

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CTCW-BERKSHIRE CLUB, LLC,

Appellant,

v.

Case No. 5D20-2531

LT Case No. 2018-CA-013886-O

CED CAPITAL HOLDINGS 2000 EB, LLC,

Appellee.

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Opinion filed November 5, 2021

Appeal from the Circuit Court  
for Orange County,  
John E. Jordan, Judge.

Zachary J. Bancroft, of Baker Donelson  
Bearman Caldwell & Berkowitz, PC,  
Orlando, Steven F. Griffith, Jr. and Laura E.  
Carlisle, of Baker, Donelson, Bearman,  
Caldwell & Berkowitz, PC, New Orleans, LA,  
for Appellant.

Tucker H. Byrd, Scottie N. McPherson and  
Brittany M. Wages, of Byrd Campbell, P.A.,  
Winter Park, for Appellee.

PER CURIAM.

AFFIRMED.

NARDELLA and WOZNIAK, JJ., concur.  
SASSO, J., concurs specially, with opinion.

SASSO, J., concurring specially.

I agree with this court's decision to affirm the judgment on appeal and write to explain why I believe we are so constrained.

Appellant challenges the trial court's order awarding damages on several grounds, first arguing that the damages were never pled. On this point though, while the trial court determined the damages were not required to be specifically pled, it alternatively found that any pleading defects were remedied by virtue of the parties' pretrial stipulation. Appellant does not challenge this alternative basis in its initial brief and therefore has waived the issue. See *Brown v. State*, 304 So. 3d 243, 267 (Fla. 2020) (failure to challenge circuit court's alternative and primary bases for denying relief constituted waiver of error); *Rosier v. State*, 276 So. 3d 403, 406 (Fla. 1st DCA 2019) (issues not raised in the initial brief are considered waived or abandoned).

Next, Appellant challenges Appellee's standing to obtain damages suffered by its parent company, a non-party to this action. Appellant argues that Appellee lacks standing to obtain damages because the purported assignment it received from its parent company violates the Statute of Frauds. Appellant's sole argument on this point does not support reversal. See *Boulevard Nat'l Bank of Miami v. Air Metal Indus., Inc.*, 176 So. 2d 94,

97–98 (Fla. 1965) (holding that a written assignment of a contract is not required); *Loper v. Weather Shield Mfg., Inc.*, 203 So. 3d 898, 906 (Fla. 1st DCA 2015) (“The general rule is that the Statute of Frauds bars enforcement of oral contracts which by their terms are not to be performed within a year. The fact that a contact may not be performed within a year does not bring it within the statute. . . .” (citations omitted)). Thus, Appellant fails to meet its appellate burden on this point. See *Rosier*, 276 So. 3d at 406 (noting appellate court may not become an advocate by second-guessing counsel and advancing for him theories and defenses which counsel either intentionally or unintentionally has chosen not to mention).

Finally, Appellant challenges the issue of continuing damages. On this point, the award of continuing damages appeared for the first time in the final judgment, and Appellant did not file a motion for rehearing directed at this alleged error. Consequently, the issue is unpreserved for our review. See *Pensacola Beach Pier, Inc. v. King*, 66 So. 3d 321, 324–25 (Fla. 1st DCA 2011) (appellant failed to preserve for appellate review alleged legal error which appeared for the first time on the face of the judgment and appellant did not move for rehearing or otherwise seek post-judgment relief).