

# When Do I Need to Establish Article III Standing?

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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.*

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Ohio

## Agent's Liability Under Contract

***Nat'l Church Residences v. Kessler*, 3rd Dist. Union, No. 2023-Ohio-1437.**

The Third Appellate District reversed the trial court's decision to grant the plaintiff summary judgment, finding an issue of fact existed as to whether the defendant could be bound by the terms of an agreement.

**The Bullet Point:** "A cause of action for breach of contract requires the claimant to establish the existence of a contract, the failure without legal excuse of the other party to perform when performance is due, and damages or loss resulting from the breach." However, "[a] contract is binding only upon parties to a contract and those in privity with them."

An "agent" is a person "'who is authorized to act for or in place of another; a *representative*.'" Generally, "'[w]here an agent acts for a disclosed principal, in the name of such principal, and within the scope of authority, such agent is ordinarily not liable on the contracts the agent makes.'"

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## Implied Contract

***Stride Studios, Inc. v. Alsfelder*, 1st Dist. Hamilton, No. 2023-Ohio-1502.**

The First Appellate District affirmed the trial court's decision to grant judgment for the plaintiff, finding that it properly found the defendant's wife personally liable under a contract even though she had not executed the same.

**The Bullet Point:** A contract is implied, in fact, if the surrounding circumstances show a meeting of the minds. To establish an implied-in-fact contract, "a plaintiff must demonstrate that the circumstances surrounding the parties' transactions make it reasonably certain that an agreement was intended." An implied contract can be established through privity.

“It is well established that a contract is binding only upon the parties to the contract and those in privity with them and that an action for breach of contract can only be maintained by the parties to the contract and those deriving rights from the contracting parties.” “While spouses will not always be in privity with each other, privity can arise where individuals raise identical legal claims and seek identical rather than individually tailored results.”

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## Florida

### Agreement to Arbitrate

#### ***Saks Fifth Avenue LLC v. Bal Harbour Shops LLC*, No. 3D22-2098 (Fla. 3d DCA May 3, 2023)**

The Third District concluded that the language in an amendment to a lease agreement requiring both parties to consent to arbitration superseded the arbitration provision in the original lease that allowed either party to have a dispute arbitrated.

**The Bullet Point:** In ruling on a motion to compel arbitration, the court must interpret the contractual language of the relevant arbitration provision to determine whether the parties agreed to arbitrate the matter in dispute. Where there are two differing arbitration provisions, the court will construe both to determine the parties’ intent.

In this case, a tenant moved to compel arbitration of its landlord’s claims based upon the arbitration provision in the parties’ lease agreement, which provides that either party may refer a lease dispute to arbitration. The landlord opposed the tenant’s motion, arguing that the arbitration provision in the amendment to the lease requires the parties’ mutual assent to arbitration. Agreeing with the landlord, the trial court denied the motion to compel arbitration. On appeal, the Third District affirmed the order, reasoning that the amendment’s plain language to the lease makes clear that the parties intended to replace the arbitration provision allowing either party to have a dispute arbitrated with the provision requiring mutual assent to arbitration.

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### Lienholder’s Recovery in Conversion Action

#### ***Hollywood Imports Limited Inc. d/b/a Autonation Honda Hollywood v. Nationwide Financial Services, LLC, et al.*, No. 4D22-567 (Fla. 4th DCA May 3, 2023)**

The Fourth District concluded that a lienholder’s recovery in a conversion action was limited to the value of its interest in the vehicle.

**The Bullet Point:** Ordinarily, the damages lienholders can recover in a conversion action are limited to the value of their interest in the subject property. Under the “stranger” rule, however, a lienholder is allowed to recover the full value of the property if it is also liable to a person owning a superior or remainder interest. At issue in

this appeal was whether the lienholder recovering in the underlying conversion action was entitled to the vehicle's fair market value at the center of the dispute. The trial court concluded that the "stranger" rule applied and awarded the lienholder the vehicle's full value. The Fourth District disagreed, concluding that the "stranger" rule did not apply because nothing in the evidence suggested that the lienholder was responsible to another party holding any superior interest. Therefore, the lienholder was entitled only to the balance of its outstanding lien on the vehicle, and the award of the vehicle's fair market value to the lienholder was reversed.

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### Evidence of Standing at Summary Judgment

#### ***Tocmail, Inc. v. Microsoft Corp.*, No. 22-10223 (11th Cir. April 25, 2023)**

The Eleventh Circuit vacated a district court's summary judgment order because the plaintiff failed to provide sufficient evidence of Article III standing.

**The Bullet Point:** At each successive stage of litigation, the three elements of Article III standing must be supported in the same way as any other matter on which the plaintiff bears the burden of proof. At the pleading stage, the plaintiff may assert general factual allegations of injury resulting from the defendant's conduct. At the summary judgment stage, however, the plaintiff can no longer rest on mere allegations and must set forth by affidavit or other evidence the specific facts supporting standing. Standing theories that rest on speculation or are supported only by a conclusory affidavit will not suffice.

This appeal stems from the district court's entry of summary judgment in favor of the appellee on the appellant's claim of false advertising. Before reaching the merits, the Eleventh Circuit considered whether the district court had jurisdiction to hear the plaintiff's case, which alleged billions in lost customers and millions in lost sales. The Eleventh Circuit concluded that while such allegations of injury were sufficient to survive a motion to dismiss, more evidence of Article III standing was needed at the summary judgment stage. The Eleventh Circuit reasoned that the plaintiff offered no evidence from which a reasonable jury could find that it suffered any injury, as the plaintiff offered nothing more than conclusory and unsupported claims of lost profits and speculation about lost customers. Therefore, the plaintiff lacked standing to sue, and the district court did not have jurisdiction to hear the case. Accordingly, the summary judgment order was vacated.

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