

Have I Been Unjustly Enriched?

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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.

Ohio

Unjust Enrichment

[CPC Parts Delivery, LLC v. Ohio Bureau of Workers' Comp., Tenth Appellate District Franklin County \(Ohio Ct. App. 2024\)](#)

In this appeal, the Tenth Appellate Court in Franklin County affirmed in part the court of claims order granting summary judgment in favor of the defendant, Ohio Bureau of Workers Compensation, and agreed with the defendant that the plaintiff failed to state a claim for unjust enrichment upon which relief could be granted.

Bullet Point: In Ohio, to establish a claim for unjust enrichment, a plaintiff must demonstrate: (1) a benefit conferred by a plaintiff upon a defendant, (2) knowledge by the defendant of the benefit, and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. The court noted that in order to prevail on an unjust enrichment claim "it is not sufficient for the plaintiffs to show that they have conferred a benefit upon the defendants." A plaintiff must go further and show that under the circumstances, the plaintiff would have "such an equity so that as against them it would be unconscionable for the defendants to retain the benefit."

Certifying Class for Mortgage Release Violation

[Voss v. Loan Servicer, 1st Dist. Hamilton No. C-230065, 2024-Ohio-12.](#)

Recently, the Ohio First District Court of Appeals in Hamilton County affirmed a trial court's order certifying a class of borrowers who assert that a mortgage lender in the state was failing to timely comply with Ohio's statutory requirement to release the mortgage once the note was satisfied.

Bullet Point: Under [Ohio Revised Code 5301.36](#), mortgage lenders operating in the state must release a mortgage from the title to property with the county recorder within 90 days after the note is satisfied. Failure to release the mortgage timely may result in borrowers receiving up to \$250 from the lender. Until April 7, 2023, borrowers making a claim under the statute could recover collectively against a lender in a class action;

however, recent amendments passed in early 2023 now bar class recovery. Here, the appellate court had to determine if an action brought prior to the amendment's effective date barred the plaintiff's class recovery. The court held that no, even with a change in the law, since the certification of the class occurred prior to the effective date of the statutory change barring class recovery for failure to timely release a mortgage, the class should be certified.

Florida

Long-Arm Jurisdiction

Promenade Charters V.I., Ltd. v. Caribbean Insurers Marine Limited, et al., No. 3D22-1324 (Fla. 3d DCA January 3, 2024)

The Third District examined whether an out-of-state defendant breached a contract in the State of Florida such that the underlying action was within the ambit of Florida's long-arm statute, section 48.193, Florida Statutes.

The Bullet Point: Florida's long-arm statute allows a court to obtain personal jurisdiction over an out-of-state defendant who commits certain acts within the state of Florida, such as failing to perform acts required by a contract to be performed within the state. At issue in this appeal is whether the subject contract required payment in the State of Florida such that the appellees' alleged failure to make payment brought the action within the ambit of the long-arm statute. The Third District concluded that the subject contract does not contain any terms requiring payment in Florida and is silent as to the place of payment. Accordingly, the appellant failed to satisfy the requirements of Florida's long-arm statute, and the trial court's dismissal of the action for lack of personal jurisdiction was affirmed.

Breach of Settlement Agreement Damages

Fleetwing Corporation v. David Ricketts, No. 6D23-948 (Fla. 6th DCA January 5, 2024)

The Sixth District concluded that a trial court did not have continuing jurisdiction to adjudicate a plaintiff's claim for breach of a settlement agreement.

The Bullet Point: Where a court incorporates a settlement agreement into a final judgment, the Court has the jurisdiction to enforce the terms of the agreement even if the terms are outside the scope of the remedy sought in the original pleadings. However, the extent of such jurisdiction is limited by the terms of that agreement. Thus, where a party seeks to recover general damages rather than to specifically compel the performance of an obligation of a settlement agreement, a separate suit is required.

This appeal stems from the trial court's final judgment awarding damages to the appellee in connection with his claim for breach of a settlement agreement. The appellant argued that the appellee was required to file a separate lawsuit because he sought general damages, while the appellee contended that the amount awarded

was the amount required to properly perform under the contract. Agreeing with the appellant, the Sixth District concluded that the appellee filed an action seeking general damages. This is because the settlement agreement is silent with respect to damages in the event of a breach of the release provision. Accordingly, the trial court did not have continuing jurisdiction to adjudicate the appellee's claim, and the final judgment was reversed.

Prejudgment Writ of Replevin

[Ryan Kehoe v. Kelly Kehope, et al., No. 2D22-3031 \(Fla. 2d DCA December 27, 2023\)](#)

The Second District examined whether a trial court correctly denied a plaintiff's motion for prejudgment writ of replevin pursuant to Fla. Sta. § 78.068(2).

The Bullet Point: Chapter 78, Florida Statutes, provides an avenue for recovering possession of personal property that is wrongfully detained by another person and any damages sustained by reason of the wrongful taking or detention. Under Fla. Sta. § 78.068(2), a plaintiff may obtain a prejudgment writ of replevin for the limited purpose of obtaining possession of the property before trial in order to secure it against the "danger of destruction, concealment, waste, removal from the state, removal from the jurisdiction of the court, or transfer to an innocent purchaser during the pendency of the action."

This appeal stems from an order denying the appellant's prejudgment writ of replevin to recover certain personal property. The appellant argued that once the trial court determined he was entitled to the return of his personal property, he was entitled to a prejudgment writ of replevin. The Second District disagreed, ruling that the trial court correctly denied the motion for a prejudgment writ of replevin because the appellant failed to meet the statutory requirements to obtain such immediate relief. However, the Court further clarified that the denial of a prejudgment writ is not a final adjudication of the merits of the action, and the appellant still has a right to a trial on the merits of his complaint for ordinary replevin. Accordingly, the trial court's order denying the motion for a prejudgment writ of replevin was affirmed but remanded for further proceedings on the claims in the appellant's complaint.

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