

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLANDCHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE101 WEST LOMBARD STREET
BALTIMORE, MARYLAND 21201
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March 7, 2016

MEMO TO COUNSEL RE: Jos. A. Bank Clothiers, Inc. v. J.A.B. Columbia, et al.
Civil No. ELH-15-3075

Dear Counsel:

Because of a temporary imbalance of workload, I am ruling upon the motion to dismiss count III of the counterclaim for Judge Hollander.

The motion (document 16) is granted. The parties dispute various matters concerning whether defendant has met Rule 9(b)'s heightened pleading standard, including the content of misrepresentations made to defendant, the identity of the person who made the misrepresentations and the identity of the persons to whom the misrepresentations were made. What is clear, however, is that nothing in count III of the counterclaim alleges that at the time that plaintiff made the alleged misrepresentations, it knew of their falsity or that it was recklessly indifferent to the truth of what it said. Such a difference as to state of mind is essential to a fraud claim. *See Learning Works, Inc. v. The Learning Annex, Inc.*, 830 F.2d 541, 546 (4th Cir. 1987), and the absence of such an allegation is fatal to count III.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge