

\*\*\*\*\*

The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion. In no event will any such motions be accepted before the “officially released” date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

\*\*\*\*\*

LAVERY, J., concurring in part and dissenting in part. Although I agree with part I of the majority opinion, I respectfully disagree with part II. In my opinion, the plaintiffs, Jerrold M. Metcoff and David B. Wilson, have alleged sufficient facts in their complaint to support their legal claim that the defendants' conduct in refusing to issue the shares of stock to the plaintiffs was outside the scope of their duties as officers and directors of NCT Group. The defendants are Irene Lebovics, Cy E. Hammond, John J. McCloy II, Sam Oolie and Michael J. Parrella, Sr. Accordingly, I respectfully dissent from part II in which the majority concludes that the trial court correctly found that the plaintiffs failed to plead a cognizable tortious interference with contract claim and, thus, properly struck count one of the second substitute complaint.

As the majority notes, the standard of review in an appeal from the granting of a motion to strike is well established. "A motion to strike challenges the legal sufficiency of a pleading, and, consequently, requires no factual findings by the trial court. As a result, our review of the court's ruling is plenary. . . . We take the facts to be those alleged in the complaint that has been stricken and we construe 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.) *Ventres v. Goodspeed Airport, LLC*, 275 Conn. 105, 154, 881 A.2d 937 (2005), cert. denied, 547 U.S. 1111, 126 S. Ct. 1913, 164 L. Ed. 2d 664 (2006). "For the purpose of ruling upon a motion to strike, the facts alleged in a complaint, though not the legal conclusions it may contain, are deemed to be admitted." (Internal quotation marks omitted.) *Murillo v. Seymour Ambulance Assn., Inc.*, 264 Conn. 474, 476, 823 A.2d 1202 (2003). "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.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003).

"A claim for intentional interference with contractual relations requires the plaintiff to establish: (1) the existence of a contractual or beneficial relationship; (2) the defendant's knowledge of that relationship; (3) the defendant's intent to interfere with the relationship; (4) that the interference was tortious; and (5) a loss suffered by the plaintiff that was caused by the defendant's tortious conduct." *Rioux v. Barry*, 283 Conn. 338, 351, 927 A.2d 304 (2007). "It has long been considered tortious either to induce a breach of contract or to interfere with financial expectancies. . . . However, it is well-

settled that the tort of interference with contractual relations only lies when a third party adversely affects the contractual relations of two other parties.” (Internal quotation marks omitted.) *Wellington Systems, Inc. v. Redding Group, Inc.*, 49 Conn. App. 152, 168, 714 A.2d 21, cert. denied, 247 Conn. 905, 720 A.2d 516 (1998). Thus, in Connecticut the “general rule is that the agent may not be charged with having interfered with a contract of the agent’s principal. . . . [A]n agent acting legitimately within the scope of his authority cannot be held liable for interfering with or inducing his principal to breach a contract between his principal and a third party, because to hold him liable would be, in effect, to hold the corporation liable in tort for breaching its own contract . . . [the agent, however,] could be held liable for such interference or inducement if *he did not act legitimately within his scope of duty but used the corporate power improperly for personal gain.*” (Citation omitted; emphasis added; internal quotation marks omitted.) *Appleton v. Board of Education*, 53 Conn. App. 252, 267, 730 A.2d 88 (1999), rev’d in part on other grounds, 254 Conn. 205, 757 A.2d 1059 (2000).

In considering the facts to be those alleged in the complaint and construing the complaint in the manner most favorable to sustaining its legal sufficiency, the plaintiffs have made out a prima facie case for tortious interference with contractual relations. The dispositive issue for the court was its determination that finding the defendants liable would effectively be holding NCT Group liable in tort for allegedly breaching its own contract by failing to issue the shares owed to the plaintiffs. More specifically, the court concluded that “the decision not to issue the shares was the type of decision that the defendants were employed or retained to perform in order for there to be a corporate act, and the court simply cannot conclude on the basis of any of the complaint’s specifically alleged facts that a decision not to issue the shares of stock was so inimical and hostile to any conceivable interest of NCT Group that this failure to act was outside of the defendants’ authority.” In light of our scope of employment jurisprudence, however, I do not agree with this result.

“In determining whether an employee has acted within the scope of employment, courts look to whether the employee’s conduct: (1) occurs primarily within the employer’s authorized time and space limits; (2) is of the type that the employee is employed to perform; and (3) is motivated, at least in part, by a purpose to serve the employer. . . . Ordinarily, it is a question of fact as to whether a wilful tort of the servant has occurred within the scope of the servant’s employment . . . [b]ut there are occasional cases [in which] a servant’s digression from [or adherence to] duty is so clear-cut that the disposition of the case becomes a matter of law.” (Citation omitted; internal quotation marks omitted.) *Harp v. King*, 266 Conn. 747, 782–83, 835 A.2d 953

(2003). Under the intracorporate conspiracy doctrine, a doctrine the majority cites to, the test is not the “wrongful nature of the conspirators’ actions but whether the wrongful conduct was performed within the scope of the conspirators’ official duties. . . . An employee acts within the scope of his employment as long as he is discharging his duties or endeavoring to do his job, no matter how irregularly, or with what disregard of instructions.” (Citation omitted; internal quotation marks omitted.) *Id.*, 785–86.

In *Harp*, the plaintiff, a real estate developer and architect, argued on appeal that the trial court improperly granted the motions for summary judgment filed by the defendants, employees of the Connecticut Housing Finance Authority (authority), because his claims were not barred by the intracorporate conspiracy doctrine. Specifically, he argued that his claims were not barred because the defendants were not acting within the scope of their employment when they engaged in their allegedly tortious conduct. *Id.*, 782. Our Supreme Court disagreed and affirmed the judgment by concluding that “there is nothing in the record from which a fact finder could conclude that the defendants’ allegedly tortious conduct had occurred outside the scope of their employment.” *Id.*, 783. Although the plaintiff submitted some evidence that tended to support his claim of disparate and unfair treatment, the court stated that he failed to explain why the defendants’ actions fell outside the scope of the defendants’ employment, even though all of those actions were undertaken in the discharge of their official duties and in the furtherance of the authority’s business. *Id.*, 785. Consequently, our Supreme Court determined that the plaintiff’s contention that the defendants were not acting within the scope of their employment was without merit.

The case before us is easily distinguishable from *Harp*. Here, the plaintiffs specifically alleged that the defendants entered into a fraudulent scheme with an outside lender that was designed to deprive the plaintiffs of their rights under the merger agreement for the sole purpose of ensuring that the defendants would receive exorbitant salaries, stock options and other benefits—the scheme, according to the plaintiffs, had nothing to do with the interests of NCT Group, an insolvent corporation. The capital to fund the fraudulent scheme came from an outside lender to NCT Group. Pursuant to the scheme, NCT Group would next default on the outside lender’s notes, eventually resulting in the conversion of the notes into more shares of NCT Group stock without the lender providing additional capital. On account of these loan transactions, the lender came to own substantially more shares of NCT Group stock than the corporation was authorized to issue. The lender dictated that the capital loaned to NCT Group was to be used principally by the defendants to fund their exorbitant compensation plan that was comprised

of, inter alia, salaries, benefits, stock options and warrants. In turn, the defendants continued to grant these pyramiding stock options, warrants and rights to the lender so that if the company, as a result of this fraudulent scheme, was subsequently sold or merged, the defendants would be rewarded with a golden parachute. Thus, the defendants utilized the royalties owed to the plaintiffs in order to keep this scheme functioning.

The defendants' self-dealing caused NCT Group to cease to function as an independent entity and was replaced by an organization that served as a mere conduit for the defendants' own mutual benefit and self-interests. The plaintiffs alleged that such intentional, unauthorized self-dealing was in fact destructive of the interests of NCT Group and beyond the defendants' charged responsibilities and authority as officers or directors. In light of the foregoing, the plaintiffs stated in their second substitute complaint that the "[d]efendants acted outside the scope of their authority as NCT Group directors and officers for self gain, without regard for the consequences of their actions, without regard for NCT Group's obligations under the [a]greement, without regard for the injuries, damages, and losses their wrongful conduct would cause to [the] [p]laintiffs, and in a manner totally devoid of any motivation or purpose to serve NCT Group, in refusing to cause delivery of said shares [owed] to the [p]laintiffs [under the agreement]."

Given these allegations, I do not agree with the court's conclusion that the plaintiffs failed to allege any facts to support the claim that the defendants did not act legitimately within the scope of their duties as officers and directors of NCT Group. Although I agree with the majority that the plaintiffs did not narrowly frame their allegations to aver that the defendants' "refusal to cause" shares of stock to be issued is conduct that falls outside the scope of their duties as officers and directors of NCT Group, this conclusion is not dispositive of the appeal. Rather, a corporate agent may be deprived of the immunity afforded to him by his status if he employed corporate power solely for his own benefit rather than for corporate purposes. See *Walsky v. Gastaldi*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-89-0101368-S (July 26, 1990). To hold otherwise would allow any corporate agent, despite the severity of the allegations of self-dealing, to escape liability under a tortious interference with contract action by claiming that he possessed the general power through his employment position to make the decision or, alternatively, to refrain from performing the act at issue.

I would hold that under the specific facts as pleaded in this case the defendants exceeded the scope of their employment by declining to issue the plaintiffs' shares due under the merger agreement solely to line their own pockets at the direct expense of NCT Group. The

plaintiffs have sufficiently explained why such actions are not confined within the authorized functions the defendants were charged with performing. Accordingly, I conclude that the trial court improperly granted the defendant's motion to strike count one of the second substitute complaint and I would reverse the judgment and remand the case to the trial court for further proceedings according to law.

---