

Fraud in Virginia



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Fraud cases in Virginia are not only difficult to prove, but can also be challenging to plead. The well-established standard that fraud must be pleaded with particularity diverges from the “notice pleading” test that permits general allegations to suffice in most circumstances.

In *County of Grayson, et al. v. Ra-Tech Services*, two Virginia counties brought a claim against Ra-Tech and its two principals – John Spane and Dale Sutphin - alleging fraud, fraud in the inducement, constructive fraud and breach of contract arising from an agreement between the parties for the installation and maintenance by Ra-Tech of communications systems to be used by first responders in the two counties.

Ra-Tech, Sutphin and Spane filed a Motion to Dismiss the Amended Complaint, which was granted as to the individual defendants. Plaintiff asked the court to reconsider the dismissal of the fraud in the inducement count against Spane and Sutphin.

On reconsideration, the Court began by reviewing the limited circumstances justifying a second look at the court’s order: an intervening change in the law, new evidence not previously available and the catch-all, “clear error” or “manifest injustice.”

The counties argued that the only reason the Court found the Complaint deficient against Sutphin and Spane was because the Court ruled that the defendants’ conduct did not justify breaching RA-Tech’s corporate shield, meaning that the decision had been rendered based on an issue that had not been briefed. However, upon review, the Court affirmed its ruling “that the plaintiffs failed to state a fraudulent inducement claim against the individual defendants.”

To sustain a fraudulent inducement claim under Virginia law, a plaintiff must demonstrate that “the defendants made misrepresentations [that] were positive statements of facts; made for the purpose of procuring the contract; that they are untrue; that they are material; and that the party to whom they were made relied upon them and was induced by them to enter the contract.”

In addition to the enhanced standard of proof, the Federal Rules of Civil Procedure impose a similarly rigorous pleading standard for fraud claims. The Virginia rule is substantially the same. In particular, a plaintiff must allege facts regarding “the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.”

The allegations of the two counties against the individual defendants were that they “intentionally made false written and oral statements to the Plaintiffs... in support of the proposal in order to induce the Plaintiffs into entering the agreement, with the present intention of defrauding the Plaintiffs....” Under traditional notice pleading,

allegations of this sort, to be fleshed out in discovery, will be adequate, but they are precisely the sort of “labels and conclusions” and “formulaic recitations of the elements of the cause of action” that are insufficient to sustain a fraud claim.

Fraud allegations impute the stigma of intentional wrong-doing and dishonesty and the civil penalties can be harsh. Because litigants recognize the advantages, they are quick to plead fraud whenever possible. As a result, our system of jurisprudence has developed limiting rules of civil procedure and evidence designed to eliminate frivolous claims. A good rule to remember: if you can’t recite the details of a fraud claim, you probably don’t have one.