

A business made an agreement in writing with a shareholder to purchase all of her stock in a corporation at a specified price per share. At the time the agreement was executed, the business said to the shareholder, "Our commitment to buy is conditioned on first obtaining approval of the purchase agreement from our parent company." The shareholder replied, "That will not be a problem." The shareholder is willing and ready to consummate the sale of her stock to the business, but the business refuses to perform on the ground (which is true) that the parent company has firmly refused to approve the contract.

If the shareholder sues the business for breach of contract and seeks to exclude any evidence of the oral condition requiring the parent company's approval, how will the court likely rule?

- A. Admit the evidence as proof of a collateral agreement.
- B. Admit the evidence as proof of a condition to the existence of an enforceable obligation, and therefore not within the scope of the parol evidence rule.
- C. Exclude the evidence as contradicting the terms of the parties' written agreement, whether or not the writing was a complete integration of the contract.
- D. Exclude the evidence on the basis of a finding that the parties' written agreement was a complete integration of their contract.

## Explanation:

### Exceptions to parol evidence rule

Evidence of prior or contemporaneous oral or written agreement is admissible to establish:

- whether writing is integrated and, if so, completely or partially
- meaning of ambiguous term
- defense to formation or enforcement (eg, fraud, duress, mistake)
- ground for granting or denying remedy (eg, rescission, reformation)
- subsequent contract modifications
- condition precedent to effectiveness

The **parol evidence rule** generally bars evidence of a prior or contemporaneous agreement to modify or contradict the terms of an integrated writing. But this rule **does not apply** when a party is **attacking the validity** of the agreement—eg, by asserting there was a **condition precedent to effectiveness** that **failed to occur**. As a result, evidence of such a condition precedent is admissible.

Here, the parties orally agreed that the business would be committed to buy the stock (ie, the purchase agreement would take effect) only if the parent company approved the agreement—a condition precedent to effectiveness. Therefore, the parol evidence rule does not apply, and evidence of the oral condition is admissible to prove that the purchase agreement failed to take effect because the parent company refused to approve it.

**(Choice A)** Evidence of the oral condition is *not* evidence of a collateral agreement—ie, one that is related to the subject matter of the contract but not part of its primary promise. That is because the oral condition *is* part of the primary purpose of the agreement—ie, the purchase of the stock.

**(Choices C & D)** The contract was a *partial integration* because it set forth the parties' final agreement about some, but not all, terms. But regardless of whether the contract was a complete or partial integration, the oral agreement is admissible because it evidences a condition precedent to effectiveness.

### Educational objective:

Evidence used to establish a condition precedent that must occur before a contract becomes effective is admissible under the parol evidence rule.

### References

- Restatement (Second) of Contracts § 217 (Am. Law Inst. 1981) (integrated agreement subject to oral requirement).

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