



[More on Fraud, Opinions and Contracts](#)



Here at [Construction Law Musings](#), I have discussed the [interaction between fraud and contracts](#) on many [occasions](#). Recently, I got to put my advice into action. I am counsel for the plaintiff in the matter of *Environmental Staffing Acquisition Corp. v. Beamon, et. al.* in the Portsmouth, VA Circuit Court and recently got a [great opinion](#) (.pdf) right on point that was recently [featured in Virginia Lawyers Weekly](#).

The basic facts are these. My client, Environmental Staffing (En-Staff) filed a [Little Miller Act](#) claim and a claim for breach of contract for Beamon's failure to pay for temporary staffing that En-Staff provided it at the Jeffrey Wilson housing project demolition in Portsmouth, VA. Beamon then counterclaimed for fraud and breach of contract claiming that some statements to the effect that a particular supervisor was qualified along with presentation of the individual's resume constituted fraud. My client demurred to the two fraud counts (actual and constructive).

The Circuit Court agreed with En-Staff and adopted a couple of my arguments. Aside from the argument that works in most contexts (i. e. that where the duty to act a certain way is based in contract, there can be no fraud), the Court stated that statements like those made by the employee of En-Staff (see the opinion for specifics) were merely sales talk. Additionally, the Court set forth a test for the difference between statements of opinion (not fraud) and statements of fact (possibly fraud). The Court also discussed how the ability to investigate the claimed fraudulent statements may impact the analysis. The Court then concluded that no fraud occurred and that, as expected, Beamon had to proceed under a contract theory.

In short, I recommend the opinion as a good discussion of the interaction between fraud and contract (and not just because the Court sided with me). The nuances discussed show why contractors and other construction professionals should discuss their claims with an [experienced Virginia construction lawyer](#) prior to deciding how to proceed.

Image via [Wikipedia](#)

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