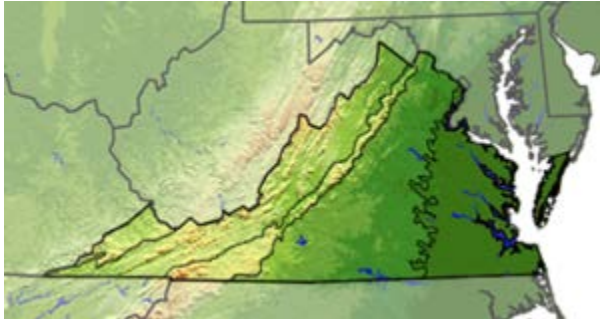




## [A Couple of Interesting Construction Law Cases](#)



This past weekend, I had the pleasure of attending the 33rd Annual Construction and Public Contracts Law seminar sponsored by Virginia CLE and the [Construction Law and Public Contracts](#) section of the Virginia State Bar. Aside from learning a lot and getting a chance to rub elbows and network with some (if not all) of the best construction

attorneys in Virginia, attending this seminar (as well as membership in the section for which I am a member of the Board of Governors) inevitably alerts me to some cases that I hadn't discussed here at Musings and that I think are interesting.

As with every year, I mentally highlighted a couple of cases that I thought my readers here at [Construction Law Musings](#) would find helpful.

The first of these is [CA Builders LLC v. Forde](#) out of the Fairfax Circuit Court. This case is one that emphasizes once again the picky and technical nature of [mechanic's liens in Virginia](#).

In the *Forde* case, the Court determined that Mortgage Electronic Registrations Systems Inc. ("MERS") was a necessary party to a mechanic's lien lawsuit. In *Forde*, MERS was a named beneficiary (not a trustee) of a deed of trust on the Owner's property at the time the mechanics lien was filed by CA Builders. CA Builders then filed suit and did not name MERS as a party. The Owners then argued successfully that MERS as a beneficiary of the deed of trust was a necessary party to the lawsuit. The Court agreed with the Owners despite the fact that MERS is just an agent of the lender. The Court then dismissed the suit with prejudice because the 6 month statute of limitations to file suit to enforce a mechanic's lien had expired.

The lesson of this case, like many a mechanic's lien case, is that mechanic's liens are [technical and picky beasts](#) where one small omission can derail the process. As such the assistance of an [experienced Virginia construction lawyer](#) can be invaluable.

The second case I will outline here is that of [Penney v. Brock](#) out of the Accomack County, Virginia Circuit Court. On first blush, this case seems to be one in a long line of cases where the Virginia courts [refused to find fraud in a construction contract](#)

[case](#). However, unlike many of the cases that preceded this one, this one involved actions by the contractor that were not directly required by the contract.

In this case, the contractor received an advance of funds from the owners based upon certifications that it had paid (or would pay) its subcontractors out of that payment. The wrinkle? These certifications were false and not required by the language of the contract. Despite this last fact (namely that the contractor allegedly misrepresented certain facts where even truthful representations were not required), the Virginia court extended the past cases to encompass such misrepresentations and dismissed the fraud count. In doing so however, the Court expressed grave concerns that such a result was an unintended consequence of the historical rule in Virginia.

What are your thoughts on this last case? Should the fraud count have proceeded to trial?

Both of the above cases are trial court opinions and may or may not be on appeal as we speak. Should I hear of Virginia Supreme Court opinions relating to these cases, I will let you know.

Thanks again to all who attended the CLE this past weekend, it is always fun to catch up with construction lawyers from across Virginia. If you are a Virginia lawyer interested in construction and a great group of folks, I highly recommend that you join the Construction Law and Public Contracts section of the state bar.

Image via [Wikipedia](#)

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