

**AJ Waste Systems, LLC v. Lion Condominium Association of South-
ington, Inc.**

CV1160040146S

**SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT
OF NEW HAVEN AT MERIDEN**

2012 Conn. Super. LEXIS 1575

June 20, 2012, Filed

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OPINION

[*1]

Short Name:AJ Waste Systems, LLC v. Lion Condominium Ass'n of Southington, Inc.

Other Parties:

Opinion No.: 119961

Conn.Sup. Cite:

As-is Docket Number:CV11-60040146-S

Other Docket Numbers:

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Caption Date:June 20, 2012

Judge (with first initial, no space for Sullivan, Dorsey, and Walsh):Markle, Denise D., J.

Opinion Title:*MEMORANDUM OF DECISION RE MOTION TO STRIKE #101*

The plaintiff, AJ Waste Systems, LLC, brings the present action in a two-count complaint claiming breach of contract and negligence against the defendant, Lion Condominium Association of Southington, Inc. In count one the plaintiff alleges that on February 28, 2002, the plaintiff and the defendant entered into a three-year written contract for the disposal of nonhazardous waste. The contract provides an effective date of April 1, 2002, and contains an automatic re-

newal provision that renews the contract every three years unless the defendant provides notice of its intent to terminate the contract at least 90 days, but no more than 120 days, before the initial or any renewal term ends. The contract further provides that if the defendant breaches the contract, the defendant shall be responsible [*2] for paying the monthly payments for the remainder of the contract. In exchange for the disposal of nonhazardous waste, the defendant agreed to pay a monthly fee. On or about August 31, 2011, the plaintiff sent the defendant a monthly invoice in the amount of \$257.09 for services to be provided in the month of September and alleges the defendant to have breached the terms of the contract when failed to render payment.

The defendant filed a motion to strike count one on the grounds that the automatic renewal clause contained in the contract is in violation of *General Statutes §42-158aa* and the contract, as a whole, is unconscionable.[1] The defendant further asserts that because the contract is unconscionable or in violation of *§42-158aa*, paragraph three of the prayer for relief, which seeks the award of costs, fees and attorney fees in accordance with the contract, must also be stricken. The defendant submitted an accompanying memorandum of law in support of its motion to strike.

On January 25, 2012, the plaintiff filed an objection to the defendant's motion to strike and a memorandum of law in support and arguments were presented by counsel at short calendar on March 13, 2012. Following [*3] the short calendar the defendant filed a supplemental memorandum of law in support of the motion to strike and on March 19, 2012, the defendant filed a second supplemental memorandum of law in support of its motion to strike. On April 2, 2012, the plaintiff filed a supplemental memorandum of law in support of its objection to the defendant's motion to strike. After having considered the arguments of counsel, and after review of the applicable statutes and case law, the court hereby denies the defendant's Motion to Strike for the following reasons.

LEGAL STANDARD OF REVIEW

"The proper method to challenge the legal sufficiency of a complaint is to make a motion to strike prior to trial." *Gulack v. Gulack*, 30 Conn.App. 305, 309, 620 A.2d 181 (1993). "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). "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 [*4] to a motion to strike." *Bouchard v. People's Bank*, 219 Conn. 465, 471, 594 A.2d 1 (1991). "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). "In ruling on a motion to strike, the court is limited to the facts alleged in the complaint." (Internal quotation marks omitted.) *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 580, 693 A.2d 293 (1997).

The defendant asserts that the first count and paragraph three of the prayer for relief should be stricken from the plaintiff's complaint. The defendant argues that the contract, which accord-

ing to its terms was renewed most recently on April 1, 2011, is invalid under §42-158aa. The defendant further asserts that the terms of the contract are unconscionable and thus, unenforceable. The plaintiff argues that the contract is not void by operation of law because §42-158aa only applies to contracts entered into on or after October 1, 2007, and the contract that is the subject [*5] of this dispute was originally entered into April 1, 2002. Additionally, the plaintiff contends that the terms of the contract are not unconscionable and that the defendant's motion to strike, as written, does not comply with the requirements of *Practice Book §10-41*. The court need not reach the merits of these contentions at this juncture.

Connecticut courts have consistently held that "[t]he elements of a breach of contract action are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages." (Internal quotation marks omitted.) *The FCM Group, Inc. v. Miller*, 300 Conn. 774, 798, 17 A.2d 40 (2011). "[I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Vacco v. Microsoft Corp.*, 260 Conn. 59, 65, 793 A.2d 1048 (2002). However, "[a] bald assertion that the defendant has a contractual obligation, without more, is insufficient to survive a motion to strike." *Commissioner of Labor v. C.J.M. Services, Inc.*, 268 Conn. 283, 293, 842 A.2d 1124 (2004). Ultimately, "[w]hether the terms of the contract support that allegation is a factual question to be [*6] determined by the fact finder and, therefore, is not at issue when the trial court considers a motion to strike." *Id.*

The plaintiff alleges that the parties agreed that the plaintiff would remove nonhazardous waste for the defendant in exchange for a monthly fee. The plaintiff further alleges that the defendant breached this duty on August 31, 2011, by failing to render payment for the plaintiff's services. As a result of the defendant's failure to pay the plaintiff, the plaintiff alleges that it suffered damages. Thus, "[t]he complaint [alleges] the basic elements of a breach of contract action, namely, formation, performance, breach and damages." *Bross v. Hillside Acres, Inc.*, 92 Conn.App. 773, 782, 887 A.2d 420 (2006), and finds the allegations states a legally sufficient cause of action.

CONCLUSION

For the above stated reasons, the Motion to Strike Count One of the complaint is hereby DENIED.

BY THE COURT

Denise D. Markle, Judge

[1] *Section 42-158aa* provides in relevant part: "No provision of a contract for refuse removal or disposal which states that the term of such contract shall be deemed renewed for a specified additional period of time shall be enforceable unless the person against [*7] whom such provision is to be enforced initialed or signed a conspicuous statement immediately following such provision, stating, in boldface type at least twelve points in size: 'I acknowledge that this contract contains an AUTOMATIC RENEWAL provision . . .'"

