



Fraud, the VCPA and Construction Contracts



I've discussed the [economic loss rule](#) here at Musings on several occasions. The economic loss rule basically states that where one party assumes a duty based in contract or agreement, the Virginia courts will not allow a claim for breach of that duty to go forward as anything but a contract claim. This doctrine makes fraud claims

nearly, [though not absolutely](#), impossible to maintain in a construction context. In a majority of instances, fraud and construction contracts are [very much like oil and water](#), leaving parties to fight it out over the terms of a particular contract despite actions by one party or the other that non-lawyers would clearly see as fraud.

However, a recent case decided by the Virginia Supreme Court gives at least some hope to those who are seemingly fooled into entering a contract that they would not otherwise have entered into. In [Philip Abi-Najm, et. al, v Concord Condominium, LLC](#), several condominium purchasers sued Concord under for breach of contract, breach of the [Virginia Consumer Protection Act](#) (VCPA) and for fraud in the inducement based upon flooring that Concord installed that was far from the quality stated in the purchase contract. Based upon these facts, the Court looked at two questions: 1. Did a statement in the contract between Concord and the condo buyers create a situation in which the merger doctrine barred the breach of contract claim, and 2. Did the economic loss rule bar the VCPA and fraud claims?

After analyzing the merger claim and determining that the merger doctrine did not bar the breach of contract claim, the Court moved on to its analysis of the VCPA and fraud in the inducement claims. In both instances, the Court determined that the causes of action would stand. It reasoned that the VCPA created an *independent statutory* requirement making it unlawful to misrepresent that goods are of a particular quality. Because this duty arose independent of the contract, the claim was not barred by the economic loss rule.

Similarly, the fraud in the inducement claim was not barred because the plaintiffs alleged that Concord deliberately misrepresented the quality of the flooring knowing that it would likely cost Concord the sales if it disclosed the actual quality of the floors. In short, the fraud, as alleged, was independent of the contract because it was conceived to

bring buyers in despite Concord's having no intention to follow through on the quality of the floors.

The lesson here is that pleading matters and that not all is lost for a consumer or home buyer that thinks that he or she is subject to fraud. However, the devil is in the details and in the details put into the pleadings. Without pleading some *independent duty* outside of the contract, any fraud or other non-contract claim will fail. The advice of an [experienced Virginia construction attorney](#) will help you parse through the facts and properly package them for presentation to the Court.

Image via [Wikipedia](#)

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