What is the Garn-St. Germain Act? The Bullet Point: Volume 2, Issue 24

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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.

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16(b) Pro Se Representation

Olagues v. Timken, U.S. Court of Appeals, 6th Cir. No. 18-3351.

Plaintiff claimed to be a "stock options expert" and he traveled the country suing companies under section 16(b) of the Securities and Exchange Act. Ward Timken, CEO of TimkenSteel, exercised a stock option and transferred company stock that he owned back into the company. Thereafter, he purchased company stock on the open market. Plaintiff, who claimed to own stock in the company, accused Mr. Timken of insider trading. He then filed suit and sought damages in the amount of $554,700, the amount of profit Mr. Timken earned through the alleged forbidden trade.

Defendants moved to strike the complaint arguing that a pro se litigant could not represent the company's interests in an action under section 16(b) of the Securities and Exchange Act. The trial court agreed, granted the motion to strike, and dismissed the action.

Plaintiff appealed and on appeal, the Sixth Circuit Court of Appeals affirmed. However, it also granted plaintiff leave to obtain counsel and amend the complaint.

The Bullet Point: Under § 16(b), an insider must return profits from buying and selling stock if both transactions occurred within six months. A shareholder can bring an insider trading action to disgorge "short-swing" profits that an insider obtained improperly. Although the shareholder can bring the lawsuit, any recovery goes only to the company. Under 28 U.S.C. § 1654, plaintiffs in federal court may not "appear pro se where interests other than their own are at stake." "The rule against non-lawyer representation protects the rights of those before the court by preventing an ill-equipped layperson from squandering the rights of the party he purports to represent." So while a pro se plaintiff can "squander" his own rights, he cannot waste the rights of other persons or entities. This is why, "under longstanding tradition, 'a corporation can only appear by an attorney.'"

The Garn-St. Germain Act

Estate of Cornell v. Bayview Loan Servicing, LLC, et. al., U.S. Court of Appeals, 6th Cir. No. 18-1245.

This appeal focused on non-judicial foreclosure under Michigan law. The borrower's estate challenged the foreclosure by asserting a number of causes of action, including a claim under the Garn-St. Germain Depository Institutions Act of 1982. The action was removed to federal court on federal question jurisdiction. Plaintiff did not contest this and eventually the district court granted the defendant's motion to dismiss.

The estate appealed and on appeal, the Sixth Circuit Court of Appeals, sua sponte, determined that the district court lacked subject-matter jurisdiction to hear the first case and vacated the district court's opinion with instructions to remand the matter back to state court.

The Bullet Point: The Garn-St. Germain Act prohibits states from banning due-on-sale clauses, providing in principal part that "[n]otwithstanding any provision of the constitution or laws (including judicial decisions) of any State to the contrary, a lender may, subject to subsection (c) of this section, enter into or enforce a contract containing a due-on-sale clause with respect to a real property loan." The Act specifically references only nine types of due-on-sale clauses that are covered. Here, in determining whether the cause of action conferred subject matter jurisdiction on the district court, the Sixth Circuit considered whether the claims arise "under a statute sufficient to confer subject matter jurisdiction" and considered two factors: 1) "litigants whose causes of action are created by federal law," and 2) "state-law claims that implicate significant federal issues." The court specifically found that the claims under the Garn-St. Germain Act do not meet these requirements, finding that the Act does not provide for an express cause of action or an implied cause of action, and thus it could not provide a basis for subject matter jurisdiction in federal court.

Class Certification

Cantlin v. Smythe Cramer Co., 8th Dist. Cuyahoga No. 106697, 2018-Ohio-4607.

This was an appeal of the trial court's decision to grant a motion for class certification. The defendant, a real estate company, charged a $225 fee in connection with services provided for in real estate transactions. The plaintiffs contended that the fee was unearned because the defendant offered no actual services in exchange for the fee. The plaintiffs further contended that defendant masked the fee as a "sales commission" to avoid customer backlash.

The named plaintiffs eventually initiated a lawsuit, asserting claims for fraud and unjust enrichment and seeking class certification on these particular claims. The trial court granted the motion for class certification, finding that all of the elements of fraud and unjust enrichment can be proved or disproved by common proof. The defendant appealed and on appeal, the Eighth Appellate District affirmed finding that all elements of Civ.R. 23 were met and class certification was appropriate.

The Bullet Point: Civ.R. 23 provides seven requirements for maintaining a class action:

1. an identifiable class must exist and the definition of the class must be unambiguous;
2. the named representatives must be members of the class;
3. the class must be so numerous that joinder of all members is impracticable;
4. there must be questions of law or fact common to the class;
5. the claims or defenses of the representative parties must be typical of the claims or defenses of the class;
6. the representative parties must fairly and accurately protect the interests of the class; and
7. one of the three Civ.R. 23(B) requirements must be met.

Civ.R. 23(A) requires that the class definition be unambiguous and the class identifiable. "The requirement that there be a class will not be deemed satisfied unless the description of it is sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member." Moreover, while individualized fact-finding may defeat class certification, this is true only when the cause of the problem is plaintiff's overly broad class definition. Ohio courts have favored

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class certification when fraud is alleged concerning a defendant's form contracts. "[C]laims involving interpretations of form contracts present the classic case for treatment as a class action * * *."

Negligence

Dabney v. Metro Appraisal Group, Inc., 8th Dist. Cuyahoga No. 106917, 2018-Ohio-4601.

This was an appeal of a trial court's decision to dismiss a complaint alleging claims for breach of contract and negligence. Plaintiff and his ex-wife sought to refinance their mortgage with Wells Fargo Bank. Wells Fargo, in turn, hired the defendant to conduct a property appraisal for use in considering the refinancing request. The defendant's arrangement was with the ex-wife, not the plaintiff. Eventually, Wells Fargo advised plaintiff that he needed to obtain his own appraisal in order to be considered for refinancing. He refused, and when the refinancing attempt by his ex-wife was declined, plaintiff sued, claiming that defendant breached a duty it owed to him.

Defendant eventually moved to dismiss arguing, among other things, that any negligence claim was time-barred and that the defendant had no contractual relationship with the plaintiff. The trial court agreed and dismissed the lawsuit. Plaintiff appealed and on appeal, the Eighth Appellate District affirmed, finding that the complaint failed to state a claim upon which relief could be granted.

The Bullet Point: In order to establish a claim for negligence, a plaintiff must establish that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, and (3) the plaintiff suffered an injury and damages as a direct and proximate result of that breach. To establish a "duty," the plaintiff must demonstrate that a relationship existed between the parties. Absent this relationship, however, "there is no duty on behalf of [a defendant] to refrain from acting negligently towards [a plaintiff]."