



Do Court-Appointed Receivers Have Judicial Immunity in Ohio?

SCOTT OPINCAR | RESTRUCTURING STRATEGIES | MAY 06, 2015

The Ohio legislature recently amended Ohio's receivership statutes for the first time in over 60 years. Although Sub. H.B. No. 9, which became effective on March 23, 2015, clarified various issues related to the powers of a receiver and a receiver's ability to sell real property free and clear of liens, the amendments did not include any provisions regarding whether or not a court-appointed receiver may have personal liability for conduct taken or not taken in the context of carrying out his or her duties as receiver.

The rationale to accord a receiver with judicial immunity is that a receiver is exercising judicially-authorized functions as an arm of the court and thus should be entitled to the immunity typically accorded to judges under the doctrine of judicial immunity.

The Barton Doctrine

In *Barton v. Barbour*, the United States Supreme Court held:

"We therefore declare it as our opinion that when the court of one State has a railroad or other property in its possession for administration as trust assets, and has appointed a receiver to aid it in the performance of its duty by carrying on the business to which the property is adapted, until such time as it can be sold with due regard to the rights of all persons interested therein, a court of another State has not jurisdiction, without leave of the court by which the receiver was appointed, to entertain a suit against him for a cause of action arising in the State in which he was appointed and in which the property in his possession is situated, based on his negligence or that of his servants in the performance of their duty in respect of such property."

The *Barton* doctrine provides that, in cases outside of bankruptcy where a receiver is appointed, the appointing court must approve any suit against the receiver to ensure a consistent and equitable administration of the receivership property, because a judgment against a receiver would be satisfied out of the receivership property. Thus, according to the *Barton* case, requiring a party with claims against the receiver to obtain permission from the appointing court before filing suit in another jurisdiction would prevent the usurpation of the powers and duties which belong exclusively to the appointing court to distribute the trust assets to creditors equitably and according to their respective priorities. The *Barton* doctrine is not dependent on any federal statute, but instead on principles of common law. The First, Third, Sixth, and Ninth Circuit Courts of Appeal have held that the *Barton* doctrine continues to exist, but on a limited basis. A plaintiff must still seek leave (permission) of the court before instituting an action against a receiver, but only for acts done in the receiver's official capacity. See, *Heavrin v. Schilling (In re Triple S Restaurants, Inc.)*, 519 F. 3d 575, 578 (6th Cir. 2008) (quoting *Allard v. Weitzman (In re DeLorean Motor Co.)*, 991 F.2d 1236, 1240 (6th Cir. 1993).

Ohio Common Law

In Ohio, a court's decision to grant or deny a request to bring claims against a receiver will not be overturned on appeal absent a finding of abuse of discretion. An abuse of discretion requires more than a mere error of law or judgement, instead requiring a finding that the court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St. 3d 217, 219 (1983). A receiver can only be sued in his or her official capacity for actions taken under a court's order and satisfaction of such judgments can be obtained solely from funds in the receiver's hands as directed by the court that appointed the receiver. *INF Enterprises, Inc. v. Donnellon*, 133 Ohio App. 3d 787, 789 (1st Dist. 1999). In *INF Enterprises*, the Court of Appeals held that quasi-judicial immunity would not protect a receiver to the extent that the receiver acts outside of the authority granted by the court through such court's orders or "fails to use ordinary care" in administering the receivership assets. The receiver acts in a fiduciary capacity and must use ordinary care in performing his or her duties as receiver.

Ohio's ordinary care standard creates an evidentiary burden that does not exist in many other states. The majority of reported decisions extend judicial immunity to receivers in extremely broad terms. Courts in Arizona, California, Minnesota, North Dakota, South Dakota, Texas, and Utah have held that receivers should be afforded the same judicial immunity as the judge that appoints the receiver so long as the receiver carried out the orders of the judge that appointed him or her. Consequently, it is critical for a court-appointed receiver in Ohio to understand and act within the scope of the court's order appointing the receiver and subsequent orders entered by the appointing court.



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