

## Economic Loss Rule not Absolute in Construction



Musings takes a step off of the [green construction](#) and marketing train to discuss an interesting decision from the City of Richmond, Virginia Circuit Court.

As Musings has [discussed on several occasions](#), the economic loss rule in Virginia states that where a loss occurs that relates *in any way* to a contract, the injured party cannot recover for tort related damages.

For example, in what is now an [infamous case](#) in Virginia construction circles, the Virginia Supreme Court held that an owner cannot recover for fraud even if a contractor lied about materials used to build a baseball diamond. The Court decided that the contractor would not have had a duty to tell the truth if it weren't for the contract and, therefore, the economic loss rule applies.

[Betco Construction, Inc. v. NWJ Chesterfield Apartments, LLC](#) gives some hope to contractors who are seemingly staring down the barrel of this harsh “economic loss” rule. In Betco, the Plaintiff, a Virginia construction company, claimed that it was fraudulently induced to execute a contract by statements of the Defendant about its corporate status. Betco plead that the Defendants signed a construction contract and several change orders under the name of a company that no longer existed.

After initially invoking the economic loss rule in dismissing the fraud claims, and allowing Betco to amend its complaint, the court reconsidered and allowed the claim to go forward. The Court at least thought that the Amended Complaint stated enough to get the Plaintiff contractor off of first base.

This case is interesting given the seemingly [unwavering and expanding](#) dedication to the economic loss rule in Virginia. Contractors, subcontractors and their [counsel](#) would do well to learn the circumstances of this case. The key component, in my opinion, is that the Court must have held that the defendants had a duty to properly state their corporate status *prior to execution of the contract*.

The take away? I believe it is two-fold. 1. Always be honest in your dealings with contracts and construction. The economic loss rule does not protect those that induce others to enter construction contracts through dishonesty or misrepresentation of facts outside of the contract. 2. Make sure that you, as a construction professional, look at all the circumstances surrounding execution of your contract when seeking avenues of recovery. Betco gives you at least a glimmer of hope that you could recovery for fraud *if*

*you can find facts showing a duty outside of the contract.* Of course an [experienced construction attorney](#) can help you ferret out proper facts to show such a duty.

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