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Harness the Power of the Integration Clause to Protect Your Business

Most business owners have seen “entire agreement” or “integration” clauses in contracts with employees, vendors, purchasers of their products and services, and joint venture partners. To many, it is boilerplate jargon that sounds strange and has little practical meaning.

By Andrew J. DeFalco | August 09, 2018 at 02:50 PM

Andrew J. DeFalco, Spector Gadon & Rosen

Most business owners have seen “entire agreement” or “integration” clauses in contracts with employees, vendors, purchasers of their products and services, and joint venture partners. To many, it is boilerplate jargon that sounds strange and has little practical meaning. A typical clause provides: “This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to this subject matter.”

These clauses are important, however, because if properly drafted they can dramatically limit a business owner’s exposure to liability.

This is because a properly drafted entire agreement or integration clause should preclude liability for tort claims, breach of contract claims, and claims under Pennsylvania’s Unfair Trade Practices and Consumer Protection Law, 73 P.S. Section 201-2 et seq., if those claims are based upon statements or conduct prior to signing of the contract, and relate generally to the subject matter of the contract. Once a contract containing an integration clause is signed, the only evidence of the parties’ agreement is the contract itself, and no claim relating broadly to the subject matter of the contract can arise from statements or conduct outside the contract.

There are two legal rationales for this so-called “parol evidence rule.” The first is that these clauses supersede pre-contractual statements and conduct, such that they are excluded from consideration in a

lawsuit. For example, in the seminal Pennsylvania case *Yocca* v. *Pittsburgh Steelers*, 854 A.2d 425 (Pa. 2004), fans of the Pittsburgh Steelers were sent pamphlets describing the planned location of their seats in a new stadium. After the fans signed integrated contracts purchasing their seats, they discovered that the seats were not as good as advertised in the pamphlets. They sued for, among other things, fraud and unfair trade practices, alleging the pamphlets improperly induced them into signing the contracts. The Supreme Court ruled that the only evidence of each fan's agreement with the Steelers was the contract. Thus, no claim could be made based on pre-contractual representations.

The second theory, where applicable, is lack of reliance. Tort claims such as fraud and negligent misrepresentation, as well as claims for unfair trade practices, require claimants to prove they justifiably relied to their detriment on false or misleading statements or conduct. However, courts generally find that an entire agreement or integration clause acts to disclaim reliance on prior statements and conduct. The Supreme Court explained "a party cannot justifiably rely upon prior oral representations yet sign a contract denying the existence of those representations."

Additionally, as a general matter entire agreement or integration clauses protect not only the contracting parties, they also protect so-called "privies" and "intended third-party beneficiaries" of the contracting parties. Thus, a properly drafted integration clause can broadly protect the contracting parties and those acting through them or on their behalf from liability for pre-contractual statements and conduct. Together with other legal principles, a disappointed contracting party can be limited to a claim for breach of contract based solely upon the language of the contract, with tort claims and other claims based on pre-litigation statements or conduct precluded.

Of course, there are exceptions. The first, and most obvious, is that so-called "fraud in the execution" claims—that one party "slipped something in" to the final draft of a contract—are not impacted by an integration clause. Additionally, integration clauses generally have no effect on conduct or statements occurring after the contract is signed.

Most common are situations where the language of the clause is too narrow, or the clause is otherwise poorly drafted. Particularly in claims involving consumers, courts can be hesitant to dismiss a claim of improper inducement to contract based on a "technicality" arising from a disclaimer in a contract. An improperly drafted clause can give a concerned judge the ability to distinguish the settled law enforcing such clauses, and refuse to enforce the clause.

Thus, in each business contract, care should be taken to limit exposure by ensuring that an integration clause is broad enough to prevent claims based on pre-contractual statements or conduct. A properly drafted integration clause should, among other things:

- State that the contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, statements, conduct, arrangements and understandings between them, whether written or oral, relating to this subject matter*;*
- State that the contracting parties are not relying on any statements, agreements, understandings, writings or conduct, of the contracting parties, their privies, their agents, or third party beneficiaries, from prior to the execution of the contract;
- State that no claim for misrepresentation can arise from statements, information provided, writings, agreements or conduct prior to the signing of the contract; and
- Identify by name various other persons or entities to be covered by the integration clause.

On the other hand, care should also be taken to ensure that the contracting parties will not be harmed by an integration clause. Prior to signing a contract, the parties should give substantial thought to and identify all materials, conduct, understandings, representations and information that induced them to enter into the contract. If necessary, the parties can choose to condition to the enforceability of the final contract on their truth, accuracy or existence. Alternatively, if there are concerns about the accuracy of pre-contractual representations or information provided, the parties may choose to include a “carve-out” for misrepresentation stating that misrepresentations made prior to the signing of the contract can be actionable. If these methods are employed, in the event that pre-contractual information or representations turn out to be incorrect, misleading or false, a valid claim will still exist.

Andrew J. DeFalco, *a member of Spector Gadon & Rosen, is a business litigation attorney who focuses his practice on the representation of companies and individuals in complex corporate and commercial cases, at both the trial and appellate level.*

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