

# Does my release bar a future claim?

May 20, 2020

## Waiver of personal jurisdiction

[Caimona v. More Muscle Cars, LLC, 11th Dist. Trumbull No. 2019-T-0049, 2020-Ohio-2896](#)

In this appeal, the Eleventh Appellate District affirmed the trial court's decision finding that the defendants did not waive the defense of lack of personal jurisdiction in a refiled lawsuit by failing to assert the defense in an initial lawsuit.

**The Bullet Point:** In Ohio, "personal jurisdiction is a 'waivable right,' and an individual may consent to a specific court exercising jurisdiction over him or her." An individual consents and waives personal jurisdiction by voluntarily appearing and submitting to the jurisdiction of the court. However, as noted by the court, lack of personal jurisdiction is a defense available in each separate lawsuit. If a plaintiff voluntarily dismisses their claim without prejudice and later refiles a subsequent lawsuit, the first voluntary dismissal "places the parties in the same position as if no suit had ever been filed." As such, the defendant is free to assert the defense of lack of personal jurisdiction in its answer to the refiled suit as participating in the first proceeding will not waive the defense.

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## Fraudulent Concealment

[Solis v. Emery Fed. Credit Union, S.D. Ohio No. 1:19-cv-387, 2020 U.S. Dist. LEXIS 82366 \(May 11, 2020\)](#)

In this case, the District Court granted the defendant's motion to dismiss the amended complaint, finding that the plaintiffs failed to adequately plead fraudulent concealment to toll the statute of limitations.

**The Bullet Point:** Generally, a statute of limitations (i.e. the time a party has to bring a claim) begins running either at the time an injury occurs, regardless of a plaintiff's awareness of the injury, or at the time that a plaintiff discovers or reasonably could have discovered that he has been injured. In limited circumstances, the equitable doctrine of fraudulent concealment serves as an extension to the limitations period. Pursuant to the doctrine of fraudulent concealment, "where the defendant takes steps to 'cover its tracks' and prevent the

plaintiff from discovering the harm he has caused, the defendant should not be allowed to rely on the limitations period to escape liability for his conduct.” To demonstrate fraudulent concealment, the plaintiff must show three elements: (1) the defendant actively concealed the conduct constituting the cause of action; (2) this concealment prevented the plaintiff from discovering the cause of action within the limitations period; and (3) until discovery, the plaintiff exercised due diligence trying to learn about the cause of action. To satisfy the due diligence prong, the plaintiff must exercise reasonable diligence once having sufficient notice of a potential injury.

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## Release

### [Forbes v. Nationwide Mut. Ins. Co., 10th Dist. Franklin No. 19AP-220, 2020-Ohio-2802](#)

In this appeal, the Tenth Appellate District affirmed the trial court’s decision finding that although a prior release did not bar plaintiff’s breach of contract claim, the defendant was nonetheless entitled to summary judgment.

**The Bullet Point:** A release of liability is a binding agreement between the parties under which at least one party relinquishes an existing claim or cause of action against the other party. Such a release of liability is an “absolute bar to a later action on any claim encompassed within it, absent a showing of fraud, duress, or other wrongful conduct in procuring” the release. In deciding whether a release operates upon a certain liability, Ohio courts analyze the language of the release and the state of then-existing facts to determine the intent of the parties in executing the release. That being said, releases from liability for future tortious conduct are not favored by Ohio courts and will be narrowly construed.

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## Lemon Law

### [Diguglielmo v. FCA US LLC, 6th Dist. Lucas No. L-19-1187, 2020-Ohio-2858](#)

In this appeal, the Sixth Appellate District reversed in part and affirmed in part the trial court’s decision, finding that genuine issues of material fact existed regarding whether the consumer’s vehicle conformed to an express warranty.

**The Bullet Point:** In order for a consumer to succeed on a claim under Ohio’s Lemon Law, R.C. 1345.71, et seq., the consumer must demonstrate: “(1) he was the owner of a vehicle covered by a written warranty, (2) the motor vehicle does not conform to the applicable expressed warranty, (3) he reported the nonconformity to the manufacturer or manufacturer’s authorized dealer within one year following the original date of delivery or the first 18,000 miles of operation, whichever is earlier, and (4) the manufacturer or authorized dealer was unable to conform the motor vehicle to the express warranty by repairing or correcting a defect that substantially impaired the use, safety, or value of the motor vehicle, after a reasonable number of repair attempts.” A consumer’s inability to “specifically identify” the defective part of the vehicle does not bar recovery. While the consumer bears the burden of presenting evidence from which a reasonable inference can be made that a

specific problem with the vehicle is due to a defective part, the consumer does not have the burden of eliminating all possible causes of the problem. That being said, the defect complained of must be “major” in that it substantially impairs the use, value, or safety of the vehicle to the consumer; Ohio’s Lemon Law does not create remedies for buyers who have soured on their new vehicle for cosmetic or other trivial reasons.

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