

Did the Ohio Supreme Court Just Reverse Itself? The Bullet Point: Volume 3, Issue 11

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The Bullet Point is a biweekly update of recent, unique, and impactful cases in Ohio state and federal courts in the area of commercial litigation.

Motion for Reconsideration; Quo Warranto

State ex rel. Yost v. Omar Ibn El Khattab Mosque, Inc., Slip. Op. No. 2019-Ohio-1958.

Upon a motion for reconsideration, the Ohio Supreme Court reversed a prior decision and ordered the Tenth Appellate District to deny a writ of prohibition.

The mosque is an Ohio nonprofit corporation. The corporation was governed by various corporate documents that set up a separate entity from the mosque to engage in philanthropic activities for the mosque. Those documents also set out an initial board of directors. The board began raising money for a construction project, ultimately raising over \$400,000. However, various members of the board then got into a fight about access to those funds. This ultimately led to the appointment of a new board. Upset over this, some of the old board members held their own meeting in which they appointed another board to control the corporation. Various litigation ensued and eventually the Ohio Attorney General filed for a writ of Quo Warranto to dissolve the corporation. The Tenth Appellate District initially granted the writ. On appeal, the Ohio Supreme Court affirmed. The appellants then moved for reconsideration and, upon reconsideration, the Ohio Supreme Court reversed, finding the corporation's failure to follow statutory requirements for meetings, elections etc. did not establish that the corporation had "surrendered or forfeited its corporate rights, privileges, and franchises" as required to issue a writ of quo warranto.

The Bullet Point: Quo warranto "is an extraordinary remedy invoked against a corporation, where public interests are involved and the corporation has exercised a franchise, privilege or right in contravention of law, or misused a right conferred upon it by law." Quo warranto will lie when a corporation has "misused a franchise, privilege, or right conferred upon it by law." In an action for quo warranto based on a misuse of the corporate franchise, courts may order a partial or total ouster of the offending corporation.

Home Owner Association Receivership

Grand Arcade Condominium Owners Assn v. GA 130 LLC, 8th Dist. Cuyahoga No. 107733, 2019-Ohio-2003.

This was an appeal of a trial court's decision to deny a Home Owner Association's request to appoint a receiver in a foreclosure proceeding. A first lien mortgage holder had objected to the request on the basis that its lien had "priority" and the trial court agreed. On appeal, the Eighth Appellate District reversed, finding that appointment of a receiver in this situation was mandatory and a lien holder's priority was immaterial.

The Bullet Point: Unlike Ohio's general receivership statute, the Home Owner Association statutes indicate that a condo association is entitled to the appointment of a receiver. Courts have found this language to be mandatory. The fact that a first lien mortgage might have priority over a Home Owner Association lien does not matter with respect to appointment of a receiver. In fact, the appointment of a receiver in these cases does not impact the first lien holder's mortgage priority.

Intended Third-Party Beneficiary

Taylor v. Honda Motorcars, 8th Dist. Cuyahoga No. 107840, 2019-Ohio-1891.

This was an appeal of a summary judgment decision in a breach of contract. The plaintiff leased a vehicle from the defendant. Around that time, the same type of vehicle was stolen from defendant who reported it to the police. The dealer accidentally gave the police the license plate number for the vehicle plaintiff loaned and the police ultimately pulled over the plaintiff's daughter when she was driving the vehicle. The error was uncovered, no charges were ever filed against plaintiff (or his daughter), and the parties ultimately rescinded the transaction.

Plaintiff, on behalf of himself and daughter, then sued raising various claims including for breach of contract. The dealer moved for summary judgment which was granted. On appeal the Eighth Appellate District affirmed, finding that the plaintiff's daughter was not a party or intended beneficiary to the contract and could not sue for breach of contract as a result.

The Bullet Point: Only an intended third-party beneficiary has enforceable rights under a contract; an incidental third-party beneficiary does not. To be an intended third party beneficiary, there must be "evidence that the contract was intended to directly benefit that third party." (This is sometimes called the "intent to benefit" test.) The absence of such intent means the third party is, at best, an incidental beneficiary.

Intentional Infliction of Emotional Distress

Lloyd v. Cleveland Clinic Foundation, 8th Dist. Cuyahoga No. 107214, 2019-Ohio-1885.

This was an appeal of the trial court's decision to grant a hospital judgment on various common law tort claims, including for intentional infliction of emotional distress. The plaintiff claimed she visited the hospital for a

urinary issue. She claims that during the visit she told the doctor about a neighbor who was threatening her and the doctor ultimately set her up to stay with an emergency contact until she felt safe. Plaintiff claims that some employees of the hospital then began posting offensive defamatory statements about her on her Facebook page.

Plaintiff sued and ultimately the hospital was awarded summary judgment on all her claims, including her claim for intentional infliction of emotional distress. Plaintiff appealed and the Eighth Appellate District affirmed, finding that the claims did not rise to the serious conduct and circumstances that would support a claim for intentional infliction of emotional distress.

The Bullet Point: To state a claim for intentional infliction of emotional distress, a plaintiff must establish: (1) the defendant intended to cause the plaintiff serious emotional distress, (2) the defendant's conduct was extreme and outrageous, and (3) the defendant's conduct was the proximate cause of plaintiff's serious emotional distress. "Extreme and outrageous" is defined as conduct that "goes beyond all bounds of decency and is so atrocious that it is utterly intolerable in a civilized community." To that end, mere insults, indignities, threats, annoyances, or other trivialities are not sufficient to support a claim for intentional infliction of emotional distress.