Franchise Agreements, Alleged Fraud, and Parol Evidence: From Bedlam to Bright Lines

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ABSTRACT

FRANCHISE AGREEMENTS, ALLEGED FRAUD, AND PAROL EVIDENCE: FROM BEDIAM TO BRIGHT LINES

I. Introduction
II. Current Tactics for Dealing with the Parol Evidence Rule in Franchising
   A. The Fraud Exception Is Too Narrow
   B. Partial Integration Offers Franchisees Marginal Relief
   C. Franchisors as Fiduciaries of Their Franchisees
   D. The Role of Waiver
   E. The Resulting Paradox and Its Effects
III. The Need for Reform
   A. The Middle Ground
   B. Distinguishing Sophisticated and Unsophisticated Parties for Parol Evidence Rule Enforcement Purposes
      1. Defining Sophistication
      2. Sophistication and Securities
      3. A Relativistic Approach to Sophistication
   C. Differences Between Franchising and Other Commercial Contracts
      1. Simple and Short-Term Compared to Elaborate and Long-Term
      2. Franchise Agreements as Relational Pacts
IV. Conclusion

This Paper surveys the variety of approaches courts have used to evade the inequitable results of strictly applying the parol evidence rule. It determines that reform is needed to clarify the law and establish a better judicial balance between adherence to the traditional rule and protection of vulnerable franchisees at the hands of more sophisticated franchisors. The Paper then explores a “middle ground” where this balance may be found: addressing the particularities of contracts in the franchising context that make a more flexible approach to parol evidence especially useful. The Paper concludes with recommendations for future judicial and legislative handling of parol evidence in the franchising context, including testing for the parties’ relative sophistication and possible use of a “soft” rule. It notes how franchise contract provisions could more expressly warn potential franchisees that the presumed promises from prior discussions or correspondence are superseded by the actual contract terms.

Key words: parol evidence, contract law, fraud, waiver, sophistication.