

363 So.3d 1150

District Court of Appeal of Florida, Second District.

GREENSPIRE GLOBAL, INC.,  
and Steven M. Knauss, Appellants,

v.

SARASOTA GREEN  
GROUP, LLC, Appellee.

No. 2D22-2653

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June 23, 2023

### Synopsis

**Background:** Distributor brought action against manufacturer of bactericide and fungicide compound and manufacturer's president alleging fraudulent inducement, negligent misrepresentation, fraud, violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), and unjust enrichment. After a non-evidentiary hearing, the Circuit Court, 12th Judicial Circuit, Manatee County, [Edward Nicholas, J.](#), denied defendants' motion to dismiss for lack of personal jurisdiction. Defendants appealed. The Second District Court of Appeal, [301 So.3d 423](#), reversed and remanded, holding that trial court could not deny motion to dismiss without holding limited evidentiary hearing. On remand, the Circuit Court, 12th Judicial Circuit, Manatee County, [Edward Nicholas, J.](#), issued order permitting distributor to amend its complaint to seek punitive damages. Defendants appealed.

**[Holding:]** The District Court of Appeal, [Northcutt, J.](#), held that distributor's filings of unverified allegations and affidavit were inadequate to support amendment to complaint to assert claim for punitive damages.

Reversed and remanded.

West Headnotes (2)

### [1] Pleading As to relief prayed

Distributor's filings of unverified allegations and affidavit from managing member were inadequate to show manufacturer's conduct, knowledge, and intent reached level of intentional misconduct or gross negligence, thus precluding distributor from amending complaint to assert punitive damages claim; unverified complaint was not evidence, unauthenticated attachments to unverified complaint lacked any evidentiary weight, affidavit based on information and belief did not act as verification of complaint, affidavit only reflected that member believed unverified accusations in complaint, affidavit did not disclose how managing member had personal knowledge of manufacturer's intent, and managing member's mere belief that manufacturer behaved fraudulently was not evidence that they did so. [Fla. Stat. Ann. § 768.72\(1\)](#).

### [2] Pleading Knowledge, information, and belief

A complaint's verification that is improperly based on information and belief is insufficient to entitle the verifying party to relief because the verification is qualified in nature.

\***1151** Appeal pursuant to [Fla. R. App. P. 9.130](#) from the Circuit Court for Manatee County; [Edward Nicholas, Judge](#).

### Attorneys and Law Firms

[James L. Essenson, Barbara J. Welch, and Matthew J. Kelly](#) of [Essenson Law Firm, Sarasota](#), for Appellants.

Hunter G. Norton of Shumaker, Loop & Kendrick, LLP, Sarasota, for Appellee.

## Opinion

NORTHCUTT, Judge.

Greenspire Global, Inc., and its president, Steven M. Knauss (collectively, Greenspire), appeal a nonfinal order permitting Sarasota Green Group, LLC (SGG), to amend its complaint to seek punitive damages. *See Fla. R. App. P. 9.130(a)(3)(G)* (authorizing appeal of nonfinal orders that grant or deny motions for leave to amend to assert punitive damage claims). We reverse because SGG failed to submit or proffer evidence to support the amendment.

Greenspire licensed its bactericide and fungicide compound known as “Procidic 2” to SGG, a distributor of “green” agricultural products. SGG later sued Greenspire and Knauss for alleged fraudulent inducement, negligent misrepresentation, fraud, violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), and unjust enrichment.

In due course, SGG sought leave to amend its complaint to add demands for punitive damages in the fraud counts, contending that “[t]he conduct causing damages to the Plaintiff was intentional and/or so reckless and wanton in care that it constituted a conscious disregard or indifference to the rights of the Plaintiff.” After a hearing, the circuit court granted SGG’s motion. We review the ruling *de novo*. *See Est. of Blakely ex rel. Wilson v. Stetson Univ., Inc.*, 355 So. 3d 476, 481 (Fla. 5th DCA 2022).

In Florida, punitive damages are authorized and governed by statute. *See* § 768.72, Fla. Stat. (2022). “A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence.” § 768.72(2). As defined in the statute:

(a) “Intentional misconduct” means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite

that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) “Gross negligence” means that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

§ 768.72(2)(a), (b).

Before a punitive damages claim may proceed, there must be “a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.” § 768.72(1). Accordingly, when seeking leave to plead its punitive \*1152 damage claims, SGG was obliged to produce evidence that Greenspire’s conduct, knowledge, and intent reached the level of “intentional misconduct” or “gross negligence.” *See* § 768.72(2)(a), (b).

[1] For this purpose, SGG relied solely on the unverified allegations within and attachments to its complaint, augmented by an affidavit from its managing member, Bruce Cassidy. SGG maintained that those documents showed that Greenspire intentionally made false and misleading statements regarding Procidic 2, intentionally failed to disclose an out-of-state regulatory action regarding the product, and knowingly misrepresented that SGG would grant Greenspire an exclusive license. But those filings were inadequate to justify SGG’s punitive damages claims for several reasons.

First, SGG’s unverified complaint was not evidence. *See Harrold v. Schlupe*, 264 So. 2d 431, 435 (Fla. 4th DCA 1972) (“Pleadings are not admissible in evidence to prove or disprove a fact in issue.”). As such, it could not support the circuit court’s determination that SGG made an *evidentiary* showing sufficient to substantiate its punitive damages claims. Similarly, the circuit court could not rely on the unauthenticated attachments to the unverified complaint because they, too, lacked any evidentiary weight on their own. *See Eco-Tradition, LLC v. Pennzoil-Quaker State Co.*, 137 So. 3d 495, 496 (Fla. 4th DCA 2014) (holding that unauthenticated attachments to an unverified complaint have no evidentiary value).

[2] Second, SGG's attempt to imbue the complaint and exhibits with evidentiary import by submitting Cassidy's affidavit was ineffective. The affidavit represented that Cassidy had read SGG's second amended complaint and that “[t]he statements made therein are correct to the best of my personal knowledge, information, and belief.” (Emphasis added.) A “verification which is improperly based on information and belief is insufficient to entitle the verifying party to relief because the verification is qualified in nature.” *Ballinger v. Bay Gulf Credit Union*, 51 So. 3d 528, 529-30 (Fla. 2d DCA 2010) (declining to give weight to other words like “knowledge” within the verification when the verification was already qualified by the inclusion of the word “belief”). Thus, insofar as Cassidy's affidavit simply reflected that he believed the unverified accusations in the complaint, it failed to lend evidentiary support to SGG's proposed punitive damage claims.

Finally, Cassidy's affidavit asserted that Greenspire intentionally misrepresented or withheld material information in direct communications with him. These allegations were fatally flawed because Cassidy failed to disclose how he could have personal knowledge of Greenspire's intent. See *W. Edge II v. Kunderas*, 910 So. 2d 953, 954-55 (Fla. 2d DCA 2005) (holding

that an averment in an affidavit from an affiant who “could not have had personal knowledge of what [another organization] knew or did not know” was insufficient as a matter of law). Cassidy's mere *belief* that Greenspire intentionally misrepresented the attributes of Procidic 2 and otherwise behaved fraudulently was not *evidence* that they did so. See *id.* (citing *Fla. Dep't of Fin. Servs. v. Associated Indus. Ins. Co.*, 868 So. 2d 600, 602 (Fla. 1st DCA 2004) (holding that opinions are not statements based on personal knowledge)).

Because there was no showing by evidence in the record or proffered by SGG to support claims for punitive damages in this case, we reverse the order permitting it to add such claims to its pleadings. Our holding is without prejudice to SGG's filing a \*1153 new motion to amend with proper evidentiary support.

Reversed and remanded.

CASANUEVA, J., and CASE, JAMES R.,  
ASSOCIATE SENIOR JUDGE, Concur.

#### All Citations

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