Sebastian v. Gaddis

Superior Court of Connecticut, Judicial District of Waterbury At Waterbury

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Clebia Sebastian v. Avery Gaddis

Core Terms

apportionment, motion to strike, motor vehicle, uninsured motorist, carrier, legal insufficiency

Judges: **[*1]** MATTHEW DALLAS GORDON, J.

Opinion by: MATTHEW DALLAS GORDON

Opinion

MEMORANDUM OF DECISION REGARDING MOTIONS TO STRIKE FILED BY THE APPORTIONMENT DEFENDANT (NO. 113) AND THE PLAINTIFF (NO. 116)

This case presents the novel issue of whether a defendant in a motor vehicle negligence action may file an apportionment complaint against the plaintiff's uninsured motorist carrier on the theory that the accident was caused by the negligent operation of a motor vehicle that the defendant identified in his apportionment complaint, but which left the scene of the accident without stopping. For the reasons explained in this decision, the court concludes that the apportionment complaint filed by the defendant, Avery Gaddis, is legally insufficient, and that the motions to strike filed by the plaintiff, Clebia Sebastian, and the apportionment defendant, Metropolitan Casualty Insurance Company (Metropolitan), must therefore be granted.

I. FACTS AND PROCEDURAL HISTORY

The plaintiff's complaint alleges that she was operating her motor vehicle in a northerly direction on Highland Avenue in Waterbury, Connecticut on November 20, 2018, and that when she stopped for traffic ahead of her, was struck from behind by the defendant's **[*2]** vehicle. The complaint alleges that the defendant was negligent in several respects, including, *inter alia*, following the plaintiff's vehicle too closely and failing to not stop in time to avoid a collision in violation of *General Statutes §14-240*.

On February 18, 2020, the defendant filed an apportionment complaint against Metropolitan alleging that the accident resulted from a "Terminix Truck" stopping suddenly in front of the plaintiff's vehicle. According to paragraph five of the defendant's apportionment complaint, any injuries and damages suffered by the plaintiff "were proximately caused by an unidentified tortfeasor driver of the Terminix Truck which negligently stopped short in front of the plaintiff causing the plaintiff to do the same and in turn resulted in the impact between [the defendant's] vehicle and the plaintiff's vehicle."

The plaintiff and Metropolitan have each filed motions to strike the defendant's apportionment complaint. The

plaintiff contends that apportionment is appropriate only if the plaintiff has asserted a claim against the uninsured motorist carrier, and that the defendant has no independent legal basis for seeking apportionment from Metropolitan. The plaintiff also asserts **[*3]** that the defendant's apportionment complaint is legally defective because in a "hit and run" or "force and run" uninsured motorist situation, the plaintiff must plead and prove that the owner and driver are in fact unknown, whereas the defendant's apportionment complaint specifically identifies the vehicle that allegedly stopped in front of the plaintiff.

Metropolitan contends that the defendant's apportionment complaint is legally insufficient because General Statutes §52-102b provides that only *identified* persons can be included in an apportionment complaint,[1] and because General Statutes §52-572h(o) specifically provides, in relevant part, that "[e]xcept as provided in subsection (b) of this section, *there shall be no apportionment of liability or damages between parties liable for negligence and parties liable on any basis other than negligence*."[2] (Emphasis added.) According to Metropolitan, the defendant's apportionment complaint is contractual in nature, and legally insufficient because there is no privity of contract between the defendant and Metropolitan.

II. APPLICABLE LEGAL STANDARD

"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). "[A] motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court . . . We take the facts to be those alleged in the complaint . . . and we construe 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." (Internal quotation marks omitted.) Geysen v. Securitas Security Services USA, Inc., 322 Conn. 385, 398, 142 A.3d 227 (2016). "In ruling on a motion to strike the trial court is limited to considering the grounds specified in the motion." Meredith v. Police Commission of New Canaan, 182 Conn. 138, 140, 438 A.2d 27 (1980).

III. ANALYSIS

In *Ocasio v. Fulton*, Superior Court, judicial district of Waterbury, Docket No. UWY-CV-19-6049631-S (May 15, 2020, Gordon, J.), the court analyzed the interplay between §§52-102b and 52-572h and concluded that a defendant may seek apportionment against the plaintiff's uninsured motorist carrier based on the alleged negligence of an unknown operator of an unidentified motor **[*5]** vehicle even though the carrier was not named as a defendant in the plaintiff's original complaint. The court's conclusion was based on the Supreme Court's observation in Collins v. Colonial Penn Ins. Co., 257 Conn. 718, 778 A.2d 899 (2001), that requiring a defendant to pay the entire amount of the plaintiff's damages in a multitortfeasor situation without

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[1] Section 52-102b(a) provides, in pertinent part: "A defendant in any civil action to which [§]52-572h applies may serve a writ, summons and complaint upon a person not a party to the action who is or may be liable pursuant to said section for a proportionate share of the plaintiff's damages in which case the demand for relief shall seek an apportionment of liability."

[2] Section 52-572h(b) provides: "In causes of action based on negligence, contributory negligence shall not bar recovery in an action by any person or the person's legal representative to recover damages resulting from personal injury, wrongful death or damage to property if the negligence was not greater than the combined negligence of the person or persons against whom recovery is sought including settled or released persons under subsection (n) of this section. The economic or noneconomic damages allowed shall be diminished in the proportion of the percentage of negligence attributable to the person recovering which percentage shall be determined pursuant to subsection (f) of this section."

Section 52-572h(f) provides: "The jury or, if there is no jury, the court shall specify: (1) The amount of economic damages; (2) the amount of noneconomic damages; (3) any findings of fact necessary for the court to specify recoverable economic damages and recoverable noneconomic damages; (4) the percentage of negligence that proximately caused the injury, death or damage to property in relation to one hundred per cent, that is attributable to each party whose negligent actions were a proximate cause of the injury, death or damage to property *including settled or released persons under subsection (n) of this section;* and (5) the percentage of such negligence attributable to the claimant." (Emphasis added.)

Section 52-572h(n) provides: "A release, settlement or similar agreement entered into by a claimant and a person discharges that person for all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. *However, the total award of damages is reduced by the amount of the released person's percentage of negligence determined in accordance* ***[*4]*** *with subsection (f) of this section*." (Emphasis added.)

apportionment would constitute a reversion to the common-law rule of joint and several liability. It was also the court's view that permitting a defendant to seek apportionment under such circumstances is both equitable and consistent with the public policy underlying §§52-102b and 52-572h of ensuring that each tortfeasor pay only their proportionate share of the plaintiff's damages. The court also noted that the statutory framework established by §§52-102b and 52-572h "is designed precisely to allow a defendant to seek apportionment against a third party that the plaintiffs have chosen, for whatever reason, not to pursue, but who is or may be liable for the plaintiffs' injuries." *Ocasio v. Fulton, supra*, Docket No. UWY-CV-19-6049631-S.[3]

Unlike *Ocasio*, where the defendant alleged that the accident was caused by an unknown operator of *an unidentified motor vehicle*, the defendant here has alleged that the accident was caused by the negligent operation **[*6]** of an *identified motor vehicle;* viz, a "Terminix Truck." This factual distinction renders the court's conclusion in *Ocasio* inapposite to the present situation because there is no public policy that a plaintiff's uninsured motorist carrier should be required to act as an insurance surrogate for a third-party tortfeasor operating a motor vehicle that the defendant has specifically identified.[4]

If further investigation reveals that the owner and operator of the Terminix vehicle cannot be sufficiently identified so as to permit the defendant to assert a viable apportionment complaint against them, then an apportionment claim against the plaintiff's uninsured motorist carrier *may* be warranted and legally viable. However, it is the court's view that the current apportionment complaint is legally insufficient because it alleges that the plaintiff's injuries and damages were caused by the negligent operation of an identified motor vehicle.

IV. CONCLUSION

Having carefully considered the motions to strike and supporting memorandums of law filed by the plaintiff and Metropolitan; and having carefully considered the defendant's objections to these motions, together with the defendant's supporting **[*7]** memorandums of law; and having entertained oral argument at which all counsel appeared and had a full opportunity to present their respective views; the court concludes, for all of the reasons previously stated, that the defendant's apportionment complaint is legally insufficient and that the motions to strike filed by the plaintiff and Metropolitan should be and are hereby granted.

BY THE COURT,

MATTHEW DALLAS GORDON, J.

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[3] The court also concluded in *Ocasio* that the lack of contractual privity between the uninsured motorist carrier and the defendant did not render the defendant's apportionment claim for uninsured motorist benefits legally defective based on the sui generis and hybrid nature of uninsured motorist benefits, and the carrier's role as a surrogate for the allegedly irresponsible and unidentified tortfeasor.

[4] *General Statutes §52-183* provides: "In any civil action brought against the owner of a motor vehicle to recover damages for the negligent or reckless operation of the motor vehicle, the operator, if he is other than the owner of the motor vehicle, shall be presumed to be the agent and servant of the owner of the motor vehicle and operating it in the course of his employment. The defendant shall have the burden of rebutting the presumption."