Can I Settle for Injunctive Relief in a Class Action?

April 20, 2023

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

The Lanham Act

***Lewis v. Acuity Real Estate Services*, 6th Cir. 22-1406**

In this appeal, the Sixth Circuit Court of Appeals affirmed the district court's decision dismissing the complaint under the Lanham Act because such a claim only applies to businesses that suffer commercial injuries, not consumer redress.

The Bullet Point: The Lanham Act prohibits a "person" from using a "false or misleading description" or "representation of fact" in "commercial advertising or promotion" that "misrepresents the nature, characteristics, qualities, or geographic origin" of the person's or another's "goods, services, or commercial activities[.]" The Act expressly authorizes "a civil action by any person who believes that he or she is or is likely to be damaged by" the false advertising. While the court noted that such text could be read to place no limits on the injured parties who can sue, it noted that when reviewing the rule against the backdrop of statutory interpretation, the Lanham Act was never intended to provide redress for purely consumer-related injuries. Instead, under the "zone-of-interest" test, the intent in passing the Lanham Act was "to protect persons engaged in [interstate] commerce against unfair competition[.]" Thus, "consumers do not fall within this zone of interests even if they waste money on a useless product because the traditional unfair-competition tort did not encompass this consumer harm."

Tortious Interference with a Business Relationship

***Weiler v. DLR Group,* 8th Dist. Cuyahoga No. 2023-Ohio-1221.**

In this appeal, the Eight Appellate District affirmed the trial court's decision to dismiss a claim for tortious interference with a business relationship.

The Bullet Point:

There are five elements to a tortious interference claim: "(1) [the existence of] a business relationship or contract; (2) the defendant's knowledge of the relationship or contract; (3) the defendant's intentional or improper action taken to prevent a contract formation, procure a contractual breach, or terminate a business relationship; (4) a lack of privilege; and (5) resulting damages."

In order to substantiate a claim for tortious interference with a prospective business relationship or contract, a plaintiff must include allegations of fact demonstrating the existence of "an actual prospective contractual relation" that but for the interference, would have been consummated.

"A vague assertion that a party interfered with certain unspecified business relationships is insufficient to state a claim for tortious interference with a business relationship."

Unjust Enrichment

***Subel v. AMD Plastics*, 8th Dist. Cuyahoga No. 111770, 2023-Ohio-1139.**

In this case, the Eighth Appellate District affirmed in part and reversed in part the trial court's decision to grant judgment to the defendant, finding that while the statute of frauds barred any breach of contract claim, the plaintiff still had a viable unjust enrichment claim.

The Bullet Point: A claim for unjust enrichment arises out of a contract in law or a quasi-contract.

This type of contract is not a true contract; rather, it is an "'obligation that is created by the law without regard to expressions of assent by either words or acts,' * * * and is imposed to prevent a party from retaining money or benefits which in justice and equity belong to another."

Unjust enrichment occurs when "a person has and retains money or benefits which in justice and in equity belong to another."

In order to prevail on a claim for unjust enrichment, a plaintiff must demonstrate by a preponderance of the evidence that: (1) the plaintiff conferred a benefit upon the defendant; (2) the defendant had knowledge of the benefit; and (3) the defendant retained the benefit under circumstances in which it would be unjust for him or her to retain that benefit.

Florida

Standing to Bring a Class Action

***Williams, et al. v. Reckitt Benckiser LLC*, No. 22-11232 (11th Cir. April 12, 2023)**

The Eleventh Circuit vacated a district court's order approving a class action settlement because the named plaintiffs lacked Article III standing to pursue injunctive relief.

The Bullet Point: Before approving a settlement in a federal class action, a district court must assure itself of the named plaintiffs' standing under Article III to raise each class subclaim. Thus, where the settlement provides both monetary and injunctive relief, the court does not have jurisdiction to approve the settlement unless the named plaintiffs separately establish a threat of real and immediate future injury. This is true even if the named plaintiffs seek monetary relief based upon allegations of past harm, as the fact that the plaintiffs may have been injured in the past is insufficient to establish an injury in fact that would support injunctive relief.

This appeal stems from a district court's approval of a class action settlement providing injunctive and monetary relief to a class of individuals who purchased supplements from the defendants. The Eleventh Circuit concluded that the district court was without jurisdiction to approve the class action settlement because the named plaintiffs lacked Article III standing to pursue their claims for injunctive relief. The Eleventh Circuit reasoned that the plaintiffs failed to establish an actual or imminent future injury, as the operative complaint provided only a remote possibility that the named plaintiffs would purchase the defendants' products again. With only a conjectural and hypothetical risk of future harm being alleged, the named plaintiffs lack Article III standing to pursue prospective injunctive relief against the defendants. The district court lacks the power to approve a settlement awarding the same. As a result, the order approving the class action settlement was vacated.

FUFTA's Catch-All Provision

***SE Property Holdings, LLC v. Neverve*, No. 21-1176 (11th Cir. April 11, 2023)**

The Eleventh Circuit concluded that the catch-all provision of the Florida Uniform Fraudulent Transfer Act (FUFTA), Fla. Stat. § 726.108(1)(c)3, does not allow for an award of money damages against the transferor, an award of punitive damages, or an award of attorneys' fees.

The Bullet Point: The FUFTA generally provides that a creditor may avoid a debtor's fraudulent transfer to the extent necessary to satisfy the creditor's claim. The catch-all provision in section 726.108(1)(c)3 provides, in relevant part, that a creditor may obtain "[a]ny relief the circumstance may require." In a case presenting an issue of first impression for the court, the Eleventh Circuit concluded that this catch-all provision does not allow for an award of money damages against the transferor, an award of punitive damages, or an award of attorneys' fees.

In this case, the creditor obtained a deficiency judgment against the debtor. Following the judgment, the debtor received proceeds from an unrelated settlement, which it transferred to the attorneys representing the debtor's

principal in his personal bankruptcy proceedings. The creditor then brought FUFTA claims against the debtor, alleging the debtor fraudulently transferred the proceeds instead of turning them over toward satisfaction of the judgment. The creditor sought compensatory damages, punitive damages, and attorneys' fees and costs under the FUFTA's catch-all provision. The district court entered summary judgment in favor of the debtor because the relief sought by the creditor is not permitted under the FUFTA, and the creditor appealed this decision.

Relying on statutory interpretation and relevant Florida case law, the Eleventh Circuit concluded that the Florida Supreme Court would not find that the FUFTA authorizes an award of money damages, punitive damages, or attorneys' fees because the catch-all provision only contemplates equitable remedies. The Eleventh Circuit reasoned that the creditor already holds a monetary judgment against the debtor, which created the creditor-debtor relationship giving rise to the FUFTA claims. Therefore, the district court's entry of summary judgment in favor of the debtor was affirmed.

The Doctrine of Merger

***Ferry v. E-Z Cashing, LLC*, No. 2D22-1201 (Fla. 2d DCA April 5, 2023)**

The Second District concluded that while a note and mortgage merges with a final judgment of foreclosure, an assignment of rents and leases survives the judgment and is not extinguished by the doctrine of merger.

The Bullet Point: The doctrine of merger provides that when a final judgment is entered in favor of a plaintiff, the original debt or cause of action upon which the adjudication is based merges into the final judgment. As such, when a mortgage is foreclosed, the mortgage is merged into the final judgment and loses its separate identity. However, because the foreclosure of a mortgage and the foreclosure of an assignment of leases and rents are separate and independent actions, a collateral assignment of rents and leases does not merge with a foreclosure judgment.

At issue in this appeal is whether the doctrine of merger precluded the trial court from entering an amended final judgment of foreclosure and an order granting the creditor's motion for the assignment of leases and rents. The appellant maintained that it did, arguing that the subject note and mortgage merged with the prior consent foreclosure judgment, thereby extinguishing any cause of action arising thereunder. Agreeing in part, the Second District concluded that the note and mortgage merged with the consent foreclosure judgment. Therefore, the trial court erred in amending the judgment because it was premised on extinguished loan documents. However, the Second District ruled that the collateral assignment of leases and rents survived the foreclosure judgment because a mortgagee has the right to foreclose on an assignment of rents without the necessity of foreclosing on the underlying mortgage. Therefore, the amended final judgment of foreclosure was reversed, and the order granting the motion for the assignment of leases and rents was affirmed.

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