



## Jeff Geiger Counters

### A Common Sense Conspiracy

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Here's my point: stop turning every bad business decision into a conspiracy claim. Enough is enough. Based on an anecdotal review of recent civil actions, it is as if the mafia is threatening to break an arm on every business transaction. Simply stated, contracts may be breached, but it should not give rise to claims of a conspiracy merely because there was more than one person involved in the performance of the contract.

A recent opinion by the Virginia Supreme Court dealt a blow to the "shot gun" approach in pleading claims (i.e., throw in a whole bunch of causes of action and hope one of them hits the target). In [Station #2, LLC v. Michael Lynch, et al.](#), a restaurant suffered a sharp decline in business when the City of Norfolk ordered it to stop musical performances after repeated violations of the noise ordinance. The restaurant claimed that various defendants conspired against it because they prevented the restaurant from installing soundproofing materials, which presumably would have allowed it to hold live music shows. Indeed, the restaurant had a lease and an oral agreement with certain of the defendants permitting it to soundproof its space.

In considering the claim for statutory conspiracy, the Supreme Court concluded that the restaurant was filing blanks. In a clear effort to stymie the burgeoning practice of transforming every breach of contract case into a conspiracy claim, the Supreme Court explained that conspiracy requires an unlawful act or an unlawful purpose. Preventing the restaurant from installing soundproofing, even if there is an agreement allowing it to do so, does not constitute an "unlawful act." Instead:

"[W]e presently are of opinion that a conspiracy merely to breach a contract that does not involve an independent duty arising outside the contract is insufficient to establish a civil claim under [the conspiracy statute]. To permit a mere breach of contract to constitute an 'unlawful act' for the purposes of the conspiracy statute would be inconsistent with the diligence we have exercised to prevent 'turning every breach of contract into an actionable claim for fraud.'"

Score one point for common sense.

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