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Court of Appeal, Second District, Division 4, California.
Phillip ALEXANDER, Plaintiff and Respondent,
v.
FARMERS GROUP, INC., et al., Defendants and Appellants.
No. B142432.
(Los Angeles County Super. Ct. No. BC147454).

June 16, 2004.
As Modified on Denial of Rehearing July 13, 2004.

Tobin Lucks, Edwin J. Lucks, John F. Salisbury; Greines, Martin, Stein & Richland, Robert A. Olson, Rex S. Heinke and Peter O. Israel, for Defendants and Appellants.

Paul & Janofsky, Gary M. Paul; Lewis, Goldberg & Ball, Michael L. Goldberg and Michael D. Hutchinson, for Plaintiff and Respondent.

CURRY, J.

INTRODUCTION

*1 Defendants Farmers Group, Inc., Farmers Insurance Exchange, Farmers New World Life Ins. Co., Fire Insurance Exchange, Mid-Century Insurance Company, and Truck Insurance Exchange (hereafter collectively referred to as Farmers or the Companies) appeal from the judgment after a jury verdict in favor of plaintiff and respondent Phillip Alexander, which verdict included an award of punitive damages. Alexander was an independent contractor for Farmers whose contract was terminated after 13 years of service. He filed the present lawsuit, stating claims for breach of contract, fraud, and negligent and intentional infliction of emotional distress.

Farmers asserts on appeal that the trial court prejudicially erred by admitting parol evidence of an oral promise that Alexander's contract would only be terminated for cause, in direct contradiction of the terms of the parties' written, integrated agreement. As to other allegedly fraudulent promises made by Farmers to induce Alexander to enter into the contract, Farmers argues on appeal that the statute of limitations barred Alexander from bringing suit based on these promises. As to both contentions, we agree with Farmers and conclude that reversible error occurred. We therefore reverse the judgment, with the exception of the award as to Alexander's breach of contract claim.

FACTUAL AND PROCEDURAL BACKGROUND

1. Alexander Is Recruited to be a District Manager

Alexander was an Allstate insurance agent for nine years, until 1979. He then began working as an agent for Farmers. In 1980, his first year as a Farmers agent, he earned about $50,000. He earned $7,000 to $9,000 per month in 1981 and was the top selling agent in Farmers' Los

Angeles Region. In July 1981, Alexander's Division Agency Manager, Michael Bigley, approached him about becoming a district manager. Alexander's district manager told Alexander he would enjoy the district manager position and would be naturally good at it. Alexander discussed the prospect of becoming a district manager over the next several months with Bigley, Regional Sales Manager Stanley Bergstrom, and Regional Manager Paul Whealen. They discussed the position and the terms of its governing contract, the District Manager Appointment Agreement ("the Agreement").

Alexander was reluctant to give up the independence of being an agent, but was reassured that he would continue to be an independent businessman who could operate his business with a minimum of interference from the company. Bergstrom testified that the opportunity to be an independent businessman was an incentive for a person to become a district manager. Alexander was told that as an independent businessman, his only expenses would be to furnish and equip his office, just as he did when he was an agent, but additionally he would have to provide furnishings and equipment for all of his agents.

Alexander was told that the goals and objectives set by Farmers were easily obtainable. Various people told Alexander that as a district manager he could set his own goals and Farmers would not limit the number of agents he recruited, as long as the agents were acceptable to Farmers, and that recruiting and training agents was one of the major responsibilities of the position. Alexander understood that how much he made was entirely up to him and depended on how many new agents he recruited and how he trained and motivated his agents.FN1 The ability to recruit agents was an important consideration in Alexander's decision to become a district manager. After becoming a district manager, Alexander received awards for being a top recruiter, more than doubling the number of agents in his district in four years.

FN1. Pursuant to the Agreement, District Managers were paid an "overwrite," a percentage of the business written and renewed by agents within their districts.

*2 Alexander knew that a provision of the Agreement stated that the Agreement could be terminated without cause. This was one of the reasons Alexander was reluctant to become a district manager. Alexander asked Bergstrom and Whealen to put a for-cause termination provision in writing but they declined, saying they had other candidates for the position. He walked away from the negotiations, but Whealen and Bergstrom reassured him that Farmers' practice was not to terminate a district manager without cause, that they personally had never terminated a district manager, and that if there was a problem the district manager would be moved "inside the company" or could return to being a sales agent.

Bergstrom and Whealen told Alexander that it was Farmers' corporate responsibility to the agency force and to its district managers to maintain an active presence in the marketing areas they already were in, such as the automobile, homeowner, and commercial markets. Alexander understood that the insurance offered in these markets would be changed only in a manner acceptable to all parties. Bergstrom and Whealen told him that the only business the company had withdrawn from in the past was writing policies for long-haul trucking companies.

Alexander was told that district managers were required to maintain good records on agent performance, sales, claims, and related matters. The Agreement specified District Managers were required to maintain a profit and loss statement, but Alexander never really understood what that meant.

Alexander conceded that the oral statements above were not included in the Agreement, but he believed them to be promises made to him, and he testified that he relied upon them in becoming a district manager and only signed the Agreement because of the assurances made to him by his recruiters.

2. The District Manager Appointment Agreement

Alexander signed the Agreement on January 11, 1982, effective January 1, 1982. The Agreement provided that a district manager would be paid an "overwrite" on all business produced by agents in his district, according to schedules adopted by the Companies.

The Agreement provided in paragraph B that the district manager agreed: "1. To recruit for appointment and train as many agents acceptable to the Companies as may be required to produce sales in accordance with goals and objectives established by the Companies.... [¶] 3. To conform to all regulations, operating principles and standards of the Companies, and through Agents under his supervision to provide claims and other service to policyholders of the Companies. [¶] 4. To maintain adequate records, including a monthly profit and loss statement, as may be required by the Companies or the State in which he operates, and make them available for audit by representatives of the Companies at all reasonable times...."

Paragraph D provided: "This Agreement ... may be cancelled without cause by either the District Manager or the Companies on 30 days written notice ...." (Italics added.)

*3 The Agreement provided that upon cancellation or termination the Companies would pay "contract value" to a district manager, defined as an amount based on the "service commission overwrite" paid to the District Manager during the six months immediately preceding termination, and the number of years of service as district manager, in accordance with a stated schedule. If a district manager became totally and permanently disabled after age 45, and had 10 years of service as district manager, then the contract value would be 7 times the last six months' service commission overwrite.

Paragraph H provided: "Nothing contained herein is intended or shall be construed to create the relationship of employer and employee. The time to be expended by the District Manager is solely within his discretion, and the persons to be solicited and the area within the district involved wherein solicitation shall be conducted is at the election of the District Manager. No control is to be exercised by the Companies over the time when, the place where, or the manner in which the District Manager shall operate in carrying out the objectives of this Agreement provided only that they conform to normal good business practice, and to all State and Federal laws governing the conduct of the Companies and their Agents."

Paragraph J provided: "[T]his Agreement supersedes and takes the place of any and all prior agreements, written or otherwise, between the District Manager and the Companies, or any of them, and no change, alteration or modification hereof may be made, except as is evidenced by an agreement in writing signed by the District Manager and an authorized representative of the Companies." (Italics added.)

3. Farmers Does Not Follow Through on Its Oral Representations

Beginning in 1982, the Companies monitored Alexander's production and agency development reports and expected him to meet quotas. From early 1983 on, he was expected to make progress

reports; he believed these reports violated the Agreement. The Companies introduced the "Distribution System 2000" program at the end of 1991, which became operative before April 1992, which imposed quarterly reporting requirements on district managers. Alexander thought these reporting requirements also violated the Agreement.

A year after signing the Agreement, Alexander found out that the Companies expected him to assume financial obligations for each new agent pursuant to a "participation agreement," whereby he was responsible for contributing a portion of a subsidy paid to agents in his district who were unsuccessful. He questioned why he had not been told of this requirement before signing the Agreement, but he reluctantly complied.

Alexander's district initially did not meet Farmers' profitability expectations. In 1984 his district was subjected to additional monitoring due to lack of profitability.

In January 1990, Alexander wrote a letter to Gaylon Zissa, the new regional sales manager, commenting on Alexander's goals and objectives for the year and on various Farmers policies, and saying he thought certain goals established by Farmers were unrealistic.

*4 In late November 1991, Alexander was informed that as of December 13, 1992, Farmers would not accept any new agents in Alexander's district unless an opening was created by way of the termination of a full-time agent. Alexander felt that this was contrary to what he had been promised and told regional management that he viewed it as an attempt to alter the Agreement.

4. Alexander's Health Declines

In August 1990, Alexander had begun having health problems. At that time he sought treatment at a hospital and thereafter came under the care of a cardiologist. By April 1993, he was under the care of a psychiatrist. Eventually, in February 1994, he applied for disability. In July 1994, his disability insurance carrier found him to be totally and permanently disabled. In early 1994, on the advice of his doctor, Alexander reduced his direct involvement in the office to three to four hours per week. His wife served as his office manager and ran the day-to-day business of the office. She asked to attend meetings in Alexander's place but such requests were rejected.

5. Alexander's District Manager Agreement Is Terminated

In March 1991, Regional Sales Manager Gaylon Zissa recommended that Alexander's appointment be terminated, but the recommendation was rejected by Regional Manager John Schock due to a lack of supporting documentation and a perceived failure to discuss criticisms with Alexander. Zissa renewed his efforts to terminate Alexander in 1992, when new regional management was assigned to consolidate the Los Angeles and Simi regions. In May 1993, regional officials recommended that Alexander be terminated, and requested guidance on assembling documentation to support the termination in the event the recommendation was rejected. The recommendation was rejected.

In March 1993, Paul Hopkins, a regional manager, wrote to Alexander expressing doubt about whether the relationship was "one of good faith" and about whether it was in Alexander's best interest to continue in his present position. In a letter dated April 27, 1993, Hopkins stated his opinion that Alexander was "not sufficiently meeting [his] contractual obligations," and that it was imperative they meet to "discuss our possible solutions."

In late 1994, regional officials again recommended that Alexander be terminated, citing abandonment of his district. On November 21, 1994, the Vice President for Field Operations approved the recommendation that Alexander's appointment be terminated. Defendants gave Alexander notice of the termination by letter dated January 6, 1995. The termination was effective March 3, 1995. The letter cited Alexander's “inability to conduct [the] responsibilities of a District Manager.”

Although Alexander was totally disabled at the time of his termination, his termination payment failed to take into account his disability as promised in the Agreement.

6. Alexander Files the Present Lawsuit

Alexander filed his complaint in April 1996. The operative third amended complaint was filed in November 1997. It contained, among others, causes of action for breach of contract, fraud, negligent misrepresentation, and intentional infliction of emotional distress.

*5 In December 1997, Farmers moved for summary adjudication of the claims against the individual defendants, and of the fourth cause of action for fraud, and the fifth cause of action for negligent misrepresentation. Farmers asserted Alexander could not establish justifiable reliance on the promises made to induce him to leave his independent agency, and that claims based on certain of those promises were barred by the statute of limitations. In February 1998, the trial court (Judge Ouderkirk) granted summary adjudication of the claims against the individual defendants but denied the motions in all other respects. The court stated as to the statute of limitations argument that the accrual of the action “could have been as late as September 8, 1995.” Citing Code of Civil Procedure section 338, subdivision (d), the court “[felt] that at least factually based on the evidence it wasn't until the occurrence of a variety of other acts and ultimately its termination that the plaintiff discovered the fraud and the negligent misrepresentation.”

In October 28, 1998, Farmers again moved for summary adjudication arguing that it had no contractual duty to terminate Alexander solely for cause. It argued that the integrated contract contained a “no cause” termination provision and therefore the parol evidence rule precluded introduction of evidence of a contrary duty. The trial court (Judge Ouderkirk) granted the motion, ruling that the contract was “unambiguous” and any evidence contrary to its terms was barred by the parol evidence rule.FN2

FN2. The court also dismissed Diane Alexander's claims for loss of consortium and negligent infliction of emotional distress, dismissed Alexander's negligent and intentional infliction of emotional distress claims on statute of limitations grounds, and dismissed the individual defendants from the action.

Prior to trial, Farmers filed a motion in limine to exclude evidence of any promise that Alexander's District Manager Agreement could be terminated only for specific causes. The trial court (Judge Williams) denied the motion, finding that the previous ruling related to the breach of contract issue only, otherwise it would have been inconsistent to leave the fraud causes of action in the case but deny Alexander the right to adduce evidence of the fraud which induced the contract.

The matter was tried before a jury, which returned a special verdict in favor of Alexander on the fraud and breach of contract claims,FN3 awarding him $2.5 million in economic damages due to

the fraud and $2.5 million noneconomic damages for emotional distress, and finding Farmers' conduct was malicious and oppressive. The second phase of trial ended with the jury returning a verdict for punitive damages in the amount of $12.5 million. Judgment was entered on April 17, 2000.FN4 The trial court denied defendants' postjudgment motions for judgment notwithstanding the verdict and new trial.

FN3. As to the breach of contract claim, the jury was simply asked to find whether plaintiff was totally and permanently disabled, pursuant to a specified provision of the Agreement, on March 3, 1995; it found that he was.

FN4. The judgment also included an award of $190,126.06 based upon the jury's finding of breach of contract; the parties stipulated that the court would calculate the amount due based on Farmers' failure to pay Alexander an additional sum specified in the Agreement arising from the fact of his disability at the time the Agreement was terminated.

This appeal followed.

DISCUSSION

I. Parol Evidence

A provision of the Agreement stated “This Agreement ... may be cancelled without cause by either the District Manager or the Companies on 30 days written notice.” According to Alexander, before signing the Agreement, he asked that a for-cause termination provision be put in writing, but Farmers declined. He walked away from the negotiations, but was reassured that Farmers' practice was not to terminate a district manager without cause, that the people with whom he was dealing personally had never terminated a district manager, and that if there was a problem the district manager would be moved “inside the company” or could return to being a sales agent. However, the language of the Agreement was not modified before Alexander signed it.

*6 Before trial, the Farmers defendants successfully moved to summarily adjudicate the issue of whether they owed a duty to terminate the Agreement only for cause. They argued the integrated Agreement's express terms barred any reasonable reliance on contradictory or additional oral promises. The trial court agreed that Alexander was barred by the parol evidence rule from relying on pre-contract promises that he would be terminated only for cause since those promises directly contradict an unambiguous provision in the integrated contract.

Despite that ruling, at trial Alexander was permitted to introduce extensive evidence of promises purportedly made by Farmers that despite express language to the contrary, the Agreement could only be terminated for cause. The trial court reasoned that the prior ruling (by a different judge) related to the breach of contract issue only, otherwise it would have been inconsistent to leave the fraud causes of action in the case but deny Alexander the right to adduce evidence of the fraud which induced the contract.FN5 The trial court understood the law to be that no matter what the contract says, if there is fraud in the inducement, all evidence regarding fraud in the inducement is admissible.

FN5. There were, however, other allegations regarding fraud and misrepresentations which were not inconsistent with specific terms of the Agreement. Those allegations were not barred by the parol evidence rule and formed the basis for leaving in place the causes of action for fraud and misrepresentation.

We conclude, however, that admission of this evidence was contrary to well-established law in California.

At issue is the parol evidence introduced by Alexander to support his cause of action for fraud in the inducement. "The Supreme Court has held that where an employer uses misrepresentations to induce a party to change employment when the objective could not have been achieved truthfully, and the party is left in worse circumstances than those in which he would have found himself had he not been lied to, he has a claim for promissory fraud or fraud in the inducement. (Lazar v. Superior Court (1996) 12 Cal.4th 631, 638-643, 49 Cal.Rptr.2d 377, 909 P.2d 981....) Although [plaintiff] was an independent contractor, not an employee, we see no reason why the same principle would not apply." (Magpali v. Farmers Group, Inc. (1996) 48 Cal.App.4th 471, 480, 55 Cal.Rptr.2d 225.)

The parol evidence rule is set forth in Code of Civil Procedure section 1856. Subdivision (a) provides: "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 a contemporaneous oral agreement." (Italics added.) Subdivision (b) provides that terms set forth in a writing "may be explained or supplemented by evidence of consistent additional terms unless the writing is intended also as a complete and exclusive statement of the terms of the agreement." (Italics added.) The so-called "fraud exception" to the parol evidence rule is contained in subdivision (g) of section 1856, which provides: "This section does not exclude other evidence ... to establish illegality or fraud."

Case law has established, however, that "the fraud exception is not applicable where 'promissory fraud' [fn. omitted] is alleged, unless the false promise is independent of or consistent with the written instrument. (Simmons v. Cal. Institute of Technology (1949) 34 Cal.2d 264, 274-275, 209 P.2d 581 ...; Newmark v. H and H Products Mfg. Co. (1954) 128 Cal.App.2d 35, 37-38, 274 P.2d 702 ...; Cobbs v. Cobbs (1942) 53 Cal.App.2d 780, 784-786, 128 P.2d 373....) It does not apply where, as here, parol evidence is offered to show a fraudulent promise directly at variance with the terms of the written agreement. (Bank of America etc. Assn. v. Pendergrass (1935) 4 Cal.2d 258, 263, 48 P.2d 659 ...; see Simmons v. Cal. Institute of Technology, supra, 34 Cal.2d at pp. 274-275, 209 P.2d 581 ...; Green v. Del-Camp Investments, Inc. (1961) 193 Cal.App.2d 479, 482, 14 Cal.Rptr. 420....)

*7 "In Pendergrass, supra, 4 Cal.2d 258, at page 263, 48 P.2d 659, the Supreme Court announced the law of California as it applies to this question: '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.' " (Continental Airlines, Inc. v. McDonnell Douglas Corp. (1989) 216 Cal.App.3d 388, 419, 264 Cal.Rptr. 779, hereafter Continental.)

In Continental, evidence was admitted of a pre-contract promise made by McDonnell Douglas that the landing gear on an airplane it was designing for sale to Continental "will not rupture" the wing fuel tank under certain landing conditions. The contract, which was fully integrated, stated

that the airplane would be designed so that failure of the landing gear "is not likely" to rupture the wing fuel tanks or fuel lines. The Court of Appeal held that the trial court erred in admitting evidence of McDonnell Douglas's pre-contract promise that the wing fuel tank "will not rupture," relying on the rule stated in Pendergrass. (Continental, supra, 216 Cal.App.3d at p. 421, 264 Cal.Rptr. 779.)

The Court did not reverse the judgment in favor of Continental, however, because it found there to be no prejudice to McDonnell Douglas. Other factual promises (regarding the then-existing state of facts and not regarding promises of future performance) not directly at variance with the terms of the contract, which were properly admitted, also addressed the subject of the landing gear design. For example, McDonnell Douglas represented that the wing engines/pylons " 'are designed for wipe-off without rupturing the wing fuel tank ' " and " 'the main landing gear is designed to break away from the wing structure without rupturing fuel lines ." (Continental, supra, at p. 422, 264 Cal.Rptr. 779.) The Court ruled that "[T]he four representations ..., which unequivocally announced that the landing gear breakaway design was then a fait accompli, were admissible as factual representations by Douglas to Continental that it had already accomplished its safety-oriented design for that particular feature of the aircraft. [Fn. omitted.] That evidence was properly considered by the jury on each of Continental's relevant theories of fraud." The Court thus concluded that the challenged evidence of promissory fraud was merely cumulative of other properly admitted evidence on that subject; consequently, its admission was not prejudicial to Douglas's cause. (Continental, supra, 216 Cal.App.3d at p. 423, 264 Cal.Rptr. 779.)

In the case before us, Alexander was properly allowed to testify that he was told by the Farmers representatives with whom he negotiated the Agreement that they had never personally terminated a district manager agreement (a representation as to an existing fact), but Alexander should not have been allowed to introduce evidence of Farmers' promises regarding its future conduct to the effect that the Agreement would only be terminated for cause despite language in the Agreement directly to the contrary. (See Continental, supra, 216 Cal.App.3d at p. 424, 264 Cal.Rptr. 779.)

*8 A recent case, though not factually on point with the one before us, bears mentioning in that it recognizes the continued vitality of the Pendergrass rule. In Casa Herrera, Inc. v. Beydoun (2004) 32 Cal.4th 336, 9 Cal.Rptr.3d 97, 83 P.3d 497, the Supreme Court considered the issue of whether termination of a lawsuit based on application of the parol evidence rule constitutes a favorable termination for malicious prosecution purposes. In discussing the effect of the parol evidence rule, the Supreme Court rejected the principle "that a promise made without the intention to perform may still support a cause of action for fraud, even though the promise 'is unprovable and so unenforceable under the parol evidence rule' (Rest.2d Torts, § 530, com. c)," noting that "we rejected this proposition long ago. (See Bank of America etc. Assn. v. Pendergrass (1935) 4 Cal.2d 258, 263-264, 48 P.2d 659....)" (Casa Herrera, Inc. v. Beydoun, supra, 32 Cal.4th at p. 346, 9 Cal.Rptr.3d 97, 83 P.3d 497.) The Court continued: "[D]espite some criticism, our courts have consistently rejected promissory fraud claims premised on prior or contemporaneous statements at variance with the terms of a written integrated agreement." (Ibid., citing Wang v. Massey Chevrolet (2002) 97 Cal.App.4th 856, 867-871, 873, 118 Cal.Rptr.2d 770; Alling v. Universal Manufacturing Corp. (1992) 5 Cal.App.4th 1412, 1436, 7 Cal.Rptr.2d 718; Continental Airlines, Inc. v. McDonnell Douglas Corp., supra, 216 Cal.App.3d 388, 419, 264 Cal.Rptr. 779; Price v. Wells Fargo Bank (1989) 213 Cal.App.3d 465, 483-486, 261 Cal.Rptr. 735.)

The cases relied upon by Alexander for the overly broad proposition that parol evidence is always admissible to prove fraud are distinguishable.FN6 (Ferguson v. Koch (1928) 204 Cal. 342, 268 P. 342; Vai v. Bank of America (1961) 56 Cal.2d 329, 15 Cal.Rptr. 71, 364 P.2d 247; Hartman v. Shell Oil Co. (1977) 68 Cal.App.3d 240, 137 Cal.Rptr. 244; and Richard v. Baker (1956) 141 Cal.App.2d 857, 297 P.2d 674.) Only one case cited by Alexander involves a situation where the parol evidence at issue directly contradicts a term of a written, integrated contract, but it does not follow the rule established by the Supreme Court in Pendergrass, and indeed does not even cite Pendergrass, and thus has no value as precedent. (Halagan v. Ohanesian (1967) 257 Cal.App.2d 14, 64 Cal.Rptr. 792.)

FN6. In addition, we note that a case called to our attention by Alexander just prior to oral argument, Blitz v. Fluor Enterprises, Inc., was ordered not to be published on May 12, 2004, and is no longer citable.

Taking a slightly different tack, Alexander asserts that Farmers concedes that parol evidence is admissible to prove fraudulent concealment, citing Marketing West, Inc. v. Sanyo Fisher (USA) Corp. (1992) 6 Cal.App.4th 603, 7 Cal.Rptr.2d 859 (Marketing West). He states: “In Marketing West the plaintiffs were induced to sign a new employment agreement which contained a ‘no-cause’ termination clause by the employer's false promise that it would continue to honor a prior ‘for cause only’ agreement. Division Seven of this court held that parol evidence could be utilized to establish that the employer concealed its true intent to fire the plaintiffs without cause even though parol evidence could not be used to contradict the ‘no-cause termination’ provision of the integrated contract.”

*9 Clarification of the facts and holding of Marketing West are required. There, plaintiffs were independent sales agents who worked for defendants for a period of time based on oral agreements that they could be terminated only for cause. They were then forced to sign a written agreement stating they could be terminated without cause, but they were told the written agreement did not apply to them as it did to other employees. About a year later, they signed a second written agreement which again provided they could be terminated without cause. They were terminated without cause and filed suit, claiming fraudulent misrepresentation and fraudulent concealment. The trial court granted summary judgment in favor of defendants.

The Court of Appeal reversed, but held that the parol evidence rule barred admission of any evidence of the fraudulent promises that the at-will provision of the agreement did not apply to plaintiffs because such promises directly contradicted the written agreement, citing Pendergrass, supra. (Marketing West, supra, 6 Cal.App.4th at p. 610, 7 Cal.Rptr.2d 859.) The court held, however, that defendants had failed to establish by way of summary judgment that there was no actionable fraudulent concealment on defendants' part. Plaintiffs alleged in their complaint that defendants had adopted a plan to eliminate the independent sales representatives such as plaintiffs and replace them with an in-house sales organization, and defendants used the first written agreement as part of that plan, i.e., as an artifice employed for the sole purpose of circumventing the good cause requirement of the oral agreements-but defendants fraudulently concealed these facts from plaintiffs. (Id. at pp. 612-614, 7 Cal.Rptr.2d 859.) The Court concluded that the trial court erred in concluding that plaintiffs could not have reasonably relied on the alleged concealed facts. The defendants had not negated the element of reasonable reliance by plaintiffs on the alleged concealed facts: the only type of reliance required for fraudulent concealment is that the plaintiff must have been unaware of the facts and would not have acted as he did if he had known of the concealed or suppressed facts. (Id. at pp. 612-613, 7 Cal.Rptr.2d 859.) Thus, plaintiffs could survive summary judgment by alleging that defendants

fraudulently concealed their plan to terminate plaintiffs and that the real purpose of the first written agreement was to circumvent the oral agreement to terminate only for cause, and that plaintiffs were unaware of these facts when they signed the second written agreement.

In sum, the Marketing West court did not hold that parol evidence which contradicts express provisions of a writing is admissible if used to prove fraudulent concealment as opposed to fraudulent misrepresentation. It simply held that under the circumstances before it, defendants had not negated the reliance element of plaintiffs' action for fraudulent concealment. In the case before us, any parol evidence to the effect that Farmers promised that the Agreement would be terminated only for cause was inadmissible.FN7 Asserting the negative of that, i.e., that defendants concealed an intent to terminate Alexander without cause if they cared to do so, is nonsensical: the Agreement made clear that defendants reserved the right to terminate Alexander without cause.

FN7. Alexander claims that he relied to his detriment on the promise that the Agreement would only be terminated for cause, but only by executing the Agreement based on the promise that the provision would not be enforced; he alleged no detrimental reliance prior to his execution of the Agreement. This is precisely the situation in which the Pendergrass rule bars parol evidence of a promise which contradicts the terms of the writing. Alexander could have insisted that the Agreement accurately reflect the promises made, and if that could not be accomplished, he could simply have walked away without incurring any legal detriment.

*10 Furthermore, the error in admission of this evidence was undoubtedly prejudicial to Farmers. Evidence regarding Alexander's job performance and the circumstances surrounding termination of the Agreement consumed much of the trial. Alexander was permitted to argue, as the centerpiece of his case for promissory fraud in the inducement, that he was orally promised the Agreement would be terminated only for cause, that is, if he committed any of “six deadly sins.” FN8 Alexander's counsel then focused on proving that none of the six deadly sins, including “abandonment” of his district, were committed by Alexander. The jury was given directly conflicting information and likely felt it could choose which version of events was correct: it was told the Agreement provided that it was terminable without cause, but it also heard that Alexander was promised he would only be terminated for cause. Under the parol evidence rule, the latter promise should have been treated as if it never existed. To paraphrase the Court in Casa Herrera, any alleged oral agreement or promise regarding for-cause termination no longer exists because the written Agreement, as a matter of law, has replaced it. (Casa Herrera, Inc. v. Beydoun, supra, 32 Cal.4th at p. 346, 9 Cal.Rptr.3d 97, 83 P.3d 497.) And therefore, as a matter of law, the Agreement was terminable without cause.

FN8. The Agreement enumerated six transgressions which would provide justification for immediate termination of the Agreement without notice, in contrast to the provision allowing for termination without cause only on 30 days' written notice.

It was permissible for the jury to hear evidence that Alexander was told by the Farmers representatives with whom he negotiated the Agreement that they had never personally terminated a district manager agreement, and that Alexander was promised that if the Agreement were terminated he would be able to return to being an agent or he would be given a job within the company, because such representations were not directly at variance with the language of the Agreement. However, if the jury heard only that information it would have been placed in a very different context, especially given Alexander's disability and admitted limitation to working no more than three to four hours per week. We conclude the inadmissible evidence carried

considerable force and that the jury might well have reached a different verdict had the evidence been excluded. Thus, admission of the parol evidence constituted prejudicial error requiring reversal.FN9

FN9. Alexander's claims of fraudulent concealment were based on the allegations that he was not made aware of a training program for new district managers, and that Farmers concealed from him their efforts to terminate him and their campaign to collect negative information about him. We conclude that these contentions were entirely insufficient to support the verdict in the absence of the improperly admitted parol evidence.

In addition, while there were other purportedly fraudulent promises made to Alexander upon which he allegedly relied in signing the Agreement which did not directly contradict terms of the Agreement,FN10 as we will next discuss, Alexander had reason to discover the falsity of these promises more than three years before he filed suit. (Code Civ. Proc., § 338, subd. (d) [three-year statute of limitations for fraud actions accrues upon discovery of facts constituting the fraud].) The remaining admissible evidence of fraud was negligible, and wholly insufficient to support the jury's finding of liability and the verdict of $5 million in compensatory damages (half of which was for additional money he would have earned had he remained an agent, and half of which was for emotional distress), let alone the $12.5 million punitive damage award.

FN10. Specifically, he was told before he signed the Agreement that he would be allowed to recruit as many agents as he wanted; that he would be independent and subject only to minimal reporting requirements; that goals established would be easily obtainable; that the amount of income he earned was entirely up to him and his efforts; that Farmers would not change or discontinue the types of insurance products offered without agreement of district managers and agents; and that his expenditures as a district manager would not be substantially more than as an agent.

*11 We note that the jury separately awarded Alexander about $200,000 for breach of contract (pursuant to the court's calculation of the amount), based on Farmers' failure to pay Alexander an additional sum specified in the contract arising from the fact of his disability at the time the Agreement was terminated. Defendants did not appeal from that portion of the judgment and thus it stands.

II. Statute of Limitations

Before trial, Farmers brought an unsuccessful motion for summary adjudication, attempting to assert that Alexander's action was barred by the statute of limitations. The trial court found that "it wasn't until the occurrence of a variety of other acts and ultimately its termination that the plaintiff discovered the fraud and the negligent misrepresentation." During trial, the court ruled that it was not until Alexander received a letter from Farmers dated April 27, 1993, that the statute of limitations began to run. Thus, according to the trial court, Alexander filed his complaint in April 1996 and therefore filed within the applicable three-year statute of limitations, as a matter of law. (Code Civ. Proc., § 338, subd. (d) .)

" 'In ordinary tort and contract actions, the statute of limitations ... begins to run upon the occurrence of the last element essential to the cause of action.' (Neel v. Magana, Olney, Levy, Cathcart & Gelfand (1971) 6 Cal.3d 176, 187, 98 Cal.Rptr. 837, 491 P.2d 421...." (Spellis v. Lawn (1988) 200 Cal.App.3d 1075, 1079, 246 Cal.Rptr. 385.) In actions for fraud, "The cause of action ... is not to be deemed to have accrued until the discovery, by the aggrieved party, of the

facts constituting the fraud or mistake.” (Code Civ. Proc., § 338, subd. (d).) “The courts interpret discovery in this context to mean not when the plaintiff became aware of the specific wrong alleged, but when the plaintiff suspected or should have suspected that an injury was caused by wrongdoing. The statute of limitations begins to run when the plaintiff has information which would put a reasonable person on inquiry. A plaintiff need not be aware of the specific facts necessary to establish a claim since they can be developed in pretrial discovery. Wrong and wrongdoing in this context are understood in their lay and not legal senses. (Jolly v. Eli Lilly & Co. (1988) 44 Cal.3d 1103, 1110-1111, 245 Cal.Rptr. 658, 751 P.2d 923....)” (Kline v. Turner (2001) 87 Cal.App.4th 1369, 1374, 105 Cal.Rptr.2d 699.) “ ‘ “[W]hen the plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to [his] investigation ..., the statute commences to run.” ‘ “ (Ibid.)

“The fraud claim is a backward looking one in that the tort of fraud in the inducement is complete the moment the plaintiff suffers reliance damage by leaving his previous employment. The only reason the statute of limitations does not accrue immediately is that plaintiff is presumably ignorant of the fraud at that point. (See Code Civ. Proc., § 338, subd. (d)....) Once the plaintiff obtains the requisite knowledge, the statute begins to run.” (Magpali v. Farmers Group, Inc., supra, 48 Cal.App.4th 471, 484, 55 Cal.Rptr.2d 225 (“Magpali ”).)

*12 In Magpali, plaintiff brought an action for fraud and intentional infliction of emotional distress against Farmers Group, Inc., contending that he was fraudulently induced to become an agent for Farmers. He alleged that Farmers falsely represented that Magpali would be permitted to run his office as he saw fit, that Farmers concealed the existence of the Limited Underwriting Authority (LUA) program under which agents were limited in their ability to bind insurance, and that Farmers falsely represented that Magpali could sell insurance to members of any racial or ethnic group without revealing the existence of an “unwritten policy” precluding an agent from dealing exclusively with particular racial or ethnic groups. (Magpali, at p. 480, 55 Cal.Rptr.2d 225.)

In that case, we concluded that Magpali's action was time-barred. As to the allegation he was falsely promised he could run his office as he saw fit, we found that he had notice that he would be operating under less than the absolute freedom he asserts was his due by May of 1989. By that time he had been designated an LUA agent, restricted as to the types of insurance he could bind, forced to defend his operating and marketing practices, and ordered to develop a plan to return his agency to profitability by year's end. (Magpali, at p. 482, 55 Cal.Rptr.2d 225.) His complaint, filed in July 1992, was untimely, although his agency position was terminated in February 1992.

Similarly, as to the contention Farmers induced him to become an agent by wrongfully concealing the existence of the LUA program, we found Magpali knew about the program by April or May of 1989 and thus his action was untimely filed. By that date, “[h]e had already left his position with [his prior employer], suffering the alleged damage.” (Magpali, at p. 483, 55 Cal.Rptr.2d 225.) Finally, as to the allegation that Farmers misrepresented its marketing policy and fraudulently concealed its unwritten policy prohibiting agents from marketing in any one specific ethnic group, we found that Magpali knew of the alleged discriminatory policy in May of 1989 when he was placed on LUA status and told he must expand his book of business outside the Filipino and Hispanic communities. “On that date, every element of the cause of action was in place, including damages, and he had actual knowledge that the sales policy was otherwise than he had been informed.” (Id. at p. 484, 55 Cal.Rptr.2d 225.) “Unlike a claim for discrimination, ... the damages do not arise from the loss of the position with Farmers, as

Magpali suggests in his brief, but from the loss of the previously held position which the agent was induced to leave. (See Lazar v. Superior Court, supra, 12 Cal.4th at pp. 642-643, 49 Cal.Rptr.2d 377, 909 P.2d 981.)" (Ibid.) Specifically, "the crucial event for accrual purposes is the occasion on which the plaintiff first learns of the allegedly discriminatory policy, not the date on which he is terminated. Nor does it begin running anew every time the discriminatory policy is mentioned or emphasized." (Ibid.)

*13 In the present case, Alexander's primary argument regarding the statute of limitations is that he did not suffer any damage until the Agreement was terminated, although he concedes that "[his] damages are based on the injury he suffered because he was induced to leave the secure sales agency he held, and are not based on the loss of his district manager contract." He argues: "[U]ntil Alexander's District Manager Agreement was actually terminated by Farmers, any damages that he might have suffered as a result of having been fraudulently induced to leave his agency and take on the district manager's job were conjectural, a mere possibility. Even though his damages in the fraudulent inducement action would be measured by his anticipated earnings as a sales agent, he was enjoying substantial earnings as a district manager ... and until he was no longer earning money as a district manager, whether or not he would ever suffer any financial injury as a result of being induced to leave his agency was conjectural-a mere possibility."

We find no merit in this argument. There was nothing conjectural about Alexander's argument to the jury that he lost money every year by being a district manager rather than a sales agent. The jury awarded him the healthy sum of $2.5 million precisely based on the theory that he would have earned that amount had he remained an agent in addition to what he earned as a district manager. Alexander's assertion that "until he was no longer earning money as a district manager, [it was conjectural] whether or not he would ever suffer any financial injury as a result of being induced to leave his agency," is simply specious.FN11 The jury's compensatory damage award was based on Alexander's evidence and argument as to how much more he would have earned each year as an agent during the time he was a district manager. Clearly he began incurring damage from the time he relied on the false promises by leaving his prior position as an agent, long before the Agreement was terminated. His expectations as to his income as a district manager-upon which he based his decision to sign the Agreement-were in fact based directly on the alleged misrepresentations that the amount of income he earned was entirely up to him and his efforts, and that he would be able to recruit as many agents as he wanted, that his expenses as a district manager would not be substantially more than as an agent, that he would be independent and subject only to minimal reporting requirements, that goals established would be easily obtainable, and that Farmers would not discontinue the types of insurance products offered without agreement of all parties, including the district manager and sales agents. Once he obtained the requisite knowledge that each of these promises was false, the statute of limitations began to run. We conclude that Alexander discovered the falsity of each of these representations more than three years before he filed suit in April 1996. Alexander asserted that Farmers baldly reneged on each of these express promises, without explanation, thus putting him on notice that the promises which induced him to execute the Agreement were falsely made.FN12

FN11. If Alexander's contention in this regard is that his understanding was the district manager position was a secure one, i.e., terminable only for cause, just like the sales agency position, and he did not know until he was terminated that it was not a secure position, then the argument still fails. As we discussed above, the alleged false promise that he would be terminated only for cause must be treated as if it never existed, based on the parol evidence rule.

FN12. Assuming for a moment that these allegations were not barred by the statute of limitations, Alexander would have had to prove that these promises were made by Farmers with no intent to perform, and he would have had to establish that fact by showing more than simply nonperformance. (Tenzer v. Superscope (1985) 39 Cal.3d 18, 30, 216 Cal.Rptr. 130, 702 P.2d 212.) We note that Alexander's presentation of his case was seemingly devoid of such proof, as well.

*14 Regarding the false promises that the amount of income he earned would be largely up to him, and that he would be allowed to recruit as many agents as he could, Alexander was informed in late November 1991 that as of December 13, 1992, Farmers would not accept any new agents in Alexander's district unless an opening was created by way of the termination of a full-time agent. Alexander felt that this was contrary to what he had been promised and told regional management that he viewed it as an attempt to alter the Agreement.

Regarding his expenditures as a district manager, Alexander knew within one year after signing the Agreement in early 1982 that the Companies expected him to assume financial obligations for each new agent pursuant to a “participation agreement,” whereby he was responsible for contributing a portion of a subsidy paid to agents in his district who were unsuccessful. He questioned why he had not been told of this requirement before signing the Agreement, but he reluctantly complied.

As to the reporting requirements Alexander was subjected to, beginning in 1982, the Companies monitored Alexander's production and agency development reports and expected him to meet quotas. From early 1983 on, he was expected to make progress reports; he believed these reports violated the Agreement. The Companies introduced the “Distribution System 2000” program at the end of 1991, which became operative before April 1992, that imposed quarterly reporting requirements on district managers. Alexander thought these reporting requirements also violated the Agreement and requested supporting legal authority for imposition of these requirements.

Regarding the goals and objectives imposed on him, Alexander's district initially did not meet Farmers' profitability expectations. In 1984 his district was subjected to additional monitoring due to lack of profitability and failure to meet goals for improvement. In January 1990, Alexander wrote a letter to Gaylon Zissa, the new regional sales manager, commenting on Alexander's goals and objectives for the year and on various Farmers policies, and saying he thought certain goals established by Farmers were unrealistic. FN13

FN13. Alexander argues that “these events [imposing reporting requirements and quotas, and incurring additional financial obligations] did not put Alexander on notice that the promises were false because, consistent with the promises, by accepting Alexander's failure to perform these acts Farmers indicated that they weren't real requirements.” If in fact they were not real requirements, then indeed they were not really false promises.

Regarding the discontinuation of insurance products, Alexander knew by December 1991 that the Companies were withdrawing from writing insurance for the auto dismantler business, and he expressed his displeasure over that fact in early 1992. He stated his belief that this violated the Agreement, but the insurance was nevertheless discontinued.

Thus Alexander was put on notice that the promises on which he relied were false more than three years before he filed the present lawsuit in April 1996. The statute of limitations thus barred his action to the extent it relied on these promises.

We note the trial court ruled that a letter written by Paul Hopkins to Alexander on April 27, 1993, started the running of the statute of limitations, as it was the first notice to Alexander that the Agreement was in danger of being terminated. The letter stated, “I am of the opinion that you are not sufficiently meeting your contractual obligations to Farmers Insurance Group....” While the letter might have been Alexander's first notice that he might be terminated, by no means was it his first notice that the remainder of the promises on which he relied were false. As we ruled above, the false promise that he would be terminated only for cause-as a matter of law-never existed, and thus awaiting notice of its falsity could not delay the running of the statute of limitations.

*15 In the preceding section, we ruled that it was permissible for the jury to hear evidence that Alexander was told by the Farmers representatives with whom he negotiated the Agreement that they had never personally terminated a district manager agreement, and that Alexander was promised that if the Agreement were terminated he would be able to return to being an agent or he would be given a job within the company, because such representations were not directly at variance with the language of the Agreement. We note that these allegations also are not barred by the statute of limitations, since Alexander discovered the falsity of the promises of continued employment only once he was faced with termination. We note, however, that Alexander presented no evidence that he asked to return to being an agent, or to be moved inside the company, once the Agreement was terminated. Indeed, as Alexander himself points out, he was totally disabled at the time and could not work more than a few hours per week. We conclude that the remaining allegations of fraud (those which are not either barred by the parol evidence rule or the statute of limitations) are as a matter of law insufficient to support the verdict in Alexander's favor. Accordingly, the judgment must be reversed as to the causes of action sounding in tort, as well as with regard to the award of punitive damages.

DISPOSITION

The judgment in favor of Alexander as to the causes of action sounding in tort and the award of punitive damages is reversed, and the trial court is directed to enter judgment in favor of appellants as to the tort claims. The judgment is otherwise affirmed as to the cause of action for breach of contract. Appellants are to recover costs on appeal.

We concur: EPSTEIN, Acting P.J., and HASTINGS, J.