[Cite as *Mokski Ents., L.L.C. v. USL Holdings, L.L.C.*, 2026-Ohio-4704.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

MOKSKI ENTERPRISES, LLC, d.b.a. ACAPPELLA FREIGHT SOLUTIONS,	:	APPEAL NO. C-250592 TRIAL NOS. A-2301247 A-2403529
and	:	
JOHN PAUL MOKSKI,	:	
Plaintiffs-Appellants,	:	*JUDGMENT ENTRY*
vs.	:	
USL HOLDINGS, LLC,	:	
USL CAPITAL, LLC,	:	
TRANSPORT INVESTMENTS, INC., n.k.a. BRIDGEWAY CONNECT, INC.,	:	
US LOGISTICS, LLC,	:	
JEFFREY HIATT,	:	
DOUGLAS LOGEMAN,	:	
SARAH LONG,	:	
and	:	
KATHRYN SPRINGOB,	:	
Defendants-Appellees.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgments of the trial court are affirmed.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 11/25/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By:_____
Administrative Judge

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and	:	
JOHN PAUL MOKSKI,	:	
Plaintiffs-Appellants,	:	*O P I N I O N*
vs.	:	
USL HOLDINGS, LLC,	:	
USL CAPITAL, LLC,	:	
TRANSPORT INVESTMENTS, INC., n.k.a. BRIDGEWAY CONNECT, INC.,	:	
US LOGISTICS, LLC,	:	
JEFFREY HIATT,	:	
DOUGLAS LOGEMAN,	:	
SARAH LONG,	:	
and	:	
KATHRYN SPRINGOB,	:	
Defendants-Appellees.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgments Appealed From Are: Affirmed

Date of Judgment Entry on Appeal: November 25, 2026

DeWitt Law, LLC, and *Michael W. DeWitt*, for Plaintiffs-Appellants,

Benesch, Friedlander, Coplan, & Aronoff LLP, *James E. von der Heydt*, *David M. Walters* and *Marc S. Blubaugh*, for Defendants-Appellees.

ZAYAS, Presiding Judge.

{¶1} The crux of this dispute relates to claimed breaches of the Option Agreement regarding the purchase of ownership units in Acappella Freight, LLC, ("Acappella"). Plaintiff-appellant Mokski Enterprises, LLC, d.b.a Acappella Freight Solutions ("Mokski Enterprises")—the entity with the option to purchase under the Option Agreement—and plaintiff-appellant John Paul Mokski ("JPM")—an owner/member of Mokski Enterprises—initiated the actions relevant to this appeal. The procedural history is complex with two separate cases being filed, arising from the same set of facts, and several complaint amendments occurring between the two actions, which were ultimately consolidated below.

{¶2} In summary, plaintiffs-appellants Mokski Enterprises and JPM challenge four actions by the trial court: (1) the trial court's dismissal of certain claims in the first action for failure to state a claim under Civ.R. 12(B)(6), (2) the trial court's decision on summary judgment regarding the remaining two claims in the first action, (3) the trial court's consolidation of the two actions below, and (4) the trial court's imposition of sanctions against JPM for bringing a negligence claim in the second action that was found to be unwarranted under existing law and not supported by a good-faith argument for a change in the law. For the reasons that follow, we overrule the assignments of error and affirm the judgments of the trial court.

I. Background

A. The Agreements Relevant to this Appeal

{¶3} On February 10, 2020, Acappella, a registered transportation property broker, entered into a Transportation Brokerage Independent Contractor Agreement (the "TBICA") with Mokski Enterprises, JPM, Kevin Mokski and an "affiliate" of Acappella, defendant-appellee US Logistics, LLC, ("US Logistics"). Under the TBICA,

Acappella "engage[d]" Mokski Enterprises as an independent contractor to perform the services outlined in the agreement, which included "actively develop[ing] and solicit[ing] transportation brokerage business on behalf of [Acappella]." The TBICA asserted that Mokski Enterprises would "derive a substantial benefit from the transactions outlined in [the] Agreement." Relevant here, the TBICA provided that it "shall automatically terminate upon the Option Closing under the Option Agreement dated February 10, 2020 by and between [Acappella, Mokski Enterprises, Kevin Mokski, JPM,] USL Holdings, LLC, and USL Capital, LLC." The TBICA further provided, "The Option Closing shall have the meaning set forth in the Option Agreement."

{¶4} The Option Agreement, entered into between the mentioned parties that same day, provided Mokski Enterprises with the "option to purchase the Option Units (as defined [in the Option Agreement]) in [Acappella], upon the terms and conditions stated in [the] Agreement." More specifically, defendant-appellee USL Holdings, LLC, ("USL Holdings") granted Mokski Enterprises "the option. . . to purchase One Hundred (100) of [its] Membership Units . . . in [Acappella], upon the . . . terms and conditions [stated in the agreement]."

{¶5} Relevant here, Mokski Enterprises had the right to exercise the Option "at any time during the Option Period," which was defined as "any time following the date upon which [Acappella]'s Gross Revenue exceeds $5,000,000.00 for the preceding 12-full-month period," if exercised prior to January 1, 2022, and "any time following the date upon which [Acappella]'s Gross Revenue exceed $2,000,000.00 for the trailing 12-full-month period," if exercised on or after January 1, 2022. The Option Closing was to occur within 60 days "after the date upon which Mokski Enterprises exercises the Option, unless extended by mutual agreement of the Parties."

{¶6} The Option Agreement contained a nonassignment provision that stated, "No party shall assign this Agreement in whole or in part without the prior written consent of all other Parties."

{¶7} Further, the Option Agreement provided that, "[a]s consideration for the Option Units, at the Option Closing, Mokski Enterprises, in its capacity as the sole owner/member of [Acappella], shall cause [Acappella] to execute a Factoring Agreement with the USL Capital, Mokski Enterprises, [JPM] and Keving Mokski." Consistent with this obligation, Acappella, defendant-appellee USL Capital, LLC, ("USL Capital") Mokski Enterprises, JPM, and Kevin Mokski agreed "to execute the Factoring Agreement at the Option Closing, in the form attached [to the agreement] as Exhibit A."

{¶8} The Factoring Agreement "form" attached to the Option Agreement shows that USL Capital, Acappella, Mokski Enterprises, JPM, and Kevin Mokski were intended to execute an agreement wherein the "Client," defined as all parties to the agreement except USL Capital, was to factor its invoices to USL Capital "according to the terms set forth in the Agreement."

{¶9} A later Modification Agreement in June 2021 removed Kevin Mokski from all agreements.

B. Exercise of the Option

{¶10} On January 14, 2022, JPM sent an email purporting to exercise the option. The email stated,

> As previously communicated, Mokski Enterprises LLC hereby exercises its option pursuant to the terms of the Option Agreement, into which we mutually entered on February 10, 2020.
>
> Having met the conditions therein defined in Section 1.2(ii),

> Mokski Enterprises LLC moves to purchase the 100 Membership Units (or the total outstanding Membership Units in Acappella Freight LLC, if the number of Membership Units representing 100% of the units changed since the signing of the Option Agreement).
>
> The Option Agreement, Section 1.4, stipulates that the Option Closing shall occur within 60 days. As this was previously communicated, and delayed for the acquisition, Mokski Enterprises would like to close on this transaction on March 15, 2022 or earlier.
>
> Contemporaneous to this closing, Acappella Freight LLC shall enter into the Factoring Agreement as originally presented, subject to our prior modification of removing Kevin Mokski from any and all documents.

C. The "Closing"

{¶11} On September 1, 2022, Transport Investments, Inc., USL Capital, Mokski Enterprises, and Acappella entered into an Assignment and Assumption Agreement. This agreement indicated that Transport Investments, Inc., the "assignor," was the owner of 100 membership units in Acappella, which constitutes 100 percent of the membership interest, and that Mokski Enterprises "asserts the right" to receive Acappella by virtue of the Option Agreement.

{¶12} In the agreement, Transport Investments, Inc., assigned all its "rights, title, and interest in and to the Assigned Interest" to Mokski Enterprises.

II. Proceedings Below

A. Initiation of First Action (A-2301247)

{¶13} In March 2023, Mokski Enterprises filed a complaint against (1) USL Holdings, (2) USL Capital, (defendants one and two collectively referred to as "the USL

defendants") (3) Transport Investments, Inc., n.k.a. Bridgeway Connect, Inc., ("TII") (4) Jeffrey Hiatt, (5) Douglass Logeman, (6) Sarah Long, and (7) Kathryn Springob (defendants four through seven collectively referred to as "the individual defendants"). Hiatt and Logeman are alleged to be former co-owners of USL Holdings. Long and Springob are alleged to be former co-owners or "unjustified beneficiar[ies] of the sale of USL Holdings."

{¶14} The complaint alleged that the individual defendants wrongfully sold Acappella to TII, a third party, as part of a larger transaction involving the USL defendants. The sale was alleged to be wrongful due to the Option Agreement. The complaint also alleged that USL Holdings breached the Option Agreement by "fail[ing and refus[ing] to schedule a closing and convey Acappella" to Mokski Enterprises as required on or before April 30, 2022. The complaint further alleged that USL Capital repudiated its obligation to sign the Factoring Agreement once Mokski Enterprises "assumed ownership" of Acappella. Beyond that, the complaint claimed that TII knew, or should have known, of the contracts between Mokski Enterprises and the USL defendants at the time of sale.

{¶15} The complaint asserted (1) a claim against USL Holdings for breach of the Option Agreement based on its refusal to schedule the closing and convey Acappella to Mokski Enterprises, (2) a claim against USL Capital for breach "via anticipatory repudiation of obligations to sign [the] factoring agreement," (3) a claim against the USL defendants and the individual defendants for breach of contract based on the nonassignment provisions of the TBICA agreement and the Option Agreement, (4) a claim against the USL defendants and the individual defendants for breach of contract based on the failure to perform under the TBICA and the Factoring Agreement, (5) a claim against the USL defendants and the individual defendants for

fraud, fraudulent concealment, intentional misrepresentation, and/or fraudulent inducement, (6) a claim against the USL defendants and the individual defendants for negligent misrepresentation, (7) a claim against TII for tortious interference with a contract, and (8) a claim against the individual defendants for conversion.

{¶16} All defendants subsequently filed a motion to dismiss the complaint, in part. The motion sought dismissal based on failure to state a claim of Counts 3 and 4 against the individual defendants, Count 4 against USL Holdings, and Counts 3, 5, 6, 7, and 8 in their entirety. Hiatt and Logeman also sought dismissal of the claims against them on the basis of improper service.

{¶17} In response, Mokski Enterprises filed an amended complaint in June 2023. The amended complaint added US Logistics as a defendant to the action and (1) added USL Capital as an additional defendant on the first claim, (2) removed the Option Agreement from the allegations in the third claim and added US Logistics as an additional defendant to that claim, (3) added a new claim for breach of contract against the USL defendants and the individual defendants for breach of the nonassignment provision of the Option Agreement, (4) removed the Factoring Agreement from the allegations of the (previous fourth) now fifth claim and added US Logistics as an additional defendant to that claim, (5) added a claim against USL Capital and the individual defendants for breach of the Factoring Agreement based on failure to perform, (6) added US Logistics as an additional defendant to the fraud claim, (7) added US Logistics as an additional defendant to the negligent-misrepresentation claim, and (8) added a claim against all defendants for unjust enrichment.

{¶18} All defendants then moved to dismiss the amended complaint, in part. The motion sought dismissal based on failure to state a claim of Counts 3 through 6 as

against the individual defendants, and 3, 4, 7, 8, 9, 10, and 11 in their entirety. US Logistics, Hiatt, and Logeman also sought dismissal of the claims against them on the basis of improper service.

{¶19} Mokski Enterprises then filed a second amended complaint in October 2023. The second amended complaint added (1) TII as a defendant to the sixth claim for breach of contract based on the failure to perform under the Factoring Agreement, and (2) a new claim against the US Logistics, the USL defendants, and the individual defendants for breach of fiduciary duty.

{¶20} All defendants then moved to dismiss the second amended complaint, in part. The motion sought dismissal based on failure to state a claim of Counts 3 through 6 against the individual defendants, and Count 6 in part, and Counts 3, 4, and 7 through 12 in their entirety.

{¶21} Mokski Enterprises filed a third amended complaint in May 2024.[1] The third amended complaint asserted (1) a claim against the USL defendants and TII for breach of the Option Agreement based on their refusal to schedule the closing and convey Acappella to Mokski Enterprises, (2) a claim against USL Capital for breach "via anticipatory repudiation of obligations to sign [the] factoring agreement," (3) a claim against USL Holdings for breach of contract based on the failure to perform under the TBICA, (4) a claim against USL Capital for breach of contract based on the failure to perform under the Factoring Agreement, (5) a claim against US Logistics and the USL defendants for fraud, fraudulent concealment, intentional misrepresentation, and/or fraudulent inducement, (6) a claim against US Logistics and the USL defendants for negligent misrepresentation, (7) a claim against TII for tortious

[1] The record indicates that Mokski Enterprises received leave of court to file the third amended complaint.

interference with a contract, (8) a claim against US Logistics for unjust enrichment, and (9) a claim against the US Logistics and the USL defendants for breach of fiduciary duty.

{¶22} Thus, the third amended complaint (1) added TII as a defendant to the first claim, (2) removed the (former) third and fourth claims, (3) removed US Logistics, USL Capital, and the individual defendants as defendants from the now third (former fifth) claim, (4) removed TII and the individual defendants as defendants from the now fourth (former sixth) claim, (5) removed the individual defendants as defendants from the now fifth (former seventh) claim and the now sixth (former eighth) claim, (6) removed the (former) tenth claim, (7) removed all defendants except US Logistics as defendants from the now eighth (former eleventh) claim, and (8) removed the individual defendants as defendants from the now ninth (former twelfth) claim. These amendments resulted in no claims being asserted against the individual defendants.

{¶23} In response, the USL defendants, TII, and US Logistics ("the corporate defendants") filed a "supplemental filing" in support of their prior motion to dismiss, indicating that the third amended complaint should be dismissed in part for "all the same reasons as before." This motion indicated that argument was set before the court the following day (May 20, 2024), and this document was filed in aid of said argument. On the day of argument, the case was transferred to the commercial docket.

{¶24} The following month (June 2024), the commercial defendants moved to dismiss the third amended complaint, in part. The motion sought dismissal based on failure to state a claim of Count 1 against TII, Count 4 in part, and Counts 3 and 5 through 9 in their entirety (i.e., all claims except Count 1 against the USL defendants, Count 2, and Count 4 in part). The motion asserted,

> This is a contract case involving no damages. In conversation with Plaintiff's counsel, Defendants have spent a year working to whittle the operative pleading down to fit the realities of the law, with only marginal success. Despite repeated admonitions from the Court, Plaintiff Mokski Enterprises, LLC . . . has not gotten the message that, in business disputes, it must rely on the language of its contracts. Under well-established Ohio law, this case is only about Counts One (in part), Two, and Four (in part). The nominal breaches alleged in those counts are associated with no damages; indeed, Mokski [Enterprises] has been unable to identify a number that would assuage its owner's grievance, and has yet to make an initial disclosure that would calculate damages.
>
> Application of the law to the pleading will address some of the case's ailments. The Third Amended Complaint . . . is Mokski [Enterprises]'s fourth attempt to plead viable claims arising from the ownership transactions that occurred in 2021 and 2022. Despite multiple hearings about Mokski [Enterprises]'s pleading deficiencies, the current document has not and cannot fix the legal defects in the "kitchensink" approach Mokski [Enterprises] has taken. In addition to violating the rule for "simple, concise, and direct" statements of fact that would identify actual harms caused by any defendant's breach, see Civ.R. 8(E), most of the [third amended complaint] is legally defective just as its predecessors were. In discovery, Defendants will show that the counts that survive this Motion are unsupported by any commercial facts.

{¶25} The trial court heard oral arguments on July 31, 2024.

{¶26} On August 5, 2024, Mokski Enterprises filed a notice of voluntary dismissal under Civ.R. 41(A)(1)(a), indicating that it was dismissing—without prejudice—the individual defendants.

{¶27} Later that month, on August 27, 2024, the corporate defendants and the individual defendants moved to consolidate the action (the case numbered A-2301247) with a new action (the case numbered A-2403529) that was filed by JPM shortly after the individual defendants were dismissed. The motion asserted that the new action was JPM's attempt to circumvent the unfavorable ruling it knew was coming in the first action and an attempt to judge-shop. The motion requested consolidation on the basis that the claims arose from the same set of facts and asserted the same legal and factual issues.

B. Initiation of Second Action (A-240359)

{¶28} On August 7, 2024, JPM filed a complaint in the second action against the USL defendants, US Logistics, TII, and the individual defendants. The complaint claimed to arise from "Defendants' deliberate, reckless, and negligent conduct, resulting in substantial economic and non-economic damages to Plaintiff." The complaint stated that the "suit parallel[ed] ongoing litigation, Case A-2301247 in the Commercial Docket, regarding breaches of contractual obligations by Defendants affecting Plaintiff's business." The complaint claimed to seek "redress for the personal harms Plaintiff endured due to Defendants' wrongful actions." It further claimed that the action was "distinct from the business-related claims already filed under Case A2301247 and should be adjudicated separately." The complaint requested that the action be "handled in the general division," and said,

> The original pleadings of Case A2301247 included mentions of personal injury claims, which Defendants deemed improper in their

> answers. In response to Defendants' position and to comply with Rule 49.06 of the Ohio Rules of Superintendence, Plaintiff is filing this separate action to ensure that the personal injury claims are addressed in the appropriate forum.

{¶29} The complaint asserted claims for negligence and intentional infliction of emotional distress ("IIED") against the corporate defendants and the individual defendants.

C. Proceedings While the Motion to Consolidate was Pending

1. The Second Action

{¶30} While the motion to consolidate was pending, JPM filed an amended complaint in the second action (in September 2024). The amended complaint removed the corporate defendants as defendants on the claims and alleged more "personal" factual allegations. Resultingly, the remaining claims in the second action were claims for negligence and IIED against the individual defendants.

2. The First Action

{¶31} Further, in November 2024, Mokski Enterprises moved for summary judgment in its favor in the first action "on the sections of claims One, Two, Three, and Four of the Third Amended Complaint as to Defendants' liability for beaching the various agreements at issue."

{¶32} A couple of weeks later, on November 21, 2014, the trial court granted the corporate defendants' motion to dismiss the third amended complaint, in part, in the first action. Resultingly, the surviving claims in the first action were (1) Count 1 against the USL defendants for breach of the Option Agreement based on their refusal to schedule the closing and convey Acappella to Mokski Enterprises, and (2) Count 2 against USL Capital for breach "via anticipatory repudiation of obligations to sign [the]

factoring agreement."

D. Consolidation

{¶33} That same day (November 21, 2024), the trial court granted the motion to consolidate. The trial court found that actions shared "tremendous commonality of issues." The court stated,

> The underlying facts of both cases are identical—the question raised by the new case is whether the same actions underlying the contract claims can also constitute tort claims. In fact, this tremendous similarity is why Plaintiff does not oppose consolidation of discovery. Based on the tremendous similarity of the facts and issues, the fact that the same discovery is necessary for both cases, consolidation is appropriate and would save judicial time and resources.

{¶34} Thus, the trial court entered an order on November 26, 2024, consolidating the second action, the case numbered A-2403529, with the first action, the case numbered A-2301247.

E. Proceedings After Consolidation

{¶35} Shortly after consolidation, Mokski Enterprises filed a motion for reconsideration of the trial court's ruling on the corporate defendants' motion to dismiss the claims in the third amended complaint filed in the first action. The motion asked the court to reconsider its dismissal of TII as a defendant on Count 1, and its dismissal of Counts 3, 4 and 7 of the third amended complaint.

{¶36} Additionally, the corporate defendants and the individual defendants filed a motion to dismiss the amended complaint filed in the second action for failure to state a claim. The motion claimed that "this **sixth** complaint" "results solely from [JPM]'s refusal to heed the law or respect the Court's prior rulings and instructions."

(Emphasis in original.) The motion asserted,

> As reflected in the Court's ruling dismissing *all* tort and other claims, this is a contract case. The relationships at issue were all governed by a commercial contract and commercial interactions conducted at arm's length in the commercial transportation industry. None of the claims except those arising from breach of contract (which, themselves, involve no cognizable damages) are viable. [JPM] apparently believed that he might persuade a different judge to see the matter differently, but the law is the law, and it applies to him and his company the same as to anyone else.

(Emphasis in original.)

{¶37} Further, the corporate defendants and the individual defendants filed a motion for sanctions under R.C. 2323.51 and Civ.R. 11. The motion requested that JPM "be sanctioned for asserting a claim that is <u>both</u> unfounded, under any existing or reasonably proposed body of law, <u>and</u> unsupported by any existing or reasonably anticipated evidence." (Emphasis in original.) The motion argued, "[JPM] invented a cause of action that does not exist, in Ohio or anywhere else, and made allegations he knew to be false. Defendants should be compensated for having to respond."

{¶38} Later, JPM voluntarily dismissed the corporate defendants, without prejudice under Civ.R. 41(A)(1)(a), from the second action.

{¶39} Thereafter, the trial court entered an order granting the defendants' motion to dismiss the amended complaint filed in the second action and an order denying Mokski Enterprises' motion for reconsideration.

{¶40} The trial court heard oral arguments regarding the motion for sanctions on May 14, 2025.

{¶41} On May 21, 2025, the trial court entered a decision denying sanctions under Civ.R. 11 and finding that sanctions were appropriate under "R.C. 2923.51." The court found that pursuing the negligence claim "based on breach of duty arising from the alleged personal relationship between [JPM] and the Individual Defendants]" was "objectively frivolous and no reasonable attorney would have brought such a cause of action in light of existing law." The court further stated, "The cause of action is not warranted under existing law and Counsel has put forth no good faith arguments in support of an extension, modification, reversal of existing law, or establishment of new law."

{¶42} Thereafter, the corporate defendants filed a cross-motion for summary judgment on the two remaining claims in the third amended complaint filed in the first action.

{¶43} Further, Mokski Enterprises filed a motion to "withdraw the matters deemed admitted by [its] inadvertent non-response to Defendant's Requests for Admissions and for leave to file amended responses" under Civ.R. 36(B).

{¶44} The court heard oral arguments on the cross-motions for summary judgment on October 1, 2025.

{¶45} On October 8, 2025, the court entered a decision denying Mokski Enterprises' motion for summary judgment and granting the corporate defendants' motion for summary judgment. The court also held that the motion to withdraw admissions was moot as the summary-judgment decision disposed of all pending claims.

{¶46} The following day, the court entered an order sanctioning JPM in the amount of $24,217, the stipulated amount of reasonable attorney fees "associated with the frivolous action."

III. Proceedings After Filing of the Notice of Appeal

{¶47} Shortly after, Mokski Enterprises filed a notice of appeal of the trial court's decisions on summary judgment and sanctions.

{¶48} Mokski Enterprises *and JPM* then filed an amended notice of appeal of the trial court's decisions on (1) summary judgment, (2) sanctions, (3) dismissal under Civ.R. 12(B)(6), and (4) consolidation.

{¶49} During the pendency of the appeal and without any limited remand, the trial court entered a "corrected order" on the award of sanctions. In the entry, the trial court explained that the court did not specify in the previous entry which defendants were entitled to receive the sanction fee amount and accordingly added that the award was "owed jointly to all Defendants, Individual and Entity alike."

{¶50} The trial court then purported to enter a "final judgment" stating that its summary-judgment decision disposed of all remaining claims in the case and then the court "signed a Corrected Order Awarding Defendants Sanctions." The entry then states, "Therefore, the Court now ENTERS FINAL JUDGMENT for all Defendants on all claims. Further Plaintiff [JPM] has been SANCTIONED in the amount of $24,217 and shall remit that amount to all Defendants."

{¶51} Thereafter, this court ordered jurisdictional briefing on "whether the orders appealed by the appellant are final, appealable orders under R.C. 2505.02." Both parties filed a brief on jurisdiction, and this court ultimately entered an order holding that the trial court's order on summary judgment and its initial orders on sanctions were final, appealable orders. Thus, this court held that it has jurisdiction over the appeal challenging these orders and the "several interlocutory orders that pre-date the final orders in the trial court case." However, this court additionally said, "The orders appealed from are not affected by the trial court's subsequent orders

entered on November 7, 2025 and November 10, 2025 because once the notice of appeal is filed, the trial court was deprived of jurisdiction except to take action in aid of the appeal." Thus, we proceed with the appeal on this basis.

IV. Analysis

{¶52} Mokski Enterprises and JPM assert four assignments of error for this court's review. The first assignment of error challenges the trial court's decision on the competing summary-judgment motions. The second assignment of error challenges the trial court's decision to consolidate the actions below. The third assignment of error challenges the trial court's imposition of sanctions against JPM. The fourth assignment of error challenges the trial court's decision dismissing certain claims in the first action under Civ.R. 12(B)(6).

A. First Assignment of Error

{¶53} The first assignment of error challenges the trial court's decision on the competing summary-judgment motions in the first action.

1. Standard of Review

{¶54} "'Summary judgment may be granted when (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.'" *L.H. v. Sun Secured Fin., L.L.C.*, 2026-Ohio-2219, ¶ 9, quoting *McConnell v. Dudley*, 2019-Ohio-4740, ¶ 18. An appellate court's "'review of cases involving a grant of summary judgment is de novo.'" *Id.*, quoting *Harris v. Hilderbrand*, 2023-Ohio-3005, ¶ 23.

2. Summary-Judgment Motions

{¶55} The claims remaining at the time of summary judgment were two claims brought by Mokski Enterprises in the first action: Count 1 against the USL defendants for breach of the Option Agreement based on their refusal to schedule the closing and convey Acappella to Mokski Enterprises; and Count 2 against USL Capital for breach "via anticipatory repudiation of obligations to sign [the] factoring agreement." Thus, these are the claims relevant to this assignment of error.

{¶56} In count one, Mokski Enterprises asserted that the USL defendants' refusal to close on April 30, 2022, as agreed, was a breach of the Option Agreement that caused it to "sustain damages in an amount to be proven at trial." In Count 2, Mokski Enterprises asserted that USL Capital "indicated a present, positive, unequivocal refusal to sign and render performance under the Factoring Agreement," and USL Capital's "refusal to sign and perform under the Factoring Agreement" was a breach of the Option Agreement that caused it to "suffer damages in an amount to be proven at trial."

{¶57} Mokski Enterprises moved for partial summary judgment "as to Defendants' liability for breaching the various agreements at issue." It specifically stated that it was seeking summary judgment only as to "liability regarding the damages attributable to their breaches of the applicable contracts," and "[t]he amount of damages caused by those breaches is still in dispute." Mokski Enterprises argued that, based on the pleadings, the affidavit of JPM, and the applicable contracts, no genuine issues of material fact remained as to liability, and it was entitled to judgment as a matter of law.

{¶58} In his affidavit, JPM asserted that, although Mokski Enterprises exercised its option under the Option Agreement on January 14, 2022, "defendants"

communicated on February 18, 2022, that they would not sign the Factoring Agreement. He further asserted that "the parties" agreed to extend the closing until April 30, 2022; however, "defendants failed to convey units in Acappella and further failed to sign the Factoring Agreement" on that day. Lastly, JPM asserted that, on September 1, 2022, USL Capital signed the Factoring Agreement and began performance thereunder and TII, as assignor, conveyed the units in Acappella "through an Assignment and Assumption Agreement and a Rights Agreement."

{¶59} The summary-judgment motion argued that the defendants admitted to the breaches where they only claimed that the breaches did not result in any damages and did not "produce[] any documents, nor ma[k]e any arguments" offering a defense to "the core contractual breaches." The summary-judgment motion also argued that Mokski Enterprises was entitled to judgment as a matter of law where the defendants did not dispute the alleged breaches nor offer any substantive defenses.

{¶60} In response, the corporate defendants filed a joint, combined memorandum in opposition to Mokski Enterprises' motion for summary judgment and a motion for summary judgment in their favor on the two remaining claims. The corporate defendants asserted that Mokski Enterprises' motion for summary judgment would "be mooted" upon summary judgment in their favor on the two remaining claims. As to TII and US Logistics, the corporate defendants argued that summary judgment should be granted in their favor as no claims against them remained in the case. As to the USL defendants, the corporate defendants argued that Mokski Enterprises "has no proof of any cognizable business damages resulting from any breach of the operative agreements." They asserted that, in the end, Mokski Enterprises "received everything it bargained for under the Option Agreement," and that the "only alleged breach was in the timing, and that delay is not actionable under

the circumstances."

{¶61} Notably, the corporate defendants acknowledged that it was not in dispute that Acappella's revenue generation "declined sharply" in 2022. They even pointed to exhibit E to their motion, incorporated by way of an affidavit of defendant-appellee Kathryn Springob, allegedly indicating a decline in credit rating as of September 2022. Yet, they asserted that Mokski Enterprises' "single explanation" for this decline—JPM suffering psychologically during the closing process and negotiations "such that he was rendered unable to run the business effectively"—cannot create a triable issue of material fact, even if true, as there were many "confounding factors that might have caused him the same distress and incapacitation regardless of the negotiations," including difficulty working during the COVID pandemic, relocation of his principal residence from Germany to France, and "family difficulties with severely ill parents." They pointed to a deposition excerpt and other evidence (exhibits G, H, I, J, K, L, all incorporated by way of the affidavit) to assert many other potential causes of JPM's medical issues and argued that Mokski Enterprises could not "establish a causal link under Ohio law without an expert." They asserted,

> No evidence exists to disaggregate the commercial effects that might have been related to the alleged breach from those that came from some other cause — including the glaring reality that [Mokski Enterprises] acted unreasonably in failing to mitigate the situation by retaining more people to sustain the business and its relationships with its largest customers. And no evidence suggests that [JPM]'s breakdown was foreseeable at the time of contracting, to make its downstream effects recoverable as contract damages.

{¶62} Thus, the corporate defendants argued that (1) emotional-distress damages were not available under the circumstances for breach of contract, (2) the purported damages were not foreseeable as a result of the alleged breaches, and (3) even if damages were available, Mokski Enterprises did not offer expert testimony to support its claim of emotional-distress damages. They further asserted that any anticipatory repudiation of the factoring agreement was "fully cured" and thus did not amount to a material breach of contract.

{¶63} In response, Mokski Enterprises filed a combined reply in support of its summary-judgment motion and in opposition to the corporate defendants' motion for summary judgment. It argued that the corporate defendants "ignore[d] damages directly based on [their] failure to perform under the Factoring Agreement, which included, at Section 2(E) of the TBICA, a trade credit reference obligation." Mokski Enterprises argued that genuine issue of material fact remained as to damages based on the second affidavit of JPM and exhibit No. 3, both of which were attached to its response. Mokski Enterprises further argued that it was not "seeking emotional damages." Rather, it was seeking "direct and consequential damages based on Defendants' breaches of contract."

{¶64} In the second affidavit, JPM claimed, among other things, that the TBICA contained a trade reference obligation that "ceased to apply" 60 days after Mokski Enterprises exercised the option to purchase, and neither the Option Agreement, the TBICA, nor the Factoring Agreement "contemplate substitute performance." The second affidavit does not reference exhibit No. 3. Exhibit No. 3—claimed to be a damages calculation—seems to consist of certain number tabulations that generally assert the "total amount due to Mokski."

{¶65} The corporate defendants filed a reply in support of their summary-

judgment motion, arguing that Mokski Enterprises has not raised any issues of fact as to any cognizable damages for any alleged breach and has no claim for any damage for the period of "hesitat[ion]" in signing the Factoring Agreement.

3. Oral Argument

{¶66} At oral argument, the corporate defendants focused on the lack of evidence of proximate cause. They argued, "We have asserted and we continue to assert, based on the record and the briefing, that there is no showing, there is no scintilla, of evidence of proximately caused damages in this case." Notably, they argued that Mokski Enterprises "needs both" breach and proximate cause so its motion for summary judgment is moot where it failed to prove proximate cause. Notably, the court asked counsel what it should do with exhibit No. 3, offered by Mokski. Counsel offered that the court could "generously construe" the exhibit as showing that Acappella "is worth less than anyone hoped it would be worth at this point." Counsel offered to stipulate that "there is less value in Acappella than was predicted." Counsel further provided the trial court with certain pages from JPM's deposition—that was referenced in Mokski's Enterprises' motion for summary judgment but not included in the record—and argued that no proximate cause was established even when considering this deposition excerpt.[2]

{¶67} Mokski Enterprises purported to focus its argument on its own motion for summary judgment. However, the court prompted counsel to discuss damages "assuming everybody is in agreement that there is a breach." Counsel initially suggested that exhibit No. 3 and JPM's testimony went to damages. However, when

[2] The record indicates that the trial court accepted this excerpt from counsel, but the excerpt did not originally appear in the record before this court. Defendants-appellees moved this court to supplement the record with this excerpt to accurately reflect the record below. This court granted the motion to supplement the record, and this excerpt is now in the record before this court.

the trial court asked about testimony and the lack of reference to any testimony in the briefing, counsel changed course and said JPM would testify at trial about exhibit No. 3. The court then asked counsel where JPM testified "in the record," and counsel responded, "Well, that's in Exhibit 3." The court asked counsel, "So is there analysis of this that is admissible evidence, any testimony, an affidavit?" Counsel responded, "As we sit here, no." The court then asked counsel how it should interpret exhibit No. 3. Counsel replied, "Well, Your Honor, I think that our position is, and it flows out of our motion, that there are disputed facts about the damages. Our Motion is only about liability." The following exchange then occurred:

> Court: I am framing it totally differently. You have the burden, in opposing their motion for summary judgment, to put facts into evidence so that I can see if there's disputed facts. I know you argue there are disputed facts. You say that in your writing in your brief, but I don't -- what is the fact I'm looking at, other than Exhibit 3 and the two affidavits? What would you put -- who is the witness you would put on the witness stand, and when you put Exhibit 3 up on the board for the Jury, who is the witness and how would you -- what would they be saying in explaining Exhibit 3 to the Jury?
>
> Counsel: [JPM] would be the witness –
>
> Court: Okay.
>
> Counsel: -- testifying on the value of his business.
>
> Court: And has he done that somewhere in the record?
>
> Counsel: I don't believe that he has testified to each of those

numbers in the record, no. We put the numbers in the record, and I understand Your Honor's question, but he would be sitting there, and the Jury would be looking at Line Number 1, and he would explain what Line Number 1 is. They would look at Line Number 2, and he would explain what Line Number 2 is.

Obviously, this is not a jury trial. It would be Your Honor doing this, but the damages are what are in the dispute, at least from -- I know that Defendants disagree with that, but the damages are what is in dispute. There is no dispute that there was a breach. They admitted that there was a breach. The length of the breach –

Court: Right. So let's say you win on Element 1, but you still have to prove, you have to put in the record for summary judgment, that there is damage, and then their argument, that the damage was caused by that form of delay.

Counsel: Our argument is that those were the damages that were caused, and so I think that our argument, whether it's in our motion or in response to their motion, our argument is, here's the numbers.

And so I think that's -- I mean, I think that -- their motion -- much of their motion is about the emotional damages. And we make it very clear in our response that those emotional damages are not part of the case and have not been since Your Honor's ruling a year ago or, you know,

nine months ago, so our argument is that those are the damages that are in Exhibit 3 that they are free to cross-examine him on at trial.

Court: Okay.

Counsel: So I believe that is -- as I kind of go back and sort of wrap things up, our motion is, there was two things in the contract that they were required to do and they didn't do either one of them, and those lead to damages, but we are only seeking summary judgment on the liability end, and then having a hearing or a trial on damages.

{¶68} The court then specifically explained to counsel that it would have to find evidence of damages caused by the breach and asked counsel if there was anything to look at for the causation argument. Counsel replied, "Well, I think that -- I mean, we cited the same [deposition] pages that [defense counsel] just handed you, so I would suggest that those pages show what our argument on causation is, along with the spreadsheet." The following exchange then occurred about exhibit No. 3:

Court: And in your analysis, what is the lost profit number in Exhibit 3?

Counsel: Well, I think that would be a disputed fact because I think we have to go through them, necessarily, to be sure.

Court: What is your position?

Counsel: Well, it's the $7 million, as it relates to those four months.

4. The Trial Court's Summary-Judgment Decision

{¶69} The trial court ultimately entered an order denying Mokski Enterprises' motion for summary judgment and granting the corporate defendants' motion for

summary judgment. The trial court denied Mokski Enterprises' motion for summary judgment on the basis that it failed to meet its burden, "[a]s movant," to show no factual dispute for trial where it "has not put evidence of damages in the record." The trial court said that JMP's affidavits "do not address damages" and, while exhibit No. 3 includes a "tabulation of numbers," "there is no explanation or testimony as to the basis for these numbers." The court continued,

> The numbers are merely labeled "losses" with no explanation whatsoever of what the numbers are or where they came from. While Plaintiff's counsel has indicated that [JPM] could testify to this topic at trial, he has failed to put any evidence in the record on that topic. It is not addressed in his affidavits and no deposition testimony has been put in the record.

{¶70} Beyond that, the trial court granted the corporate defendants' motion for summary judgment on the basis that Mokski Enterprises "has put no evidence in record that the delay caused foreseeable damages for which [it] can recover."

5. Law and Analysis

{¶71} Mokski Enterprises first challenges the trial court's denial of its motion for summary judgment on the basis that Mokski Enterprises failed to set forth any evidence of damages. Mokski Enterprises asserts that there was evidence of damages in the record where JPM's affidavit (1) set forth Mokski Enterprises' damages and included a methodology "explaining the source of the figures, including that they were 'derived from USL's numbers' and reflected the 'difference between actuals and projected,'" and (2) said that "those damages 'stemmed directly from Defendants[']failure to convey the company and to sign and perform under the Factoring Agreement.'" Mokski Enterprises further asserts that JPM "testified at deposition [sic]

that Defendants' conduct caused the collapse of the business."

{¶72} Mokski Enterprises next challenges the trial court's grant of the corporate defendants' motion for summary judgment on the basis of no foreseeable injury. It asserts that JPM's second affidavit "explicitly detailed the causal mechanism of the commercial harm: the delay itself placed the business in a prolonged operational limbo." It argues that the affidavit demonstrates that the prior operational agreement, the TBICA, "ceased to apply upon the exercise of the Option, and none of the governing agreements contemplated or permitted substitute performance."

{¶73} As to the argument regarding evidence of damages, this argument is unpersuasive where neither of JPM's affidavits purport to explain the methodology of calculating damages as claimed by Mokski Enterprises, and Mokski Enterprises failed to include any deposition testimony in the record explaining its calculation of damages.

{¶74} Notably, even if this court considers the deposition pages offered to the trial court at the summary-judgment hearing, JPM only makes conclusory assertions that Acappella would have continued to grow had closing timely occurred. He claimed, "If [TII] were not involved at all and the transaction had gone per the documents, per option and per factoring, right, and there was no [TII], and there was no sale, I'm pretty sure everything would have been just fine because it was growing." In essence, he seemed to claim that USL was assisting him with back-office tasks that he could not get to prior to the sale to TII and TII did not provide adequate "substitute performance," post-sale. He claimed that this outcome would be different if he had timely owned Acappella because he would still be working with USL and they would have "maintained the statute quo," so there would be no damage. He claimed that TII "failed to pay the bills on time," "failed to collect the money," "failed to protect the

credit rating," and "didn't do claims." However, he never made any allegations of any specific company losses connected to this assertion and never connected any information from exhibit No. 3 to this assertion. Rather, he said,

> As I told you, anything that impairs my ability to run the business -- and when I lost control of being able to run the business, as happened once [TII] took over, impacts the results of the business. So take out the golden goose and there's no money.

{¶75} Thus, based on our review of the evidence, the trial court was correct that there is no evidence explaining the claimed losses in exhibit No. 3 and thus no evidence of damages *resulting from* the claimed breaches.

{¶76} As to the argument regarding the asserted "operational limbo" due to termination of certain obligations under the TBICA, this argument is unpersuasive based on the express language of the TBICA, which provides that the TBICA automatically terminated *upon the Option Closing*, not upon *the exercise of the Option*. Thus, there was no "operational limbo" between the contracts as claimed by Mokski Enterprises.

{¶77} Beyond that, Mokski Enterprises asserts that the trial court erred in deciding summary judgment while its motion to withdraw its deemed admissions was pending. In doing so, it claims that the trial court "allowed deemed admissions to control the summary-judgment ruling even though the record already contained sworn deposition testimony and other materials addressing the same subjects."

{¶78} However, there is no indication that the trial court relied upon the "deemed admissions" when deciding summary judgment. Rather, the court deemed the motion moot upon its grant of summary judgment in favor of the corporate defendants based on other evidence. Thus, there is no possible prejudice from the trial

court's determination of summary judgment prior to consideration of the motion to withdraw the admissions as the trial court did not purport to base its judgment on any deemed admissions.

{¶79} For all the foregoing reasons, we overrule the first assignment of error.

B. Second Assignment of Error

{¶80} In the second assignment of error, Mokski Enterprises and JPM argue that the trial court committed reversible error when it granted the motion to consolidate the actions. Mokski Enterprises and JPM argue that consolidation was improper were the actions did not share parties or claims.

{¶81} Assuming, without deciding, that consolidation was improper, Mokski Enterprises and JPM have failed to show prejudicial error in the trial court's decision. Any error in the erroneous consolidation of cases under Civ.R. 42(A) must be disregarded if the error was harmless and did not affect a litigant's substantial rights. *See* Civ.R. 61; *Wheeler v. Durrani*, 2026-Ohio-2475, ¶ 92 (1st Dist.).

{¶82} Here, Mokski Enterprises and JPM claim that the consolidation was prejudicial because it "eliminated the distinction" between the personal harms and the contractual claims and "caused the personal tort claims to be evaluated through the lens of the commercial action rather than on their own terms." However, JPM has not raised any challenge to the trial court's dismissal of his claims arising from the alleged "personal harms" for failure to state a claim and there is no evidence in the record that the trial court did not resolve these claims on their own merit. Rather, the trial court's decision dismissing these claims shows that the trial court relied upon the allegations in the amended complaint filed in the second action when rendering its decision, as it was required to do. Therefore, because there is no evidence of prejudice even assuming that consolidation was improper, we overrule the second assignment of

error.

C. Third Assignment of Error

{¶83} In the third assignment of error, JPM challenges the trial court's decision to impose sanctions under R.C. 2323.51.

{¶84} As an initial matter, JPM asserts that the trial court's decision "purport[ed] to impose attorney-fee liability under a repealed statute" and the order is therefore "legally incoherent on its face and cannot stand." He argues that this court cannot view the trial court's use of "R.C. 2923.51," instead of R.C. 2323.51, as a typographical error as the trial court cited to this repealed statute "twice," once in the decision imposing sanctions and again in the decision awarding the sanction amount. Thus, he seems to suggest that the trial court's use of "R.C. 2923.51" was intentional. However, it is clear that the trial court's use of "R.C. 2923.51" was simply a typographical error and the trial court did not actually intend to award sanctions under a repealed statute. First, the defendants moved for sanctions under R.C. 2323.51, and, in its entry, the trial court said that the defendants were seeking sanctions under "R.C. 2923.51." Thus, the court clearly was attempting to reference the statute at issue in the motion for sanctions, which was R.C. 2323.51. Moreover, and most tellingly, the trial court directly applied the provisions of R.C. 2323.51(A)(2)(a)(ii) when it imposed sanctions. Thus, in substance, the trial court clearly applied the correct statute when it imposed sanctions.

{¶85} JPM next argues that the trial court awarded sanctions to the wrong parties where the corporate defendants were already removed from the claims via the complaint amendment in the second action prior to the motion for sanctions. However, just because the complaint was amended does not mean that the corporate defendants were not "adversely affected" by the frivolous conduct. *See* R.C.

2323.51(B)(1). JPM does not assert any argument that the corporate defendants were not adversely affected by the frivolous conduct.

{¶86} JPM next argues that the sanctions were "defective" because the court sanctioned him personally for "a legal judgment about pleading theory."

{¶87} R.C. 2323.51(B)(4) provides that an award "may be against a party, the party's counsel of record, or both." "By allowing the imposition of sanctions against the party, attorney, or both, the statute 'provides a mechanism for the court to place the blame directly where fault lies.'" *Southard Supply, Inc. v. Anthem Contrs., Inc.*, 2017-Ohio-7298, ¶ 36, citing *Rindfleisch v. AFT, Inc.*, 2005-Ohio-191, ¶ 19 (8th Dist.), *Ron Scheiderer Assocs. v. City of London*, 81 Ohio St.3d 94, 97 (1998), and *Sain v. Roo*, 2001-Ohio-4115 (10th Dist.). "An appellate court will not reverse the trial court's allocation of the responsibility for the payment of attorney fees absent an abuse of discretion." *Id.*, citing *Blackburn v. Lauder*, 1996 Ohio App. LEXIS 5108 (4th Dist. Nov. 12, 1996).

{¶88} When moving for sanctions against JPM, the individual defendants and the corporate defendants asserted that JPM should be sanctioned for "invent[ing] a cause of action that does not exist in Ohio or anywhere else, and mak[ing] allegations he knew to be false." They argued that the litigation arose "from a business relationship in the freight-brokering industry," yet JMP filed the negligence claim in the second action alleging a "personal relationship of trust" between the parties that is unsupported "by legal research or factual inquiry."

{¶89} In support of this argument, they submitted an affidavit of defendant-appellee Kathryn Springob, wherein she averred that she was the one who communicated with JPM "for items that escalated beyond the scope of the general team supporting his business" and she stated that did not recall ever meeting JPM in

person. She further stated that she never texted with JPM, was not linked to JMP on social media, never "had a meal" with JPM, and disclosed nothing of note to JPM about her life outside of her profession. She said she "knew no more about [JPM] than about any other similarly situated broker with whom [they] did business," and stated, "Neither [JPM] nor I have created or identified any reason to trust each other beyond the business incentives and contractual obligations of our companies."

{¶90} In response, JPM argued that the negligence claim was "relat[ed] to medical conditions [he] believes are directly related to his dealings with all the Defendants." He said the claim has "nothing to do with the contractual relationship" and relates "only to the medical conditions [he] claimed to have suffered that were proximately caused by Defendants' actions." He asserted that the claim arose "out of the actions of the Individual Defendants and their personal dealings with Mr. Mokski." Thus, he asserted that the duty owed to him arose "from the close personal relationship they cultivated, which went far beyond any professional obligations."

{¶91} At the hearing on the motion for sanctions, counsel for JPM suggested to the court that JPM was seeking redress for harms done to him personally, rather than to Mokski Enterprises, and that was the basis of the negligence claim in the second action. He stated, "So we filed another complaint, not for the purpose of judge shopping, not for purposes of harassment, not for purposes of anything other than addressing what we believe were viable claims in negligence, and addressed what we believed the source of the duty is." He said, "[M]y client indicated that there was these relationships and that -- I don't think it's -- I think it's a part of the duty [to zealously advocate] to try to find a way to get him damages individually for damages that were done to him, if we can do that, and part of that is arguing for the expansion of the law, because that is who I am representing." He expressed, "[S]o there was never any

intention to do anything other than just file a case that we believed had merit." When questioned by the court about his basis for bringing the claim, counsel told the court that, based on the law of negligence and what he was told by JPM, he believed that a duty was owed to JPM to at least be truthful in their interactions. However, he agreed with the court that there is generally no duty to tell the truth that rises to the level of a tort. Nevertheless, he said, "After research, I felt that an argument, a legitimate Straight-faced argument could be made that they owed him a duty, arising from negligence -- a duty in negligence." At no point did counsel for JPM argue that the sanctions should not be imposed on JPM personally or suggest that JPM was not involved in bringing this claim.

{¶92} The trial court ultimately found that "asserting and pursuing" the negligence cause of action based on a breach of duty arising from the alleged personal relationship between JPM and the individual defendants "was objectively frivolous and no reasonable attorney would have brought such a cause of action in light of existing law." The court accordingly sanctioned JPM for the stipulated amount.

{¶93} JPM argues that the trial court's finding that "no reasonable attorney would have brought" the claim is a finding "directed at legal strategy and legal sufficiency" that does not justify imposing sanctions on him personally as he is not an attorney.

{¶94} The finding that no reasonable attorney would have pursued the cause of action is simply a finding related to whether the claim was warranted under existing law. *See generally, e.g., Riston v. Butler*, 2002-Ohio-2308, ¶ 34-36 (1st Dist.); *Feagan v. Bethesda N. Hosp.*, 2024-Ohio-166, ¶ 25 (1st Dist.); *Menkhaus v. Menkhaus*, 2022-Ohio-2369, ¶ 54 (1st Dist.). It sets forth an objective test by which to measure a claim. It does not address the culpable party. Rather, the culpable party relates to the party

responsible for what is found to be the frivolous *conduct*. Here, the frivolous conduct, as found by the trial court, was "asserting and pursuing" the negligence claim. *See* R.C. 2323.51(A)(1)(a) (defining "conduct" as "[t]he filing, the assertion, . . . or other position in connection with a civil action, the filing of a pleading, . . . or other paper in a civil action, . . . or the taking of any other action in connection with a civil action."). Notably, a party cannot claim ignorance of the law as a defense to bringing a claim that is found not to be warranted under existing law. *Sain*, 2001-Ohio-4115, at ¶ 31 (10th Dist.), citing *Huntington Ctr. Assocs. v. Schwartz, Warren & Ramirez, L.L.C.*, 2000 Ohio App. LEXIS 4388 (10th Dist. Sept. 26, 2000).

{¶95} Counsel's statements at the hearing suggested that the assertion and pursuit of the negligence claim was a joint effort between JPM and his counsel. Counsel routinely referred to himself and JPM as a collective "we" when discussing the basis for bringing the claim. Beyond that, there is nothing in the record to suggest that counsel alone was responsible for this conduct. While this court may have reached a different conclusion as to whether counsel should have also been found to be a culpable party, it is noteworthy that the motion for sanctions only sought sanctions against JPM, not his counsel, and this was never challenged below. We would be loath to find an abuse of discretion by the trial court under such circumstances where R.C. 2323.51(B)(4) gives the trial court discretion to sanction "a party, the party's counsel of record, or both" for frivolous conduct. Therefore, we overrule the third assignment of error.

D. Fourth Assignment of Error

{¶96} In the fourth assignment of error, Mokski Enterprises asserts that the trial court erred in dismissing Count 1 against TII and Counts 3 and 4 against TII and the USL defendants for failure to state a claim.

{¶97} Count 1 in the third amended complaint is a claim against the USL defendants and TII for breach of the Option Agreement based on their refusal to schedule the closing and convey Acappella to Mokski Enterprises. Count 3 in the third amended complaint was a claim against USL Holdings for breach of contract based on the failure to perform under the TBICA. Count 4 in the third amended complaint was a claim against USL Capital for breach of contract based on the failure to perform under the Factoring Agreement.

1. Standard of Review

{¶98} "This court reviews a trial court's judgment granting a motion to dismiss for failure to state a claim de novo." *Walker v. JPMorgan Chase Bank, N.A.*, 2026-Ohio-813, ¶ 7 (1st Dist.), citing *Twang, LLC v. City of Cincinnati*, 2024-Ohio-6077, ¶ 87 (1st Dist.). "A motion to dismiss for failure to state a claim under Civ.R. 12(B)(6) tests the sufficiency of the allegations in the complaint." *Id.*, citing *Brendamour v. City of the Village of Indian Hill*, 2022-Ohio-4724, ¶ 17 (1st Dist.). "Civ.R. 8(A) sets forth the standard for determining whether a complaint's allegations are sufficient." *Id.*, citing *Vandemark v. Reder*, 2026-Ohio-50, ¶ 10 (1st Dist.). "A complaint must 'contain (1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled.'" *Id.*, citing Civ.R. 8(A).

{¶99} "A Civ.R. 12(B)(6) dismissal is appropriate where, accepting the factual allegations in the complaint as true and drawing all reasonable inferences from those facts in the plaintiff's favor, the court determines that 'it appears "beyond doubt from the complaint that the plaintiff can prove no set of facts entitling [the plaintiff] to recovery."'" *Id.* at ¶ 8, citing *Brendamour* at ¶ 17. "Without sufficient factual support, conclusory statements involving elements of a claim cannot withstand a motion to

dismiss." *Id.*, citing *Olthaus v. Niesen*, 2023-Ohio-4710, ¶ 8 (1st Dist.). "But Ohio is a notice-pleading jurisdiction, and the plaintiffs are not required to prove their case at the pleading stage." *Id.*, citing *Maternal Grandmother, ADMR v. Hamilton Cty. Dept. of Job and Family Servs.*, 2021-Ohio-4096, ¶ 7, 16.

2. Law and Analysis

{¶100} As an initial matter, to the extent that Mokski Enterprises argues that the trial court erred in dismissing Counts 3 and 4 of the third amended complaint as against TII, we overrule this argument on the basis that these claims were not asserted against TII.

{¶101} Further, to the extent Mokski Enterprises argues that the trial court erred in dismissing Count 3 as to USL Capital and Count 4 as to USL Holdings, we overrule these arguments as Count 3 was only asserted against USL Holdings and Count 4 was only asserted against USL Capital.

{¶102} Beyond that, in essence, Mokski Enterprises argues that the trial court erred in dismissing Counts 1 and 3 as against the nonsignatories to the at-issue agreements in those claims. It seems to claim that the nonsignatories at issue were proper parties to each claim where these entities were in control of the circumstances that caused the breach. It appears to be arguing a theory of liability based on piercing the corporate veil. *See generally Boyd v. Archdiocese of Cincinnati*, 2015-Ohio-1394, ¶ 27 (2d Dist.) ("The only way that the agreement could be enforced against these nonparties is through a liability theory like '"assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver, and estoppel."'"); *Donahue v. Travelers Co.*, 2025 U.S. Dist. LEXIS 195296, *14 (N.D.Ohio Oct. 2, 2025) ("[W]hen the parent corporation is not a party to the . . . contract, privity is established when the subsidiary's corporate veil is pierced."). However, Mokski

Enterprises failed to set forth sufficient allegations in the third amended complaint showing that any of the separate entities did not retain their own independence. *See Boyd* at ¶ 27 ("Th[e] test [to determine liability under piercing the corporate veil] looks for 'control over the corporation by those to be held liable [that] was so complete that the corporation has no separate mind, will, or existence of its own' and for 'control over the corporation by those to be held liable [that] was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity.'"). Therefore, this argument is unpersuasive.

{¶103} Further, Mokski Enterprises argues that the trial court erred in dismissing Count 4 where USL Capital was a signatory to the Factoring Agreement. However, as found by the trial court, the third amended complaint alleged that *TII* was the entity that ultimately signed the Factoring Agreement, not USL Capital as originally intended. Thus, based on the allegations in the complaint, USL Capital was not ultimately a party to the Factoring Agreement.

{¶104} For the foregoing reasons, we overrule the fourth assignment of error.

V. Conclusion

{¶105} Based on the foregoing, we overrule the assignments of error and affirm the judgments of the trial court.

Judgments affirmed.

CROUSE and **BOCK, JJ.,** concur.