

# The Bullet Point – Volume I, Issue 4

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*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.*

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## **Clarkwestern Dietrich Bld. Sys., LLC v. Certified Steel Stud Ass'n., 12th Dist. Butler No. CA2016-05-098, 2017-Ohio-1091.**

This was an appeal of a trial court decision to grant summary judgment on claims involving the Ohio Valentine Act, which is designed to protect trade and competition in Ohio by making it unlawful to engage in price fixes or rig bids. The dispute involved nonstructural steel framing products that the plaintiff had developed in a cheaper way than other manufacturers, which provided it a significant competitive advantage. The plaintiff was part of a trade organization who most of the manufacturers in this area were members of. The trade organization developed a compliance program for the steel products that all members had to comply with. The program negatively impacted the plaintiff's newfound way of manufacturing the steel product and the plaintiff ultimately sued.

Plaintiff sued under the Ohio Valentine Act, claiming that the manufacturing association unreasonably restrained trade. The trial court disagreed and the plaintiff appealed. The Twelfth Appellate District affirmed. In so ruling, the court noted that to establish a restraint of trade claim under the Ohio Valentine Act, a party must show not only a conspiracy to engage in anticompetitive efforts but an injury that was the direct result of those efforts. Here, the plaintiff presented no evidence that it was presented from selling its product as a result of the alleged conspiracy.

**The Bullet Point:** Yes, Ohio has an antitrust statute! Like its federal counterpart, the Sherman Antitrust Act, the Ohio Valentine Act protects businesses from agreements that restrain trade and hurt competition. However, a private claim under the Ohio Valentine Act will only succeed if the plaintiff can show that the anticompetitive effort actually caused them injury, like being unable to sell the product or customers being unable to buy the product. Absent injury, there is no exclusion from the market and therefore no antitrust claim.

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## **Martin v. Mahr Machine Rebuilding, Inc., 11th Dist. Lake No. 2015-L-101, 2017-Ohio-1101.**

This was an appeal of a bench trial verdict in favor of the defendant on a claim for conversion and a claim for tortious interference with a business contract. Conversion is the wrongful act or disposition of property of another that leads to damages. A tortious interference of business relationship claim exists when a party is aware of a contract between other parties and then works to breach that contract. In this case, the plaintiff owned a trucking business. He stored his trucks on land owned by First Energy. The only way he could access the property was through a neighbor's land and he obtained permission via a written letter to do so. The letter made clear that the approval could be revoked at any time. The plaintiff subsequently got into a dispute with the appellee regarding a building he rented from them that was next to his trucking business. To encourage the plaintiff to pay the debt, the appellee blocked access to his trucking business, with the approval of the neighbor.

The trial court ultimately ruled in favor of the appellees on the claims for conversion and tortious interference with a business contract. On appeal, the Eleventh Appellate District affirmed. In so ruling, the court noted that to be liable for conversion, the conduct must be "wrongful" and that since the appellee had permission to block access to the trucking business, its actions were not "wrongful." The Plaintiff also claimed that the court added an additional element to a conversion claim when it found the conduct was also not "unlawful," but the Eleventh Appellate District disagreed, finding that the words "wrongful" and "unlawful" meant the same thing.

**The Bullet Point:** Conversion focuses on the defendant's wrongful conduct. If a defendant gets permission to do something, the conduct will not be considered wrongful as required to prevail on a conversion claim.

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## **McLane Co. Inc. v. EEOC, No. 15-1248, 581 U.S. \_\_\_\_ (2017).**

This case involved an appeal in an Equal Employment Opportunity Commission (EEOC) lawsuit where the Ninth Circuit reversed a district court decision declining to enforce a subpoena seeking information related to various employees of a business.

A female employee of the business returning from maternity leave was required to take a physical examination upon returning from medical leave per company policy. She failed the exam three times and was fired. She then filed a sex discrimination charge and the EEOC began an investigation. As part of its investigation into the company, it sought to subpoena personal information of other employees who were forced to take the physical examination, like their social security numbers, telephone numbers, and addresses. The company refused to provide the information. A district court refused to enforce the subpoenas, finding the information irrelevant to the EEOC charges. On appeal the Ninth Circuit Court of Appeals reversed, finding that under a de novo standard of review (meaning no deference was given to the District Court), the District Court erred and should have enforced the subpoenas.

The company appealed to the United States Supreme Court. The Supreme Court reversed, finding that the Ninth

Circuit employed the wrong standard of review. Rather, it should have used an abuse of discretion standard, meaning that the District Court’s findings should have been reversed only if there was no basis for it, even if the Ninth Circuit would have ruled differently.

**The Bullet Point:** The standard of review for a particular case or issue is very important in an appeal. When the standard of review is abuse of discretion, appellate courts will give great weight and deference to a trial court and will only reverse its decision if there is absolutely nothing in the record to support the decision.

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### **Struckman v. Bd. of Education of Teays Valley, 4th Dist. Pickaway No. 16CA10, 2017-Ohio-1177.**

This was an appeal of the trial court decision to grant a school board’s motion to dismiss a lawsuit involving a breach of a real estate purchase contract. Specifically, the plaintiff argued that the school board entered into a contract with him where it represented that it would build a school on his property. In exchange, he sold the property at below market rate. When the school board did not build a school on the property, the plaintiff sued.

The trial court granted the school board’s motion to dismiss, finding that the contract language was unambiguous and the school board was not required to build a school on the property. The Fourth Appellate District agreed. The court found that the language regarding the “intended use” of the property was clear and unambiguous and did not require a school to be built on the property.

**The Bullet Point:** If a contract is clear, courts will interpret written contracts as it is written. Because of that, be a specific as possible regarding the terms of the contract to avoid confusion, and, possibly, litigation, in the future.

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### **Tibbe v. Ranbaxy, Inc., 1st Dist. Hamilton No. C-160472, 2017-Ohio-1149.**

This was an appeal of a trial court’s judgment finding that the plaintiff’s claims were preempted by federal law. The plaintiff alleged that she began taking a generic prescription drug made by the defendant in 2010. She claims that after taking the drug for a year, she developed lupus as a result of ingesting the drug. She sued the defendant, the manufacturer of the drug, under various Ohio statutes, including the Ohio Consumer Sales Practices Act which prohibits unfair and deceptive practices. The manufacturer moved to dismiss the claims arguing that they were preempted by federal law and the US Supreme Court’s “failure to warn theory.” The trial court initially denied the motion to dismiss finding that an exception to the “failure to warn theory” could exist. After discovery, the manufacturer again moved for summary judgment on the basis of preemption. It argued that the exception to the “failure to warn theory” did not apply. The trial court agreed and dismissed the lawsuit and the plaintiff appealed.

The First Appellate District agreed with the trial court. It found that state laws requiring certain labeling on

generic drug manufacturers was preempted by the FDA rules on labeling. It further noted that the plaintiff's claim that the manufacturer had some additional duty above and beyond what the FDA provided for was not timely raised and, regardless, not supported by Ohio law.

**The Bullet Point:** Under the Supremacy Clause, when state and federal law conflicts, federal law controls and can preempt or prohibit a lawsuit based on state law.