DOCKET NO. NNH CV 14-6050939-S : SUPERIOR COURT

JOHN W. MILLS : JUDICIAL DISTRICT OF NEW HAVEN

V. : AT NEW HAVEN

MARK I. HARRISON : APRIL 8, 2015

MEMORANDUM OF DECISION
MOTION TO STRIKE (NO. 103)

FACTS

The plaintiff filed a two-count revised complaint on December 16, 2014, in which he alleges the following facts. The plaintiff hired the defendant and his company to conduct a business evaluation of the plaintiff's law firm and determine its fair market value. After receiving the evaluation and a bill from the defendant, the plaintiff questioned the defendant's appraisal methodology and billing practices. The plaintiff then sought a second opinion from another expert, Nancy Riella, who informed him that the defendant's report was incorrect and that the bill was significantly inflated. The defendant then sued Riella for defamation based on her report.

Count one alleges that the lawsuit[1] against Riella was premised on privileged statements and initiated solely to intimidate Riella and the plaintiff. This in turn hindered the plaintiff's ability to use Riella's testimony to dispute the defendant's billing practices. Count two alleges abuse of process[2] based on a grievance the defendant filed against the plaintiff with the Connecticut

[1] This action was eventually withdrawn. *Myers, Harrison & Pia, LLC* v. *Riella*, Superior Court, judicial district of New Haven, Docket No. CV-13-6038357-S (November 13, 2013).

[2] Count two alleges "abusive process," but it should be assumed that the plaintiff intended to indicate abuse of process.

Statewide Grievance Committee. The plaintiff alleges that this grievance, which was dismissed for lack of probable cause, lacked any legitimate basis and was filed to intimidate and prevent him from disputing the defendant's billing practices. The groundless grievance damaged the plaintiff's professional reputation and compromised his legal right to seek redress through the courts.

On December 23, 2014, the defendant filed a motion to strike both counts of the plaintiff's revised complaint on the ground that he has failed to sufficiently plead the required elements of an abuse of process claim. This motion is accompanied by a memorandum of law. The plaintiff then filed an objection and supporting memorandum on January 22, 2015. The defendant proceeded to file a reply brief on January 28, 2015, to which the plaintiff filed a surreply on February 4, 2015. Lastly, the defendant filed a surreply in further support of his motion to strike on February 4, 2015. This matter was heard at short calendar on February 9, 2015.

DISCUSSION

"[I]t 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. . . . 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). "Moreover . . . [w]hat is necessarily implied [in an allegation] need not be expressly alleged"; (internal quotation marks omitted) *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, 295 Conn. 240, 252, 990 A.2d 206 (2010); because the "pleadings are to be construed broadly and

realistically, rather than narrowly and technically . . . ." (Internal quotation marks omitted.) *Downs* v. *Trias*, 306 Conn. 81, 92, 49 A.3d 180 (2012). "If any facts provable under the express and implied allegations in the plaintiff's complaint support 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). Nevertheless, "[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). "In ruling on a motion to strike, the trial court is limited to considering the grounds specified in the motion"; *Meredith* v. *Police Commission*, 182 Conn. 138, 140, 438 A.2d 27 (1980); and "[e]ach motion to strike must be accompanied by a memorandum of law citing the legal authorities upon which the motion relies." Practice Book § 10-39 (c).

The defendant argues that the court should strike counts one and two of the plaintiff's revised complaint because the plaintiff fails to allege sufficient facts showing that the lawsuit and grievance were filed primarily to intimidate the plaintiff from disputing the defendant's billing practices. The plaintiff counters that he has alleged sufficient facts demonstrating that the lawsuit and grievance were groundless and initiated solely for intimidation and to prevent him from disputing the defendant's billing practices.

"An action for abuse of process lies against any person using a legal process against another in an improper manner or to accomplish a purpose for which it was not designed. . . . Because the tort arises out of the accomplishment of a result that could not be achieved by the proper and successful use of process, the Restatement Second (1977) of Torts, § 682, emphasizes that the

gravamen of the action for abuse of process is the use of a legal process . . . against another *primarily* to accomplish a purpose for which it is not designed . . . . Comment b to § 682 explains that the addition of 'primarily' is meant to exclude liability when the process is used for the purpose for which it is intended, but there is an incidental motive of spite or an ulterior purpose of benefit to the defendant." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Mozzochi* v. *Beck*, 204 Conn. 490, 494, 529 A.2d 171 (1987).

"[T]here is no bright line that clearly distinguishes between the ends ordinarily associated with litigation and the ulterior purpose that the tort of abuse of process is intended to sanction. Much turns on the specificity of the pleadings." Id., 496.

"[G]eneral . . . allegation[s] of abuse [do] not satisfy the requirement of showing the use of legal process *primarily* to accomplish a purpose for which it is not designed . . . ." (Emphasis in original; internal quotation marks omitted.) Id., 497 (holding general allegation that defendants continued to pursue litigation after learning case lacked merit legally insufficient); accord, *Cadle Co.* v. *D'Addario*, 131 Conn. App. 223, 236–37, 26 A.3d 682 (2011) (holding factual allegations only indicating a conscious—rather than a primary—desire to intimidate plaintiff through litigation legally insufficient and at most indicative of incidentally improper motive); *Fidelity Bank* v. *Krenisky*, 72 Conn. App. 700, 720–21, 807 A.2d 968 (2002) (holding allegations that plaintiff maliciously initiated foreclosure action without probable cause were conclusory and legally insufficient to support counterclaims of malicious prosecution and abuse of process). Rather, a complaint must "point to specific misconduct intended to cause specific injury outside of the normal contemplation of private litigation. . . . [E]xamples of actions that might give rise to claims

for abuse of process [include] unreasonable force, excessive attachments or extortionate methods . . . ." (Citation omitted; internal quotation marks omitted.) *Suffield Development Associates Ltd. Partnership* v. *National Loan Investors, L.P.*, 260 Conn. 766, 776, 802 A.2d 44 (2002) (holding allegations that defendant misrepresented and inflated amount of money owed when applying for bank execution legally sufficient).

In the present case, count one alleges that the defendant sued the plaintiff's expert "*solely* for purposes of intimidation." Nonetheless, the plaintiff fails to allege sufficient facts showing that the lawsuit was primarily filed for an improper purpose. Mere conclusions of law that the defendant filed a defamation lawsuit to intimidate the plaintiff and his expert do not rise to the level of "specific misconduct intended to cause specific injury outside of the normal contemplation of private litigation." *Suffield Development Associates Ltd. Partnership* v. *National Loan Investors, L.P.*, supra, 260 Conn. 776. While the plaintiff does allege that the defamation action against Riella injured him by "inhibiting [his] ability to use [her] expert testimony . . . in disputing [the defendant's billing practices and methodology]," he fails to allege facts showing that the defendant's primary objective was to inflict this specific injury. The plaintiff's factual allegations, at most, speak to an ulterior or coincidental motive to intimidate and injure the plaintiff—i.e, all that the plaintiff alleges is that the lawsuit against Riella happened to hinder his ability to use her testimony in contesting the defendant's billing practices and methodology. Furthermore, although it fails to do so,[3] had count one alleged that the defendant sued Riella despite knowing the lawsuit

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[3] The plaintiff's memorandum of law in opposition to the defendant's motion to strike (No. 107) states that the defendant's lawyer sued for defamation despite knowing that the lawsuit was

lacked merit because it was premised on privileged statements, this by itself would still be insufficient. Although such an allegation would speak to an improper motive, it is not buttressed by facts showing a primarily improper motive. As a result, count one is hereby stricken.

Count two is also legally insufficient because the plaintiff in no way alleges that the grievance was filed primarily[4] (or only, solely, especially, etc.) to intimidate and prevent him from disputing the defendant's billing practices and methodology. Even if he had alleged a primarily improper purpose in filing the grievance, the plaintiff still fails to allege sufficient facts demonstrating this. The plaintiff alleges injuries based on the grievance, namely that he was stymied in his pursuit of legal redress and suffered damage to his professional reputation, but fails to allege sufficient facts showing that this was the defendant's primary purpose in filing the grievance. As a result, count two is hereby stricken.

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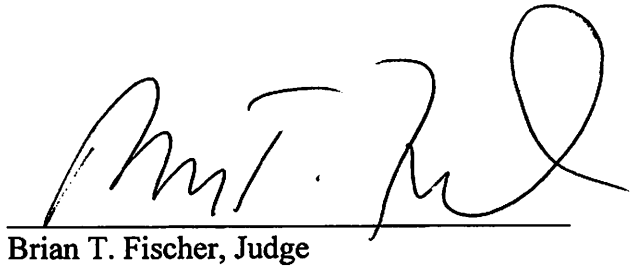
based on privileged (i.e., inadmissible) statements and could not support a cause of action. Still, as the defendant points out in his surreply, that language is not entirely consistent with the revised complaint, which alleges that the defendant "improperly used the opinions expressed by Nancy Riella in support of the plaintiff's cause of action against [the defendant], which are privileged statements under Connecticut law, as the basis for claims of defamation against Nancy Riella [and her appraisal business]."

[4] As is the case with count one, the plaintiff's characterization of count two in subsequent pleadings is inconsistent with the language in the revised complaint. The plaintiff's memorandum of law in opposition to the defendant's motion to strike alleges that "the *only* reason the defendant filed a grievance was to intimidate [the plaintiff]" whereas count two of the revised complaint contains no such language.

CONCLUSION

For the aforementioned reasons, the court grants the defendant's motion to strike counts one and two of the plaintiff's revised complaint.



Brian T. Fischer, Judge