



1 of 2 DOCUMENTS

Afrim Frangu v. Eugene Axelrod et al.

CV116006714S

**SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF
ANSONIA-MILFORD AT MILFORD**

2012 Conn. Super. LEXIS 13

January 3, 2012, Decided

January 3, 2012, Filed

NOTICE: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

JUDGES: [*1] Paul Matasavage, J.

OPINION BY: Paul Matasavage

OPINION

MEMORANDUM OF DECISION

This is a decision on the defendants' motion to strike, dated September 13, 2011. On May 23, 2011, the plaintiff, Afrim Frangu, filed a four-count complaint sounding in professional negligence, breach of contract, CUTPA and conversion/statutory theft against the defendants, Eugene Axelrod and Axelrod & Associates, LLC.

In their motion to strike, the defendants seek to strike the second, third and fourth counts. The plaintiff filed a timely memorandum in opposition, but at argument on December 12, 2011, plaintiff's counsel consented to the granting of the motion as to the second and fourth counts,

but indicated that he would replead the fourth count. This memorandum deals with the defendants' motion to strike the third count, namely, the alleged violations of the Connecticut Unfair Trade Practices Act (hereinafter "CUTPA"), *C.G.S. §42-110a et seq.*, and the corresponding prayers for relief.

In the first count of his complaint sounding in professional negligence, the plaintiff alleges as follows. The defendant, Eugene Axelrod was a duly licensed attorney engaged in the practice of law in Woodbridge, and was the sole manager and member [*2] of "Axelrod & Associates, LLC."

The plaintiff was employed at Sikorsky Aircraft in Stratford, Connecticut and was a member of the Teamsters Union. On November 27, 2007, plaintiff was involved in an altercation with a coworker and was subsequently suspended from his employment. Following an investigation, on December 10, 2007, Sikorsky Aircraft terminated plaintiff's employment. The plaintiff's union filed grievances on his behalf, however, once the grievances were exhausted, the union refused to arbitrate his case.

On February 20, 2009, the plaintiff consulted with and retained the services of the defendants' law firm. At all times, the defendants represented to the plaintiff and the general public that they were duly qualified and

capable of skillfully providing legal representation including employment and unions related matters. Upon the advice of defendant, Eugene Axelrod, plaintiff pursued a claim against Sikorsky Aircraft only regarding his termination in December of 2007 by filing a complaint with the Equal Employment Opportunities Commission ("EEOC"). The defendants charged a fee of \$2,500.00 to file a complaint against Sikorsky Aircraft despite the fact that the filing deadline [*3] for such complaints was 300 days from the termination. On January 7, 2010, the EEOC notified the plaintiff that his claim was time-barred as the complaint was filed more than 300 days after plaintiff's termination date of December 10, 2007.

Plaintiff informed the defendants in February of 2009 that he believed he was a victim of racial, religious and nationality discrimination by his union, when the union ceased in January of 2009 to pursue further action or arbitration for the plaintiff; however, defendants failed to file a claim with the EEOC or the Connecticut Commission on Human Rights & Opportunities ("CHRO") against the union. The defendants also failed to inform the plaintiff that he had timely viable claims against his union for discrimination and unfair labor practices; further, that claims should have been pursued with the EEOC, CHRO, and/or the National Labor Relations Board in order to preserve his rights, nor was a federal lawsuit filed to pursue the claims.

Also, plaintiff informed the defendants that three co-employees/witnesses interviewed by Sikorsky Aircraft, made false statements regarding the plaintiff and defamed his character and reputation thereby causing his termination. [*4] However, the defendants failed to file any claim on plaintiff's behalf for defamation nor advise the plaintiff that he had a viable cause of action against these witnesses for defamation.

The plaintiff alleged that the defendants, Eugene Axelrod and Axelrod Associates, LLC, were negligent, careless, and unskillful in their legal representation of the plaintiff and in the practice of law, and as a direct and proximate result of the defendants' conduct, the plaintiff has suffered financial loss, severe emotional distress, nervousness and anxiety.

Count three incorporates by reference count one in its entirety, and adds the following. The defendant, Eugene Axelrod, while engaged in his trade and commerce as an attorney, engaged in the following

actions towards the plaintiff by falsely denoting in his various advertisements, including the Yellow Pages, expertise in the field of employment and labor law, upon which plaintiff relied in choosing the defendants as his attorney and charging plaintiff a \$2,500.00 fee to pursue an administrative complaint that the defendants knew was going to be dismissed as untimely. Said actions constitute a violation of CUTPA, and as a result, caused plaintiff [*5] economic and non-economic damages, including emotional distress. The plaintiff requests monetary damages, costs, attorneys fees and other damages pursuant to *C.G.S. §42-110g*.

In their September 13, 2011, motion to strike, the defendants argue that count three of the complaint fails to allege a valid CUTPA claim. Specifically, they contend that the underlying action is merely a legal malpractice claim which does not fall under CUTPA. On November 21, 2011, the plaintiff filed a memorandum in opposition to the defendants' motion to strike, and the court heard the matter at short calendar on December 12, 2011.

I.

Practice Book §10-39(a) provides in relevant part: "Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted . . . that party may do so by filing a motion to strike . . ." "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). [*6] "[F]or the purpose of a motion to strike, the moving party admits all facts well pleaded." *RK Constructors, Inc. v. Fusco Corp.*, 231 Conn. 381, 383 n.2, 650 A.2d 153 (1994). Accordingly, "[i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Batte-Holmgren v. Commissioner of Public Health*, 281 Conn. 277, 294, 914 A.2d 996 (2007). Furthermore, the court must "construe the complaint in the manner most favorable to sustaining its legal sufficiency." (Internal quotation marks omitted.) *Sullivan v. Lake Compounce Theme Park, Inc.*, 277 Conn. 113, 117, 889 A.2d 810 (2006).

II.

The defendants claim that count three of the complaint insufficiently alleges a claim under CUTPA. Since the enactment of CUTPA, Connecticut law has evolved whereby the bare allegations of professional medical or legal negligence or malpractice cannot support a CUTPA claim. *Haynes v. Yale-New Haven Hospital*, 243 Conn. 17, 34, 699 A.2d 964 (1997) (medical malpractice), *Beverly Hills Concepts, Inc. v. Schatz & Schatz, Ribicoff & Kotkin*, 247 Conn. 48, 79, 717 A.2d 724 (1998) (legal malpractice). CUTPA is a statute designed to address injuries caused by unfair [*7] and deceptive commercial practices, not injuries related to the "actual competence" of professionals. *Haynes*, 243 Conn. at 35. As the *Haynes* court explained, "[o]nly the entrepreneurial or commercial aspects of the profession are covered [by CUTPA]." *Haynes*, 243 Conn. at 34.

When analyzing whether activities of a professional give rise to a CUTPA claim, courts are to determine "whether the allegedly improper conduct is part of the . . . professional representation of a client or is part of the entrepreneurial aspect" of the practice. *Suffield Development Associates, Ltd. Partnership v. National Loan investors, L.P.*, 260 Conn. 766, 781, 802 A.2d 44 (2002).

The plaintiff raises two apparent "entrepreneurial" claims. In the complaint, plaintiff claims that the defendant falsely denoted in his various advertisements, including the Yellow Pages, expertise in the field of employment and labor law upon which plaintiff relied in choosing the defendant as his attorney, and charging plaintiff a \$2,500.00 fee to pursue an administrative complaint that the defendant knew was going to be dismissed as untimely. In determining whether this conduct would otherwise meet the pleading requirements for a CUTPA cause [*8] of action, 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 . . ." (Citations omitted; internal quotation marks omitted.) *Harris v. Bradley Memorial Hospital and Health Center*, 296 Conn. 315, 350, 994 A.2d 153 (2010).

The plaintiff's complaint is devoid of any underlying facts to support the conclusory allegation that the defendants' advertisements were false. [*9] To be actionable under CUTPA, the advertising must be unfair, unconscionable or deceptive, see *Janusauskas v. Fichman*, 264 Conn. 796, 812, 826 A.2d 1066 (2003). Since the plaintiff has not alleged any supporting facts which show the advertisements as being unfair, unconscionable or deceptive, the complaint falls short of being an actionable CUTPA claim.

Further, while the plaintiff claims that the defendants charged a \$2,500.00 fee to pursue an administrative complaint that the defendants knew was going to be dismissed as untimely, there are no underlying facts presented to show that the fee was excessive or unconscionable. Regarding the defendants' knowledge that the complaint was going to be dismissed, it is inconceivable how the defendants could pre-determine whether an administrative law court would even be presented with a statute of limitation defense, nor fully predict the raising of any defense claim prior to the claim's presentment. Notwithstanding, while bringing a claim after the expiration of the statute of limitations may constitute professional negligence, there are no facts presented that show any action or non-action on the part of the defendants was unfair, immoral, unethical, oppressive, [*10] or unscrupulous.

Accordingly, the defendant's motion to strike count three is granted.

III.

For the foregoing reasons, the defendant's motion to strike is granted in its entirety.

Matasavage, J.