Is a Former Employee Protected by the ADA?

October 20, 2023

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

Trade secrets

***Hanneman Family Funeral Home & Crematorium v. Orians*, Slip. Op. 2023-Ohio-3687.**

In this discretionary appeal, the Ohio Supreme Court clarified what constitutes a trade secret under Ohio's Uniform Trade Secrets Act and confirmed certain tort claims were preempted by the Trade Secrets Act.

The Bullet Point: Ohio's Uniform Trade Secrets Act defines the term "trade secret" as information, including * * * any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Information publicly available would not constitute a trade secret.

Moreover, the Court found that "[s]tatutory language like that in R.C. 1333.67 prevents a plaintiff from merely restating their trade secret claims as separate tort claims." This is regardless of whether the alleged trade secret falls within the meaning of the act.

Unfair and Deceptive Acts Under the CSPA

***Durnell's R.V. Sales Inc. v. Beckler*, 3rd Dist. Logan No. 2023-Ohio-3565.**

In this appeal, the Third Appellate District affirmed the trial court's decision to grant summary judgment to the plaintiff on claims related to the sale and purchase of an R.V. on multiple claims, including one under the Ohio Consumer Sales Practices Act (CSPA).

The Bullet Point: Under the CSPA, "[a]n act or practice is unfair if it is marked by injustice, partiality, or deception, or it results in inequitable business dealings." "Generally, an act or practice is deceptive if it 'has the likelihood of inducing in the mind of the consumer a belief which is not in accord with the facts.'" To be deceptive, the conduct must be both false and material to the transaction. Thus, "[a] matter that is merely incidental to the choices a consumer must make when deciding to engage in the transaction is, therefore, not 'deceptive' within the meaning of the [CSPA] * * *."

HUD Face-to-Face Meeting Requirement

***Bank v. Cicoretti*, 7th Dist. Mahoning No. 2023-Ohio-3599.**

In this appeal, the Seventh Appellate District affirmed the trial court's decision to grant the plaintiff summary judgment on its claim for foreclosure, finding that it was exempt from complying with U.S. Department of Housing and Urban Development (HUD) regulations requiring a face-to-face meeting before filing a foreclosure action and the fact that the prior mortgagee might have been subject to the regulation did not mean plaintiff had to comply with the same.

The Bullet Point: 24 C.F.R. 203.604(b) states: "The mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid." Appellants acknowledge that no face-to-face interview is required if "[t]he mortgaged property is not within 200 miles of the mortgagee, its servicer, or a branch office of either" under the exception found in 24 C.F.R. 203.604(c)(2). Defendants claimed that "mortgagee" includes prior mortgagee of records who have assigned their interest in the underlying loans. The appellate Court disagreed, finding that only the current mortgagee has any loss mitigation duties and that their argument "would render 24 C.F.R. 203.604(b) as nothing more than a bureaucratic delay mechanism rather than as a meaningful part of the larger F.H.A. purpose."

Florida

Americans with Disabilities Act Protections

***Stanley v. City of Sanford*, 2023 U.S. App. LEXIS 2700 (11th Cir. 2023)**

The Eleventh Circuit Rules that the protections included in Title I of the Americans with Disabilities Act (ADA) does not apply to former employees.

The Bullet Point: Title I of the ADA prohibits discrimination in the workplace. It has been designed to address and remove barriers to employment so individuals with disabilities can enjoy the same employment opportunities as people without disabilities.

In *Stanley*, the plaintiff was a firefighter with the City of Sanford for about seventeen years until her disability retirement in 2018. When she retired, she continued to receive free health insurance through the City.

Under a policy in effect when the plaintiff first joined the fire department, employees retiring for qualifying disability reasons received free health insurance until the age of sixty-five.

However, and unbeknownst to the plaintiff, the City changed its benefits plan in 2003. Under the new plan, disability retirees were entitled to the health insurance subsidy for only twenty-four months after retiring.

Plaintiff sued the City under the ADA, the Rehabilitation Act, and the Florida Civil Rights Act, claiming that its decision to trim the health insurance subsidy was discriminatory against her as a disabled retiree. The district court dismissed the case, relying on prior Eleventh Circuit precedent, *Gonzalez v. Garner Food Services, Inc.*, 89 F.3d 1523 (11th Cir. 1996). In *Stanley*, the Eleventh Circuit was deciding whether *Gonzalez* was still good law following a subsequent Supreme Court decision in *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997) and Congress's changes to the text of the ADA.

Ultimately, the Eleventh Circuit affirmed the district court's decision, ruling that *Gonzalez* was still good law.

The ADA defines a "qualified individual with a disability" as someone "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." While the ADA protects against discrimination in fringe benefits, these benefits have always been recognized as one example of a term, condition, or privilege of employment. Because the ADA prohibits discrimination only as to those individuals who hold or desire to hold a job, a former employee cannot bring suit under Title I of the ADA to remedy discrimination in the provision of post-employment fringe benefits.

The Eleventh Circuit also noted that there is a circuit split regarding this issue.

Failure to Plead Avoidances

***Green Gables Apts. v. AHG Tax Credit Fund Xvii*, 2023 Fla. App. LEXIS 7068 (Fla. 5th Dist. 2023)**

The Fifth District affirmed a circuit court order granting summary judgment and wrote to address the importance of Florida's pleading rules regarding avoidances.

The Bullet Point: On appeal, the appellant argued several avoidances (including lack of prejudice, waiver, and modification) to the appellees' affirmative defenses, but the appellant failed to previously plead these avoidances as required under Fla.R.Civ.P. 1.110(d). Because these issues were not properly pled as avoidances, nor tried by consent at the hearing, the appellate court was not permitted to consider these issues on appeal.

---

view previous issues

Related people

Joseph A. Apatov

Jim Sandy

Chase Stoecker