

The Interpretation of Contracts: When Courts refuse to use Extrinsic Evidence

*By David Elmaleh**

When litigation arises regarding the proper interpretation of a contract, a common question courts consider is whether extrinsic evidence can be used to vary or modify seemingly unambiguous terms of the binding agreement. *SeaWorld Parks & Entertainment LLC v. Marineland of Canada Inc.*, 2011 ONCA 616, is a recent example of an appellate decision that deals with this issue.

In this case, emotions were heightened and the stakes were high, as the contract in question involved two competitors who entered into an agreement to loan each other marine animals. SeaWorld owned a male killer whale and agreed to loan him to Marineland pursuant to a Breeding Loan Agreement in November 2006. When SeaWorld gave written notice to Marineland of its intention to terminate this agreement when it expired on December 31, 2010, Marineland declined to return the whale and this litigation ensued.

The agreement which the parties entered into provided a clause for a fixed term and rights of termination:

This Agreement shall remain in force, except as otherwise provided, for a term ending December 31, 2010. This Agreement shall be renewed automatically for one year terms thereafter unless or until terminated by either Party. Either Party to this Agreement may terminate this Agreement at any time with respect to some or all of the Specimens listed above by giving the other Party thirty (30) days' written notice prior to the effective date of the proposed termination.

In support of its position, Marineland filed considerable affidavit evidence concerning the genesis of its relationship with SeaWorld, the pre-contractual representations by SeaWorld, and its post-contractual conduct. Specifically, Marineland relied on provisions of a prior agreement signed by the parties which set out a number of guiding principles for future agreements. One of the principles was that both parties would be willing to loan animals to each other for various purposes, and continue such loans on a regular basis until either party is unable to properly maintain the mammals.

The application judge ruled that Florida law (the agreed-upon law governing the contract) was substantially the same as Ontario law; namely, where a contract is clear and unambiguous, parole

evidence cannot be admitted to vary, alter or contradict its terms. Thus, he granted the remedy sought by SeaWorld.

Marineland appealed, arguing that the application judge erred:

1. by interpreting the loan agreement on its own, rather than construing it together with the original agreement of guiding principles;
2. by failing to consider the evidence of the surrounding circumstances which would have raised an ambiguity in the termination provision that required extrinsic evidence to be analyzed
3. by rendering an interpretation that was commercially unreasonable

Marineland's appeal hinged on the fact that the original 'guiding principles' agreement arguably implied that the parties would collaborate on a number of projects, and that unilateral terminations would be frowned upon.

The Court of Appeal dismissed Marineland's contentions, confirming that where the words of a contract are clear and unambiguous, extrinsic evidence cannot be used to alter its meaning. At the same time though, consideration of the circumstances in which the contract was made is part of the interpretive process. This factual matrix, according to the Court of Appeal, is relevant to assist the court to determine the meaning of the contract against its objective contextual scene.

The Court of Appeal agreed with the application judge that the task of determining if a particular contract is ambiguous is not a question of Florida law, but rather is a question for the Ontario court in the course of applying Florida law. Flowing from this determination, the Court ruled that the termination provision was clear and unambiguous and that there was no evidence of the circumstances surrounding the making of the agreement which would render the terms unclear. The loan agreement was a stand-alone contract with a concise termination clause. Consequently, prior agreements in principle ought not to carry significant weight in interpreting the contract.

Regarding Marineland's final allegation that the interpretation was commercially unreasonable, the Court of Appeal rejected this argument on the basis that the loan agreement was not a long-term contract, nor was there a guarantee for a long-term relationship.

This case is significant, as it articulates the considerations to be applied in the analysis of contract interpretation. It makes it abundantly clear that where the words of a contract are unambiguous, extrinsic evidence cannot be used to alter its meaning. It also confirms the law in Ontario that the circumstances surrounding the contract's construction are part of the interpretive process. Litigators should be mindful of these principles and use them to their advantage when attacking or defending specific clauses in a contract. Correspondingly, solicitors should heed these lessons as well in order to construct a legally binding agreement with clear and concise clauses that will minimize adverse results in future litigation.

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