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1. Schlump v. Pabst, 2013 Conn. Super. LEXIS 2806

Client/Matter: SCHLUMP v. NAIDENE PABST
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Cases	-None-

Schlump v. Pabst

Superior Court of Connecticut, Judicial District of Waterbury At Waterbury
December 9, 2013, Decided; December 10, 2013, Filed
UWYCV126013935

Reporter: 2013 Conn. Super. LEXIS 2806; 2013 WL 6916771

Marie Schlump v. Naidene Pabst dba
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.

Core Terms

recklessness, negligence, count, dismount, claim, horse, plead, motion to strike, cause of action, instruct, omitted, internal quotation marks, amended complaint, filed, motion, acts

Judges: **[*1]** Terence A. Zemetis, J.
Opinion by: Terence A. Zemetis

Opinion

MEMORANDUM OF DECISION RE Motion to Strike #133

ISSUE AND SUBMISSION

Whether the court should grant the defendant's motion to strike count two of the complaint on the grounds that the recklessness claim is insufficiently plead and merely restates the negligence claim stated in count one.

FACTS

The plaintiff, Marie Schlump,[1] first commenced this action on March 13, 2012. Following several requests to revise and amendments to the complaint, the plaintiff filed a three-count amended complaint on August 8, 2013, which is the operative complaint. In the amended complaint, the plaintiff alleges the following facts.

The defendant, Naidene Pabst, doing business as Cool Blue Farms, Limited Partnership, operates a full service equestrian facility and holds herself out to be a professional horsewoman experienced in teaching riding lessons. On May 9, 2010, the plaintiff was participating in a riding lesson under the instruction of the defendant. During the course of that lesson, the plaintiff **[*2]** attempted to dismount the horse and got her foot caught in the stirrup, causing her to fall. The plaintiff relied on the defendant to provide instruction in horse riding, including dismounting a horse.

The plaintiff further alleges that the defendant was standing on the right side of the horse when the plaintiff fell. The plaintiff was dismounting on the left side per the defendant's instructions. The defendant knew or should have known how to instruct the plaintiff to dismount the horse, of the plaintiff's need for instruction, of the proper positioning for safely dismounting the horse, and that failing to remove both feet from the stirrups prior to dismounting could lead to the type of injuries sustained by the plaintiff.

Count one of the complaint alleges that the defendant was negligent in improperly instructing the plaintiff how to dismount a horse, and in failing to assist the plaintiff in dismounting the horse. Count two alleges that the defendant acted with reckless disregard for the plaintiff's safety by failing to provide the necessary instruction and assistance to the plaintiff during the dismount, by failing to have the plaintiff remove both feet from the stirrups prior to **[*3]** dismounting, by instructing the plaintiff to get off the horse and step onto a mounting block or a ladder, and by standing on the opposite side of the horse when the plaintiff was dismounting. The plaintiff suffered physical injuries as a result of the fall, and seeks money and punitive damages.

The defendant filed a request to revise the amended complaint on August 20, 2013. The plaintiff filed an objection to the defendant's request to revise on August 30, 2013, which was sustained by the court.[2] On October 10, 2013, the defendant filed the present motion to strike count two of the complaint on the grounds that the recklessness claim is insufficiently plead and merely restates the prior negligence claim. The defendant also filed a memorandum of law in support of the motion. The plaintiff filed an objection to the motion to strike and a supporting memorandum on October 21,

[1] Count three of the operative complaint is brought by Robert Schlump, the plaintiff's husband, alleging loss of consortium. That count is not relevant to the present motion.

[2] Order no. 132.10.

2013. Oral argument was heard by the court at short calendar on November 4, 2013.
DISCUSSION

"A motion to strike challenges the legal sufficiency of a pleading . . . and, consequently, requires no factual findings by the trial court." (Internal quotation marks omitted.) *Santorso v. Bristol Hosp.*, 308 Conn. 338, 349, 63 A.3d 940 (2013). **[*4]** "[I]n 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 . . . The role of the trial court in ruling on a motion to strike is to examine the [complaint], construed in favor of the [plaintiff], to determine whether the [pleading party has] stated a legally sufficient cause of action." (Citation omitted; internal quotation marks omitted.) *Coe v. Board of Education*, 301 Conn. 112, 116-17, 19 A.3d 640 (2011). "Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Santorso v. Bristol Hospital, supra*, 349. "Moreover, we note that [w]hat is necessarily implied [in an allegation] need not be expressly alleged . . . [P]leadings 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). "If any facts provable under the express and implied allegations in the plaintiff's complaint support **[*5]** a cause of action . . . the complaint is not vulnerable to a motion to strike." *Bouchard v. People's Bank*, 219 Conn. 465, 471, 594 A.2d 1 (1991).

In the present case, the defendant argues that the recklessness claim is insufficiently plead and merely restates the prior negligence claim. The defendant claims that because the conduct alleged by the plaintiff in the recklessness claim is nearly identical to the alleged negligent conduct, the second count does not meet the standard of pleading recklessness and should be stricken. The defendant further argues that the language in count two regarding the defendant's training and experience demonstrates that the claim is actually a claim of negligence for professional malpractice rather than recklessness. The plaintiff argues in response that the recklessness count is distinctly different from the negligence count in both its specificity and its allegations, and that it is sufficiently plead.

"The plaintiff . . . is entitled to plead various alternatives in its complaint, even when those assertions are contradictory." *Vidiaki, LLC v. Just Breakfast & Things!!!, LLC*, 133 Conn.App. 1, 24, 33 A.3d 848 (2012). "Although there is a difference between **[*6]** negligence and a reckless disregard of the rights or safety of others, a complaint is not deficient so long as it utilizes language explicit enough to inform the court and opposing counsel that both negligence and reckless misconduct are being asserted." *Craig v. Driscoll*, 262 Conn. 312, 343, 813 A.2d 1003 (2003). "[T]he plaintiff's claim of recklessness is not destroyed merely because the plaintiff pleaded both negligence and recklessness based upon substantially the same allegations of fact." *Iwanow v. Finnucan*, Superior Court, judicial district of New Britain, Docket No. CV-05-5000281-S, 2005 Conn. Super. LEXIS 3599 (December 21, 2005, Shapiro, J.). "[T]here is no reason why the plaintiff, relying on the same set of facts in negligence counts, cannot set forth in separate counts, causes of action arising out of those same facts alleging recklessness." *Adams v. Champagne*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-98-061154-S (May 27, 1998, Corradino, J.) (22 Conn. L. Rptr. 241, 242, 1998 Conn. Super. LEXIS 1492). "At [the motion to strike] stage, then, it would not be appropriate for the court to conclude that a reasonable jury could only find the defendant's conduct negligent and not reckless." *Chioccola v. Stakely*, Superior Court, judicial district of New London, Docket No. CV-13-6017470-S, 2013 Conn. Super. LEXIS 2285 (October 10, 2013 **[*7]** , Devine, J.).

The defendant first argues that the allegation of recklessness should be stricken because it restates the negligence count. This argument is contrary to the case law, which clearly permits a cause of action in recklessness arising from the same actions as plead in a negligence count. The difference between negligence and recklessness turns on the mental state of the defendant at the time of the action in question. See *Craig v. Driscoll, supra*, 262 Conn. 342 ("recklessness is a state of consciousness with reference to the consequences of one's acts" (internal quotation marks omitted)); cf. *Roach v. Ivari Int'l Ctrs., Inc.*., 77 Conn. App. 93, 99, 822 A.2d 316 (2003) ("[t]he essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury" (internal quotation marks omitted)). Accordingly, the fact that the plaintiff has alleged identical or similar actions by the defendant as negligent is not a bar to the plaintiff's cause of action in recklessness, so long as the complaint is "explicit enough to inform the **[*8]** court and opposing counsel that both negligence and reckless misconduct are being asserted." *Craig v. Driscoll, supra*, 343.

The plaintiff alleges additional facts in count two that pertain to the defendant's state of mind and her knowledge of the potential consequences of her acts. Contrary to the defendant's position, the allegations in paragraph twelve of count two regarding the defendant's training and

experience do not suggest that this is a professional malpractice claim. The allegations regarding the defendant's knowledge and experience in teaching horse riding lessons, if proven, may enable the factfinder to infer that the defendant was aware of an increased likelihood of injury resulting from her conduct. The plaintiff alleges in paragraph twelve that the defendant, as a result of her familiarity with the risks associated with the act of dismounting a horse, possessed the requisite state of consciousness regarding the consequences of her acts. *See* *Craig v. Driscoll, supra*, 262 Conn. 342. That state of consciousness is the essential element separating the count of recklessness from the count of negligence. Accordingly, the allegations which assert or imply such consciousness, **[*9]** such as those present in count two of the amended complaint, are properly plead in a cause of action for recklessness and are not grounds on which a motion to strike should be granted.

CONCLUSION

For the foregoing reasons, the court denies the defendant's motion to strike count two of the amended complaint.

Zemetis, J.