

“promissory /p fraud”

4. Research References:

West’s Key Number Digest, Implied and Constructive Contracts ⇨30 to 40

American Jurisprudence 2d (AMJUR)

American Law Reports (ALR)

California Jurisprudence 3d (CAJUR)

California Civil Practice—Torts (CCP-TORT)

Am. Jur. 2d, Restitution and Implied Contracts §§ 37 et seq.

Cal. Jur. 3d, Damages § 219

§ 7:2 Business-Financial Manager; Breach of Contract; Breach of Fiduciary Duty; Breach of Implied Covenant of Good Faith and Fair Dealing; Conversion; Negligence; Fraudulent Misrepresentation; Negligent Misrepresentation; Concealment; Contract Damages; Nominal Damages; Tort Damages; Punitive Damages; Cross-Complaint Breach of Contract; Reasonable Value of Services (Quantum Meruit); Out of Pocket Damages

A. BACKGROUND

Case Name: Rodriguez v. Cortez

Court: Superior Court of Los Angeles County

Case Number: BC360844

Judge: Honorable Robert H. O’Brien

Attorneys for Plaintiff: Cross-Defendant: John K. Pierson, Esq., Pierson Law Firm, Los Angeles, CA/Minneapolis, MN; Frank Sandelmann, Esq., Venable LLP, Los Angeles, CA.

Attorney for Defendant/Cross-Complainant: Joseph A. Davis, Esq., Davis & Winston, Beverly Hills, CA.

Synopsis: Plaintiff Raul R. Rodriguez, an artist and Rose Parade float designer, sued his cousin and former business manager of many years, defendant Diane L. Cortez. Plaintiff claimed that he and defendant had a contract requiring him to provide her with room and board plus a salary of \$20,000 per year to handle his accounting and business affairs. Plaintiff claimed that for years, defendant paid herself excessive fees, and secretly misappropriated and converted, hundreds of thousands of dollars from plaintiff’s financial accounts. Plaintiff did not discover defendant’s fraud until his utilities were turned off and his health insurance was cancelled. Defendant Cortez denied plaintiff’s claims. Defendant Cortez alleged plaintiff agreed to pay her \$60,000 per year and cross-complained for breach of contract and reasonable value

of services. Plaintiff also sued his accountant, Christopher Dutra, but the claim was settled.

Damages: Financial losses exceeding \$750,000; loss of business opportunities; loss of reputation.

Verdict: \$882,147 compensatory damages; \$100,000 punitive damages

Verdict Date: June 26, 2008

Judgment Amount: \$982,147 plus 10% interest from date of judgment and costs of \$37,051.96.

Subsequent History: Motions for New Trial and Judgment Notwithstanding the Verdict denied. Appeal pending.

Jury Instructions: 2008 WL 2307793 (joint proposed instructions). Actual instructions set forth below were provided by Attorney John K. Pierson.

Jury Verdict: 2008 WL 2856118

Author's Note: This case was tried in 2008 and newer versions of some instructions are now available. The special Instructions and modifications to the CACI are excellent examples of instructions drafted to fit multiple causes of actions and a cross-complaint. Counsel may find these instructions useful as models for preparing instructions in similar cases, but must not rely on them as instructions are always fact related and subject to the approval of the court. They are not a substitute for the individual research and drafting that may be required in a particular case. It is important to review the CACI to see if additional instructions are required for your case. Always check the Directions for Use in selecting instructions. BAJI Instructions may be used when there are no CACI instructions covering the same subject matter. Where special instructions and modifications of the CACI are offered be sure they are "accurate, brief, understandable, impartial, and free from argument." (See Cal. Rules of Court, Rule 2.1050.)

B. INTRODUCTORY INSTRUCTIONS AT CONCLUSION OF TRIAL

BAJI 1.00. Respective Duties Of Judge and Jury

Ladies and Gentlemen of the Jury:

It is now my duty to instruct you on the law that applies to this case. It is your duty to follow that law.

As jurors it is your duty to determine the effect and value of the evidence and to decide all questions of fact.

Do not let bias, sympathy, prejudice, or public opinion influence your decision. Bias includes bias for or against any party or any witness based upon his or her actual or perceived disability,

ACKNOWLEDGEMENTS

One cannot write about jury instructions and not first and foremost thank the people who put their lives on hold in order to serve on juries. They provide an extraordinary service to all of us and deserve our warmest praise and greatest admiration.

Jury Instructions and Verdict Forms have long been confusing. All of us in the legal community owe a debt of gratitude to the Honorable Carol A. Corrigan, the Honorable James D. Ward, the Honorable H. Walter Croskey, the judges and attorney members of the Judicial Council Advisory Committee on Civil Jury Instructions, appointed by the Honorable Chief Justice Ronald M. George, and the staff attorneys of the Administrative Office of the Courts. They have achieved their goal. Thanks to them, we now have a plain-English explanation of the law.

I am obliged to Los Angeles Superior Court Judges Kenneth R. Freeman and Linda K. Lefkowitz who gave me jury instructions and verdict forms from their trials and answered my questions regarding their trial procedures. Thank you for being there when I needed your help.

I am indebted to a number of highly skilled attorneys who took time out from their busy schedules to provide me with the instructions and verdict forms they used in winning their cases. Their Comments add invaluable insight into the strategies of top notch litigators. Thus, my special thanks go to Bruce A. Broillet, Esq., Constance Endelicato, Esq., Bruce Hurley, Esq., Matthew T. Kline, Esq., Mark S. Lester, Esq., David Loughnot, Esq., Shaun M. Murphy, Esq., James M. Neudecker, Esq., Stephen M. Nichols, Esq., Daniel M. Petrocelli, Esq., John K. Pierson, Esq., Lawrence Riff, Esq., David M. Ring, Esq., Suzanne E. Rischman, Esq., Gail Solo, Esq., Robert C. Welsh, Esq. In my book, you are all Super Lawyers!

I am grateful to Kevin Duerinck, Esq., Thomson Reuters Principal Attorney Editor, whose capable and conscientious research assistance, along with his enthusiasm and encouragement, guided me every step of the way.

Elizabeth A. Baron
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