

Can an email create a binding contract? The Bullet Point: Volume 3, Issue 21

October 25, 2019

Email Satisfies Statute of Frauds

[Battle Axe Construction, LLC v. Hafner & Sons, Inc., 1st Dist. Hamilton No. C-180640, 2019-Ohio-4191.](#)

In this appeal, the First Appellate District found that the statute of frauds was satisfied through an email exchange between the parties.

The Bullet Point: The statute of frauds, R.C. 1302.04(A), bars the enforcement of contracts for the sale of goods over \$500 unless there is a writing indicating a contract between the parties and signed by the party against whom enforcement is sought. There are exceptions to this rule. For instance, R.C. 1302.04(C)(3) provides that even when a contract fails to satisfy the writing requirement of the statute of frauds, it is still enforceable where the goods have been accepted and paid for.

Attorneys' Fees

[Bales v. Forest River, Inc., 8th Dist. Cuyahoga No. 107896, 2019-Ohio-4160.](#)

In this appeal, the Eighth Appellate District affirmed the trial court's decision on the amount of attorney's fees to the plaintiff related to various consumer protection violations.

The Bullet Point: Ohio courts apply a two-part test to the reasonableness of attorney's fees. First, the trial court multiplies the number of hours reasonably expended by the attorney by a reasonable hourly rate. This calculation provides "an initial estimate of the value of the lawyers' services." Second, the court can then adjust the fee upward or downward based on a variety of factors including the time and labor required, novelty and difficulty of the questions involved, fee customarily charged in the locality for similar services, amount involved and results obtained, and the experience, reputation, and ability of the lawyer performing the services. These two steps often overlap.

Settlement Agreements

[Santomauro v. SUMSS Property Management, LLC, 9th Dist. Summit No. 29032, 2019-Ohio-4335.](#)

Here, the Ninth Appellate District affirmed in part and reversed in part the trial court's decision enforcing a settlement agreement between the parties.

The Bullet Point: Settlement agreements are contracts and are susceptible to the same defenses a party might have to a contract. Thus, lack of capacity can be a valid defense to the enforcement of a settlement agreement. However, a party who enters into a settlement agreement and later claims to have been incompetent to enter into that settlement must demonstrate by clear and convincing evidence that the agreement was executed while he was mentally incompetent. To demonstrate a lack of competency, a party must show that his mind was so affected at the time he entered the agreement that he did not possess the ability to comprehend the nature or scope of his act, or to appreciate its effect or consequences. A settlement can also be avoided by "duress." "To avoid a contract on the basis of duress, a party must prove coercion by the other party to the contract. It is not enough to show that one assented merely because of difficult circumstances that are not the fault of the other party." "Three common elements of duress include (1) the involuntary acceptance of terms by one party, (2) no alternative to acceptance under the circumstances, and (3) coercive acts by the other party gave rise to those circumstances."

The Bullet Point is a biweekly update of recent, unique, and impactful cases in Ohio state and federal courts in the area of commercial litigation.

[Click here for a PDF with the full text of each decision.](#)