

# Am I a third-party beneficiary under a contract?

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## Third-Party Beneficiary

*Santagate v. Pennsylvania Higher Edn. Assistance Agency (PHEAA)*, 10th Dist. Franklin No. 19AP-705, 2020-Ohio-3153

In this appeal, the Tenth Appellate District affirmed the trial court’s decision in part, holding that student loan servicing is not a consumer transaction under the Ohio Consumer Sales Practices Act (CSPA) and that the consumer was not an intended third-party beneficiary of the servicing contract.

**The Bullet Point:** As with servicers of residential mortgages, servicers of student loans are not “suppliers” under the Ohio CSPA. Likewise, student loan servicing is not a “consumer transaction” within the meaning of the CSPA. The court explained that a student loan servicer’s function is the same as the servicer of a residential mortgage loan – simply stated, “to service the loan.” Moreover, the court stressed that there is no contractual relationship between the student loan servicer and the consumer to support a claim. Only a party to a contract or an intended third-party beneficiary of a contract may bring an action on a contract in Ohio. In order for a party to prove it is an intended third-party beneficiary, the party must present evidence that the promisee intended to directly benefit the consumer in its performance of the contract. On the contrary, a third party who receives only a “mere happenstance benefit from the promisee’s performance of a contract” is considered an incidental beneficiary to whom the servicer owes no contractual duty.

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## Contract Ambiguity

*Campbell v. 1 Spring, LLC*, 10th Dist. Franklin No. 19AP-368, 2020-Ohio-3190

In this appeal, the Tenth Appellate District affirmed the trial court’s decision, finding that because the terms of the contract were ambiguous, the trial court properly allowed extrinsic evidence to determine the intent of the parties.

**The Bullet Point:** When parties to a contract dispute the meaning of language within the agreement, Ohio courts must first consider the language within the “four corners of the contract.” When the terms are clear and precise, the contract is not ambiguous, and the court may not refer to outside evidence to ascertain the parties’ intent. On the other hand, a contract is ambiguous when its meaning cannot be determined from the four corners or

when the language is susceptible to two or more reasonable interpretations. When the language or terms of a contract is ambiguous, the meaning of the words becomes a question of fact. In such cases where the meaning of terms used in a contract are ambiguous, extrinsic evidence is properly admissible to determine the intent of the parties.

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## Deceptive Trade Practices Act

### *Enduring Wellness, L.L.C. v. Roizen*, 8th Dist. Cuyahoga No. 108681, 2020-Ohio-3180

In this appeal, the Eighth Appellate District affirmed the trial court's decision, holding that even if the defendant's alleged statements were false, the licensee did not state a claim for relief under the Ohio Deceptive Trade Practices Act (DTPA) as the defendant did not have the authority to make the statements on behalf of the licensor.

**The Bullet Point:** Under the Ohio DTPA, "a person engages in deceptive trade practice when, in the course of the person's business, vocation, or occupation, \* \* \* the person represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have." R.C. 4165.02(A)(7). When adjudicating claims brought under the DTPA, Ohio courts look to and apply the same analysis applicable to claims brought under the analogous federal Lanham Act. In order to successfully bring a claim under the Lanham Act, the plaintiff must establish five elements: "(1) the defendant has made false or misleading statements of fact concerning his own product or another's; (2) the statement actually deceives or tends to deceive a substantial portion of the intended audience; (3) the statement is material in that it will likely influence the deceived consumer's purchasing decisions; (4) the advertisements were introduced into interstate commerce; and (5) there is some causal link between the challenged statements and harm to the plaintiff." As the court stressed, it is insufficient that the defendant made false or misleading statements to the plaintiff regarding a product. Rather, the plaintiff must show that the statements actually caused or tended to cause the plaintiff to be deceived. As such, where the defendant was not authorized or held out as authorized to make statements regarding a product, the plaintiff cannot show it was actually deceived by the defendant's false statements.

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