Have I economically coerced my employee? The Bullet Point: Volume 2, Issue 9

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Acosta v. Cathedral Buffet, 6th Cir. No. 17-3427 (April 16, 2018).

The defendant was an Ohio for-profit corporation but does not generate a profit. The U.S. Department of Labor (DOL) began an investigation into the buffet's employment practices. The buffet separated its workers into "employees" and "volunteers." Volunteers performed many of the same tasks as employees. Employees received an hourly wage; volunteers did not. The volunteers were recruited from weekly church services and were coerced into volunteering at the buffet. Eventually the DOL filed a lawsuit against the buffet for violating the Fair Labor Standards Act (FLSA) by how it classified employees versus volunteers. The lower court held that the buffet was not exempt from the FLSA as a religious institution and that the volunteers were actually employees that should have received pay. The buffet appealed, and on appeal, the Sixth Circuit Court of Appeals reversed.

The Sixth Circuit found that to be considered an employee under the FLSA, the individual must have an expectation that he or she will actually receive pay for the work provided. Here, there was no evidence of this; in fact, the evidence established that the volunteers did not depend economically on the buffet.

The Bullet Point: The FLSA mandates that "[e]very employer shall pay to each of his employees who . . . is employed in an enterprise engaged in commerce or in the production of goods for commerce" a minimum wage set by Congress. What constitutes an "employee" under the FLSA has a broad, wide-ranging meaning and is typically determined on a case-by-case basis. As such, to determine whether a worker is an FLSA employee, courts typically look to the economic realities of the business relationship in light of all the relevant factors. However, a threshold question under the FSLA is whether a volunteer expected compensation for the work done. If not, then the person cannot be considered an "employee" within the meaning of the FLSA. As the Sixth Circuit cautioned, however, in some circumstances, a showing of economic coercion might be sufficient to overcome a volunteer's lack of expected compensation and bring her within the protections of the FLSA. Economic coercion could include the employer using its superior bargaining power to its advantage, or whether the volunteer work is being done for a church-affiliated enterprise, as opposed to a for-profit corporation. Spiritual coercion alone cannot substitute for economic coercion in this regard.

Arbor Grove Properties v. Clear Sky Realty, Inc., 5th Dist. Stark No. 2017 CA 00124, 2018-Ohio-1467.

This was an appeal of a denial of a motion to compel arbitration. Plaintiffs initially filed suit against Defendant for allegedly breaching an agreement to manage a number of residential properties. Plaintiffs claimed that Defendant overcharged for maintenance work and failed to properly manage various properties.

Defendant moved to compel arbitration based on an arbitration clause contained in the contract, but the trial court denied the motion and Defendant appealed. On appeal, the Fifth Appellate District affirmed the trial court's decision. In so ruling, the court found that the claims alleged were outside of the scope of the arbitration agreement and that the parties had no contracted to arbitrate the specific claims.

The Bullet Point: Ohio law favors arbitration. However, there is no duty to arbitrate particular disputes where there has been no agreement between parties requiring such disputes to be submitted to arbitration. That being the case, under the doctrine of severability, an arbitration agreement is treated as an independent contract that does not necessarily fail if the remainder of the contract is found invalid. Moreover, courts will sometimes strike a discrete provision of an arbitration provision and enforce the arbitration clause when the claim falls within the scope of the provision and reflects the intent of the parties to arbitrate their claims.

Wells Fargo Bank, N.A. v. Mayo, 6th Dist. Erie No. E-16-007, 2018-Ohio-1432.

This case is an appeal of a foreclosure judgment. The loan required the lender to provide notice of default prior to initiating a foreclosure. Here, the defendant claimed that the notice requirement was not complied with. The trial court disagreed and granted the lender's motion for summary judgment. The defendant appealed, and on appeal, the Sixth Appellate District affirmed, finding that a prior lender's notice of default was sufficient notice for the current lender to foreclose.

The Bullet Point: Under Ohio law, notices of default required by residential loan agreements are considered conditions precedent to foreclosure, meaning the notice must be sent before a foreclosure can be filed. The notice does not have to be sent by the lender seeking to foreclose in order to be valid. In fact, most often the notice of default is sent by the lender's loan servicer on its behalf. In this case, the court found that the notice sent by a prior note holder was sufficient as well because the current holder was in privity with the prior holder.

Wells Fargo Fin. Ohio 1, Inc. v. John Doe, 10th Dist. Franklin No. 17AP-727, 2018-Ohio-1472.

This was an appeal of a partial denial of a motion for default judgment in a foreclosure action. After serving the defendants, the lender moved for default judgment. The trial court granted the motion in part, granting judgment on the promissory note but denying the motion on the lender's request to foreclose on the mortgage, finding that the mortgage was not properly acknowledged by a notary and was therefore invalid under Ohio law. The lender appealed and the Tenth Appellate District reversed.

In so ruling, the Tenth Appellate District noted Ohio law was recently changed and that now, if a mortgage has been recorded for four or more years, any defects in its execution or acknowledgement are automatically cured. Because of this, the court reversed.

The Bullet Point: Previously, an instrument with a defective acknowledgement would only be cured by operation of law after it had been recorded for more than 21 years. The Ohio legislature recently amended this rule to dramatically shorten the time frame to four years.

Mid America Mortgage, Inc. v. Scott, 8th Dist. Cuyahoga No. 1060099, 2018-Ohio-1403.

In this appeal, the appellant, the ex-wife of a mortgage loan borrower, appealed a foreclosure judgment entered against her ex-husband. The ex-husband had executed a note and mortgage to purchase a house. The appellant only executed the mortgage. Eventually, the ex-husband defaulted on the loan, and the lender filed a foreclosure action. The ex-husband never appeared. Instead, the appellant attempted to defend the foreclosure on his behalf, arguing, among other things, that the lender lacked standing to foreclose. Eventually, the trial court granted the lender's motion for summary judgment and appellant appealed.

The Eighth Appellate District affirmed. It found that the appellant, who was not a borrower under the promissory note, lacked standing to contest it or raise arguments on behalf of her ex-husband. And that because she did not execute the note, she "cede[d] the right to raise defenses to the foreclosure action the debtor could have raised."

The Bullet Point: Ohio recognizes the general prohibition on a litigant's raising another person's legal rights. Thus, as in this case, when an individual only executes the mortgage, but not the note, he or she has no grounds to contest a lender's ability to enforce the Note. As the Eighth Appellate District noted, "[t]o recognize otherwise would open the door to two inequitable situations. It would encourage creditors to reassess the common proposition that a nonborrowing, co-mortgagor is not liable for the debt under the note — if the nonborrowing co-mortgagor is entitled to raise the abandoned defenses of the debtor that only arise under the terms of the note and mortgage, then a creditor in turn should be permitted to enforce the debt obligation on the nonborrowing spouse under those same terms. It would also permit the nonborrowing spouse to prevent the sale of the property meant to indemnify the debtor, leaving the borrowing spouse in the position of being financially responsible for the property without the benefit of using the property to mitigate the damages.”