

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2013

THE LAW OFFICES OF DAVID J. STERN, P.A., and DAVID J. STERN,
Appellants,

v.

RORY HEWITT,
Appellee.

No. 4D11-3524

[January 9, 2013]

PER CURIAM.

We affirm the class certification order in this case on the authority of *Law Offices of David J. Stern, P.A. v. Banner*, 50 So. 3d 1221 (Fla. 4th DCA 2010), which we find to be indistinguishable from this case in all relevant respects. We reject appellants' argument that the class representative's claim was atypical because he did not pay any of the reinstatement charges. *Id.* at 1222 (declining to distinguish between those class members who paid reinstatement charges and those who did not).

We note, however, that our jurisdiction in this non-final appeal is limited to review of the propriety of the class certification. The trial court's denial of appellants' motion for partial summary judgment on appellee's claim for a violation of FDUTPA is not before us at this point. *See Pinellas Cnty. Sch. Bd. v. Crowley*, 911 So. 2d 881, 882 (Fla. 2d DCA 2005) ("The School Board's argument . . . actually addresses the issue of whether the class representatives' complaint stated a cause of action. This issue is not properly before us, and we express no opinion on it. Our jurisdiction in this nonfinal appeal is limited to the review of the propriety of the order of class certification.").

We therefore cannot express an opinion on whether appellee's complaint stated a cause of action for a FDUTPA claim. However, we note our decision in *State, Office of Attorney General v. Shapiro & Fishman, LLP*, 59 So. 3d 353 (Fla. 4th DCA 2011), in which we upheld a trial court order quashing a subpoena seeking production of documents related to a law firm's representation of lending institutions in

foreclosure cases, and ruled that “the alleged conduct of the law firm...d[id] not fall within the rubric of ‘trade or commerce’ as required for civil investigative subpoenas under FDUTPA.” *Id.* at 356. Further, any future determination on whether the FDUTPA claim is viable would not affect the trial court’s determination as to class certification of the FCCPA claim. We thus hold that the class certification order here was not an abuse of discretion.

Affirmed.

TAYLOR, CIKLIN and LEVINE, JJ., concur.

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Appeal of non-final order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Lucy Chernow Brown, Judge; L.T. Case No. 502009CA036046XXXXMB.

Jeffrey Tew and James Malphurs of Tew Cardenas LLP, Miami, for appellants.

Philip M. Burlington and Nichole J. Segal of Burlington & Rockenbach, P.A., West Palm Beach, Louis M. Silber of Silber & Davis, LLC, West Palm Beach, and Kirk Friedland, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.