CALIFORNIA SUPREME COURT OVERRULES 78-YEAR-OLD PENDERGRASS DECISION AND REESTABLISHES ADMISSIBILITY OF ORAL MISREPRESENTATIONS TO VITIATE AN INTEGRATED WRITTEN AGREEMENT

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Although the parol evidence rule is intended to make the terms of an integrated written document the exclusive evidence of the parties' agreement, the fraud exception allows a party to introduce extrinsic evidence to support an allegation that the agreement was tainted by fraud. *See* Cal. Code Civ. P. § 1856; Cal. Civ. Code § 1625. However, in 1935, the California Supreme Court established a significant limitation on the fraud exception. In *Bank of America National Trust and Savings Assn. v. Pendergrass*, 4 Cal.2d 258 (1935), the Court held that evidence offered to prove fraud "must tend to establish some independent fact or representation, some fraud in the procurement of the instrument or some breach of confidence concerning its use, and not a promise directly at variance with the promise of the writing." *Id*. at 263. Although several California courts have criticized the holding in *Pendergrass*, it has remained good law for more than 75 years.

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On January 14, 2013, however, the California Supreme Court overruled *Pendergrass* and its progeny. In *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association*, 55 Cal. 4th 1169 (2013), the Court held that evidence of an alleged oral misrepresentation of the written terms of an agreement was admissible. The Supreme Court cited a number of "good reasons" for reconsidering *Pendergrass*, including: (1) the limitation is not supported by the statute codifying the parol evidence rule and the fraud exception; (2) the limitation is difficult to apply, depends on artificial distinctions and has led to unnecessary complexities; (3) the limitation conflicts with the Restatements, most treatises and the law of most other jurisdictions; (4) the limitation may actually provide a shield for fraudulent conduct; and (5) the *Pendergrass* ruling departed from established law at the time it was decided, without justification.

Mr. and Mrs. Workman, Riverisland Cold Storage, Inc. and the Workman Family Living Trust ("Plaintiffs") were unable to make payments due on a loan given by defendant Fresno-Madera Production Credit Association ("Defendant"). In an agreement dated March 26, 2007, Plaintiffs restructured their debt and Defendant promised not to take any action to enforce its rights until July 1, 2007, if Plaintiffs made certain payments. Plaintiffs also pledged eight additional parcels of land to secure the debt. Plaintiffs failed to make the payments required by the restructuring agreement and, on March 21, 2008, Defendant issued a notice of default. Plaintiffs subsequently repaid the loan and sued Defendant, asserting fraud and negligent misrepresentation. They alleged that, prior to the parties' entry into the restructuring agreement, Defendant's vice president confirmed orally that the loan would be extended for two years (instead of three months, as provided in the written agreement) in exchange for adding only two additional parcels as collateral. Defendant moved for summary judgment, contending that Plaintiffs could not prove their claims because the parol evidence rule barred the inclusion of any evidence that would directly contradict the terms of the written agreement. Relying on *Pendergrass*, the trial court granted summary judgment. The Court of Appeal reversed the trial court, holding that *Pendergrass* is limited to cases involving promissory fraud.

The parol evidence rule both serves an evidentiary purpose and determines the enforceable terms of an integrated written agreement. *See Riverisland*, 55 Cal. 4th at 1174. Code of Civil Procedure section 1856(f) establishes an exception to the parol evidence rule permitting the admission of evidence offered not to alter the terms of the agreement, but to challenge the validity of the agreement itself. *See* Cal. Code Civ. P. § 1856(f); *Riverisland*, 55 Cal. 4th at 1174-75 ("Evidence to prove that the instrument is void or voidable for mistake, fraud, duress, undue influence, illegality, alteration, lack of consideration, or another invalidating cause is admissible. This evidence does not contradict the terms of an effective integration, because it shows that the purported instrument has no legal effect.") (citing 2 Witkin, Cal. Evidence (5th ed. 2012) Documentary Evidence, § 97, p.242). In addition, Section 1856(g) is explicit that "[t]his section does not exclude other evidence . . . to establish . . . fraud." Cal. Code Civ. P. § 1856(g). The *Pendergrass* court had nonetheless imposed a limitation on the fraud exception. Yet, in 1977, the California Law Revision Commission proposed modifications to the statutory formulation of the parol evidence rule making no mention of Pendergrass and its limitations on the fraud exception. *See Riverisland*, 55 Cal. 4th at 1178-79. The Legislature later

adopted the Commission's proposed revisions without substantive change to provisions permitting evidence relevant to the validity of an agreement and evidence of fraud. *See* Recommendation Relating to Parol Evidence Rule (Nov. 1977) 14 Cal. Law Revision Com. Rep. (1978) p. 152; Stats. 1978, ch. 150, § 1, pp. 374-75.

Considering the state of the parol evidence rule at the time *Pendergrass* was decided, the Supreme Court found that earlier cases routinely permitted parol evidence to prove allegations of fraud, including promissory fraud. *See, e.g. Ferguson v. Koch*, 204 Cal. 342, 347 (1928) ("Parol evidence is always admissible to prove fraud, and it was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud."); *Langley v. Rodriguez*, 122 Cal. 580, 581-82 (1898) ("[C]ases are not infrequent where relief against a contract reduced to writing has been granted on that ground that its execution was procured by means of oral promises fraudulent in the particular mentioned, however variant from the terms of the written engagement into which they were the means of inveigling the party."). The Supreme Court also found the cases on which the *Pendergrass* decision was based to be inapposite. These conclusions led the Court to determine that Pendergrass "was an aberration" as its holding "failed to account for the fundamental principle that fraud undermines the essential validity of the parties' agreements." *Riverisland*, 55 Cal. 4th at 1182. The Court did caution, however, that the intent element of promissory fraud requires more than proof of an unkept promise or mere failure to perform. And it left for another day the question whether a party who does not read a written agreement before its execution can be found reasonably to have relied on contradictory oral statements made before entering into the agreement, as all allegations of fraud require a showing of justifiable reliance. *See id*. at 1183.

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