

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

RIVERISLAND COLD STORAGE, )  
INC., LANCE WORKMAN, PAM )  
WORKMAN, LAURENCE A. )  
WORKMAN, CAROLE WORMAN )  
and WORKMAN FAMILY LIVING )  
TRUST )

Appellants, )

v. )

FRESNO-MADERA PRODUCTION )  
CREDIT ASSOCIATION )

Respondent. )

RIVERISLAND COLD STORAGE,  
INC., LANCE WORKMAN, PAM  
WORKMAN, LAURENCE A.  
WORKMAN, CAROLE WORMAN  
and WORKMAN FAMILY LIVING  
TRUST ANSWER TO PETITION FOR  
REVIEW

SUPREME COURT  
FILED

MAR 7 - 2011

Frederick K. O'Riagh Clerk

Deputy

After Rehearing Denied and After the Published Opinion  
In the Court of Appeal, Fifth Appellate District  
5<sup>th</sup> Civil No. F045448

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	<b>INC., LANCE WORKMAN, PAM</b>
<b>Appellants, )</b>	<b>WORKMAN, LAURENCE A.</b>
	<b>WORKMAN, CAROLE WORMAN</b>
<b>v. )</b>	<b>and WORKMAN FAMILY LIVING</b>
	<b>TRUST ANSWER TO PETITION FOR</b>
<b>FRESNO-MADERA PRODUCTION )</b>	<b>REVIEW</b>
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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

**(California Rule of Court 8.208)**

The following persons have an ownership interest of 10 percent or more in one of the parties filing this certificate (California Rule of Court 8.208).

Lance Workman

Pam Workman

Laurence A. Workman

Carole Workman

The parties filing this certificate believe that the following entities person have a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves (California Rule of Court 8.208(d)(2)).

David Ylarregui

Dated: March 4 2011

Respectfully submitted,  
**WILD, CARTER, & TIPTON**  
Steven E. Paganetti #087513

By  \_\_\_\_\_

Steven E. Paganetti  
Attorneys for Appellants RiverIsland  
Cold Storage, Lance Workman, Pam  
Workman, Laurence A. Workman,  
Carole Workman and Workman  
Family Living Trust

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## I. INTRODUCTION

Fresno-Madera Production Credit Association (“Credit Association”) has filed the present Petition for review based upon the incorrect position the Fifth Appellate District adoption of an exception to the Parole Evidence Rule that extrinsic evidence of the alleged misrepresentation made by Credit Association’s representative should be admitted where the Defendant Representative is alleged to have misrepresented to the Plaintiff the content of a written Forbearance Agreement consistent with the Court ruling on *Pacific State Bank v. Greene* (2003) 110 Cal.App.4th 375, 385-387, 389 and 390-392 and *Fleury v. Ramacciotti* (1937) 8 Cal.2d 660. In *Greene* Petition for review in the California Supreme Court was previously denied.

In *Greene*, Parole Evidence of fraudulent representations were allowed to be introduced where there was a claim of mis-characterization of the content of the document to be signed which was made at the time of signing. *Green*, at p. 392 and 393. In *Fleury* admissibility of Parole Evidence was allowed to prove fraudulent representations as to the content of a written agreement induced its execution which survived *Pendergrass*.

Neither *RiverIsland*, *Greene* or *Fleury* are inconsistent with any other California Supreme Court or Appellate Court decision. Simply, *RiverIsland* has followed the now recognized exception to the Parole Evidence Rule stated in *Fleury and Greene* which allows the introduction of evidence where a Defendant has made a misrepresentation of

fact regarding the content of an agreement to be signed at the time it is executed. This is good law because it prevents a party from taking advantage of another by misrepresenting the content as an inducement the execution of an agreement which has actual content which is different as represented. There is no need for review because there is no need for reconciliation as suggested by Credit Association.

In rendering its decision the Fifth Appellate District applied well established law to the particular facts in this case and concluded that the *Pendergrass* Court did not intend its limitation on the fraud exception to the Parole Evidence Rule to extend beyond evidence of promissory fraud where as in the present case, the extrinsic evidence relates to a misrepresentation regarding the content of an agreement at the time of execution.

Despite the straightforward application of existing law, Credit Association seeks Supreme Court review by mischaracterizing the Fifth Appellate District decision manufacturing confusion in existing case law where none exist. Simply, the exception to the Parole Evidence Rule identified in *Greene* now adopted by the Fifth Appellate District does not conflict with either *Pendergrass* (1935) 4 Cal.2d 258 or *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336 as suggested by Credit Association. The two Appellate Court decisions *Greene* and now *RiverIsland* are consistent with each other and in fact the Fifth Appellate District adopted the exception to the Parole Evidence in *Greene*. Accordingly, there are no inconsistent Appellate Court issues on this exception to the Parole Evidence Rule and therefore the Petition for review should be denied.

## II. FACTS

On July 14, 2003 PCA recorded a notice of additional debt and secured by Deed of Trust regarding outstanding obligation of \$1,050,000.00 which was secured on Lance Workman's real property located in Kings County designated as parcels 1 through 5 and real property located in Tulare County designated as parcels 1 through 5. On December 12, 2003 PCA executed a Deed of Partial Reconveyance which released as security Parcels 1 through 5 in Tulare County (CT 402). As of December 12, 2005 the only real property securing the \$1,050,000.00 loan obligations was the five parcels in Kings County (CT 403, 410-413).

Between the calendar year 2003 and 2006 the projected income for PCA's security interest in receivables and inventory dropped each year (CT 404). The balance due on the operating line was rolled over each year from 2002 through 2006 without obtaining any additional security other than original security consisting of 20 acres including 15 acres of tree fruit and 5 acre truck yard valued at \$215,000.00 from an appraisal in 2002 with a net of \$61,400.00 (CT 404 and 408).

In September of 2006 Workman's cold storage facility was listed for sale with Pearson Realty (CT 362-363). The listing price was determined by Lance Workman and Dan Kevorkian of Pearson Realty in the amount of \$2.5M for the cold storage facility. Dan Kevorkian of Pearson Realty was comfortable with the amount of \$2.5M as the asking price based upon his knowledge of cold storages in the area (CT 363-366).



In November 2006 Lance Workman, had a conversation with David Ylarregui about renewing the operating line of credit. David Ylarregui as he had stated in past years stated in meetings in November 2006 PCA would renew the loan (CT 352).

In March 2007 Lance Workman called David Ylarregui to tell him Workman would be selling the Cold Storage facility to pay the outstanding balance owed to the PCA and that he had been advised by Dan Kevorkian, a manager of Pearson Realty it could take up to two years to sell (CT 353-354). David Ylarregui responded that if Workman needed that kind of time PCA would require him to add additional security. In response Workman offered to put up a 15 and 15 ½ acre ranch (CT 353-354).

Prior to the execution of the Forbearance Agreement and at the time of the execution of the Forbearance Agreement on March 29, 2007 David Ylarregui on behalf of PCA stated the Forbearance Agreement was for a period of 2 years and that the only additional security was the two additional ranches designated as a 15 and 15 ½ acres of orchard in the County of Kings, State of California (CT 349, 353-355, 405-406). Appellant Lance Workman and Pam Workman did not read the Forbearance Agreement prior to signing and relied on the representations made by David Ylarregui at the time of signing the Forbearance Agreement that the content of the Forbearance Agreement they were signing was for a period of 2 years and only contained as additional security a 15 and 15 ½ acre parcels. At the time of the execution of the Forbearance Agreement Lance Workman and Pam Workman were merely told by David Ylarregui to sign at the tabbed

locations of the Agreement. At the time the Forbearance Agreement was signed on March 29, 2007 the six month expiration date on July 1, 2007 was less than 90 days and contained additional security including Workman's residence and cold storage facility (CT 342-343, 349, 355).

PCA did not require Lance Workman to pledge all of his real property as a condition for the Forbearance Agreement (CT 390). On March 29, 2007 the outstanding loan was \$875,306.00 and the security under the loan agreement had a value of \$4,545,050.00 and there was net equity in the property under the security in excess of \$2,506,000.00 (CT 388, 393-399, 409, 414-465).

The cold storage valued at \$2.5M had an equity of more than \$1.4M sufficient to pay off the debt of \$875,306.06 owed to PCA (CT 342). PCA was not under any regulatory time period or any of its written policies or procedures which required it to file a notice of foreclosure when it did (CT 391-392).

### **III. LEGAL DECISION**

#### **I. There Are No Grounds for Supreme Court Review.**

Review should be denied for the simple reason this case presents neither an important question of law nor a necessity to secure uniformity of decision. Cal. Rules of Court, Rule 8.516(a)(1). The Appellate Court cases of *Green* and now *RiverIsland* both are consistent in concluding there is an exception to the Parole Evidence Rule where there is a misrepresentation of fact over the content of an agreement at the time of execution.

**II. There is No Conflict to Be Resolved Before Any Decision in This Case and Decision of the Supreme Court and Other Courts of Appeal.**

Remarkably Credit Association has failed to cite *Fleury v. Ramacciotti* (1937) 8 Cal.2d 660 decided two years after *Pendergrass* where the California Supreme Court issued its decision Parole Evidence is admissible to prove that fraudulent representations as the content of a written agreement induced its execution. This omission is obvious because it takes the wind out of any Credit Association argument there is any conflict in the California Supreme Court and Appellate Court regarding whether Parole Evidence may be admitted when there are misrepresentations regarding the content of the written agreement. This basic concept was not altered in either *RiverIsland* or *Greene*. In both *RiverIsland* and *Greene* the Court followed this basic principle and stated the exception applies where there were misrepresentations concerning the content of the agreement at the time of execution.

The Third Appellate District in *Greene* limited the exception to the Parole Evidence Rule under *Pendergrass* to a situation involving a mis-characterization of the content of the document to be signed at the time of execution which was more narrow in time and circumstance. *RiverIsland* involved the same situation where there was a mis-characterization as to the content of the document to be signed at the time of execution and similar to *Fleury* misrepresentation regarding the content of the Forbearance Agreement in conjunction with a statement to just sign the agreement at the tabbed locations.

The Fifth Appellate District in its decision recognized misrepresentations of the terms of the written contract in order to induce the other parties to sign it constitutes fraud in the procurement of the instrument which both *Pendergrass and Fleury* recognize as an appropriate circumstance for application of the fraud exception to the Parole Evidence Rule. The Fifth Appellate District like the *Green* Court found Parole Evidence was admissible where a party misrepresented the content of the written contract and thereby induced execution of the agreement.

Accordingly, *Pendergrass* has not been lost in any analysis of the Court ruling of the exceptions to the Parole Evidence Rule in *Greene, Continental Airlines and RiverIsland* because all of these cases are consistent with the California Supreme Court ruling in *Fleury. Casa Herrera v. Beydown* (2004) 32 Cal.4th 336 is materially, factually different from the facts upon which *Fleury, Green and RiverIsland* found an exemption to the Parole Evidence Rule because in *Casa Herrera* there was no allegations that Appellants misrepresented the contents of the written sales agreement at the time the agreement was executed. Similarly, in *West v. Henderson* 227 Cal.App.3d 1578 there was no misrepresentation regarding the content of the subject lease/guarantee at the time of execution.

### **III. Review is Not Necessary to Revisit Already Established Good Law Regarding an Exception to the Parole Evidence Rule.**

In the present case, *Fleury, Greene and RiverIsland* are consistent regarding an exception to the Parole Evidence Rule limited to misrepresentations regarding the content

of the agreement at the time of execution. This is good law to prevent a party, as in this case, Credit Association from taking unfair advantage of misrepresentations by its representative in an effort to enforce an inherently unfair Forbearance Agreement. The statements in the present case are false regarding the content of the Agreement because the agreement had an expiration date less than 90 days from the date of execution of March 27, 2007 and contained additional security on real property and in addition to the 15 and 15 ½ acre orchard including the Workman residence. Credit Association now had real property with potential foreclosure in less than 90 days as security in excess of \$2,506,000.00 including the Workman residence on an outstanding obligation of \$875,000.00 as opposed to the represented term of two years and security in a 15 and 15 ½ acre orchard.

The *Fleury, Greene and RiverIsland* cases establish a well reasoned exception where there is misrepresentation concerning the content of a document at the time of the execution and reasonable reliance.

This exception is good law because it prevents an individual from taking advantage of another, as in this case, when an unsuspecting party executes an agreement based on its representations regarding the content at the time of signing and later finding out the content is misrepresented and unreasonably oppressive. Unless this exception is maintained individuals or entities such as Credit Association may take unfair advantage of an individual who executes an agreement based upon a false representation regarding

the content and later finds out the agreement is misrepresented. The lack of this exception encourages individuals and business entities to engage in unfair business practice by misrepresenting the content of a document at the time of signature inducing an unwary trusting individual to execute it and then hide behind *Pendergrass* as suggested by Credit Association.

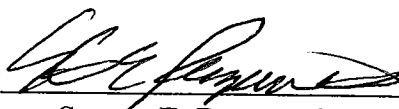
#### IV. CONCLUSION

The Petition for review should be denied because there is no need to resolve any conflict in Appellate opinions. The Fifth Appellate District's opinion simply applies well established law to the particular set of facts in the case. The only confusion and disagreement is Credit Association alone. None of the criteria for triggering Supreme Court review is present.

Dated: March 4 2011

Respectfully submitted,  
**WILD, CARTER, & TIPTON**  
Steven E. Paganetti #087513

By



Steven E. Paganetti  
Attorneys for Appellants RiverIsland  
Cold Storage, Inc., Laurence A.  
Workman, Lance Workman, Pam  
Workman, Carole Workman and  
Workman Family Living Trust

**CERTIFICATE OF COMPLIANCE [California Rule of Court Rule 14(c)]**

Appellants RiverIsland Cold Storage, Lance Workman, Pam Workman, Laurence A. Workman, Carole Workman and Workman Family Living Trust by and through their attorney of record hereby certifies its Answer to Petition for Review complies with California Rule of Court Rule 14(c)(1) because the brief contains 2,078 words based upon the computer calculation used in preparing the brief.

I declare under penalty of perjury under the law of the State of California the foregoing is true and correct and if called as witness I would and could competently testify thereto.

Dated: March 4, 2011

  
STEVEN E. PAGANETTI

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF FRESNO

3 I am employed in the County of Fresno, State of California. I am over the age of  
4 18 and not a party to the within action; my business address is: 246 West Shaw Avenue, Fresno,  
California 93704.

5 On **March 4, 2011**, I served the document(s) described as:

6 **RIVERISLAND COLD STORAGE, INC., LANCE WORKMAN, PAM  
7 WORKMAN, LAURENCE A. WORKMAN, CAROLE WORMAN and  
8 WORKMAN FAMILY LIVING TRUST ANSWER TO PETITION FOR  
REVIEW**

9 on the interested parties in this action by placing a true copy thereof enclosed in a sealed  
envelope at: Fresno, California, addressed as follows:

10 **Scott J. Ivy, Esq.  
11 LANG, RICHERT & PATCH  
12 5200 North Palm Ave., 4<sup>th</sup> Floor  
13 Fresno, CA 93704  
14 Tel: (559) 228-6700  
15 Fax: (559) 228-6727**

**Court of Appeal  
16 Fifth Appellate District  
17 2424 Ventura Street  
18 Fresno, CA 93721**

19 **Honorable Adolfo Corona  
20 Superior Court of California  
21 County of Fresno  
22 Department 201  
23 1130 "O" Street  
24 Fresno, CA 93721**

25 X (BY MAIL) I am readily familiar with this business's practice for collection and  
26 processing of correspondence for mailing, and that correspondence, with postage  
27 thereon fully prepaid, will be deposited with the U. S. Postal Service on the date  
28 hereinabove in the ordinary course of business, at Fresno, California.

\_\_\_\_\_ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to  
the offices of the addressee(s).

\_\_\_\_\_ (BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be  
delivered to an overnight courier service for delivery to the addressee(s).

\_\_\_\_\_ (BY FACSIMILE) I caused the above-referenced document(s) to be faxed to the  
offices of the addressee(s).

Executed on **March 4, 2011**, at Fresno, California.

29 X (STATE) I declare under penalty of perjury under the laws of the State of  
California that the foregoing is true and correct.

30 \_\_\_\_\_ (FEDERAL) I declare that I am employed in the office of a member of the bar of  
this court at whose direction the service was made.

  
31 **NICOLE SERGI**