

# The Greatest Show on Turf?: How The Rams' Personal Seat License Agreements Bend

## Judicial Understanding of Output Contracts

By: Benjamin Kweskin

### I. INTRODUCTION: *McAllister v. The St. Louis Rams LLC*.<sup>1</sup>

The team formerly known as the St. Louis Rams is forging new ground within contract and property law in the lawsuits surrounding its move to Los Angeles (“LA”). Although the Rams were not the first team to create the Personal Seating License (“PSL”), the team’s relocation to LA before the expiration of its St. Louis PSLs has created a new contractual issue for courts to grapple with.<sup>2</sup> PSLs create a private right for an individual to buy the right to sit in a given seat in a stadium from year to year.<sup>3</sup> They have become “one-time fees that must be paid by anyone who wants to buy season tickets.”<sup>4</sup> However, PSLs may represent more than just a one-time fee to buy season tickets.

Some teams require PSLs to purchase season tickets.<sup>5</sup> In a post-move lawsuit that began in January 2016, three PSL holders sought class certification for more than 50,000 similarly situated Rams PSL holders for breach of contract.<sup>6</sup> The St. Louis Rams is the first professional team to move cities while under active PSL contracts.<sup>7</sup>

---

<sup>1</sup> *McAllister v. The St. Louis Rams, LLC*, 209 F. Supp. 3d 1121 (E.D. Mo. 2016).

<sup>2</sup> Jacob Kirn, *Rams Breaking Season-Ticket Agreements in Move, Lawsuit Alleges*, ST. LOUIS BUSINESS JOURNAL (Jan. 20, 2016, 6:41 AM), [http://www.bizjournals.com/stlouis/morning\\_call/2016/01/rams-breaking-season-ticket-agreements-in-move.html](http://www.bizjournals.com/stlouis/morning_call/2016/01/rams-breaking-season-ticket-agreements-in-move.html).

<sup>3</sup> *Id.*

<sup>4</sup> Brad Tuttle, *'Fricking Ridiculous' NFL Stadium Seat Fees Cost Thousands — But Fans Pay Up*, TIME (Oct. 6, 2013), <http://business.time.com/2013/10/06/fricking-ridiculous-nfl-stadium-seat-fees-cost-thousands-but-fans-pay-up/>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Michael Kernan, *Case for St. Louis Rams PSL Holders To buy L.A. Season Tickets*, THE POST GAME, (Jan. 13, 2016), <http://www.thepostgame.com/daily-take/201601/st-louis-rams-psl-fans-tickets-los-angeles-stadium-nfl>.

The casual observer, in contrast to a diehard fan, might not realize the importance of purchasing a PSL., season tickets for the same seats as the owner occupied during the previous year were thought to be renewable in perpetuity.<sup>8</sup> This original presumption of perpetuity stems from the idea that “season ticket holders purchased the renewal right for all future years, so long as the season ticket holders paid for their season tickets annually.”<sup>9</sup> In other words, a consumer could expect to have season tickets for the same seat, year after year, so long as the tickets were renewed.

In *Estate of Harold Oshinsky v. N.Y. Football Giants, Inc.*, a family of football fans sued the New York Giants for enforcing a PSL before renewing the family’s season tickets.<sup>10</sup> Many teams acted like the Giants who, before implementing PSLs, “never previously discontinued season tickets without cause.”<sup>11</sup> It was assumed by fans that a team would renew season tickets until the season ticket holder could not afford them, or did not want them, any longer.<sup>12</sup> This renewal system changed with the PSL. In its infancy, the PSL was a right to purchase season tickets at a given stadium, in a given seat, for a given number of years.<sup>13</sup> A fan could also lose a PSL even after purchasing one. “[I]f a PSL [was] purchased, but season tickets [were] not renewed for a subsequent season, the PSL [was] forfeited.”<sup>14</sup>

PSLs have been a hotly contested issue.<sup>15</sup> Many fans initially resisted PSLs as too expensive and unnecessary.<sup>16</sup> Ultimately, many fans made the decision to continue purchasing

---

<sup>8</sup> *Estate of Harold Oshinsky v. N.Y. Football Giants, Inc.*, No. 09-CV-01186 PGS, 2011 WL 383880, at \*2 (D.N.J. Feb. 2, 2011).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at \*3.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at \*2.

<sup>15</sup> Aaron Gordon, *The Creator of Personal Seat Licenses Hates them as Much as You Do*, VICE NEWS (Dec. 28, 2015, 8:48 AM), [https://sports.vice.com/en\\_us/article/the-creator-of-personal-seat-licenses-hates-them-as-much-as-you-do](https://sports.vice.com/en_us/article/the-creator-of-personal-seat-licenses-hates-them-as-much-as-you-do).

season tickets at the expense of the PSL.<sup>17</sup> Today, when many teams move from one place to another, PSL sales are strong evidence of belief in team longevity.<sup>18</sup> The logic flows from the notion that 30-year commitments to purchase tickets are strong indicators that fans will be around for a long time.<sup>19</sup> The prices of PSLs have both risen and fallen dramatically as PSL popularity among teams grew while team performance varied.<sup>20</sup>

Adding to the complexity, some PSLs were not even sold by the teams themselves. Oftentimes, pump-up groups (organizations that create publicity and enthusiasm for an incoming team) will bolster a team's PSL sales before they even enter the city.<sup>21</sup> One specific group, FANS Inc. ("FANS"), poses a problem for St. Louisans who bought tickets from FANS instead of the Rams.<sup>22</sup> FANS sold PSLs for the Rams at the, then new, Edward Jones Dome in St. Louis. The FANS' Contract differs from the Rams' Contract in determining how to recover the lost value of PSLs, according to the *McAllister* Court.<sup>23</sup>

## II. LEGAL BACKGROUND

*McAllister v. The St. Louis Rams LLC* presents a first impression for courts to analyze the boundaries PSLs create in terms of contract rights and to help define what, precisely, a consumer is buying when they sign a PSL agreement.

To begin, basic contract analysis is crucial. All promises require consideration to be a contract. In order to have consideration for an agreement, "each party promises to undertake

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (citing the NBA's expansion to Charlotte over Miami and Orlando in 1987).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Joe Dwyer III, *FANS Inc. kicked in \$14 million*, ST. LOUIS BUSINESS JOURNAL (Nov. 24, 1996, 11:00 PM), <http://www.bizjournals.com/stlouis/stories/1996/11/25/story5.html>.

<sup>22</sup> *McAllister*, *supra* note 1, at \*1.

<sup>23</sup> *Id.* at \*6.

some legal duty or liability.”<sup>24</sup> “An illusory promise is not a promise at all and cannot act as consideration.”<sup>25</sup> “A promise is illusory when one party retains the unilateral right to amend the agreement and avoid its obligations.”<sup>26</sup>

In other words, illusory promises are ones in which the promisor, and only the promisor, has the right to terminate an agreement. The definition of an illusory promise is important to note in context of the holding of *McAllister* because it may help some of the Plaintiffs regain their foothold in the context of litigation. But even if the promise is not illusory, the boundary of the PSL agreement may still be ambiguous.

### III. THE INSTANT DECISION

*McAllister* involves three separate plaintiff classes (Envision, Arnold, and *McAllister*).<sup>27</sup> All three classes of Plaintiffs bought PSLs for Rams games.<sup>28</sup> The Envision and Arnold classes both signed agreements with a company called FANS Inc., not the St. Louis Rams.<sup>29</sup> “There are two nearly-identical agreements at issue. The original license agreements were issued by the Rams' ticketing agent, FANS, Inc., . . . Subsequent PSLs were sold directly by the Rams using an almost identical contract (“Rams” Agreement).”<sup>30</sup>

It is important to note that the Rams *required* fans to purchase PSLs, either through FANS, Inc. or through the Rams themselves, in designated sections before buying season

---

<sup>24</sup> Baker v. Bristol Care, Inc., 450 S.W.3d 770, 776 (Mo. 2014).

<sup>25</sup> Morrow v. Hallmark Cards, Inc., 273 S.W.3d 15, 30 (Mo. Ct. App. 2008).

<sup>26</sup> Baker, *supra* note 24.

<sup>27</sup> *McAllister*, *supra* note 1, at \*4.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at \*1.

tickets.<sup>31</sup> Approximately 46,000 PSLs were sold by the St. Louis Rams out of over 66,000 available seats at the Edward Jones Dome.<sup>32 33</sup>

In contrast to the Rams Agreement, the FANS Agreement did not have a “Best Efforts” clause.<sup>34</sup> Without the Best Efforts clause, PSL holders who contracted with FANS Inc. could not recover from the Rams as the third-party beneficiary of FANS Inc.<sup>35</sup> The two contracts are identical in all other substantive respects.

Plaintiff McAllister challenged the Best Efforts clause, arguing that the Rams terminated the FANS Agreement.<sup>36</sup> The Rams responded arguing that the contract naturally expired when the team moved.<sup>37</sup> The Court reasoned that “[w]hether the FANS Agreement merely ‘expired’ passively or was actively ‘terminated’ by the Rams . . . is irrelevant”<sup>38</sup> because “expiration” is synonymous with “termination.”<sup>39</sup> Since the FANS contract expired without a Best Efforts clause to keep it alive, the contract was completed and both parties had performed their duties.<sup>40</sup> The holding in *McAllister* subject to criticism because purchasers could have foreseen the Rams leaving, given the team’s recent performance. This disproportion of knowledge makes the price of PSL’s a guess for fans, but a certainty for teams.

The court looked to the PSL holders who had purchased their PSLs through the Rams (the McAllister Plaintiffs) specifically. The McAllister Plaintiffs were not bound by the agreement being terminated if the Rams left St. Louis because the PSL was “not contingent on

---

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Stadiums of Pro Football, *Edward Jones Dome*, STADIUMS OF PRO FOOTBALL (last visited 4 April, 2017), <http://www.stadiumsofprofootball.com/nfc/EdwardJonesDome.htm>

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 5.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

the Rams playing football at the Stadium.”<sup>41</sup> The McAllister Plaintiffs brought a claim of an illusory contract; however, the claim was dismissed as moot because the court granted partial judgment in favor of McAllister Plaintiffs.<sup>42</sup>

To be clear, the only remaining issue is how to handle PSL holders who bought their tickets through FANS Inc. and never renewed them through the Rams. The FANS Inc. PSL holders are the only ones bound by the weaker “Best Efforts” clause.<sup>43</sup> The FANS’ Agreement did not define what the parties meant by “transferred games.”<sup>44</sup> The Rams argued that the “transferred games” phrase “[meant] games transferred on a temporary basis where St. Louis and the Stadium remain the team's home venue.”<sup>45</sup> The court ultimately adopted this view.<sup>46</sup> However, this view reads in language that the parties did not intend,<sup>47</sup> contradicting the decision.<sup>48</sup> But, even if one party (the Rams) did intend this term, the four corners of the contract suggest nothing that would cause the purchasers to be on notice.

Plaintiffs believed that transferred games meant “any home game played anywhere other than the Stadium for the 30–year duration of the contract.”<sup>49</sup> The court held that Plaintiff’s view of that term, alone, is a reasonable interpretation but fails to address the provision in the FANS’ Agreement that limits the contract to *at most* 30 years and only so long as NFL football is played *at the stadium*.<sup>50</sup>

---

<sup>41</sup> McAllister, *supra* note 1 at \*4 (here “the Stadium” refers to the Edward Jones Dome in St. Louis where the Rams played).

<sup>42</sup> *Id.* at \*6.

<sup>43</sup> *Id.* at \*2.

<sup>44</sup> *Id.* at \*3.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at \*2.

<sup>48</sup> The Rams’ position is consistent with the FANS Inc. contract drafter, Marc Ganis. *See* Nathan Fenno, *Rams Must Refund Deposits for Personal seat Licenses or Offer Tickets to Some in St. Louis, Judge says*, LA TIMES (Sept. 22, 2016), <http://www.latimes.com/sports/rams/la-sp-rams-psl-lawsuit-20160922-snap-story.html>.

<sup>49</sup> McAllister, *supra* note 1, at \*2.

<sup>50</sup> *Id.* at \*3.

To hold that PSL holders have *no* right to tickets from Year 21 to Year 30 hurts public policy and arguably makes the Rams' promise illusory.<sup>51</sup> A team could promise a 100-year PSL, but move within five. This example is most clear in cases of credit. When a creditor bases a contract on the promise that the creditor will not collect, the promise is illusory.<sup>52</sup> The Rams would probably respond that the promise is not illusory, and is clearly defined in the contract, as the district court held.<sup>53</sup> The court made no reference to the illusory argument as it pertains to the FANS agreement.<sup>54</sup> Alternatives to the 30-year PSL were not given any consideration in the contract language. Had the Rams moved ten years prior, there would be no difference in the price of the PSL, and the Rams could hide behind the FANS Inc. Agreement.

Ultimately, the district court held for the Rams, stating, "the four corners of the FANS Agreement establish that, in the event the Rams moved their home venue away from the Stadium, the contract is terminated."<sup>55</sup> In stark and inexplicable contrast, "the four corners of the Rams Agreement establish that the Rams have the obligation to use Best Efforts to offer tickets at the Rams' new home venue to St. Louis Rams PSL holders."<sup>56</sup>

#### *A. An Argument for Loss of Bargain*

As mentioned above, one theory of recovery is loss of bargain. The theory relies on PSL holders making an investment in under-valued PSLs in 1995, and not being able to enjoy the full value of those tickets between 2016, when the Rams left, and 2025 when the PSLs would theoretically end. At first blush, the assumption for this recovery would be to recover 9/30ths of the value of an Inglewood PSL. However, LA Rams do not get to seek the benefit of cashing in

---

<sup>51</sup> RESTATEMENT (SECOND) OF CONTRACTS § 77, ch. 4, 1.1 (AM LAW INST.1981).

<sup>52</sup> *Promise*, BLACK'S LAW DICTIONARY (10th ed. 2014) (stating a conditional promise is not illusory as long as the condition is not entirely within the promisor's control).

<sup>53</sup> McAllister, *supra* note 1, at \*3.

<sup>54</sup> *Id.* (the court did address and ultimately dismiss the argument of an illusory promise by McAllister-Plaintiffs. The argument was moot as the court granted partial summary judgment on behalf of McAllister-Plaintiffs).

<sup>55</sup> *Id.* at \*6.

<sup>56</sup> *Id.*

on those tickets until the 2018-2019 Season. The LA Rams currently play at the Coliseum, and season tickets require no PSL.<sup>57</sup> The Rams plan to move into the new Inglewood Stadium in the 2018-2019 season with PSL requirements.<sup>58</sup>

In a normal case of an investment, an investor anticipates a gain at the end of the term. A clear example would be a 30-year bond. When a person cashes out a 30-year bond, he or she expects to gain the interest rate associated with the bond compounded over time. In truth, PSLs are substantial investments for fans. If teams are required to pay for the loss of bargain of PSL holders, the teams' liability will increase. Such a windfall in favor of PSL holders would dissuade teams from selling PSLs in the future, for better or worse.<sup>59</sup>

#### *B. Loss of Bargain is the Weaker Argument for Plaintiffs*

PSLs are dissimilar to 30-year bonds because, at the end of the term, the value of the PSL is zero. This is because, each year, the value diminishes by 1/30<sup>th</sup>. Since all PSLs were set to terminate at the end of the 2025-2026 season, the value of the St. Louis Rams' license which ended that same year is gone. Fans, generally, do not buy PSLs to gain the value.<sup>60</sup> Most fans buy PSLs, and thereby season tickets, so they can watch their local team from the same seat year after year.<sup>61</sup> There seems to be an injustice, or at least a windfall in the fans' favor, from this method of damage calculation.

The true issue with loss of bargain is that PSL holders would gain back more from their seven-year interest (between \$933.33 and \$35,000) than the original value of the PSL (between \$398.36 and \$7,170.44) in 2017 dollars. Such a windfall is inconsistent with the purpose for

---

<sup>57</sup> Los Angeles Rams, *LA Rams FAQ Page*, LOS ANGELES RAMS PORTAL (2017), <https://losangelesramsportal.io-media.com/faqs>.

<sup>58</sup> *Id.*

<sup>59</sup> This paragraph is based on the author's own experiences and analysis.

<sup>60</sup> Dan Alexander, *NFL PSLs Have Become Very Risky Investments* FORBES-SPORTSMONEY (Sept. 5, 2012), <https://www.forbes.com/sites/danalexander/2012/09/05/nfl-psls-have-become-very-risky-investments/#3337f6dc3672>.

<sup>61</sup> *Id.*

which most PSL holders purchase their licenses. As mentioned above, most PSL holders likely do not intend to resell their PSLs to make an economic gain.<sup>62</sup>

The argument for unjust enrichment is stronger. To simplify the case as much as possible, this is a case of one party paying for a 30-year license, but only receiving 21 years of use of that license. There are nine years of PSL rights that are unaccounted for, for which PSL holders are entitled to relief. Since PSLs are generally not transferred for profit,<sup>63</sup> and are not commercially liquid, PSL holders could not expect to profit off of the Rams' move to LA. PSL holders may have expected to have 30 years' ticket rights in St. Louis, regardless of which stadium the games would be held when they signed on.

Given the differences between St. Louis and LA, it seems unreasonable for PSL holders to expect either actual seat rights in LA or the loss of the bargain. The better option is to reimburse PSL holders for the value of the PSL at the time it was purchased. As *Baker v. Bristol Care Inc.* case noted, an illusory promise is no promise at all, thus no contract ever existed.<sup>64</sup> Here, a contract did in fact exist for 21 years.<sup>65</sup> However, that contract was terminated.<sup>66</sup>

The irony in all of this is that the Rams probably could have avoided any liability by giving FANS' contractees the right to purchase a future season ticket, so long as the team, in good faith, sells season tickets of the type. To interpret the contract this way would cause teams to seriously reconsider whether a PSL is a (one-time) purchase of the right to buy season tickets for thirty years, as Rams PSL holders contend, or if there is an obligation of mutual performance for thirty single-year rights to buy season tickets.

---

<sup>62</sup> This paragraph is based on the author's own experiences and analysis.

<sup>63</sup> Gordon, *supra* note 11.

<sup>64</sup> Baker, *supra* note 23.

<sup>65</sup> McAllister, *supra* note 1, at \*1.

<sup>66</sup> *Id.* at \*4.

#### IV. CONCLUSION

*The McAllister* case is the first impression of courts looking for how to deal with PSLs when a team moves. Since the Rams were initially located in St. Louis, and virtually all Plaintiffs in the class were from Missouri, Missouri law has been used to determine the meaning of the contract between PSL holders and the formerly-of-St. Louis Rams. However, by separating out the Plaintiffs whose PSLs contained a Best Efforts clause, the U.S. District Court for the Eastern District of Missouri may present an uneven bargain between fans and teams based on the illusory promise PSL holders have the right to buy tickets “only so long as NFL football is played at the stadium.”<sup>67</sup>

First, the contract is ambiguous about what would happen when the Rams left St. Louis. Second, the Best Efforts clause and the conditional seat license create disproportionate power for team owners. To hold that the term is not illusory creates a windfall for the Rams. Still, courts are very hesitant to call output contracts illusory.<sup>68</sup> What consumers, particularly any future PSL holders, should know is that their PSL is a commitment to be fully devoted to a team for a set term length. In truth, fans are gambling on one major and uncontrollable aspect: that a team will not leave them behind.<sup>69</sup>

---

<sup>67</sup> *Id.*

<sup>68</sup> *Gen. Motors Corp. v. Paramount Metal Prod. Co.*, 90 F. Supp. 2d 861, 873 (E.D. Mich. 2000).

<sup>69</sup> In the interest of full disclosure, I am a St. Louisan. I remember watching the legendary team of Kurt Warner, Isaac Bruce, Marshal Faulk, and Tory Holt. I know exactly where I was when I was seven years old and saw the Rams clinch their only Super Bowl. And yes, I remember when I heard the Rams were leaving. I’m not bitter.