

Fraud and Construction Contracts- Like Oil and Water?



We have discussed the interaction of fraud and breach of contract actions [on occasion](#) here at Construction Law Musings. In most cases the two do not mix. Between the [economic loss rule](#) and the general desire of Virginia courts to keep contract actions and tort actions separate, [most of the time](#) it is impossible to make a fraud action relating to a contract stick in a construction context.

The Virginia Supreme Court recently confirmed this fraud/contract distinction. As discussed in the [Virginia Real Estate Land Use & Construction Law](#) blog (Thanks Heidi!), [Station No. 2, LLC v. Lynch, et. al.](#), strongly re-states the Virginia courts' strong reluctance to allow a breach of contract turn into a claim for fraud. Without re-iterating the great discussion of the facts of the case found in the post by Heidi Meizner, suffice it to say that certain contractual promises between and among the parties were not fulfilled much to Station 2, LLC's detriment.

However, in its pleadings, Station 2, LLC did not plead that any of the defendants meant to break their promises *at the time that they were made*. In fact, the pleadings stated that any determination to breach the promises was made among the defendants and after the original contract. In short, all of the facts plead in relation to the fraud claim flowed from the original (and now unfulfilled) contract. Therefore, no fraud in the inducement claim can follow.

The take away from this case is that, despite the seeming unfairness, fraud in the inducement is a difficult claim to plead and prove in the Commonwealth of Virginia. Only certain circumstances will allow even the most evil sounding facts relating to a construction contract rise to a claim for fraud. Contractors, subcontractors and business owners should thoroughly discuss the facts and circumstances of their potential fraud claims with a knowledgeable [construction attorney](#) to determine the best course of action in enforcing rights in circumstances where a seeming fraud induced them into a contract that was later unfulfilled.

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.