Is my interest in a deed subject to the Stranger Rule?

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Compulsory Counterclaims to foreclosure

Helfinstine v. Wells Fargo Bank, NA, 9th Dist. Summit No. 29551, 2020-Ohio-4675

In this appeal, the Ninth Appellate District affirmed the trial court's decision, agreeing that the borrower's counterclaims were compulsory as they were logically related to the lender's claim in the foreclosure action and were required to have been raised in the prior foreclosure.

The Bullet Point: Compulsory counterclaims are claims that exist at the time the defendant was served and that arise out of the "same transaction or occurrence that is the subject matter of the opposing claim." Ohio courts apply a broad and flexible meaning to the phrase "same transaction or occurrence" to determine whether claims are compulsory counterclaims. Using the "logical relation" test, counterclaims arise out of the same occurrence and are compulsory if litigating each of the claims separately would involve a substantial duplication of effort and time. This logical relation test does not require the claims to be identical, and does not exclude counterclaims that include additional allegations. On the contrary, claims are compulsory under this test if they involve many of the same factual or legal issues, or where they are "offshoots of the same basic controversy." A clear example is a borrower's breach of contract counterclaim to a foreclosure action, as both claims involve the alleged breach of the same note and mortgage. Even further, although a borrower's trespass and conversion claims sound in tort, these counterclaims are also compulsory as they involve the same note and mortgage that are the subject of the foreclosure. Under Civ.R. 13(A), compulsory counterclaims must be asserted or forever barred. As such, a borrower who fails to assert his compulsory counterclaims in a foreclosure action will be prevented from later asserting those claims.

The "Stranger Rule"

Smith v. Collectors Triangle, Ltd., 7th Dist. Harrison No. 19 HA 0010, 2020-Ohio-4823

In this appeal, the Seventh Appellate District reversed and remanded the trial court's decision finding that the plaintiffs were not strangers to a deed, and were therefore bound by it and not exempt under the *Stranger Rule*.

The Bullet Point: Pursuant to Ohio's *Stranger Rule*, third parties who are neither the grantor nor the grantee in a deed are considered 'strangers' to the deed. Under this long-standing rule, a reservation in a deed is something "issuing from or coming out of the thing granted," and must be to the grantor and not to a stranger. Simply stated, deeds cannot create title or reserve interests in a stranger's favor. That being said, there is an exception to the *Stranger Rule* that occurs when an interest is conveyed to a third party before a deed is executed. As the court explained, if the grantor conveys an interest to a third party and subsequently executes a deed to the grantee, the third party is not a stranger because its interest was conveyed prior to the deed. As the third party is not a stranger to the deed, its pre-existing rights are not subject to the *Stranger Rule*.

Adverse Possession

Hampton v. Lively, 4th Dist. Lawrence No. 19CA9, 2020-Ohio-4713

In this case, the Fourth Appellate District reversed and remanded the trial court's decision, determining that the buyers adversely possessed the property, even though they initially took possession pursuant to a sales contract after paying the purchase price and treating it as their own.

The Bullet Point: It has long been held in Ohio that to acquire title to real property by adverse possession, "a party must prove, by clear and convincing evidence, exclusive possession and open, notorious, continuous, and adverse use for a period of twenty-one years." Adverse use is non-permissive use, and this element is satisfied with evidence that the claimant possessed the property and treated it as her own. Notably, a claimant-buyer may prove adverse use even when the owner initially gave her permission to possess the property pursuant to a sales contract. As the court explained, permissive use pursuant to a sales contract may be considered adverse once the buyer takes possession after paying the purchase price but the seller fails to convey title. This is because the buyer manifests an intent to treat the property as her own and the buyer's performance of paying the purchase price and taking possession triggers the seller's duty to convey legal title.

Business Records Authentication

HS Fin. Group, LLC v. Hinchee, 2d Dist. Greene No. 2019-CA-67, 2020-Ohio-4765

In this appeal, the Second Appellate District reversed and remanded the trial court's decision, finding that the debt collector failed to properly authenticate the records used to obtain summary judgment in the case.

The Bullet Point: Prior to admitting documents under Evid.R. 803(6)'s business records exception, the testifying witness must first properly authenticate them. Specifically, the testifying witness must "possess a working knowledge of the specific record-keeping system that produced the documents and be able to vouch from personal knowledge of the record-keeping system that such records were kept in the regular course of business." In addition, the witness must testify as to the "regularity and reliability of the business activity involved in the creation of the record."

Ohio courts utilize different authentication requirements for admitting "adoptive" business records, that is, business records created by a third party, such as a predecessor-in-interest, that have been incorporated into the business records of the assignee and relied upon in its own business dealings. In mortgage-foreclosure cases, Ohio courts admit adopted business records "even when the proffering party is not the maker of the document, if the other requirements of Evid.R. 803(6) are met and the circumstances suggest that the record is trustworthy." This less stringent authentication requirement is utilized due to the fact that the assignee relied on the accuracy of the third-party records and incorporated them into its own business dealings. As such, the circumstances surrounding the third-party records indicate their trustworthiness.

On the other hand, Ohio courts have begun to employ a stricter authentication requirement for admitting adopted business records in debt-collection cases. In such cases, the assignee must prove that the adopted business records on which it seeks to rely as its business records were first business records created and maintained by its predecessor in the course of its predecessor's regularly conducted business. As the court noted, this stricter authentication requirement is justified in debt-collection cases due to the nature of the business. As it is the business of debt collectors to collect on a debt, the predecessor's business records are not relied upon by debt collectors in their own business endeavors.

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