

What are my Close Corporation Fiduciary Duties? The Bullet Point: Volume 3, Issue 8

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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.

Writ of Prohibition

State Ex Rel Novak v. Ambrose, Slip Op. No. 2019-Ohio-1329.

This was an appeal of the denial of a writ of prohibition by an appellate court, which found that the trial court judge had jurisdiction over a breach of contract case pending before him.

The Ohio Supreme Court affirmed the decision and denied the writ of prohibition finding that the court had subject matter jurisdiction over the claim pending before it and found that nothing in the Uniform Partnership Act divested the trial court judge of jurisdiction over the case.

The Bullet Point: Prohibition is “an extraordinary writ and [this court does] not grant it routinely or easily.” To be entitled to the requested writ of prohibition, the party must show that (1) the opposing party is about to exercise or has exercised judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of the law. In a jurisdictional context, a writ of prohibition could be proper when the judge has general jurisdiction but has taken action that exceeds the court’s statutory authority. In other words, if a more specific “statute patently and unambiguously divests a court of its basic statutory jurisdiction to proceed in a matter, a writ of prohibition is appropriate.”

A plaintiff bears the burden of proving the nature and extent of damages suffered by him or her. Damages must be established by a “reasonable certainty.” In a breach of contract action, damages must be shown to a greater degree of certainty than for tort claims, and the amount of damages must not be speculative.

Tortious Interference with a Business Relationship

Cedar Lan Farms Corp. v. Besancon, 9th Dist. Wayne No. 18AP0025, 2019-Ohio-1389.

This was an appeal of a decision to grant summary judgment on a claim for tortious interference with a business relationship. On appeal, the Ninth Appellate District reversed the decision, finding that an issue of fact existed as to whether the plaintiff had adequately alleged a business relationship with a third party as required to support a claim for tortious interference with a business relationship.

The Bullet Point: “The elements of ‘tortious interference with a business relationship are: (1) a contractual or business relationship; (2) knowledge of the relationship by the tortfeasor; (3) an intentional and improper act by the tortfeasor preventing formation of a contract, procuring breach of a contract, or termination of a business relationship; (4) lack of privilege on the part of the tortfeasor; and (5) resulting damage.” Such a claim is similar to a claim for tortious interference with a contract. The difference is that the result of the interference is not a breach of a contract but that a third party does not enter into or continue a business relationship with the plaintiff.

HUD Face to Face Meeting

Wilmington Savings Fund Society, FSB v. West, 5th Dist. Fairfield No. 18CA20, 2019-Ohio-1249.

This was an appeal of the trial court’s decision to dismiss a foreclosure lawsuit due to the lender’s failure to timely comply with various HUD requirements. On appeal the Fifth Appellate District reversed, finding that the timeframe contained in the HUD guidelines was aspirational, not mandatory.

The Bullet Point: Under HUD guidelines, found at 23 CFR 203.604, before a foreclosure can occur, a mortgagee is required to have a “face-to-face” meeting with a borrower, or arrange a reasonable attempt at one, before three “monthly installments due on the mortgage are unpaid.” While there are various exceptions to this regulation, Ohio courts have nearly universally held that the three month time frame is aspirational, and not mandatory. As courts have noted: “a commonsense construction of the regulation is that it requires, subject to the exceptions... that a lender either have a face-to- face interview or make a reasonable effort to arrange the interview before bringing a foreclosure action, and that the mortgagee is urged, by the regulation, to have the interview, or to make a reasonable effort to arrange the interview, within the three-month default period.”

Close Corporations – Fiduciary Duties

Palmer v. Bowers, 9th Dist. Lorain No. 17CA011137, 2019-Ohio-1274.

This appeal involved the trial court's decision to grant summary judgment in a shareholder derivative action challenging fiduciary duties owed by various directors and officers of the close corporation. On appeal, the Ninth Appellate District reversed, finding that an issue of fact existed for trial regarding whether the director of the close corporation had breached various fiduciary duties he owed to the corporation.

The Bullet Point: “[A] close corporation is a corporation with a few shareholders and whose corporate shares are not generally traded on a securities market.” There are different fiduciary duties in a close corporation: duties between shareholders and duties owed by a director or officer.

In a close corporation, the majority shareholders owe a heightened fiduciary duty to deal in the “utmost good faith and loyalty” with the minority shareholders. The fiduciary duty between majority shareholders and minority shareholders is breached when the majority shareholders, absent a legitimate business purpose, control the corporation in such a way as to prevent the minority shareholders from “having an equal opportunity in the corporation.” The fiduciary duty of a director of a closely held corporation is owed to the corporation and to the corporation's shareholders, collectively. These fiduciary duties “include a duty of good faith, a duty of loyalty, a duty to refrain from self-dealing[,] and a duty of disclosure.”