

A homeowner went to an appliance store to purchase a new refrigerator. The homeowner's old refrigerator had just been destroyed by an electrical surge, and he needed to purchase a new one immediately to prevent food spoilage. The homeowner did not understand English, so he conversed with the salesperson in Spanish.

The homeowner told the salesperson about the electrical surge and explained that he did not have enough cash for a new refrigerator. The salesperson told the homeowner not to worry because the appliance store offered no-interest financing for a "small finance fee." Then the homeowner signed a contract printed in English. The contract provided for a purchase price of \$900, payable in three equal monthly installments, plus a finance fee of \$500. The homeowner made three installment payments of \$300 each but never paid the finance fee.

If the appliance store sues the homeowner for breach of contract and seeks to exclude any evidence of the conversation between the homeowner and the salesperson, how will the court likely rule?

- A. Admit the evidence as proof of a collateral agreement.
- B. Admit the evidence as proof of unfair surprise in the contract's terms.
- C. Exclude the evidence as contradicting an unambiguous term of the contract.
- D. Exclude the evidence on the basis of a finding that the contract was completely integrated.

Explanation:

The **parol evidence rule** bars evidence of prior or contemporaneous communications between contracting parties that contradict the unambiguous terms of a written contract that is completely or partially integrated.* But this rule **does not apply** to evidence that is offered to establish a **defense to the enforceability** of the contract. One such defense is **unconscionability**, which is available if the contract involves some element of **unfair surprise**.

Here, the homeowner signed a written contract to purchase the refrigerator. Before doing so, the homeowner had told the salesperson about his financial situation, and the salesperson had told the homeowner that the store offered no-interest financing for a "small fee." Evidence of this conversation shows that the \$500 finance fee for a \$900 refrigerator was not in line with the homeowner's expectations—particularly since the contract was in English. Therefore, the court should admit the conversation as proof of unconscionability due to unfair surprise.

*However, evidence of prior or contemporaneous communications that supplement (ie, add to) but do not contradict the writing is only barred by the parol evidence rule if the contract is completely integrated.

(Choice A) The parol evidence rule does not apply to evidence of a collateral agreement—ie, a separate deal with its own consideration. But here, the conversation between the salesperson and the homeowner did not concern a separate deal since it directly applied to the sale of the refrigerator.

(Choice C) Evidence that the finance fee was characterized as "small" would ordinarily be barred by the parol evidence rule because it contradicts the unambiguous, \$500 finance fee in the contract's terms. But since the evidence helps show that the fee unfairly surprised the homeowner, it is admissible.

(Choice D) Even if a contract is completely integrated, parol evidence may be offered to establish a defense to the enforceability of the contract (eg, unconscionability).

Educational objective:

The parol evidence rule does NOT bar evidence of prior or contemporaneous communications between contracting parties when the evidence is offered to establish a defense to enforceability (eg, unconscionability).

References

- Restatement (Second) of Contracts § 214 (Am. Law Inst. 1981) (exceptions to parol evidence rule).

