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Contracts - Parol Evidence - Admissibility to Prove Collateral Agreement

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CONTRACTS—PAROL EVIDENCE—ADMISSIBILITY TO PROVE COLLATERAL AGREEMENT

Plaintiff sold land to the defendant by a notarial act, and later brought suit to recover damages for wrongful conversion of certain farm implements which were left on the premises. Plaintiff claimed that it was understood by the parties that these implements were not to be included in the sale. He offered parol and non-authentic written evidence to show the existence of a prior agreement by which the machinery in question was to remain the property of the plaintiff, not being transferred to the defendant either in the act of sale or in a prior written contract to sell farm machinery.[1] The Supreme Court, in reversing the judgment given for the plaintiff in the lower court, *held* that the extrinsic evidence was not admissible because it was not needed to clarify the description of the property, nor did it purport to show a contemporaneous collateral agreement not appearing in the deed. *Smith v. Bell*, 68 So.2d 737 (La. 1953).

The courts have generally held that parol evidence is not admissible to vary the terms of a written contract.[2] This exclusionary rule is based on Articles 2236 and 2276[3] of the Louisiana Civil Code.

Article 2236 states that "The authentic act is full proof of the agreement contained in it, against the contracting parties and their heirs or assigns, unless it be declared and proved a forgery." Though it provides that the authentic act is full proof of the agreement contained in it, and by implication that parol evidence shall not be admitted to vary that agreement, it does not mention prior agreements between the parties. Therefore, it seems that Article 2236 would allow the introduction of parol evidence to prove the existence of a prior collateral agreement entered into by the parties.

Neither does it appear that Article 2276[4] prohibits the proof of collateral agreements, since it provides only that parol evidence shall not be admitted against or beyond what is contained

1. This could not be determined from the official reports, but was found upon an examination of the plaintiff's briefs.

2. Lawrence v. Claiborne, 215 La. 785, 41 So.2d 680 (1949); Franton v. Rusca, 187 La. 578, 175 So. 66 (1937).

3. Art. 2276, LA. CIVIL CODE of 1870: "Neither shall parol evidence be admitted against or beyond what is contained in the acts, nor on what may have been said before, at the time of making them, or since."

4. See note 3 *supra*.

in the act. In *Dwight v. Linton*[5] the court said that Article 2276[6] was inapplicable to a case where the evidence was offered neither to contradict nor to explain the written instrument but only to prove a collateral fact or agreement in relation to it. In *Brandin Slate Co. v. Fornea*,[7] it was held that parol evidence is admissible to prove a collateral agreement which does not contradict the writing, but merely covers an additional and collateral undertaking.

Article 2239[8] illustrates another case where proof of a collateral agreement, even in direct contradiction of an authentic act, is permitted by the code itself.

At common law the parol evidence rule is applicable only in cases where there is an integration of all prior agreements.[9] It does not prohibit the introduction of parol evidence to prove an oral agreement varying the terms of a written instrument when the oral agreement is (1) collateral in form, (2) not contradictory to the express or implied provisions of the writing, and (3) not the type ordinarily put into writing.[10]

Whether or not there is an integration of all prior agreements in the written contract depends upon the intent of the parties, which must be determined from all the circumstances surrounding the making of the contract.[11] In some cases parol evidence must of necessity be admitted to prove the parties' intention to integrate all prior agreements. Admitting it for that purpose does not offend the general rule against parol evidence because it is not used in this context to vary the terms of the written contract.[12] Formal writings such as deeds can usually be shown not to be complete integrations of the agreement. At best they are only partial integrations.[13]

The court in the instant case said that the plaintiff's only purpose in offering the parol evidence was to contradict the terms of the written instrument. However, in view of the circum-

5. 3 Rob. 57 (La. 1842).
6. Art. 2256, LA. CIVIL CODE of 1825.
7. 183 So. 572 (La. App. 1938).
8. Art. 2239, LA. CIVIL CODE of 1870: "Counter letters can have no effect against creditors or *bona fide* purchasers; they are valid as to all others; but forced heirs shall have the same right to annul absolutely and by parol evidence the simulated contracts of those from whom they inherit, and shall not be restricted to the legitimate."
9. 3 CORBIN, CONTRACTS § 573 (1951); RESTATEMENT, CONTRACTS § 237 (1932).
10. Mitchill v. Lath, 247 N.Y. 377, 160 N.E. 646, 68 A.L.R. 239 (1928). See also 3 CORBIN, CONTRACTS § 583.
11. See Note, 70 A.L.R. 752 (1931).
12. 3 CORBIN, CONTRACTS 263, § 581.
13. *Id.* at 298, § 587.

stances surrounding the prior contract to sell machinery, there seems to have been a collateral unwritten agreement to let the plaintiff retain the machinery not specifically mentioned in the contract to sell, transferring the remaining machinery with the property. If this was not their understanding the prior contract to sell the machinery would have been unnecessary, since all of the machinery would have been transferred by the notarial act of sale.[14] Further, the very fact that the prior contract was formed shows that the parties did not intend to integrate their complete agreement in the notarial act of sale.

The parties apparently intended that their agreement be contained both in the notarial act and in the prior contract to sell the machinery, which was collateral to the notarial act, and which gave rise to the unwritten agreement alleged by the plaintiff. It is submitted, therefore, that the parol evidence should have been admitted to determine if these were their actual intentions. If they did intend to integrate their agreements, parol evidence should not be allowed to vary the terms of the written act; if they did not so intend, effect should have been given to the collateral agreements revealed by the parol evidence.

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INSURANCE—ACTION AGAINST LIABILITY INSURER BY NAMED INSURED

Plaintiff brought suit against his liability insurance carrier for damages resulting from injuries he suffered when his car, in which he was a passenger, was involved in an accident while his wife was driving. Circumstances of the accident clearly established the negligence of the wife. *Held*, the provisions of the policy authorized recovery by the named insured against his insurer. *McDowell v. National Surety Corp.*, 68 So.2d 189 (La. App. 1953).

The courts have previously held that under the Louisiana Direct Action Statute[1] only general defenses of the insured can be urged by the insurer. Thus, a party can recover from a spouse's liability insurer even though the defense of coverture, a personal

14. Art. 468, LA. CIVIL CODE of 1870.

1. LA. R.S. § 22:655 (1950). For a general discussion of this statute, see Comment, 13 LOUISIANA LAW REVIEW 495 (1953).