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OHIO APPELLATE COURT HOLDS THAT STATUTORILY AUTHORIZED AWARDS OF
ATTORNEY’S FEES ARE PROPERLY DECIDED BY ARBITRATORS

By
Nick Fox*

I. INTRODUCTION

In *Corbin v. Kelly Plating Co.*, the Court of Appeals of Ohio, 8th District considered an appeal from a plaintiff-appellant for issuance of a statutorily authorized award of attorney’s fees.¹ While in court-annexed arbitration, the appellant neither presented the issue of attorney’s fees to the arbitral panel, nor preserved the issue for the trial court to decide.² After the arbitral award was confirmed by the court, the appellant motioned the court for the fees.³ Appellant pursued the sought-after attorney’s fees in the intermediate appellate court.⁴ As a matter of first impression, the Court identified a strikingly similar case decided by the Illinois Supreme Court, and adopted the holding and reasoning nearly verbatim.⁵

II. BACKGROUND

Joe L. Corbin, appellant, worked for appellee, Kelly Plating Company (“Kelly Plating”).⁶ At times, Corbin worked a late shift and at other times in a supervisory role.⁷ Under both circumstances, he was entitled to earn an increased wage beyond his base pay.⁸ Kelly Plating, however, did not consider these factors

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¹ *Corbin v. Kelly Plating Co.*, 931 N.E.2d 204, 205 (Ohio Ct. App. 2010).

² *Id.* at 207.

³ *Id.* at 206.

⁴ *Id.*

⁵ *Cruz v. Nw. Chrysler Plymouth Sales*, 688 N.E.2d 653 (1997).

⁶ *Corbin*, 931 N.E.2d at 206.

⁷ *Id.*

⁸ *Id.*

when it issued Corbin's paychecks.⁹ On January 15, 2008, Corbin filed a civil suit against Kelly Plating alleging breach of federal and state wage and employment laws.¹⁰ Corbin sought relief in the form of back wages, liquidated damages, and attorney's fees under both the Fair Labor Standards Act ("FLSA") and Ohio's wage and overtime law.¹¹

Kelly Plating answered the complaint and filed counterclaims alleging that Corbin regularly left work early and that he also owed them for various fees for union dues and uniforms.¹² Shortly thereafter, the trial court ordered the case to proceed through court-annexed arbitration, pursuant to a local rule requiring arbitration.¹³ Accordingly, the parties submitted their claims to an arbitral panel and proceeded through a series of hearings.¹⁴ On September 11, 2008, the panel issued an award whose net amount favored Corbin by \$1,100.¹⁵ Approximately one month later, the trial court confirmed the arbitral panel's decision.¹⁶

Just four days later, Corbin motioned to the trial court seeking attorney's fees in the amount of nearly \$14,000.¹⁷ The trial court denied the motion on grounds that the motion was untimely and that the issue should have either been properly submitted to the arbitral panel or excepted from their consideration.¹⁸ Corbin appealed the trial court's decision.¹⁹

Corbin asked the appellate court to review the trial court's determination that denied his request for attorney's fees.²⁰ Corbin contended that attorney's fees are wholly distinct from any judgment award, and are only to be awarded after the

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Corbin*, 931 N.E.2d at 206 n.2 (referencing Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (2011); OHIO REV. CODE ANN. §§ 4111.01-4111.99 (West 2011)).

¹² *Corbin*, 931 N.E.2d at 206.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Corbin*, 931 N.E.2d at 206.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

judgment is entered.²¹ He further argued that an award of attorney's fees would be speculative if issued by an arbitral panel.²² Part of this contention stemmed from uncertainty accompanying the possibility that the arbitral award would be appealed.²³ Corbin reasoned that at the point in time when the panel was able to award attorney's fees, it would be inappropriate to do so.²⁴

III. ANALYSIS

The appellate court reviewed Corbin's claims *de novo*.²⁵ The principal issue under review was whether a court can properly award statutorily authorized attorney's fees after it has confirmed an arbitral award.²⁶ In considering this issue, the court recognized that it would be required to weigh two important policy considerations.²⁷ The first is the legislature's desire to ensure that litigants are reimbursed for their attorney's fees in appropriate cases.²⁸ The contrasting consideration is the safeguarding of the perception that court-annexed arbitration can provide a less expensive and more expedient means to adjudicate claims.²⁹

The court first examined the trial court's decision not to award attorney's fees *post hoc*.³⁰ A driving force that influenced the trial court's decision was their determination that the arbitrator was in the better position to determine the amount of reasonable fees.³¹ Since this was a case of first impression for the appellate

²¹ *Id.* at 209.

²² *Corbin*, 931 N.E.2d at 210.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 206.

²⁶ *Id.* at 210.

²⁷ *Corbin*, 931 N.E.2d at 205.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 208.

³¹ *Id.*; *See Moore v. First Bank of San Luis Obispo*, 996 P.2d 706 (Cal. 2000); *Dickins v. Lee*, 230 Cal. Rptr. 2d 783 (1991); *and Turnberry Assoc. v. Serv. Station Aid*, 651 So. 2d 1173 (Fla. 1995).

court, it looked outward for direction to benchmark the trial court's determination.³² Specifically, the court considered cases decided in California, Florida, and Illinois. The court particularly focused on an Illinois decision, *Cruz v. Northwestern Chrysler Plymouth Sales, Inc.*³³ *Cruz* involved a dispute stemming from the sale of an automobile under the Consumer Fraud and Deceptive Business Practices Act.³⁴ The case was ordered into court-annexed arbitration.³⁵ On the issue of statutorily authorized attorney's fees, the court held that in order to recover attorney's fees, the plaintiff must present a claim for them to the arbitration panel.³⁶ The Illinois Supreme Court reversed the decision of the trial court, which awarded attorney's fees despite the fact that the party failed to properly appeal the arbitral award during the prescribed time frame.³⁷ The *Cruz* court emphasized that the arbitral panel is best suited to decipher and establish an award of attorney's fees because, "the court will know virtually nothing about the issues in the case, how difficult it was to litigate, or how effectively counsel-represented his clients. The arbitration panel, not the . . . court, is therefore the proper body to rule on statutory fee requests."³⁸ The Ohio court in the instant case virtually adopted the holding and reasoning of the *Cruz* court.³⁹ The court then addressed what constitutes reasonable attorney's fees in Ohio as specified by the Ohio Rule of Professional Conduct.⁴⁰ "The arbitration panel is familiar with the time, novelty, nature, experience, and range of possible results in the cases before them. Therefore, [they] are in the best possible position to determine what [is] a reasonable fee."⁴¹

³² *Corbin*, 931 N.E.2d at 208.

³³ *Id.* (citing *Cruz v. Nw. Chrysler Plymouth Sales, Inc.*, 688 N.E.2d 653, 654 (Ill. 1997)).

³⁴ *Id.*

³⁵ *Id.* (citing *Cruz*, 688 N.E.2d at 654).

³⁶ *Id.* at 208.

³⁷ *Corbin*, 931 N.E.2d at 208.

³⁸ *Id.* (citing *Cruz*, 688 N.E.2d at 657-58).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 209.

In addressing Corbin's contentions that attorney's fees are the exclusive domain of the courts, and such an award by an arbitral panel would be improper, the court once again relied on *Cruz*.⁴² The *Cruz* court articulated its rationale that directly rebutted Corbin's position, by suggesting that the entire system of mandatory arbitration rested upon the condition that defendants can rely on the arbitrator's award as fixing their maximum exposure to liability.⁴³ The court further speculated that if courts were permitted to award attorney's fees on top of the award issued by arbitrators, few if any defendants would accept the arbitrator's decision as binding.⁴⁴ Additionally, the court reasoned that every case where attorney's fees are possible would require the participation of a trial court to determine the award.⁴⁵ This is impractical and detracts from the efficiency that court-annexed arbitration provides.⁴⁶ Ultimately, the court arrived at a decision based largely upon reasoning borrowed from *Cruz* to affirm the order of the trial court, denying the award of attorney's fees.⁴⁷

IV. SIGNIFICANCE

Corbin is significant because it establishes a precedent for all would-be litigants in Ohio to follow when pursuing an arbitral award of attorney's fees. The court signals a tendency to favor preservation of the efficiencies of court-annexed arbitration over preserving individual rights to full compensation for incurred costs. This is especially evidenced by the court's acknowledgement that Corbin was in-fact entitled to the attorney's fees.⁴⁸ Moving forward, litigants will benefit

⁴² *Corbin*, 931 N.E.2d at 209.

⁴³ *Id.*; see *Cruz*, 688 N.E.2d at 657.

⁴⁴ *Corbin*, 931 N.E.2d at 208; see *Cruz*, 688 N.E.2d at 657.

⁴⁵ *Corbin*, 931 N.E.2d at 210.

⁴⁶ *Id.*

⁴⁷ *Corbin*, 931 N.E.2d at 211.

⁴⁸ *Id.* at 210.

from knowing that untimely motions for attorney's fees that stem from court-annexed arbitration will not be entertained by Ohio courts.