

DIRT Periodic Development for Wednesday, May 22, 2013
Riverisland Cold Storage v. Fresno-Madera Prod. Credit Ass'n

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Last month California finally abandoned its isolated position that the parol evidence rule barred testimony about fraud in a mortgage unless it involved something other than just changing the wording of the agreement. Here is the column that I wrote on that case for our Real Property Law Report.

SPEAKING ABOUT MORTGAGES: PAROL EVIDENCE OR THE DOCUMENT'S TEXT?

Riverisland Cold Storage v Fresno-Madera Prod. Credit Ass'n

Riverisland Cold Storage v Fresno-Madera Prod. Credit Ass'n (2013) 55 C4th 1169, the recent decision by the California Supreme Court permitting parol evidence to be admitted into evidence to show that a contract was tainted by fraud—even when the contention amounted to showing that the terms were other than what was printed in the document—probably shocks any California attorney who has practiced law here for less than the past 85 years, when *Bank of America v Pendergrass* (1935) 4 C2d 258 first announced a contrary rule, putting the parol evidence rule above the fraud argument.

That old supreme court rule tended to become gospel in the minds of California attorneys, especially if they were unfamiliar with the fact that the rule was out of sync with what most other jurisdictions held (and from what the Restatements of Torts and Contracts asserted). But on the other hand, for mortgage attorneys—whether practicing here or elsewhere—the *Riverisland* decision is little more than an 85-years-belated correction of a mistaken evidentiary ruling.

Riverisland allows a party to show that a mortgage loan arrangement was in fact different from what the documents said it was—in this case, that a debt restructuring agreement actually called for an eight-month forbearance and two additional pieces of security, even though the executed documents referred to only three months and eight additional parcels of land. Because that written agreement was integrated, signed, and initialed at the appropriate places, the borrowers' testimony about the oral agreement clearly constituted parol evidence that would vary or contradict the writing. This would be a clear violation of CCP §1856 unless it could fall within the fraud exception to the statute—which, under *Pendergrass*, it would not, because the claimed fraud was not “independent” of the variance.

When a document is involved in an ordinary transaction, the natural instinct of judges is to take it seriously: to ascertain its meaning from its own content (its four corners) and to avoid allowing extrinsic evidence be used to alter it. The parties are seen as masters of their own fate with regard to what they agreed on and signed, leaving it for judges to merely comprehend and enforce what they said.

But when the document involved is a mortgage, that principle of ordinary construction doesn't apply—it never has (and probably never will). Five hundred years ago, when the first