

Do I have a State Court Standing Defense?

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McGlinchey's Commercial Law Bulletin 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 our Commercial Law Bulletin from its previous coverage of Ohio case law to include additional areas in McGlinchey's footprint.

Ohio

Mootness

Harvest Land Co-op, Inc. v. Hora, 2d Dist. Montgomery Nos. 26218, 26227, 2022-Ohio-2375

In this matter, the Second Appellate District dismissed the appeal as the issue of whether the trial court correctly determined the accounting on the promissory note was rendered moot because the debtor's debt was discharged in bankruptcy, the debtor failed to dispute said discharge, and the debtor failed to demonstrate the applicability of any of the exceptions to the mootness doctrine.

The Bullet Point: The doctrine of mootness is founded upon the "long and well established [premise] that every judicial tribunal must decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect." Thus, a court "will not decide * * * cases in which there is no longer any actual controversy." In this case, the plaintiff asserted the instant appeal was moot, as its debt and certificate of judgment were discharged and the bankruptcy court's order of discharge specifically stated that the certificate of judgment "shall be deemed satisfied and released of record." Although the debtor did not dispute that the debt and certificate of judgment were discharged and that he no longer owed money to the plaintiff, the debtor argued the appeal was not moot and should be decided under the exceptions to the mootness doctrine.

As the court explained, the mootness doctrine has limited exceptions that allow review. One such exception involves issues that are "capable of repetition, yet evading review." "This exception applies only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." Notably, "[a]n injury is not deemed capable of repetition merely because someone, at sometime [sic], might suffer the same harm; there must be a reasonable chance that it will happen again to the complaining party." Here, the debtor failed to argue this type of action –

a complaint to enforce a promissory note – is by its nature too short in duration to be fully litigated before its cessation. The debtor also failed to demonstrate any reasonable expectation that he would be subject to the same action again. Therefore, there was no merit in the debtor’s claim that the “capable of repetition yet evading review” exception applied. In reference to other exceptions to the mootness doctrine, the court noted that “[an appellate] court may hear the appeal where there remains a debatable constitutional question to resolve, or where the matter appealed is one of great public or general interest.”

However, the record before the court was devoid of anything to suggest either of these exceptions applied to the case, and the court summarily rejected this argument. Debtor further argued the appeal was not moot because the failure to determine the merits of the case would result in secondary legal consequences, contending the plaintiff would make future fraudulent charges and/or impose improper interest charges. This so-called “collateral consequences” exception may apply where “the collateral consequence is imposed as a matter of law.” However, as the Supreme Court of Ohio advised, “[s]peculation is insufficient to establish a legally cognizable interest for which a court can order relief using the collateral-consequences exception to the mootness doctrine.” Moreover, “[a] collateral disability must be a substantial, individualized impairment, and a purely hypothetical statement, about what might occur in the future is not sufficient to give viability to an otherwise moot appeal.”

Conversion

Pertuset v. Hull, 4th Dist. Scioto No. 21CA3959, 2022-Ohio-2348

In this appeal, the Fourth Appellate District affirmed the trial court’s decision, agreeing that the plaintiffs’ claim for conversion was without merit because there was no evidence defendants engaged in any wrongful act or disposition of plaintiffs’ personal property as the defendants took possession of the property legally.

The Bullet Point: In Ohio, the tort of conversion has also been defined as “the wrongful exercise of dominion over the property to the exclusion of the rights of the owner or withholding it from his possession under a claim inconsistent with his rights.” The elements of a conversion claim are: “1) a plaintiff’s ownership or right to possession in property at the time of conversion; 2) defendant’s conversion by a wrongful act or disposition of the plaintiff’s property rights; and 3) damages.” Upon review of the record, the court determined there was no evidence that the defendants engaged in any wrongful act or disposition of the plaintiffs’ property. Instead, the plaintiffs admitted they made no effort to remove their personal property throughout the underlying foreclosure proceedings and execution of the writ of restitution, and that they chose to ignore the trial judge’s orders. When the defendants legally took possession of the property, the entire farm was cluttered with personal property of every kind, nature, and description. Thereafter, the defendants “rented at [their] own expense a U Haul truck and together with the help of six other people took two U Haul truck loads and four pickup truck loads of personal property from the residence and delivered it to the church” where plaintiffs were residing. The remainder of their personal property remained stored at the farm until removed by the plaintiffs in 2017.

Florida

Establishing Standing

James Lucas Southam v. Red Wing Shoe Company, Inc., No. 4D21-3338 (Fla. 4th DCA July 13, 2022)

The Fourth District concluded that a class representative who suffered no economic, distinct, or palpable injury under the Fair and Accurate Credit Transactions Act (“FACTA”) lacked standing.

The Bullet Point: Under FACTA, no person who accepts credit cards or debit cards for a business transaction shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder. The appellant initially filed his lawsuit in state court and alleged that the appellee willfully violated FACTA when it printed ten digits of his credit card on his receipt. His complaint sought only statutory damages; he did not allege or seek to recover any actual damages. Appellee thereafter removed the case to federal court, which was subsequently dismissed after the district court ruled that the appellant lacked standing to sue because it pled only a bare violation of the statute.

This matter was then remanded back to state court, where the appellee filed a motion to dismiss, arguing that the appellant likewise lacked standing under the state court standard. Specifically, the appellee argued that the appellant lacked standing because he had not suffered a concrete or actual injury, which is the standard under Florida state court law to establish standing. The trial court agreed and dismissed the case.

At issue in this appeal was whether alleging a mere statutory violation conveys standing. The Fourth District concluded that it does not. Appellee’s purely illegal action of printing too many digits on the appellant’s receipt does not confer standing to maintain a suit because the appellant did not allege some threatened or actual injury resulting from the putatively illegal action. In summary, the Fourth District concluded that the appellant did not demonstrate an injury in fact that was concrete, distinct and palpable, and actual or imminent. Failing this test, the trial court correctly granted the appellee’s motion to dismiss.

Compelling Production of Trade Secrets

Fiberoptics Technology, Inc. v. Sunoptic Technologies, LLC, No. 1D21-3820 (Fla. 1st DCA July 13, 2022)

The First District concluded that the trial court departed from the essential elements of the law by compelling the disclosure of asserted trade secret information.

The Bullet Point: Trial courts must undertake the following three-step analysis when faced with a claim that a discovery request seeks the production of a protected secret: (1) it first must determine whether the information requested includes trade secrets, which usually requires the court to conduct an *in camera* review of the documents; (2) if the request seeks information subject to the trade secret privilege, the court must determine whether the party seeking production can show a reasonable necessity for the information; and (3) if the court determines there is a reasonable necessity for the production of trade secret information, it must determine what safeguards should be put in place to protect the information. In this case, the trial court

departed from the essential elements of law by requiring the production of documents without making the required findings as to whether the information in question was a trade secret and, if so, whether the appellee had proven a reasonable necessity for disclosing it. Accordingly, the discovery order was quashed.

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