BISHOP, J., dissenting. In affirming summary judgment, the majority concludes that the trial court correctly determined that the complaint by the plaintiff, Andrea Meyers, sounds in negligence and not contract and, therefore, the plaintiff's claim is time barred by General Statutes § 52-577. The basis of the court's conclusion appears to be twofold: first, the complaint sounds in negligence, and, second, the plaintiff does not allege that the defendant, Livingston, Adler, Pulda, Meiklejohn & Kelly, P.C., breached its contract by failing to obtain a specific result and, therefore, did not allege a true contract claim. I respectfully disagree with the majority's reasoning and the conclusion it reaches. Because I believe the complaint adequately sets forth a contract claim that is governed by the six year statute of limitations in General Statutes § 52-576 and because the date on which the plaintiff's claim accrued is fact bound and contested, I would reverse the judgment of the trial court and remand for further proceedings.

It is axiomatic that the interpretation of pleadings is a question of law and, therefore, our assessment of the legal nature of the complaint on appeal is plenary. *Montanaro* v. *Gorelick*, 73 Conn. App. 319, 323, 807 A.2d 1083 (2002). In making this determination, I am mindful of Connecticut's legal tradition to "construe pleadings broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Beaudoin* v. *Town Oil Co.*, 207 Conn. 575, 588, 542 A.2d 1124 (1988).

With regard to claims against attorneys, this court has previously held that not all such claims must necessarily be construed as sounding in tort. *Mac's Car City, Inc.* v. *DeNigris*, 18 Conn. App. 525, 530, 559 A.2d 712, cert. denied, 212 Conn. 807, 563 A.2d 1356 (1989). Furthermore, in Connecticut, "[o]ne may bring against an attorney an action sounding in both negligence and contract." *Caffery* v. *Stillman*, 79 Conn. App. 192, 197, 829 A.2d 881 (2003). Nor must tort claims be separated from contract claims in a complaint. As this court has previously indicated: "We have uniformly approved the use of a single count to set forth the basis of a plaintiff's claims for relief where they grow out of a single occurrence or transactions or closely related occurrences or transactions, and it does not matter that the claims for relief do not have the same legal basis." (Internal quotation marks omitted.) *Hill* v. *Williams*, 74 Conn. App. 654, 661, 813 A.2d 130, cert. denied, 263 Conn. 918, 822 A.2d 242 (2003). I am aware, as well, that this court has cautioned that a plaintiff may not escape a tort statute of limitations simply by bringing a tort claim cloaked in contract language as those, as a matter of

law, are not breach of contract claims. See *Pelletier* v. *Galske*, 105 Conn. App. 77, 81, 936 A.2d 689 (2007), cert. denied, 285 Conn. 921, 943 A.2d 1100 (2008). These precepts guide my analysis.

Unlike the majority, I believe a fair and liberal reading of the underlying complaint in the present case reveals that, although the complaint contains allegations that may sound in tort, it also contains allegations, based on express or implied contract, that the defendant refused to take specific action requested and directed by the plaintiff. In paragraph seven of the complaint, the plaintiff alleges that "[the defendant] breached its contract duties to the plaintiff in one or more of the following respects:

"(a) it pursued the interests of Diane [Thibodeau, another client who had similar claims against the same parties, as did the plaintiff] in derogation of the interests, wishes and instructions of the plaintiff in bringing about a settlement of the lawsuit;

"(b) it failed and/or refused to follow the express wishes and instructions of the plaintiff to reject the settlement offer in the lawsuit and to continue to prosecute the lawsuit."

These claims, I believe, are not merely negligence claims cloaked in contract terms. Rather, I view them as claims that, contrary to express or implied agreement, the defendant failed to follow the plaintiff's instructions to take specific actions in regard to her case and settled against her interests.[1] As a consequence of resolving the case contrary to her instructions and to the terms of the retainer agreement, the plaintiff claims that the defendant is not entitled to payment of legal fees. Accordingly, as a claim for relief, the plaintiff seeks a return of fees paid and a remittal to her of fees held in escrow by the defendant.[2]

In concluding that the complaint does not sound in contract, the majority appears to posit that a claim against an attorney is based in contract only if it alleges that the attorney failed to obtain a specific result. The majority states: "In a true contract claim, a plaintiff asserts that a defendant who is a professional breached an agreement to obtain a specific result. *Caffery* v. *Stillman*, [supra, 79 Conn. App. 197]. The plaintiff does not allege in her complaint that the defendant breached its contract with the plaintiff for legal services by failing to obtain a specific result or to perform a specific task. The unambiguous language of the parties' contract for legal services, which was attached as an exhibit to the defendant's motion for summary judgment, reveals that the contract did not promise a specific result or the performance of specific tasks." (Internal quotation marks omitted.)

Respectfully, I believe the majority applies *Caffery* too broadly and takes the cited language out of its

factual context. Certainly, as noted by *Caffery*, a claim that a defendant failed to obtain a specific result after agreeing to do so sets forth a contract claim. *Caffery* did not purport, however, to circumscribe the world of contract law as it relates to attorney defendants. Indeed, as this court recognized in *Connecticut Education Assn., Inc.* v. *Milliman USA, Inc.*, 105 Conn. App. 446, 938 A.2d 1249 (2008), "[A]llegations of a lawyer's refusal to take certain actions indicated an intentional act rather than inadvertence or negligence and went beyond being merely couched in the language of tort . . . ." (Internal quotation marks omitted.) Id., 459. Accordingly, in *Hill*, the court applied the six year statute of limitations for contracts to allegations in the plaintiff's complaint seeking to hold the defendant liable for "his refusal to perform his duties pursuant to his contracts with the plaintiff." *Hill* v. *Williams*, supra, 74 Conn. App. 662. As in *Hill*, where the plaintiff alleged that the defendant refused to take certain actions in furtherance of his contractual duties, so, too, the plaintiff in the present appeal has alleged that the defendant refused her specific instructions in regard to pursuing a satisfactory resolution of her claims.[3]

My conclusion that the plaintiff adequately has set forth a breach of contract claim does not imply, of course, a belief that the plaintiff is entitled to prevail because that ultimate determination will require fact-finding after a fair hearing, a task beyond our ken on review. "It is well settled that the existence of a contract is a question of fact." (Internal quotation marks omitted.) *Stevenson Lumber Co.-Suffield, Inc.* v. *Chase Associates, Inc.*, 284 Conn. 205, 216, 932 A.2d 401 (2007). So, too, is the question of whether an actionable breach has occurred. *Colliers, Dow & Condon, Inc.* v. *Schwartz*, 77 Conn. App. 462, 471, 823 A.2d 438 (2003). In the present case, although it is apparent from the face of the fee retainer agreement that the defendant did not expressly agree to follow the plaintiff's directions in the pursuit of her claims, I believe the determination of whether such a requirement may reasonably be inferred from the language of the contract, and the circumstances of its making, would similarly require a fact-laden hearing.

Furthermore, my determination that the complaint adequately sets forth a contractual claim does not end the necessary analysis of whether summary judgment was correctly rendered. In the present case, the trial court determined that, even if the complaint sets forth a contractual claim, it arose more than six years before the action was commenced and, therefore, was barred by § 52-576. In reaching its determination, however, I believe that the court incorrectly decided facts in dispute. The court concluded that the plaintiff's contract claim arose on December 14, 1999, the date on which the parties to the plaintiff's underlying claim put a settlement agreement on the record in court. The plaintiff

claims, however, that the defendant's contractual obligations to her continued beyond December 14, 1999, and did not accrue until February 25, 2000, the date on which she alleges she executed a settlement agreement under duress and the date on which she claims her fee dispute with the defendant arose.[4] From the plaintiff's brief, it is clear that a portion of the complaint is premised upon a fee dispute and that the plaintiff claims that the fee dispute with the defendant did not arise until the date on which she signed the agreement against her instructions. This aspect of the plaintiff's claim clearly highlights the presence of a factual dispute regarding when the claim arose.

Finally, the plaintiff claims that the defendant should be estopped from asserting that any contract based claims arose on December 14, 1999, because of its refusal to turn her file over to her until several months after the defendant moved to withdraw from its representation of her on the basis of a conflict of interest. As to this claim, the court determined that the defendant should not be estopped from asserting a statute of limitations defense because the plaintiff knew of her harm in December, 1999. In response, the plaintiff points out, however, that her estoppel claim is not premised on when she learned that counsel was acting against her wishes but rather on her claim that because the defendant unreasonably withheld her file from her for several months, the defendant should be deprived, as a sanction, from claiming that she should have earlier brought her action. Because the determination of the date on which the plaintiff's cause of action in contract accrued requires an evidentiary hearing, the issue of estoppel is not presently ripe for legal assessment. Rather, I would reverse the judgment of the court and remand the matter for further proceedings in accordance with law. If, on remand, the issue of estoppel again arises, the court may determine that an evidentiary hearing is necessary to resolve any factual issues enmeshed in the plaintiff's assertion of estoppel as part of its analysis of the claim's legal viability.

Accordingly, I respectfully dissent.

[1] As the majority correctly points out, the plaintiff does not allege that the defendant failed to represent her at all. She does, however, allege that the defendant failed to take specific action on her behalf through her claim that the defendant failed to follow her wishes and instructions regarding settlement of the case. In light of the terms of the contract, I believe that this allegation, coupled with the plaintiff's request for remittance of the fees being held in escrow, adequately sets forth a claim founded in contract. Thus, although the plaintiff's complaint does not set forth the explicit allegation that the defendant's refusal to follow her directions regarding settlement is the breach for which she seeks a return of fees held in escrow, I believe that claim is implicit in the allegations set forth by the plaintiff coupled with her request for payment of the fees held in escrow. While surely the complaint could have been more artfully and expressly drawn, its imprecision does not defeat its essence as a complaint founded in contract. In sum, construing the complaint broadly, I believe that it is reasonable to conclude that the plaintiff's contract claim is founded on the notion that the defendant's alleged failure to follow her instructions regarding settlement resulted in an unsatisfactory resolution of her claims, contrary to the provision of

the contract entitling the defendant to fees upon the claim's satisfactory resolution.

[2] I recognize that the complaint sets forth a claim for damages in addition to a return and remittance of fees. To the extent that the claim of relief for damages relates to the allegations of the complaint regarding the defendant's alleged breach of duty of undivided loyalty, it may well be barred by § 52-577. To the extent that the majority holds that this claim is time barred, I agree.

[3] It is important to note that, unlike a typical tort based malpractice claim, this one count complaint contains no allegations that the defendant's conduct was negligent or that its performance was below a standard of competence. Taken as a whole, the complaint succeeds or fails as a contract claim.

[4] An illustration of the confusion and uncertainty regarding this inquiry is suggested by the court's rulings regarding the start date for purposes of applying the statute of limitations. The record reveals that on November 17, 2009, the court denied the defendant's motion for summary judgment based on the statute of limitations with the notation: "The motion is denied because the date of suit, February 21, 2006 was within the statute of limitations. The statute began to run February 25, 2000." Thereafter, on June 8, 2010, the court issued the following order: "The court finds that this is a legal malpractice action and not a breach of contract action. Further, the plaintiff became aware of her injury (conflict of interest) in December of 1999. This lawsuit was not brought until 2006, thereby violating the three year (tort) and six year (contract) statutes of limitations. The denial of the motion for summary judgment is vacated and summary judgment is granted for the above reasons."