

**FILED**

**FEB 14 2019**

**HARTFORD J.D.**

DOC. NO. X07-HHD-CV-18-6090558-S : SUPERIOR COURT  
:   
WILLIAM PAETZOLD : COMPLEX LITIGATION  
:   
: J.D. OF HARTFORD  
V. :   
:   
:   
METROPOLITAN DISTRICT :   
COMMISSION : FEBRUARY 14, 2019

### **Memorandum of Decision**

The Metropolitan District Commission moves to strike the class claim of breaching the covenant of good faith and fair dealing that it and the class agree is read into all contracts.

The class accuses the MDC of breaching an implied contract to sell water at lawful rates. The class says the law requires those rates to be uniform among all customers. It says the MDC breached its contract by charging non-member customers more than member customers.

It also claims that by surcharging its non-member customers it abused the discretion it has to set those rates.

The parties agree that for this alleged abuse to breach the covenant of good faith and fair dealing an improper motive must be alleged. The court is satisfied that an

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improper motive was alleged. The complaint says the MDC's purpose was to gouge illegally some customers to benefit others and it alleges sufficient facts in support.

But it doesn't adequately allege the discretion at issue. In opposing the motion to strike, the class explains that MDC exploited how it passed on certain infrastructure charges, but this aspect of the abuse doesn't seem to be spelled out in the complaint. The complaint contains only the conclusory allegations that the MDC exercised discretion but said nothing about the theory it employed in opposing the motion to strike. Having not alleged the material facts the complaint can't be squared with the Practice Book § 10-1 requirement of stating "the material facts on which the pleader relies."

The lack of facts alone is enough to strike count two. But if Paetzold wants to plead in the alternative it's going to have to do more. The complaint seems to depend entirely on the finding as a matter of law that the MDC must charge uniform rates and that it has already been held that it is not. It is unclear how Paetzold can simultaneously rely on the mandatory prohibition against variable rates among municipalities while claiming the rate setting was actually discretionary. If these are alternative ways of trying to apply the court ruling it relies on, this complaint doesn't make them distinct enough to pass muster and state alternative theories of recovery.

Count two is stricken.

BY THE COURT



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Moukawsher, J.