

BAD FOR BUSINESS

Ohio's Statute of Limitations For Written Contracts

By Mark A. Johnson and Rodger L. Eckelberry

Do you recall details of conversations and events from 15 years ago? Unless the event was personally significant or tragic, probably not. Too much happens in our daily lives to remember details from so long ago. But Ohio businesses have to defend breach of contract claims filed as long as 15 years after the alleged breach. Ohio Rev. Code Section 2305.06.

Suit on an oral contract must be brought within six years, and tort claims generally must be filed within four years.¹ Why, then, if the claim is upon a written contract, can suit be brought a decade and a half after the alleged breach? Surely if a written contract was breached in 1995, the nonbreaching party should know in fewer than 15 years.

From Pony Express to Email

In 1790, the Northwest Territory adopted a ten-year statute of limitations for "matters of record, and covenant," and six years for a debt upon "simple contract," but this Act was disapproved by Congress two years later.² In 1803, when Ohio achieved statehood, the legislature created a 15-year statute of limitations for "all actions of covenant or debt founded upon a specialty under hand and seal. . . ." By 1824, the 15-year limitations period for "any agreement, contract or promise in writing" survived, while the condition that it be under seal was dropped.⁴ Contracts under seal date back to early English common law, before the end of Edward I's reign.⁵ Ohio eliminated any special significance to contracts under seal in 1883.⁶

Whatever justification existed over two centuries ago for adopting a 15-year limitations period for actions on a written contract have long passed. At that time, the primary mode of transportation was by horse, and communications took weeks to be delivered; 15 years to bring suit for a breach may have been reasonable at an early 19th Century pace. Today, with near instantaneous communications, a 15-year statute of limitations is an historical relic.

The Impact on Ohio businesses

Why should the legislature fix this embarrassing anachronism? Beyond increasing costs to businesses, allowing suits

on stale claims makes cases difficult and unfair to defend and increases the burden on an overtaxed court system.

Take, for example, a run-of-the-mill class action founded upon a claim for breach of a written contract. If certified as a class action, the class period may include as class members all who were party to the contract within 15 years before the suit was filed. A business facing a class action for breach of contract and potential damages of \$100 per class member over 15 years could face exposure of \$10 million with a class of 100,000. However, with a six year limitations period (assuming all else to be equal), the class size would be only 40,000 and potential damages reduced to \$4 million. This scenario in class actions asserting contract claims is real.⁷ The impact is further compounded by the potential for 15-plus years of prejudgment interest on a contract claim.⁸ The generous 15-year limitations period enables class counsel to use millions more in "damages" as economic leverage to force settlement of class actions simply because of an outdated statute of limitations from two centuries ago.

This statute of limitations affects businesses in more than just class actions, though. Document and data retention is a significant, ongoing business expense and maintaining paper and terabytes of data to be able to defend a contract claim 15 years later is costly. Even when documents still exist, those who drafted or performed the old contracts have often retired or even died by the time a complaint is filed – further complicating the defense. What's more, Ohio jurisprudence is rife with disputes over contorted attempts to convert time-barred tort claims into contract claims that unnecessarily burden dockets.⁹

Time for Change

Among all states, only Kentucky stands with Ohio in generously allowing 15 years to bring suit on a written contract. A plurality of states (22) provide for six years, 18 states have limitations periods between 3-5 years, while only eight provide limitations periods of eight or ten years.¹⁰

No sound reason exists for Ohio to maintain this 19th Century byproduct that

does nothing but shock clients sued in class actions. Not only does this limitations period add fuel to the fire of class actions, it's an added, unnecessary expense of the cost of doing business in Ohio. Considering that the statute of limitations for a felony is only six years (albeit with many exceptions that may lengthen or obviate that time period),¹¹ 15 years to bring suit on a written contract is absurd.

It's time for Ohio to leave behind this statutory vestige of our wilderness days and join the 21st Century by adopting a statute of limitations for breach of written contract more suited to the world of today. Forty states have limitations periods between 3-6 years. Surely, were Ohio to join this majority, we'd send the signal that we're open for business, and not just for costly class actions.

¹ Ohio Rev. Code Sections 2305.07, 2305.09.

² Statutes of Ohio and the Northwestern Territory, adopted or enacted from 1788-1833, Vol. 1, at 102-03 (ed. Salmon P. Chase 1833) ("Chase").

³ Id. at 392.

⁴ Chase, Vol. II. at 1768.

⁵ 3 Corbin on Contracts, §§10.2-10.18 (Rev. ed. 1996).

⁶ Revised Statutes § 4 ; see also Ohio Rev. Code §5.11 (private seals abolished and "shall not give such instrument additional force or effect").

⁷ See, e.g., Westgate Ford Truck Sales, Inc. v. Ford Motor Company (8th Dist.), 2007-Ohio-4013.

⁸ Ohio Rev. Code. Section 1343.03.

⁹ See, e.g., Creaturo v. Duko (7th Dist.), 2005-Ohio-1342.

¹⁰ A handful of states have a longer limitations period for contracts under seal, a distinction without difference in Ohio. Ohio Rev. Code Section 5.11.

¹¹ O.R.C. Section 2901.13.



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