

Is One Text Message Enough?

July 31, 2023

McGlinchey's Commercial Law Bulletin is a biweekly update of recent, unique, and impactful cases in state and federal courts in the area of commercial litigation.

Ohio

Vacating an Arbitration Award

[Lorain v. Fraternal Order of Police, Lodge No. 3, 9th Dist. Lorain No. 22CA011903, 2023-Ohio-2431.](#)

In this appeal, the Ninth Appellate District affirmed the trial court's decision to vacate an arbitrator's award.

The Bullet Point: Ohio's Arbitration Act strongly favors arbitration. Because of this, Ohio's Arbitration Act limits the jurisdiction of a court once an arbitration has been conducted. It also limits the grounds for vacating an arbitrator's award. R.C. 2711.10(D) provides that an award may be vacated if "[t]he arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the matter submitted to them was not made." Reviewing courts are thus limited in their role to a determination of whether an award draws its essence from the relevant contract or whether the award is unlawful, arbitrary, or capricious. Ultimately, if there is a good-faith argument that an arbitrator's award is authorized by the contract that provides the arbitrator's authority, the award is within the arbitrator's power. Conversely, "[a]n arbitrator exceeds his power when an award fails to draw its essence from the agreement of the parties."

Contract Interpretation

[Daily Services, LLC v. Transglobal, Inc., 10th Dist. Franklin No. 22AP-656, 2023-Ohio-2462.](#)

In this appeal, the Tenth Appellate District reversed the trial court's decision to grant the plaintiff summary judgment in part because of an improper application of a contract the court found was properly terminated.

The Bullet Point: When reviewing a contract, a court's primary role is to ascertain and give effect to the intent of the parties. " 'The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement.' " To determine the parties' intent in the language of the contract, a reviewing court must read the contract as a whole and give effect, when possible, to every provision in the agreement. A contract that is, by its terms, clear and unambiguous requires no interpretation or construction and will be given the effect called for by its plain language. When the terms in an existing contract are clear and unambiguous, a court

cannot create a new contract “by finding an intent not expressed in the clear language employed by the parties.” Conversely, a contract is considered ambiguous if the language is “unclear, indefinite, and reasonably subject to dual interpretations or is of such doubtful meaning that reasonable minds could disagree as to its meaning.” In this situation, courts can consider extrinsic evidence to determine the intent of the parties.

Presentment of Claim

Maplewood at Chardon, LLC v. Stinn, 11th Dist. Geauga No. 2023-G-0005, 2023-Ohio-2539.

In this appeal, the Eleventh Appellate District found that a creditor of an estate properly and timely submitted a claim against the estate.

The Bullet Point: Under Ohio probate law, “all creditors having claims against an estate, including claims arising out of contract, * * * shall present their claims[,] * * * [a]fter the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination, * * * [t]o the executor or administrator in a writing.” R.C. 2117.06(A)(1)(a)2. “[A]ll claims shall be presented within six months after the death of the decedent, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period.” R.C. 2117.06(B). “[A] claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties.” There is no requirement that a creditor deliver its claim by ordinary mail, the executor actually received the claim, or a copy of the claim be filed with the probate court. Rather, the presentment of a claim by filing it with the probate court or in a writing actually received by the executor or administrator are alternative forms of presentment provided for by the statute. See R.C. 2117.06(A)(1)(b) and (c).

Under R.C. 2117.06(A)(1)(a), “[c]laims need only be ‘in a writing’ and ‘presented’ to the ‘executor or administrator’ within the statutory time in R.C. 2117.06(B).” “No strict form requirements are imposed for the presentment of claims to an executor.”

Florida

Concrete Harm

Drazen v. Godaddy.com, LLC, No. 21-10199 (11th Cir. July 24, 2023)

The Eleventh Circuit concluded that plaintiffs who received a single unwanted telemarketing text message suffered a concrete injury.

The Bullet Point: To establish standing in federal court, among other things, a plaintiff must have experienced an injury-in-fact. This ensures the plaintiff has a concrete stake in the lawsuit that can be redressed. In this en

banc opinion, the Eleventh Circuit concluded that the receipt of an unwanted text message causes a concrete injury, reasoning that the harm from receiving such a text message shares a close relationship with the harm underlying the tort of intrusion upon seclusion. In reaching its conclusion, it focused on whether the harm was similar to that of intrusion upon seclusion, irrespective of whether there is a difference in the degree of harm. The court found that both harms represent an intrusion into peace and quiet in a realm that is private and personal. In the opinion, the court distinguished its previous *Hunstein* decision where the court found an absence of standing, with the distinction being that an element of the closely related claim in *Hunstein* required communication to the public at large, which was entirely absent. Note that in concluding a single unwanted text message confers standing in the TCPA class action, the actual receipt of that text message was not in dispute.

Enforcement of a Construction Lien

[WB's Septic & Sitework, Inc. No. 1D21-3533 \(Fla. 1st DCA July 5, 2023\)](#)

The First District ruled that a construction lien may be attached to land based on contracts entered into by an agent of the landowner.

The Bullet Point: Pursuant to Fla. Stat. § 713.10, a construction lien extends to the right, title, and interest of the person who contracts for the improvements to the property. At issue in this appeal is whether a construction lien under section 713.10 may be attached to a property owner's land based on contracts entered into by the agent of the property owner. The First District concluded that it can, noting that no language in chapter 713 specifically bars an agency argument. However, the fact that an owner was present or aware of an improvement being made is not enough to subject the owner's interest to a lien or put the owner in privity with the plaintiff. The plaintiff must prove all the elements of an agent-principal relationship exist. Accordingly, the First District ruled that the construction lien could not attach in this case because the plaintiff failed to satisfy its burden of proving an agency relationship exists.

[view previous issues](#)

Related people

Joseph A. Apatov

Jim Sandy

Alyssa Weiss