UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

WESTGATE RESORTS, LTD., et al,

Plaintiffs,

v. **Case No: 6:18-cv-1088-Orl-31DCI**

REED HEIN & ASSOCIATES, LLC d/b/a TIMESHARE EXIT TEAM, BRANDON REED, TREVOR HEIN and THOMAS PARENTEAU,

Defendants.

ORDER

This case comes before the Court without a hearing on the Motion for Reconsideration (Doc. 146) filed by the Plaintiffs and the Response in Opposition (Doc. 151) filed by the Defendants. Upon consideration, the motion is granted.

I. Background

The Plaintiffs in this action are a group of entities comprised of Westgate timeshare developers and timeshare owners' associations (henceforth, "**Westgate**"). The Defendants include a self-described consumer protection company—Reed Hein & Associates, LLC d/b/a Timeshare Exit Team—and the operators of the company—Brandon Reed, Trevor Hein, and Thomas Parenteau. For simplicity's sake, these Defendants will be referred to collectively as "**TET**".

TET is in the business of helping timeshare owners get out of their contractual obligations to businesses such as Westgate. Those obligations primarily consist of maintenance fees and property taxes and, for those owners with outstanding mortgages on their timeshares, mortgage payments. To recruit new clients, TET advertises extensively via talk radio and various websites.

Westgate complains that many of the statements TET makes via these ads and other marketing materials create the false and misleading impression that TET can safely and legitimately cancel an owner's timeshare contract for any reason. As a result, it is alleged that timeshare owners are duped into retaining TET for thousands of dollars.

At TET's direction, those same owners stop making payments to Westgate. TET then runs interference for as long as possible by: (1) hiring lawyers to send letters requiring Westgate to cease communicating with the owners, and (2) sending bogus update emails to the owners offering vague assurances that their exit is imminent and that the lawyers are actively negotiating with Westgate. Ultimately, however, Westgate forecloses on the owners' defaulted timeshares. TET then sends congratulatory letters to the owners stating their timeshares have been successfully terminated without any mention of the foreclosure. Consequently, the owners are left in the dark and Westgate suffers harm in the form of lost payments.

Seeking monetary and injunctive relief from TET, Westgate filed suit on July 9, 2018. (Doc. 1). In an Amended Complaint, it asserts claims for tortious interference with existing contracts (Count I); violation of the Florida Deceptive and Unfair Trade Practices Act ("**FDUTPA**") (Count II); civil conspiracy (Counts III and IV); misleading advertising in violation of Fla. Stat. § 817.41 (Count V); and false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a) (Count VI). (Doc. 69).

On October 7, 2019, TET moved for summary judgment as to each of these claims. (Doc. 112). For its Lanham Act claim, Westgate alleges that TET caused injury to its commercial interest by "soliciting Westgate Owners through false and misleading advertising and marketing materials to induce Westgate Owners to cancel their timeshare interest without any factual or legal basis and stop making payments to [Westgate] even though such payments are required by legally

enforceable contracts to which the timeshare owners have no legal excuse or justification not to pay." (Doc. 69, ¶¶ 158, 167). As support, Westgate identified 33 statements "contained in TET's advertisements, marketing materials[,] and similar communications that it contends are false, misleading, unfair and/or deceptive" (hereinafter, "**Advertising Statements**"). (Doc. 112-18 at 8–14).

In moving for summary judgment, TET argued, *inter alia*, that none of the Advertising Statements direct timeshare owners to stop making payments. Thus, the Lanham Act claim—which requires economic or reputational injury flowing directly from the deception wrought by the defendant's advertising[1]—failed for lack of proximate cause. (*See* Doc. 112 at 7–13; *see also* Doc. 129 at 7).

Relying on the same "reasons discussed in [its] argument for summary judgment on Westgate's Lanham Act claim," TET argued that Westgate could not "establish the requisite causation to succeed on its FDUTPA claim." (*Id.* at 35; Doc. 129 at 18). Specifically, TET argued that causation was lacking because: (1) none of the advertisements identify or otherwise mention Westgate"; (2) "there is no evidence showing that any . . . Owners stopped making payments on their timeshare because of [TET]'s advertisements; (3) "nowhere in any of the advertisements in question is there any language that directs or implies that readers or listeners should stop making payments to Westgate or any timeshare company." (Doc. 112. at 35–36; Doc. 129 at 18).

Persuaded by TET's causation arguments, the Court granted summary judgment on Westgate's Lanham Act claim and FDUTPA claim but denied judgment as to the remaining

[1] *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2014) (emphasis added).

claims. (Doc. 112 ("**Order**")). Westgate now requests that the Court reconsider the grant of summary judgment on its FDUTPA claim. (Doc. 146).[2]

II. Analysis

"Courts have distilled three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice." *Instituto de Pervision Militar v. Lehman Bros., Inc*., 485 F. Supp. 2d 1340, 1343 (S.D. Fla. 2007) (quoting *Cover v. Wal–Mart Stores, Inc*., 148 F.R.D. 294, 295 (M.D. Fla. 1993) (citations omitted). Here, Westgate contends that reconsideration of the Court's Order is necessary to address a clear error of apprehension of the nature and scope of Westgate's FDUTPA claim. The Court agrees.

As Westgate correctly points out, the Amended Complaint asserts a FDUTPA claim for injunctive relief and damages based on conduct that extends beyond the Advertising Statements. (*See* Doc. 69, ¶¶ 123, 126 (asserting a non-exhaustive list of deceptive acts and practices)). For example, Westgate expressly accuses TET of committing "unfair and deceptive acts and practices" by "instruct[ing] owners of Westgate timeshare interests to stop making payments of validly assessed maintenance and taxes, and of legitimately owed note and mortgage payments, to Westgate in Florida, which damages Westgate." (Doc. 50).

Nonetheless, in addressing Westgate's FDUTPA claim, TET did not address any conduct outside of the Advertising Statements. Nor did it address Westgate's prayer for injunctive relief.[3]

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[2] Westgate does not seek reconsideration of the Court's grant of summary judgment on its Lanham Act claim. (Doc. 146 at 2 n.2).

[3] TET insists that it addressed Westgate's request for an injunction. The Court disagrees. In its motion for summary judgment, TET made no arguments regarding Westgate's FDUTPA claim for injunctive relief. It only addressed Westgate's request for an injunction with respect to the Lanham Act claim. (Doc. 112 at 28; Doc. 129 at 13). To be sure, TET's motion doesn't even

Instead, TET focused exclusively on the Advertising Statements and Westgate's request for monetary damages. (*See* Doc. 112 at 34–36). Following TET's lead, the Court inadvertently failed to consider any conduct outside of the Advertising Statements that may have supported Westgate's claim for monetary damages. The Court also inadvertently overlooked Westgate's prayer for injunctive relief. As such, the Court reconsiders Westgate's FDUTPA claim.

"To bring a FDUTPA claim for damages, a plaintiff must establish three elements: 1) a deceptive act or unfair practice; 2) causation; and 3) actual damages." *Stewart Agency, Inc. v. Arrigo Enterprises, Inc.*, 266 So. 3d 207, 212 (Fla. 4th DCA 2019) (citation omitted). Deception occurs if there is a "representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." *PNR, Inc. v. Beacon Prop. Mgmt., Inc*., 842 So. 2d 773, 777 (Fla. 2003) (citing *Millennium Commc'ns & Fulfillment, Inc. v. Office of Att'y Gen.*, 761 So. 2d 1256, 1263 (Fla. 3d DCA 2000)).

In seeking injunctive relief, the plaintiff must simply prove that the defendant "engaged in an unfair or deceptive practice" and that the plaintiff is "aggrieved," meaning "its rights have been, are being, or will be adversely affected." *Stewart Agency, Inc. v. Arrigo Enterprises, Inc.*, 266 So. 3d 207, 214 (Fla. 4th DCA 2019). Despite TET's argument to the contrary, there is no requirement that a plaintiff show an ongoing practice or irreparable harm. The statute merely requires that the plaintiff seek "to enjoin a person who has violated, is violating, or is otherwise likely to violate [the] [statute]." Fla. Stat. § 501.211(1). *Martorella v. Deutsche Bank Nat'l Tr. Co.*, 161 F. Supp. 3d 1209, 1224 (S.D. Fla. 2015); *Orange Lake Country Club, Inc. v. Castle Law Grp., P.C.*, No. 6:17-cv-1044-ORL-31DCI, 2019 WL 7484077, at *1 (M.D. Fla. Dec. 13, 2019).

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set forth the requirements for an injunction under FDUTPA. (Doc.112 at 34–37; Doc. 129 at 17–19).

As noted above, Westgate claims that TET has engaged in unfair and deceptive acts and practices by, *inter alia*, instructing owners of Westgate timeshare interests to stop making payments to Westgate. (Doc. 69, ¶¶ 6, 50, 82, 104, 135(b), 145(b)). In doing so, TET allegedly fails to inform the owners that non-payment will likely result in foreclosure. Instead, TET deceives owners' into believing that non-payment will help TET safely and legitimately exit them from their timeshares. But, according to Westgate, TET's exit process is neither safe nor legitimate because it merely involves getting owners to default on their obligations, hiring an outside attorney to cut off communications between the owners and Westgate, and then waiting for Westgate to foreclose so that TET can spuriously claim that it has achieved an exit on the owner's behalf. (*Id.* ¶¶ 6–9, 84, 97).

To support its claim, Westgate submits the testimony of TET's corporate representative, Thomas Parenteau, and TET's Director of Marketing, Scott Loughran, who admit that TET's agents have instructed its clients not to pay their timeshare obligations. (Doc. 111-3 at 129:24-130:13; Doc. 111-9 at 147:18-148:7). Westgate also offers the testimony of several Westgate owners—including, Richard Snyder, Carolyn Dupuie, Denise Stewart, and Marlene Thorne—who claim that: (1) TET stated or implied that it would safely and legitimately exit them from their timeshares; (2) they were current on their timeshare obligations when they hired TET; (3) they stopped paying Westgate after TET instructed them to do so; and (4) their timeshare interests were ultimately foreclosed by Westgate. [4]

[4] (*See. e.g.*, Snyder Dep., Doc. 112-15 at 6:17-22, 12:10-15, 16:4-18, 21:17-20, 22:12-14, 23:11-19; Dupuie Dep., Doc. 122-14 at 38:8-16, 40:24-41:9, 41:10-20, 44:11-45:8; Thorne Dep., Doc. 112-14 at 20:18-24, 22:1-11, 29:19-23, 31:5-10, 58:5-19; Stewart Dep., Doc. 122-6 at 17:1-18:3, 18:15-20:11, 30:3-25, 37:24-38:14, 39:24-40:1, 41:3-42:1).

For example, Richard Snyder ("**Snyder**") testified he hired TET in February 2015, after speaking with a representative who told him that TET would negotiate with Westgate to get him out of his timeshare "honorably, without default in payments." (Doc. 112-15 at 6:17-22, 16:4-18, 21:14-20, 22:12-14, 23:11-19). Although Snyder was current on his timeshare obligations, a TET representative instructed him stop making payments to, and communicating with, Westgate. (*Id.* at 12:10-15, 22:3-11, 24:22-25:2).[5] However, the representative did not explain the risks associated with using TET's services, (*id.* at 23:24-24:2, 25:7-10), and when Snyder expressed concerns regarding foreclosure, the representative assured him "there would be no foreclosure," (*id.* at 23:24-24:5). Snyder stopped paying. (*Id.* at 38:8-14).

Years later, in March 2019, Snyder received a notice of foreclosure from Westgate and "it became clear" to him that TET's promise of an exit without foreclosure was "untrue." (*Id.* at 8:13-15, 41:1-42:6). To make matters worse, after Snyder received the notice of foreclosure, TET wrote him an email stating:

> We have received an update from the attorney assigned to your case. Westgate is within their right to foreclose. Unfortunately, according to the attorney, Westgate never offers a deed in lieu. Westgate will only foreclose. This is not uncommon. Once Westgate decides to foreclose, then they will not entertain alternatives.

(*Id.* at 27:11-17). Outraged, Snyder responded:

> If [TET's] attorneys are fully aware that Westgate will only foreclose, why did you contract with us in the first place? Did you defraud us? When we engaged you, in return for the sum we paid, you promised: One, an honorable exit. The exact language was, "We have never failed to accomplish this in our entire corporate history."

[5] Apparently "TET's attorneys" also instructed Snyder to stop paying Westgate. (Doc. 112-15 at 8:7-12).

> At the time we contracted with you, we were completely current in payments to Westgate, and our membership with them was active. We received immediate instructions from [TET] to cease any and all payments. If your attorneys were fully aware of Westgate's corporate behavior, did you know all along that no product from you would be necessary, that all you had to do was sit on the account and wait for foreclosure? What is different about the outcome we are experiencing and the one that we would have experienced if we had simply stopped payments years ago and allowed the account to languish? By your own admission, quote, "Westgate will only foreclose." What would your firm have us believe? Do you plan to make any restitution?

(*Id.* at 27:18-28:25).

Despite Snyder's complaints, TET never refunded him or got him out of his timeshare. (*Id.* at 36:6-12, 30:20-21). Notwithstanding that fact—after Westgate foreclosed on Snyder's timeshare interest—TET shamelessly sent a letter congratulating Snyder and advising him that it had met its obligations. (*Id.* at 44:16-25).

Next is Carolyn Dupuie ("**Dupuie**"). Unlike Snyder, Dupuie didn't even know that Westgate had foreclosed on her timeshare interest. She hired TET after it guaranteed that it could get her out of her timeshare "free and clear" by negotiating with Westgate. (Doc. 122-14 at 36:8-16, 44:11-45:8, 49:21-25). At the time she hired TET, Dupuie was current on her timeshare obligations to Westgate and only stopped paying once TET instructed her to. (*Id.* at 41:15-20, 44:11-45:8, 50:18-51:14, 53:2-17). She did not understand or agree that TET would exit her from her timeshare through foreclosure. (*Id.* at 41:10-14, 71:4-72:4). In fact, Dupuie testified that she did not want Westgate to foreclose on her timeshare because she wanted to keep her credit intact. (*Id.* at 31:20-37:2).

Two years later, TET sent Dupuie a letter claiming that it had "effectively terminated" her timeshare interest. (*Id.* at 103:25-104:3). But Dupuie had no idea what TET had done to achieve the "termination". (*Id.* at 104:6-7). In fact, it wasn't until her deposition in 2019 that Dupuie

learned that Westgate had foreclosed on her timeshare interests. (*Id.* at 114:23-24). According to Dupuie, she would have never hired TET had she known that it would use foreclosure as a means of exiting her from her timeshare. (*Id.* at 52:2-5).

Denise Stewart ("**Stewart**") shares a similar story. She was current on her timeshare obligations but stopped paying after TET guaranteed that it could get her out of her timeshare and instructed her to stop paying and communicating with Westgate. (Doc. 122-6 at 17:1-18:3, 18:15-20:11, 37:24-37:14, 40:22-25, 49:21-25). She did not agree or understand that TET would use foreclosure to exit her from her timeshare interest. (*Id.* at 40:2-6, 64:14-23). Instead, she believed that TET would come to an agreement with Westgate. (*Id.* at 40:9-12). But it didn't happen that way.

Three years after Stewart hired TET, Westgate foreclosed on her timeshare and TET sent Stewart a letter stating, in relevant part: "We have effectively terminated your interest in your timeshare. And as a result, it has been cancelled." (*Id.* at 58:11-59:17). TET never told Stewart what it had done to "terminate" her timeshare. (*Id.* at 65:19-24). And like Dupuie, Stewart was unaware that Westgate had foreclosed on her timeshare until her deposition in 2019. (*Id.* at 61:3-21, 143:16-20, 156:9-157:11).

Marlene Thorne ("**Thorne**") was also unaware that TET would use foreclosure as a means to terminate her timeshare. (Doc. 112-14 at 29:7-10). In fact, she expressly told TET's co-owner, Trevor Hein ("**Hein**"), that she wanted to exit her timeshare without foreclosure. (*Id.* at 29:14-18, 29:24-30:1). Hein assured Thorne that "[TET] could do that" and that TET had "successfully" exited other owners from their timeshares. (*Id.* at 29:19-23, 58:19-20).

Although Thorne was current on her timeshare obligations, TET directed her to stop paying Westgate, and Thorne complied. (*Id.* 20:18-24, 164:12-165:18). Then, about a year later, TET sent

Thorne a letter stating that it had successfully exited her from her timeshare. (*Id.* at 34:11-16). However, TET did not explain how it had accomplished the exit. (*Id.* at 34:17-20). So, Thorne contacted TET to request supporting documentation. In response, TET stated:

> I know you are looking to get more official paperwork, stating that you're officially out of your timeshare. However, our exit letter is an official statement from our company, stating that you are out of your timeshare. Timeshares do not always send paperwork supporting the exit, because they aren't congratulating you for being out, like we are. All you need to prove that you are out is the letter from us. And if they ever come at you again, please give us a call, and we will take care of it.

(*Id.* at 35:3-12).

Consequently, Thorne thought she was out of her timeshare and that "it was over and done with." (*Id.* at 36:11-15). But, a short time later, Thorne began receiving collection notices for outstanding maintenance fees owed to Westgate. (*Id.* at 37:2-12). Acknowledging that it had erroneously told Thorne that she was out of her timeshare, TET issued Thorne a check for the outstanding maintenance fees and Thorne submitted payment to Westgate. (*Id.* at 37:14-22, 38:6-14).

Following the failed "exit", TET told Thorne that it would continue working to get her out of her timeshare. (*Id.* at 40:24-41:11). Later, however, a TET representative called and notified Thorne that Westgate had decided to foreclose on her timeshare. (*Id.* at 43:12-16). When Thorne expressed her displeasure and reminded the representative that TET had promised to get her out of her timeshare "without a foreclosure," the representative brazenly responded, "[o]h, well, a foreclosure means you are out of your process." (*Id.* at 43:23-44).

Based on this testimony, and contrary to TET's arguments otherwise, Westgate has proffered sufficient evidence from which a reasonably jury could find TET engaged in deceptive practices that caused Westgate actual damages. More specifically, a jury could find that TET

engaged in deceptive practices by guaranteeing owners that it could legitimately exit them from their timeshare interests and instructing those same owners to stop making payments to Westgate, knowing that it would not actually negotiate with Westgate, that Westgate would likely foreclose, and that TET would simply claim that it had successfully "terminated" the owners' timeshare interests without disclosing the foreclosure.

Because the timeshare owners were current on their timeshare obligations before hiring TET and only stopped paying at TET's direction, a jury could also reasonably find TET's purported deceptive practices caused Westgate actual damages in the form of lost payments.[6] Accordingly, Westgate's FDUTPA claim survives summary judgment.

IV. Conclusion

In consideration of the foregoing, it is hereby

ORDERED that the Plaintiff's Motion for Reconsideration (Doc. 146) is **GRANTED**. The Court's Order (Doc. 143) is **VACATED** to the extent that it granted summary judgment on Plaintiff's FDUTPA claim and Defendant's motion for summary judgment (Doc. 112) is **DENIED** as to same.

DONE and **ORDERED** in Orlando, Florida on April 27, 2020.

GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

[6] Westgate has also identified over 600 accounts for which the owners had defaulted on their mortgages and/or maintenance fees after hiring TET. (Doc. 111-28 at 8–12). It has also retained and disclosed expert witness Charles Cowan whose statistical analysis will supposedly show that these owners defaulted as a result of TET's instruction to stop paying. (Doc. 146 at 15).