Where Parties Have Manifested Their Intentions in a Final, Exclusive, and Fully Integrated Agreement, That Writing Will Be the Only Evidence of Their Agreement: *Yocca v. The Pittsburgh Steelers Sports, Inc.*

Matthew A. Meyers

Follow this and additional works at: https://dsc.duq.edu/dlr

Part of the Law Commons

Recommended Citation
Available at: https://dsc.duq.edu/dlr/vol43/iss3/9

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.
Where Parties Have Manifested Their Intentions in a Final, Exclusive, and Fully Integrated Agreement, that Writing Will be the Only Evidence of Their Agreement: *Yocca v. The Pittsburgh Steelers Sports, Inc.*

**CONTRACT LAW – INTERPRETATION – THE PAROL EVIDENCE RULE** - The Pennsylvania Supreme Court ruled that where there is a fully integrated written agreement, evidence of a prior agreement is barred from inclusion in the final written agreement by the parol evidence rule, and any reliance on those prior agreements is unjustified.


In or around October 1998, Plaintiff Ronald A. Yocca and others (hereinafter “Yocca”) received a Stadium Builder License (hereinafter “SBL”) brochure.¹ The brochure advertised the sale of licenses that would give the licensee the right to purchase season tickets in the Steelers’ new stadium for the seats to which the licenses were assigned.² The licenses represented the right to buy the tickets for specific seats and were freely transferable and subject to cancellation at any time by the licensee.³ The brochure laid out the procedure that was necessary to obtain one of these licenses and contained two small diagrams which represented the seating design of the planned stadium.⁴ The person applying for a

---

1. *Yocca v. The Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425 (Pa. 2004). The brochures were distributed jointly by the Pittsburgh Steelers Sports, Inc. t/d/b/a the Steelers Pittsburgh Sports Club, and the Sports & Exhibition Authority of Pittsburgh and Allegheny County, all of whom were defendants in this case referred to collectively as the “Pittsburgh Steelers” or “Steelers.” *Yocca*, 854 A.2d at 427.

2. *Yocca*, 854 A.2d at 427-28. The brochures advertised the ability to purchase licenses and season tickets based on those licenses for seats in the new stadium, a “bigger and better” stadium that offered seats closer to the field than its predecessor, Three Rivers Stadium. *Id.*

3. *Id.* at 428.

4. *Id.* One of the sketches represented the proposed location of the seating sections in the lower level of the new stadium, while the other represented the proposed location of the section in the upper level. Neither of the sketches were detailed enough to show the number of rows in a section or seats in a row; however, they were detailed enough that it ap-
license was required to submit a deposit equal to one-third of the price of the seats that he desired and to identify a second and third choice in the event that the Steelers were unable to offer seats in the desired location.\textsuperscript{5}

The brochure specifically stated that those who did not have first priority in the selection process -- those like Yocca, who did not currently hold a license -- would randomly be assigned a number that would be placed on the application corresponding to the order in which the application was received.\textsuperscript{6} That number would determine the order in which the applicant would be assigned a license and the order in which he or she would be assigned a section based on vacancies in the areas selected.\textsuperscript{7} Clearly articulated in the brochure was the fact that neither the right to receive a license nor the right to the desired seats was guaranteed.\textsuperscript{8} Furthermore, the brochure told the potential applicant that he or she would not receive his or her final seating assignment until the seats were physically installed.\textsuperscript{9}

Based on the representations in the brochure, Yocca was interested in obtaining licenses in the Club I Level, which appeared in the sketches to occupy the area between the twenty yard lines on the stadium’s lower level.\textsuperscript{10} He submitted his application and preliminary deposit for the licenses as required.\textsuperscript{11} In August 1999, Yocca received a letter explaining that he had received a SBL in the section he requested, which also included two more sketches that showed “the location of all the sections.”\textsuperscript{12} Those sketches appeared as though the area in which Yocca was interested, Club I Level, contained the sections between the twenty yard lines. \textit{Id.} The other plaintiffs were interested in sections D, E, and F which appeared to occupy the same position with regard to the field but in the upper level. \textit{Id.}

\textsuperscript{5} \textit{Id.}

\textsuperscript{6} \textit{Id.} at 428-29. The people who held licenses for Three Rivers Stadium were given priority as to which sections they were assigned in the new stadium in an attempt to sit them as close to their current location as possible, given the difference in design of the two stadiums. \textit{Id.}

\textsuperscript{7} \textit{Yocca,} 854 A.2d at 429.

\textsuperscript{8} \textit{Id.}

\textsuperscript{9} \textit{Id.}

\textsuperscript{10} \textit{Id.} at 431.

\textsuperscript{11} \textit{Id.} at 429. The deposit was subject to forfeiture if the final contract, originally scheduled to be sent out by the end of March 1999, was sent to the applicant and was not signed and returned within fifteen days. \textit{Id.}

\textsuperscript{12} \textit{Yocca,} 854 A.2d at 429. These sketches were just as detailed as the first two; not detailed enough to show the number of rows per section or seats per row, but detailed enough to show that Club I Level, now appeared to occupy the sections between the ten yard lines. \textit{Id.}
varied from the originals included in the SBL brochure. In the new sketches, the area Yocca had applied for, Club I Level, appeared to occupy the seats between the ten yard lines. Two months later, Yocca received another letter that included the SBL agreement requiring his signature to secure the license. Located within the agreement were the section in which the licenses were located, the number of seats to which the licenses applied, and the total cost for the licenses. Also included with the letter and agreement were a document entitled "Additional Terms and Conditions of Stadium Builder License and Club Seat Agreement" (hereinafter "terms and conditions") and another copy of the August 1999 sketches noting the location of the licenses as identified in the agreement. The terms and conditions contained an integration (or merger) clause that stated that the SBL agreement represented the entirety of the contract and that it superseded any prior agreements, as well as a provision stating that by signing the agreement the licensee indicated that he or she read and understood the terms and conditions. The terms and conditions were incorporated into the agreement by reference and the agreement stated that both parties agreed to the contract. Yocca signed the agreement and paid the balance due on the licenses. However, upon use of his season tickets, Yocca found that the seats, although in the section identified in the agreement, were outside the twenty yard lines as they appeared in the brochure. The seats were located on the eighteen yard line. In August of 2001, Yocca and others filed a complaint in the Allegheny County Court of Common Pleas on behalf of themselves and others similarly situated alleging breach of contract against

13. Id.
14. Id.
15. Id. at 430.
16. Id.
17. Yocca, 854 A.2d at 430. The court thought it abundantly clear that although the sketches were not labeled "Exhibit A," the sketches were the document that the agreement referred to as "exhibit A," assisting the license holder to find the location of his seats. Id.
18. Id. at 431. The complete integration clause provided, "This agreement contains the entire agreement of the parties with respect to the matters provided for herein and shall supersede any representations or agreements previously made or entered into by the parties hereto. No modification hereto shall be enforced unless in writing, signed by both parties." Id.
19. Id.
20. Id.
21. Id.
22. Yocca, 854 A.2d at 431.
the Pittsburgh Steelers. Yocca claimed several breaches, including: (1) he was provided seats that differed in location from those identified in the SBL brochure; (2) he was not given the priority promised in the SBL brochure; and (3) he was not given the reduced price of the less expensive seats actually received as promised in the SBL brochure. In addition to the breach of contract claims, Yocca further alleged that the Steelers committed fraud, negligent misrepresentation, and violation of the Unfair Trade Practice and Consumer Protection Law (hereinafter “UTPCPL”), thereby entitling Yocca to money damages, declaratory relief, and injunctive relief. Yocca sought declaratory relief, finding the agreement void for lack of consideration and incorporating the first sketches of the stadium found in the SBL brochure into the SBL agreement for purposes of identifying the seats to which the plaintiffs were entitled. The injunctive relief sought was either a re-issuance of the tickets or rescission and a refund of money paid with interest and fees.

The Court of Common Pleas granted the Steelers’ preliminary objections and dismissed all claims. The court reasoned that the breach of contract claims failed because they were based on the representations that were made in the SBL brochure. The integration clause in the SBL agreement stated that it was the final expression of the contract and the parol evidence rule barred evidence of any prior agreement or representation.

The court dismissed the claims of fraud and negligent misrepresentation, because they were based on the underlying breach of contract claim. According to the Pennsylvania Superior Court in

---

23. Id. at 432. The lawsuit was brought by Ronald A. Yocca, Paul Serwonski and Patty Serwonski, his wife, and Ronald P. Carmassi, individually and on behalf of all similarly situated. Id. at 425. The other plaintiffs were similarly interested in seats they thought would be between the twenty yard lines, but located in the upper deck sections D, E, and F. Id. at 428.

24. Id. According to Yocca, because the seats were outside of the twenty yard lines, they were not in the Club I Level identified in the brochure sketches; therefore, he was not given seats in the Club I Level even though his priority would have enabled him to obtain such seats, and he was charged for Club I Level seats even though he did not receive them. Id. at 432-33.

25. Id. at 432.

26. Id.

27. Yocca, 854 A.2d at 432.

28. Id. at 433. The hearing took place on November 20, 2001. Id.

29. Id.

30. Id.

31. Id.
Bash v. Bell Telephone Co., 32 there can be no independent tort claims based on an underlying breach of contract claim. 33

The court next addressed the UTPCPL claims. 34 It found that the licenses were neither goods nor services and were therefore not governed by the provisions of the UTPCPL. 35 Furthermore, even had the court found that the licenses were goods or services, the claim still failed because there must exist justifiable reliance on the representations in order to support an independent claim under the UTPCPL. 36 The parol evidence rule and the integration clause considered both independently and together made any reliance on the representations in the SBL brochure unjustified. 37

The court denied the first request for declaratory relief, finding the contract void for want of consideration because the parties agreed to be legally bound by the written contract, and because the Pennsylvania Uniform Written Obligations Act 38 holds that no written contract will be void for want of consideration where both parties agree to be legally bound. 39 The court then refused to grant Yocca’s second request for declaratory relief, the integration of the prior sketch from the SBL brochure, because the August 1999 sketch was included in the agreement and was sufficiently referenced and clear to show the location of the seats to which Yocca had been assigned. 40 The court’s final determination was that there was no imminent danger of irreversible harm to justify injunctive relief. 41 The plaintiffs appealed to the Commonwealth Court. 42

On appeal, the Commonwealth Court affirmed in part, but reversed the dismissal of the claims for breach of contract, violation of the UTPCPL, and declaratory relief. 43 The court ruled that the

33. Yocca, 854 A.2d at 433. The court stated, “To permit a promisee to sue his promisor in tort for breaches of contract inter se would erode the usual rules of contractual recovery and inject confusion into our well-settled forms of action.” Id. (quoting Bash v. Bell Telephone Co., 601 A.2d 825. (1992))
34. Yocca, 854 A.2d at 433.
35. Id.
36. Id.
37. Id.
40. Id. at 433-34.
41. Id.
42. Id.
43. Id. Judge Cohn concurred in part and dissented in part in the opinion of the Commonwealth Court; in dissent, she found that there were no promises made in the SBL bro-
terms of the SBL brochure represented the terms of the contract, and that the parol evidence rule did not apply. The court further held that the sale of the license was an option contract that potentially could be recognized as a service governed by the UTPCPL and one that should survive the preliminary objection stage; it also held that the law was not totally clear regarding whether the plaintiffs were entitled to have the SBL brochure sketch integrated into the agreement for the purpose of identifying the licensed sections. The Pennsylvania Supreme Court granted the Steelers’ petition for appeal.

The issues before the Supreme Court on appeal were as follows: whether the SBL agreement represented the entire contract between the parties, which the Steelers breached; whether the representations made by the Steelers violated the UTPCPL; and whether the plaintiffs were entitled to the declaratory relief of incorporation of the SBL brochure into the SBL agreement for the purpose of defining the sections for which the tickets were sold. In determining these issues, the court unanimously found that, according to the parol evidence rule, the integration clause in the SBL agreement stating that the SBL agreement represented the entirety of the contract prevented the introduction of any extrinsic evidence to define the terms of the agreement and, therefore, any claim for breach of contract based on the representations of the SBL brochure must fail. The court further found that the Steelers’ representations in the SBL brochure were not in violation of the UTPCPL because a private action under the UTPCPL requires justifiable reliance on representations made. In this case, the court found that there could be no such reliance because the integration clause in the SBL agreement and the parol evidence rule made any reliance on the terms of the SBL brochure

44. Yocca, 854 A.2d at 434.
45. Id. at 436-35.
46. Id. at 436. The standard of review for the Supreme Court in granting or denying preliminary objections in the nature of a demurrer is plenary and is proper when, based on the facts alleged in the complaint, it is clear to the court that the plaintiff, here Yocca, is not entitled to recovery or relief. Id.
47. Id. The Supreme Court granted the Steelers’ appeal of the reversal of the trials court’s dismissal of the appellees’ claims for breach of contract (which requires a parol evidence analysis), violation of the UTPCPL, and declaratory relief. Id.
48. Id. at 438
unjustifiable.\textsuperscript{50} Finally, the court found that Yocca was not entitled to declaratory relief incorporating the SBL brochure into the SBL agreement, because the SBL agreement clearly referenced the August 1999 sketches that were included with the SBL agreement.\textsuperscript{51}

The Pennsylvania Supreme Court reasoned, relying on \textit{Gianni v. R. Russel & Co.},\textsuperscript{52} that the parol evidence rule is designed to bar from consideration any prior negotiations, conversations, or agreements when the parties put their agreement in a final writing.\textsuperscript{53} According to the court, one very strong indicator that a writing is a final and all-inclusive of the terms of the contract is the existence of an integration clause, a clause explicitly identifying a writing as the final expression of the terms of the agreement.\textsuperscript{54} Set against these two principles of law, the court analyzed the decision of the Commonwealth Court, which found that the SBL brochure contained the terms of the contract for the sale of licenses.\textsuperscript{55} The Supreme Court disagreed with the finding of the lower court that there were no promises made in the SBL brochure upon which a contract could have been constructed.\textsuperscript{56} The brochure did not promise anything other than that if the plaintiff followed the procedure outlined within the brochure, he or she could be considered for a license.\textsuperscript{57} The court found that the only contract in this case was the SBL agreement signed by both parties.\textsuperscript{58} It was the first instance in which there was a promise to sell a specific seat to the plaintiff and was sufficiently specific in the terms and conditions of the contract to be considered as such.\textsuperscript{59} That contract also included an integration clause that stated that it was the final

\textsuperscript{50} Id.
\textsuperscript{51} Id.
\textsuperscript{52} 126 A. 791 (Pa. 1924).
\textsuperscript{53} \textit{Gianni}, 126 A. at 792. The court stated, Where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superceded by the subsequent written contract . . . and unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence.
\textsuperscript{54} Id.
\textsuperscript{55} Id. at 436.
\textsuperscript{56} Id. at 437.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
\textsuperscript{59} Id.
expression of the terms of the contract. Therefore, because the parties had reduced their agreement to a final writing, which identified itself in the integration clause as the final writing, the parol evidence rule prohibited the consideration of prior conversations, negotiations, or agreements. Accordingly, any claim for breach of contract based on a failure to live up to the representations of the SBL brochure must fail because those representations were not part of any agreement between the parties.

The court then considered the exception to the parol evidence rule that allows extrinsic evidence to clarify ambiguous terms within a contract. The court found no ambiguity in the agreement. The agreement clearly referred to the enclosed sketches (the August 1999 sketches), and the brochure sketches were not required for clarification.

As for the alleged violation of the UTPCPL, the lower court found that it was improper to dismiss the claim at the preliminary objection phase because the license was similar to an option which could be considered a service and within the scope of the act. The Supreme Court, however, found that regardless of whether the license amounted to a good or a service, the UTPCPL had not been violated. A private cause of action under the UTPCPL requires a justifiable reliance on wrongful actions or representation of the defendant. Here, the court found that there could be no justifiable reliance on the terms of the brochure because the agreement, not the brochure, represented the terms of the contract according to the integration clause and the parol evidence rule. By agreeing that the terms and conditions included with the SBL agreement were the final terms and conditions, Yocca could not justifiably rely on any prior representations, and the trial court's dismissal at the preliminary objection stage was proper.

Finally, in consideration of whether Yocca was entitled to declaratory relief in the form of integration of the terms of the SBL

60. Id. at 438.
61. Id.
62. Id.
63. Id.
64. Yocca, 854 A.2d at 438.
65. Id.
66. Id.
67. Id.
68. Id.
70. Id.
brochure into the SBL agreement, the court found that the terms and conditions set forth in the SBL agreement and the reference to the enclosed August 1999 sketches were sufficient to define the terms of the agreement and required no further clarification.\textsuperscript{71} Thus, there was no need for the court to grant declaratory relief to include the terms of the SBL brochure or the sketches to define any of the terms found within the SBL agreement.\textsuperscript{72}

Parol evidence is defined in Black's Law Dictionary as either oral evidence or, as it appears in the second definition and applies to this case, extrinsic evidence.\textsuperscript{73} Extrinsic evidence is then defined as that which comes from a source other than the face of a contract, and the definition itself alludes to the parol evidence rule.\textsuperscript{74} The definition of extrinsic evidence states that it may not be introduced to contradict or vary the unambiguous terms of a written contract.\textsuperscript{75} Continuing through the pages of Black's, one comes to the definition of the parol evidence rule, stated as follows:

The principle that a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence that adds to, varies, or contradicts the writing. This rule [usually] operates to prevent a party from introducing extrinsic evidence of negotiations that occurred before or while the agreement was being reduced to its final written form.\textsuperscript{76}

In his book \textit{Murray on Contracts}, Professor Murray lays out the conditions necessary for the parol evidence rule to be activated.\textsuperscript{77} First and foremost, there must be a written agreement that follows either a prior written or oral agreement.\textsuperscript{78} Once a party asserts that the written contract is the final expression of the terms of the contract, the parol evidence rule is activated.\textsuperscript{79} The question then becomes whether it was the intent of all the parties in-

\textsuperscript{71} Id.
\textsuperscript{72} Id.
\textsuperscript{73} BLACK'S LAW DICTIONARY 459 (7th ed. 1999).
\textsuperscript{74} Id. at 458.
\textsuperscript{75} Id.
\textsuperscript{76} Id. at 913.
\textsuperscript{77} JOHN EDWARD MURRAY, JR., MURRAY ON CONTRACTS 427 (4th ed. 2001). Professor Murray is the chancellor and a Professor of Law at Duquesne University School of Law.
\textsuperscript{78} Id. The parol evidence rule operates with equal force regarding written or oral agreements as long as they are either prior to or contemporaneous with the final written agreement. Id.
\textsuperscript{79} Id.
volved that the written agreement be the final, complete, and exclusive expression of the terms of the agreement.\textsuperscript{80}

Professor Murray identifies three different intents.\textsuperscript{81} The first is that the parties intended to allow prior negotiations to affect the final written agreement.\textsuperscript{82} The second intent allows limited use of prior negotiations.\textsuperscript{83} The parties in this instance agree that the writing is to control those matters contained within, while prior negotiations can control other aspects of the agreement.\textsuperscript{84} The third and final intent involves parties who have agreed that no prior negotiations or agreements will have any effect on the agreement, and that the final writing controls every aspect of the agreement.\textsuperscript{85} This typically can be accomplished by including a merger clause.\textsuperscript{86} If the agreement is the complete and exclusive manifestation of the parties' intended agreement, the writing is said to be fully integrated.\textsuperscript{87}

Once a court determines that a contract is fully integrated, all evidence of prior negotiations or agreements, whether consistent or inconsistent with the terms of the fully integrated agreement, is barred, since the parties' intent is that the written contract, and only the written contract, controls the agreement.\textsuperscript{88}

A major consideration implicit in the application of the parol evidence rule is how the court determines the actual intent of the parties.\textsuperscript{89} The inclusion of a merger clause is only one element of several that the court should consider.\textsuperscript{90} There are also several well established tests for making the determination.\textsuperscript{91} The first of these tests is the appearance test.\textsuperscript{92} In its application, the judge

\begin{itemize}
  \item \textsuperscript{80} Id.
  \item \textsuperscript{81} Id. at 431.
  \item \textsuperscript{82} MURRAY, supra note 76, at 431.
  \item \textsuperscript{83} Id.
  \item \textsuperscript{84} Id.
  \item \textsuperscript{85} Id.
  \item \textsuperscript{86} Id.
  \item \textsuperscript{87} MURRAY, supra note 76, at 433.
  \item \textsuperscript{88} Id. at 429, 433. Courts have determined that to allow the jury to consider the evidence would have undue influence over their final determination, and because they lack the sophistication to evaluate properly the evidence decision, the determination is left to the court. Id. at 429. A fully integrated contract contains all the terms that the parties intend to control their agreement. Id. at 433.
  \item \textsuperscript{89} Id. at 435.
  \item \textsuperscript{90} Id. at 438. A merger clause states clearly in the terms of the written contract that the parties intend the writing to be the final and exclusive expression of their agreement. Id. at 439.
  \item \textsuperscript{91} Id. at 437.
  \item \textsuperscript{92} MURRAY, supra note 76, at 437-39.
\end{itemize}
looks to the agreement, and if it appears on its face to be the complete and exclusive manifestation of the contract, then the contract is fully integrated.\textsuperscript{93} The merger clause is likely to be considered here, as it helps the court identify the parties' intent when looking only upon the face of the agreement.\textsuperscript{94}

However, according to Professor Murray, there is a separate test for the merger clause.\textsuperscript{95} Not all courts are willing to apply the parol evidence rule blindly to every contract that contains a merger clause.\textsuperscript{96} The court must determine whether both parties actually assented to the terms of the merger clause.\textsuperscript{97} Questions are raised when the clause is printed rather than handwritten and resembles nothing more than boilerplate.\textsuperscript{98} In certain situations, it may not be clear that both parties actually assented to the merger clause's effect, thus intending to exclude prior negotiations and agreements.\textsuperscript{99}

Other tests employed by the court to determine the intent of the parties include the separate consideration test, which will consider outside agreements or negotiations if separate consideration has been given to support them.\textsuperscript{100} The Restatement (Second) of Contracts contains the natural omission test as sponsored by Professor Williston.\textsuperscript{101} It provides that a written agreement may not be fully integrated because it also includes those elements that would naturally be omitted in the writing of an agreement.\textsuperscript{102} This has sometimes been called the natural inclusion test, asking, in the alternative, whether the element in question would naturally be included in the contract if agreed upon.\textsuperscript{103} This test appears in

\begin{itemize}
  \item \textsuperscript{93} Id. at 437.
  \item \textsuperscript{94} Id. at 438.
  \item \textsuperscript{95} Id. at 440.
  \item \textsuperscript{96} Id.
  \item \textsuperscript{97} MURRAY, supra note 76, at 440.
  \item \textsuperscript{98} Id.
  \item \textsuperscript{99} Id.
  \item \textsuperscript{100} Id. at 447.
  \item \textsuperscript{101} Id. Notably, Samuel Williston (1861-1963) taught Contracts and other subjects at Harvard Law School for forty-eight years, from 1890-1938. "Williston on Contracts" is a classic treatise and his writings there and elsewhere are cited frequently by judges and legal scholars. He was the Reporter for the first Restatement of Contracts and drafted several uniform acts, including the Uniform Sales Act that is the predecessor to Article Two of the Uniform Commercial Code.
  \item \textsuperscript{102} MURRAY, supra note 76, at 447.
  \item \textsuperscript{103} Id.
\end{itemize}
modified form in the *Uniform Commercial Code*, and requires that the element be one that would certainly be included in the written agreement.\(^\text{104}\) In either case, if the extrinsic evidence is such that it would naturally or certainly have been included in the writing if agreed upon, evidence of its making must be excluded.\(^\text{105}\) Finally, the test favored by Dean Wigmore, the *writing omission test*, looks at the contract and holds that if the element in question is addressed at any length within the contract, no extrinsic evidence regarding that element will be considered.\(^\text{106}\)

In the courts of Pennsylvania, application of the parol evidence rule traces back as far as 1826.\(^\text{107}\) In that year, the Pennsylvania Supreme Court ruled in *Hain v. Kalbach* that where there is a written contract, parol evidence of prior agreements that directly contradicts the terms of a later written agreement is not to be considered unless there was fraud.\(^\text{108}\) The court, even at that early date, recognized that if it were to allow such evidence to be considered, there were very few contracts that would not be challenged by one party or the other or that would lose effect all together.\(^\text{109}\) While recognizing the fraud exception to the parol evidence rule, the court clearly pointed out that there must be a strong and convincing showing of fraud.\(^\text{110}\) The court required that any finding by the jury could not be based on the slightest doubt.\(^\text{111}\) In application of the rule, the court barred evidence of an alleged declaration by the obligee that he would only require payment of interest on a bond for his lifetime and at the time of his death; rather than the principle coming due, the bond was to become null and void.\(^\text{112}\) None of those terms appeared on the bond itself and were, therefore, barred from consideration.\(^\text{113}\)

The ruling in *Hain* provided the precedent cited by the court in *Martin v. Berens*.\(^\text{114}\) By this point, the court found that the rules regarding parol evidence had been strongly established, but expressly recognized several situations in addition to fraud wherein

\(^\text{104.} \) *Id.* at 450.
\(^\text{105.} \) *Id.* at 452.
\(^\text{106.} \) *Id.* at 444-45. Dean Wigmore authored *Wigmore on Evidence*. *Id.*
\(^\text{108.} \) *Hain*, 14 Serg. & Rawle at 160.
\(^\text{109.} \) *Id.*
\(^\text{110.} \) *Id.*
\(^\text{111.} \) *Id.*
\(^\text{112.} \) *Id.* at 158.
\(^\text{113.} \) *Hain*, 14 Serg. & Rawle at 160.
\(^\text{114.} \) 67 Pa 459, 463 (1871).
parol evidence could be considered.\textsuperscript{116} The list provided by the court included, in addition to cases of fraud, evidence showing consideration that was not within a deed (so long as it was not inconsistent with the writing), evidence to explain latent ambiguities, and evidence to supply deficiencies in the contract.\textsuperscript{116} However, in recognizing those exceptions, the court clearly stated that parol evidence is still not admissible to contradict the terms of a written agreement.\textsuperscript{117} The court’s statement of the parol evidence rule that would be cited regularly in future cases held that “[w]here parties, without any fraud or mistake have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. . . .”\textsuperscript{118}

In \textit{Martin}, the parties agreed that in addition to paying normal rents, the tenant was going to pay for all repairs necessary on the property.\textsuperscript{119} When the building burned down, the tenant ceased paying rent and took the position that stopping payments was justified under an agreement understood by the parties when the lease was signed, although the agreement was not reflected in writing.\textsuperscript{120} That agreement was alleged to have stated that no rent would be due if the building burned down so long as it remained in a state of ruin, and should the lessee rebuild the structure, rent would no longer be due to the lessor.\textsuperscript{121} The court held that the evidence of this prior agreement contradicted the terms of the original written lease and was therefore barred by the parol evidence rule.\textsuperscript{122}

While \textit{Hain} and \textit{Marten} defined the parol evidence rule and declared when it should apply, another line of cases developed the effect that the rule would have.\textsuperscript{123} In \textit{Wodock v. Robinson}, the court was faced with the determination of whether the terms of a lease that expressly stated that the lessee would be responsible for the upkeep and repairs to the property could be altered by an alleged oral promise on the part of the lessor to keep the dwelling in

\begin{flushleft}
\textsuperscript{115} \textit{Martin}, 67 Pa. at 462-63.
\textsuperscript{116} Id. at 463.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id. at 460.
\textsuperscript{120} Id. at 460.
\textsuperscript{121} Id. at 461.
\textsuperscript{122} Id. at 463.
\textsuperscript{123} Id. at 463.
\end{flushleft}
good repair.\textsuperscript{124} The \textit{Wodock} court, staying true to the state of the law, refused to allow the oral promise to alter the express terms of the written agreement.\textsuperscript{125} The court reasoned that once an agreement is manifested in a writing, all preliminary negotiations, conversations, and agreements are merged into the writing, and are superseded by the terms of the writing.\textsuperscript{126}

Following \textit{Wodock}, the Supreme Court of Pennsylvania took the same position in \textit{Union Storage Co. v. Economy Distilling Co.}\textsuperscript{127} The defendant had stored whiskey in a warehouse run by the defendant.\textsuperscript{128} The terms of their written agreement were that the defendant would pay the storage fee every six months and, in the event payment was not made, interest would accrue.\textsuperscript{129} Also included in the agreement was a term stating that the defendant stored the whiskey at his own risk, and that if there were a fire or other calamity that caused the warehouse and the whiskey to be destroyed, the plaintiff would not be liable for loss.\textsuperscript{130} And then there was a fire.\textsuperscript{131} The warehouse and the whiskey were destroyed, leaving an unpaid balance of over $6,000 for storage fees.\textsuperscript{132} The defendant attempted to introduce evidence showing, in direct contradiction of the terms of the written agreement, that, prior to signing the agreement, the plaintiff had promised the defendant that payment would only be due when any part of the whiskey was removed from the warehouse.\textsuperscript{133} This court built upon the rule laid down in \textit{Wodock} that, where the parties intentionally manifest their agreement in a final and exclusive writing, the principle is firmly settled that all preliminary negotiations, conversations, and verbal agreements are merged in and superseded by the subsequent written contract, 'which is the final outcome and result of the bargaining of the parties,' and, 'unless fraud, accident or mistake be averred, the writing
constitutes the agreement between the parties, and its terms cannot be added to nor subtracted from by parol evidence.\textsuperscript{134}

Based on that rule, the court reasoned that the promises made prior to the signing of the final writing were not to be considered as part of the agreement, as they were superseded by the writing.\textsuperscript{135}

Combining the rules that developed in these two lines of cases, \textit{Gianni v. R. Russel & Co.} laid out the parol evidence rule as it stands today in Pennsylvania and as it here appears in \textit{Yocca}.\textsuperscript{136} In \textit{Gianni}, the plaintiff operated a store in a building that was subsequently obtained by the defendant.\textsuperscript{137} The plaintiff had been selling, among other things, soft drinks and tobacco.\textsuperscript{138} The plaintiff then entered into a lease agreement with the defendant so that he could continue to operate the store.\textsuperscript{139} The defendant preferred that the plaintiff not sell tobacco in his store, and it was expressed as a term in the written lease that the plaintiff would not sell tobacco in the store.\textsuperscript{140} Plaintiff alleged that there was an oral agreement between the parties, and that, in exchange for not selling tobacco, the plaintiff would receive the exclusive rights to peddle soft drinks in the building; however, such an agreement was not reflected in the written lease.\textsuperscript{141} The defendant subsequently leased the adjoining store front to a drug store and allowed that tenant to sell soft drinks as well.\textsuperscript{142} The plaintiff then sought to have the promise of exclusive soft drink vending rights enforced because the competition from the soft drinks sales at the drug company was eroding his profits.\textsuperscript{143}

In consideration of the evidence, the Supreme Court of Pennsylvania held that the promise was a contradiction of the terms of the final written contract and, therefore, was not to be considered part of the agreement.\textsuperscript{144} The court employed the natural inclusion test

\begin{itemize}
\item \textsuperscript{134} \textit{Id.} at 49 (quoting Wodock, 24 A. at 73).
\item \textsuperscript{135} \textit{Id.}
\item \textsuperscript{136} \textit{Gianni}, 126 A. at 792. This case also appears in Professor Murray's text book as an example of the application of the parol evidence rule and the natural inclusion test. \textsc{John Edward Murray, Jr., Contracts: Cases and Materials 440} (5th ed. 2000).
\item \textsuperscript{137} \textit{Gianni}, 126 A. 791.
\item \textsuperscript{138} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{140} \textit{Id.}
\item \textsuperscript{141} \textit{Id.}
\item \textsuperscript{142} \textit{Gianni}, 126 A. at 791.
\item \textsuperscript{143} \textit{Id.}
\item \textsuperscript{144} \textit{Id.} at 792.
\end{itemize}
and determined that parties similarly situated naturally would have included such terms in the writing if it were their final intent; therefore, since the agreement lacked any such term, the oral promise was not to be enforced. The court also made use of Wigmore's writing omission test, finding that this element of the transaction, the rights to sell certain goods, was dealt with in the contract, and therefore the included terms were all that applied with respect to that element. Since there were specific terms in the contract addressing the sale of soft drinks and no mention of the exclusive right to do so, it clearly was not the intent of the parties that it be part of the agreement.

Although there may have been a prior conversation about the exclusive right to sell drinks, when a party commits to a written contract the parol evidence rule forecloses his or her right to sue under any previous agreement within the scope of the final written agreement.

Based on the long-standing rules regarding parol evidence, it appears that the court came to the correct decision in Yocca. The parol evidence rule has been firmly established in the jurisprudence of the Pennsylvania courts for some time, and this case, if nothing else, should give future courts a more contemporary source of authority. In its decision, the court relied on precedent set by Gianni v. R. Russel & Co., a case decided in 1924. If the length of time between Gianni and Yocca is any indication, courts will likely rely on this decision for quite some time. Unfortunately, in coming to the right decision, the court fell short of providing a full analysis of the case that would have provided future courts the benefit of an unmistakable guide to deciding other parol evidence rule cases.

The court clearly based its decision, and rightfully so, on the parol evidence rule as handed down by the court in Gianni. That rule was formed by combining the rules set forth in Martin and Union Storage. Yocca quoted the rule that "[w]here the parties . . . put their engagements in writing, the law declares the writing to be not only the best, but the only evidence of their agreement . . . and its terms and agreements cannot be added to nor subtracted

145. Id.
146. Id.
147. Gianni, 126 A. at 792.
148. Id.
149. Yocca, 854 A.2d at 436.
150. Gianni, 126 A. at 792.
from by parol evidence.” This statement is certainly a historically accurate statement of the rule. However, prior to its implementation, the court must make the preliminary determination of whether the written agreement was intended to be the final and exclusive expression of the agreement between the parties, or fully integrated. It is this determination that the opinion in Yocca failed to give full analysis.

According to Professor Murray, there are several tests that should be considered in the determination of whether an agreement is fully integrated. The court in Yocca relied on the dated appearance test and the merger clause test in determining that this was a fully integrated contract. Those two tests are certainly helpful in the determination, but perhaps are not the most persuasive. Dean Wigmore, in particular, has been critical of the appearance test. As one can imagine, it is nearly an impossible task to look at an instrument and determine solely from a facial analysis of the document that the agreement is fully integrated. Professor Murray points out that the appearance test is quite helpful in determining integration in obvious cases, but this case seems a little more complicated, as evidenced by the fact that it lead two of the highest courts of Pennsylvania to disagree. In such a case, analysis under certain other tests may have been more appropriate.

The merger clause test has greater strength when determining integration than does the appearance test. The appearance of a merger clause in an agreement has been recognized as a determining factor by the Restatement (Second) of Contracts. The Restatement, however, refused to recognize the test as completely dispositive of the integration question on its own, stating that it is merely “likely to conclude” the question of integration. The problem with the merger clause test is that, even though the merger clause appears in the contract, it is not necessarily clear that both parties assented to its terms.

152. Murray, supra note 76, at 437.
154. Murray, supra note 76, at 438.
155. Id.
156. Id. at 439.
157. Id. at 440.
158. Id.
That said, it must again be argued that this court ultimately reached the proper conclusion, but missed an opportunity to do a fully exhaustive analysis, or at least a more exhaustive analysis of the integration question that would have created a more comprehensive source of judicial authority for future courts and would have helped to avoid reliance on the eighty-year-old decision in Gianni.

Examples of other possible analyses will follow, but there is one other matter that the court gave lighter consideration than perhaps deserved. That matter is whether the sale of the licenses was the sale of a good or of a service. Two of the leading tests for integration hinge directly on the issue of whether the contract is for the sale of goods or for another purpose. The Restatement (Second) of Contracts recognizes the Williston natural omission/inclusion test while the UCC recognizes a modified version of the Williston test requiring certain inclusion. Thus, if it were determined that this was a contract for the sale of goods, the court should admit more evidence into consideration than it would in any other instance. Evidence will be excluded in a contract for the sale of goods under the UCC only if it would certainly be included within the terms of the contract. Conversely, if it were determined that this was a contract for the sale of a service the court should employ the natural inclusion test, and accordingly consider less evidence.

The court in Yocca pointed out that the law regarding whether the sale was one for goods or services was not settled; thus, to choose one of the tests would require a preliminary determination of that difficult and disputed issue. However, this case created an opportunity for the court to perform an alternative analysis, analyzing the sale as both a good and a service. Such an approach would have set the tests recognized in the Restatement and UCC before the lower courts for use in their future analyses. Using both a UCC and Restatement analysis in combination with the merger clause and appearance test would bolster the strength of the integration decision and thus the application of the parol evidence rule.

159. MURRAY, supra note 76, at 452, 474.
160. Id. at 452-53.
161. Id. at 453.
162. Id. at 447.
As stated, if this agreement constituted the sale of a good then the certain inclusion test would apply under the UCC. The UCC states in section 2-202 that "if additional terms are such that, if agreed upon, they would certainly have been in the document in the view of the court, then evidence of their alleged making must be kept from the trier of fact." The terms of the contract stated not only the location of the seats by reference to the enclosed diagram, but also the price of the seats. The prices of the licenses were determined by the location of the seats. The terms sought to be introduced by Yocca directly contradicted those terms appearing in the agreement. It seems clear, therefore, that had the parties agreed that the seats were going to be located and assigned prices according to the SBL brochure, such a term would certainly have appeared in the agreement rather than the reference to the enclosed diagram. As evidence that would certainly have appeared in the agreement if agreed upon, it should have been excluded and not allowed to vary, add to, or subtract from the written agreement.

Alternatively, if the court had treated the license as a service and applied the natural inclusion test sponsored by the Restatement (Second) of Contracts, the court could have shown yet another reason for excluding Yocca's evidence. This test is the stricter of the two, but the result would be the same. Section 216 of the Restatement (Second) of Contracts states that "an agreement is not completely integrated if the writing omits a consistent additional agreed term which... in the circumstances might naturally be omitted from the writing." The terms sought to be introduced were not consistent with the agreement; in fact, they were a clear variation of the specifications in the agreement. Furthermore, in the sale of stadium seat licenses it appears that the terms specifying the location and the price of the seat and license are not ones that would naturally be omitted. They seems critical to the operation of the contract. A principle requirement for a valid contract is a description of the good to be sold, and therefore the description here cannot possibly be a term that would naturally be omitted in the agreement.

As it is unclear which of these two tests would apply to the case without first determining whether the licenses were goods or services, another possible test would have been the test that Dean

164. UCC § 2-202, cmt. 3 (2003).
Wigmore offered in place of the appearance test: the Writing Omission Test. That test states, as aforementioned, that if a term or condition is discussed at any length within the contract then no extrinsic evidence should be considered to modify those terms and conditions appearing in the contract. In Yocca it was clear, or so the court thought, that the agreement sufficiently referenced the enclosed diagram of the stadium so as to identify the location of the licenses. Since the term was clearly discussed within the contract, no extrinsic evidence regarding that issue should have been considered.

Once the court had declared the contract to be fully integrated using any or all of these more definitive tests, they would have been in a much stronger position to apply the clearly defined parol evidence rule quoted from Gianni. It may be that the court thought this an easy case and, as Professor Murray has stated, reliance on the merger clause test in easy cases is proper. But the contract in this case clearly passed not only the merger and appearance tests, but also the UCC, Restatement, and Wigmore tests for integration, and the court had the opportunity to use any or all of those tests to provide greater strength to its decision.

Regardless of the failure to use these tests, this court did reach the proper outcome. The agreement was fully integrated and the evidence that was sought to be introduced was of a prior agreement that directly contradicted the terms appearing in the final written agreement. The concern is that the parol evidence rule is well established in the jurisprudence of the state, and rarely does the opportunity arise for it to be reviewed by the state’s highest court. The court in this case was forced to cite as authority a case that had been decided eighty years prior, and this instance provided the court an opportunity to update, improve, and add to the well-established foundations that prior cases had declared. In the end, this case stands as a proper resolution of the dispute by the learned court, but also as an opportunity lost.

Matthew A. Meyers

166. MURRAY, supra note 76, at 444-45.
167. Id.