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Contracts - Parol Evidence

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ability alone will suffice to permit a court to assert in personam jurisdiction over the defendant in a tort action.

The *Roche* court attempted to limit its holding by stating: "Here the normal usage of the product [truck] almost inevitably would bring it into New Jersey. That is the deciding factor. It is therefore not necessary to speculate upon what our holding would be if J.C.'s plant were further away or in a different relative geographic location, or if J.C. completed fewer trucks."[21]

It is submitted that this case was an unexpected and unwarranted extension of in personam jurisdiction. It is possible that without guidance from the United States Supreme Court the *Roche* case, if followed, could expand the jurisdiction of any state over any foreign corporation if the state feels that the foreign corporation has wronged one of its domiciliaries. Whether this is good or bad is not in question, but it is submitted that to do it under the guise of minimum contacts when none in fact exist is clearly erroneous. It would subject corporations to in personam jurisdiction anywhere without regard to state jurisdictional patterns of power. It is time for the Supreme Court to clarify the jurisdictional guidelines of *International Shoe* and *Hanson.*

Louis P. Vitti

CONTRACTS—PAROL EVIDENCE—Parol evidence rule does not bar testimony concerning procurement of bank financing as an oral condition precedent to the formation of a contract for home improvements that did not mention financing, since the oral agreement did not contradict the main body of the written contract, despite the inclusion of an "integration clause."

Luther Williams, Jr., Inc. v. Johnson, 229 A.2d 163 (D.C. Ct. App. 1967).

Appellant sought to recover liquidated damages under a contract for improvements on appellee's home. The contract in question contained the following "integration clause": "This contract embodies the entire understanding between the parties, and there are no verbal agreements or representations in connection therewith."[1] Appellees testified that the contract never came into existence because of an unfulfilled condition precedent to the formation of the contract. Appellant objected to the introduction of the testimony concerning the parol agreement for financing, and later objected to the jury being instructed to find for the

21. 232 A.2d at 167.

1. Luther Williams, Jr., Inc. v. Johnson, 229 A.2d 163 (D.C. Ct. App. 1967), at 165.

defendants if the jury determined that the negotiations regarding the condition precedent of ability to obtain financing had taken place and that the contract was not to come into existence unless financing was first obtained. The objections were overruled, and the jury returned a verdict for appellees, which the District of Columbia Court of Appeals affirmed in the instant decision.

When the parties to a contract intend to embody all the terms of their agreement in a written instrument, intending that the written instrument be the final expression of their agreement, the parol evidence rule affords special protection to the writing by making inoperative any prior or contemporaneous agreements which seek to vary or contradict the terms of the integrated writing.[2] A judge rather than a jury determines if there was an integrated writing before affording protection to the written instrument by the use of the parol evidence rule.[3]

In determining if the parties to a contract intended to create an integrated writing, judges have generally given conclusive effect to an "integration clause."[4] The rationale for this conclusion is that the overt act of including an "integration clause" is evidence that the parties must have intended an integrated writing,[5] especially in view of the fact that even written instruments not containing "integration clauses" have been deemed as creating a strong presumption that the agreement in the instrument is integrated.[6] Thus when an "integration clause" is present in a written instrument, the majority of courts take the view that evidence of any oral condition precedent to the formation of the contract is contradictory to the "integration clause" and therefore violative of the parol

2. 3 A. CORBIN, CONTRACTS § 578 (2d ed. 1960); RESTATEMENT, CONTRACTS § 237 (1932); 4 S. WILLISTON, CONTRACTS § 631 (3d ed. 1961).

3. Murray, *The Parol Evidence Rule: A Clarification*, 4 DUQUESNE L. REV. 340 (1966).

4. J & J Constr. Co. v. Mayernik, 241 Or. 537, 407 P.2d 625 (1965); Mandracchia v. McKeen, 167 N.Y.S.2d 678 (1957); Land Fin. Corp. v. Sherwin Elec. Co., 102 Vt. 73, 146 A. 72 (1929); Schuster v. Hotel Co., 106 Neb. 672, 184 N.W. 136 (1921); Meyer v. Armstrong, 49 Wash. 2d 598, 304 P.2d 710 (1956); A. CORBIN, *supra* note 2, § 578; S. WILLISTON, *supra* note 2, § 634, at 1026; When an "integration clause" is not present, evidence that the writing is nonintegrated may be admissible. City Nat'l Bank of Anchorage v. Moliter, 63 Wash. 2d 737, 388 P.2d 936 (1964); Walker & Laberge Co. v. First Nat'l Bank of Boston, 206 Va. 683, 146 S.E.2d 239 (1966); Fugate v. Cook, 236 Cal. App. 2d 700, 46 Cal. Rptr. 291 (1965); Hunt Foods & Indus. Inc. v. Doliner, 49 Misc. 2d 346, 267 N.Y.S.2d 364, *rev'd other grounds*, 26 App. Div. 2d 41, 270 N.Y.S.2d 937 (1966); 14 N.Y.U. INTRA. L. REV. 52 (1958); 13 U. PITT. L. REV. 760 (1952).

5. *See* New Prague Flouring Mill Co. v. Hewett Grain & Provision Co., 226 Mich. 35, 196 N.W. 890 (1924); Bressler and Taylor, *A Critique of the Parol Evidence Rule in Pennsylvania*, 100 U. PA. L. REV. 703 (1952).

6. *See* Seitz v. Brewers' Refrigerating Mach. Co., 141 U.S. 510, 517 (1891); Townsend v. Standard Indus. Inc., 235 Ark. 951, 363 S.W.2d 535 (1963); Rath v. Schoon, 192 Iowa 180, 182 N.W. 180 (1921); Garden State Plaza Corp. v. Kresge Co., 78 N.J. Super. 485, 189 A.2d 448 (1963); A. CORBIN, *supra* note 2, § 578, 403, n.39, 405; 5 S. WILLISTON, *supra* note 2, § 811, at 887, 890; RESTATEMENT, CONTRACTS § 573 (1932).

evidence rule.[7] However the courts in rare cases of fraud or mistake, or on some ground that is usually sufficient to set aside any type of contract, will not give conclusive effect to an "integration clause."[8]

Associate Judge Quinn[9] rejected giving conclusive effect to an "integration clause" in a written instrument in the instant case stating that despite the presence of an "integration clause," parol evidence could be admitted to show that a condition precedent existed. Judge Quinn believed that the "integration clause" should be considered only as additional evidence along with the conduct and language of the parties and all the surrounding circumstances in determining if the parties intended to create an itegrated writing. Judge Quinn quoted with approval from *Wigmore on Evidence*,[10] which in essence stated that the judge must look outside the written instrument in order to determine the intention of both parties to the written contract; that in order to determine if the writing was intended to be integrated, the court must first learn orally from each party all the terms and conditions of their contract and then determine if the conditions were included in the body of the written instrument; that if an oral condition or term of the contract is dealt with at all in the written instrument, then presumably the subject was intended by the parties to be integrated and such evidence of an oral condition or term would be inadmissible under the parol evidence rule if it contradicted or varied the terms of the integrated writing. Judge Quinn decided that procurement of bank financing as an oral condition precedent to the formation of the contract for home improvements was not specifically mentioned in the written instrument, therefore he decided the writing was not intended by the parties to be integrated, and therefore the admission of evidence of the oral condition in the lower court did not violate the parol evidence rule.[11]

The court in the instant case stated that it was clear from the *Illustration* in § 241 of The Restatement of Contracts,[12] that parol evidence relating to conditions precedent should not be excluded because of an "integration clause," as violative of the parol evidence rule,[13] but excluded only when the alleged oral condition precedent to the formation of the contract contradicts the "integration clause" and *some other specific term* of the written instrument, but the court did not give any

7. Note 4, *supra*.

8. *Id.*

9. With whom Hood, C.J., and Myers, J., concur.

10. 9 J. WIGMORE, EVIDENCE § 2430 (3d ed. 1940).

11. Not all written statements of fact are necessarily true because they are written and therefore Professor Corbin does not believe that an "integration clause" necessarily represents the true intention of the parties, A. CORBIN, *supra* note 2, §§ 578, 582.

12. (1932).

13. Note 2, *supra*.

reason as to why it was clear, and merely quoted The Restatement of Contracts § 241 as follows:

> Where parties to a writing which purports to be an integration of a contract between them orally agree, before or contemporaneously with the making of the writing, that it shall not become binding until a future day or until the happening of a future event, the oral agreement is operative *if there is nothing in the writing inconsistent therewith.* (Emphasis added.) *Illustration: A* and *B* make and sign a writing in which *A* promises to sell and *B* promises to buy goods of a certain description at a stated price. The parties at the same time orally agree that the writing shall not take effect unless within ten days their local railroad has cars available for shipping the goods. The oral agreement is operative according to its terms. If, however, the writing provided 'delivery shall be made within thirty days' from the date of the writing, the oral agreement is inoperative.

The *Illustration* does not contain an "integration clause" nor the dilemma caused by an "integration clause," and therefore the court should have stated some rationale as to why it was clear from the *Illustration* that evidence should not be excluded because of an "integration clause," as violative of the parol evidence rule, but excluded only when the alleged oral condition precedent to the formation of the contract contradicts the "integration clause" *plus* some other specific term of the written agreement.

One writer has stated that there is a distinction between varying, contradicting, or adding to a written agreement and showing by oral evidence that a writing was not intended to be legally binding until a condition precedent was fulfilled.[14] This writer's view is that an "integration clause" presupposes that a contract is in existence since without such a contract being proved there is nothing to give the written instrument legal effect and consequently nothing to give the "integration clause" any legal effect.[15] The writer states:

> A condition precedent may be shown [under *Restatement* § 241] 'if there is nothing in the writing inconsistent therewith.' It might be argued that a literal application of this rule would emasculate the entire doctrine [that conditions in a contract are operative only if a contract is shown to exist], inasmuch as any condition precedent is inconsistent with a writ-

14. Comment, *Special Provisions in Contracts to Exclude Contentions Based Upon Parol Evidence*, 32 ILLINOIS L. REV. 938, 949 (1936).

15. *Id.*

> ing purporting to be a complete binding contract. It would seem to assume the very question in issue by giving effect to a provision of the writing when the question is whether the provisions of the writing collectively and severally are to be given effect at all. Certainly if the provision is to be given conclusive effect, as apparently is intended, this objection is valid. However, if the provision may be considered as evidentiary merely, the rule is desirable in directing attention to it. The provision should be utilized in court as an admission or a prior inconsistent statement of the party seeking to establish the condition precedent.[16] (Footnotes omitted.)

David J. Kozma

CRIMINAL LAW—DISCLOSURE OF IDENTITY OF EYEWITNESS INFORMER—The Supreme Court of Pennsylvania has held that the governmental privilege[1] to refrain from disclosing the identity of an informer does not limit the duty of the prosecution to make available the name and whereabouts of all material eyewitnesses to the defense.

Commonwealth v. Carter, 427 Pa. 53, 233 A.2d 284 (1967).

Norton Wilder, an undercover agent for the Philadelphia Police force and the prosecution's principal witness testified that he went to a street corner in Philadelphia where he was introduced to the appellant, Carter. Wilder was accompanied by an informer and both were under the surveillance of a federal narcotics agent. Wilder testified that after being introduced to the appellant, the appellant sold heroin to the informer in the presence of Wilder. The agent for the Federal Bureau of Narcotics testified that he saw Wilder, appellant, and the informer conversing at the scene of the alleged sale. The agent, who was sitting in an automobile parked a half block away, stated that he did not see the transaction but that he did recognize the appellant.

The appellant was arrested two months after the alleged sale and indicted for the felonious possession and sale of narcotic drugs. At the jury trial counsel for appellant asked Wilder to disclose the name of the informant. The prosecution objected and the trial judge sustained the objection. The defense at the close of the Commonwealth's case made a motion to have the case dismissed because of the Commonwealth's failure

16. *Id.*

1. In n.3, at 56 of 427 Pa. 53, and at 285 of 233 A.2d 284 (1967), it is stated that "neither statute nor appellate decision in Pennsylvania has yet recognized such a privilege. To simplify the issues in this appeal, we have assumed without deciding such a privilege exists."