

Is my arbitration agreement unconscionable? The Bullet Point: Volume 3, Issue 3

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Forum Non Conveniens

***All Pro Freight Sys., Inc. v. Walker*, 9th Dist. Lorain No. 18CA011337, 2019-Ohio-321.**

This appeal involved a venue challenge. The plaintiff, an Ohio corporation with its principal place of business in Lorain, Ohio, filed suit against the defendant for breach of contract. The defendant and his company were residents of the state of North Carolina. The parties had contracted to do business together operating a cargo carrier and messenger service. As part of the agreement, the plaintiff loaned the defendant \$50,000 for a software application. The defendant accepted the money then failed to provide the software application and plaintiff ultimately sued.

In response to the lawsuit, the defendant moved to transfer the venue to North Carolina. The trial court ultimately granted the motion and plaintiff appealed. On appeal the Ninth Appellate District reversed, finding that the trial court erred in applying the doctrine of forum non conveniens.

The Bullet Point: “The doctrine of forum non conveniens....assumes that proper jurisdiction and venue lie in the court the plaintiff has chosen, but that there is also another forum in which the defendant may be sued.” It is within the court’s sound discretion to apply the doctrine and should “be employed pursuant to the inherent powers of such court to achieve the ends of justice and convenience of the parties and witnesses.” “[T]he determination must be based on a balancing of all relevant public and private factors, including the ease of access to evidence including witnesses, the local interest in having local controversies decided at home, and the appropriateness of litigating in a forum familiar with the applicable law.” The party challenging venue bears the burden to prove all of these factors.

Probate Court Jurisdiction

Wiggins v. Safeco, 2d Dist. Montgomery No. 28163, 2019-Ohio-312.

This was an appeal of a probate court's decision to dismiss a declaratory judgment lawsuit related to an insurance policy for lack of subject matter jurisdiction. The plaintiff's wife passed away and he was appointed the administrator of her estate in probate court. While the estate was probated, fire damaged the couple's home. The home was titled in the wife's name and there were two insurance policies covering the home for any loss. One policy was solely in the wife's name. During the probate action, the husband took out another policy in his name. That policy contained an "other insurance" clause which stated that if loss was covered by another policy, the insurance company would only pay its proportionate share of the loss. The defendant explained this to the plaintiff but plaintiff ultimately sued in probate court for declaratory judgment, seeking an order declaring the parties' rights and responsibilities under the insurance policy.

The insurance company moved to dismiss, arguing the probate court lacked subject matter jurisdiction over the plaintiff's claims. The probate court agreed and dismissed the action. Plaintiff then appealed. The Second Appellate District affirmed, finding that the probate court had no subject matter jurisdiction over the claims asserted by the plaintiff.

The Bullet Point: Under Ohio law, a "probate court is a court of limited jurisdiction. The court has only that jurisdiction which is granted by statute and by Constitution." In very limited circumstances, a probate court has concurrent jurisdiction with the common pleas court over certain matters, but not over a declaratory judgment as the plaintiff sought. Rather, "[s]tatutes which create a declaratory judgment procedure do not extend the jurisdiction of the subject matter of a court but rather extend the power of the court to grant declaratory relief within its respective jurisdiction. In other words, declaratory judgment statutes provide an additional remedy which may be granted by a court but they do not extend the jurisdiction as to the subject matter upon which a court may act." The probate court has "jurisdiction when a justiciable dispute arises with respect to duties related to the administration of the estate." It follows, then, that "[i]n determining whether a declaratory judgment action is properly before the probate court, the primary question is whether the matter is related to the administration of the estate."

Unconscionability

Jones v. Carrols, L.L.C., 9th Dist. Summit No. 28918, 2019-Ohio-211.

This was an appeal of the trial court's decision to grant a motion to compel arbitration and stay of proceedings pending arbitration. The plaintiff was an employee of Burger King. He eventually was promoted to shift supervisor. Around this time the franchisee employed a mandatory arbitration policy that required employees to arbitrate nearly all claims. The franchise did not require existing employees to sign the arbitration policy. Instead, it was distributed to all current employees via a memorandum which stated that by reporting to work after August 1, 2006, the employees agreed and consented to the arbitration policy. The plaintiff was ultimately

fired and then filed suit for various employment related claims. The defendants moved to compel arbitration and the plaintiff opposed, arguing, among other things, that he never agreed to the arbitration policy.

The trial court disagreed and granted the motion to compel. The plaintiff appealed and on appeal the Ninth Appellate District affirmed, finding that the arbitration policy was not unconscionable and did not violate public policy.

The Bullet Point: Unconscionability consists of two separate concepts: (1) unfair and unreasonable contract terms, i.e., substantive unconscionability; and (2) ‘an absence of meaningful choice on the part of one of the parties[,]’ i.e., procedural unconscionability.” Both must be proven to invalidate an arbitration provision. “Procedural unconscionability concerns the formation of the agreement, and occurs where no voluntary meeting of the minds was possible.” When determining procedural unconscionability, a reviewing court considers “factors bearing on the relative bargaining position of the parties, including age, education, intelligence, business acumen, experience in similar transactions, whether the terms were explained to the weaker party, and who drafted the contract.” Generally, no one factor alone determines whether a contract is procedurally unconscionable. Substantive unconscionability, in turn, “encompasses those factors which concern the contract terms themselves, and the issue of whether these terms are commercially reasonable.” An arbitration agreement is considered substantively unconscionable when it is so one-side as to “oppress or unfairly surprise a party.”

Default Judgement

Chuparkoff v. Ohio Title Loans, 9th Dist. Summit No. 29008, 2019-Ohio-209.

This was an appeal of a trial court’s decision awarding damages in part after granting default judgment. The plaintiff filed suit against the defendant, alleging that it trespassed on his property and stole valuables from his vehicle. The plaintiff sought compensatory and punitive damages. Eventually the plaintiff moved for default judgment against the defendant and the motion was granted. A hearing was then held on damages. The magistrate awarded no compensatory or punitive damages. The plaintiff filed objections to the magistrate’s decision and the trial court sustained them in part, awarding nominal damages in the amount of \$10.00 but declining to consider the request for punitive damages.

On appeal the Ninth Appellate District reversed in part, finding that the record supported a finding of nominal damages but that the court erred in not considering the request for punitive damages.

The Bullet Point: When default judgment is granted against a party, it triggers the potential recovery of punitive damages. Indeed, “following the entry of default judgment, all that remained was a damages hearing in order for the trier of fact to determine the amount of damages, if any.” Even if no actual damages are recovered, the trial court should still consider whether punitive damages are appropriate.