DOCKET NO: UWYCV206054893S

SUPERIOR COURT

BILYARD, JANE B.
V.
MIDDLESEX MUTUAL ASSURANCE COMPANY Et Al

JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

6/1/2022

ORDER

ORDER REGARDING:
02/16/2021 129.00 MOTION TO STRIKE

The foregoing, having been considered by the Court, is hereby:

ORDER:

The operative complaint in this matter contains eight counts and is dated November 6, 2020. The plaintiff is Jane Bilyard. She is the spouse of Keith Bilyard, the plaintiff in a companion action, Bilyard v. Middlesex Mutual Assurance Company, Docket No. UWY CV-156028936S. The defendants in the present action are Middlesex Mutual Assurance Company, the appraiser it selected to participate in the process mandated by Conn. Gen. Stat. Section 38a-307, David Beaver, and Beaver's employer, Sedgwick Claims Management Services, Inc.

This case centers around a dispute as to the "amount of loss" suffered as the result of two incidents that occurred at a home owned by the plaintiff and located at 1208 Main Street North in Southbury. The first of these incidents involved a broken water pipe that occurred on May 1, 2014. The second of these incidents involved a broken toilet that occurred on July 3, 2015. More than eight years have passed since the first incident, and a dispute as to the amount due to the plaintiff under a policy of insurance issued to her by the defendant Middlesex Mutual Assurance Company that covered these losses seems no closer to being resolved than it was when the first suit relating to this matter was initiated on October 30, 2015.

Chief among the current impediments to resolving the dispute as to the amount of insurance recovery payable is the plaintiff's dissatisfaction with the way in which the mandatory appraisal process required by Conn. Gen. Stat. Section 37a-307 has transpired. Among the ways this dissatisfaction has manifested itself is by the plaintiff Jane Bilyard bringing the present action which follows the 2015 case referenced above that was brought by her husband Keith. In response to Keith's dissatisfaction with the appraisal process, he has filed a motion in the 2015 action to cite in Beaver and Sedgwick.

Now before the court is a motion to strike filed by Beaver and Sedgwick whose resolution hinges on one central question. That question is whether the counts sounding in tortious interference with contract directed against Beaver and Sedgwick should be stricken because the plaintiff's' claims against them arise from Beaver's alleged misconduct incident to his service as the appraiser chosen by Middlesex pursuant to Section 37a-307. Beaver and Sedgwick argue they are immune from suit given the allegations against them in the operative complaint by virtue of both common law and statutory arbitral immunity. The plaintiff disagrees and argues that the claims she wishes to pursue against Beaver and Sedgwick are cognizable.

“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). “[I]t is fundamental that in determining the sufficiency of a complaint challenged by a defendant’s motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted. . . . 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." (Citation omitted; internal quotation marks omitted.) Coe v. Board of Education, 301 Conn. 112, 116-17, 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).

The court begins it analysis mindful of Justice Peter's opinion rejecting prior thinking that there was in the eyes of the law a meaningful distinction to be drawn between an arbitration process and an appraisal process." In the past, courts have sometimes found a distinction between arbitration and appraisal, holding that the latter is not an arbitration in the accepted legal sense of the word, because an arbitration is a method adopted to settle already-existing controversies, while an appraisal settles questions of amount, quality, value or price which might come up during or after the performance of the contract. It is noteworthy that this distinction was made prior to the adoption of Connecticut's arbitration statutes in 1929.Whatever validity the distinction may once have had, this court has more recently rejected an interpretation of the word 'controversy' in s 52-408 that would render it 'narrower . . . than its normal connotation.' The normal connotation of 'controversy' is more than sufficient to encompass the dispute over the amount of a fire loss that triggers the appraisal procedure in the insurance contract in question. In addition, our definition of arbitration as 'the voluntary submission . . . of an existing or future dispute to a disinterested person or persons for final determination' is broad enough to include the appraisal clause." (citation omitted) Covenant Ins. Co. v. Banks, 177 Conn. 273, 279–80, 413 A.2d 862, 865–66 (1979)

Therefore, to the extent the plaintiff now seek damages by way of a direct action against an appraiser who was appointed under the auspices of Section 38a-307, the validity of this action is properly considered in a fashion that is analagous to a situation in which an aggrieved party brings suit against an arbitrator seeking damages because of dissatisfaction resulting from the manner in which the arbitrator conducted his or her duties. Under common law "[i]t is well established that an arbitrator is immune from suit for all acts which he performs in his capacity as an arbitrator. " (citation omitted) Atl. Coast Const., Inc. v. John Dempsey Hosp. Fin. Corp., No. CV91 039 56 15, 1994 WL 116324, at *3 (Conn. Super. Ct. Mar. 10, 1994) In addition, in adopting the Revised Uniform Arbitration Act in 2018, Connecticut codified the common law immunity enjoyed by arbitrators in Conn. Gen. Stat. Section 52-407nn. That statute provides in pertinent part as follows:" An arbitrator ... acting in that capacity is immune from civil liability to the same extent as a judge of a court in this state acting in a judicial capacity...The immunity afforded by this section supplements any immunity under other law."

No binding Connecticut law has extended either common law or statutory arbitrator immunity to appraisers who have been appointed in furtherance of the law's command that certain insurance policies contain provisions mandating that disputes as to the amount of the loss be resolved through an appraisal process. A well reasoned California case has however, consistent with the holding of the Covenant case cited above, concluded that "[w]e see no reason why an appraiser who is required by statute to be 'disinterested' ... should be subject to tort liability in connection with his role as an appraiser, given this state's preference to provide immunity to those who perform the function of resolving disputes between parties" (citation omitted) Lambert v. Carneghi, 158 Cal. App. 4th 1120, 1136, 70 Cal. Rptr. 3d 626, 637 (2008) The law has long eschewed permitting parties who are dissatisfied with the outcome of a legally mandated official dispute resolution process from acting on that dissatisfaction by bringing an action for damages against the individual charged with resolving the dispute." Like judicial and quasi-judicial immunity, arbitral immunity is necessary to protect decisionmakers from undue influence, and the decision-making process from attack by dissatisfied litigants.... Arbitral immunity protects all acts within the scope of the arbitral process." (citations omitted) Olson v. Nat'l Ass'n of Sec. Dealers, 85 F.3d 381, 382–83 (8th Cir. 1996)

The plaintiff insists that even if an appraiser appointed under Section 38a-307 were entitled to arbiter immunity, such immunity should not obtain in this case because the claims made by the plaintiff are for alleged misconduct that falls outside the appraiser's statutory responsibilities. It is true, as recognized by the plaintiff, that the immunity in question is not unlimited. In this case, Section 38a-307 and the insurance policies at issue call upon the appraisers to "set the amount of the loss". While the plaintiff

argues that the conduct of Beaver that she complain of falls outside of the duties the insurance contract obligates him to fulfill, the court notes that all of the alleged misconduct by Beaver took place in connection with and incident to his efforts to meet his obligations as the appraiser selected by Middlesex pursuant to statute to determine the amounts due to the Bilyards under the applicable policies.

Given the law's reticence to permit direct actions for damages against those charged with resolving disputes, it is not surprising that there exists a legal avenue through which serious alleged misconduct on the part of an arbitrator or appraiser may timely be addressed. "As a threshold matter, we recognize that the arbitration statutes contain no provision allowing for the summary removal of an arbitrator prior to or during the arbitration proceedings. Although the statutes do not allow for such action, our Supreme Court has recognized that under certain circumstances, the trial court, pursuant to its equitable powers, may intervene in an arbitration proceeding and issue an equitable decree to prevent an arbitrator from participating in the arbitration. ... To conclude that an arbitrator, who cannot observe his or her ethical duties or who cannot participate in a fair, honest and good-faith manner, may nevertheless serve as an arbitrator would undermine society's confidence in the legitimacy of the arbitration process." (citations and internal quotation marks omitted) Metro. Dist. Comm'n v. Connecticut Res. Recovery Auth., 130 Conn. App. 132, 142–44, 22 A.3d 651, 657–58 (2011)

In addition, proof of "actual misconduct" on the part of an appraiser may form a basis upon which to vacate an appraisal award after the appraisal process has been completed . See, e.g. Gordon v. Amica Mut. Ins. Co., No. CV030830712S, 2004 WL 2943244, at *4 (Conn. Super. Ct. Nov. 15, 2004)

For all of the reasons stated above, the motion to strike counts two and three of the plaintiff's amended complaint dated November 9, 2020 is granted.

On 06/03/2022, JDNO sent to notify all counsel of record of the availability of this order in the electronic file.

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Judge: ANDREW W RORABACK

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