

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

HOWARD L. MARTZ,

Plaintiff,

v.

GOLDEN CONSTRUCTION, INC., et al.,

Defendants.

CIVIL ACTION
No. 80-0738-A

FILED

DEC 11 1980

MEMORANDUM OPINION AND ORDER

CLERK, U. S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

The defendants moved this court on December 5, 1980 for summary judgment pursuant to Fed. R. Civ. P. 56. The defendants alleged that this court lacks jurisdiction under § 10 of the Securities Exchange Act of 1934, 15 U.S.C. § 78, (1976) because no instrumentality of interstate commerce was utilized in connection with the sale of a security. Secondly, the defendants allege that there was an accord and satisfaction of any claim the plaintiff here asserts. Thirdly, counsel for the defendants urged in oral argument that there exists no genuine issue of material fact regarding whether the plaintiff relied upon misrepresentations of the defendants.

The court has carefully considered the memoranda and affidavits submitted by counsel. It has reviewed the deposition of the plaintiff and considered the oral arguments of counsel. Resolving, as it must, all inferences in favor of the plaintiff, the court finds as follows:

1. There is disputed evidence regarding whether instrumentalities of interstate commerce were involved in the sale of securities. Accordingly, the court will defer ruling on jurisdiction until it can hear evidence at the trial of this matter.

2. There is a genuine issue of material fact regarding whether there has been an accord and satisfaction of the claims alleged by the plaintiff.

3. There is a genuine issue of material fact regarding whether the plaintiff relied upon representations made by the defendants in the document entitled "Points to be contained in agreement for Stock Repurchase Offer," dated November 14, 1978 or upon other representations.

Accordingly, the defendants' motion for summary judgment is denied.


United States District Judge

December 10, 1980