Where Can I Be Sued? – The Bullet Point – Volume 1, Issue 10

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The Bullet Point is a biweekly update of recent, unique, and impactful cases in Ohio state and federal courts in the area of commercial litigation.

Bristol-Myers Squibb Co. v. Superior Ct. of Cal., No. 16-466, 582 U.S. __ (2017).

In this case, a group of plaintiffs sued a pharmaceutical company in California state court, alleging that one of the pharmaceutical company's drugs harmed them. The company was incorporated in Delaware and headquartered in New York. While it engaged in business in California, it did not develop, market, manufacture, label, or package the drug there. The plaintiffs did not allege they purchased the drugs in California, nor did they allege they were injured there.

The company challenged the state court's specific jurisdiction over the plaintiffs' claims. The California courts disagreed and the company appealed to the United States Supreme Court. The Supreme Court reversed, finding that the state court lacked specific jurisdiction.

In so ruling, the Court noted that there were two types of personal jurisdiction: general and specific. Specific jurisdiction requires the lawsuit to "arise out of or relate to the defendant's conduct with the forum." Here, the court found that for specific jurisdiction to attach, there had to be an "affiliation" between the forum and underlying controversy; in other words, "an activity or an occurrence that takes place in the forum state." Here, no such connection was alleged or found.

The Bullet Point: Large international companies typically could be sued in any state and court in the United States because they almost always have contacts with the forum state, through the sale or distribution of their goods or services. *Bristol-Myers* marks a departure from this general line of thinking. Now it isn't enough that the company does business in the forum state in order to bring suit there. In order to have specific jurisdiction over a company, the plaintiff must allege that the claimed harm arose out of the company's relationship or contacts to the forum state.

This is a much more difficult and specific standard to meet, requiring businesses to conduct a more rigorous jurisdictional analysis before filing any action or responding to any suit. In addition, entities should consider more business-friendly jurisdictions before incorporating and/or basing operations, as that is where they will likely be sued.

Specialty Exec., Inc. v. KDH Defense Sys., Inc., 5th Dist. Morrow No. 16CA0012, 2017-Ohio-4399.

This was an appeal of a trial court's decision to deny a motion for directed verdict after a jury trial in a breach of contract action. The defendant designs and manufactures body armor, and the plaintiff was an employment recruiter. The parties entered into a placement search agreement for the recruiter to find employees in exchange for compensation. The recruiter found a suitable candidate for employment and emailed the defendant about the candidate. In the emails, the recruiter asked for additional compensation than what was agreed upon by the parties in their placement search agreement. The candidate was eventually hired, but the defendant refused to pay the recruiter his fee, and the recruiter sued for unjust enrichment and breach of contract.

At trial, the jury found for the recruiter in the amount of $51,600 based on the email communications. The trial court denied the employer's post-judgment motion for a judgment notwithstanding the trial court's verdict arguing that the email communications could not constitute a valid agreement between the parties. The trial court disagreed as did the Fifth Appellate District on appeal.

The Bullet Point: Contracts can be written or oral, formal, or informal, even if not signed by the parties. What the courts will look at is whether there was a meeting of the minds to the essential terms of the agreement to determine if a valid, enforceable contract exists.

As the appellate court noted, for a contract to exist there must be an offer, acceptance, contractual capacity, consideration, and a "manifestation of mutual assent." The court noted that "mutual assent or 'a meeting of the minds' means that both parties have reached an agreement on the contract's essential terms." Here, the court looked at the email communications and found each of the necessary terms for a contract even though it wasn't signed by the employer. Keep this in mind next time you are emailing a client or prospective client!

R&A Lawn Care, LLC v. Back Tree & Landscape, Inc., 1st Dist. Hamilton No. C-160682, 2017-Ohio-4404.

This was an appeal of a trial court's decision finding that no oral contract existed between the parties. R&A claimed it performed landscape work for defendants. R&A claimed that the parties orally agreed it would provide landscape work at property owned by defendant at a rate of $25 per hour. Typically, R&A would tell the defendant the number of hours worked and the defendant would pay that amount, albeit slowly. Eventually the defendant refused to pay R&A, claiming that no contract existed between them. R&A sued, but at trial, the trial court found that no oral contract existed between the parties.

R&A appealed and the First Appellate District reversed. In so ruling, the court noted that oral contracts can be difficult to discern and that they are typically based on a parties' words, deeds, or acts. Here, the court found that the parties' deeds and acts, along with their course of conduct, established that an oral contract existed.

The Bullet Point: The old adage that "an oral contract is not worth the paper it is written on is" is wrong. While it is always better to put your agreements in writing, courts will find that parties have entered into an oral contract when the terms are clear and they act like a contract exists. That said, there are certain circumstances that will always require written contracts. Per what is commonly known as the Statute of Frauds, five categories of agreements must generally be in writing: (1) contracts

involving the sale of an interest in land, (2) contracts which cannot be performed within a year, (3) contracts in which someone assumes responsibility for someone else's debt, (4) promises in consideration for getting married (less pertinent to business), (5) contracts for the sale of goods worth more than $500 — much more pertinent to businesses, and (6) certain promises by executors and administrators.

Ginn v. Stonecreek Dental Care, 12th Dist. Fayette No. CA2016-10-014, 2017-Ohio-4370.

This appeal revolves around the sale of a dental practice. Dr. Ginn purchased the dental practice of Dr. Martin. As part of that agreement, the parties entered into a noncompete agreement prohibiting Dr. Martin from engaging in business "within 30 miles" of Dr. Ginn's practice for a period of five years. The parties had a falling out and Dr. Martin eventually began working for a dental practice within 30 miles of Dr. Ginn's practice. Dr. Martin's new employer then placed radio advertisements with Dr. Martin's voice in and around Dr. Ginn's practice area. Dr. Ginn then sued. At trial the jury eventually awarded Dr. Ginn $125,000 in damages against Dr. Martin, but the claims against his new employer for tortious interference were dismissed. That was reversed on appeal.

However, Dr. Martin's employer moved for summary judgment immediately after the first appeal, which was granted by the trial court arguing the single satisfaction rule barred the tortious interference claim. Before Dr. Ginn received discovery regarding damages and finances from the employer, the trial court granted the summary judgment motion. Dr. Ginn appealed again. The Twelfth Appellate District reversed the decision on appeal. In so ruling, the court noted that the elements of tortious interference with contract are (1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) the lack of justification, and (5) resulting damages. These damages can include damages that would otherwise be recoverable in a breach of contract claim. However, the employer argued that under the single satisfaction rule, in order to recover on both claims, a plaintiff would have to establish damages above and beyond what was established for the breach of contract claim, and that since the jury already compensated Dr. Ginn for his damages, he could not also recover against Dr. Martin's employer.

The appellate district disagreed based on the collateral source rule. The collateral source rule is the judicial refusal to credit to the benefit of the wrongdoer money or services received by a plaintiff from an independent third party. In Ohio, the collateral source rule had not yet been applied in civil tort actions until this case. The Twelfth Appellate District found that "such extension of the collateral source rule consistent with its purpose to assure a "tortfeasor does not benefit, by way of a reduced damage award, from payments which the plaintiff receives from an independent third party." Here, an issue existed to what extent Dr. Martin's employer benefited from its purported wrongful acts to warrant reversal of the trial court's decision.

The Bullet Point: The collateral source rule is an exception to the general rule in tort actions that the measure of the plaintiff's damages is that which will make [him] whole. It prevents a wrongdoer from arguing that the amount of damages he owes should be lessened based on money or compensation the plaintiff received from an independent source.

In essence, the collateral source rule ensures that a defendant is punished for his or her actions even if the plaintiff receives compensation elsewhere. This case is the first in Ohio to apply the collateral source rule to tort actions, as "the exception has been applied to 'insurance carriers, workers' compensation programs, employer disability programs, Medicare, and Social Security benefits.'" This ruling can be an important tool to address improper and unscrupulous business practices.

Gilliam v. Crowe, 2d Dist. Montgomery No. 27352, 2017-Ohio-5494.

This was an appeal of a denial of a motion for leave to amend a complaint based on the finding that seeking leave to amend would be futile. The Second Appellate District disagreed and reversed the trial court judgment.

Plaintiff was in a car wreck when his car hit a utility pole, dropping power lines into the road. This caused a delay in getting to the vehicle and towing it. The towing company was finally able to tow the vehicle. However, no one was aware that the plaintiff remained in the car, injured. He was not discovered for another six hours, at which point he was taken to the hospital for treatment. Plaintiff sued the tow company as well as the sheriff's office for negligence and other claims. The defendants moved to dismiss the complaint and so plaintiff sought leave to amend. The trial court denied the motion finding that since the claims could not withstand a motion to dismiss, seeking leave to amend the claims would be "futile."

On appeal, the Second Appellate District disagreed. In so ruling, the court noted that under Ohio law, a litigant only needs to provide a "short and plain statement" of the asserted claims. The court noted that based on the allegations in the proposed complaint, it is possible the plaintiff asserted a viable negligence claim and so it reversed the trial court's decision.

The Bullet Point: Under Ohio law, leave to amend a complaint is supposed to be "freely given." Courts will almost always grant a litigant leave to amend unless the request was done in bad faith, was done to delay proceedings, or it would be futile to grant the motion. Futility focuses on whether the proposed amended claims could withstand a motion to dismiss. If not, leave to amend a complaint should not be granted.