California Real Property Journal

OFFICIAL PUBLICATION OF THE REAL PROPERTY LAW SECTION STATE BAR OF CALIFORNIA

Vol. 31, No. 2, 2013 www.calbar.ca.gov/rpsection

Redefining the Scope of the Fraud Exception to the Parol Evidence Rule: RiverIsland Cold Storage v. Fresno-Madera Credit Association

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I. INTRODUCTION

This article will review and summarize the opinion in *RiverIsland Cold Storage, Inc. v. Fresno-Madera Credit Ass'n*[1] and provide some drafting recommendations based on the holding of the case. The main issue in *RiverIsland* was the application of the fraud exception to the parol evidence rule—when fraud is raised as a defense to a contract enforcement action. In deciding *RiverIsland*, the California Supreme Court overruled *Bank of America v. Pendergrass*,[2] which, for over seventy-five years, articulated the law in California on the fraud exception to the parol evidence rule. By focusing on the competing considerations of enforcing contracts as written versus a party's right to be protected from fraud, the Court concluded that evidence of fraud in the inducement will not be precluded based on the parol evidence rule regardless of whether it contradicts a material term in the agreement.[3]

II. SUMMARY OF THE COURT'S OPINION

A. Factual Background

Fresno-Madera Credit Association made loans to RiverIsland Cold Storage, Inc. ("RiverIsland") secured by real estate.[4] RiverIsland became delinquent in making the payments required by the loan documents.[5] The credit association filed a notice of default.[6] Discussions between the credit association and RiverIsland ensued, resulting in a forbearance agreement.[7] RiverIsland did not make the payments required by the forbearance agreement.[8] RiverIsland then sued, alleging that the bank's vice president represented that if they pledged additional collateral, consisting of certain ranchland, the bank would forbear for two years.[9] The loan documents varied from the vice president's representations and listed eight parcels other than the ranchland and contained a forbearance period not of two years, but only three months.[10] The plaintiffs contended the vice president's representations were fraudulent.[11] They also contended they relied solely on his statements and never read the documents.[12] By the time suit was filed, the plaintiffs had paid off the loan.[13]

B. Procedural Background

As the facts indicate, *RiverIsland* was a case involving a dispute between the lender and the borrower-plaintiffs over the terms of a loan secured by real estate.[14] The trial court granted summary judgment in favor of the credit association, rejecting the plaintiffs' arguments that the parol evidence rule should not be applied to preclude evidence of fraud in the inducement.[15] The court of appeal reversed on the basis that the fraud alleged was a type of promissory fraud, not precluded by the parol evidence rule, and distinguished the case as not being subject to application of the *Pendergrass* rule precluding the introduction of evidence that might conflict with or alter the terms of the documents.[16] The California Supreme Court affirmed the holding of the court of appeal.[17]

C. Holding

In affirming the court of appeal decision, the California Supreme Court overruled *Pendergrass*, the 1935 case in which the Court broadly applied the parol evidence rule to exclude any evidence of fraud that contradicted the written agreement.[18] The Court determined that *Pendergrass* was (1) inconsistent with the statutes governing the parol evidence rule, particularly sections 1625 and 1856 of the California Code of Civil Procedure; (2) inconsistent with the law in the majority of states; and (3) inconsistent with the application of the parol evidence rule as found in the *Restatement of Contracts, Second*, as well as that of major treatises, such as *Corbin on Contracts*.[19] In arriving at its decision, the Court also focused on the difficulty in applying *Pendergrass*, the poor reasoning underlying the *Pendergrass* opinion and its inconsistency with both statutory and case law precedent in California at the time, and the observation that *Pendergrass* probably allowed more fraudulent conduct than it prevented.[20]

III. THE LAW BEFORE RIVERISLAND

A. Significant Cases

The Court based its analysis in *RiverIsland* on a number of prior cases. Those playing a prominent role in the Court's decision are discussed in this article. In addition, the Court considered Code of Civil Procedure section 1856 ("section 1856"), particularly subsections (f) and (g), the statutory language describing the parol evidence rule and its exceptions for fraud and illegality. For reference, section 1856 provides at subsection (a) a general definition for the parol evidence rule:

> Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of an oral agreement.

Subsection (f), the "broad exception" to the rule, provides: "Where the validity of the agreement is the fact in dispute, this section does not exclude evidence relevant to that issue." Subsection (g) states:

> This section does not exclude other evidence of circumstances under which the agreement was made or

to which it relates, as defined in Section 1860, or to explain an extrinsic ambiguity or otherwise interpret the terms of the agreement to establish illegality or fraud.

B. Cases Applying *Pendergrass*

In *RiverIsland*, the Court focused on the holding in the *Pendergrass* case:

> Our conception of the rule which permits parol evidence of fraud to establish the invalidity of the instrument is that it 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.[21]

The cases reviewed by the Court demonstrate the difficulty in applying *Pendergrass* and the pervasive confusion as to the correct application of its holding.

1. *Casa Herrera, Inc. v. Beydoun*

Casa Herrera, Inc. v. Beydoun was a malicious prosecution case in which the court of appeal affirmed the trial court; however, it determined that the claims in the underlying action were terminated on substantive grounds, since the evidence plaintiffs offered of fraud in the inducement were precluded by the parol evidence rule, a substantive rule of law.[22] As such, the prevailing party, the defendant, could sue the plaintiff for malicious prosecution since the suit was terminated in its favor on substantive grounds.[23] The Supreme Court affirmed the court of appeal decision, holding that termination of a breach of contract and fraud action based on the parol evidence rule satisfied the favorable termination element of a malicious prosecution claim.[24] The Court reiterated that the parol evidence rule is a rule of substantive law, not a procedural rule, and concluded that California courts have consistently rejected promissory fraud claims premised on prior or contemporaneous statements at variance with the terms of the written agreement.[25] The Court acknowledged the authority of *Pendergrass*, indicating that the courts of this state long ago rejected the idea that, when it contradicts the terms of the written agreement, a promise made without the intention to perform it may be offered to support a claim for fraud.[26]

2. *Duncan v. McCaffrey Group, Inc.*

In *Duncan v. McCaffrey Group, Inc.*, the defendants were developers of custom homes, and the plaintiffs purchased lots from them on which they also intended to build custom homes.[27] The plaintiffs sued, asserting a number of tort claims, including fraud based on the defendants' misrepresentations that it would build only custom homes in the subdivision.[28] The trial court sustained the developers' demurrers to the plaintiffs' fraud causes of action because the fraud allegations were inconsistent with the terms of the written agreement between the parties and therefore precluded by the parol evidence rule.[29] In considering the trial court's ruling, the court in *Duncan* observed that: "[t]he scope of the fraud exception to the parol evidence rule is the crux of this issue."[30]

The appellate court upheld the trial court's ruling, sustaining the demurrer.[31] In doing so, the court of appeal noted that although *Pendergrass* had been criticized as precluding certain claims of promissory fraud, it represented "a rational policy choice that has never been reconsidered by the Supreme Court."[32] The court reviewed multiple decisions applying *Pendergrass* and the parol evidence rule to fraud claims, "to establish some parameters for the parol evidence rule."[33] In conclusion, the court determined that since the agreements did not require the defendants to build only custom homes and specifically reserved to the defendants the right to build other types of homes, the plaintiffs could not introduce evidence of misrepresentations contrary to those terms.[34]

3. *Price v. Wells Fargo Bank*

In *Price v. Wells Fargo Bank*, the plaintiffs sought (and obtained) new loans from Wells Fargo to pay off existing loans incurred in connection with their farming and ranching operation.[35] When the loans became due, the plaintiffs attempted to restructure the loans, but missed payments and defaulted.[36] Although eventually the loans were paid off, the Prices sued Wells Fargo alleging fraud in the inducement, among other causes of action.[37] The trial court granted summary judgment for Wells Fargo.[38] The court of appeal upheld the summary judgment, and in doing so reviewed the fraud exception to the parol evidence rule.[39] The court viewed *Pendergrass* as precluding only certain types of promissory fraud:

> [the courts] have held that if, to induce one to enter into an agreement, a party makes an independent promise without any intention of performing it, this separate false promise constitutes fraud which may be proven to nullify the main agreement; but if the false promise relates to the matter covered by the main agreement and contradicts or varies the terms thereof, any evidence of the false promise directly violates the parol evidence rule and is inadmissible.[40]

The court noted that *Pendergrass* had been repeatedly criticized and that the distinction between the different forms of promissory fraud may be a distinction without a real difference.[41] It also pointed out that the prior decisions may simply reflect conflicting policies: how to interpret the fraud exception to the parol evidence rule to accommodate the competing interests between the enforcement of contracts as written and the objectives of tort law to discourage fraud.[42] The court concluded that *Pendergrass*, however, was controlling, and that it was easily applied in the case at hand.[43] As such, the court concluded that the promissory note the plaintiffs challenged was an integrated agreement and the alleged oral promises of Wells Fargo to the contrary directly contradicted the terms of the written agreement; accordingly, the plaintiffs were precluded by the parol evidence rule from introducing the misrepresentations.[44]

C. Cases Ignoring *Pendergrass*

In the mid- to late-1960s, the California Supreme Court decided three cases, each of which seems on its face to ignore not only *Pendergrass*, but to redefine the fraud exception to the

parol evidence rule. The cases represent the extreme to which the California Supreme Court had previously gone in undermining, but not overruling, *Pendergrass*.

1. Pacific Gas & Electric v. G.W. Thomas Drayage & Rigging Co.

Pacific Gas & Electric v. G.W. Thomas Drayage & Rigging Co. involved the interpretation of an express contractual indemnity clause.[45] The Court premised its opinion on the following statement:

> [t]he test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the evidence offered is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.[46]

The Court concluded that regardless of whether the words used in the contract appeared ambiguous on their face, the intent of the parties is primary and evidence concerning that intent should always be admissible, notwithstanding the parol evidence rule.[47] Thus, no question of ambiguity need be raised, only that the contract terms were reasonably susceptible to more than one interpretation.[48] The trial court's exclusion of the evidence of the party's intent was reversed.[49]

2. Delta Dynamics, Inc. v. Arioto

Delta Dynamics, Inc. v. Arioto, decided later in the same year as *G.W. Thomas Drayage & Rigging Co.*, involved the sale of locks by Delta to its distributor.[50] Delta sued for breach of contract.[51] The distributor claimed Delta's remedies were limited by the contract and attempted to introduce extrinsic evidence to demonstrate the meaning of the termination clause in the contract.[52] The trial court precluded the introduction of that evidence. The Supreme Court reversed and quoted verbatim its premise excerpted above in *G.W. Thomas Drayage & Rigging Co.*[53]

Dissenting, Justice Mosk stated that the Court was emasculating the parol evidence rule, since the defendant was clearly trying to bring in evidence of discussions that occurred during the negotiation phase of the contract.[54] He also noted that no finding of ambiguity was ever made to justify the Court's holding in this case.[55]

3. Masterson v. Sine

Masterson v. Sine involved the assignability of an option for the sale of real estate.[56] The debate involved a deed given by one of the parties.[57] Specifically, the deed did not contain any assignment language.[58] The Court reversed the trial court's exclusion of parol evidence regarding the assignability of the option.[59] The Court reasoned that there was nothing in the written agreement precluding the existence of an oral side agreement and thus the parol evidence rule was not violated because of the lack of a fully integrated document.[60] The Court also determined that the presumption that an ownership right was assignable as a matter of law did not preclude the offer of extrinsic evidence to show the contrary, since the absence of any assignability language in the contract meant the terms of the contract would not be contradicted.[61]

IV. ANALYSIS

A. Timing

The *RiverIsland* case is in many ways a prototypical lender liability case, involving alleged misrepresentations made by a lender in connection with the execution of certain loan restructuring agreements. Many factors probably proved significant in the Court's decision to review the case. The prolonged and severe economic downturn generated many more of these cases, as otherwise creditworthy borrowers began to default on their loans. Given the comprehensive nature of most commercial loan documents, it is difficult to conceive of a case where any misrepresentations that had been made would not somehow contradict the terms of the loan documents.

The California Supreme Court's response in *RiverIsland* was primarily an attempt to achieve some uniformity and consistency in the results reached in cases where the validity of a contract is questioned when an attempt is made to enforce it. A close reading indicates that the decision is not a wholesale attempt to provide borrowers with newly created avenues of relief. The *Pendergrass* case, which *RiverIsland* overrules, was itself a case that arose in 1935, during the Great Depression, with the opposite effect. No doubt the ever-increasing volume of litigation that has occurred since 1935, making the conflict in the decisions between the appellate courts more readily apparent, also influenced the Court's decision to review the *RiverIsland* case to utilize it as an opportunity to overrule *Pendergrass*.

The unanimous decision of the California Supreme Court may represent not so much a departure from prior law, but rather, an attempt to better control its caseload by clarifying previously contradictory case law addressing the fraud exception to the parol evidence rule. *RiverIsland* also represents a straightforward example of the fraud exception to the parol evidence rule, unclouded by the issue of the debtor's default.

B. Predictable Evolution or Pronounced Change?

The Court noted in *RiverIsland* that "[d]espite some criticism, *Pendergrass* has survived for over 75 years and the Courts of Appeal have followed it, albeit with varying degrees of fidelity."[62] In its opinion, the Court also cited several opinions contrary to or inconsistent with *Pendergrass*. For instance, in *Coast Bank v. Holmes*, the appellate court determined *Pendergrass* was inconsistent with the terms of section 1856 permitting a contract to be invalidated by a showing of fraud.[63] *Pacific State Bank v. Green* was another case permitting the introduction of parol evidence of a misrepresentation of facts contrary to the terms of the written agreement.[64]

Some courts have observed that the distinction between promises deemed consistent with the writing, and those considered inconsistent is "tenuous."[65]

Some of the appellate courts have avoided the dictates of *Pendergrass* by holding that it is not applicable to a fraud cause of action. For example, in *Cobbledick-Kibbe Glass Co. v. Pugh*, a court held that parol evidence regarding fraudulent representations concerning the contents of the agreement was

admissible, notwithstanding the defendant's failure to read the agreement.[66] But, in *West v. Henderson* the same court, several years later, reached the opposite result on similar facts and held that only prior representations independent of or consistent with the agreement are admissible.[67]

Other attempts to get around *Pendergrass* have focused on the distinction between consistent and inconsistent promises as to the terms of the agreement, without concern for the materiality of the inconsistent promises.[68]

The most frequently used distinction was to draw "a line between false promises at variance with the terms of a contract and misrepresentations of fact about the contents of the document."[69]

And, at least one court simply refused to apply *Pendergrass* when the parol evidence rule was raised in defense to the fraud in the inducement allegations.[70]

The history of the cases, as cited by the *RiverIsland* Court, indicates that *Pendergrass* was being acknowledged but not strictly followed by the appellate courts. Although the Court expresses its concern with the importance of precedent and the principle of *stare decisis*, going out of its way to justify its decision by reviewing the Legislative enactments,[71] the treatises, and the case law of other states, the Court's opinion made it clear that that Court had determined that it was time to formalize a change that for all practical purposes had already occurred.

The Court stated that its primary concern was with the difficulty of applying *Pendergrass*, rather than the constraints imposed upon it by precedent.[72] The Court states at the very beginning of its opinion, "[i]t [the fraud exception to the parol evidence rule] is difficult to apply."[73] Given the timing, the difficulty of applying *Pendergrass*, and the conflicts in the decisions between the courts of appeal and even within certain appellate courts, the time was ripe for overruling *Pendergrass*.

V. OTHER CONSIDERATIONS

It is unlikely that the tension between the parol evidence rule, which promotes the enforcement of contracts as written, and its exception allowing the admissibility of evidence tending to establish fraud in the inducement, will ever be totally eliminated. On its face, the California Supreme Court seems to say that evidence of fraud in the inducement must be considered by the trial court in assessing whether the contract itself is valid, regardless of whether that evidence contradicts the clear terms of the agreement and regardless of the materiality of the misrepresentations allegedly made. The issue of whether evidence of fraud is offered to modify or contradict the terms of the contract is irrelevant and must be disregarded. That being the case, all evidence of fraud must be admitted, when fraud is raised as a defense to a contract enforcement action.

The second and related issue is whether the Court's opinion will encourage litigants to turn every breach of contract case into a fraud case, since there will be little risk that the evidence of fraud will be precluded.

A third issue has to do with whether California permits parol evidence simply to demonstrate the intent of the parties, notwithstanding the fact that there is no claim of ambiguity or fraud, but based simply on the fact that a party argues that the contract is capable of more than one interpretation or has a secondary meaning (see the discussion in Part III.C above).

The impact of these issues will be felt most at the demurrer and summary judgment stages and will favor the proponent of the evidence of fraud. At the trial stage, the impact will more than likely be minimal because the burden of proof is not affected.

A. Guidelines for Future Cases

Although *RiverIsland* does not represent a sweeping change in the law, rather a much-needed clarification of it, it may have minimal impact on the day-to-day practices of attorneys.[74] Nonetheless, some guidelines are offered for consideration by practitioners.

1. Drafting Guidelines

In drafting commercial agreements, the following terms will be essential: (1) the entirety or integration clauses, i.e., that the agreement expresses the entire agreement of the parties, and any prior or contemporary oral or other agreements are merged into this agreement; (2) both parties participated in the drafting, review, or creation of the agreement and the principle that any provisions lacking clarity should be construed against the drafter must be waived; (3) the agreement is the sole expression of the parties' intent; and (4) each party has had the opportunity to read and review the agreement before signing it and in doing so, did not rely on any representations of the other party. In the alternative to (4), a statement may be made that any failure to review the agreement before signing it precludes any claim that it does not represent the true agreement of the parties.

Transactional attorneys may also want to enhance their understanding of the parol evidence rule and its exceptions by referring to the Restatement and treatises referred to by the California Supreme Court in *RiverIsland*.

2. Litigation Guidelines

a. The Law of Other States

The case of *Airs International Inc. v. Perfect Scents Distributors*[75] notes that Hawaii, Oregon, and Arizona admit any evidence of fraud, notwithstanding the parol evidence rule to demonstrate fraud in the inducement and concludes that this is the policy of a majority of states.[76] That opinion also makes note that the Arizona *Pinnacle Peak Developers v. TRW Investment Corp.*[77] case cites all of the cases from various jurisdictions.[78] The *Pinnacle Peak* case identifies the following jurisdictions as "allow[ing] evidence of promissory fraud, notwithstanding the parol evidence rule": Florida, Illinois, Michigan, Minnesota, Montana, New York, North Carolina, Pennsylvania, Texas, Vermont, and Virginia.[79] The Arizona court further noted that there is a wide variation among the states in how the parol evidence rule is applied when fraud in the inducement is alleged.[80]

b. The Restatement of Contracts

The *Restatement of Contracts, Second* sections 213 (Effect of Integrated Agreements on Prior Agreements (Parol Evidence Rule)), 214 (Evidence of Prior or Contemporaneous Agreements and Negotiations), and 215 (Contradiction of Integrated Terms) state that evidence of fraud is not restricted by the parol evidence rule.

c. Treatises

Volume 6 of *Corbin on Contracts*, section 25.20[A] discusses the fraud exception to the parol evidence rule. Corbin observes:

> The best reason for allowing fraud and similar undermining factors to be proven extrinsically is the obvious one: if there was fraud, or a mistake or some other form of illegality, it is unlikely that it was bargained over or will be recited in the document. To bar extrinsic evidence would be to make the parol evidence rule a shield to protect misconduct or mistake.[81]

3. Subsequent Cases

Since the *RiverIsland* case was decided, it has been cited by one California case, *Jolley v. Chase Home Finance, LLC*,[82] and a Ninth Circuit case from the Central District of California, *Negrete v. Allianz Life Insurance Co.*,[83] as well as in several unpublished appellate court opinions: *Melman v. PDF Solutions, Inc.*;[84] *People v. Cross*;[85] and, *Insurance Co. of the West v. Engineered Systems & Construction, Inc.*[86] In addition, because so many prior California cases honored *Pendergrass*, more or less, until the decision in *RiverIsland*, many of them may remain viable authority.

VI. CONCLUSION

It remains to be seen whether Justice Mosk's concern that the fraud exception could completely swallow and "emasculate" the parol evidence rule will now come to pass. Some will argue that if, in fact, the fraud exception has killed the ability to preclude any defensive evidence of fraud in a breach of contract case, then the parol evidence rule died in this context long before *RiverIsland*, which simply put the nail in the coffin. However, the parol evidence rule remains alive and well after *RiverIsland*, as demonstrated by the precautionary statements made by the California Supreme Court. In essence, allowing evidence of fraudulent misrepresentations tends to establish only one of the five elements of fraud, i.e., that a misrepresentation was made. As the Court notes in *RiverIsland*, the evidence required to prove the most difficult elements of fraud, intent and justifiable reliance, will not be affected by the Court's decision. Intent will have to be established from circumstances other than the failure to perform the terms of the contract, and parties who claim they relied on any representations not contained in the contract will not be found justified in their reliance when they fail to read the documents. Thus, the concern that every contract enforcement action could be turned into a fraud case should be slight.

Susan Barilich has over 30 years experience as a trial attorney, with extensive courtroom experience. Her practice focuses on litigation in both State and federal courts, with an emphasis on business and commercial litigation and real estate litigation, as well as commercial and construction arbitrations. She is AV-rated by Martindale-Hubbell.

ENDNOTES

1 55 Cal. 4th 1169 (2013).
2 4 Cal. 2d 258 (1935).
3 *RiverIsland*, 55 Cal. 4th at 1182.
4 *Id.* at 1172–73.
5 *Id.* at 1173.
6 *Id.*
7 *Id.*
8 RiverIsland eventually paid the loans off, a factor that may have made the case a more desirable one to review, since the case was not complicated by the lender's defenses of non-payment and non-performance.
9 *RiverIsland*, 55 Cal. 4th at 1173.
10 *Id.* at 1172–73.
11 *Id.* at 1173.
12 *Id.*
13 *Id.*
14 *Id.* at 1172–73.
15 *Id.*
16 *RiverIsland Cold Storage, Inc. v. Fresno-Madera Prod. Credit Ass'n*, 191 Cal. App. 4th 611 (2011).
17 *RiverIsland*, 55 Cal. 4th at 1183.
18 *Bank of Am. v. Pendergrass*, 4 Cal. 2d 258 (1935).
19 *RiverIsland*, 55 Cal. 4th at 1176–79.
20 *Id.* at 1182–84.
21 *Id.* at 1175; *Pendergrass*, 4 Cal. 2d at 258, 263–64.
22 32 Cal. 4th 336, 343 (2004).
23 *Id.* at 344–45.
24 *Id.* at 343–44.
25 *Id.* at 345–47.
26 *Id.* at 346–47.
27 200 Cal. App. 4th 346 (2011).
28 *Id.* at 353–54.
29 *Id.* at 358–59.
30 *Id.* at 369.
31 *Id.*
32 *Id.*
33 *Id.* at 376.
34 *Id.* at 377.
35 213 Cal. App. 3d 465 (1989).
36 *Id.* at 471–72.
37 *Id.* at 474.
38 *Id.* at 470.
39 *Id.* at 483–84.
40 *Id.* at 484.
41 *Id.*
42 *Id.* at 485.
43 *Id.* at 485–86.
44 *Id.* at 486.
45 69 Cal. 2d 33 (1968).
46 *Id.* at 37.
47 *Id.* at 39.
48 *Id.* at 40.
49 *Id.* at 41.
50 69 Cal. 2d 525 (1968).
51 *Id.* at 526.
52 *Id.* at 527.
53 *Id.* at 528.
54 *Id.* at 531.

55 *Id.*
56 68 Cal. 2d 222 (1968).
57 *Id.* at 224.
58 *Id.* at 224–25.
59 *Id.* at 230–31.
60 *Id.*
61 *Id.*
62 *RiverIsland Cold Storage, Inc. v. Fresno-Madera Credit Ass'n*, 55 Cal. 4th 1169, 1174 (2013).
63 19 Cal. App. 3d 581 (1971).
64 110 Cal. App. 4th 375 (2003).
65 *Holmes*, 19 Cal. App. 3d at 591; *see also Simmons v. Cal. Inst. of Tech.*, 34 Cal. 2d 264, 274 (1949) (holding that parol evidence not inconsistent with the agreement is admissible to demonstrate lack of intent to perform the agreement, as distinguished from a "parol promise").
66 161 Cal. App. 2d 123(1958).
67 227 Cal. App. 3d 1578 (1991).
68 *Holmes*, 19 Cal. App. 3d at 592; *Shyvers v. Mitchell*, 133 Cal. App. 2d 569 (1955).
69 *RiverIsland Cold Storage, Inc. v. Fresno-Madera Credit Ass'n*, 55 Cal. 4th 1169, 1178 n.7 (2013); *see also Cont'l Airlines, Inc. v. McDonnell Douglas Corp.*, 216 Cal. App. 3d 388 (1989) (following *Pendergrass* in distinguishing between false promises and factual misrepresentations).
70 *Munchow v. Kraszewsk*, 56 Cal. App. 3d 831, 836 (1976) (holding that *Pendergrass* is inapplicable and permitting introduction of evidence of fraud).
71 The court's attempt to demonstrate that the Legislature has acknowledged the problem seems strained, although it provides some interesting background reading. If the Legislature had dealt with the problem, the court would not have had to.
72 *RiverIsland*, 55 Cal. 4th at 1182.
73 *Id.* at 1172.
74 Suffice it to say, however, that should litigants now be emboldened in their efforts to undo a contract by offering proof of fraud that directly contradicts its material terms, the prospect of drafting a completely "bullet-proof" contract has decidedly grown more dim.
75 902 F. Supp. 1141 (N.D. Cal. 1995).
76 *Id.* at 1146.
77 129 Ariz. 385, 631 P.2d 540 (Ariz. Ct. App. 1980).
78 *Id.* at 389–90.
79 *Id.* at 390.
80 *Id.* at 389.
81 6 CORBIN ON CONTRACTS § 25.20[A] (2009).
82 213 Cal. App. 4th 872 (2013).
83 No. CV 05-6838 CAS (MANx), CV 05-8908 CAS (MANx), 2013 U.S. Dist. LEXIS 27205 (C.D. Cal. Feb. 25, 2013).
84 No. 037703, 2013 Cal. App. Unpub. LEXIS 2112 (Mar. 22, 2013).
85 No. E055055, 2013 Cal. App. Unpub. LEXIS 1714 (Mar. 7, 2013).
86 No. D059661, 2013 Cal. App. Unpub. LEXIS 1417 (Feb. 26, 2013).