



As I have [discussed](#) at Musings on several occasions, the general rule in Virginia is that fraud and construction contracts do not mix. In other words, most of the time, even where a contractor clearly misrepresents the work performed, an owner can only recover in contract, and not for fraud with its potential for punitive damages and the like.

However, the recent case of [Brin v. A Home Come True, Inc. et. al.](#) reminds us all that an exception to this general rule exists. In Brin, the Fairfax, VA Circuit Court upheld damages for fraud against one of two contractors who allegedly conspired to defraud a homeowner. Brin is a case where A Home Come True misstated the class level of its contractor's license. Another contractor agreed to let A Home Come True use its license and therefore was a part of the conspiracy. The Court held that such "fraud in the inducement" is actionable outside of the contract. The court, like others before it, reasoned that unlike false or misleading statements as to the quality of work done under the contract, fraud used to get an owner to enter into the contract in the first place is in fact actionable.

On a side note, the particular defendant, Mr. Gierlinger, did not respond to the initial lawsuit and was therefore held in default. The Court was therefore less than sympathetic to his claims.

Two lessons from this case. One, if you get sued, hire a [lawyer](#) and make sure that you show up for court. Two, if you are a contractor, make sure that your advertising and sales statements (particularly relating to your license) are accurate. If you make statements that are untrue, you could be held liable for fraud should one of your subcontractors or even your employees do something to keep you from fulfilling your contract.

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