Are my franchise rights protected? The Bullet Point: Volume 1, Issue 22

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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.

Blanton v. Eskridge, 4th Dist. Scioto No. 16CA3783, 2017-Ohio-8991.
This appeal centered on whether the plaintiff had established an easement of necessity over a portion of land owned by defendant.

Plaintiff's land was blocked by a highway. To access their land, they used an old road historically used by their predecessors to reach their home. That road was on defendant's land. The trial court granted them an easement by necessity and defendants appealed. On appeal, the Fourth Appellate District reversed, finding that the plaintiffs failed to prove each and every element of an easement by necessity with clear and convincing evidence.

The Bullet Point: "[A]n easement is an interest in the land of another that entitles the owner of the easement to a limited use of the land in which the interest exists." 'An implied easement or way of necessity is based upon the theory that without it the grantor or grantee, as the case may be, cannot make use of his land.' Such easements are not favored by the law, however. As a result, courts will strictly construe whether and easement by necessity exists.
Easements are important to many businesses in order to access their property and deliver services. While many are taken for granted because of historic use, businesses should consider the prudence of formalizing such arrangements to ensure efficient operations are not put at risk.

Spit-Shine v. Rick Case Hyundai, 8th Dist. Cuyahoga No. 105553, 2017-Ohio-8888.
This as an appeal of the trial court's dismissal of claims for breach of contract and fraud. The plaintiff performed vehicle detailing work for the defendant car dealership. To support its claims, plaintiff attached a partially executed contract to its complaint, which included the name "A One Detailers." Nothing in the record explained the relationship between this entity and the plaintiff. Eventually the trial court dismissed the lawsuit, and plaintiff appealed.

On appeal, the Eighth Appellate District affirmed. Regarding the breach of contract claim, the court found that the failure to explain the relationship between the entities deprived the plaintiff of standing to sue on the contract. Likewise, the court found that the plaintiff failed to properly allege a claim for fraudulent representation.

The Bullet Point: Standing is a prerequisite to filing suit. At its most basic, this means that the plaintiff has some interest, and suffered some type of injury, as a result of the defendant's behavior. The failure to establish standing will result in the lawsuit being dismissed.

Meinert Plumbing v. Warner Industries, Inc., 8th Dist. Cuyahoga No. 104817, 2017-Ohio-8863.
This was an appeal of the trial court's decision to grant judgment to the defendant on claims for breach of contract and under Ohio's Business Opportunity Plans Act (BOPA). The defendant is a multinational holding company whose numerous subsidiaries include manufacturers of sealants and coatings. One such subsidiary was Rust Oleum, who manufactured specialty floor coating products and who had entered into an arrangement with Home Depot to sell its products. Warner Industries, in turn, sold and installed flooring and foam insulation to companies and was eventually contract by Rust Oleum to run its program with Home Depot. Warner Industries would contract out the work to third parties.

Plaintiffs were a collection of small businesses whom Warner Industries contracted with to do this work. Eventually, Home Depot terminated its arrangement with Rust Oleum, which had a domino effect, and the plaintiffs eventually filed suit against Rust Oleum and others, alleging breach of contract and breach of the BOPA.

The trial court eventually granted judgment for the defendants and on appeal the Eighth Appellate District affirmed, noting that plaintiffs failed to establish a direct contractual relationship with Rust Oleum or any agency relationship between it and Warner Industries as necessary to support a viable claim under BOPA.

The Bullet Point: A business opportunity plan is an "agreement in which a purchaser obtains the right to offer, sell or distribute goods or services" under the conditions listed in the statute. These laws are critical to most franchise relationship. Under BOPA, a seller is a "person who sells or leases a business opportunity plan" and a purchaser is "a person to whom a business opportunity plan is sold or leased." In order to have an actionable claim under BOPA, there needs to be some contract between the parties that would constitute a business plan. However, the BOPA is subject to many exemptions, for example, the law does not apply to the relationship between an employer and employee, the sale of an ongoing business, or previous purchasers of similar business plans. Franchising is regulated by the Federal Trade Commission Franchise Rule (FTC Franchise Rule) and by various state agencies. A state's franchise laws usually apply only if the offer or sale of a franchise is made in the state, or the franchised business will be located in the state, or the franchisee is a resident of the state. Entrepreneurs considering franchises should understand BOPA and the FTC Franchise Rule and the other issues that should be addressed when a franchisee obtains the right to offer, sell, or distribute goods or services under a franchise agreement in the state of Ohio.

Ettayem v. The Land Ararat Investment Group, 10th Dist. Franklin No. 17AP-93, 2017-Ohio-8835.
This case arose out of the business dealings between the parties. The named defendant was the sole shareholder and manager of defendant, a corporation whose only asset was a small shopping center. Plaintiff was a former minority shareholder in the defendant corporation. Unhappy with his returns from his investment in the defendant corporation, plaintiff and defendant negotiated a share buyback arrangement and agreement to rent space for a small grocery store run by the plaintiff at the shopping center. A dispute arose over the condition of the property however and eventually plaintiff filed a lawsuit alleging claims for breach of contract, breach of fiduciary duty, and fraud.

The trial court eventually granted judgment to the defendants and plaintiff appealed. On appeal, the Tenth Appellate District affirmed in part and reversed in part the trial court's decision. Specifically, the court found that an issue of fact remained for trial on the plaintiff's fiduciary duty claim.

The Bullet Point: To prove a claim for breach of fiduciary duty under Ohio law, the following elements must be established: (1) the existence of a duty arising from a fiduciary relationship; (2) a failure to observe the duty; and (3) an injury resulting proximately therefrom. Majority shareholders in companies owe a duty of utmost good faith and loyalty to the minority shareholders of a corporation when they make decisions or take action on behalf of the corporation.

And majority shareholders of close corporations owe minority shareholders a heightened fiduciary duty of good faith and loyalty. In a close corporation, a majority shareholder breaches a fiduciary duty when that shareholder manipulates his or her control over the close corporation in order to unfairly acquire personal benefits owing to or not otherwise available to minority shareholders of the close corporation." Shareholder fiduciary duties are a highly contested area in business law and disputes are common with many arguments over whether majority shareholders have properly protected the interests on the minority.