

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 6, 2022

**109714** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
COD PROPERTIES OHIO LLC v BLACK TIE TITLE, LLC, ET AL.

**109833** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
COD PROPERTIES OHIO, LLC v BLACK TIE TITLE, LLC, ET AL.

Reversed and remanded.

Emanuella D. Groves, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Attorney disqualification; Prof.Cond.R. 3.7; necessary witness; unobtainable testimony; crime-fraud exception; attorney-client privilege.*

**Attorney disqualification is a drastic measure that should not be taken unless absolutely necessary. Trial court erred in disqualifying attorney where there is insufficient evidence to support the trial court's finding that the attorney's testimony was unobtainable by any other source and therefore necessary.**

**109886** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
DOROTHEA KINGSBURY, TRUSTEE, ET AL. v CORNERSTONE FAMILY OFFICE LLC, ET AL.

Affirmed.

Anita Laster Mays, P.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Motion to enforce settlement agreement; attorney fees.*

**The trial court retained jurisdiction to enforce the settlement agreement between the parties. The evidence was sufficient to support the trial court's finding to enforce the agreement. The trial court did not base its decision on a misconstruction of law or an erroneous standard.**

**110420** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
BROADWAY CONCRETE INVESTMENTS, LLC v MASONRY CONTRACTING CORP., ET AL.

Affirmed in part; reversed and remanded in part.

Kathleen Ann Keough, P.J., Michelle J. Sheehan, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Prompt Payment Act; R.C. 4113.61; interest; attorney fees; breach of contract; mechanic's lien bond.*

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(Case 110420 continued)

**Trial court's judgment finding that appellant had violated Ohio's Prompt Payment Act set forth in R.C. 4113.61 and awarding interest and attorney fees for the violation reversed because the trial court improperly found that appellant was prepaid for appellee's work and that the statute therefore required appellant to pay the appellee within ten days of receipt of appellee's invoices, rather than ten days after payment from the upper tier contractor; trial court's judgment that appellant breached the contract between appellant and appellee reversed because the trial court based its judgment on terms that were not part of the contract; trial court's judgment that surety company was liable on a surety bond for any part of the judgment rendered against the subcontractor was affirmed because neither the surety company nor the subcontractor challenged the underlying mechanic's lien at trial, thereby waiving any challenge on appeal.**

**110432** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ESTATE OF RICHARD A. WIEDEMER, JR., DECEASED, ET AL. v  
THE CLEVELAND YACHTING CLUB, INC., ET AL.

**110681** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ESTATE OF RICHARD A. WIEDEMER, JR., DECEASED, ET AL. v  
THE CLEVELAND YACHTING CLUB, INC., ET AL.

Affirmed in part; reversed in part; and remanded.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and James A. Brogan, J.,\* concur.

\*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

**KEY WORDS:** *Motion to quash subpoena; Civ.R. 45; motion for protective order; Civ.R. 26(C); final appealable order; provisional remedy; R.C. 2505.02(B)(4); abuse of discretion; privileged or otherwise protected material; tax returns; financial records; undue burden; damages.*

**The trial court did not abuse its discretion in denying appellants' motion to quash subpoena and motion for protective order. Due to the nature of the damages sought by appellants, the benefit of the disclosure of the records outweighs their privacy interests. In addition, appellants failed to demonstrate that compliance with the subpoena constituted an undue burden. Finally, because appellant Hinkley Lighting only sought to prevent disclosure of the financial records beyond the instant suit, the trial court erred in denying Hinkley Lighting's motion for protective order.**

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**110539** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ARCHIE GRAY

Affirmed.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Crim.R. 36; nunc pro tunc entry; Crim.R. 32(C) sentencing entry.*

***Defendant's 1989 sentencing entry did not comply with Crim.R. 32(C). After defendant filed motions to vacate sentence, the trial court's denial of motions to vacate his sentence was not error and the trial court properly issued a nunc pro tunc entry that conformed with Crim.R. 32(C). The original sentencing entry was not void, and the nunc pro tunc entry did not create any new right of appeal.***