PELLEGRINO, J., concurring. Although I agree that the judgment must be affirmed, I respectfully disagree with the majority's conclusion in part II of the opinion that the factual allegations by the plaintiff, Kevin Petitte, with regard to his negligent misrepresentation claim, failed to rise to the level of a legally viable claim. I conclude, instead, that the trial court properly rendered summary judgment as to the negligent misrepresentation count of the plaintiff's amended complaint because, although the facts alleged stated a cause of action, there was insufficient evidence to establish the existence of a genuine issue of material fact as to whether the defendant, DSL.net, Inc., made "false representations" to the plaintiff. I would, therefore, affirm the judgment of the trial court on that ground.

"Our Supreme Court has long recognized liability for negligent misrepresentation. [It has] held that even an innocent misrepresentation of fact may be actionable if the declarant has the means of knowing, ought to know, or has the duty of knowing the truth. . . . The governing principles are set forth in similar terms in § 552 of the Restatement Second of Torts (1977): One who, in the course of his business, profession or employment . . . supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." (Internal quotation marks omitted.) *Mokonnen* v. *Pro Park, Inc.*, 96 Conn. App. 625, 632–33, 901 A.2d 725, cert. denied, 280 Conn. 924, 908 A.2d 1088 (2006). "[A]n action for negligent misrepresentation requires the plaintiff to establish (1) that the defendant made a misrepresentation of fact (2) that the defendant knew or should have known was false, and (3) that the plaintiff reasonably relied on the misrepresentation, and (4) suffered pecuniary harm as a result." *Nazami* v. *Patrons Mutual Insurance Co.*, 280 Conn. 619, 626, 910 A.2d 209 (2006).

In count two of the amended complaint, the plaintiff alleged: "The statement by the defendant to the plaintiff of an offer to join the defendant . . . with a start date of December 15, 2003 was false . . . and the defendant knew, or in the exercise of reasonable care as an employer should have known at the time it made such representations that they were false. . . . The plaintiff relied on the untrue representations of the defendant, and quit his existing job to start work with the defendant, which resulted in the permanent forfeiture of that job . . . . The plaintiff suffered pecuniary loss as a result of his reliance on the defendant's negligent misrepresentation, which pecuniary loss includes the loss

of his income, commissions, and benefits . . . ."

The plaintiff also submitted an affidavit in opposition to the defendant's motion for summary judgment in which he attested that there was an assumption that he was to be hired, that he had a firm offer of employment and that having relied on these representations, he quit his previous job. The plaintiff further attested that the false representation was that there was a job available to him, when, in fact, there was none. I believe that on the basis of the facts alleged and the evidence submitted, the plaintiff stated a cause of action for negligent misrepresentation.

The plaintiff's evidence, however, although sufficient to establish a legally viable claim, was insufficient to survive the defendant's motion for summary judgment. The plaintiff did not allege an adequate factual predicate to raise a genuine issue of material fact as to whether the defendant's representations were false. Cf. *Miller* v. *Bourgoin*, 28 Conn. App. 491, 498, 613 A.2d 292 ("it remains incumbent upon the party opposing summary judgment to establish a factual predicate from which it can be determined as a matter of law, that a genuine issue of material fact exists" [internal quotation marks omitted]), cert. denied, 223 Conn. 927, 614 A.2d (1992). The plaintiff merely alleged that the defendant made false representations by informing him that he was hired despite the fact that the defendant knew it had not consulted his references. The plaintiff alleged that the defendant's offer letter of December 10, 2003, contained statements that were false. The trial court, however, found that there were no statements in the offer letter that were false. Additionally, in his affidavit in opposition to the defendant's motion for summary judgment, the plaintiff did not refer to any statements in the offer letter that were "false." When opposing a motion for summary judgment, it is not enough for the plaintiff merely to assert the existence of a disputed issue. See *Branford* v. *Monaco*, 48 Conn. App. 216, 222, 709 A.2d 582 ("[m]ere assertions of fact . . . are insufficient to establish the existence of a material fact" [internal quotation marks omitted]), cert. denied, 245 Conn. 903, 719 A.2d 900 (1998).

Unfortunately, given the "at-will" termination provision in the defendant's offer letter that permitted termination for any reason with or without cause, the defendant had the absolute right to rescind its offer at any time. As reprehensible as the defendant's conduct in this case might have been in offering employment with the knowledge that the plaintiff would terminate his current job in reliance thereon, and then withdrawing that offer before employment actually commenced, the defendant did so within its rights in accordance with the at-will employment relationship it had with the plaintiff. I agree with the trial court's conclusion that the offer of employment, "while arguably illusory,

was not false."

I would, therefore, affirm the decision of the trial court with regard to the count of negligent misrepresentation on the ground that there was insufficient evidence to establish a genuine issue of material fact with regard to the defendant's alleged false representations.

In all other aspects of the majority's opinion, I concur.