

When Can I Confirm an Arbitration Award?

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Timeline to Confirm Arbitration Award

BST Ohio Corp. v. Wolfgang, 2021-Ohio-1785

In this appeal, the Supreme Court of Ohio reversed the lower court's decision, holding that neither R.C. 2711.09 nor R.C. 2711.13 requires a court to wait three months after an arbitration award is issued before confirming the award.

The Bullet Point: In this matter, the Supreme Court of Ohio determined that trial courts need not wait three months before confirming an arbitration award. In making this determination, the Court analyzed the interplay of the timing requirements of R.C. 2711.09 and 2711.13. Under R.C. 2711.09, a party may file an application to confirm an arbitration award with a court of common pleas within one year after the award is issued. Thereafter, the court must grant an order and issue judgment confirming said award unless it has been vacated, modified, or corrected pursuant to R.C. 2711.10 and 2711.11. As compared to said one-year limit to confirm, R.C. 2711.13 mandates that a party seeking to alter the results of arbitration must move to vacate, modify, or correct the award within three months of the award being issued. In this case, the plaintiff applied to the Cuyahoga County Common Pleas Court (the "trial court") to confirm the arbitration award the same day it was issued. The following day, the defendant filed a petition to vacate or correct the award in the Superior Court of California, County of Los Angeles. The trial court scheduled a hearing on the confirmation application, and the defendant subsequently moved to stay or continue the proceedings in Cuyahoga County. The trial court proceeded with the confirmation hearing, which the defendant contested as premature and argued it had three months under R.C. 2711.13 to move to vacate, modify, or correct the arbitration award. The trial court disagreed, and subsequently confirmed the award.

In analyzing the trial court's confirmation, this Court explained that the time-deadline provisions of R.C. 2711.09 and 2711.13—one year in which to apply to confirm an award and three months in which to move to vacate, modify, or correct an award—coexist and operate both independently and in tandem. However, R.C. 2711.13 is not a guaranteed time period and it "does not operate as a statute of limitations for the purpose of preserving objection time." On the contrary, R.C. 2711.13 provides for a maximum of three months for a party to file a motion to vacate, modify, or correct an arbitration award. Consequently, when a party files an application to confirm, "as with any other motion or application, the onus is then on the other parties to the arbitration to respond, lest the trial court take the action of confirmation, as contemplated by the statute, and "enter judgment in conformity therewith," R.C. 2711.12." Here, despite the plaintiff's pending application to confirm and its appearance at the confirmation hearing, the defendant failed to file a motion to vacate the arbitration award in Ohio until after the trial court's confirmation. The Court noted that R.C. 2711.13 provides that the trial

court may stay or continue a pending application for confirmation while a motion to vacate is pending. Therefore, the trial court has the discretionary power to “balance the interests of the parties through procedures that allow both the arbitration confirmation to be considered and any grievances about the arbitration award to be aired and resolved.” As such, when a party files an application to confirm within the three-month period of R.C. 2711.13, fairness to both parties dictates that any motion to alter the award must be filed on or before the hearing date of the application to confirm, and that said motion must be filed within three months of the delivery of the arbitration award.

Liquidated Damages

Quincy Commun. v. Patrick, 1st Dist. Hamilton No. C-200224, 2021-Ohio-1736

In this matter, the First Appellate District affirmed the lower court’s decision, agreeing that the liquidated damages clause was unenforceable as it failed to specify the amount of damages in clear and unambiguous terms.

The Bullet Point: Under Ohio law, contracting parties may utilize a liquidated damages clause where actual damages would be difficult to prove or calculate in the event of a breach of contract. When negotiating a clause for liquidated damages, it is imperative to include the specific dollar amount to be awarded, so that a reviewing court may easily enforce the clause without having to compute the amount of damages. In this case, the plaintiff brought a breach of contract action against the defendant and asked the court to enforce the liquidated damages clause. In determining the validity of said clause, the court utilized a three-part test set forth by the Supreme Court of Ohio. Specifically, the court analyzed the clause to determine whether the parties’ damages would be: “(1) uncertain as to amount and difficult of proof, and if (2) the contract as a whole is not so manifestly unconscionable, unreasonable, and disproportionate in amount as to justify the conclusion that it does not express the true intention of the parties, and if (3) the contract is consistent with the conclusion that it was the intention of the parties that damages in the amount stated should follow the breach thereof.” Here, the liquidated damages clause failed to specify the amount of damages that would be imposed if the defendant breached the contract. Instead, the clause stated that the defendant would be required to pay the lesser of the plaintiff’s lost profits or 25% of the contract price, plus overhead and profit as determined by the defendant’s insurance company. As the court noted, rather than being a specific dollar amount for liquidated damages, this clause included calculations for measuring actual damages. If actual damages are calculable, no liquidated damages clause is necessary. Further, both calculations for damages included amounts that were unknown and purely speculative at the time the parties entered the contract. As the clause failed to specify, in clear and unambiguous terms, the agreed upon amount of damages to be imposed in the event of a breach, the court determined the liquidated damages clause was unenforceable.

Confirmation of Arbitration Award

***Brown v. Nanteeka Gloves, L.L.C.*, 8th Dist. Cuyahoga No. 109925, 2021-Ohio-1659**

In this appeal, the Eighth Appellate District affirmed the trial court's decision, agreeing that the arbitration award was properly confirmed as the defendant failed to file a separate motion to vacate.

The Bullet Point: As outlined in R.C. 2711.09, a party may file an application to confirm an arbitration award with a court of common pleas within one year after the award is issued. Thereafter, the court must grant an order and issue judgment confirming said award unless it has been vacated, modified, or corrected pursuant to R.C. 2711.10 and 2711.11. In this case, the plaintiff timely filed an application to confirm an arbitration award pursuant to R.C. 2711.09. In response to said application, the defendant filed an answer and counterclaim. The plaintiff argued that the arbitration award should be confirmed as the defendant's response did not constitute a motion to vacate or modify under R.C. 2711.10 or 2711.11. Both the lower and appellate courts agreed, finding that the defendant failed to timely file a motion to vacate. As this court explained, Ohio law favors resolving disputes through arbitration. Therefore, the authority of courts to vacate an arbitration award is extremely limited. If a party is not satisfied with an arbitration award, it must file a motion to modify, vacate, or correct the award within three months of the award being issued. R.C. 2711.13. It is insufficient to respond to a motion to confirm simply by arguing to vacate the award; a separate, timely motion to vacate is required. If a motion to vacate is not timely filed within the three-month period, the trial court is precluded from vacating, modifying, or correcting the award. Instead of filing a separate motion to vacate, the defendant in this case filed an answer and counterclaim. Consequently, the trial court's confirmation of the arbitration award was proper.

Assumption of Risk

***Oliveri v. Osteostrong*, 11th Dist. Lake No. 2019-L-104, 2021-Ohio-1694**

In this appeal, the Eleventh Appellate District reversed and remanded the trial court's decision, finding that the plaintiff did not expressly waive her negligence claim and that she was not injured as a result of an inherent danger of working out at a gym.

The Bullet Point: Contracting parties may expressly assume the risk of injury. Specifically, a party expressly assumes a risk when it "expressly contracts with another not to sue for any future injuries which may be caused by that person's negligence." Stated differently, express assumption of the risk is akin to waiving the right to recover for future harm. Ohio courts are hesitant to enforce releases from liability for future tortious conduct and such releases are narrowly construed. That being said, releases from future tort liability will be enforced if the intent of the parties regarding what kind of liability and what individuals or entities are being released is clear and unambiguous. As such, for express assumption of risk to be enforced to bar the plaintiff's negligence claim, the plaintiff must have expressed a clear and unambiguous intent to release the defendant from liability for its negligence.

In this case, the defendant argued the plaintiff's negligence claims were barred under the theories of primary and implied assumption of risk. Primary assumption of risk prevents a plaintiff from establishing the duty element of a negligence claim. In Ohio, "the test for applying the doctrine of primary assumption of the risk to

recreational activities and sporting events requires that “(1) the danger is ordinary to the game, (2) it is common knowledge that the danger exists, and (3) the injury occurs as a result of the danger during the course of the game.”” Simply stated, to be barred by the primary assumption of risk doctrine, the risk must be one that is so inherent to the activity that it cannot be eliminated, such as the risk of being hit by an errant golf ball at a driving range. Here, the court reviewed the plaintiff’s injuries and found no evidence that she was injured as a result of a danger inherent in the exercise of or working out at a gym. Lastly, the court noted that the doctrine of implied assumption of risk has merged into Ohio’s comparative negligence statute, R.C. 2315.33. Under comparative negligence, “the trier of fact must apportion relative degrees of fault between the plaintiff and the defendant in deciding the issue of negligence.”

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