

# Who Bears What Burden in Class Settlement Objections

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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

### Fraudulent Transfer

#### [Leonard Holdings, Inc. v. Rohaley, 11th District Lake County, 2023-Ohio-4096](#)

In this appeal, the Eleventh Appellate District affirmed the trial court's decision to grant the defendant's motion for summary judgment, finding that the plaintiff failed to meet their burden of proof to establish a claim of fraudulent transfer.

**Bullet Point:** In Ohio, to succeed on a claim of fraudulent transfer, a plaintiff must prove (1) the transfer of an asset or the incurrence of a new debt; (2) done with actual intent to defraud, hinder, or delay; and (3) present or future creditors.

A fraudulent transfer is, among other things, a transfer made or an obligation incurred by a debtor is fraudulent as to a creditor, whether the claim of the creditor arose before or within a reasonable time not to exceed four years after the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any creditor of the debtor.

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### Unjust Enrichment

#### [Scott v. First Choice Auto Clinic, 10th District Franklin County, 2023-Ohio-3855](#)

In this appeal, the Ninth Appellate District affirmed in part and reversed in part the trial court's decision and overruled, among other causes of action, the trial court's finding of unjust enrichment in favor of the plaintiff.

**Bullet Point:** Ohio case law continues to develop with appellate courts in the state addressing the concept of unjust enrichment.

Unjust enrichment is an alternative theory of recovery, which operates in the absence of an express contract to prevent a party from retaining money or benefits that, in justice and equity, belong to another. An oral contract is considered an express contract and thus would preclude an alternative theory for relief, like unjust enrichment.

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## Unclean Hands

### [Bank v. Tony J. Reiser, 6th District Wood County, 2023-Ohio-4167](#)

In this appeal, the Sixth Appellate District affirmed the trial court's decision to grant the plaintiff summary judgment and issue a decree of foreclosure in favor of the bank.

**Bullet Point:** The Sixth Appellate Court had to determine whether or not the trial court erred in granting summary judgment for the plaintiff when the trial court found that the bank did not engage in the practice of "unclean hands."

Case law in Ohio states that to establish the affirmative defense of unclean hands, a defendant must show that the plaintiff seeking relief engaged in reprehensible conduct with respect to the subject matter of the action, which the trial court found that the bank did not engage in.

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## Florida

### Objections to Class Action Settlements

#### [Robert Ponzio, et al., v. Emily Pinon, et al., No. 21-14503 \(11th Cir. November 27, 2023\)](#)

The Eleventh Circuit examined what burden is borne by objectors to a proposed class action settlement.

**The Bullet Point:** Pursuant to Federal Rule of Civil Procedure 23(e)(2), a district court may approve a class action settlement that binds class members "only after a hearing and only on finding that it is fair, reasonable, and adequate[.]" The proponents of the settlement bear the burden of demonstrating that the settlement distribution is fair, reasonable, and adequate. In this appeal, objectors to a proposed class action settlement argued that the trial court abused its discretion in the agreement. Noting that it never provided a detailed explanation of what burden, if any, is borne by objectors to a proposed class action settlement, the Eleventh Circuit outlined certain parameters to follow.

The Court determined that the requirement in Rule 23(e)(5)(A) that an objector must "state with specificity" the grounds for an objection means that objections must provide sufficient details to enable the parties to respond to them and the Court to evaluate them. Once proper objections are lodged, the proponents of the settlement must show that the matters raised do not impact the fairness, reasonableness, or adequacy of the agreement. The challenge for the district court is to distinguish between a meritorious objection and those advanced for

improper purposes. Following these parameters, the Court examined the objections and concluded that the trial court acted within its discretion in approving the settlement agreement.

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## Attorneys' Fees Awards under the FLSA

### [Peter Serrao v. Mantis Funding, LLC and Michael Marano, No. 4D2022-1467 \(Fla. 4th DCA November 22, 2023\)](#)

The Fourth District concluded that the Fair Labor Standards Act requires an award of fees upon rendering of a judgment in the plaintiff's favor, regardless of whether the plaintiff prevailed on all of its claims.

**The Bullet Point:** The Fair Labor Standards Act (the FLSA) provides that, in addition to any judgment awarded, the plaintiff may recover a reasonable attorneys' fee to be paid by the defendant. In this appeal, the Fourth District examined whether the trial court erred by denying an award of attorneys' fees on the basis that the plaintiff was not a prevailing party on all of his claims. The Fourth District concluded that the trial court's reliance on the prevailing party standard was error. This is because the language of the FLSA provides that plaintiffs who recover a judgment in their favor "shall" be allowed a reasonable attorneys' fee. Accordingly, the denial of attorneys' fees was reversed and remanded for a hearing to determine a reasonable fee.

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## Mandatory and Permissive Forum Selection Clauses

### [Property Registration Champions, LLC, No. 5D22-2341 \(Fla. 5th DCA November 13, 2023\)](#)

The Fourth District examined the plain language of a forum selection clause to determine whether it was mandatory or permissive.

**The Bullet Point:** Florida law recognizes two types of forum selection clauses: mandatory and permissive. Mandatory forum selection clauses require that a lawsuit be filed in the identified forum, while a permissive clause provides only that a particular forum may have jurisdiction over such litigation. Whether a forum selection clause is mandatory or permissive is determined by whether the language of the provision indicates exclusivity.

In this appeal, the appellant argued that the trial court erred in denying his motion to dismiss based upon its finding that the forum selection clause was permissive. The Fourth District agreed, concluding that the forum selection clause was mandatory because its plain language made clear that "all" suits arising out of or relating to the underlying contract "shall be brought" in Delaware. The Fourth District reasoned that while there are no "magic words" that dictate the classification of a forum selection clause, the plain language of the forum selection clause, in this case, unambiguously indicates exclusivity. Accordingly, because the mandatory forum selection clause requires that the lawsuit must be brought in Delaware, the trial court erred in denying the motion to dismiss.

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