

DOCKET NO: MMXCV236036860S

SUPERIOR COURT

CESTARO, CHRISTOPHER P. Et Al
V.
FFDN EJ, LLC Et Al

JUDICIAL DISTRICT OF MIDDLESEX
AT MIDDLETOWN

12/19/2023

ORDER

ORDER REGARDING:

11/15/2023 126.00 MOTION TO DISMISS PB 10-30

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

ORDER: GRANTED

Defendants FFDN EJ, LLC and Bantry Bay Ventures LLC (collectively, Fine Fettle) move to dismiss plaintiff Strategic Acquisitions-GM LLC (Strategic) for failure to plead aggrievement. Even when the allegations of the complaint are construed favorably to Strategic, Fine Fettle contends that they have failed to meet the pleading requirements for classical aggrievement by omitting any specificity about its relationship to this appeal and the claims it asserts. The plaintiffs object and argue that their interests are pleaded in their complaint. After consideration, the court grants the motion.

1. “[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). “A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.” (Internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013). Specifically, Practice Book § 10-30 (a) provides that: “A motion to dismiss shall be used to assert: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; and (4) insufficiency of service of process.”

2. In administrative appeals, “aggrievement implicates [the] court’s subject matter jurisdiction and, therefore, is a threshold matter that must be resolved before addressing the claims raised on appeal.” *PHH Mortgage Corp. v. Cameron*, 130 Conn. App. 238, 241, 22 A.3d 1282 (2011). The plaintiff must be aggrieved when the appeal is taken and maintain aggrievement throughout the course of the trial: “[I]n order to retain standing as an aggrieved person, a party must have and must maintain a specific, personal and legal interest in the subject matter of the appeal throughout the course of the appeal.” (Internal quotation marks omitted.) *JZ, Inc., Dunkin Donuts v. Planning & Zoning Commission*, 119 Conn. App. 243, 246, 987 A.2d 1072, cert. denied, 296 Conn. 905, 992 A.2d 329 (2010).

2. Relying on the standard articulated by the courts for classical aggrievement, Fine Fettle contends that Strategic has not properly pleaded a claim. Fine Fettle argues that Strategic has not identified a specific and particular legal interest in the subject matter of the appeal and that its claims are similar to anyone in the general public.

3. In its opposition, Strategic argues that it has pleaded classical aggrievement, in part, through the following statements in its complaint: Strategic Acquisitions is the owner of real property located at 210 Boston Post in Old Saybrook, Connecticut, which houses a learning center for children from ages 6 weeks old to 5 years old and is approximately two hundred fifty (250) feet from the Project and is classically aggrieved. See Complaint, ¶ 2; the zoning commission ignored the testimony and evidence of nearby business owners that, due to the aforesaid lot and street restrictions, their businesses would become “turn around” spots for the increased traffic and insufficient parking associated with the anticipated use. See Complaint ¶ 21 (h); and the zoning commission ignored testimony and evidence that 233 Boston Post Road is within 250 feet of a pre-existing and long standing (16 years in operation) children’s learning center for children aged 6 weeks to 5 years old and is, therefore, an inappropriate use

at this particular location. See Complaint ¶ 21 (j). Additionally, the plaintiffs argue that it has pleaded various ways in which the zoning commission failed in its duties. The plaintiffs distinguish each of the cases cited by Fine Fettle.

4. In reviewing the cases cited by Fine Fettle, the court cannot find that Strategic has properly pleaded aggrievement. Although traffic could be a cause of aggrievement, Strategic fails to identify how it would be affected specifically rather than in the same way as the general public. See *Bongiorno Supermarket, Inc. v. Zoning Board of Appeals*, 266 Conn. 531, 833 A.2d 883 (2003). See also *Wucik v. Planning & Zoning Commission*, 113 Conn. App. 502, 508, 967 A.2d 572 (2009) (affirming dismissal of appeal where allegation of aggrievement was “a mere conclusory statement devoid of any specific factual allegations”); and *Hickey v. New London*, 153 Conn. 35, 37, 213 A.2d 308 (1965) (conclusory statements averring that the plaintiff is aggrieved by the decision of the defendant and plaintiff has a specific personal and legal property interest which was specifically and injuriously affected by the action of the defendant insufficient as a matter of law because not accompanied by adequate factual allegations). Accordingly, the court grants the motion to dismiss.

Judicial Notice (JDNO) was sent regarding this order.

435708

Judge: RUPAL SHAH
Processed by: Suphi Philip

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