

Can partial performance prevent the statute of frauds from barring an oral agreement?

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The Bullet Point is a biweekly update of recent, unique, and impactful cases in state and federal courts in the area of commercial litigation. We're pleased to expand the Bullet Point from its previous coverage of Ohio case law to include additional areas in McGlinchey's footprint.

Ohio

Statute of Frauds

TLOA Acquisitions, L.L.C. v. Unknown Heirs, 8th Dist. Cuyahoga No. 110002, 2021-Ohio-3678

In this appeal, the Eighth Appellate District affirmed the trial court's decision, agreeing that the defendant's partial performance of making monthly payments under a payment plan prevented the statute of frauds from barring the oral agreement.

The Bullet Point: At issue in this dispute was whether the statute of frauds operates to bar oral contracts when one of the parties has partially performed under the terms of said oral agreement. While an agreement regarding tax certificates may fall under the statute of frauds as it is "a contract or sale of lands, tenements, or hereditaments, or interest in or concerning them * * *," the statute of frauds did not bar the oral contract here as the doctrine of partial performance applied. Ohio courts apply the equitable doctrine of partial performance "in situations where it would be inequitable to permit the statute of frauds to operate and where the acts done sufficiently establish the alleged agreement to provide a safeguard against fraud in lieu of the statutory requirements." Not all acts are sufficient to avoid the statute of frauds. Rather, partial performance sufficient to remove an agreement from the operation of the statute of frauds "must consist of unequivocal acts by the party relying upon the agreement which are exclusively referable to the agreement." Further, the party asserting partial performance must have "undertaken acts that changed his position to his detriment and make it impossible or impractical to place the parties in status quo."

As noted by the appellate court, the defendant made monthly payments pursuant to the oral agreement for over 1.5 years by the time the tax certificates were assigned to the plaintiff. These unequivocal acts of making monthly payments exclusively refer to the oral agreement and could not refer to anything else. Moreover, the defendant's partial performance changed her position to her detriment as she lost not only money but the

opportunity to clear the property of the delinquent taxes. Therefore, the doctrine of partial performance applied to prevent the oral agreement from being barred by the statute of frauds.

Presentment of Claim

Doczi v. Blake, 4th Dist. Meigs No. 20CA3, 2021-Ohio-3433

In this appeal, the Fourth Appellate District affirmed in part, reversed in part, and remanded the trial court's decision, agreeing that as the accident victim's presentment of claim listed his attorney's address instead of his own address, he could not collect any judgment awarded from the assets of the decedent's estate.

The Bullet Point: At issue in this dispute between an accident victim and the decedent's estate was how strictly a creditor must comply with the presentment requirements of R.C. 2117.06. Ohio Revised Code 2117.06 governs the presentation of creditors' claims against an estate. R.C. 2117.06(A)(1)(a)-(c) states in relevant part that all creditors having claims against an estate shall present their claims to the executor in a writing. Significantly, the statute further provides in section (B) that claims shall be presented within six months after the decedent's death and that "every claim presented shall set forth the claimant's address."

Both the trial and appellate courts rejected the plaintiff's argument that listing his attorney's address on his claim sufficiently complied with the presentment requirements, noting a recent decision issued by the Supreme Court of Ohio which made clear that strict compliance with R.C. 2117.06 is required. In the Court's decision, it rejected what it described as a "softened" standard of presentment, instead finding that the plain language of the statute requires that creditors "shall" present their claims to the executor, that "shall" means must, and that the word "must" is mandatory. Listing a claimant's attorney's address on a purported claim against an estate, rather than the claimant's own address, fails to strictly comply with the requirements contained in R.C. 2117.06.

Jurisdictional Priority Rule

Rimby v. Heritage Union Title Co., 7th Dist. Columbiana No. 21 CO 0002, 2021-Ohio-3635

In this appeal, the Seventh Appellate District reversed and remanded the lower court's decision, finding that although final judgment in the homeowner's divorce case had been entered and there was no pending matter to invoke the jurisdictional priority rule, the lower court erred in dismissing the suit and releasing the escrow funds to the ex-husband.

The Bullet Point: At issue in this declaratory relief action was whether the common pleas court or the domestic relations court had subject matter jurisdiction over the proceedings. Under Ohio's jurisdictional priority rule, between courts of concurrent jurisdiction, "the court who first acquires jurisdiction over an action acquires jurisdiction, to the exclusion of all tribunals, to adjudicate upon the whole action and to settle the rights of the parties." Once a court acquires jurisdiction of a cause of action, its authority continues until the matter is "completely and finally disposed of" and a court of concurrent jurisdiction cannot interfere. Simply stated, the

jurisdictional priority rule does not apply where, as was the case here, a final judgment has been entered before the second action is filed. Consequently, because final judgment in the homeowner's divorce case had been entered and there was no other matter pending to invoke the jurisdictional priority rule, the common pleas court had the power to adjudicate the claim.

Florida

Motion to Enforce Settlement Agreement

Honahan v. Burgeson, — So.3d —, 2021 WL 4483703 (Fla. 2d DCA 2021)

The Second District dismissed the appeal from a trial court's denial of a motion to enforce a settlement agreement, finding that the trial court's ruling did not determine that as a matter of law, the settlement agreement is unenforceable, is set aside, or never existed, and therefore the order was nonfinal and nonappealable.

The Bullet Point: The trial court denied the Appellant's motion to enforce a settlement agreement without making any written findings and the record did not include a hearing transcript. Because there were no written findings or transcript to explain the order, the Second District noted that this could mean that the trial court determined: (1) that a settlement agreement exists but is unenforceable; (2) that a settlement agreement exists but is set aside; or (3) that a settlement agreement never existed. Any of these determinations would give the appellate jurisdiction under Fla. R. App. 9.130(a)(3)(C)(ix); however, they each require different analysis. Additionally, a fourth possibility, and one that would not give the appellate court jurisdiction, is that the trial court denied the motion to enforce for lack of sufficient evidence.

Due to the scant record, the appellate court would not presume that a determination giving it jurisdiction was made, nor guess upon what legal grounds the determination was made. The appellate court noted that its dismissal of the appeal did not prevent the Appellant from again seeking to enforce the settlement agreement nor from obtaining a sufficiently developed order from the trial court.

Scope of Arbitration Agreement

Brea 3-2 LLC v. Hagshama Fla. 8 Sarasota, LLC, — So.3d —, 2021 WL 4447919 (Fla. 3d DCA 2021)

The Third District ruled that the claims that were compelled to arbitration were outside the scope of the relevant arbitration agreements, which were limited to disputes "under the Agreement," finding that the claims lacked the requisite "direct relationship" to the underlying agreements.

The Bullet Point: The Appellants in this consolidated appeal brought claims for usury and injunctive and declaratory relief based upon the alleged usury violations, and the trial court ruled that the Appellants' claims fell within the scope of arbitration agreements entered into between the parties. The Third District reversed the trial court's order, finding that the claims fell outside the scope of the arbitration provisions.

Florida has adopted section two of the Federal Arbitration Act which favors arbitration and withdraws the power of states to require a judicial forum for the resolution of claims where the contracting parties agreed to resolve by arbitration. The Third District explained that the first task of a court asked to compel arbitration of a dispute is to determine whether the parties agreed to arbitrate that dispute. The Third District found that the trial court overlooked this step and that both arbitration agreements were narrowly drafted and limited to “any dispute under this Agreement,” which is a narrow arbitration provision that limits arbitration to those claims that have a direct relationship to the contract’s terms and provisions. The Court contrasted the provision with a broad arbitration provision that includes language such as “any claim, dispute, or controversy . . . arising from or relating to this Agreement . . .”

The Third District found that the usury claims were not arbitrable because they could not have arisen under the arbitration agreements. Instead, the duty alleged to be breached was one imposed by law in recognition of public policy and is generally owed to others besides the contracting parties. The Third Circuit found that the usury claims could not have been said to have a significant relationship to the arbitration agreements, and therefore could not satisfy the more rigorous requirement that they bear a direct relationship to the arbitration agreements. In issuing its ruling, the Third District joined the Fifth District in *Party Yards, Inc. v. Templeton*, 751 So. 2d 121 (Fla. 5th DCA 2000), which construed a contract with a similarly narrow arbitration provision and held that the arbitration of the contract at issue was not broad enough to encompass a usury violation that arose under Florida statutory law. The Third District indicated a different result was likely if the arbitration provision had used the broader language.

Foreclosure Due to a Breach of a Loan Modification Agreement

Carus v. VRMTG Asset Trust, — So.3d —, 2021 WL 4447933 (Fla. 3d DCA 2021)

The Third District ruled that the introduction of a copy of a loan modification agreement produced remotely by the Appellee during a trial conducted remotely due to the COVID-19 pandemic was sufficient to support the trial court’s foreclosure judgment.

The Bullet Point: In this case, the foreclosure trial was conducted remotely due to restrictions precipitated by the COVID-19 pandemic. During the trial, the Appellee produced copies of the loan modification agreement signed by the borrower, along with the note, mortgage, assignments of mortgage, and merger documents. The exhibit list was later supplemented with the originals. Evidence that the borrower under the original note and the loan modification agreement had made three payments following the execution of the loan modification agreement (and therefore ratifying the loan modification agreement) was also introduced. The trial court entered a judgment of foreclosure in favor of the Appellee. The Appellant, who was not a party to the loan agreement and who had obtained title to the property via a quitclaim deed after the mortgage had been recorded, argued on appeal that the Appellee had failed to adequately plead and prove an independent breach of the loan modification agreement and that his consent was required to ratify the loan modification agreement. The Third District rejected both of these arguments, holding: (1) the entry of judgment was supported by competent, substantial evidence; and (2) the Appellant’s consent to the loan modification agreement was not required, as he was neither a party to the note or mortgage, and both documents required the signature of the

borrower only to effectuate the modification. Additionally, the Third District found no issue with the procedure engaged by the trial court (the remote trial), as due process is flexible and it can call for such procedural protections as the particular situation demands. Ultimately the final judgment was reversed, in part, and remanded simply to fix an error in the interest rate included in the final judgment.

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