

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED  
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

BREAST CANCER RESEARCH AND SUPPORT  
FUND and THE FUNDRAISING CENTER,

Appellants,

v.

MATTHEW D. WEIDNER,  
Appellee.

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Ref. No.: 17-000046-AP-88B

UCN: 522017AP000046XXXXCI

**ORDER AND OPINION**

Appellants appeal the trial court's Final Summary Judgment in Favor of Plaintiff's Declaratory and Injunctive Relief Claims ("Final Summary Judgment") that found in favor of Appellee and entered a permanent injunction against Appellants. On appeal, Appellants contend that the trial court erred both in entering summary judgment when a genuine issue of material fact existed and in improperly entering the permanent injunction. Upon review of the briefs, the record on appeal, and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. For the reasons set forth below, the Final Summary Judgment is affirmed.

**Facts and Procedural History**

On November 7, 2016, the lower court deemed Appellee's four-count Second Amended and Supplemental Complaint filed. Appellee alleged that Appellants committed fraud and violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") and sought a Declaratory Judgment that Appellants violated FDUTPA and the Florida Solicitation of Contributions Act ("FSCA") and a permanent injunction. On November 28, 2016, Appellants filed their joint Answer and Affirmative Defenses. On June 26, 2017, Appellee filed a motion for summary judgment with supporting evidence, including seven exhibits and an affidavit signed by himself. Appellants did not file any oppositional summary judgment evidence. On August 28,

2017, the day of the summary judgment hearing, Appellants filed an unsworn memorandum in opposition to the motion.

Appellee's claims essentially revolve around his allegations that Appellants misrepresented themselves as a charity. As established by the undisputed summary judgment evidence, Appellee received a phone solicitation from Appellants, to whom he subsequently donated \$10. Apparently his own research led him to discover that, based on Appellants' tax documents, Appellants used donations for issues other than breast cancer research. Appellee also alleged that Appellants' charity was deceptively similar to a well-known breast cancer charity, Susan G. Komen. Appellee's Complaint claimed that Appellants had provided false, misleading, and inaccurate statements to represent themselves, used third parties' names without consent, used logos and symbols similar to other organizations, failed to apply donations as represented, and failed to provide required disclosures. The Complaint alleged that these actions violated FSCA, which constituted a per se violation of FDUTPA.

On August 29, 2017, the trial court entered the Final Summary Judgment, which found in Appellee's favor that Appellants violated FSCA and FDUTPA and were permanently enjoined from further violations. On September 13, 2017, Appellant Breast Cancer Research and Support Fund filed a motion for rehearing, which the lower court denied on September 19, 2017. On September 28, 2017, Appellants filed the instant appeal.

### **Standard of Review**

The appellate court reviews orders granting or denying summary judgment de novo, as they are a pure question of law. *Shaw v. Tampa Elec. Co.*, 949 So. 2d 1066, 1069 (Fla. 2d DCA 2007); *Matissek v. Waller*, 51 So. 3d 625, 628 (Fla. 2d DCA 2011). The appellate court reviews orders granting, denying, dissolving, or modifying injunctions for a clear abuse of the trial court's discretion; otherwise, it will not disturb that decision. *Wise v. Schmidek*, 649 So. 2d 336, 337 (Fla. 3d DCA 1995).

## Discussion

A motion for summary judgment “must state with particularity the grounds on which it is based and the substantial matters of law to be argued and must specifically identify any affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence.” Fla. R. Civ. P. 1.510(c). “The judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Id.* To be entitled to summary judgment when a non-moving party has filed affirmative defenses, the moving party also “must conclusively refute the factual bases for the defenses or establish that they are legally insufficient.” *Coral Wood Page, Inc. v. GRE Coral Wood, LP*, 71 So. 3d 251, 253 (Fla. 2d DCA 2011); *see also Atria v. One Progress Plaza, II, LLC*, 170 So. 3d 884 (Fla. 2d DCA 2015). If the moving party sufficiently refutes the affirmative defenses, then the burden shifts back to the non-moving to prove the existence of material fact. *Id.*

Here, Appellee’s Complaint alleged that he was aggrieved in various ways, including by being misled about Appellants’ use of his monetary donation to Appellants’ charity and by being misled about Appellants’ name, symbol, and emblem. In support of his motion for summary judgment, Appellee submitted various summary judgment evidence, including an affidavit based upon Appellee’s personal knowledge. Appellants failed to submit any oppositional summary judgment evidence. The lower court properly found that Appellee’s summary judgment evidence sufficiently refuted Appellants’ defenses and established that there are no genuine issues of material fact. Thus, the question becomes whether Appellee was entitled to judgment as a matter of law.

The FCSA is intended “to protect the public [from solicitation activities] by requiring full public disclosure of the identity of persons who solicit contributions from the public, and of the purposes for which such contributions are solicited and the manner in which the contributions are actually used. It is further the intent of the Legislature to prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions.” § 496.402, Fla. Stat. “Any

person who commits an act or practice that violates any provision of [FCSA] commits an unfair or deceptive act or practice or unfair method of competition in violation of [FDUTPA], and is subject to the penalties and remedies provided for such violation.” § 496.416, Fla. Stat.

“[A]nyone aggrieved by a violation of [FDUTPA] may bring an action to obtain a declaratory judgment that an act or practice violates [FDUTPA] and to enjoin a person who has violated, is violating, or is otherwise likely to violate this part.” § 501.211, Fla. Stat. Whether a party is “aggrieved” is broadly interpreted to mean that the party “must be able to demonstrate some specific past, present, or future grievance,” even if the party has not been damaged or suffered a loss. *Ahearn v. Mayo Clinic*, 180 So. 3d 165, 173 (Fla. 1st DCA 2015); *Off Lease Only, Inc. v. LeJeune Auto Wholesale, Inc.*, 187 So. 3d 868, 870 (Fla. 3d DCA 2016), *reh'g denied* (Mar. 23, 2016); *see also CareerFairs.com v. United Bus. Media LLC*, 838 F. Supp. 2d 1316, 1324 (S.D. Fla. 2011) (“To plead a FDUTPA claim for injunctive relief, a party must allege 1.) a deceptive act or unfair practice; and 2.) that the party was aggrieved by the act practice [sic].”) (applying Florida law). An injunction may be granted even if there is no “continuing irreparable injury” to the party. *Martorella v. Deutsche Bank Nat'l Tr. Co.*, 161 F. Supp. 3d 1209, 1224 (S.D. Fla. 2015), *adhered to on reconsideration*, 12-80372-CIV, 2015 WL 10857441 (S.D. Fla. Nov. 9, 2015) (applying Florida law) citing *Davis v. Powertel, Inc.*, 776 So. 2d 971, 975 (Fla. 1st DCA 2000) (“Nothing in the statute requires proof that the declaratory or injunctive relief would benefit the consumer filing the suit.”).

Here, Appellee alleges that he was aggrieved by being misled into making a nominal monetary donation to Appellants based upon Appellants’ deceptive website and phone call to Appellee. This is sufficient to establish Appellee’s “aggrieved” status under FDUTPA. Appellee also established that Appellants engaged in deceptive, fraudulent, or misrepresentational acts in the solicitation and reporting of contributions based upon Appellant’s website, program partners, symbol, and indicated use of donations. Thus, Appellee was entitled to judgment as a matter of law and the lower court properly entered summary judgment in his favor.

Furthermore, the injunction was proper and specifically set forth appropriate terms based upon the Final Summary Judgment finding that Appellants violated FDUTPA. Appellants contend that the trial court was required to hold an evidentiary hearing prior to entry of the injunction; however, an evidentiary hearing was not required because there were no issues of fact to be decided. *See* Fla. R. Civ. P. 1.510(c), 1.610. Additionally, Appellants' contention that the permanent injunction is improper because it does not find that Appellee was irreparably harmed by Appellants' conduct is without merit as a FDUTPA injunction may be granted even where the conduct may only occur in the future and there is no irreparable injury to the aggrieved party. *Ahearn*, 180 So. 3d at 173; *Martorella*, 161 F. Supp. 3d at 1224.

### **Conclusion**

Because the trial court properly found that there were no genuine issues of material fact precluding summary judgment and the permanent injunction was proper, it is

#### **ORDERED AND ADJUDGED** that:

1. The Final Summary Judgment in Favor of Plaintiff's Declaratory and Injunctive Relief Claims is hereby **AFFIRMED**; and
2. Appellee's Motion for Appellate Attorney's Fees is remanded to the trial court and granted contingent upon the trial court's determination of entitlement, and if entitled, an assessment of the amount.

**DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Original Order entered on July 3, 2018, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Amy M. Williams.

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