

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

NUTRIBAND, INC.,

Appellant,

v.

Case No. 5D19-334

ADVANCED HEALTH BRANDS, INC.,
RAYMOND KALMAR, PAUL MURPHY,
MICHELLE POLLY-MURPHY,
LAURA FILLMAN AND JOHN BAKER,

Appellees.

Opinion filed March 20, 2020

Appeal from the Circuit Court
for Orange County,
Jose R. Rodriguez, Judge.

Kristie Hatcher-Bolin, of GrayRobinson,
P.A., Lakeland, and John M. Brennan and
Michael R. Santana, of GrayRobinson,
P.A., Orlando, for Appellant.

Brandon T. Crossland, and Maureen
Berard Soles, of Baker & Hostetler, LLP,
Orlando, for Appellees, Raymond Kalmar,
Paul Murphy, Michelle Polly-Murphy, and
John Baker.

No Appearance for Other Appellees.

WALLIS, J.

Appellant, Nutriband, Inc., appeals the final judgment entered in favor of Appellees,
Advanced Health Brands, Inc., et al., which dismissed Appellant's amended complaint

with prejudice and dissolved a temporary injunction that Appellant obtained against Appellees. After Appellees allegedly breached the agreement for the sale of intellectual property and stock, Appellant filed suit against Appellees for replevin, rescission, unjust enrichment, and specific performance. In dismissing the action, the trial court found that Appellant is estopped from seeking rescission of the agreement or replevin of Appellant's stock. The lower court erred in several respects, most notably when it dismissed the case with prejudice.¹ See Yun Enters., Ltd. v. Graziani, 840 So. 2d 420, 423 (Fla. 5th DCA 2003) ("[A]s a general rule, refusal to allow amendment constitutes an abuse of discretion unless it clearly appears that allowing the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile."). Accordingly, we reverse the portion of the final judgment that dismissed the amended complaint with prejudice, and remand for an opportunity for Appellant to amend the complaint. In all other respects, we affirm.

AFFIRMED in Part; REVERSED in Part; REMANDED.

EDWARDS, J., and GARAGOZLO, B.B., Associate Judge, concur.

¹ We note that the trial court further erred when it considered matters outside of the four corners of the complaint, including evidence presented at the hearing, and in ruling on a potential estoppel defense. See Enlow v. E.C. Scott Wright, P.A., 274 So. 3d 1192, 1193 (Fla. 5th DCA 2019) ("When reviewing a motion to dismiss, the court is strictly confined to the allegations contained within the four corners of the complaint and its attachments."); Stucchio v. Huffstetler, 690 So. 2d 753, 754 (Fla. 5th DCA 1997) (explaining that defenses to an action may not be considered in deciding a motion to dismiss).