Dingle v. City of Stamford

Superior Court of Connecticut, Judicial District of Waterbury, Complex Litigation Docket At Waterbury

September 30, 2020, Filed

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Reporter
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Kevin Dingle et al. v. City of Stamford et al.

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Opinion

[*1] Short Name:Dingle v. Stamford

Other Parties:

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Judge (with first initial, no space for Sullivan, Dorsey, and Walsh):Bellis, Barbara N., J.

Opinion Title:*MEMORANDUM OF DECISION RE MOTION TO STRIKE #196*

In this action, the plaintiffs, Kevin Dingle, Robert Pickering, Bruce Wagoner and Brian Whitbread, have brought suit against the defendants, the city of Stamford (city), the city of Stamford's personnel commission, Kathryn Emmett,[1] Clemon Williams and the city of Stamford's board of fire commissioners[2] (fire commission).[3] As outlined in the operative pleading, the amended complaint filed on November 8, 2018, the plaintiffs allege the following facts relevant to adjudicating the motion that is currently before the court. Dingle and Wagoner are currently employed as fire lieutenants in the Stamford Fire Department (fire department) and Whitbread and Pickering are also working as firefighters at the fire department. Emmett is being sued in her capacity as the city's director of legal affairs and corporation counsel whereas Williams [*2] is being sued in his role as the city's director of personnel. According to relevant portions of the city's charter, originally adopted in 1947, as well as General Statutes §7-414[4] and the city's classified service rules, whenever a vacancy occurs in city employment, it must be filled via a merit selection process. Specifically, under the "rule of three," the successful candidate must be chosen from the top three ranking applicants based upon an examination. In June 2015, following an entry-level firefighter test that was deemed to have resulted in a disparate impact on African-American and Hispanic candidates, the city made changes to its classified service rules. Now, the city would round the scores of the candidates up or down to whole numbers, and then band together applicants with similar scores. Thereafter, the city interpreted the "rule of three" to cover not three individual people but rather three groups of people.

On July 25, 2017, the city gave written examinations for individuals interested in receiving a promotion to fire lieutenant and fire captain. Dingle and Wagoner were eligible for promotion to fire captain and Pickering and Whitbread were eligible to be promoted to fire lieutenant, respectively. [*3] Pursuant to a memorandum of understanding between the plaintiffs' union and the city, the written examination counted for 35 percent of the total score with respect to the total assessment of the candidate, whereas the oral interview constituted the remaining 65 percent. According to the plaintiffs, after all of the applicants' scores were rounded and banded, there were several "artificial ties" that

"misrepresent[ed] the candidates' relative excellence to the appointing authorities." As a result, all of the plaintiffs were "passed over" for promotion in favor of "less qualified" candidates. These appointments became effective on November 2, 2017. The plaintiffs contend that this practice violates the city charter, the city's classified services rules as well as governing Connecticut statutes. Consequently, the plaintiffs allege that they have suffered economic damages resulting from their loss of potential employment promotions and seniority.

In the operative complaint, the plaintiffs allege the following causes of action: (1) count one-violations of the city's charter as to all defendants; (2) count two-violations of the equal protection provisions of the Connecticut constitution [*4] as to all of the defendants;[5] (3) count three-an application for a writ of mandamus against the city; (4) count four-a request for a declaratory judgment against the city and (5) count five-violations of the Connecticut Fair Employment Practices Act, General Statutes §46a-60[6] against the city. At the present time, only counts one, three and four remain in the case. The plaintiffs' prayer for relief requests, *inter alia*: (1) a permanent injunction[7] and declaratory ruling prohibiting the city from engaging in these promotional hiring practices; (2) a declaratory ruling promoting the plaintiffs to their desired positions; (3) compensatory damages; (4) punitive damages and (5) attorneys fees and costs.

On February 3, 2020, the defendants filed a motion to strike all remaining counts of the plaintiffs' amended complaint and a memorandum of law in support of their motion. The plaintiffs filed their memorandum of law in opposition to the defendants' motion on March 19, 2020. On April 8, 2020, the defendants filed a reply memorandum. The court conducted remote oral argument on September 9, 2020.

DISCUSSION

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint [*5] . . . 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 in original; 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).

As a threshold matter, the court notes the plaintiffs argue that the defendants' motion to strike should be denied because it is untimely pursuant to Practice Book §10-8.[8] Given that the plaintiffs were not defaulted prior to the filing of the motion to strike, that the plaintiffs [*6] did nothing to waive the filing of a motion to strike, and that this case is pending on the Complex Litigation docket, and the court has broad discretion to determine caseflow management under Practice Book §23-14,[9] the defendants have not waived their right to file a motion to strike and the court will consider the substantive arguments raised by the parties in their respective pleadings.

I

PURPORTED FAILURE TO JOIN INDISPENSABLE PARTIES

The defendants first move to strike all remaining counts of the amended complaint on the ground that the plaintiffs failed to join indispensable parties. Specifically, the defendants point to the twenty individuals who were promoted to the rank of fire captain and fire lieutenant in November 2017, as well as the people who are currently on the lists for promotion. According to the defendants, each of these individuals would necessarily be affected if the court were to order the plaintiffs to be promoted retroactively. In response, the plaintiffs argue that the motion to strike on this ground should be denied because: (1) the motion is procedurally defective due to the defendants' non-compliance with Practice Book §10-39(d); (2) "the cases cited by [the] [d]efendants seeking dismissal have been [*7] over-turned" and (3) the individuals the defendants believe are indispensable do not actually need to be included in this case in order for there to be a proper resolution of the matter.[10] In

reply, the defendants argue, *inter alia*, that their failure to adhere to the requirements of §10-39(d) should be excused because Connecticut law shields the addresses of firefighters from public disclosure. The defendants state they are willing to provide "that information pursuant to an appropriate order that protects the privacy of its employees."

The court will first address the plaintiffs' procedural argument against granting the motion to strike. Section 10-39(d) of our rules of practice provides: "A motion to strike on the ground of the non-joinder of a necessary party or noncompliance with Section 17-56(b) must give the name and residence of the missing party or interested person or such information as the moving party has as to the identity and residence of the missing party or interested person and must state the missing party's or interested person's interest in the cause of action." It is undisputed that the defendants did not comply with this section of the Practice Book when filing their motion. Although there does not [*8] appear to be any mandatory appellate authority on point, multiple Superior Court judges have held that a failure to adhere to this section of the Practice Book is fatal to a motion to strike. See, e.g., *Ross v. Environmental Protection Commission,* Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-08-4045017-S (May 8, 2009, Pavia, J.); *Big East Equipment Co., Inc. v. Ohio Casualty Ins. Co.,* Superior Court, judicial district of New Haven, Docket No. CV-05-4015860-S (July 3, 2006, Zoarski, J.T.R.) (41 Conn. L. Rptr. 576, 577); *Broadnax v. New Haven,* Superior Court, judicial district of New Haven, Docket No. CV-98-0412193-S (May 16, 2000, Levin, J.).

In an attempt to excuse their failure to follow the mandatory requirements of §10-39(d), the defendants cite to General Statutes §1-217(a)(7), which provides, in relevant part that: "No public agency may disclose, under the Freedom of Information Act, from its personnel, medical or similar files, the residential address of any of the following persons employed by such public agency . . . A firefighter . . ." Although §1-217 may provide support for a general public policy that this state chooses to keep the addresses of firefighters private, the statue does not, by itself, justify non-compliance with §10-39(d). While the court certainly [*9] understands the defendants' hesitancy to publish the addresses of firefighters on the public record, there were alternate procedural avenues available to them. For instance, the defendants could have sought to file their motion to strike under seal pursuant to Practice Book §11-20A(c).[11] The defendants could have attempted to file some type of a motion for protective order pursuant to Practice Book §13-5.[12] Instead, the defendants filed neither of these motions and simply decided not to adhere to §10-39(d) when filing their motion to strike. It is important to note that the names and addresses of the individuals at issue, all of whom are fire department employees, are most easily obtained by the defendants. Moreover, the entire purpose of this motion essentially is to force the plaintiffs to bring these individuals into this case, such that some of their personal informnation will inevitably become part of the public record. Accordingly, the court concludes that this is a sufficient basis to deny the motion to strike on this ground.[13]

II

COUNT THREE: WRIT OF MANDAMUS

Next, the defendants move to strike count three, writ of mandamus, on two grounds. First, the defendants contend this count is legally insufficient because the plaintiffs [*10] did not allege that the fire commission, or any other defendant, had a mandatory duty to promote them. Second, the defendants argue that count three must be stricken because a cause of action for a writ of mandamus cannot be brought against a municipality. In opposition, the plaintiffs argue that the city and its employees have a mandatory duty strictly to comply with the provisions of the civil service statutes and to create a proper promotion eligibility list. The plaintiffs further state that "each of the [f]ire [c]ommissioners[14] was named individually as was the [p]ersonnel [d]irector." Therefore, the plaintiffs believe that count three is legally sufficient, and the court should reject the defendants' argument that this count should be stricken because it was brought against an improper party.

As an initial matter, the court must determine which defendants count three is alleged against because "[t]he interpretation of pleadings is always a question of law for the court . . ." (Internal quotation marks omitted.) *Presidential Village, LLC v. Phillips,* 325 Conn. 394, 412 n.15, 158 A.3d 772 (2017). The heading of count three only states that it is brought against "the city of Stamford." Moreover, paragraph 73 alleges that "[t]he [c]ity is required to select qualified [*11] candidates for promotion based on the [c]lassified [s]ervice [r]ules, the [c]harter, and [s]tate law." Paragraphs seventy-eight and seventy-nine also mention the "[c]ity's obligation" to appoint the plaintiffs to the promotions they are seeking. Other than generic references to "the [d]efendants" in paragraph 76 and in the "wherefore" clause at the end

of the count, there are no allegations related to other defendants in count three. Accordingly, the court determines that as it is currently drafted, count three only alleges a cause of action against the city. Therefore, the court will have to decide whether a writ of mandamus action can legally be brought against a municipality.

"A writ of mandamus is an extraordinary remedy, available in limited circumstances for limited purposes . . . The writ is proper only when (1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy." (Internal quotation marks omitted.) *Cook-Littman v. Board of Selectman,* 328 Conn. 758, 767 n.9, 184 A.3d 253 (2018). "Wherever the performance of some municipal duty is sought to [*12] be compelled by a writ of mandamus, the writ should be directed to the officer or board of the municipal government specially charged with the performance of the thing ordered to be done. If the municipal corporation has no such officer or board, then the writ may be directed to the municipality by its corporate name." *Venditto v. Auletta,* 31 Conn.Sup. 145, 149-50, 325 A.2d 458 (1974), citing, *State v. Towers,* 71 Conn. 657, 663, 42 A. 1083 (1899). Accordingly, "the proper practice in a mandamus action involving a political subdivision is to direct the writ against the municipal officers whose acts are sought to be coerced, and failure to comply with the requirements for naming a government entity or employee as a respondent may require dismissal of the petition." 52 Am.Jur.2d Mandamus §396. See, e.g., *Homerville v. Touchton,* 282 Ga. 237, 237-38, 647 S.E.2d 50 (2007) (stating that "[t]he [c]ity is not a proper party to this mandamus action . . . [therefore, the plaintiff's] petition . . . did not properly allege a cause of action, since it was brought against the [city] and not the proper officials required by law to perform the specified act").

In count three, the plaintiffs allege a mandamus cause of action against the city alone. Given that the law regarding writs of mandamus dictates that such a claim be brought against a particular municipal employee or the relevant board (unless no such [*13] person or board exists), count three is rendered legally insufficient. Therefore, the court grants the defendants' motion to strike count three.[15]

III

COUNT FOUR: DECLARATORY JUDGMENT

The defendants next move to strike count four wherein the plaintiffs request a declaratory judgment on the ground that the plaintiffs have not complied with Practice Book §17-56. Specifically, the defendants contend that the plaintiffs failed to follow this rule of practice because they did not give notice to all interested parties and they did not attach the required certification attesting to same. In response, the plaintiffs argue that the court should deny the motion to strike this count because the defendants' motion does not comply with Practice Book §10-39(d).

This dispute is easily solved by an examination of the relevant rules of practice. Practice Book §17-56(b) provides in relevant part: "All persons who have an interest in the subject matter of the requested declaratory judgment that is direct, immediate and adverse to the interest of one or more of the plaintiffs or defendants in the action shall be made parties to the action or shall be given reasonable notice thereof . . . The party seeking the declaratory judgment shall append to its complaint or counterclaim [*14] a certificate stating that all such interested persons have been joined as parties to the action or have been given reasonable notice thereof. If notice was given, the certificate shall list the names, if known, of all such persons, the nature of their interest and the manner of notice." "The exclusive remedy for nonjoinder or failure to give notice to interested persons is by motion to strike as provided in Sections 10-39 and 10-44." Practice Book §17-56(c). "A motion to strike on the ground of the nonjoinder of a necessary party or noncompliance with Section 17-56(b) must give the name and residence of the missing party or interested person or such information as the moving party has as to the identity and residence of the missing party or interested person and must state the missing party's or interested person's interest in the cause of action." §10-39(d).

Section 10-39(d) clearly and unambiguously mandates that in order to file a motion to strike based on non-compliance with §17-56(b), the moving party must provide the identity and residence of the alleged missing parties. It is undisputed that the defendants in this case have not done so, and the court has already rejected their explanations for this failure. Accordingly, even though the plaintiffs did not fully comply [*15] with §17-56(b) when they failed to attach to their complaint a certificate listing the parties that they gave notice to, the court must still deny the motion to strike count four because the defendants did not adhere to §10-39(d).

See, e.g., *Herbasway Laboratories v. Zhou,* Superior Court, complex litigation docket at New Britain, Docket No. X03-CV-01-0512689-S (April 27, 2004, Peck, J.) (stating that "since Practice Book §10-39[(d)] requires that the moving party, on a motion to strike pursuant to §17-56(b) provide the name and address of the 'missing' or 'interested' party, if the address is defective or insufficient, the motion to strike must be denied"). Therefore, the motion to strike count four is denied.

IV

DAMAGES CLAIMS IN THE PRAYER FOR RELIEF

Finally, the defendants move to strike the plaintiffs' claims for compensatory and punitive damages and attorneys fees found in the amended complaint's prayer for relief. According to the defendants, the plaintiffs cannot legally receive any compensatory damages in this case because the Stamford city charter does not provide for this type of monetary damages. Similarly, the defendants argue that the court cannot potentially award the plaintiffs any attorneys fees because the plaintiffs [*16] have not identified any statutory or contractual exception to the American Rule. The defendants further contend that punitive damages are not available here because a municipality cannot be held liable for punitive damages in the absence of an express statutory provision authorizing same. In response, the plaintiffs only argue that this portion of the motion to strike must be denied because the defendants failed to adhere to the requirements of Practice Book §10-39(b).

The court will first address the plaintiffs' threshold procedural argument. Section 10-39(b) provides: "Each claim of legal insufficiency enumerated in this section shall be separately set forth and shall specify the reason or reasons for such claimed insufficiency." The ground stated on the face of the defendants' motion is "the claims for compensatory damages, punitive damages, and [attorney's] fees included in [the] [p]laintiffs' [p]rayer for [r]elief must be stricken because the relief sought is unavailable under any of the causes of action alleged." The plaintiffs rely on the case of *Stuart v. Freiberg,* 102 Conn.App. 857, 927 A.2d 343 (2007) for the proposition that "[m]otions to strike that do not specify the grounds of insufficiency are fatally defective and, absent a waiver by the party opposing the motion, [*17] should not be granted." (Internal quotation marks omitted.) *Id.*, 861. Importantly, however, when reaching its decision, the *Stuart* court primarily relied on the former Practice Book §10-41,[16] which was removed from the Practice Book effective January 1, 2014. As recently noted by one Superior Court judge, "[t]he mandatory requirement that the motion (as opposed to the supporting memorandum) set forth the reasons for each claimed legal insufficiency has been (apparently purposefully) eliminated. Consequently, the court does not view *Stuart . . .* as controlling authority and deems the supporting memorandum in this instance as sufficient compliance with Section 10-39(b)'s requirement that claims of legal insufficiency be separately set forth and supported by specific reasons." (Internal quotation marks omitted.) *D2E Holdings, LLC v. Corp. for Urban Home Ownership of New Haven,* Superior Court, judicial district of New Haven, Docket No. CV-17-6075593-S (April 3, 2018, Wilson, J.) [66 Conn. L. Rptr. 223].

This court similarly determines that *Stuart* is no longer controlling precedent and consequently concludes that a moving party need not explicitly state all of its grounds on the motion to strike itself. That being said, there was sufficient information in it to place the plaintiffs [*18] on notice of the arguments advanced by the defendants. Simply put, the defendants are moving to strike the prayers for relief because the court could not legally award the types of damages sought by the plaintiffs. Therefore, the court will examine the merits of the defendants' various arguments.

Notably, the plaintiffs offer no substantive opposition to the defendants' motion to strike the various prayers for relief. When previously faced with a motion to strike with no opposition, this court determined that "the lack of opposition adds some weight to the movant's arguments. As such, the court will address the merits of the defendant's motion with some added force noted to the defendant's argument, in light of the lack of opposition from the plaintiff." (Internal quotation marks omitted.) *Phills v. Greater Bridgeport Transit Authority,* Superior Court, judicial district of Fairfield, Docket No. CV-09-4027290-S (March 29, 2009, Bellis, J.). The court will therefore examine the defendants' arguments keeping this principle in mind.

The court will first address the defendants' motion to strike the prayer for relief requesting compensatory damages. When analyzing this issue, it is important [*19] to remember that following the court's decision to strike count three, there are only two counts remaining in the operative complaint. Count one is a cause of action for violation of the Stamford city charter. Count four is a request for a declaratory judgment, and the plaintiffs are not seeking, nor would they ordinarily be entitled to, compensatory damages under this

statutory procedure. See, e.g., *Avonside, Inc. v. Zoning & Planning Commission,* 153 Conn. 232, 239, 215 A.2d 409 (1965) (stating that "each plaintiff, instead of seeking a declaratory judgment, should have brought a simple action claiming monetary damages in the amount illegally exacted from it . . ."). Therefore, it necessarily follows that in order for the plaintiffs to receive compensatory damages in this matter, they must obtain them via count one.

"It is settled law that as a creation of the state, a municipality has no inherent powers of its own . . . A municipality has only those powers that have been expressly granted to it by the state or that are necessary for it to discharge its duties and to carry out its objects and purposes . . . It is well established that a [town's] charter is the fountainhead of municipal powers . . . The charter serves as an enabling act, both creating power and prescribing [*20] the form in which it must be exercised." (Citation omitted; internal quotation marks omitted.) *Cook-Littman v. Board of Selectman, supra*, 328 Conn. 768. "As with any issue of statutory construction, the interpretation of a charter or municipal ordinance presents a question of law . . . In construing a city charter, the rules of statutory construction generally apply . . . In arriving at the intention of the framers of the charter the whole and every part of the instrument must be taken and compared together. In other words, effect should be given, if possible, to every section, paragraph, sentence, clause and word in the instrument and related laws." (Internal quotation marks omitted.) *Kiewlen v. Meriden,* 317 Conn. 139, 149, 115 A.3d 1095 (2015).

The defendants have attached to their motion to strike the legislative enactment that created the Stamford city charter. Special Acts 312 (1947). Despite the plaintiffs' arguments to the contrary, the court may take judicial notice of this Special Act of the General Assembly and doing so does not convert the defendants' motion into an impermissible speaking motion to strike. General Statutes §52-163(1).[17] In their ninth prayer for relief, the plaintiffs seek "[c]ompensatory damages in excess of $15,000 for emotional distress, damage to reputation and loss of promotional opportunities [*21] and other damages, in an amount which a jury shall determine to be just and reasonable . . ." The plaintiffs' complaint does not point to any specific portion of the Stamford city charter that would allow the court to award these damages, and the court also cannot locate such a reference. There is a "well settled fundamental premise that there exists a presumption in Connecticut that private enforcement does not exist unless expressly provided in a statute. In order to overcome that presumption, the [plaintiffs bear] the burden of demonstrating that such an action is created implicitly in the statute." (Internal quotation marks omitted.) *Geradi v. Bridgeport,* 294 Conn. 461, 468, 985 A.2d 328 (2010). The plaintiffs here have failed to direct the court to any provision of the Stamford city charter that would allow them to receive the compensatory damages they are seeking. Accordingly, the court strikes the plaintiffs' ninth prayer for relief requesting compensatory damages.[18]

With respect to the plaintiffs' tenth and eleventh prayers for relief, which seek punitive damages and attorneys fees/costs, respectively, the court also concludes that the requests for these types of damages are legally insufficient. Our state's Appellate Court has stated [*22] that "[i]n the overwhelming majority of jurisdictions which have considered [whether a municipality is liable for punitive damages], it is now firmly established that exemplary or punitive damages are not recoverable unless expressly authorized by statute or through statutory construction . . . In denying punitive or exemplary damages, most courts have reasoned that while the public is benefitted by the exaction of such damages against a malicious, willful or reckless wrongdoer, the benefit does not follow when the public itself is penalized for the acts of its agents over which it is able to exercise but little direct control." (Internal quotation marks omitted.) *Hartford v. International Assn. of Firefighters, Local 760,* 49 Conn.App. 805, 817-18, 717 A.2d 258, cert. denied, 247 Conn. 920, 722 A.2d 809 (1998). Additionally, "[i]t is well settled law that an action against a government official in his or her official capacity is not an action against the official, but, instead, is one against the official's office and, thus, is treated as an action against the entity itself." *Kelly v. New Haven,* 275 Conn. 580, 595, 881 A.2d 978 (2005). The plaintiffs have cited no authority to the contrary, and the court determines that they cannot collect punitive damages in this case. Therefore, the tenth prayer for relief is ordered stricken.

Similarly, "[w]hen it comes to attorneys [*23] fees, Connecticut follows the American Rule . . . Pursuant to that rule, attorneys fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception." (Internal quotation marks omitted.) *Ferri v. Powell-Ferri,* 326 Conn. 438, 451, 165 A.3d 1137 (2017). In fact, in a case where firefighters brought suit against a city for underfilling open positions, our Supreme Court determined that it was not an abuse of discretion to deny an award of attorneys fees because "[e]ven if we

were to assume that the plaintiffs were the 'prevailing party' in the present case, the plaintiffs have not cited any statutory or contractual authority that would permit an award of attorneys fees, nor have the plaintiffs claimed that the present case falls within any exception to the American rule." (Emphasis omitted.) *Broadnax v. New Haven,* 270 Conn. 133, 178-79, 851 A.2d 1113 (2004). Accordingly, the court determines that it cannot award attorneys fees in this matter, and, as a result, it strikes the plaintiffs' eleventh prayer for relief.

CONCLUSION

For all of the reasons stated above, the court grants the defendants' motion to strike count three and the ninth, tenth and eleventh prayers for relief. The motion to strike is denied in all other respects.

BY THE COURT,

421277 [*24]

Bellis, J.

[1] Emmett's first name is spelled "Katherine" on the summons but it is spelled "Kathryn" in the operative complaint. The court will assume the more recent spelling of "Kathryn" is correct.

[2] The fire commission was not listed as a defendant on the summons but it was mentioned in the original complaint. Accordingly, the fire commission moved to dismiss the case against it due to insufficiency of process. This court, Bellis, J., denied this motion on August 19, 2019. Therefore, the fire commission is now fully considered a defendant in the case.

[3] The parties will both be referred to collectively as "the plaintiffs" and "the defendants" and separately by their names when appropriate.

[4] General Statutes §7-414 provides: "The board shall, from the returns or reports of the tests, prepare a register or eligible list, for each grade or class of positions in the classified service, of the persons who attain such minimum mark as may be fixed by the board for any part of such test as fixed by the rules of such board and who are otherwise eligible. Such persons shall take rank as candidates upon such register or list in the order of their relative excellence as determined by test, without reference to [*25] priority of time of test. The board shall provide by its rules for promotions in such classified service on a basis of ascertained merit in service, seniority in service and special test. The board shall submit to the appointing power for each promotion the names of not more than three applicants having the highest rating. The method of testing and the rules governing the same and the method of certifying shall, as far as possible, be the same as provided for applicants for original appointment."

[5] In their memorandum of law in opposition to the present motion to strike, the plaintiffs agreed to "amend the [a]mended [c]omplaint as to certain factual allegations contained in the [s]econd [c]ount and [p]rayer for [r]elief . . ." The court will treat this statement as meaning the plaintiffs have withdrawn count two. Therefore, even though the motion to strike is addressed to count two, the court need not discuss this portion of the motion.

[6] Although count five physically remains in the operative complaint, this court, Bellis, J., dismissed this count on June 12, 2019 for failure to exhaust administrative remedies. Accordingly, the court obviously need not address any further arguments [*26] with respect to the legal sufficiency of this count.

[7] On October 29, 2019, this court, Bellis, J., already granted a temporary injunction prohibiting the city from promoting candidates to the title of fire lieutenant and fire captain until a full trial on the merits in this matter.

[8] Practice Book §10-8 provides: "Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of thirty days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the time period shall be fifteen days. The filing of interrogatories or requests for discovery shall not suspend the time requirements of this section unless upon motion of either party the judicial authority shall find that there is good cause to suspend such time requirements."

[9] Practice Book §23-14 provides: "The judge to whom complex litigation [*27] cases have been assigned may stay any or all further proceedings in the cases, may transfer any or all further proceedings in the cases to the judicial district where the judge is sitting, may hear all pretrial motions, and may enter any appropriate order which facilitates the management of the complex litigation cases."

[10] The plaintiffs also argue that the motion to strike should be denied because it is an improper speaking motion to strike. Under our rules of practice, "[i]t is well established that a motion to strike must be considered within the confines of the pleadings and not external documents . . . We are limited . . . to a consideration of the facts alleged in the complaint." (Internal quotation marks omitted.) *Zirinsky v. Zirinsky,* 87 Conn.App. 257, 268-69 n.9, 865 A.2d 488, cert. denied, 273 Conn. 916, 871 A.2d 372 (2005). Nevertheless, "[i]n ruling on a motion to strike for nonjoinder, the court must be able to properly evaluate interests of those persons identified by the movant as necessary . . . Consequently, this apparent exception to the rule against speaking motions to strike [which impart facts outside the pleadings] [exists] when the basis for the motion is nonjoinder of a necessary party." (Internal quotation marks omitted.) *Bender v. Bender,* Superior Court, [*28] judicial district of Windham, Docket No. CV-05-4001704-S (October 24, 2005, Riley, J.); see also *Bloom v. Miklovich,* 111 Conn.App. 323, 332 n.6, 958 A.2d 1283 (2008) (stating that "[t]he defendants' motion to strike on the basis of nonjoinder was . . . not an impermissible 'speaking motion' . . . in the context of this case"). In any event, given how the court resolved this ground, it was not necessary for the court to consider information beyond the allegations found in the four corners of the complaint.

[11] Practice Book §11-20A(c) provides, in relevant part: "Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials."

[12] Practice Book §13-5 provides: "Upon motion by a party from whom discovery is sought, and for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: [*29] (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the judicial authority; (6) that a deposition after being sealed be opened only by order of the judicial authority; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judicial authority; (9) specified terms and conditions relating to the discovery of electronically stored information including the allocation of expense of the discovery of electronically stored information, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the [*30] importance of the requested discovery in resolving the issues."

[13] Having made this determination, it is unnecessary for the court to examine the parties' remaining arguments. Despite this fact, the court will make the following comments. The plaintiffs repeatedly argue in their opposition memorandum that this case "should not be dismissed for failure to join indispensable parties" because appellate-level cases holding as such have been overturned. It is true that our courts used to dismiss cases for failure to join indispensable parties; see, e.g., *Kolenberg v. Board of Education,* 206 Conn. 113, 536 A.2d 577, cert. denied, 487 U.S. 1236, 108 S.Ct. 2903, 101 L.Ed.2d 935 (1988); but that no longer is the law of this state. *Bauer v. Souto,* 277 Conn. 829, 838, 896 A.2d 90 (2006) (stating that "the failure to join an indispensable party is not a [subject matter] jurisdictional defect"). Indeed, Practice Book §17-56(c) clearly provides that the exclusive remedy for nonjoinder is to file a motion to strike. Simply put, the plaintiffs' argument in this regard conflates the purpose and procedural posture of a motion to dismiss and a motion to strike. "The motion to dismiss is governed by Practice Book §§10-30 through 10-34. Properly granted on jurisdictional grounds, it essentially asserts that, as a matter of law and fact, a plaintiff cannot state a cause of action that is properly before the court . . . By [*31] contrast, the motion to strike attacks the sufficiency of the pleadings . . . There is a significant difference between asserting that a plaintiff *cannot* state a cause of action and asserting that a plaintiff *has not* stated a cause of action, and therein lies the distinction between the motion to dismiss and the motion to strike. (Citations omitted; emphasis in original.) *Egri v. Foisie,* 83 Conn.App. 243, 247, 48 A.2d 1266, cert. denied, 271 Conn. 931, 859 A.2d 930 (2004). Accordingly, the court rejects this argument asserted by the plaintiffs.

With respect to the defendants' substantive argument that the eleven fire lieutenants and nine fire captains who were promoted ahead of the plaintiffs are indispensable parties, the court notes that in the majority of the cases cited by the defendants, the plaintiffs were seeking relief that would necessarily affect the individuals who had been promoted in lieu of them. See *Benz v. Walker,* 154 Conn. 74, 79, 221 A.2d 841 (1966) (stating that "[s]ince all of the candidates who were successful in the examinations are not parties to this action . . . their rights cannot be adjudicated in these proceedings. Nor does due process of law permit the fruits of their success to be destroyed without notice and an opportunity to be heard."); *Demarest v. Fire Dept.,* 76 Conn.App. 24, 30, 817 A.2d 1285 (2003) (holding that "because the remedy . . . would be [*32] the ouster of that firefighter, the individuals who would be most directly affected by a judgment for the plaintiffs were not able to defend their rights to their positions."); *O'Hanlon v. Danbury,* Superior Court, judicial district of Danbury, Docket No. CV-07-4008131-S (January 7, 2010, Marano, J.) (holding that "[b]ecause a quo warranto action cannot be adequately addressed on the merits in the absence of parties whose ouster is sought . . . the parties to be cited in are indispensable parties to this action."); *Peeler v. Bridgeport,* Superior Court, judicial district of Fairfield, Docket No. CV-90-0269466-S (April 24, 1990, Ballen, J.) (citing *Benz* and concluding that the plaintiffs, who were denied the opportunity take a police department promotional examination, failed to join indispensable parties when, *inter alia*, they did not include "the sixty-four candidates who in fact sat for said examination . . ."); *Preece v. New Britain,* Superior Court, judicial district of New Britain, Docket No. CV-08-5008375-S (November 21, 2008, Tanzer, J.) (concluding that the plaintiffs failed to join an indispensable party because they requested that the city "be ordered to comply with its [c]ivil [*33] [s]ervice rules in all appointments from this list, [n]amely, that the promotion of [c]andidate #14 be deemed effective no earlier than the date he may have been considered eligible in accordance with the [d]efendant's [c]ivil [s]ervice [r]ules."). All of these cases, therefore, are factually distinguishable from this matter.

In contrast, in the present case, the plaintiffs are not necessarily seeking any relief that would affect other people. Importantly, the defendants in this matter have moved to strike the operative complaint because these individuals are ostensibly indispensable parties. "Necessary parties are [p]ersons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it . . . [B]ut if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties . . . A party is deemed necessary if its presence [*34] is absolutely required in order to assure a fair and equitable trial." (Internal quotation marks omitted.) *Pelletier Mechanical Services, LLC v. G&W Management, Inc.,* 162 Conn.App. 294, 303, 131 A.3d 1189, cert. denied, 320 Conn. 932, 134 A.3d 622 (2016). Therefore, even though the court is not actually ruling on this argument, it would appear that the candidates who were previously promoted are not truly indispensable within the context of this case.

[14] Although the names of the individual fire commissioners are referenced in the amended complaint, they were not listed as defendants on the summons. Moreover, there has been no prior judicial determination that these individuals are currently defendants in the case. Importantly, this court's August 19, 2019 decision only found that the fire commission itself was a defendant, not the individual members of the fire commission.

[15] Having made this determination, the court need not address the defendants' other argument regarding the legal insufficiency of count three. That being said, although the various city employees may have a mandatory duty to follow the law and compile a legally proper list of eligible employees for promotion, it would seem unlikely that the same employees would have a mandatory duty actually to promote the plaintiffs.

[16] Before it was removed [*35] from the Practice Book, §10-41 provided: "Each motion to strike raising any of the claims of legal insufficiency enumerated in the preceding sections shall separately set forth each such claim of insufficiency and shall distinctly specify the reason or reasons for each such claimed insufficiency."

[17] General Statutes §52-163 provides, in relevant part: "The court shall take judicial notice of: (1) Private or special acts of this state . . ."

[18] In making this decision, the court is only striking the plaintiffs' ninth prayer for relief. The court is not making any ruling with respect to other forms of monetary compensation, such as back pay, that the plaintiffs are seeking. Moreover, the court notes that it has not had

the benefit of a substantive opposition argument advanced by the plaintiffs. In the event that the plaintiffs re-plead their complaint pursuant to Practice Book §10-44, it is possible that the issue of whether the plaintiffs are legally entitled to request compensatory damages might be addressed in the future.

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