

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

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## 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.

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## 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.

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#### 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.

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#### 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.