

Does the Savings Statute Save My Claim?

August 27, 2020

Savings Statute

Moore v. Mt. Carmel Health Sys., Slip Opinion No. 2020-Ohio-4113

In this case, the Ohio Supreme Court held that when a plaintiff fails to obtain service within the one-year period to do so, and the action has neither failed (other than on its merits) nor been refiled, Ohio's savings statute does not apply.

The Bullet Point: An action is barred by the statute of limitations unless it is "commenced" prior to the expiration of the statute of limitations for a claim. Pursuant to Civ.R. 3(A), a civil action is "commenced" at the time the complaint is filed if service is obtained within one year of filing. In addition to this one-year commencement period, Ohio's savings statute provides that when an action is dismissed other than on the merits, and the statute of limitations has run on the claim during the lawsuit, the plaintiff may refile the action within one year. R.C. 2305.19(A).

The savings statute does not apply automatically to extend the one-year commencement requirement. Rather, Ohio's savings statute "applies only when its terms are met: when an action is commenced or attempted to be commenced; when a judgment is reversed or an action fails other than on the merits, that is, when there is either a voluntary dismissal without prejudice under Civ.R. 41(A) or an involuntary dismissal without prejudice under Civ.R. 41(B); and when the complaint is refiled within one year." Therefore, a plaintiff who fails to obtain service within Civ.R. 3(A)'s one-year commencement period and whose action was neither dismissed without prejudice nor refiled will not be able to use Ohio's savings statute to revive its action outside the statute of limitations period.

Jurisdictional Priority Rule

Kinzel v. Ebner, 6th Dist. Erie Nos. E-19-033, E-19-034, 2020-Ohio-4165

In this appeal, the Sixth Appellate District affirmed in part and reversed in part the trial court's decision, deciding that the jurisdictional priority rule did not apply as the municipal court and common pleas court were not courts of concurrent jurisdiction over the defendant's equitable counterclaim.

The Bullet Point: Under the jurisdictional priority rule, "as between state courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the

exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties.” Essentially, this rule applies to give jurisdictional priority to the court presiding over the first lawsuit when there are two courts of equal jurisdiction presiding over separate lawsuits involving the same issue. Ohio courts apply the jurisdictional priority rule even when the separate lawsuits are not exactly the same so long as the causes of action are part of the same ‘whole issue.’

Concurrent jurisdiction exists when, as with courts of common pleas and municipal courts, different courts are authorized to deal with the same subject matter. However, concurrent jurisdiction does not exist between a court of general jurisdiction and one whose limited powers are inadequate to afford full relief to the parties under the circumstances. Since Ohio municipal courts do not generally have subject matter jurisdiction over an action that is principally equitable in nature and the defendant’s counterclaim sought principally equitable relief, the municipal court did not have concurrent jurisdiction with the common pleas court in this case.

Merger by Deed

Olenchick v. Scramling, 11th Dist. Lake No. 2020-L-018, 2020-Ohio-4111

In this appeal, the Eleventh Appellate District affirmed the lower court’s decision and found that the doctrine of merger by deed was inapplicable, as there was no evidence the rerecorded deed was a valid final contract into which the purchase agreement merged.

The Bullet Point: Under Ohio law, the doctrine of merger by deed dictates that where a deed is delivered and accepted without qualification pursuant to the parties’ agreement, there are no remaining causes of action based upon the parties’ prior agreement. Instead, the rights of the parties must be determined by the deed itself unless there is evidence of fraud, mistake, or when the parties’ agreement creates rights collateral to the conveyance. In other words, the parties’ prior agreement is merged into the deed and the deed becomes the final, controlling agreement between the parties.

The doctrine of merger by deed is similar to the contract doctrine of integration. Under the doctrine of integration, all prior documents are considered “integrated” into the final contract, so only the provisions in the final contract are part of the agreement. The doctrine of integration is the combination of the parol evidence rule and the rule of interpretation, which seeks to determine the parties’ intentions. Likewise, “the merger doctrine should only be applied as a canon of construction that attempts to arrive at the true intention of the parties to a deed.” Regardless, Ohio law mandates that all deeds must be signed by the grantor. R.C. 5301.01(A). Without the grantor’s signature on the deed, there is no evidence that said deed is a valid final contract into which the parties’ agreement must merge. Therefore, the doctrine of merger by deed cannot apply to an unsigned rerecorded deed.

Shareholder Appraisal Statute

Zalvin v. Ayers, 1st Dist. Hamilton No. C-190285, 2020-Ohio-4021

In this appeal, the First Appellate District affirmed the lower court's decision, finding that although the plaintiff's allegations were not barred by the appraisal statute, the shareholder failed to make a prima facie case that the directors breached their fiduciary duties.

The Bullet Point: A shareholder may challenge the value paid for his or her shares in a cash-out merger under Ohio's appraisal statute. Specifically, Ohio's appraisal statute is designed to provide compensation to shareholders who dissent from a merger by providing for the payment of fair cash value for his or her shares as of the day prior to the vote of the shareholders. R.C. 1701.85. Notwithstanding the appraisal statute, an action for breach of fiduciary duty may also be maintained but such an action "may not seek to overturn or modify the fair cash value determined in a cash-out merger." Stated differently, the appraisal statute is the sole remedy available when the shareholder's objection is essentially a complaint regarding the price he received for his shares of stock.

[Download PDF with full text of cases](#)

Related people

Jim Sandy