

Third District Court of Appeal

State of Florida

Opinion filed August 26, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D25-1665
Lower Tribunal No. 24-4493-CA-01

Yellowfin Yachts, LLC, etc.,
Appellant,

vs.

Carl Austin Rosen,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Lisa S. Walsh, Judge.

Cole, Scott & Kissane, P.A., and Scott A. Cole and Francesca M. Stein, for appellant.

The Ferraro Law Firm, P.A., and Leslie B. Rothenberg and Angelica L. Novick, for appellee.

Before SCALES, C.J., and LOBREE and GOODEN, JJ.

SCALES, C.J.

Appellant and defendant below Yellowfin Yachts, LLC appeals the trial court's non-final order granting appellee and plaintiff below Carl Austin Rosen's motion for leave to add a claim for punitive damages. We have jurisdiction. See Fla. R. App. P. 9.130(a)(3)(G).

Rosen asserts fraudulent misrepresentation and FDUTPA¹ claims against Yellowfin Yachts. After conducting discovery, Rosen filed his motion seeking to add a claim for punitive damages, alleging that Yellowfin Yachts engaged in "intentional misconduct" and "gross negligence."²

Rosen purchased a new fishing boat from Yellowfin Yachts. In support of his motion, Rosen proffered record evidence that Yellowfin Yachts deliberately concealed facts that, during a sea trial of the vessel – conducted as part of the manufacturing process – a Yellowfin Yachts employee grounded Rosen's boat on a sandbar, allegedly causing significant damage

¹ The Florida Deceptive and Unfair Trade Practices Act. § 501.201 *et seq.*, Fla. Stat. (2025).

² For the purposes of punitive damages claims, "intentional misconduct" means "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." § 768.72(2)(a), Fla. Stat. (2025). "Gross negligence" means "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)(b), Fla. Stat. (2025).

to the vessel. Regarding his FDUTPA claim, Rosen's proffer consisted of evidence allegedly showing that Yellowfin Yachts made inadequate repairs to the vessel after its grounding, delivered an unfit vessel to Rosen, and demanded full payment of the balance due under allegedly false pretenses.

While Yellowfin Yachts made a competing evidentiary proffer, the trial court, in adjudicating Rosen's motion, was correct to rely exclusively upon Rosen's evidentiary proffer. Perlmutter v. Fed. Ins. Co., 434 So 3d 681, 689 (Fla. 2026) ("The trial court does not act as a fact-finder in a proceeding under section 768.72(1). It must not weigh the claimant's evidence, meaning that its role is not to decide the truth of the matter. In conducting its review, the trial court must 'consider the record evidence and the proffered evidence in the light most favorable to the plaintiff.' Hosp. Specialists, P.A. v. Deen, 373 So. 3d 1283, 1287 (Fla. 5th DCA 2023). Of course, the allegations contained in the claimant's proposed amended complaint are not themselves evidence – the whole point of a proceeding under section 768.72(1) is to determine whether the claimant can show reasonable evidentiary support for those allegations.").

Viewed in a light most favorable to Rosen, his proffered evidence provided reasonable evidentiary support for his punitive damages claim.

Affirmed.