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THOMAS NAPOLITANO *v.* ACE AMERICAN INSURANCE COMPANY ET AL.
(AC 44694)

Bright, C. J., and Moll and Vertefeuille, Js.

Syllabus

Pursuant to statute (§ 31-348), the cancellation of any workers' compensation insurance policy "shall not become effective until fifteen days after notice of such cancellation has been filed with the chairperson" of the Workers' Compensation Commission.

Pursuant further to *Dengler* v. *Special Attention Health Services, Inc.* (62 Conn. App. 440), the notice of cancellation of a workers' compensation insurance policy pursuant to § 31-348 must be "certain and unequivocal."

The plaintiff employer, whose employee had sustained injuries in the course of his employment, sought a declaratory judgment and damages against the defendant insurance company A Co. for, inter alia, breach of contract, after A Co. refused to defend or indemnify the plaintiff under his workers' compensation insurance policy issued by A Co. A Co. claimed that the policy had been terminated prior to the date of loss, May 29, 2018. The plaintiff's second insurance policy with A Co. was effective from October, 2017, to February, 2018, and his third policy was to be effective from February, 2018, to February, 2019. A Co. mailed two letters to the plaintiff dated April 5, 2018, the second of which notified him that he was in noncompliance with an audit charge for his second policy and that his failure to comply had resulted in the cancellation of his third policy as of April 25, 2018. The plaintiff emailed certain documents relating to compliance to his insurance producer, the defendant L Co., on April 7, 2018, and, on April 10, 2018, he received an email from L Co.'s agent, the defendant E, notifying him that he was compliant at that time. On April 16, 2018, the defendant T Co., A Co.'s agent, emailed the defendant to inform him, inter alia, that he needed to provide additional documents within five days of that notice to be in compliance; prior to April 25, 2018, the plaintiff did not take any action in response to the April 16, 2018 email. The plaintiff claimed that the second April 5, 2018 notice of cancellation was not "certain and unequivocal" as required by § 31-348 and *Dengler* because the other notices sent by A Co. gave him an opportunity to negate the cancellation. A Co. filed a motion to strike the count of the plaintiff's amended complaint alleging a claim of bad faith, which the trial court granted. Thereafter, the court granted the plaintiff's motion for summary judgment as to the counts of his complaint seeking a declaratory judgment regarding the parties' rights under the third policy and a judgment as to liability as to his breach of contract claim. The court further determined that its ruling rendered moot the remainder of the plaintiff's claims against A Co. and awarded damages to the plaintiff. On A Co.'s appeal and the plaintiff's cross appeal to this court, *held*:

1. The trial court erred in granting the plaintiff's motion for summary judgment and, thus, the court also erred in awarding the plaintiff damages: A Co.'s second notice to the plaintiff of April 5, 2018, effectively cancelled the plaintiff's third policy as of April 25, 2018, because it expressly stated that the effective date of the cancellation of the policy was April 25, 2018, and, thus, it was certain and unequivocal under § 31-348 and complied with the requirements thereof, and the plaintiff's subjective understanding of when his policy was terminated was irrelevant to this court's determination as to whether the third policy was effectively cancelled; moreover, the plaintiff could not prevail on his claim that the summary judgment rendered in his favor should be affirmed on the alternative ground that E, acting as an agent of A Co., had negated the cancellation notice by notifying him that he was in compliance, as genuine issues of material fact existed as to whether E was acting as an agent of A Co. and whether the April 16, 2018 email sent by T Co. constituted a withdrawal of the April 5, 2018 cancellation notice; accordingly, the damages the court awarded were vacated, and the counts of the complaint directed to A Co. that the court deemed moot were revived on

remand.

2. The trial court improperly granted A Co.'s motion to strike the count of the plaintiff's complaint asserting a claim of bad faith: the plaintiff set forth sufficient specific factual allegations to establish that A Co. denied coverage under the third policy for a dishonest purpose, as he alleged that A Co. undertook a specific course of conduct leading up to and at the time of the denial of coverage, including failing to respond to a workers' compensation action brought by the plaintiff's employee, providing confusing information regarding his third policy and refusing coverage after E told him that he was compliant, in order to avoid paying a claim under a policy with which he was told he was compliant before the date of loss; moreover, it could be inferred from the facts the plaintiff alleged that A Co.'s deliberate course of conduct in denying coverage was unlikely to be attributable to an honest mistake or negligence, but, rather, a deliberate refusal to provide otherwise available coverage for the purpose of increasing profits.

Argued September 13, 2022—officially released May 2, 2023

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the case was transferred to the Complex Litigation Docket; thereafter, the plaintiff filed an amended complaint; subsequently, the court, *Moukawsher*, *J.*, granted the named defendant's motion to strike; thereafter, the court, *Moukawsher*, *J.*, granted the plaintiff's motion for summary judgment and rendered judgment thereon, from which the named defendant appealed and the plaintiff cross appealed to this court. *Reversed*; *further proceedings*.

Brian M. Paice, for the appellant-cross appellee (named defendant).

Kristen S. Greene, with whom was *Michael Feldman*, for the appellee-cross appellant (plaintiff).

Opinion

MOLL, J. The defendant Ace American Insurance Company[1] appeals from the judgment of the trial court granting the motion for summary judgment filed by the plaintiff, Thomas Napolitano, doing business as Napolitano Roofing, as to counts one and two of the plaintiff's fifth amended complaint, in which he sought a declaratory judgment and asserted a breach of contract claim, respectively. On appeal, the defendant claims that the court erred in (1) granting the plaintiff's motion for summary judgment because the court improperly determined that (a) the defendant's notice of cancellation to the plaintiff, cancelling his workers' compensation insurance policy, was ineffective and (b) the defendant breached its duty under the policy to defend or indemnify the plaintiff with respect to a workers' compensation claim submitted by his employee, (2) awarding attorney's fees to the plaintiff, as damages, in connection with his defense of the workers' compensation claim and a lawsuit brought by the employee, and (3) awarding prejudgment statutory interest to the plaintiff relating to workers' compensation payments that he made to his employee. In addition, the plaintiff cross appeals from the court's granting of the defendant's motion to strike count three of his fifth amended complaint, in which he asserted a claim of bad faith. The plaintiff argues on appeal that he pleaded legally sufficient allegations that the defendant breached the implied covenant of good faith and fair dealing when it refused to defend or indemnify him under his insurance policy. With respect to the defendant's appeal, we reverse the summary judgment of the trial court rendered in favor of the plaintiff, and, as a result, we also vacate the attorney's fees and prejudgment statutory interest awarded to the plaintiff—relief that was predicated on the court's conclusion that the plaintiff was entitled to judgment as a matter of law on count two. As to the plaintiff's cross appeal, we reverse the decision of the trial court striking the third count of the plaintiff's fifth amended complaint.[2]

The following undisputed facts and procedural history are relevant to our resolution of this appeal and this cross appeal. The plaintiff had three workers' compensation insurance policies with the defendant, the first of which is not germane to this appeal. The second policy was effective from October 21, 2017, to February 9, 2018 (second policy). The third policy had effective dates of coverage from February 9, 2018, to February 9, 2019 (third policy). On March 28, 2018, the defendant mailed the plaintiff a notice of an audit noncompliance charge, stating in relevant part that the plaintiff would be charged an additional $912 for noncompliance with the required premium audit for the second policy, and requesting, inter alia, payroll records to complete the audit. On April 3, 2018, the defendant mailed the plaintiff

a notice that was identical to the March 28, 2018 notice, other than the date of creation. On April 5, 2018, the defendant mailed the plaintiff a notice titled "Notice of Noncooperation with Audit Current Coverage" (first April 5 notice). The first April 5 notice stated that the plaintiff had not complied with requests to obtain "payroll, classification and tax information" for the plaintiff's second policy. The notice also stated that "[f]ailure to comply will result in cancellation of your current . . . policy. If the audit is not conducted prior to the effective date of cancellation, the cancellation will remain in effect. If you have already complied with our request, please disregard this notice." The effective date of cancellation, although not appearing on the first April 5 notice, appeared on a second notice sent by the defendant to the plaintiff on the same day, April 5, 2018, titled "Workers Compensation and Employers Liability Policy Cancellation" (second April 5 notice). The second April 5 notice stated in relevant part that the third policy "is cancelled in accordance with its terms as of the effective date of cancellation indicated," i.e., April 25, 2018.

On April 7, 2018, the plaintiff emailed his 2017 tax returns to his insurance producer, the defendant Lanza Insurance Agency, LLC (Lanza). On April 10, 2018, the plaintiff emailed the defendant Jazmin Echevarria, Lanza's agent, indicating that he had received a cancellation notice and inquiring whether the defendant had received his tax returns for the audit. That same day, Echevarria responded to the plaintiff's email, informing him that she "just called and they stated that you are compliant at this time."[3] On April 16, 2018, Travelers, the defendant's agent, emailed the plaintiff (April 16 email), stating in relevant part that he still had "premium audit documents missing" for the second policy period. The April 16 email notified the plaintiff that he still needed to provide a "PolicyHolder Audit Report" and to provide it "within [five] days of this notice." The parties do not appear to dispute that, prior to April 25, 2018, the plaintiff did not take any action in response to the April 16 email.

On May 29, 2018 (date of loss), Joshua Arce, an employee of the plaintiff, fell from a roof, sustaining injuries arising out of and in the course of his employment. On July 16, 2018, Arce filed a claim for compensation benefits with the Workers' Compensation Commission (commission). The defendant denied Arce's claim and refused to defend or indemnify the plaintiff under the third policy, claiming that the policy had been terminated prior to the date of loss.[4]

On April 6, 2020, after holding a formal hearing on August 26 and November 18, 2019, the Workers' Compensation Commissioner for the First District (commissioner)[5] found that, on the date of loss, Arce fell from a roof sustaining compensable injuries arising out of and in the course of his employment. The commissioner

also found that the plaintiff did not have workers' compensation insurance on the date of loss because the third policy was "properly cancelled electronically with the [commission]" through the National Council on Compensation Insurance (NCCI) on April 6, 2018.[6]

During the August 26, 2019 session of the formal hearing, the commissioner stated that his determination as to whether the second April 5 notice effectively cancelled the third policy on April 25, 2018, was limited to whether the defendant had complied with the requirements of General Statutes § 31-348, in that the cancellation was reported to the commission fifteen days prior to the effective date of cancellation.[7] In that regard, the commissioner stated that he would examine only whether the NCCI reported the policy as terminated on the date of loss and not whether the second April 5 notice complied with the defendant's contractual obligations under the third policy.

On November 4, 2020, the plaintiff and the Second Injury Fund (fund) entered into a settlement agreement with Arce, wherein, inter alia, the plaintiff and the fund agreed to pay to Arce $225,000 in compensation for the prior, present, and subsequent medical care for his injuries arising out of the May 29, 2018 fall. Pursuant to that agreement, Arce agreed to withdraw the action that he had filed against the plaintiff; the fund also agreed to withdraw its intervening complaint in that action. See *Arce* v. *Napolitano*, Superior Court, judicial district of Hartford, Docket No. CV-19-6115160-S.

On November 30, 2018, while the workers' compensation proceedings were ongoing, the plaintiff commenced the present action. On October 21, 2019, the plaintiff filed his fifth amended complaint (i.e., the operative complaint), in which five counts were directed to the defendant. Count one sought a declaratory judgment vis-à-vis the parties' rights under the third policy. Counts two, three, four, and eight alleged breach of contract, bad faith, negligent misrepresentation, and promissory estoppel, respectively.[8]

On November 20, 2019, the defendant filed a motion to strike, accompanied by a memorandum of law in support thereof, directed to count three of the plaintiff's fifth amended complaint asserting a claim of bad faith. On December 3, 2019, the plaintiff filed an objection to the defendant's motion to strike. On January 14, 2020, the trial court, *Moukawsher*, *J.*, issued a memorandum of decision granting the defendant's motion to strike.

On February 5, 2020, the plaintiff filed a motion for summary judgment, accompanied by a supporting memorandum of law and exhibits, as to counts one and two of his fifth amended complaint, seeking a declaratory judgment and a judgment as to liability only as to the breach of contract claim, respectively. On March 20, 2020, the defendant filed an objection, accompanied by

a supporting memorandum of law and exhibits. On April 13, 2020, the plaintiff filed a reply with an accompanying exhibit.[9] On January 22, 2021, following a hearing held on January 20, 2021, the court issued a memorandum of decision granting the plaintiff's motion for summary judgment as to counts one and two of his fifth amended complaint. The court further determined that its ruling rendered moot the remainder of the plaintiff's claims against the defendant, namely, counts four (negligent misrepresentation) and eight (promissory estoppel).[10] On April 22, 2021, following an evidentiary hearing in damages, the court issued a memorandum of decision awarding damages to the plaintiff in the amount of (1) $225,000 in reimbursement owed to the fund for Arce's settlement amount, (2) $7600 for "indemnity paid to [Arce]," (3) $78,264 in workers' compensation related attorney's fees and expenses, and (4) $2400 in "[s]tatutory interest on workers' compensation and indemnity." This appeal followed. Additional facts will be set forth as necessary.

I

With respect to its appeal, the defendant claims that the trial court erred in granting the plaintiff's motion for summary judgment as to counts one and two of the plaintiff's fifth amended complaint, which sought a declaratory judgment and asserted a breach of contract claim, respectively, and in specifically determining that the cancellation of the third policy was not effective because the second April 5 notice was not "unambiguous and unequivocal." The defendant also claims that, in calculating the damages vis-à-vis the breach of contract claim, the court improperly awarded the plaintiff attorney's fees and prejudgment statutory interest. For the reasons that follow, we conclude that the court erred in rendering summary judgment in the plaintiff's favor, and, consequently, it follows that the court also erred in awarding the plaintiff attorney's fees and prejudgment statutory interest.

As a preliminary matter, we set forth our standard of review. "In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine

issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book § [17-45]. . . . Our review of the trial court's decision to grant [or to deny a] motion for summary judgment is plenary." (Footnote omitted; internal quotation marks omitted.) *Atlantic St. Heritage Associates, LLC* v. *Atlantic Realty Co.*, 216 Conn. App. 530, 539–40, 285 A.3d 1128 (2022).

The following procedural history is relevant to our resolution of the defendant's claim. In moving for summary judgment on counts one and two of his fifth amended complaint, the plaintiff argued, inter alia, that there was no effective cancellation of his third policy and that the defendant was obligated under the third policy to defend or indemnify him with regard to the workers' compensation claim brought by Arce. The plaintiff claimed that, under *Dengler* v. *Special Attention Health Services, Inc.*, 62 Conn. App. 440, 774 A.2d 992 (2001), the cancellation of a workers' compensation insurance policy is only effective if it is "definite, certain, and unambiguous." See *Dengler* v. *Special Attention Health Services, Inc.*, supra, 460 (cancellation notice for workers' compensation policy required to be "certain and unequivocal"). Under this standard, the plaintiff claimed that the second April 5 notice was ineffective because, when read with the other notices detailed previously in this opinion that the defendant sent to the plaintiff around that time, which gave the plaintiff an opportunity to negate the cancellation, that notice was not "definite, certain, and unambiguous."

In its objection to the plaintiff's motion for summary judgment, the defendant argued, inter alia, that the second April 5 notice was an effective cancellation of the plaintiff's third policy because it complied with the language of the policy and the requirements of § 31-348. The defendant further claimed that the April 25, 2018 cancellation of the third policy, effectuated by the second April 5 notice, was not negated by the other, aforementioned notices that the defendant sent to the plaintiff around that time; in that regard, the defendant claimed that the second April 5 notice was "definite and certain."

In granting the plaintiff's motion for summary judgment as to the request for a declaratory judgment and the breach of contract claim, the court determined that "a reasonable jury could not find [the two April 5 notices, the email exchange with Echevarria, and the

April 16 email] unambiguous and unequivocal," and that, "because the cancellation wasn't unambiguous and unequivocal, it was invalid." The court concluded that "the policy was not cancelled on April 25, [2018], and therefore was in force on May 29, 2018, when . . . Arce fell from a roof" and further held that, "[t]o the extent [the defendant] refuses to pay the claim at issue on the basis of cancellation . . . it has breached its contract with [the plaintiff] because there was no cancellation." The court emphasized that cancellation of a workers' compensation insurance policy must be "unambiguous and unequivocal" under *Dengler* and stated that if the second April 5 notice "were the only evidence, [the defendant] would be right. It unequivocally tells [the plaintiff] that his policy is being cancelled. But ignoring the other communications associated with [the second April 5 notice] would be absurd." The court placed special emphasis on the other communications sent by the defendant to the plaintiff, including the first April 5 notice and the April 16 email. Regarding the April 16 email, the court stated that "there was no April 25th deadline anymore. [The defendant] set an April 21st deadline—and no penalty for meeting it.[11] This could only mean that either there was no deadline and cancellation anymore or at least that a reasonable person might see it that way. Therefore, at a minimum, [the plaintiff] was provided ambiguous information about what he must do when and the consequences for not doing it."[12] (Footnote added.)

On appeal, the defendant claims that the court erred in granting the plaintiff's motion for summary judgment on counts one and two of the plaintiff's fifth amended complaint on the basis of its determination that the cancellation of the third policy was not effective, because, according to the defendant, the cancellation of the third policy was "unambiguous and unequivocal." Specifically, the defendant argues that the court improperly (1) compared the second April 5 notice to the other notices that the plaintiff received, including the April 16 email requesting additional documents and (2) considered the plaintiff's subjective understanding of the second April 5 notice, as well as the other notices that he received, including the first April 5 notice and the April 16 email. We conclude that the second April 5 notice effectively cancelled the third policy on April 25, 2018, because it was (1) certain and unequivocal[13] under § 31-348 and complied with the requirements thereof, and (2) cancelled in accordance with the third policy.

In support of its claim that the second April 5 notice was certain and unequivocal, the defendant relies on this court's decision in *Dengler*. In *Dengler*, a workers' compensation insurer denied a workers' compensation claim, contending that it had cancelled its insurance policy with the plaintiff's employer prior to the date on which the plaintiff suffered a work related injury.

Dengler v. *Special Attention Health Services, Inc.*, supra, 62 Conn. App. 442–44. Prior to cancellation, the insurer sent copies of two notices to the chairperson of the commission and sent both notices to the employer. Id., 457–58. The first notice, dated July 18, 1996, warned the employer that its insurance policy would be cancelled in thirty days following the date of that notice unless the employer paid its past due premiums. Id., 457–58 n.3. The second notice, dated August 16, 1996, informed the employer that its policy was cancelled, effective the next day, August 17, 1996, due to the nonpayment of premiums. Id., 458 n.4. This court affirmed the holding of the Compensation Review Board, which upheld the ruling of a Workers' Compensation Commissioner, that the insurer's August 16, 1996 cancellation of the policy did not take effect until fifteen days after submitting the notice with the chairperson of the commission, in accordance with the requirements of § 31-348. Id., 457–62. The court in *Dengler* highlighted, for purposes of reporting a workers' compensation policy cancellation to the chairperson of the commission, the distinction between each notice, namely, that the first "constituted a warning that the policy would be [cancelled] if [past due] premiums were not paid"; id., 458; in which case a " 'cancellation might occur' "; (emphasis omitted) id., 461; the second "constituted a notice of cancellation." Id., 458. The court in *Dengler* emphasized that "[t]he occurrence of an event, i.e., the payment of past due] premiums, could have negated the attempted cancellation at issue in the present case. On the basis of the terms of the July 18, 1996 letter, [the employer] possessed the authority to negate the cancellation altogether." Id., 461.

At issue in *Dengler* was not that each notice could have communicated conflicting messages to the employer; rather, the gravamen was that each notice was filed with the chairperson of the *commission*, less than one month apart, attempting to effectuate the cancellation of the employer's insurance policy pursuant to § 31-348. Indeed, this court emphasized in *Dengler* that "[o]ur Supreme Court has explained the importance of providing sufficient notice of cancellation by noting that [workers'] compensation is a peculiar type of insurance, and that to every policy each employee of the insured is in a very real sense a party . . . . [T]he purpose of the notice was to make an authentic record so that any employee or prospective employee might ascertain whether the employer is insured, and, if so, in what company, and that the insurer is estopped to deny the truth of the formal record, whether or not the particular employee whose rights are in question examined the files where such records are kept; and . . . that, as the record stated that the policy was in effect, the insurer could not deny that this was so. . . . That rule protects employees' interests by affording them access to accurate records filed in the chair[per-

son's] office about an employer's compensation coverage. . . . What the statute and case law require is a certain and unequivocal cancellation specifying an ascertainable date and time when cancellation will occur, not a specific date and time when cancellation might become effective if certain events do or do not transpire." (Citations omitted; internal quotation marks omitted.) Id., 460.

In the present case, the plaintiff claims, inter alia, that the second April 5 notice is not "definite, certain, or unambiguous" when viewed alongside the first April 5 notice, the email exchange with Echevarria, and the April 16 email, which, the plaintiff posits, the trial court was permitted to examine under *Dengler*. The plaintiff, however, overlooks the key issue presented in *Dengler*. The first notice in *Dengler*—a warning that the employer's policy would be cancelled if it did not pay its outstanding balance—was not certain and unequivocal such that it would provide employees and prospective employees, in consulting the records in the chairperson's office, with accurate information as to whether the employer had workers' compensation insurance or whether it would be cancelled on a specified date. "A third party examining the records in the commissioner's office could not ascertain whether [the negation of cancellation] occurred." *Dengler* v. *Special Attention Health Services Inc.*, supra, 62 Conn. App. 461. The court in *Dengler* reasoned that § 31-348 requires a workers' compensation cancellation notice to be certain and unequivocal to protect employees and prospective employees in a search for whether an employer has workers' compensation insurance. Id., 460. What an employer policyholder subjectively interprets from reading various notices sent by an insurer is not a consideration in the determination of whether a cancellation notice is certain and unequivocal in the pursuit of compliance with § 31-348. "[The employer's] understanding of when its policy was [cancelled] is not persuasive evidence of when the cancellation legally occurred. . . . In that regard, an employer's understanding as to when coverage terminated is largely irrelevant; the cancellation occurs in accordance with the statute." Id., 461; see also *Bellerive* v. *Grotto*, *Inc.*, 206 Conn. App. 702, 707, 260 A.3d 1228 ("[C]ancellation of a workers' compensation insurance policy occurs in accordance with § 31-348. . . . Indeed, § 31-348 has been interpreted as protecting employees or anyone examining coverage records in the commissioner's office. In that regard, an employer's understanding as to when coverage terminated is largely irrelevant." (Citation omitted; internal quotation marks omitted.)), cert. denied, 339 Conn. 908, 260 A.3d 483 (2021).

By its express terms, the second April 5 notice unequivocally informed the plaintiff that his third policy "is cancelled in accordance with its terms as of the effective date of cancellation indicated herein, and at

the hour on which the policy became effective." That notice states that the "effective date of cancellation" is April 25, 2018. On the basis of the summary judgment record before us, the commission received the second April 5 notice on April 6, 2018, and there is no evidence that the commission also received the notice of noncooperation (i.e., the first April 5 notice), such that it would provide conflicting information to both the chairperson of the commission and an inquiring employee and/or prospective employee as to whether the third policy would be cancelled on a specified date. Moreover, as previously noted, the plaintiff's subjective understanding as to when his policy terminated is generally irrelevant to our determination as to whether the third policy was effectively cancelled. Indeed, that the first April 5 notice gave the plaintiff an opportunity to cure does not negate the unambiguous and unequivocal cancellation detailed in the second April 5 notice. See *21st Century North America Ins. Co.* v. *Perez*, 177 Conn. App. 802, 820–24, 173 A.3d 64 (2017) (explaining that earlier notice, warning of cancellation in event of nonpayment of insurance premium, does not negate subsequent cancellation notice), cert. denied, 327 Conn. 995, 175 A.3d 1246 (2018). Therefore, the first April 5 notice is not relevant to our analysis.

The plaintiff claims, however, as an alternative ground for affirmance, that the rendering of summary judgment in his favor should be affirmed because Echevarria, acting as an agent of the defendant, negated the cancellation notice by notifying the plaintiff that he was in compliance. On the basis of the summary judgment record before us, we conclude that there is a genuine issue of material fact as to whether Echevarria was acting as an agent of the defendant when she told the plaintiff that he was compliant with his policy, and, therefore, the summary judgment rendered in the plaintiff's favor cannot be affirmed on that alternative ground. Additionally, because the parties dispute whether Echevarria was acting as an agent of the defendant, there exists a genuine issue of material fact as to whether the April 16 email sent by Travelers to the plaintiff—warning him that he still needed to provide a "PolicyHolder Audit Report" for the second policy "within [five] days"—constituted a withdrawal of the cancellation.

Furthermore, the third policy required the defendant to "mail or deliver . . . not less than ten days advance written notice stating when the [cancellation] is to take effect" to the plaintiff's mailing address. The defendant mailed this written notice on April 5, 2018, twenty days in advance of when the cancellation would take effect. As previously noted, the second April 5 notice also stated the effective date of cancellation. The defendant complied with that requirement, and the plaintiff has not suggested that more was required for the defendant to cancel the third policy. See *ED Construction, Inc.*

v. *CNA Ins. Co.*, 130 Conn. App. 391, 403, 24 A.3d 1 (2011) ("[T]he unambiguous language of the policy allows for the cancellation of the policy by [the insurer] so long as notice is provided to the plaintiff ten days prior to the date of cancellation. The plaintiff has not provided us with any provisions of the policy or any cases that suggest there are any limitations, other than the notice requirement, on when or under what circumstances the policy can be cancelled by [the insurer].").

In sum, we conclude that, on the basis of the summary judgment record, the plaintiff did not have workers' compensation insurance on the date of loss because the second April 5 notice cancelled the third policy pursuant to (1) the requirements of § 31-348, including that the notice was certain and unequivocal and was filed with the chairperson of the commission fifteen days prior to the date of cancellation, and (2) the terms of the third policy. Accordingly, the court improperly rendered summary judgment in favor of the plaintiff on counts one and two of his fifth amended complaint.

In light of our conclusion that summary judgment was rendered improperly in the plaintiff's favor on counts one and two, the damages awarded in the amount of $313,264 on count two (i.e., the breach of contract count) must be vacated. See *Sovereign Bank* v. *Licata*, 116 Conn. App. 483, 495, 977 A.2d 228 (2009) (reversing judgment of trial court with respect to one count of complaint and vacating award made pursuant to that count), appeal dismissed, 303 Conn. 721, 36 A.3d 662 (2012).

Furthermore, because we are reversing the summary judgment rendered in favor of the plaintiff as to counts one and two, it follows that the counts directed to the defendant that the court deemed moot as a result of its summary judgment decision—i.e., count four (negligent misrepresentation) and count eight (promissory estoppel)—are revived on remand. See footnote 12 of this opinion.

II

In the plaintiff's cross appeal, the plaintiff claims that the trial court erred in granting the defendant's motion to strike count three of his fifth amended complaint, in which he asserted a claim of bad faith (motion to strike). We agree.

As a preliminary matter, we set forth our standard of review. "The standard of review in an appeal challenging a trial court's 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 suffi-

ciency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . [W]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . It is fundamental that in determining the sufficiency of a complaint challenged by a [defendant's] motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted. . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." (Citations omitted; internal quotation marks omitted.) *Lavette* v. *Stanley Black & Decker, Inc.*, 213 Conn. App. 463, 470–71, 278 A.3d 1072 (2022). At the same time, "[m]ere conclusions of law, without factual support, are not enough to survive a motion to strike." *Keller* v. *Beckenstein*, 117 Conn. App. 550, 565, 979 A.2d 1055, cert. denied, 294 Conn. 913, 983 A.2d 274 (2009).

The following procedural history is relevant to our resolution of this cross appeal. In support of the claim of bad faith raised in count three of his fifth amended complaint, the plaintiff alleged in relevant part that the defendant breached the covenant of good faith and fair dealing in that it "failed to properly respond to [Arce's] workers' compensation claim"; "provided false, confusing and/or misleading information to [the plaintiff] in connection with the [third] policy"; "received and accepted financial information [it] requested from [the plaintiff] prior to the Arce accident, but nevertheless maintain[s] the [third] policy was cancelled"; "directed [the plaintiff] in the cancellation notice to contact Lanza with any questions concerning the cancellation, which he did and was told he was 'compliant,' but now maintain[s], after the Arce accident and workers' compensation claim, he was not compliant"; "represented that [the plaintiff] was 'compliant' with the [third] policy prior to the Arce accident and workers' compensation claim, but now, after the Arce accident and workers' compensation claim, maintain[s] the [third] policy was cancelled"; and that, in "denying coverage for the workers' compensation claim after the Arce loss, and continuing to deny coverage through present, [the defendant has] done so intentionally with improper motive for the purpose of wrongfully denying the claim in order to avoid paying the workers' compensation claim—which claim was covered under [the third] policy—and to increase profits to [the defendant] to the detriment of the plaintiff."

In its motion to strike, the defendant argued that the plaintiff failed to allege sufficient facts demonstrating that the defendant acted in bad faith. Specifically, the defendant argued that the plaintiff's allegations that the defendant acted with an intentional and improper motive to increase profits were merely conclusory. In his objection, the plaintiff claimed that he alleged legally sufficient facts to plead that the defendant acted in bad faith because he alleged that the defendant intentionally

and with improper motive denied coverage under the third policy in order to increase profits. On January 9, 2020, the court held a hearing on the defendant's motion to strike.

In granting the defendant's motion to strike, the court determined that the "claim still fails to state a claim for breach of the covenant of good faith and fair dealing. The count still doesn't allege that [the defendant] knew it was wrong.[14] [The defendant] may have 'intended' to cancel the coverage, but it may have done so because of its negligently held but honest belief that it was the right thing to do." (Footnote added.) The court questioned whether "not wanting to pay a claim" is always bad faith or an improper motive and concluded that it would be bad faith if the defendant "knew the claim was valid and chose to cheat [the plaintiff] out of paying money it knew was due. . . . [B]eing wrong isn't enough. Being negligently wrong isn't enough. . . . [H]ere that remains all . . . that this complaint alleges." The court ruled that the "plaintiff may not replead a claim for breach of the covenant of good faith and fair dealing."

"We begin by setting forth the required elements for bad faith claims. [I]t is axiomatic that the . . . duty of good faith and fair dealing is a covenant implied into a contract or a contractual relationship. . . . In other words, every contract carries an implied duty requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement. . . . The covenant of good faith and fair dealing presupposes that the terms and purpose of the contract are agreed upon by the parties and that what is in dispute is a party's discretionary application or interpretation of a contract term. . . . To constitute a breach of [the implied covenant of good faith and fair dealing], the acts by which a defendant allegedly impedes the plaintiff's right to receive benefits that he or she reasonably expected to receive under the contract must have been taken in bad faith. . . . Bad faith in general implies both actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. . . . Bad faith means more than mere negligence; it involves a dishonest purpose." (Internal quotation marks omitted.) *Capstone Building Corp.* v. *American Motorists Ins. Co.*, 308 Conn. 760, 794–95, 67 A.3d 961 (2013).

"There is some variance among trial court decisions concerning the standard of pleading required to state a legally sufficient bad faith cause of action. One line of cases requires specific allegations that establish malice or a dishonest purpose . . . ." *Prucker* v. *American Economy Ins. Co.*, Superior Court, judicial district of Tolland, Docket No. CV-18-6013630-S (May 31, 2019)

(68 Conn. L. Rptr. 626, 628); see *Marder* v. *Nationwide Ins. Co.*, Superior Court, judicial district of New Haven, Docket No. CV-13-6038355-S (November 12, 2015) (61 Conn. L. Rptr. 269, 274) (granting defendant's motion to strike because plaintiff "fails to allege the requisite specificity to support her claim of bad faith" and to "specifically allege that the defendant acted with a dishonest purpose . . . rising to the level of bad faith"); *Brickhouse* v. *Progressive Casualty Ins. Co.*, Superior Court, judicial district of New Haven, Docket No. CV-14-6048681-S (December 2, 2014) (granting defendant's motion to strike where complaint did not contain "specific facts to show how the defendant's actions were done in bad faith and in what manner the conduct was done with ill purpose"); *Cifatte* v. *Utica First Ins. Co.*, Superior Court, judicial district of Fairfield, Docket No. CV-13-6038325-S (September 5, 2014) (granting defendant's motion to strike where complaint lacked "any allegation of a specific activity" to support bad faith claim); *Fowler* v. *Allstate Property & Casualty Ins. Co.*, Superior Court, judicial district of Fairfield, Docket No. CV-08-5016911-S (January 7, 2009) (granting defendant's motion to strike where plaintiff made "no specific factual allegations establishing a dishonest purpose" and did not "allege that the conduct at issue was engaged in knowingly or willfully").

"[A]nother [line of cases] applies a less stringent standard accepting factual allegations from which an inference of bad faith may be drawn." *Prucker* v. *American Economy Ins. Co.*, supra, 68 Conn. L. Rptr. 628. The second approach requires only that the plaintiff "allege sufficient facts or allegations from which it may reasonably be inferred that the defendant breached the implied covenant of good faith and fair dealing. . . . Under the less stringent standard, bad faith may be inferred by repetitive, knowing or deliberate conduct as such allegations are unlikely to be attributable to an honest mistake or mere negligence . . . . Nevertheless, [even] where courts have used an inference analysis . . . they have looked to allegations that the conduct at issue was engaged in purposefully." (Citations omitted; internal quotation marks omitted.) *Marder* v. *Nationwide Ins. Co.*, supra, 61 Conn. L. Rptr. 272; see *Labonne* v. *Hingham Mutual Fire Ins. Co.*, Superior Court, judicial district of New London, Docket No. CV-12-6014737-S (March 7, 2014) (57 Conn. L. Rptr. 794, 796) (denying defendant's motion to strike where reasonable inference could be drawn from allegations that defendant acted with " 'interested or sinister' motive in order to avoid paying benefits owed . . . under the . . . insurance contract"); *Urban Apparel Plus, LLC* v. *Sentinel Ins. Co., Ltd.*, Superior Court, judicial district of New Haven, Docket No. CV-13-6035293-S (October 31, 2013) (57 Conn. L. Rptr. 124, 126) (denying defendant's motion to strike because plaintiff alleged "defendant intentionally engaged in specific behavior from which one can

reasonably infer a sinister motive on the part of the defendant"); *Fradera* v. *State Farm Mutual Automobile Ins. Co.*, Superior Court, judicial district of New Haven, Docket No. CV-11-6003104-S (July 26, 2013) (denying defendant's motion to strike where plaintiff alleged facts demonstrating that defendant breached contract in bad faith); *Perkins* v. *Hermitage Ins. Co.*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-11-6006314-S (February 29, 2012) (denying defendant's motion to strike because plaintiff alleged defendant acted with dishonest purpose, even though plaintiff did not specifically allege that defendant "had an intent to mislead or deceive or defraud").

As previously noted, to state a claim of bad faith, a plaintiff must allege specific facts, or allege sufficient facts to raise a reasonable inference, that a defendant acted with a sinister motive or a dishonest purpose during the course of a contractual relationship. See *Capstone Building Corp.* v. *American Motorists Ins. Co.*, supra, 308 Conn. 794–95. The plaintiff claims that he has done so here, in that he has alleged sufficient facts in count three to satisfy either approach adopted by our trial courts. We agree. Construing the plaintiff's factual allegations in count three of his fifth amended complaint in the most favorable light, we read them as being sufficient to plead a claim of bad faith under either approach.[15]

Under the first approach, the plaintiff has set forth sufficient specific factual allegations to establish that the defendant denied coverage under the third policy for a dishonest purpose. The plaintiff specifically alleged that the defendant acted with the "improper motive for the purpose of wrongfully denying the [workers' compensation] claim" to increase its profits. Further, as noted above, the plaintiff alleged facts indicating that the defendant undertook a specific course of conduct leading up to and at the time of the denial of coverage, including failing to respond to the workers' compensation action, providing confusing information regarding his third policy, and refusing coverage after Echevarria told the plaintiff that he was compliant, all in order to avoid paying a claim under a policy with which the plaintiff was told he was compliant before the date of loss. The plaintiff also has set forth allegations sufficient under the second approach adopted by our trial courts. That is, it may be inferred from the facts alleged in count three that the defendant's deliberate course of conduct in denying coverage was unlikely to be attributable to an honest mistake or negligence, but, rather, a deliberate refusal to provide otherwise available coverage for the purpose of increasing profits.

In sum, we conclude that the court improperly granted the defendant's motion to strike the third count of the plaintiff's fifth amended complaint.

The judgment is reversed and the case is remanded

for further proceedings consistent with this opinion.

In this opinion the other judges concurred.

[1] In addition to Ace American Insurance Company, the plaintiff's original complaint named as defendants Travelers Indemnity Company (Travelers), Chubb National Insurance Company (Chubb), Lanza Insurance Agency, LLC (Lanza), and Jazmin Echevarria. Subsequently, because Ace American Insurance Company indicated that it would assume liability and financial responsibility for the alleged conduct of Travelers and Chubb, who were acting as its agents, Chubb and Travelers were dropped as party defendants by way of an amended complaint. As for Lanza and Echevarria, they are not participating in this appeal, as the claims against them remain pending in the trial court. For these reasons, we refer to Ace American Insurance Company as the defendant.

[2] The record reflects that the defendant did not file a motion for judgment on the stricken third count of the plaintiff's fifth amended complaint. See Practice Book § 10-44. "It is well established that [t]he granting of a motion to strike . . . ordinarily is not a final judgment . . . . Nevertheless, [i]n similar circumstances where a count of a complaint was stricken, but the plaintiff failed to plead over, no judgment was entered thereon and the remaining counts were disposed of by way of summary judgment, this court has considered the appeal to have been from a final judgment." (Citation omitted; internal quotation marks omitted.) *Dressler* v. *Riccio*, 205 Conn. App. 533, 537 n.2, 259 A.3d 14 (2021). Because the court disposed of the remaining counts of the plaintiff's fifth amended complaint directed to the defendant by way of summary judgment, we have jurisdiction to entertain the plaintiff's claim challenging the granting of the defendant's motion to strike count three of the fifth amended complaint.

[3] The parties dispute whether Echevarria reported the correct policy number to the defendant when she inquired whether the plaintiff was compliant with his policy. That issue is neither before us on appeal nor relevant to our analysis of the issues that are before us, and we therefore do not address it.

[4] The plaintiff's third policy stated in relevant part that "[w]e have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits. We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. . . . We will pay promptly when due the benefits required of you by the workers compensation law. . . . We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this [policy]." The policy covered bodily injuries to employees, with other requirements not relevant here, that "arise out of and in the course of . . . employment."

[5] "We note that General Statutes § 31-275d (a) (1), effective as of October 1, 2021, provides in relevant part that '[w]herever the words "workers' compensation commissioner", "compensation commissioner" or "commissioner" are used to denote a workers' compensation commissioner in [several enumerated] sections of the general statutes, [including sections contained in the Workers' Compensation Act, General Statutes § 31-275 et seq.] the words "administrative law judge" shall be substituted in lieu thereof . . . .' " *Arrico* v. *Board of Education*, 212 Conn. App. 1, 4 n.4, 274 A.3d 148 (2022). Because the workers' compensation proceedings detailed herein occurred prior to October 1, 2021, we will refer to the workers' compensation commissioner who presided over the proceedings involving Arce as the commissioner.

[6] Because the commissioner determined that the plaintiff did not have workers' compensation insurance on the date of loss, the Second Injury Fund (fund) became a party to the workers' compensation proceeding pursuant to General Statutes § 31-355 (b), which provides in relevant part: "When an award of compensation has been made under the provisions of this chapter against an employer who failed, neglected, refused or is unable to pay any type of benefit coming due as a consequence of such award or any adjustment in compensation required by this chapter, and whose insurer failed, neglected, refused or is unable to pay the compensation, such compensation shall be paid from the Second Injury Fund. The administrative law judge, on a finding of failure or inability to pay compensation, shall give notice to the Treasurer of the award, directing the Treasurer to make payment from the fund. . . ."

[7] General Statutes § 31-348 provides in relevant part: "Every insurance

company writing compensation insurance or its duly appointed agent shall report in writing or by other means to the chairperson of the Workers' Compensation Commission, in accordance with rules prescribed by the chairperson, the name of the person or corporation insured, including the state, the day on which the policy becomes effective and the date of its expiration, which report shall be made within fifteen days from the date of the policy. The cancellation of any policy so written and reported shall not become effective until fifteen days after notice of such cancellation has been filed with the chairperson. . . ."

[8] The plaintiff included Lanza and Echevarria in the count of negligent misrepresentation and alleged separate counts of negligence and violations of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq., against Lanza and Echevarria only. As noted previously in this opinion, the plaintiff's claims against Lanza and Echevarria are not relevant to this appeal. See footnote 1 of this opinion.

[9] The plaintiff also filed a supplemental memorandum of law and exhibits in support of his motion for summary judgment.

[10] The defendant also filed a motion for summary judgment as to the plaintiff's request for a declaratory judgment and claims of breach of contract, negligent misrepresentation, and promissory estoppel, which the court denied. The defendant has not claimed on appeal that the court erred in denying its motion for summary judgment, and, therefore, we do not address that ruling further.

[11] We infer that the court was interpreting, in referring to an April 21, 2018 deadline, the language in the April 16 email sent by Travelers to the plaintiff, which directs the plaintiff to provide documents "within [five] days" of the date of the April 16 email.

[12] The court further stated that "[t]his ruling moots the other claims between [the plaintiff] and [the defendant] [i.e., negligent misrepresentation and promissory estoppel], so the court will not rule on the other counts on summary judgment or send them to trial." On September 8, 2022, this court ordered, sua sponte, that the parties "be prepared to address at oral argument whether the trial court's January 22, 2021 memorandum of decision disposed of the plaintiff's claims of negligent misrepresentation and promissory estoppel against the defendant . . . such that this appeal and cross appeal were taken from a final judgment. See *Meribear Productions, Inc.* v. *Frank*, 328 Conn. 709, [183 A.3d 1164] (2018); Practice Book §§ 61-3 and 61-4 (a)." At oral argument, the defendant argued that the appeal and the cross appeal were taken from a final judgment and that, if this court concludes that the trial court erred in granting the plaintiff's motion for summary judgment on counts one and two of his fifth amended complaint, then it follows that the negligent misrepresentation and promissory estoppel claims would be revived on remand. The plaintiff did not address the final judgment issue during argument. We conclude that there is no jurisdictional bar to hearing this appeal and cross appeal.

[13] We pause to note that both the trial court and the parties frame what is required of a workers' compensation insurance cancellation notice under *Dengler* in similar but varying ways. One standard cited by the defendant in its appellate brief follows the language in *Travelers Ins. Co.* v. *Hendrickson*, 1 Conn. App. 409, 412, 472 A.2d 356 (1984), which requires automobile insurance cancellation notices to be "definite and certain." Another standard cited by the defendant stems from *Dengler* v. *Special Attention Health Services, Inc.*, supra, 62 Conn. App. 461, which requires cancellation notices to be " 'unambiguous and unequivocal . . . .' " Because the court in *Dengler* interpreted § 31-348—which specifically concerns workers' compensation insurance policies—as requiring a cancellation notice to be "certain and unequivocal," we use that language for purposes of our analysis herein. See id., 460.

[14] The plaintiff raised a claim of bad faith in count three of all five of his previously filed complaints in this action. Count three was previously stricken by the court for failure to allege that the defendant acted with "wrongful motive."

[15] We pause to note that the court did not indicate in its memorandum of decision whether it adopted either of the two approaches utilized by our trial courts in granting the defendant's motion to strike.