

Law Offices
James J. Falcone
300 Capitol Mall, Suite 1800
Sacramento, California 95814-4717

916/442-4204

May 15, 2012

A brief summary of the California rule for when extrinsic evidence may be admitted to explain essential terms required by the Statute of Frauds.

The Statute of Frauds (Civil Code §1624) requires, in specified cases, a written memorandum signed by the party who it is being enforced against. The memorandum satisfies the statute of frauds if it identifies the subject of the parties' agreement, shows that they made a contract, and states the essential contract terms with reasonable certainty.

"Extrinsic evidence" is evidence outside the written words of a contract. Generally, although extrinsic evidence cannot be used to supply an essential term of a contract, it can be used "to explain essential terms that were understood by the parties but would otherwise be unintelligible to others." *Sterling v. Taylor* (2007), 40 Cal.4th 757, 767. "California courts have not hesitated to imply a term of duration when the nature of the contract and surrounding circumstances afford a reasonable ground for such implication." *Consol. Theatres, Inc. v. Theatrical Stage Emps. Union*, 69 Cal.2d 713, 727, 73 Cal.Rptr. 213, 447.

Under the California parol evidence rule, "[t]he test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." *Pac. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 69 Cal.2d 33, 37.

Thus,

[w]here the meaning of the words used in a contract is disputed, the trial court must provisionally receive any proffered extrinsic evidence which is relevant to show whether the contract is reasonably susceptible of a

particular meaning. Indeed, it is reversible error for a trial court to refuse to consider such extrinsic evidence on the basis of the trial court's own conclusion that the language of the contract appears to be clear and unambiguous on its face. Even if a contract appears unambiguous on its face, a latent ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible.

Morey v. Vannucci, 64 Cal.App.4th 904, 912, 75 Cal.Rptr.2d 573 (1998) (internal citations omitted).

See *First Nat. Mortg. Co. v. Federal Realty Inv. Trust*, 631 F. 3d 1058, 1066-1067 (9th Circ. 2011)