

Did my behavior ratify a contract?

April 22, 2021

Contract Ratification

***Gionino's Pizzeria Inc. v. Reynolds*, 7th Dist. Carroll No. 20 CA 0940, 2021-Ohio-1289**

In this matter, the Seventh Appellate District reversed and remanded the lower court's decision, finding that although the document was only partially executed, the parties' behavior constructively ratified the contract.

The Bullet Point: As a gatekeeping issue, a plaintiff must demonstrate the existence of a valid contract in order to prevail on a breach of contract claim. Where, as here, there exists only a partially signed agreement, the court analyzes the parties' conduct to determine the existence of a contract. Specifically, the court considers a partially signed contract in conjunction with the parties' subsequent conduct to determine whether they behaved as if the contract were in effect. Under this so-called doctrine of "constructive ratification," a contract may be found to exist where the parties' behavior is consistent with the terms of an unsigned or unwritten contract. In this case, the plaintiff-franchisor sought to enforce a contract against the defendant-franchisee, who was the only party who signed the document. While the franchisee initially testified he did not remember ever receiving a contract, the franchisee also acknowledged key terms of the contract, including the purchase price and paying the required franchise transfer fee. The court also analyzed the parties' behavior and found that they both conducted themselves according to the terms and conditions of the agreement. Notably, the franchisee obtained financing to purchase the franchise and operated the franchise location for ten years. As such, the court found that the parties' conduct evidenced their intention to be bound by the contract, even though said contract was only partially executed.

Duty of Easement Owner

***Johnson's Island Property Owners' Assoc. v. Cianciola*, 6th Dist. Ottawa No. OT-20-011, 2021-Ohio-1341**

In this appeal, the Sixth Appellate District affirmed in part and modified the trial court's decision, agreeing that the easement owners had a duty to contribute to the reasonable costs of necessary repairs and maintenance of the easement.

The Bullet Point: An easement is the interest in land owned by another that entitles the owners of the easement to a limited use of the other person's land. Stated differently, the owners of an easement, known as the dominant estate, have authority to use the so-called servient estate's property for the easement purposes. One of the most common easements is a road for the dominant estate to cross over the land of the servient estate. Under Ohio common law, owners of an easement have an obligation to perform reasonable repairs and maintenance of the easement when necessary. Where there are multiple easement owners, the owners have a duty to each other to contribute to the "reasonable costs of repair and maintenance" of the easement. Restat

3d of Prop: Servitudes, § 4.13 (3rd 2000). While there is no affirmative duty to initiate repair, once repair or maintenance is “reasonably undertaken” by one or more of the easement owners, the other owners have a responsibility to contribute to the reasonable costs based upon a fair proportion of said costs. *Id., at comment e*. In determining whether an easement holder is required to contribute to the cost of maintenance and repair of said easement, Ohio courts generally consider five factors: “(1) the amount and intensity of each party’s actual use of the road and the benefits they derive from that use; (2) whether a party had notice of and an opportunity to participate in repair and maintenance decisions; (3) whether the work consisted of reasonable and necessary repairs and maintenance, rather than improvements to the road; (4) whether the quality and price of the work was reasonable; and (5) the value of other monetary or in-kind contributions to repair and maintenance made by the parties.” In this matter, the defendants, along with 300 property owners in nearby subdivisions, owned an easement over island roads and a causeway. The defendants agreed they had a common-law obligation to contribute to and pay their share of the repair and maintenance costs, but argued the work performed was not necessary and was instead unnecessary improvements and upgrades. The court rejected this argument, as the plaintiffs presented uncontroverted evidence that the projects undertaken were appropriate and only for necessary repairs and maintenance of the island roads and causeway, not improvements. The court also noted that the defendants had actual use of the easement from which they derived a benefit, as the island roads and causeway provided direct access to and from their homes. As such, the defendants had a responsibility to contribute their share of the repair costs to the other easement owners.

Res Judicata

***AJZ’s Hauling, L.L.C. v. Trunorth Warranty Programs of N. Am.*, 8th Dist. Cuyahoga No. 109632, 2021-Ohio-1190**

In this appeal, the Eighth Appellate District affirmed the trial court’s decision, agreeing that it would be unjust and unreasonable to apply the doctrine of res judicata to prohibit the trial court from reconsidering its prior ruling.

The Bullet Point: The doctrine of res judicata requires a final order of the court to preclude re-litigation of issues that have or could have been raised in a prior proceeding. Stated simply, if a court’s final appealable order is not timely appealed, all matters that could have been reviewed on appeal become res judicata and are not reviewable in a related or subsequent proceeding or appeal. This is an important legal concept. It provides finality and security to litigants that they will not be continually sued for the same claims or issues over and over again. Similarly, under the law of the case doctrine, the decision of a reviewing court in a case remains the law of that case on legal questions involved for all subsequent proceedings in the case at both trial and reviewing levels. Pursuant to R.C. 2711.02(C), an order that grants or denies a stay of an action pending arbitration is a final order that may be reviewed on appeal. Consequently, a party who fails to appeal an order staying an action pending arbitration will generally be barred by res judicata from subsequently arguing that the arbitration provision at issue is unenforceable. Rarely will courts refuse to enforce the concept of res judicata when it is clearly applicable, as was the case here. However, despite this, the Eighth Appellate District refused to apply the doctrine on the basis that it would be unreasonable or unjust to do so.

Land Contract

***Lovejoy v. Diel*, 12th Dist. Butler No. CA2020-06-067, 2021-Ohio-1124**

In this appeal, the Twelfth Appellate District reversed and remanded the trial court's decision, holding that the determination of whether a real estate agreement constitutes a land installment contract requires a two-part analysis under R.C. 5313.01(A) and 5313.02(A).

The Bullet Point: When determining whether an agreement to sell property constitutes a land installment contract, Ohio courts must look to the clear and unambiguous language of both R.C. 5313.01(A) and R.C. 5313.02(A). R.C. 5313.01(A) defines a land installment contract, in part, as an agreement under which the seller, referred to as the vendor, agrees to convey title in real property to the buyer, referred to as the vendee, and the vendee agrees to pay the purchase price in installment payments while the vendor retains title to the property as security for the vendee's obligation. After determining whether or not the agreement meets the definition of a land installment contract under R.C. 5313.01, the court must continue its analysis under R.C. 5313.02. While there are four subsections in R.C. 5313.02 that impose several requirements, R.C. 5313.02(A) itself lists 16 provisions that must be contained in all land installment contracts. In this case, the parties entered into a real estate agreement. The trial court analyzed the agreement solely under R.C. 5313.02 and determined it was a land installment contract despite lacking the 16 mandatory elements. On appeal, the court found that the parties' agreement failed to satisfy the definition of a land installment contract under R.C. 5313.01 as it did not state the plaintiff would ever convey title to the defendants. Moreover, the agreement did not even state the address or generally identify the property being sold. The court further noted that the agreement contained only six of the 16 elements that R.C. 5313.02(A) says a land installment contract "shall * * * at least" contain. The court rejected the "substantial compliance" position that has been taken by some Ohio Districts who have held that an agreement can be a land installment contract if it substantially complies with the 16 provisions. Instead, this court determined that the mandatory language of R.C. 5313.02(A) is plain and unambiguous and must be applied, not interpreted. As the agreement failed to include all 16 of the mandatory provisions in R.C. 5313.02(A), and because it failed to meet the definition under R.C. 5313.01(A), the real estate agreement was not a land installment contract.

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