

DOCKET NO: HHD CV 10-6016042 : SUPERIOR COURT
ESTATE OF MARCIAL TORRES, ET AL : J.D. OF HARTFORD
VS. : at HARTFORD
BERLINE LINE APARTMENTS, LLC, : APRIL 12, 2016
ET AL

MEMORANDUM OF DECISION
RE MOTION TO STRIKE

In this action, plaintiff's estate seeks compensation for the death of Marcial Torres, claiming that the defendants' landscaping and mulching work at an apartment complex in which decedent resided caused severe asthmatic reactions that resulted in his death.

Decedent's spouse has asserted claims for loss of consortium. In addition, Ms. Torres asserts claims for bystander emotional distress and the defendants have moved to strike these latter claims.

A motion to strike tests the legal sufficiency of a complaint, and, in considering such a motion the court is to regard as admitted all facts appropriately plead and any implications therefrom. *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn.

4/12/16 - cc: Rpha Todd Bee, Hartmann, Litchfield, Calabrese.

SG Buonoms

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480, 498 (2003)' *Gazo v. Stamford*, 255 Conn. 245, 260 (2001).

However, the court is not obligated to consider admitted the legal conclusions or the truth or accuracy of opinions set forth in the pleadings. *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 588 (1997). While a motion to strike must be denied if the facts alleged would support a cause of action, a motion to strike is properly granted if the complaint alleges conclusions of law that are unsupported of the facts alleged. *Sullivan v. Lake Compounce Theme Park, Inc.*, 227 Conn. 113, 117-18 (2006); *Fort Trumbull Conservancy, LLC v. Alves*, *supra*, 262 Conn. 498.

In the Third, Sixth, Ninth and Twelfth counts of her complaint, Ms. Torres alleges that her husband suffered moderate to severe asthmatic reactions on multiple occasions when landscaping and mulching was being conducted on the premises at which he resided. Ms. Torres further alleges that in the spring or summer of 2007, she advised the defendants of these circumstances and requested that she be notified prior to any future landscaping or mulching so that the decedent could

stay elsewhere during such work. According to the complaint, the defendants did not provide such warning. The complaint further alleges that, on April 17, 2008, Mr. Torres suffered a severe asthma attack, allegedly as a result of the repeated landscaping and mulching that had been done. Mr. Torres passed away eighteen months later.

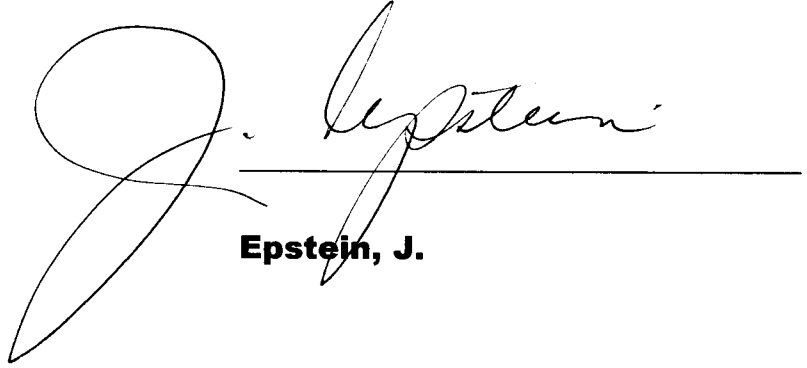
In its decision in *Clohessy v. Bachelor*, 237 Conn. 31 (1996), the Connecticut Supreme Court recognized, for the first time in this state, a cause of action for bystander emotional distress. The court imposed, however, significant limitations on the application of the doctrine, requiring (1) a close relationship between the claimant and the injury victim; (2) claimant's "contemporaneous sensory perception of the event or conduct" that caused the injury; (3) a substantial physical injury to the victim; and (4) a serious emotional injury sustained by the person asserting the bystander emotional distress claim. *Clohessy v. Bachelor*, supra, 51 to 56. In *Clohessy*, having applied these limitations, the Supreme Court recognized the viability of the

bystander emotional distress claims of a mother and brother of a seven-year-old child who was struck and killed by an automobile as the three of them attempted to cross a street.

In the present case, plaintiff alleges defendants' failure to alert her of upcoming work. Plaintiff also alleges that her husband suffered his devastating ailment onset as a result of defendants' "repeated landscaping and mulching."

Plaintiff does not specify the time or date of the landscaping or mulching of which she complains. In addition, she does not allege that she witnessed any particular landscaping and mulching activities of which she complains. Furthermore, and most importantly for our purposes here, plaintiff does not allege witnessing any landscaping or mulching simultaneously with the onset of her husband's asthma attack.

**Plaintiff fails to viably assert a cause of action for
bystander emotional distress and, consequently, the defendants'
motion to strike counts three, six, nine and twelve is granted.**



A handwritten signature in cursive script, appearing to read "J. Epstein", is written over a horizontal line. The signature is fluid and somewhat stylized, with a large initial "J" and a long, sweeping underline.

Epstein, J.

CHECKLIST FOR CLERK

Docket Number CVID-6016042

Case Name TORRES v. BERLINE

Memorandum of Decision dated 4/12/16

File Sealed: yes no

Memo Sealed: yes no

This Memorandum of Decision may be released to the Reporter of Judicial Decisions for publication.

This Memorandum of Decision may NOT be released to the Reporter of Judicial Decisions for publication.

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HHD-CV10-6016042-S TORRES, ELBA Et Al v. BERLINE LINE APARTMENTS, LLC Et Al
 Prefix: ROB Case Type: T03 File Date: 11/04/2010 Return Date: 11/09/2010

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Information Updated as of: 04/12/2016

Case Information

Case Type: T03 - Torts - Defective Premises - Private - Other
Court Location: HARTFORD JD
List Type: REMOVED FROM TRIAL LIST (00)
Trial List Claim:
Last Action Date: 12/11/2015 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party	No Fee Party	Category
P-01 ELBA TORRES Attorney: # HARDMAN LAW OFFICES LLC (432329) File Date: 09/26/2011 98 WASHINGTON STREET SUITE 203 MIDDLETOWN, CT 06457		Plaintiff
P-02 ELBA ESTATE OF MARCIAL TORRES Attorney: # HARDMAN LAW OFFICES LLC (432329) File Date: 09/26/2011 98 WASHINGTON STREET SUITE 203 MIDDLETOWN, CT 06457		Plaintiff
D-50 BERLINE LINE APARTMENTS LLC Attorney: # LITCHFIELD CAVO (416477) File Date: 11/09/2010 82 HOPMEADOW STREET SUITE 210 SIMSBURY, CT 06089		Defendant
D-51 LORRAINE ROSS Attorney: # LITCHFIELD CAVO (416477) File Date: 11/09/2010 82 HOPMEADOW STREET SUITE 210 SIMSBURY, CT 06089		Defendant
D-52 HARVEST INVESTMENTS LLC Attorney: # LITCHFIELD CAVO (416477) File Date: 11/09/2010 82 HOPMEADOW STREET SUITE 210 SIMSBURY, CT 06089		Defendant
D-53 EVERGREEN APARTMENTS LLC Attorney: # LITCHFIELD CAVO (416477) File Date: 11/09/2010 82 HOPMEADOW STREET SUITE 210 SIMSBURY, CT 06089		Defendant
D-54 ROY'S LANDSCAPING LLC Attorney: # CALABRESE JOHN P LAW OFFICE OF (419054) File Date: 11/12/2010 500 ENTERPRISE DRIVE		Defendant

12/11/2015
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