

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT

Stewart Agency, Inc. d/b/a Earl Stewart Toyota of North Palm Beach
v. Arrigo Enterprises, Inc. d/b/a Arrigo Dodge Chrysler Jeep Ram
West Palm Beach, and Arrigo Ft. Pierce, LLC d/b/a Arrigo Dodge
Chrysler Jeep Ram Fiat Ft. Pierce

266 So. 3d 207 (Fla. 4th DCA 2019) · No. 4D18-813 · Decided March 6, 2019

SUMMARY

The Florida Fourth District Court of Appeal affirmed summary judgment for Arrigo Enterprises and Arrigo Ft. Pierce in a Florida Deceptive and Unfair Trade Practices Act action brought by Stewart Agency. The court held that Stewart presented no evidence that Arrigo engaged in an unfair or deceptive practice injuring a consumer or that Arrigo’s conduct caused Stewart’s alleged damages. The court also concluded that Stewart was not sufficiently aggrieved to obtain declaratory or injunctive relief.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Warner, J.; Damoorgian, J.; Levine, J.
JURISDICTION	Florida
DECIDED	March 6, 2019
DOCKET	4D18-813
DISPOSITION	affirmed
PROCEDURAL POSTURE	Stewart appealed a final summary judgment entered in favor of Arrigo on Stewart's claims for actual damages and declaratory and injunctive relief under the Florida Deceptive and Unfair Trade Practices Act.
STANDARD OF REVIEW	De novo review applies to a trial court's decision to grant summary judgment. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law; after the movant tenders competent supporting evidence, the nonmoving party must present opposing evidence creating a genuine issue.

PRECEDENTIAL VALUE	Published Florida Fourth District Court of Appeal opinion; precedential within the applicable Florida appellate hierarchy unless later limited or overruled.
PARTIES	Stewart Agency, Inc. d/b/a Earl Stewart Toyota of North Palm Beach v. Arrigo Enterprises, Inc. d/b/a Arrigo Dodge Chrysler Jeep Ram West Palm Beach, Arrigo Ft. Pierce, LLC d/b/a Arrigo Dodge Chrysler Jeep Ram Fiat Ft. Pierce

TOPICS

deceptive trade practices consumer protection commercial litigation remedies standard of review

PRACTICE AREAS

consumer protection commercial litigation appellate procedure remedies

QUESTIONS PRESENTED

1. Whether summary judgment was proper on Stewart's FDUTPA claim for actual damages where Stewart presented no evidence that Arrigo's conduct caused its alleged losses.
2. Whether Stewart, a competing business, was entitled to declaratory or injunctive relief under FDUTPA section 501.211(1) without evidence that it was adversely affected by a consumer-injuring unfair or deceptive practice by Arrigo.
3. Whether the evidence created a genuine issue of material fact regarding an unfair or deceptive trade practice by Arrigo.

HOLDINGS

1. A plaintiff seeking actual damages under FDUTPA must establish an unfair or deceptive act or practice, causation, and actual damages. Because Stewart admitted that Arrigo did not cause Stewart's decision to stop selling unrepaired vehicles and produced no evidence of a specific deceptive transaction, summary judgment on the actual-damages claim was proper.
2. Stewart failed to create a genuine issue of material fact that Arrigo committed an unfair or deceptive trade practice that injured a consumer.
3. An entity seeking declaratory or injunctive relief under FDUTPA section 501.211(1) must show that it is aggrieved because its rights have been, are being, or will be adversely affected by a FDUTPA violation, meaning an unfair or deceptive practice injurious to consumers. Stewart failed to satisfy those requirements.
4. Summary judgment is proper when the movant's competent evidence negates a material element and the nonmovant fails to present counterevidence creating a genuine issue of material fact.

KEY QUOTATIONS

“We agree and affirm.” (at 208)

““[C]ausation [under FDUTPA] must be direct, rather than remote or speculative.”” (at 211)

“In other words, to state a claim for equitable relief, an entity must show (1) that it is aggrieved, in that its rights have been, are being, or will be adversely affected, by (2) a violation of FDUTPA, meaning an unfair or deceptive practice which is injurious to consumers.” (at 214)

FACTUAL BACKGROUND

Stewart and Arrigo were competing automobile dealerships that accepted trade-ins, including vehicles equipped with unrepaired Takata airbags subject to a safety recall. Stewart alleged that Arrigo engaged in unfair and deceptive practices by selling or advertising those vehicles without adequately disclosing the recall and by using bait-and-switch tactics. Stewart admitted that Arrigo did not cause its decision to stop selling unrepaired vehicles at retail, that it would have stopped selling them regardless of Arrigo's conduct, and that it could not identify a specific Arrigo transaction involving an unfair or deceptive practice. Stewart also admitted that it sold such vehicles to wholesalers without restrictions on resale.

PROCEDURAL HISTORY

Stewart sued competitor Arrigo, alleging that Arrigo deceptively sold or advertised vehicles with unrepaired Takata airbag recalls. After discovery, including Stewart's admissions that Arrigo did not cause Stewart's decision to stop selling such vehicles and that Stewart could identify no specific deceptive transaction by Arrigo, Arrigo moved for summary judgment. The circuit court granted summary judgment on all counts, finding no evidence of causation, and the Fourth District affirmed.

DISPOSITION

affirmed

CASES CITED

- PNR, Inc. v. Beacon Prop. Mgmt., Inc., 842 So. 2d 773, 777 (Fla. 2003)
- Samuels v. King Motor Co. of Fort Lauderdale, 782 So. 2d 489, 499 (Fla. 4th DCA 2001)
- Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000)
- Craven v. TRG-Boynton Beach, Ltd., 925 So. 2d 476, 479-80 (Fla. 4th DCA 2006)
- Baptist Hosp., Inc. v. Baker, 84 So. 3d 1200, 1204 (Fla. 1st DCA 2012)
- Caribbean Cruise Line, Inc. v. Better Bus. Bureau of Palm Beach Cty., Inc., 169 So. 3d 164, 168-69 (Fla. 4th DCA 2015)
- Navellier v. Shortz, 207 So. 3d 287, 288 (Fla. 4th DCA 2016)
- Lombardo v. Johnson & Johnson Consumer Cos., Inc., 124 F. Supp. 3d 1283, 1290 (S.D. Fla. 2015)
- Hennegan Co. v. Arriola, 855 F. Supp. 2d 1354, 1361 (S.D. Fla. 2012)
- Ahearn v. Mayo Clinic, 180 So. 3d 165, 171-73 (Fla. 1st DCA 2015)
- City First Mortg. Corp. v. Barton, 988 So. 2d 82, 86 (Fla. 4th DCA 2008)

- Wyndham Vacation Resorts, Inc. v. Timeshares Direct, Inc., 123 So. 3d 1149 (Fla. 5th DCA 2012)
- PepsiCo, Inc. v. Distribuidora La Matagalpa, Inc., 510 F. Supp. 2d 1110, 1116 (S.D. Fla. 2007)
- Macias v. HBC of Fla., Inc., 694 So. 2d 88, 90 (Fla. 3d DCA 1997)

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