

DOCKET NO.: LLI-CV-23-6035109-S : SUPERIOR COURT
APRIL ARRASATE : JUDICIAL DISTRICT OF LITCHFIELD
V. : AT TORRINGTON
LINARES FAYE FARMS, LLC, ET AL. : NOVEMBER 12, 2024

MEMORANDUM OF DECISION

MOTION TO STRIKE

Before the court is the defendants' motion to strike, seeking to (1) strike Count One as brought against Connecticut Social Equity, LLC ("CSE") and Arthur Linares as they are not parties to the contract; (2) strike Count Two as brought against Connecticut Social Equity Holdings, LLC ("CSEH"), CSE, and Arthur Linares as they are not parties to the contract, and alternatively, as against all named defendants for failure to state a claim; (3) strike Count Three as brought against CSEH, CSE, and Arthur Linares as they are not parties to the contract, and alternatively, in its entirety for failure to state a claim upon which relief may be granted; (4) strike Count Four as brought against CSEH, CSE, and Arthur Linares, and alternatively, in its entirety for failure to state a claim; and to strike Counts Five through Nine in their entirety for failure to state a claim. The defendants further seek to strike the plaintiff's prayer for relief as to specific performance, punitive damages, and CUTPA damages for failure to plead sufficient facts to allege the standards necessary for such relief.

JDND sent 11/12/24. All parties appearing.

For the reasons stated below, the court denies the motion to strike Counts One and Two as they pertain to Linares Faye Farms, LLC (“LFF”) and denies the motion to strike Counts Five and Six. The court grants the motion to strike the remaining counts and their associated prayers for relief.

I

BACKGROUND & PROCEDURAL HISTORY

This action concerns a contract between the plaintiff, April Arrasate, and the defendant, Linares Faye Farms, LLC (LFF). On August 23, 2022, the plaintiff entered into an assignment and assumption agreement (the contract) with CSE, which was executed by Arthur Linares. The contract was amended in September 2022 to include LFF as a party. Prior to the creation of the assignment and assumption agreement, the plaintiff obtained the rights to purchase a 78-acre property with an address of 266 Watertown Road, Morris, CT (the Property). The plaintiff obtained zoning approval for the Property to be used to grow cannabis pursuant to the Responsible and Equitable Regulation of Adult-Use Cannabis Act (RERACA), codified at General Statutes § 21a-420 et seq. In accordance with the assignment and assumption agreement, the plaintiff transferred the purchase rights for the Property to CSE, LFF, and/or Arthur Linares as an individual backer in exchange for (a) partition of an approximately 20 acre portion of the Property to be sold to the plaintiff (Carve-Out Property); (b) sale of the Carve-Out Property to the plaintiff for \$1; and (c) payment of a \$125,000 penalty if (a) and (b) were not accomplished within a year. The defendants purchased the Property and began operations pursuant to RERACA.

The plaintiff alleges that the defendants, CSE, LFF, Arthur Linares, Luis Linares, and Brian Faye have breached the contract in a number of ways, including by failing and refusing to partition and sell the Carve-Out Property to the plaintiff, failing and refusing to install a residential well on

the Carve-Out Property, and refusing to make the required \$125,000 payment to the plaintiff. The plaintiff now brings this nine-count action against the defendants, sounding in breach of contract, breach of the implied covenant of good faith and fair dealing, violations of CUTPA, recklessness, negligent infliction of emotional distress, tortious interference with a contract, and tortious interference with business expectancy.

II

STANDARD OF LAW

Practice Book 10-39 (a) provides in relevant part: “[a] motion to strike shall be used whenever a party wishes to contest . . . the legal sufficiency of the allegations of any complaint” “[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, [the court notes] that [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).

“The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted.” (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003).

“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.” (Internal quotation marks omitted.) *Coe v. Board of Education*, 301 Conn. 112, 117, 19 A.3d 640 (2011). “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 admits all facts well pleaded; it does not admit legal conclusions or the truth or accuracy of opinions stated in the pleadings.” (Emphasis omitted; internal quotation marks omitted.) *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 588, 693 A.2d 293 (1997). “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).

III

DISCUSSION

Motion to Strike Counts One, Two, and Three as brought against anyone other than LFF

The defendants move to strike the contract-based claims, Counts One, Two, and Three, as against all defendants who were not parties to the agreement. A contract cannot bind a nonparty and, thus, an action pertaining to a breach of contract may only be maintained against a person who is a party to the contract.¹ See *FCM Group, Inc. v. Miller*, 300 Conn. 774, 797, 17 A.3d 40

¹ See *Lustig v. Pomperaug District Department of Health*, Superior Court, judicial district of New Haven, Docket No. CV-22-6123753-S (April 29, 2024, *Wilson, J.*) (granting motion for summary judgement where the court found that the agreement was between the signatories, and did not include the defendants who were not mentioned in the agreement, who could not be then held liable to the agreement); *2-4 Broad St., LLC v. Instant Replay Bar & Rest., LLC*, AAN-CV-21-6044766-S, 2023 WL 196033 at 1-2 (Conn. Super. Ct. Jan. 10, 2023) (*Hiller, J.*) (motion to strike a special defense was granted by the court because two individuals were not parties to the lease in dispute.);

(2011). The court agrees with the defendants that the plaintiff may only plead contract-based claims against the defendant that is a party to the contract. The only party to the contract and lease at issue here is LFF.

The plaintiff in the present case before the court contends that CSEH, CSE, and Arthur Linares may be held liable for breach of the contract in question. The plaintiff argues that the RERACA defines Arthur Linares as a controlling member of CSEH, and that he is named in the contract, so he is “personally bound by these terms, as he is a controlling member of both [CSEH] and Linares Faye Farms, LLC, and a statutory backer of [CSEH] under RERACA.” The plaintiff, in essence, claims that Arthur Linares, CSEH, and CSE are liable for the breach of contract because they are named in the amended lease, they participated in the breach, and the original lease on its face indicates that it is binding on Linares and “any parties who may in the future succeed to their interests.”

The assignment and assumption agreement, which was effective as of August 23, 2022, was signed by Arthur Linares, and by April Arrasate as the tenant. Exhibit D. Under “First Amendment to Lease Agreement,” the date of the lease and parties were modified to specify that LFF was the landlord to the lease. *Id.* The printed name of the landlord next to the signatory block likewise expresses that Linares Faye Farms, LLC, is the landlord. Although Arthur Linares signed the lease, this provision, in conjunction with the signatory block, makes it clear that Arthur Linares was not signing in his individual capacity. Further, the plaintiff does not cite any case law to support her claim that RERACA binds controlling members to a contract, amounting to consent to

Fiondella v. Pre-Bilt Manufacturing, LLC, Superior Court, judicial district of New Haven, Docket No. CV-13-6043555-S (November 18, 2015, *Wilson, J.*) (granting motion for summary judgement in part because the defendant was deemed to have signed the contract in his representative capacity for his LLC, not his individual capacity, and therefore could not be held personally liable).

be bound. Finally, CSEH and CSE are not mentioned in the agreement. Therefore, the court strikes the contract-based claims, Counts One, Two, and Three, as brought against CSE, CSEH, Arthur Linares, Luis Linares, and Bryan Faye.

Count One: Breach of "Assignment Agreement"

The plaintiff first alleges a breach of contract claim against the defendants. For the reasons discussed above, the court will analyze only the breach of contract claim against defendant LFF. In her revised complaint, the plaintiff contends that, per the contract she entered into with LFF, LFF has violated the terms of the agreement by failing and refusing to partition and sell the Carve-Out Property to the plaintiff; failing and refusing to install a residential well on the Carve-Out Property; leasing the entire Property, including the Carve-Out Property, to CSE despite the existing lease the plaintiff had on the Carve-Out Property; and finally by refusing to make a required \$125,000 payment. As such, the plaintiff claims damages. The defendants, in their motion to strike, ask the court to strike this count as to all defendants excepting LFF, which the court has discussed above. Count One is stricken as it pertains to all defendants except LFF. Count One remains as it applies to LFF.

Count Two: Breach of Lease

The defendants move to strike Count Two as to CSE, CSEH, and Arthur Linares, on the basis that they are not parties to the amended lease agreement. The court agrees and strikes this count as to all parties except LFF. As it pertains to LFF, the defendants ask this court to strike this count in its entirety for failure to state a claim, alleging that the plaintiff has failed to state essential elements of her claim, including specific damages or breach of the covenant of quiet enjoyment.

The defendants allege that the plaintiff made only conclusory claims of trespass and damage to personal property and fails to include any facts that show damage.

The plaintiff disagrees and cites to the complaint, which describes the breach of the contract as follows: “[defendants] violated the terms of the lease and their obligations as landlord under Conn. Gen. Stat. §47a-7, including, but not limited to, by repeatedly trespassing, damaging [the plaintiff’s] personal property, damaging the Carve-Out Property, including violations of local ordinances, failing to record the lease on Town land records, and by repeatedly interfering with her quiet enjoyment of the Carve-Out Property, including, but not limited to, by issuing hunting permits without notice to [the plaintiff], where she resides with her small child.” Docket No. 130. Further, the plaintiff claims that she “has been damaged by Defendants’ breaches of the lease agreement and violations of Conn. Gen. Stat. §47a-7.” Id.

The court agrees with the defendants that plaintiff has failed to allege facts that demonstrate a breach of the covenant of quiet enjoyment. A party pleading breach of the covenant of quiet enjoyment is required to plead either actual or constructive eviction, *Hart v. EQR-Fairfield, LLC.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FST-CV-15-6024790-S (December 9, 2015, *Lee, J.*). “A constructive eviction arises where a landlord, while not actually depriving the tenant of possession of any part of the premises leased, has done or suffered some act by which the premises are rendered untenable....” *Conference Center Ltd. v. TRC*, 189 Conn. 212, 220, 455 A.2d 857 (1983). Thus, the plaintiff must plead the following: “that (1) the problem was caused by the landlord, (2) the tenant vacated the premises because of the problem, and (3) the tenant did not vacate until after giving the landlord reasonable time to correct the problem.” *Welsch v. Groat*, 95 Conn. App. 658, 662, 897 A.2d 710 (2006). The plaintiff, here, has not attempted to allege either actual or constructive eviction.

The plaintiff, however, correctly notes that the breach of the covenant of quiet enjoyment is not the only breach she pleads. She also alleges trespass, violations of local ordinances, damaging of personal property, damaging the Carve-Out Property, and violations of local ordinances. Plaintiff also alleges that these breaches have caused her damage. The plaintiff has not cited to specific provisions of the lease that the defendant LFF has breached. The lease does contain provisions regarding Access to the Premises. At this early stage in the proceedings, she has sufficiently put the defendants on notice that she is claiming a breach and that the breach has caused her damage. Through discovery, the defendants can further flesh out these claims. Construing the complaint in the manner most favorable to sustaining its legal sufficiency, the court finds that the plaintiff has adequately plead the existences of lease, multiple potential grounds for breach of that lease, and that she has suffered damages. The court strikes Count Two as to all parties except LFF.

Count Three: Breach of implied covenant of good faith and fair dealing as to CSE, CSEH, and Arthur Linares, or in its entirety due to failure to state a claim

The defendants move to strike Count Three, which alleges a breach of the implied covenant of good faith and fair dealing as to CSE, CSEH, and Arthur Linares, or in its entirety due to failure to state a claim. As discussed above, the court agrees with the defendants that Count Three should be stricken as to CSE, CSEH, and Arthur Linares. Thus, the analysis of the remainder of Count Three will refer to defendant LFF only as LFF is the only party to the contract that has allegedly been breached.

In her revised complaint, the plaintiff alleges that the defendant “repeatedly engaged in bad faith conduct by the manner in which they caused, and continue to cause, breach of the agreements, including by acting with malice, deception, and by their intentional evasion of the spirit of the

bargains set forth in the contracts.” Docket No. 130. Further, the plaintiff claims that the defendants have berated her with sexist behavior and refuse to speak with her directly and instead have forced her to incur attorneys’ fees to enforce the contract. The plaintiff claims that she has been damaged by this behavior, and that it amounts to a breach of the implied covenant of good faith and fair dealing. The defendants, in their motion to strike, assert that the plaintiff has not sufficiently pled the requirements for breach of the implied covenant of good faith and fair dealing and thus has failed to state a claim. The defendants maintain that the plaintiff’s claims of sexist or infantilizing behavior does not prove a dishonest purpose required to state a claim for a breach of the good faith and fair dealing principle.

“Every contract carries an implied covenant of good faith and fair dealing requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement.” *Habetz v. Condon*, 224 Conn. 231, 238, 618 A.2d 501 (1992). “To constitute a breach of [the implied covenant of good faith and fair dealing], the acts by which a defendant allegedly impedes the plaintiff’s right to receive benefits that he or she reasonably expected to receive under the contract must have been taken in bad faith.” (Emphasis omitted; internal citation omitted.) *Landry v. Spitz*, 102 Conn. App. 34, 42, 925 A.2d 334 (2007). “Bad faith in general implies...actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive.... Bad faith means more than mere negligence; it involves a dishonest purpose.” (Internal quotation marks omitted; internal citations omitted.) *Habetz v. Condon*, *supra*, 224 Conn. at 237. “[B]ad faith is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity [I]t contemplates a state of mind affirmatively operating with furtive design or ill

will.” (Internal quotation marks omitted.) *Hutchinson v. Farm Family Casualty Ins. Co.*, 273 Conn. 33, 42 n.4, 867 A.2d 1 (2005). “Absent allegations and evidence of a dishonest purpose or sinister motive, a claim for breach of the implied covenant of good faith and fair dealing is legally insufficient.” *Alexandru v. Strong*, 81 Conn. App. 68, 81, 837 A.2d 875, cert. denied, 268 Conn. 906, 845 A.2d 406 (2004).

Here, the plaintiff in her revised complaint does not allege sufficient facts that would indicate that the defendant, LFF, breached the express terms of their contract in a way that would have violated the implied covenant of good faith and fair dealing. Further, the plaintiff only vaguely alleges infantilizing and sexist behavior, and demands from the defendants to speak to them through attorneys. This is insufficient to support a claim of breach of the implied covenant of good faith and fair dealing, and as such the motion to strike Count Three in its entirety is granted.

Count Four: CUTPA in its entirety for failure to state a claim.

The defendant next argues that Count Four of the plaintiff’s complaint must be stricken on the ground that the plaintiff fails to state a claim upon which relief can be granted under CUTPA, because the facts alleged do not satisfy the applicable test in order to plead a CUTPA claim sufficiently. In reply, the plaintiff asserts that she has alleged sufficient facts to satisfy the applicable test under CUTPA because “the shell game manner in which [d]efendants purportedly

² A number of Superior Court cases clarify that Connecticut courts will grant motions to strike where a plaintiff has alleged a breach of the implied covenant of good faith and fair dealing due to bad faith but has failed to allege sufficient facts to support these allegations. See *White v. Carta*, Superior Court, judicial district of New Haven, Docket No. CV-11-6020154-S (December 11, 2013, *Vitale, J.*), aff’d, 163 Conn. App. 902, 131 A.3d 1293 (2016); *Romero v. Gewirtz*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-09-5013109-S (September 28, 2011, *Karazin, J.T.R.*) (52 Conn. L. Rptr. 686); *Crespan v. State Farm Mutual Automobile Ins. Co.*, Superior Court, judicial district of Litchfield, Docket No. CV-05-4002121-S (January 12, 2006, *Pickard, J.*). As the court in *White* noted when granting the defendant’s motion to strike, “the plaintiff’s specific factual allegations are bare as the defendant’s intent. The plaintiff has alleged an unsupported conclusion of law. The motion to strike is therefore granted....” *White v. Carta*, supra, Superior Court, Docket No. CV-11-6020154-S.

leased the Carve-Out Property to [p]laintiff” is a violation of the purpose of RERACA.” Docket No. 130. The plaintiff alleges that these statutory violations were made with improper and ill will which is adequate to support her CUTPA claim. In their reply, the defendants claim that the plaintiff has not alleged facts which support a pattern of deception or concealment in order to satisfy the requirements for a CUTPA claim.

“It is well settled that in determining whether a practice violates CUTPA we have adopted the criteria set out in the cigarette rule by the federal trade commission for determining when a practice is unfair: (1) [W]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers, [competitors or other businesspersons]. . . . All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three. . . . [A] violation of CUTPA may be established by showing either an actual deceptive practice . . . or a practice amounting to a violation of public policy. . . . In order to enforce this prohibition, CUTPA provides a private cause of action to [a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a [prohibited] method, act or practice” (Citations omitted; internal quotation marks omitted.) *Ramirez v. Health Net of the Northeast, Inc.*, 285 Conn. 1, 18-19, 938 A.2d 576 (2008).

Furthermore, “[a] claim under CUTPA must be pleaded with particularity to allow evaluation of the legal theory upon which the claim is based.” (Internal quotation marks omitted.) *S.M.S. Textile Mills, Inc. v. Brown, Jacobson, Tillinghast, Lahan & King, P.C.*, 32 Conn.

App. 786, 797, 631 A.2d 340, cert. denied, 228 Conn. 903, 634 A.2d 296 (1993). As to whether a breach of contract claim may serve as a basis for a CUTPA claim, our Appellate Court has stated that “the same facts that establish a breach of contract claim may be sufficient to establish a CUTPA violation” *Lester v. Resort Camplands International, Inc.*, 27 Conn. App. 59, 71, 605 A.2d 550 (1992). “[N]ot every contractual breach rises to the level of a CUTPA violation. . . . In the absence of aggravating unscrupulous conduct, mere incompetence does not by itself mandate a trial court to find a CUTPA violation.” (Citations omitted; internal quotation marks omitted.) *Naples v. Keystone Building & Development Corp.*, 295 Conn. 214, 228-29, 990 A.2d 326 (2010). “[T]o recover under CUTPA for a simple breach of contract, the plaintiff must show substantial aggravating circumstances Under [CUTPA] intent to deceive is not relevant.” (Internal quotation marks omitted.) *Thames River Recycling, Inc. v. Gallo*, 50 Conn. App. 767, 784, 720 A.2d 242 (1998).

“In applying this proposition, our trial courts are split in determining what additional allegations are required to be pleaded by the plaintiff for a CUTPA claim, aside from merely pleading a sufficient breach of contract claim. Regardless of this split, the majority of courts [hold] that a simple breach of contract, even if intentional, does not amount to a violation of CUTPA in the absence of substantial aggravating circumstances. . . . Thus, [a] CUTPA claim may not be premised on a simple breach of contract, that is, one in which there are no aggravating factors under parts two or three of the cigarette rule. . . . This approach is primarily premised on public policy considerations. As one court aptly stated: The burdens and risks inherent in contract formation would be intolerably increased if every simple breach of contract claim were to be made the basis of a CUTPA violation. . . . A CUTPA claim generally requires some unfairness, deception, immorality, unethical behavior or unscrupulous conduct. Thus, as to what may constitute sufficient

aggravating circumstances, courts have permitted a CUTPA cause of action based on a breach of contract, [because] there generally has been some type of fraudulent behavior accompanying the breach or aggravating circumstances . . . The question therefore becomes whether the plaintiff has alleged in its complaint the substantial aggravating circumstances attending the breach of contract necessary to establish a CUTPA violation. . . . Conduct that has been held to be substantial aggravating circumstances sufficient to support CUTPA claims includes fraudulent representations, fraudulent concealment, false claims . . . and multiple breaches of contract. . . . Accordingly, [a] simple contract breach is not sufficient to establish a violation of CUTPA . . . where a count simply incorporates by reference the breach of contract claim and does not set forth how or in what respect the defendant's activities are either, immoral, unethical, unscrupulous, or offensive to public policy.” (Citations omitted; emphasis omitted; internal quotation marks omitted.) *American Pride Builders, Inc. v. New Haven Housing Authority*, Superior Court, judicial district of New Haven, Docket No. CV-13-6041741-S (April 23, 2014, *Nazzaro, J.*).

In her revised complaint, the plaintiff does not allege facts with specificity. Instead, she alleges that the defendants' violations of their contractual and statutory responsibilities are unscrupulous, unethical, and in bad faith. To successfully assert a claim for a violation of CUTPA, a plaintiff must set forth in what respect the defendant's activities are unscrupulous, unethical, or in bad faith, and specify what those activities are. Because the plaintiff has failed to do so, the court grants the motion to strike Count Four.

Count Five: Recklessness, in its entirety for failure to state a claim

The defendants move to strike Count Five in its entirety for failure to state a claim. In her complaint, the plaintiff alleges that defendants Arthur Linares, Luis Linares, and Brian Faye acted with “conscious and callous disregard” for her, her son, and her dog's safety in issuing hunting

permits on the Carve-Out Property which she leased. Docket No. 130. She further asserts that failing to notify her of the issuance of these permits was “an extreme departure from ordinary care.” *Id.* As a result of their alleged reckless conduct, the plaintiff claims damages including emotional distress. The defendants move that Count Five should be stricken because the plaintiff has not pled sufficient facts to meet the standard for common-law recklessness, and that the plaintiff had failed to allege facts demonstrating both egregious conduct and the requisite state of mind. Further, the defendants assert that Arthur Linares, Luis Linares, and Brian Faye cannot be held liable for recklessness because none of the individual defendants own the property at issue, and therefore do not have the legal authority to issue the permits personally. The defendants finally claim that Count Five should be stricken because it mirrors the negligence claim in Count Six.

To determine whether a plaintiff has alleged sufficient facts to support a claim of common-law recklessness, the court must first look to the definitions of wilful, wanton, and reckless behavior. *Craig v. Driscoll*, 262 Conn. 312, 342, 813 A.2d 1003 (2003). “Recklessness requires a conscious choice of a course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man, and the actor must recognize that his conduct involves a risk substantially greater . . . than that which is necessary to make his conduct negligent. . . . More recently, [the court] [has] described recklessness as a state of consciousness with reference to the consequences of one’s acts. . . . It is more than negligence, more than gross negligence. . . . The state of mind amounting to recklessness may be inferred from conduct. But, in order to infer it, there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them. . . . Wanton misconduct is reckless misconduct. . . . It is such conduct as indicates a reckless disregard of the just rights or safety of others or of the consequences

of the action. . . . While [the court] [has] attempted to draw definitional distinctions between the terms wilful, wanton or reckless, in practice the three terms have been treated as meaning the same thing. The result is that willful, wanton, or reckless conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent.” (Citations omitted; internal quotation marks omitted.) *Matthiessen v. Vanech*, 266 Conn. 822, 832-33, 836 A.2d 394 (2003).

“Although there is a difference between 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 conduct are being asserted.” *Craig v. Driscoll*, supra, 262 Conn. 343; see also *Ismail v. Jepsen*, Superior Court, judicial district of New Haven, Docket No. CV-94-0365563 (January 24, 1995, *Zoarski, J.*) (specific allegation setting out the conduct, claimed to be reckless or wanton, must be made). “There is a wide difference between negligence and a reckless disregard of the rights or safety of others, and a complaint should employ language explicit enough to clearly inform the court and opposing counsel that reckless misconduct is relied on.” *Brock v. Waldron*, 127 Conn. 79, 81, 14 A.2d 713 (1940).

“Simply using the word reckless or recklessness is not enough. A specific allegation setting out the conduct that is claimed to be reckless or wanton must be made.” (Internal quotation marks omitted.) *Dumond v. Denehy*, 145 Conn. 88, 91, 139 A.2d 58 (1958). “Recklessness requires a conscious choice of a course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man, and the actor must recognize that his conduct involves a risk substantially greater ... than that which is necessary to make his conduct negligent.... More recently, we have described recklessness as a

state of consciousness with reference to the consequences of one's acts.... It is more than negligence, more than gross negligence.... The state of mind amounting to recklessness may be inferred from conduct. But, in order to infer it, there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them.... Wanton misconduct is reckless misconduct.... It is such conduct as indicates a reckless disregard of the just rights or safety of others or of the consequences of the action.” (Internal quotation marks omitted.) *Doe v. Boy Scouts of America Corp.*, 323 Conn. 303, 330, 147 A.3d 104 (2016).

General Statutes §26-65 sets forth the regulations for hunting on privately owned land. It states that “(a) In the interest of developing a sound wildlife program for all species of wild birds and wild quadrupeds, to encourage landowner participation in such program and to develop public hunting on public and private lands and waters, the Commissioner of Energy and Environmental Protection is delegated authority to regulate hunting within the state as hereinafter provided; and (b) No person may engage in hunting on private land without the permission of the owner of such land.” In this case, the defendants move to strike Count Five because none of the defendants named in the count own the property personally, nor are they parties to the contract. Therefore, the defendants conclude that they could not have had the legal authority to issue the hunting permits personally and should not be held liable.

The court disagrees. General Statutes §26-65 explicitly states that no person may engage in hunting on private land without the permission of the owner of the land. Construing the plaintiff’s complaint broadly and realistically, and taking the facts she has alleged as true in order to uphold legal sufficiency, Brian Faye, Arthur Linares, and Luis Linares issued hunting permits on private land owned by LFF. Either the defendants had permission from LFF to do so, or they

acted in their individual capacity. In other words, they either had permission from LFF, who had a duty of care to the plaintiff as a party to the contract, to issue the permits, or acted as apparent agents of LFF to issue the permits³.

Viewing the complaint in the light most favorable to the plaintiff, the court agrees she has pled common-law recklessness sufficiently to survive a motion to strike. Although none of the individual plaintiffs own the land, they either acted with LFF's permission to issue the hunting permits, or they acted as apparent agents in issuing the permits. Either way, the defendants had a duty of care to the plaintiff through the contract LFF executed.

Taking the plaintiff's facts alleged as true, she has pled facts sufficient to uphold a claim of common-law recklessness. She alleges that the defendants issued hunting permits for the outdoor portions of the Carve-Out Property, over which she has the exclusive right to use and enjoy in her lease. She further alleges that, with conscious and callous disregard for safety and in an extreme departure from ordinary care, the defendants never informed her that they issued these permits. The plaintiff also claims that, when confronted, the defendants lied to the plaintiff and claimed that they had never issued the permits, and in a separate interaction, stated that they had revoked the permits despite the fact that the plaintiff continues to hear gunshots in and around the

³ According to Restatement (Third) Of Agency § 7.01 (2006), "[a]n agent is subject to liability to a third party harmed by the agent's tortious conduct. Unless an applicable statute provides otherwise, an actor remains subject to liability although the actor acts as an agent or an employee, with actual or apparent authority, or within the scope of employment." "Apparent authority is that semblance of authority which a principal, through his own acts or inadvertences, causes or allows third persons to believe his agent possesses.... Consequently, apparent authority is to be determined, not by the agent's own acts, but by the acts of the agent's principal.... The issue of apparent authority is one of fact to be determined based on two criteria.... First, it must appear from the principal's conduct that the principal held the agent out as possessing sufficient authority to embrace the act in question, or knowingly permitted [the agent] to act as having such authority.... Second, the party dealing with the agent must have, acting in good faith, reasonably believed, under all the circumstances, that the agent had the necessary authority to bind the principal to the agent's action." (Citations omitted; internal quotation marks omitted.) *Tomlinson v. Board of Education*, 226 Conn. 704, 734–35, 629 A.2d 333 (1993). "[A]pparent authority, even absent actual authority, [is] enough to bind ... parties to ... agreements." *Id.* at 736.

Carve-Out Property. As a result, the plaintiff claims she has and will continue to suffer damages, including severe emotional distress, due to the extreme danger created by the defendants.

As detailed above, the court must look at the defendants' conduct to determine recklessness. Recklessness requires a conscious choice either with the knowledge of the serious danger imposed on others, or with knowledge of facts which would disclose this danger to any reasonable man. See *Craig v. Driscoll*, supra, 262 Conn. 343. This state of mind may be inferred from the defendants' conduct. Id. Here, the defendants' conduct supports a claim of recklessness because not notifying a resident with a young child on private property that hunting permits, including permission to use deadly weapons, had been issued for her private property may rise to the level of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent. This extreme departure from ordinary care is also what differentiates the plaintiff's claim of recklessness from mere negligence, negating the defendants' claim that this count mirrors Count Six. Therefore, the court denies the motion to strike Count Five.

Count Six: Negligent infliction of emotional distress in its entirety for failure to state a claim

In the present action, the plaintiff alleges that defendants Arthur Linares, Luis Linares, and Brian Faye were aware that the plaintiff, her son, and her dog frequented the outdoor portions of the Carve-Out Property she leased, and that the defendants issued hunting permits to multiple unnamed individuals on the same property. She further alleges that the defendants did not notify the plaintiff that they issued hunting permits, and that upon her discovery of the permits the defendants claimed to never have issued the permits despite the plaintiff finding copies of the permits. The defendants then claimed to have revoked the permits, but the plaintiff contends that she still hears gunshots in or around the Bethlehem portion of the Carve-Out Property. As a result,

the plaintiff alleges emotional distress “which was a foreseeable result of their conduct, and which these [d]efendants knew might result in illness or bodily harm.” Docket No. 130. As a result, the plaintiff alleges that she has suffered and will continue to suffer damages including emotional distress. In the defendants’ motion to strike, they contend that “[t]he [i]ndividual [d]efendants conduct cannot be the cause of any alleged distress...when none of the named [i]ndividual [d]efendants own the [p]roperty, nor could they have breached the duty required to be established under an NIED claim.” Docket No. 132.

“To prevail on a claim of negligent infliction of emotional distress, the plaintiff must plead and prove the following: (1) the defendant’s conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff’s distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant’s conduct was the cause of the plaintiff’s distress. . . . Thus, [t]he plaintiff must prove that the defendant should have realized that its conduct involved an unreasonable risk of causing emotional distress and that that distress, if it were caused, might result in illness or bodily harm. . . . The foreseeability requirement in a negligent infliction of emotional distress claim is more specific than the standard negligence requirement that an actor should have foreseen that [its] tortious conduct was likely to cause harm. . . . In order to state a claim for negligent infliction of emotional distress, the plaintiff must plead that the actor should have foreseen that [its] behavior would likely cause harm of a specific nature, i.e., emotional distress likely to lead to illness or bodily harm.” (Citation omitted; internal quotation marks omitted.) *Stancuna v. Schaffer*, 122 Conn. App. 484, 490, 998 A.2d 1221 (2010).

“This condition differs from the standard foreseeability of the risk of harm requirement for negligence liability . . . in that it focuses more precisely upon the nature of the harm to be

anticipated as a prerequisite to recovery” (Internal quotation marks omitted.) *Di Teresi v. Stamford Health Systems, Inc.*, 142 Conn. App. 72, 80, 63 A.3d 1011 (2013). “The foreseeability requirement in a negligent infliction of emotional distress claim is more specific than the standard negligence requirement that an actor should have foreseen that his tortious conduct was likely to cause harm.... In order to state a claim for negligent infliction of emotional distress, the plaintiff must plead that the actor should have foreseen that her behavior would likely cause harm of a specific nature, i.e., emotional distress likely to lead to illness or bodily harm.” (Citation omitted.) *Olson v. Bristol–Burlington Health District*, 87 Conn. App. 1, 5, 863 A.2d 748, cert. granted on other grounds, 273 Conn. 914, 870 A.2d 1083 (2005) (appeal withdrawn May 25, 2005).

In her complaint, the plaintiff pled that the defendant’s conduct in issuing the hunting permits without notice created an unreasonable risk of causing her severe emotional distress. The plaintiff also pled that her distress was foreseeable, and that the defendant’s conduct was the cause of that distress. She also pled that her distress was of such a nature that her distress would or could amount to illness or bodily harm. The plaintiff sufficiently pled each element of her negligent infliction of emotional distress claim; therefore, the court denies the motion to strike Count Six.

Count Seven: Negligence as brought against improper defendants and for failure to state a claim

The defendants move to strike Count Seven as to CSE, CSEH, Arthur Linares, Luis Linares, and Brian Faye. For the reasons discussed above, the court agrees with the defendants and grants the motion to strike in this regard.

The defendants also move to strike Count Seven in its entirety for failure to state a claim. In her complaint, the plaintiff alleges that the remaining defendant, LFF, breached its duty to exercise the same care as a reasonably prudent person or entity would under the circumstances, including by causing, or directing the digging of wells, test pits, and other work which caused

flooding and water damage to the Carve-Out Property, resulting in the damage of personal property; causing or directing hunting permits to be granted with no notice on the Carve-Out Property where the plaintiff resides; causing or directing unauthorized alterations to the Carve-Out Property, including attempts to alter the property boundaries in order to create an allegedly unauthorized parking lot; failing to maintain the residence on the Carve-Out Property in the same habitable state it was at the time it was leased, including failing to prevent the roof from leaking, failing to prevent seepage, and failing to maintain access to utilities; and invading the plaintiff's privacy with repeated intrusions and trespasses on the Carve-Out Property with no notice, including negligently causing local police to invade the plaintiff's residence. As a result of this conduct, the plaintiff alleges she has sustained damages including emotional distress, damage to personal property, and damage to the Carve-Out Property in which she has an ownership interest.

In their motion to strike, the defendants contend that LFF was authorized to perform work upon the Carve-Out Property. The defendants note that, in the Assignment Agreement, LFF was explicitly authorized to enter the Carve-Out Property to install wells subject to certain conditions. Exhibit A. Further, the defendants claim that LFF, as the landlord, is not liable for the negligent work of contractors, and that the plaintiff must instead hold the contractors liable for negligent work absent a contractual obligation to supervise contractors. Because the plaintiff has not alleged that LFF had a contractual obligation to supervise the work performed by the contractors, the defendants claim that the plaintiff cannot claim a negligent breach of duty because there was no duty owed which could have been breached by LFF.

"Negligence occurs where one under a duty to exercise a certain degree of care to avoid injury to others fails to do so." *Dean v. Hershowitz*, 119 Conn. 398, 407-408, 177 A. 262 (1935). "The essential elements of a cause of action in negligence are well established: duty; breach of that

duty; causation; and actual injury.” *RK Constructors, Inc. v. Fusco Corp.*, 231 Conn. 381, 384, 650 A.2d 153 (1994). “The existence of a duty of care is an essential element of negligence.... A duty to use care may arise ... from circumstances under which a reasonable person, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result from his act or failure to act.” (Internal quotation marks omitted.) *Greene v. Perry*, 62 Conn. App. 338, 341, 771 A.2d 196 (2001), cert. denied, 256 Conn. 917, 773 A.2d 943 (2001). “A duty to use care may arise from a contract, from a statute, or from circumstances under which a reasonable person, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result from his act or failure to act.” *Coburn v. Lenox Homes, Inc.*, 186 Conn 370, 375, 441 A.2d 620 (1982). To sustain a cause of action, the court must determine whether the defendant owed a duty to the plaintiff. *Id.* at 372.

Generally, one who employs a reputable independent contractor is not liable for injuries caused by that contractor. See *Douglass v. Peck & Lines Co.*, 89 Conn. 622, 627, 95 A. 22 (1915). “The explanation for [this rule] most commonly given is that, since the employer has no power of control over the manner in which the work is to be done by the contractor, it is to be regarded as the contractor’s own enterprise, and [the contractor], rather than the employer, is the proper party to be charged with the responsibility of preventing the risk, and bearing and distributing it.” (Internal citations omitted.) *Pelletier v. Sordoni/Skanska Construction Co.*, 264 Conn. 509, 517-18, 825 A.2d 72 (2003).

Exceptions to this rule exist and are identified in *Pelletier v. Sordoni/Skanska Construction Co.* “[The Supreme Court has] long held, however, that [t]o this general rule there are exceptions, among them these: If the work contracted for be unlawful, or such as may cause a nuisance, or is intrinsically dangerous, or in its nature is calculated to cause injury to others, or if the contractee

negligently employ an incompetent or untrustworthy contractor, or if he reserve in his contract general control over the contractor or his servants, or over the manner of doing the work, or if he in the progress of the work assume control or interfere with the work, or if he is under a legal duty to see that the work is properly performed, the contractee will be responsible for resultant injury. . . . So, too, the contractee or proprietor will be liable for injury which results from his own negligence.” (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Pelletier v. Sordoni/Skanska Construction. Co.*, supra, 264 Conn. 518.

Here, the plaintiff has failed to establish a duty of care. The complaint alleges that the defendants caused or directed the digging of wells, test pits, and other work that caused flooding. LFF may not be held liable for the negligence of its contractors absent a contractual provision, and the plaintiff has not pled facts alleging that any of the exceptions named in *Pelletier* apply. Moreover, the plaintiff has not pled a specific duty that LFF or the defendants would owe her aside from their contractual obligations. Therefore, the court grants the motion to strike Count Seven.

Count Eight: Tortious interference with contract in its entirety for failure to state a claim

The defendants argue that Count Eight should be likewise stricken in its entirety for failure to state a claim. In her revised complaint, the plaintiff claims tortious interference with a contract against defendant CSE for allegedly leasing the entire Property and thereby interfering with her contractual rights in the contract while recording its improperly claimed interest on town land records. The plaintiff alleges damages and loss, including her contractual expectancy interest in the purchase of the Carve-Out Property, destruction to and improper alteration of the Carve-Out Property, as well as damage to and or loss of personal property. The defendants assert that the plaintiff’s claim is deficient and must be stricken because it does not allege CSE’s tortious interference with a contract between the plaintiff and a third party; that CSE possessed any intent

to interfere with the contractual relationship between the plaintiff and the defendant LFF; that the defendants acted tortiously or wrongfully; or that the plaintiff's loss was caused by the defendants.

"A claim for intentional interference with contractual relations requires the plaintiff to establish: (1) the existence of a contractual or beneficial relationship; (2) the defendant's knowledge of that relationship; (3) the defendant's intent to interfere with the relationship; (4) that the interference was tortious; and (5) a loss was suffered by the plaintiff that was caused by the defendant's tortious conduct." *Rioux v. Barry*, 283 Conn. 338, 351, 927 A.2d 304 (2007). "[N]ot every act that disturbs a contract or business expectancy is actionable." *Robert S. Weiss & Associates, Inc., v. Wiederlight*, 208 Conn. 525, 546 A.2d 216 (1988). "[A]n action for intentional interference with business relations ... requires the plaintiff to plead and prove at least some improper motive or improper means.... [A] claim is made out [only] when interference resulting in injury to another is wrongful by some measure beyond the fact of the interference itself." (Internal quotation marks omitted; internal citations omitted.) *Id.*

In addition, "it is well-settled that the tort of interference with contractual relations only lies when a third party adversely affects the contractual relations of two *other* parties." *Metcoff v. Lebovics*, 123 Conn. App. 512, 520, 2 A.3d 942 (2010). "[T]here can be no intentional interference with contractual relations by someone who is directly or indirectly a party to the contract. [T]he general rule is that the agent may not be charged with having interfered with a contract of the agent's principal." *Id.*

In the present case before the court, the plaintiff has failed to sufficiently allege facts to support a claim for intentional interference with contractual relations. The plaintiff has not alleged tortious interference with a third party. This claim is brought against CSE. CSE is an agent of LFF. The plaintiff has not pled any facts that would support an exception to the general rule that an

agent may not be charged with having interfered with a contract of the agent's principle. The plaintiff has also failed to plead that the defendant acted with the intention of interfering with her contractual relationships, that the conduct was tortious, and what her specific loss was. Therefore, the court grants the motion to strike Count Eight of the complaint.

Count Nine: Tortious interference with business expectancy in its entirety for failure to state a claim

The defendants assert that the plaintiff's final count is deficient, and as such should be stricken. In Count Nine, the plaintiff alleges that the defendant, Arthur Linares, in his individual capacity and/or in his capacity as controlling principal or backer of the defendant LLCs, was aware of business relationships the plaintiff maintained with numerous parties in the cannabis business and interfered with these relationships by attempting to sell the Property and the business entities with ownership interests in the Carve-Out Property at an event where numerous of the plaintiff's business contacts were present without her knowledge. As a result, the plaintiff claims financial and reputational loss. In response, the defendants contend that the count should be stricken because the plaintiff failed to allege facts supporting financial or reputational loss, and does not identify specific relationships interfered with.

"A claim for tortious interference with contractual relations requires the plaintiff to establish (1) the existence of a contractual or beneficial relationship, (2) the defendants' knowledge of that relationship, (3) the defendants' intent to interfere with the relationship, (4) the interference was tortious, and (5) a loss suffered by the plaintiff that was caused by the defendants' tortious conduct." (Internal quotation marks omitted.) *Appleton v. Board of Education*, 254 Conn. 205, 212-13, 757 A.2d 1059 (2000). "[I]t is an essential element of the tort of unlawful interference with business relations that the plaintiff suffered actual loss. . . . Thus, it must appear that, except

for the tortious interference of the defendant, there was a reasonable probability that the plaintiff would have entered into a contract or made a profit. . . . Such a determination is a question for the trier of fact, as is the question of whether the plaintiff has suffered an ‘actual loss.’” (Citations omitted; internal quotation marks omitted.) *American Diamond Exchange, Inc. v. Alpert*, 101 Conn. App. 83, 97, 920 A.2d 357, cert. denied, 284 Conn. 901, 931 A.2d 261 (2007), rev’d in part on other grounds, 302 Conn. 494, 28 A.3d 976 (2011).

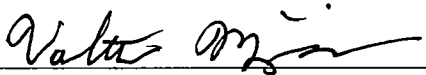
Here, the plaintiff has failed to allege any specific business relationships in her revised complaint, has not alleged any facts as to whether the defendant’s interference was intentional, or even what the interference was, and has not alleged any facts to support an actual loss. As stated above, “[a] 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*, supra, 308 Conn. At 349. As such, the court strikes Count Nine of the complaint.

IV

CONCLUSION

For the foregoing reasons, the court GRANTS the defendants’ motion to strike Counts One in part, Two in part, Three, Four, Seven, Eight, and Nine, and DENIES the motion to strike Counts Five and Six.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Valter Menjivar", is written over a horizontal line.

MENJIVAR, J.