



State v. Buckeye Finance Corp.

54 Ohio St.2d 407 (1978) | Cited 2 times | Ohio Supreme Court | June 21, 1978

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O'NEILL, C.J.

The issue before this court is whether the trial judge properly denied the plaintiffs motion for leave to file the amended complaint.

Under Civ. R. 15, "a party may amend his pleading only by leave of court or by written consent of the adverse party," except in circumstances not relevant here. The rule further provides that "[l]eave of court shall be freely given when justice so requires."

The trial judge held that the statute on which the plaintiffs relied, R.C. section 1707.26, did not authorize them to sue for the relief prayed for.

Thus, the issue here involves the proper interpretation of R.C. section 1707.26.

The question is not whether certain remedies - rescission and restitution - lie within the equitable jurisdiction of the court of common pleas. The question is whether the plaintiffs, as administrative agents of the state, have statutory authority to sue for those remedies on behalf of purchasers of securities. We hold that they do not.

It would be unreasonable to infer such authority from the general language of R.C. section 1707.26, when, in other sections of the code, the General Assembly has taken pains to create similar causes of action in purchasers of securities explicitly, rather than by implication. For example, under R.C. section 1707.41, a purchaser has an action for damages against anyone who advertises securities by a prospectus which falsely represents the offering. Under R.C. section 1707.42, the purchaser can sue for damages against anyone who, without disclosing his financial interest in the transaction, advises him to buy securities and receives a commission on the sale. Under R.C. section 1707.43, any contract for the sale of securities which violates the Ohio Securities Act (R.C. sections 1707.01 to 1707.45) is voidable at the election of the purchaser, and under certain conditions the purchaser has an action for the purchase price, plus taxable court costs, against "every person who has participated in or aided the seller in any way" in making the sale.

By contrast with these specific provisions, R.C. section 1707.26 says only that in addition to injunctions against deceptive or fraudulent acts, practices, or transactions, or acts in violation of the



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Ohio securities Act, the director of commerce may obtain "such other relief as the facts warrant."

This court holds that if the General Assembly had meant "other relief" to include rescission and restitution, it would have said so in language as explicit as that used in R.C. sections 1707.41, 1707.42, and 1707.43.

R.C. section 1707.40 supports this conclusion. It states, in part, that "R.C. sections 1707.01 to 1707.45, create no new civil liabilities * * * other than as specified in R.C. sections 1707.41, 1707.42, and 1707.43 * * *."

It is significant that H. B. No. 339, now pending in the General Assembly, would amend R.C. section 1707.40 by removing the quoted provision. It would also enact R.C. section 1707.23(J), which would expressly authorize the division of securities to sue for the type of relief prayed for in the amended complaint. The proposed enactment reads: "In any action authorized by R.C. Chapter 1707, [the Division of Securities may] make a claim for restitution, rescission, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action."²

The fact that the supporters of H. B. No. 339 have thought it advisable to seek express legislative authority for the claims presented in the amended complaint suggests that the authority does not exist under the present statutes.

The judgment of the court of appeals is affirmed.

Judgment affirmed.

HERBERT, CELEBREZZE, W. BROWN, P. BROWN, SWEENEY and LOCHER, JJ., concur.

1. R.C. section 1707.26 reads:

"Whenever it appears to the division of securities, upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in, any deceptive or fraudulent act, practice, or transaction, or in any act, practice, or transaction declared to be illegal, prohibited, or defined as fraudulent in R.C. sections 1707.01 to 1707.45, the director of commerce may apply to a court of common pleas of any county in this state for, and upon proof of any such offenses such court may grant an injunction restraining such persons and its agents, employees, partners, officers, directors, and shareholders from continuing, engaging in, or doing any acts in furtherance of, such acts, practices, or transactions, and may order such other relief as the facts warrant."

2. H. D. No. 339, 112th Ohio General Assembly, Regular Session (1977-1978).

