

# **The Construction Conversation**

## **Ohio's Legislative, Administrative, and Judicial Two-Way Newsletter**

November, 2023

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### **Legislative: Domestic Abuse Alleged in the House**

State Representative Elliott Forhan (D, South Euclid) is accused of “harassment, hostility, and intimidation” of General Assembly colleagues and staff, resulting in a state investigation and disciplinary measures against the sitting legislator. (Cont'd p. 2.)

### **Administrative: State Construction Funding Grants**

The State is offering construction funding grants from several programs which recently passed in the 2023 Operating Budget. Grants announced by the state include \$770 million for construction. (Cont'd p. 2.)

### **Judicial: Home Solicitation Sales Act Requires Damages**

A Court of Appeals ruled that an action by owners against a contractor for violation of the Home Solicitation Sales Act requires actual damages, even if the contractor violated the Act. (Cont'd p. 2.)

### **Judicial: Unjust Enrichment for Subcontractor Claims**

A Court of Appeals held that a subcontractor may pursue unjust enrichment against the owner in spite of a contractual arrangement with a general contractor, if the general contractor is insolvent or not pursuing payment. (Cont'd p. 3.)

### **Legislative: Legislative Districts Validated**

The Ohio Supreme Court reversed course in declaring the latest General Assembly district maps to be constitutional, dismissing a challenge on the basis that, “The bipartisan adoption of the September 2023 plan is a changed circumstance...”. (Cont'd p. 3.)

### **Judicial: Arbitration Clause Requires Hearing**

The 9<sup>th</sup> District Court of Appeals for Medina County held that, when parties dispute the requirement of arbitration, the trial court must hold an evidentiary hearing consistent with R.C. 2711.03. (Cont'd p. 3.)

### **Administrative: Polymath Park**

The legacy of Architect Frank Lloyd Wright is promoted at Polymath Park in Acme, Pennsylvania, where visitors can stay overnight in an actual relocated Wright-built home. (Cont'd p. 3.)

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## **Legislative: Domestic Abuse Alleged in the House (Cont'd)**

Effective November 16, 2023, the House Minority Leader stripped Rep. Forhan of all committee assignments and caucus staff services, and forbid any contact with legislative staff.

“You have been counselled multiple times, yet refuse to accept the responsibility and weight of your position, actions, and discourse” wrote the Minority Leader. The letter followed an apparent argument between Forhan and another State Representative.

On November 17, 2023, the House Speaker requested that the Attorney General further investigate, based upon “a reasonable apprehension of violent conduct.” The Attorney General appointed a Special Counsel to investigate.

On November 21, 2023, Representative Juanita Brent (D, Cleveland) filed for a protective order in Cuyahoga Common Pleas Court, citing social media posts by Forhan directed at her. “Rep. Forhan posted three separate, public social media videos directed at me. The representative’s tone, demeanor and choice of words in each video left me feeling uncomfortable and concerned for my safety,” wrote Brent.

Forhan is an attorney, graduated from Yale Law School. His official biography refers to his having conducted the wedding ceremony for his two mother parents after the U.S. Supreme Court recognized gay marriage.

## **Administrative: State Construction Funding Grants (Cont'd)**

\$420 million is allocated for the second round of the Appalachian Community Grant to underwrite local improvements. The funds originated from American Rescue Plan Act federal dollars. Application deadline is December 8<sup>th</sup> to the Office of Appalachia in the Ohio Department of Development.

\$200 million was awarded for career technical education construction, with priority for job-creating programs. Among awards was \$15 million to the Four County Career Center in Defiance for welding and electrical systems programs.

\$150 million is allocated to the fourth round of the Building Demolition and Site Revitalization Program for local communities to prepare project sites for new development. Each county will receive \$500,000, with remaining funds awarded on first-come basis until June 30, 2024.

## **Judicial: Home Solicitation Sales Act Requires Damages (Cont'd)**

Based on the undisputed absence of a three-day right to cancel notice with the contract, the owner canceled the contract when a dispute over the work occurred. The Court found that contractor failure to be a violation of the law.

However, the statute does not provide that a refund is warranted in spite of work completed. The HSSA is part of the Consumer Sales Practices Act, and requires only that “the right to cancel is an additional remedy, and ends *unfulfilled* obligations under a contract often referred to as executory obligations.”

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The CSPA is not intended to create a windfall for return of payment after work is completed. Any refund due is only for any overpayment.

Further, outside of the contract the contractor still had a valid unjust enrichment claim.

*Santos v. Buckeye 5 LLC*, 7<sup>th</sup> Dist.  
Mahoning, 2023-Ohio-3602

## **Judicial: Unjust Enrichment for Subcontractor Claims (Cont'd)**

A subcontractor typically must sue along the lines of contract privity, and therefore has no remedy against an owner without a mechanics' lien.

However, if the owner has not paid the prime contractor, and the prime contractor is insolvent or unable to pursue the owner, then the subcontractor may sue the owner for unjust enrichment. This claim is not viable if the owner might be exposed to dual payment for the subcontractor's work.

In this case, the prime contractor participated in the case. Yet, it recovered no judgment on behalf of the subcontractor, so there was no risk of double recovery. Further, evidence in trial demonstrated that the prime contractor effectively was not conducting business.

Therefore, the subcontractor's unjust enrichment claim against the owner was allowed.

*VMI Group v Capstone Constr.*, 8<sup>th</sup> Dist.  
Cuyahoga, 2023-Ohio-3882.

## **Legislative: Legislative Districts Validated (Cont'd)**

Voting along party lines, the most significant "changed circumstance" is the departure of former Chief Justice Maureen O'Connor, who voted repeatedly to declare the districts unconstitutional.

The former Chief Justice is now part of a group named "Citizens Not Politicians", circulating petitions to change the redistricting process on the November, 2024 ballot.

"It is time to ban politicians and lobbyists from rigging maps for their own short-sighted interests, and instead to install an independent redistricting commission that assures that every Ohio has fair representation in Congress and the Ohio Statehouse," the League of Women Voters' Executive Director stated.

The most recent ballot initiatives passed in spite of strong Republican legislative opposition. In the November 8<sup>th</sup> General Election, voters approved an amendment to the Constitution to insure a woman's right to choose regarding abortion. Also by a vote of 57%, the voters approved recreational marijuana use in Ohio.

*League of Women Voters v. Ohio Redistricting Commission*, 2023-Ohio-4271

## **Judicial: Arbitration Clause Requires Hearing (Cont'd)**

In a homeowner's dispute with a construction contractor, the contract clearly called for arbitration. Owners often dislike arbitration, because the arbitrator tends to have construction experience, which can be perceived as a pro-contractor bias. Owners thus prefer the local court.

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Alleging fraud, a violation of state statute, and breach of contract, the homeowners requested a hearing to prove that the arbitration provision was fraudulently induced, and therefore was unenforceable.

The trial court granted arbitration to the contractor without a hearing.

The Court of Appeals reviewed the legal history of the R.C. 2711.03 language which appears to require an actual hearing: “The court shall hear the parties...”. As the various Ohio courts of appeals disagree on whether this is mandatory language, the Supreme Court has yet to resolve the difference of legal opinion.

Accordingly, the 9<sup>th</sup> Appellate District required a full hearing before arbitration can be granted, until such time that the Supreme Court orders otherwise.

*Snyder v. Old World Classics LLC*, 9<sup>th</sup> Dist. Medina, 2023-Ohio-4019.

## **Administrative: Polymath Park (Cont'd)**

South of Pittsburgh, the Park hosts four homes, two of which were built by Wright elsewhere, and moved to this location.

“Mantyla” means “of the pines” in Finnish, built in 1952 for the Lindholm family in Minnesota. Now relocated to Polymath Park, the home features Wright’s “Prairie School” design of one floor, no basement or attic; heated concrete floors painted “Cherokee red”; a large central fireplace in a great room with floor-to-ceiling glass windows, and indirect lighting.

Visitors experience living among the trees, sitting on Wright-designed furniture

with built-in cabinets.

Wright built the Duncan House in 1957 in Lisle, Illinois in his “Usonian” concept for city neighborhoods. Construction includes radiant heating, concrete construction without wood-framed walls, and integrated into the natural landscape.

Polymath Park is only a few minutes away from Wright’s masterpiece, “Falling Waters”, constructed of cantilevered concrete waiving in air over a magnificent waterfall.

When Wright was 86 years old, he finished a neighboring home named “Kentuck Knob”, similar in design and constructed out of stone from the surrounding acreage, built into the highest hill on the property.

In describing his lifelong construction-design philosophy, Wright wrote:

“[N]o house should ever be *on* a hill or *on* anything. It should be *of* the hill. Belonging to it. Hill and house should live together each the happier for the other.”

The area is historic. Also nearby is the house built by Albert Gallatin, former Treasury Secretary to Presidents Jefferson and Madison. “Friendship Hill” is a National Park overlooking the Monongahela River.

For further information:

<https://www.polymathpark.com/>

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Join us in

## **The Construction Conversation Call-In**

on

**Thursday, December 14, 2023**

**3:30 p.m.**

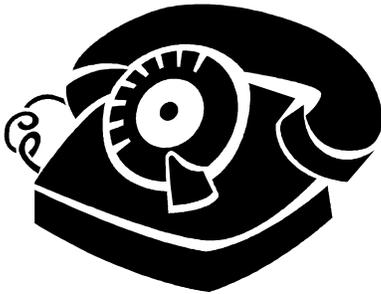
Join Zoom Meeting

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Meeting ID: 824 6583 6997

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