

Prepared by and return to:

Jon B Coats, Jr., Esq
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St. Petersburg, FL 33704
727-456-4462

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THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPLE BALANCE DUE UPON MATURITY IS \$42,000.00, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

MORTGAGE

This Indenture, Made this ___ day of August, 2017, by and between **Murakami Designs, LLC**, whose post office address is 6800 Gulfport Blvd. S., #201, South Pasadena, FL 33707, hereinafter called the Mortgagor, and **Howard and Lisa Cicio**, whose address is **30 Dibs Rd., Cadosia, NY 13783**, hereinafter called the Mortgagee:

The terms "Mortgagor" and "Mortgagee", shall include heirs, personal representatives, successors, legal representatives and assigns, and shall denote the singular and/or the plural, and the masculine and/or the feminine and natural and/or artificial persons, whenever and wherever the context so admits or requires.

Witnesseth, that the said Mortgagor, for and in consideration of the aggregate sum named in the promissory note, a copy of which is attached hereto and made a part hereof, the receipt of which is hereby acknowledged, does grant, bargain and sell to the said Mortgagee, his successors and assigns, in fee simple, the following described land, situate, lying and being in **Pinellas County, Florida**, to-wit:

Unit 201 of Bay Island Group No. 2, a Condominium according to the Declaration of Condominium thereof, recorded in Official Records Book 3540, Page(s) 677, of the Public Records of Pinellas County, Florida, and any amendments thereto, together with its undivided share in the common elements.

Together with all improvements now or later placed on the Real Property.

And the said Mortgagor does hereby fully warrant the title to said land, and will defend title to said land against the lawful claims of all persons whomsoever.

Provided always, that if said Mortgagor, his successors or assigns, shall pay unto the said Mortgagee, his successors or assigns, that certain promissory note, of which a true and correct copy is attached, and Mortgagor shall perform, comply with and abide by each and every stipulation, agreement, condition and covenant of said promissory note and of this mortgage, and shall duly pay all taxes, all insurance premiums reasonably required, all costs and expenses including reasonable attorneys fees that Mortgagee may incur in collecting money secured by this mortgage, and also in enforcing this mortgage by suit or otherwise, then this mortgage and the estate hereby created shall cease and be null and void.

Mortgagor hereby covenants and agrees:

To pay the principal and interest (if any) and other sums of money payable by virtue of said promissory note and this mortgage, or either, promptly on the days respectively the same severally come due.

To permit, commit or suffer no waste, impairment or deterioration of the property, or any part thereof.

If any of the sums of money due and owing to Mortgagee under the terms of the promissory note and this mortgage, including but not limited to any advance made by Mortgagee for the payment of insurance or taxes, are not paid within 15 days after the same become due and payable, or if each of the stipulations, agreements, conditions and covenants of the promissory note and this mortgage, or either, are not fully performed or complied with the aggregate sum owed on the promissory note shall become due and payable forthwith or thereafter at the option of Mortgagee, his successors, legal representatives, or assigns.



This mortgage and the note hereby secured shall be construed and enforced according to the laws of the State of Florida.

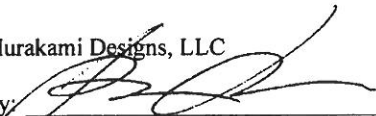
The principal sum secured hereby, along with any interest to be paid in accordance with the terms of the note secured hereby, shall immediately become due and payable without notice, if a transfer of title to the premises by sale or otherwise is made without the Mortgagee's written consent, while this mortgage remains a lien thereon, at the option of Mortgagee, his successors, legal representatives, or assigns.

Executed at Pinellas County, Florida on the date written above.

Signed, sealed and delivered in the presence of:

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPLE BALANCE DUE UPON MATURITY IS \$42,000.00, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.



Witness Name: Jan 15 Coab

Witness Name: Alison Butcher

Murakami Designs, LLC
By: 
Bruce Murakami, authorized member

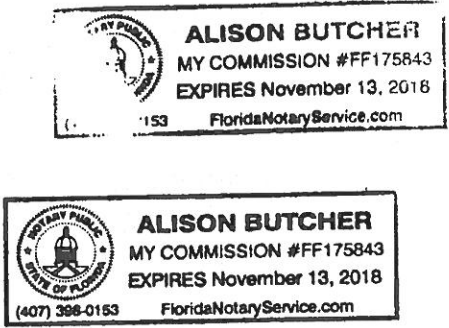
State of Florida
County of Pinellas

The foregoing instrument was acknowledged before me this 22nd day of August, 2017, by Bruce Murakami, as authorized member of Murakami Designs, LLC. He is personally known to me or has produced a driver's license as identification.

[Notary Seal]



Notary Public
Printed Name: _____
My Commission Expires: _____



**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.

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 FCSA 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. *Ahearne 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 3rd day of July, 2018.



JACK DAY
Circuit Judge, Appellate Division



PAMELA A.M. CAMPBELL
Circuit Judge, Appellate Division



AMY M. WILLIAMS
Circuit Judge, Appellate Division

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