

With Fraud Claims, Timing Is Everything

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Partner [Bill Gyves](#) co-authored the *New York Law Journal* article “With Fraud Claims, Timing Is Everything.” The article examines an issue commercial litigators and courts frequently face: When does a simple breach of contract rise to the level of a viable claim for fraud? In *United States ex rel. O'Donnell v. Countrywide Home Loans*, the Second Circuit reversed and remanded with instructions to enter judgement in favor of defendants who were accused of violating the Federal Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The decision was praised as a much needed push-back against what some see as the government's hyper-aggressive use of FIRREA to extract substantial settlements from financial institutions. In a broader sense, the case teaches that no matter how intentional, willful or malicious a breach of contract may be, as a general rule it will not give rise to a viable fraud claim unless the bad actor, upon entering into the contract, had absolutely no intention of ever performing its contractual obligations.

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