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October 19 2012

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Court of Appeals Revisits Disclaimers and Integration Clauses in Contracts

This past week, the Indiana Court of Appeals had an opportunity to address the role of disclaimers and integration clauses in contracts. The case, *Wind Wire, LLC v. Finney*, revolves around a very straightforward set of facts. The Finneys received a flyer from Wind Wire in an attempt to sell a wind generator to the Finneys. After many of the promises in the advertisement were realized to be manifestly false, the Finneys brought a lawsuit against Wind Wire for fraudulently inducing them to purchase the product. The claim progressed to a bench trial – a trial to a judge and not to a jury – in which the judge found that Wind Wire had fraudulently induced the Finneys to contract for the purchase of the generator and that Wind Wire breached the implied warranty of fitness for a particular purpose.

More interesting than the specific facts of the case is the issue that was argued by Wind Wire on appeal. In order to understand the argument of Wind Wire, you must first understand what the Finneys were required to prove to establish a claim for fraudulent inducement. Under Indiana law, in order to prove fraud a plaintiff must establish the following elements: "(1) a material representation of [. . .] facts which (2) was false, (3) was made with knowledge or reckless ignorance of its

falsity, (4) was made with the intent to deceive, (5) was rightfully relied upon by the complaining party, and (6) proximately caused injury to the complaining party." This case dealt with the fifth element – reasonable reliance.

The argument by Wind Wire was that the contract for the sale of the generator contained an integration clause. An integration clause – a.k.a. merger clause – is a contractual provision that attempts to limit the entire contract to the written document. This may seem odd upon first blush. However, this stems from the fact that a contract is a legal concept that means a promise that is supported by consideration and is binding upon all parties to it. While we could spend several days discussing the concept of consideration, for our purposes here it is sufficient to say that what it means is that a contract is something more than just the paper expressing the terms of the agreement. What an integration/merger clause attempts to do is to limit the binding agreement to the specific terms written on the paper.

In this case, the clause "disclaimed reliance on any prior representations." Put simply, Wind Wire attempted to argue that because of this clause, it was not liable for any misrepresentations made to the Finneys through its advertisement literature. The court summarized Indiana law on integration clauses as follows.

> An integration clause of a contract is to be considered as any other contract provision to determine the intention of the parties and to determine if that which they intended to contract is fully expressed in the four corners of the writing. Generally, where parties have reduced an agreement to writing and have stated in an integration clause that the written document embodies the complete agreement between the parties, the parol evidence rule prohibits courts from considering extrinsic evidence for the purpose of varying or adding to the terms of the written contract. An exception to the parol evidence rule applies, however, in the case of fraud in the inducement, where a party was 'induced' through fraudulent representations to enter a contract.

In order for this statement of law to make sense you must understand the "parol evidence rule." The parol evidence rule is a rule of contract law that under certain circumstances no evidence can be used to understand the contract outside of the four corners of the document. Recall, the contract is really the concept of an agreement. Clearly not all agreements have to be written. Just think of a gentlemen's agreement sealed by a handshake for such an example. However, where the parol evidence rule applies, the only evidence that a court can consider is the language written on the paper. No matter what the two parties to the contract said before signing it or while signing it, if it is not in the document then the court cannot consider it.

In a case with an integration clause, such as here, the plaintiff would be unable to argue all of the misrepresentations in the advertisements and discussions with the defendant prior to signing the written document. However, as the Court of Appeals notes, the parol evidence rule does not apply where one party has committed fraud to induce the other to enter into the contract. Nevertheless, merely saying that the parol evidence rule does not apply where there was fraudulent inducement does not end the case. The plaintiffs must actually prove that they were fraudulently induced.

Wind Wire argued that the fraudulent inducement exception to the parol evidence rule did not apply in this case. They based their position on the 2002 *Circle Center Development Center v. Y/G Indiana L.P.* decision. In that case the Court of Appeals stated that in order for the exception to the parol evidence rule to apply "the fraud must have induced or produced the execution" of the specific clause and not just the "signing of the contract generally." Despite this accurate citation, the Court of Appeals was not buying it in this case. The court looked to a more recent opinion – 2009 – in the case *Tru–Cal, Inc. v. Conrad Kacsik Instrument Systems, Inc.*The *Tru-Cal* decision stands for the proposition that "a party c[an] overcome the effect of an integration clause if it had a right to rely on the alleged misrepresentations and did in fact rely on them in executing the release and/or integration clause." This was precisely the issue in the *Finney* case. The court also reaffirmed its position that whether the clause applies is a to be decided on a case-by-case basis. This standard added to the findings of the trial court, led the Court of Appeals to affirm the decision and with it allow the Finneys to prevail in their case against Wind Wire.

So, what should you take from this discussion? I would think the two most important lessons to take away from our discussion today are this: (1) that a contract is really the entire agreement and not just the piece of paper it is written upon; and (2) lesson one can be made completely irrelevant if an integration/merger clause is able to be enforced. Thus, my advice is to take the following steps before signing a document to form a contract: review the document in its entirety and try to find an integration/merger clause – this will often say that no other terms apply outside of the written document or that this document is "a complete and final embodiment of the parties' agreement" or something similar; and to consider whether there is anything whatsoever that you think you have agreed to that is not in the written document. If you think there is some vital term upon which you are relying that is not in the document, make the other person write it in there and initial next to it.

Join us again next time for further discussions of developments in the law.

<u>Sources</u>

- *Wind Wire, LLC v. Finney*, 977 N.E.2d 401 (Ind. Ct. App. 2012).
- *Circle Ctr. Dev. Co. v. Y/G Ind., L.P.*, 762 N.E.2d 176, 180 (Ind. Ct. App. 2002).
- *Tru–Cal, Inc. v. Conrad Kacsik Instrument Sys., Inc.*, 905 N.E.2d 44-45 (Ind. Ct. App. 2009).

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