



to disclose to the plaintiff the financial condition of Beta and Zhejiang, failed to disclose material information regarding securities transactions between the two companies, and failed to provide a market for the plaintiff to exchange or sell his shares. As a result of the breach of the partnership agreement, the plaintiff has been damaged and seeks monetary relief or in the alternative specific performance of the partnership agreement.

On November 5, 2015, the defendants filed a motion to strike counts three through eight, which encompass claims of negligent misrepresentation, fraudulent misrepresentation, and breach of fiduciary duty, on the grounds that they are barred by the economic loss doctrine and that counts five and eight fail to state legally cognizable causes of action for breach of fiduciary duty. The defendants filed a memorandum of law in support of their motion to strike. The plaintiff filed a memorandum in opposition to the defendants' motion to strike on December 4, 2015. The defendants filed their reply memorandum on December 17, 2015. This matter was heard at the short calendar on December 21, 2015.

#### DISCUSSION

“[A] motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court . . . . [The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied.” (Internal quotation marks omitted.) *Coppola Construction Co. v. Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013). “Moreover, [the court notes] that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . [P]leadings must be construed broadly and realistically, rather than narrowly and technically.” (Internal quotation marks omitted.) *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, 295 Conn. 240, 252-53, 990 A.2d 206 (2010). “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). “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).

I  
NEGLIGENT MISREPRESENTATION

The defendants first argue that the plaintiff failed to allege sufficient facts showing that the defendants had a duty to disclose information to the plaintiff and that the negligent misrepresentation claims alleged in counts three and six are barred by the economic loss doctrine. Specifically, the defendants argue that the relationship between the parties is contractual in nature, making the losses alleged purely economic, and that the plaintiff failed to sufficiently allege that representations were made to induce the plaintiff to enter into the partnership agreement. The plaintiff counters, arguing that because counts three and six are based on and arise from the defendants' tortious conduct prior to the formation of the partnership agreement, the economic loss doctrine is inapplicable. Further, the plaintiff argues that he has alleged several specific facts that show that the defendants made representations that were negligently false and misleading in order to induce the plaintiff to enter into the partnership agreement.

“[T]he essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury. (Internal quotation marks omitted.) *Cannizzaro v. Marinyak*, 312 Conn. 361, 366, 93 A.3d 584 (2014). “[A]n action for negligent misrepresentation requires the plaintiff to establish (1) that the defendant made a misrepresentation of fact (2) that the defendant knew or should have known was false, and (3) that the plaintiff reasonably relied on the misrepresentation, and (4) suffered pecuniary harm as a result.” *Nazami v. Patrons Mutual Ins. Co.*, 280 Conn. 619, 626, 910 A.2d 209 (2006). Our Supreme Court has “held that even an innocent misrepresentation of fact may be actionable if the declarant has the means of knowing, ought to know, or has the duty of knowing the truth. . . . The governing principles [of negligent misrepresentation] are set forth in similar terms in § 552 of the Restatement (Second) of Torts (1977): One who, in the course of his business, profession or employment . . . supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.” (Internal quotation marks omitted.) *Kramer v. Petisi*, 285 Conn. 674, 681, 940 A.2d 800 (2008). “Liability for

negligent misrepresentation may be placed on an individual when there has been a failure to disclose known facts and, in addition thereto, a request or an occasion or a circumstance which imposes a duty to speak.” (Internal quotation marks omitted.) *Johnnycake Mountain Associates v. Ochs*, 104 Conn. App. 194, 206, 932 A.2d 472 (2007), cert. denied, 286 Conn. 906, 944 A.2d 978 (2008).

In the present case, the plaintiff alleges that the defendants agreed to pay the plaintiff a stated salary and that plaintiff would be provided with and own stock in both Beta and Zhejiang, all of which the defendants knew or should have known would not be paid or provided to the plaintiff. The plaintiff further alleges that the defendants failed to disclose to the plaintiff material information pertaining to the financial conditions of Beta and Zhejiang, as well as their ability to transact, purchase, and invest the stock and shares between the companies and the market. As a result of these misrepresentations and nondisclosures of fact that the defendants knew or should have known were false, the plaintiff relied on them and entered into the partnership agreement to form Beta Pharma Canada. After expending his own resources to form Beta Pharma Canada, the plaintiff suffered pecuniary harm when he was not paid his salary nor provided the stocks that were agreed to under the partnership agreement. Construing the complaint broadly and in the manner most favorable to sustaining its legal sufficiency, the plaintiff has pleaded sufficient facts to establish a cause of action for negligent misrepresentation in counts three and six.

The court now turns to whether or not the plaintiff’s claims of negligent misrepresentation are barred by the economic loss doctrine. Our Supreme Court adopted the economic loss doctrine when it stated, “commercial losses arising out of the defective performance of contracts for the sale of goods cannot be combined with negligent misrepresentation.” *Flagg Energy Development Corp. v. General Motors Corp.*, 244 Conn. 126, 153, 709 A.2d 1075 (1998), overruled on other grounds by *Ulbrich v. Groth*, 310 Conn. 375, 410, 78 A.3d 76 (2013). In *Ulbrich*, our Supreme Court expanded the economic loss doctrine to include contracts that did not deal with the sale of goods. The Supreme Court stated that “the economic loss doctrine bars negligence claims that arise out of and are dependant on breach of contract claims that result only in economic loss.” *Ulbrich*, supra, 310 Conn. 410. The Supreme Court, however, clarified that the economic loss does not always bar these types of negligence claims stating that “a plaintiff that has a contractual relationship with the

defendant can bring a negligent misrepresentation claim against the defendant when the negligent misrepresentations induced the plaintiff to enter into a contract.” Id., 406.

Here, as noted previously, the plaintiff has alleged that he entered into the partnership agreement in order to receive his agreed upon salary and shares in Beta and Zhejiang. Construed broadly, the contractual promises made to the plaintiff are of the type made during negotiations of contract terms as they relate to payment for performance under the partnership agreement. Accordingly, the complaint sufficiently alleges that these allegations were made prior to entering into the partnership agreement, they induced the plaintiff to enter into the partnership agreement, and they were subsequently breached. Therefore, the economic loss doctrine does not bar the plaintiff’s negligent misrepresentation claims and that the defendants’ motion to strike as to counts three and six should be denied.

## II FRAUDULENT MISREPRESENTATION

The court next addresses the defendants’ arguments in support of striking the plaintiff’s fraudulent misrepresentation claims. The defendants argues that the plaintiff’s fraudulent misrepresentation claims alleged in counts four and seven should be stricken because the plaintiff fails to allege sufficient facts to show that the misrepresentations induced him to enter the partnership agreement, that the claims are barred by the economic loss doctrine, and that the plaintiff failed to show the defendant had a duty to disclose information. The plaintiff counters that he alleged several specific facts that demonstrate the defendants made deliberately false, fraudulent, and misleading representations to the plaintiff to induce him to enter the partnership agreement. Further, the plaintiff argues that he sufficiently alleged that the defendants failed to disclose significant material information.

“The essential elements of a cause of action in [fraudulent misrepresentation] are: (1) a false representation was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) it was made to induce the other party to act upon it; and (4) the other party did so act upon the false representation to his injury.” (Internal quotation marks omitted.) *Centimark Corp. v. Village Manor Associates Ltd. Partnership*, 113 Conn. App. 509, 522, 967 A.2d 550, cert. denied,

292 Conn. 907, 973 A.2d 103 (2009). “Because specific acts must be pleaded, the mere allegation that a fraud has been perpetrated is insufficient.” (Internal quotation marks omitted.) *Chiulli v. Zola*, 97 Conn. App. 699, 709, 905 A.2d 1236 (2006). “In an action based on fraudulent nondisclosure the plaintiff must prove not only the nondisclosure but his reliance on it.” *Creelman v. Rogowski*, 152 Conn. 382, 385, 207 A.2d 272 (1965). “To constitute [fraud by nondisclosure], there must be a failure to disclose known facts and, in addition thereto, a request or an occasion or a circumstance which imposes a duty to speak. . . . The duty to disclose known facts is imposed on a party insofar as he voluntarily makes disclosure. A party who assumes to speak must make a full and fair disclosure as to the matters about which he assumes to speak.” (Citations omitted; internal quotation marks omitted.) *Statewide Grievance Committee v. Egbarin*, 61 Conn. App. 445, 454-55, 767 A.2d 732, cert. denied, 255 Conn. 949, 769 A.2d 64 (2001).

In the present case, the plaintiff alleges that the defendants misrepresented to the plaintiff that he would be receiving his stated salary as well as the stated stock in both Beta and Zhejiang. The plaintiff alleges that the defendants’ representations were deliberately false, fraudulent, and misleading in that the defendants knew or should have known that the plaintiff would not be paid his salary or receive the requisite stocks and interests. As discussed previously, these misrepresentations induced the plaintiff to enter into the partnership agreement. Finally, the plaintiff alleges that he suffered injury by acting on the false representation when he expended resources to form Beta Pharma Canada and did not receive his agreed upon salary and stock.

The plaintiff also alleges several instances where the defendants failed to disclose material information pertaining to the financial condition of both Beta and Zhejiang. These allegations establish that the defendants provided disclosures about their financial ability to pay the plaintiff the stated salary and the ability for the companies to provide plaintiff with tradeable stock. Thus, the defendants voluntarily disclosed this information and, accordingly, were under a duty to provide a full and fair disclosure, which they failed to do. Further, the plaintiff’s allegations are not barred by the economic loss doctrine because he has sufficiently alleged that the fraudulent misrepresentations induced him to enter into the contract. See *Ulbrich v. Groth*, supra, 310 Conn. 406. Therefore, the defendants’ motion to strike as to counts four and seven should be denied.

III  
BREACH OF FIDUCIARY DUTY

Finally, the court addresses the defendants' arguments in support of its motion to strike the plaintiff's breach of fiduciary duty claims. The defendants argue that the plaintiff's breach of fiduciary duty claims in counts five and eight are legally insufficient because the plaintiff did not sufficiently allege that a formal partnership with the defendants had been created. The defendants also argue that the economic loss doctrine bars the plaintiff's breach of fiduciary duty claims. The plaintiff asserts that he has sufficiently alleged that the defendants were partners with him in the Beta Pharma Canada venture and also he has sufficiently alleged that the partnership agreement placed the defendants in a uniquely dominant position over the plaintiff. The plaintiff further argues that the economic loss doctrine does not bar his claims of breach of fiduciary duty because he was induced to enter into the partnership agreement by the defendants' breach of their fiduciary duty.

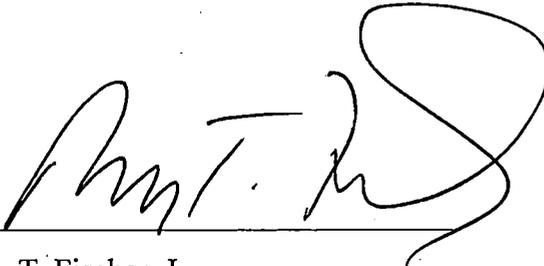
"The law does not provide a bright line test for determining whether a fiduciary relationship exists, yet courts look to well established principles that are the hallmark of such relationships. . . . [A] fiduciary or confidential relationship is characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other. . . . The superior position of the fiduciary or dominant party affords him great opportunity for abuse of the confidence reposed in him. . . . [The Supreme Court has] not, however, defined that relationship in precise detail and in such a manner as to exclude new situations, choosing instead to leave the bars down for situations in which there is a justifiable trust confided on one side and a resulting superiority and influence on the other." (Internal quotation marks omitted.) *Iacurci v. Sax*, 139 Conn. App. 386, 401, 57 A.3d 736 (2012), *aff'd*, 313 Conn. 786, 99 A.3d 1145 (2014).

In the present case, the plaintiff alleges that he entered into a partnership agreement with the defendants to form Beta Pharma Canada in reliance of receiving his salary and the stocks in Beta and Zhejiang. The plaintiff's reliance was due to the defendants' misrepresentations that induced him to enter the agreement. The facts allege a justifiable trust that the plaintiff confided in the defendants where he entered into the partnership agreement, expended his own resources to form Beta Pharma

Canada, and performed his duties under the partnership agreement. The defendants are the superior party here because they have the power to pay or not pay for the plaintiff's performance as well as superior knowledge of the industry. The plaintiff was wrongly induced to put his trust in the defendants who ultimately breached their fiduciary obligations when they failed to provide the plaintiff with his agreed upon salary and stock in Beta and Zhejiang, pursuant to the partnership agreement. Therefore, the plaintiff has provided sufficient facts to establish a fiduciary relationship with the defendants and that the economic loss doctrine does not bar his breach of fiduciary claims in counts five and eight.

CONCLUSION

For the foregoing reasons, the defendants' motion to strike counts three through eight of the plaintiff's complaint are denied.



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Brian T. Fischer, J.