

The Business Strategy Behind a Creative Appeal

BY MICHAEL ROBERTSON

It happens more often than entrepreneurs and investors may think—they find a partner for what seems like a great venture, but the partnership ends sour when there is conflict over key business decisions.

Claims and counterclaims are filed, proceed to judgment, and the defendant asks you to represent them after having lost millions of dollars in fees and punitive damages. As an attorney, what rules can you apply to change the court's understanding of the case and reverse the decision to help your client?

Taft's Appellate Litigation team was faced with this very challenge in *Hutchinson v. Parent*. The case involved two former commercial real estate partners who, after being unable to resolve company disputes, turned to litigation. Parent, who had initially been represented by separate counsel at trial, retained Taft after an unfavorable jury verdict and initial post-trial briefing. The Taft team knew they needed a legal strategy that could effectively appeal an adverse \$2 million judgment.

While this outcome may seem unlikely, the defense formed a creative legal strategy by first using Federal Rule of Civil Procedure 62.1 to reduce the client's exposure to punitive damages, and then turning to Ohio Civil Rule 13(A) and Ohio Civil Rule 41(A)(1)(a) in the underlying appeal. At issue was the tension between a plaintiff's ability to dismiss claims prior to judgment under Rule 41(A)(1)(a), and the barring of those claims—on res judicata grounds—in subsequent litigation under Rule 13(A) when related counterclaims had been brought.



When navigating business disputes that encompass related and unrelated transactions, both parties should exercise caution before seeking a voluntary dismissal.

Business disputes can lead to a variety of claims and counterclaims: breach of contract, breach of fiduciary duty, fraud, misappropriation, etc. For any commercial litigator, understanding the legal implications of Ohio Rules of Civil Procedure 13(A) and 41(A)(1)(a) and how they operate can be instrumental in a court decision, and can lead to the loss or gain of millions of dollars for a client.

Defining the Relationship (or Lack Thereof) Between Ohio Rule 13(A) and Rule 41(A)(1)(a)

At its core, Ohio Rule 13(A) requires a party to bring forward any cause of action that arises out of the same transaction or occurrence as the opposing party's claim or counterclaim. In determining whether a claim and an opposing counterclaim arise out of the same transaction or occurrence, Ohio courts ask whether they are logically related—that is, whether they involve many of the same factual and legal issues that are part of the same general controversy. When a claim

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that is faced with a compulsory counterclaim is dismissed, and the compulsory counterclaim then proceeds to judgment, Ohio's doctrine of res judicata prohibits subsequent re-litigation of the claim.

At first glance, the framework of Ohio Rule 13(A) appears to be at odds with the grant of authority found in Rule 41(A)(1)(a). Under Rule 41(A)(1)(a), a plaintiff may dismiss his or her claims once without prejudice before the trial

begins, *unless* the defendant has served a counterclaim that "cannot remain pending for independent adjudication."

As the U.S. Court of Appeals for the Sixth Circuit recently made clear, whether a claim is logically related to a counterclaim under Rule 13(A) is a separate and distinct inquiry from whether a counterclaim can be adjudicated independent of an opposing claim under Rule 41(A)(1)(a). Incapable of being independently adjudicated can be a



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high standard to satisfy, and courts are often reluctant to require a plaintiff to litigate a claim. Demonstrating, however, that a claim and counterclaim are logically related—particularly in the business context—is a much more obtainable objective for litigators to achieve.

Litigators should think of these two rules as operating independently. A plaintiff faced with a logically related counterclaim that can be independently adjudicated is free to dismiss his or her claim under Rule 41(A)(1)(a). The decision to dismiss the claim, however, will be subject to the parallel consequences of Rule 13(A) and its preclusive effect.

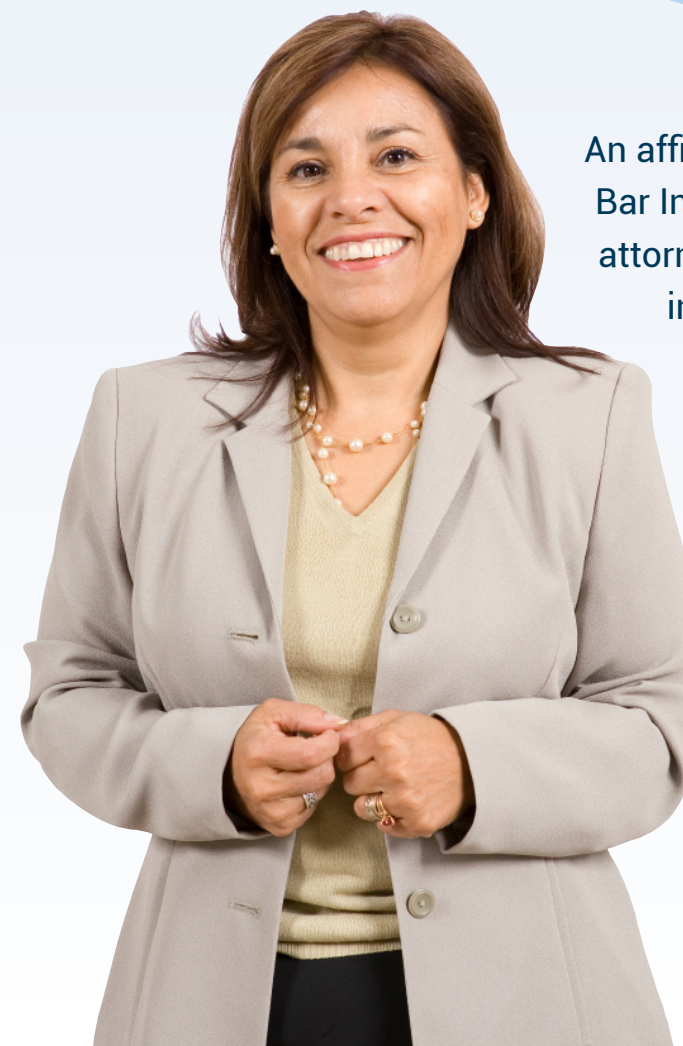
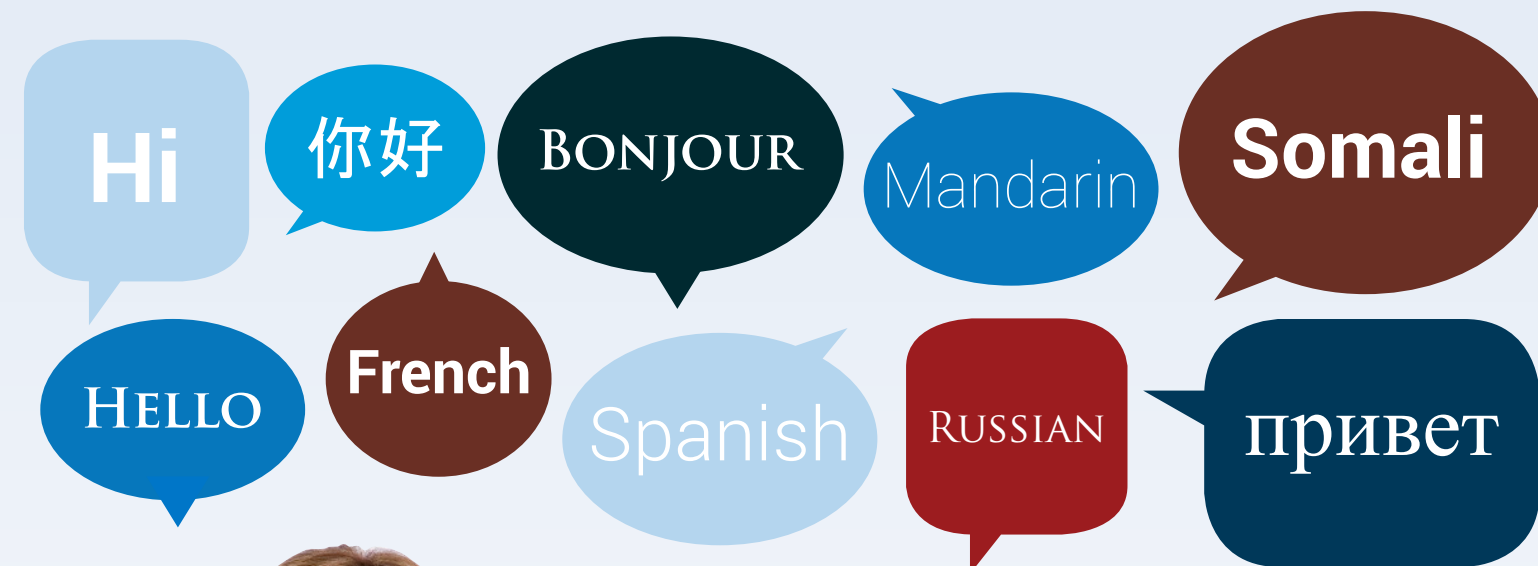
When navigating business disputes that encompass related and unrelated transactions, both parties should exercise caution before seeking a voluntary dismissal. While it may be difficult for a defendant to demonstrate that two opposing claims are incapable of independent adjudication, it will be much easier for that same defendant to bar the plaintiff's logically related claim in a subsequent lawsuit.

In the case of *Hutchinson v. Parent*, the defense team's ability to creatively demonstrate the application of Rule 41(A)(1)(a) and Rule 13(A) in its appeal resulted in the U.S. Court of Appeals for the Sixth Circuit vacating the adverse judgment and reversing a contrary decision by the federal district court. Not only did this ruling clarify important legal implications of filing claims and counterclaims for business owners, real estate investors and entrepreneurs, it also shed light on critical guidance for attorneys with clients who may find themselves faced with similar business obstacles in the future.

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