DOCKET NO. CV 23-6051885-S	:	SUPERIOR COURT
	:	
ALAN DEL MONTE SALON, LLC	:	J.D. OF ANSONIA/MILFORD
	:	
V	:	AT MILFORD
	:	
ERICA TAYLOR	:	MAY 28, 2024

MEMORANDUM OF DECISION

The issue presented is whether the motion to strike the third and fourth count sounding in tortious interference and CUTPA should be granted on the basis that the plaintiff does not sufficiently plead the requisite elements.

FACTS

On July 11, 2023, the plaintiff, Alan Del Monte Salon, LLC, filed a complaint against the defendants, Erica Taylor and HNA, LLC d/b/a Styles International Salon and Spa (Styles), alleging (1) breach of fiduciary duty; (2) breach of contract; (3) tortious interference with contract; and (4) violation of the Connecticut Unfair Trade Practices Act (CUTPA). The plaintiff alleges the following facts in support. Taylor previously worked for the plaintiff and, as part of her employment, she signed a Letter of Employment Agreement (agreement) in October, 2015, which included, inter alia, a non-compete provision.[1] Throughout Taylor's employment,

[1] The agreement provides in relevant part: "I agree that I will not, during my employment or for a period of twelve months following the termination of my employment, disclose or reveal any trade secrets, marketing strategies, promotional material, database contents or client history of the [plaintiff's] client . . . including names, addresses or telephone numbers, nor solicit any such clients and staff members for my own personal gain or the gain of anyone other than the [plaintiff], nor will I, for a period of twelve months following the termination of my employment, for any reason whatsoever, become involved, directly or indirectly, as an employee, partner, consultant, co-venturer, or in any fashion whatsoever, in any competitive, similar or like business to that of the [plaintiff] within the radius of seven miles from 554 Boston Post Road, Milford, Connecticut and/or any other location of the [plaintiff] at the tie of the termination of my employment." Compl., Count One ¶ 5.

the plaintiff provided her with access to the its clients, client lists, and potential leads for new business. Before terminating her employment with the plaintiff, Taylor discussed potential employment with Styles and procured at least one client's business on behalf of Styles, which should have been obtained on the plaintiff's behalf. Styles had knowledge that Taylor was still employed with the plaintiff and owed it her undivided loyalty. Taylor and Styles, however, agreed to collaborate to the plaintiff's exclusion, while Taylor was employed by the plaintiff. On or about February 4, 2023, Taylor notified the plaintiff of her intention to terminate her employment.

On December 4, 2023, the defendants moved to strike the third and fourth count of the complaint. On January 3, 2024, the plaintiff filed a memorandum of law in opposition to the defendants' motion to strike. The parties were heard remotely on the matter on April 18, 2024.

DISCUSSION

Practice Book § 10-39 (a) provides in relevant part: "A motion to strike shall be used whenever any party wishes to contest . . . the legal sufficiency of the allegations of any complaint . . . ." "A motion to strike admits all *facts* well pleaded; it does not admit *legal conclusions or the truth or accuracy of opinions* stated in the pleadings." (Emphasis in original; internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 588, 693 A.2d 293 (1997). "[A] motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court . . . . [The court] construe[s] 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. . . . Moreover, [the court] note[s] that [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." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016). "If any facts provable under the express and implied allegations in the plaintiff's complaint support a cause of action . . . the complaint is not vulnerable to a motion to strike." *Bouchard* v. *People's Bank*, 219 Conn. 465, 471, 594 A.2d 1 (1991).

Practice Book § 10-44 allows a party to file a new pleading "[w]ithin fifteen days after the granting of any motion to strike . . . . [If] the party whose pleading or a count thereof has been so stricken fails to file a new pleading within that fifteen day period, the judicial authority may, upon motion, enter judgment against [that] party on [the] stricken complaint . . . ."

I. Tortious Interference

The third count of the complaint, sounding in tortious interference, alleges that Styles tortiously interfered with the contract between Taylor and the plaintiff, causing the plaintiff actual damage in the following ways: "[1] Taylor failed to perform under her agreements with [the plaintiff] . . . [2] Styles paid Taylor in money and/or promise(s) of future monetary reward when such should have been the property of [the plaintiff] . . . [and] [3] Styles took for itself clients from [the plaintiff], through Taylor, while Taylor was still an employee of [the plaintiff]."

In support of their motion to strike, the defendants claim that the plaintiff has not pleaded sufficient facts to support a cause of action for tortious interference with contract. Particularly, the defendants argue that the plaintiff failed to allege facts to show that they committed fraud, misrepresentation, intimidation or molestation, or that they acted maliciously; the plaintiff merely alleges that Taylor, while she was working for the plaintiff, procured a client's business of behalf of Styles as opposed to the plaintiff, and that the defendants had agreed to collaborate with one another. The defendants further rely on case law where courts have stricken claims for tortious interference in the context of a non-compete agreement breach. See *RPM Capital Management, LLC* v. *Young*, Superior Court, judicial district of Danbury, Docket No. CV-21-6039162-S (January 4, 2022, *Brazzel-Massaro, J.*); *Mullen & Mahon, Inc.* v. *Touchette*, Superior Court, judicial district of Tolland, Docket No. CV-17-6012016-S (September 18, 2018, *Farley, J.*) (67 Conn. L. Rptr. 222); *Advanced Copy Technologies, Inc.* v. *Wiegman*, Superior Court, judicial district of Middlesex, Docket No. CV-15-6013794-S (October 19, 2016, *Vitale, J.*) (63 Conn. L. Rptr. 211).

In response to the defendants' motion to strike, the plaintiff argues that it has alleged sufficient facts to properly plead a tortious interference with a contractual relationship claim. The plaintiff holds that "[t]he allegation that Styles encouraged Taylor to breach her employment contract and subsequently hired her as a permanent employee sufficiently alleges intentional interference without justification." P.'s Mem. Opp. to Ds.' Mot. to Strike. Moreover, as to the showing of actual loss, the plaintiff argues that it has alleged that it has suffered damages as a result of Styles' interference, reasoning that "[a]lthough the plaintiff has not specified the damages it suffered, the allegations are sufficient to show that it is reasonably

certain that the plaintiff suffered a monetary loss since it was deprived of the benefit it would have received from the services of Taylor." P.'s Mem. Opp. to Ds.' Mot. to Strike. See *Desrosier of Greenwich* v. *Shumway Capital Partners*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-05-4004621-S (May 30, 2006, *Lewis, J.*).

"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).

The Supreme Court has held that "not every act that disturbs a contract or business expectancy is actionable. . . . [F]or a plaintiff successfully to prosecute such an action it must prove that the defendant's conduct was in fact tortious. This element may be satisfied by proof that the defendant was guilty of fraud, misrepresentation, intimidation or molestation . . . or that the defendant acted maliciously." (Citation omitted; internal quotation marks omitted.) *Blake* v. *Levy*, 191 Conn. 257, 260-61, 464 A.2d 52 (1983). "The plaintiff in a tortious interference claim must demonstrate malice on the part of the defendant, not in the sense of ill will, but intentional interference without justification." (Internal quotation marks omitted.) *Daley* v. *Aetna Life & Casualty Co.*, 249 Conn. 766, 806, 734 A.2d 112 (1999). "[A] claim [for tortious interference] is made out [only] when interference resulting in injury to another is wrongful by some measure beyond the fact of the interference itself." (Internal quotation marks omitted.) *Downes-Patterson Corp.* v. *First National Supermarkets, Inc.*, 64 Conn. App. 417, 429, 780 A.2d 967, cert. denied,

258 Conn. 917, 782 A.2d 1242 (2001). Thus, "the plaintiff must plead and prove at least some improper motive or improper means." (Internal quotation marks omitted.) Id.

In *Advanced Copy Technologies, Inc.* v. *Wiegman*, supra, 63 Conn. L. Rptr. 211, the plaintiff brought an action against its former employee and a competitor for an alleged breach of the noncompete and nondisclosure agreements and alleges, inter alia, tortious interference with contract. The plaintiff alleges that the former employee misappropriated the plaintiff's confidential business information, pursued its customers, and resigned from the plaintiff's employ to work for a plaintiff's competitor. Id. In granting the defendants' motion to strike, the court held that the conduct alleged was not tortious, reasoning that "[a]lthough the plaintiff sufficiently alleges the existence of a beneficial employment relationship with [the former employee] . . . and that [the competitor] knew of this relationship and of [the former employee's] nondisclosure and noncompetition agreement with the plaintiff . . . the conduct by which the plaintiff alleges [the competitor] interfered with this relationship cannot be considered tortious" as "[t]hese allegations alone do not fairly imply that [the competitor] acted with fraud, misrepresentation, intimidation or molestation or that it acted with malice." (Citations omitted; internal quotation marks omitted.) Id., 213-14, discussing *Robert S. Weiss & Associates, Inc.* v. *Wiederlight*, 208 Conn. 525, 546 A.2d 216 (1988). See also *Toll Brothers Smart Home Technologies, Inc.* v. *Security Systems, Inc.*, Superior Court, judicial district of Middlesex, Docket No. CV-23-6038527-S (January 3, 2024, *Shah, J.*) (erroneous conduct does not satisfy malice standard under tortious interference determination).

In *Arian Enterprises, LLC* v. *Lawson*, Superior Court, judicial district of Middlesex, Complex Litigation Docket, Docket No. X04-CV-05-4004655-S (March 7, 2006, *Beach, J.*), the

complaint alleges that the plaintiff bought a pizza parlor whose principal hired his cousin and the defendant employee. The pizza parlor suffered considerable damages in a fire, and the defendant employee opened another location under a different name with the same marketing logo while the premises were being repaired. Id. The principal bought out the cousin's interest, and the purchase agreement contained a non-compete clause; the cousin, however, was working with the defendant employee at the newly established pizza parlor. Id. The plaintiff alleged, inter alia, tortious interference, which the defendants moved to strike. Id. The court denied the motion to strike, reasoning that the "intentional and improper" element was sufficiently pleaded; the allegations provide that the defendant restaurant "knew of the non-compete clause, encouraged violation of the agreement and knowingly made misrepresentations designed to conceal arrangement . . . ." Id. See also *Northeast Double Disc Grind, LLC* v. *Pietrowicz*, Superior Court, judicial district of New Britain, Docket No. CV-12-6018053-S (May 7, 2014, *Abrams, J.*) (denying motion to strike tortious interference claim because defendant competitor encouraged employees to violate non-compete and non-solicitation provisions and advising them that they were unenforceable); *Desrosier of Greenwich* v. *Shumway Capital Partners*, supra, Superior Court, Docket No. CV-05-4004621-S (same).

Similarly to *Advanced Copy Technologies, Inc.* v. *Wiegman*, supra, 63 Conn. L. Rptr. 211, the plaintiff alleges that Styles had knowledge of Taylor's employment with the plaintiff, including the terms of the non-compete agreement. As established in *Advanced Copy Technologies, Inc.* v. *Wiegman*, one's knowledge of an employee's non-compete clause does not rise to the level of fraud, misrepresentation, intimidation or molestation, or otherwise malice, unless additional steps are taken to interfere with the employee relationship. Id., 213-14. In its

response to the defendants' motion to strike, the plaintiff argues that Styles encouraged Taylor to breach her employment contract and hired her as a permanent employee, thus satisfying the intentional interference without justification standard of malice. The complaint, however, fails to set forth any encouragement on the part of Styles, only that Styles and Taylor engaged in conversations and Taylor's business procurement on behalf of Styles; the plaintiff's allegation that Styles had knowledge of Taylor's employment with the plaintiff as well as knowledge of Taylor's undivided loyalty to the plaintiff does not support a finding of malicious conduct.

In contrast to *Arian Enterprises, LLC* v. *Lawson*, supra, Superior Court, Docket No. X04-CV-05-4004655-S, in which the court held that the tortious interference claim was sufficiently pleaded, particularly taking into account the defendant's knowledge of the non-compete clause, encouragement of its violation, and misrepresentations made to conceal the arrangement, the plaintiff in the present case fails to set forth sufficient factual allegations of actions that are "intentional and improper." (Internal quotation marks omitted.) Id. Merely alleging that the defendants engaged in conversations about potential employment and Taylor procuring business on behalf of Styles does not suggest the presence of any misrepresentation on the part of either party, even though Styles may have had knowledge of the non-compete clause. There are insufficient allegations to show that Styles encouraged the violation of the non-compete agreement and any misrepresentations made to conceal the agreement between Taylor and Styles, such as in *Arian Enterprises, LLC* v. *Lawson*.

Accordingly, the plaintiff has inadequately pleaded the malice element and the motion to strike the tortious interference with contract claim is granted.

II. CUTPA

The fourth count of the complaint sounding in CUTPA alleges that the defendants' conduct constituted unfair and deceptive trade acts or practices pursuant to General Statutes § 42-110b et seq., which have made the plaintiff suffer an ascertainable loss of money or property. In support of their motion to strike, the defendants argue that the plaintiff failed to allege a violation of CUTPA. On one hand, the defendants assert that the plaintiff failed to allege that their conduct was unfair or deceptive and was merely a breach of contract. See *Naples* v. *Keystone Building & Development Corp.*, 295 Conn. 214, 228, 990 A.2d 326 (2010); *Muniz* v. *Kravis*, 59 Conn. App. 704, 715, 757 A.2d 1207 (2000). On the other hand, the defendants claim that the plaintiff does not allege an ascertainable loss as required by CUTPA, reasoning that the pleadings lack specificity regarding the actual loss. In response to the defendants' motion to strike, the plaintiff argues that Connecticut courts interpret CUTPA claims with flexibility, not requiring proof of intent to deceive, mislead, or defraud; the complaint alleges particular actions and practices by the defendants that are unlawful and offend public policy, extending far beyond the breach of a contract itself, thereby sufficient to survive a motion to strike. See *Williams Ford, Inc.* v. *Hartford Courant Co.*, 232 Conn. 559, 657 A.2d 212 (1995).

General Statutes § 42-110b (a) provides: "No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." As a remedial statute, CUTPA must be construed liberally to effectuate its public policy objectives. *Web Press Services Corp.* v. *New London Motors, Inc.*, 203 Conn. 342, 354, 525 A.2d 57 (1987). "CUTPA was designed by the legislature to put Connecticut in the forefront of state consumer protection." (Internal quotation marks omitted.) *Heslin* v. *Connecticut Law*

Clinic of Trantolo & Trantolo, 190 Conn. 510, 515, 461 A.2d 938 (1983). "The policy behind CUTPA is to encourage litigants to act as private attorneys general and to bring actions for unfair or deceptive trade practices." *Hernandez* v. *Monterey Village Associates Ltd. Partnership*, 17 Conn. App. 421, 425, 553 A.2d 617 (1989). "It is well settled that in determining whether a practice violates CUTPA we have adopted the criteria set out in the cigarette rule by the [F]ederal [T]rade [C]omission for determining when a practice is unfair: (1) [W]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers . . . . All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." (Internal quotation marks omitted.) *Edmands* v. *CUNO, Inc.*, 277 Conn. 425, 450 n.16, 892 A.2d 938 (2006).

a. *Aggravating Factors*

"A claim under CUTPA must be pleaded with particularly to allow evaluation of the legal theory upon which the claim is based." (Internal quotation marks omitted.) *S.M.S. Textile Mills, Inc.* v. *Brown, Jacobson, Tillinghast, Lahan & King, P.C.*, 32 Conn. App. 786, 797, 631 A.2d 340, cert. denied, 228 Conn. 903, 634 A.2d 296 (1993). "In cases involving claims of breach of contract, our courts repeatedly have held that the same facts that establish a breach of contract claim may be sufficient to establish a CUTPA violation." *Pointe Residential Builders*

BH, LLC v. *TMP Construction Group, LLC*, 213 Conn. App. 445, 454, 278 A.3d 505 (2022). "A simple breach of contract [however] does not offend traditional notions of fairness and, standing alone, does not offend public policy so as to invoke CUTPA." *Greene* v. *Orsini*, 50 Conn. Supp. 312, 315, 926 A.2d 708 (2007). To sufficiently allege a CUTPA violation based on a breach of contract, there must be aggravating circumstances which "constitute more than a failure to deliver on a promise." Id. "Connecticut case law demonstrates that the aggravating factors present must involve bad faith conduct or violation of some concept of fairness in order to sufficiently plead a CUTPA claim by way of breach of contract." *Metromedia Energy, Inc.* v. *21st Century Management, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-13-6043097-S (October 2, 2014, *Wilson, J.*). "Aggravating circumstances must be shown particularly where the count alleging CUTPA simply incorporates by reference the breach of contract claim and does not set forth how or in what respect the defendant's activities are either immoral, unethical, unscrupulous or offensive to public policy." (Internal quotation marks omitted.) *D2E Holdings, LLC* v. *Corp. for Urban Home Ownership of New Haven*, Superior Court, judicial district of New Haven, Docket No. CV-17-6075593-S (April 3, 2018, *Wilson, J.*). "Conduct that has been held to be substantial aggravating circumstances . . . includes fraudulent representations, fraudulent concealment, false claims . . . and multiple breaches of contract." (Internal quotation marks omitted.) *Murray* v. *BLP Enterprises, Inc.*, Superior Court, judicial district of New London, Docket No. CV-11-6008038-S (November 9, 2011, *Martin, J.*).

In *Metromedia Energy, Inc.* v. *21st Century Management, Inc.*, supra, Superior Court, Docket No. CV-13-6043097-S, the plaintiff brought a three count complaint against the defendants alleging breach of contract, unjust enrichment, and violation of CUTPA. The

plaintiff alleges that the defendant,21st Century Management, Inc., as the other defendants' agent and asset management, entered into agreements with the plaintiff in which the plaintiff would provide natural gas services to the defendants' laundromats. Id. The defendants refused to make the requirement payments for services the plaintiff rendered. Id. The defendants moved to strike, inter alia, the CUTPA claim, on the grounds that the plaintiff fails to sufficiently allege the presence of aggravating factors and an ascertainable loss to satisfy a CUTPA violation. Id. In granting the defendants' motion to strike, the court reasons that the plaintiff failed to allege substantial aggravating factors to "elevate [the plaintiff's] breach of contract claim to a CUTPA claim." Id. See *Lydall, Inc.* v. *Ruschmeyer*, 282 Conn. 209, 247-48, 919 A.2d 421 (2007). "[A]ggravating factors present must involve bad faith conduct or violation of some concept of fairness in order to sufficiently plead a CUTPA claim by way of breach of contract." *Metromedia Energy, Inc.* v. *21st Century Management, Inc.*, supra, Superior Court, Docket No. CV-13-6043097-S. The court held that the plaintiff's allegations that the defendants used the plaintiff's commodity to operate their respective laundromats is merely based on a breach of contract, and the plaintiff fails to allege that the defendants engaged in any specifically unfair or deceptive trade practices as to the contract between the parties. Id.

In *Webster Financial Corp.* v. *McDonald*, Superior Court, judicial district of Waterbury, Docket No. CV-08-4016026-S (January 28, 2009, *Brunetti, J.*), the plaintiffs, Webster Financial Corporation (Webster) and USI Insurance Services of Connecticut, Inc. (USI), brought a nine count complaint against the defendants, William McDonald and Shoff Darby, Inc. (Shoff Darby). The plaintiffs allege that while under USI's employ, McDonald entered into an employment agreement with USI which included a non-compete and non-solicitation clause. Id.

The non-compete clause forbids McDonald from "soliciting and providing insurance services similar to those rendered by USI to anyone who was a client or potential client twelve months prior to McDonald's termination" and from "accepting employment with any other insurance business within twenty-five miles of any insurance office of the defendants in the state of Connecticut." Id. The defendants move to strike, inter alia, count eight sounding in CUTPA, arguing that the plaintiffs' pleadings are legal conclusions that are unsupported by factual allegations, and merely allege a breach of contract. Id. In denying the motion to strike, the court considered the plaintiffs' allegations that "McDonald spread false rumors to USI's customers concerning USI employees and violated the non-compete provisions of the contract several times." Id., discussing *Greene* v. *Orsini*, supra, 50 Conn. Supp. 316 (court found CUTPA violation where defendants violated restrictive covenant on several occasions). See also *ATI Engineering Services, LLC* v. *Millard*, Superior Court, judicial district of New Haven, Docket No. CV-18-6079777-S (August 7, 2018, *Pierson, J.*); *Always There Home Care* v. *Dube*, Superior Court, judicial district of Waterbury, Docket No. CV-14-6022487-S (March 17, 2015, *Brazzel-Massaro, J.*) (59 Conn. L. Rptr. 958, 960-61) (granting motion to strike CUTPA claim, reasoning that single breach of contract was insufficient, and there were no allegations of fraudulent misrepresentation, fraudulent concealment, or false claim).

Similarly to *Metromedia Energy, Inc.* v. *21st Century Management, Inc.*, supra, Superior Court, Docket No. CV-13-6043097-S, the plaintiff relies exclusively on the breach of contract as the basis of the CUTPA violation. As established, to succeed on a CUTPA claim, the plaintiff must set forth allegations of aggravating circumstances to recover pursuant to a breach of contract claim. In the present case, in support of its CUTPA claim, the plaintiff simply alleges

that Taylor and Styles had conversations together and agreed to collaborate to the plaintiff's exclusion, while Styles knew of the non-compete agreement between Taylor and the plaintiff; these allegations merely allege a breach of contract, and the plaintiff fails to point to aggravating circumstances to successfully plead a CUTPA claim.

For example, in contrast to *Webster Financial Corp.* v. *McDonald*, supra, Superior Court, Docket No. CV-08-4016026-S, the plaintiff in the present case only alleges a single instance of Taylor's breach of contract by her violation of the agreement's non-compete provision. A single breach of contract has not been found to be sufficient to establish a CUTPA violation. See *Always There Home Care* v. *Dube*, supra, 59 Conn. L. Rptr. 960. Moreover, the plaintiff does not allege that there are substantially aggravating circumstances; all of the plaintiff's allegations in support of the tortious interference claim relate to Taylor's violation of the non-compete provision and fail to rise to the level of demonstrating fraudulent misrepresentation, fraudulent concealment, or a false claim. See id. The plaintiff merely makes conclusory statements that the defendants' conduct constituted unfair or deceptive acts which caused the plaintiff damages, failing to set forth allegations of any misrepresentation or concealment by either Styles or Taylor.

As such, the plaintiff has failed to allege facts to support an inference that, if proven, demonstrate substantially aggravating circumstances as part of the breach of contract to establish that the defendants acted unethically or that their conduct violated public policy.

b. *Ascertainable Loss*

General Statutes § 42-110g (a) provides in relevant part: "Any person who suffers any ascertainable loss of money or property . . . as a result of the use or employment of a method, act

or practice prohibited by section 42-110b, may bring an action . . . to recover actual damages. . . . The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper." "The ascertainable loss requirement is a threshold barrier [that] limits the class of persons who may bring a CUTPA action seeking either actual damages or equitable relief. . . . Thus, to be entitled to any relief under CUTPA, a plaintiff must first prove that he has suffered an ascertainable loss due to a CUTPA violation." (Internal quotation marks omitted.) *Neighborhood Builders, Inc.* v. *Madison*, 294 Conn. 651, 657, 986 A.2d 278 (2010). "[T]he ascertainable loss provision do[es] not require a plaintiff to prove a specific amount of actual damages in order to make out a prima facie case. . . . Rather . . . [t]he term loss necessarily encompasses a broader meaning than the term damage . . . . Accordingly, this court previously has concluded that, for purposes of § 42-110g, an ascertainable loss is a deprivation, detriment [or] injury that is capable of being discovered, observed or established. . . . [A] loss is ascertainable if it is measurable even though the precise amount of the loss is not known. . . . Under CUTPA, there is no need to allege or prove the *amount* of the actual loss." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Marinos* v. *Poirot*, 308 Conn. 706, 713-14, 66 A.3d 860 (2013). See *Service Road Corp.* v. *Quinn*, 241 Conn. 630, 643-44, 698 A.2d 258 (1997).

In *Santa Buckley Energy Ltd.* v. *Tiscia Corp.*, Superior Court, judicial district of New Haven, Docket No. CV-15-6052285-S (May 16, 2016, *Wilson, J.*), the plaintiff provided fuel and gas services for the defendant pursuant to a contract, which the defendant has refused to pay for. As a result, the plaintiff brought an action for breach of contract and unjust enrichment, and

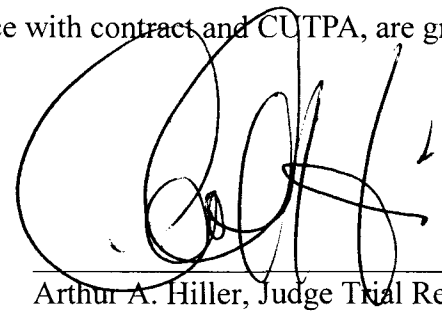
the defendant counterclaimed with a CUTPA violation on the basis that the plaintiff charged significantly higher prices than the defendant's previous gas provider, further alleging an ascertainable loss of money as a result of the plaintiff's conduct. Id. The plaintiff moved to strike the counterclaim, arguing that the defendant does not allege sufficient facts to establish a claim under CUTPA. Id. The court denied the motion to strike, holding that the plaintiff has sufficiently pleaded an ascertainable loss, reasoning that "[t]he damages alleged by the plaintiff . . . are clearly an injury that is capable of being established." Id.

Similarly to *Santa Buckley Energy Ltd.* v. *Tiscia Corp.*, the plaintiff in the present case does not allege a specific amount of damages but just a general, ascertainable monetary and property loss as a result of the defendants' behavior. In order to meet the ascertainable loss element of establishing a violation of CUTPA, a plaintiff does not need to prove a specific amount of actual damages but one that is capable of being established. *Marinos* v. *Poirot*, supra, 308 Conn. 713-14. Therefore, at this stage of the pleading, relying on the court's reasoning in *Santa Buckley Energy Ltd.* v. *Tiscia Corp.*, the plaintiff in the present case has sufficiently alleged a loss that is capable of being established.

Although the plaintiff has sufficiently pleaded the ascertainable loss element, the plaintiff has failed to allege aggravating circumstances beyond a breach of contract to show that the breach violated public policy or was unethical.

CONCLUSION

Accordingly, the defendants' motion to strike the third and fourth counts of the complaint, sounding in tortious interference with contract and CUTPA, are granted.



Arthur A. Hiller, Judge Trial Referee