

Do I have an enforceable contract?

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Contract Interpretation

***McCruter v. Travelers Home & Marine Ins. Co.*, 11th Dist. Lake No. 2019-L-167, 2021-Ohio-472**

In this appeal, the Eleventh Appellate District affirmed in part and reversed in part the lower court's decision, and remanded the matter after determining the trial court's interpretation of the contract was contrary to the express language of the policy.

The Bullet Point: When interpreting a contract, Ohio courts examine the contract as a whole instead of analyzing each section separately on its own. Further, when a contract's language is clear, "a court may look no further than the writing itself to find the intent of the parties." Stated differently, Ohio courts look to the plain and ordinary meaning of the language and presume that the intent of the parties is reflected in the language used by the contracting parties. In this matter, the insurer argued it was not liable to pay the monetary judgment granted to the injured plaintiff because its insured allegedly failed to perform her contractual duties under the insurance policy. As this court noted, the relevant section of the insurance policy did not impose duties upon the insured. Rather, the express language of the policy described the duties that the insurer owed to the insured, not duties owed by the insured. The court explained that an insured cannot violate a policy requirement that imposes no duties upon her. As such, the trial court erred when it interpreted the policy contrary to its express language by finding the insured violated a policy under which she had no duties to fulfill.

Enforceable Contract

***Lakeside Produce Distrib. v. Wirtz*, 8th Dist. Cuyahoga No. 109460, 2021-Ohio-505**

In this appeal, the Eighth Appellate District affirmed the trial court's decision, finding that the language in the agreement was too aspirational to constitute an enforceable contract.

The Bullet Point: Under long-standing law, a plaintiff must allege four elements to state a claim for breach of contract: "(1) the existence of a binding contract, (2) the nonbreaching party performed his or her contractual obligations, (3) the other party failed to fulfill its contractual obligations without legal excuse, and (4) the nonbreaching party suffered damages as a result of the breach." As a preliminary matter, there must be an enforceable contract before a party can succeed on a breach of contract claim. An enforceable contract is one which contains an offer, acceptance, consideration, and a manifestation of mutual assent. Stated differently, a

plaintiff satisfies the first element by demonstrating that “both parties consented to the terms of the contract, that there was a ‘meeting of the minds’ of both parties, and that the terms of the contract are definite and certain.” As the court explained, contract terms are definite and certain if they allow the court to determine the existence of a breach and the appropriate remedy. The court explained that indefinite and aspirational language does not constitute an enforceable promise under Ohio law. As the agreement contained merely general, aspirational statements, it did not constitute an enforceable confidentiality contract.

Right to Set-Off

***Mockensturm v. McIlwain*, 6th Dist. Lucas No. L-20-1035, 2021-Ohio-532**

In this appeal, the Sixth Appellate District affirmed in part and reversed in part the trial court’s decision, agreeing that since there was a mutuality of obligation between the parties, the defendant was entitled to set-off.

The Bullet Point: In Ohio, setoff is “that right which exists between two parties, each of whom under an independent contract owes a definite amount to the other, to set off their respective debts by way of a mutual deduction.” Simply stated, the claim of setoff exists when the plaintiff brings a suit against the defendant for money damages, and the defendant responds by asserting a claim of setoff against the plaintiff for money owed on a separate agreement between the parties. The necessary prerequisite to setoff is mutuality of obligation between the parties. That is to say, the defendant cannot assert a claim of setoff unless both the plaintiff and the defendant are also parties to the other contract.

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