# The Bullet Point – Volume I, Issue 7

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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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Midland Funding, LLC v. Johnson, 581 U.S. ___ (2017)

In this case, a debt collector filed a proof of claim in a consumer's Chapter 13 bankruptcy, asserting he owed a balance on a credit card account. However, the last charge on the account was more than 10 years ago, and under Alabama law, the statute of limitations to collect on such an account was six years. Based on this, the consumer filed a lawsuit under the Fair Debt Collection Practices Act (FDCPA) arguing that the debt collector's action in filing a proof of claim on a debt that was time-barred was a "false," "deceptive," and "misleading" attempt to collect on a debt. The District Court found that the FDCPA did not apply and dismissed the lawsuit. The Eleventh Circuit Court of Appeals reversed. On appeal, the United States Supreme Court reversed.

The Supreme Court found that the filing of a proof of claim on a time-barred debt did not violate Alabama law. In so ruling, the Court noted that under Alabama law, a creditor has a right to payment even if the limitations period has expired. The Court also noted that filing a proof of claim in a bankruptcy differs from filing a lawsuit against a consumer, and that under the bankruptcy code, a debtor can always argue that a proof of claim is time-barred as an affirmative defense.

**The Bullet Point:** While seeking to collect on a time-barred debt can be a violation of the FDCPA, it is not an automatic violation. Instead, courts will consider applicable law and the context of the action to determine whether in fact such an action violates the FDCPA. Similarly, for businesses seeking to collect on debts that fall outside the statute of limitations, which is typically six years in Ohio, all facts should be considered.

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BT Property LLC v. Franklin Cty. Bd. of Revision, 10th Dist. Franklin No. 16AP-449, 2017-Ohio-2769.

This was an appeal of the Board of Tax Appeals (BTA) decision valuing four properties for tax purposes. In determining the value of the properties, the Tenth Appellate District found that the BTA did not err in relying on the school district appraiser's opinion that characteristics of an owner-occupied UPS truck terminal facility rendered it a special-use property and that a permanent easement granted to the city should not be deducted from the site acreage. The BTA also did not err in relying on the property owner appraiser's opinion and property records in determining the square footage of the truck terminal for valuation purposes.

**The Bullet Point:** The BTA is given significant discretion in determining the value of property. Courts will not reverse its decision unless it appears such a decision was unreasonable or unlawful. Likewise, while property is typically valued on what it would sell for on the open market (the market exchange valuation), an exception applies under the "special purpose" doctrine. This means that if a property has a special purpose (meaning it was built for a unique purpose), that unique purpose can form the basis of its value. In determining whether a property has a "special purpose," the BTA will weigh factors like what it was built for and for what purpose it is currently being used.

Despite the risks and costs, businesses should consider the rewards of filing and winning a property tax complaint. In addition to the actual tax savings, a reduction in real estate taxes decreases overhead, which equates to an increase in net income. For example, for companies with a 10 percent profit margin, a $10,000 savings in taxes for a year can approximate $100,000 in increased sales. Similarly, for income generating properties, $10,000 in tax savings for properties with a 10 percent capitalization rate equates to a $100,000 increase in value. Considering the potential benefits, property owners must consider contesting the Auditor's valuation if the circumstances warrant such action.

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Clarkwestern Dietrich Building Sys., LLC v. Certified Steel Stud Assn, 12th Dist. Butler No. CA2016-06-113, 2017-Ohio-2713.

This was an appeal of a jury trial decision finding that the plaintiff was entitled to more than $49 million in damages for claims involving defamation and unfair trade practices.

The plaintiff sold steel framing products and manufactures coatings. The defendant was an association of various manufacturers in the business of nonstructural steel framing. The defendant released a publication calling into question one of the plaintiff's coating products. The publication was sent to thousands of customers, and plaintiff eventually lost projects and millions of dollars in revenue as a result. The plaintiff sued for defamation and violation of the Ohio Deceptive Trade Practices Act, among other claims. The matter went to a jury trial, and eventually the plaintiff recovered more than $49 million.

The defendant appealed, arguing that the trial court erred in denying its motion for summary judgment on the defamation claim arguing that the publication was "opinion" and not fact. The Twelfth Appellate District disagreed. It noted that whether a statement is opinion or fact for defamation purposes is based on a "totality of the circumstances" test (whether the statement is verifiable, the context of the statement, and the broader context in which the statement appeared). In other words, the court looked to whether the statement could be proven as true or false. Here, the court found that the defendant's statements in the publication were all verifiable and precise and thus actionable under a defamation claim.

**The Bullet Point:** Whether a statement is defamatory depends on many factors. Most importantly, courts will consider whether the defamatory statement is verifiable. If there is any question on this, courts will typically allow the claim to proceed to a jury trial.

As there are few hard and fast rules, businesses should be very careful when making any statements about other businesses, especially their competitors. Thus, to be safe, if such statements must be made, it makes sense to consult an attorney.

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Crow v. Baldino, 2d Dist. Clark No. 2016-CA-56, 2017-Ohio-2779.

This was an appeal of a trial court's denial of a defendant's motion to intervene in a lawsuit brought against his mother involved in an action to collect damages from a rental agreement. The trial court denied the motion and the Second Appellate District affirmed on appeal.

In so ruling, the court noted that under Ohio law, a party can intervene in a lawsuit as a right if a statute confers a right to intervene or if he or she has an interest in the property or transaction subject of the lawsuit. Absent a showing of this, there is no right to intervene. Here, the party seeking to intervene failed to show that any law permitted him to intervene in the suit or that he had an interest in the property subject of the action and the motion to intervene was properly denied.

**The Bullet Point:** If you have an interest in property or a transaction subject of a lawsuit, Ohio law has a mechanism for you to get involved to protect your interests. A trial court also has discretion to permit a party to intervene if the moving party has a claim or defense that is in "common" with the current lawsuit.

Though businesses might have a right to intervene, they should carefully consider whether they should. Businesses must establish not only an interest in the property or transaction at issue, but must also allege or show that if they are not permitted to intervene, their interests would be impaired.

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The Huntington Nat'l Bank v. Bywood, Inc., 10th Dist. Franklin No. 16AP-358, 2017-Ohio-2740.

This was an action filed by a bank to have the trial court assist it in executing on a prior judgment it obtained against the defendant. Previously, the bank had obtained a judgment against the bank regarding the defendant's default on a line of credit. Post-judgment, the bank conducted a number of debtor examinations. During those examinations, the defendant claimed to own 100 percent of the stock in a business he had created. Based on this information, the bank filed an ex parte motion in aid of execution asking the court to prohibit the defendant from transferring or selling his stocks and to issue a replacement stock certificate for all of the stocks and turn it over to the county sheriff for levy and sale. The court granted these requests.

The defendant appealed. On appeal, the Tenth Appellate District agreed in part and reversed in part with the trial court's decision. The court noted that under Ohio law, a creditor can obtain a debtor's stocks to satisfy a debt or judgment. However, the court noted that under Ohio law, a stock that is lost cannot be seized by a creditor. The court found that the trial court overstepped its bounds when it issued a new stock certificate for the defendant's company.

**The Bullet Point:** Courts can assist a business or individual in executing or collecting on a judgment. However,

the court's authority to do so is limited by statute. When a creditor seeks to have stock certificates turned over to satisfy a judgment or debt, and if the stocks cannot be located, the only way they can be turned over is if the court orders the debtor company to reissue new stock certificates.