

A homeowner and a planner signed a detailed writing in which the planner, a landscape architect, agreed to landscape and replant the owner's residential property in accordance with a design prepared by the planner and incorporated in the writing. The owner agreed to pay \$10,000 for the work upon its completion. The owner's spouse was not a party to the agreement and had no ownership interest in the premises.

Shortly before the agreement was signed, the owner and the planner orally agreed that the writing would not become binding on either party unless the owner's spouse should approve the landscaping design.

If the owner's spouse disapproves the design and the owner refuses to allow the planner to proceed with the work, is evidence of the oral agreement admissible in the planner's action against the owner for breach of contract?

- A. No, because the parol evidence rule bars evidence of a prior oral agreement even if the latter is consistent with the terms of a partial integration.
- B. No, because the prior oral agreement contradicted the writing by making the parties' duties conditional.
- C. Yes, because the evidence shows that the writing was intended to take effect only if the approval occurred.
- D. Yes, because the oral agreement required approval by a third party.

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, before the writing was signed, the parties orally agreed that it would become binding (ie, take effect) only if the owner's spouse approved the landscape design—a condition precedent to effectiveness. Therefore, the parol evidence rule does not bar evidence of the oral agreement, and that evidence is likely admissible **(Choice B)**.

(Choice A) The parol evidence rule *allows* evidence of a prior agreement if that agreement is consistent with the terms of a partial integration (ie, a writing that sets forth the parties' final agreement about some, but not all, terms).

(Choice D) The oral agreement is admissible because it evidences a condition precedent to effectiveness; the fact that the oral agreement required approval by a third party is irrelevant.

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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