

**SIXTH DISTRICT COURT OF APPEAL  
STATE OF FLORIDA**

---

Case Nos. 6D23-91, 23-159, 23-417  
CONSOLIDATED  
Lower Tribunal No. 2020-CC-001271

---

NAPLES MOTORCOACH RESORT HOMEOWNERS ASSOCIATION, INC. and  
NAPLES RV RESORT, LLC,

Appellants,

v.

JG&M PROPERTIES, LLC,

Appellee.

---

Appeal from the County Court for Collier County.  
Janeice T. Martin, Judge.

May 5, 2023

SMITH, J.

Naples Motorcoach Resort Homeowners Association, Inc. (“Association”) and Naples RV Resort, LLC (“Naples RV Resort”) appeal the final judgment.<sup>1</sup> Association and Naples RV Resort also appeal two subsequent amended final

---

<sup>1</sup> This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

judgments imposing attorney's fees and costs against them. We have jurisdiction. *See Fla. R. App. P. 9.030(b)(1)(A)*. For reasons set forth below, we reverse.

### ***Background***

Naples RV Resort is the developer of a high-end property where individuals can purchase lots for their recreational vehicles. The Association governs this conglomeration of lots. In 2013, the Appellee, JG&M Properties, LLC (who will be referred to as "Owner") purchased one such lot.<sup>2</sup>

Under the rules as set forth in the declarations at the time of purchase, Naples RV Resort reserved the exclusive right to lease all lots when left unoccupied by the owners. Per the declarations, Naples RV Resort was to create an advertising program to promote the rental of the units. The declarations also provided that "No restrictions are placed herein regarding an Owner's right to sell his Unit."

In 2018, the declarations were amended to add a 3% resale assessment to any purchase where the purchaser was "introduced or invited into the Project as a result of [Naples RV Resort's] leasing program." Owner was required to pay the 3% fee on the sale of its lot, which amounted to a \$6,000 fee as the lot was sold for \$200,000. This suit by Owner against Naples RV Resort and the Association resulted.

---

<sup>2</sup> Although immaterial to the present appeal, it must be noted for accuracy that the lot was originally purchased by Julius Anderson who then transferred ownership of the lot to JG&M Properties, LLC, an LLC Mr. Anderson now controls.

The Owner asserted two counts in its operative complaint. Count I alleged violations of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) against both Naples RV Resort and the Association for violation of section 720.3075(5), Florida Statutes (2018). Parties do not dispute that Count I was expanded at trial to also include a violation of the Florida statutory construct relating to unlicensed real estate broker activity as part of the FDUTPA claim. Count II asserted a violation of section 720.3075(5) against only Naples RV Resort. After a bench trial, the trial court found regarding Count I that the collection of the 3% fee by Naples RV Resort and Association violated the Florida statutory construct relating to unlicensed real estate broker activity, and, therefore, constituted a FDUTPA violation. Regarding Count II, the court found that Naples RV Resort violated section 720.3075(5), and this violation, also constituted an additional FDUTPA violation under Count I.

***Count I-FDUTPA violation based upon the Florida statutory construct relating to unlicensed real estate broker activity***

While the parties dispute whether Naples RV Resort’s and Association’s actions constituted unlicensed brokerage activity, this court need not reach that question because FDUTPA does not apply to the statutory construct at issue. Section 475.01(1)(a), Florida Statutes (2018), defines a broker as follows:

“Broker” means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or

with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists.

Correspondingly, section 475.42(1)(a), provides, “[a] person may not operate as a broker or sales associate without being the holder of a valid and current active license therefor.” The trial court found that Naples RV Resort and Association violated this statutory construct by collecting a 3% fee on the resale without a real estate license. The court then found that this statutory violation constituted a FDUTPA violation.

FDUTPA provides, “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or

commerce are hereby declared unlawful.” § 501.204(1), Fla. Stat. (2018)

Concerning how a “violation of this part” may occur, FDUTPA states:

“(3) Violation of this part” means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2017:

(a) Any rules promulgated pursuant to the Federal Trade Commission Act, 15 U.S.C. ss. 41 et seq.;

(b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts; or

(c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

§ 501.203(3), Fla. Stat. (2018) Our analysis of this count is limited to section 501.203(3)(c), that being whether a statute forms a *per se* (also referred to as “predicate”) basis for a FDUTPA violation because the Owner exclusively sought this relief and the final judgment ultimately reflected it.

FDUTPA expressly guides this court toward federal caselaw when interpreting the statute: “It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1,

2017.” § 501.204(2), Fla. Stat. (2018) Pursuant to the statute, this Court shall therefore look to federal courts in evaluating Owner’s FDUTPA claims.

As discussed in *Parr v. Maesbury Homes, Inc.*, No. 6:09-cv-1268-Orl-19GJK, 2009 WL 5171770 at \*7 (M.D. Fla. Dec. 22, 2009), there are two ways a statute can form a basis for finding a violation of FDUTPA:

Statutes may be found to serve as predicates for a FDUTPA claim under § 501.203(3)(c) in one of two ways. First, the text of a statute may expressly state that it is to serve as a FDUTPA predicate... Second, a court may find that a statute proscribes unfair and deceptive trade practices and therefore operates as an implied FDUTPA predicate.

Neither section 475.01 nor section 475.42 expressly states the statute may serve as a FDUTPA predicate.<sup>3</sup> Accordingly, the question is whether the statutory construct at issue here can operate as an implied FDUTPA predicate.

Similar to the statutory scheme regulating Florida realtors, there is also a statutory scheme regulating the Florida construction industry. *See* Fla. Stat. § 489.101 et seq. In a well-reasoned opinion, the court in *In re Edgewater By The Bay, LLLP*, 419 B.R. 511, 514 (Bankr. S.D. Fla. 2009) was required to analyze whether several construction-related statutory and ordinance violations qualified as

---

<sup>3</sup> An example of a statute with an express provision permitting claims under FDUTPA is section 509.511, Florida Statutes, which states, “A violation of this act is a deceptive and unfair trade practice and constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act.” The real estate statutes in question here contain no such provision.

a basis for FDUTPA claims. After a detailed look at the caselaw definitions of “unfair” and “deceptive,” and other guiding principles related to whether statutes qualify as predicates for FDUTPA claims, the court held that the alleged violations did not proscribe unfair trade practices or unfair methods of competition under section 501.203(3)(c):

The Florida Statutes and Code of Miami–Dade County contain numerous provisions regulating the construction industry and the sale of condominiums. ***Compliance with these provisions certainly provides benefits to the public. This does not mean, however, that violations of these laws or county codes are violations of laws or code provisions giving rise to claims under Florida's Deceptive and Unfair Trade Practices Act.***

*Edgewater*, 419 B.R. at 518 (emphasis added).

*In re Mona Lisa at Celebration, LLC*, 472 B.R. 582 (Bankr. M.D. Fla. 2012), aff'd, 495 B.R. 535 (M.D. Fla. 2013), analyzed several statutes regarding whether they could serve as predicate violations for FDUTPA claims and reached a similar conclusion. Relevant to our analysis, the court considered certain statutory sections of the Florida Condominium Act. The court conceded that while “the[se] statutes absolutely protect purchasers; the protection they provide is totally unrelated to the scope of FDUTPA that is designed to protect purchasers from unfair competition or deceptive trade practices.” *Mona Lisa*, 472 B.R. at 639 (citations omitted).

Akin to a regulatory scheme governing construction and condominiums, the prohibition on collecting a commission fee as a broker without a license pursuant to

sections 475.01(1)(a) and 475.42(1)(a) is not the type of statutory scheme which is encompassed under FDUTPA's scope of consumer protection or prevention of unfair or deceptive trade practices. We acknowledge these "statutes absolutely protect purchasers; however, the protection they provide is totally unrelated to the scope of FDUTPA that is designed to protect purchasers from unfair competition or deceptive trade practices." *Mona Lisa*, 472 B.R. at 639 (citation omitted). Because the applicable statutory scheme to Count I cannot serve as a FDUTPA predicate, this Court must reverse the lower court's judgment.

***Count II-Violation based on section 720.3075(5) as to Naples RV Resort only***

The parties also dispute whether section 720.3075(5) can form a basis for violation of FDUTPA. The Court need not reach that question to resolve this count because the trial court should have granted Naples RV Resort's motion for involuntary dismissal on this alleged statutory violation. Owner adduced no evidence that Naples RV Resort violated section 720.3075(5). Accordingly, both the direct statutory claim in Count II and its corresponding FDUTPA predicate act claim in Count I fail.

After the Owner rested in its case in chief, the defense moved for involuntary dismissal due to the failure of Owner to prove a violation of section 720.3075(5). The trial court denied the motion, and Naples RV Resort has asserted in its appeal that the denial was in error.



The standard of review for the trial court’s denial of a motion for involuntary dismissal is *de novo*. *Kuhnsman v. Wells Fargo Bank, N.A.*, 311 So. 3d 980, 983 (Fla. 2d DCA 2020). “When a party raises a motion for involuntary dismissal in a nonjury trial ‘the movant admits the truth of all facts in evidence and every reasonable conclusion or inference based thereon favorable to the non-moving party. Where the plaintiff has presented a prima facie case and different conclusions or inferences can be drawn from the evidence, the trial judge should not grant a motion for involuntary dismissal.’” *Deutsche Bank Nat. Tr. Co. v. Kummer*, 195 So. 3d 1173, 1175 (Fla. 2d DCA 2016) (quoting *Day v. Amini*, 550 So. 2d 169, 171 (Fla. 2d DCA 1989)).

Section 720.3075(5), Florida Statutes, entitled “Prohibited clauses in association documents,” provides:

It is declared the public policy of the state that prior to transition of control of a homeowners’ association in a community from the developer to the nondeveloper members, as set forth in s. 720.307, the right of the developer to amend the association’s governing documents is subject to a test of reasonableness, which prohibits the developer from unilaterally making amendments to the governing documents that are arbitrary, capricious, or in bad faith; destroy the general plan of development; prejudice the rights of existing nondeveloper members to use and enjoy the benefits of common property; or materially shift economic burdens from the developer to the existing nondeveloper members.

It is undisputed that Naples RV Resort unilaterally amended the declarations after Owner purchased its lot. However, at the time of Naples RV Resort's motion for involuntary dismissal, there was no evidence before the trial court establishing that the amendment was 1) arbitrary, capricious, or in bad faith, 2) prejudicial to the rights of existing nondeveloper members to use and enjoy the benefits of common property, or 3) materially shifting economic burdens from the developer to the existing nondeveloper members.

The Owner asserts that the mere language of the amendment is enough to establish a violation of the statute under one of the elements cited above. The amendment in question states as follows:

Resale Assessment for Unit Sales Procured by Declarant. During any period in which Declarant retains control of the Association, the Declarant shall levy a resale assessment equal to three percent (3%) of the purchase price upon the transfer of any Unit whereby the purchaser or transferee was introduced or invited into the Project as a result of Declarant's leasing program. In the event of any dispute arising out of this section and whether Declarant's leasing program is the procuring cause of said conveyance, the Declarant's reasonable discretion shall control. The due date shall be the date of the closing of the conveyance. This resale assessment shall, unless the transferor and transferee otherwise expressly agree, be the obligation of the transferor.

Nothing on the face of the amendment establishes that it was arbitrary or capricious or done in bad faith. Nor is there anything in the amendment that states what the funds would be used for, *i.e.*, whether there was some economic burden Naples RV

Resort intended to shift to the Owner or other nondeveloper members. Due to the complete lack of documentary or testimonial evidence in support of the Owner's claim pertaining to Count II at the time of the motion for involuntary dismissal, it was error for the trial court to deny the same. Accordingly, the trial court's judgment in favor of the Owner on Count II must be reversed, as well as the corresponding FDUTPA judgment in Count I.

Finally, having concluded the trial court erred by imposing final judgment on both of appellee's claims, we also reverse its subsequent fee awards. This matter is reversed and remanded for entry of an order of involuntary dismissal of Count II, a final judgment in appellants' favor on Count I, and further proceedings.

**REVERSED and REMANDED.**

COHEN and TRAVER, JJ., concur.

Ceci C. Berman and Joseph T. Eagleton, of Brannock Berman & Seider, Tampa, for Appellants.

John F. Hooley, of The Law Offices of John F. Hooley, P.A., Naples, for Appellee.

**NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING  
AND DISPOSITION THEREOF IF TIMELY FILED**