ELOISE MARINOS ET AL. *v.* DAVID POIROT ET AL.
(SC 18924)

Rogers, C. J., and Norcott, Zarella, Eveleigh and Vertefeuille, Js.

Argued January 8—officially released June 4, 2013

John R. Williams, for the appellants (plaintiffs).

David M. Poirot and *Gordon S. Johnson, Jr.*, the appellees (defendants).

Opinion

VERTEFEUILLE, J. In this certified appeal,[1] we clarify the requirement that a plaintiff alleging a violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq., must make some showing of an "ascertainable loss of money or property" as required by General Statutes § 42-110g (a) in order to defeat a defendant's motion for summary judgment. The plaintiff, Eloise Marinos, individually and as administratrix of the estate of Steven F. Meo (Meo),[2] appeals from the judgment of the Appellate Court, affirming the trial court's summary judgment rendered in favor of the defendants, David M. Poirot and Gordon S. Johnson, Jr.[3] *Marinos* v. *Poirot*, 132 Conn. App. 693, 709, 33 A.3d 282 (2011). On appeal, the plaintiff argues that the Appellate Court improperly affirmed the trial court's summary judgment rendered in favor of the defendants on the ground that the plaintiff's failure to produce an itemization of her claimed damages was fatal to her CUTPA claims. We agree with the plaintiff that a litigant need not produce "an itemization" of her claimed CUTPA damages in order to defeat a defendant's motion for summary judgment, and we reject that portion of the Appellate Court's reasoning that implies that an itemization is required. We conclude, however, that the Appellate Court nevertheless properly affirmed the summary judgment for the defendants in the present case because the trial court correctly determined that the plaintiff had failed to identify *any* evidence of ascertainable loss. Accordingly, we affirm the judgment of the Appellate Court on that basis.

The opinion of the Appellate Court sets forth the following relevant facts and procedural history. "The plaintiff and Meo were wife and husband. Meo was engaged in the practice of law as the sole proprietor of the Law Office of Steven F. Meo (Meo law office) and in 1992 employed Poirot as an associate. In October, 2005, Meo was hospitalized and remained hospitalized until his death on April 25, 2006. From the time Meo was hospitalized until his death, Poirot was the only attorney in the Meo law office, and he managed its clients and files. In December, 2005, Meo authorized Poirot to be added as a signatory to the Meo law office's operating checking account and its clients' funds [Interest on Lawyers Trust Account] so that Poirot could manage and facilitate settlement disbursements for clients. On April 28, 2006, Poirot left the Meo law office to open his own practice and was retained by approximately fifty-one of the fifty-three clients of the Meo law office to handle their legal matters to conclusion.

"Johnson, an attorney licensed to practice law in Wisconsin, specializes in traumatic brain injury litigation. Beginning in 2002, Johnson, with Meo as local counsel, litigated certain traumatic brain injury cases in Connecticut. Following Meo's death, Johnson and

Poirot litigated two traumatic brain injury cases that had originated in the Meo law office." *Marinos* v. *Poirot*, supra, 132 Conn. App. 695–96.

The plaintiff filed a nineteen count complaint against the defendants, alleging, inter alia, breach of the duty of loyalty, conversion, civil theft, civil conspiracy, and the claimed CUTPA violations at issue in the present appeal. "In sum, the plaintiff alleges that in November, 2005, Poirot began to plan the opening of his own law office and to appropriate business from the Meo law office. The plaintiff alleges that Poirot stole clients from the Meo law office, as well as supplies and the services of its employees. Moreover, the plaintiff alleges that Poirot and Johnson conspired to appropriate cases from the Meo law office to their benefit and to the detriment of the Meo law office. The plaintiff claims that, as Meo's widow and the administratrix of his estate, she is the successor to Meo's interest in the Meo law office and that she was harmed by the defendants' acts." Id., 696–67.

Both Poirot and Johnson filed a motion for summary judgment, which motions were granted in their entirety by the trial court. In their respective motions, the defendants advanced a number of arguments, including that summary judgment was warranted because the plaintiff failed to identify any evidence of damages resulting from her claimed CUTPA violations. In her opposition to the summary judgment motions, the plaintiff denied any obligation to furnish documentary evidence or other proof in support of her CUTPA claims, but nevertheless maintained that her written responses to the defendants' discovery requests were sufficient to identify an ascertainable loss and avoid summary judgment.

Citing our decision in *Artie's Auto Body, Inc.* v. *Hartford Fire Ins. Co.*, 287 Conn. 208, 217–18, 947 A.2d 320 (2008), the trial court held that although the plaintiff was "not required to provide proof of actual damages in the form of a specific dollar amount," she *was* required to submit at least some proof of her alleged loss in order to defeat summary judgment. Because the plaintiff had failed to attach to her opposition any "supporting documentation, in the form of affidavits or other evidence of measurable damages," the court concluded that the pleadings and proof, in toto, failed to establish a genuine issue of material fact as to whether the plaintiff, either in her personal or representative capacity, had suffered "any loss of money or property . . . ."

In so concluding, the trial court rejected the plaintiff's argument that her responses to the defendants' discovery requests were sufficient to maintain her CUTPA claim, finding, to the contrary, that the plaintiff's opposition contained only "conclusory statements and a list of office supplies allegedly taken by Poirot." Specifically, the court observed, in response to the defendants'

discovery requests to state the amount of damages she had allegedly sustained, the plaintiff replied: " 'A complete account of financial damages and losses is ongoing, therefore no itemization can be listed herein. As soon as the cumulative value has been assessed we will forward a copy of the same.' " The court noted, however, that more than one year later, no such itemization had been produced.

The Appellate Court affirmed the judgment of the trial court, emphasizing that "the plaintiff had failed to produce an itemization of her claimed CUTPA damages" in response to Poirot's repeated requests that she "state the amount of damages [she had] allegedly sustained." *Marinos* v. *Poirot*, supra, 132 Conn. App. 708. This appeal followed.

We begin our analysis with the standard of review of a trial court's decision to grant a motion for summary judgment. Practice Book § 17-49 provides that summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." A party moving for summary judgment is held to a "strict standard." *Ramirez* v. *Health Net of the Northeast, Inc.*, 285 Conn. 1, 11, 938 A.2d 576 (2008). "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 [a] motion for summary judgment is plenary." (Internal quotation marks omitted.) Id.

The plaintiff contends that the Appellate Court improperly affirmed the trial court's judgment on the ground that the plaintiff's failure to produce an itemization of her damages was fatal to her CUTPA claims. The defendants disagree with the plaintiff's reading of the trial court's memorandum of decision, arguing that the trial court in fact rendered summary judgment in their favor because the plaintiff had failed to identify

any evidence in her opposition that either she or Meo's estate had suffered any ascertainable loss. We agree with the defendants.

CUTPA is, on its face, a remedial statute[4] that broadly prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." General Statutes § 42-110b (a); see also *Associated Investment Co. Ltd. Partnership* v. *Williams Associates IV*, 230 Conn. 148, 155, 645 A.2d 505 (1994). The act provides for more robust remedies than those available under analogous common-law causes of action, including punitive damages; General Statutes § 42-110g (a); and attorney's fees and costs, and, "in addition to damages or in lieu of damages, injunctive or other equitable relief." General Statutes § 42-110g (d); see generally *Associated Investment Co. Ltd. Partnership* v. *Williams Associates IV*, supra, 148 (describing history, scope and purpose of CUTPA cause of action and remedies). To give effect to its provisions, § 42-110g (a) of the act establishes a private cause of action, available to "[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by section 42-110b . . . ."

"The ascertainable loss requirement [of § 42-110g] is a threshold barrier which 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.) *Artie's Auto Body, Inc.* v. *Hartford Fire Ins. Co.*, supra, 287 Conn. 217–18. CUTPA, however, "is not limited to providing redress only for consumers who can put a precise dollars and cents figure on their loss"; *Hinchliffe* v. *American Motors Corp.*, 184 Conn. 607, 618, 440 A.2d 810 (1981); as the 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." Id., 612–13. Rather, as we explained in *Hinchliffe*, "[d]amage . . . is only a species of loss"; (internal quotation marks omitted) id., 613; hence "[t]he term 'loss' necessarily encompasses a broader meaning than the term 'damage.' " Id. 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 measureable 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." (Citation omitted; emphasis added; internal quotation marks omitted.) *Service Road Corp.* v. *Quinn*, 241 Conn. 630, 638–39, 698 A.2d 258 (1997).

Of course, a plaintiff still must marshal *some* evidence

of ascertainable loss in support of her CUTPA allegations, and a failure to do so is indeed fatal to a CUTPA claim on summary judgment. See, e.g., *Anderson* v. *Schoenhorn*, 89 Conn. App. 666, 675, 874 A.2d 798 (2005) (affirming trial court's entry of summary judgment in favor of defendants on plaintiff's CUTPA claim when plaintiff "failed to provide *any* basis on which a jury could conclude that the defendants' conduct violated CUTPA" [emphasis added]).

Turning to the present case, we conclude that the Appellate Court properly affirmed the trial court's grant of the defendants' motions for summary judgment. Although we agree with the plaintiff that a litigant need not produce an "itemization" of her claimed CUTPA damages to defeat a motion for summary judgment, we conclude that on any fair reading, the trial court's decision does not suggest otherwise. Rather, we observe that it was the plaintiff who alleged in her discovery responses that she could and would furnish an "itemization" of her claimed CUTPA damages, and who relied on these representations, in lieu of any evidence of her alleged loss, in opposing summary judgment. Specifically, the plaintiff represented that she was conducting a "complete account of [her alleged] financial damages and losses" and that although she could not yet produce an "itemization," "the same" would be delivered to the defendants "[a]s soon as the cumulative value [of the alleged losses had] been assessed . . . ." The trial court therefore correctly concluded that the plaintiff's failure to tender this *or any other documentary evidence* in support of her opposition compelled the entry of summary judgment for the defendants. We therefore read the trial court's well reasoned decision to suggest that while the promised itemization certainly would have been *sufficient* to identify an ascertainable loss at the summary judgment stage, it was hardly *necessary* for this purpose, as the plaintiff should have submitted instead an affidavit, or other such "supporting documentation," with her opposition.

By contrast, the trial court noted that the defendants had attached substantial documentary evidence to their motions for summary judgment, including the sworn affidavits of both defendants, a fee-splitting agreement executed by the plaintiff and Poirot, and copies of several memoranda of decision disposing of previous claims between the plaintiff and the defendants. The defendants' submission also asserted that, as a result of the agreement and prior judicial rulings, the plaintiff was not entitled to any additional compensation as a matter of law. This evidence shifted the burden to the plaintiff to demonstrate that her allegations of loss were supported by at least some proof. After the defendants' submission, the plaintiff's "[m]ere assertions of fact" became "insufficient to establish the existence of a material fact, and, therefore, [could] not refute [the] evidence properly presented to the court" by the defen-

dants.[5] *Ramirez* v. *Health Net of the Northeast, Inc.*, supra, 285 Conn. 11. Accordingly, we conclude, the trial court properly rendered summary judgment for the defendants on the basis of the plaintiff's failure to offer *any* proof of any loss allegedly suffered by her or by Meo's estate. Therefore, insofar as the Appellate Court's affirmance of the trial court's judgment relied on the plaintiff's failure, in opposing summary judgment, to offer *any* proof of her alleged loss, we conclude that such affirmance was proper.

To the extent that the Appellate Court affirmed the judgment of the trial court on the ground that the plaintiff's failure specifically to produce an "itemization" of her damages was fatal to her CUTPA claims, however, we disagree with such reasoning. Black's Law Dictionary defines the verb "itemize" as "[t]o list in detail; to state by items," and gives the example of "an itemized bill." Black's Law Dictionary (9th Ed. 2009). Requiring a plaintiff to list her damages "in detail," however, would be tantamount to requiring her to "provide proof of damages in the form of a specific dollar amount," something this court has expressly—and repeatedly—declined to do. See, e.g., *Beverly Hills Concepts, Inc.* v. *Schatz & Schatz, Ribicoff & Kotkin*, 247 Conn. 48, 50, 717 A.2d 724 (1998) (considering plaintiff's CUTPA claim on appeal despite plaintiff's failure adequately to prove lost profit damages "to a reasonable certainty"); *Service Road Corp.* v. *Quinn*, supra, 241 Conn. 643–44 (concluding that "in the business context, a plaintiff asserting a CUTPA claim may satisfy the ascertainable loss requirement of § 42-110g by establishing, through a reasonable inference, or otherwise, that the defendant's unfair trade practice has caused the plaintiff to lose potential customers" and that "[a] loss of prospective customers constitutes a deprivation, detriment [or] injury that is capable of being discovered, observed or established" [internal quotation marks omitted]); *Hinchliffe* v. *American Motors Corp.*, supra, 184 Conn. 615 ("[a]doption of the . . . view . . . that ascertainable loss is equivalent to actual damages . . . would eviscerate the private remedy provided by CUTPA"). Proof of actual damages in the form of a specific dollar amount is not required to sustain a CUTPA claim.

Although we previously have not had occasion to specify the evidentiary showing a CUTPA plaintiff must make in order to defeat a defendant's motion for summary judgment, we believe that our precedents suggest the answer. In prior decisions, we have upheld a finding of ascertainable loss—both at trial and in ruling on dispositive motions—on the basis of affidavits and other documentary evidence, as well as trial and deposition testimony. See, e.g., *Artie's Auto Body, Inc.* v. *Hartford Fire Ins. Co.*, supra, 287 Conn. 220 (putative class of CUTPA plaintiffs made showing of ascertainable loss sufficient to uphold class certification through affidavits, documentary evidence); *Service Road Corp.* v.

Quinn, supra, 241 Conn. 644–45 (affirming trial court's finding of ascertainable loss, despite plaintiffs' failure to prove extent of loss, on basis of testimony of two witnesses, including expert). We see no reason to hold a CUTPA litigant to a different standard at summary judgment. Accordingly, we conclude that a CUTPA litigant may establish the existence of a genuine issue of material fact as to whether she has suffered an ascertainable loss through the use of affidavits or other documentary evidence, such as business records or transcripts of testimony, identifying a measureable loss. Indeed, when confronted with a motion for summary judgment, a CUTPA plaintiff must do so, for "[i]t is not enough that one opposing a motion for . . . summary judgment claims there is a genuine issue of material fact; some evidence showing the existence of such an issue must be presented in the counter affidavit." (Internal quotation marks omitted.) *Plouffe* v. *New York, New Haven & Hartford Railroad Co.*, 160 Conn. 482, 490, 280 A.2d 359 (1971); accord *Federal Trade Commission* v. *Inc21.com Corp.*, 745 F. Sup. 2d 975, 1008 (N.D. Cal. 2010) (government agency established entitlement to summary judgment on federal unfair trade practices claim through two sworn witness declarations that defendants failed to rebut). Because the plaintiff in the present case failed to present any such evidence in opposition to the defendants' motions for summary judgment, and, indeed, failed even to request a continuance to marshal such evidence,[6] we conclude that the Appellate Court properly affirmed the trial court's summary judgment rendered in favor of the defendants.[7] Accordingly, we affirm the judgment of the Appellate Court on that ground.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

[1] We granted the petition for certification to appeal filed by the plaintiff Eloise Marinos in her individual and representative capacity; see footnote 2 of this opinion; limited to the following issue: "Did the Appellate Court properly determine that, on a [Connecticut Unfair Trade Practices Act (CUTPA)] claim for damages, the trial court properly entered summary judgment in favor of the defendants because the plaintiff 'failed to produce an itemization of her claimed CUTPA damages?' " *Marinos* v. *Poirot*, 303 Conn. 940, 37 A.3d 154 (2012).

[2] We refer in this opinion to Marinos in both capacities as the plaintiff.

[3] We refer to Poirot and Johnson jointly as the defendants, and, when necessary, individually by name.

[4] See General Statutes § 42-110b (d) ("[i]t is the intention of the legislature that this chapter be remedial and be so construed").

[5] For this reason, we reject the plaintiff's argument that the list of office supplies recited in her discovery responses and alleged to have been "smuggled out of the office" by Poirot, was sufficient to establish a genuine issue of material fact as to whether the plaintiff had suffered an ascertainable loss. Moreover, we observe that the plaintiff's "list of office supplies," in its entirety, included: copy paper, paper clips, note pads, file folders, binders, boxes, tape and envelopes. This list fails to allege approximate quantities, rendering any attempt to value the loss an exercise in speculation. Even if approximate quantities—and thus the approximate dollar value of the loss—could be ascertained from the list, however, we have held that "CUTPA is not designed to afford a remedy for trifles." *Hinchliffe* v. *American Motors Corp.*, supra, 184 Conn. 614.

[6] In *Plouffe* v. *New York, New Haven & Hartford Railroad Co.*, supra, 160

Conn. 490, this court explained that when the party opposing summary judgment timely files an affidavit with the court stating the reasons why she is "presently unable to proffer evidentiary affidavits," such a motion should be "liberally treated" unless it is "dilatory or lacking in merit . . . ." Although the plaintiff in the present case represented in her discovery responses that she was in the process of conducting "[a] complete account of [her alleged] financial damages and losses," and that she would furnish "the same" to the defendants "[a]s soon as the cumulative value" of those losses was assessed, we observe that she did not move the court for a continuance to gather evidence to oppose summary judgment.

[7] Because our consideration of the certified issue is dispositive of this appeal, we need not address the defendants' argument that the judgment of the Appellate Court may be upheld on the alternate ground that the plaintiff's CUTPA claims are barred by the doctrine of res judicata.