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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.

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BISHOP, J., dissenting in part. While I agree with my colleagues that the first count of the complaint was properly stricken, I believe the court incorrectly struck counts two, three and four. As noted by the majority, the second count of the complaint sets forth a claim against, Henry J. Fernandez III, a municipal employee, for negligence. In sum, the plaintiffs allege in count two that the city of New Haven (city) had taken a certain building by eminent domain, that Fernandez, as an agent of the municipality, was in control and possession of the building and its contents, and that the plaintiffs were the owners of the building's contents. The plaintiffs further alleged that the contents of the building had been stolen and that their loss was due to the negligent failure of Fernandez to secure adequately the building and its contents. The third count alleged that the city should be liable for indemnification based on the allegations against Fernandez. The fourth claim sets forth a direct claim against the municipality.

In agreeing with the trial court, the majority holds as a matter of law that Fernandez, as a municipal officer, is entitled to governmental immunity for the failure to perform a discretionary act. Specifically, the majority holds that the exception for discretionary acts relating to the imminent harm to an identifiable victim did not apply to the circumstances as alleged by the plaintiffs. In reaching this conclusion, my colleagues find support in *Evon* v. *Andrews*, 211 Conn. 501, 559 A.2d 1131 (1989). I do not believe *Evon* is controlling. In *Evon*, our Supreme Court determined that the trial court correctly had struck the fifth count of the plaintiffs' complaint directed against a municipality and various municipal officers for the wrongful death of the plaintiffs' decedents who had perished in a multi-family apartment fire. Id., 502. In arriving at its conclusion, the Supreme Court did not evaluate whether the duty involved was public or private because the parties had agreed that the duty was public. Id., 506. The court determined that the victims were not a discrete, readily identifiable group, and that the risk of harm to them was not imminent. Id., 508. The court noted: "The class of possible victims of an unspecified fire that may occur at some unspecified time in the future is by no means a group of 'identifiable persons' . . . ." Id. Additionally, the *Evon* court found that the facts alleged in the complaint could not support a finding that the risk of harm was imminent because a fire could happen at any time in the future. Id.

Contrary to *Evon*, the duty alleged by the plaintiffs in the instant case may fairly be characterized as private, and not public, because the duty related to specific property belonging only to the plaintiffs. "[I]f the duty

which the official authority imposes upon an officer is a duty to the public, a failure to perform it, or an inadequate or erroneous performance, must be a public, not an individual injury, and must be redressed, if at all, in some form of public prosecution. On the other hand, if the duty is a duty to the individual, then a neglect to perform it, or to perform it properly, is an individual wrong, and may support an individual action for damages. 2 Cooley, Torts (4th Ed.) p. 385.'' (Internal quotation marks omitted.) *Leger* v. *Kelley*, 142 Conn. 585, 589–90, 116 A.2d 429 (1955). The notion that the breach of a private duty may expose a municipal employee to liability was later reaffirmed in *Shore* v. *Stonington*, 187 Conn. 147, 152, 444 A.2d. 1379 (1982) and *Gordon* v. *Bridgeport Housing Authority*, 208 Conn. 161, 166, 544 A.2d 1185 (1988).

While the decisional law regarding a municipal employee's liability for the negligent performance of a private act is not abundantly clear, I am not prepared to conclude that the private duty doctrine is dead in Connecticut. Rather, we have a dearth of cases assessing the imposition of liability on the basis of a private duty because in cases in which a private duty has been alleged, the courts have found the nature of the duty to be public. See, e.g., *Shore* v. *Stonington*, supra, 187 Conn. 152–57; *Roman* v. *Stamford*, 16 Conn. App. 213, 216, 220–21, 547 A.2d 97 (1988), aff'd, 211 Conn. 396, 559 A.2d 710 (1989). This case, I believe, squarely implicates a private and not a public duty because the municipality and its employees had a duty not to the public, but to the plaintiffs alone for the security of their personal property.

I am familiar, too, with the dicta of *Shore* v. *Stonington*, supra, 187 Conn. 156, that even if a duty is private, a municipality and its employees will not be liable for the negligent performance of a discretionary act unless the plaintiffs can prove that they were within an identifiable group for whom the risk of harm was imminent. In addition to my awareness that dicta does not constitute precedent, I believe the facts alleged in counts two and four are sufficient for a fact finder to determine that Fernandez had a duty to an identifiable group of victims, i.e., the plaintiffs, to prevent loss to their personalty. As to the imminence of the harm, I believe that raises a question of fact ill suited for a motion to strike. Because a motion to strike a complaint on the basis of governmental immunity should only be granted if it is plain that the complaint is not legally viable, I would have denied the motion to strike as to count two, which was based on the allegations against Fernandez, as to count three, which was based on the city's indemnification of Fernandez, and as to count four, which consisted of allegations against the municipality, leaving the parties to further flush out any factual issues by way of more appropriate, less cursory pleadings.

Accordingly, I respectfully dissent.