[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-11183

Non-Argument Calendar

CMR CONSTRUCTION AND ROOFING, LLC,

Plaintiff-Appellant,

versus

UCMS, LLC,
d.b.a. Universal Contracting Florida,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:20-cv-00867-JLB-MRM

Before JORDAN, LAGOA, and BRASHER, Circuit Judges.

LAGOA, Circuit Judge:

CMR Construction and Roofing, LLC ("CMR"), appeals from the district court's order dismissing its suit against UCMS, LLC ("UCMS"), for tortious interference and for violating Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"). The district court dismissed CMR's complaint for failing to plausibly plead its causes of action. After its complaint was dismissed, CMR filed two motions for reconsideration and a motion to amend its complaint. The district court denied those motions after determining that amending the complaint was futile.

On appeal, CMR contends that the district court erred in dismissing CMR's complaint and in denying CMR's subsequent motions. After careful review, we affirm the district court's orders.

I. FACTUAL AND PROCEDURAL BACKGROUND

In April 2018, CMR contracted with the Orchards Condominium Association, Inc. (the "Association"), a residential condominium association in Naples, Florida, to repair damage to the Association's property related to Hurricane Irma and to perform roofing services. In exchange for performing this work, the Association directed its insurer, Empire Indemnity Insurance Company ("Empire"), to pay CMR for its services.

According to CMR, it performed under the contract and pursued payment from Empire. But, in May 2020, the Association

negotiated with a different construction company, UCMS, to perform the same work that CMR had a pre-existing contract to perform. The Association demanded that CMR cease and desist all work and entered into an agreement with UCMS.

CMR filed separate lawsuits against the Association and UCMS. This appeal concerns the suit CMR filed against UCMS for: (1) tortious interference with contract; (2) tortious interference with an advantageous business relationship; and (3) violating FDUTPA.

In support of CMR's tortious interference claims, CMR alleged that UCMS submitted a bid, as part of "a competitive bidding process," to perform the same construction work CMR had a pre-existing contract to perform. But, according to CMR, UCMS knew of CMR's contractual and business relationships with the Association. And, despite that knowledge, UCMS negotiated and contracted with the Association to perform, and submitted building applications for, the same construction repair work that CMR had a pre-existing contract to perform. CMR further alleged that UCMS "did not have [a] justification or privilege in procuring" the Association to breach its contract with CMR. But CMR did not allege facts in support of UCMS's alleged knowledge or lack of justification.

In support of CMR's FDUTPA claim, CMR alleged that UCMS "wrongfully and unjustifiably interfere[d] with and procure[d] the breach" of CMR's contractual and business relationships with the Association. In so doing, CMR relied on similar

allegations to the ones supporting its claims for tortious interference—i.e., that UCMS negotiated and contracted with the Association to perform work that CMR had a pre-existing contract to perform. CMR further alleged that UCMS's conduct harmed CMR because CMR expended money and resources to perform its contractual obligations. As remedies for its FDUTPA claim, CMR sought both monetary damages and injunctive relief. CMR also asserted a separate "cause of action" for temporary and permanent injunctions to prohibit UCMS from performing any of the work that CMR was contracted to perform.

UCMS moved to dismiss CMR's complaint for failure to state a claim. UCMS argued that CMR's complaint lacked sufficient factual allegations to support claims for tortious interference and for a violation of FDUTPA, and that CMR was not entitled to injunctive relief.

The district court granted UCMS's motion to dismiss because CMS failed to plausibly plead its causes of action. As to CMR's tortious interference claims, the district court held that CMR failed to allege facts to support its allegations that UCMS lacked justification or privilege to interfere with CMR's contractual and business relationships with the Association. The district court further held that "CMR has not plausibly pled how [UCMS] should have known that CMR was allegedly still contracted to perform roofing repairs more than two and one-half years after the damage occurred." As to CMR's FDUTPA claim, the district court held that "CMR has not pled, and cannot plausibly plead, the requisite

consumer injury here." The district court also dismissed CMR's "cause of action" for injunctive relief because injunctive relief is a remedy and not a cause of action.

CMR moved for reconsideration and to reopen its suit against UCMS under Federal Rules of Civil Procedure 59 and 60 ("CMR's first motion for reconsideration"). CMR's first motion for reconsideration was specific to CMR's tortious interference claims; CMR did not address its FDUTPA claim in this motion. In support of its motion, CMR identified new evidence: a construction proposal UCMS sent to the Association in connection with its bid to perform the Association's repair work. CMR asserted that UCMS's proposal was substantially similar to an April 2020 construction proposal that CMR had sent to the Association. CMR also asserted that UCMS's proposal agreed to assist the Association in litigation, which CMR was also involved in, against Empire. According to CMR, this new evidence demonstrated that UCMS should have known that CMR had a contract with the Association and that UCMS colluded with the Association to breach the contract between CMR and the Association. CMR further stated that this new evidence was not previously available because CMR received UCMS's proposal through discovery in its separate suit against the Association. While the Association had previously responded to CMR's requests for production, the Association had not previously produced UCMS's proposal.

The district court denied CMR's first motion for reconsideration because "[t]he mere existence of a proposal or contract" did

not render CMR's "claims any more plausible." The district court also clarified that it dismissed CMR's complaint, with prejudice, because amendment was futile.

CMR then filed a second motion for reconsideration based on the same evidence, i.e., UCMS's construction proposal, under Rule 59. In its second motion for reconsideration, CMR clarified that the proposal UCMS "plagiarized" was a proposal CMR submitted in furtherance of the work CMR was under contract to perform—i.e., it was not a proposal in support of a bid for CMR to perform new work.

CMR also filed a motion seeking leave to file a first amended complaint under Federal Rule of Civil Procedure 15.[1] In its motion seeking leave to amend, CMR asserted that it could "plausibly allege" that a "member and owner of [UCMS], admitted in a text message . . . that he knew that (i) [the Association was] not moving forward with CMR . . . and (ii) Empire informed [the Association that] they refused to settle the [l]oss with CMR and [that the Association] needed a new contractor." Like CMR's first motion for reconsideration, CMR's subsequent motions were specific to CMR's tortious interference claims.

[1] CMR also brought its motion to amend under Federal Rule of Civil Procedure 7(b), but that rule concerns the general requirements for all motions. CMR was seeking to amend its complaint pursuant to Rule 15(a)(2), which applies to motions to amend a complaint "with the opposing party's written consent or the court's leave."

The district court denied CMR's motions. In so doing, the district court held that the new allegations, and CMR's evidence, did "not establish that [UCMS] somehow knew of the still-existing contract and conspired to interfere with that contract." This appeal ensued.

II. STANDARD OF REVIEW

"We review *de novo* the district court's order dismissing [plaintiff's] complaint pursuant to Rule 12(b)(6)." *Duty Free Ams., Inc. v. Estee Lauder Cos.*, 797 F.3d 1248, 1262 (11th Cir. 2015). "We accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff," but "we afford no presumption of truth to legal conclusions and recitations of the basic elements of a cause of action." *Id.* (quoting *Franklin v. Curry*, 738 F.3d 1246, 1248 n.1 (11th Cir.2013)).

We generally "review both the denial of a motion for leave to amend a pleading and a motion for reconsideration for abuse of discretion." *Blackburn v. Shire US Inc.*, 18 F.4th 1310, 1316 (11th Cir. 2021); *see also Jenkins v. Anton*, 922 F.3d 1257, 1263–64, 1270 (11th Cir. 2019) (reviewing Rule 59(e) and 60(b) motions for abuse of discretion). But "we exercise *de novo* review as to the underlying legal conclusion that an amendment to the complaint would be futile." *SFM Holdings, Ltd. v. Banc of Am. Sec., LLC*, 600 F.3d 1334, 1336 (11th Cir. 2010).

III. ANALYSIS

CMR asserts that the district court erred in dismissing its claims and in denying its motions for reconsideration and to amend its complaint. Our analysis of CMR's arguments is divided into three parts. First, we discuss whether the district court erred in dismissing CMR's FDUTPA claim. Then, we discuss whether the district court erred in dismissing CMR's tortious interference claims. Finally, we discuss whether the district court erred in denying CMR's two motions for reconsideration and CMR's post-judgment motion to amend its complaint.

A. CMR's FDUTPA Claim

"FDUTPA prohibits '[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.'" *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 983 (11th Cir. 2016) (alteration in original) (quoting Fla. Stat. § 501.204(1)). To state a claim for injunctive relief under FDUTPA, a plaintiff must allege: (1) "a deceptive [or unfair] act or practice in trade"; and (2) "that [p]laintiff is a person 'aggrieved' by the deceptive act or practice." *Caribbean Cruise Line, Inc. v. Better Bus. Bureau of Palm Beach Cnty., Inc.*, 169 So. 3d 164, 167 (Fla. Dist. Ct. App. 2015) (quoting *Kertesz v. Net Transactions, Ltd.*, 635 F. Supp. 2d 1339, 1348 (S.D. Fla. 2009)). And to state a claim for damages under FDUTPA, a plaintiff must allege: "(1) a deceptive act or unfair practice; (2) causation; and (3) actual damages." *Carriulo*, 823 F.3d at 983 (citing *City First Mortg. Corp. v. Barton*, 988 So.2d 82, 86 (Fla. Dist. Ct. App. 2008)).

Florida's district courts of appeal have held that non-consumers may bring FDUTPA claims for damages under Fla. Stat. § 501.211(2).[2] *See Caribbean Cruise Line,* 169 So. 3d at 169; *Bailey v. St. Louis*, 196 So. 3d 375, 383 (Fla. Dist. Ct. App. 2016); *Off Lease Only, Inc. v. LeJeune Auto Wholesale, Inc.*, 187 So. 3d 868, 869 n.2 (Fla. Dist. Ct. App. 2016). But in order to satisfy the first element for a claim for both damages and injunctive relief under FDUTPA—i.e., a deceptive act or unfair practice—the plaintiff must allege that the relevant act or practice was harmful to a consumer. *See Caribbean Cruise Line*, 169 So.3d at 169 ("[W]hile the claimant would have to prove that *there was an injury or detriment to consumers* in order to satisfy all of the elements of a FDUTPA claim, the claimant *does not have to be a consumer* to bring the claim. (emphasis in original).").

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[2] We recognize that district courts in this circuit have interpreted Fla. Stat. § 501.211(2) inconsistently. *Compare, e.g.*, *Crmsuite Corp. v. Gen. Motors Co.*, No. 8:20-cv-762-T-02-WFJ-AAS, 2020 WL 5898970, at *5–6 (M.D. Fla. Oct. 5, 2020) ("The replacement of 'consumer' with 'person' in [§] 501.211(2) is significant and signals the legislature's desire to expand the damages remedy" to non-consumers), *with Taylor v. Trapeze Mgmt., LLC*, No. 0:17-cv-62262-KMM, 2018 WL 9708619, at *6–7 (S.D. Fla. Mar. 26, 2018) ("'[P]erson' under the FDUTPA applies only to a consumer injured by an unfair or deceptive act when buying or purchasing goods and services."). But, in the absence of a decision by the Florida Supreme Court, "[t]he decisions of the district courts of appeal represent the law of Florida." *Nunez v. Geico Gen. Ins. Co.*, 685 F.3d 1205, 1210 (11th Cir. 2012) (alteration in original) (quoting *McMahan v. Toto*, 311 F.3d 1077, 1080 (11th Cir. 2002)). Therefore, we follow Florida's district courts of appeal and find that non-consumers can also bring FDUTPA claims.

A deceptive act involves "a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." *Zlotnick v. Premier Sales Grp., Inc.*, 480 F.3d 1281, 1284 (11th Cir. 2007) (quoting *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003)). And to establish an unfair practice, the plaintiff must show that it is "one that 'offends established public policy' and one that is 'immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.'" *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1098 (11th Cir. 2021) (quoting *PNR*, 842 So. 2d at 777).

Here, CMR asserted a claim against UCMS under FDUTPA for both damages and injunctive relief. In support of that claim, CMR asserted that UCMS "engaged in unconscionable and unfair acts or practices" by "wrongfully and unjustifiably interfering with" CMR's contractual and business relationships with the Association. CMR identified the following conduct in support thereof: (i) UCMS submitted "a bid[], or otherwise negotiat[ed]" with the Association; (ii) UCMS submitted building permit applications to conduct repair work at the Association; and (iii) UCMS agreed to, and performed, work that CMR was already contracted to perform. And CMR alleged that UCMS's conduct caused harm to CMR because CMR expended money and resources in connection with the contract UCMS interfered with.

The district court dismissed CMR's FDUTPA claim because the district court found that CMR failed to plead an injury to a consumer. On appeal, CMR asserts that its allegations were sufficient

at the motion to dismiss stage and that the district court erred because CMR acted as a consumer, and suffered a consumer harm, by incurring expenses and expending resources. We reject CMR's argument for the following two reasons.

First, "as the Supreme Court has clarified . . . , [Rule 8's] pleading standard 'demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation,' and, '[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Id.* at 1099 (second alteration in original) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). And here, CMR's allegations amounted to "the defendant unlawfully-harmed-me accusation." *Id.* (quoting *Iqbal*, 556 U.S. at 678).

The alleged conduct, as pled in CMR's complaint, that CMR complains of—UCMS negotiating with the Association to obtain a bid for construction work, submitting building permit applications, and performing the construction work for the Association—does not rise to the level of a deceptive act or unfair practice as required by FDUTPA. *See Zlotnick*, 480 F.3d at 1284 (defining a deceptive act); *Marrache*, 17 F.4th at 1098 (defining an unfair practice). Instead, CMR's complaint relied on conclusory allegations that UCMS knowingly and willfully procured the Association to breach its contract with CMR, even though CMR alleged that the Association requested that other construction contractors submit work proposal bids as part of "a competitive bid process." These "threadbare recitals" of unfairness "supported by mere conclusory

statements, do not suffice," *Iqbal*, 556 U.S. at 678, and are undercut by its own admission that the Association solicited bids. Therefore, we hold that CMR failed to meet the first element of a claim for damages or injunctive relief under FDUTPA—i.e., a deceptive act or unfair practice. *Cf. Molina v. Aurora Loan Servs., LLC*, 635 F. App'x 618, 627 (11th Cir. 2015) (holding that the plaintiff "failed to properly allege the elements of a FDUTPA claim" where, "[o]ther than alleging that Aurora and Nationstar denied her own loan modification, Ms. Molina did not explain what was deceptive about the websites.").[3]

Second, as noted, the relevant deceptive act or unfair practice must be harmful to a consumer. *See Caribbean Cruise Line*, 169 So. 3d at 169. Here, CMR and UCMS were service providers that sought to provide, and provided, construction services to the Association. And CMR alleged that it was harmed because UCMS interfered with CMR's ability to provide its services to the Association, after CMR had already expended money and resources to perform those services. Because CMR alleged harm solely to itself—in its capacity as the construction service provider, and not to

[3] While the district court did not address whether the conduct CMR alleged amounted to a deceptive act or unfair practice, below and on appeal UCMS has contested CMR's factual allegations in support of its claim that UCMS "engaged in unfair or deceptive practices." And "we 'may affirm for any reason supported by the record, even if not relied upon by the district court.'" *Marrache*, 17 F.4th at 1097 (quoting *Allen v. USAA Cas. Ins. Co.*, 790 F.3d 1274, 1278 (11th Cir. 2015)).

the consumer of its services—CMR failed to allege a harm to a consumer. *See id.*

As the district court correctly determined, injunctive relief is not a standalone cause of action. Instead, as relevant here, injunctive relief is a remedy for a violation of FDUTPA. Because we hold that CMR failed to satisfy the first element of a claim for both damages and injunctive relief under FDUTPA, we also conclude that the district court did not err in finding that CMR was not entitled to injunctive relief. Moreover, because CMR never sought leave to amend its FDUTPA claim, the district court was not required to grant CMR leave to amend its FDUTPA claim. *See Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002). Therefore, we conclude that the district court did not err in dismissing CMR's FDUTPA claim.

B. CMR's Tortious Interference Claims

To establish a claim for tortious interference with a business relationship under Florida law, the plaintiff must establish the following elements: "(1) the existence of a business relationship[;] (2) knowledge of the relationship on the part of the defendant; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff as a result of the breach of the relationship'" *Duty Free Ams.*, 797 F.3d at 1279 (alterations in original) (quoting *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So.2d 812, 814 (Fla. 1994)). And the elements of a cause of action for tortious interference with a contractual relationship under Florida law are: "(1) [t]he existence of a contract, (2) [t]he

defendant's knowledge of the contract, (3) [t]he defendant's intentional procurement of the contract's breach, (4) [a]bsence of any justification or privilege, [and] (5) [d]amages resulting from the breach." *Johnson Enters. of Jacksonville, Inc. v. FPL Grp., Inc.*, 162 F.3d 1290, 1322 (11th Cir. 1998) (one alteration in original) (quoting *Fla. Tel. Corp. v. Essig*, 468 So. 2d 543, 544 (Fla. Dist. Ct. App. 1985)).

To support either claim, CMR was required to allege that UCMS had knowledge of, and intentionally and unjustifiably interfered with, CMR's relationship (either contractual or business) with the Association. As to the element of intentional and unjustifiable interference, if "a defendant interferes with a contract [or business relationship] in order to safeguard a preexisting economic interest of his own, the defendant's right to protect his own established economic interest outweighs the plaintiff's right to be free of interference, and his actions are usually recognized as privileged and nonactionable." *Duty Free Ams.* 797 F.3d at 1280. But the defendant cannot do so by improper means. *Johnson Enters. of Jacksonville*, 162 F.3d at 1322. "In other words, the privilege [to interfere] does not encompass the purposeful causing of a breach of contract" or business relationship. *McCurdy v. Collis*, 508 So.2d 380, 384 (Fla. Dist. Ct. App. 1987).

Florida courts arguably recognize colluding to interfere with a contract or business relationship as an improper means of interference. *See Ellis Rubin, P.A. v. Alarcon*, 892 So. 2d 501, 503 (Fla. Dist. Ct. App. 2004) ("What the parties may not do, however, is

engage in intentional and unjustified interference by engaging in fraud or collusion."); *Morsani v. Major League Baseball*, 663 So. 2d 653, 657 (Fla. Dist. Ct. App. 1995) (finding that the appellants stated a cause of action for tortious interference because "appellants have alleged the use of threats, intimidation and conspiratorial conduct"). And in "[i]nterpreting Florida law, we have said that 'when there is room for different views' about the propriety of a defendant's interference with a plaintiff's business relationships, 'the determination of whether the interference was improper or not is ordinarily left to the jury.'" *Duty Free Ams.*, 797 F.3d at 1280 (quoting *Mfg. Rsch. Corp. v. Greenlee Tool Co.*, 693 F.2d 1037, 1040 (11th Cir. 1982)).

In its complaint, CMR alleged that the Association "offered the same exterior construction and roofing services" to other contractors "via a competitive bid process," but that UCMS knew that the Association had already contracted with CMR and therefore UCMS's conduct was improper. The district court dismissed CMR's tortious interference claims because CMR failed to plead how UCMS knew of CMR's pre-existing contractual and business relationships with the Association and because CMR failed to plead facts to "establish UCMS's lack of justification . . . to interfere."

On appeal, CMR asserts that its allegations in support of its tortious interference claims were sufficient and that the district court erred by imposing a heightened pleading standard. We disagree.

CMR relied on assertions that UCMS "knew, and was aware" of, and that UCMS "purposefully and intentionally" interfered with, CMR's contractual and business relationships with the Association to support its claims. But CMR failed to allege facts to support those otherwise conclusory assertions. Instead, as the district court held, the conduct CMR alleged—i.e., that UCMS negotiated with the Association, submitted building permit applications, and performed the work that CMR had also agreed to perform—were consistent with the Association selecting UCMS as part of a competitive bidding process. And, under Federal Rule of Civil Procedure, "conclusory statements" that UCMS's conduct was unjustified and undertaken with knowledge of CMR's pre-existing relationships with the Association are insufficient. *Iqbal*, 556 U.S. at 678. Because CMR failed to support its tortious interference claims with "*facts* from which a reasonable trier of fact could infer" that CMR's claims were plausible, the district court did not err in dismissing CMR's tortious interference claims.[4] *See Duty Free Ams.*, 797 F.3d at 1281 (emphasis in original).

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[4] On appeal, CMR also asserts that the district court erred by dismissing CMR's tortious interference claims without giving CMR leave to amend. Because CMR did not seek leave to amend its tortious interference claims before the district court dismissed those claims, the "district court [was] not required to grant [CMR] leave to amend [its] complaint *sua sponte* when the plaintiff, who is represented by counsel, never filed a motion to amend nor requested leave to amend." *Daewoo*, 314 F.3d at 542. But CMR properly sought leave to amend its complaint under Rules 59 and 60 after its complaint was dismissed. *See, e.g., DiMaio v. Democratic Nat'l Comm.*, 520 F.3d 1299, 1303 (11th Cir. 2008) ("[A] plaintiff may seek to amend his complaint pursuant to Federal

C. CMR's Motions for Reconsideration and to Amend

After CMR's complaint was dismissed and judgment was entered in favor of UCMS, CMR sought to amend its tortious interference claims by filing two motions for reconsideration and a separate motion to amend it complaint. CMR's first motion for reconsideration sought relief under Rules 59(e) and 60(b) based on new evidence. And CMR's second motion for reconsideration, and its motion to amend, sought relief under Rules 59(e) and 15(a)(2). But the district court found that amending the complaint was futile and denied CMR's motions.

On appeal, we must determine whether CMR's complaint, inclusive of CMR's proposed amendments, "would still be subject to dismissal." *Boyd v. Warden, Holman Corr. Facility*, 856 F.3d 853, 864 (11th Cir. 2017) ("An amendment is considered futile when the claim, as amended, would still be subject to dismissal."). And we must ensure that CMR adhered to the relevant procedural requirements governing CMR's motions. *See Weatherly v. Ala. State Univ.*, 728 F.3d 1263, 1269 (11th Cir. 2013) ("[The plaintiff's] failure to adhere to the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure . . . greatly limits our ability to review these alleged errors.").

Rules of Civil Procedure 15(a)(2), 59(e), or 60(b)(6) . . . ." (emphasis omitted)). Therefore, on appeal, we must address CMR's arguments that the district court erred in denying its motions for reconsideration and in finding that amendment was futile.

1. CMR's First Motion for Reconsideration

CMR's first motion for reconsideration sought leave, under Rules 59(e) and 60(b), to reopen its suit and amend CMR's tortious interference claims based on new evidence, i.e., the 2020 construction proposal UCMS sent to the Association. Under Rules 59 and 60 "where a party attempts to introduce previously unsubmitted evidence on a motion to reconsider, the court should not grant the motion absent some showing that the evidence was not available during the pendency of the motion." *Mays v. U.S. Postal Serv.*, 122 F.3d 43, 46 (11th Cir. 1997).

Here, CMR asserted that it did not have access to UCMS's 2020 construction proposal because, despite requesting it during discovery, the Association did not produce the proposal. And UCMS does not dispute that its proposal was not available to CMR during the pendency of UCMS's motion to dismiss. Therefore, CMR sufficiently demonstrated that UCMS's construction proposal was not available.

Based on this new evidence, CMR alleged that UCMS knowingly colluded with the Association. Specifically, CMR asserted that UCMS's proposal was "nearly identical" to CMR's 2020 proposal—implying that UCMS improperly obtained access to CMR's proposal—and that UCMS proposed to assist the Association in its dispute with Empire, which also involved CMR.

Crediting CMR's factual assertions, and assuming that an allegation of collusion is sufficient to support the element of

intentional and unjustified interference, CMR's new evidence and allegations still did not plausibly suggest that UCMS had knowledge of CMR's pre-existing relationships with the Association. First, the document UCMS allegedly plagiarized was CMR's April 2020 proposal—CMR did not assert that UCMS had access to, or plagiarized, CMR's 2018 contract with the Association—which did not refer to a pre-existing contractual or business relationship. Second, while CMR alleged that UCMS proposed to assist the Association in its dispute with Empire, CMR failed to assert any facts to plausibly suggest that UCMS knew that the dispute with Empire also involved CMR or that the dispute involved CMR because CMR had a pre-existing contract with the Association.

Because CMR's new evidence and allegations failed to allege that UCMS had knowledge of CMR's contractual and business relationships with the Association, CMR's tortious interference claims, as proposed to be "amended, would still subject to dismissal." *Boyd,* 856 F.3d at 864. Therefore, the district court did not err in holding that amendment was futile or in denying CMR's first motion for reconsideration.

2. CMR's Second Motion for Reconsideration

CMR's second motion for reconsideration also sought leave under Rules 59(e). And, in support of its second motion for reconsideration, CMR once again relied on UCMS's 2020 construction proposal to support its allegation that UCMS improperly interfered with CMR's contractual and business relationship.

But this evidence was no longer new, and we have already found that this evidence was insufficient to plausibly suggest that UCMS had knowledge of CMR's pre-existing contractual and business relationships with the Association. Therefore, the district court did not err in dismissing CMR's second motion for reconsideration.

3. CMR's Motion to Amend

In its separate motion to amend its complaint under Rule 15(a)(2), CMR asserted for the first time that text messages from the owner of UCMS demonstrated that UCMS was aware that the Association had a pre-existing contract with CMR. But, as UCMS correctly asserts, Rule 15, "by its plain language, governs amendment of pleadings *before* judgment is entered; it has no application *after* judgment is entered." *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010). CMR therefore could not have amended its complaint under Rule 15 after the district court dismissed CMR's suit.

Even after a complaint is dismissed, and the plaintiff's right to amend under Rule 15(a) is terminated, the plaintiff "may still move the court for leave to amend, and such amendments should be granted liberally." *Czeremcha v. Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO*, 724 F.2d 1552, 1556 (11th Cir. 1984) (footnote omitted). We could therefore construe CMR's motions as a third Rule 59(e) motion, which is the rule that corresponds to a post-judgment motion for leave to amend. *See Jacobs*, 626 F.3d at 1344–45 ("Post-judgment, the plaintiff may seek leave to amend

if he is granted relief under Rule 59(e) . . . ." (quoting *United States ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1361 n.22 (11th Cir. 2006))). But a motion for reconsideration that relies on "previously unsubmitted evidence . . . should not [be] grant[ed] . . . absent some showing that the evidence was not available during the pendency of the motion." *Mays*, 122 F.3d at 46 (11th Cir. 1997). And because CMR "has not shown that [the text message] evidence [CMR] belatedly wishe[d] to present was newly discovered," CMR could not rely on those text messages in a third motion for reconsideration. *See In re Kellogg*, 197 F.3d 1116, 1120 (11th Cir. 1999).

As discussed, the district court properly denied CMR's other motions for reconsideration for failing to plausibly allege UCMS's knowledge of CMR's contractual and business relationship with the Association. And the only new allegations concerning UCMS's knowledge could not be considered in a "third" motion for reconsideration under Rule 59(e). Thus, the district court did not err in denying CMR leave to amend its complaint post-judgment.

IV. CONCLUSION

For the foregoing reasons, we conclude that the district court did not err in dismissing CMR's claims and in denying CMR's motions for reconsideration and to amend its complaint post-judgment. Accordingly, we affirm the district court's dismissal of CMR's suit against UCMS.

AFFIRMED.