



Think Twice Before Posting a “For Sale” Sign: Tortious Interference with Another’s Business Relationship

By Shaun K. Ramey

A Florida appellate court recently issued an opinion that should make all owners of real estate—both residential and commercial—think twice before they put a “for sale” sign on their own property. In *Walters v. Blankenship*, the court held that the mere act of placing a sign on one’s own property may constitute tortious interference with another’s business relationships.¹ From *Walters*, we are instructed that the simple act of putting out a sign or advertising is not always protected. Rather, in assessing liability, the question boils down to one of motive: Why did the real estate owner put out the “for sale” sign? The answer will likely determine liability, and hence, real estate owners everywhere need to explore their own motives before taking what at first may appear to be a harmless and legal act.

The Facts of *Walters*

Richard and Roberta Walters were the owners of four luxury condominium units. The Walters listed all four of their units for sale through a real estate auction company wherein potential bidders were required to deposit a \$50,000 cashier’s check as a condition precedent to participation as a bidder at the auction. There was no reserve listed for the auction, and more than 20 bidders deposited the required checks.² On the day before the auction, the Walters alleged that one of their neighbors, defendant Thomas Klinehofer, confronted another unit owner and said, “You wait until the day of the sale and see what we are going to do to Dick Walters.” On the day of the auction, Mr. Klinehofer, as well as four other neighbors who were also listed as defendants, put “for sale by owner” signs in front of their respective units.³ The auction took place as scheduled.⁴

The Walters’s condominium units sold for a total price of \$2,066,925. The Walters alleged, however, that the combined acts of the defendants placing “for sale by owner” signs in front of their respective units caused financial and emotional damage. As a proximate result of these “intentional, spiteful, malicious, and nonprivileged” acts, each unit offered by the Walters allegedly sold at a substantial loss. The defendants removed all “for sale by owner” signs immediately after the last of the Walters’ units was sold. The Walters’ lawsuit sought compensatory damages in excess of \$1.5 million and punitive damages in excess of \$4.5 million.

The *Walters* Holding

The *Walters* lawsuit consisted of three counts—one for tortious

interference with business relationships. The trial court dismissed the case on a motion to dismiss. The appellate court reviewed the case to determine, based upon the facts alleged, whether a claim for tortious interference could stand. The appellate court stressed that it took no position on the ultimate outcome of the case as it was another question as to whether the Walters could actually prove that they would have received a greater price for the sale of their units (and for how much) but for the actions of the defendants.

In Florida, the elements for a cause of action based on tortious interference with a business relationship, similar to the elements used by other states, consist of the existence of a business relationship, the defendant’s knowledge of the relationship, the defendant’s intentional and unjustified interference with the relationship, and damage to the plaintiff as a result of the breach of the relationship.⁵ The appellate court held in this case that the Walters had alleged sufficient facts to state a cause of action for tortious interference.⁶

In analyzing the first element, the court held that the allegations involved much more than a “mere offer to sell,” which normally does not create a business relationship.⁷ The court observed that once the Walters agreed to the auction without a reserve, they were obligated to accept the offers on their units irrespective of the price. The court also pointed to the fact that more than 20 bidders, who had posted substantial bonds, attended the auction. Thus, the court stated that the parties had progressed beyond the stage of a mere offer to sell—the Walters were now obligated to sell—and hence, a business relationship had been established.⁸

The court spent little time analyzing the second element—the defendants’ knowledge of the business relationship. This was likely because knowledge was obvious from the facts alleged. The court spent the majority of its opinion analyzing the third element—whether the defendants’ acts were unjustified. The court stated that the defendants did not have a legitimate reason for posting their “for sale” signs. Their units were not for sale as best evidenced by the fact that the signs were removed as soon as the last of the Walters’s units was sold.⁹ The court further stated that the defendants did not have an absolute First Amendment right to post the “for sale” signs. In holding as such, the court distinguished its prior opinion in *Americas Homes, Inc. v. Esler*, in which it held that homeowners did have a First Amendment right to post “for sale” signs on their property.¹⁰ The difference the

court noted was that in *Americas Homes*, the defendants had a legitimate right for posting their signs.¹¹

In *Americas Homes*, the defendants posted signs that said “due to local flooding, this property is for sale.” The defendants posted the signs on the advice of their real estate broker shortly after a flood. The defendants were seeking to actually sell their property, and their broker advised them that they must disclose the flooding to be able to sell. A developer subsequently sued the homeowners, claiming that the signs drastically reduced the sale of homes it was selling in neighboring areas. In finding for the homeowners, the court held that freedom of speech is a fundamental personal right and that the act of placing the signs in their yards was protected.¹² As previously stated though, the court in *Walters* found the current situation distinguishable and thus, implied that a legitimate motive must support the act itself to be protected.

With respect to the final element, damages, the court noted that the greater number of units for sale may have suggested something may be wrong with the condominiums or, at the very least, dramatically increased the supply of units for sale, thus lowering the market value of each unit.¹³ Consequently, the court held that the Walters had alleged a sufficient set of facts in support of a cause of action for tortious interference.

The Significance of *Walters*: Motive Matters

The dissent in *Walters* alleged that there has been no case in any jurisdiction in this country where a cause of action has previously been recognized that would allow someone to be sued for placing a “for sale by owner” sign on his or her own property.¹⁴ The *Walters* decision thus imposes a burden on all owners of real estate that before they offer or advertise their real estate for sale, they need to first ensure themselves that their motives are legitimate. This appears to be contrary to the position previously taken by other courts as noted in the *Walters* dissent that exercising a right to offer or advertise your own property for sale, regardless of motive, is legal.¹⁵ However, the concurrence in *Walters* contended that almost all, if not all, tortious interference cases involve acts that are otherwise “legal.”¹⁶ The issue is not whether the act is “legal” but whether it was “unjustified.”¹⁷ Whether interference is unjustified requires a balancing of interests and turns on what is “right” and “just” under the “rules of the game.”¹⁸ In *Walters*, no legitimate interests were advanced by the interference. Alternatively, the concurrence in *Walters* stated that irrespective of the court’s motive analysis, the defendant’s actions were not “legal” because condominium rules prohibited the posting of the defendants’ signs. Conversely, the right of the plaintiffs to sell their property was of paramount importance.¹⁹ “If it can be proven that the defendants acted out of pure spite, for the purpose of harming plaintiffs (or for another purpose), as has been alleged, this cannot be justified under any rules of any game with which I am familiar.”²⁰

So the question becomes, what constitutes a “legitimate” or a “justified” reason for posting a “for sale” sign. Does an owner actually have to be planning to sell his or her property? What

about homeowners who are merely “fishing” or “testing the waters” and thus may not actually be in the market of selling their home? What about homeowners who post such signs merely to get a fair market appraisal of their property? Can these reasons be considered legitimate or legitimate enough? In support thereof, what evidence will exonerate a real estate owner who advertises his or her property for sale? Conversely, can evidence of an unreasonable asking price be used against a seller to show that he or she is not trying to sell the property in good faith? Likewise, how long must a real estate owner offer the property for sale to prove that he or she is advertising it in good faith? The *Walters* decision does not answer these questions, but it permits, or possibly even mandates, that courts now ask such questions when analyzing disputed real estate transactions.

Motive Is Not the End of the Story

While a legitimate or justified motive now appears to be a prerequisite before posting a sign or otherwise advertising one’s property for sale, *Walters* instructs us that this motive must still be balanced against a potential plaintiff’s interest in his or her business relationship. Thus, with what relationships must real estate owners not interfere? The concurrence in *Walters* contends that the customers at issue cannot be speculative; they must be identifiable.²¹ But must they be as identifiable as the bidders in *Walters* who had each deposited substantial sums to bid? What about bidders at a general auction with no deposit required? What about a neighbor in general? Assuming that a defendant did not have a legitimate motive to put up a “for sale” sign, as was the case in *Walters*, does it matter whether the plaintiffs can prove identifiable customers, or could the public in general suffice under those facts?

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The cases appear to provide that some identifiable relationship must still exist irrespective of motive. By way of example, in *Landry v. Hornstein*, a Florida appellate court held that a sufficient business relationship had been established between a pharmacist who rented the premises of his drugstores and a prospective purchaser with whom he had entered into sales negotiations.²² In holding that the pharmacist’s landlord had tortiously interfered with the business relationship because the landlord stated to the prospective purchaser that he was “going to get rid of” the pharmacist, the court stated that “the negotiations had progressed

beyond the stage of a mere offer, to an understanding between [the pharmacist and the prospective buyer] for the sale of the business.”²³ Likewise, in *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, the court stated that “as a general rule, an action for tortious interference with a business relationship requires a business relationship evidenced by an actual and identifiable understanding or agreement which in all probability would have been completed if the defendant had not interfered.”²⁴ Thus, the business relationship at issue must be somewhat identifiable, but *Walters* leaves open the question of how identifiable.

Conclusion

Despite the fact that this article warns real estate owners that they should have a legitimate motive before they offer or advertise their property for sale, they may still “get away” with unjustified motives if the plaintiff cannot prove the existence of a sufficient business relationship. Of course, given the fact that a plaintiff may need only to show some form of an “understanding” with a prospective purchaser to invoke liability, this is a risk that a real estate owner should probably seek to avoid. Nevertheless, *Walters* is significant because for perhaps the first time, it forces real estate owners to question their own motives before they offer or otherwise advertise their property for sale and thus adds another item to the seller’s checklist before selling or advertising his or her property. Consequently, all owners of real estate should think twice before they put a “for sale” sign on their own property. ■

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Endnotes

1. *Walters v. Blankenship*, 931 So. 2d 137, 138 (Fla. Dist. Ct. App. 2006).

2. *Id.* at 138–39.

3. *Id.* at 139.

4. *Id.*

5. *Id.* at 139 (citing *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 812 (Fla. 1994); *Sobi v. Fairfield Resorts, Inc.*, 846 So. 2d 1204 (Fla. Dist. Ct. App. 2003)).

6. *Walters*, 931 So. 2d at 139.

7. See *Ethan Allen, Inc.*, 647 So. 2d at 815 (“In Florida, a plaintiff may properly bring a cause of action alleging tortious interference with present or prospective customers but no cause of action exists for tortious interference with a business’s relationship to the community at large.”).

8. *Walters*, 931 So. 2d at 139–140.

9. *Id.* at 140.

10. *Americas Homes, Inc. v. Esler*, 668 So. 2d 239, 240 (Fla. Dist. Ct. App. 1996).

11. *Walters*, 931 So. 2d at 140.

12. *Americas Homes*, 668 So. 2d at 240.

13. *Walters*, 931 So. 2d at 141.

14. *Id.* at 145 (Lawson, J., dissenting).

15. *Id.* at 143 (Lawson, J., dissenting).

16. *Id.* at 141 (Torpy, J., concurring).

17. *Id.* (citing *Field Servs., Inc. v. White & White Inspection & Audit Serv., Inc.*, 384 So. 2d 303, 306–07 (Fla. App. Ct. 1980)).

18. *Walters*, 931 So. 2d at 141.

19. *Id.* at 142.

20. *Id.*

21. *Id.* (Torpy, J., concurring).

22. *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 462 So. 2d 844, 847 (Fla. App. Ct. 1985).

23. *Id.* at 846–47.

24. *Landry v. Hornstein*, 647 So. 2d 812, 815 (Fla. 1995).

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