Are negotiations before a franchise agreement was finalized admissible?

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When finalizing the sale of a franchise, a franchisor representative may make certain representations as to potential sales or growth numbers or estimated associated costs, or they may characterize the franchise as "a fantastic business opportunity." Eventually, if the potential franchise sale moves forward, the details are finalized in a franchise agreement. But if there is a dispute about the terms of the franchise agreement or the franchise sale process after the agreement is finalized, are any of those representations about the franchise being "a fantastic opportunity," for example, admissible?

What is the parol evidence rule?

The parol evidence rule – a rule which applies in many states throughout the country– provides that the great majority of these "pre-sale" representations are not admissible. Under the parol evidence rule, "absent fraud, mistake, or other invalidating cause, the parties' final written integration of their agreement may not be varied, contradicted or supplemented by evidence of prior or contemporaneous oral agreements, or prior written agreements." (Galmish v. Cicchini, 90 Ohio St.3d 22, 27 (2000).) While this rule is applied in some states more strictly than others, in Ohio, for example, this rule means that all prior conversations, agreements, and negotiations leading up to the final agreement are superseded by the written franchise agreement. If the parties later have some dispute about the terms of the agreement, the final agreement cannot be modified by the prior oral statements made during the finalization process. Such a bright line rule is meant "to protect the integrity of written contracts." (Williams v. Spitzer Autoworld Canton, LLC, 122 Ohio St.3d 546, 2009-Ohio-3554, (2009).)

When does the parol evidence rule apply?

The parol evidence rule does not necessarily apply to all agreements. A contact must present a "clear sign" that the parties intended it to be a final representation of the parties' intentions, or otherwise purport to be complete documents with no ambiguity as to the terms in the contract for the parol evidence rule to apply. (See Ed Schory & Sons, Inc. v. Francis, 75 Ohio St.3d 433, 440, (1996).) If the final agreement has an integration clause, or a clause that specifically states that the agreement is the final and complete understanding of the parties, as many franchise agreements do, the parol evidence rule may be particularly applicable. However, any contract that "appears to be a complete and unambiguous statement of the parties' contractual intent is presumed to be an integrated writing." (Galmish, 90 Ohio St.3d at 27 (2000); see also Bellman v. Am. Internatl.. Grp., 113 Ohio St.3d 323, 2007-Ohio-2071 (prohibiting the introduction of parol evidence where an agreement was appeared to be a complete and final agreement, regardless of whether it had an integration clause).)

Are there exceptions to the parol evidence rule?

In Ohio, some exceptions to the parol evidence rule exist; one of these exceptions allows the admission of parol evidence to prove that a party was fraudulently induced into signing an agreement. (Galmish, 90 Ohio St.3d at 28 (2000).) But admission of parol evidence is not triggered simply by a claim that the prospective business owner was promised something that did not end up in the finalized contract. Instead, a business owner must demonstrate that he was "fraudulently induced

into entering an agreement by promises that the promising party had no intention of fulfilling. (Marion Prod. Credit Assn. v. Cochran, 40 Ohio St.3d 265 (1998).) The rationale behind this strict application is “that a party cannot claim they were misled into signing a document when the aggrieved party could have discovered the truth by simply reading the document.” (Chase Home Fin., LLC v. Literski, 2014-Ohio-615 (1st Dist. 2014), citing Ed Schory & Sons v. Francis, 75 Ohio St.3d 433 (1996).) Therefore, although the statements of the sales representative and claims relating to a “fantastic opportunity” for a franchise may sound appealing while negotiating a franchise agreement, a prospective franchisee is wise to make sure to “simply read the document” detailing the terms of the franchise business. A franchisee likely cannot rely on oral statements made during negotiations once the agreement is finalized.

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