CV 16 6022098 S	:	SUPERIOR COURT
MARILOU MCNEIL	:	JUDICIAL DISTRICT OF
VS.	:	ANSONIA/MILFORD AT DERBY
ANA DOANE, ET. AL.	:	OCTOBER 2018

MEMORANDUM OF DECISION

STATEMENT OF THE CASE

This action was instituted by the plaintiff, Marilou McNeil, against the defendants Anna Doane and Sandra Doane, seeking monetary damages for injuries and losses the plaintiff allegedly sustained in an automobile accident. According to the complaint, on November 18, 2014, the plaintiff was operating an automobile in the northbound direction on Pershing Drive, Derby, Connecticut. Anna Doane was operating an automobile owned by Sandra Doane in the northbound direction on Pershing Drive in the lane immediately adjacent to and to the right of the lane occupied by the plaintiff's automobile when suddenly and without warning Anna Doane veered her automobile into the plaintiff's lane striking the entire passenger side of the plaintiff's vehicle. The complaint is in three counts. The first count is based on negligence. The second count alleges statutory recklessness under General Statutes § 14-295. The third count is based on common law recklessness. The plaintiff seeks compensatory damages under all the counts of the complaint and also seeks punitive damages and attorney fees under the second and third counts.

On February 15, 2018, the defendants filed a motion with a supporting memorandum of law seeking to strike the second and third counts of the complaint on the ground that the allegations were insufficient to assert causes of action for recklessness under either General Statutes § 14-295 or common law. On March 29, 2018, the plaintiff objected to the motion to

strike and filed a supporting memorandum. The motion and the objection appeared on the court's non-arguable short calendar docket, and on April 3, 2018, the court issued a summary ruling denying the motion to strike and sustaining the objection to the motion.[1] On April 12, 2018, the defendants filed a motion requesting reconsideration of this ruling and seeking oral argument and articulation. On April 12, 2018, the court granted the defendants' motion to reargue on the ground that the matter may have been considered on the papers when the movants wanted oral argument. On July 9, 2018, the court heard argument on the motion and the objection.

DISCUSSION

I

"A motion to strike shall be used whenever any party wishes to contest: (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim . . . to state a claim upon which relief can be granted; or (2) the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint. . . ." Practice Book § 10-39 (a). "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

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[1]The court's April 3, 2018 ruling stated the following: "The defendants' motion to strike is denied and the plaintiff's objection to the motion is sustained. The defendants claim that the second count fails to assert a claim for statutory recklessness under General Statutes § 14-295. The court has adopted the majority rule on this issue and on the basis of this rule concludes that these allegations are sufficient to state a claim under General Statutes § 14-295. *Lombard* v. *Booth*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV 01 0383637S (July 12 2001, *Stevens, J.*) As to the third count, the court further concludes that the allegations are sufficient to assert a claim for common law recklessness. See *Craig* v. *Driscoll*, 262 Conn. 312, 342-43 (2003)."

n.9, 865 A.2d 488, cert. denied, 273 Conn. 916, 871 A.2d 372 (2005). "[A] motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court. . . . [The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Moreover . . . [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . 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.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016). "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).

II

As previously stated, the defendants first move to strike count two of the complaint alleging statutory recklessness under General Statutes § 14-295. The text of this statute reads as follows:

> In any civil action to recover damages resulting from personal injury, wrongful death or damage to property, the trier of fact may award double or treble damages if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of section 14-218a, 14-219, 14-222, 14-227a or 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n or section 14-230, 14-234, 14-237, 14-239 or 14-240a, and that such violation was a substantial factor in causing such injury, death or damage to property. The owner of a rental or leased motor vehicle shall not be responsible for such damages unless the damages arose from such owner's operation of the motor vehicle.

According to the plaintiff, the allegations of the second count are sufficient because a claim of recklessness under § 14-295 may be asserted by alleging that the plaintiff's injuries were caused by conduct committed by the defendants deliberately or with reckless disregard of the consequences without the assertion of subordinate facts. In their motion to strike, the defendants argue that in order for the plaintiff to assert a cause of action for statutory recklessness under § 14–295, the claim of recklessness must be pleaded with factual specificity, and mere reference to and reliance on the statutory language of § 14–295 is insufficient. The defendants appreciate that this argument implicates an issue of statutory construction which has not been addressed by our appellate courts and which has created a decades long conflict among the trial courts.

The undersigned weighed in on this subject seventeen years ago in *Lombard* v. *Booth*, Superior Court, judicial district of Bridgeport, Docket No. 01 038367 (July 12, 2001, *Stevens, J.*), issuing a decision rejecting the defendants' position. In their motion to reargue, the defendants essentially take issue with this court's continued reliance on *Lombard* and insist that recent decisions provide a more persuasive, differing analysis of this issue. In making this argument, the defendants neither appreciate nor address that under the doctrine of stare decisis, the court is bound to follow this prior precedent absent a reasoned basis for the court to reverse itself. "The doctrine of stare decisis counsels that a court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it . . . Stare decisis is justified because it allows for predictability in the ordering of conduct, it promotes the necessary perception that the law is relatively unchanging, it saves resources and it promotes judicial efficiency . . . It is the most important application of a theory of decision-making consistency in our legal culture and . . . is an obvious manifestation of the notion that decision-making consistency itself has normative

value." (Internal quotation marks omitted.) *State* v. *Ray*, 290 Conn. 602, 614–15, 966 A.2d 148 (2009). After again reviewing the differing positions on this well traversed controversy, the court remains convinced about the reasoning of *Lombard* and is disinclined to reverse this precedent.

The parties' dispute involves differing interpretations of § 14-295. In this regard, the court is guided by the provisions of General Statutes § 1-2z: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extra-textual evidence of the meaning of the statute shall not be considered." Furthermore, "[w]hen the relevant statutory text and the relationship of that text to other statutes do not reveal a meaning that is plain and unambiguous, our analysis is not limited, and we look to other factors relevant to determining the meaning of [a statute], including its legislative history, the circumstances surrounding its enactment and its purpose. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Citations omitted; internal quotation marks omitted.) *Viera* v. *Cohen*, 283 Conn. 412, 421, 927 A.2d 843 (2007).

The language of § 14-295 is clear and unambiguous. The statute provides that "the trier of fact may award double or treble damages if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation" of one of the motor vehicle provisions specifically delineated in the statute. Consequently, if the complaint alleges that the defendant has violated one of the specified provisions "deliberately or with reckless disregard" then according to the statutory language nothing more needs to be pleaded in order to seek double or treble damages as authorized by the statute. "If a further

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