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Dealmaking, Contracting, and the Parol Evidence Rule

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This blog follows up on an article I wrote last year emphasizing the obvious (but often overlooked) importance of actually reading a contract before signing on the dotted line. As pointed out in that article, a court will presume that one has read a contract and agreed to its contents if he or she signs it. In other words, failing to read the "fine print" cannot serve as an excuse if the deal goes bad. Courts take this principle one step further with the "parol evidence rule."

Many law students are surprised to learn about the parol evidence rule in their contracts class rather than in their criminal law class (it having nothing to do with "*parole*"). The parol evidence rule states that the terms of a written contract may generally not be contradicted by oral agreements or prior written agreements. This rule often comes up during a dispute in which one party claims to have relied on the oral representations of the other party before signing a written contract.

With narrow exceptions, the parol evidence rule bars one from introducing evidence of oral representations to contradict the terms of the written contract. In other words, the court holds the party to the terms of the written contract and ignores whatever oral promises may otherwise contradict them. This rule enhances the critical importance of reading a contract before signing— because ignoring the written terms while listening to the sly representations of the other party can be perilous. The Ohio Court of Appeals recently provided an example of this danger.

In *Licata Jewelers, Inc. v. Levis Commons*, 195 Ohio App.3d, 2011-Ohio-4684, the landlord of a shopping center complex in development lured a jeweler into a lease with promises that several attractive anchor stores were committed to become tenants. The jeweler relied on these statements believing that the anchor stores would generate the type of foot-traffic needed to make his business successful in that location. The written lease, however, stated that the tenant shall not rely on any representations concerning the occupancy of any current or proposed tenants in the shopping center.

Because the written lease made no promises concerning the "attractive anchor stores," the Court of Appeals rejected the jeweler's reliance on the landlord's oral promises and excluded evidence related to the statements. Thus, the parol evidence rule can operate in a manner that, at times, seems harsh and unfair to a party relying on the honesty of another. Nevertheless, the prudent

and careful businessperson can avoid this potential pitfall by reading the written contract and relying on its terms.

If you would like to know more about these issues or seek review of a contract, please contact Ryan McLane, an associate in the Construction and Civil Litigation Sections at Dressman Benzinger LaVelle psc. Ryan can be reached at (859) 426-2143 or via email at rmclane@dbllaw.com.