



Be Careful with Construction Fraud Allegations



Here at [Construction Law Musings](#) we have discussed the [intersection of contracts, construction and fraud](#) on several occasions. We've even discussed how such fraud can bleed over from the civil [to the criminal](#).

Recently, the Virginia Supreme Court weighed in again on the question of construction fraud and criminal allegations. In [O'Connor v. Tice](#), the Court discussed a malicious prosecution action brought by a contractor against owners of a commercial building. In *O'Connor*, the

owners and the contractor got into a disagreement over alleged damage to the roof of the owners' building and who was responsible. In response to this disagreement, the owners contacted the local sheriff's office, accusing the contractor of construction fraud, and then wrote a "15 day letter" to the contractor outlining the criminal consequences should he fail to pay the damages sought in the owners' *civil* lawsuit. Subsequently, a criminal warrant was issued against the contractor based solely upon the word of the owners. This last occurred at the insistence of the owners (who did not inform the sheriff's deputy or the Commonwealth Attorney that they'd had this conversation or that the contractor had partially performed) after they discussed the matter with the contractor's attorney and were informed that any claim that they may have had was civil in nature.

Based upon these facts, the Circuit Court of Northumberland County entered judgment for the contractor in his malicious prosecution action and the Supreme Court affirmed. The Supreme Court held that by threatening criminal action to collect a civil debt and concealing certain facts, the jury could properly find that the owners instituted a criminal action without probable cause and did so maliciously.

The takeaway? From a contractor's perspective, you do not need to take actions like those outlined in this case lying down. Should you be in the unfortunate position of facing such allegations from an owner, contact an [experienced construction attorney](#) to help determine your rights and how to respond.

As a building owner, the lesson here is to take a deep breath, talk with an attorney, and think long and hard about whether you want to escalate a civil claim for damages into a criminal case. If you decide to take such action, make sure that you share *everything* with the authorities before moving forward. Failure to do so can be disastrous.

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