In a recent decision by Judge Gale, the North Carolina Business Court has reminded plaintiffs seeking to advance the claim of fraud by omission that the particularity pleading threshold has teeth.

*Island Beyond, LLC v. Prime Capital Group, LLC* arose from a real estate development deal gone bad. In 2005, the parties formed an LLC whose purpose was to own and operate a commercial development near Kernersville, NC. The plaintiff erroneously assumed that the land for the development was being acquired on behalf of that LLC; in fact, the land was being acquired in the name of different corporate entities. In 2011, six years after the project got underway, plaintiff learned that in fact the development entity owned only ten of the necessary 30 acres and had no income-producing property.

Plaintiff brought suit, asserting, among other things, that by failing to disclose the true ownership of the property at issue, defendants had committed fraud. In granting the defendants' 12(b)(6) motion as to the fraud claim, the court laid out the following pleadings requirements for an omission-based fraud claim. A plaintiff must allege (1) the relationship between plaintiff and defendant gives rise to a duty to speak; (2) the event that triggered the duty to speak or the general time period over which the relationship arose and the fraud occurred; (3) the general content of the information that was withheld and the reason for its materiality; (4) the identity of those under a duty who failed to make such disclosures; (5) what the defendant gained from withholding the information; (6) why the plaintiff's reliance on the omission was reasonable and detrimental; and (7) the damages the fraud caused the plaintiff.

The court reemphasized an earlier business court holding that merely “parroting a legal conclusion” is insufficient, and noted that the court was “hard pressed” to see how the alleged silence of defendants regarding ownership of the property in question could give rise to a claim for fraud where those very facts were contained in public records contained at the Forsythe County Register of Deeds.

The lesson? Litigants are often befuddled by what constitutes sufficient specificity in pleading fraud, and fraud
by omission is even more oblique. Here, the Business Court provides some clarity for the latter. At a minimum, ensure the facts you allege should have been communicated weren't publicly available.