

13 Fla. L. Weekly Supp. 987a

Landlord-tenant -- Commercial lease -- Florida Deceptive and Unfair Trade Practices Act -- Pursuant to 2004 amendment to FDUTPA removing cause of action for deceptive and unfair trade practices pertaining to commercial real property, tenant has no cause of action under FDUTPA against landlord who allegedly deliberately failed to remedy leaking roof and other problems because landlord wanted tenant out of leased premises where premises are commercial property, there is written lease, lease requires landlord to maintain roof and structure, and lease provides for resolution of any problems and award of damages, attorney's fees and costs

HOBBIE WAREHOUSE, INC. a Florida Corporation, Plaintiff, vs. WPRM, LLC, a Florida limited liability company, Defendant. Circuit Court, 20th Judicial Circuit in and for Lee County, Civil Action. Case No. 05 CA 005318 L. June 14, 2006. R. Thomas Corbin, Judge. Counsel: Mark A. Ebelini. Clayton W. Crevasse.

ORDER GRANTING MOTION TO DISMISS COUNT III OF
THE SECOND AMENDED COMPLAINT WITH PREJUDICE

This matter having come before the court on the defendant's motion to dismiss Count III of the "Second Amended Complaint", it is ordered:

The motion is granted. The legislature gives and the legislature takes away. In 2004, the legislature took away a cause of action under F.S. §501.201 *et seq.* for a deceptive and unfair trade practice "pertaining to commercial real property" when it amended the statute to provide:

"501.212 Application

This part does not apply to:

...

(7)(a) Causes of action pertaining to commercial real property located in this state if the parties to the action executed a written lease or contract that expressly provides for the process of resolution of any dispute and the award of damages, attorney's fees, and costs, if any; . . ."

The legislature passed this amendment after the decision of *PNR, Inc. v. Beacon Property Management, Inc.*, 842 So.2d 773 (Fla. 2003), which held that "the [Florida Deceptive and Unfair Trade Practices Act] applies to private causes of action arising from single unfair or deceptive acts in the conduct of any trade or commerce, even if it involves only a single party, a single transaction or a single contract." *Id.* at 777.

The facts of *PNR* are identical to the facts alleged in the Second Amended Complaint: A tenant who held a long term lease in a commercial space complained to his landlord of roof leaks and other maintenance problems but the landlord did not remedy the condition, resulting in a collapse of part of the building. The tenant was forced to leave the property because it was unsafe and unuseable and lost its long term right to use the property. The tenant here and in *PNR* sued under the FDUTPA and for breach of lease.

Even though the plaintiff here alleges in Count III that the defendant deliberately failed to remedy the leaking roof and other problems because it wanted the tenant out of the space so it could remodel the

space and rent it for more money, to the extent those allegations amount to a trade practice that is unfair and deceptive, there is no cause of action available under the FDUTPA after the amendment to the statute. The Second Amended Complaint alleges (1) this is a commercial property; (2) there is a written lease; (3) the lease requires the landlord to maintain the roof and structure; and (4) the courts of this state have jurisdiction over causes of action for breach of lease so a remedy is available; and (5) the lease provides the landlord is entitled to attorney's fees under certain conditions.¹ Of course, it goes without saying that the prevailing party is entitled to its costs.

Therefore, the amendment to the statute applies squarely to this cause of action and it eliminates this cause of action under the FDUTPA. The plaintiff is left with its common law remedies.

For the foregoing reasons, the motion to dismiss Count III is granted *with prejudice*. The tenant has twice alleged the same cause of action and this is the second time the court has dismissed it for the same reasons.

¹The court notes, in passing, that the amendment does not require that the lease award fees to the prevailing party. It only requires that the lease address the "award of . . . attorney's fees", and this lease does contain an attorney fee provision. Paragraph 16 says the landlord is entitled to fees under certain conditions. Whether the tenant is also entitled to fees under that paragraph and §57.105(7), Florida Statutes, if it prevails is another question.

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