

Caryn Rickel

v.

Michael Komaromi et al.

No. CV105010673

No. 115789

Superior Court of Connecticut

June 6, 2011

Caption Date: June 6, 2011

Judicial District of Ansonia-Milford at Milford

Judge (with first initial, no space for Sullivan, Dorsey, and Walsh):Keegan, Maureen M., J.

**MEMORANDUM OF DECISION ON DEFENDANTS'
MOTION TO STRIKE (#114)**

Maureen M. Keegan, J.

The plaintiff, who is representing herself in this action, has brought this complaint against her neighbors for injunctive relief and monetary damages due to the alleged encroachment onto her property by bamboo located on the property of her neighbors. The defendants William and Laura Price move to strike four of the five counts directed to them. For the reasons stated herein, the motion is granted.

The plaintiff's complaint alleges that her property, which adjoins the properties of both defendants by way of their backyard property line, has been overrun by invasive bamboo originally planted by the defendant Michael Komaromi in July 1994. She further alleges that the bamboo planted by Komaromi has invaded both her property and that of the Prices, and that the invasion of the Price property then invaded hers.

The plaintiff has filed an eleven-count complaint, alleging six counts against the Komaromis and five against the Prices. The Prices have not moved to strike the trespass count. Rather they have moved to strike the counts alleging negligence, "encroachment by vegetation" and two counts alleging violations of Seymour town ordinances.

A motion to strike challenges the legal sufficiency of the allegations of the complaint or any one or more counts thereof. Practice Book §10-39. In ruling on a motion to strike, the court views the allegations of the complaint in a

light most favorable to the pleader. *Blancato v. Feldspar*, 203 Conn. 34, 36 (1987). "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 in original; internal quotation marks omitted.) *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 588 (1997). 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 (2006).

In order to sustain a count alleging negligence, the plaintiff must allege facts that support the four elements of the cause of action: duty, breach, causation and damages. The defendants argue that, as pled by the plaintiff, the count is completely deficient. The court agrees. The factual allegations do not allege, or describe, the conduct of these defendants that would support a count of negligence. The count merely asserts that the defendants, contiguous neighbors to the plaintiff, have bamboo on their property that was not planted by them that has invaded plaintiff's property. It further asserts that the defendants, after being advised by the plaintiff of the invasive nature of the plant, and the destruction that it can cause, did not join the plaintiff in her effort to discuss the matter with the Komaromis in order to somehow solve the problem. These allegations do not support the existence of a duty, the breach of the duty, the causation between the breach and the damage, or the damages caused by the Prices. The motion to strike is granted on the negligence count.

The defendants next argue that the count alleging "encroachment by vegetation" is not a viable cause of action, as it does not exist in Connecticut. The plaintiff disputes this and at oral argument, provided the court with computer printouts from the state law library on the subject of encroachment by an adjoining landowner in Connecticut. The court's careful examination of the cases cited therein, as well as its independent search for legal support of such a cause of action, convinces the court that the allegations of encroachment by the bamboo is part of, and subsumed by the count alleging trespass. The motion to strike this count is granted.

The defendant next argues that the remaining two counts, alleging various violations of the town ordinances of Seymour, fail as a matter of law because a violation of a town's ordinances does not give rise to an independent cause of action against a private party. In these two counts, the plaintiff has alleged that the defendants have violated ordinances as to both trees and blight. The court agrees with the defendant. First, the plaintiff has simply inserted the language of the ordinance, and has failed to allege any facts

whatsoever. Second, violations of town ordinances are enforced by the appropriate municipal authority. The plaintiff has not cited any authority to the court, nor has any been found in either caselaw or statute, that supports the plaintiff's claimed cause of action for a purported town ordinance violation. In fact, the law is the opposite. As stated in *Dreher v. Joseph*, 60 Conn.App. 257, 261 (2000), "it is a general rule of construction of statutes or ordinances which impose upon property owners the performance of a part of the duty of a municipality to the public that a legislative intent is indicated, unless it is plainly expressed otherwise, that a breach thereof shall be remedial only by the municipal government or by enforcement of a penalty therein, and that there is no right of action to a citizen specially injured in consequence of such breach." Here, there is no such legislative intent or any other intent expressed. The motion to strike these two counts is granted.

For all the foregoing reasons, the defendant Prices' motion to strike is granted.