Am I a “Responsible Person” for My Company’s Payroll Taxes? The Bullet Point: Volume 2, Issue 16

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The Bullet Point is a biweekly update of recent, unique, and impactful cases in Ohio state and federal courts in the area of commercial litigation.

Individual Responsibility for Company Payroll Taxes

U.S. v. Hartman, 6th Cir. No. 17-2273 (July 25, 2018).

In this appeal, the Sixth Circuit Court of Appeals affirmed a district court’s decision granting the government summary judgment in an action to collect unpaid taxes from the owner of a business.

Defendant co-owned a tool company. He initially relied on an automated payment company to manage the company’s payroll. He would tell the payment company the number of hours his employees worked and their wages, and the company in turn would tell him how much to withhold for payroll taxes and then issue checks for signature. At some point, the business was unable to pay its employees, and when the automated payment company found out, it dropped the company as a client. The defendant then made alternative arrangements to pay his employees, but no arrangement was made to withhold payroll taxes. Defendant, at various points, was aware, or should have been aware, that payroll taxes were not being paid, but he made no arrangement to fix the issue. Eventually, defendant filed for Chapter 11 bankruptcy petition. The IRS ultimately objected to the plan and the plan was converted into a Chapter 7 liquidation.

The government then filed suit against defendant personally to recover the unpaid payroll taxes. The district court ultimately granted the government’s summary judgment motion and the defendant appealed. The Sixth Circuit affirmed on appeal, finding that he was a “responsible person” for the payment of the taxes.

The Bullet Point: The government may recover outstanding payroll taxes from anyone who (1) was “required to” remit payroll taxes and (2) “willfully” failed to pay them to the Internal Revenue Service; 26 U.S.C. § 6672(a). A responsible person may willfully fail to pay taxes in one of two ways: he may know that the company did not pay the taxes, or he may “deliberately or recklessly disregard facts and known risks that the taxes were not being paid.” A responsible person thus cannot act recklessly (and therefore willfully) if “he believed that the taxes were in fact being paid, so long as that belief was, in the circumstances, a reasonable one.”

Statute of Limitation on Claims Related to Mortgage and Note

Baker v. Nationstar Mortgage LLC, et. al., S.D. Ohio No. 15-cv-2917 (July 20, 2018).

In this affirmative lawsuit brought by a mortgage borrower, the United States District Court for the Southern District of Ohio found that a mortgage lender’s inability to bring an action on a promissory note due to the statute of limitations running also precluded it from foreclosing on the corresponding mortgage and that its attempt to do so violated the Fair Debt Collection Practices Act (FDCPA).

Borrowers obtained a residential mortgage loan in September 1995. In May 2008, a foreclosure action was filed against them, and in September 2009, judgment was entered against them in the foreclosure. Eventually the property was sold at sheriff’s sale and purchased by the lender in 2012. The foreclosure sale was eventually vacated. After that, borrowers started receiving mortgage statements asking for payment from the lender. They eventually filed suit, raising various claims including a claim under the FDCPA that the lender sought to collect on a time-barred debt.

Both parties moved for summary judgment, and the court eventually granted the borrower’s motion in part, finding, among other things, that the lender violated the FDCPA and that the borrowers were entitled to declaratory relief regarding the lender’s ability to foreclose on the mortgage due to the statute of limitations running on the promissory note.

The Bullet Point: The Baker opinion highlights an emerging split between courts on whether a claim related to a residential mortgage is time-barred if the corresponding promissory note is also time-barred. Promissory notes are governed by a six year statute of limitations found at R.C. 1303.16. Conversely, residential mortgages are governed by the eight year statute of limitation found at R.C. 2305.06. Relying on the distinction between notes and mortgages, the Court of Appeals for the Eighth District of Ohio has held that, “[a]s a matter of law, R.C. 1303.16(A) does not apply to actions to enforce the mortgage lien on the property after the payment on the note becomes unenforceable through the running of the statute of limitations.” U.S. Bank Nat’l Ass’n v. Robinson, 2017-Ohio-5585, ¶ 11 (Ohio Ct. App. 8th Dist. 2017), appeal not allowed sub nom. U.S. Bank Natl. Assn. v. Robinson, 2018-Ohio-723, ¶ 11, 92 N.E.3d 879; see also Bank of New York Mellon v. Walker, 78 N.E.3d 930, 938 (Ohio Ct. App. 8th Dis. 2017). Despite this, the Baker court reached the opposite conclusion. Instead, the Baker court relied on a Supreme Court case from 1895 to hold that “when a note is secured by the mortgage, the statute of limitations as to both is the same.”

Assumption of the Risk

Peterson v. National Security Associates, Inc., 10th Dist. Franklin No. 17AP-39, 2018-Ohio-2905.

This was an appeal of a summary judgment decision in favor of a police department regarding claims for negligence. The plaintiff was an Ohio highway patrol officer and a member of the special response team. The special response team was trained in explosive breaching, which involves detonating an explosive device on the door or window of a building to breach the structure so officers can enter the building. The plaintiff, who had experience in explosive breaching while in the army, was asked to teach a course on it to other highway patrol officers. He agreed, and was injured during a training session when a student detonated an explosive device while he was in the way. He eventually filed suit and the defendants all moved for summary judgment, arguing, among other things, that the plaintiff assumed the risk. The trial court agreed and granted the defendants' summary judgment motions. Plaintiff appealed, and on appeal the Tenth Appellate District reversed, finding that while explosive trainings could be dangerous, there were safeguards in place along with other attendant circumstances as to whether other elements existed to elevate the risks at issue beyond the ordinary risk of explosive breaching training.

The Bullet Point: Traditionally, negligence requires a showing of three things: (1) a duty, (2) a breach of that duty, and (3) an injury proximately caused by the breach. "Ohio law recognizes three categories of assumption of the risk as defenses to a negligence claim: express, primary, and implied or secondary." "Under the doctrine of primary assumption of the risk, a plaintiff who voluntarily engages in a recreational activity or sporting event assumes the inherent risks of that activity and cannot recover for injuries sustained in engaging in the activity unless the defendant acted recklessly or intentionally in causing the injuries." The rationale behind the doctrine is that certain risks are so intrinsic in some activities that the risk of injury is unavoidable. "[A] successful primary assumption of risk defense means that the duty element of negligence is not established as a matter of law." To succeed on a primary assumption of risk defense, it must be shown that (1) the danger is ordinary to the activity, (2) it is common knowledge that the danger exists, and (3) the injury occurs as a result of the danger during the course of the activity.

Implied assumption of risk is defined as the "plaintiff's consent to or acquiescence in an appreciated, known or obvious risk to plaintiff's safety." "Implied assumption of the risk does not relieve defendant of his duty to plaintiff." Thus, implied assumption of risk "exists when a plaintiff, who fully understands the risk of harm to himself, nevertheless voluntarily chooses to subject himself to it, under circumstances that manifest his willingness to accept the risk."

Statutory Construction

Citizens Bank, N.A. v. Leek, 7th Dist. Columbiana No. 17 CO 0031, 2018-Ohio-2813.

This appeal revolves around the language in R.C. 2329.311(A), which allows the judgment creditor and first lienholder to redeem the residential property taken by an order of sale by paying the purchase price within fourteen days after a sale “at an auction with the minimum bid pursuant to division (B) or section 2329.52 * * *.” The trial court found that the foreclosing bank had no right to redeem the property. The Seventh Appellate District disagreed and, utilizing the rules of statutory interpretation and construction, found that a foreclosing bank does in fact have a right to redeem the residential property. Under Ohio law, property subject of a foreclosure action is supposed to sell for no less than 2/3 the appraised value. If it does not sell at the first auction, a second auction is set where the property is to be sold to the highest bidder. Under R.C. 2329.11(A), when property is sold under the second scenario, the judgment creditor and first lienholder “each have the right to redeem the property within fourteen days after the sale by paying the purchase price.”

The Bullet Point: “Rules for construing the language * * * may be employed only if the statute is ambiguous.” Ambiguity means the statutory provision is “capable of bearing more than one meaning.” The “in pari materia” rule of statutory construction (where statutes relate to the same general subject matter) can only be applied “where some doubt or ambiguity exists in the wording of a statute.” Likewise, the legislative history of a statute and former statutory provisions are used to determine legislative intent only if a court finds the statute ambiguous.

Reformation of a Contract

LRC Realty, Inc. v. BEB Properties, 11th Dist. Geauga No. 2016-G-0076, 2018-Ohio-2887.

This appeal involved, in part, the trial court’s decision to deny a request to reform a deed. The case began as a declaratory judgment between plaintiff and defendant seeking a declaration as to the parties’ legal rights under an Option to Lease and Lease Agreement. Thereafter, Bruce and Sheila Bird appeared and filed a third party complaint against defendant, raising claims for anticipatory breach regarding annual rental payments for use of their property for a cell phone tower. They also sought to reform a warranty deed between two other parties to make clear that the property was not transferred in a manner that would allow the plaintiff to receive the rental payments. The trial court ultimately denied summary judgment on the reformation count and the Birds appealed. On appeal the Eleventh Appellate District affirmed the trial court’s decision, finding that the Birds were not parties to the warranty deed and were not in privity to the transaction and thus could not seek reformation of the deed as a result.

The Bullet Point: It is well-established that “reformation of an instrument is an equitable remedy whereby a court modifies the instrument which, due to mutual mistake on the part of the original parties to the instrument, does not evince the actual intention of those parties.” “‘[R]eformation’ is defined as the remedy afforded by courts possessing equitable jurisdiction to the parties and the privies of parties, to written instruments which import a legal obligation to reform or rectify such instruments whenever they fail, through fraud or mutual mistake, to express the real agreement or intention of the parties.” “Equity will permit the reformation of a written instrument not only as between the original parties but also as to parties in privity with them.” “[O]ne who is in privity with another because of the transfer of property ‘stands in the same shoes’ as to the rights of the prior owner in the same property, thereby giving the subsequent owner the same rights and obligation as the original owner had in regard to the property[,]” including “the right to reformation of a deed if the necessary elements are present, that is, fraud, error, omission or mutual mistake.”