Is My Cure Offer under the Consumer Sales Practices Act Timely?

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Timing of Cure Offer

Norman v. Kellie Auto Sales, Inc., 10th Dist. Franklin No. 18AP-32, 2020-Ohio-4311

On application for reconsideration, the Tenth Appellate District vacated its original decision and affirmed the trial court's decision, finding that a statutory cure offer under the Ohio Consumer Sales Practices Act (CSPA) that was made after arbitration ended could not be the basis for vacating or modifying an arbitration award.

The Bullet Point: The CSPA permits a party to make a statutory cure offer only after a consumer has commenced an action alleging a violation of the statute. R.C. 1345.092(A). That being said, nothing in the CSPA prevents a supplier from making an offer to cure before an action formally begins or before arbitration occurs. The court's ruling highlights the importance of making an early offer to cure and underlines the dangers of waiting until after the parties engage in arbitration. Specifically, a supplier who waits to make a cure offer until after arbitration is completed will be prevented from using the CSPA cure provisions to later reduce the arbitrator's award. That is because a court's jurisdiction to review arbitration awards is statutorily restricted, narrow, and limited under both the Federal Arbitration Act and Ohio's Arbitration Act, R.C. Chapter 2711. Under R.C. 2711.11(A), a trial court is authorized to modify an arbitration award only if "there was an evident material miscalculation of figures ***." The court noted that an arbitrator's powers and authority end once its award is issued, so an arbitrator is unable to consider a supplier's cure offer that is made after arbitration ends. As such, a trial court cannot find that an arbitrator erred in failing to consider the CSPA cure provisions and reduce or modify the arbitration award if a supplier waits to make a cure offer until after the award is issued.

Valid Legal Tender

Williams v. City of Dayton Water, 2d Dist. Montgomery No. 28686, 2020-Ohio-4332

In this appeal, the Second Appellate District affirmed the trial court's decision, agreeing that the plaintiff's self-prepared international bills of exchange drawn on the United States Treasury are not valid legal documents or tender.

The Bullet Point: Ohio courts and courts throughout the country have uniformly rejected arguments that self-prepared bills of exchange created under the so-called 'Redemptionist' theory are valid legal tender to payoff debts. On the contrary, such documents are not negotiable instruments and are not valid forms of payment. As the court succinctly summarized, such bills of exchange supposedly drawn on treasury accounts are no more than "**worthless pieces of paper**."

Excusable Neglect

Russell v. McDonalds Inc., 8th Dist. Cuyahoga No. 109112, 2020-Ohio-4300

In this appeal, the Eighth Appellate District affirmed the lower court's decision, finding that the corporation failed to demonstrate excusable neglect that the summons and complaint were not forwarded to the appropriate party.

The Bullet Point: One way to obtain relief from judgment under Ohio law is to demonstrate an entitlement to relief due to mistake, inadvertence, surprise or excusable neglect. Civ.R. 60(B)(1). With regards to a corporation, relief from a default judgment may be granted on the basis of excusable neglect when service is properly made on a corporation but a corporate employee fails to forward the summons and complaint to the appropriate person and, in so doing, fails to follow company policy and procedures for handling service of process. A corporation can provide sufficient proof of excusable neglect with an affidavit that establishes the following: "(1) that there is a set procedure to be followed in the corporate hierarchy for dealing with legal process, and (2) that such procedure was, inadvertently, not followed until such time as a default judgment had already been entered against the corporate defendant." However, a corporation who lacks such a procedure in the first place will not be excused for its inaction and failure to respond when properly served.

Exceptions to Public Records Request

McDougald v. Greene, Slip Opinion No. 2020-Ohio-4268

In this mandamus case, the Supreme Court of Ohio denied the petitioner's writ, finding that the requested documents fell under the security-records exception of the Public Records Act.

The Bullet Point: Under Ohio's Public Records Act, a public office is required to make copies of public records available to any person on request and within a reasonable period of time. R.C. 149.43(B)(1). Nevertheless, not all public records are subject to disclosure and the Public Records Act contains several exceptions. One exception is infrastructure records, which include "any record that discloses the configuration of critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of a building." R.C. 149.433(A). Another exception to the Public Records Act is security records. Under R.C. 149.433(A)(1), security records include "[a]ny record that contains information directly used for protecting or maintaining the security of a public office

against attack, interference, or sabotage." The Court analyzed the petitioner's request, and determined that it was clear from the face of the documents that the security-records exemption applied. Specifically, the Court noted that "one need not be too creative to see how this is information that could be used to plan an escape or an attack on the prison or to aid in the smuggling in of contraband."

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