

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

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NO. 2006-CA-0974

VERSUS

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COURT OF APPEAL

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FOURTH CIRCUIT

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

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STATE OF LOUISIANA

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CANNIZZARO, J. DISSENTS WITH REASONS

I respectfully dissent from the majority opinion. The plaintiffs have alleged that they have claims against the defendants, because the defendants intentionally and fraudulently and negligently misrepresented facts to government entities. According to the plaintiffs' claims, the misrepresentations caused them damages.

Intentional or Fraudulent Misrepresentation

As the trial court judge explained in her reasons for judgment, certain elements are required to prove an intentional or fraudulent misrepresentation. There must be a misrepresentation of a material fact, an intent to deceive, and a justifiable reliance on the misrepresentation of fact that causes damage. As set forth in the majority opinion, the facts in the petition must be considered as true for purposes of an exception of no cause

of action. Additionally, to defeat an exception of no cause of action, the petition on its face must contain allegations, which, if proven, state a cause of action.

The allegedly misrepresented facts were represented to a government entity, not to the plaintiffs, and neither the petition nor the amended petition alleges that the facts were misrepresented to them. Further, there is no allegation in the petition or the amended petition that the defendants had an intent to deceive the plaintiffs.

Although the plaintiffs do allege in the petition that they relied to their detriment on the misrepresented facts, they do not allege how they could have relied on facts that were misrepresented to a government entity and not to them. Thus, I do not think that in this case the petition, as amended, alleges on its face the elements that are required for a cause of action for fraudulent or intentional misrepresentation.

Negligent Misrepresentation

A claim for negligent misrepresentation on the part of the defendants would require the plaintiffs to have alleged in their petition, as it was amended, certain elements. False information must have been supplied by the defendants, the defendants must have had a duty to supply correct information, the duty to supply correct information must have been breached by an act or omission of the defendants, and the plaintiffs must have incurred damages as a result of the plaintiffs' reliance on the false information. The petition, as amended, on its face fails to state a cause of action for negligent misrepresentation, because the allegations in the petition, as amended, do not include the elements required for a cause of action based on negligent misrepresentation. There was no allegation of a

legal duty owed by the defendants to the plaintiffs, which is essential for stating a claim for negligent misrepresentation.

Oblique and Revocatory Actions

The plaintiffs have alleged that they are entitled to an oblique or a revocatory action against the other defendants if Science & Engineering Associates, Inc. is insolvent. These actions are for the benefit of a creditor whose debtor is insolvent. I would find that there can be no debtor creditor relationship between the plaintiffs and the defendants based on the petition, as amended, because it fails to state a cause of action for either intentional, fraudulent misrepresentation or negligent misrepresentation. Therefore, there is no cause of action for an oblique or a revocatory action.

Based on the foregoing analysis, I would remand this case to the trial court. The plaintiffs should be given an opportunity to amend their petition to state a cause of action. La. C.C.P. art. 934.