Where must I seek legal relief? The Bullet Point: Volume 2, Issue 12

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Binding Arbitrations Clauses Valid

Epic Systems Corp. v. Lewis, No. 16-285 (May 21, 2018).

In this seminal decision, the United States Supreme Court found that employers and employees can contract away the right to litigate claims in court under the Fair Labor Standard Act through binding arbitration clauses. In these cases, employers and employees agreed to contracts that contained an arbitration clause to resolve employment disputes between the parties. Despite this, the employees filed suit in court for purported violations of the Fair Labor Standards Act through class or collective actions. The Supreme Court held that such actions could not be litigated in court but must be pursued in binding arbitration pursuant to the terms of the arbitration clauses contained in the employment agreements.

The Bullet Point: The Federal Arbitration Act requires courts to enforce agreements to arbitrate, including the terms of arbitration the parties select. While the Federal Arbitration Act contains a savings clause, which allows courts to refuse to enforce arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract," the court found that this refers to "generally applicable contract defenses, such as fraud, duress, or unconscionability." The court further found that the Federal Arbitration Act did not conflict with the National Labor Relations Act (NLRA) in this regard. In so ruling, the court noted that nothing in the NLRA infers that class and collective actions are "concerted activities" protected by the NLRA that would warrant a different outcome in this case.

Providing Permission to Call a Cell Phone Creates TCPA "Prior Express Consent"

Barton v. Credit One Financial, N.D. Ohio No. 16CV2652 (Apr. 30, 2018).

This lawsuit involved purported violations of the Telephone Consumer Protection Act (TCPA). The plaintiff claimed that defendant called his cell phone after the plaintiff opened a credit card with the defendant. The parties agreed that plaintiff provided his cell phone number to the defendant on his credit card application and listed it as his primary, and only, contact number. The plaintiff also had agreed to a cardholder agreement which contained language that he provided his express consent to defendant to contact him on his cell phone with an automatic telephone dialing system. Plaintiff claims that thereafter the defendant engaged in a "harassing collection campaign" and contacted him repeatedly on his cell phone with an automatic telephone dialing system, and that he revoked any prior consent at that time by telling defendant's collection agents not to contact him anymore. Plaintiff then filed suit alleging defendant violated the TCPA.

Defendant eventually moved for summary judgment and the U.S. District Court for the Northern District of Ohio granted the motion, finding that defendant had express permission to contact plaintiff on his cell phone with an automated dialer system.

The Bullet Point: The TCPA regulates the use of certain technology when placing calls to consumers, and makes it illegal for any person to place a call "using any automatic telephone dialing system or an artificial prerecorded voice" to a cell phone number without obtaining the "prior express consent of the called party." While not defined, the Federal Communications Commission has interpreted "prior express consent" to include a form of implied consent, wherein "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called" at such number, "absent instructions to the contrary." A debtor does not need to specifically provide his consent to automated calls, rather, "a party who gives an invitation or permission to be called at [a certain] number" has given "prior express consent" to be contacted. This consent can be revoked. As the district court found, however, that cardholder agreement contained a revocation clause that required it to be in writing, among other things, and the TCPA "does not permit a consumer who agrees to be contacted by telephone as part of a bargained-for transaction to unilaterally revoke that consent."

Implied-in-Fact Contracts

R.C. Costello & Assoc., Inc. v. Energy Tech., Inc., 5th Dist. Richland No. 17CA103, 2018-Ohio-2092.

This was an appeal of a summary judgment decision entered in favor of the plaintiff. Defendant was an Ohio company that was seeking funding in order to create a process for reforming hydrogen using a base facilitated system. The defendant contacted the plaintiff for assistance in attracting potential clients in January 2017, which included participating in various client pitches for the defendant. For these services plaintiff billed over $16,000, but the defendant failed to pay and plaintiff filed suit.

Defendant defended the lawsuit claiming that no actual contract existed because the contract was contingent on obtaining funding for the project, and there was no signed contract. The trial court and Fifth Appellate

District disagreed, finding that through defendant's actions, a contract implied-in-fact existed between the parties.

The Bullet Point: While having a fully executed contract is always preferable, courts will sometimes find that a contractual relationship existed based on a contract implied-in-fact. "To show a contract implied-in-fact, services must be rendered, work performed, or materials furnished by one party under circumstances such that the party to be charged knew or should have known that the services were given with the expectation of being paid their reasonable worth." Recovery under a contract implied-in-act theory is the reasonable value of the services rendered.

Lines of Credit Not Negotiable Instruments

SMS Fin. 30, L.L.C. v. Frederick D. Harris, M.D., Inc., 8th Dist. Cuyahoga No. 105710, 2018-Ohio-2064.

This was an appeal of a trial court's decision to award judgment to the plaintiff in excess of $64,000. The parties had entered into a small business line of credit originally in the amount of $50,000. Pursuant to the contract, the lender would issue various loans or advances to the defendant. The last payment made on the loan was in April 2012. Plaintiff notified the defendant of the default in October 2015 and thereafter filed suit. Defendant argued, among other things, that the claim was time-barred. The trial court and the Eighth Appellate District disagreed.

In so ruling, the court found that the line of credit was not a negotiable instrument and so the six-year statute of limitation for negotiable instruments did not apply, and that the claim was brought in a timely manner, within the time frame for suing on a written contract under Ohio law.

The Bullet Point: A negotiable instrument means an unconditional promise or order to pay a fixed amount of money that is payable to bearer or order at the time it is issued, is payable on demand or at a definitive time, and does not state any other undertaking or instruction by the person promising or ordering payment. Negotiable instruments are subject to a six-year statute of limitations under Ohio law. A line of credit is not considered a negotiable instrument because the amount owed is not fixed. As such, lines of credit are subject to the eight-year statute of limitations for written contracts under Ohio law.

Specific Motion Required to Vacate or Modify Arbitration Award

Brooklyn Estates Homeowners' Assn. v. Miclara, LLC, 4th Dist. Ross No. 17CA3605, 2018-Ohio-2012.

This was an appeal of a trial court's denial of a motion to confirm an arbitration award and, instead, vacate the award. Plaintiff and defendant had a dispute as to whether defendant could use a residential lot for commercial purposes. The parties elected arbitration to resolve their disputes. The arbitrator eventually ruled, finding that the arbitration decision was binding and that defendant could not use the property for commercial use. Plaintiff then filed an application for an order confirming the arbitration award. Defendant opposed which the trial court treated as a motion to vacate the arbitrator's award. The trial court granted the motion and plaintiff appealed.

On appeal the Eighth Appellate District reversed, finding that the trial court erred in vacating the award since no one filed a motion specifically asking to vacate or modify the award as required by statute.

The Bullet Point: A reviewing court cannot easily overturn an arbitrator's award. "Because Ohio law favors and encourages arbitration, courts only have limited authority to vacate an arbitrator's award." An arbitrator's award can only be vacated as follows under 2711.13; in order to have an arbitrator's award vacated, modified, or corrected: after an award in an arbitration proceeding is made, any party to the arbitration may file a motion in the court of common pleas for an order vacating, modifying, or correcting the award as prescribed in sections 2711.10 and 2711.11 of the Revised Code. Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is delivered to the parties in interest, as prescribed by law for service of notice of a motion in an action. * * * If no motion is made pursuant to this section, then the trial court has no basis in which to vacate or modify an arbitrator's award.