For several weeks, a buyer's agent and an aircraft salesperson negotiated over the purchase price of a plane. After agreeing to a purchase price of $250,000, the agent signed a written contract to purchase the plane on behalf of the buyer. The contract contained a merger clause and called for a $10,000 deposit that the aircraft company could retain as liquidated damages if the buyer failed to accept delivery of the plane. The agent gave the salesperson a check for $10,000.

The buyer subsequently refused to accept delivery of the plane. The aircraft company tried to deposit the check pursuant to the liquidated damages provision, but the agent had issued a stop-payment order. The aircraft company sued the buyer to recover the $10,000. The buyer has offered the agent's testimony that the salesperson orally agreed during their negotiations that the deal would not be finalized until the buyer's wife approved it, which she did not.

Should the court admit this testimony?

A. No, because the merger clause bars any evidence of the parties' prior discussions concerning the sale of the plane.

B. No, because the testimony contradicts the writing by making the parties' duties conditional.

C. Yes, because the parol evidence rule does not bar the introduction of evidence for the purpose of showing that no contract was formed.

D. Yes, but only for the purpose of proving that the written contract was only partially integrated.

Explanation:

A written contract that contains a **merger clause** is presumed to be a **complete integration**—ie, a complete and final expression of the parties' agreement as to all of the terms. As a result, the **parol evidence rule bars** evidence of **prior or contemporaneous communications** that **supplement or contradict** the writing. However, the parol evidence rule **does not apply** to evidence offered to prove that **no contract was formed**—eg, because there was a condition precedent to the existence of the contract that failed to occur.

Here, the agent signed a written contract to buy the plane on the buyer's behalf. The contract contained a merger clause, which ordinarily would bar any evidence of the parties' prior discussions concerning the sale. However, the agent's testimony shows that the parties agreed that the deal would not be finalized until the buyer's wife approved it—a condition precedent to the existence of the contract. Therefore, the court should admit the testimony to show that no contract was formed because the buyer's wife did not approve the contract **(Choice A)**.

(Choice B) Even if the testimony contradicts the writing by making the parties' duties conditional, the testimony is not barred by the parol evidence rule since it is offered to prove that no contract was formed.

(Choice D) Although the merger clause creates a presumption that the agreement was completely integrated, this presumption can be rebutted with evidence that the agreement was only partially integrated—ie, a final expression as to some (but not all) of the terms. As a result, the agent's testimony is admissible for that purpose. But it is also admissible to prove that the written contract never came into being because a condition precedent failed to occur.

Educational objective:

The parol evidence rule bars evidence of prior or contemporaneous communications that supplement or contradict the terms of a contract that is completely integrated (eg, as evidenced by a merger clause). But this rule does not apply to evidence offered to prove that no contract was formed.

References

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