SERVICE ROAD CORPORATION v. QUINN

241 Conn. 630 (1997) | Cited 25 times | Supreme Court of Connecticut | July 15, 1997

Opinion

The principal issue in this appeal is whether the trial courtproperly concluded that the plaintiffs suffered an "ascertainable lossof money or property," as required to maintain an action pursuant toGeneral Statutes § 42-110g,[1] which is part of the

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Connecticut Unfair Trade Practices Act (CUTPA), as the result of theinstallation of several video surveillance cameras by the nameddefendant, Daniel Quinn, on his property. The cameras were focused onthe front entrances to the plaintiffs' two neighboring businessestablishments. We conclude, inter alia, that the trial court properlydetermined that the plaintiffs suffered an ascertainable loss as aresult of Quinn's actions. We therefore affirm the judgment of thetrial court.

The record reveals the following facts. At all relevanttimes, the plaintiffs, Service Road Corporation and CousinVinnie's, Inc., operated adjacent exotic dance clubs, known asUncle Al's and Cousin Vinnie's, at 145 and 147 West Service Roadin Hartford. Quinn operated an adult bookstore known as Danny'sAdult Book World next to Uncle Al's and Cousin Vinnie's at 151West Service Road. During the time period in question, Quinn alsoowned and operated two exotic dance clubs, one, known as Kahoots,located in East Hartford, the other, known as Carrie-Ann's,located in Vernon. Both Kahoots and Carrie-Ann's competed withUncle Al's and Cousin Vinnie's for patrons. The other defendantin this case, Gordon Debigare, worked for Quinn as the manager ofKahoots.

On September 7, 1993, the plaintiffs, through their attorney,notified Quinn and the Hartford police department that customersof Danny's Adult Book World had been engaging in sexual activityand drug use at the rear of Quinn's property at 151 West ServiceRoad. Approximately two weeks later, Quinn installed two videosurveillance cameras on the south side of his building, whichfaced the north side of the plaintiffs' building, where the frontentrances to both Uncle Al's

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and Cousin Vinnie's were located. One of the cameras was situated sothat it pointed directly at, and focused on, the front door of UncleAl's, the other so that it pointed directly at, and focused on, thefront door of Cousin Vinnie's. A short time later, Quinn installedadditional cameras on his building, four of which also focused on thefront doorways of Uncle Al's and Cousin Vinnie's.

Sometime in October,1993, Debigare contacted at least two patrons of the plaintiffs' clubsand informed them that he had seen them entering the plaintiffs'clubs on the security television attached to the surveillancecameras at 151 West Service Road. Debigare also provided severalof the plaintiffs' patrons with free drink coupons that wereredeemable at Kahoots. In addition, Debigare assisted in postingadvertisements for Carrie-Ann's on the side of the building at 151West Service Road that faced the front entrances of Uncle Al's andCousin Vinnie's.

The plaintiffs filed a two count complaint and an applicationfor a temporary injunction against the defendants in the trialcourt. In the first count of their complaint, the plaintiffsalleged that the defendants' actions tortiously interfered withthe plaintiffs' business, causing them irreparable loss anddamage. In the second count of the complaint, the plaintiffsclaimed that the defendants' actions constituted unfair anddeceptive acts and practices in the conduct of trade or commerce,in violation of CUTPA, General Statutes §§ 42-110a through42-110q. In the first count, the plaintiffs sought damages, costsand temporary and permanent injunctions ordering the defendants toremove the cameras, or to adjust them so that they did not focus on theplaintiffs' property. In addition, the plaintiffs sought temporaryand permanent injunctions ordering the defendants to refrain fromcontacting the plaintiffs' customers. In the CUTPA count, theplaintiffs sought both economic and punitive damages, temporaryand

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permanent injunctive relief, attorneys' fees and costs, allunder § 42-110g. Thereafter, the plaintiffs amended theircomplaint by removing from both counts any claim for economicdamages.[2] Before trial, the parties stipulated to theentry of a temporary injunction against the defendants requiringthe defendants to adjust the cameras that were capable of viewingthe premises at 145 and 147 West Service Road so that at all timesthe cameras pointed downward at an angle of less than fiftydegrees.

After a court trial, the trial court issued a memorandum ofdecision in which it found for the defendants on the first countof the plaintiffs' complaint and for the plaintiffs on the secondcount. The court concluded that Quinn's actions constituted anunfair trade practice in violation of § 42-110b.[3] The courtissued the permanent injunction sought by the plaintiffs,[4]and also determined that the plaintiffs were entitled toattorneys' fees and costs from Quinn. The court found that at alltimes

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Debigare had acted simply as Quinn's agent and declined to awardattorneys' fees against him. The court also, in the exercise of itsdiscretion, declined to award the plaintiffs punitive damages. OnJanuary 1, 1997, the court rendered judgment in accordance with itsmemorandum of decision and awarded the plaintiffs attorneys' fees againstQuinn in the stipulated amount of $14,930.30. The defendants appealedfrom the judgment of the trial court to the Appellate Court, and wetransferred

the appeal to this court pursuant to Practice Book § 4023and General Statutes § 51-199(c).[5]

The defendants claim that the second count of the plaintiffs'amended complaint, which alleged a CUTPA violation, wasinsufficient as a matter of law because it contained no allegationthat the plaintiffs had suffered an economic loss as a result ofthe defendants' conduct. The defendants contend that a plaintiffclaiming a CUTPA violation in the context of a competitivebusiness relationship must allege some economic loss in order tosatisfy the ascertainable loss requirement of § 42-110g. Theyclaim that the plaintiffs' amended complaint did not include suchan allegation. In addition, the defendants claim that the trialcourt's factual determination that the plaintiffs had suffered anascertainable loss was clearly erroneous in light of the evidencepresented at trial. Consequently, they contend that the trialcourt's judgment ordering a permanent injunction and awarding theplaintiffs attorneys' fees must be reversed. We are unpersuaded.

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I

As an initial matter, we decline to address the defendants'arguments concerning the legal sufficiency of the plaintiffs'amended complaint at this late stage of the proceedings. "[A]judgment ordinarily cures pleading defects. . . . The absence ofa requisite allegation in a complaint that would have justifiedthe granting of a motion to strike . . . is not a sufficient basisfor vacating a judgment unless the pleading defect has resulted inprejudice. [I]f parties will insist on going to trial on issuesframed in a slovenly manner, they must abide the verdict; judgmentwill not be arrested for faults in statement when facts sufficientto support the judgment have been substantially put in issue andfound. . . . Want of precision in alleging the cause of an injuryfor which an action is brought, is waived by contesting the caseupon its merits without questioning such defect." (Citationsomitted; internal quotation marks omitted.) Normand JosefEnterprises, Inc. v. Connecticut National Bank, 230 Conn. 486,497, 646 A.2d 1289 (1994); see also Tedesco v. Stamford,215 Conn. 450, 458, 576 A.2d 1273 (1990), on remand, 24 Conn. App. 377,588 A.2d 656 (1991), rev'd, 222 Conn. 233, 610 A.2d 574 (1992).

Instead of submitting a motion to strike the plaintiffs'amended complaint, the defendants waited until the close of theplaintiffs' evidence and then moved, pursuant to Practice Book §302,[6] for a judgment of dismissal for failure of theplaintiffs to make out a prima facie

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case.[7] Thus, the defendants challenged the sufficiency of theplaintiffs' evidence rather than the sufficiency of their pleading.Because the defendants did not raise their argument concerning thesufficiency of the plaintiffs' pleading in the trial court and havefailed to demonstrate that they in any way were prejudiced by theplaintiffs' amended complaint,[8] we conclude that thedefendants have

waived this claim. Normand Josef Enterprises,Inc. v. Connecticut National Bank, supra, 230 Conn. 496-97.

II

The defendants next contend that the trial court improperlyconcluded that the plaintiffs had sustained their burden ofproving that they had suffered an ascertainable loss of money orproperty as required by § 42-110g. The defendants do not findfault with the trial court's determination that Quinn's actionsconstituted an unfair trade practice in violation of § 42-110b.They argue, rather, that the trial court committed clear error inconcluding that the plaintiffs had proven that they had sufferedan ascertainable loss as a result of Quinn's installation of thesurveillance cameras. We disagree.

We begin our analysis with the principle that CUTPA "isremedial in character . . . and must be liberally construed infavor of those whom the legislature intended to benefit."(Citations omitted; internal quotation marks omitted.) Fink v.Golenbock, 238 Conn. 183, 213, 680 A.2d 1243 (1996). In LarsenChelsey Realty Co. v. Larsen, 232 Conn. 480, 496-99, 656 A.2d 1009(1995), we reaffirmed the principle, first stated in McLaughlinFord, Inc. v. Ford Motor Co., 192 Conn. 558, 566-67,

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473 A.2d 1185 (1984), that CUTPA was designed to provide protection tobusinesses as well as to consumers.[9] "CUTPA is not limited toconduct involving consumer injury. . . . [A] competitor or other businessperson can maintain a CUTPA cause of action without showing consumerinjury." McLaughlin Ford, Inc. v. Ford Motor Co., supra, 566-67.

Section 42-110b (a) prohibits persons from engaging in"unfair methods of competition and unfair or deceptive acts orpractices in the conduct of any trade or commerce." Section42-110g (a) affords a cause of action to "[a]ny person who suffersany ascertainable loss of money or property, real or personal, asa result of the use or employment of a method, act or practiceprohibited by section 42-110b. . . ." We have stated that"[t]he ascertainable loss requirement is a threshold barrier whichlimits the class of persons who may bring a CUTPA action seekingeither actual damages or equitable relief." Hinchliffe v.American Motors Corp., 184 Conn. 607, 615, 440 A.2d 810 (1981).An ascertainable loss is a "deprivation, detriment [or] injury"that is "capable of being discovered, observed or established."(Internal quotation marks omitted.) Id., 613. "[A] loss

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is ascertainable if it is measurable even though the precise amountof the loss is not known. . . . Under CUTPA, there is no need toallege or prove the amount of the ascertainable loss." Id., 614.A plaintiff need not "prove a specific amount of actual damages inorder to make out a prima facie case

[under CUTPA]." Id., 612-13.

With these principles in mind, we turn to the validity of thetrial court's finding that the plaintiffs suffered anascertainable loss. In its memorandum of decision, the trialcourt stated: "At trial, representatives of the plaintiffstestified that they had no evidence that Quinn's actions causedthem a loss of profits. This may be due in part to the entry of atemporary injunction on April 22, 1994, under the terms of whichthe cameras were pointed away from the plaintiffs' front doorways.Not surprisingly, the plaintiffs also failed to present the testimonyof any patron or prospective patron concerning the effect Quinn'scameras had on their willingness to enter the plaintiffs' exotic danceclubs. Nevertheless, the court finds that Quinn's cameras, when pointedat the entrance to the plaintiffs' exotic dance clubs, wereintended to and probably would have a negative impact on theplaintiffs' business because they would deter certain prospectivepatrons from entering the clubs." (Emphasis added.)

The plaintiffs had the burden to prove, by a preponderance ofthe evidence, that they suffered an ascertainable loss of money orproperty as the result of the defendants' actions. In order tosatisfy that burden, the plaintiffs needed to convince the trialcourt that it was more likely than not that the plaintiffssuffered such a loss. See Tianti v. William Raveis Real Estate,Inc., 231 Conn. 690, 701, 651 A.2d 1286 (1995). A fair reading ofthe trial court's memorandum of decision indicates that the courtwas persuaded that it was more likely than not that Quinn'sinstallation of cameras on the

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building at 151 West Service Road and the monitoring of the entrancesto the plaintiffs' establishments caused prospective patrons to refrainfrom entering the plaintiffs' establishments. The trial court foundthat Quinn's actions "probably would have a negative impact on theplaintiffs' business because they would deter certain prospectivepatrons from entering the clubs." We read this to mean that thetrial court found, as a matter of fact, that Quinn's installationof cameras did deter prospective customers from patronizing theplaintiffs' establishments. The defendants claim that thisfactual finding is not supported by the evidence that was adducedat trial. We disagree.

"[A] trial court's findings are binding upon this courtunless they are clearly erroneous in light of the evidence and thepleadings in the record as a whole. . . . We cannot retry thefacts or pass on the credibility of the witnesses. . . . A findingof fact is clearly erroneous when there is no evidence in therecord to support it . . . or when although there is evidence tosupport it, the reviewing court on the entire evidence is leftwith the definite and firm conviction that a mistake has beencommitted. . . . Crowell v. Danforth, 222 Conn. 150, 156,609 A.2d 654 (1992); see also Pandolphe's Auto Parts, Inc. v. Manchester,181 Conn. 217, 220, 435 A.2d 24 (1980)." (Internal quotation marksomitted.) United Components, Inc. v. Wdowiak, 239 Conn. 259, 263,684 A.2d 693 (1996).

"It is axiomatic that the trier of fact may draw reasonableand logical inferences from the facts

proven. . . . In doing so,finders of fact are not expected to lay aside matters of commonknowledge or their own observation and experience of the affairsof life, but, on the contrary, to apply them to the evidence orfacts in hand, to the end that their action may be intelligent andtheir conclusions correct. . . . Our review of the fact finder'sinferences is limited to determining whether the

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inferences drawn are so unreasonable as to be unjustifiable."(Citations omitted; internal quotation marks omitted.) Tiantiv. William Raveis Real Estate, Inc., supra, 231 Conn. 700-701. "In acivil case, proof of a material fact by inference from circumstantialevidence need not be so conclusive as to exclude every other hypothesis.It is sufficient if the evidence produces in the mind of the trier areasonable belief in the probability of the existence of thematerial fact." (Internal quotation marks omitted.) ConnecticutBank & Trust Co., N.A. v. Reckert, 33 Conn. App. 702, 704-705,638 A.2d 44 (1994).

We conclude that the trial court reasonably could haveinferred from the evidence presented during the trial that thedefendants' actions caused prospective patrons to refrain fromentering the plaintiffs' establishments at 145 and 147 WestService Road. The plaintiffs had presented evidence that theyoperated two exotic dance clubs at those addresses. They alsopresented evidence, which the trial court found credible, thatQuinn had installed the surveillance cameras on his building at151 West Service Road with the intention of interfering with theplaintiffs' establishments.[10] In

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addition, the plaintiffs presented evidence that the cameras on thebuilding at 151 West Service Road were visible to a person standingin the entrances to both Uncle Al's and Cousin Vinnie's and that sucha person would believe that he or she was being filmed.[11]Moreover, the plaintiffs presented Alan Tannenbaum, the treasurer ofService Road Corporation and the president of Cousin Vinnie's, Inc.,who testified that the cameras on Quinn's building at 151 West ServiceRoad intimidated customers of Uncle Al's and Cousin Vinnie's, Inc.Tannenbaum testified that a number of patrons had informed him thatthey made sure that they entered his establishments with their backstoward Quinn's cameras. He also testified that he believed that somepatrons had not entered his establishments because of the cameras, butthat he did not know of any particular patrons who had refrained fromdoing so.[12] We conclude, on

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the basis of the totality of the evidence presented at trial, that thetrial court's factual determination that Quinn's installation ofcameras on the building at 151 West Service Road deterred prospectivepatrons from entering the plaintiffs' establishments was not clearlyerroneous.

We next address the question of whether the trial court'sfactual finding satisfied the ascertainable loss requirement of §42-110g. We have never addressed the meaning of the phrase"ascertainable loss" in a similar context, in which one businessowner claims that another has engaged in an intentional unfairtrade practice that has caused the first business to losepotential customers.[13] Nevertheless, we conclude that, inthe business context, a plaintiff asserting a CUTPA claim maysatisfy the ascertainable loss requirement of § 42-110g

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by establishing, through a reasonable inference, or otherwise, thatthe defendant's unfair trade practice has caused the plaintiff tolose potential customers. A loss of prospective customersconstitutes a "deprivation, detriment [or] injury" that is"capable of being discovered, observed or established." (Internalquotation marks omitted.) Hinchliffe v. American Motors Corp.,supra, 184 Conn. 613. Such a loss appears to be precisely thetype of business injury for which the legislature intended toprovide redress when it enacted CUTPA. See Larsen Chelsey RealtyCo. v. Larsen, supra, 232 Conn. 496-97. The fact that a plaintifffails to prove a particular loss or the extent of the loss doesnot foreclose the plaintiff from obtaining injunctive relief andattorneys' fees pursuant to CUTPA if the plaintiff is able toprove by a preponderance of the evidence that an unfair tradepractice has occurred and a reasonable inference can be drawn bythe trier of fact that the unfair trade practice has resulted in aloss to the plaintiff. In the present case, the trial court foundthat the defendants engaged in an intentional unfair tradepractice and drew the reasonable inference that the unfair tradepractice had caused the plaintiffs to lose potential customers.We conclude, therefore, that the plaintiffs satisfied their burdenof proving that they had suffered an ascertainable loss.

After properly finding that the plaintiffs had suffered anascertainable loss as the result of the defendants' unfair tradepractices, the trial court exercised its discretion, pursuant to §42-110g, to issue a permanent

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injunction and to award the plaintiffs attorneys' fees. The defendantshave failed to persuade us that the trial court abused its discretionin so doing.

The judgment is affirmed.

In this opinion BORDEN, BERDON and PETERS, Js., concurred.

1. General Statutes § 42-110g provides in relevant part:"Action for damages. Class actions. Costs and fees. Equitablerelief. Jury trial. (a) Any person who suffers any ascertainableloss of money or property, real or personal, as a result of theuse or employment of a method, act or practice prohibited bysection 42-110b, may bring an action in the judicial district inwhich the plaintiff or defendant resides or has his principalplace of business or is doing business, to recover actual

damages.Proof of public interest or public injury shall not be required inany action brought under this section. The court may, in itsdiscretion, award punitive damages and may provide such equitablerelief as it deems necessary or proper. . . . "(d) In any action brought by a person under this section,the court may award, to the plaintiff, in addition to the reliefprovided in this section, costs and reasonable attorneys' feesbased on the work reasonably performed by an attorney and not onthe amount of recovery. In a class action in which there is nomonetary recovery, but other relief is granted on behalf of aclass, the court may award, to the plaintiff, in addition to otherrelief provided in this section, costs and reasonable attorneys'fees. In any action brought under this section, the court may, inits discretion, order, in addition to damages or in lieu ofdamages, injunctive or other equitable relief." (Emphasis added.)

2. The plaintiffs apparently amended their complaint inresponse to a discovery motion by the defendants seeking incometax returns.

3. General Statutes § 42-110b provides in relevant part:"Unfair trade practices prohibited. Legislative intent. (a) Noperson shall engage in unfair methods of competition and unfair ordeceptive acts or practices in the conduct of any trade orcommerce. . . ."

4. The permanent injunction issued by the court provided:"After a trial in the above-captioned action, it is herebyORDERED: "1. Daniel Quinn, Gordon Debigare and their agents, servantsand employees shall not point any video camera, closed circuittelevision camera or other camera located on the defendant Quinn'sproperty at 151 West Service Road, Hartford, Connecticut, in thedirection of the plaintiffs' premises at 145 or 147 West ServiceRoad. All such cameras which are visible to persons entering 145or 147 West Service Road shall be inverted in such a fashion thatthe base of the housing of such camera shall at all times pointdownward at an angle not to exceed fifty (50x) degrees from thevertical plane of the south wall of 151 West Service Road. "2. Daniel Quinn, Gordon Debigare and their agents, servantsand employees shall not contact the plaintiffs' customersconcerning the presence of the aforementioned cameras or the factthat the customers may have been or may in the future be observedon said cameras."

5. There are two docket numbers in this case because thedefendants initially appealed to the Appellate Court following thetrial court's memorandum of decision. We transferred that appealto this court pursuant to Practice Book § 4023 and GeneralStatutes § 51-199 (c). The defendants subsequently filed a secondappeal to the Appellate Court from the trial court's rendering ofjudgment in accordance with its memorandum of decision. Wegranted the defendants' motion, to which the plaintiffs consented,to consolidate both appeals and incorporate into the second appealthe briefs filed in the first appeal.

6. Practice Book § 302 provides: "Dismissal in Court Cases forFailure to Make Out a Prima Facie Case "If, on the trial of any issue of fact in a civil actiontried to the court, the plaintiff has produced his evidence andrested his cause, the defendant may move for judgment ofdismissal, and the court may grant such motion, if in its opinionthe plaintiff has failed to make out a prima facie case. Thedefendant may offer evidence in the event the motion is notgranted, without having reserved the right to do so and to thesame extent as if the motion had not been made."

7. The trial court reserved decision on the motion until afterthe defendants had presented their case.

8. Indeed, the defendants have not argued, either in theirbriefs or at oral argument, that they were prejudiced by a defectin the plaintiffs' amended complaint.

9. In Larsen Chelsey Realty Co., we reviewed the legislativehistory that suggested that the legislature intended CUTPA toprotect businesses as well as consumers: "According toRepresentative Howard A. Newman, who reported the CUTPAlegislation out of committee to the House of Representatives, theact `gives honest businessmen great protection [against] deceptiveor unscrupulous [businessmen] who by unfair methods of competitionand deceptive advertising, etc., unlawfully divert trade away fromlaw abiding businessmen.' 16 H.R. Proc., Pt. 14, 1973 Sess., p.7323. Other supporters of the bill made similar comments. See,e.g., Conn. Joint Standing Committee Hearings, General Law, Pt. 2,1973 Sess., p. 724, remarks of Stuart Dear, a member of the boardof directors of the Connecticut Consumer Association (CUTPA will`assist the businessman in not losing out to those members of thebusiness community who won't play fair'); Conn. Joint StandingCommittee Hearings, General Law, Pt. 1, 1978 Sess., pp. 307-308,remarks of Assistant Attorney General Robert M. Langer (CUTPAcovers transactions `between one business and another business')."Larsen Chelsey Realty Co. v. Larsen, supra, 232 Conn. 497-98.

10. In its memorandum of decision, the trial court stated:"The plaintiffs claim that the primary, if not sole, purpose ofQuinn's camera installation was to intimidate and harass theircustomers and harm their businesses and, therefore, that suchinstallation constituted an unfair or deceptive practice withinthe meaning of § 42-110b. The court agrees. "The defendant Quinn has claimed that he installed thecameras purely for security reasons. However, the court does notfind that claim to be credible. A disproportionately large numberof the video cameras were placed on the side of Quinn's buildingwhich was nearest to Uncle Al's and Cousin Vinnie's with no camerasurveillance of the [entrance] to Quinn's store or its mainparking lot. A security expert who testified at the trialdescribed Quinn's camera configuration as `absurd' in terms ofproviding optimum security surveillance of Quinn's premises. "A business is certainly permitted to install securitycameras for its own protection and cannot be accused of an unfairpractice if one or more of those cameras incidentally picks upactivity on the premises of a nearby business. In this case thepurpose of the camera installation was to interfere with theplaintiffs' business and the security benefits to the defendantQuinn's property [were] incidental. The number and placement ofthe video cameras described above, the temporal proximity of thecamera installation to a complaint directed at Quinn by theplaintiffs, and the contacting of the plaintiffs' patronsconcerning their appearance on Quinn's video cameras, indicates aprimary intention to impact the plaintiffs' business." (Emphasisadded.)

11. The plaintiffs presented testimony from Thomas Luddy, asecurity expert, who testified as follows: "Q. When you first went to the premises and conducted yourinspection, you did that inspection in part from the premises at145/147 West Service Road, in other words, looking across thedriveway to 151? "A. Yes, I did. "Q. Were you able, sir, during that inspection, to stand inthe doorways of the premises of Uncle Al's and Cousin Vinnie's andto look at the cameras mounted on 151 West Service Road? "A. Yes, which I did. "Q. And would you tell the court from those two vantagepoints where the cameras or the housings appeared to be directed? "A. At least a couple of them and the third one that waspanned and tilted, the 180 degree one, certainly I would feel likeI had been on Candid Camera, so to speak. If I were standing inthe doorway, I would have been viewed."

12. The relevant colloquy went as follows: "Q. . . . Is it my understanding, Mr. Tannenbaum, that yourcomplaint is that at least two of the cameras on Mr. Quinn'sbuilding at 151 West Service Road point at the two entrances toyour building? "A.

Yes. "Q. And why is that a problem for you? "A. Because it intimidated our customers. "Q. How long have customers, in fact, stopped coming to yourbusiness because of their complaint to you about these cameras? "A. I don't think there is any way of knowing that. It'slike going to a restaurant, you have a lousy meal, you don't tellanybody and you don't go back. "Q. So, has any customer come to you and said, Mr.Tannenbaum, I'm no longer coming to your business because I'mafraid of those cameras across the alley? "A. I've had a couple of people tell me they make sure theywalk in with their back to the camera. "Q. But they're still coming in? "A. Some people haven't, I'm sure. "Q. But you don't know of any? "A. I can't tell you for a fact."

13. In Sportsmen's Boating Corp. v. Hensley, 192 Conn. 747,748-49, 474 A.2d 780 (1984), the plaintiff, a corporation, broughta CUTPA action against the defendant, a business competitor,alleging that the defendant had engaged in unfair trade practicesthat resulted in the plaintiff's losing potential customers. Thetrial court found, however, that the plaintiff had not lost anypotential customers as a result of the defendant's actions. Id.,749. Because our analysis in Sportsmen's Boating Corp. waslimited to whether the trial court's factual finding was clearlyerroneous, we did not have occasion to address whether a loss ofpotential customers would constitute an ascertainable loss ofmoney or property as required by § 42-110g. In Hinchliffe v. American Motors Corp., supra,184 Conn. 612-16, we analyzed the ascertainable loss requirement at length,but in the context of a consumer claim under CUTPA rather than inthe context of a claim by one business against another. Ouranalysis in Hinchliffe, therefore, does not provide us with ananswer to the question posed in the present case.

14. In its memorandum of decision, the trial court stated: "Attrial, representatives of the plaintiffs testified that they hadno evidence that [the named defendant Daniel] Quinn's actionscaused them a loss of profits. . . . [T]he plaintiffs also failedto present the testimony of any patron or prospective patronconcerning the effect Quinn's cameras had on their willingness toenter the plaintiffs' exotic dance clubs."

15. Although I understand that it was not the intent of themajority, I am nevertheless concerned that, because this decisionrelies on evidence that proves only that there was an unfair tradepractice, the court's holding may be read to support the argumentthat a plaintiff may prove an ascertainable loss entitling him orher to relief under CUTPA merely by proving that there was anunfair trade practice undertaken with the intent to bring aboutsuch a loss.

16. During cross-examination by the defendants' attorney,Tannenbaum testified regarding his belief as to the effect thecameras may have had on potential customers: "Q. Is it my understanding, Mr. Tannenbaum, that yourcomplaint is that at least two of the cameras on Mr. Quinn'sbuilding at 151 West Service Road point at the two entrances toyour building? "A. Yes. "Q. And why is that a problem for you? "A. Because it intimidated our customers. "Q. How long have customers, in fact, stopped coming to yourbusiness because of their complaint to you about these cameras? "A. I don't think there is any way of knowing that. It'slike going to a restaurant, you have a lousy meal, you don't tellanybody and you don't go back. "Q. So, has any customer come to you and said, Mr.Tannenbaum, I'm no longer coming to your business because I'mafraid of those cameras across the alley? "A. I've had a couple of people tell me they make sure theywalk in with their back to the camera. "Q. But they're still coming in? "A. Some people haven't, I'm sure. "Q. But you don't know of any? "A. I can't tell you for a fact." Neither of the plaintiffs testified on direct examinationregarding the possible loss of customers.

17. The transcript contains the following colloquy between Quinnand the plaintiffs' attorney: "Q. Okay. Sir, when those cameras were installed . . . didyou take into account the possible effect these cameras may havehad on customers of [the plaintiffs]? "A. Absolutely not. "Q. Why not? "A. Well, I have cameras on all my businesses, including theexterior. "Q. All right . . . [d]o the housings of cameras on yourother buildings point to other establishments, other businesses? "A. Absolutely. "Q. They do? Okay, sir, do you think that the kind ofbusiness that [the plaintiffs] are engaged in, similar to yourown, would make a difference in deciding whether or not a patronor customer might be troubled by having a housing or housingspointed at him or at her? "A. Absolutely not." Following this colloquy, the trial