

When can someone be an apparent agent for a company? The Bullet Point: Volume 3, Issue 23

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Statutory Construction and Summary Judgment

Beverage Holdings, LLC v. 5701 Lombardo, LLC, Slip. Op. 2019-Ohio-4716.

In this appeal, the Ohio Supreme Court reversed the appellate court's decision, finding that a provision in a contract for the sale of a franchise business was enforceable and not "manifestly absurd."

The Bullet Point: In interpreting a contract, courts are to give effect to the intent of the parties, and presume that the intent of the parties is reflected in the plain language of the contract. To that end, if the language of a contract is plain and unambiguous, courts enforce the terms as written, and will not turn to evidence outside the four corners of the contract to alter its meaning. When considering the language of a particular contractual provision, "[c]ommon words will be given their ordinary meaning unless manifest absurdity results or unless some other meaning is clear from the face or overall contents of the agreement." The "manifest absurdity" exception to this is very narrow. First, "the word 'absurd' conveys a degree of extremeness. Contract language is absurd not simply when it is unreasonable, but rather when it is 'ridiculously unreasonable, unsound, or incongruous.' Second, the word 'manifest' requires that any absurdity in contract language be obvious."

Authority of Apparent Agent

Briskey v. KAF Properties, LLC, 5th Dist. Delaware No. 19 CAE 07 0042, 2019-Ohio-4563.

Gregory Filbrun and his company, AHV Construction, LLC defaulted on a loan made to them by Appellant, Richard A. Briskey. Mr. Filbrun filed for bankruptcy protection, so Appellant attempted to collect the debt from Appellee KAF Properties LLC, relying upon Gregory Filbrun's signature on a cognovit note, purportedly signing on behalf of Appellee. Kathleen Filbrun, wife of Greg Filbrun and owner of KAF Properties objected, claiming that Greg Filbrun had no authority to sign on behalf of her company. Appellant argued that Mr. Filbrun was authorized as an agent to bind KAF, but the trial court disagreed and found that the Appellee was entitled to summary judgment. On appeal, the Fifth Appellate District upheld a trial court's decision, finding that a debtor was not an agent of a company and could not bind that company to a cognovit note.

The Bullet Point: The creation of an agency relationship may be express or implied. “The relationship of principal and agent, and the resultant liability of the principal for the acts of the agent, may be created by the express grant of authority by the principal. Absent express agency, the relation may be one of implied or apparent agency.” Apparent agency exists “where one who is assuming to act as an agent for a party in the making of a contract but in fact has no actual authority to do so, such party will nonetheless be bound by the contract ‘if such party has by his words or conduct, reasonably interpreted, caused the other party to the contract to believe that the one assuming to act as agent had the necessary authority to make the contract.’” For a principal to be bound by the acts under a theory of apparent agency, two things must be shown: (1) principal held the agent out to the public as possessing sufficient authority, and (2) the person dealing with the agent knew about this and, acting in good faith, had reason to believe and did believe that the agent had authority.

Ohio Consumer Sales Practices Act

Hatfield v. Preston Chevrolet-Cadillac, Inc., 11th Dist. Geauga No. 2018-G-0168, 2019-Ohio-4730.

In this appeal, the Eleventh Appellate District affirmed the trial court’s decision to dismiss a claim brought under Ohio law and the Consumer Sales Practices Act (CSPA) related to a fee charged in connection with a vehicle lease.

The Bullet Point: The CSPA prohibits unfair or deceptive acts and unconscionable acts or practices by suppliers in consumer transactions whether they occur before, during, or after the transaction. The Ohio legislature has given the Attorney General authority to adopt, amend, or repeal substantive rules that define acts or practices that violate the CSPA. One such rule is Ohio Adm. Code 109:4-3-16(B) which makes it a violation of the CSPA to, among other things, advertise the price of a vehicle unless the price includes all costs to the consumer (except for tax, title and registration fees.) A plain reading of Ohio Adm.Code 109:4-3-16(B)(21) reveals that it does not preclude a dealer or seller of an automobile from charging fees other than those specified. To the contrary, a plain reading confirms that this provision is designed to ensure that the advertised price includes all costs, except those specified.

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