

DOCKET NO. FST-CV-15-5014808-S	:	SUPERIOR COURT
WILLIAM A. LOMAS	:	J.D. OF STAMFORD/NORWALK
v.	:	AT STAMFORD
PARTNER WEALTH MANAGEMENT, LLC, et al.	:	OCTOBER 16, 2015

REQUEST TO REVISE COMPLAINT

The defendants, PARTNER WEALTH MANAGEMENT, LLC, *et al.* (the “Defendants”), pursuant to Practice Book §§ 10-35 *et seq.*, hereby request that the plaintiff, WILLIAM A. LOMAS (the “Plaintiff”), revise his complaint dated June 26, 2015 (the “Complaint”), in the following particulars, so that the pleading reasonably and/or properly sets forth the material facts relied upon by the Plaintiff and/or complies with other Practice Book provisions, thereby permitting the Defendants to properly plead thereto, as follows:

A. 1. The portion of the Complaint to be revised:

“FIRST COUNT (Breach of Contract)

33. By their foregoing acts, and their failure to make payment, or at least begin making payments, to Lomas as required by the Agreement, PWM, Burns, Pratt-Haney and Loftus breached the Agreement.”

2. The Requested Revision:

Please include an allegation of the date on which the Plaintiff claims the Defendants were contractually obligated to make payment or begin making payments under the Agreement.

3. Reasons for the Requested Revision:

The requested revision is necessary in order for the Defendants to be able to fairly plead

to the breach of contract claim asserted in the First Count of the Complaint. It is axiomatic that there are four essential elements of a breach of contract claim. They are “the formation of an agreement, performance by one party, breach of the agreement by the other party and damages.” *Rosato v. Mascardo*, 82 Conn.App. 396, 411 (2004). In the Complaint, however, while the Plaintiff alleges that the Defendants breached the Agreement, he simultaneously acknowledges that the Agreement permitted payments to be made over time,¹ without ever alleging when he claims the payment was to be made or the permitted payments were to commence under the terms of the contract. The absence of this material fact being alleged in the Complaint violates the rules of pleading set forth in the Practice Book.

Connecticut is a fact-based pleading state. *See, Practice Book* § 10-1, entitled “Fact Pleading:” “Each pleading shall contain a plain and concise statement of the material facts upon which the pleader relies” The Plaintiff necessarily has to prove and, therefore, plead that the Defendants breached the Agreement by not making payment or payments on a date or dates certain under the Agreement. If the time for the payment(s) has not commenced, then there can be no breach of the Agreement. The Defendants have a right to know the Plaintiff’s belief regarding this material fact and, therefore, the same should be pleaded in the Complaint.

Accordingly, the Plaintiff should revise the First Count of the Complaint to include an allegation of the date on which the Plaintiff claims the Defendants were to make payment or begin making payments under the Agreement.

4. Objections, if any, and reasons therefor:

¹ In paragraph number 29 of the First Count, the Plaintiff alleges that the Defendants had the right to “elect[] under the Agreement to pay the sums due over a five year period ... ,” without alleging any date on which the payments are to commence.

B. 1. The portion of the Complaint to be revised:

“SECOND COUNT (Breach of Fiduciary Duty)

40. As co-members and officers of PWM, Burns, Pratt-Heaney and Loftus were in positions of superiority and influence relative to Lomas requiring that they deal with him fairly, in good faith, and in accordance with the terms mutually agreed to among them as set forth in the Agreement.”

2. The Requested Revision:

Please include allegations of the facts upon which the Plaintiff relies to conclude that the individual defendants “were in a position of superiority and influence relative to Lomas,” as alleged.

3. Reason for the Requested Revision:

The requested revision is necessary in order for the Defendants to be able to fairly plead to the quoted allegation, which, as it presently stands, is entirely conclusory and without any factual basis or support. Indeed, in paragraphs numbers “1” through “4” of the Complaint, the individual defendants are all expressly identified as equal “25% member[s]” of PWM. It is impossible for the Defendants to know, therefore, on what basis the Plaintiff concludes that the three named individual defendants, who, like the Plaintiff, are identified as 25% members of the limited liability company defendant, are allegedly “in a position of superiority and influence relative to Lomas.” This is a critical fact to know, moreover, because, under Connecticut law, a fiduciary relationship is defined as a relationship that 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.” *Dunham v. Dunham*, 204 Conn. 303, 322 (1987), overruled in part by *Santopietro v. New Haven*, 239 Conn. 207, 213, n. 8 (1996).

The allegation, as pleaded, therefore, violates the rules of pleading set forth in *Practice Book* § 10-1, which mandates that a complaint “contain a plain and concise statement of the material facts upon which the pleader relies” There must be some factual basis for the Plaintiff to conclude that Burns, Pratt-Heaney and Loftus were in positions of superiority and influence relative to him, or were under a duty to represent his interests, and the same must be alleged (or the claim should be withdrawn).

Accordingly, the Plaintiff should revise the Second Count of the Complaint to include allegations of the facts upon which the Plaintiff relies to conclude that the individual defendants “were in a position of superiority and influence relative to” him.

4. Objections, if any, and reasons therefor:

C. 1. The portion of the Complaint to be revised:

“FIFTH COUNT (Declaratory Judgment)”.

2. The Requested Revision:

Please include an allegation of whether the Plaintiff claims that all persons who have an interest in the subject matter of the requested declaratory judgment that is direct, immediate and adverse to the interests of the Plaintiff or Defendants have been made parties to the action or given reasonable notice thereof. In addition, please append to the Complaint a certificate stating that all such interested persons have been joined as parties to the action or have been given reasonable notice thereof.

3. Reasons for the Requested Revision:

Practice Book § 17-56(b) requires that “[a]ll persons who have an interest in the subject matter of the requested declaratory judgment that is direct, immediate and adverse to the interests of the one or more plaintiffs or defendants in the action shall be made parties to the action or shall be given reasonable notice thereof.” Practice Book § 17-56(b) also provides that the “party seeking the declaratory judgment shall append to its complaint or counterclaim a certificate stating that all such interested persons have been joined as parties to the action or have been given reasonable notice thereof.”

The Plaintiff has failed to abide by these mandatory rules of practice. Further, Practice Book § 10-35(4) specifically authorizes a request to revise a complaint to obtain “any ... appropriate correction in an adverse party’s pleading.”

Accordingly, the Fifth Count of the Complaint should be revised to comply with Practice Book § 17-56’s mandatory requirements.

4. Objections, if any, and reasons therefor:

THE DEFENDANTS

By: 

Mark J. Kovack
Berchem, Moses & Devlin, P.C. – Westport
1221 Post Road East, Suite 300
Westport, CT 06880
Tel. (203) 227-9545
Juris No. 065850
mkovack@bmdlaw.com
THEIR ATTORNEYS

CERTIFICATION

This is to certify that on this 16th day of October, 2015, a copy of the foregoing was mailed and/or emailed to all counsel and/or pro se parties of record, to wit:

Thomas Rechen, Esq.
McCarter & English, LLP
CitiPlace I
185 Asylum Street
Hartford, CT 06103
trechen@McCarter.com



Mark J. Kovack
Commissioner of the Superior Court