

Have I Been Defamed in the Newspaper? The Bullet Point: Volume 3, Issue 15

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McGlinchey's Commercial Law Bulletin is a biweekly update of recent, unique, and impactful cases in state and federal courts in the area of commercial litigation.

RESPA Standing

Keen v. Helson, 2019 U.S. App. LEXIS 21262 (6th Cir., July 18, 2019).

In this appeal, the Sixth Circuit Court of Appeals found that only a “borrower” had standing to sue for violations of the Real Estate Settlement Procedures Act (RESPA).

The Bullet Point: Among other things, RESPA requires mortgage loan servicers to take certain steps when a borrower seeks options to avoid foreclosure. The failure to follow those steps could result in liability on the part of the mortgage loan servicer. However, RESPA only authorizes a “borrower” to sue. However, the statute does not define the term. In *Keen*, the Sixth Circuit therefore gave the term its ordinary meaning, and defined a “borrower” for RESPA purposes as “someone who has borrowed money from a lender and promised to pay it back.” Accordingly, if a party only signed the mortgage and not the note, he or she would not be considered a “borrower” with standing to sue under RESPA.

Defamation

Croce v. New York Times Co., Sixth Cir. No. 18-4158 (July 17, 2019).

In this appeal, the Sixth Circuit Court of Appeals affirmed a district court decision, finding that a newspaper article about the plaintiff, while unflattering, was not defamatory.

The Bullet Point: Under Ohio law, “defamation occurs when a publication contains a false statement made with some degree of fault, reflecting injuriously on a person’s reputation, or exposing a person to public hatred, contempt, ridicule, shame, or disgrace, or affecting a person adversely in his or her trade, business, or

profession.” To prove defamation, a party must establish five things: (1) that a false statement was made, (2) that the statement was defamatory, (3) that the statement was published, (4) that the plaintiff suffered an injury as a proximate result of the publication, and (5) that the defendant acted with the requisite degree of fault in publishing the statement. A court must decide whether a statement is defamatory as a matter of law. In order to do so, courts consider the totality of the circumstances surrounding the statement. This is considered the “reasonable reader” standard.

Statutes of Repose

New Riegel Local School Dist. Bd. of Ed. v. Buehrer Group Architecture & Eng., Inc., Slip. Op. No. 2019-Ohio-2851 (July 17, 2019).

In this appeal, the Ohio Supreme Court clarified that Ohio’s construction statute of repose applies to both contract and tort claims.

The Bullet Point: A statute of repose is a statute that bars “any suit that is brought after a specified time since the defendant acted...even if this period ends before the plaintiff has suffered a resulting injury.” The period begins to run “when a specific event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted.” Ohio’s construction statute of repose is found at R.C. 2305.131, which precludes a cause of action for damages for bodily injury, injury to real or personal property, or wrongful death that arises out of a defective or safe condition of an improvement to real property more than ten years from the date of substantial completion of each performance.

Arbitration – Coercion, Economic Duress

Dacres v. Setjo, LLC, 8th Dist. Cuyahoga No. 107638, 2019-Ohio-2914.

In this appeal, the Eighth Appellate District affirmed a trial court’s decision granting a motion to compel arbitration, finding that the arbitration clause was valid and that the plaintiff was not coerced into agreeing to it under economic duress.

The Bullet Point: Ohio law and public policy encourages arbitration. That being said, arbitration is a matter of contract, and parties cannot be required to submit to arbitration any dispute which they did not agree to submit. While economic duress can be a defense to a valid arbitration agreement, the party claiming duress must show that he or she was subjected to a wrongful or unlawful act or threat, and that it deprived him or her of his or her unfettered will. In other words, to show economic duress, one must establish: (1) involuntary acceptance, (2) no alternative under the circumstances, and (3) the coercion was caused by the opposing party. Merely taking advantage of a person’s financial difficulty does not consist economic duress.