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OPINION

Today's Business: The legal remedies to unfair competition

By David A Slossberg
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July 20, 2024

David A. Slossberg
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A hallmark of business dealings in America is free and fair competition. If a business delivers superior service and/or products, the prevailing wisdom is that it can expect to be successful and profitable and to outperform its competition.

Of course, many factors, such as costs, taxes, economic conditions, industry evolutions and changing demand, can impact the bottom line. However, the law also recognizes the possibility of bad actors improperly interfering with business — and provides remedies that can help a business overcome the improper interference.

To ensure fairness in business dealings, the courts recognize the common-law claim of interference with business expectancies. A valid business expectancy includes any prospective contractual or business relationship of monetary value.

To prevail in a claim of interference with business expectancies, the aggrieved plaintiff must prove:

- The existence of a business relationship between it and another party
- The defendant's knowledge of the relationship
- The defendant's interference with the relationship
- Loss to the plaintiff

The interference is committed by third-parties to the business relationship in an effort to usurp or otherwise interfere with the benefits of that relationship.

The conduct giving rise to the claim also must be wrongful or "tortious." To establish the wrongful conduct, the plaintiff must prove that the defendant's conduct involved fraud, misrepresentation, intimidation or malice. The defendant must have an improper motive or means.

What constitutes a bona fide business expectancy depends on the particular circumstances of the business relationship at issue. The clearest example is where a plaintiff has an existing contract with which the defendant tortiously interferes. The existence of the contract is evidence of the business expectancy. It is often less clear when a party has a business opportunity that has not yet been evidenced in writing and has yet to come to fruition. A party must provide enough evidence to demonstrate that the expectancy was reasonable and not simply speculative. In other words, did the wrongful interference cause the alleged damages?

Establishment of tortious interference may also give rise to liability for unfair or deceptive trade practices under Connecticut's Unfair Trade Practices Act (CUTPA). Some courts have even found a CUTPA claim viable without establishing all elements of a common law claim, if the alleged conduct was unscrupulous, immoral or unethical. This is consistent with CUTPA's remedial purpose to eliminate unfair competition and to provide a broad basis for a claim aside from the common law standard. CUTPA also creates the possibility to recover attorney's fees as the prevailing party and punitive damages if the defendant's conduct is truly egregious.

Interference with business expectancies arises under many circumstances. One common example is when a competitor attempts to steal a customer with whom a business has an existing relationship. While jockeying for customers is commonly understood to take place between competitors, a soliciting company cannot seek to acquire the customer by misrepresenting or defaming its competitor or defrauding the customer in the process. Other examples include misleading customers regarding the right to use a protected trademark, submitting fraudulent bids for work, and interfering with the sale of real and personal property.

While healthy competition is the foundation of our economy, both the common law and CUTPA provide the means for courts to weed out the bad actors and provide relief for their wrongful interference with business expectancies.

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