

# Am I Entitled to a Bonus?

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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.*

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## Ohio

### Enforceability of Arbitration Agreement

[Bryan Costin v. Midwest Vision Partners LLC, 8th Dist. Cuyahoga No. 112651, 2024-Ohio-463.](#)

The Eighth District Court of Appeals recently affirmed the trial court's ruling denying defendant's motion to compel arbitration when defendant asserted it was attempting to enforce an arbitration agreement it had with the consumer.

**Bullet Point:** Ohio, like the majority of jurisdictions, has a strong public policy favoring arbitration of disputes, and there is a presumption favoring arbitration that arises when the dispute falls within the scope of an arbitration provision. "Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983). However, parties cannot be compelled to arbitrate claims which they had not agreed to arbitrate in their agreement. Here, the employment agreement between Dr. Bryan Costin and Midwest Vision Partners contained specific, enumerated disputes for which arbitration could be compelled. The trial and appellate courts, while recognizing the strong public interest in compelling arbitration, had to enforce the black letter of the agreement between the parties and held that here, the root cause of the claim by Dr. Costin was not one which arbitration could be compelled based on the express terms of the arbitration agreement.

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### Statute of Limitations on Promissory Note

[Vladimir Duz v. Advance Materials Products Inc., 9th Dist. Summit No. 30267, 2024-Ohio-316.](#)

In this matter, the Ninth District Court of Appeals reversed the trial court's ruling, denying defendant's claims that plaintiff's claim was barred by the statute of limitations to enforce a promissory note.

**Bullet Point:** In Ohio, an action to enforce a promissory note must be brought within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date. Ohio Rev. Code 1303.16(a). Here, plaintiff attempted to bring suit on a promissory note that matured in 2003. Plaintiff

contended that a provision in the contract allowed him to modify the repayment schedule, however, the court found no record of plaintiff's modification. Accordingly, the appellate court held that absent proof of any modification, the six-year statute of limitations barred plaintiff's claim to enforce the note.

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## Damages Under CSPA

### *Jeremi Warman v. Select Auto, 2nd Dist. Montgomery No. 29839, 2024-Ohio-366.*

The Second District Court of Appeals reversed in part a trial court's award of damages to plaintiff under the Ohio Consumer Sales Practices Act (CSPA) when the trial court included the cost of financing and fees in its calculation of damages owed to plaintiff.

**Bullet Point:** The CSPA states in the relevant part that when the CSPA has been violated by an unfair or deceptive act or practice, the consumer may "rescind the transaction or recover the consumer's actual economic damages plus an amount not exceeding five thousand dollars in noneconomic damages." Ohio Rev. Code 1345.09(A). The statute defines "actual economic damages" as "damages for direct, incidental, or consequential pecuniary losses" resulting from the violation; it does not include noneconomic damages. Ohio Rev. Code 1345.09(G). Here, the appellate court found that the trial court abused its discretion by including fees that were part of the agreement, but not necessarily part of the act of deceit or unfairness associated with the sale itself, reasoning that if plaintiff wanted to use rescission of the contract as a remedy rather than suing for expectation damages, he should have done that in the pleadings rather seeking the remedy during a damages proceeding.

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## Tortious Interference

### *Victor Couzens v. United Bank and Trust Co., 1st Dist. Hamilton NO. C-230130, 2024-Ohio-306.*

The First District Court of Appeals affirmed a trial court's order granting summary judgment in favor of defendants when plaintiff stated no claim for which relief could be granted when he argued defendant convinced his employer to terminate his contract in order to continue doing business with the employer.

**Bullet Point:** In Ohio, to succeed on a claim for tortious interference plaintiff must establish: (1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) lack of justification, and (5) resulting damages. In a tortious-interference case, the plaintiff bears the burden of showing that the defendant lacked justification for the alleged interference. To determine justification, courts consider (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference, and (g) the relations between the parties. Here, the Bank argued that it had no interest in interfering with plaintiff's contract with his employer. Rather, the Bank refused to do business with plaintiff in a professional or personal capacity due to prior dealing with

plaintiff and in an effort to protect the Bank's business interest. The appellate court agreed, holding the Bank had a legitimate justification in protecting its business interest, and plaintiff's termination by his employer was not the fault of the Bank but rather his own conduct.

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## Florida

### Bonus Plans in Employment Agreements

#### *Presidio, Inc. v. Brian Feeny, No. 4D23-0045 (Fla. 4th DCA February 7, 2024)*

The Fourth District examined whether a bonus plan contained in an employment agreement was considered a contract.

**The Bullet Point:** Under Florida law, incentive plans contained in employment agreements generally do not rise to the level of an enforceable contract. Rather, a vague, indefinite, or otherwise incalculable incentive suggests a discretionary bonus. In this case, an employee sued his employer for breach of contract and unjust enrichment after his employer failed to pay him a bonus at the end of the fiscal year. The employer argued the plan's discretionary language permitted it to withhold the bonus based on the company's underperformance. In contrast, the employee argued that the plan was an enforceable contract and that his bonus was vested once he satisfied the plan's requirements.

On appeal, the Fourth District concluded that the plan did not contain any language indicating that it was intended to be part of the employment agreement. This is because the employer retained the right to change the bonus plan at its discretion and based on corporate performance. The bonus was, therefore, discretionary, and the trial court erred when it entered summary judgment in the employee's favor.

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### Part Performance and the Statute of Frauds

#### *Mowder, et al., v. Smith, No. 3D23-776 (3d DCA February 7, 2024)*

Reiterating the principle that the doctrine of part performance operates as an exception to the statute of frauds, the Third District affirmed a final judgment enforcing an oral agreement to transfer real property.

**The Bullet Point:** Florida law recognizes that the doctrine of part performance removes a contract from the statute of frauds. In cases involving oral agreements to convey real property, delivery of possession is required in order to prove part performance. Accordingly, where there is proof of an oral contract for conveyance, payment of consideration, possession, and improvements made to the property, the contract is removed from the statute of frauds, and specific performance may be justified.

At issue in this appeal is whether the trial court erred in enforcing an oral agreement to transfer real property. The trial court found that the appellants orally agreed to convey the subject property to the appellee upon

satisfaction of the mortgage, reasoning that the appellee rendered the payment, continuously remained in possession of the property, paid all utilities and taxes, and undertook substantial improvements. The Fourth District concluded that these factors were sufficient to sustain the findings that part performance removed the oral agreement from the statute of frauds, and specific performance was warranted. Accordingly, the trial court's order divesting the appellants of ownership interest in the property and requiring the conveyance of the same to the appellee was affirmed.

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## Absence of a Promissory Note

[Xiang v. Ocala Heart Clinic II, LLC, et al., No. 5D23-1402 \(5th DCA February 2, 2024\)](#)

The Fifth District concluded that the failure to execute a promissory note is not fatal to the existence of the debt.

**The Bullet Point:** Pursuant to Florida law, while a promissory note evidences a debt and specifies the terms under which one party will pay money to another, it neither constitutes the debt itself nor is required to create a debt. In the foreclosure context, the absence of a promissory note does not render a mortgage unenforceable. Therefore, just as the want of a promissory note does not eviscerate the existence of a debt, the lack of a promissory note does not preclude enforcement of the debt. Applying these principles, the Fifth District concluded in this appeal that the parties' failure to execute a promissory note was not fatal to the existence of the debt that the appellant owed to the appellee. Accordingly, the appellant was liable for the unpaid balance of his debt, and the trial court's judgment in favor of the appellee was affirmed.

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