

Does Choice Of Law Include The Parol Evidence Rule?

Article By:

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On the antepenultimate day before Christmas, the California Court of Appeal issued an opinion that should be of interest and concern to lawyers documenting merger and acquisition agreements. *Kanno v. Marwit Capital*, No. G052348, 2017 Cal. App. LEXIS 1150 (Ct. App. Dec. 22, 2017). The opinion covers many important points that I plan to cover in several future posts.

How it began . . .

The case started with the plaintiff's decision to retire and sell three of his businesses. He hired an investment banker who duly found a buyer. The plaintiff wanted cash. Ultimately, the parties agreed on a mostly cash deal with some preferred stock. This preferred stock became a problem for the parties because the plaintiff's insistence on a guaranteed redemption in three years would create an immediate taxable event. After some discussions, the plaintiff extracted an oral agreement to repurchase the stock.

Three agreements

According to the Court of Appeal, there were three key written transaction agreements: (1) a contribution and purchase agreement, (2) a stock subscription agreement, and (3) a stockholder agreement. The parties were represented by large law firms in their negotiation of these agreements. All three agreements included an integration clause. When the oral promise to redeem was not honored, the plaintiff sued.

Choice of law and the parol evidence rule

The first issue for the Court of Appeal was the question of applicable law. The contribution and purchase agreement included a California choice-of-law provision while the stock subscription and stockholder agreements had a Delaware choice of law provision. The Court of Appeal applied California law to the contribution and purchase agreement and Delaware law to the other two agreements. As an initial matter, one might question whether a contractual choice of law provision would dictate the application of the parol evidence rule on the basis that the rule is procedural and not substantive. However, California courts consider the parol evidence rule to be a rule of substantive law and not of evidence. See *Hutchinson v. Hutchinson*, 48 Cal. App. 2d 12, 19, 119 P.2d 214, 217 (1941).

For more on the parol evidence rule, see this [post](#) from two years ago.

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