

When can I intervene in a lawsuit?

February 27, 2020

Emotion distress damages under RESPA

***Cameron v. Ocwen Loan Servicing, LLC*, S.D.Ohio No. 2:18-cv-428, 2020 U.S. Dist. LEXIS 14595 (Jan. 29, 2020)**

In this case, the U.S. District Court for the Southern District of Ohio granted the plaintiff's motion for reconsideration, finding that the court had unconsciously overlooked evidence of emotional distress damages suffered as a result of Real Estate Settlement and Procedures Act (RESPA) violations.

The Bullet Point: In certain circumstances, a plaintiff can recover emotional distress damages for a RESPA violation. A plaintiff has presented sufficient evidence to proceed on a claim of emotional distress suffered as a result of RESPA violations where the plaintiff alleges anxiety, loss of sleep, and emotional and mental distress and puts forth evidence of these damages. The court considers evidence of emotional distress damages to include the plaintiff's testimony and affidavit that the plaintiff "lives with constant concern, worry and anxiety" and "endures emotional distress" because the loan servicer defendant refuses to correct errors.

Pleading fraud with particularity

***Alspach v. Swartzmiller*, 3d Dist. Seneca No. 13-19-33, 2020-Ohio-428**

In this appeal, the Third Appellate District affirmed in part and reversed in part the trial court's decision to dismiss with prejudice the plaintiff's fraud claims for failure to state a claim, finding that the fraud claims could be plead with particularity.

The Bullet Point: In Ohio, the claim of fraud has a heightened pleading requirement. Pursuant to Civ.R 9(B), all allegations of fraud must be plead with particularity and the circumstances constituting the alleged fraud must be specific enough to give the defendant notice of the particular misconduct so that it can defend against the charge. To satisfy the particularity requirement, the plaintiff "should plead the time, place, and content of the false representation, the fact misrepresented, and the nature of what was obtained or given as a consequence of the fraud". Stated differently, all claims of fraud must be accompanied by the who, what, when, where, and how of the fraudulent conduct alleged or risk being dismissed for failure to state a claim.

Intervention in lawsuit

***Community Hosps. & Wellness Ctrs. v. State*, 6th Dist. Williams Nos. WM-19-001, WM-19-002, 2020-Ohio-401**

In this appeal, the Sixth Appellate District affirmed the trial court’s denial of a motion to intervene to oppose a motion for summary judgment as it was untimely, the movant lacked a legally protected interest, and it would unduly delay the adjudication without the addition of any genuine issue of material fact for summary judgment purposes.

The Bullet Point: Pursuant to Civil Rule 24, a non-party may be permitted to intervene in an action either by right or permission upon filing a motion to intervene. Intervention by right requires the intervenor’s motion to be 1) timely, and that demonstrates “2) the intervenor’s interest relates to the subject of the action, 3) the disposition of the action will impair or impede the intervenor’s ability to protect its interest, and 4) that its interest is not already adequately represented by the existing parties.” Unless a statute grants a conditional right to intervene, a non-party seeking permissive intervention must “demonstrate that its claim or defense and the main action have a question or law or fact in common”. When exercising its discretion to grant permissive intervention, a court considers whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

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