

Can My Agent Bind Me to an Arbitration Agreement with a Third Party?

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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

Adoptive Business Records

[Cincinnati v. PE Alms Hill Realty, LLC, 1st Dist. Hamilton, 2023-Ohio-2784.](#)

In this appeal, the First Appellate District affirmed the trial court's decision to grant commercial lenders summary judgment on their breach of guaranty claims finding that the records were admissible under Ohio's adoptive business records exception.

The Bullet Point: A document may be admitted as a business record even when the entity admitting the document is not its maker "provided that the other requirements of Evid.R. 803(6) are met, and the circumstances indicate that the records are trustworthy."

The "[t]rustworthiness of a record is suggested by the profferer's incorporation into its own records and reliance on it."

Personal Guarantee

[Starlion Elec. Dist., LLC v. Zoran Medical, LLC, 8th Dist. Cuyahoga No. 2023-Ohio-2876.](#)

In this appeal, the Eighth Appellate District affirmed the trial court's decision to grant the plaintiff summary judgment, finding that the defendant's personal guarantee of a contract was not unconscionable.

The Bullet Point: A guaranty is a promise by one person to pay the debts of another. Ordinarily, an officer of a corporation is not personally liable on contracts for which his corporate principal is liable. "However, if a

corporate officer executes an agreement in a way that indicates personal liability, then that officer is personally liable regardless of his intention.” Moreover, courts have held corporate officers personally liable on guaranties even though their corporate titles were affixed to their signatures if the contract clearly evidenced an intent to bind the corporate officer individually.

Duty to Mitigate

Apple Ohio, LLC v. Rose Italian Kitchen Solon, 8th Dist. Cuyahoga No. 2023-Ohio-2880.

In this appeal, the Eighth Appellate District affirmed in part and reversed in part the trial court’s decision granting judgment in favor of the plaintiff, finding that an issue of fact existed as to whether the landlord had mitigated its damages.

The Bullet Point: Pursuant to applicable law in Ohio, “[a] lessor has a duty to mitigate damages caused by a lessee’s breach of a commercial lease if the lessee abandons the leasehold” and “the lessor’s efforts to mitigate must be reasonable[.]”

The duty to mitigate arises in all commercial leases of real property, just as it exists in all other contracts.” “Accordingly, barring contrary contract provisions, a duty to mitigate damages applies to all leases.”

Unconscionable Arbitration Agreement

Okolish v. Town Money Saver, Inc., 9th Dist. Summit No. 2023-Ohio-2865.

In this appeal, the Ninth Appellate District reversed the trial court’s decision to refuse to enforce an arbitration clause on the basis of unconscionability.

The Bullet Point: “Arbitration agreements are ‘valid, irrevocable, and enforceable, except upon grounds that exist at law or in equity for the revocation of any contract.’” “Unconscionability is a valid basis for revoking a contract.” “Unconscionability includes both ‘an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.’”

“The party asserting unconscionability of a contract bears the burden of proving that the agreement is both procedurally and substantively unconscionable.”

In determining whether an arbitration provision is procedurally unconscionable, we consider “the circumstances surrounding the contracting parties’ bargaining, such as the parties’ ‘age, education, intelligence, business acumen and experience, * * * who drafted the contract, * * * whether alterations in the printed terms were possible, [and] whether there were alternative sources of supply for the goods in question.’”

Florida

Agency Principles Applied to Arbitration Agreements

SICS North America, Inc. v. Sadies Hideaway, LLC, et al., No. 1D232-8 (Fla. 1st DCA August 9, 2023)

The First District examined whether agency principles applied to bind a non-signatory to an arbitration agreement.

The Bullet Point: In ruling on a motion to compel arbitration, courts must consider (1) whether a valid agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitrate was waived. At issue in this appeal is whether the appellee was bound by the arbitration provision in a purchase agreement entered into by its agent. The First District concluded that it was, reasoning that because the purchase agreement was within the scope of work that the agent was hired to do, it was unnecessary for the appellee to expressly authorize its agent to enter into the arbitration provision contained therein. Therefore, the appellee was bound by that arbitration agreement by virtue of the agency relationship, and the order denying the motion to compel arbitration was reversed.

Negligence Class Action Based Upon Economic Loss

Juncadella, et al., v. Robinhood Financial LLC, et. al., No. 22-10669 (11th Cir. August 10, 2023)

The Eleventh Circuit ruled that a putative class failed to state a negligence claim under Florida law because there was no duty to avoid causing economic loss.

The Bullet Point: Under Florida law, a tort duty generally can arise from four sources: (1) legislative enactments or administration regulations; (2) judicial interpretations of such enactments or regulations; (3) other judicial precedent; and (4) a duty arising from the general facts of the case. Here, the putative class argued that the defendant had a duty not to cause them economic loss, pointing to judicial precedent, regulations, and the facts of the case in support of the claim. The Eleventh Circuit concluded that none of these sources create the kind of economic-loss negligence duty needed for the putative class to state a claim. This is because the judicial precedent relied upon was inapplicable to cases not involving physical harm, the cited regulation did not create a tort duty enforceable by a private right of action, and Florida law has a strong presumption against the imposition of a duty not to cause economic loss through negligence. Accordingly, the putative class failed to state a negligence claim under Florida law.

Fiduciary Relationship

Mawardi v. Cohen, No. 4D21-2291 (Fla. 4th DCA August 9, 2023)

The Fourth District examined whether a fiduciary duty arose from a lending transaction.

The Bullet Point: To establish a fiduciary relationship, the party must allege some degree of dependency on one side and some degree of undertaking on the other to advise, counsel, and protect the weaker party. Thus, when parties are dealing at arm's length, a fiduciary relationship does not exist because there is no duty imposed on either party to protect or benefit the other. In this appeal, the Fourth District examined the transaction between the parties to determine whether a fiduciary relationship existed. The Fourth District concluded that no fiduciary relationship existed because the agreement between the parties was an ordinary arm's length transaction for which the lenders were under no duty to protect or benefit the other party. Accordingly, the final judgment was reversed and remanded for entry of judgment in favor of the lenders on the negligent breach of fiduciary duty claim.

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