

Do I have a Claim for Unfair Competition Against a Competitor?

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Privity to Sue

Yeager v. U.S. Bank, 1st Dist. Hamilton No. C-200262, 2021-Ohio-1972

In this appeal, the First Appellate District affirmed in part as modified, reversed in part, and remanded the trial court's decision. The Appellate Court found the beneficiaries were in privity to enforce their rights, as their interests became vested immediately upon the creation of the irrevocable, generation-skipping trust.

The Bullet Point: Under long-standing Ohio law, "one not in privity cannot sue; vesting gives the necessary privity to sue." Stated differently, plaintiffs must be in privity to maintain a lawsuit against the defendant. Importantly, the status of those seeking to sue must be examined at the time the claimed mistake or injury took place. In this case, the plaintiffs were beneficiaries to an irrevocable, generation-skipping trust. Under the trust document, the plaintiffs became beneficiaries of the trust upon the death of the primary beneficiary in 2017. After becoming beneficiaries, they made two requests for information to the trustee-defendant, seeking an explanation regarding a deposit that was made into the trust in 2011 and seeking a full trust accounting. Both requests went unanswered and the beneficiaries filed suit, alleging the 2011 deposit was reimbursement for the embezzlement of funds and that the trustee had a duty to provide them with a full trust accounting. Pursuant to R.C. 5808.13(A), a trustee has a duty to "keep the current beneficiaries of the trust reasonably informed about the administration of the trust" and has a duty to "respond to a beneficiary's request for information related to the administration of the trust." The trustee filed a motion to dismiss, arguing that the beneficiaries did not have standing to sue based on events that occurred in 2011, as that was prior to them becoming current beneficiaries and their rights were not then vested. The court disagreed, finding that the beneficiaries were in privity to enforce their rights. As the court explained, a "beneficiary" is "a person that has a present or future beneficial interest in a trust, whether vested or contingent * * *," while a "current beneficiary" is "a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of the trust income or principal." R.C. 5801.01(C) and (F). As the court noted, the trust at issue was an irrevocable, generation-skipping trust. Consequently, the beneficiaries' interests became vested upon the creation of the trust, and their interests were absolute. Therefore, the beneficiaries were in privity to enforce their rights as beneficiaries in 2011 even though they were not then the current beneficiaries.

Defamation

***Mercer v. Goans*, 8th Dist. Cuyahoga No. 109651, 2021-Ohio-1948**

In this appeal, the Eighth Appellate District affirmed the trial court's decision, agreeing that the plaintiff failed to provide sufficient evidence that the alleged defamatory statements made to human resources were false.

The Bullet Point: In order to successfully bring a claim of defamation, the plaintiff must prove five essential elements. Specifically, the plaintiff must prove that: 1) the statement was false, 2) the statement was defamatory, 3) the statement was published, 4) the plaintiff was injured, and 5) the defendant acted with the required degree of fault. In Ohio, defamation may be per quod or per se. Defamation per quod means that a statement with an apparently innocent meaning becomes defamatory through interpretation or innuendo. On the other hand, defamation per se means that the defamation 'is accomplished by the very words spoken.' Further, the statement must "consist of words which import an indictable criminal offense involving moral turpitude or infamous punishment, imputes some loathsome or contagious disease which excludes one from society or tends to injure one in his trade or occupation." In this case, the plaintiff and the defendants worked for the same company. The plaintiff brought an action for defamation per se, alleging the defendants made defamatory statements when they told human resources that the plaintiff acted in an intimidating manner and threatened them. The defendants argued that their statements to human resources could not be defamatory as their statements were true. Crucially, truth is the ultimate defense in an action for defamation. The court noted that besides his own statement, the plaintiff failed to provide any other evidence that the defendants' statements were false. Consequently, the defendants were entitled to summary judgment.

Unfair Competition

***Key Realty, Ltd. v. Hall*, 6th Dist. Lucas No. L-19-1237, 2021-Ohio-1908**

In this appeal, the Sixth Appellate District granted the motion for reconsideration, vacated in part its previous decision, and remanded the claim for the factfinder to determine whether the defendants engaged in unfair competition by soliciting the plaintiff's agents through the use of false rumors or published statements designed to harm the plaintiff.

The Bullet Point: Originally, the claim of unfair competition covered "representations by one person, for the purpose of deceiving the public, that his goods are those of another." Over time, Ohio courts expanded the concept of unfair competition to include acts such as malicious litigation, circulation of false rumors, or publication of statements made to negatively impact another's business. Simply stated, the claim of unfair competition now includes a broad range of unfair commercial practices that are designed to harm the business of another. In cases where the circulation of false rumors forms the basis of a claim of unfair competition, summary judgment is appropriate where "no competent evidence has been presented which creates a question of fact as to whether [defendants] circulated false rumors, or published statements designed to harm [plaintiff's] business." In this case, the defendants held a grand opening of their real estate business, to which they invited only the plaintiff's real estate agents. At the grand opening, the defendants solicited the plaintiff's agents to join their new business and made a powerpoint presentation that stated the plaintiff made "broken promises" to its

agents. Further, the evidence demonstrated that the defendants hoped 200 of the plaintiff's agents would leave the plaintiff's agency to join their new agency within six months of its opening. After conducting its second review of the record, this court reconsidered and vacated its previous ruling, holding that there was competent evidence for the factfinder to determine the defendants engaged in unfair competition through the use of false rumors or published statements that were intended to harm the plaintiff's business.

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