

Am I bound by an arbitration agreement I did not sign?

July 08, 2020

TCPA Government-Debt Exception

Barr v. Am. Assn. of Political Consultants, ___ U.S. ___ (2020)

The United States Supreme Court affirmed the judgment of the U.S. Court of Appeals for the Fourth Circuit, striking down the 2015 government-debt exception to the TCPA and upholding the ban on robocalls made to cell phones.

The Bullet Point: Congress passed the Telephone Consumer Protection Act of 1991 (TCPA) to prohibit, *inter alia*, almost all robocalls made to cell phones. 47 U. S. C. §227(b)(1)(A)(iii). In 2015, Congress amended this robocall restriction by carving out a government-debt exception to allow robocalls made for the sole purpose of collecting on debts owed to or backed by the federal government. American Association of Political Consultants and three other political organizations filed a declaratory judgment action, claiming that §227(b)(1)(A)(iii) violated the First Amendment. The Supreme Court agreed, finding that the government-debt exception is an unconstitutional content-based restriction on speech. A law is content-based if “a regulation of speech ‘on its face’ draws distinctions based on the message a speaker conveys.” That description applies to a law that “singles out specific subject matter for differential treatment.” Under the government-debt exception to §227(b)(1)(A)(iii), the legality of a robocall turned on whether it was “made solely to collect a debt owed to or guaranteed by the United States.” As the TCPA exception favored speech made for collecting government debt over political and other types of speech, the law was a content-based restriction on speech. The federal government conceded that it could not satisfy the strict scrutiny test to justify the exception, and the Court determined that the exception was severable from the TCPA.

County Tax Sale

Wiltshire Capital Partners v. Reflections II, Inc., 10th Dist. Franklin No. 19AP-415, 2020-Ohio-3468

In this appeal, the Tenth Appellate District reversed in part the trial court’s decision, finding that the auditor’s conveyance of the forfeited land did not extinguish the plaintiff’s mortgage.

The Bullet Point: In Ohio, a county prosecuting attorney may commence an in rem foreclosure action against delinquent land to foreclose the lien of the state in accordance with R.C. 5721.18(C). If the delinquent land is not purchased after being offered for sale on two separate occasions, the property is forfeited to the state. R.C. 5723.01(A)(1). Thereafter, the county auditor sells the forfeited land at public auction and conveys the property to a purchaser via an auditor's deed. As this court noted, such sales of real estate are governed by R.C. 5723.12(C). Under R.C. 5723.12(C), the purchaser of the forfeited land obtains a title free of the lien for land taxes, assessments, charges, penalties, and interest for which the lien was foreclosed. However, the title remains subject to all other liens and encumbrances with respect to the tract. Stated differently, "Because the foreclosure action is brought pursuant to R.C. 5721.18(C), the sale of the real estate is governed by R.C. 5723.12(C), which states that the conveyance of real estate by the Auditor will transfer title to the forfeited sale purchaser subject to all liens and encumbrances other than the tax lien for which the property was foreclosed." As the plaintiff's mortgage was not the lien that resulted in the county's in rem foreclosure, the auditor's conveyance of the delinquent land did not extinguish the plaintiff's mortgage.

Enforcement of Arbitration Against Non-Signatory

Mascher v. Basement Care, 7th Dist. Columbiana No. 19 CO 0022, 2020-Ohio-3582

In this appeal, the Seventh Appellate District reversed and remanded the trial court's decision, finding that the non-signatory plaintiffs were bound to the arbitration agreement contained in the contract that was the basis for their lawsuit against the signatories.

The Bullet Point: In Ohio, a non-signatory to an arbitration agreement may be bound by said arbitration agreement under various contractual and agency-related legal theories. For example, "estoppel, incorporation by reference, assumption, agency, veil-piercing/alter ego, and third-party beneficiary" are legal theories under which non-signatories are bound to an arbitration agreement. Under the theory of estoppel, a non-signatory "who knowingly accepts the benefits of an agreement is estopped from denying a corresponding obligation to arbitrate." Therefore, a non-signatory who asserts a breach of contract claim against a signatory will be bound to the arbitration agreement contained in that contract. Moreover, it is long-standing Ohio law that the fiduciary of a signatory's estate will likewise be bound by an arbitration agreement as the fiduciary stands in the signatory's shoes.

Reviving a Dormant Judgment

Auto Now Acceptance Co., LLC v. Brickey, 4th Dist. Scioto No. 19CA3883, 2020-Ohio-3447

In this appeal, the Fourth Appellate District reversed and remanded the trial court's decision, holding that the judgment creditor was not required to file an annual affidavit of the balance due once a judgment and garnishment order had become dormant.

The Bullet Point: R.C. 2716.03(A) sets forth the requirements for a garnishment proceeding and provides that a judgment creditor may seek a personal-earnings garnishment in part by filing a written affidavit with the court. After a court issues a personal-earnings garnishment order, the court must notify the garnishee and the judgment debtor. R.C. 2716.03(C). Additionally, a judgment creditor is required to annually "file with the court, the garnishee, and the judgment debtor an affidavit of current balance due on garnishment order that contains the current balance due on the order." R.C. 2716.031(A). As the court noted, a judgment creditor is not required to file an annual affidavit once the judgment and garnishment order has become dormant as it cannot be enforced and is without legal effect. As such, an annual filing would have no legal significance. Moreover, the revival of a dormant judgment is not a continuation of the dormant judgment, and its revival does not automatically revive any liens or garnishments attached to that dormant judgment. Instead, a revived judgment essentially "creates a new judgment that a judgment creditor may seek to enforce."

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