Supreme Court of Ohio Clerk of Court - Filed June 08, 2020 - Case No. 2020-0031

IN THE SUPREME COURT OF OHIO

SILTSTONE RESOURCES, LLC,	:	
	:	
Plaintiff/Appellant,	:	**Case No. 2020-0031**
	:	
v.	:	
	:	
STATE OF OHIO, PUBLIC WORKS COMMISSION,	:	**On Appeal from the Belmont County Court of Appeals, Seventh Appellate District, Case No. 18 BE 0042**
	:	
Defendant/Appellee	:	
	:	
v.	:	
	:	
PATRIOT LAND COMPANY, LLC, et al.,	:	
	:	
Crossclaim Defendants/Appellants.	:	

MERIT BRIEF OF AMICI CURIAE GULFPORT ENERGY CORPORATION, AXEBRIDGE ENERGY, LLC AND WHISPERING PINES, LLC IN SUPPORT OF APPELLANTS

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STATEMENT OF INTEREST OF AMICI

Gulfport Energy Corporation ("Gulfport") is a leading independent energy company specializing in producing natural gas from unconventional formations, such as the Utica shale in Ohio. Gulfport has made, and continues to make, enormous investments in Ohio and in the responsible development of its valuable natural resources. It has approximately 205,000 acres under lease in Ohio, including the specific acreage at issue in this appeal.

As such, Gulfport brings a unique and important perspective to this appeal. The stability of Gulfport's leasehold position is critical not just to the company itself, but to the economic interest of its Ohio-based lessors, vendors, contractors, and others living and doing business in the communities where it operates. Therefore, Gulfport urges this Court to protect and reaffirm the well-established and well-reasoned tenets of Ohio property law and public policy that—contrary to the Seventh District's opinion in this case—Gulfport, its peer companies, its lessors, and all other property-rights holders rely on to predictably govern their investments and interests.

Axebridge Energy, LLC ("Axebridge") holds an overriding royalty interest in Gulfport's Oil and Gas Lease to the subject Property.

Whispering Pines, LLC ("Whispering Pines") is a land company that was formed to acquire and/or lease gas and oil for itself and/or third parties throughout the state of Ohio. Like Gulfport, Whispering Pines relies on the longstanding tenets of Ohio property law and public policy at issue in this appeal to predictably govern its investments and interests.

STATEMENT OF THE CASE AND FACTS

Amici defer to the Statement of the Case and Statement of Facts as set forth in the Merit Briefs of Appellants.

ARGUMENT

Proposition of Law No. 1:

Courts may not enforce a restrictive covenant in a deed barring the grantee from alienating the property without the consent of some other party, unless the legislature has clearly allowed for such restraint on alienation in a statute by express terms or unmistakable implication.

As Appellants correctly argue, the Alienation Restriction is an illegal, absolute restraint on the transfer of any and all rights in a fee simple estate in direct contravention of Ohio public policy. That is more than enough to bar its enforcement.

But the Alienation Restriction also is void for another reason, which is of particular interest to Amici and mineral lessors all across Ohio. It gratuitously subverts Ohio's public policy favoring oil and gas development.

A. Ohio public policy is to support and encourage the responsible development of oil and gas resources throughout the State

This Court has long acknowledged that "[i]t is the public policy of the state of Ohio to encourage oil and gas production when the extraction of those resources can be accomplished without undue threat of harm to the health, safety and welfare of the citizens of Ohio." *Newbury Twp. Bd. of Twp. Trustees v. Lomak Petroleum*, 62 Ohio St. 3d 387, 389, 583 N.E.2d 302, 304 (1992). Moreover, this Court has repeatedly upheld Ohio's public policy in favor of oil and gas development in the enforcement and interpretation of contracts, including, *e.g.*, by declaring void long-term leases where no mineral development is required to occur, and reading into oil and gas leases a covenant to reasonably develop acreage leased for the purpose of oil and gas production. *See, e.g.*, *Ionno v. Glen-Gery Corp.*, 2 Ohio St.3d 131, 134, 443 N.E.2d 504, 508 (1983) ("Long-term leases under which there is no development impede the mining of mineral lands and are thus against public policy"); *Alford v. Collins-McGregor Operating Co.*, 152 Ohio St.3d 303, 2018-Ohio-8, 95 N.E.3d 382.

In addition, the General Assembly has formally codified this public policy with legislation, declaring that "[i]t is the policy of the state to provide access to and support the exploration for, development of, and production of oil and natural gas resources owned or controlled by the state in an effort to use the state's natural resources responsibly." R.C. 1509.71(A). That is, even when the State owns or controls the resources, it is state policy to promote their responsible development, not to inhibit it. Moreover, as this Court has also recognized, the General Assembly passed the Dormant Minerals Act in 1989 in an effort "to help clear title to dormant mineral interests *and to encourage the development of Ohio's mineral resources* by allowing parties to rely on a record chain of title to them." *Corban v. Chesapeake Exploration, L.L.C.*, 149 Ohio St.3d 512, 519, 2016-Ohio-5796, 76 N.E.3d 1089, ¶ 27 (emphasis added). Ohio public policy is and has long been a policy to promote and encourage the development and production of oil and natural gas resources in a responsible manner.

Despite the Ohio Public Works Commission's (the "Commission") assertions to the contrary, Clean Ohio did not abrogate or displace this clear and unmistakable public policy. If anything, Clean Ohio reaffirmed it. Importantly, the General Assembly may abrogate the common law only by express, statutory language. *Carrel v. Allied Prod. Corp.*, 78 Ohio St. 3d 284, 287, 677 N.E.2d 795 (1997) (overturned by statute on unrelated grounds). "There is no repeal of the common law by mere implication." *Id*. (quoting *Frantz v. Maher*, 106 Ohio App. 465, 472, 155 N.E.2d 471, 476 (2d Dist. 1957)). Nothing in the Clean Ohio statutes even comes close to an express abrogation, let alone a repeal or exception to the legislatively codified public policy of Ohio concerning oil and gas development.

The Commission relies exclusively upon R.C. 164.26(A) as the statutory authority for the Alienation Restriction. But that provision merely acknowledges a "need" for long term ownership

or control of grant-funded properties to ensure that they remain green space park areas set aside for conservation. *Id.* And while the statute also empowers the director of the Commission to "establish policies" related to that "need," absent an express abrogation, the director's policies still must comport with the common law and Ohio public policy favoring oil and gas development. *See Carrel* at 287. Asserting that the General Assembly gave the Commission an absolute right to limit the alienation of property in any manner, simply by acknowledging the need for long-term ownership or control of grant-funded properties in aid of environmental conservation, is not just argument by implication—it is a complete inversion of the rules of statutory construction. *See, e.g., State ex Rel. Morris v. Sullivan*, 81 Ohio St. 79, 96, 90 N.E. 146 (1909) ("The established canons of construction forbid [an] interpretation [abrogating the common law], unless the plain language of the statute imperatively requires it").

Even more, responsible oil and gas development—particularly of deep minerals thousands of feet below the surface of property being preserved as "green space"—is in perfect harmony with the Clean Ohio program's purposes, not in contravention of them. The Ohio Constitution specifically recognizes the authorized purposes of the Clean Ohio program, which include: "environmental and related conservation," "general and economic well-being of the people of this state," "public health, safety, and welfare," protecting "water and other natural resources," "preservation of natural and open areas," enhancing "public use, and enjoyment of natural areas and resources," and the creation of preservation of "jobs and enhance[ment of] employment opportunities." *See*, Ohio Constitution, Article VIII. Development of the oil and gas resources beneath the Property *effectuates* rather than contravenes a number of these purposes by, among other things, helping "to enhance the availability, public use, and enjoyment of natural areas and resources," and "to create and preserve jobs and enhance employment opportunities" in the

process. Particularly where Ohio public policy is to promote the development of oil and gas resources, including those "owned or controlled by the state," it would be patently unreasonable to construe Clean Ohio as an abrogation of that policy in any way. R.C. 1509.71(A).

Finally, even if certain forms of oil and gas development were demonstrated to be at odds with Clean Ohio's purposes (a proposition for which the Commission has provided no support generally, let alone specifically in this case), the Ohio Department of Natural Resources' Division of Oil and Gas Resources Management retains "sole and exclusive authority" over the regulation of oil and gas production in Ohio. R.C. 1509.02. The Commission cannot contractually coopt that authority with respect to grant-funded properties by giving itself the unlimited discretion to permit or prohibit oil and gas development on such properties through otherwise unlawful restraints on alienation. *See, id.* (noting that even cooperative agreements between ODNR's oil and gas division and other state agencies will not confer authority on those agencies to regulate oil and gas production themselves). Clean Ohio was not adopted and does not exist to promote the aggrandizement of the Commission's power—the Commission's power exists to effectuate Clean Ohio. And neither the people of Ohio directly, nor the General Assembly as the people's representatives, ever gave the Commission the authority to administer the Clean Ohio program by imposing absolute restraints on alienation that prevent any and all oil and gas development beneath grant-funded properties.

Ohio public policy—as recognized by this Court, as codified by the legislature of this State, and as reaffirmed by Clean Ohio itself—is not merely opposed to barriers to oil and gas development; it is an affirmative policy of support for and encouragement of the responsible development of both public and private oil and gas resources. It was the public policy of Ohio before the Clean Ohio program, and it remains the public policy of Ohio today.

B. The Alienation Restriction is void and unenforceable, because it gratuitously impedes the development of oil and gas resources beneath the Property in violation of Ohio public policy.

By prohibiting any and all transfers of any and all rights in the Property, the Alienation Restriction imposes a gratuitous bar on oil and gas development beneath the Property in direct contravention of Ohio public policy. It is, therefore, invalid and unenforceable.

First, as the Commission itself makes clear, the Alienation Restriction prevents any transfers facilitating the development of oil and gas resources beneath the Property, without Commission consent. *See,* Commission Memorandum in Opposition to Jurisdiction, pp. 10-11 (filed Feb. 5, 2020) ("the Deed Restrictions prohibited the CDC from alienating the Property in any way"). Indeed, as a matter of contract, the Alienation Restriction purports to prohibit any and all transfers or encumbrances of rights in the Property. And it is beyond dispute that such transfers are legally necessary for the effective development of oil and gas resources. *See generally, Corban v. Chesapeake Exploration, L.L.C.*, 149 Ohio St.3d 512, 2016-Ohio-5796, 76 N.E.3d 1089 (detailing the common law and legislative history with respect to transactions in mineral interests and their importance to oil and gas development and production). Moreover, as a matter of practice, the Commission has consistently refused to consent to such transfers, and even initiated legal actions—as it has in the present case and other, pending appeals—requesting that courts impose prohibitory injunctions in order to prevent all oil and gas development beneath grant-funded properties. And the Commission has done so citing no justification other than that the Alienation Restriction gives it the unfettered discretion to do so.

In fact, the Commission asserts and the Seventh District agreed that any transaction, such as an oil and gas lease, breaches the Alienation Restriction even if no development of subsurface minerals ever occurs. *See, e.g., Siltstone Res. LLC v. State Pub. Works Comm'n,* 2019-Ohio-4916, 137 N.E.3d 144, ¶ 14 (7th Dist.) ("App. Opinion," R. 32) (noting that "[i]t is undisputed that to

date the surface of the property has not been disturbed," that "[n]o wells have been drilled on the surface, no roads have been built on the surface, and no removal of trees has occurred," and that "[t]he land is *potentially* being drilled through the use of lateral wells or preparation for drilling has begun" (emphasis added)); (*id.* at ¶¶ 50, 53) ("[t]hese *transactions* were all in clear violation of the Restrictions on transfer of the Property because not once did Appellee Guernsey seek Appellant OPWC's consent"(emphasis added)). In other words, according to the Commission and the Seventh District, the Alienation Restriction bars the mere transacting in rights to the minerals beneath the Property, regardless of whether the transaction legally authorized and/or actually resulted in any oil and gas development at all, let alone development that contravened public policy by posing a threat to the "health, safety and welfare of the citizens of Ohio." *Newbury Twp. Bd. of Twp. Trustees v. Lomak Petroleum*, 62 Ohio St. 3d 387, 389, 583 N.E.2d 302, 304 (1992).

Second, a contractual provision in contravention of public policy is void and of no effect. The "'[l]iberty of contract is not an absolute and unlimited right, but upon the contrary is always subservient to the public welfare. * * * The public welfare is safeguarded, not only by Constitutions, statutes, and judicial decisions, but by sound and substantial public policies underlying all of them.'" *Cincinnati City Sch. Dist. Bd. of Ed. v. Conners*, 132 Ohio St.3d 468, 974 N.E.2d 78, 2012-Ohio-2447, ¶ 16 (quoting *J.F. v. D.B.*, 116 Ohio St.3d 363, 2007-Ohio-6750, 879 N.E.2d 740, ¶ 5, quoting *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co. v. Kinney*, 95 Ohio St. 64, 115 N.E. 505 (1916), syllabus).

"'Public policy' is the community common sense and common conscience extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like." *Id.* at ¶ 17 (quoting *Kinney*, 95 Ohio St. at 64, 115 N.E. 505). It is "that principle of law which holds that no one can lawfully do that which has a tendency to be injurious

to the public or against the public good. Accordingly, contracts which bring about results which the law seeks to prevent are unenforceable as against public policy.'" *Id.* (quoting *Eagle v. Fred Martin Motor Co.,* 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, ¶ 64, quoting Ohio Jurisprudence 3d, Contracts, Section 94, at 528 (1980)).

As the dissent below correctly observed, particularly where the Use Restriction runs with the land, thereby protecting the "green space" purposes of Clean Ohio generally as well as of the grant agreement specifically, "it is unreasonable to require [the Commission's] approval for transfers of the subsurface." *See Siltstone* App. Opinion, (R. 32 at ¶¶ 75-77) (Robb, J., dissenting). The Seventh District majority did not even quarrel with that conclusion. Instead, it merely observed that the trial court had offered "no law or explanation for this conclusion," and then declared that the Alienation Restriction "is clear and unambiguous" in its prohibition of any and all transfers. *(Id.* at ¶ 53). The court of appeals never even addressed the public policy question, instead mistaking the issue as one of ambiguity, rather than one of enforceability.

In addition to disallowing absolute restraints on alienability generally, Ohio public policy affirmatively encourages the responsible development of oil and gas resources, which policy exists for the ultimate benefit of all of Ohio's citizens. The Alienation Restriction's absolute prohibition on transfers in aid of such development is not merely unreasonable—it is *clearly and unambiguously* void.

Proposition of Law No. 2:

The legislature's express provision for grant repayment and liquidated damages in R.C. § 164.26(A) in the event that a grant recipient fails to comply with long-term ownership requirements does not allow for additional equitable relief fashioned by the courts.

Proposition of Law No. 3:

Because R.C. § 164.26(A) expressly provides for grant repayment and liquidated damages in the event that long-term control requirements are not met, the OPWC director cannot ignore or contradict the policy embodied by the statute by requesting equitable relief or providing for equitable relief for violation of control requirements in deeds conveying properties purchased with a Clean Ohio Fund grant.

Appellants are correct that R.C. 164.26(A) precludes the equitable relief demanded by the Commission.

But even if this Court agrees with the Seventh District that the Clean Ohio statutes theoretically permit the Commission to seek equitable relief, the Enforcement Provision itself—that is, the parties' actual bargained-for agreement as memorialized in the Deed—renders injunctive relief of any kind unavailable to the Commission nonetheless.

A. The Commission's agreement to liquidated damages as compensation for a breach precludes injunctive relief

The Commission expressly agreed to liquidated damages as compensation for a breach of the parties' contract, thereby precluding a finding of irreparable harm and preventing the Commission from seeking enforcement of the Deed Restrictions *via* an injunction.

The Enforcement Provision plainly states that "if [the grantee or its successor or assign] should fail to observe the covenants and restrictions set forth herein…[it] shall pay to [the Commission] upon demand, as liquidated damages" the greater of twice the grant amount plus six percent interest from the date of the grant or twice the fair market value of the Property as of the demand date. *See*, Enforcement Provision (Gulfport Answer, Trial R. 23 at ¶ 31, *et seq.*). The Enforcement Provision further states that "such sum…is intended to *compensate* for damages

suffered in the event [of] a breach or violation of the covenants and restrictions set forth herein, the determination of which is not readily ascertainable." *Id* (emphasis added). This is consistent with the very essence of "[l]iquidated damages clauses … [which] attempt to fix in advance reasonable compensation for actual damages." *Nahra v. Honeywell, Inc.*, 892 F. Supp. 962, 969 (N.D. Ohio 1995); *Boone Coleman Constr., Inc. v. Piketon*, 145 Ohio St.3d 450, 2016-Ohio-628, 50 N.E.3d 502, ¶ 12 ("a liquidated damages clause in a contract is an advance settlement of the anticipated actual damages arising from a future breach"); 30 Ohio Jurisprudence 3d, Damages, Section 97 ("Liquidated damages clauses attempt to fix in advance reasonable compensation for actual damages, allowing contracting parties to specify in advance those damages that are to be paid in the event of a breach as long as the provision does not disregard the principle of compensation").

However, Ohio law is clear that, "where damages will adequately compensate an injured party for a harm suffered, equitable relief is not appropriate." *Mesarvey, Russell & Co. v. Boyer*, 10th Dist. Franklin No. 91AP-974, 1992 WL 185656, *5 (Jul. 30, 1992) (citing *Garono v. State*, 37 Ohio St.3d 171, 524 N.E.2d 496 (1988)). This is because equitable remedies, like injunctions, are available only upon a showing of "irreparable injury." *Id.* Thus, when parties to a contract have expressly agreed to an amount of liquidated damages as compensation for a breach, "[i]t is difficult to conceive how damages can be irreparable…." *Id.* For this reason, the remedies theoretically available under the statute are immaterial. As this Court has made clear, "[w]here the parties, in their contract, have agreed upon a stipulation and definite remedy to be employed by the grantor, in case of breach of a subsequent covenant by the grantee, the grantor ordinarily will be relegated to the relief thus stipulated in his contract." *New York Cent. R. Co. v. City of Bucyrus*, 126 Ohio St. 558, 569, 186 N.E. 450 (1933).

Because the Enforcement Provision clearly provides that the bargained-for liquidated damages constitute the Commission's sole and exclusive remedy for a breach, which damages the Commission explicitly acknowledged would be "*compensat[ion]* for damages suffered in the event [of] a breach…," the Commission cannot establish an irreparable injury necessary to support an award of injunctive relief, even if such relief were otherwise available. *See, e.g., Atlantic Tool & Die v. Kacic*, 9th Dist. Medina No. 2717-M, 1998 WL 801913, *4 (Nov. 18, 1998) ("Although neither party has addressed this [liquidated damages] clause on appeal, and the trial court failed to address it below, this clause may prevent Kacic from litigating the existence of irreparable harm").

B. The Commission's mandatory rescission of the grant in the event of a breach precludes injunctive relief

While a provision for liquidated damages precludes a showing of irreparable injury, rescission of an agreement absolutely bars the contract's prospective enforcement. As a result, the (statutorily *required*) provision for a rescissionary remedy in the form of grant repayment further illustrates why the Commission never could be entitled to injunctive relief.

Specifically, the Enforcement Provision provides that the amount of liquidated damages will be the greater of twice the grant amount or twice the property value. This methodology ensures that the Commission will receive back at least 200% of the consideration that it gave in exchange for the Deed Restrictions in the first place. And, as the Clean Ohio statutes make clear, the Commission was legally obligated to contract for such "grant repayment in the event of a breach." *See*, R.C. § 164.26(A) (the Commission "*shall* provide for proper liquidated damages and grant repayment") (emphasis added)).

This repayment of the grant—mandated by statute and expressly provided for in the Deed in the event of a breach—constitutes a rescission of the parties' agreement. It is well-established that the return of consideration given—"restitution and recovery back of money paid"—amounts

to rescission of a contract. *See, e.g, Yurchak v. Jack Boiman Const. Co.*, 3 Ohio App.3d 15, 16, 443 N.E.2d 526 (1st Dist. 1981) (citations omitted). *See also Cross v. Ledford*, 161 Ohio St. 469, 475, 120 N.E.2d 118 (1954) ("Where a defrauded party rescinds a contract and offers to restore what he has received under the contract, he may recover the consideration paid"); 13A Ohio Jurisprudence 3d, Cancellation and Reformation of Instruments, Section 4. Moreover, the return of grant funds in particular effectuates a rescission of the grant agreement that awarded such funds. *See, e.g., City & Cty. of San Francisco v. O'Flynn*, 1st Dist., Div. 2, No. A130693, 22012 WL 968059 (Cal. Ct. App., Mar. 22, 2012). *See also* 13A Ohio Jurisprudence 3d, Cancellation and Reformation of Instruments, Sections 1, 26 (noting the availability of the equitable remedy of rescission for the "breach of a material and vital condition" of an agreement, including real estate contracts).

However, the principle that a contract cannot be both rescinded and also enforced is equally well-established. *See, e.g., The Ernest M. Munn*, 66 F. 356, 357, 13 C.C.A. 510 (2d Cir. 1895). "'A party cannot rescind a contract, and yet retain any portion of the consideration. * * * (He) cannot derive any benefit from it, and yet rescind the contract. It must be nullified in toto, or not at all. It cannot be enforced in part and rescinded in part.'" *Id*. (quoting *Perley v. Balch*, 23 Pick. 286 (S. Ct. Mass, 1839) and citing *Shepherd v. Temple*, 3 N.H. 455, 457 (S. Ct. N.H., 1826); *Norton v. Young*, 3 Greenl. 300; and 8 Am. & Eng. Enc. Law, p. 806). Indeed, "[a] party will not be permitted to retain the benefits of a contract and at the same time repudiate it." *Metro. Elec., Inc. v. Jones*, 30 Ohio Misc.2d 9, 506 N.E.2d 950, 952 (M.C. 1986) (citing former 18 Ohio Jurisprudence 3d, Contracts, Section 310 (1980)).

Instead, "[h]aving been rescinded, the contract [is] ineffective ab initio, and no rights could be predicated on that contract as such." *See Schuster Elec. Co. v. Hamilton Cty. Stores*, 61 Ohio

App. 331, 335, 22 N.E.2d 582 (1st Dist. 1939); *see also May v. State Farm Ins. Co.*, 10th Dist. Franklin No. 90AP-1407, 1991 WL 81925, *2 (May 14, 1991) ("A contract which is rescinded is ineffective ab initio and no rights may be predicated upon that contract"). As a result, "[t]o rescind a contract is not merely to terminate it but to abrogate and undo it from the beginning; that is,…to release the parties from further obligation to each other in respect to the subject of the contract." *Sylvania Indus. Corp. v. Lilienfeld's Estate*, 132 F.2d 887, 892–93 (4th Cir. 1943). Thus, "[r]escission necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it." *Id. See also* 13A Ohio Jurisprudence 3d, Cancellation and Reformation of Instruments, Section 1.

The Enforcement Provision includes the statutorily mandated repayment of the grant money, which is the very essence of a rescissionary remedy. But the Commission insists that it is entitled to receive back twice the grant amount plus interest *and* to enforce the Deed Restrictions *via* prospective injunction, both now and for each and every "breaching" transaction, from today until the end of time. The Commission cannot nullify the grant, receive back its consideration (and then some), and yet retain the right to enforce the voided Deed Restrictions in the future. Such remedies are fundamentally irreconcilable. *See, United States v. Oregon Lumber Co.*, 260 U.S. 290, 294-295, 43 S.Ct. 100, 67 L.Ed. 261 (1922) (precluding the pursuit of damages for fraudulent transfer of property after pursuing disaffirmance of the transfer of the same property). To permit such a result would be not merely inequitable—it would be contrary to the most foundational principles of the law of contracts and remedies.

The Seventh District's conclusion in this regard was mistaken in two respects. *First*, the decision below errantly asserts that "nothing in R.C. 164.26(A) prevents equitable relief." *Siltstone* App. Opinion (R. 32 at ¶ 66). But the Seventh District never addressed how a

rescissionary remedy of grant repayment (expressly mandated by R.C. 164.26(A)) could ever be reconciled with a demand for injunctive relief enforcing the very same, rescinded agreement. *See, supra*. While R.C. 164.26(A) may not explicitly forbid injunctive relief, the Seventh District failed to recognize that what the statute mandates (rescission) necessarily implies the unavailability of injunctive relief. *Second*, the Seventh District errantly asserts that the Enforcement Provision clearly allows enforcement "in equity," which means enforcement *via* injunctive relief, and that it cannot "be construed to mean anything else." *Id*. at ¶ 68. But the Seventh District failed to recognize that ""[r]escission is an equitable remedy," so that even if a contract allows for enforcement "in equity," it still may not allow for enforcement *via* injunction. *Hubbard v. AASE Sales, LLC*, 2018-Ohio-2363, 104 N.E.3d 1027, ¶ 59 (5th Dist.).

Appellants are correct that the Commission is not merely empowered, but also is limited, by the remedies specifically identified in R.C. 164.26(A). However, regardless of what remedies the statute prescribes or prohibits, the express terms of the parties' contract preclude the possibility of injunctive relief for the Commission in any event.

CONCLUSION

For the foregoing reasons, and for all of the reasons stated in the briefs of Appellants, Amici urge reversal of the Judgment below.

Respectfully submitted,

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