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SUPERIOR COURT

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JUDICIAL DISTRICT OF
FAIRFIELD AT BRIDGEPORT
STATE OF CONNECTICUT SUPERIOR COURT
DOCKET NO. FBT CV12 6034053

KENNETH C. REED III, RUTH E. REED

JUDICIAL DISTRICT OF FAIRFIELD

VS.

AT BRIDGEPORT

3M COMPANY, ET AL.

MAY 25, 2016

MEMORANDUM OF DECISION
MOTION TO DISMISS DEFENDANTS' CROSS-CLAIMS

The plaintiffs instituted this action against sixty-six defendants by way of a complaint dated November 5, 2012, bearing a return date of December 11, 2012. The First Count alleged a violation of the Connecticut Product Liability Act ("CPLA"), regarding direct and secondary exposure to asbestos products and the ingestion of asbestos dust and fibers by the plaintiff, Kenneth C. Reed, III, which has caused this plaintiff to contract mesothelioma. The Second Count alleges a loss of consortium. The Third Count alleges fraud. The Fourth Count alleges a premises liability claim based on contamination of the plaintiff Kenneth C. Reed III's residence by way of asbestos contaminants brought to the residence by Reed's father from his father's place of employment.

Thereafter, the plaintiffs filed a Sixth Revised and Amended Complaint dated October 5, 2016. The First Count continues to claim a violation of the CPLA against all remaining defendants.¹ The Second Count continues to claim a loss of consortium against the three Ford

¹ Three defendants remain as to the plaintiffs' complaint. The remaining non-settled or non-withdrawn defendants are Ford Motor Company, Bridge-Haven Ford Truck Sales, Inc. and Stamford Motors. These three defendants are collectively referred to herein as the "Ford defendants". Various other cross-claim

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+ R.O.J.D. 5/25/16

defendants The Third Count, directed only to the defendants Ford Motor Company and Stamford Motors, Inc., continues to allege a premises liability action. The defendants Ford Motor Company, Stamford Motors, Inc. and Bridge-Haven Ford Truck Sales, Inc. ("Ford defendants"), on or about March 17, 2016, filed their Answer and Special Defenses to the plaintiff's Sixth Revised Amended Complaint and additionally, filed Cross-claims against the other remaining defendants, as well as, their Answers to Cross-Claims filed against them by other defendants in this matter.

At the present time the plaintiffs' action remains only against the three Ford defendants, as the plaintiffs have either settled their claims or have withdrawn their claims against sixty-three of the original sixty-six defendants. The sixty-three defendants who have either settled with the plaintiffs or have had the claims against them withdrawn, have in turn either withdrawn or abandoned their cross-claims against other defendants or have had their cross-claims dismissed by the court (Bellis, J.) Therefore, the only cross-claims presently pending against any settled or withdrawn defendants are those filed by the Ford defendants.

A review of the cross-claims filed by the Ford defendants reveals that these cross-claims contain three paragraphs. In the first paragraph the Ford defendants, in addition to denying the plaintiffs' claims, allege that "in the event that 'Ford' is found liable to the plaintiff, then all other defendants in this matter, whether direct or by third party complaints are liable for equitable contribution and/or statutory contribution pursuant to Conn. Gen. Stat. §52-572o, and/or allocation

defendants remain by virtue of cross-claims filed by the Ford defendants. The cross-claims of the Ford defendants are the subject of this decision.

of fault.” The second paragraph alleges “[f]or purposes of this Cross-Claim, Ford adopts all allegations set forth in the Plaintiffs’ Complaint or related third party complaints against other co-defendants.” Lastly, the third and final paragraph states “[o]nly in the event that Ford is found liable to Plaintiffs, in whole or in part, then the other co-defendants are liable to Ford for all or part of Plaintiff’s claimed damages.”

Jury selection commenced on or about March 18, 2016. During the course of ongoing jury selection, concerns about the viability of the cross-claims filed by the Ford defendants and other settled or withdrawn defendants have been raised by the court, the plaintiffs and other defendants to this action. However, no motions to strike the cross-claims were filed by any party, and thus, the court was not called upon to rule. However, the court continued to express concerns regarding the viability of the cross-claims, as alleged, as despite their labels or captions as “cross-claims”, they appeared to be claims for contribution. On April 28, 2016, while jury selection continued, several defendants, including the three Ford defendants, filed their memorandum of law in support of their respective cross-claims, responding to the court’s concerns. Thereafter, additional defendants, who had settled their claims or had claims withdrawn against them, moved, as cross-claim defendants, for permission to file motions for summary judgment as to the cross-claims pending against them. These requests were denied by the court (Bellis, J.) on April 29, 2016 and May 2, 2016.²

The court (Bellis, J.) on an earlier date also had denied motions to sever the existing cross-claims.

On May 17, 2016, the court (Arnold, J.), acting sua sponte informed counsel for the plaintiffs, defendants and remaining cross-claim defendants that it had again reviewed the cross-claims filed by the Ford defendants. In doing so, it appeared that the cross-claims were, in fact, claims for contribution in a product liability case, which should be governed by General Statutes §52-572o(e).³ Section 52-572o(e) reads as follows:

“(e) If a judgment has been rendered, any action for contribution must be brought within one year after the judgment becomes final. If no judgment has been rendered, the person bringing the action for contribution either must have (1) discharged by payment the common liability within the period of the statute of limitations applicable to the right of action of the claimant against him and commenced the action for contribution within one year after payment, or (2) agreed while action was pending to discharge the common liability and, within one year after the agreement, have paid the liability and brought an action for contribution.”

The court then informed the parties that if, in fact, the cross-claims were claims for contribution, the court was concerned that in accordance with the foregoing statute the cross-claims brought by the Ford defendants were premature, in that the conditions for bringing an action for contribution pursuant to General Statutes §52-572o(e) had not been met. There has been no judgment against any defendant; no payment of a judgment by any defendant; and no agreement by any of the Ford defendants to discharge “the common liability” and to pay the liability. See. General Statutes §52-572o(e). The Court then informed the respective parties that it appeared the Ford defendants may lack standing at this time to bring an action for statutory contribution, which,

³ The cross-claims filed by the three Ford defendants against various co-defendants are the only remaining active cross-claims and are the only cross-claims being addressed by this decision.

in turn, invokes the court's subject matter jurisdiction, allowing the court to act sua sponte to dismiss the cross-claims for a lack of subject matter jurisdiction. The court then granted the plaintiffs, the Ford defendants and all remaining cross-claim defendants a period of one week until May 24, 2016, to file legal memorandum or responses to the court's concerns before the court made any determination regarding a dismissal of the Ford defendants' cross-claims for lack of subject matter jurisdiction.

Standard of Law

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Bacon Construction Co. v. Department of Public Works*, 294 Conn. 695, 706, 987 A.2d 348 (2010). "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *Wilcox v. Webster Ins., Inc.*, 294 Conn. 206, 213, 982 A.2d 1053 (2009). "Pursuant to the rules of practice, a motion to dismiss is the appropriate motion for raising a lack of subject matter jurisdiction." *George v. Gordon*, 264 Conn. 538, 545, 825 A.2d 90 (2003). The purpose of the motion is to attack the "jurisdiction of the court [by asserting] that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." *Directory Assistants, Inc. v. Big Country Vein, L.P.*, 134 Conn. App. 415, 219, 39 A.3d 777 (2012). A motion to dismiss "admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone." *Gold v. Rowland*, 296 Conn. 186, 200-01, 994 A.2d 106 (2010).

"[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). "[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." (Internal quotation marks omitted.) *May v. Coffey*, 291 Conn. 106, 113, 967 A.2d 495 (2009). "[I]n determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Intentional quotation marks omitted.) *Connor v. Statewide Grievance Committee*, 260 Conn. 435, 443, 797 A.2d 1081 (2002). "The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any state of the proceedings, including on appeal." *Peters v. Department of Social Services*, 273 Conn. 434, 441, 870 A.2d 448 (2005). "Standing is the legal right to set judicial machinery in motion.... If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." *City of Middletown v. P&G Enterprises Ltd. Part.*, 45 Conn. Sup. 435,437 (1998).

Discussion

In reviewing the Memorandum of Law filed by the Ford defendants, dated April 28, 2016, the court notes that these defendants argue their cross-claims have stated facially valid claims for contribution under Connecticut law "entitling them to contribution from co-defendants *should* the jury find the Cross-claimants liable for the Plaintiffs' injuries. (*Emphasis added*). General Statutes §52-572o(e) addresses the question of contribution among defendants following a judgment

rendered pursuant to §52-572o(d). Section 52-572o(d) reads as follows:

“(d) The court shall determine the award for each claimant according to these findings and shall enter judgment against parties liable on the basis of the common law joint and several liability of joint tortfeasors. The judgment shall also specify the proportionate amount of damages allocated against each party liable, according to the percentage of responsibility established for such party.”

General Statutes §52-572o has been interpreted by our Supreme Court, as follows:

“The first sentence of subsection (e) of § 52–572o . . . addresses the question of contribution among the defendants following a judgment rendered by the court pursuant to subsection (d). It provides that any action for contribution must be brought within one year of the judgment. “Contribution is a payment made by each, or by any, of several having a common interest or liability of his share in the loss suffered, or in the money necessarily paid by one of the parties in behalf of the others.... The right of action for contribution, which is equitable in origin, arises when, as between multiple parties jointly bound to pay a sum of money, one party is compelled to pay the entire sum. That party may then assert a right of contribution against the others for their proportionate share of the common obligation.”

(Citation omitted) *Barry v. Quality Steel Products, Inc.* 280 Conn. 1, 13-14, 905 A.2d 55 (2006)

“ The purposes of subsections (d) and (e) of § 52–572o are: (1) to ensure, to the extent possible, that the plaintiff is made whole by recovering the full amount of his net award, from all or any one of the defendants; and (2) to provide that if any liable defendant pays more than its proportional share of that net award, it may seek appropriate contributions from the other liable defendants.” *Id.*, 14.

“The legislature clearly intended to make our Products Liability Act an exclusive remedy for claims falling within its scope.” See *Winslow v. Lewis-Shepard, Inc.*, 212 Conn. 462, 471 (1989). The Connecticut Products Liability Act has abrogated the common law rules of

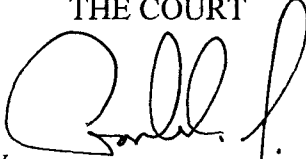
indemnification and contribution in the context of product liability suits where all the defendants are parties to the original action. *Kyratatas v. Stop & Shop, Inc.*, 205 Conn. 694, 697-702 (1988)⁴. The CPLA has replaced the common law rules of indemnification and contribution with a system of comparative responsibility. *Id.* at 701. Because all of the cross-claim defendants and the Ford defendants are original co-defendants named in plaintiff's original complaint, any right to contribution flowing to the Ford defendants, as cross-claim plaintiffs, from the cross-claim defendants must exist pursuant to Section § 52-572o(e) which provides for contribution. See. *Hall v. Sarstedt, Inc.*, Superior Court, judicial district of Stamford-Norwalk, at Stamford., No. CV88 0096190 S. (Sept. 11, 1990, Flynn, J.). Where a cause of action is created by statute that did not otherwise exist at common law, standing to pursue such a cause of action is determined by looking to the statute itself. *Soracco v. Williams Scotsman, Inc.*, 292 Conn. 86, 971 A.2d 1 (2009).

Section 52-572o(e) creates a right of contribution and imposes condition precedents to enforcement of that right of action. The condition precedents have not yet occurred. The defendants' cross-claims for contribution, therefore, are not ripe and are non-justiciable. "A case that is non-justiciable must be dismissed for lack of subject matter jurisdiction." (Internal quotation marks omitted.) *Chapman Lumber, Inc. v. Tager*, 288 Conn. 69, 86, 952 A.2d 1 (2008).

Malerba v. Cessna Aircraft Co., 210 Conn. 189 (1989), permitted a contribution claim and an indemnification claim between a defendant-third-party plaintiff and a third-party defendant. The instant action involves co-defendants that were initially named by the plaintiffs. *Malerba*, does not control the instant case because the factual circumstances and procedural postures are different. "[T]he preconditions of § 52-572o(e) apply only to those circumstances where a party elects to pursue an independent cause of action for contribution rather than impleading the prospectively liable third party...." *Id.* at 195.

Specifically, “ripeness is a sine qua non of justiciability ...” (Internal quotation marks omitted.) *Liberty Mutual Ins. Co. v. Lone Star Industries, Inc.*, 290 Conn. 767, 812, 967 A.2d 1 (2009). “[T]he rationale of the ripeness doctrine is to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements ... Thus, a court must be satisfied that the case before it does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire.” (Citation omitted; internal quotations marks omitted.) *Keller v. Beckenstein*, 122 Conn. App. 438, 443, 998 A.2d 838, cert. granted on other grounds, 298 Conn. 921, 4 A.3d 1227 (2010).

For each of the reasons set forth herein, the court, acting sua sponte, dismisses the cross-claims filed by the defendants, Ford Motor Company, Stamford Motors, Inc. and Bridge-Haven Ford Truck Sales, Inc. (“Ford defendants”).

THE COURT

By _____
Arnold, Judge