the morality of [the defendant's] conduct." *J.S.T. Development Corp. v. Vitrano, Superior Court, judicial district of New Britain, Docket No. CV 03 0521186 (June 22, 2004, McWeeny, J.) (37 Conn. L. Rptr. 590, 2004 Conn. Super. LEXIS 2136*).

With respect to the relationship between an [*9] insurance agent and a client, at least one Superior Court judge has held that "because of the increasing complexity of the insurance industry and the specialized knowledge required to understand all of its intricacies, the relationship between the insurance agent and his client is often a fiduciary one." *Putnam Resources v. Frenkel & Co., Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV 92 0123838 (July 20, 1993, Lewis, J.) [9 Conn. L. Rptr. 420, 1993 Conn. Super. LEXIS 1851]*. The insurance agent-client relationships which give rise to a fiduciary duty and those which are merely professional in nature are distinguished by the conduct of the parties. "[W]here the agent holds himself out as a consultant and counselor . . . and is acting as a specialist," and where the client trusts and relies on the agent as a specialist, a fiduciary duty is present. *Id*. The Connecticut Supreme Court has "specifically refused to define a fiduciary relationship in precise detail and in such a manner as to exclude new situations . . . [C]ourts have characterized the issue of whether or not a fiduciary relationship exists between an insured and an insurance broker as a question of fact." (Citations omitted; [*10] internal quotation marks omitted.) *Id*., quoting *Alaimo v. Royer, 188 Conn. 36, 41,*

448 A.2d 207 (1982).

To successfully allege a breach of fiduciary duty, the plaintiff must allege facts establishing two separate elements: (1) the existence of a fiduciary duty, and (2) a breach of that duty, specifically, a breach of the duty of loyalty and honesty. If allegations establishing either element are absent, the claim for breach of fiduciary duty will not survive a motion to strike.

The present case is reflective of the increasing complexity of the insurance industry. Builders' risk insurance is an uncommon and complex product which the average consumer would not be expected to fully understand. For simpler and more common products like term life insurance, homeowner's insurance, or automobile insurance, the client typically approaches the insurance agent as a broker to find the best price. In those cases, the insurance agent-client relationship does not give rise to a fiduciary duty. But where the insurance product at issue is uncommon and complex, the client approaches the insurance agent both for price and for advice and counsel. Where understanding an insurance product requires specialized knowledge, [*11] and the agent holds himself out as providing advice and counsel beyond a mere broker for price, the insurance agent-client relationship can give rise to a fiduciary duty.

In the present case, the plaintiff's amended complaint alleges that the defendants have been the plaintiff's only insurance agents for many years. The plaintiff also alleges that the defendants "knew that [the plaintiff] was not knowledgeable about insurance and relied exclusively upon [the] defendants' stated expertise . . . as [the defendants] always assured [the plaintiff] that it could rely on [the defendants'] advice." Taken together, as applied to a builders' risk insurance policy, these allegations are sufficient to allege the existence of a fiduciary duty between the defendants as insurance agent, and the plaintiff as client.

Having established the existence of a fiduciary duty, the plaintiff must still allege facts sufficient to establish breach of that duty--breach of the duty of loyalty and honesty. At best, the plaintiff's amended complaint alleges that the defendants failed to advise the plaintiff of the risks of altering their coverage under the builders' risk insurance policy. The alleged omission, while [*12] possibly negligent, does not implicate disloyalty or dishonesty. While the Connecticut Supreme Court has not expressly limited breach of fiduciary duty to fraud, self-dealing or conflict of interest, these three categories typify the type of allegations required. No such allegation of disloyalty or dishonesty is made by the plaintiff.

Accordingly, while the plaintiff has alleged the existence of a fiduciary duty, the plaintiff has not alleged a breach of that duty. The plaintiff's prayer for relief seeks interest, disbursements and attorneys fees for the breach of fiduciary duty. Because the plaintiff has not sufficiently alleged a breach of fiduciary duty, the demands for interest, disbursements and attorneys fees are unavailable.

CONCLUSION

For the foregoing reasons, the motion to strike the third and fourth counts of the amended complaint, and the prayer for relief for interest, disbursements and attorneys fees is granted because the plaintiff has not sufficiently alleged a breach of fiduciary duty by the defendants.

David R. Tobin, J.