

Winning Early in Complex Business Litigation Alleging Fraud



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In a recent case alleging common law and consumer fraud, the Eighth Circuit Court of Appeals affirmed dismissal because the plaintiff failed to meet the requisite pleading standard. The plaintiff, a commercial printing company, purchased a printing press from the defendant technology company. Four years later, the commercial printing company sued the technology company for fraud. In this case, as with every complex business case involving allegations of fraud, there are often different rules and pleading standards that must be followed. Navigating these waters carefully, as illustrated in this opinion, can often make the difference between protracted litigation and winning early on a motion to dismiss.

Takeaways

Preparing for an Appeal Early in Litigation. The legal strategy pursued here is not only noteworthy because the defendant got out relatively early in litigation by winning a motion to dismiss, but also because the legal theory was one that could withstand an appeal. Anytime that you file a motion to dismiss, there is the chance that if you win and the case is dismissed, the losing party will take matters to an appellate court. In the early stages of conducting legal research, settling on a theory for the motion, and putting together a winning argument, a lawyer should always keep one eye on a possible appeal. This important consideration can shape the strategy pursued, and ultimately result in success on appeal. In short, even in the early stages of litigation a wise attorney will prepare the case for an appeal.

Heightened Pleading Standards Apply. In a lawsuit alleging fraud, the complaint “must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). Even though this was a lawsuit premised on state law, the Eighth Circuit explained that its position is to apply “federal pleading standards...to the state substantive law to determine if a complaint makes out a claim under state law.” This heightened pleading standard essentially means a higher hurdle for a plaintiff to clear at the outset, or stated another way, federal cases alleging fraud are not just “business as usual” for litigators. Extreme attention to how facts are pleaded is critical when suing under or defending against a fraud case. Where a plaintiff fails to appreciate this heightened standard early in the case, a defendant can often find an early exit from litigation.

Case reference: *Ambassador Press, Inc. v. Durst Image Technology U.S., LLC*, No. 18-3017 (8th Cir. Feb. 5, 2020).