NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 0589

EDWIN AND CATHERINE PEARSON

VERSUS

JACK A. BLOSSMAN, SR., J.A.B.T.F, INC.,
ROBERT L. TORRES, SR., AND
TAMMANY HOLDING CORPORATION

Judgment Rendered: NOV 06 2015

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 99-13859

Honorable Martin E. Coady, Judge

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Joseph M. Bruno Daniel A. Meyer New Orleans, LA	Attorneys for Appellant Plaintiff and Defendant-In-Reconvention – Edwin Pearson
Eric A. Bopp Mandeville, LA	Attorney for Appellees Defendants – Jack A. Blossman, Sr. and J.A.B.T.F., Inc.
Wayne A. Collier Slidell, LA	Attorney for Appellees Defendant and Plaintiff-In-Reconvention – Tammany Holding Corporation Plaintiff-In-Reconvention – Robert L. Torres, Sr.

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BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

WELCH, J.

The plaintiff/appellant, Edwin Pearson ("plaintiff"), appeals a December 11, 2014 judgment of the trial court, which dismissed his claims against the defendants/appellees, Jack A. Blossman, Sr., J.A.B.T.F., Inc., and Tammany Holding Corporation ("THC").[1] For the following reasons, we affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL HISTORY

Overview

The claims herein arise out of the plaintiff's purchase from J.A.B.T.F. of a 7.3 acre piece of undeveloped commercial property (referred to as "Parcel 2-B") located at the entrance to Lakeshore Estates subdivision in Slidell, Louisiana. The plaintiff contends that he received implicit and express assurances from J.A.B.T.F.'s representative, Blossman, that the property he was purchasing would have approximately 1,000 feet of frontage adjacent to a proposed boulevard providing ingress and egress to the subdivision. The developer of Lakeshore Estates and J.A.B.T.F.'s ancestor-in-title to Parcel 2-B, THC, owned the adjacent property upon which the proposed boulevard was to be constructed. However, following the plaintiff's purchase of the property, the location of the proposed boulevard was modified by the placement of a 50-foot wide and 1,000-foot long landscape buffer between the boulevard and the plaintiff's property line. The modification of the boulevard location resulted in the plaintiff's property being denied frontage on and access to the boulevard. The plaintiff claims the resulting lack of frontage on the boulevard and access thereto destroyed the marketability and value of his property.

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[1] The caption of this matter lists both Edward Pearson and Katherine Pearson as plaintiffs; however, Ms. Pearson was dismissed as a plaintiff in this matter by judgment dated April 28, 2008, after she transferred all of her interest in the property at issue herein to Edward Pearson as the result of a 2003 community property settlement between the Pearsons.

Action in the Trial Court

On September 10, 1999, the plaintiff filed the instant suit against Blossman, J.A.B.T.F., THC, and THC's sole owner, Robert L. Torres ("Torres"). The petition alleged claims of inducement against J.A.B.T.F. and Blossman. The plaintiff claimed that he was induced to purchase the property based upon verbal and written assurances regarding the location of and access to the proposed boulevard made by Blossman, individually, and as the representative of J.A.B.T.F. Also, the petition alleged claims for breach of verbal and express written warranties that the boulevard would be constructed adjacent to Parcel 2-B.

The plaintiff asserted claims for fraud and violations of the Louisiana Unfair Trade Practices Act ("LUTPA")[2] against THC and Torres, individually. Torres was dismissed as a defendant from this action on October 30, 2001. The petition alleged that THC fraudulently induced and represented to Blossman and J.A.B.T.F. "and thus[,] all successors in title" that the proposed boulevard would extend along Parcel 2-B. Further, the petition alleged that THC, as an economic competitor of the plaintiff, modified the location of the boulevard with the intent to economically harm the plaintiff, giving rise to recovery under LUTPA. Finally, the petition asserted a claim of intentional infliction of emotional distress against THC.

Other pleadings filed in this action include a reconventional demand filed by THC and Torres, prior to his dismissal, against the plaintiff asserting a defamation claim and seeking attorney's fees. Also, Blossman and J.A.B.T.F. each filed separate cross-claims against Torres and THC, averring that the relocation of the boulevard took place without their consent and was the result of actions beyond their control.

Following protracted preliminary litigation, a bench trial was held on October 23 and 24, 2014. In a judgment signed December 11, 2014, the trial court

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[2] See La. R.S. 51:1401 *et seq.*

dismissed all of the plaintiff's claims against Blossman, J.A.B.T.F., and THC. The judgment expressly dismissed THC's defamation claims, but is silent as to Torres' individual defamation claims.[3] Finally, the judgment dismissed the "counterclaims" of Blossman and J.A.B.T.F. against THC.

Factual Background

In August of 1996, THC purchased approximately 3,000 acres of vacant lowland with frontage on Lake Ponchartrain. THC purchased the property for the purpose of developing Lakeshore Estates as an upscale residential community consisting of amenities such as man-made lakes and a marina on Lake Ponchartrain. THC immediately sold two parcels totaling 62.16 acres for $1,500,000.00 to J.A.B.T.F. One of the two parcels conveyed to J.A.B.T.F. was the 7.3 acre parcel (Parcel 2-B) at issue herein.

When Parcel 2-B was conveyed to J.A.B.T.F., it had existing frontage of approximately 317.79 feet on the East I-10 Service Road. Oak Harbor Boulevard, an existing public road intersecting the East I-10 Service Road, terminated at what would later become the entrance of Lakeshore Estates.[4] When J.A.B.T.F. purchased the property from THC, the parties discussed the possibility of the proposed boulevard being built adjacent to Parcel 2-B. At that same time, THC and the parish were discussing a possible donation of a 25-acre parcel to the west of Parcel 2-B for the construction of a parish facility as well as the possibility of the parish paying for the construction of the boulevard. Blossman contends that he and Torres entered into an oral agreement, which provided if the proposed

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[3] Generally, silence in a judgment of the trial court as to any issue, claim, or demand placed before the court is deemed a rejection of the claim and the relief sought is presumed to be denied. **Schoolhouse, Inc. v. Fanguy**, 2010-2238 (La. App. 1st Cir. 6/10/11), 69 So.3d 658, 664. Accordingly, the silence in the trial court's judgment on this issue is deemed as a rejection of Torres' reconventional demand.

[4] The Oak Harbor Boulevard extension at issue herein was later renamed Lakeshore Boulevard East. However, at trial, the parties referred to the proposed road as Oak Harbor Boulevard and/or Oak Harbor Boulevard East. For ease of reference herein we refer to the road as Oak Harbor Boulevard.

boulevard extension was not paid for by the parish, then the owner of Parcel 2-B would be responsible to THC for 25% of the construction costs or $40,000.00, whichever was less. At trial, Torres did not dispute Blossman's understanding of the oral agreement, but did not recall this specific agreement.

Shortly after acquiring the property, J.A.B.T.F. retained Larry Haik, a commercial real estate agent, to market the 62.16 acres, including Parcel 2-B. The plaintiff, a fireworks retailer and licensed real estate agent, had previously expressed interest in the property to Torres. Haik, knowing of plaintiff's interest, approached the plaintiff regarding the purchase of Parcel 2-B. Parcel 2-B was sold unfilled; therefore, the plaintiff's initial plan was to use the property as a location for fireworks sales until he could obtain the funds necessary to fill and develop the property. Both Haik and the plaintiff testified that it was their understanding Parcel 2-B would have 1,000 feet of frontage on and access to the proposed boulevard based on their review of various preliminary plats of the subdivision plan. Haik and the plaintiff further understood that Parcel 2-B's frontage and access to the boulevard was the basis for justifying the $800,000.00 purchase price being asked for the property.

A purchase agreement was executed on August 11, 1997. Blossman requested the following condition be added to the purchase agreement regarding the obligation of the owner of Parcel 2-B to contribute funds for the construction of the proposed boulevard:

> **Purchaser is hereby informed that when the new road is built along the South side of the subject property, the then owner of subject property will pay 25% of such cost or forty thousand dollars ($40,000.00), whichever is less.** [Emphasis in original]

The plaintiff received two extensions on the purchase agreement in October of 1997. The second extension of the purchase agreement, dated October 29, 1997, also granted the plaintiff the right to make improvements to Parcel 2-B for the

purpose of setting up a tent to sell fireworks pending completion of the property sale.

Prior to the plaintiff's closing on the purchase of Parcel 2-B, Torres learned of the plaintiff's plans to sell fireworks. Torres strongly objected to the plaintiff's plan to operate a fireworks stand in the vicinity of the entrance of the upscale Lakeshore Estates and expressed his objections to both Blossman and Haik. Haik arranged a meeting between plaintiff and Torres to address the situation. On November 5, 1997, Haik and the plaintiff met with Torres.

In an audio recording of the November 5, 1997 meeting made by the plaintiff, without Torres' knowledge, Torres unequivocally stated that THC owned and controlled the property where the proposed boulevard would be located. Torres expressly stated the ultimate location of the proposed boulevard shown on preliminary plats was controlled by him and the location could be moved at his discretion. Torres emphatically told the plaintiff and Haik that he would "never, never" dedicate the property adjacent to the plaintiff's property for a street if the plaintiff went forward with his plan to sell fireworks on Parcel 2-B.

In a letter dated November 6, 1997, the plaintiff provided notice to Blossman of the details of his meeting with Torres. The plaintiff testified that during a subsequent meeting, Blossman assured the plaintiff that "there was no way [Torres] could move that boulevard" and cited his 35% partnership interest in a development project with Torres as the basis for his influence. The plaintiff contends these particular statements led him to believe Blossman had sufficient control or influence over Torres to assure the location of the proposed boulevard. According to the plaintiff, Blossman's statements constituted an enforceable verbal guarantee.[5] The plaintiff did not retain an attorney to confirm his belief in the

[5] The plaintiff's assertion regarding Blossman's and Torres' relationship as business partners is based on a separate venture entered into between Torres and Blossman in their individual capacities. In May of 1996, Torres, individually, purchased the 3,000 acres, which he later sold

enforceability of such a warranty, nor did he hire anyone to search the property records to determine whether Blossman owned any interest in the property adjacent to Parcel 2-B. Blossman expressly denied ever telling the plaintiff that he owned any interest in the property adjacent to Parcel 2-B or that he had any influence over Torres' decisions.

On November 10, 1997, the plaintiff sent a letter to Blossman indicating his willingness to place certain restrictions on the property, if Torres was amenable. The plaintiff's letter contains the following request directed at Torres and/or THC:

> In addition, I would require that I be guaranteed in a written, witnessed and notarized document, unlimited access to said Boulevard for the entire depth of the property, and an outside date when the proposed street will be completed.

The notarized document requested by the plaintiff was never executed by any of the defendants. Prior to purchasing Parcel 2-B, the plaintiff again attempted to obtain assurances from THC through Torres guaranteeing that Parcel 2-B would be adjacent to the proposed boulevard, via a written "Agreement" presented to Torres. However, the proposed "Agreement" was never executed by Torres or THC. Over the course of the 1997-1998 holiday season, the plaintiff sold fireworks from a tent on Parcel 2-B, despite knowing of Torres' objections and without a permit by the parish to sell fireworks at that location.[6]

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to THC in August of 1996. In June of 1996, shortly after the 3,000 acres was initially acquired by Torres, Blossman made a $250,000.00 personal loan to Torres for the purpose of assisting Torres with financing the purchase. The parties signed an agreement memorializing the loan by Blossman, which also stated the parties were partners, with Blossman holding a 35% interest, in the development of 1,000 acres of the property near or adjacent to the lakefront. It is undisputed that the 1,000 acres referenced in the agreement does not include the plaintiff's property at issue herein.

In November of 1998, Blossman filed a declaratory judgment against Torres after a dispute arose over whether a partnership/joint venture existed in connection with the 1,000 acres. Torres and Blossman later settled the matter out of court with Torres paying Blossman $500,000.00 in exchange for Blossman relinquishing his claim of holding a 35% interest in the 1,000 acres.

[6] With regard to permitting issues prior to purchasing the property, the plaintiff testified he understood he was operating without the necessary permitting, but proceeded based on the understanding that the short holiday fireworks season would be over before the parish could secure the necessary court order to shut down the stand. After the plaintiff purchased the

In early 1998, the plaintiff and Blossman executed a credit sale.[7] At the closing, language concerning the obligation of the owner of Parcel 2-B to contribute to the costs of constructing the proposed boulevard, if necessary, was added to the sale document. The parties dispute the purpose and intent of the added contract provision. The plaintiff maintains the added provision constitutes an express warranty requested by him ensuring the proposed boulevard would be built adjacent to Parcel 2-B. However, Blossman contends the provision was added for his protection and to ensure the purchaser of Parcel 2-B would be on notice of the obligation to contribute to the costs of constructing the boulevard.

In July of 1999, THC dedicated property to the parish for the construction of the proposed boulevard. In the dedication, THC retained ownership of a 50-foot wide and 1,000-foot long piece of property adjacent to Parcel 2-B. On August 10, 1999, the final subdivision review for Lakeshore Estates, Phase 1, was conducted at a meeting of the St. Tammany Parish Planning Commission. The tentative plat presented for final approval at the August 10, 1999 meeting evidenced the 50 foot wide and 1,000 foot long parcel placed between Parcel 2-B and the proposed boulevard. The plaintiff's attorney appeared at the public meeting and provided testimony on the plaintiff's behalf. The planning commission ultimately approved the proposed design contained in the tentative plat, and the boulevard was built accordingly.

Issues on Appeal

The plaintiff urges five assignments of error for this court's review. First, the plaintiff contends the trial court erred as a matter of law by not interpreting

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property, the police jury passed an ordinance prohibiting the sale of fireworks applicable to C-1 property in the district where Parcel 2-B is located.

[7] The act of sale between J.A.B.T.F. and plaintiff indicates that the sale was executed on February 2, 1998; however, the instrument's recording date is January 6, 1998 and other parts of the record indicate the closing occurred in January of 1998. The reference on the act of sale to February, 2, 1998 appears to be a typographical error.

what he contends is an ambiguous warranty provision in the sale document in favor of the plaintiff under La. Civ. Code art. 2474. Second, due to the boulevard not being constructed adjacent to Parcel 2-B, the plaintiff asserts the trial court erred in not finding a breach of the written warranty by Blossman and J.A.B.T.F. Third, the plaintiff asserts the trial court erred in not finding that he was a competitor of THC under LUTPA. The plaintiff's fourth assignment of error challenges the trial court's factual finding that the location of the boulevard was the decision of the parish, not THC. Finally, the plaintiff asserts error by the trial court in failing to find THC's actions related to modification of the boulevard constituted a violation of LUTPA. The plaintiff does not challenge the dismissal of his fraud claims.

THC and Torres filed an "appellee brief" wherein they assert the trial court erred in dismissing their claims for attorney's fees and defamation and seek reversal of the trial court's finding. However, the failure of THC and Torres to file an answer to the appeal, as required by La. Code Civ. P. art. 2133, precludes our review of these claims. See **MB Industries, LLC v. CNA Ins. Co.**, 2006-1084 (La. App. 1st Cir. 3/23/07), 960 So.2d 144, 148 n.l, writs denied, 2007-1186, 2007-1191, 2007-1217 (La. 9/21/07), 964 So.2d 335, 337, 340.

LAW AND DISCUSSION

I. Dismissal of Plaintiff's Breach of Warranty Claims Against Blossman and J.A.B.T.F.

We first address the plaintiff's two assignments of error relating to the trial court's dismissal of his claims for breach of warranty against Blossman and J.A.B.T.F.

Standard of Review

The determination regarding whether a contract is clear or ambiguous is a question of law. **Sanders v. Ashland Oil, Inc.**, 96-1751 (La. App. 1st Cir. 6/20/97), 696 So.2d 1031, 1037, writ denied, 97-1911 (La. 10/31/97), 703 So.2d

29. However, where factual findings are pertinent to the interpretation of a contract, those factual findings are not to be disturbed unless manifest error is shown. *Id.* When appellate review is not premised upon any factual findings made at the trial level, but instead is based upon an independent review and examination of the contract on its face, the manifest error rule does not apply. *Id.*

Applicable Law and Discussion

A contract is formed by the consent of the parties established through offer and acceptance. La. Civ. Code art. 1927. A party who signs a written instrument is presumed to know its contents and cannot avoid its obligations by contending that he did not read it, that he did not understand it, or that the other party failed to explain its meaning. **Aguillard v. Auction Management Corp.**, 2004-2804 (La. 6/29/05), 908 So.2d 1, 22; **Dulin v. Levis Mitsubishi, Inc.**, 2001-2457 (La. App. 1st Cir. 12/20/02), 836 So.2d 340, 345, writ denied, 2003-0218 (La. 3/28/03), 840 So.2d 576.

Interpretation of a contract is the determination of the common intent of the parties. La. Civ. Code art. 2045. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. Civ. Code art. 2046. Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole. **Clovelly Oil Co., LLC v. Midstates Petroleum Co., LLC**, 2012-2055 (La. 3/19/13), 112 So.3d 187, 192. A court's duty is confined to the ascertainment of the limits of the rights and obligations of the contracting parties as they have defined them for themselves. **Amitech U.S.A., Ltd. v. Nottingham Const. Co.**, 2009-2048 (La. App. 1st Cir. 10/29/10), 57 So.3d 1043, 1055, writs denied, 2011-0866, 2011-0953 (La. 6/17/11), 63 So.3d 1036, 1043 (citing **Weeks v. T.L. James & Co. Inc.**, 626 So.2d 420, 424 (La. App. 3rd Cir. 1993), writs denied, 93-2909, 93-2936 (La. 1/28/94),

630 So.2d 794). The fact that one party may create a dispute about the meaning of a contractual provision does not render the provision ambiguous. **Campbell v. Melton**, 2001-2578 (La. 5/14/02), 817 So.2d 69, 76.

The plaintiff contends that the trial court erred in its interpretation of the following contract provision in the sale document between J.A.B.T.F. and the plaintiff:

> As further consideration of this conveyance, the Vendor declares that a new road or boulevard is to be constructed on the south side of and adjacent to the subject property, **and if** constructed as anticipated by the parties hereto, Purchasers, their heirs, successors and assigns, being the then current owners of the herein described property, shall reimburse the Vendor 25% of the cost of the road improvements, not to exceed $40,000.00. **If**, however, the road or boulevard is constructed at no cost to the adjacent landowners but is constructed at the expense of some governmental agency, then there will be no reimbursement due Vendor by Purchasers. [Emphasis Added.]

The plaintiff maintains said provision was added at the closing at his request for the purpose of guaranteeing Parcel 2-B access to the proposed boulevard. The plaintiff testified he told Blossman he would not sign the sale document without such a guarantee. In contrast, Blossman acknowledged he had his lawyer insert the provision, but testified the provision was added to the sale document at his request for his protection and as an acknowledgement of his oral agreement with Torres. We note Blossman added similar language to the purchase agreement for his protection, prior to the dispute arising between Torres and the plaintiff.

On appeal, the plaintiff argues the contract provision is undoubtedly ambiguous, and the trial court erred in not interpreting the contractual provision against the seller, J.A.B.T.F., as required under La. Civ. Code art. 2474. Louisiana Civil Code article 2427 provides a "seller must clearly express the extent of his obligations arising from the contract, and any obscurity or ambiguity in that expression must be interpreted against the seller." The plaintiff offers an alternative interpretation in support of his position, wherein he contends the

provision contains the stand alone, affirmative declaration that the boulevard would be built next to Parcel 2-B, with two separate conditional provisions relating to the obligation to contribute to the payment of construction costs, depending on whether the parish did or did not participate in the boulevard's construction.

The trial court did not find the contract provision ambiguous. The trial court interpreted the words, "if constructed as anticipated by the parties[,]" to mean that if Parcel 2-B obtained access to the boulevard, then the owner of Parcel 2-B would pay 25% of the construction costs of the boulevard, up to $40,000.00. The trial court concluded the agreement was not a guarantee of access to the road, but a statement outlining the plaintiff's responsibility for construction costs in the event the boulevard was constructed.

The trial court considered both the language of the provision and the facts surrounding the negotiation and sale of Parcel 2-B. The trial court noted the plaintiff's meeting with Torres as well as the plaintiff's failed attempts to secure a written guarantee of frontage from Torres and THC, as facts undermining the plaintiff's assertions regarding his belief regarding Blossman's influence over Torres and/or control over the ultimate location of the boulevard. The trial court found these facts supported a finding that the plaintiff could not logically rely on his assumption that Blossman could provide a warranty regarding the location of the boulevard. The trial court also questioned the failure of the plaintiff to include in the sale document the warranty language he had previously presented to Torres and THC in the unexecuted "Agreement." The trial court found Blossman's testimony credible regarding the events surrounding the sale of Parcel 2-B, including his testimony that he did not provide a verbal guarantee to the plaintiff regarding access to the property; he had no influence over Torres; and his testimony that the provision in the sale document was not an express guarantee.

We find no legal or factual error in the trial court's ruling. Louisiana Civil Code article 1767 provides that if the obligation cannot be enforced until an uncertain event occurs, the condition is suspensive. We find the phrase "and if constructed as anticipated" represents a suspensive condition, which modifies the declaration stating a new road is to be constructed adjacent to Parcel 2-B. In particular, the phrase "and if" in this context connotes uncertainty. Webster's Ninth New Collegiate Dictionary (1991) offers the following definitions of the word "if": "in the event that," "allowing that," and "on the condition that." The provision at issue herein contains no express assurances regarding Parcel 2-B's right of access to the boulevard; instead, the provision focuses on the possible obligation of the buyer of Parcel 2-B to contribute a portion of the costs associated with the construction of a boulevard adjacent to Parcel 2-B. Based on the above-discussed considerations, we find the trial court did not err in dismissing the plaintiff's breach of warranty claims against J.A.B.T.F. and Blossman.[8]

II. Dismissal of Plaintiff's LUTPA Claims Against THC

We now turn to the plaintiff's third, fourth, and fifth assignments of error challenging the trial court's dismissal of his LUTPA claims against THC.

Standard of Review

A court of appeal may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). Before an appellate court may reverse a factfinder's determinations, it must find from the record that a reasonable factual basis does not

[8] The plaintiff also argues on appeal that J.A.B.T.F. and Blossman should be cast in judgment "jointly and *in solido*" for the breach of warranty, based on Blossman's alleged representation of influence over Torres as the result of their business dealings in connection with the 1,000-acre lakefront project. Further, the plaintiff contends Blossman's personal acceptance of a check from the plaintiff in connection with interest on the property sale constitutes commingling of funds and additionally creates a basis for personal liability under the theory of corporate veil piercing. However, we need not reach the merits of the plaintiff's arguments based on our decision herein to affirm the trial court's dismissal of the plaintiff's claims for breach of warranty.

exist for the findings and that the record establishes that the findings are clearly wrong. **Stobart v. State, through Dept. of Trans. and Development**, 617 So.2d 880, 882 (La. 1993). Where there are two permissible views of the evidence, the factfinders choice between them cannot be manifestly erroneous or clearly wrong. *Id.* at 883.

Applicable Law and Discussion

Louisiana Revised Statutes 51:1405(A) prohibits any "unfair or deceptive acts or practices in the conduct of any trade or commerce." Louisiana Revised Statutes 51:1409(A) grants a right of action to "[a]ny person who suffers any ascertainable loss" from a violation of this prohibition. Although business consumers and competitors are included in the group afforded this private right of action, they are not its exclusive members. **Cheramie Services, Inc. v. Shell Deepwater Production, Inc.,** 2009-1633 (La. 4/23/10), 35 So.3d 1053, 1057.

The Louisiana Supreme Court has found that the range of prohibited practices under LUTPA to be extremely narrow, citing with favor the following explanation of the scope of LUTPA from the federal Fifth Circuit:

> LUTPA does not prohibit sound business practices, the exercise of permissible business judgment, or appropriate free enterprise transactions. The statute does not forbid a business to do what everyone knows a business must do: make money. Businesses in Louisiana are still free to pursue profit, even at the expense of competitors, so long as the means used are not egregious. Finally, the statute does not provide an alternate remedy for simple breaches of contract. There is a great deal of daylight between a breach of contract claim and the egregious behavior the statute proscribes.

Id. at 1060.

It has been left to the courts to determine what constitutes a LUPTA violation on a case-by-case basis. **Quality Environmental Processes, Inc. v. I.P. Petroleum Co.,** 2013-1582 (La. 5/7/14), 144 So.3d 1011, 1025. The plaintiff must show by a preponderance of the evidence that the alleged conduct "offends established public policy and ... is immoral, unethical, oppressive, unscrupulous,

or substantially injurious." See **Cheramie Services, Inc. v. Shell Deepwater Production, Inc.**, 35 So.3d at 1059. In sum, LUTPA covers the claims of persons who assert a "loss of money or ... property ... as a result of the use or employment by another person of an unfair or deceptive method, act, or practice." *Id.* at 1058.

Here, the plaintiff maintains sufficient evidence was produced at trial to prove his claim against THC for unfair trade practices; therefore, the trial court's dismissal of his LUTPA claims was in error. In particular, the plaintiff contends the trial court erred in failing to make the following findings of fact: the plaintiff and THC were competitors for purposes of LUTPA; the decision to block Parcel 2-B's access to the boulevard was made by THC, not the parish; and THC's actions were intended solely to destroy the plaintiff's property value and constituted an unfair trade practice that offends established public policy.

The Louisiana Supreme Court has held any persons injured by unfair trade practices have standing to seek recovery under LUTPA. *Id.* The focus in a LUTPA claim is whether a plaintiff has met his burden of proving egregious acts amounting to unfair trade practices, regardless of the plaintiff's status as a competitor or otherwise. *Id.* Here, although the plaintiff contends that the trial court erred finding that the plaintiff and THC were not competitors, this factual finding is immaterial to the ultimate issue, namely, whether the trial court erred in dismissing the plaintiff's LUPTA claims. Accordingly, we find no merit in the plaintiff's third assignment of error based upon the record.

With regard to his fourth assignment of error, the plaintiff contests the trial court's finding that the installation of the landscape area adjacent to Parcel 2-B was the decision of the parish. The plaintiff contends THC, not the parish, conceived and designed the modified plan. In support of his position, the plaintiff asserts the property description in the act of donation by THC to the parish compresses the right of way and results in the exclusion of the 50-foot landscape buffer adjacent to

Parcel 2-B. The plaintiff argues the tentative plat submitted at the August 10, 1999 planning commission meeting containing the modified boulevard was created and submitted by THC. Finally, the plaintiff contends his position is supported by the fact that the installed landscape buffer reflects the threats made by Torres during the November 5, 1997 meeting.

Torres testified that the parish planning commission and the police jury recommended and approved the placement of the landscape buffer on the south side of the boulevard adjacent to Parcel 2-B. Torres testified the parish was not interested in maintaining the landscape buffer area after dedication, and THC retained ownership of the area for beautification. According to Torres, the parish determined the final configuration of the boulevard. The buffer area was added with the intent of ensuring that the new extension to Oak Harbor Boulevard aligned with the existing boulevard; thus, eliminating a need to modify or relocate the alignment line of the boulevard during construction. Based on the evidence presented, we find the trial court had a reasonable factual basis to conclude that the parish, not THC, recommended the modification of the boulevard. Accordingly, the plaintiff's fourth assignment of error is without merit.

Regardless, even if THC was the party who enacted the modification of the boulevard to include the landscape buffer, the record amply supports the trial court's dismissal of the plaintiff's LUTPA claims. The plaintiff was in the best position to ensure his own access and frontage on the boulevard. The plaintiff was aware prior to purchasing the property that THC was neither obligated nor committed to building the boulevard adjacent to Parcel 2-B. The plaintiff, a businessman and licensed real estate agent, proceeded with the purchase of Parcel 2-B despite being expressly told by Torres that no access to the boulevard would be provided if he went forward with his fireworks stand. The plaintiff also attempted and failed to secure written assurance of his access to the boulevard

from the developer, knowing that final approval of the development plans was pending. Thus, it cannot be said the plaintiff was misled. Moreover, the plaintiff always had the option to simply not purchase the property. We find a reasonable factual basis exists for the trial court's finding that THC's actions did not rise to the level of offending established public policy or were immoral, unethical, oppressive, unscrupulous, or substantially injurious as required to support a claim under LUPTA. See **Cheramie Services, Inc. v. Shell Deepwater Production, Inc.**, 35 So.3d at 1059. As such, we find no merit in the plaintiff's fifth assignment of error.

CONCLUSION

For the above reasons, we affirm the December 11, 2014 judgment of the trial court dismissing the claims of Edward Pearson against the defendants, Jack A. Blossman, Sr., J.A.B.T.F., Inc., and Tammany Holding Corporation. All costs of this appeal are to be paid by appellant, Edward Pearson.

AFFIRMED.