

# Is my Agreement Ambiguous?

November 10, 2020

Challenges to Arbitration Award

*Hughes v. Hughes*, 10th Dist. Franklin No. 19AP-865, 2020-Ohio-5026

In this appeal, the Tenth Appellate District affirmed the trial court's decision and confirmed an arbitration award.

- **The Bullet Point:** As Ohio law strongly encourages the resolution of disputes through arbitration, it strictly limits judicial review of arbitration awards. Under R.C. 2711.13, a party has only three months after an arbitration award is issued to: 1) file a motion in the court of common pleas for an order vacating, modifying, or correcting the award, and 2) serve the opposing party. On the other hand, a party has up to one year after an arbitration award is issued to apply to the court for an order confirming the award. R.C. 2711.09. This statutory language is mandatory, and the court must confirm an arbitration award unless there is a pending motion to vacate, modify, or correct the award. Moreover, the court isn't required to conduct a hearing before confirming an arbitration award.

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Parol Evidence

*Patel v. Strategic Group, L.L.C.*, 8th Dist. Cuyahoga No. 109043, 2020-Ohio-4990

In this appeal, the Eighth Appellate District affirmed in part and vacated in part the trial court's decision, finding that because the terms of the purchase agreement were ambiguous, the court properly considered parol evidence to establish the parties' mutual understanding and agreement.

- **The Bullet Point:** When interpreting a contract, Ohio courts review the contract as a whole and presume the language accurately reflects the parties' intent. When the language is plain and unambiguous, the contract terms are enforced as written and courts do not look beyond the four corners of the document to interpret its meaning. Conversely, Ohio courts do look to outside evidence to interpret the parties' intentions when the contract terms are unclear or ambiguous. Contract terms are ambiguous where their meanings are "reasonably susceptible to multiple interpretations" or explanations. In such cases, courts allow parol evidence to be introduced solely to explain or interpret the intentions of the parties, not to contradict the contract terms. As the court found the purchase agreement terms to be ambiguous, parol evidence was properly introduced to clarify the parties' mutual understanding.

## Interpreting Cognovit Notes

### *Sutton Bank v. Progressive Polymers, L.L.C., 2020-Ohio-5101*

In this appeal, the Supreme Court of Ohio reversed the lower court's decision and reinstated the trial court's cognovit judgment, determining that the literal interpretation of the cognovit note terms was contrary to the intent of the parties.

- **The Bullet Point:** Under Ohio law, a cognovit note enables a creditor to obtain an immediate judgment against a defaulting debtor without providing prior notice or an opportunity to be heard. Instead, the cognovit note's warrant of attorney authorizes an attorney to act on behalf of the debtor to confess judgment against the debtor. Because a warrant of attorney has such extraordinary authority to confess judgment, Ohio courts require a specific warning to appear on the cognovit note to clearly notify debtors of the warrant of attorney. R.C. 2323.13(D). Moreover, Ohio courts strictly construe cognovit note terms against those seeking to enforce them, and "court proceedings based on such warrants must conform in every essential detail with the statutory law governing the subject." That being said, while the traditional rules of contract interpretation apply to cognovit notes, courts still must give effect to the clear intent of the parties when interpreting cognovit notes. As explained by the Supreme Court, traditional interpretation rules must yield to the intent of the parties, and "a contract will not be interpreted literally if doing so would produce absurd results in the sense of results that the parties, presumed to be rational persons pursuing rational ends, are very unlikely to have agreed to seek". In this case, as the literal interpretation of the disputed warrant of attorney terms would have exchanged the parties waiving their rights, the Court refused to apply the terms as written and instead construed the warrant of attorney according to the parties' intent.

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## Enforceable Agreements

### *Aceste v. Stryker Corp., 6th Dist. Lucas No. L-19-1166, 2020-Ohio-4938*

In this appeal, the Sixth Appellate District reversed the trial court's decision, holding that by making a counteroffer, the plaintiffs rejected the defendants' offer and no settlement agreement was reached.

**The Bullet Point:** To succeed on a motion to enforce a settlement agreement, the moving party must demonstrate that a valid settlement agreement exists with reasonably certain and clear terms. There is no requirement that the settlement agreement be in writing, but there must be evidence establishing enforceable terms of an oral agreement. As the court succinctly noted, it "cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract." Regardless of whether the settlement agreement was oral or in writing, the moving party must prove the existence of an offer and an acceptance of that same offer. Stated differently, once negotiating parties reject an offer or make a counteroffer, the original offer is "off the table" and no settlement agreement has been reached for the court to enforce. As the court determined the plaintiffs responded to the defendants' offer with a counteroffer, the parties failed to enter into a binding settlement agreement and the motion to enforce was denied.

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