Does Accepting an Arbitration Award Preclude Me from Pursuing Different Claims in Court? The Bullet Point: Volume 2, Issue 20

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Damages in Non-Liquidated Cases

Skiver v. Wilson, 8th Dist. Cuyahoga No. 106560, 2018-Ohio-3795.

This case involved the amount of evidence that should be presented at a damages hearing after a default judgment has been granted. Plaintiff sued the defendant on various tort and contract claims related to services she provided for the defendant but for which she was never compensated. Eventually the plaintiff moved for default judgment against the defendant, and the motion was ultimately granted. The trial court then set the matter for a damages hearing. At the damages hearing, the plaintiff presented testimony of an oral contract with the defendant and the number of hours she claimed to have worked. The plaintiff never presented any written contract, nor did she provide details as to when or where the work was performed, nor any invoice supporting her claims. As such, the trial court only awarded her nominal damages. Plaintiff appealed, and on appeal the Eighth Appellate District affirmed.

In so ruling, the court noted that under Civ.R. 55 a trial court has discretion in weighing the evidence presented at a damages hearing, and here it did not abuse that discretion.

The Bullet Point: Civ.R. 55(A) provides for a hearing on damages at a trial court's discretion. The discretion depends on the type of case. If the case presents one of liquidated damages (damages that can be determined "with exactness from the agreement between the parties"), then no hearing is required. Where the judgment is not liquidated or only partially liquidated, a hearing is required. In conducting such a hearing, the trial court is afforded significant discretion in weighing the evidence and credibility of any witness. Moreover, there is no requirement that a trial court award damages even when a defendant is in default of answering.

Acceptance of Arbitration Award

Lucas v. Ford Motor Co., 9th Dist. Summit No. 28622, 2018-Ohio-3765.

This was an appeal by Ford of a trial court's ruling finding that the plaintiff's claims were not barred by his acceptance of an arbitration award. Plaintiff had purchased a new Ford truck from a Ford dealership for almost $50,000. The purchase agreement included an arbitration clause. The plaintiff had numerous issues with the truck, and ultimately he brought a claim under the Better Business Bureau (BBB) against Ford. The matter proceeded to arbitration through the BBB. Eventually, the arbitrator found in favor of the plaintiff and found that Ford should repurchase the vehicle. Plaintiff accepted the decision and acknowledged that by doing so he was giving up any right to sue Ford in court.

Thereafter, he filed an application for a court order affirming the arbitration award and seeking additional damages based on different claims from what he had asserted in arbitration. Eventually both parties moved for summary judgment. Ford argued that the plaintiff's claims were precluded by his acceptance of the arbitration award. However, the trial court disagreed and eventually awarded monetary damages to the plaintiff.

Ford appealed, and on appeal the Ninth Appellate District reversed, finding that by accepting the arbitration award Plaintiff was precluded from seeking additional claims or damages against Ford.

The Bullet Point: Under R.C. 1345.75, Ohio's "Lemon Law", "The [arbitrator's] decision is binding on the manufacturer, but not on the consumer. However, if the consumer accepts the board's decision, the dispute is considered settled once the manufacturer performs." Thus, once the dispute is settled, "[t]he previously existing claim is extinguished by the compromise and settlement and, as a result, any subsequent litigation based upon it is barred."

Adoptive Business Records Exception to Hearsay

Bank of NY Mellon v. Kohn, 7th Dist. Mahoning No. 17 MA 0164, 2018-Ohio-3728.

This appeal of a foreclosure judgment involved a borrower's challenge to the application of the adoptive business records exception to hearsay. After filing a foreclosure lawsuit against defendant, the plaintiff moved for summary judgment. In support of its motion, the plaintiff presented the affidavit from the current loan servicer who testified to various documents, including documents that were created by a prior loan servicer. The borrower opposed the motion, arguing that the current loan servicer lacked the requisite personal knowledge to testify to the records of a different company. The trial court disagreed and granted summary judgment to the plaintiff.

The borrower appealed, and on appeal the Seventh Appellate District affirmed the trial court's ruling. The court found that under the adoptive business records exception to hearsay, the current loan servicer could testify to the prior loan servicer's records when they were adopted and relied upon them.

The Bullet Point: This is another in a long line of cases describing and applying the "adoptive business records exception" in foreclosure lawsuits. Under Evid.R. 803(6) (the business records exception to hearsay), courts will allow a business to attest to the records of another business where those records are integrated and adopted by the attesting party and relied upon in its business operations.

Subpoena on a Non-Party, Non-Resident of Ohio

Gibsonburg Health, LLC v. Miniet, 6th Dist. Sandusky No. S-17-015, 2018-Ohio-3510.

This case involves a challenge to a trial court's decision ordering an out-of-state entity to produce records in Ohio to a subpoena. After obtaining a judgment against the appellant, the appellee sought post-judgment discovery for collection purposes. As part of that, it served a subpoena on appellant's son and attorney-in-fact, a non-party who resided in New York. The son refused to comply with the subpoena arguing it was invalid. Appellee then sought to compel a response from the Ohio state trial court, which granted the motion as well as awarded sanctions. Appellant appealed.

On appeal the Sixth Appellate District found that the subpoena was not properly issued, and that the son therefore had no duty to respond to it, and the court reversed the trial court's decision.

The Bullet Point: While Civ.R. 45 gives a court the power to subpoena non-parties, an Ohio court's subpoena power does not reach out-of-state non-parties. A party may serve a subpoena upon an out-of-state non-party under the Uniform Interstate Depositions and Discovery Act if the state where the non-party resides has adopted the act. The act sets forth the procedure to be followed to have the local clerk of court serve the requested subpoena. If a person objects to the subpoena or a party seeks to enforce the subpoena, that party must file a motion in the "court in the county in which discovery is to be conducted". As such, and by way of example, here the subpoena should be enforced by the out-of-state New York court that issued it, not the Ohio court that lacks territorial jurisdiction to resolve the issue.

Constitutionality of Service by Publication in Foreclosures

Wells Fargo Bank, N.A. v. Herman, 2d Dist. Montgomery No. 27854, 2018-Ohio-3700.

In an appeal handled by McGlinchey Stafford attorney Jim Sandy, the Second Appellate District found that service by publication in a foreclosure action for a period of three weeks is not unconstitutional.

This case involved a reverse mortgage foreclosure by Wells Fargo. After being unable to obtain residential service on the defendant, Wells Fargo requested leave to serve her via publication and the trial court agreed. Notice of the lawsuit was published in the local paper for a period of three weeks. Thereafter, Wells Fargo moved for default judgment against the defendant, and the trial court granted the motion. Defendant then appealed, arguing in part that service by publication in foreclosure actions was unconstitutional.

On appeal the Second Appellate District disagreed, finding that the shortened time period to serve defendants in a foreclosure action was not unconstitutional.

The Bullet Point: R.C. 2703.141 provides for a shorter period of time to serve defendants by publication in foreclosures than other types of actions: If service by publication is necessary in an action to foreclose a mortgage or to enforce a lien or other encumbrance or charge on real property, then the party seeking service by publication shall cause the publication to be made once a week for three consecutive weeks instead of as provided by Civil Rule 4.4. All that due process requires is notice and a reasonable opportunity to be heard. As the Second Appellate District noted, service by publication for three weeks gives a defendant more than enough notice and opportunity to be heard. Likewise, service by publication in a foreclosure action for a period of three weeks does not violate the equal protection clause. As the Second Appellate District noted, "[t]he Ohio legislature enacted R.C. 2703.141 in 2008, amidst what this and other Courts have acknowledged was a "foreclosure crisis." "Under those circumstances, the State had both a valid interest in streamlining the mortgage foreclosure process and a rational basis for advancing that interest by reducing the number of weeks required for service by publication in mortgage foreclosure actions."