

What can I get when my contract is breached? The Bullet Point: Volume 2, Issue 2

The Bullet Point: An Ohio Commercial Law Bulletin

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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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Lucarell v. Nationwide Mut. Ins. Co., Slip Op. No. 2018-Ohio-15.

This was an appeal by an insurance company to the Ohio Supreme Court of a jury verdict entered in favor of a former employee for breach of contract, fraud, invasion of privacy, and bad faith. The former employee had argued that the insurance company induced her to open a new insurance agency when it intended to terminate her after she generated a profitable book of business. At trial, she received a jury verdict in the amount of \$42 million. This amount was reduced to \$14 million by the trial court, which was affirmed in part by the Seventh Appellate District, which found that the former employee could recover punitive damages for breach of contract if she proved her fraud claim.

The Ohio Supreme Court reversed, finding that punitive damages are not recoverable for breach of a contract.

The Bullet Point: In a wide-ranging opinion, the Ohio Supreme Court reaffirmed a number of contract and tort law principals:

1. Punitive damages are not recoverable in an action for breach of contract.
2. When a breach of contract involves conduct that also constitutes a tort, punitive damages may be awarded only for the tort, not for the breach, and any punitive damages awarded are subject to the statutory limitations on punitive damages imposed in R.C. 2315.21.
3. A party to a contract does not breach the implied duty of good faith and fair dealing by seeking to enforce the agreement as written or by acting in accordance with its express terms, nor can there be a breach of the implied duty unless a specific obligation imposed by the contract is not met.
4. An unconditional release of liability becomes effective upon execution and delivery and bars any claims encompassed within it, unless it was procured by fraud, duress, or other wrongful conduct.
5. A party seeking to avoid a release of liability on the basis that it was procured under duress is required to prove duress by clear and convincing evidence.
6. The prevention of performance doctrine—which states that a party who prevents another from performing a contractual obligation may not rely on that failure of performance to assert a claim for breach of contract—is not a defense to a release of liability and therefore cannot be asserted as a defense to a release.
7. A fraud claim cannot be predicated on predictions or projections relating to future performance or on misrepresentations made to third parties.

All businesses should understand these rules when disputes arise as they exemplify the saying that “just because something is legal doesn’t make it right.” Knowing what is actionable and what damages are available is critical when assessing disputes and the proper strategy to address same.

Alford v. Collins-McGregor Operating Co., Slip. Op. No. 2018-Ohio-8.

A group of landowners sued an oil company for partial termination of an oil and gas lease. The landowners hold interest in 74 acres. The land is subject to an oil and gas lease from 1980. “[T]he sole and only purpose” of the lease is to permit “mining and operating for oil and gas and laying pipe lines, and building tanks, powers, stations, and structures thereon, to produce, save, and take care of said products.” In return for permission to mine the land, the oil company agreed to make royalty payments based on the amount of gas produced. The lease is silent on drilling and production. The landowners claimed that the oil company breached the lease by not exploring or drilling for oil at certain depths and sought termination of the lease as a result. The landowners claimed this violated an implied covenant of reasonable development and the implied covenant to explore further. The oil company moved to dismiss, arguing that Ohio law does not recognize these implied covenants. The trial court and Fourth Appellate District agreed.

The Ohio Supreme Court affirmed, finding that Ohio law does not recognize the implied covenant to explore further.

The Bullet Point: Oil and gas leases are ordinarily subject to an implied covenant to reasonably develop the land. According to the Ohio Supreme Court, this implied covenant sufficiently protects a landowner’s interest in development of the land, and thus a new implied covenant to explore further is not necessary. Indeed, the purpose of the implied covenant of reasonable development is to protect the lessor’s interest in the lease, which is to obtain production and, hence, profits, once the right to drill has been granted to the lessee. In fact, recognizing a separate implied covenant to explore further would not support the overarching purpose of an oil and gas lease: “the profit motive [is] an instrumental force in oil and gas leases on behalf of both lessee and lessor,” and to fail to recognize the profit motive “is to ignore the very essence of the contract.”

Brannon v. Edman, 9th Dist. Summit No. 28544, 2018-Ohio-70.

This appeal involved the dismissal of a lawsuit for fraud and breach of contract for violating the statute of frauds. The plaintiff alleged that he orally agreed to purchase real property from the defendant by making monthly payments. Plaintiff further claimed he made all of the monthly payments and that defendant subsequently refused to accept payments. Plaintiff then sued when defendant refused to deed the real property to him. Defendant moved to dismiss, arguing that the allegations violated the statute of frauds, which requires that real estate transactions be in writing and signed by the party to be charged. The trial court agreed and dismissed the action.

On appeal, the Ninth Appellate District reversed, finding that the doctrine of part performance removed the contract from the statute of frauds.

The Bullet Point: At its core, the statute of frauds makes clear that, under certain circumstances, if a contract is not written, it is not binding. Ohio’s version, as every state has its own, is in O.R.C. Section 1305.05:

No action shall be brought whereby to charge the defendant ... upon a contract or sale of lands, tenements, or hereditaments, or interest in or concerning them, or upon an agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized.

The statute of frauds is riddled with exceptions and qualifications. One such exception is the doctrine of part performance. The Ohio Supreme Court has limited application of

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the doctrine of part performance to “cases involving the sale or leasing of real estate, wherein there has been a delivery of possession of the real estate in question, and in settlements made upon consideration of marriage, followed by actual marriage.” The doctrine takes a case out of the operation of the statute of frauds if the acts of the parties “* * * are such that it is clearly evident that such acts would not have been done in the absence of a contract and * * * there is no other explanation for the performance of such acts except a contract containing the provisions contended for by the plaintiff.”

For part performance to apply, three factors must be met: (1) evidence of a change in who possesses the land, (2) payment of all or part of the consideration for the land, and (3) improvements, alterations, or repairs upon the land.

Though the statute of frauds has long existed, it is often the core of contractual disputes; businesses not only need to be aware of it, but also aware of all its exceptions and qualifications.

Bayview Loan Servicing, LLC v. Vasko, 6th Dist. Wood No. WD-17-029, 2018-Ohio-38.

This appeal involved a lien priority challenge between competing lienholders. The plaintiff filed a foreclosure lawsuit on a residential mortgage recorded in 2008. It named a law firm as a defendant in the lawsuit because the title record reflected that it held a mortgage on the property recorded in October 2012. Subsequently, the plaintiff modified its mortgage and the modified mortgage was recorded in October 2014.

The defendant law firm opposed the plaintiff’s lien priority, arguing that it took priority because the plaintiff’s lien was modified subsequent to its mortgage being recorded, and it therefore lost its priority. The trial court disagreed and the law firm appealed.

On appeal, the Sixth Appellate District affirmed, finding that the plaintiff’s mortgage had priority because it was recorded first.

The Bullet Point: Ohio follows a “first in time first in right” theory on lien recording. That is, mortgages and encumbrances are to be paid in the order they are recorded. In certain circumstances, a mortgage can retain its priority even when it has been modified because the modification “relates back” to the original date of recording. Factors the courts may consider in determining whether a modification “relates back” for priority purposes include whether there were additional funds in the modification, whether the interest rate increased, whether the repayment period was extended, and whether the monthly payments were reduced.