

Can My Complaint Be the Basis for a Fraud Counter-Claim?

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Laches

***Toki v. Toki*, 5th Dist. Perry No. 19-CA-00009, 2020-Ohio-130.**

In this appeal, the Fifth Appellate District affirmed the trial court's decision finding a contempt motion brought in a divorce dispute was barred by laches.

The BulletPoint: Laches is "an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party." In order to successfully invoke the doctrine, the following four elements must be established, by a preponderance of the evidence: (1) unreasonable delay or lapse of time in asserting a right; (2) absence of an excuse for the delay; (3) knowledge, actual or constructive, of the injury or wrong; and (4) prejudice to the other party. Delay in asserting a right does not, without more, establish laches. Rather, the person invoking the doctrine must show the delay caused material prejudice. "Financial" prejudice, on its own, is typically not sufficient to demonstrate a "material prejudice" as required to establish laches. Instead, to establish "material prejudice," the party invoking the laches doctrine must show either: (1) the loss of evidence helpful to the case; or (2) a change in position which would not have occurred if the right had been promptly asserted.

Fraud Claims Based Upon the Content of Pleadings

***MidFirst Bank v. Spencer*, 8th Dist. Cuyahoga No. 108292, 2020-Ohio-106.**

In this case, the Eighth Appellate District affirmed the trial court's decision to dismiss a counterclaim for fraud based upon purportedly false or fraudulent statements made in a foreclosure complaint.

The BulletPoint: A common law fraud claim requires proof of the following elements: (a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance. To state a viable fraud claim, the alleged fraudulent statements must be directed at the plaintiff. Documents attached to a lawsuit are not necessarily directed at the defendant (but, rather, the court) and are typically not the basis of a fraud claim. Moreover, when a defendant challenges such documents attached to a lawsuit, it undercuts any claim of reliance as required to state a fraud claim.

Personal Jurisdiction

***Henderson v. SMC Productions, Inc.*, 6th Dist. Erie No. E-18-003, 2019-Ohio-5275.**

In this appeal, the Sixth Appellate District affirmed the trial court's decision to vacate a default judgment for lack of personal jurisdiction over a corporation and its refusal to enforce a forum selection clause contained in an online document.

The Bullet Point: A court's personal jurisdiction over a party is a waivable right, "and there are a variety of legal arrangements whereby litigants may consent to the personal jurisdiction of a particular court system." The use of a forum-selection clause is one method whereby contracting parties may agree to submit to the jurisdiction of a particular court. Forum-selection clauses are classified as either permissive or mandatory. A permissive clause authorizes jurisdiction in the designated forum but does not prohibit litigation elsewhere while a mandatory clause fixes jurisdiction and venue in a designated forum using words of exclusivity. The Ohio Supreme Court established a three-part test to determine the validity of a forum-selection clause: "(1) Are both parties to the contract commercial entities? (2) Is there evidence of fraud or overreaching? (3) Would enforcement of the clause be unreasonable and unjust?"

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