

Can a Consumer Prevail in an FCRA Case Without Actual Damages?

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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

Oral Contract claims

[Scott v. First Choice Auto Clinic, Inc., 10th Dist. Franklin No. 2023-Ohio-3855.](#)

In this appeal, the Tenth Appellate District affirmed in part and reversed in part the trial court's decision to grant the plaintiff judgment on both a claim for breach of contract and unjust enrichment.

The Bullet Point: Ohio law bars a claim for unjust enrichment when an express contract covers the same subject matter.

Unjust enrichment is an alternative theory of recovery, which operates in the absence of an express contract to prevent a party from retaining money or benefits that, in justice and equity, belong to another. An oral contract is considered an express contract and thus would preclude an alternative theory for relief, like unjust enrichment.

Priority to Garnished Funds

[Wulco v. The O'Gara Group, Inc., 12th Dist. Butler No. 2023-Ohio-4023.](#)

In this case, the Twelfth Appellate District reversed the decision to award garnished monies to a judgment creditor over other interested parties.

The Bullet Point: A security interest in specific property is "superior" to a judgment lien over that property if the judgment lien attached after the security interest was perfected. See R.C. 1309.317(A)(2)(a). Accordingly, if the

secured creditor establishes that, under the law, it has priority to the garnished funds, the garnishor judgment creditor's claim to the funds is defeated.

Security interests are generally governed by R.C. Chapter 1309, Ohio's version of Article 9 of the Uniform Commercial Code (UCC). A "security interest" is "an interest in" property that "secures payment or performance of an obligation."

A security interest attaches to a collateralized deposit account only if: (1) value has been given; (2) the debtor has rights in the deposit account or the power to transfer rights in the account to a secured party; and (3) the debtor has signed a security agreement that identifies the collateral or the secured party has control of the deposit account under R.C. 1309.104 pursuant to the security agreement.

Oral Hearing on Arbitration Motion

Snyder v. Old World Classics, LLC, 9th Dist. Medina No. 2023-Ohio-4019.

In this appeal, the Ninth Appellate District reversed the trial court's decision to grant the defendant's motion to compel arbitration under Ohio law without first holding a hearing.

The Bullet Point: R.C. 2711.03 codifies Ohio's arbitration statutes and requires a court to, among other things, "hear the parties" before compelling claims to arbitration. Currently, a split exists between appellate courts in Ohio on whether an oral hearing is necessary to comply with R.C. 2711.03. As the Ninth District noted, "pursuant to the plain language of R.C. 2711.03, a trial court is explicitly required to hold a hearing on a motion to compel arbitration. A hearing is especially necessary when the parties contest the scope of the arbitration clause." * * *

* Whether a motion to compel arbitration is filed "alone or in combination with a motion to stay the proceedings, the trial court must conduct a hearing." * * *

"When the record indicates that the trial court did not conduct a hearing, this Court will reverse without addressing the merits of the trial court's decision."

Florida

FCRA Statutory Damages

Omar Santos v. Healthcare Revenue Group, LLC, et al., No. 22-11187 (11th Cir. November 6, 2023)

The Eleventh Circuit concluded that a consumer can recover statutory damages under the FCRA without proving actual damages.

The Bullet Point: The Fair Credit Reporting Act's damages provision for willful violations—section 1681n(a)(1)(A)—allows a consumer to recover either (1) "any actual damages sustained by the consumer as a

result of the failure” or (2) “damages of not less than \$100 and not more than \$1,000.” At issue in this appeal is whether the second option requires a consumer to prove he suffered actual damages as a result of the consumer reporting agency’s willful violation of the Act. The Eleventh Circuit ruled that it does not, reasoning that the provision’s plain language permits recovery of statutory damages in the absence of actual damages.

In reaching this conclusion, the Eleventh Circuit examined the entire statutory context of the Act to determine the ordinary meaning of “damages” as used in the second option. The Court concluded that “damages” under the second option need not be “actual damages,” be “sustained by the consumer,” or be “a result of” the willful violation. The Eleventh Circuit further determined that this conclusion was consistent with its own caselaw and with how the other circuit courts have read section 1681n(a)(1)(A). Accordingly, a consumer alleging a willful violation of the Act does not need to prove actual damages to recover “damages of not less than \$100 and not more than \$1,000.”

Competing Unjust Enrichment Claims

Richard Dooley and Sanford Thigpen v. Gary the Carpenter Construction, Inc., No. 3D22-1460 (Fla. 3d DCA November 8, 2023)

The Third District concluded that a trial court was not required to employ an all-or-nothing approach in adjudicating competing unjust enrichment claims.

The Bullet Point: Under Florida law, unjust enrichment is designed to permit recovery by contractual remedy in cases where no contract exists. Damages in such cases are valued based on either (1) the market value of the services; or (2) the value of the services to the party unjustly enriched. In this case, the parties brought competing claims for unjust enrichment stemming from construction work that was commenced but never completed. The contractor claimed damages in the amount of the unpaid invoices, and the homeowners claimed collateral and completion damages. The trial court found that both parties proved their claims and awarded the contractor net damages derived from the unpaid invoices less those damages the homeowners proved.

On appeal, the homeowners argued that the damages should have been awarded on an all-or-nothing basis. The Third District disagreed, reasoning that principles of restitution, rather than contract, guide any award of damages in an unjust enrichment claim. The Court concluded that the trial judge protected against a windfall by crediting the homeowners for the damages they established they sustained during construction, and this methodology is consistent with the underpinning of unjust enrichment law. Accordingly, the judgment was affirmed.

Notice of a Florida Civil Rights Act Violation

Kreiger Belony v. North Broward Hospital District d/b/a Broward Health, No. 4D2022-3061 (Fla. 4th DCA November 1, 2023)

The Fourth District concluded that a claimant failed to exhaust his administrative remedies under the Florida Civil Rights Act.

The Bullet Point: Before bringing a civil lawsuit for a Florida Civil Rights Act violation, a claimant must file a complaint with the Florida Commission on Human Rights (the FCHR) and exhaust the administrative remedies set forth in section 760.11, Florida Statutes. This statutory prerequisite is premised on the claimant asserting a violation in a form sufficient to put the employer on notice that the claimant is alleging a violation of Florida law. In this appeal, the Fourth District concluded that a notice asserting only claims under federal law is insufficient to comply with the requirements of section 760.11. This is because an employer cannot be placed on notice that a claimant is claiming a violation of the Act when his notice only asserts a violation of federal law. Accordingly, because the claimant's notice did not specifically reference Florida law, the trial court correctly dismissed his complaint for failure to exhaust administrative remedies under the statute.

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