Docket No. AAN-CV-19-6034483 S

ATLANTIC BABY GROUP	:	SUPERIOR COURT
	:	
v.	:	JUDICIAL DISTRICT OF
	:	ANSONIA-MILFORD AT DERBY
TREBCO SPECIALTY PRODUCTS, INC.	:	
	:	MARCH 16, 2020

MEMORANDUM OF DECISION RE MOTION TO STRIKE (No. 102)

STATEMENT OF THE CASE

This action involves a commercial dispute. According to the complaint, the plaintiff, Atlantic Baby Group, is a corporation registered and located in Denmark. Further according to the complaint, the defendant, Trebco Specialty Products, Inc., is a domestic corporation, duly licensed by the state of Connecticut, having a principal place of business in Orange, Connecticut.

The plaintiff alleges that on October 11, 2010, the plaintiff and the defendant entered into a written "Distributorship Agreement" (agreement) regarding products of the defendant defined as a "WubbaNub Infant Pacifier & marketing materials" (products). The plaintiff further alleges that with respect to the products, the agreement gave the plaintiff the exclusive right to sell within a defined geographical area (territory). The agreement defined the territory to include a list of countries in Europe, including Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. Thereafter, the defendant added Switzerland, the Middle East, Australia, and certain countries in South America, Africa, and Asia to the territory.

The plaintiff further claims that pursuant to the agreement, the defendant agreed to sell the products to the plaintiff at wholesale prices and that these prices would not deviate greatly from

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prices offered to other distributors. The plaintiff also alleges that the defendant was required to sell the products to the plaintiff for resale within the territory.

The plaintiff goes on to claim that the defendant breached the agreement in three respects: (1) by allowing other distributors to sell products in the territory;[1] (2) by charging the plaintiff wholesale prices that were higher and deviated greatly from prices offered to other distributors; and (3) by failing to sell products to the plaintiff for resale within the territory since approximately September, 2018. The plaintiff alleges that these breaches have prevented the plaintiff from continuing to engage in its business and has caused it to suffer harm.

In addition to alleging a breach of contract (Count One), the plaintiff asserts claims in unjust enrichment (Count Two), tortious interference with business expectancies (Count Three), and violations of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq. (CUTPA) (Count Four). Additional allegations are recited below, as necessary.

On October 15, 2019, the defendant filed a motion to strike Counts Three and Four of the complaint. Docket Entry No. 102. The plaintiff filed an objection on November 25, 2019. Docket Entry No. 106. Oral argument was heard by the court on December 2, 2019, on which date the matter was taken under advisement.

DISCUSSION

I

"[A] motion to strike challenges the legal sufficiency of a pleading . . . ." (Internal quotation marks omitted.) *Eskin* v. *Castiglia*, 253 Conn. 516, 522, 753 A.2d 927 (2000); see also Practice Book § 10-39 (a); *Cadle Co.* v. *D'Addario*, 131 Conn. App. 223, 230, 26 A.3d 682 (2011).

[1] More specifically, the plaintiff claims that the defendant allowed other distributors, United States-based retailers, and "e-tailers" to sell products in the territory.

It is the proper procedural vehicle to test a counterclaim. *JP Morgan Chase Bank, Trustee* v. *Rodrigues*, 109 Conn. App. 125, 131, 952 A.2d 56 (2008). The standard of review applicable to motions to strike is well established. As the motion is directed to the viability of a party's pleading as a matter of law, the court's inquiry is limited to the facts alleged in the challenged pleading. *Novametrix Medical Systems, Inc.* v. *BOC Group, Inc.*, 224 Conn. 210, 214–15, 618 A.2d 25 (1992). Any consideration of matters outside the pleadings is generally prohibited. *Liljedahl Bros., Inc.* v. *Grigsby*, 215 Conn. 345, 348, 576 A.2d 149 (1990) ("[i]n deciding upon a motion to strike . . . a trial court must take the facts to be those alleged in the [pleadings] . . . and cannot be aided by the assumption of any facts not therein alleged" [citations omitted; internal quotation marks omitted]).

So-called "speaking" motions to strike, which import facts from outside the pleadings, have long been prohibited in our practice. *Mercer* v. *Cosley*, 110 Conn. App. 283, 292 n.7, 955 A.2d 550 (2008). "It is well established that a motion to strike must be considered within the confines of the pleadings and not external documents . . . ." *Zirinsky* v. *Zirinsky*, 87 Conn. App. 257, 268 n.9, 865 A.2d 488, cert. denied, 273 Conn. 916, 871 A.2d 372 (2005). The trial court may not rely upon evidence outside the four corners of a challenged pleading in determining its legal sufficiency. *Beck & Beck, LLC* v. *Costello*, 159 Conn. App. 203, 207–208, 122 A.3d 269 (2015). "Where the legal grounds for . . . a motion [to strike] are dependent upon underlying facts not alleged in the . . . pleadings, the [moving party] must await the evidence which may be adduced at trial, and the motion should be denied." (Internal quotations marks omitted.) *Commissioner of Labor* v. *C.J.M. Services, Inc.*, 268 Conn. 283, 293, 842 A.2d 1124 (2004). Although the court is thus limited to an examination of the pleadings on a motion to strike, "[w]hat is necessarily implied [in an allegation] need not be expressly alleged"; (internal quotation marks omitted) *Pamela B.* v.

Ment, 244 Conn. 296, 308, 709 A.2d 1089 (1998); and the court is required to "read the allegations of the [challenged pleading] generously to sustain its viability . . . ." (Internal quotation marks omitted.) *Sherwood* v. *Danbury Hospital*, 252 Conn. 193, 212, 746 A.2d 730 (2000); see also *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 580, 693 A.2d 293 (1997) (in keeping with its obligation to interpret pleading generously, court "must construe the facts in the [challenged pleading] most favorably to the [claimant]" [internal quotation marks omitted]).

Even so, a motion to strike "does not admit legal conclusions or the truth or accuracy of opinions stated in the pleadings." (Emphasis omitted.) *Mingachos* v. *CBS, Inc.*, 196 Conn. 91, 108, 491 A.2d 368 (1985). Thus, the motion must be granted "if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." *Novametrix Medical Systems, Inc.* v. *BOC Group, Inc.*, supra, 224 Conn. 215. "For the purpose of ruling upon a motion to strike, the facts alleged in a [challenged pleading] . . . are deemed to be admitted." (Internal quotation marks omitted.) *DeConti* v. *McGlone*, 88 Conn. App. 270, 271 n.1, 869 A.2d 271, cert. denied, 273 Conn. 940, 875 A.2d 42 (2005). "[I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Lombard* v. *Edward J. Peters, Jr., P.C.*, 252 Conn. 623, 626, 749 A.2d 630 (2000).

II

A

Count Three purports to state a claim in tortious interference with business expectancies. "It is well established that the elements of a claim for tortious interference with business expectancies are: (1) a business relationship between the plaintiff and another party; (2) the defendant's intentional interference with the business relationship while knowing of the relationship; and (3) as a result of the interference, the plaintiff suffers actual loss." (Citations

omitted.) *Hi-Ho Tower, Inc.* v. *Com-Tronics, Inc.*, 255 Conn. 20, 27, 761 A.2d 1268 (2000). Connecticut law requires that the plaintiff plead the defendant tortiously interfered with an "existing or prospective business relationship." Id., 31.

The defendant moves to strike Count Three of the plaintiff's complaint on the ground that it is barred by the economic loss doctrine. The argument is rejected. In doing so, the court adopts the reasoning of *Klewin v. Highland Hills Apartments, LLC*, Superior Court, judicial district of New London at New London, Docket No. CV166026603 (Mar. 15, 2018, *Calmar, J.*), in which the court held: "'[T]he economic loss doctrine bars *negligence* claims that arise out of and are dependent on breach of contract claims that result only in economic loss.' *Ulbrich v. Groth,* [310 Conn. 375, 410, 78 A.3D 76 (2013)]. Nevertheless, 'the economic loss doctrine does not bar claims arising from a breach of contract ... when the plaintiff has alleged that the breach was accompanied by intentional, reckless, unethical or unscrupulous conduct.' Id., 412. Tortious interference is an intentional tort. *Landmark Investment Group, LLC v. CALCO Construction & Development Co.,* [318 Conn. 847, 868-69, 124 A.3d 847 (2015)]." (Emphasis added.)

In this case, Count Three states all the necessary elements of a claim in tortious interference, including, inter alia, that the defendant acted intentionally and with malice in allowing other distributors to sell products in the territory. *Klewin v. Highland Hills Apartments, LLC*, supra, Superior Court, judicial district of New London at New London, Docket No. CV166026603 (Mar. 15, 2018, *Calmar, J.*) ("In the present case, because the plaintiff's complaint sufficiently alleges intentional conduct for count three, tortious interference, the economic loss doctrine does not bar the claim."). The motion to strike is denied as to Count Three.

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