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WHITE PAPER ALERT

California -
Fraud Exception to Parol Evidence Rule

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Riverisland Cold Storage v. Fresno-Madera Prod. Credit Ass'n (Cal. Supreme Ct. - Jan. 14, 2013)

In an amazing ruling the California Supreme Court today unanimously overrules longstanding precedent -- first articulated in 1935 -- holding that parties can make fraud claims - even if those claims are inconsistent with the express terms of a written contract.

In short, *Bank of America v. Pendergrass* (1935) 4 Cal.2d 258, 263 bites the dust.

Riverisland Cold Storage, Inc. v. Fresno-Madera Prod. Credit Ass'n, was an action against a creditor alleging causes of action for fraud, negligent misrepresentation, rescission, and reformation, arising from a breach of a written forbearance agreement. In reversing the trial court order granting the defendant's motion for summary judgment, the court held plaintiffs' evidence of misrepresentation fell within the fraud exception to the parol evidence rule. As a result, the evidence should have been admitted to raise a triable issue of material fact in opposition to the motion.

The court wrote: "We conclude that the *Pendergrass* court did not intend its limitation on the fraud exception to the parol evidence rule to extend beyond evidence of promissory fraud. Like the *Greene* court, we decline to apply its limits where the party seeking admission of the parol evidence has alleged that the other party misrepresented the content of the written contract and thereby induced execution of the contract. Plaintiffs' extrinsic evidence of the alleged misrepresentations made by defendant's representative should have been admitted in opposition to defendant's motion for summary judgment."

This will make fraud claims - and rescission claims based on fraud - ridiculously simple to assert. The California Supreme Court argues this will result in a net decrease in fraud, since now you cannot defraud people and then write a contract to cover your fraud. But this seems an unlikely result in practice.

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Prior to this decision, a party could not avoid a contract by claiming the other side orally said something different from the terms of an integrated contract. Now they can. Worse yet, as long as a party has their own testimony, it appears you avoid summary judgment as well. This appears to create a great incentive to “recall” oral statements by the other side, inconsistent with a contract that did not turn out as a party hoped.

It's a big day for civil litigation in California. For better or worse...

Please contact us with any questions

A copy of the decision is: [HERE](#)

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