

Am I Bound by My Client's Settlement Agreement?

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McGlinchey's Commercial Law Bulletin is a biweekly update of recent, unique, and impactful cases in state and federal courts in the area of commercial litigation.

Ohio

Equitable Estoppel

[Litsinger v. Rootstown Twn. Bd. of Trustees, 11th Dist. Portage, No. 2023-P-0067, 2024-Ohio-781](#)

In this appeal, the Eleventh Appellate District affirmed the trial court's decision to grant the defendant summary judgment, finding, among other things, that equitable estoppel was a defense, not affirmative cause of action.

The Bullet Point: "The purpose of equitable estoppel is to prevent actual or constructive fraud and to promote the ends of justice." "It is available only in defense of a legal or equitable right or claim made in good faith and should not be used to uphold crime, fraud, or injustice." It has often been recognized that "'equitable estoppel' is not an independent cause of action, but rather is a device by which courts bind parties to presentments made upon which an opposing party relies to his * * * detriment for the formation of a contract."

"It does not furnish a basis for damages claims, but a defense against the claim of the stopped party."

Unconscionability of Arbitration Clause

[Grimm v. Professional Dental Alliance, Inc., 11th Dist. Portage No. 2023-P-0054, 2024-Ohio-637](#)

In this appeal, the Eleventh Appellate District reversed the trial court's decision compelling the claims to arbitration, finding the court failed to adequately consider whether a "loser pays" provision rendered the arbitration clause unconscionable and thus unenforceable.

Bullet Point: "Unconscionability includes both "an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." Procedural unconscionability considers the circumstances surrounding the contracting parties' bargaining, such as the parties' age, education, intelligence, business acumen, and experience, and who drafted the contract.

Conversely, “[a]n assessment of whether a contract is substantively unconscionable involves consideration of the terms of the agreement and whether they are commercially reasonable.” Factors to consider whether a contract is substantively unconscionable include “the fairness of the terms, the charge of the service rendered, the standard in the industry, and the ability to accurately predict the extent of future liability.”

Non-Compete Agreements

Kross Acquisition Co, LLC v. Groundworks Ohio LLC, 1st Dist. Hamilton No. C-230272, 2024-Ohio-592

In this appeal, the First Appellate District affirmed the trial court’s decision to grant plaintiff’s motion for summary judgment to enforce a non-competition agreement.

The Bullet Point: A non-competition agreement “is enforceable only if the restraint ‘is no greater than is required for the protection of the employer, does not impose undue hardship on the employee, and is not injurious to the public.’” To determine whether a non-compete agreement is enforceable, courts consider the following factors: (1) whether the agreement contains time and space limitations; (2) whether the employee is the sole contact with the customer; (3) whether the employee has confidential information or trade secrets; (4) whether the covenant seeks to limit only unfair competition or is designed more broadly to eliminate ordinary competition; (5) whether the agreement seeks to stifle the employee’s inherent skill and experience; (6) whether the benefit to the employer is disproportional to the detriment to the employee; (7) whether the agreement bars the employee’s sole means of support; (8) whether the skills that the agreement seeks to restrain were actually developed during the employment; and (9) whether the forbidden employment is merely incidental to the main employment.

Florida

Florida’s Arbitration Code

Flying Panda Florida, LLC v. Rutherford, et al., No. 5D23-1697 (Fla. 5th DCA February 23, 2024)

The Fifth District concluded that the issue of a contract’s validity should have been decided in the first instance by an arbitrator rather than the trial court.

The Bullet Point: Under Florida’s arbitration code, the trial court’s only consideration on a motion to compel arbitration is (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived. Therefore, an attack on an arbitration provision raises an issue for the court to decide, while challenges to the legality or enforceability of the contract as a whole are for the arbitrator to decide in the first instance.

In this case, the trial court denied a motion to compel arbitration on the basis that the contract contained an ambiguous exculpatory clause and was, therefore, unenforceable. On appeal, the appellant argued that the

validity of the exculpatory clause was an issue for the arbitrator, not the trial court, to decide. Agreeing with the appellant, the Fifth District concluded that the trial court should not have considered the validity of the exculpatory clause contained within the agreement. Instead, the trial court should have limited its determination only to whether the appellee raised any contractual defenses to the arbitration clause, and because she did not, the trial court should have enforced the unchallenged arbitration provision. Accordingly, the order denying the motion to compel was reversed.

Binding Attorney to Client's Settlement Agreement

Hanson, et al. v. National Legal Staffing Support, LLC, et al., No. 4D2022-3194 and 4D2022-3438 (4th DCA February 28, 2024)

The Fourth District held that a non-signatory attorney was not bound to the substantive provisions within his client's settlement agreements.

The Bullet Point: Under Florida law, a valid contract arises where the parties' assent is manifested through written or spoken words or inferred from the parties' conduct. Therefore, Florida law recognizes that a non-signatory can be bound by the terms of a contract. At issue in this appeal is whether a non-signatory attorney was bound by his client's settlement agreements because the agreements contained provisions identifying him by name and by his role as "counsel." The Fourth District concluded he was not, reasoning that the attorney neither signed the agreements nor was named as a party to the agreements. Further, the attorney's actions in negotiating the agreement, transmitting the executed agreement between the parties, and accepting the benefits of the agreements were customary actions performed by attorneys and did not demonstrate intent to be bound by the agreements. Accordingly, the attorney was not bound to the confidentiality and non-dissemination clauses of the settlement agreements, and the trial court erred in granting summary judgment in favor of the plaintiffs on their breach of contract claims against the attorney.

Distinguishing Fraudulent Transfer Claims from Common Law Fraud

Wurtzebach v. Flooring Depot FTL, Inc., No. 4D2023-0476 & 4D2023-0480 (5th DCA February 21, 2024)

The Fourth District ruled that a claim for fraudulent transfer under the Florida Uniform Fraudulent Transfer Act (the FUFTA), Fla. Stat. § 726.106(1), is a separate and distinct cause of action from common law fraud.

The Bullet Point: A claim for common law fraud under Florida law requires proof of (1) a false statement of material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation induces another to act on it; and (4) consequent injury to the party acting in reliance on the representation. By contrast, a claim for fraudulent transfer under the FUFTA operates under a constructive fraud theory, with the focus being on the unfairness of the transfer to a judgment creditor rather than the representations made to the plaintiff.

This appeal stems from an order entering summary judgment against the plaintiffs on their claim for fraudulent transfer under the FUFTA. Relying on collateral estoppel or res judicata, the trial court concluded that the plaintiffs' fraudulent transfer claim was barred because the parties previously litigated a claim for fraudulent misrepresentation based upon common facts. The Fourth District reversed the trial court's order on appeal, ruling that a claim for fraudulent transfer is a separate and distinct cause of action from common law fraud. The Fourth District elaborated that the factors necessary to establish each claim are different, as a common law fraud claim requires a showing of misleading conduct, but a fraudulent transfer claim only requires proof that the defendant made a transfer while it was insolvent and without receiving reasonably equivalent value in return. As such, the fraudulent transfer claim was not barred by collateral estoppel or res judicata.

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