

**COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY**

Wisniewski v. Marek Builders, Inc.

Wisniewshi v. Marek Builders, Inc., 2017 Ohio 1035 (Ohio Ct. App. 2017) · No. 104197 · Decided March 23, 2017

SUMMARY

The Ohio Eighth District Court of Appeals reversed and remanded an order staying a contractual dispute and compelling arbitration. The court held that the Ohio Home Solicitation Sales Act applied to the parties’ home addition and remodeling contract, which lacked the required cancellation notice, and that the plaintiff had cancelled the contract under the Act. The court concluded that the statutory cancellation rendered the arbitration provision unenforceable under the circumstances.

CASE DETAILS

COURT	Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
WRITING FOR THE COURT	Eileen A. Gallagher; Kathleen Ann Keough; Tim McCormack
JURISDICTION	Ohio
DECIDED	March 23, 2017
DOCKET	104197
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order of the Cuyahoga County Court of Common Pleas staying the contractual dispute and compelling arbitration.
STANDARD OF REVIEW	De novo review applies to whether the parties agreed to arbitrate an issue and to questions of unconscionability; the applicable review depends on the type of challenge to the arbitration provision.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion; precedential within the applicable Ohio appellate district subject to later treatment.
PARTIES	Michael Wisniewski v. Marek Builders, Inc., Robert Marek, Various subcontractors

TOPICS

- arbitration
- consumer protection
- construction law
- contracts
- appellate procedure

PRACTICE AREAS

arbitration

construction law

consumer protection

contracts

civil procedure

QUESTIONS PRESENTED

1. Whether the Ohio Home Solicitation Sales Act applied to the home addition and remodeling contract.
2. Whether Wisniewski's cancellation of the contract under the Ohio Home Solicitation Sales Act rendered the contract and its arbitration provision unenforceable.
3. Whether the trial court erred by staying the action and compelling arbitration.

HOLDINGS

1. The Ohio Home Solicitation Sales Act applied because the transaction involved consumer goods or services solicited and contracted for at the buyer's residence, and home additions and remodeling fall within the statute's scope.
2. When a contract is rescinded pursuant to the Ohio Home Solicitation Sales Act, the arbitration provision contained in that contract may be revoked and is not enforceable to compel arbitration of the dispute.
3. The trial court erred by staying the action and compelling arbitration because Wisniewski had cancelled the contract under the Ohio Home Solicitation Sales Act, rendering the arbitration provision unenforceable.

KEY QUOTATIONS

"We have consistently held that an arbitration provision may be held unenforceable on grounds that exist at law or in equity for the revocation of any contract." (¶ 18)

"In light of the above authority and the unopposed facts regarding the subject contract's violation of the HSSA and Wisniewski's cancellation thereof, we find that the trial court erred in granting Marek's motion to stay and compel arbitration." (¶ 21)

FACTUAL BACKGROUND

Wisniewski entered into a contract with Marek Builders for a home addition and remodeling of an existing structure after Marek solicited the transaction at Wisniewski's home. The contract lacked the notice of the buyer's three-day cancellation right required by the Ohio Home Solicitation Sales Act. Wisniewski cancelled the contract by certified mail, and Marek did not dispute the facts concerning the solicitation, missing notice, or cancellation.

PROCEDURAL HISTORY

Wisniewski sued Marek Builders and others over a home addition and remodeling contract. Marek moved to stay the action pending arbitration, and the trial court found the arbitration agreement valid and enforceable and granted the stay. The Eighth District reversed and remanded.

DISPOSITION

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion; the trial court's order staying the action and compelling arbitration is reversed.

CASES CITED

- Kaminsky v. New Horizons Computer Learning Ctr. of Cleveland, 2016-Ohio-1468, ¶ 12 (8th Dist.)
- McCaskey v. Sanford-Brown College, 2012-Ohio-1543, ¶¶ 7-8 (8th Dist.)
- Brownlee v. Cleveland Clinic Found., 2012-Ohio-2212, ¶ 9 (8th Dist.)
- Garber v. STS Concrete Co., L.L.C., 2013-Ohio-2700, ¶¶ 12, 16, 18, 991 N.E.2d 1225 (8th Dist.)
- Clemens v. Duwel, 100 Ohio App. 3d 423, 431, 654 N.E.2d 171 (2d Dist. 1995)
- ABM Farms v. Woods, 81 Ohio St. 3d 498, 501-502, 1998-Ohio-612, 692 N.E.2d 574
- Household Realty Corp. v. Rutherford, 2004-Ohio-2422 (2d Dist.)
- Pinnell v. Cugini & Cappoccia Builders, Inc., 2014-Ohio-669 (10th Dist.)
- Tomovich v. USA Waterproofing & Found. Servs., 2007-Ohio-6214 (9th Dist.)
- Haga v. Martin Homes, Inc., 1999 Ohio App. LEXIS 1740 (5th Dist. Apr. 19, 1999)
- Hedeem v. Autos Direct Online, Inc., 2014-Ohio-4200, ¶ 26, 19 N.E.3d 957 (8th Dist.)
- Hayes v. Oakridge Home, 122 Ohio St. 3d 63, ¶ 15, 2009-Ohio-2054, 908 N.E.2d 408
- Neubauer v. Household Fin. Corp., 2002-Ohio-6831, ¶¶ 20-25 (8th Dist.)
- Miller v. Household Realty Corp., 2003-Ohio-3359, ¶¶ 34-35 (8th Dist.)
- Southland Corp. v. Keating, 465 U.S. 1, 10-11, 104 S. Ct. 852, 79 L. Ed. 2d 1 (1984)