What if I'm Tricked into Signing? – The Bullet Point – Volume 1, Issue 11

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The Bullet Point: An Ohio Commercial Law Bulletin

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.

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Kight v. Miller, 7th Dist. Mahoning No. 16 MA 0079, 2017-Ohio-5714.

This was an appeal of a summary judgment decision finding that a deed was void because of fraud and/or mistake. In this case, the appellant owned property and signed a warranty deed transferring it to the appellees for approximately $15,000. The deed was subsequently recorded. Thereafter, the appellee commenced an eviction action against the appellant. In response, appellant filed a claim for quiet title and argued that the deed was void. She claimed that appellee tricked her into signing the deed under the guise of giving her money to repair her home through a loan agreement. The trial court eventually granted the appellees summary judgment, finding that she signed the deed.

On appeal, the Seventh Appellate District reversed. The court found that a genuine issue of material fact existed as to whether the deed and loan documents were void, noting that "when the signature is admitted the presumption is that the party signing the instrument understood its terms, and he is bound by it, unless he can prove facts that will avoid it." One such ground to avoid a document is fraud in the execution. "Fraud in the execution exists where the charging party engaged in some trick or device to procure the signature of the party to be charged on an instrument which she did not intend to give, such as where there is a surreptitious substitution of one paper for another at signing." Here, the court found that the appellant alleged sufficient facts to establish fraud in the execution even though the documents had been notarized.

The Bullet Point: Typically, one will be held to an agreement or contract that they sign and when a

document bears a person's signature, there is a rebuttable presumption that it is valid. However, that presumption can be rebutted by producing evidence that the person was fraudulently induced to sign the document or that there was some fraud in the execution. The latter occurs when a party is tricked to sign a document and the terms or documents are changed after the document or contract has been reviewed.

North Valley Bank v. ABC Manufacturing, Inc., 5th Dist. Muskingum No. CT2016-0051, 2017-Ohio-5696.

This was an appeal of a denial of a motion to intervene in the lawsuit. In this case, the appellee had filed a foreclosure complaint against ABC Manufacturing seeking to collect a debt it was owed. A receiver was appointed and the intervening party became aware that property part of the receiver's estate was going to be sold. Appellant then entered into a lease with the receiver for the property and eventually made payments in excess of $325,000 towards purchasing the property. However, the appellant was unable to obtain financing to actually buy the property and the receiver filed a motion for authority to sell the property with the trial court. Appellant sought to intervene in the action. However, before the motion was heard, the parties entered into an agreement giving the appellant more time to buy the property. If the property was not purchased by a specific date, then the receiver could sell the property. The property was not purchased by appellant by the agreed date and the property was subsequently sold. Thereafter, the trial court ordered that the $325,000 appellant had paid was nonrefundable and denied the motion to intervene.

The Fifth Appellate District disagreed and reversed the trial court's decision finding that appellant had an interest in the money it paid such that intervention was appropriate.

The Bullet Point: As discussed in a prior Bullet Point, intervention is appropriate: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

This is important for businesses to understand as, in some cases, intervention may be the means of protection. In short, if you have an interest in the subject of a lawsuit but that interest will not be adequately protected by the parties to the lawsuit, then you should consider intervention.

Carrington Mortg. Servs. v. Moder, 4th Dist. Hocking No. 16CA18, 2017-Ohio-5662.

This was an appeal of the trial court's decision to grant an eviction. The mortgage company claimed it had obtained a foreclosure judgment against the appellant and it sought to evict him from the property based on that judgment. The court eventually granted the eviction and the appellant sought to stay execution of the judgment. The court denied that motion and the appellant vacated the property. He then appealed.

On appeal, the Fourth Appellate District dismissed the appeal on the basis of mootness as the appeal became moot once he vacated the property because that was the entire purpose of an action and there is no further relief that can be granted.

The Bullet Point: The law of mootness inquires whether events subsequent to the filing of suit have eliminated the controversy as courts will not decide cases when there is no actual controversy. The Court noted that "a case or controversy is lacking and a case is moot "'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" Mootness is an important concept as it goes to a court's jurisdiction. However, there are some exceptions to the mootness doctrine. Specifically, an appellate court will hear an appeal when the issues are "capable of repetition" or when the issue involves a "matter of great public interest" or "there remains a debatable constitution question to resolve." These exceptions, however, are very limited and only apply in exceptional circumstances.

Accordingly, to preserve the status quo and the ability to maintain an appeal, a party must make sure to obtain a stay of the judgment you are appealing. Otherwise, your appeal could be dismissed as moot!

Alotech Limited, LLC v. Barnes, 8th Dist. Cuyahoga No. 104389, 2017-Ohio-5569.

This was an appeal of a trial court's decision to enforce the terms of a settlement agreement. The appellee had previously sued its CEO and his wife, the appellant, for embezzling more than $1 million from the company. The wife eventually settled the lawsuit with the appellee and entered into a handwritten settlement which included, among other things, giving the appellee all assets of a trust set up by her mother naming the wife's daughter as the beneficiary, and to pay the appellee $15,000. The settlement was not signed by the wife's daughter. Thereafter, the appellee filed a motion to enforce the settlement, arguing that the assets of the trust could be transferred even without the daughter's permission. The trial court agreed and entered an order enforcing the terms of the settlement.

The Eighth Appellate District disagreed. It noted that settlement agreements are favored by the law and that it does not have to be fair or equitable to be binding or enforceable. However, settlement agreements can be found void if they violate public policy. Here, the Court found that the settlement violated public policy and was unenforceable. Specifically, the trustee was required by law to administer the trust for the benefit of beneficiary, the wife's daughter. Agreeing to transfer all assets of the trust to another party to settle a lawsuit, especially when the daughter did not agree to or sign off on this,

violated public policy and the settlement was declared void.

The Bullet Point: Like all contracts, parties are free to structure their settlement agreements as they see fit and courts will typically enforce them. However, courts will not enforce a settlement agreement that violates public policy. Indeed, "the right of making contracts * * * must be restrained when contracts are attempted against the public law, general policy, or public justice."

U.S. Bank Nat'l Ass'n v. Robinson, 8th Dist. Cuyahoga No. 105067, 2017-Ohio-5585.

This was an appeal handled by James Sandy of McGlinchey Stafford challenging the trial court's decision to grant summary judgment to the appellees in a foreclosure action on their claim that the action to foreclose the mortgage was barred by the six-year statute of limitations to obtain judgment on a promissory note.

In this case, the appellees executed a promissory note and mortgage in 2006. After making only a handful of payments, they defaulted on the note. A foreclosure action was filed against them in 2007. Around that time, appellees also discharged their personal liability in bankruptcy and the foreclosure action was subsequently dismissed. Another foreclosure was filed in 2015. In that action, appellees argued that the case must be dismissed because it was barred by the six-year statute of limitations to enforce a promissory note. They claim that the statute of limitations began to run when the original foreclosure action was filed back in 2007 and thus the current action was barred. The trial court agreed and dismissed the foreclosure.

On appeal, the Eighth Appellate District reversed. In so ruling, the court agreed with McGlinchey Stafford that even if an action on a note was time-barred, this does not mean an action to foreclose a mortgage is as well, noting: "[a]lthough R.C. 1303.16(A) may provide a specific statute of limitations regarding the obligation to pay a note, it is not intended as a blanket prohibition against all remedies available to mortgagees." The court went on to note that "R.C. 1303.16(A) does not affect the mortgagee's mortgage right created by virtue of the failure to pay the note; the statute only precludes the remedy of a money judgment upon the unsatisfied note."

The Bullet Point: Ohio law treats actions on promissory notes and actions on mortgages differently. Because of this, even if an action to obtain a personal money judgment is time barred, meaning you cannot collect on the note, an action to foreclose the mortgage is still a viable remedy.

Portage Roofing, Inc. v. Coates Construction, Inc., 7th Dist. Mahoning No. 15 MA 0175, 2017-Ohio-5710.

This was an appeal of a trial court decision granting summary judgment and attorneys' fees in a construction contract. In this matter, Coates, a general contractor, sub-contracted with the appellant to do work on two projects. One of those projects was the basis of a lawsuit in Summit County between Coates, the appellant and another party. While that lawsuit was pending, appellant filed another lawsuit against Coates in Mahoning County. Coates counterclaimed in the Mahoning County case raising issues regarding the project, and lawsuit, in Summit County. The appellant argued that the court had no jurisdiction to consider these issues. The court disagreed and entered judgment in favor of Coates.

On appeal, the Seventh Appellate District affirmed. In so ruling, the court found that the jurisdictional priority rule did not apply. The jurisdictional priority rule is a "first to file rule." However, for the rule to apply, the claims and parties must be the same in both cases. Here, the court found that the claims differed and so it refused to apply the jurisdictional priority rule.

The Bullet Point: Under the jurisdictional-priority rule, "[a]s between [state] courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties." The purpose of the rule is to avoid conflicting judgments involving the same claims and parties. However, for it to apply, the cases must be pending in the same courts (i.e., common pleas courts) and involve the same parties and claims.

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