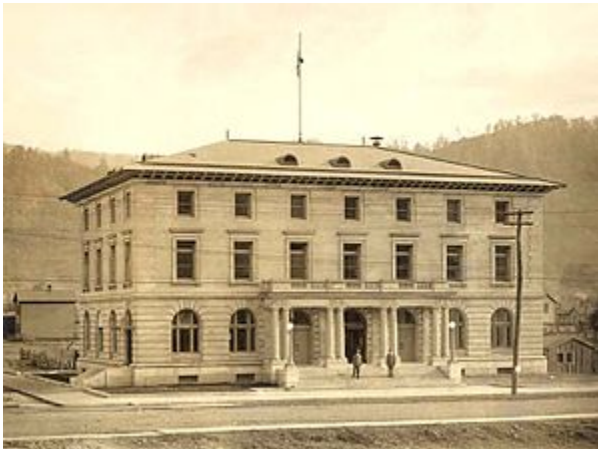




[Yet Another Reminder That Pleading Matters](#)



As anyone who has practiced construction law for any period of time knows, Motions to Dismiss are a regular occurrence. These motions are made in an attempt to get a claim reviewed and rejected early in the process. Because these motions to dismiss can and do lead to dismissal of what could have been properly proven claims, the initial complaint or, in Virginia, motion for judgment, has to be drafted with care.

The Western District of Virginia federal court reminded us of this again in a recent case considering just such a motion. In [Smart Choice Corp. v. Wayne's Erecting LLC](#) the Court considered both the elements of a contractual claim and what was necessary to be plead in order to survive a motion to dismiss.

In *Smart Choice*, the court considered whether a breach of contract claim was properly plead based upon the assignment of a contract from the Owner of a project to Smart Choice. The Court, taking all of the facts stated in the Complaint as true, decided that the pleading was adequate to survive a motion to dismiss.

However, the Court did leave the question of whether the evidence could show that the Complaint could be sustained after some discovery when it ended its opinion with the specter of summary judgment and the possibility that summary judgment could be sustained.

In short, Smart Choice did enough to survive the initial stages of the law suit through its pleading. I encourage you to both read the opinion itself (linked above) for its discussion of the pleading standards and the necessary contract elements. I also encourage you to call an [experienced construction attorney](#) to assist you in drafting a complaint to avoid the possibility that you could be out of court before having a chance to prove your case.

Photo credit: [Wikipedia](#).

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