

# Can I Execute a Contract Electronically? The Bullet Point: Volume 2, Issue 21

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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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## Consent to Arbitrate

***Carapellotti v. Breisch & Crowley, 7th Dist. Jefferson NO. 18 JE 0002, 2018-Ohio-3977.***

This was an appeal of a trial court's decision to deny a motion to compel arbitration and stay proceedings. The appellee was building a home and engaged the appellant to design and supply the timber for the home. A purchase agreement, which contained an arbitration clause, was presented to the appellee, who did not sign it. While the appellee did not sign the agreement, he did issue two checks to the appellant in accordance with the terms of the agreement. The memo lines on both checks referenced the purchase agreement. Thereafter, a dispute arose between the parties, and appellee filed suit against appellant alleging claims for negligence and breach of various warranties. The appellant filed an answer and then sought to compel arbitration in accordance with the purchase agreement. The trial court denied the motion and appellant appealed.

On appeal the Seventh Appellate District affirmed, finding that by not executing the arbitration agreement, the appellee did not indicate his agreement to arbitrate his claims.

**The Bullet Point:** "(A)rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." In Ohio, non-signatories are usually not bound by arbitration agreements. A signature on a check can evidence an intent to be bound by an arbitration agreement, but the check must evidence an intent to be bound by the entire agreement.

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## Sale of Real Estate to Benefit Ward

***Gasper v. Adkins, 10th Dist. Franklin No. 17AP-294, 2018-Ohio-3941.***

This was an appeal by a mortgage holder of a probate court's decision to order the sale of real estate. The guardian of a homeowner's estate commenced an action to sell real estate in probate court. A mortgage holder

was named as a defendant in the lawsuit because of its mortgaged interest in the property. A hearing was held on the guardian's request to sell the real estate, and a magistrate found it would be in the best interest of the ward for the property to be sold. The mortgage holder filed objections, and the trial court overruled the objections.

The mortgage holder appealed. On appeal the Tenth Appellate District affirmed, finding that the trial court did not err in finding that the sale of the property would be in the ward's best interest.

**The Bullet Point:** R.C. 2127.05 permits the sale of real estate when it is for the benefit of the ward. Upon commencement of such an action, the guardian is supposed to name all interested parties, including lien holders, who can object to the sale. The probate court is then vested with authority to determine whether the sale of the property is in the best interests of all parties concerned under R.C. 2127.29. Moreover, a mortgage holder's consent is not needed to sell real estate under R.C. 2127.

## Trespass

***Ford Motor Credit Co. v. Ryan & Ryan, Inc.*, 10th Dist. Franklin No. 17AP-304, 2018-Ohio-3960.**

This case was an appeal of a trial court's decision to grant defendants judgment following a bench trial on various tort and contract claims including a claim for breach of the peace and trespass. The plaintiff alleged that various defendants trespassed on his property and breached the peace when they repossessed his vehicle. A bench trial occurred and ultimately the trial court found for the defendants. The plaintiff appealed and on appeal the Tenth Appellate District affirmed, finding that the trial court's decision favoring testimony and credibility of various defendants over the plaintiff was not against the manifest weight of the evidence.

**The Bullet Point:** In order to maintain a trespass claim, plaintiff must show that entry onto the plaintiff's land was unlawful. Conversely, if the defendant's entry on the property is lawful or privileged, the tort of trespass does not occur.

R.C. 1309.609 gives a repossession agent legal authority to enter land in possession of another in order to repossess the vehicle collateral as long as the agent does not breach the peace in doing so. A "mere trespass" itself does not constitute a breach of the peace negating application of the statute. Rather, a breach of the peace is a "violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence or tending to provoke or excite others to break the peace."

## Sufficiency of Electronic Signature to Execute Arbitration Agreement

***Wolfe v. J.C. Penney Corp.*, 10th Dist. Franklin No. 18AP-70, 2018-Ohio-3881.**

This was an appeal of the trial court's decision to grant a motion to stay and compel arbitration. Plaintiff was a long time employee of J.C. Penney. At some point the plaintiff was offered an early retirement program by J.C. Penney but had declined it. Thereafter, she was placed on a Performance Improvement Plan (PIP) which could

result in her termination. Plaintiff claims that her boss manipulated the PIP and that she was terminated and not offered severance pay as was typically done. Plaintiff sued and alleged various employment discrimination claims. J.C. Penney moved to compel arbitration. Eventually the trial court granted the motion and the plaintiff appealed. On appeal the Tenth Appellate District affirmed, finding that her electronic signature was sufficient evidence that she had agreed to arbitrate any claims she may have had.

***The Bullet Point:*** As a general rule, a party to an action cannot be compelled into arbitration if that party has not agreed to submit the dispute to arbitration. An electronic signature is sufficient evidence to establish that an individual agreed to arbitrate his or her claims and should be considered a similar act of assent by an individual just like a written signature would be. However, a defendant may have to take additional steps to authenticate an electronic signature that are typically not otherwise required to authenticate a written signature. This could include establishing how the electronic signature process works for the company, and whether there is an audit trail available that evidences the time and date when the agreement was signed electronically. Similarly, an arbitration agreement can be enforceable even if it allows a party to modify it, assuming any modification is limited by a notice or timing provision.