ILLINOIS STATE BAR ASSOCIATION

APRIL 2023 VOL 66 NO. 5

Commercial Banking, Collections and Bankruptcy

The newsletter of the Illinois State Bar Association's Section on Commercial Banking, Collections and Bankruptcy

Here Comes the Sun
1

The Use of Artificial Intelligence in Commercial Litigation
1

Celsius Cryptocurrency Woes: Bad News for Those Whose Cryptocurrency Is Trapped in the Estate, Could Be Worse for Those Who Think They've Escaped
3

Mitigation of Damages in Illinois Commercial Lease Disputes
4

Proving an Arbitration Agreement Unconscionable: Difficult, But Not Impossible
5

Here Comes the Sun

BY JUDGE MICHAEL CHMIEL

In this edition of our newsletter, let me again thank those who read our offerings. As you will note, we have deviated from publication in the odd-numbered months to publication in the even-numbered months. Nevertheless, we are striving to continue to add value for the members of our section and other readers of this newsletter.

As the spring is bringing us more and more sun (even though we were blessed with a relatively mild winter), I am hoping to help shed a bit of sun on emerging issues in our neck of the legal world.

At the end of March, the Illinois State Bar Association sponsored its biennial think tank known as the ISBA Allerton Conference. Excepting the time of the pandemic, the Civil Practice Section of the ISBA has hosted the conference every two years, dating back many years to

Continued on next page

The Use of Artificial Intelligence in Commercial Litigation

BY JUDGE MICHAEL CHMIEL

Written with the use of chat-gpt.org

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The use of artificial intelligence (AI) in the legal industry has been on the rise in recent years. One area where AI has been particularly useful is in commercial litigation. AI technology has proven to be a valuable tool for lawyers in managing and analyzing large amounts of data in litigation cases.

AI technology can be used in many different aspects of commercial litigation. For example, AI algorithms can be used to review and classify large volumes of documents in discovery. This can help attorneys to identify relevant information more quickly and accurately than manual review.

In addition, AI-powered analytics

Continued on next page

Here Comes the Sun

CONTINUED FROM PAGE 1

the Allerton Park and Retreat Center in Monticello. The conference provides for a deep dive into emerging and anticipated issues and advances in the legal profession. This year, about 50 members of the ISBA congregated over three days in Champaign, to learn, discuss, and propose.

My role at the Conference involved serving on a panel which discussed artificial intelligence in our court system, and otherwise participating in various discussions. As for AI, I note it is a quickly developing tool which can be utilized to help with many things in the legal profession. Questions involve to what extent AI should be used and how it should be managed. To show its utility and capability, I have included a simple article in this newsletter which I drafted in less than three minutes by typing the following into a free, online version of AI at chat-gpt.org: Please prepare an article which explains the use of artificial; (sic) intelligence in commercial litigation.

In addition, in this issue of our newsletter, we include an article on another emerging use of technology, cryptocurrency, which comes to us through the guest writing of Ron Spinner of the Detroit office of Miller Canfield. Another guest contributor, R. Kymn Harp of the Chicago office of Robbins DiMonte, Ltd., writes on the mitigation of damages in commercial lease disputes. Then, Jay Schleppenbach of the Chicago office of Dechert LLP writes on arbitration clauses.

We hope you enjoy the content of this newsletter. We will work to publish the next newsletter in June. Please email me if you have an article for publication or may want to help with the newsletter. I can be reached at mjchmiel@22ndcircuit.illinoiscourts.gov. Enjoy the sun of the new season!■

The Use of Artificial Intelligence in Commercial Litigation

CONTINUED FROM PAGE 1

tools can be used to examine patterns and trends in data, such as financial records, to identify discrepancies and potential fraud. This can help attorneys to build a stronger case against fraudulent individuals or companies.

AI can also help in the areas of contract analysis and review. Many commercial litigation cases involve disputes over the interpretation of contracts. AI technology can be used to extract key legal concepts and clauses from contracts, helping attorneys to better understand the parties' rights and obligations under the agreement.

Overall, the use of AI in commercial litigation can help to increase efficiency, improve accuracy, and reduce costs. It can also help attorneys to identify risks and opportunities in cases, allowing them to craft more effective strategies.

However, as with any new technology, there are also potential risks and challenges associated with the use of AI in litigation. For example, there may be concerns around the accuracy and reliability of AI algorithms, as well as the potential for bias or error.

In order to address these concerns, it is important for attorneys to carefully consider the use of AI technology in their litigation practices. This may involve partnering with specialized AI vendors and experts, or investing in internal training and development programs to ensure that attorneys have the skills and knowledge necessary to effectively navigate these new technologies.

In conclusion, the use of artificial intelligence in commercial litigation has the potential to revolutionize the legal industry, improving efficiency, accuracy, and cost-effectiveness. However, it is important for

Commercial Banking, Collections and Bankruptcy

Published at least four times per year. Annual subscription rates for ISBA members: $30. To subscribe, visit www.isba.org or call 217-525-1760.

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attorneys to approach these new technologies with caution and care, ensuring that they are used appropriately and ethically to achieve the best possible outcomes for their clients.■

Judge Mike Chmiel is a Past Chair of the ISBA's Commercial, Banking, and Bankruptcy Section Council, which is now known as the Commercial Banking, Collections, and Bankruptcy Section Council. He serves as the Chief Judge of the Twenty-Second Judicial Circuit, and as the Editor of this newsletter. He used chat-gpt.org to draft this article.

Celsius Cryptocurrency Woes: Bad News for Those Whose Cryptocurrency Is Trapped in the Estate, Could Be Worse for Those Who Think They've Escaped

BY RONALD A. SPINNER

On January 4, 2023, the judge in the *Celsius Network bankruptcy case*[1] ruled that Celsius users who had deposited cryptocurrency in Celsius's "Earn Accounts" had transferred ownership of their cryptocurrency to Celsius. These users had deposited their cryptocurrency in the hopes of earning a high rate of interest. Unfortunately, Celsius's terms and conditions came with a "catch"—while the cryptocurrency was in the Earn Account, it belonged to Celsius. Thus, at the time it filed for bankruptcy protection, Celsius owned any cryptocurrency in the Earn Accounts. Depositors had nothing more than an "I.O.U."—the same as any other creditor.

Media reports have noted that this clearly is bad news for Earn Account users, as they only hold unsecured claims against the estate instead of claims to their original cryptocurrency. Yet, the news may be even worse for those who withdrew their cryptocurrency from Celsius in the three months before it filed.

Presumably, the bankruptcy court also will determine that even though Celsius owned the cryptocurrency, it remained obligated to return it to the depositors at some point. In other words, each deposit likely came with a corresponding debt for return of the deposit. If so, then whenever a depositor withdrew its cryptocurrency, Celsius's debt to that depositor was repaid.

Any depositor who withdrew cryptocurrency from Celsius in the three months before Celsius filed for bankruptcy protection could face a "preference" lawsuit. A "preference" typically occurs when a creditor receives payment from a debtor in the three months before the debtor files for bankruptcy protection. Here, Celsius users who thought they had escaped the bankruptcy by withdrawing their cryptocurrency in the days before Celsius filed its bankruptcy petition might be unpleasantly surprised to find themselves sued by the estate for return of the withdrawal.

Worse, the bankruptcy estate might sue not for the cryptocurrency withdrawn, but for what it was worth at the time of the withdrawal. If a preference suit is successful, the Bankruptcy Code allows the estate to recover "the property transferred, or if the court so orders, the value of such property."[2] Property often is valued at the time of the transfer rather than its current value. Thus, the bankruptcy estate might ask for return of the cryptocurrency or its value at the time of withdrawal, whichever works out best for the estate.

Examples might help. As of April 10, 2023, bitcoin was trading for around $29,000. It was trading at about $21,000 as of July 13, 2022, the date on which the Celsius bankruptcy petition was filed. If a preference suit is filed against someone who withdrew bitcoin just before the bankruptcy petition was filed, the estate likely would seek return of the bitcoin withdrawn because the estate would get the benefit of its subsequent price appreciation to $29,000 per bitcoin. But if the withdrawal had occurred in April 2022, the bankruptcy estate could ask the Court to instead award it the dollar value of the bitcoin on the withdrawal date, because bitcoin was trading for as much as $40,000 at times during that month. Thus, people who made withdrawals could find themselves liable to the estate not only for the cryptocurrency they withdrew, but also for any price depreciation the cryptocurrency suffered since then. This could easily leave them worse off than the people whose cryptocurrency remains trapped within (and owned by) the Celsius bankruptcy estate.

On a brighter note, the Celsius bankruptcy court approved a settlement last month that might provide some relief to former Celsius customers. Some

customers with cryptocurrency in Celsius's Earn Accounts had transferred their deposit to "Custody" accounts not long before the bankruptcy petition was filed. These customers seemingly had the worst possible luck - they could not withdraw their cryptocurrency because of the bankruptcy filing, yet they were also potentially subject to having the transfer treated as a preference (with all of the issues previously discussed). The settlement resolves this. Claimants in this situation who opt into the settlement can withdraw 72.5% of their cryptocurrency and resolve any preference exposure. They do not get everything they had back, but people rarely do in a bankruptcy setting…and they can sleep easier, knowing that they dodged the issues discussed above.

The Celsius case and other cryptocurrency-related bankruptcy cases continue to raise novel issues for bankruptcy practitioners. Stay tuned!■

Ron Spinner is a principal in Miller Canfield's Insolvency Practice Group. His practice includes all aspects of bankruptcy, but specializes in bankruptcy litigation, including preferences and fraudulent transfers. Ron has written articles and spoken on panels regarding the handling of cryptocurrencies in bankruptcy settings. He can be reached at spinner@millercanfield.com.

1. Currently pending as *In re Celsius Network LLC, et al., Case No. 22-10964 (Jointly Administered) in the United States Bankruptcy Court for the Southern District of New York.*
2. 11 U.S.C. § 550(a).

Mitigation of Damages in Illinois Commercial Lease Disputes

BY R. KYMN HARP

Synopsis

An Illinois landlord under a commercial lease must take reasonable measures to mitigate damages . . . but only if mitigation of damages is required – which is not always.

The General Duty to Mitigate

Illinois landlords and their agents are required to use reasonable measures to mitigate damages recoverable against a defaulting lessee. 735 ILCS 5/9-213.1. The term "reasonable measures" is not defined by statute, and Illinois courts have held that whether the landlord has complied with the reasonable-measures standard is a question of fact, to be determined on a case-by-case basis. *Danada Square, LLC v. KFC National Mgmt. Co.*, 392 Ill. App. 3d 598, 913 N.E.2d 33, 41, 332 Ill. Dec. 438 (2d Dist. 2009).

Section 9-213.1 of the Code of Civil Procedure, 735 ILCS 5/1-101, et seq., is mandatory, however, and it is the responsibility of the landlord, when proving damages, to also prove that it took reasonable measures to mitigate damages, whether or not the landlord's requirement to mitigate damages was raised as an affirmative defense by the tenant. *St. George Chi., Inc. v. George J. Murges & Associates, Ltd.*, 296 Ill. App. 3d 285, 695 N.E.2d 503, 508 – 509, 230 Ill. Dec. 1013 (1st Dist. 1998); *Snyder v. Ambrose*, 266 Ill. App. 3d 163, 639 N.E.2d 639, 640 – 641, 203 Ill. Dec. 319 (2d Dist. 1994).

The landlord has the burden to prove mitigation of damages as a prerequisite to recovery. *Snyder*, supra, 639 N.E.2d at 641; *St. Louis North Joint Venture v. P & L Enterprises, Inc.*, 116 F.3d 262, 265 (7th Cir. 1997). Losses that are reasonably avoidable are not recoverable. *Nancy's Home of Stuffed Pizza, Inc. v. Cirrincione*, 144 Ill. App. 3d 934, 494 N.E.2d 795, 800, 98 Ill. Dec. 673 (1st Dist. 1986); *Culligan Rock River Water Conditioning Co. v. Gearhart*, 111 Ill. App. 3d 254, 443 N.E.2d 1065, 1068, 66 Ill. Dec. 902 (2d Dist. 1982).

In dicta, the court in *St. George*, supra, stated that failure to take reasonable measures to mitigate damages may not necessarily bar recovery by the landlord, but it will result in the landlord's recovery being reduced. 695 N.E.2d at 509. How this would work from an evidentiary standpoint, however, is not entirely clear. Presumably, the landlord could introduce evidence at trial that, although the landlord did not take reasonable measures to mitigate damages, if it had, damages would have been reduced by some specified amount. If the landlord fails to introduce even that evidence, however, the question appears to remain open as to whether the landlord adequately proved damages — since the burden of proof of damages remains with the landlord and there is no suggestion that the statutory requirement to prove mitigation shifts to the tenant.

At least one recent case has, in dicta, questioned aspects of both St. George and Snyder, supra, disagreeing that proof of mitigation must be demonstrated by the landlord as a prerequisite to recovering damages and has suggested that the issue of mitigation of damages is an affirmative defense that must be raised by the tenant, or it is waived. *Takiff Properties Group Ltd. #2 v. GTI Life, Inc.*, 2018 IL App (1st) 171477, ¶ 23, 124 N.E.3d 11, 429 Ill. Dec. 242.

Further, as a matter of first impression, the court in Takiff went on hold that the landlord's obligation to mitigate can be contractually waived by a commercial tenant. *Takiff*, at ¶ 29, and, as determined by the trial court, was in fact contractually waived by the tenant, rendering the issue of mitigation moot. 2018 IL App (1st) 171477 at ¶ 31.

Possession as a Condition Precedent to Landlord's Duty to Mitigate

Notwithstanding any general duty of landlord to mitigate damages, a landlord has no duty to mitigate until the landlord comes into possession. *2460-68 Clark LLC v. Chopo Chicken, LLC*, 2022 IL App (1st) 210119, ¶ 34; *Block 418, LLC v. Uni-Tel Communications Group, Inc.* 398 Ill. App. 3d 586, 925 N.E.2d 253, 258 ((2d Dist. 2010); *St. George Chi., Inc. v. George J. Murges & Associates, Ltd.*, 296 Ill. App. 3d at 290-91.

Discussing the application of this principle, the Chopo Chicken court noted that an eviction proceeding is a summary proceeding to recover possession. Since a landlord has no duty to mitigate until the landlord is in possession, and, in an eviction action, a landlord is not in possession until the eviction court grants the landlord an order of possession and landlord recovers possession, landlord's efforts to mitigate, or the lack thereof, are not relevant. *Chopo Chicken*, supra ¶ 34.

Liquidated Damages Provision Makes Mitigation Irrelevant

It is the general rule in Illinois that, in the case of an enforceable liquidated damages provision, mitigation is irrelevant and should not be considered in assessing damages. *Chopo Chicken* at ¶ 33. A liquidated damages provision is an agreement by the parties as to the amount of damages that must be paid in the event of default. Id. Liquidated damages in commercial leases are not uncommon.

In *Chopo Chicken*, the court considered a provision that included an itemization of damages recoverable by landlord from tenant, including "a sum equal to the amount of unpaid rent and other charges and adjustments called for herein for the balance of the term hereof, which sum shall be due to Landlord as damages by reason of Tenant's default hereunder" constituted a liquidated damages provision.

Similarly, in the *St. George* case, 296 Ill. App. 3d 285, 695 N.E.2d 503, 507, the court found that a so-called "rent differential" formula (i.e. "amount determined by the excess if any of the present value of the aggregate Monthly Base Rent and Operating Expense Adjustments for the remainder of the Term as then in effect over the then present value of aggregate fair rental value of the Premises for the balance of the Term, with the present value calculated in each case at 3%") constituted a liquidated damages provision.

The Summary Rule Regarding Mitigation

Based upon the foregoing cases, the actual Illinois rule governing mitigation of damages in commercial lease disputes appears to be as follows: A landlord must take reasonable measures to mitigate damages, if mitigation of damages is required – but mitigation of damages is not required (i) until the landlord is placed in possession of the leased premises, or (ii) when the lease includes a liquidated damages provision.■

Proving an Arbitration Agreement Unconscionable: Difficult, But Not Impossible

BY JAY SCHLEPPENBACH

As readers of this newsletter probably know, the Federal Arbitration Act states that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[1] One such basis for challenging any contract is unconscionability.[2] It is often described as consisting of two components: procedural and substantive unconscionability.[3] Procedural unconcionability focuses on the circumstances of the signing of the agreement, such as whether the terms were clear or obscured, whether there was negotiation or not, and the respective bargaining power of the parties.[4] Substantive unconscionability, in contrast, looks at the actual terms of the contract and whether they are unreasonably favorable to the more powerful party.[5] Many courts require that a litigant show both procedural and substantive unconscionability, although others will accept a compelling showing of just one of the two types, and most acknowledge that a more forceful showing of one lessens the burden as to the other.[6] Courts have also held that parties seeking to invalidate a contract on this basis always bears a "heavy burden," leading to limited success for unconscionability arguments.[7] For example, courts have found there is no procedural unconscionability merely because the circumstances surrounding the contract signing were emotional and difficult, because the arbitration clause was part of a large set of documents, or because the signatory had a significantly lower education levels than its counterparty.[8] Similarly, courts have rejected claims of substantive unconscionability

premised on generalized allegations that arbitration could potentially be expensive, limit discovery or damages, or be biased.[9] Thus, to avoid arbitration on this basis, a party must show that he or she had no meaningful choice in signing the agreement and that its terms will effectively prevent him or her from vindicating his or her rights.[10]

Though this standard is a challenging one, parties have sometimes been able to meet it. For example, parties have had some success arguing procedural unconscionability where the arbitration clause was part of a form contract that was not explained or where the party suffered from diseases that reduced his or her cognitive abilities.[11] Parties have succeeded in arguing substantive unconscionability where, for instance, the agreement required that party to arbitrate all claims but did not require the counterparty to do so[12] or limited discovery and damages in a significant way.[13] And last summer, the First District Illinois Appellate Court reversed a trial court's order that a matter be arbitrated on unconscionability grounds in *Bain v. Airoom*.[14]

The plaintiff in *Bain* was a disabled senior citizen who alleged that a home remodeling company overcharged her for shoddy and incomplete work on her home.[15] The parties' four-page contract included the following arbitration clause in its paragraph twenty:

20. BINDING ARBITRATION. Any controversy or claim arising out of, or relating to the Contract, the Contract Documents, the Project or the Real Estate shall be resolved by binding arbitration. All arbitrations shall be conducted in Chicago, Illinois before an arbitrator selected in accordance with, and shall be conducted pursuant to, the Construction Industry Arbitration Rules of the American Arbitration Association (www.adr.org) or any other alternative dispute resolution firm, at Airoom's sole and absolute discretion. The arbitrator shall have the authority to award only compensatory damages. Except where prohibited by law, the arbitrator shall have no authority to award punitive or exemplary damages, and in any event, the arbitrator shall make no ruling, finding or award that does not conform to the terms and conditions of the Contract Documents. Costs and fees of arbitration may be awarded to the prevailing party. 'Costs and fees' shall mean all reasonable expenses of arbitration including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, and witness fees, but shall not include either party's attorney's fees or costs. The arbitration award shall be in writing and shall specify the factual and legal basis for the award. In rendering the award, the arbitrator shall determine the rights and obligations of the parties in accordance to the substantive laws of Illinois without regard to its provisions regarding conflicts of law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof and the costs incurred in connection with any action to confirm the arbitration award shall be awarded by the court. Neither party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. If Buyer rejects or does not accept this binding arbitration provision, it shall be deemed a counter offer [sic] to Airoom to proceed with the Contract, without the terms of this paragraph. In such case, Buyer's counter-offer may only be accepted in writing by an authorized officer of Airoom. If Buyer's counter-offer is not accepted by Airoom within 5 days, the Contract shall become null and void and of no further force and affect."[16]

Based on this clause, the trial court granted a motion to compel, rejecting the plaintiff's unconscionability arguments, and the plaintiff appealed.[17]

The appellate court reversed, first concluding that unconscionability could be established as a procedural or substantive matter; both were not required.[18] The court then rejected the plaintiff's contentions that the contract was unconscionable because she was an unrepresented consumer required to sign a preprinted form contract with an arbitration clause not specifically brought to her attention, citing Illinois Supreme Court precedent finding "contract[s] of adhesion" to be acceptable as "a fact of modern life."[19] But the court reasoned that its views of the substantive provisions of the contract could be colored by these factors and found several substantive provisions to be unconscionable, including: (1) a bar on the recovery of attorney fees and punitive damages; (2) a requirement that all arbitration decisions be kept confidential, unless both parties agreed otherwise; and (3) a unilateral option for the remodeling company to require that the matter be arbitrated under the AAA Construction Industry Arbitration Rules and Mediation Procedures.[20]

As to the first provision, the court noted that the plaintiff had raised a consumer fraud claim, and the relevant Illinois statute provides that "[a]ny waiver or modification of the rights, provisions, or remedies of this Act shall be void and unenforceable."[21] The court thus concluded that the agreement impermissibly limited the plaintiff's recovery in a way that was unconscionable.[22] On the second provision, the court found that the confidentiality provision was unfairly one-sided and thus unconscionable because, "[a]s a repeat player in arbitrations under its own contract, [the remodeling company would] of course have access to information about past proceedings that the individual homeowners it arbitrates with [would] lack."[23] With regard to the third provision, the court noted that the contract chose the AAA's Construction Industry Rules rather than its Home Construction Rules, which were "designed specifically for home construction disputes between a homeowner and a home builder" and had lower administrative fees and arbitrator's fees.[24] The court found the higher fees to be especially problematic given the contract's fee-shifting provision that put the plaintiff at risk of having to pay both her own and the remodeling company's arbitration fees.[25] Adding in the fact that the agreement merely pointed the plaintiff to the AAA's website rather than disclosing relevant rules or fee schedules, the court found this provision to be unconscionable.[26]

The court considered whether it could simply sever the unconscionable provisions and enforce the rest of the arbitration agreement, but concluded that this would be "tantamount to drafting a new contract."[27]

"Where, as here, the drafting party has structured an arbitration agreement that is designed to make a claim expensive to bring, to bar any full recovery, and to ensure that the public does not learn of adverse findings against the company, the modifications necessary to render the agreement enforceable cannot be considered minor. The arbitration agreement is unenforceable, and its unconscionable provisions cannot be severed."[28]

Thus, though avoiding arbitration on grounds of unconscionability remains a difficult task, it is not impossible. Particularly where both procedural and substantive aspects of the contract containing the arbitration clause are problematic, savvy practitioners may be able to follow the model of *Bain* and help their clients have their day in court. ■

Jay Schleppenbach is counsel at Dechert LLP and a past chair of the ISBA ADR Section Council. Any opinions expressed herein are solely Mr. Schleppenbach's and are not intended to reflect the views of Dechert or the Section Council.

1. 9 U.S.C. § 2.
2. Restatement (Second) of Contracts § 208 (1981).
3. *See, e.g.,* 8 Richard Lord, Williston on Contracts § 18:10 (4th ed. 2001); *Scovill v. WSYX/ABC*, 425 F.3d 1012, 1017 (6th Cir. 2005).
4. 8 Richard Lord, Williston on Contracts § 18:10 (4th ed. 2001); Schnuerle v. Insight Comm'ns Co., L.P., 376 S.W.3d 561, 576 (Ky. 2012).
5. 8 Richard Lord, Williston on Contracts § 18:10 (4th ed. 2001); *Dan Ryan Builders, Inc. v. Nelson*, 737 S.E.2d 550, 558 (W. Va. 2012).
6. *See Maxwell v. Fidelity Fin. Servs., Inc.*, 907 P.2d 51, 58 (Ariz. 1995) (collecting cases).
7. *E.g., Marzano v. Proficio Mortgage Ventures*, LLC, No. 12 C 7696, 2013 WL 1789779, at *12 (N.D. Ill. April 25, 2013); *Bralite Holdings, LLC v. Dryfoos Envtl. Consulting, LLC*, No. HHDCV116022797S, 2013 WL 1364732, at *3 (Conn. Super. March 12, 2013); *Commercial Real Estate Inv., L.C. v. Comcast of Utah II, Inc.*, 285 P.3d 1193, 1203 (Utah 2012).
8. *LeMaire v. Beverly Enter. MN, LLC*, No. 12-1768, 2013 WL 103919, at *5 (D. Minn. Jan. 9, 2013); *THI of N.M. at Vida Encantada, LLC v. Archuleta*, No. Civ. 11-399 LH/ACT, 2013 WL 2387752, at *17 (D. N.M April 30, 2013).
9. *Archuleta*, 2013 WL 2387752, at *15-16; *Carraway v. Beverly Enter. Ala., Inc.*, 978 So. 2d 27, 32-33 (Ala. 2007); *FL-Carrolwood Care Ctr., LLC v. Estate of Gordon*, 72 So. 3d 162, 167 (Fla. Ct. App. 2011).
10. *See, e.g., Briarcliff Nursing Home, Inc. v. Turcotte*, 894 So.2d 661 (Ala. 2004); *Romano v. Manor Care, Inc.*, 861 So. 2d 59, 63 (Fla. Ct. App. 2003).
11. *See, e.g., Wascovich v. Personacare of Ohio*, 943 N.E.2d 1030, 1036 (Ohio Ct. App. 2010); *Wobese v. Health Care & Retirement Corp. of Am.*, 977 So. 2d 630, 632 (Fla. Ct. App. 2008); *Manley v. Personacare of Ohio*, No. 2005-L-174, 2007 WL 210583, at *3 (Ohio Ct. App. 2007).
12. *See, e.g.*, Ruppelt v. Laurel Healthcare Providers, Inc., 293 P.3d 902, 906 (N.M. Ct. App. 2012); *McGregor v. Christian Care Ctr. of Springfield, L.L.C.*, No. M2009-01008-COA-3-CV, 2010 WL 1730131, at *6-7 (Tenn. Ct. App. 2010).
13. *See, e.g., Estate of Ruszala v. Brookdale Living Communities, Inc.*, 1 A.3d 806, 821 (N.J. Ct. App. 2010).
14. 2022 IL App (1st) 211001.
15. *Id.* ¶ 4.
16. *Id.* ¶ 6.
17. *Id.* ¶¶ 7-15.
18. *Id.* ¶ 23 (citing *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 21 (2006)).
19. *Id.* ¶ 27 (citing *Kinkel*, 223 Ill. 2d at 28).
20. *Id.* ¶¶ 28, 30.
21. *Id.* ¶ 33 (citing 815 ILCS 505/10c).
22. *Id.*
23. *Id.* ¶ 39.
24. *Id.* ¶¶ 42-46.
25. *Id.* ¶ 47.
26. *Id.* ¶ 49.
27. *Id.* ¶ 54.
28. *Id.*

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