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No exception for sophistication in the post-*Riverisland* world

Seth Gerber *is a partner in the Santa Monica office of Bingham McCutchen LLP. He can be reached at seth.gerber@bingham.com.*

When we think of castles, we do not typically envision appellate opinions concerning the fraud exception to the parol evidence rule. But that is exactly the cutting edge issue addressed by the California Court of Appeal in *Julius Castle Restaurant Inc. v. Payne*, 216 Cal. App. 4th 1423 (Cal. App. 1st Dist. June 10, 2013).

Julius Castle is a historic landmark restaurant property nestled on Telegraph Hill in San Francisco. It opened its doors to patrons in 1922, but after falling on hard times, ceased operations in mid-2006, shortly after being purchased by Frederick Payne. With the aim of re-establishing and eventually selling the restaurant for $1 million, two highly experienced restaurateurs, Charles Stinson and John Bonjean, sought to lease the premises from Payne.

During extensive negotiations over several weeks, Payne allegedly told Stinson and Bonjean that he had made substantial renovations to the property, but failed to mention that the alterations were performed without building permits or a certificate of appropriateness.

When Stinson and Bonjean conducted a walk-through of the premises, they did not test any of the equipment. Instead, they allegedly relied on Payne's oral representation that the equipment and plumbing for the restaurant were in working order and if anything was not working, he would fix it.

The parties then exchanged and edited numerous drafts of the lease and bulk sales agreement for the restaurant's assets, including the equipment. The agreements contained integration clauses stating that any agreements or representations made outside of the written contracts are void.

The fact that Stinson and Bonjean are highly sophisticated restaurateurs ... did not sway the jury to reject the pre-contractual, contrary oral promises.

Shortly after signing the integrated written agreements, Stinson and Bonjean took steps to get the restaurant operating, but the equipment (e.g., broiler, ovens, refrigerators and phone systems) malfunctioned and the parties had conflicts over repairs. Stinson and Bonjean had to spend their own money to keep the restaurant operational, and Payne allegedly refused to reimburse them. Stinson and Bonjean then started deducting money from their monthly payments. Stinson also received a city planning department notice of violation relating to the unpermitted alterations to the premises, but the restaurant was able to continue to operate under a temporary health permit for several months.

A lawsuit followed. After the trial court denied a motion in limine to exclude parol evidence, a jury found in favor of Stinson and Bonjean on their intentional and negligent misrepresentation claims and awarded them $205,800, but found for the

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Appeal raises issue of juror bias against immigrants
A Honduran man who was awarded no damages in a toxic tort case is appealing the outcome, arguing he was treated unfairly because the judge told jurors that he had entered the country illegally.

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SASB aims to help companies disclose sustainability information
A new pilot program organized by a San Francisco-based nonprofit is aimed at helping public companies systematize the process of reporting material sustainability information with the SEC.

Judges and Judiciary
Judge accused of battery in fight over dog poop
Craig Richman was charged last week with one misdemeanor count of battery for allegedly pushing a woman from behind and knocking her to the ground while she was walking her dogs.

Alternative Dispute Resolution
Lose an award by the click of a mouse
Failing to perform due diligence when selecting an arbitrator may give the losing party a reset button. By **Antony Nash and Jared LeBeau**

U.S. Court of Appeals for the 9th Circuit
Mortgage lenders win 9th Circuit ruling in deceptive practices case
Plaintiffs seeking to hold 25 mortgage lenders liable over allegedly deceptive practices got little traction Wednesday from a 9th Circuit panel.

Real Estate
Sullivan helps with $11.2 billion REIT deal
Firm acts as special counsel to executives at Cole Real Estate Investments Inc. in the company's sale to American Realty Capital Properties Inc., creating a giant net lease real estate investment trust.

Intellectual Property
Bill introduced to discourage patent infringement lawsuits
The chairman of the influential House Judiciary Committee introduced sweeping legislation Wednesday aimed at curbing frivolous patent infringement lawsuits filed by holding companies.

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landlord on a cross-complaint for breach of the lease and awarded him $75,000.

The central issue on appeal concerned whether Payne's alleged pre-contractual oral statements are admissible under the fraud exception to the parol evidence rule in light of the recent state Supreme Court decision in *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association*, 55 Cal. 4th 1169 (2013).

Prior to the *Riverisland* decision, parol evidence could not be offered to show fraud if the oral promise directly contradicts the terms of the integrated written contract. *Bank of America Etc. Assn. v. Pendergrass*, 4 Cal. 2d 258 (1935). In January 2013, however, the state Supreme Court overruled *Pendergrass* and its progeny.

The *Riverisland* court affirmed the venerable maxim: "[I]t was never intended that the parol evidence rule should be used a shield to prevent the proof of fraud." Now, under *Riverisland*, parol evidence is admissible to show fraud even if the oral promise is directly at variance with the terms of an integrated written agreement.

In *Julius Castle*, for example, Payne allegedly orally represented that the equipment was in working condition and that he would fix it if necessary. The alleged oral promise was directly contrary to the lease terms; namely, that Stinson and Bonjean had relied on their own inspection and found the premises and improvements to be in "good order, repair, and condition," that nothing in the lease obligated Payne to fix any equipment, that the tenant would, at its own expense, keep the premises in good condition and repair, and that any statutory provisions or laws requiring Payne to maintain or repair the property were expressly waived.

The jury in *Julius Castle* concluded that it was reasonable for Stinson and Bonjean to rely on Payne's alleged oral promise to repair any broken equipment even though the integrated contract did not obligate him to do so and included "as is" language regarding the restaurant equipment. The fact that Stinson and Bonjean are highly sophisticated restaurateurs who spent weeks negotiating the integrated written agreements did not sway the jury to reject the pre-contractual, contrary oral promises. And the appellate court refused to carve out an exception to *Riverisland* for sophisticated parties.

The Court of Appeal commented, "[o]ur conclusion that parol evidence is admissible as to fraud claims involving sophisticated parties does not create any injustice. A party claiming fraud in the inducement is still required to prove they relied on the parol evidence and that their reliance was reasonable." The Court of Appeal further noted that in the post-*Riverisland* world, "[a]ttention will now focus on the justifiable reliance element of fraud." In conducting the factual inquiry as to the reasonableness of the reliance on the oral promise, "[a]mong the questions to ask are: What are the plausible reasons for the alleged discrepancy between the claimed oral promises and the signed writing? Is there compatibility between the oral representations and the written document? What is the evidence relating to whether the document was read and considered before signing?"

Even with the heightened pleading standard for fraud and the burden of proof to establish justifiable reliance, the decision in *Riverisland* is likely to play a central role in a broad range of lawsuits concerning the enforceability of integrated written agreements. California state and federal courts have already seen challenges under *Riverisland* to loans, guarantees, employment agreements, releases, and law firm engagement letters. Given the post-*Riverisland* focus on the element of justifiable reliance, making sure parties read and understand written agreements - and being able to prove they did so - has become more important than ever.

Seth Gerber *is a partner in the Santa Monica office of Bingham McCutchen LLP. He can be reached at seth.gerber@bingham.com.*

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Judicial Profile
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Entertainment & Sports
Revenue from online content sows uncertainty among entertainment lawyers
As video-streaming services grow, studios and talent are starting to clamor for their share of the profits. That's forcing attorneys to mesh endlessly evolving technology with the entertainment industry's long-standing profit agreements.