

DOCKET NO: FSTCV226056206S

SUPERIOR COURT

FITZSIMMONS, BARRY
V.
CINE MED INC. Et Al

JUDICIAL DISTRICT OF STAMFORD
AT STAMFORD

5/5/2023

ORDER

ORDER REGARDING:
10/03/2022 113.00 MOTION TO STRIKE

The foregoing, having been considered by the Court, is hereby:

ORDER:

The court heard oral argument on the record on 1/23/23 on this motion and the opposition thereto. Based on the arguments presented on the record and through the pleadings and a review of the governing law the motion is DENIED.

"A motion to strike challenges the legal sufficiency of a pleading, and, consequently, requires no factual findings by the trial court." Bernhard-Thomas Building Systems, LLC v. Dunican, 286 Conn. 548, 552 (2008). "The allegations of the pleading involved are entitled to the same favorable construction a trier would be required to give in admitting evidence under them and if the facts provable under its allegations would support a defense or a cause of action, the motion to strike must fail." Mingachos v. CBS, Inc., 196 Conn. 91, 108-109 (1985).

"As we have indicated, the function of the motion to dismiss is different from that of the motion to strike. "[The motion to dismiss] essentially asserts that, as a matter of law and fact, a plaintiff cannot state a cause of action that is properly before the court. . . . [S]ee Practice Book § 10-31. By contrast, the motion to strike attacks the sufficiency of the pleadings. Practice Book § 10-39 There is a significant difference between asserting that a plaintiff cannot state a cause of action [***8] and asserting that a plaintiff has not stated a cause of action, and therein lies the distinction [**714] between the motion to dismiss and the motion to strike." (Citations omitted.) Egri v. Foisie, 83 Conn. App. 243, 247, 848 A.2d 1266, cert. denied, 271 Conn. 931, 859 A.2d 930 (2004). Pecan v. Madigan, 97 Conn. App. 617, 621, 905 A.2d 710, 713-714, 2006 Conn. App. LEXIS 407, *7-8.

Here the pleadings are sufficient to state the causes of action. "[A]ll well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted." (Internal quotation marks omitted.) Violano v. Fernandez, 280 Conn. 310, 318, 907 A.2d 1188 (2006). "Insofar as [a] motion to strike is directed [to] the entire complaint, it must . . . fail if any of the plaintiff's claims are legally sufficient." (Internal quotation marks omitted.) Whelan v. Whelan, 41 Conn. Supp. 519, 520, 588 A.2d 251 [3 Conn. L. Rptr. 135] (1991). "Where the legal grounds for such a motion are dependent upon underlying facts not alleged in the plaintiff's pleadings, the defendant must await evidence which may be adduced at trial, and the motion should be denied." Liljedahl Bros., Inc. v. Grigsby, 215 Conn. 345, 348, 576 A.2d 149 (1990).

Judicial Notice (JDNO) was sent regarding this order.

Judge: WILLIAM F CLARK
Processed by: Jonathan Bubar

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