

What if the terms of my contract lead to an absurd result? The Bullet Point – Volume 1, Issue 13

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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.

Ranson v. ALDI, Inc., 2d Dist. Montgomery No. 27425, 2017-Ohio-6693.

This was an appeal of the trial court's decision to dismiss a lawsuit as a discovery sanction. Here, the pro se plaintiff filed a lawsuit against a grocery store as a result of an injury she sustained while shopping. During the lawsuit, the grocery store attempted to get the plaintiff to sign forms for release of her medical information on at least 12 occasions. Likewise, plaintiff failed to attend a deposition. After not getting the signed forms, and after failing to attend a scheduled deposition, the grocery store filed a motion to compel. The court then ordered the plaintiff to attend the deposition and provide the medical forms. Plaintiff did neither, however, and instead filed various motions contesting the trial court's ruling.

Thereafter, the grocery store sought dismissal of the lawsuit as a discovery sanction. After more than four warnings to the plaintiff, the trial court granted the motion and dismissed the lawsuit as a discovery sanction. Plaintiff appealed and the Second Appellate District affirmed. The court noted that a trial court has discretion to dismiss a lawsuit as a result of a discovery violation. Here, the court found that plaintiff received at least four warnings that her case would be dismissed for failure to cooperate in discovery and that the trial court's ultimate decision as not unreasonable given the facts and circumstances of the case.

The Bullet Point: Dismissing a lawsuit with prejudice for violating a court order or as a sanction "should be reserved for cases when a party's conduct falls substantially below what is reasonable under the circumstances, evidences a complete disregard for the judicial system or the rights of the opposing party, or when the failure to comply with discovery orders is due to willfulness or bad faith." That being said, it is important to note that trial courts have significant discretion in fashioning sanctions for failing to comply or cooperate with discovery rulings. While clearly a harsh penalty, dismissing a lawsuit with prejudice can and will happen if a litigant refuses to comply with a court order or fails to cooperate in the discovery process.

Chateau Estate Homes, LLC v. Fifth Third Bank, 1st Dist. Hamilton No. C-160703, 2017-Ohio-6985.

This was an appeal of a trial court's judgment to grant the defendant-bank judgment on the grounds that the statute of limitations had run. The dispute centered around a life insurance policy issued to the plaintiff by the bank. The plaintiff claimed that the bank failed to follow its instructions during the application process and named an individual as the sole beneficiary under the policy instead of also including a company owned by the policy holder. The bank moved for summary judgment on the grounds of statute of limitations, and the court agreed, finding that the claims all accrued in October 2007 at the latest, when the last amendment to the insurance policy was entered into.

The First Appellate District agreed with the trial court's decision. The court noted that the statute of limitations begins to run (or "accrue") "at the time the wrongful act is committed." However, the court noted a number of exceptions, including the discovery rule. It provides that a cause of action does not arise until the plaintiff knows, or by the exercise of reasonable diligence should know, that he or she has been injured by the defendant's conduct. A related concept is the delayed-damages rule. Under that rule, "where the wrongful conduct complained of is not presently harmful, the cause of action does not accrue until actual damage occurs." That being said, the court noted that the delayed damage rule was implicitly overruled by the Ohio Supreme Court in professional liability cases, and thus the statute of limitations in this case began to run in October 2007, and the lawsuit, filed in 2016, was therefore barred by the statute of limitations.

The Bullet Point: There appears to be a split in authority between appellate courts in Ohio on the application of the delayed-damages rule to professional liability claims. This is important because unlike the discovery rule, the delayed-damages rule does not just toll the running of the statute of limitations, it adjusts when the cause of action accrues. This could allow an otherwise time-barred claim to proceed to the merits.

Knight v. Altercare Post-Acute Rehab Center, Inc., 11th Dist. Portage No. 2016-P-0045, 2017-Ohio-6946.

This was an appeal of a trial court's decision to stay a lawsuit and order arbitration of the claims. The decedent was a resident of a nursing home. She passed away at the nursing home and her estate sent notice to the nursing home seeking to arbitration claims for wrongful death in June 2014. The nursing home resisted, claiming that the statute of limitations on any claim had expired and that the arbitration agreement was only binding if executed by all of the beneficiaries of the decedent's estate, not just her representative. Thereafter, the estate filed suit claiming, among other things, that the nursing home breached the arbitration agreement by refusing to arbitrate the claims. The trial court agreed and ordered the matter to be arbitrated. The nursing home appealed.

On appeal, the Eleventh Appellate District reversed, noting that "[o]nce the statute of limitations on the survival claim ran, the agreement to arbitrate all claims against the facility had no effect and appellee possessed no authority to demand arbitration of the wrongful-death claim." The court further noted that the agreement to

arbitrate was only binding on the decedent with respect to her claims and that the decedent could not bind beneficiaries to arbitrate their wrongful death claims.

The Bullet Point: It is important to remember that courts are typically hesitant to order non-signatories to an arbitration agreement to arbitrate their claims. Typically, “a third-party beneficiary will only be bound by the terms of the underlying contract where the claims asserted by that beneficiary arise from its third-party beneficiary status.” Here, the court found that the wrongful death claim did not arise out of any third-party beneficiary statute because the claim arises solely as a result of the decedent’s death.

Natal v. U.S. Cotton, LLC, 8th Dist. Cuyahoga No. 105259, 2017-Ohio-7078.

This was an appeal of a trial court’s decision to deny a motion to enforce a settlement agreement. The parties had previously settled a lawsuit regarding denial of a worker’s compensation claim. As part of that settlement, the parties stipulated to dismissal of the lawsuit and the court entered an entry noting the dismissal and that costs were to be assessed to the plaintiff. After the dismissal, plaintiff apparently changed her mind on the settlement and refused to sign the settlement documents.

Thereafter, plaintiff sought to reopen the case to formally withdraw from the settlement. The trial court denied her motion. Plaintiff did not appeal. Instead, she then signed the settlement paperwork. In response, her former employer advised that since she had rejected the settlement, it would be making a new offer based on the additional litigation expenses it had incurred. Thereafter, the plaintiff filed a motion to enforce the settlement with the court, which was denied.

The Eighth Appellate District affirmed the denial on appeal. The court noted that the dismissal entry failed to incorporate the terms of the settlement or otherwise indicate that the court retained jurisdiction to enforce the settlement and, as a result, the motion to enforce the settlement must be denied.

The Bullet Point: “A trial court has jurisdiction to enforce a settlement agreement after a case has been dismissed only if the dismissal entry incorporated the terms of the agreement or expressly stated that the court retained jurisdiction to enforce the agreement.” Because of this, it is very important that any dismissal filed with the court includes language like “this court retains jurisdiction to enforce the settlement.” This allows for judicial review if one of the party’s backs out of the settlement and/or otherwise breaches its terms.

Beverage Holdings, LLC v. 5701 Lombardo, LLC, 8th Dist. Cuyahoga No. 104559, 2017-Ohio-7090.

This was a reconsideration of a prior decision by the Eighth Appellate District. This lawsuit involved a dispute between the parties regarding the sale of real property and business which involved periodic rental payments

until the sale closed. Four years after the agreement was entered into, and prior to closing, the parties disputed how the rent payments would be applied to the purchase price. The court ultimately found that the renter was to be given a credit for all rent payments made until the closing.

On appeal, the Eighth Appellate District originally agreed with the trial court, finding that the contract language was unambiguous and thus no extrinsic evidence was needed to be considered to determine the intent of the parties. A motion for reconsideration was filed and upon re-review, the Eighth Appellate District reversed the trial court's decision, finding that to give the contract words the meaning originally proscribed would lead to a "manifestly absurd result."

The Bullet Point: Typically, the plain language of a contract will control, and courts will not read into the meaning of words or terms in the contract when they are unambiguous. However, when giving a word its plain and ordinary meaning would lead to a "manifestly absurd result," "the court should engage in fact-finding to give the contract the most sensible and reasonable interpretation." This would include consideration of facts/evidence outside of the four corners of the contract.

Case Previews

Cyan, Inc. v. Beaver Cnty. Emp. Retirement Fund, No. 15-1439 (cert granted June 27, 2017).

In 2014, Beaver County Employees Retirement Fund filed a covered class action against Cyan Inc. in a California superior court, alleging violations under the Securities Act of 1933. Cyan Inc. moved to dismiss the claims arguing that the Securities Litigation Uniform Standards Act of 1998 prevented state courts from exercising subject-matter jurisdiction over the claims regarding the Securities Act of 1933. Below, the superior court rejected Cyan Inc.'s motion to dismiss.

The Preview Point: Whether the Securities Litigation Uniform Standards Act of 1998 precludes state courts from retaining concurrent jurisdiction over claims brought exclusively under the Securities Act of 1933.

Digital Realty Trust, Inc. v. Somers, No. 16-1276 (cert granted June 26, 2017).

After Paul Somer filed several reports to senior management alleging securities violations by Digital Realty, the company fired him. Mr. Somers failed to report his concerns to the SEC prior to his termination. Mr. Somers filed suit against Digital Realty alleging, among other things, a violation of Section 21F of the Securities Exchange Act of 1934. Digital Realty filed a motion to dismiss the Section 21F claim on the basis that Mr. Somers failed to report the allegation to the SEC and, therefore, was not a whistleblower within the meaning of the statute.

Below, the district court followed the Second Circuit's approach holding that Section 21F affords protection to individuals who disclose suspected violations, irrespective of whether the corresponding disclosures are to the SEC. The Ninth Circuit affirmed.

The Preview Point: Does the anti-retaliation provision regarding whistleblowers in Section 21F shield individuals who have failed to report the purported misconduct to the SEC?