The Parol Evidence Rule in Contracts for the Sale of Goods

The statute:

§ 25-2-202. Final written expression; parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (G.S. 25-1-205) or by course of performance (G.S. 25-2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

What the small claims judge must determine:

1. Did the parties intend the writing to be the final expression of their agreement as to this term?
2. When did the oral statements at issue occur relative to the writing?
3. Do the oral statements <u>contradict</u> the writing?

Practice pointers:

~ If the written contract contains a "merger clause" stating that the written agreement is the complete and final agreement of the parties, that clause will generally be given effect, absent some clear indication to the contrary.

~ Remember that the parol evidence rule has no application to the admissibility of oral statements made subsequent to the writing.

~ Even when a written contract is final and complete, evidence of course of dealing, course of performance, and usage of trade may be considered by the court in determining the terms of the contract.

~When a contract omits a term altogether, the court will consider evidence of oral statements relevant to that term in preference to implying a "reasonable" term. Example: A written contract for the purchase of a piano does not address time of delivery. The UCC "gap-filler" provision would normally be applied so as to imply that delivery be accomplished within a "reasonable" period of time. If the evidence demonstrates that the parties orally agreed to delivery the same day as sale, however, that term will be enforced by the court.

The Parol Evidence Rule in Other Contracts

"Any or all parts of a transaction prior to or contemporaneous with a writing intended to record them finally are superceded and made legally ineffective by the writing."

Rowe v. Rowe, 305 N.C. 177 (1972).

The purpose of this traditional rule is to "prevent the overthrow of written contracts by fabricated extrinsic negotiations." Chadbourne & McCormick, *The Parol Evidence Rule in North Carolina*, 9 N.C.L.Rev. 151 (1931).

The parol evidence rule set out in the Uniform Commercial Code for contracts for the sale of goods is considerably more liberal than the traditional North Carolina rule applicable to other contracts. That rule prohibits admission of oral or written terms serving to vary, add to, or contradict the final written contract. The language used by the cases sometimes refers to all prior communications as having been "subsumed" into the ultimate written document. That document is thereafter treated as the exclusive source for determining the parties' rights and obligations.

When a small claims magistrate is considering a contract case involving a written agreement and one party seeks to introduce evidence of oral or written terms agreed to by the parties prior to or contemporaneous with the written contract, the magistrate must make an initial determination: Does the written contract set out the parties' agreement as to those terms? If so, the parol evidence rule must be considered.

This determination is sometimes more difficult than it first appears. Clearly, if a contract requires the monthly payment of rent in the amount of $700, evidence of an oral agreement for $500 is barred by the parol evidence rule. The parties have agreed to an amount and have specified that agreement in the lease, Imagine, however, that the challenged evidence is that the parties orally agreed to a lease for one year, and that the written lease is silent as to the term of the lease. Some courts would allow this evidence, reasoning that the written lease does not, in fact, reflect the parties' final agreement as to term. Other courts might reason that a lease providing for monthly payment of rent which specifies no specific term accurately reflects the parties' intention to avoid a fixed term. Under this view, evidence of an oral agreement for a one-year lease is barred as an impermissible attempt to "add to" the final written contract. As a general rule, this determination will be greatly influenced by two factors: First, does the written document specifically address the particular topic at issue? If so, a court is much more likely to bar testimony based on a finding that the written contract is the final word on the matter. Second, courts sometimes consider whether the term is one likely to have

been considered by the parties. In the example above, lease duration is a significant aspect of a rental agreement, and omission of a specific term may reasonably be interpreted as reflective of the parties' actual intention. Failure to address a trivial or unlikely event in the written contract, however, does not so readily lend itself to this interpretation.

Perhaps the most useful understanding of the law related to the parol evidence rule is reflected in knowing when it need **NOT** be considered. The rule has no application to the following circumstances:

- Evidence offered to show that no contract exists, or that the contract should not be enforced. Evidence indicating lack of consent, for example, would not fall within the scope of the parol evidence rule. Statements indicating that a signature was obtained by fraud or duress, or testimony relevant to unconscionability are examples.

- Evidence tending to show that no contract was formed because of failure of a condition precedent. For example, statements by an agent that his authority to enter into a contract on behalf of the principal is conditioned on prior written approval by the principal might or might not be a defense to contract formation, but are certainly not barred by the parol evidence rule.

- The parol evidence rule does not bar evidence contradicting recitals of facts contained in the written contract. A contract provision stating that a used car has 75,000 miles on the odometer does not bar evidence that the actual mileage is closer to 200,000.

- The parol evidence rule has no application to evidence related to subsequent agreements between the parties.