IN RE JAVONTE B. ET AL.*
(AC 47283)

Moll, Westbrook and Flynn, Js.

Syllabus

The respondent father appealed to this court from the judgments of the trial court terminating his parental rights to his minor children, J and

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the court.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to

A, who had previously been adjudicated neglected and committed to the care of the petitioner, the Commissioner of Children and Families. The trial court determined, pursuant to statute (§ 17a-112 (j)), that the petitioner established by clear and convincing evidence that statutory grounds for termination of parental rights existed. The father claimed that the trial court erred in the dispositional phase of the proceedings by improperly determining that termination of his parental rights was in the best interests of the minor children because he had an existing relationship with the minor children and because he was bonded to them. *Held* that the trial court's determination that termination of the father's parental rights was in the best interests of the minor children was not clearly erroneous: the unchallenged factual findings regarding the father's parental deficiencies, the likelihood that those deficiencies would continue in the future, and the need for the children to have stability in their lives supported the trial court's determination, and, although the father directed this court's attention to other findings that were favorable to his position, specifically, that he had regular contact with A for a period of six months, and that he has affection for his children, did not provide this court with a basis to reverse the trial court's determination; moreover, there was an abundance of evidence presented to support the trial court's determination, including, inter alia, the fact that the father had no ongoing parent-child relationship with the minor children, his refusal to support their therapeutic needs that addressed their exposure to trauma, his refusal to cooperate with therapeutic interventions for himself, and his refusal to participate in substance abuse treatment and intimate partner violence programs.

Argued May 13—officially released July 8, 2024**

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor children, brought to the Superior Court in the judicial district of New London, Juvenile Matters at Waterford, and tried to the court, *Hon. John C. Driscoll*, judge trial referee; judgments terminating the respondents' parental rights, from which the respondent father appealed to this court. *Affirmed.*

identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

** July 8, 2024, the date that this opinion was released as a slip opinion, is the operative date for all substantive and procedural purposes.

David B. Rozwaski, assigned counsel, for the appellant (respondent father).

Brian E. Tetreault, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Nisa Khan*, assistant attorney general, for the appellee (petitioner).

Opinion

WESTBROOK, J. The respondent father, Amaris B., appeals from the judgments of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families (commissioner), terminating his parental rights with respect to his minor children, J and A.[1] On appeal, the respondent claims that the court improperly concluded that it was in the best interests of the children to terminate his parental rights because, contrary to the determination of the court, he had an existing relationship and bond with his children.[2] We affirm the judgments of the trial court.

[1] The parental rights of the respondent mother, Crystal G., were terminated by consent. The termination of the respondent mother's parental rights is not at issue on appeal. Accordingly, all references to the respondent are to the father only.

We also note that the attorney for the minor children has filed a statement, pursuant to Practice Book § 79a-6 (c), adopting the brief of the petitioner.

[2] To the extent that the respondent's brief can also be read as raising a claim that the trial court was constitutionally required to consider whether a less restrictive alternative to the termination of parental rights existed—specifically, a transfer of guardianship—we decline to review this claim because it has been inadequately briefed. "We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 803, 256 A.3d 655 (2021). The respondent fails to provide any legal analysis in support of this claim and, instead, merely asserts that "the trial court erred in finding that it was in the best interests of the children to grant the petition for termination of parental rights, even though the minor children are placed with relatives and a least restrictive alternative to termination and adoption, such as transfer of guardianship or some other less restrictive disposition should have been made by the trial court." Because this conclusory statement is not accompanied by any analysis or citation to legal authority, we conclude that this claim is inadequately briefed and decline to review it.

The following relevant facts, which the court found by clear and convincing evidence, and procedural history are relevant to the resolution of this appeal. J was born in March, 2017, and A was born in April, 2018. The Department of Children and Families (department) first became involved with J in August, 2017, when the petitioner filed a neglect petition and sought an order of temporary custody on J's behalf. The court issued the order for temporary custody and, subsequently, vacated the order of temporary custody and ordered six months of protective supervision, which expired in March, 2018.

In December, 2019, the department received a report alleging that the respondent had assaulted the children's mother in the presence of J. The respondent was arrested[3] and a full no contact protective order was issued against the respondent with J as a protected

In addition, the respondent's least restrictive alternative claim is unpreserved and fails the first prong of *Golding*. See *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989) ("[A] defendant can prevail on a claim of constitutional error not preserved at trial only if all of the following conditions are met: (1) the record is adequate to review the alleged claim of error . . . . In the absence of any one of these conditions, the defendant's claim will fail." (Emphasis omitted; footnote omitted.)), as modified by *In re Yasiel R.*, 317 Conn. 773, 120 A.3d 1188 (2015). Because the respondent failed to bring this claim before the trial court, the court made no express factual findings as to whether a less restrictive alternative, such as transfer of guardianship, existed. At oral argument before this court, counsel for the respondent conceded that the respondent did not raise the issue with the trial court and that the unpreserved claim is not reviewable on appeal. The record is therefore inadequate to review the claim. See *In re Azareon Y.*, 309 Conn. 626, 637, 72 A.3d 1074 (2013) ("the record must reflect whether there is a valid alternative permanency plan to termination and adoption"); see also *In re Skylar B.*, 204 Conn. App. 729, 745, 254 A.3d 928 (2021); *In re Riley B.*, 203 Conn. App. 627, 639, 248 A.3d 756, cert. denied, 336 Conn. 943, 250 A.3d 40 (2021); *In re Madison C.*, 201 Conn. App. 184, 194, 241 A.3d 756, cert. denied, 335 Conn. 985, 242 A.3d 480 (2020); *In re Julianna B.*, 141 Conn. App. 163, 171, 61 A.3d 606, cert. denied, 310 Conn. 908, 76 A.3d 625 (2013). In short, we decline to review the respondent's less restrictive alternative claim.

[3] The respondent was arrested for disorderly conduct, assault in the second and third degrees, carrying a dangerous weapon, and risk of injury to a child.

party. J has not seen the respondent since the incident, and both children thereafter remained in the mother's care. After the department was informed of the incident, the department investigated and substantiated reports that the respondent physically neglected J and A.

In October, 2021, the department received a report that the children were dirty, disheveled, and improperly supervised.[4] Following an investigation into the report, the petitioner filed neglect petitions on behalf of the children and sought orders of temporary custody. On October 8, 2021, the court, *Hoffman*, *J.*, granted an ex parte order for temporary custody of the children, and the department placed them in the care of their maternal great aunt and uncle. On October 15, 2021, the respondent appeared in court, and the court, *Hon. John C. Driscoll*, judge trial referee, sustained the order of temporary custody. On November 16, 2021, the respondent submitted a plea of nolo contendere and the court, *Hoffman*, *J.*, adjudicated the children neglected and committed them to the care and custody of the petitioner. On September 6, 2022, the court approved the petitioner's permanency plan of termination of parental rights and adoption.

In October, 2021, and again in November, 2021, the court ordered the respondent to follow specific steps to facilitate reunification with J and A: keep all appointments with the department; participate in counseling and make progress toward treatment goals; submit to a substance use evaluation and follow recommendations

[4] In its memorandum of decision granting the petitions to terminate parental rights, the court found the following: "On October 1, 2021, the Groton Town Police Department reported to the petitioner that a woman was sitting in front of a local store for three or four hours while with young children. This woman identified herself as a friend of the mother and gave no clear indication of the mother's whereabouts or contact information. . . . Family members were reached and provided short-term care for the children. The mother surfaced, reported that she was homeless, and had no reasonable alternative to offer."

about treatment; abstain from the use of illegal drugs; cooperate with court-ordered evaluations or testing; maintain adequate housing and income; comply with the protective order; complete a domestic violence treatment program; take care of the children's emotional needs; cooperate with the children's therapy; and visit the children as often as permitted.

The court found that the respondent failed to comply with most of the ordered reunification steps. The respondent stated that he had no intention to seek employment upon release from incarceration. He refused to cooperate with an assessment by Nancy Randall, the court-appointed evaluator and psychologist. He also rejected Dr. Randall's recommendations to participate in substance use treatment at an outpatient facility and an intimate partner violence program. The respondent did not make any attempt to modify the protective order that prevented him from contacting J. The respondent did have a period of successful visitations with A from December, 2021, through July, 2022. In July, 2022, however, the respondent was sentenced to ten years of incarceration suspended after two years with a three year period of probation. Although the department offered the respondent visitation with A during his incarceration, he declined all visitation until he is released.

On March 10, 2023, the petitioner filed petitions to terminate the respondent's parental rights to J and A. The trial took place on July 24, 2023. On November 17, 2023, the court issued a memorandum of decision, in which it granted the petitions to terminate the respondent's parental rights. The court made extensive findings of fact and concluded that the petitioner had met her burden of establishing by clear and convincing evidence that statutory grounds for termination existed and that termination was in the best interests of the minor children.

As to the adjudicatory phase, in accordance with General Statutes § 17a-112,[5] the petitioner alleged the following statutory grounds for termination of parental rights: (1) the children were adjudicated neglected in a prior proceeding, (2) the respondent failed to achieve a sufficient degree of personal rehabilitation, and (3) with respect to J, there was no ongoing parent-child relationship. The court determined that the petitioner

[5] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court . . . may grant a petition [to terminate parental rights] if it finds by clear and convincing evidence that (1) the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent . . . unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts . . . (2) termination is in the best interest of the child, and (3) (A) the child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child; (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding, or (ii) is found to be neglected, abused or uncared for and has been in the custody of the commissioner for at least fifteen months and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent . . . and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child; (C) the child has been denied, by reason of an act or acts of parental commission or omission including, but not limited to, sexual molestation or exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being, except that nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights; (D) there is no ongoing parent-child relationship, which means the relationship that ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of such parent-child relationship would be detrimental to the best interest of the child; (E) the parent of a child under the age of seven years who is neglected, abused or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families. . . ."

established by clear and convincing evidence that statutory grounds for termination of parental rights existed. The court found that the respondent failed to achieve a sufficient degree of personal rehabilitation that would encourage the belief that, within a reasonable time, considering the ages and needs of the children, the respondent could assume a responsible position in the life of either child. The court additionally found that, although the department made reasonable efforts to locate the respondent and to reunify the children with the respondent, the respondent was unable and unwilling to benefit from reunification efforts. With respect to J, the court found that the respondent made no effort to modify the criminal protective order, and, with respect to A, he declined visitation while he was incarcerated in 2022. The court also found that the respondent was unable and unwilling to meet the children's therapeutic needs. In the dispositional phase, the court determined that termination of the respondent's parental rights was in the best interests of the children. In making this determination, the court considered the importance of long-term stability and the need for expedient custodial determinations. The court found that the respondent had not been, and would not be, a safe, responsible, and nurturing parent for the children. This appealed followed. Additional facts will be set forth as necessary.

Before discussing the respondent's claim on appeal, we briefly set forth the standard of review and relevant legal principles that govern our review. "Proceedings to terminate parental rights are governed by . . . § 17a-112. . . . Under § 17a-112, a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for termination of parental rights set forth in § 17a-112 [(j) (3)]

exists by clear and convincing evidence. . . . If the trial court determines that a statutory ground for termination exists, then it proceeds to the dispositional phase. During the dispositional phase, the trial court must determine whether termination is in the best interests of the child. . . . The best interest determination also must be supported by clear and convincing evidence." (Internal quotation marks omitted.) *In re Niya B.*, 223 Conn. App. 471, 476 n.5, 308 A.3d 604, cert. denied, 348 Conn. 958, 310 A.3d 960 (2024).

"In the dispositional phase of a termination of parental rights hearing, the emphasis appropriately shifts from the conduct of the parent to the best interest of the child. . . . It is well settled that we will overturn the trial court's decision that the termination of parental rights is in the best interest of the [child] only if the court's findings are clearly erroneous. . . . The best interests of the child include the child's interests in sustained growth, development, well-being, and continuity and stability of [his or her] environment. . . . In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether it is established by clear and convincing evidence that the continuation of the respondent's parental rights is not in the best interest of the child. In arriving at this decision, the court is mandated to consider and make written findings regarding seven factors delineated in [§ 17a-112 (k)].[6] . . . The seven factors serve simply

[6] General Statutes § 17a-112 (k) provides: "Except in the case where termination of parental rights is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent; (2) whether the Department of Children and Families has made reasonable efforts to reunite the family pursuant to the federal Adoption and Safe Families Act of 1997, as amended from time to time; (3) the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties have fulfilled their obligations under such order; (4) the feelings and emotional ties of

as guidelines for the court and are not statutory prerequisites that need to be proven before termination can be ordered. . . . There is no requirement that each factor be proven by clear and convincing evidence." (Footnote added; internal quotation marks omitted.) *In re Alison M.*, 127 Conn. App. 197, 211, 15 A.3d 194 (2011).

"[A]n appellate tribunal will not disturb a trial court's finding that termination of parental rights is in a child's best interest unless that finding is clearly erroneous. . . . On appeal, our function is to determine whether the trial court's conclusion was factually supported and legally correct. . . . In doing so, however, [g]reat weight is given to the judgment of the trial court because of [the court's] opportunity to observe the parties and the evidence. . . . We do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached. . . . [Rather] every reasonable presumption is made in favor of the trial court's ruling." (Citation omitted; internal quotation marks omitted.) *In re Davonta V.*, 285 Conn. 483, 488, 940 A.2d 733 (2008); see also *In re Brayden E.-H.*, 309 Conn. 642, 657, 72 A.3d 1083 (2013). "[T]he balancing of interests in a case involving termination of parental rights is a delicate task and, when supporting evidence is not lacking, the trial court's ultimate

the child with respect to the child's parents, any guardian of such child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (5) the age of the child; (6) the efforts the parent has made to adjust such parent's circumstances, conduct, or conditions to make it in the best interest of the child to return such child home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions, and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and (7) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the

determination as to a child's best interest is entitled to the utmost deference. . . . Although a judge [charged with determining whether termination of parental rights is in a child's best interest] is guided by legal principles, the ultimate decision [whether termination is justified] is intensely human. It is the judge in the courtroom who looks the witnesses in the eye, interprets their body language, listens to the inflections in their voices and otherwise assesses the subtleties that are not conveyed in the cold transcript." (Internal quotation marks omitted.) *In re Nevaeh W.*, 317 Conn. 723, 740, 120 A.3d 1177 (2015).

On appeal, the respondent does not contest the court's findings in the adjudicatory phase of the proceedings, namely, that he failed to achieve rehabilitation. Instead, the respondent claims that the court erred in the dispositional phase because it improperly determined that termination of his parental rights was in the best interests of the children. Specifically, the respondent argues that termination was not in the best interests of J and A because he had an existing relationship and bond with them. We disagree.

In reaching the determination that the termination of the respondent's parental rights was in the children's best interests, the court made the required findings as to each of the statutory factors provided by § 17a-112 (k). The court determined that (1) the petitioner had made timely services available to the respondent, including a psychological evaluation, substance use treatment, domestic violence counseling, and mental health treatment, (2) the petitioner made reasonable efforts to reunify the respondent and the children, (3) the respondent's compliance with reunifications steps was minimal, (4) neither child has a bond with the

unreasonable act of any other person or by the economic circumstances of the parent."

respondent, but both children have a bond with their foster parents, (5) J was six years old and A was five years old, (6) the respondent made no sustained effort to improve his circumstances and has had no contact with J since 2019, or with A since 2022, and (7) there was no unreasonable conduct by any party that prevented the respondent from maintaining a relationship with the children.

After discussing the § 17a-112 (k) factors, the court found that both children have been exposed to serious trauma and need a safe and secure placement in which they can trust their caregiver. They both required therapeutic intervention and will likely need therapy in the future as well. The respondent, however, has no insight into or interest in his children's needs. Nor does he have interest in controlling his excessive substance use or addressing his propensity for violence. The court additionally found that the children would be at risk if placed with the respondent. In light of "the children's need for a secure, permanent placement, and the totality of the circumstances," the court determined, by clear and convincing evidence, that terminating the respondent's parental rights was in the best interests of J and A.

The respondent does not challenge any particular finding made by the court in support of its best interests determination. Instead, the respondent claims that termination of his parental rights was not in the best interests of J and A because he had an existing relationship with the children.

The respondent first argues that he did not "cut off" all contact with his children. The court found that the respondent made no effort to modify the protective order that prevented him from contacting J, and that, despite the option to continue visitation while he was incarcerated, he declined all visitation with A after July, 2022. The respondent does not challenge these findings.

Instead, he urges this court to consider the *reason* he failed to have visitation with both children, arguing that he declined to have visits with either child while incarcerated because he did not want his children brought into a prison setting. There is no evidence in the record, however, that supports the respondent's reason for denying visitation. The respondent did not testify about his reasoning at trial and his counsel's closing argument does not constitute evidence of the respondent's motive.[7]

Furthermore, the respondent elected not to have contact with either child even though the specific steps[8] required the respondent to visit the children as often as permitted. Regardless of the respondent's reason for denying visitation, the court found that his failure to visit the children showed a lack of insight and concern for his children's emotional needs. Thus, the respondent has not persuaded this court that the trial court committed any error in reaching this conclusion.

[7] At trial, the respondent did not testify. Subsequently, during closing arguments, the respondent's counsel stated that "[the respondent] acted responsibly when he was incarcerated, and he waived exercising his right for visitation because he didn't want the children to be exposed to the setting that he was in." "Statements and arguments of counsel are not evidence." *RAL Management, Inc.* v. *Valley View Associates*, 102 Conn. App. 678, 684, 926 A.2d 704 (2007). Moreover, the court expressly informed the respondent that any statements made during closing arguments would not constitute evidence. Specifically, the court stated the following: "My understanding is you wish during the final argument to make a statement. I want to make sure you're clear that's not evidence; it's in the nature of the arguments that I want to hear from all the lawyers or any statement a foster parent may make. It's not evidence; it's just your view of the matter, and then the court can take into account your view as well as the view of all other parties." Because the respondent did not testify and counsel's statements do not constitute evidence, there is no evidence on the record for us to consider the respondent's reason for declining visitation during his incarceration.

[8] The specific steps issued for the respondent on October 8, 2021, stated in relevant part: "If the case is under an order of temporary custody or commitment, visit the child(ren) as often as permitted and keep the child(ren) in the [s]tate of Connecticut."

The respondent also argues that the court erred in terminating his parental rights because his affection for his children is "undisputed." Although he may have affection for his children, "it still may be in the [children's] best interest[s] to terminate parental rights." (Internal quotation marks omitted.) *In re Ryder M.*, 211 Conn. App. 793, 821, 274 A.3d 218, cert. denied, 343 Conn. 931, 276 A.3d 433 (2022). The court found that the respondent "may claim to love [his children], but this proclamation does not constitute competence. He has no insight into their needs or his own deficits." Additionally, the court found that "[t]he children are bonded fully with their foster parents, in whose home the children feel safe and secure." Thus, the respondent's affection for his children does not provide this court with a reason to disturb the trial court's best interests determination.

There was an abundance of evidence presented to support the court's determination that termination of the respondent's parental rights was in the best interests of the children. The respondent has no ongoing parent-child relationship with his children. He made no effort to modify the protective order so that he could have contact with J, and he declined all visitation with the children while he was incarcerated in 2022. The children have no bond with the respondent. Additionally, the children have therapeutic needs to address their exposure to trauma, and the respondent is unable or unwilling to meet those needs. He has refused to cooperate with therapeutic interventions for himself as well as the children. In addition to rejecting visitation and therapeutic services, the respondent refused to participate in substance abuse treatment and intimate partner violence programs. The children require a safe, dependable, nurturing home.

Affording the utmost deference to the court's decision, we conclude that the court's best interests determination was not clearly erroneous. The court's unchallenged factual findings regarding the respondent's parental deficiencies, the likelihood that those deficiencies would continue into the future, and the need for the children to have stability in their lives support the court's determination. Although the respondent directs our attention to other findings that are more favorable to his position, specifically, that he had regular contact with A between December, 2021, and July, 2022, and that he has affection for his children, these facts do not provide us a basis to reverse the court's determination. "We decline the respondent's invitation to place more emphasis on certain of the court's findings so that we might reach a conclusion on appeal that differs from that of the trial court." *In re Malachi E.*, 188 Conn. App. 426, 446, 204 A.3d 810 (2019) (affirming trial court's determination that termination of parental rights was in child's best interest). We conclude that the court's determination that termination of the respondent's parental rights was in the best interests of J and A was not clearly erroneous.

The judgments are affirmed.

In this opinion the other judges concurred.

HAWORTH COUNTRY CLUB, LLC, ET AL. *v.* UNITED BANK (AC 45666)

Suarez, Westbrook and Harper, Js.

Syllabus

The plaintiff, H Co., individually and derivatively on behalf of N Co., appealed to this court, following the granting of a motion to strike, from the judgment of the trial court rendered for the defendant, U Co., a banking institution, on all counts of H Co.'s complaint. H Co. alleged that U Co.

improperly opened a bank account in the name of V Co., specifically, that U Co. failed to exercise due diligence to determine the legal existence of V Co. in accordance with various state and federal banking statutes and regulations, which permitted the diversion of moneys away from H Co. and N Co. *Held*:

1. H Co. could not prevail on its claim that the trial court did not apply the proper legal standard in ruling on the motion to strike: H Co. failed to articulate how the court failed to utilize the proper legal standard; moreover, in its decision, the trial court set forth the proper legal standard to be applied in ruling on a motion to strike and, in the absence of some clear indication to the contrary, this court presumed the trial court applied the correct legal standard.
2. H Co. could not prevail on its claim that the trial court erred in concluding that H Co. was not entitled to bring a cause of action against U Co.: H Co.'s status as a noncustomer of U Co. was dispositive as to preclude any allegations of liability against U Co., as H Co. failed to allege any circumstance that would give rise to a legal duty of care owed by U Co.; moreover, the issues identified by H Co. regarding V Co.'s documentation, which was used by U Co. to open the V Co. account, did not demonstrate that a reasonable person would anticipate that a third-party noncustomer of U Co. would likely suffer harm from the opening of the V Co. account.
3. H Co. could not prevail on its claims that the trial court erred in concluding that its allegations that U Co. violated banking statutes and regulations regarding what a bank is required to do before opening an account for a customer were not allegations of conduct offensive to public policy under the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq.), and that the statute (§ 35-1) regarding the use of fictitious business names was inapplicable to H Co.'s claims to support a per se violation of CUTPA: H Co.'s complaint did not specify how the documentation obtained by U Co. insufficiently complied with any of the identified statutes or regulations, and, to the extent H Co. argued that U Co.'s failure to obtain a current certified copy of the articles of incorporation or other current certified corporate document violated a federal regulation (31 C.F.R. § 1020.220), such argument was legally flawed, as H Co.'s complaint did not demonstrate how U Co. was subject to the regulation; moreover, even if it was assumed that U Co.'s account opening procedures fell within the ambit of 31 C.F.R. § 1020.220, the circumstances alleged by H Co. did not establish a violation of the regulation, as, contrary to H Co.'s contention, the regulation does not mandate that U Co. must possess a current certified copy of the articles of incorporation or other current certified corporate document, rather, the regulation suggests the type of documents a bank may require under its opening procedures to form a reasonable belief as to the identity of its customers; furthermore, § 35-1 did not apply to U Co. in the present case, as U Co. did not conduct or transact business under an improper name, rather

it was V Co. whom H Co. alleged conducted business under a fictitious name.

4. H Co. could not prevail on its claim that the trial court erred in failing to address that U Co., as of the date of service of the lawsuit, was on notice that V Co.'s bank account had been opened under an improper and fictitious name and that the moneys in the account were owned by another party: H Co. did not allege facts demonstrating that U Co.'s operating procedures were subject to 31 C.F.R. § 1020.220, and, even if it was assumed that regulation applied to U Co., the regulation was not applicable to the circumstances of this case, as it only applies to a bank's opening procedures when verifying its customer's identity through nondocumentary methods, and, in the present case, U Co. relied on documents from V Co. to open the V Co. account; moreover, H Co.'s complaint did not establish how U Co.'s opening procedures prevented U Co. from forming a reasonable belief as to the identity of V Co. based upon the documents it received in connection with the opening of the V Co. account; furthermore, H Co. failed to cite any applicable legal authority that would impose a duty on U Co. to reinvestigate the identity of V Co. upon being served with a complaint alleging the moneys in the V Co. account belonged to a noncustomer of U Co.

Argued November 16, 2023—officially released July 16, 2024

Procedural History

Action to recover damages for, inter alia, breach of a fiduciary duty, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the matter was transferred to the judicial district of Hartford, Complex Litigation Docket; thereafter, the court, *Noble*, *J.*, granted the defendant's motion to strike, and the plaintiffs appealed to this court; subsequently, the court, *Noble*, *J.*, granted the defendant's motion for judgment and rendered judgment for the defendant, and the plaintiffs filed an amended appeal. *Affirmed.*

Michael S. Taylor, with whom were *Brendon Levesque*, and, on the brief, *Steven Berglass* and *Rosie Miller*, for the appellants (plaintiffs).

Thomas S. Lambert, with whom were *Meagan A. Cauda*, and, on the brief, *James T. Shearin*, for the appellee (defendant).

Opinion

SUAREZ, J. The plaintiff, Haworth Country Club, LLC, individually and derivatively on behalf of Newberry Village Holdings, LLC (NVH), appeals, following the granting of a motion to strike,[1] from the judgment of the trial court rendered in favor of the defendant, United Bank, on all counts of the plaintiff's third amended complaint. On appeal, the plaintiff claims that, in ruling on the motion to strike, the court (1) did not apply the proper legal standard, (2) erred in concluding that the plaintiff was not entitled to bring a cause of action against the defendant, and that the plaintiff's status as a noncustomer of the defendant is dispositive as to preclude any allegations of liability against the defendant, (3) erred in concluding that the plaintiff's allegations that the defendant violated banking statutes and regulations regarding what a bank is required to do before opening an account for a customer are not allegations of conduct offensive to public policy under the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq., and that General Statutes § 35-1 is inapplicable to the plaintiff's claims, and (4) improperly failed

[1] On July 26, 2022, the plaintiff appealed from the trial court's July 8, 2022 decision striking its third amended complaint. On October 20, 2022, this court ordered, sua sponte, that the parties file memoranda addressing why the appeal should not be dismissed for lack of a final judgment. See *Pellecchia* v. *Connecticut Light & Power Co.*, 139 Conn. App. 88, 90, 54 A.3d 658 (2012) ("[t]he granting of a motion to strike . . . ordinarily is not a final judgment because our rules of practice afford a party a right to amend deficient pleadings" (internal quotation marks omitted)), cert. denied, 307 Conn. 950, 60 A.3d 740 (2013). On October 24, 2022, the defendant moved for an order of judgment on each count of the plaintiff's third amended complaint. On November 29, 2022, the court granted the defendant's motion for judgment on the stricken third amended complaint in favor of the defendant. On December 15, 2022, the plaintiff filed this amended appeal. Because the original appeal was not taken from an appealable final judgment, it is dismissed. See Practice Book § 61-9 ("[i]f the original appeal is dismissed for lack of jurisdiction, any amended appeal shall remain pending if it was filed from a judgment or order from which an original appeal properly could have been filed").

to address that the defendant, as of the date of service of this action, was on notice that the subject bank account had been opened under an improper and fictitious name and that the money in the account was owned by another party.[2] We affirm the judgment of the trial court.

The following procedural history, as set forth in the court's July 8, 2022 memorandum of decision, is relevant to our resolution of this amended appeal. "The plaintiff alleges in its [third amended] complaint that the defendant, a banking institution, improperly opened a bank account in the name of Newberry Village, LLC (NV), which permitted the diversion of moneys away from the plaintiff and [NVH], a nonparty to the present action. The impropriety alleged by the plaintiff consists of the failure to exercise due diligence to determine the legal existence of NV in accordance with state and federal banking statutes and regulations. The plaintiff asserts this failure caused both [it] and NVH to suffer damages. In particular, [the plaintiff] alleges it loaned $6,000,000 to NVH to be used exclusively for construction of a housing development that was not repaid as a result of NVH's diversion of moneys to NV.

"The plaintiff incorporates the following facts into each count of its [third amended] complaint related to the opening of the account, which it alleges raised substantial questions related to the propriety of the opening. In December of 2018, NVH issued a check in the amount of $60,000 from a different bank, which

[2] The plaintiff also claims that the court erred in not considering our Supreme Court's decision in *Ulbrich* v. *Groth*, 310 Conn. 375, 78 A.3d 76 (2013), and in misinterpreting this court's decision in *Sheiman* v. *Lafayette Bank & Trust Co.*, 4 Conn. App. 39, 492 A.2d 219 (1985). As the court's interpretation of *Sheiman* and its decision not to consider *Ulbrich* are interrelated to the plaintiff's second and third claims, respectively, we address the court's interpretation and consideration of those cases, or lack thereof, in parts II and III of this opinion.

represented virtually NVH's entire balance, to an attorney. The attorney deposited the check into his law firm's account and then issued two separate checks totaling $60,000 with the defendant, presumably although not expressly stated, for purposes of opening NV's account with the defendant. Thereafter, in March of 2019, a deposit in the amount of $212,252.75 was made in the name of NV with the defendant. The plaintiff alleges this was suspicious activity that required [the defendant] to report and take action as mandated by unspecified laws, statutes, regulations and requirements. An 'inordinate' amount of withdrawals were undertaken by a member of NV and his associates and a retainer was paid to another attorney. The plaintiff alleges in its [third amended] complaint that had the defendant complied 'with the law,' it would not have opened an account under the name of NV. This is so because the plaintiff claims no Certificate of Legal Existence would have been issued because NV was not up-to-date on annual report filings and the defendant would not have been able to verify a valid tax identification number because NV had filed a final tax return for the tax year ending December 31, 2016.

"The acts and omissions of the defendant in the opening of the account are alleged to include the failure to identify and verify all owners and beneficial owners, including NVH; the defendant accepted only a 'Limited Liability Company Authorization' signed by one of NV's principals which should have indicated the date the authorizing meeting took place; a copy of the meeting minutes of the resolution and an attestation signature that was either nonexistent or blank; a Certificate of Legal Existence; and the acceptance of articles of incorporation of a company with the name of '*Newbury* Village, LLC' rather than articles of incorporation of NV, which is properly spelled '*Newberry* Village, LLC.' . . . Additionally, the plaintiff alleges that the present

action was commenced on April 12, 2019, which should have put the defendant on notice that the money in NV's account was the property of the plaintiff and not NV. The plaintiff asserts that this notice obligated the defendant to institute an interpleader pursuant to General Statutes § 52-484, place a freeze or hold on the account and further obligated it to research public records which would have revealed that a lawsuit has been pending since February of 2019, in the New Haven judicial district in which the plaintiff alleged that the managing member of NVH has been removed and replaced, moneys were in dispute, and that the usage of NVH funds to fund a bank account under the name of NV was questionable. . . .

"The [third amended] complaint is clear that the plaintiff was not a customer of [the defendant]. The plaintiff seeks to impose liability upon the defendant by a claim that it owed a common-law duty derived from its obligations pursuant to sixteen federal and state statutes and regulations, most of which relate to statutory banking requirements including the USA Patriot Act of 2001, 107 Pub. L. No. 56, 115 Stat. 272, § 42-110a et seq., related to the opening of accounts, but also including [CUTPA], and General Statutes § 42a-3-420, which imposes liability on banks for statutory conversion pursuant to the Uniform Commercial Code . . . . The statutes are characterized as having the purpose of prohibiting 'money laundering, diversion, hiding and concealment of moneys in banking.' In its eight count, fifty-five page [third amended] complaint, the plaintiff asserts claims of breaches of statutory violations by the [defendant], which, although not explicitly stated in the complaint, involve the failure to properly identify the legal existence of the depositor, NV, the failure to freeze or hold the moneys and to interplead the account moneys into court (first count); negligence (second count); breach of a fiduciary duty (third count);

a violation of CUTPA (fourth count); a breach of the implied covenant of good faith and fair dealing (fifth count); violations of General Statutes § 52-562[3] . . . (sixth count); a declaratory judgment request (seventh count), and spoliation of evidence (eighth count).[4]

"Significantly, the plaintiff's second amended complaint in the present action, which alleged similar theories of liability on the grounds of deficiencies by the defendant in opening the account, was stricken in its entirely by the court, *Schuman*, *J.*, [on] September 3, 2021. The court ruled in that decision that because there was no contract between the defendant and the plaintiff, the former had no legal duty to the plaintiff; absent a borrower-lender or bank-customer relationship, no fiduciary duties were owed to the plaintiff . . . and the derivative action failed because the plaintiff failed to plead the existence of a demand as required by General Statutes § 34-271c.[5] The present third amended complaint was timely filed by the plaintiff."[6] (Emphasis

[3] General Statutes § 52-562 provides: "When any person is guilty of fraud in contracting a debt, or conceals, removes or conveys away any part of his property, with intent to prevent it from being taken, by legal process, or refuses to pay any debt admitted by him or established by a valid judgment, while having property, not exempt from execution, sufficient to discharge the debt, concealed or withheld by him so that the property cannot be taken by legal process, or refuses to disclose his rights of action, with intent to prevent the rights of action from being taken by foreign attachment or garnishment, any creditor aggrieved thereby may institute an action against him, setting forth his debt and the fraudulent act or acts particularly in the complaint."

[4] During oral argument before this court, the plaintiff abandoned its claims on appeal with respect to counts one, three, five, and eight of its third amended complaint.

[5] "[Section] 34-271c mandates a demand for company action to enforce a company right be made by a member of [a limited liability company] on other members prior to the commencement of a derivative claim."

[6] The court noted that the plaintiff's third amended complaint was "replete with repetitive allegations involving immoderate use of synonyms and over incorporation of paragraphs present in the second amended complaint that results in confusing, and at times unintelligible, allegations."

in original; emphasis omitted; footnotes added; footnote in original.)

On November 8, 2021, the defendant filed a motion to strike the plaintiff's third amended complaint on the basis that the defendant does not owe a legal duty to the plaintiff, a noncustomer and legal stranger to the defendant. In its memorandum of law in support of its motion to strike, the defendant argued, with respect to the negligence count, that there is no special relationship between the plaintiff and the defendant that would give rise to any duty owed by the defendant to the plaintiff. The defendant also argued that it was not foreseeable that its purported issues with opening the subject bank account would harm third-party noncustomers of the defendant, like the plaintiff. The defendant further argued that the statutes alleged in the plaintiff's third amended complaint do not provide for a private cause of action against the defendant.

With respect to the plaintiff's fourth count, alleging a violation of CUTPA, the defendant argued that its alleged actions do not rise to the level of immoral, unethical, oppressive, or unscrupulous conduct, or any conduct offensive to public policy that would support a CUTPA cause of action. Moreover, the defendant asserted that the plaintiff's CUPTA claim is the same as the CUTPA claim raised in the plaintiff's second amended complaint, which Judge Schuman struck previously on the basis that, "[c]ontrary to the plaintiff's suggestion, the [defendant] has no duty to research pending lawsuits against a prospective customer and determine, without any court proceedings, that the customer owes money to a third party such as the plaintiff." Regarding the plaintiff's sixth count, alleging a violation of § 52-562, the defendant argued that "[the plaintiff] is not bringing a claim against the [defendant] pursuant to those statutes. . . . The [defendant] is not alleged to have fraudulently conveyed anything, nor did it defraud

[the plaintiff]. Those actions were undertaken by others." As to the plaintiff's seventh count, seeking a declaratory judgment, the defendant argued that, "[b]ecause the [defendant] does not owe any duty to [the plaintiff], and because [the plaintiff's] causes of action must fail as a result, there is still no valid underlying cause of action in which [the court] can make a declaration as requested by [the plaintiff] . . . ."

On January 7, 2022, the plaintiff filed a memorandum of law in opposition to the defendant's motion to strike. In its memorandum of law, the plaintiff argued that NV was not in legal existence at the time the bank account was opened in December, 2018, as NV had been dissolved in December, 2016, with the filing of its final tax return. The plaintiff also argued that, "as of April, 2019, when [the defendant] was served with this lawsuit, wherein the lawsuit stated the moneys were the property of [NVH] (and not [NV]), the defendant was on direct notice and thus required by law to take actions immediately thereon which the defendant failed to do." Furthermore, the plaintiff asserted that the defendant's noncompliance with the statutes and regulations cited in its third amended complaint, established a duty under *Sheiman* v. *Lafayette Bank & Trust Co.*, 4 Conn. App. 39, 45, 492 A.2d 219 (1985).[7] Specifically, the plaintiff contended that the defendant opened an illegitimate account under an improper name which constitutes a circumstance where a reasonable person would anticipate that harm would be suffered by the rightful owners of the money deposited.

With respect to the plaintiff's CUTPA count, the plaintiff argued that the defendant's noncompliance with the

[7] In *Sheiman*, this court held that "[t]he requisite duty to use care may stem from a contract, from a statute, or from circumstances under which a reasonable person would anticipate that harm of the general nature of that suffered was likely to result." *Sheiman* v. *Lafayette Bank & Trust Co.*, supra, 4 Conn. App. 45.

statutes and regulations alleged in its third amended complaint violates public policy. The plaintiff also argued that the defendant's involvement with the use of a fictitious name, due to the plaintiff's contention the NV was not in legal existence at the time the bank account was opened, violated § 35-1 and constituted a per se violation of CUTPA. Regarding its sixth count alleging a violation of § 52-562, the plaintiff asserted that "the defendant was required to identify and verify [NV] prior to opening an account, and to identify and verify the depositor as well. In failing to do so, the defendant's conduct facilitated improper transactions." (Emphasis omitted.) As to its request for a declaratory judgment in count seven, the plaintiff argued that it alleged both legal and equitable interests that are in danger of loss or uncertainty, and that the defendant's conduct in failing to comply with the statutory requirements to open a bank account created an actual and substantial question in dispute.

On April 13, 2022, the court, *Noble*, *J.*, held oral argument on the defendant's motion to strike. At the conclusion of oral argument, the court requested supplemental briefing on the following three issues: (1) the statutory requirements for opening a bank account, (2) whether the statutes or regulations cited by the plaintiff in its operative third amended complaint regarding the improper opening or operation of a bank account provide for a private cause of action, and (3) whether NV's failure to file certain corporate documents for tax returns meant that it was no longer in legal existence at the time of the account opening. Thereafter, the parties submitted supplemental memoranda addressing the issues identified by the court. In its supplemental memorandum of law, the plaintiff conceded that its third amended complaint is "not predicated as a private cause of action under federal banking statutes . . . ." On

June 29, 2022,[8] the court held oral argument on the three issues raised by the court and addressed in the parties' supplemental memoranda.

On July 8, 2022, the court issued a memorandum of decision granting the defendant's motion to strike in its entirety. As to those counts remaining at issue in the present appeal, the court determined that the defendant's second count, sounding in negligence, should be stricken because "the statutes [cited within the third amended complaint] do not create a duty upon which a claim of negligence may be asserted." The court explained that the plaintiff merely assumes that the harm it suffered was foreseeable under the circumstances of the present case without explaining why the harm was foreseeable. The court further explained that "foreseeability alone, without duty, is insufficient to support a cause of action for negligence." To the extent the plaintiff argued that the statutes cited in its third amended complaint "provide the basis for a determination that public policy suggests the imposition of a duty the violation of which renders the defendant answerable to a claim of negligence," the court declined to consider such argument due to the plaintiff's inadequate briefing of the issue. As to the plaintiff's fourth count, alleging a violation of CUTPA, the court stated that, "[a]t best, the plaintiff describes a mere technical violation of any statute insufficient, without more, to demonstrate that the conduct offends public policy, implicate[s] the concept of unfairness or cause[s] the type of substantial injury that CUTPA was designed to address. . . . There is nothing in the plaintiff's complaint that suggests an 'immoral, unethical, oppressive, or unscrupulous' character of the defendant's opening procedure . . . ." (Citation omitted.) Furthermore, the

[8] We note that there appears to be a scrivener's error in the court's memorandum of decision regarding the date of this oral argument, as the transcript for this proceeding is dated June 27, 2022.

court reasoned that § 35-1 does not apply to the defendant because the defendant "did not conduct business under an illegitimate name. Rather, it was NV that the plaintiff alleges was the malefactor." Regarding the plaintiff's sixth count, asserting a claim for fraud in contracting a debt in violation of § 52-562, the court struck the count on the basis that the claim failed to state a legally sufficient claim. The court reasoned that "[t]he defendant is not alleged to have been a debtor of the plaintiff. Indeed, the only such claim is made against NVH and not the defendant." As to the plaintiff's seventh count, seeking a declaratory judgment, the court stated that "[t]he granting of the present motion to strike in its entirety eliminates any substantial question in dispute or a substantial uncertainty of legal relations between the parties." This amended appeal followed. Additional procedural history will be set forth as necessary.

Before addressing the merits of the plaintiff's claims, we begin by setting forth the applicable standard of review. "The standard of review in an appeal challenging a trial court's granting of a motion to strike is well established. A motion to strike challenges the legal sufficiency of a pleading, and, consequently, requires no factual findings by the trial court. As a result, our review of the court's ruling is plenary. . . . We take the facts to be those alleged in the complaint that has been stricken and we construe 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." (Internal quotation marks omitted.) *Sieranski* v. *TJC Esq, A Professional Services Corp.*, 203 Conn. App. 75, 81, 247 A.3d 201 (2021). "Moreover, we note 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. . . . [W]e assume the truth of both the specific factual allegations and any facts fairly provable thereunder. . . . 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. . . . A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Citations omitted; internal quotation marks omitted.) *Desmond* v. *Yale-New Haven Hospital, Inc.*, 212 Conn. App. 274, 284, 275 A.3d 735, cert. denied, 343 Conn. 931, 276 A.3d 433 (2022).

"Furthermore, we long have eschewed the notion that pleadings should be read in a hypertechnical manner. Rather, [t]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically. . . . [T]he complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory [on] which it proceeded, and do substantial justice between the parties. . . . Our reading of pleadings in a manner that advances substantial justice means that a pleading must be construed reasonably, to contain all that it fairly means, but carries with it the related proposition that it must not be contorted in such a way so as to strain the bounds of rational comprehension." (Emphasis omitted; internal quotation marks omitted.) *Carpenter* v. *Daar*, 346 Conn. 80, 128, 287 A.3d 1027 (2023).

I

The plaintiff first claims that the court did not apply the proper legal standard in ruling on the defendant's motion to strike. Specifically, the plaintiff argues that "[a] trial court reviews a motion to strike to determine

whether the allegations are sufficiently pled, not whether the plaintiff will prevail at trial. . . . An amended pleading is sufficient if the causes of action are stated, 'in a manner responsive to the defects identified by the trial court in its grant of the motion to strike the earlier pleading.' " (Citation omitted.) In support thereof, the plaintiff recites the proper legal standard to be applied in ruling on a motion to strike, however, it undertakes no further analysis of this claim. We are not persuaded.

The standard of review regarding a ruling on a motion to strike is set forth previously in this opinion. In considering "[w]hether the court applied the proper legal standard in ruling on the motion to strike . . . we exercise plenary review." *Plainville* v. *Almost Home Animal Rescue & Shelter, Inc.*, 182 Conn. App. 55, 63, 187 A.3d 1174 (2018). In its decision, the court set forth the proper legal standard to be applied in ruling on a motion to strike. In the absence of some clear indication to the contrary, our Supreme Court and this court have held that we presume the court applied the correct legal standard. *In re Annessa J.*, 343 Conn. 642, 676, 284 A.3d 562 (2022); see also *Plainville* v. *Almost Home Animal Rescue & Shelter, Inc.*, supra, 64. In the present case, the plaintiff has failed to articulate how the court failed to utilize the proper legal standard in ruling on the defendant's motion to strike. Accordingly, in the absence of any clear indication to the contrary, we conclude that the court applied the proper legal standard in granting the defendant's motion to strike.

II

The plaintiff claims that the court erred in concluding that the plaintiff was not entitled to bring a cause of action against the defendant, and that the plaintiff's status as a noncustomer is dispositive as to preclude

any allegations of liability against the defendant. Specifically, the plaintiff argues that "[a]llegations of a bank's noncompliance with statutes and requirements prior to opening a bank account satisfy the . . . rule [in *Sheiman* v. *Lafayette Bank & Trust Co.*, supra, 4 Conn. App. 45] in that violation of these statutes and requirements would necessarily cause any reasonable person to anticipate that harm of the general nature of that suffered would be likely to result." We are not persuaded.

The following additional procedural history is relevant to our resolution of the plaintiff's claim. In its July 8, 2022 memorandum of decision, the court stated that "[t]he defendant's motion to strike is premised on the observation that because the plaintiff is not a customer of the defendant it is in effect a legal stranger to the [defendant] and accordingly the [defendant] is unencumbered by any legal duty to the plaintiff. This tenet was central to the court's granting of the motion to strike the second amended complaint. While it is clear that a bank owes a duty of care to its customers arising out of the bank's contract with its customer . . . a duty to noncustomers, such as the plaintiff, must arise out of a separate contract, statute or circumstances which would give rise to a duty owed by [the defendant] which would support an action in negligence. *Sheiman* v. *Lafayette Bank & Trust Co.*, [supra, 4 Conn. App. 45] (defendant bank owed no duty to plaintiffs—heirs of decedent's estate—for failure to exercise due care in cashing check presented by a person not the payee/decedent). This principle is simply a restatement of the more general rule that, absent a legal duty, a plaintiff cannot recover in negligence from the defendant. . . .

"In its third amended complaint, the plaintiff, mindful no doubt, of its status as a noncustomer, added to its complaint sixteen statutes and regulations which it claims obliged the defendant to undertake certain

actions in the opening of the NV account. . . . However, the plaintiff concedes in its supplemental brief . . . and . . . repeated at oral argument, that it does not claim that any of the federal statutes it cited provide for a private cause of action. There exists in our law the well settled fundamental premise that there exists a presumption in Connecticut that private enforcement does not exist unless expressly provided in a statute. In order to overcome that presumption, the [plaintiff bears] the burden of demonstrating that such an action is created implicitly in the statute. . . . Where, as in the present case, the plaintiff does not even claim that a private cause of action exists as to the federal statutes and regulations, the violation of these federal statutes and regulations provides a legally insufficient claim for relief.

"The remaining state statutes do not afford the plaintiff relief. The determination of whether a private cause of action is implicit in a statute not expressly providing one is dependent on a three part test: (1) whether the plaintiff is one of the class for whose benefit the statute was enacted; (2) whether there is any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; and (3) whether it is consistent with the underlying purposes for the legislative scheme to imply such a remedy for the plaintiff. . . . [T]he foregoing test is not vital to the determination of the motion to strike this count, not the least because the plaintiff has not undertaken any such analysis. Courts are not required to review claims that are inadequately briefed. . . . No analysis of any sort was undertaken by the plaintiff related to the following statutes which were pleaded as having been violated by the defendant: General Statutes § 36a-606a,[9] which requires

[9] "General Statutes § 36a-606a (a) provides in [relevant] part that '[e]ach licensee [person engaged in money transmission] shall comply with the applicable provisions of the Currency and Foreign Transactions Reporting Act, 31 USC Section 5311 et seq., as from time to time amended, and any regulations adopted under such provisions, as from time to time amended

financial [institutions] to establish anti money laundering programs; General Statutes § 36a-287, which requires financial institutions to comply with the applicable provisions of the Currency and Foreign Transactions Reporting Act, 31 U.S.C. § 5311 et seq.; General Statutes § 53-275 et seq., which prohibits money laundering activities; and § 35-1, which prohibits the use of a fictitious name in conducting or transacting business. While the plaintiff includes § 52-484[10]—applicable to interpleaders—in the list of statutes, the violation of which caused it injury, this statute does not create a cause of action but merely permissively permits the filing of an interpleader. . . .

"The plaintiff did argue that a private cause of action was explicit in three statutes. It is true that [CUTPA] does provide a private cause of action, but the plaintiff has not alleged the statutory elements requisite for such [a] claim,[11] either in the first count or in the stand-alone claim asserted in the fourth count . . . . [Section] 52-562, the Uniform Fraudulent Transfer Act, creates liability in fraud for contracting debt. However, the plaintiff has not alleged that the defendant fraudulently conveyed anything, nor that it defrauded it. Finally, § 42a-

and, upon request, shall provide proof of such compliance to the commissioner. In addition to any other remedies provided by law, a violation of such federal law or regulation shall be deemed a violation of this section and a basis *upon which the commissioner* may take enforcement action pursuant to section 36a-608.' (Emphasis added.)"

[10] "General Statutes § 52-484 provides in relevant part that '[w]henever any person has, or is alleged to have, any money or other property in his possession which is claimed by two or more persons, either he, or any of the persons claiming the same, may bring a complaint in equity, in the nature of a bill of interpleader . . . .' "

[11] "CUTPA provides that [n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce and provides a private cause of action to [a]ny person who suffers any ascertainable loss of money . . . as a result of the use or employment of a [prohibited] method, act or practice . . . . (Internal quotation marks omitted.) *Stevenson Lumber Co.-Suffield, Inc.* v. *Chase Associates, Inc.*, 284 Conn. 205, 213–14, 932 A.2d 401 (2007)."

3-420[12] does create a private cause of action for statutory conversion but the plaintiff asserts impropriety only in the opening of the account, not in the conversion of an instrument within the ambit of the statute. For the foregoing reasons, the motion to strike the first count is stricken in its entirety." (Citations omitted; footnotes in original; internal quotation marks omitted.)

As to the plaintiff's second count, sounding in negligence, the court determined that it should be stricken because "the statutes [alleged in the operative complaint] do not create a duty upon which a claim of negligence may be asserted. . . . The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury. . . . Duty is a legal conclusion about relationships between individuals, made after the fact, and [is] imperative to a negligence cause of action. . . . Thus, [t]here can be no actionable negligence . . . unless there exists a cognizable duty of care. . . . A duty of care may arise from contract, from a statute, or from circumstances under which a reasonable person, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result from his act or failure to act. . . . [T]he test for the existence of a legal duty [of care] entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered

[12] "General Statutes § 42a-3-420 (a) provides that '[t]he law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or endorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a copayee.' "

was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in this case. . . .

"[A] simple conclusion that the harm to the plaintiff was foreseeable . . . cannot by itself mandate a determination that a legal duty exists. Many harms are quite literally foreseeable, yet for pragmatic reasons, no recovery is allowed. . . . A further inquiry must be made, for we recognize that duty is not sacrosanct in itself . . . but is only an expression of the sum total of those considerations of policy [that] lead the law to say that the plaintiff is entitled to protection. . . . The final step in the duty inquiry, then, is to make a determination of the fundamental policy of the law, as to whether the defendant's responsibility should extend to such results. . . .

"In considering whether public policy suggests the imposition of a duty, we . . . consider the following four factors: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions. . . .

"The plaintiff asserts that the facts alleged in its complaint—in its view demonstrating an illegitimate account opened under a false name in circumstances in which the [defendant's] conduct is not compliant with the enumerated statutes and regulations—create a condition wherein any reasonable person would anticipate that harm would be suffered by the rightful owners of the moneys. . . . The plaintiff, however, merely assumes foreseeability under these circumstances and advances no argument as to why this must be so. . . .

The plaintiff's bald assertion in the present case that foreseeability exists in the circumstances set forth in its complaint is without merit.

"As our law instructs, moreover, foreseeability alone, without duty, is insufficient to support a cause of action for negligence. The plaintiff has not made the argument that the account opening or screening procedures it relies upon exist to protect strangers with whom they do no business. . . . [T]he plaintiff, having failed to establish that the statutes relied upon provide a private cause of action, provides almost no analysis of whether these same statutes provide the basis for a determination that public policy suggests the imposition of a duty the violation of which renders the defendant answerable to a claim of negligence. . . .

"What the plaintiff has done is to refer the court to cases which it asserts support its claim for liability. None of them address a bank's liability to a third-party noncustomer for the improper opening of a bank account. In *Sheiman* v. *Lafayette Bank & Trust Co.*, supra, 4 Conn. App. 46, the Appellate Court found no duty on a bank to a third party for the improper negotiation of an unendorsed check. In *East Shore Glass, Inc.* v. *Bank of America, N.A.*, [Superior Court, judicial district of New Haven, Docket No. CV-17-6069615-S (March 28, 2019) (68 Conn. L. Rptr. 314, 319)], the court held that while there was no common-law cause of action against a depositor bank for conversion related to check fraud by a former employee of the plaintiff who either forged or deposited checks with no endorsement with the defendant, there was a duty owed by the bank to the plaintiff, a noncustomer, to exercise care in negotiating checks to undertake reasonable care to determine that an instrument presented for payment is endorsed and that the individual presenting it is the named payee.[13]

[13] "The court reached this conclusion after a thorough analysis of the four public policy factors relevant to imposing a duty." See footnote 15 of this opinion.

Similarly, in *Red Law Firm, LLC* v. *Webster Bank*, Superior Court, judicial district of New Haven, Docket No. CV-12-6029913-S (February 7, 2014) (57 Conn. L. Rptr. 640, 643), the court held that the defendant bank had a duty to a customer law firm to take reasonable steps to determine that an instrument presented for payment was endorsed and that the individual presenting it was the named payee. . . . [N]one of these cases relied upon by the plaintiff, reviewed a factual circumstance involving a claim of liability of a bank to a third-party noncustomer for the improper opening of a bank account, and thus the plaintiff's reliance is misplaced. In the absence of the requisite elements of foreseeability and duty, or the appropriate briefing relative thereto, the motion to strike the second count is granted." (Citations omitted; footnote in original; internal quotation marks omitted.)

In its amended appeal, the plaintiff argues that its status as a noncustomer of the defendant is not dispositive as to the defendant's liability. The plaintiff relies on this court's decision in *Sheiman* v. *Lafayette Bank & Trust Co.*, supra, 4 Conn. App. 39, and two Superior Court cases, *East Shore Glass, Inc.* v. *Bank of America, N.A.*, supra, 68 Conn. L. Rptr. 314, and *Red Law Firm, LLC* v. *Webster Bank*, supra, 57 Conn. L. Rptr. 640, for the proposition that "[n]oncustomers may bring claims against a bank, including negligence, for a bank's conduct in noncompliance with statutes, regulations and laws resulting in harm to the noncustomer." Specifically, the plaintiff contends that "*Sheiman* provides for private causes of action against a bank by a noncustomer when it is reasonably foreseeable that the rightful owners of moneys would suffer harm and loss by virtue of movement of moneys into accounts with different names and to improper recipients, thus causing harm and damage to the rightful owners of the moneys."

The following legal principles are relevant to our resolution of the plaintiff's claim. "To sustain a cause of action [in negligence], the court must determine whether the defendant owed a duty to the [plaintiff] . . . and the applicable standard of care. . . . The existence of a duty is a question of law. . . . Only if such duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand. . . .

"The requisite duty to use care may stem from a contract, from a statute, or from circumstances under which a reasonable person would anticipate that harm of the general nature of that suffered was likely to result. . . . Negligence cannot be predicated upon the failure to perform an act which the actor was under no duty obligation to perform." (Citations omitted; internal quotation marks omitted.) *Sheiman* v. *Lafayette Bank & Trust Co.*, supra, 4 Conn. App. 44–45.

In *Sheiman*, the plaintiffs were the granddaughters and heirs of a decedent whose estate issued a check to a trustee clients' fund at the defendant bank, Lafayette Bank and Trust Company (Lafayette). Id., 40. Thereafter, one of the daughters of the decedent presented an unendorsed check to the defendant bank, First Federal Savings and Loan Association (First Federal), and used the proceeds of the check to purchase certificates of deposit from First Federal. Id., 40–41. The plaintiffs, noncustomers of First Federal, subsequently brought causes of action for violations of General Statutes (Rev. to 1979) § 42a-4-103,[14] and for negligent, reckless, and wanton acts against Lafayette and First Federal for its

[14] "General Statutes [(Rev. to 1979)] § 42a-4-103 (5) provides a rule for determining damages for the failure to exercise ordinary care. The damages rule of that subsection does not become operative, however, until the liability of the bank and some loss to the *customer* or *owner* [has been] established." (Emphasis in original; internal quotation marks omitted.) *Sheiman* v. *Lafayette Bank & Trust Co.*, supra, 4 Conn. App. 43.

handling and processing of the check. Id., 41–42. First Federal filed a motion to strike the plaintiffs' complaint in its entirety on the ground that it failed to state a claim upon which relief could be granted, and the trial court granted First Federal's motion. Id., 42. On appeal, this court affirmed the trial court's decision and held that, "[b]ecause the plaintiffs have not alleged that any relationship contemplated by [General Statutes (Rev. to 1979)] § 42a-4-103 existed between themselves and First Federal, we conclude that the trial court was correct in finding that [the plaintiffs] had no rights in the instrument and no standing to sue thereon." Id., 44. Regarding the plaintiff's tort claims, the court concluded that "the plaintiffs have failed to allege any contract, statute or circumstances which would give rise to a duty owed by First Federal which would support an action in negligence"; id., 45; and that "the plaintiffs have failed to allege any facts from which . . . a duty may be proven." Id., 46.

In *Red Law Firm, LLC*, a defendant bank was presented with a check bearing the name of the plaintiff, who was a customer of the bank, containing forged and unauthorized endorsements, and the individual presenting the check was an improper payee not entitled to enforce the check or receive payment. *Red Law Firm, LLC* v. *Webster Bank*, supra, 57 Conn. L. Rptr. 641. The bank, however, negotiated the check and wrongfully paid the proceeds to the improper payee. Id. The trial court held that the bank did owe the plaintiff a duty of care based upon the four public policy factors in *Monk* v. *Temple George Associates, LLC*, 273 Conn. 108, 118, 869 A.2d 179 (2005).[15] *Red Law Firm, LLC* v. *Webster*

[15] "[I]n considering whether public policy suggests the imposition of a duty, we . . . consider the following four factors: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging the participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions." (Internal quotation marks omitted.) *Monk* v. *Temple George Associates, LLC*, supra, 273 Conn. 118.

Bank, supra, 643–44. Specifically, the court reasoned that, "[o]n balance, the four public policy factors . . . support imposing a duty on a bank to take reasonable steps to determine that an instrument presented for payment is endorsed and that the individual presenting it is the named payee." Id., 643.

In *East Shore Glass, Inc.*, a former employee of the plaintiff, who did not have authority to process, endorse, or deposit checks payable to the plaintiff, took possession of checks payable to the plaintiff and presented them to the defendant bank. *East Shore Glass, Inc.* v. *Bank of America, N.A.*, supra, 68 Conn. L. Rptr. 314. The former employee caused the checks to be forged or altered with an unauthorized endorsement, or with no endorsement thereon. Id. The defendant accepted the checks and wrongfully paid the former employee. Id. The plaintiff, a noncustomer of the defendant, brought causes of action against the defendant sounding in, inter alia, statutory violations and common-law negligence. Id. The trial court held that the defendant did owe the plaintiff a duty of care based upon public policy. Id., 319. The court reasoned that it was foreseeable that "[reasonable] bank agents should anticipate that they may improperly disburse funds to unauthorized individuals if they fail to take *basic steps* to identify persons presenting negotiable instruments for payment." (Emphasis added; internal quotation marks omitted.) Id., 318.

In the present case, the plaintiff's reliance on *Sheiman* is misplaced as its third amended complaint does not allege any circumstance that would give rise to a duty owed by the defendant. The plaintiff is a noncustomer of the defendant, and therefore, a duty of care could only be imposed upon the defendant, under *Sheiman*, if it was foreseeable that harm of the general nature of that suffered was likely to result from the challenged conduct. In opening the NV account, the

defendant relied on the following documentation: a Certification of Owners of Legal Entities form, dated December 31, 2018, and signed by one of NV's principals; a Secretary of the State business inquiry regarding NV, dated December 31, 2018, indicating the last annual report filed for the year 2016; a Secretary of the State Annual Report of NV for the year 2016; "Newbury Village, LLC" Articles of Incorporation, dated December 13, 2002, a distinct entity from NV which is properly spelled "Newberry Village, LLC"; a Limited Liability Company Authorization Resolution form dated December 31, 2018, listing the tax identification number of NV, and signed by one of the principals of NV; and an Account Agreement form, dated December 31, 2018, and signed by a principal of NV. The issues identified by the plaintiff regarding NV's documentation, which was used by the defendant to open the NV account, do not demonstrate that a reasonable person would anticipate that a third-party noncustomer of the defendant would likely suffer harm from the opening of the NV account. As the trial court accurately observed, "the plaintiff . . . merely assumes foreseeability under these circumstances and advances no argument as to why this must be so."

Moreover, our Superior Court's decisions in *East Shore Glass, Inc.*, and *Red Law Firm, LLC*, are factually distinguishable from the circumstances of the present case. Both decisions involved a bank failing to take basic steps to identify the persons presenting negotiable instruments for payment, which the courts held created a circumstance where the harm suffered by those plaintiffs was foreseeable. The circumstances of the present case do not involve negotiable instruments, nor do they involve the defendant failing to take basic steps to identify the depositor of moneys to the defendant. Rather, the facts alleged in the plaintiff's third amended complaint indicate that the defendant did take reasonable

steps to identify the company opening the NV account. Thus, unlike in *East Shore Glass*, *Inc.*, and *Red Law Firm*, *LLC*, it was not foreseeable that a third-party noncustomer of the defendant would suffer harm by the defendant opening the NV account. Accordingly, we conclude that the court properly determined that the defendant did not owe the plaintiff a legal duty of care under the circumstances of this case.

III

The plaintiff next claims that the court erred in concluding that the allegations in its third amended complaint of banking statutes and regulations the defendant violated regarding the requirements prior to opening an account are not allegations of conduct offensive to public policy under CUTPA, and that § 35-1 is inapplicable to the plaintiff's claims. The plaintiff further argues that the court erred in its application and effect of our Supreme Court's decision in *Ulbrich* v. *Groth*, 310 Conn. 375, 78 A.3d 76 (2013). We disagree.

The following additional procedural history and legal principles are relevant to our resolution of the plaintiff's claim. In its July 8, 2022 memorandum of decision, the court determined that "[t]he defendant['s] . . . fourth count, which sets forth a claim of [a] violation of CUTPA, is legally insufficient because the plaintiff has not alleged facts sufficient to show 'immoral, unethical, oppressive or unscrupulous' practices on the part of the defendant. . . .

"In the plaintiff's estimation, the statutes it alleges were violated by the defendant were designed to prevent unfair and/or deceptive business practices. This is a mere conclusion of law. The plaintiff reminds the court that these statutes include: the USA Patriot Act of 2001, 107 Pub. L. No. 56, 115 Stat. 272; 31 C.F.R. § 1020.220; § 36a-606a; the Currency and Foreign Transactions Reporting Act, 31 U.S.C. § 5311 et seq. (Bank

Secrecy Act); the implementing regulations of the Bank Secrecy Act, 12 C.F.R. §§ 21.11 and 21.21; § 36a-287; 18 U.S.C. § 1956; 18 U.S.C. § 1957; § 53-275 et seq.; § 35-1; 18 U.S.C. § 1342; 18 U.S.C. § 1341; 18 U.S.C. § 1343; § 52-484; and § 42a-3-420. . . . These statutes, the plaintiff observes—with no specific analysis—require that 'prior to opening a bank account, a bank is required by law to identify and verify the company opening the account, identify and verify the depositors, identify deposits, and undertake activities prior to opening the account, including specific procedures and processes that banks must follow' and that the statutes and regulations are designed to prevent the diversion, hiding and concealment of moneys from their rightful owners. The plaintiff, however, invests no effort in describing how the facts it sets forth in its complaint constitute specific violations of any of the statutes it relies on.

"Indeed, the facts, and legal conclusions, alleged in the [third amended] complaint do not reveal either a complete lack of any activity to identify the corporate status of NV or that any further effort on the part of the defendant would have yielded the conclusion that NV had no legal existence." (Citation omitted.) The court further articulated that "nowhere in the complaint, and with few exceptions in its objection to the motion to strike, does the plaintiff specify how the documentation obtained insufficiently complied with any of the identified statutes.

"The plaintiff's reliance upon those statutes or regulations it did attempt to demonstrate the [defendant] violated is misplaced. The plaintiff's objection refers the court to 31 C.F.R. § 1020.220 (a) (2) (ii) (A) (2), which the brief represents provides that a bank must possess a certified copy of the articles of incorporation or other certified corporate document . . . . The regulation, which is part of a chapter entitled Financial Crimes Enforcement Network, however, provides that it is

applicable to a bank required to have an anti money laundering compliance program under the regulations implementing 31 U.S.C. § 5318 (h), 12 U.S.C. § 1818 (s), or 12 U.S.C. § 1786 (q) (1) . . . . 31 C.F.R. § 1020.220 (a) (1). The plaintiff does not, either in its complaint or its objection, demonstrate that the defendant is subject to the requirements set forth in the regulation. . . .

"Moreover, the regulation established the requirement for risk based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank [to] form *a reasonable belief* that it knows the true identity of each customer. These procedures must be based on the bank's assessment of the relevant risks, including . . . the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. [(Emphasis added.)] 31 C.F.R. § 1020.220 (a) (2). The plaintiff nowhere addresses the reasonable belief standard imposed by the regulation and the court declines to do so for it. While the regulation does require minimum elements for the *procedures* it is required to implement, the plaintiff omits the language of the regulation that describes verification through documents that provides that [f]or a bank relying on documents, the [customer identification program] must contain procedures that set forth the documents that the bank will use. These documents *may* include . . . (2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, *such as* certified articles of incorporation, a government issued business license, a partnership agreement, or trust instrument. . . . [(Emphasis added.)] Far from imposing a list of mandatory documents, which the defendant is alleged not to have obtained, required for opening an account, the

regulation *suggests* the type of documentation necessary for a *mandated* bank to implement the required procedures to acquire a *reasonable belief* relative to the identity of each customer. The defendant, as the plaintiff alleges, did obtain documentation from NV at the time of the opening of the account. The plaintiff's failure to address the reasonable belief standard would require the court to conduct the analysis for it. This the court declines to do." (Citations omitted; emphasis in original; internal quotation marks omitted.)

As to the plaintiff's contention that the defendant violated § 35-1, the court stated that "[t]he plaintiff asserts in its brief that the defendant opened an account under an illegitimate name and accordingly violated . . . § 35-1, again without explaining how its account opening procedures manifested a violation. This statute provides that '(a) [n]o person, except as provided in this subsection, shall conduct or transact business in this state, under any assumed name, or under any designation, name or style, corporate or otherwise, other than the real name or names of the person or persons conducting or transacting such business' in the absence of enumerated requirements. General Statutes § 35-1. The plaintiff misapprehends the application of this statute which by its explicit language does not apply to the defendant, which did not conduct business under an illegitimate name. Rather, it was NV that the plaintiff alleges was the malefactor. Thus, this statute is inapplicable.

"Returning to the criteria considered for a violation of CUTPA, the plaintiff, relying on the violation of the statute, has failed to establish, or provide any analysis, of the first criterion relative to how the defendant's opening procedures offends public policy as established by statute, the common law or otherwise. At best, the plaintiff describes a mere technical violation of any statute insufficient, without more, to demonstrate that

the conduct offends public policy, implicates the concept of unfairness, or causes the type of substantial injury that CUTPA was designed to address. See *Normand Josef Enterprises, Inc.* v. *Connecticut National Bank*, 230 Conn. 486, 524–25, 646 A.3d 1289 (1994) (technical violation of banking statute absent allegations of other impropriety did not violate CUPTA).

"There is nothing in the plaintiff's complaint that suggests an 'immoral, unethical, oppressive, or unscrupulous' character of the defendant's opening procedure as required to satisfy the second criterion. The plaintiff did not argue in its briefing or at oral argument that the [defendant's] opening procedures alleged in its [third amended] complaint caused substantial injury to consumers, competitors or other businesspersons, so the court does not consider the third criterion. For the foregoing reason the court strikes the fourth count of the plaintiff's [third amended] complaint for its failure to state a legally sufficient cause of action."

"The basic contours of a CUTPA claim are well settled. CUTPA is, on its face, a remedial statute that broadly prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. . . . To give effect to its provisions, [General Statutes] § 42-110g (a) of [CUTPA] 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 [General Statutes §] 42-110b . . . . When interpreting CUTPA, § 42-110b (b) directs us to consider the interpretations given by the Federal Trade Commission and the federal courts to the Federal Trade Commission Act, 15 U.S.C. § 45 (a) (1), as from time to time amended.

"To successfully state a claim for a CUTPA violation, the plaintiffs must allege that the defendant's acts

occurred in the conduct of trade or commerce. . . . On the record before us, this requirement undoubtedly has been met. It is well settled that CUTPA applies to banks and banking activities. . . .

"The plaintiffs also must establish that the alleged acts or practices are unfair or deceptive. [W]e have adopted [certain] 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 [competitors or other businesspersons]. . . . 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. . . . Thus a violation of CUTPA may be established by showing either an actual deceptive practice . . . or a practice amounting to a violation of public policy. . . .

"We are mindful that our legislature deliberately chose not to define the scope of unfair or deceptive acts proscribed by CUTPA so that courts might develop a body of law responsive to the marketplace practices that actually generate such complaints. . . . Predictably, [therefore] CUTPA has come to embrace a much broader range of business conduct than does the [common-law] tort action. . . . Moreover, [b]ecause CUTPA is a self-avowed remedial measure . . . § 42-110b (d), it is construed liberally in an effort to effectuate its public policy goals. . . . Indeed, there is no . . . unfair method of competition, or unfair [or] deceptive

act or practice that cannot be reached [under CUTPA]. . . . Thus, it has been held that a violation of CUTPA does not necessarily have to be based on an underlying actionable wrong . . . . Nonetheless, [u]nder CUTPA, only intentional, reckless, unethical or unscrupulous conduct can form the basis for a claim." (Citations omitted; footnotes omitted; internal quotation marks omitted.) *Cenatiempo* v. *Bank of America, N.A.*, 333 Conn. 769, 788–91, 219 A.3d 767 (2019).

In its amended appeal, the plaintiff argues that the defendant's noncompliance with the banking statutes and regulations cited in its third amended complaint violates public policy, and such noncompliance is immoral, unethical, and unscrupulous. The plaintiff further argues, in the alternative, that its third amended complaint alleges a violation of § 35-1, which constitutes a per se violation of CUTPA.

As the court aptly observed, however, the plaintiff's third amended complaint does not specify how the documentation obtained by the defendant insufficiently complied with any of the identified statutes or regulations. To the extent that the plaintiff argues that the defendant's failure to obtain a current certified copy of the articles of incorporation or other current certified corporate document violated 31 C.F.R. § 1020.220 (a) (2) (ii) (A) (2),[16] such argument is legally flawed. As

[16] Title 31 of the Code of Federal Regulations, § 1020.220, provides in relevant part: "(a) Customer Identification Program: minimum requirements—(1) In general. A bank required to have an anti-money laundering compliance program under the regulations . . . must implement a written Customer Identification Program (CIP) appropriate for the bank's size and type of business that, at a minimum, includes each of the requirements of paragraphs (a) (1) through (5) of this section. . . . (2) Identity verification procedures. The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. . . . At a minimum, these procedures must contain the elements described in this paragraph (a) (2). . . . (ii) Customer verification. . . . (A) Verification through documents. For a bank relying on documents, the CIP must contain procedures that set forth the

articulated by the court, the plaintiff's third amended complaint does not demonstrate how the defendant is subject to the regulation.

Even if we were to assume that the defendant's account opening procedures fall within the ambit of the regulation, the circumstances alleged by the plaintiff do not establish a violation of the regulation. Specifically, 31 C.F.R. § 1020.220 (a) (2) states that a bank's procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer and sets forth examples of documents that a bank may use to verify the identity of its customer. Contrary to the plaintiff's contention, the regulation does not mandate that the defendant must possess a current certified copy of the articles of incorporation or other current certified corporate document. Rather, the regulation suggests the type of documents a bank may require under its opening procedures to form a reasonable belief as to the identity of its customers. In the present case, the defendant did obtain documentation from NV to verify the identity of its customer at the time it opened the NV account. As the court explained, "the facts, and legal conclusions, alleged in the [third amended] complaint do not reveal . . . that any further effort on the part of the defendant would have yielded the conclusion that NV had no legal existence." Therefore, the plaintiff's third amended complaint fails to establish how the defendant's account opening procedures prevented the defendant from forming a reasonable belief as to the identity of NV in violation of 31 C.F.R. § 1020.220.

documents that the bank will use. These documents *may* include . . . (2) For a person other than an individual . . . documents showing the existence of the entity, *such as* certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument. . . ." (Emphasis added.)

The plaintiff also asserts that the defendant's conduct in opening the NV account violated § 35-1 and constitutes a per se violation of CUTPA. Section 35-1 (a) provides in relevant part: "No person, except as provided in this subsection, shall conduct or transact business in this state, under any assumed name, or under any designation, name or style, corporate or otherwise, other than the real name or names of the person or persons conducting or transacting such business . . . ." As the trial court accurately reasoned in its memorandum of decision, "[t]he plaintiff misapprehends the application of this statute which by its explicit language does not apply to the defendant, which did not conduct business under an illegitimate name. Rather, it was NV that the plaintiff alleges was the malefactor. Thus, this statute is inapplicable." We agree with the court that § 35-1 does not apply to the defendant in the present case, as the defendant did not conduct or transact business under an improper name; rather it was NV whom the plaintiff alleges conducted business under a fictitious name.

The plaintiff further argues that the court erred in not considering our Supreme Court's decision in *Ulbrich* v. *Groth*, supra, 310 Conn. 375. Specifically, the plaintiff asserts that *Ulbrich* "confirms that CUTPA claims are available to noncustomers as well as customers of a bank . . . ." The court, however, did not strike the plaintiff's CUTPA claim on the basis that it was a noncustomer of the defendant. Instead, the court struck the plaintiff's CUTPA claim because the circumstances alleged by the plaintiff in its third amended complaint failed to establish how the defendant's opening procedures offended public policy or were immoral, unethical, oppressive, or unscrupulous. Therefore, the plaintiff's reliance on *Ulbrich* is misplaced.

Accordingly, we conclude that the court properly struck the plaintiff's fourth count alleging a CUTPA violation.

IV

The plaintiff's final claim is that the trial court erred in "failing to address that at least as of April, 2019, the date of service of the instant lawsuit, the defendant was on notice that the account had been opened under an improper and fictitious name and that the moneys in this account were owned by another party."[17] Specifically, the plaintiff argues that, "[o]nce a bank becomes aware of issues with an existing account, the statutes require the bank to investigate the account. Thus, failure to comply with the statutes is contrary to public policy." In support of its argument, the plaintiff cites to 31 C.F.R. § 1020.220 (a) (2) (iii) (C) for the proposition that, as of April, 2019, the defendant had a duty "to reinvestigate [the NV account] at that time, to verify and identify the name on the account which the defendant failed to do." In particular, the plaintiff contends that "as required by the statutes and regulations, including 31 C.F.R. § 1020.220 (a) (2) (ii) (B) (1), the defendant would have been required to check public databases and did not." We disagree.

Entitled "Customer identification program requirements for banks," 31 C.F.R. § 1020.220, provides in relevant part: "(a) (2) (iii) Lack of verification. The [customer identification program] must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe . . . (C) When the bank should close an account, after attempts to verify a customer's identity have failed . . . ." 31 C.F.R. § 1020.220 (a) (2) (iii). Section 1020.220 further provides in relevant part: "Verification through *non-documentary* methods. For a

[17] The plaintiff's third amended complaint is devoid of any allegation that additional banking transactions occurred after April, 2019, regarding the NV account.

bank relying on non-documentary methods, the [customer identification program] must contain procedures that describe the non-documentary methods the bank will use. (1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement. . . ." (Emphasis added.) 31 C.F.R. § 1020.220 (a) (2) (ii) (B).

As we articulated in part III of this opinion, in its third amended complaint, the plaintiff did not allege facts demonstrating that the defendant's operating procedures were subject to 31 C.F.R. § 1020.220. Even if we were to assume the regulation applies to the defendant, 31 C.F.R. § 1020.220 (a) (2) (ii) (B) is not applicable to the circumstances of this case, as it only applies to a bank's opening procedures when verifying its customer's identity through nondocumentary methods. In the present case, the defendant relied on documents from NV to open the NV account. Moreover, 31 C.F.R. § 1020.220 (a) (2) (iii) requires only that a bank have procedures in place for when a bank cannot form a reasonable belief as to the identity of its customer. The plaintiff's third amended complaint does not establish how the defendant's opening procedures prevented the defendant from forming a reasonable belief as to the identity of NV based upon the documents it received in connection with the opening of the NV account. As reasoned in Judge Schuman's order striking the plaintiff's second amended complaint, "[c]ontrary to the plaintiff's suggestion, the [defendant] has no duty to research pending lawsuits against a prospective customer and determine, without any court proceedings, that the customer owes money to a third party such as the plaintiff." The plaintiffs do not cite any applicable

legal authority, nor are we aware of any, that would impose a duty on the behalf of the defendant to reinvestigate the identity of NV upon being served with a complaint alleging the moneys in the NV account belonged to a noncustomer of the defendant. Therefore, we conclude that the court properly disregarded the plaintiff's contention that the defendant had a duty, as of April, 2019, to investigate the NV account.

For the foregoing reasons, we conclude that the plaintiff has failed to demonstrate that the court erred in granting the defendant's motion to strike its third amended complaint.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* OLES JEAN-BAPTISTE (AC 46260)

Bright, C. J., and Alvord and DiPentima, Js.

Syllabus

The defendant, who had been convicted, following a jury trial, of the crimes of larceny in the third degree, assault of public safety personnel, and interfering with an officer, appealed to this court, claiming that his sixth amendment right to counsel was violated by the trial court's alleged inadequate response to his claims of ineffective assistance of counsel during the trial. *Held* that the record was inadequate to review the defendant's claim of ineffective assistance of counsel on direct appeal to this court: the proper vehicle for the defendant to litigate his claim of ineffective assistance of counsel was a petition for a writ of habeas corpus, and this court was unable to review, on the basis of the record before it, whether defense counsel's decisions not to object to the introduction of a police officer's body camera recording or to obtain a medical expert constituted ineffective assistance, as opposed to sound trial strategy, as the record did not reflect what other defenses or courses of action defense counsel considered, what options, if any, were available to him, how he concluded that a medical expert would not be helpful, or whether a medical expert's testimony would have, in fact, been helpful to the defense; moreover, because the defendant asked this court to review two specific allegations of ineffective assistance of counsel, while

maintaining that he was not waiving any other ineffective assistance of counsel claims that he might assert against his defense counsel in a later habeas corpus proceeding, a review of the defendant's claims at this stage would result in a piecemeal resolution of the defendant's ineffective assistance of counsel claims in the event that the defendant pursued additional claims in a petition for a writ of habeas corpus; furthermore, the duty the defendant sought to impose on the trial court would have required the court to make a qualitative judgment of defense counsel's performance throughout the trial proceedings, and an inquiry into defense counsel's strategy for the matter proceeding before the court risked interfering with the defendant's right to counsel and the attorney-client relationship.

Argued May 22—officially released July 16, 2024

Procedural History

Substitute information charging the defendant with the crimes of larceny in the third degree, assault of public safety personnel and interfering with an officer, brought to the Superior Court in the judicial district of New London, geographical area number twenty-one, and tried to the jury before *K. Murphy, J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed.*

Gary A. Mastronardi, assigned counsel, for the appellant (defendant).

Danielle Koch, assistant state's attorney, with whom, on the brief, were *Paul Narducci*, state's attorney, and *Adam Scott*, supervisory assistant state's attorney, for the appellee (state).

Opinion

ALVORD, J. The defendant, Oles Jean-Baptiste, appeals from the judgment of conviction, rendered following a jury trial, of larceny in the third degree in violation of General Statutes § 53a-124 (a) (1), assault of public safety personnel in violation of General Statutes § 53a-167c (a) (1), and interfering with an officer in violation of General Statutes § 53a-167a (a). On appeal, the defendant claims that his sixth amendment right to

counsel was violated by the trial court's alleged inadequate response to his claims of ineffective assistance of counsel.[1] We affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On the afternoon of March 2, 2020, the Norwich Police Department received a call from Kenneth Wilder reporting the theft of his pink scooter, which was missing its seat. Officer Ryan Froehlich was dispatched to investigate the theft. The dispatcher described the scooter as missing its seat and further stated that the suspect would be pushing the scooter because it was not operable. Officer Froehlich set out to the dispatched location and engaged the cruiser's siren, which automatically activated his cruiser and body cameras.

While driving to the dispatched location, Officer Froehlich noticed two people on the opposite side of the street with a pink scooter that matched the description provided by dispatch. One of the individuals, Bob Rodriguez, was driving a separate scooter. At the same time, the defendant was straddling both Rodriguez' moving scooter and the pink scooter, which he was towing by controlling its handlebars. Officer Froehlich activated the cruiser's emergency lights and pulled over directly in front of them.

Rodriguez and the defendant stopped when Officer Froehlich got out of the cruiser, and they moved to the shoulder of the roadway at Officer Froehlich's request. Officer Froehlich asked the two men if the pink scooter was theirs. The defendant replied that it belonged to a friend. Because Officer Froehlich was the only officer present and the defendant was walking backward

[1] In his principal appellate brief, the defendant also claimed that (1) the trial court committed plain error in allowing the state to offer into evidence an audio-video exhibit with content that was brutal, shocking, highly inflammatory, and unduly prejudicial to the defendant, and (2) there was insufficient evidence to sustain his conviction for larceny. In his reply brief, however, the defendant expressly withdrew both of those claims.

toward the wood line, Officer Froehlich asked the defendant to be seated. The defendant did not sit down and responded, "I'm not a dog." Officer Froehlich subsequently attempted to handcuff the defendant. The defendant then started actively to avoid him.

A physical struggle between the defendant and Officer Froehlich ensued. The defendant scratched, punched, and bit Officer Froehlich. Officer Froehlich struck the defendant several times and tried to tase the defendant twice but was unable to do so successfully due to the defendant's clothing. During the struggle, Sergeant Harry Formiglio arrived at the scene. Both officers were able to control the defendant's arms while waiting for other officers' assistance. The officers then handcuffed the defendant, and he went limp as the officers were bringing him to the cruiser. Once inside the cruiser, the defendant kept his legs outside of the vehicle, and the officers used a stun gun to get his legs inside and close the door.

Officer Froehlich was taken to a hospital. There, he was treated for the injuries he sustained during the incident. In addition, Officer Froehlich was treated for asthma and potential exposure to blood-borne pathogens.

The defendant was transported by Officer Matthew Seidel, who was equipped with a body camera. As he was being transported to police headquarters, the defendant screamed at Officer Seidel. Specifically, the defendant threatened to kill Officer Seidel's family and he repeatedly described sexual acts he was going to perform on Officer Seidel and his family. Upon arriving at the police department headquarters, the officers there determined that the defendant needed medical attention.

Officer Seidel accompanied the defendant in the ambulance that transported the defendant from the

police headquarters to a hospital.[2] The defendant continued yelling and making threatening remarks at the police headquarters, in the ambulance, and at the hospital.

The defendant subsequently was charged with larceny in the third degree, assault of public safety personnel, and interfering with an officer.

The following procedural history is relevant to our resolution of this appeal. Attorney Richard Perry represented the defendant in the criminal proceedings. The defendant entered not guilty pleas on all charges, and the jury trial took place over the course of three days from September 7 through 9, 2022.

On the first day of evidence, before the swearing in of the jury, the defendant engaged in a discussion with the court regarding his legal representation. Specifically, he expressed his concerns about Attorney Perry during the following exchange:

"The Defendant: So, first of all, I had requested for Mr. Perry to give me a social worker, a private, because I've had bad experiences with the ones that work inside for the court. Secondly, I had asked for a private investigator. And I also asked for a private expert and he didn't give me those.

"The Court: Okay, let me take them one at [a] time. What's the purpose in getting a social worker in this case?

[2] At the hospital, the defendant was evaluated by a psychiatric clinician who determined that "psychiatric hospitalization" was not required. Another doctor stated that, "[a]s best as can be ascertained, there is a limited psychiatric history with some brief outpatient care and no current care." However, the doctor reported that, "[o]f note is that the patient had been drinking . . . and urine toxicology was positive for cannabinoids and cocaine, which may have exacerbated his rage."

"The Defendant: Because I've had bad experiences with the lawyers. I just want to be able to speak to the social worker.

"The Court: Okay, what about the private investigator? What—what's—what was the purpose in having a private investigator?

"The Defendant: Judge, it's not for me only. If I'm going to trial, I want an expert, I mean, investigation that can explain what's happened. Because I want the footage from the body camera that was on the police officer. So, I want an expert. I want an investigator that could explain exactly what happened.

"The Court: Okay, all right. Attorney Perry, my understanding is that the public defender's office does have an investigator. Do you have an investigator that's available for you if you wish?

"[Defense Counsel]: We do, Your Honor, and she did work on the case. And we do have a social worker who went to the jail last week to meet with [the defendant].

"The Court: Okay. And I don't want to get into any strategy or anything regarding this potential expert, but did you look into the issue of whether an expert would be beneficial to [the defendant] in this case?

"[Defense Counsel]: Your Honor, I did and I felt that it would not be justified.

"The Court: Okay, all right. Well, Mr. Jean-Baptiste, I hear what you're saying and you have created a record. You've protected yourself, if there's an issue down the road."

After the jury was sworn in, the prosecutor presented the testimony of three witnesses and offered into evidence several exhibits. During Officer Froehlich's testimony, the prosecutor offered into evidence a flash drive

containing several audio and video recordings, including the victim's 911 call, radio interactions between officers and dispatch, cruiser camera footage, and body camera footage of several officers. Attorney Perry did not object to the exhibit, and it was admitted in full as exhibit 1.[3]

The defendant then interjected, and the court excused the jury. The defendant explained: "This lawyer that's here, when you ask him if he objects, he doesn't say anything. There's always evidence that's being presented here. He was supposed to let me see it too. I haven't seen anything yet. . . . [B]y right, this lawyer to show me all the exhibits before they're presented—before it's presented to the jury. Because I made a request with him before, he refused all my requests. One time again, this lawyer is . . . ineffective on the case." After engaging in a discussion with the defendant regarding courtroom procedures, the court addressed Attorney Perry:

"The Court: [The defendant] has not seen this or has not seen all of this?

"[Defense Counsel]: I don't believe he's seen this, Your Honor.

"The Court: Okay. You have seen this though?

"[Defense Counsel]: Yes.

"The Court: Okay. All right. Then, I'll ask the state to play the whole thing for—everything on there.

* * *

"[The Prosecutor]: To watch every single video on the tape, it will take hours.

[3] Initially, the flash drive was admitted in full as a single exhibit, exhibit 1. Later during the trial, the contents of the flash drive were separated into exhibits 1a, 1b, 1c, and 1d.

"The Court: Attorney Perry, was [the defendant] given the opportunity to listen and watch this video on an earlier date?

"[Defense Counsel]: Your Honor, I believe I'm the fourth attorney on this case.[4] I'm not sure what the prior attorneys did. We discussed the video and [I] don't want to get into my particular trial tactics, but I did not feel that it was necessary for him and I to go over the video. That was not part of my—my plan and I thought that had been made clear to my client. . . .

"The Defendant: . . . I've been through five lawyers already for this. He is number six. . . . I've asked . . . since March 2 to provide me the evidence.

"The Court: All right. Here's what I'm gonna do. I don't want to waste the jury's time or counsel's time. The exhibit has already been admitted as a full exhibit. The state has the opportunity to publish the exhibit to the jury. Mr. Jean-Baptiste, you will have an opportunity to review—watch the video and listen to the audio, take notes, talk to your attorney and I will, if necessary, if your attorney needs more time, if you need more time to talk to your attorney, we will take a break after the conclusion of this witness' testimony so that your attorney can prepare for a cross-examination, including examination of the exhibit." (Footnote added.)

After the jury returned, the prosecutor played the 911 call audio recording, continued his direct examination of Officer Froehlich, and published photographs of Officer Froehlich's injuries and the pink scooter, among other images, to the jury. Before adjourning for the day and after excusing the jury, the court allowed the parties to remain in the courtroom to give the defendant the opportunity to view exhibit 1.

[4] At that time, Attorney Perry was the sixth attorney within two and one-half years to represent the defendant.

The following day of the trial, the defendant reiterated that he had concerns with Attorney Perry. The defendant then decided that he did not want to be present for the trial and voluntarily went to the courthouse lockup for the remainder of the proceedings. After the jury returned, the prosecutor completed his direct examination of Officer Froehlich, and he played for the jury the radio calls, Officer Froehlich's cruiser camera footage, and Officer Froehlich's body camera footage. Attorney Perry then conducted his cross-examination.

The state also presented the testimony of Officer Seidel. During his direct examination of Officer Seidel, the prosecutor began playing for the jury exhibit 1d. See footnote 3 of this opinion. This exhibit contained the audio and video footage from Officer Seidel's body camera, which recorded the entirety of his interaction with the defendant during the defendant's transportation in the cruiser to the police headquarters and his transportation in the ambulance to the hospital. Twelve minutes and fifty seconds into the video, the court instructed the prosecutor to turn off the video and excused the jury. The court expressed concern with respect to the strong language and "whether the material being provided would be considered other crimes, evidence and whether the court should be entering some type of limiting instruction or limiting the introduction of the exhibit . . . ." The court then asked the prosecutor to state the relevance of the exhibit. The prosecutor responded that the defendant's behavior as shown on the video was relevant to intent. The court then inquired of Attorney Perry whether he had any objection to the exhibit.

The following exchange occurred:

"The Court: Obviously, you've had a chance to hear this before. Is that right?

"[Defense Counsel]: That's correct, Your Honor. I did view this video earlier.

"The Court: Okay. And your—still your position is you're not objecting to the admission of this exhibit.

"[Defense Counsel]: I would like to say this, Your Honor. I agree with the court that it may not be relevant. However, I believe that this may be helpful to my client's case in that it will show that he could not form the intent to commit these crimes.

"The Court: Okay. So, at this point you're not making any motion either to exclude it or limit it or anything like that?

"[Defense Counsel]: No, Your Honor."

The jury returned, and the prosecutor resumed playing the video.[5] The prosecutor then presented the testimony of Officer Benjamin Sawaryn and introduced into evidence a series of pictures, a property receipt, part of a Norwich Police Department arrest report, and a statement of the value of the pink scooter. Defense counsel called no witnesses. During his closing argument, Attorney Perry relied on exhibit 1d in arguing: "[T]o have [the required] intent, [the defendant] would have had to have a rational thought process. And you yourselves saw the tapes that were presented yesterday and the day before. The question that you have to answer is did this person have the ability to make a decision such as that in the state that he was in. Now, that's the key element here."

[5] After Officer Seidel's testimony, the court instructed the jury: "The state has offered evidence of other acts of misconduct of the defendant. This [is] not being admitted to prove the bad character, propensity or criminal tendencies of the defendant. Such evidence is being admitted solely to show or establish the defendant's intent and to some extent the defendant's knowledge of the English language. . . ."

The jury found the defendant guilty on all three counts. The court, *K. Murphy, J.*, sentenced the defendant to a total effective sentence of ten years of incarceration, execution suspended after seven years, followed by three years of probation. This appeal followed.

On appeal, the defendant claims that the court failed to "adequately inquire into defense counsel's reasons (i) for not objecting to the admissibility of [exhibit] 1d, and (ii) for failing to retain a medical expert," and, in doing so, "improperly countenanced obvious ineffective assistance of counsel and breached its duty to maintain the integrity of the judicial proceedings" in violation of the defendant's sixth amendment right to counsel. Because the defendant's claim rests on his assertion that Attorney Perry rendered "visible ineffective assistance," "a review of how and when ineffective assistance of counsel claims typically are addressed by our courts informs our analysis of the [defendant's] claims. A claim of ineffective assistance of counsel is more properly pursued on . . . a petition for a writ of habeas corpus rather than on direct appeal . . . [because] [t]he trial transcript seldom discloses all of the considerations of strategy that may have induced counsel to follow a particular course of action. . . . [A] habeas proceeding provides a superior forum for the review of a claim of ineffective assistance because it provides the opportunity for an evidentiary hearing in which the attorney whose conduct is challenged may testify regarding the reasons [for the challenged actions]. . . . A habeas proceeding thus enables the court to determine whether counsel's [deficiency] was due to mere incompetence or to counsel's trial strategy, which would not be possible in a direct appeal in which there is no possibility of an evidentiary hearing." (Citation omitted; internal quotation marks omitted.) *Banks* v.

Commissioner of Correction, 225 Conn. App. 234, 244, 314 A.3d 1052 (2024).

"[O]n the rare occasions that [our Supreme Court has] addressed an ineffective assistance of counsel claim on direct appeal, [it has] limited [its] review to allegations that the defendant's sixth amendment rights had been jeopardized by the actions of the *trial court*, rather than by those of his counsel. . . . [The court has] addressed such claims, moreover, only where the record of the trial court's allegedly improper action was adequate for review or the issue presented was a question of law, not one of fact requiring further evidentiary development." (Emphasis in original; internal quotation marks omitted.) *State* v. *Taft*, 306 Conn. 749, 768, 51 A.3d 988 (2012).

The defendant maintains that this case presents one of those rare occasions when an ineffective assistance of counsel claim can be reviewed by this court on direct appeal. First, the defendant argues that "[t]he trial court record in this case is chock full of instances which, viewed individually or collectively, were more than adequate to 'alert' the trial judge that defense counsel was not providing effective assistance to his client." The state responds that an evidentiary proceeding would be necessary to permit review of the defendant's claim because Attorney Perry's "explanations for his trial strategy are absent" and the court could not have inquired further due to attorney-client privilege. In his reply brief, the defendant reiterates that Attorney Perry's deficient performance is so clear from the record before the trial court that further evidentiary proceedings are unnecessary. The defendant states that the trial record sufficiently exhibits both "the purported 'strategic' reason underlying [Attorney Perry's] choice not to object to the admission of [exhibit 1d]" and the "shortcomings [that] should have been 'red flags' to the trial judge which, at minimum, should have alerted the

court" to Attorney Perry's lack of preparedness, particularly with respect to obtaining a medical expert.[6] We conclude that the record is inadequate to review the defendant's claim on direct appeal.

"To succeed on a claim of ineffective assistance of counsel, a habeas petitioner must satisfy the two-pronged test articulated in *Strickland* v. *Washington*, [466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)]. *Strickland* requires that a petitioner satisfy both a performance prong and a prejudice prong. To satisfy the performance prong, a claimant must demonstrate that counsel made errors so serious that counsel was not functioning as the counsel guaranteed . . . by the [s]ixth [a]mendment. . . . To satisfy the prejudice prong, a claimant must demonstrate that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. . . . Because both prongs . . . must be established for a habeas petitioner to prevail, a court may [deny] a petitioner's claim if he fails to meet either prong. . . .

"Our Supreme Court has stated that to establish deficient performance by counsel, a [petitioner] must show that, considering all of the circumstances, counsel's representation fell below an objective standard of reasonableness as measured by prevailing professional norms. . . . [T]here is a strong presumption in favor of concluding that counsel's performance was competent. . . . In order to overcome that presumption, *the*

[6] The defendant argues that the alleged ineffective assistance of his counsel in the form of failure to present the testimony of a medical expert should have been apparent to the trial court, noting that the trial court had presided over a competency hearing during which evidence of a psychiatric disorder was presented. The defendant contends that the psychiatric testimony "could have, and should have, [been] offered—as a plausible explanation not only for the highly prejudicial content of [exhibit 1d] but also for the defendant's sudden, violent, overreactive response to the attempt by Officer Froehlich to handcuff him."

[*defendant*] *bears the burden* of proving that counsel's representation fell below an objective standard of reasonableness. . . . [T]he performance inquiry must be whether counsel's assistance was reasonable *considering all the circumstances*. . . . Thus, the question of whether counsel's behavior was objectively unreasonable is not only one on which the [defendant] bears the burden of proof; its resolution turns on a fact intensive inquiry." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Banks* v. *Commissioner of Correction*, supra, 225 Conn. App. 246.

Furthermore, our Supreme Court has emphasized that an "ineffective assistance claim should be resolved, not in piecemeal fashion, but as a totality after an evidentiary hearing in the trial court where the attorney whose conduct is in question may have an opportunity to testify." *State* v. *Leecan*, 198 Conn. 517, 542, 504 A.2d 480, cert. denied, 476 U.S. 1184, 106 S. Ct. 2922, 91 L. Ed. 2d 550 (1986). Relatedly, in *State* v. *Jose V.*, 157 Conn. App. 393, 116 A.3d 833, cert. denied, 317 Conn. 916, 117 A.3d 854 (2015), this court further explained that, "[a]lthough the record may reflect the actions of defense counsel during the [underlying] proceeding, we do not know all of the reasons for those actions. . . . All of the relevant circumstances are not known. Our role . . . is not to guess at possibilities, but to review claims based on a complete factual record developed by a trial court. Without a hearing in which the reasons for counsel's decision may be elicited, any decision of ours . . . would be entirely speculative." (Internal quotation marks omitted.) Id., 405–406.

In the present case, the proper vehicle for the defendant to litigate his claim of ineffective assistance of counsel is a petition for a writ of habeas corpus. We cannot review, on the basis of the record before us, the claim raised in this direct appeal, which concerns whether Attorney Perry's actions, namely, his decisions

not to object to exhibit 1d or obtain a medical expert, constituted ineffective assistance, as opposed to sound trial strategy. See *Banks* v. *Commissioner of Correction*, supra, 225 Conn. App. 247 (rejecting petitioner's claim that would require court to presume counsel's assistance was unreasonable, which "would be contrary to the presumption of competence"). As for Attorney Perry's decision not to object to exhibit 1d, the record is inadequate in that it contains only a brief exchange in which Attorney Perry indicated that the exhibit "may be helpful to [his] client's case" and that "it w[ould] show that [the defendant] could not form the intent to commit these crimes" and evidence of how Attorney Perry sought to implement that strategy in his closing argument. The record does not reflect what other defenses or courses of action Attorney Perry considered or what options, if any, were available to him. Similarly, the record is inadequate to evaluate Attorney Perry's decision not to obtain a medical expert. Attorney Perry, in response to the court's inquiry, stated that he had considered whether an expert would be beneficial and "felt that it would not be justified."[7] He did not explain how he came to that conclusion. Furthermore, the record before us contains no information on whether a medical expert's testimony would have been helpful to the defense. Without an evidentiary proceeding during which the defendant and the state, or the Commissioner of Correction, would have the opportunity to present evidence and the trial court could make credibility

[7] Additionally, we note that, although our Supreme Court has recognized that a court may address an ineffective assistance of counsel claim where "the issue presented was a question of law, not one of fact requiring further evidentiary development"; *State* v. *Taft*, supra, 306 Conn. 768; the defendant in the present case asks this court to evaluate Attorney Perry's alleged deficient performance and strategic decisions and the trial court's response. These inquiries are fact intensive, requiring further evidentiary development. See *Banks* v. *Commissioner of Correction*, supra, 225 Conn. App. 246 (resolution of question of whether counsel's behavior was objectively unreasonable turns on fact intensive inquiry).

determinations and factual findings based on that evidence, the record is inadequate to review the defendant's ineffective assistance of counsel claim. See, e.g., *State* v. *Campbell*, 328 Conn. 444, 468 n.7, 180 A.3d 882 (2018) ("[t]he defendant's ineffective assistance claim is precisely the type of collateral attack that is best resolved in a habeas action, where the defendant will have the opportunity to present evidence in support of his claim that his counsel's performance was deficient and that he was prejudiced by that deficient performance").

Furthermore, contrary to well settled law, the defendant is asking this court to review two specific allegations of ineffective assistance of counsel, while maintaining that he is not waiving any other ineffective assistance of counsel claims that he might assert against Attorney Perry in a later habeas corpus proceeding. Consequently, reviewing the defendant's claim at this stage would result in a piecemeal resolution of the defendant's ineffective assistance of counsel claims, in the event that the defendant pursues additional claims in a petition for a writ of habeas corpus. See *State* v. *Leecan*, supra, 198 Conn. 542 (ineffective assistance of counsel claims should not be resolved in piecemeal fashion).

The defendant attempts to avoid the above precedents by arguing that he is really challenging the inaction of the trial court, as opposed to asserting a direct claim of ineffective assistance of counsel. He maintains that the trial court "was under a duty to protect both the defendant's constitutional right to counsel and the integrity of the court by inquiring into the basis for defense counsel's highly questionable decision not to object to the admissibility of exhibit 1d."[8] In *Banks* v.

[8] The defendant further contends that, "in the absence of any reasonable and competent responses by defense counsel to these critical court inquiries, the judge was required to ensure the defendant's sixth amendment right to competent counsel and was duty bound to protect the integrity of the judicial

Commissioner of Correction, supra, 225 Conn. App. 238–39, the petitioner's attorney declined the opportunity to present evidence demonstrating good cause for the untimely filing of his habeas petition during a show cause hearing. On appeal, the petitioner argued that the habeas court had an obligation to intervene based on the attorney's " 'patently ineffective' " assistance. Id., 244. Specifically, "the petitioner request[ed] that we recognize a new duty for the [court] to step in whenever it appears that counsel has no strategic reason for failing to pursue a certain course of action." Id., 252. This court stated that, "[i]n the absence of any persuasive, let alone binding, authority to support the petitioner's contention, we decline to do so." Id.

We similarly are not persuaded by the defendant's argument in the present case. As succinctly stated by the court in *Banks*, there exists no binding nor persuasive authority supporting the defendant's claim. Id. The defendant cites several decisions of the United States Supreme Court and federal courts of appeals in arguing that a trial court has a duty to act sua sponte when the trial court is alerted to an obvious sixth amendment violation.[9] Most of the cited decisions are not applicable

proceedings by (1) at the very least, refusing, sua sponte, to admit exhibit 1d; while (2) strongly considering, and probably actually declaring, sua sponte, a mistrial."

[9] Specifically, the defendant cites *Cuyler* v. *Sullivan*, 446 U.S. 335, 347, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980) (asserting that duty to inquire exists when "the trial court knows or reasonably should know that a particular conflict [of interest] exists," in which case trial court should "initiate an inquiry"); *United States* v. *Sands*, 968 F.2d 1058, 1066 (10th Cir. 1992) (citing *United States* v. *McCord*, 509 F.2d 334, 352 n.65 (D.C. Cir. 1974), cert. denied, 421 U.S. 930, 95 S. Ct. 1656, 44 L. Ed. 2d 87 (1975)), cert. denied, 506 U.S. 1056, 113 S. Ct. 987, 122 L. Ed. 2d 139 (1993); *United States* v. *McCord*, supra, 352 and n.65 (finding that when claims of ineffective assistance of counsel based on existing conflict of interest "arise at trial, the better [practice] is for the trial judge to immediately conduct an inquiry into the bases for the claim if it is at all colorable"); *United States* v. *DeCoster*, 487 F.2d 1197, 1200 n.4 (D.C. Cir. 1973) (reiterating, in context of defendant's plea of guilty, that judges should strive "to maintain proper standards of performance by attorneys who are representing defendants in criminal cases" (internal quotation marks omitted)).

in that they involve conflicts of interest. "Making a qualitative judgment as to counsel's performance during the proceeding in which the alleged ineffective assistance is occurring is fundamentally different than . . . inquiring into an apparent conflict of interest . . . because evaluating counsel's performance would require that the court inquire as to counsel's strategy for the matter that is still proceeding before the court. The problem with that line of inquiry is that the trial court risks interfering with the defendant's right to counsel and the attorney-client relationship if the court asks counsel, *during trial*, for a full explanation of his strategy. . . . Indeed, that is why, in circumstances in which defense counsel's [conduct] . . . constitutes a violation of the defendant's right to the effective assistance of counsel, the defendant may seek recourse through habeas corpus proceedings." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Banks* v. *Commissioner of Correction*, supra, 225 Conn. App. 253.

The duty the defendant seeks to impose on the trial court would have required the court to make a qualitative judgment of Attorney Perry's performance throughout the trial proceedings. As the court noted in *Banks*, an inquiry into counsel's strategy for the matter proceeding before the court "risks interfering with the defendant's right to counsel and the attorney-client relationship . . . ." (Internal quotation marks omitted.) Id. The trial court in the present case expressly noted this concern. Accordingly, we are not persuaded by the defendant's argument that the trial court had a duty to inquire further as to Attorney Perry's courses of action with respect to a medical expert and exhibit 1d.

The judgment is affirmed.

In this opinion the other judges concurred.

914 NORTH COLONY, LLC *v.* 99 WEST, LLC
(AC 46943)

Bright, C. J., and Cradle and Seeley, Js.

Syllabus

The plaintiff landlord and the defendant tenant entered into a lease agreement that required the defendant to pay base rent on a monthly basis, as well as charges for real estate taxes and water and sewer assessments. After the defendant failed to make its rent payment in April, 2020, the plaintiff served the defendant with a notice to quit for nonpayment of rent, which included a disclaimer stating that any payments tendered after the service of the notice to quit would be accepted as use and occupancy only. One day before the quit date on the notice, the defendant tendered payment for the April and May, 2020, base rent. Shortly thereafter and for the next few months, the parties' representatives had discussions regarding the defendant's tenancy at the premises. The plaintiff commenced the present action seeking to recover possession of the premises in October, 2020, when it became apparent that the defendant would not agree to a new lease. During the months when discussions were taking place between the parties' representatives, as well as after the underlying action was commenced, the plaintiff continued to send invoices to the defendant itemizing charges accruing under the lease, including rent, attorney's fees, real estate taxes, and late fees, while at times also requesting use and occupancy payments. The defendant made payments in response to each invoice. Following the plaintiff's case-in-chief at trial, the defendant's counsel made an oral motion to dismiss on the basis that the court lacked subject matter jurisdiction. The court granted the motion to dismiss, finding that the plaintiff's conduct after service of the notice to quit had rendered the notice to quit equivocal. On the plaintiff's appeal to this court, *held* that the trial court properly found that it lacked subject matter jurisdiction over the summary process action: the plaintiff's inconsistent characterization of what the lease referred to as base rent, its requests for payment including additional charges that were purportedly due under the terms of the lease, and the delay in initiating the summary process action undermined the effectiveness of the use and occupancy disclaimer; moreover, the plaintiff's actions created reasonable doubt in the mind of a reasonable tenant as to whether the lease, in fact, remained terminated, and the trial court therefore properly concluded that the notice to quit was rendered equivocal by the plaintiff's conduct.

Argued May 16—officially released July 16, 2024

Procedural History

Summary process action, brought to the Superior Court in the judicial district of New Haven, Housing Session, and tried to the court, *Spader*, *J.*; thereafter, the court, *Spader*, *J.*, granted the defendant's motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

John A. Farnsworth, with whom, on the brief, was *Robert L. Rispoli*, for the appellant (plaintiff).

Jonathan A. Kaplan, with whom was *Sean M. McAuliffe*, for the appellee (defendant).

Opinion

BRIGHT, C. J. The plaintiff, 914 North Colony, LLC, appeals from the judgment of the trial court dismissing its summary process action against the defendant, 99 West, LLC. On appeal, the plaintiff claims that the court improperly concluded that the plaintiff had reinstated the tenancy by accepting the defendant's tendered payments after service of the notice to quit, despite the fact that the notice to quit included a use and occupancy disclaimer. We disagree with the plaintiff's characterization of the court's judgment and conclude that the court properly found that the plaintiff's actions rendered the notice to quit equivocal, thereby depriving the court of subject matter jurisdiction over the summary process action. Accordingly, we affirm the judgment of the trial court.

The following undisputed facts are relevant to our analysis.[1] On December 1, 2017, the plaintiff purchased a parcel of land located at 914 North Colony Road in Wallingford and consented to the assignment and assumption of a preexisting lease agreement (lease)

[1] Prior to trial, the parties submitted a "joint statement of undisputed material facts" for the court's consideration.

with the defendant, which operates a restaurant on the premises.[2] The initial term of the lease began on April 19, 1999, and expired on April 18, 2019, but the lease allowed the defendant to exercise a series of four options to extend the lease for additional five year terms, and the defendant had exercised the first of these four options to extend the lease until 2024. Under the lease, the defendant is responsible for payment of the base rent on the nineteenth day of each month and a 5 percent late fee for any late payments. The base rent amount is subject to an increase at the start of each five year term extension of the lease; throughout the events at issue in this appeal, the monthly base rent was $8078.34. The lease also requires the defendant to pay charges for real estate taxes as "additional rent" and water and sewer assessments. Customarily, the defendant pays the base rent on the first of each month and pays the other charges when billed by the plaintiff.

On March 10, 2020, Governor Ned Lamont declared a state of emergency because of the COVID-19 pandemic. Following this declaration, Governor Lamont issued Executive Order No. 7D, which prohibited restaurants from serving food or drink for on premises consumption. Following this restriction, the defendant started to offer takeout food but still suffered financially. On March 27, 2020, the defendant's corporate affiliate, 99 Restaurants, LLC, sent a letter to the plaintiff stating that, due to the financial impact of the pandemic and related restrictions, the defendant was excused from performance under the lease and would "not be paying the rent and other amounts due under the lease for the month of April, 2020." The plaintiff did not reply to this

[2] The plaintiff and the defendant are successors in interest to the original parties to the lease, which was executed on or about October 6, 1998. On December 1, 2017, the plaintiff became the successor in interest to the original landlord, pursuant to a warranty deed and an assignment and assumption agreement. As of December 4, 2001, the defendant became the successor in interest to the original tenant.

letter. After the defendant did not pay the base rent when due on April 19, 2020, the plaintiff served the defendant with a notice to quit for nonpayment of rent on May 4, 2020, directing the defendant to vacate the premises on or before May 12, 2020. The notice to quit included a disclaimer stating that "[a]ny payments tendered after the service of this notice to quit will be accepted as use and occupancy only and not as rent, with full reservation of rights to continue the eviction action."

On May 8, 2020, the defendant tendered $16,156.68 for the April and May base rent, which the plaintiff received on May 11, 2020, one day prior to the quit date on the notice. Shortly after this payment, Peter DiNardo, a representative of the plaintiff, and Chad Corrigan, a representative of the defendant, discussed the status of the lease. At trial, DiNardo testified that, during this conversation, he stated, "[Y]ou will not be reinstated on your lease. The lease is terminated." On May 12, 2020, DiNardo emailed Corrigan an offering memorandum for an adjacent property to demonstrate that the defendant's base rent was lower than the market rate. The offering memorandum included a lease summary that reflected a base rent for the adjacent property that was more than double the amount of the defendant's base rent. Over the next few months, DiNardo and Corrigan continued to have discussions regarding the defendant's tenancy at the premises, and DiNardo testified that, at some point, he offered to let the defendant stay at the premises under a new lease agreement with a higher base rent. DiNardo also explained that the plaintiff commenced this action seeking to recover possession of the premises in October, 2020, only when it became apparent that the defendant would not agree to a new lease.

During the months when discussions were taking place between DiNardo and Corrigan, as well as after

the underlying action was commenced, the plaintiff continued to send invoices to the defendant itemizing charges accruing under the lease, while also at times requesting use and occupancy payments. Specifically, on May 20, 2020, the plaintiff sent an invoice for "Rent (06/2020)" and "Water (05/2020)." On June 19, 2020, the plaintiff sent an invoice for "Use & Occupancy (07/2020)," "Legal (06/2020)," and "Late Fees (06/2020)." On July 13, 2020, the plaintiff sent a letter requesting that the defendant pay real estate taxes. On August 20, 2020, the plaintiff sent an invoice for "Use & Occupancy (09/2020)" and "Water (08/2020)." On September 18, 2020, the plaintiff sent an invoice for "Use & Occupancy (10/2020)" and "Late Fees (09/2020)." On October 21, 2020, the plaintiff sent an invoice for "Use & Occupancy (11/2020)." On November 20, 2020, the plaintiff sent an invoice for "Use & Occupancy (12/2020)" and "Water (11/2020)." On December 31, 2020, the plaintiff sent an invoice for "Rent (01/2021)" and "Real Estate Taxes (01/2021)." From January, 2021, to July, 2022, the plaintiff continued to send invoices for "Rent," late fees, water, and real estate taxes. The defendant made payments in response to each invoice and remains in possession of the premises.

A trial on the plaintiff's summary process complaint was held on September 21, 2023. Following the plaintiff's case-in-chief, the defendant's counsel made an oral motion to dismiss, arguing that the evidence showed that the plaintiff, through its actions, had equivocated the notice to quit it had served on the defendant, thereby depriving the court of subject matter jurisdiction. In particular, the defendant's counsel argued that any termination of the lease was equivocated by the plaintiff's offers to reinstate the lease and its requests for payment of items such as the water bill, real estate taxes, and

late fees, which arise solely under the lease. In response, the plaintiff's counsel argued that DiNardo explicitly stated that the lease was terminated and would not be reinstated; the discussions following the notice to quit did not evidence an intent to reinstate; and the payments following the notice to quit were accepted for use and occupancy only, per the disclaimer in the notice to quit.

After hearing from the parties, the court granted the motion to dismiss, finding that the plaintiff's conduct after service of the notice to quit had rendered the notice to quit equivocal. In its oral decision, the court explained that "[t]he fact that the complaint wasn't brought for another five, six months [after service of the notice to quit] while these communications were going on, while statements went out asking for rent, while the items that went for taxes, water, sewer, which are items on the rent, while late fees are still showing up on invoices, and a complaint got served five, six months later as a negotiation tactic probably, but I think by that point this lease was reinstated by the actions of the parties by the acceptance of the payment. . . . [B]ased on the testimony before the court, I can't find that this was not equivocated. The intent, the waiting the five months . . . during a global pandemic, the motion to dismiss is granted. The notice to quit was equivocated. The lease was reinstated as of the acceptance of that payment." This appeal followed.

On appeal, the plaintiff claims that the court improperly concluded that the plaintiff had reinstated the tenancy by accepting the defendant's tendered payments after service of the notice to quit despite the fact that the notice to quit included a use and occupancy disclaimer. It argues that the court's conclusion is "unsup-

ported by applicable law and [is] not supported by facts in the record."[3] We are not persuaded.[4]

We begin our analysis by setting forth the applicable standard of review and relevant legal principles regarding summary process. Whether the court properly concluded that the plaintiff reinstated the defendant's tenancy through its course of conduct following the service of an unequivocal notice to quit "presents a mixed question of law and fact to which we apply plenary review. . . . We must therefore decide whether the court's conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Centrix Management Co., LLC* v. *Valencia*, 132 Conn. App. 582, 586–87, 33 A.3d 802 (2011).

[3] The plaintiff also claims that the court "erroneously found that [the] notice to quit was equivocal and thereafter improperly granted the defendant's oral motion to dismiss because the plaintiff established its prima facie case" pursuant to Practice Book § 15-8. Although the plaintiff dedicates much of its brief to this point, we decline to address this claim because the basis for the judgment of dismissal, and the only issue before us in this appeal, is whether the notice to quit was made equivocal by the plaintiff's actions. Whether the plaintiff established its prima facie case is a separate issue that the trial court did not address in its ruling.

[4] We note that the defendant claims that this appeal is moot because the plaintiff failed "to challenge all of the factual findings and legal conclusions that led to the trial court granting [the defendant's] motion to dismiss on the basis of equivocation of the notice to quit." (Emphasis omitted.) The defendant argues that, because the plaintiff's brief focuses solely on events from May 4 to 12, 2020, including payment of the April and May rent and conversations between the parties' representatives, and does not address the other evidence on which the trial court relied, including the invoices that the plaintiff sent to the defendant, the plaintiff failed to challenge all the bases for the trial court's decision. This argument fails. Although an appellant must challenge all the independent bases for a trial court's adverse ruling to avoid rendering an appeal moot; see, e.g., *State* v. *Marsala*, 204 Conn. App. 571, 575, 254 A.3d 358, cert. denied, 336 Conn. 951, 251 A.3d 617 (2021); the late rent payments, the conversations between the parties' representatives, and the invoices are not independent bases for the court's judgment. Rather, they are simply separate pieces of evidence that support the only basis for the court's judgment—that is, that the plaintiff's conduct rendered the notice to quit equivocal. Consequently, this appeal is not moot.

When determining whether a landlord's conduct rendered a notice to quit equivocal, courts apply an objective standard that evaluates whether the words and actions of the landlord "could create reasonable doubt in the mind of a reasonable tenant as to whether the lease, in fact, remained terminated." Id., 589. In the present case, the facts are undisputed, and the court credited the testimony of DiNardo, the only witness who testified at trial. Accordingly, our review is limited to whether the court's legal conclusion that the actions of the plaintiff created reasonable doubt in the mind of the defendant as to the status of its tenancy was legally and logically correct and finds support in the undisputed facts that appear in the record. Id., 586–87.

"Summary process is a special statutory procedure designed to provide an expeditious remedy. . . . It enable[s] landlords to obtain possession of leased premises without suffering the delay, loss and expense to which, under the common-law actions, they might be subjected by tenants wrongfully holding over their terms. . . . Service of a valid notice to quit, which terminates the lease and creates a tenancy at sufferance . . . is a condition precedent to a summary process action under [General Statutes] § 47a-23 that implicates the trial court's subject matter jurisdiction over that action." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Waterbury Twin, LLC* v. *Renal Treatment Centers–Northeast, Inc.*, 292 Conn. 459, 466, 974 A.2d 626 (2009). Due to the expeditious nature of summary process, the relevant statutes "must be narrowly construed and strictly followed." (Internal quotation marks omitted.) Id. "The failure to comply with the statutory requirements deprives a court of jurisdiction to hear the summary process action." *Bridgeport* v. *Barbour-Daniel Electronics, Inc.*, 16 Conn. App. 574, 582, 548 A.2d 744, cert. denied, 209 Conn. 826, 552 A.2d 432 (1988).

In order to comply with § 47a-23, a notice to quit must be unequivocal. See *Getty Properties Corp.* v. *ATKR, LLC*, 315 Conn. 387, 407, 107 A.3d 931 (2015) ("[i]n order to effect a termination, the lessor must perform some unequivocal act which clearly demonstrates his intent to terminate the lease" (internal quotation marks omitted)); *Centrix Management Co., LLC* v. *Valencia*, supra, 132 Conn. App. 589–90 ("a paramount consideration is the goal of insulating the tenant from confusion and uncertainty"). Furthermore, despite the service of an unequivocal notice to quit, a landlord's subsequent conduct "can render the landlord's intent to terminate the tenancy equivocal, repudiate the intent to terminate set forth in the notice to quit, and reinstate the lease." *J. M.* v. *E. M.*, 216 Conn. App. 814, 820, 286 A.3d 929 (2022); see also *Centrix Management Co., LLC* v. *Valencia*, supra, 589–90 (concluding that unequivocal notice to quit was rendered equivocal by landlord's later written and spoken statements inconsistent with termination of tenant's lease). If the notice to quit is rendered equivocal by the landlord's actions and the lease is deemed to be reinstated, the court lacks subject matter jurisdiction over the summary process action. See generally *J. M.* v. *E. M.*, supra, 820 ("[a] notice to quit is a condition precedent to a summary process action and, if defective, deprives the court of subject matter jurisdiction").

The plaintiff's primary claim on appeal is that the court improperly concluded that its acceptance of payments from the defendant after service of the notice to quit rendered the notice to quit equivocal. It argues that, because the notice to quit included a use and occupancy disclaimer and, considering that DiNardo expressly told Corrigan that the lease was terminated and would not be reinstated, any payments the plaintiff accepted after service of the notice constituted use and occupancy and, therefore, did not equivocate the notice

to quit. In response, the defendant argues that the plaintiff mischaracterizes the court's reasoning. According to the defendant, the court relied not only on the plaintiff's acceptance of payments from the defendant, but also on the entirety of the plaintiff's conduct after it served the notice to quit, including its sending of invoices seeking the payment of sums due under the lease, its negotiations with the defendant on new lease terms, and its delay in instituting the underlying action.

We, therefore, begin with a review of the court's judgment. "The interpretation of a trial court's judgment presents a question of law over which our review is plenary. . . . As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole. . . . [W]e are mindful that an opinion must be read as a whole, without particular portions read in isolation, to discern the parameters of its holding. . . . Furthermore, [w]e read an ambiguous trial court record so as to support, rather than contradict, its judgment." (Internal quotation marks omitted.) *In re November H.*, 202 Conn. App. 106, 118, 243 A.3d 839 (2020). Although the court in the present case referenced the plaintiff's acceptance of the May payment as supporting its conclusion that the plaintiff's conduct equivocated the lease, it also referred to the plaintiff's other conduct, including the invoices sent by the plaintiff following the notice to quit and the delayed commencement of the summary process action. Consequently, we consider, as did the trial court, the entirety of the plaintiff's conduct after it served the notice to quit.

As previously noted, the plaintiff's primary argument on appeal is that, because it included a use and occupancy disclaimer in the notice to quit, the defendant

was on notice that all payments made after service of the notice to quit would be accepted for use and occupancy only, and not for rent. As support for its argument, the plaintiff relies on this court's decision in *O & P Realty* v. *Santana*, 17 Conn. App. 314, 551 A.2d 1287, cert. denied, 210 Conn. 812, 556 A.2d 610 (1989), in which we held that a landlord may accept rent and characterize it as use and occupancy if the landlord has notified the tenant that any payments made after service of the notice to quit would be accepted only as use and occupancy payments. Id., 318. The plaintiff's reliance on *O & P Realty* is misplaced considering the record before the trial court in the present case.

To be sure, use and occupancy disclaimers are both permitted and encouraged in a notice to quit, as they "[avoid] misleading tenants who tender late payments and . . . [insulate] the summary process action from being flawed by the acceptance of [payment] after commencement of the summary process." (Internal quotation marks omitted.) Id., 318–19. The inclusion of a use and occupancy disclaimer, however, does not preclude a determination that the tenancy was reinstated by way of subsequent conduct, especially when, as here, the conduct included sending regular invoices that specifically identified the amounts due as rent or other amounts due pursuant to the lease.

Indeed, in the present case, the plaintiff's inconsistent characterization of what the lease referred to as base rent, sometimes as "Rent" and sometimes as "Use & Occupancy," undermines the effectiveness of the use and occupancy disclaimer in avoiding confusion. Specifically, shortly after the notice to quit was served, the defendant tendered $16,156.68, representing the base rent due under the lease for April and May, 2020. Thereafter, on May 20, 2020, just a little more than one week after DiNardo and Corrigan spoke, the plaintiff sent the defendant an invoice for June, 2020, requesting the

payment of "Rent." Given that the defendant had just paid its outstanding balance to the plaintiff on May 8, 2020, the plaintiff's May 20 invoice for "Rent" certainly "could create reasonable doubt in the mind of a reasonable tenant as to whether the lease, in fact, remained terminated." *Centrix Management Co., LLC* v. *Valencia*, supra, 132 Conn. App. 589. Although the plaintiff subsequently charged the defendant for "Use & Occupancy" from June to November, 2020, that same charge again was referred to as "Rent" in the invoices from December, 2020, through August, 2022, which could further cause a reasonable tenant to question whether the lease, in fact, had been terminated.

Further, the plaintiff ignores the fact that, although its invoices between June and November, 2020, requested "Use & Occupancy" payments equivalent to the base rent due under the lease, it also requested payment of additional charges, including water, real estate taxes, late fees, and attorney's fees that were purportedly due under the terms of the lease. Those additional charges suggest that the lease remained in effect because "after a notice to quit possession has been served, a tenant's fixed tenancy is converted into a tenancy at sufferance. . . . A tenant at sufferance is released from his obligations under a lease. . . . His only obligations are to pay the reasonable rental value of the property which he occupied in the form of use and occupancy payments . . . and to fulfill all statutory obligations." (Citations omitted; footnote omitted.) *Sproviero* v. *J.M. Scott Associates, Inc.*, 108 Conn. App. 454, 462–63, 948 A.2d 379, cert. denied, 289 Conn. 906, 957 A.2d 873 (2008).

We recognize that "[u]se and occupancy payments encompass a fair rental value of the property, which necessarily accounts for obligations that are assumed by a landlord in renting the property, such as septic system maintenance. . . . Although, in many instances, use and occupancy payments are equal to

the parties' previously agreed upon rent, a landlord may be entitled to a larger use and occupancy payment when it is forced to assume obligations that were once the responsibility of a tenant under a lease." (Citation omitted.) Id., 465. Nevertheless, where the landlord identifies those charges, which have their foundation solely in the terms of the lease, separate from the use and occupancy payment it is seeking, it creates uncertainty as to the status of the lease and equivocates its notice to quit. This is particularly true in the present case, where the plaintiff invoiced the defendant separately for late fees and attorney's fees, which are only required pursuant to the lease and cannot be an element of use and occupancy due from a tenant at sufferance. See, e.g., *Milano* v. *Paladino*, Superior Court, judicial district of New Haven, Housing Sesson, Docket No. CVNH 9007-3897 (April 3, 1991) (3 Conn. L. Rptr. 444, 445) ("[t]he landlord cannot recover late charges as provided for in the lease for the months after the landlord terminated the lease through the service of a notice to quit"). In fact, at oral argument before this court, counsel for the plaintiff conceded that items such as real estate taxes and late fees do not fall into the category of use and occupancy.

The confusion created by the plaintiff's invoices was compounded by the fact that it waited months before instituting the underlying action while it continued negotiations with the defendant regarding its continued tenancy at the premises. We have observed that "providing a tenant with a new lease agreement or with an invitation to enter into a new rental agreement after a notice to quit has been served is inconsistent with an unequivocal notice to quit." *Centrix Management Co., LLC* v. *Valencia*, supra, 132 Conn. App. 587. In *Centrix Management Co., LLC*, the landlord served a notice to quit on the tenants after they failed to pay rent for four consecutive months. Id., 584. Following the notice to

quit, the landlord expressed his preference to *not* evict the tenants and instead sought to resolve the dispute. Id. Over the one and one-half months between service of the notice to quit and commencement of the summary process action, the landlord took steps to assist the tenants in staying on the premises, such as providing them with contact information for an eviction prevention program and agreeing in writing "to forgive two months [of] use and occupancy payments and [to] work with [them] to straighten out [the] arrearage." (Internal quotation marks omitted.) Id. Even after the summary process action was filed, the parties continued to discuss the tenants' ongoing occupancy of the premises. Id., 584–85.

One of the tenants moved to dismiss the summary process action on the ground that the plaintiff had not terminated the lease because the notice to quit was equivocal. Id., 584. Concluding that the notice to quit had been equivocated, the trial court dismissed the case. Id., 585–86. The landlord appealed, claiming that his subsequent communications constituted settlement negotiations that did not contradict the pending summary process action that was not being withdrawn. Id., 586. Affirming the judgment of the trial court, this court held that the subsequent actions by the landlord during settlement negotiations and the lack of communication to the tenants "that the summary process action was proceeding to conclusion unless they successfully negotiated a pretrial settlement" created reasonable doubt as to whether the lease was terminated. Id., 590.

The plaintiff argues that the facts in the present case are distinguishable from *Centrix Management Co., LLC*, and more akin to the facts in *Cheshire Land Trust, LLC* v. *Casey*, 156 Conn. App. 833, 115 A.3d 497 (2015). In that case, the landlord sent a letter to the tenants informing them that the lease was terminated and that the landlord was in the process of contracting with a

prospective new tenant for the premises. Id., 840. It included an ultimatum for the tenants either to vacate the premises or to negotiate separately with the new tenant by a specified deadline. Id., 840–41. Following the notice to quit, one of the tenants attempted to negotiate with the prospective new tenant but they could not come to agreeable terms. Id., 842–43. When informing the landlord's agent of this impasse, the agent told the tenant to either sign the proposed sublease with the prospective tenant within thirty-five minutes or the landlord would continue with the eviction action. Id., 843. Thereafter, the tenant, the prospective tenant, and the landlord's agent met. Id. During the meeting, the prospective tenant promised to accommodate the tenant in the proposed lease documents; however, no agreement was reached. Id. The trial court rendered a judgment of possession in favor of the landlord, concluding that the notice to quit was unequivocal. Id., 837–38. The tenants appealed, claiming that the notice to quit was equivocal, as the options presented in the notice to quit suggested that a new agreement could be negotiated and, in the alternative, that the landlord's subsequent actions equivocated the notice to quit. Id., 838. This court rejected the tenants' claim, holding that, "even if we assume that the [statements in the notice to quit] could be construed as inviting the [tenants] to enter into a new lease, that invitation would not have rendered the [landlord's] notice equivocal because it was accompanied by language clearly communicating that eviction would occur in the absence of an agreement to the contrary." Id., 841–42. Addressing the tenants' alternative argument, this court held that the trial court's conclusion that the subsequent comments by the landlord's agent constituted a clear and unequivocal warning that the eviction action would proceed in the absence of a new agreement with the new tenant was consistent with our holding in *Centrix Management*

Co., *LLC*. Id., 843–44. We further observed that the approach in both *Centrix Management Co.*, *LLC*, and *Cheshire Land Trust*, *LLC*, "strikes the appropriate balance between allowing settlement discussions to continue and helping to ensure that the tenant is not unsure as to whether he or she still may be evicted pursuant to the pending action." (Internal quotation marks omitted.) Id., 842.

The plaintiff's reliance on *Cheshire Land Trust*, *LLC*, is misplaced. In its attempt to analogize the facts in the present case to those in *Cheshire Land Trust*, *LLC*, the plaintiff focuses on DiNardo's statement to Corrigan that the lease was terminated and would not be reinstated. When viewed in the context of all the subsequent actions by the plaintiff, however, this statement is not the same unequivocal ultimatum given in *Cheshire Land Trust*, *LLC*. The subsequent communications following the ultimatum in *Cheshire Land Trust*, *LLC*, were not inconsistent with the termination of the lease; rather, they reinforced the inevitability of an eviction action in the absence of an agreement. In the present case, in contrast, the plaintiff's actions following DiNardo's statement, namely, continuing to charge the defendant for obligations that arose only under the lease separately from the charges for "Use & Occupancy" and sending numerous invoices for "Rent" between May 20, 2020, and July 21, 2022, were inconsistent with a "clear intention to terminate the lease and to proceed with judicial process to secure possession." (Internal quotation marks omitted.) *Centrix Management Co.*, *LLC* v. *Valencia*, supra, 132 Conn. App. 589. As in *Centrix Management Co.*, *LLC*, the plaintiff's conduct, not only over the more than five months between the notice to quit and the commencement of the summary process action but also during the almost three years that the action was pending, created uncertainty as to whether

the landlord would proceed to conclusion with the eviction action. In other words, these communications would create reasonable doubt in the mind of a tenant as to whether the lease, in fact, remained terminated. See id. Accordingly, the court properly concluded that the notice to quit was rendered equivocal by the plaintiff's conduct.

The judgment is affirmed.

In this opinion, the other judges concurred.