



[Another Exception to Fraud and Contract Don't Mix](#)



At Construction Law Musings, we've discussed the fact that, in Virginia, the "economic loss rule" generally renders claims of fraud and construction contracts [like oil and water](#). This is true in most states, [including Florida](#).

What this means is that as a general rule where any party is supposed to perform under a contract, and fails to do so, the Virginia courts will [dismiss a fraud claim](#) out of a desire to avoid turning any breach of contract (read "broken promise") case into a claim for fraud. As you have likely gathered by the title of this post, there are exceptions. One is a [properly plead Virginia Consumer Protection Act \("VCPA"\) claim](#).

Another, found in a recent [Loudoun County, VA](#) Circuit Court opinion in [Madison v. Milton Home Systems Inc.](#), is so called fraud in the inducement (in other words, inducing a person to enter the contract under false pretenses). In *Madison* the Court analyzed several counts based upon a modular home contract and so called "performance agreement" guarantying that the home would be installed by the manufacturer in the event that it's installer failed to perform.

Needless to say, the installer failed to perform and the purchasers of the home sued everyone that they could think of. The Court was then faced with the classic economic loss rule case with counts for negligence, fraud and breach of the VCPA. After going through the all too familiar economic loss rule analysis, the Court dismissed all but the fraud count in their entirety. The Court allowed the fraud in the inducement allegations to remain despite their in-artfully plead nature. The Court, as best I can tell, determined that at least on a demurrer, it would allow the Madisons to attempt to prove that Milton Home Systems induced them to purchase the modular unit by making promises that it never intended to keep.

This case shows once again that pleading matters and that there is an exception to every rule. In this case, the exception is that where the fraud is alleged to be in the *inducement to contract* and not in any alleged breach of a duty to contract, the economic loss rule will not bar the claim. Finding an [experienced construction lawyer](#) is always a good idea

when seeking to pursue a claim here in Virginia. Good counsel can help you find the best ways to pursue your claims without having them dismissed.

A summary of this case (though not the full opinion) can be found at [Virginia Lawyers Weekly](#), and I recommend that you read and analyze it yourself (and let me know if you think that my analysis flies off the rails anywhere).

Have a great Memorial Day.

Photo Credit via [Wikipedia](#).

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