



In Contracts, One Word Makes All the Difference



Here at Musings, I sometimes feel as if I am beating the "[contract is king](#)" drum to death. However, each time I start to get this feeling, a new case out of either the Virginia state courts or the Fourth Circuit Court of Appeals here in Richmond reminds me that we all, lawyers and contractors alike, need to be reminded of this fact on a regular basis. The terms written into a construction contract (or any other

contract for that matter) [will control the outcome](#) of any dispute in just about every case.

A recent 4th Circuit case takes this to the extreme in pointing out the the choice which of two tiny words can change the entire set of procedural rules and even the courthouse in which your dispute will be decided. In [FindWhere Holdings Inc. v. Systems Env. Optimization LLC](#), the Fourth Circuit looked at a forum selection clause found in a contract between the parties. In this case, the clause stated that any dispute would be litigated in the courts "*of* the State of Virginia." When the defendants tried to remove the case from Virginia state court to the Eastern District of Virginia federal courts, the federal court remanded the case, sending it back to the Circuit Court of Loudoun County, Virginia.

On appeal of this ruling, the 4th Circuit agreed with the remand and contrasted the language found in the contract (i. e. "of the State of Virginia) with other standard language stating "*in* the State of Virginia." In upholding the district court, the 4th Circuit stated that the language containing the word *of* expressed sovereignty as opposed to the mere location expressed in the language using the word *in*. In the first case, the 4th Circuit stated, the federal courts have no jurisdiction while in the second they do. As such, the case could not continue in federal court.

While this case does not involve construction, it is informative for all of us in the construction world who deal with written contracts on a daily basis. The [Findwhere](#) is a great reminder to [read your construction documents carefully](#), and draft them with even more care. The lesson of this case is that a change in just one two-letter word can completely change the whole direction of a construction contract dispute. For this

reason, the advice, early in the contracting process, of a [qualified construction attorney](#) knowledgeable in the way these little words make a difference is key.

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