

# Is My Unsigned Settlement Enforceable? The Bullet Point: Volume 2, Issue 25

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*The Bullet Point is a biweekly update of recent, unique, and impactful cases in Ohio state and federal courts in the area of commercial litigation.*

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## Tort Damages Cap

### ***Wayt v. DHSC L.L.C., Slip. Op. No. 2018-Ohio-4822.***

This jurisdictional appeal to the Ohio Supreme Court raised the question as to whether the statutory cap for damages for noneconomic loss found under Revised Code 2315.18(B)(2) applies to compensatory damages awarded for a defamation claim.

Plaintiff was a nurse who was terminated following an investigation for neglect of duties and falsification of a medical record by the hospital where she worked. Thereafter, her boss sent a complaint to the Ohio Board of Nursing accusing the plaintiff of engaging in patient neglect. At the same time, plaintiff's union filed charges against the hospital claiming that it had refused to bargain with the union and plaintiff had been terminated because of her involvement with the union. The union was ultimately successful in getting the complaint rescinded and in restoring plaintiff's job. However, when plaintiff returned to her position, a hospital employee stated, in front of several nurses, that plaintiff was not a good nurse, nor did she deserve to regain her position.

Plaintiff filed suit for defamation. Ultimately, a jury found that she had been defamed and awarded her \$800,000 in compensatory damages and \$750,000 in punitive damages. Defendant then filed a post-judgment motion asking the trial court to apply the cap on non-economic damages set forth in Revised Code 2315.18(B)(2). The court refused, stating that the cap did not apply to injuries to reputation.

The hospital appealed and ultimately the Ohio Supreme Court held that the cap on non-economic damages found at Revised Code 2315.18(B)(2) did in fact apply to defamation claims.

**The Bullet Point:** R.C. 2315.18(A)(7) provides: " 'Tort action' means a civil action for damages for injury or loss to person or property." R.C. 2315.18(B)(2) provides that the maximum noneconomic damages that can be awarded to a plaintiff in a tort action is \$250,000, barring certain exceptions that do not apply here. The term "property"

does not include reputation. However, under Ohio law, it is well-settled that defamation is an injury to a person and thus this type of claim falls within the cap of non-economic damages found at R.C. 2315.18(B)(2).

## RESPA Recovery

### *Lewis v. PNC Bank, N.A., No. 3:17-cv-220, 2018 WL 6249989 (S.D. Ohio Nov. 29, 2018).*

This case involved claims against a loan servicer for alleged violations of the Real Estate Settlement Procedures Act (RESPA). The plaintiff alleged that he had sent several letters to the loan servicer seeking information on his mortgage loan but that the loan servicer failed to timely or properly respond. As a result, plaintiff brought suit in federal court alleging various RESPA violations.

Ultimately, the loan servicer moved for summary judgment arguing, among other things, that even if it violated RESPA, the plaintiff has no actual recoverable damages. The District Court agreed and ultimately awarded summary judgment to the loan servicer.

**The Bullet Point:** Recovery under RESPA requires more than establishing a violation; a plaintiff also must suffer actual, demonstrable damages that occurred “as a result of” that specific violation. As many courts have noted, “the costs incurred while preparing a qualified written request for information from a servicer cannot serve as a basis for damages because, at the time those expenses are incurred, there has been no RESPA violation.” Indeed, to hold otherwise would negate the requirement that a litigant must have actual damages to pursue a RESPA claim, as damages would be considered “built-in” to the claim itself.

## Motion to Enforce Settlement

### *Rayco Manufacturing, Inc. v. Murphy, Rogers, Sloss, & Gambel, 8th Dist. Cuyahoga No. 106714, 2018-Ohio-4782.*

This was an appeal of the trial court’s decision to grant a motion to enforce a settlement agreement in a legal malpractice action. Plaintiff had filed a lawsuit against his former attorneys based on their handling of a breach of warranty case for plaintiff. The parties spent substantial time mediating the case. During these conversations plaintiff continued to demand payment in the amount of \$3,050,000 to resolve the case. Eventually, defendants acquiesced and agreed to pay \$3,050,000 to settle the case in the aggregate on behalf of all defendants. Thereafter, the parties advised the court that a settlement in principal had occurred and began trading versions of the written settlement. Unfortunately, plaintiff ultimately never signed the settlement and defendants moved to enforce the agreement.

Plaintiff opposed, arguing, among other things, that there was no settlement because its \$3,050,000 demand had “lapsed,” and correspondence reiterating that number were not offers, but merely evidenced an intent by plaintiff to re-open settlement negotiations. An evidentiary hearing was held before an advisory jury. Ultimately the advisory jury found that the parties had entered into a settlement agreement. The trial court thereafter granted the motion to enforce and plaintiff appealed.

On appeal, the Eighth Appellate District affirmed the decision to grant the motion to enforce settlement, finding that the parties had entered into an agreement to resolve the case.

**The Bullet Point:** A settlement agreement is a contract designed to terminate a claim by preventing or ending litigation. Like any other contract, it requires an offer, acceptance, consideration, and mutual assent between two or more parties with the legal capacity to act. This also requires a meeting of the minds on the “essential terms” of the agreement which must be reasonably certain and clear. However, once a settlement offer has been accepted, the settlement agreement is mutually binding; the settlement agreement cannot be set aside simply because one of the parties later changes its mind. Likewise, if a client authorizes its attorney to negotiate a settlement and the attorney negotiates a settlement within the scope of that authority, the client is bound by it.

## Laches and Estoppel

### *U.S. Bank N.A. v. Mitchell*, 2d Dist. Montgomery No. 27984, 2018-Ohio-4887.

This was an appeal of a trial court’s decision to grant a lender summary judgment in a foreclosure action. The defendant claimed the lender was estopped from foreclosing because it sat on its rights and should not be permitted to foreclose. The trial court disagreed and the defendant appealed.

On appeal, the Second Appellate District affirmed, finding that neither laches nor estoppel defenses were established by the defendant, thus they did not apply in the case to defeat summary judgment.

**The Bullet Point:** Laches and estoppel are affirmative defenses. To establish laches, a defendant must show: (1) conduct on the part of the defendant \* \* \* giving rise to the situation of which complaint is made and for which the complainant seeks a remedy (2) delay in asserting the complainant’s rights, the complainant having had knowledge or notice of defendant’s conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant. Laches is an “acquiescence in the assertion of adverse rights and undue delay on complainant’s part in asserting his own, to the prejudice of the adverse party.” Further, the party asserting the defense must demonstrate that the prejudice is material to the claim, and it “may not be inferred from a mere lapse of time.”

Similarly, in order to prevail on an estoppel defense, a defendant must show (1) that the plaintiff made a factual representation, (2) that the representation was misleading, (3) that defendant acted in good faith reliance on that misrepresentation, and (4) that his reliance had a detrimental result.

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