The Bullet Point – Volume I, Issue 1

February 28, 2017

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.

Harris v. TransAmerica Advisors Life Ins. Co., 6th Dist. Lucas No. L-15-1252, 2017-Ohio-341.

In this case, the plaintiffs claimed that an insurance company improperly calculated the death benefit following their mother's death. Plaintiffs sued the insurance company for bad faith and breach of contract but the trial court ultimately granted judgment in favor of the insurance company finding that the insurance company had performed as required under the contract. The plaintiffs appealed and the Sixth Appellate District agreed with the trial court. The Sixth Appellate District found that the insurance company was not at fault because it calculated the death benefit under the formula outlined in the contract which required it to "determine the variable insurance amount as of the date of the decedent's death, compare[] it to the face amount, and [pay] the higher of the two values." Because this language was clear and unambiguous, the court declined to consider documents outside of the contract itself to determine if the insurance company had properly performed.

The Bullet Point: Follow the terms and conditions in your contracts to a "T" because when those terms are clear, courts will not look outside the four corners of the contract to determine if the parties' performance as required under the contract.

Multibank 2009-1 CML-ADC Venture, LLC v. South Bass Island Resort, Ltd. et. al., 6th Dist. Erie No. E-15-061, 2017-Ohio-344.

This was an appeal of a bench trial which found that the defendant had personally guaranteed a 20+ million dollar loan. One issue on appeal was whether the defendant had waived his right to a jury trial. Contained within the loan guaranty was the following contract term: "[t]he Guarantor hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to any of the loan documents." The trial court found, and the Sixth Appellate District agreed, that this language was clear and unambiguous and that the defendant had waived his right to a jury by signing a waiver contained in a loan guarantee.

The Bullet Point: Parties can contract for many things, including the waiver of a right. Because of that, make sure you read what you sign or you just might have waived your rights!

Javorsky v. Javorsky, 8th Dist. Cuyahoga No. 103896, 2017-Ohio-285.

This was an appeal of a trial court's decision to grant a third party's motion to compel arbitration. The appellant argued that she did not sign the contract or arbitration provision and could not be required to arbitrate her claims. The Eighth Appellate District disagreed. The general rule is that a non-party to a contract containing an arbitration clause cannot be forced to arbitrate his or her claims. There are exceptions to this general rule, including under a theory of estoppel. This exception occurs when the non-signatory obtained some benefit from the contract that contains the arbitration clause such that acceptance of that benefit would also require acceptance of the contract obligations, including the arbitration clause. In this case, the Eighth Appellate District found that under a theory of estoppel, the appellant was bound by the arbitration clause because she expressly sought and obtained funds from the IRA account at issue. In other words, once the appellant accepted the funds placed in the account pursuant to the contract, she was bound by it and the arbitration clause contained in it.

The Bullet Point: Arbitration is favored by courts but they are typically hesitant to enforce such clauses against non-signors. However, an arbitration clause can cover a lawsuit by a non-signatory if the lawsuit relates to the subject matter of the contract and the non-signatory got some benefit from the contract that contains the arbitration clause.

Seyfried v. Patrick O'Brien Chevrolet, Inc., 8th Dist. Cuyahoga No. 104212, 2017-Ohio-286.

This case was an appeal of a trial court decision ordering the class-plaintiff to arbitrate his claims. The plaintiff claimed he did not agree to arbitrate because he left the signature line in the contract blank below the arbitration clause. The trial court and Eighth Appellate District disagreed. The appeals court noted that the "lack of a signature does not in itself show that a party has not consented to arbitration." Instead, the court noted that at around the time the plaintiff signed the contract he had also signed a separate "Agreement to Binding Arbitration." The court noted that this separate document containing the arbitration clause, executed moments apart from the contract, was properly considered multiple documents of the same transaction and should be interpreted together.

The Bullet Point: It is always best to make sure the contract signed by the parties contain all of the essential terms and conditions of the contract. However, courts will still enforce a clause, like an arbitration provision, contained outside of the contract that exists in a document signed contemporaneously to the contract.

Whitson v. One Stop Rental Tool & Party, 12th Dist. Preble No. CA2016-03-004, 2017-Ohio-418.

This case was an appeal of a trial court decision to grant judgment to the defendant-appellee on a negligence claim from the rental of a bounce house gone awry. When the plaintiff had rented the bounce house he had signed a rental contract which contained a "hold harmless" clause. The clause advised the plaintiff that he assumed all risks for any damage or injury arising out of the defendant's negligence. Likewise, the contract contained a release provision where plaintiff agreed to release, indemnify, and hold harmless the defendant for any liability due to negligence. The trial court found that the plaintiff's complaint was barred by the hold harmless clauses and the Twelve Appellate District agreed.

The appeals court noted that while hold harmless clauses are permissible, they are not favored and "strictly construed." Because of this, to be enforceable, the hold harmless clause must be "clear and unequivocal." In this case, the appellate court found the hold harmless clause to be clear and unambiguous and agreed with the trial court that the defendant was entitled to judgment.

The Bullet Point: Courts do not like hold harmless provisions and will construe them in a strict manner. Because of this, hold harmless clauses must contain definite, clear, and unambiguous terms in order to be enforceable.