Should the PPM be Translated by the Issuer?

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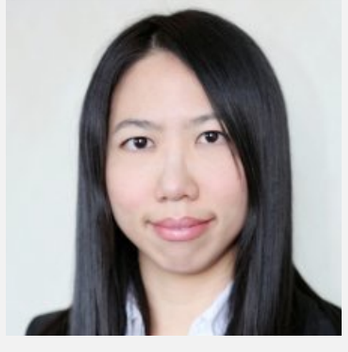

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Parties have a responsibility to understand the contract before signing

The general and well established principle of contract law is that one who is ignorant of the language in which a document is written, or who is illiterate, may be bound to a contract by negligently failing to learn its contents."

Except in cases of fraud, the fact that an offeree cannot read, write, speak, or understand the English language is immaterial to whether an English-language agreement the offeree executes is enforceable.

Case law is not so clear cut.

Paper Exp., Ltd. v. Pfankuch Maschinen GmbH (7th Cir. 1992)

The Court is unsympathetic to a company asserting fraud on the grounds that a forum selection clause, in extremely fine print, was written in German. Citing a fundamental principle of contract law, the Court holds "that a person who signs a contract is presumed to know its terms and consents to be bound by them."

In a strong argument for contract validity, analogy is made to the blind and illiterate, who are similarly bound to written language beyond their comprehension. *Id.* "We live in a global economy and contracts between parties of different nationalities, and speaking different languages, are commonplace. But a party who agrees to terms in writing without understanding or investigating those terms does so at his own peril."

A lawyer is found guilty of multiple offenses, including fraud, where Spanish-speaking clients agreed to a rate increase without knowing the content of the contract. Though the lawyer claims to have translated, glaring errors in the agreement preclude the possibility that it was actually read aloud to the clients. Knowledge and intent to deceive weigh heavily in the decision.

Gerike v. Rent-A-Ctr., Inc.,

(D.P.R. June 27, 2014)

A party to an employment dispute attempts to invalidate an arbitration agreement for a lack of informed consent. "Prior to signing, [Plaintiff] claims she expressed concern to RAC's hiring officer, explaining that she did not understand the contents of the documents she was signing.

However, RAC's motion to dismiss is granted. The Court finds that the Plaintiff "was well aware of her own language abilities, and it was ultimately her responsibility to obtain a translation or clarification of the contract terms prior to signing."

Proin S.A. v. LaSalle Bank, N.A.

(N.D. Ill. 2002)

A contract written in both Spanish and English is presented to an American bank. The bank's agent signs the document based solely on a reading of the English portion. The Court, citing *Paper Express*, finds that the bank breached its duty of ordinary care in failing to translate the agreement. The Argentinian company wins summary judgment on a breach of contract claim.

Cantu v. Butron, (Tex. App. 1996)

writ denied (Oct. 31, 1996)

Exception for fraud

A lawyer is found guilty of multiple offenses, including fraud, where Spanish-speaking clients agreed to a rate increase without knowing the content of the contract.

Though the lawyer claims to have translated, glaring errors in the agreement preclude the possibility that it was actually read aloud to the clients.

Knowledge and intent to deceive weigh heavily in the decision.

ING Bank,

(D.P.R. June 27, 2014)

Statutory Exception

A Korean couple, the Ahns, default on a mortgage and are sued by the broker, ING, for fraudulent misrepresentation in overstating their income.

The couple files a counterclaim against ING under a California statute requiring an English translation of a contract when negotiations take place in a foreign language. See Cal. Civ. Code § 1632 (West 2015);

Even though Mr. Ahn is fluent in English, ING failed to provide a Korean translation of the English contract, as required by statute. The Ahns' motion for summary judgment is granted.

Wang v. Lightspeed Envtl., Inc.,
(E.D. Mich. Jan. 3, 2014)

Dispute over the translation of documents plays prominently in EB-5 immigration cases

A Chinese businessman is persuaded to pursue EB-5 immigration status through a business investment of $1M dollars. However, "plaintiff alleges that, in contradiction to the representations that had been made to him, the business is in reality an entity without equity value, without a product, without intellectual property, without employees and without assets of any significant value."

The Court acknowledges the general rule that a party is bound by the documents he signs, regardless of whether the agreement in question is actually read or understood.

The Court also notes that the exception for fraud is relevant in this instance, under "sections 10(b) and Rule 10B–5 of the 1934 Securities Exchange Act.

Mohebbi v. Khazen

(N.D. Cal. Dec. 4, 2014)

Dispute over the translation of documents plays prominently in EB-5 immigration cases

Seeking to rescind an investment contract, entered into for the purpose of obtaining EB-5 immigration status, an Iranian plaintiff alleges fraud.

The litigation primarily focuses on the plaintiff's desire to free himself from an arbitration clause.

The Court finds that, as a "sophisticated" entity," a "businessman . . . signing a contract to invest at least $1 million," the plaintiff cannot avoid the terms of a signed agreement on the grounds that he did not understand the language.

The plaintiff is unable to show that the defendant undertook an affirmative duty to translate the document. Ultimately, the parties are bound to the arbitration agreement.

Topics

- Nuances in PPM - Difficulty in accurate translations
- Liability exposure (Plaintiff lawyers)
- Agent translation v. Law firm translation v. Certified translation
- Should Issuer translate the marketing materials?
- Your PPM is your disclosure document. Keep it simple!
- What is the cost of translating a PPM?
- Agency and ‘Apparent Agency”
- Certify English proficiency
- Statute 1632 - California statute requiring translation of contracts