

Can Class Action Arbitration Exist? The Bullet Point: Volume 3, Issue 9

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Class Action Arbitration

Lamps Plus, Inc. v. Varela, Supreme Court of the United States Slip Op. No. 17-988 (Apr. 24, 2019).

This case involved an attempt to avoid a class arbitration under the Federal Arbitration Act. The plaintiff was tricked into disclosing tax information by a hacker who then filed fraudulent tax returns. The plaintiff filed suit against his employer on behalf of himself and a class of employees subject to the same hack. The employer sought to compel arbitration on an individual basis. The district court authorized arbitration on a class-wide basis. The employer appealed but the Ninth Circuit Court of Appeals affirmed. The United States Supreme Court reversed, finding that even though the arbitration clause did not prohibit class arbitration, permitting class arbitration would defeat the very purpose of arbitration.

The Bullet Point: The Supreme Court noted that “class arbitration sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment.” Because of this, the Court noted that a court may not infer consent to participate in class arbitration absent an affirmative “contractual basis for concluding that the party agreed to do so.” In so ruling, the Court noted that silence is not enough to form the basis of consent to class arbitration.

TILA Ability to Pay/Qualified Mortgage Rule

Elliot v. First Fed. Comm. Bank of Bucyrus, S.D. Ohio No. 17-cv-00042 (Mar. 26, 2019).

This case involved the first substantive analysis of the CFPB's amendments to the Truth-in-Lending Act's (TILA) "ability to pay/qualified mortgage" rule. Here, the United States District Court for the Southern District of Ohio granted summary judgment to the lender, finding that events that reduced the plaintiff's income were not foreseeable by the lender and not subject to the ability to repay rule.

The Bullet Point: TILA's "ability to repay rule," codified at 15 USC 1639c(a)(1), prohibits a creditor from making a residential mortgage loan "unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms... ." As this case demonstrates, whether a creditor made a reasonable and good faith determination is a fact-intensive inquiry. Factors that a court will consider in determining whether a lender violated the Ability to Repay Rule include the past relationship with the borrower, including the borrower's payment and credit history, the borrower's employment history, and sources of income.

Contract – Substantial Performance

Davis v. J&J Concrete, Inc., 11th Dist. Trumbull No. 2018-T-0074, 2019-Ohio-1407.

This was an appeal of a trial court's decision finding a breach of contract and awarding nominal damages. The case revolved around an agreement entered into by the parties to pour a concrete slab for the plaintiff's storage unit. According to plaintiff, the defendant failed to pour the slab to the requisite height and he filed suit, alleging claims for breach of contract, breach of warranty, and fraud. After a bench trial, the court found in favor of the plaintiff but found that defendant substantially performed under the contract and only awarded nominal damages.

Plaintiff appealed and the Eleventh Appellate District affirmed, finding that the evidence supported a finding that the defendant substantially performed under the contract.

The Bullet Point: "In Ohio, a long and uniformly settled rule as to contracts requires only a substantial performance in order to recover upon such contract. Merely nominal, trifling, or technical departures are not sufficient to breach the contract." "Substantial performance of a contract is interpreted to mean that slight departures, omissions and inadvertences should be disregarded." "For the doctrine of substantial performance to apply, the part unperformed must not destroy the value or purpose of the contract." Whether substantial performance occurred is a fact-intensive inquiry determined on a case-by-case basis. Some factors to consider include: "the purpose of the contract; the desires being gratified by the contract; the excuse for deviating from the contract's specifications; and the cruelty of requiring the promisor to strictly adhere versus the problems inherent in compelling the promisee to accept something less than that for which it bargained."

Revival of Judgment

Worldwide Asset Purchasing LLC v. Shuster, 8th Dist. Cuyahoga No. 107431, 2019-Ohio-1441.

This appeal challenged the trial court's decision to grant a motion for revival. The plaintiff obtained a judgment on a credit card against the defendant in 2007. It thereafter assigned its interest in the judgment to a third party who filed a motion for revival in 2015. The motion was granted and the defendant appealed. On appeal the Eighth Appellate District found the motion was proper and the defendant's various challenges to the motion were not proper.

The Bullet Point: "Seeking to revive a judgment does not involve the creation of a new action, but merely the institution of a special proceeding within the original action." Thus, in a proceeding in revival, it is not appropriate to relitigate the question involved in the original suit, or to collaterally impeach the record and judgment. Rather, the only defenses that can be raised in response to a motion for revival are that the debt has been paid, settled, or barred by the statute of limitations. Absent such a claim, the debtor has no valid defense to the motion.