

**SYSTEMS ENGINEERING
AND SECURITY, INC. ("SES")**

*

NO. 2006-CA-0974

*

COURT OF APPEAL

VERSUS

*

FOURTH CIRCUIT

**SCIENCE & ENGINEERING
ASSOCIATIONS, INC. ("SEA"),
APOGEN, INC., AND ROBERT
SAVOIE**

*

STATE OF LOUISIANA

*

*

*** * * * ***

ARMSTRONG, C. J., DISSENTS WITH REASONS.

I respectfully dissent.

In 2000, SEA represented to the GSA that it was “small” in the process of bidding on a Blanket Purchase Agreement to support the Navy’s Information Technology Center in New Orleans. SES alleges that this was a misrepresentation.

In 1998 the General Service Administration (“GSA”) awarded a Multiple Award Schedule (“MAS”) contract to SEA. SEA certified that it was a “small” business at the time. This certification is good for the five-year life of the MAS contract plus three additional five-year renewal options, regardless of whether SEA grows beyond what would normally qualify as “small” during the term of the MAS contract.

Accordingly, as a matter of law, SEA is considered to be a small

business for the duration of the MAS, which would include all times relevant to this litigation. Therefore, also as a matter of law, allegations of misrepresentations are immaterial for purposes of this litigation. Bearing this in mind, I believe that the plaintiff did not state a cause of action for intentional/fraudulent misrepresentation.

I believe the plaintiff also did not state a cause of action for negligent misrepresentation. As I noted above, SEA is considered to be a small business for the duration of the MAS contract. Consequently, also as a matter of law, it is immaterial for purposes of this litigation whether SEA negligently misrepresented its size.

Finally, I believe that the plaintiff did not state a cause of action for revocatory and oblique actions. SES's petition alleges that "SEA made distributions to Apogen which caused or contributed to SEA's insolvency such that SES as a creditor may revoke those distributions." Thus, SES's revocatory and oblique action claims presuppose SES's status as a creditor of SEA. However, SES's creditor status is in turn predicated upon SES's above discussed claims against SEA which, as I have already pointed out, have no basis in law.

For the foregoing reasons, I would affirm the judgment of the trial court.