Do I have standing to pursue a claim in federal court?

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The Bullet Point 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 the Bullet Point from its previous coverage of Ohio case law to include additional areas in McGlinchey's footprint.

Ohio

Guaranty Agreements

Legacy Village Investors, L.L.C. v. Bromberg, 8th Dist. Cuyahoga Nos. 109991, 110197, 2021-Ohio-2930

In this appeal, the Eighth Appellate District affirmed the trial court's decision, agreeing that the landlord did not waive its rights under a personal guaranty by amending the lease with the tenant to collect past-due rent, failing to obtain the guarantors' consent to amend the lease, or provide notice of said amendment to the guarantors.

The Bullet Point: In this dispute, the landlord brought a breach of guaranty action against the personal guarantors for default on a commercial restaurant lease. The guarantors argued that the landlord waived its rights under the guaranty by amending the lease and that because the lease was amended, the guaranty was nullified and no longer in effect.

Both the trial and appellate courts disagreed, looking to the plain language of the guaranty. A guaranty is a contract, and Ohio courts interpret guaranty agreements in the same manner as any other contract. That is to say, Ohio courts do not look beyond the terms of the contract where those terms are clear and unambiguous. Here, the terms of the guaranty clearly and unambiguously provided for the guaranty to remain in effect in the event of a lease amendment. The guarantors further argued that they were never notified of the amendment and that the landlord acted inconsistently with the guaranty when it attempted to collect past-due rent from the tenant through a lease amendment instead of proceeding against the guarantors. These arguments also failed, as the guaranty clearly and unambiguously allowed for the amendment of the lease without notice to the guarantors, and provided that the landlord had the option to proceed against the tenant, the guarantors, or both. As such, the landlord did not waive its rights under the guaranty by not notifying or obtaining the consent of the guarantors to amend the lease with the tenant.

Final Appealable Order in a Foreclosure

US Bank Trust, N.A. v. Osborne, 4th Dist. Scioto No. 20CA3930, 2021-Ohio-2898

In this matter, the Fourth Appellate District dismissed the appeal for lack of a final appealable order, finding that the trial court's foreclosure entries did not address the order of priority of all of the lienholders and did not state the mandatory language that there is no just reason for delay.

The Bullet Point: Appellate courts have jurisdiction to review final orders of the lower courts in their district. Under R.C. 2505.02(B)(1), an order is final if it determines the action and prevents a judgment. Stated differently, the order "must dispose of the whole merits of the cause or some separate and distinct branch thereof and leave nothing for the determination of the court." Further, if a case involves multiple parties or claims, the court may enter a final judgment as to one or more but fewer than all of the parties or claims only upon an express determination that there is no just reason for delay. Civ.R. 54(B). Absent the mandatory language that "there is no just reason for delay," an order that does not dispose of all claims is subject to modification and is not final and appealable.

In this case, the trial court entered summary judgment in favor of the bank against the borrowers in a foreclosure action. The borrowers appealed, and the appellate court dismissed the appeal for lack of a final appealable order. In Ohio, foreclosure actions proceed in two stages, both of which end in a final appealable judgment: 1) the order of foreclosure, and 2) the confirmation of sale. A judgment decree in foreclosure fully disposes of liability if it "determines the extent of each lienholder's interests, sets forth the priority of the liens, and determines the other rights and responsibilities of each party in the action." As such, to qualify as a final and appealable order under R.C. 2505.02(B)(1), a foreclosure decree must account for each lienholder's interests and delineate each lienholder's rights.

Here, the borrowers did not appeal a decree in foreclosure, but rather, they appealed the trial court's decisions on summary judgment. Notably, although the foreclosure action involved multiple parties and claims, the trial court's entries did not address the order of priority of the other lienholders or their interests in the borrowers' property. Moreover, the entries did not contain the Civ.R. 54(B) mandatory language that there is no just reason for delay. As such, there was no final appealable order for the appellate court to review, and the appeal was dismissed.

Standing

Voss v. Quicken Loans LLC, S.D.Ohio No. 1:20-cv-756, 2021 U.S. Dist. LEXIS 161380 (Aug. 26, 2021)

In this matter, the U.S. District Court for the Southern District of Ohio, Western Division, remanded the lawsuit back to state court as the mere presence of a statutory violation does not cause a concrete injury sufficient to satisfy standing under Article III to pursue a claim in federal court.

The Bullet Point: This case shows the risk a defendant faces when relying on a standing defense upon removal of a lawsuit to federal court. In order for a claim to be heard in federal court, the plaintiff must have standing to

bring a claim in federal court. To satisfy the standing requirement, the plaintiff must show "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief."

In this action, the plaintiff brought a putative class action in state court alleging the defendant violated R.C. 5301.36 when it failed to timely record a satisfaction of mortgage. The defendant removed the action to federal court and then argued the plaintiff lacked standing to proceed on its claim. Specifically, the defendant argued the plaintiff could not show a "concrete" injury-in-fact as it was undisputed the only injury suffered by the plaintiff was a transient cloud on his title that was removed once the satisfaction of mortgage was recorded. The District Court agreed, noting that a technical or procedural violation of state law is insufficient to convey standing in federal court. Following the Supreme Court's controlling authority on the question of standing, the District Court explained that a plaintiff does not automatically satisfy the injury-in-fact requirement whenever a statute grants a person a statutory right. Rather, Article III standing requires the plaintiff to suffer a concrete injury even when the defendant commits a statutory violation. Stated differently, a plaintiff who has not suffered a concrete harm does not have standing to bring a claim in federal court simply to enforce general compliance with regulatory law.

Here, the plaintiff's only injury was a transient cloud on his title created by the defendant's three-week delay in recording the satisfaction of its mortgage lien. The plaintiff was neither aware of this transient cloud on his title nor suffered any actual harm as a result of the defendant's delay in recording the satisfaction. As such, the plaintiff lacked standing to proceed on his claim in federal court. That being said, the plaintiff's lack of standing did not permit the District Court to dismiss the lawsuit. On the contrary, in a removed action such as this, once it has been determined that the federal court lacks jurisdiction, remand to state court is mandatory. Consequently, the plaintiff's lawsuit was remanded back to state court for further proceedings.

Florida

Offers of Judgment

Davis v. Clark, 2D21-171, 2021 WL 3686059 (Fla. 2d DCA Aug. 20, 2021)

The Second District Court of Appeal determined that Offers of Judgment apply to small claims cases, allowing a party to shift attorney's fees and costs to the opposing party when the offer is rejected and the offeror later prevails by the prescribed amount.

The Bullet Point: Florida Statute § 768.79 provides that an offer of judgment is available in any civil action for damages filed in Florida's courts. Under Fla. Stat. § 768.79, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant is entitled to recover reasonable costs and attorney's fees from the date of filing of the offer if the judgment entered in the case is either in the defendant's favor or if the judgment obtained by the plaintiff is at least 25 percent less than the defendant's offer. Separately, Fla. R. Civ. P. 1.442 provides rules for the use of "Proposals for Settlement," including their applicability, time for service, required elements, and other procedural considerations.

Because Fla. R. Civ. P. 1.442 is not applicable in small claims cases, the Plaintiff in this case argued that Offers of Judgment are not applicable to small claims cases. There is no analogous Small Claims Rule in Florida to Fla. R. Civ. P. 1.442. The Appeals Court determined that had the Florida Legislature wished to exclude Offers of Judgment from small claims cases, it could have done so and did not. Further, the Court noted that the purpose of the Offer of Judgment Statute is to reduce litigation costs and conserve judicial resources by encouraging the settlement of legal actions. Thus, the Court concluded that Fla. Stat. § 768.79 provides substantive rights that must be honored even in small claims cases.

Claims on Force-Placed Insurance

Reconco v. Integon Nat'l Ins. Co., 312 So. 3d 914 (Fla. 4th DCA 2021), *review denied,* SC21-576, 2021 WL 2588930 (Fla. June 24, 2021)

In this appeal, the Fourth District held that a homeowner whose home was insured by her lender under a force-placed policy of insurance lacked standing to bring a cause of action seeking a declaration of coverage against the insurance company because she was neither a party to the insurance contract nor an intended third-party beneficiary. Instead, she was merely a loss payee by virtue of her ownership interest in the home.

The Bullet Point: Under Florida law, a party seeking to enforce a contract as a third-party beneficiary must allege four elements: (1) existence of a contract; (2) the clear or manifest intent of the contracting parties that the contract primarily and directly benefit the third party; (3) breach of the contract by a contracting party; and (4) damages to the third party resulting from the breach. Florida courts must interpret an insurance policy with plain and unambiguous language in accordance with its plain meaning so as to give effect to the policy as written.

In this case, the plaintiff failed to maintain homeowner's insurance on her home as required by her mortgage. Therefore, the mortgagee placed a "force-placed" insurance policy on her home. The "force-placed" policy specifically provided that it was between only the mortgagee and the insurer, that the policy was intended only for protection of the mortgagee, and that there was no contract of insurance between the borrower and the insurer. The policy provided that the borrower may be entitled, as a simple loss payee, to receive payment for any residual amount of loss. Following adjustment of a claim arising out of Hurricane Irma, the borrower attempted to have the court declare she was entitled to an appraisal and to compel additional payment under the policy. The appeals court affirmed dismissal of her claims, finding that there is no *per se* rule in Florida that a party with an insurable interest has standing to enforce a property insurance policy, and that given the language of the policy at issue, she lacked standing to enforce its terms.

Apex Doctrine

In Re: Amendment to the Florida Rule of Civil Procedure 1.280, Case No. SC21-929 (Fla. 2021)

The Florida Supreme Court extended the apex doctrine to include private parties and amended Florida Rule of Civil Procedure 1.280(h).

The Bullet Point: Florida's version of the apex doctrine previously only protected highly-level government officials. Upon its own motion, the Florida Supreme Court amended Florida Rule of Civil Procedure 1.280(h) to codify the apex doctrine and extend its protections to the private sphere. The new Florida Rule of Civil Procedure 1.280(h), which was adopted and made effective on August 26, 2021, reads as follows:

A current or former high-level government or corporate officer may seek an order preventing the officer from being subject to a deposition. The motion, whether by a party or by the person of whom the deposition is sought, must be accompanied by an affidavit or declaration of the officer explaining that the officer lacks unique, personal knowledge of the issues being litigated. If the officer meets this burden of production, the court shall issue an order preventing the deposition, unless the party seeking the deposition demonstrates that it has exhausted other discovery, that such discovery is inadequate, and that the officer has unique, personal knowledge of discoverable information. The court may vacate or modify the order if, after additional discovery, the party seeking the deposition can meet its burden of persuasion under this rule. The burden to persuade the court that the officer is high-level for purposes of this rule lies with the person or party opposing the deposition.

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