TALES FROM THE TRENCHES
BY BARRY C. MCGUIRE

PAROL EVIDENCE RULE

Our experienced member had a portfolio of 10 properties. That was good, but he decided commercial properties were his next strategy. He began negotiating on a commercial building. In friendly conversation with the husband and wife owners, he discovered that they were also selling their personal residence.

As it turned out, our member was looking for a new personal residence so he took a look. It was just what he wanted so they wrote an offer, conditional on inspection and financing. The purchase price was $2 million and, between frenzied boom times and a substantial portfolio, financing was taking longer than expected.

Our member got an urgent call from the seller's wife saying that if they didn't remove conditions on their new house, they would lose it. Could our member please remove his financing condition. Of course if he couldn't get financing, they would never hold him to the deal. After some thought, our member agreed and promptly forgot about it. Condition day was Friday. On Monday, he had a panicked call from the seller asking, "where was the subject to removal?" "Sorry, I forgot, I'll send it today".

You know the rest of the story. Financing took another two months, prices had dropped and the bank said the property was worth $1.3 million... not $2 million! Therefore, unsatisfactory financing. Long story short, the sellers held our member to the signed contract. A lawsuit was launched and at the end of a three-day trial, the judge found for the sellers. He believed the seller's wife that she never said anything about not holding our member to the contract. The judge was also upset with our member for participating in mortgage fraud.

Damages were assessed at $500,000. Even if he had believed our member that the sellers said, "don't worry, we'll never hold you to it", the judge applied an ancient rule of law known as the **PAROL EVIDENCE RULE:**

Verbal evidence is inadmissible to vary or contradict the terms of a written agreement.

In Wheeler, Kelly & Hagny v Curtis, cited at 158 Kan 312, the Supreme Court of Kansas, in 1944, adopted these words, with extensive quoting from other cases:

"Parol evidence of an agreement consisting of mere oral promises made previously or concurrently with the execution of a written contract of sale of land is inadmissible to charge the vendee with the payment of more than the expressed consideration, when the amount to be paid plainly appears from the face of the instrument.

"As a general rule all prior oral negotiations are deemed to be merged in a written agreement, and the terms of such agreement cannot be contradicted, altered, added to or varied by parol proof.

In Canada, where the rule is also applicable, the Alberta Court of Appeal, in Gainers Inc. v. Pocklington Financial Corporation, 2000 ABCA 151, published at canlii.org/en/ab/abca/doc/2000/2000abca151/2000abca151.html, described it as follows:
"When the deal is complete in the written contracts...., other evidence (parol evidence) is inadmissible to vary or contradict a clear written contract."

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SUMMARY:

1. Remember the Parol Evidence Rule: *Verbal evidence is inadmissible to vary or contradict the terms of a written agreement*
2. Courts are about law, not justice
3. Never remove conditions **unless you and only you are satisfied** with your diligence on those conditions.