



# DOUMAR LAW GROUP NEWSLETTER

A Periodic Publication Covering Legal Issues of General Interest

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## **There Is No Substitute**

For business litigation in particular, tactically we often focus on a limited issue in a case to negate the resources of a larger foe (a “Thermopylae Strategy”), but often times fighting over a number of fronts cannot be avoided. Time and time again, preparation, discovery and the use of experts can all be paramount, are all expensive, and are all crucial, especially if you have the burden of proof. Don’t plan that a case can be litigated and tried on the cheap, and never plan to file a case thinking the filing itself will be a catalyst for settlement. It’s not uncommon for a vigorously contested business litigation and trial to cost \$100,000, though there can be a wide range. Can some ends be achieved for \$5,000 in court? Sometimes yes. But if you scrimp on payment, your lawyer will try to value engineer your case to get more out of less; sometimes that is not a bad strategy for certain defendants, but there are limits.

## **Lying Is Not Fraud**

If someone lies to you while performing a contract, and you suffer damages, it’s not fraud, it’s a failure to live up to a

contract. Virginia courts will not find fraud for lies and misrepresentations made as part of contract performance. Fraud has a specific definition, namely a material misstatement of fact, intentionally false when made, on which someone justifiably relies, as a result of which that someone suffers damages. Fraud must arise separate from contract. In the last year we applied these principles to get fraud claims dismissed, and we also applied exceptions, such as a fraudulent statement inducing the signing of a contract, to avoid dismissal.

## **Real Estate Scams**

Our office helped to share information on a person who was embezzling funds out of real estate closings in the D.C. area, but himself had no fixed address. By facilitating communication among various interested parties and government investigators, and trying to locate the perpetrator ourselves, we made a contribution to the authorities finally locating and arresting this person. Misdirection of funds from title companies, or fly-by-night title companies, however, remain an ongoing concern in today’s markets, and a source of business for lawyers trying to allocate losses. Always get title insurance.