

UTILITY NFTS AND THE PARADOX OF FINITE CODE AND INFINITE PROMISES

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I. INTRODUCTION

In 2021, a market erupted out of the growing crypto space.¹ The market for non-fungible tokens, or NFTs, saw an organic trading volume of \$25.1 billion that year.² NFTs are unique digital assets that can represent virtual art, identities, property rights, and more.³ Many looked to the internet puzzled at how NFTs, which commonly take the form of digital art, can garner transaction prices as high as \$69 million.⁴ Nevertheless, as the trading volume indicates, NFTs garner significant consumer interest.⁵

NFT purchasers, when buying into projects, have a multitude of rationales for pursuing a purchase.⁶ Utility NFTs enable the owner of an NFT to access a number of perks as part of their ownership.⁷ Examples of NFT utilities include using the NFT as a reusable ticket for exclusive events and merchandise, as an asset of a gaming ecosystem, for virtual real estate, as a vehicle for passive income, and for virtual outfits in the metaverse.⁸ NFT projects commonly integrate these utilities into what they call an NFT roadmap, essentially an NFT's business plan, and promote it to potential customers.⁹

1. Andrew Hayward, *NFT Sales in 2022 Nearly Matched the 2021 Boom, Despite Market Crash*, DECRYPT (Jan. 4, 2023), <https://decrypt.co/118438/2022-versus-2021-nft-sales> [<https://perma.cc/UL2R-EZQ6>].

2. *Id.*

3. *Id.*

4. Georgia Weston, *Why NFTs are more than just JPEGs?*, 101 BLOCKCHAINS (Apr. 29, 2022), <https://101blockchains.com/nft-vs-jpeg/> [<https://perma.cc/VGV7-HTUC>].

5. Hayward, *supra* note 1.

6. Renata Liubertaitė, *Over 64% Of People Buy NFTs To Profit, Survey Says*, DEXTERLAB (June 10, 2022), <https://dexterlab.com/why-people-buy-nfts-dexterlab-survey/> [<https://perma.cc/7KPV-LAXW>]. DexterLab, a blockchain data tool for NFT projects and Decentralized Autonomous Organizations (DAO), conducted a poll on their blog and garnered 1,318 responses. *Id.* According to the poll, 64.3% purchase NFTs for profit, 14.7% for “community and flex,” 12.4% to collect digital art, and 8.6% for utilities such as access to games and tools. *Id.*

7. *All About Utility NFTs, the Unique Tokens with Practical Applications*, BINANCE BLOG (Aug. 12, 2022), <https://www.binance.com/en/blog/nft/all-about-utility-nfts-the-unique-tokens-with-practical-applications-897687675250973294> [<https://perma.cc/D2J6-YRJJ>].

8. *Id.*

9. See e.g. David O. Klein, *United States: Kevin Hart Releases NFT With Roadmap Focused On Laughter*, MONDAQ BUS. BRIEFING (July 11, 2022), <https://www.mondaq.com/unitedstates/social-media/1210642/kevin-hart-releases-nft-with-roadmap-focused-on-laughter-> [<https://perma.cc/YFN6-Y33M>]; James Dator, *Did De'Aaron Fox really defraud people for \$1.5M in an NFT 'rug pull' scheme?*, SBNATION (Feb. 25, 2022, 7:00 AM), <https://www.sbnation.com/nba/2022/2/25/22950186/deaaron-fox-defraud-nft-swipathefox-nba-kings> [<https://perma.cc/2LJK-5DZT>]; Eric James Beyer, *The Biggest Rug Pulls in NFT History*, NFTNOW (July 7, 2022), <https://nftnow.com/features/the-biggest-rug-pulls-in-nft-history/> [<https://perma.cc/5UJQ-T8ZJ>].

While NFTs may offer excitement for a prospective purchaser, the space, unfortunately, has seen rampant fraudulent activity.¹⁰ Since as early as 2017, NFT issuers have been conducting what is known as “rug pulls.”¹¹ Rug pulls occur when NFT issuers entice individuals, commonly through advertising ownership utilities, to purchase the NFT only to “pull the rug out” by taking all the liquidity and exiting the project without making good on their promises.¹² “According to Chainalysis, in 2021, NFT rug pulls resulted in more than \$2.8 billion [in crypto scam] losses”¹³ Despite this rampant fraud, the NFT space saw “\$24.7 billion worth of organic trading volume . . . across blockchain trading platforms” in 2022.¹⁴ Given the NFT market’s continued trading volume and the rampant fraud in the industry,¹⁵ it is paramount that individuals understand their rights as NFT purchasers.

A legal hurdle arises, however, when a party seeking a remedy for a rug-pull attempts to introduce an NFT’s roadmap as extrinsic evidence of promises made outside of an NFT’s smart contract. Some legal scholars argue that smart contracts, the mechanism by which NFTs are bought and sold, eliminate any ability to incorporate evidence of additional promises made outside of the smart contract’s code when seeking legal remedy under contract law.¹⁶ This is because these smart contracts contain strict, coded instructions that facilitate the exchange of crypto assets on the blockchain and cannot incorporate more abstract promises like an NFT’s project roadmap’s promised utilities.¹⁷

10. Andrew Rossow, *Scams Explained: What Are Rug Pulls? Are They a Crime?*, NFT NOW (Oct. 28, 2022), <https://nftnow.com/guides/scams-explained-what-are-rug-pulls-and-are-they-a-crime/> [<https://perma.cc/S5L7-ZWVJ>].

11. *Id.*

12. *Id.*

13. *Id.*

14. Hayward, *supra* note 1.

15. *Id.*

16. Alan Cohn et al., Travis West, & Chelsea Parker, *Smart After All: Blockchain, Smart Contracts, Parametric Insurance, and Smart Energy Grids*, 1 GEO. L. TECH. REV. 273, 281 (2017); *See also* Rakhil Kalantarova, *The Ongoing Speculation About Smart Contracts: Smart Enough to Replace Third Party Arbitrators, or Is “Smart” Just A Misnomer?*, 21 CARDOZO J. CONFLICT RESOL. 551, 568 (2020).

17. *See* Tsui S. Ng, *Blockchain and Beyond: Smart Contracts*, ABA (Sept. 28, 2017), [<https://perma.cc/EUY8-NLJ6>]; Stuart D. Levi & Alex B. Lipton, *An Introduction to Smart Contracts and Their Potential and Inherent Limitations*, HARVARD L. SCH. F. ON CORP. GOVERNANCE (May 26, 2018), <https://corpgov.law.harvard.edu/2018/05/26/an-introduction-to-smart-contracts-and-their-potential-and-inherent-limitations/> [<https://perma.cc/F2GR-RTXZ>] (providing technical details of what data is encoded into a smart contract and the enforceability of smart contracts under state contract law). The author, Elan Halpern, of the following article gives a step-by-step set of instructions of the various components included in a basic smart contract. *See* Elan Halpern, *Deploy Your First Smart*

However, if understanding an NFT transaction is completely limited to its code, how can an individual who purchased an NFT because of its advertised utilities seek to tie a project roadmap to the smart contract and hold the project accountable for its failure to deliver on its promises? In the context of utility NFTs, the law should not consider a smart contract to be a complete encapsulation of an agreement between an NFT issuer and a purchaser. Victims of rug-pulls should be able to introduce an NFT project's roadmap as extrinsic evidence to supplement a smart contract. However, if a smart contract is held to be completely integrated, NFT purchasers may succeed in introducing parol evidence of a smart contract by employing exceptions to the parol evidence rule.

What follows is an analysis of this dilemma: whether the law should consider external benefits offered and existing outside of a smart contract as part of such contracts despite their finite, rigid code. This analysis includes an examination of NFTs, specifically discourse on what NFTs are, how projects are created around them, and fraud within the NFT space. Further, the parol evidence rule is used as the essential analytical tool to answer this dilemma regarding NFTs, external benefits, and smart contracts.

II. BACKGROUND

A. *What Are Non-Fungible Tokens (NFTs)?*

In defining a non-fungible token, or NFT, it is useful to break down the term into its component parts. Something fungible is exchangeable or replaceable by another identical item.¹⁸ For example, one can exchange a U.S. dollar for another U.S. dollar and end up with the same entity after the exchange.¹⁹ Thus, dollar bills are fungible.²⁰ On the other hand, something “non-fungible” is irreplaceable and unique.²¹ “For example, a

Contract, WEB3 UNIV., <https://www.web3.university/tracks/create-a-smart-contract/deploy-your-first-smart-contract> [https://perma.cc/L9MF-UEHZ]. The following article demonstrates an alternative approach to smart contracts as legal contracts in that it posits how to develop an overarching contract that contains a smart contract within its four corners. This approach could be a more effective in the NFT space in that this approach could enable NFT issuers to disclaim or incorporate associated NFT roadmap utilities. *See* SMART CONTRACT CHECKLIST, 4 SUCCESSFUL PARTNERING BETWEEN INSIDE AND OUTSIDE COUNSEL § 49A:15 (2023); *See also* RAYMOND T. NIMMER ET AL., NON-FUNGIBLE TOKENS, 1 INFORMATION LAW § 6:28.50 (2023).

18. Gary P. Kohn, *NFTs and the Law*, L.A. LAW., Nov. 2021, at 20.

19. *Id.*

20. *Id.*

21. *Id.*

Babe Ruth baseball card is non-fungible.”²² Trading it for another card will result in possessing an entirely different card with its unique imperfections and variances in value.²³

The second half of the term is *token*.²⁴ A crypto token is a cryptocurrency other than Bitcoin and Ethereum, or a crypto asset that exists on top of another cryptocurrency’s blockchain.²⁵ The blockchain is a global platform enabling practically instantaneous transactions via the web.²⁶ A vital benefit of the blockchain is the ability to transact without needing a central authority or some costly intermediary to assist in the transaction.²⁷ Some even view the blockchain as a new internet, where a peer-to-peer network creates what experts have called a “digital distributed ledger,” or a digital system for recording the details of a transaction of assets in multiple web-based locations.²⁸ More succinctly, the blockchain allows for user-to-user transactions with complete transparency.²⁹

An NFT’s code built on the blockchain is paired with something physically tangible (like art or property deeds) or a digital asset.³⁰ However, NFTs are more commonly known for their online existence and association with digital collectibles or digital art, specifically JPEGs.³¹ Through their code, NFTs represent a unique digital asset with its own verifiable authenticity and record of ownership.³² The process for issuing these NFTs, which are associated with digital assets, is known as “minting,” where buyers can purchase NFTs directly from the issuer in a

22. Kohn, *supra* note 18, at 20.

23. *Id.*

24. *Id.*

25. *What is a token?*, COINBASE, <https://www.coinbase.com/learn/crypto-basics/what-is-a-token> [<https://perma.cc/TE69-CPBK>].

26. Joshua Ashley Klayman & F. Dario de Martino, *The (Heart)Beat Has Sounded: The World Economic Forum Places Blockchain Front and Center*, MORRISON & FOERSTER (Aug. 18, 2016), <https://www.jdsupra.com/post/fileServer.aspx?fName=ea51ea9a-22af-48da-a822-af9d2bd9235c.pdf> [<https://perma.cc/9QY7-CP8L>].

27. *Id.*

28. *Id.*

29. *Id.*

30. *See Hermès Int’l v. Rothschild*, 654 F. Supp. 3d 268, 273–74 (S.D.N.Y. 2023). *See also Physical NFTs: Bridging the Gap Between Digital and Physical Worlds*, BINANCE BLOG (Sept. 22, 2022), <https://www.binance.com/en/blog/nft/physical-nfts-bridging-the-gap-between-digital-and-physical-worlds-7460772280213595786> [<https://perma.cc/2VEC-PXSW>].

31. Kohn, *supra* note 18, at 18.

32. Katya Fisher, *Once Upon a Time in NFT: Blockchain, Copyright, and the Right of First Sale Doctrine*, 37 CARDOZO ARTS & ENT. L.J. 629, 631 (2019).

process similar to an initial public offering for stocks.³³ After “minting,” purchasers may transact their NFTs on various secondary marketplaces.³⁴

B. Project Roadmaps and Utility

A project roadmap often accompanies NFT Projects.³⁵ The roadmap outlines a timeline for the delivery of promised utilities an NFT owner can expect to receive after purchase.³⁶ Utility offerings take many forms.³⁷ For example, comedian, actor, and investor Kevin Hart launched an NFT project named “Confessions from the Hart.”³⁸ His project offers ownership utilities including (1) “privileged access to all future releases” of the NFT’s merchandise; (2) “lifetime entrance to all . . . Kevin Hart Nation Metaverse” events; (3) the ability to earn HART coins which are “redeemable for [future] NFTs and passes to in-person events”; and (4) access to a ‘card game’ that integrates the NFTs.³⁹

Another example is the well-publicized Bored Ape Yacht Club (BAYC) project. At its peak at the end of February 2022, BAYC had an “estimated market capitalization of \$1,073,506,022, with an average sales price of \$282,000” per NFT.⁴⁰ BAYC garnered this lofty valuation because of the exclusivity of its ownership that included high-profile celebrities like Justin Bieber, its establishment as a high-profile NFT brand sought out by celebrities, and for its extensive roadmap.⁴¹ Owners have access to merchandise ranging from t-shirts to wine, exclusive virtual spaces and parties at conferences, and a blockchain game.⁴² The project also seeks to leverage its intellectual property in movies and other visual media to

33. See *Hermès Int’l v. Rothschild*, 603 F. Supp. 3d 98, 100 (S.D.N.Y. 2022).

34. *Id.*

35. David O. Klein, *United States: NFT Project Promising Layers Of Utility Ends In NFT Rug Pull*, MONDAQ BUS. BRIEFING (June 8, 2022), <https://www.mondaq.com/unitedstates/fin-tech/1200000/nft-project-promising-layers-of-utility-ends-in-nft-rug-pull> [<https://perma.cc/9GXZ-RUFQ>].

36. *Id.*; See also Jules Carter, *Everything you’ve ever wanted to know about NFTs and securities regulation (and a few things you didn’t)*, WESTLAW TODAY (Aug. 15, 2022), https://www.mvalaw.com/media/news/15097_WLT_Carter.pdf [<https://perma.cc/A3MB-554L>].

37. Griffin McShane, *What Are Utility NFTs?*, COINDESK (Nov. 16, 2022, 9:57 AM), <https://www.coindesk.com/learn/what-are-utility-nfts/> [<https://perma.cc/WAQ3-U2BG>].

38. Klein, *supra* note 9.

39. *Id.*

40. Mark Radcliffe & Katherine M. Imp, *Top Billing for NFTs*, L.A. LAW. May 2022, at 20, 22.

41. *Id.* See also Leah Bitsky, *Justin Bieber buys Bored Ape NFT for \$1.29M*, PAGE SIX (Jan. 31, 2022, 1:40 PM), <https://pagesix.com/2022/01/31/justin-bieber-buys-bored-ape-nft-for-1-3m/> [<https://perma.cc/92BS-T2W7>].

42. Radcliffe & Imp, *supra* note 40, at 22.

increase brand and ownership value.⁴³ These examples demonstrate that projects offer their NFT holders both virtual and in-person benefits.⁴⁴ However, while these benefits are exciting on paper, what happens when an NFT project fails to deliver its promised utilities to its purchasers?⁴⁵

C. *The Rug-Pull*

An NFT's success is contingent on the design and management of its community.⁴⁶ But before a project can even design and manage its community, it must develop a foundation of trust and integrity. A project should develop this foundation because the NFT market and cryptocurrency markets generally face empty promises, including the failure to deliver on promised NFT roadmap utilities.⁴⁷ As evidence of the rampant issues associated with this space, the Consumer Financial Protection Bureau published 2,404 cryptocurrency-related consumer complaints in 2021 and more than 1,000 complaints as of September 6th, 2022.⁴⁸

The NFT industry defines such a failure to deliver utility as a “rug-pull.”⁴⁹ Binance Academy, a website that holds itself out as the “one-stop guide to all things crypto,” defines a rug pull as the abrupt abandonment of a project by its development team, which involves selling or removing all its liquidity.⁵⁰ The name “rug-pull” originates from the phrase “to pull the rug out from under someone,” which means unexpectedly withdrawing your support from something.⁵¹ An example of a rug pull occurred when an NBA star point guard for the Sacramento Kings, De'Aaron Fox, started his own NFT project called Swipa the Fox (“Swipa”).⁵² At the project's minting, the team raised over \$1.5 million with a minting price of .07 Ethereum, and purchasers received their NFT JPEG of a fox with unique

43. *Id.*

44. Klein, *supra* note 9; Radcliffe & Imp, *supra* note 40, at 22.

45. See e.g., Dator, *supra* note 9; Beyer, *supra* note 9; *Attorney General Issues Report On Role of Law Enforcement In Investigating Digital Assets*, FED. BANKING L. REP. (CCH) ¶ 158-441, 2022 WL 4597982 (Sept. 15, 2022); *Rug pull*, BINANCE ACAD., <https://academy.binance.com/en/glossary/rug-pull> [<https://perma.cc/HCE9-UDPT>].

46. See generally Julian Mueller et al., *Taking Advantage of NFTs to Enhance Your Online Community*, CAL. MGMT. REV. (June 27, 2022), <https://cmr.berkeley.edu/2022/06/taking-advantage-of-nfts-to-enhance-your-online-community/> [<https://perma.cc/LJ2K-YKY7>].

47. Dator, *supra* note 9; Beyer, *supra* note 9.

48. FED BANKING L. REP., *supra* note 45.

49. BINANCE ACAD., *supra* note 45.

50. *Id.*

51. *Id.*

52. Dator, *supra* note 9.

visual attributes.⁵³ The project advertised a roadmap on its website before launching, including ownership benefits and utilities such as a Metaverse land purchase for virtual basketball, the donation of scholarships to individuals attending the University of Kentucky, raffles for 2022 NBA All-Star Game tickets, and more things to come.⁵⁴ But the excitement over the chance to connect with an NBA player quickly turned sour.⁵⁵ NFT holders alleged that the Swipa the Fox management team “pulled the rug.”⁵⁶ After launch, the project’s admin team went silent, failed to deliver on most of the promised utilities, and took project funds for personal gain.⁵⁷

In response to the concerns that the admin team “pulled the rug,” De’Aaron Fox released a public statement.⁵⁸ In his statement, Fox said,

I want to address an NFT project we launched recently. The project launch was ill timed. I delegated certain aspects to the launch of the NFT in an attempt to partner with professionals. We weren’t happy with the execution & demand on my time and attention during the NBA season. This project is about a brand that will continue to grow, but I have obligations that I must fulfill to the Sacramento Kings and their loyal fan base. They deserve all of my attention. As I stated previously, I look forward to doing this again the right way and adding value to my NFT holders. I’m excited to learn from the entire NFT community as well. The project will be updated at the conclusion of the NBA season.⁵⁹

To date, the NFT admin team has sent out autographed, unstitched De’Aaron Fox jerseys only to those qualifying holders who purchased multiple De’Aaron NFTs.⁶⁰ Whereas other projects have simply taken all of a project’s crypto assets and run, Swipa the Fox brought in a whole new administrative team to try a relaunch.⁶¹ But such attempts at restoring

53. *Id.*; Swipa The Fox, <https://swipathefox.io/#roadmap>, [<https://web.archive.org/web/20220319225354/https://swipathefox.io/#collab>]. Note that the roadmap is now only available via the Internet Archive because, at the time of writing, the Swipa the Fox NFT team had already deleted the website that housed the project roadmap.

54. *Id.*

55. Dator, *supra* note 9.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. Front Office Sports (@FOS), X (Feb. 25, 2022), <https://x.com/FOS/status/1497281355520126977?lang=en> [<https://perma.cc/CTX8-JTSG>].

61. SwipaTheFox (@SwipaTheFoxNFT), X (Jul. 16, 2022), <https://x.com/SwipaTheFoxNFT/status/1548482925036834817> [<https://perma.cc/7J3S-M4G2>].

value to the holders of Fox NFTs may be futile. Although the Swipa project transacted a total volume of 253 Ethereum on the NFT trading platform OpenSea,⁶² with a portion of every sale going back to the Swipa the Fox's crypto wallet,⁶³ the platform halted NFT sales after the Swipa the Fox's administrative team went silent.⁶⁴ Thus, the Swipa project can no longer transact on one of the world's largest NFT marketplaces, and consequently, the value of its NFTs is essentially zero.⁶⁵

Unfortunately, the Swipa project is just one of the many projects that failed to deliver on their promises to NFT owners.⁶⁶ But, whereas the Swipa project may be attempting to relaunch its project, other projects have taken raised funds and terminated their projects outright.⁶⁷ An example of this more explicit "rug-pull" is the Frosties project, which raked in 335 Ethereum.⁶⁸ The project offered utilities such as merchandise, raffles, and the establishment of a fund to ensure the project's longevity.⁶⁹ Unfortunately, following the launch, the project's website and Discord server "disappeared."⁷⁰ Not only that, but the funds raised through minting went directly to various crypto wallets, and the founders disappeared.⁷¹ However, prosecutors from the Southern District of New York tracked down the project founders, arrested them, and charged them with conspiracy to commit fraud and money laundering.⁷² The case is still ongoing.⁷³

62. See Swipa The Fox, OPENSEA, <https://opensea.io/collection/swipa-the-fox/activity> [<https://perma.cc/JDB3-H4JY>].

63. A crypto wallet is essentially an encoded wallet where cryptocurrency is stored for withdrawal, reinvestment, or conversion to other crypto wallets. See generally *What is a crypto wallet?*, COINBASE, <https://www.coinbase.com/learn/crypto-basics/what-is-a-crypto-wallet> [<https://perma.cc/Z3PR-DCYF>].

64. See OPENSEA, *supra* note 62.

65. See, e.g., *id.* (having a current 'offer' on the collection from _vitalik at approximately \$0.29 for the entire collection).

66. See Beyer, *supra* note 9.

67. *Id.*

68. *Id.*

69. *Id.*

70. Beyer, *supra* note 9.

71. *Id.*

72. *Id.*

73. Press Release, U.S. Attorney's Off., S. Dist. New York, Two Defendants Charged In Non-Fungible Token ("NFT") Fraud And Money Laundering Scheme (Mar. 24, 2022), <https://www.justice.gov/usao-sdny/pr/two-defendants-charged-non-fungible-token-nft-fraud-and-money-laundering-scheme-0> [<https://perma.cc/A6WN-DY8E>].

D. *Tackling Fraud in the NFT Space*

Law enforcement and federal agencies are tackling rampant fraud in the NFT space.⁷⁴ One avenue of prosecution is the Securities and Exchange Commission's (SEC) pursuit of NFT scams through securities fraud charges.⁷⁵ Although the SEC has not officially ruled on how to classify NFTs as an asset class, SEC Commissioner Hester Pierce has warned pursuers and promoters of NFT projects to consider the "potential places where NFTs might run into the securities regulatory regime."⁷⁶

Another alternative route is wire fraud.⁷⁷ In the first half of 2022, the U.S. Attorney's Office for the Southern District of New York had two pending cases prosecuting NFT rug-pulls.⁷⁸ The first was the previously discussed "Frosties" project.⁷⁹ There, the department pursued the project for the stolen \$1.1 million and the false promises of benefits "such as giveaways and access to a metaverse game."⁸⁰ In the other case, the department charged an NFT rug-pull project entitled "Baller Ape."⁸¹ The District Attorney alleged that the project creator took \$2.6 million through the project's mint but that the project failed even to deliver the NFT JPEGs to its purchasers.⁸² "In neither case did the DOJ allege that the NFTs . . . were securities or commodities."⁸³ Instead, the Department of Justice focused on basic wire fraud theory, with the charges based on the premise that purchasers failed to receive the projects' promised utilities.⁸⁴

E. *Filling a Gap in Tackling NFT Fraud: Parol Evidence Rule*

The prosecution of NFT projects for failing to deliver upon their promises comes in many forms.⁸⁵ But no matter how officials choose to

74. See generally Carter, *supra* note 36, at 3; see also Ian McGinley, *Wire fraud: the most powerful law in crypto right now*, REUTERS (Aug. 23, 2022, 11:38 AM), <https://www.reuters.com/legal/legalindustry/wire-fraud-most-powerful-law-crypto-right-now-2022-08-23/> [<https://perma.cc/RBU9-GG9T>].

75. Carter, *supra* note 36, at 1.

76. *Id.* (internal quotation marks omitted) (quoting *First Mover: SEC Commissioner Peirce on 2022 Outlook for Stablecoins, NFTs, Bitcoin ETFs, New Legislation and More* (CoinDesk TV online broadcast Dec. 30, 2021)).

77. McGinley, *supra* note 74.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. McGinley, *supra* note 74.

83. *Id.*

84. *Id.*

85. *Id.*

prosecute NFT rug-pulls, a vital aspect of this prosecution is examining the NFT's promised utilities and the NFT's use of a smart contract.⁸⁶ However, an NFT's smart contract seemingly cannot incorporate an NFT's roadmap into its strictly written smart contract code.⁸⁷ Such an evidentiary gap could result in the inability of an NFT purchaser to seek damages for a project's failure to deliver on its promised utilities.

Tsui S. Ng, in her article entitled *Blockchain and Beyond: Smart Contracts*, asks us to imagine a future where contracts look like the following text string: `“./peer chaincode deploy -n ex01 -c ‘{“Function”:”init”, “Args”: [“{”version\”:\”1.0\”}”]’.”`⁸⁸ This text string is part of the code of a smart contract.⁸⁹ A smart contract is unlike a paper contract, which is physical and tangible with potentially multiple copies.⁹⁰ Instead, smart contracts save and execute according to their code and operate entirely on the blockchain.⁹¹ If a smart contract contains the requisite classical contract ingredients, it is likely enforceable as a legal contract.⁹²

Courts have described smart contracts as self-executing contracts where its terms are directly written into computer code.⁹³ Once a developer writes a smart contract code, protocols execute it based on the fixed, encoded conditions and instructions.⁹⁴ When executing a smart contract,

86. Carter, *supra* note 36, 2–4. See also Reggie O’Shields, *Smart Contracts: Legal Agreements for the Blockchain*, 21 N.C. BANKING INST. 177, 185–89 (2017). Legal writers posit that contract law is equipped to interpret and govern smart contracts. Adam Creppelle, *Getting Smart About Tribal Commercial Law: How Smart Contracts Can Transform Tribal Economies*, 46 DEL. J. CORP. L. 469, 503 (2022).

87. Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17.

88. Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17.

89. Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17.

90. Cohn et al, *supra* note 16; See also Kalantarova, *supra* note 16, at 568.

91. Cohn et al, *supra* note 16; See also Kalantarova, *supra* note 16, at 568.

92. Jeffrey D. Neuburger, Wai L. Choy, & Kevin P. Milewski, *Smart Contracts: Best Practices*, WESTLAW PRAC. L. COM. TRANSACTIONS, W-022-2968; See also Alan Cohn & Evan Abrams, *Decentralized Finance (DeFi): Overview*, WESTLAW PRAC. L. COM. TRANSACTIONS, W-028-7308; See also Ali Dhanani & Ryan Dowell, *Introduction to Blockchain Technologies and Smart Contracts*, HOUS. LAW., Nov.–Dec. 2019, at 18, 21–22. Some states have even legislated to authorize the enforcement of smart contracts as legal contracts. See Jared Arcari, *Decoding Smart Contracts: Technology, Legitimacy, & Legislative Uniformity*, 24 FORDHAM J. CORP. & FIN. L. 363, 378–383 (2019). Some legal writers also posit that smart contracts should be distinguished from legal contracts. See e.g. Peter S. Vogel, *ABCs in IP on NFTs*, in TXCLE ADVANCED INTELLECTUAL PROPERTY LAW (2022); See also Tom Butler, *Smart Contracts and Distributed Ledger Technologies in Financial Services: Keeping Lawyers in the Loop*, BANKING & FIN. SERVICES POL’Y REP., Sept. 2017, at 3.

93. *Rensel v. Centra Tech, Inc.*, No. 17-24500-CIV-KING/SIMONTON, 2018 WL 4410110, at *10 (S.D. Fla. June 14, 2018); Ng, *supra* note 17.

94. Ng, *supra* note 17.

there are no obligations for parties to agree to any external agreements for the smart contract to process.⁹⁵ For example, in the physical art world, the art transaction may require intermediaries like brokers instead of a purchaser buying the art directly from the artist. Once that type of transaction occurs, the purchaser may require additional services like authentication, delivery, and insurance. In the NFT space, however, the transaction is complete once the smart contract executes because the delivery of the digital asset associated with the NFT and the transfer of ownership rights are instantaneous.⁹⁶

The United States District Court for the Southern District of New York, when addressing smart contracts in the context of NFTs, stated that a smart contract refers to computer code “stored on the blockchain . . . that, among other things, determines the name of each of the NFTs, constrains how they can be sold or transferred, and controls which digital files are associated with each of the NFTs.”⁹⁷ However, it is important to note that the court’s definition of a smart contract in the context of NFTs fails to include the ability to incorporate promised NFT utilities into the code.⁹⁸

If a smart contract cannot incorporate NFT utilities into its code, can individuals introduce evidence of a project’s roadmap when it failed to deliver on promised utilities?⁹⁹ The attempt to introduce evidence that contradicts or supplements a written contract triggers the parol evidence rule.¹⁰⁰ At a high level, parol evidence is any agreement that parties to a contract failed to include in their written contract.¹⁰¹ The parol evidence rule provides that “if the parties to a written agreement assent to a writing as the final and complete expression of the terms of their agreement, evidence of prior or contemporaneous agreements may not be admitted to contradict, vary, or add to the terms of the writing.”¹⁰² Courts apply the

95. *Id.*

96. *Id.*

97. *Hermès Int’l*, 654 F. Supp. 3d at 274. The court also notes that the Smart contract is distinct from the actual NFT. Thus, the creator of an NFT project technically owns the smart contract while the NFT owner simply owns the NFT. Consequently, the NFT owner still retains the power to change important attributes of the NFT including the image and its title. This fact of control even further demonstrates the power an NFT issuer has in a smart contract transaction.

98. *Id.*

99. *Id.*

100. MAX C. GOTTLIEB, TRIAL HANDBOOK FOR WEST VIRGINIA LAWYERS § 24:2 (2023).

101. *Parol Evidence Rule*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/parol_evidence_rule [<https://perma.cc/YJJ2-VLQW>]; See also 16 N.Y. JUR. 2D *Cancellation of Instruments* § 53 (2nd ed. 2024); Robert W. Emerson, *Franchising and the Parol Evidence Rule*, 50 AM. BUS. L.J. 659, 665 (2013); See also *Devine v. Buki*, 767 S.E.2d 459 (Va. 2015) (providing that fraudulent inducement to a contract requires that some form of concealment must necessarily precede a contract’s formation).

102. 36 AM. JUR. *Proof of Facts* 3d 331 § 2 (Originally published in 1996).

rule to contracts, deeds, and instruments of conveyance between the parties of these types of agreements and their privies.¹⁰³ This rule examines the parties' intent to determine whether their contract writing completely expressed the entirety of their contractual agreement or if the agreement purposely excludes certain terms.¹⁰⁴ The design of the parol evidence rule is to "promote, preserve, and protect the integrity, certainty, sanctity, and stability of written agreements and the transactions or obligations which they embody."¹⁰⁵ Additionally, it seeks to ensure "predictability and enforceability of finalized written agreements" and minimize risks of future litigation by encouraging the parties to a contract to make their agreement a final and complete statement of the parties' obligations.¹⁰⁶

One key factor in determining whether the parol evidence rule applies is whether a contract is completely or partially integrated.¹⁰⁷ An agreement is partially integrated if the parties intended the writing to be a final expression of its terms but purposefully excluded or left open specific terms.¹⁰⁸ When a contract is partially integrated, the parol evidence applies only to that part.¹⁰⁹ When an agreement fails to address an issue, parol evidence is admissible "to prove the existence of additional terms to an agreement" if those additional terms are consistent with the express terms in the agreement.¹¹⁰ At its core, the rule recognizes that a contract's final form between parties "may not accurately reflect the course of dealing between parties based on their complete agreement."¹¹¹

Conversely, a contract is completely integrated if the parties intended the written agreement to express all agreed-upon terms.¹¹² A contract is also completely integrated if the writing fully and accurately embodies the parties' mutual rights and obligations or supersedes all related agreements to a transaction.¹¹³ The parol evidence rule will apply with "even greater force" if a contract contains an integration clause that indicates that a contract represents a "complete and final expression of the parties' wishes."¹¹⁴ Thus, parties may also use contract clauses within a written agreement to demonstrate their intent to have a completely integrated

103. See e.g. 21 STEVEN W. FELDMAN, TENNESSEE PRACTICE CONTRACT LAW AND PRACTICE § 8:41 (2d ed. 2016).

104. 29A AM. JUR. 2D *Evidence* § 1076 (2024).

105. 32A C.J.S. *Evidence* § 1331 (2024).

106. *Id.*

107. *Id.* at § 1527.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.* at § 1526.

114. *Id.*

agreement.¹¹⁵ If a contract is completely integrated, the parol evidence rule prevents the introduction of extrinsic evidence to supplement an existing agreement unless narrow exceptions apply.¹¹⁶

Courts have put forward various tests to determine whether an agreement is fully or partially integrated.¹¹⁷ For example, in *Thompson v. Libby*, the Supreme Court of Minnesota held that parties cannot introduce extrinsic evidence to supplement an agreement if a contract looks complete on its face.¹¹⁸ This approach is known as the “four corners rule.”¹¹⁹ In other words, if a contract’s text looks complete, the court applies a strong presumption that the parties intended the agreement to be completely integrated.¹²⁰

In *Brown v. Oliver*, the Supreme Court of Kansas focused on the reliability of extrinsic evidence.¹²¹ The court in *Brown* believed that it was impossible to determine contractual intentions from the explicit terms of the agreement alone.¹²² Thus, the court ruled courts should admit any evidence regarding the parties’ intentions, essentially ignoring the parol evidence rule altogether.¹²³ More explicitly, the court stated that courts could consider extrinsic evidence to determine whether the parties to a contract intended a disputed subject not contained in their written agreement to be included in the written memorialization of the transaction.¹²⁴ Therefore, courts must admit any relevant extrinsic evidence regarding the parties’ intentions to supplement the written agreement.¹²⁵

In addition to the approaches in *Thompson* and *Brown*, the Supreme Court of California in *Masterson v. Sine* employed a third approach to introducing parol evidence.¹²⁶ In that case, the court focused on the credibility of extrinsic evidence when deciding on the parties’ intent.¹²⁷ If

115. *Id.*

116. *Id.*

117. *Id.*

118. *Thompson v. Libby*, 26 N.W. 1, 2 (Minn. 1885).

119. *See generally* *Air Safety, Inc. v. Teachers Realty Corp.*, 706 N.E.2d 882 (Ill. 1999); *See also generally* *AM Int’l, Inc. v. Graphic Mgmt. Assocs., Inc.*, 44 F.3d 572 (7th Cir. 1995).

120. *See generally* *Air Safety, Inc. v. Teachers Realty Corp.*, 706 N.E.2d 882 (Ill. 1999); *See also generally* *AM Int’l, Inc. v. Graphic Mgmt. Assocs., Inc.*, 44 F.3d 572 (7th Cir. 1995).

121. *Brown v. Oliver*, 256 P. 1008, 1009 (Kan. 1927).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Masterson v. Sine*, 436 P.2d 561, 563–64 (Cal. 1968).

127. *Id.*

a court finds that the extrinsic evidence is credible, then the evidence is admissible.¹²⁸ Even if it is unclear whether parties to a written contract intended an agreement to be complete, evidence of a separate oral agreement is potentially admissible to prove the terms of the contract.¹²⁹ However, the court provided that when a party seeks to introduce external evidence into court, that evidence must represent an agreement that parties would naturally make separately from the main agreement, given their actual situation and the circumstances when drafting their agreement.¹³⁰ Such a representation lends credence to the credibility of the evidence.¹³¹

Three commonly applied exceptions to the parol evidence rule include the collateral contract exception, the ambiguity exception, and the fraudulent inducement exception.¹³² The collateral contract exception requires that 1) the extrinsic evidence is not distinct and independent from the original written agreement; 2) the extrinsic agreement must not contradict the express or implied terms of the written contract; and 3) a court examining the parol evidence must not expect that the parties would ordinarily include the extrinsic evidence in a written agreement.¹³³ For example, the Supreme Court of Texas admitted oral testimony parol evidence to a debt agreement.¹³⁴ The parol evidence demonstrated that the lender agreed to forgive the borrower's debt in exchange for an agreement that enabled the lender to claim the losses that belonged to the borrower and to sell specified assets owed to the lender well below market value.¹³⁵ The court held that this oral arrangement was consistent with the existing written agreement, was supported by adequate consideration, and was ultimately collateral to the parties' written agreement.¹³⁶

The second exception, the ambiguity exception, permits using parol evidence to determine the meaning of vague or uncertain language within the written contract, capable of having more than one meaning.¹³⁷ A third exception is the fraudulent inducement exception.¹³⁸ Fraudulent inducement is generally defined as a material misrepresentation that

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine v. Buki, 767 S.E.2d 459 (Va. 2015).

133. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine v. Buki, 767 S.E.2d 459 (Va. 2015).

134. *See* West v. Quintanilla, 573 S.W.3d 237 (Tex. 2019).

135. *Id.*

136. *Id.*

137. *Id.*

138. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

persuades another to enter into an agreement.¹³⁹ The elements of such a cause of action generally require that a party seeking to induce another to enter an agreement or make a purchase falsely represents material facts to induce another to enter an agreement to their detriment, thus giving rise to damages.¹⁴⁰ First, the party making the representations must knowingly and intentionally seek to influence the other party to enter the agreement through deception.¹⁴¹ Second, the aggrieved party must reasonably rely on these false representations in entering the agreement.¹⁴² Finally, the aggrieved party must have suffered damages or harm because of their reliance on and entrance into the agreement.¹⁴³ In employing this exception, some states only allow a party to introduce parol evidence so long that it does not directly contradict the main written contract.¹⁴⁴

Some legal scholars state that smart contracts prohibit the use of parol evidence because smart contract creators cannot encode complex promises like NFT utilities into a smart contract, making the smart contract completely integrated.¹⁴⁵ These writers posit that a party will not succeed in arguing that a smart contract incorporates terms outside of the encoded smart contract. A problem arises, however, in determining whether the law should view smart contracts as completely integrated agreements in the context of utility NFTs since these projects commonly offer membership benefits not encapsulated into a smart contract's code.¹⁴⁶ The decision to hold smart contracts as completely integrated will eliminate one area of remedy for NFT purchasers subjected to an NFT rug pull by eliminating their ability to introduce an NFT's roadmap to a court hearing a contract dispute or claim.¹⁴⁷ Instead, courts should employ approaches akin to *Brown* and *Masterson* and allow extrinsic evidence to combat NFT rug-pull disputes and enable individuals subjected to rug-pulls to receive remedy.¹⁴⁸

139. See e.g. 48 AM. JUR. *Proof of Facts* 3d 329 (Originally published in 1998).

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. Emerson, *supra* note 101.

145. Cohn et al., *supra* note 16; Kalantarova, *supra* note 16.

146. Ng, *supra* note 17.

147. See *Thompson v. Libby*, 26 N.W. 1, 2 (Minn. 1885); See also *Masterson v. Sine*, 436 P.2d 561, 563–64 (Cal. 1968); See *Brown v. Oliver*, 256 P. 1008, 1009 (Kan. 1927).

148. See *Thompson v. Libby*, 26 N.W. 1, 2 (Minn. 1885); See also *Masterson v. Sine*, 436 P.2d 561, 563–64 (Cal. 1968); See *Brown v. Oliver*, 256 P. 1008, 1009 (Kan. 1927).

III. ANALYSIS

A strict application of the parol evidence rule to NFTs harms consumers and ignores promises that directly impacted the formation of contracts for these digital assets. If smart contracts for NFTs are considered completely integrated, then NFT projects can, for example, satisfy their end of the transaction by selling an NFT JPEG in exchange for Ethereum.¹⁴⁹ But how can the law ignore an NFT's roadmap and promised utilities, which induce individuals to purchase the NFT? In this context, a smart contract should be considered partially integrated because it cannot include all of the abstracted elements of a roadmap.¹⁵⁰ Furthermore, the additional promised utilities in an NFT roadmap demonstrate the intent of the NFT team to provide more than just the token in exchange for a customer's payment.¹⁵¹

The first challenge a party must overcome if they are seeking to introduce parol evidence to supplement a smart contract is the test a court will employ to determine if an agreement is completely integrated.¹⁵² Some argue that because a smart contract cannot include external information and can only apply to the encoded terms of the smart contract, disputes about expectations to the parol evidence rule will be "slim to none."¹⁵³ These writers align with the view of the Supreme Court of Minnesota in *Thompson v. Libby* because they assert that a smart contract, when examining its four corners, is a complete and definite expression of the parties' agreement.¹⁵⁴ So, hypothetically, if Kevin Hart transacted NFTs to customers via a smart contract but failed to deliver on any of the promised utilities from his "Confessions from the Hart" project, which promised merchandise, entrance to future metaverse events, the ability to earn HART coins, and the promise of a card game for NFT holders, he would face no repercussions under contract law because he succeeded in transacting the NFT in exchange for cryptocurrency in a valid smart contract transaction.¹⁵⁵

Intuitively, this interpretation that the smart contract completely encapsulates the transaction between the NFT issuer and the customer

149. Cohn et al., *supra* note 16; Kalantarova, *supra* note 16.

150. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine v. Buki, 767 S.E.2d 459 (Va. 2015).

151. Klein, *supra* note 9; Radcliffe & Imp, *supra* note 40.

152. Klein, *supra* note 9; Radcliffe & Imp, *supra* note 40.

153. Kalantarova, *supra* note 16.

154. See *Brown*, 256 P. at 1009; Cohn & Abrams, *supra* note 92; Kalantarova, *supra* note 16.

155. Klein, *supra* note 9.

seems incorrect on its face.¹⁵⁶ Such an approach will bar all evidence showing how a project's advertising of its NFT roadmap on its website and through other materials enticed individuals to purchase the NFT.¹⁵⁷ Contracts are promises that the law will enforce.¹⁵⁸ If a party fails to deliver on its promises and breaches the contract, the law provides remedies for a harmed party, commonly through damages or specific performance.¹⁵⁹ Consequently, a smart contract in the NFT context should not be viewed as completely integrated because, as seen with Kevin Hart's project, ownership of his NFT involved promises of owning more than a Kevin Hart token.¹⁶⁰

Courts employing the approaches used in *Brown v. Oliver* and *Masterson v. Sine* would likely admit extrinsic evidence, including an NFT roadmap.¹⁶¹ In *Brown*, the court focused on the reliability of the extrinsic evidence pertaining to the parties' intent on the degree of contract integration.¹⁶² In *Masterson*, the court focused on the credibility of the extrinsic evidence.¹⁶³ Of course, these courts will have to examine the facts of a given matter, but such approaches do not bar any extrinsic evidence outright like the approach in *Thompson v. Libby*.¹⁶⁴ Thus, an individual seeking to admit parol evidence will fare better in front of a court that is willing to examine parol evidence in their case.

In states where courts strictly apply the parol evidence rule, a party must plead a valid exception to the rule.¹⁶⁵ As stated, such exceptions include the collateral contract exception, the ambiguity exception, and the fraudulent inducement exception.¹⁶⁶ Starting with the collateral exception, a party must demonstrate that 1) the extrinsic evidence is not distinct and independent from the original written agreement; 2) the extrinsic agreement must not contradict the express or implied terms of the written contract; and 3) a court examining the parol evidence must not expect that

156. Kalantarova, *supra* note 16. *See also* Masterson v. Sine, 436 P.2d 561, 563–64 (Cal. 1968); *Brown*, 256 P. at 1009.

157. *See e.g.* Thompson v. Libby, 26 N.W. 1 (Minn. 1885).

158. contract, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/contract>, [https://perma.cc/99EU-SDSA].

159. *Id.*

160. Klein, *supra* note 9; *See also* Masterson, 436 P.2d at 563–64; *Brown*, 256 P. at 1009.

161. *See* Klein, *supra* note 9; *See also* Masterson, 436 P.2d at 563–64.

162. *See* *Brown*, 256 P. at 1009.

163. *See* Masterson, 436 P.2d at 563–64.

164. *See* *Brown*, 256 P. at 1009; *See also* Masterson, 436 P.2d at 563–64.

165. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine v. Buki, 767 S.E.2d 459 (Va. 2015).

166. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine v. Buki, 767 S.E.2d 459 (Va. 2015).

the parties would ordinarily include the extrinsic evidence in a written agreement.¹⁶⁷

The first element requires the party to demonstrate that the extrinsic evidence is neither distinct nor independent from the original written agreement.¹⁶⁸ A smart contract, composed of instructions communicated through code, cannot incorporate an NFT's roadmap's more abstract utilities, like the Swipa project's charitable donations, the development of video games, and access to an NBA star.¹⁶⁹ But, such utilities entice individuals to purchase an NFT prior to the execution of a smart contract. A look at the code of Swipa's smart contract on the website Etherscan will demonstrate that the smart contract excludes any reference to the roadmap nor any capability to capture its roadmap's promises.¹⁷⁰ This fact raises a problem with how the law should view the NFT's "original written agreement." The law should look at the entirety of the NFT offering, including the promised benefits of ownership, rather than solely observing the contract code when considering what constitutes the original written agreement in this context. To hold otherwise would limit the law's ability to analyze the entire transaction because the medium of smart contracts does not allow for the coding of complex promised utilities. A utility NFT transaction intertwines the smart contract, promised utilities, and NFT.

The same consideration for the original agreement must also apply to the extrinsic agreement. A roadmap and its promised utilities will likely qualify as an additional or collateral agreement because the consideration exchanged in the smart contract transaction gives rise to the ability to receive the promised utilities of owning the NFT.¹⁷¹ The exchange of additional consideration for access to roadmap utilities is counterintuitive to the structure of Utility NFTs because projects premise NFT roadmaps on the idea that an individual receives such utilities through ownership of the NFT. Thus, the extrinsic evidence in the form of a roadmap is neither distinct nor independent from the written code and is collateral to the smart contract code.¹⁷²

167. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine v. Buki, 767 S.E.2d 459 (Va. 2015).

168. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine v. Buki, 767 S.E.2d 459 (Va. 2015).

169. Dator, *supra* note 9; Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17.

170. See *SwipaTheFox Contract*, ETHERSCAN, <https://etherscan.io/address/0x574ee20beb697c4870226671b8e1e30b6b64c755#code> [<https://perma.cc/9RPF-TL6X>].

171. *Id.* See also Klein, *supra* note 9; Dator, *supra* note 9; Beyer, *supra* note 9.

172. *SwipaTheFox Contract*, *supra* note 170; Klein, *supra* note 9; Dator, *supra* note 9; Beyer, *supra* note 9.

The second element, which states that the party must demonstrate that the extrinsic agreement must not contradict the express or implied terms of the written agreement, again requires a case-by-case analysis.¹⁷³ The smart contract exists more as a mode of processing a transaction on the blockchain than a written agreement that includes complex promises like those offered by NFT roadmaps. Thus, the agreement, in the form of the roadmap, is unlikely to contradict any smart contract terms.

Finally, the third element requires that the party demonstrate that the court examining the parol evidence must not expect the parties to ordinarily include the extrinsic evidence in a written agreement.¹⁷⁴ For example, a court examining a smart contract, like Swipa's, would likely understand, through expert testimony, that the terms of a smart contract are unable to include the abstract promises made on a roadmap, and thus not considered as part of a smart contract's code.¹⁷⁵

The success of a roadmap under the collateral contract is contingent on how the law will view the first element. A court examining a roadmap as a collateral contract must determine that it is not independent nor distinct from the written code.¹⁷⁶ Reaching this determination requires that the law looks outside the smart contract code in defining the "original written agreement" because of the code's inability to communicate complex promises like NFT utilities.¹⁷⁷ Only in that case may an NFT purchaser successfully introduce an NFT roadmap as a collateral contract.

The second exception, the ambiguity exception, will not come into play in the context of smart contracts pertaining to utility NFTs.¹⁷⁸ The terms of a smart contract are unambiguous because they take the form of concrete coded sets of instructions.¹⁷⁹ In this context, the transaction is quite simple. An NFT project transacts the NFT asset for cryptocurrency.¹⁸⁰ The problem arises when NFT projects fail to deliver the promised benefits of NFT ownership once that transaction occurs.

173. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine v. Buki, 767 S.E.2d 459 (Va. 2015).

174. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine v. Buki, 767 S.E.2d 459 (Va. 2015).

175. Dator, *supra* note 9; Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17.

176. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

177. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

178. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

179. Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17.

180. Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17.

The final exception is the fraudulent inducement or fraud in the inducement exception.¹⁸¹ This exception also requires a case-by-case analysis.¹⁸² However, like the collateral contract exception, this exception, theoretically, poses an opportunity for success. But the law has yet to examine the fraud in the inducement exception in this context.

First, a party seeking a fraud in the inducement claim must demonstrate that the NFT team knowingly and intentionally sought to achieve a contract through deception.¹⁸³ In looking at the Baller Ape and Swipa projects as examples, we can see where a party may succeed and fail under this element in pursuing a fraudulent inducement claim.¹⁸⁴ A project like “Baller Ape,” where the project team took the \$2.6 million obtained at the project’s mint and immediately pulled the rug, may be a quality candidate under this test because the project team seemingly had no intention of delivering any utility and is not relaunching the project.¹⁸⁵ In contrast, with the Swipa project, a party may satisfy the first element by proving that the Swipa team made the roadmap with no intention to deliver on its promised utilities and instead used such a roadmap to induce individuals to purchase the NFT.¹⁸⁶ However, because the Swipa NFT is seeking a relaunch, a party seeking remedy under this exception is unlikely to succeed because the project is exerting effort to provide owners with some of its promised utility.¹⁸⁷

The second requirement is that an aggrieved party must reasonably rely on the false representations and enter an agreement.¹⁸⁸ A plaintiff will likely succeed under this prong because roadmaps are common in NFT projects.¹⁸⁹ A project inducing an individual to purchase an NFT because of promised utility will likely constitute reasonable reliance.¹⁹⁰ Finally, the

181. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

182. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

183. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

184. Dator, *supra* note 9; McGinley, *supra* note 74.

185. McGinley, *supra* note 74.

186. Dator, *supra* note 9; *see* Front Office Sports, *supra* note 60.

187. Dator, *supra* note 9; *see* Front Office Sports, *supra* note 60; *See also* LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

188. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

189. Dator, *supra* note 9; Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17.

190. Dator, *supra* note 9; Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17; *see also* LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

aggrieved party must have suffered damages or harm because they relied on the inducement and entered into an agreement.¹⁹¹

Individuals enticed to purchase NFTs because of a roadmap and purchased those NFTs will have suffered damages in the form of the money they spent on the NFT.¹⁹² Thus, this third exception offers a path to introducing extrinsic evidence in the form of roadmaps to supplement a smart contract.

In sum, the fraud on the inducement exception and the collateral contract exception may offer narrow opportunities where an individual harmed by an NFT rug-pull may successfully introduce parol evidence to supplement a smart contract.¹⁹³ The potential successful employment of these exceptions may be an essential tool available to purchasers who seek to hold NFT projects accountable for their fraud and also prevent future projects from carrying out fraud.

IV. CONCLUSION

Utility NFT projects offer several benefits to holders of their NFTs.¹⁹⁴ NFT projects roll out these utilities according to a roadmap.¹⁹⁵ Unfortunately, seemingly fraudulent activity is rampant in the industry.¹⁹⁶ Projects advertise ownership utilities to potential customers but fail to deliver the project's promised ownership benefits once the transaction is complete.¹⁹⁷ The NFT rug pull is a plague that has led onlookers to view the NFT space with distrust. A byproduct of this distrust is the holding of

191. Dator, *supra* note 9; Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17; *see also* LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459.

192. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459; *see also* Dator, *supra* note 9; Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17; McGinley, *supra* note 74.

193. LEGAL INFO. INST., *supra* note 101; Emerson, *supra* note 101; Devine, 767 S.E.2d 459; *see also* Dator, *supra* note 9; Ng, *supra* note 17; Levi, *supra* note 17; Halpern, *supra* note 17; McGinley, *supra* note 74.

194. *See e.g.* Klein, *supra* note 9; Rossow, *supra* note 10; Dator, *supra* note 9; Department of Justice, *supra* note 48; BINANCE ACAD., *supra* note 45; Beyer, *supra* note 9; McGinley, *supra* note 74.

195. *See e.g.* Klein, *supra* note 9; Rossow, *supra* note 10; Dator, *supra* note 9; Department of Justice, *supra* note 48; BINANCE ACAD., *supra* note 45; Beyer, *supra* note 9; McGinley, *supra* note 74.

196. *See e.g.* Klein, *supra* note 9; Rossow, *supra* note 10; Dator, *supra* note 9; Department of Justice, *supra* note 48; BINANCE ACAD., *supra* note 45; Beyer, *supra* note 9; McGinley, *supra* note 74.

197. *See e.g.* Klein, *supra* note 9; Rossow, *supra* note 10; Dator, *supra* note 9; Department of Justice, *supra* note 48; BINANCE ACAD., *supra* note 45; Beyer, *supra* note 9; McGinley, *supra* note 74.

the NFT market hostage from reaching its potential to form meaningful online communities.

Despite this plague of fraud, individuals seeking damages because of the misrepresentation by NFT sellers face an uncertain road to a remedy. Questions like whether a smart contract is fully integrated further cloud the path to holding NFT fraudsters accountable for their deceit. If, as some legal scholars propose, a smart contract fully integrates the elements of a crypto-based transaction, how can NFT purchasers hold NFT projects liable for failing to deliver on their promised utilities advertised before the NFT's mint?¹⁹⁸ As demonstrated, the smart contracts governing these NFT transactions cannot put into code the promised utilities included in roadmaps that entice individuals to purchase NFTs.¹⁹⁹ Because of the nature of an NFT smart contract transaction with an accompanying roadmap, courts must not construe smart contracts as completely integrated. Instead, they must allow the introduction of parol evidence, specifically an NFT's roadmap. If the law were to hold otherwise, the law would view an NFT exchange as complete once the purchaser receives the NFT, notwithstanding any failure to deliver on promised ownership benefits.²⁰⁰ And such a view would also permit projects to advertise promises they are unlikely to deliver on. The ultimate effect, however, is deterring individuals from entering the NFT space and causing those already in it to exit.

Contract law seeks to enforce an agreement between parties rather than allow fraudulent activity under a contract to fester.²⁰¹ If the exchange ends after the execution of the smart contract, NFT purchasers may face an uphill battle toward recourse when an NFT project pulls out the rug from underneath them. If NFT purchasers face a court that ignores the byproduct of holding a smart contract as completely integrated, they should seek to employ the fraud on the inducement and collateral contract exceptions to the parol evidence rule. Under these legal avenues, NFT purchasers can attempt to admit a roadmap as additional evidence, outside of the smart contract, to demonstrate that NFT projects failed to deliver upon their promised utilities. By holding the smart contract and a roadmap as intertwined components of the written agreement, NFT purchasers will achieve a crucial step towards holding NFT projects accountable.

198. Ng *supra* note 17. The author addresses this fact when he states that litigation attorneys may no longer be litigating the “four-corners” of contracts, but instead may be expanding into understanding the intent of the code.

199. *Id.*; Levi, *supra* note 17; Halpern, *supra* note 17.

200. Cohn et al., *supra* note 16; Kalantarova, *supra* note 16.

201. LEGAL INFO. INST., *supra* note 158.

Accountability is paramount to combatting rampant fraud and repairing the damaged reputation of the NFT space.