

SIGNED A FRAUDULENT AGREEMENT? YOU MAY HAVE A NEW ARROW IN YOUR QUIVER

It might have taken almost 100 years, but California finally got it right. At the beginning of this year the California Supreme Court provided additional protection against deceptive practices through expanding the fraud exception in the *Riverisland Cold Storage, Inc.* case. **Now, evidence from contract negotiations, such as real estate purchase/sale or loan agreements, may be used in an attempt to prove fraud and invalidate a written agreement.**

The general rule states that a signed written agreement is the controlling document containing the full and final expression of the parties' bargain. Its terms cannot be changed by any prior written or oral statement. There are few exceptions to this rule. Outside of California, courts have historically permitted evidence of oral or written statements made prior to the signing of the final agreement.

California, however, has had a narrower fraud exception rule until recently. From 1935 to 2013, an oral promise that directly contradicted the promise in a written agreement could not be used to invalidate a written agreement, **even in the case of fraud**. Instead, a party was required to offer evidence that established some independent fact or representation, preserving the sanctity of the written word but making it very difficult for victims of fraud to challenge a written contract.

This year, the California Supreme Court expanded the fraud exception in the *Riverisland* case. As a result:

- Now, a party who makes a fraudulent oral promise that directly contradicts the promise in the subsequent written agreement may no longer escape liability.
- The aggrieved party may use oral testimony from the beginning of the negotiation to the time the written agreement is signed to attempt to prove fraud.
- Another California court has since affirmed *Riverisland*, holding that a party's sophistication level or bargaining power has no bearing on its ability to use oral evidence to challenge a written agreement in a fraud case. A layperson and a lender have an equal opportunity to use the fraud exception to invalidate a written agreement.

There is no doubt the *Riverisland* decision benefits a party who has been harmed by a contract drafter who says one thing and then prepares an agreement that says another. Parties can take steps, however, during the negotiation and closing process to minimize the risk of their statements being misconstrued, or used later to assert fraud.

Business Pointers:

- Make sure your employees really understand the terms and conditions that need to be included in the written agreement, and can accurately and consistently explain these to the other party involved so that oral and written statements are not at odds.
- Maintain accurate records of oral and written statements that are exchanged before the final written agreement.
- Consider using cover letters, addenda, explanatory sheets, special initialing, or formatting such as underline or bold print to highlight key terms and conditions.
- While it may lead to delays in closing a deal, you should provide the non-drafting party additional time to read, understand and finalize an agreement.

If you are negotiating a written agreement that contains terms that are inconsistent with prior oral promises, be sure to seek the assistance of a knowledgeable professional. For more advice on how to draft, interpret or challenge a written agreement, please contact **Sblend A. Sblendorio** or another member of Hoge Fenton's Business Law group.

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