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Reading Robinson Helicopter in 2026: Fraud Between Contracting Parties and the Economic-Loss Rule After Rattagan

Grand Park Law Group · November 7, 2026 · 7 min read



California's economic loss rule polices the boundary between contract remedies and tort recovery for fraud.

Robinson Helicopter is often described as an exception to California's economic loss rule for fraud. In 2024 the Supreme Court recast it. This memorandum states how fraud claims between contracting parties are analyzed as of November 2026.

I. Question Presented

When may a party to a contract recover in tort for fraud by its counterparty, notwithstanding the economic loss rule, and how did *Rattagan v. Uber Technologies, Inc.* change the analysis?

II. Short Answer

The economic loss rule bars tort recovery for negligently inflicted, purely economic loss that arises from a contract. It does not bar intentional fraud claims that stand independently of the contract. *Robinson* allowed affirmative misrepresentation claims that exposed the plaintiff to liability beyond its economic loss. *Rattagan* holds that fraudulent concealment during performance is likewise actionable if its elements can be established independently of the parties' contractual rights and obligations, and the conduct exposes the plaintiff to a risk of harm beyond the parties' reasonable contemplation at contracting.

III. Governing Law

A. The Rule and Its Purpose

"In general, there is no recovery in tort for negligently inflicted 'purely economic losses,' meaning financial harm unaccompanied by physical or property damage." (*Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922.) In the contract setting, *Sheen* explained, the rule bars negligence claims for pure economic loss in deference to the parties' contract. *Sheen* held that a lender owes no tort duty in processing a loan modification application. It noted that a borrower injured by intentional conduct may pursue theories such as fraud.

Aas v. Superior Court (2000) 24 Cal.4th 627 applied the rule to bar negligence claims by homeowners for construction defects that had caused no physical injury or property damage. It stated that "[a] person may not ordinarily recover in tort for the breach of duties that merely restate contractual obligations." (*Id.* at p. 643.)

Erlich v. Menezes (1999) 21 Cal.4th 543 held that homeowners could not recover emotional distress damages for the negligent breach of a contract to build a house. (*Id.* at p. 548.) It reiterated that "conduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law." (*Id.* at p. 551.) It identified settings in which tort recovery has been allowed, including where "the breach is accompanied by a traditional common law tort, such as fraud or conversion," and where "the means used to breach the contract are tortious, involving deceit or undue coercion." (*Id.* at pp. 553–554.)

B. *Robinson Helicopter*

In *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, Dana supplied sprag clutches for Robinson's helicopters. It changed its grinding process without notice and continued to issue written certificates of conformance. (*Id.* at pp. 985–986.) The court stated that "[t]he economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise." (*Id.* at p. 988.) It held that the rule did not bar Robinson's fraud and intentional misrepresentation claims because they were independent of the breach. (*Id.* at p. 991.) It explained that "a contract is not a license allowing one party to cheat or defraud the other." (*Id.* at p. 992.) It described its holding as "narrow in scope and limited to a defendant's affirmative misrepresentations on which a plaintiff relies and which expose a plaintiff to liability for personal damages independent of the plaintiff's economic loss." (*Id.* at p. 993.) It declined to decide whether intentional concealment is an independent tort. (*Id.* at p. 991.)

C. *Rattagan* (2024)

The Ninth Circuit asked the Supreme Court whether fraudulent concealment claims are exempt from the economic loss rule. The court reframed the question. On August 22, 2024, it answered in *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1: a plaintiff may assert fraudulent concealment "based on conduct occurring in the course of a contractual relationship, if the elements

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of the claim can be established independently of the parties' contractual rights and obligations and the tortious conduct exposes the plaintiff to a risk of harm beyond the reasonable contemplation of the parties when they entered into the contract."

The court stated: "It is inaccurate to conclude *Robinson* announced an exception to the economic loss rule." Rather, *Robinson* "applied the broader independent tort principle." The court prescribed three steps. First, ascertain the full scope of the contract, including rights, obligations, and remedies. Second, determine whether an independent tort duty exists. Third, determine whether the plaintiff can establish every element of the tort independently of the contract. It recited the five elements of fraudulent concealment and the circumstances giving rise to a duty to disclose.

The court distinguished precontract inducement. Most concealment claims arise from negotiations and are pleaded as fraudulent inducement, a context in which tort and contract principles have traditionally overlapped. Concealment during performance is different, because parties may anticipate nondisclosure and allocate that risk. If the harm "was anticipated and the risk allocated," the conduct does not support an independent tort, though it may breach an express term or the implied covenant.

D. *Dhital*

In *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, the First District held that "the economic loss rule does not bar plaintiffs' claim here for fraudulent inducement by concealment" in a vehicle-purchase case. *Rattagan* noted that review had been granted in *Dhital* on February 1, 2023 (S277568) and did not address its issues. The Supreme Court dismissed review on December 18, 2024, after *Rattagan*, and returned the matter to the Court of Appeal. (Supreme Ct. Petition Conf. Results (Dec. 18, 2024).) Under the Comment to California Rules of Court, rule 8.1115(e), an order dismissing review is a "decision on review," and a published Court of Appeal opinion then regains binding effect unless the Supreme Court orders otherwise.

IV. Analysis

A. Affirmative Misrepresentation

Where the defendant made an affirmative false statement on which the plaintiff relied, *Robinson* and *Rattagan* together indicate the economic loss rule is not the obstacle. *Rattagan* stated that the rule "does not apply to limit recovery for intentional tort claims like fraud." The question becomes whether the fraud elements exist apart from the contract and whether the harm exceeded what the parties allocated.

B. Concealment During Performance

For nondisclosure after formation, the contract is the starting point. A court will ask whether the agreement addressed the information at issue, whether it allocated the risk of nondisclosure, and what remedies it provided. *Rattagan* illustrated the line with a seller who learns of a latent defect posing serious harm beyond the warranty's contemplation and conceals it. That claim may proceed. If the defect caused no harm beyond what the warranty contemplated, the buyer likely could not assert an independent fraud claim.

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C. Application to Negotiated Transactions

No California appellate decision applying *Rattagan* to an acquisition agreement was located for this memorandum. The framework nonetheless maps onto such agreements. Representations, disclosure schedules, indemnities, and survival periods are the "full scope" of the bargain under step one. A concealment claim based on facts the agreement expressly allocated will face the contemplation inquiry. Fraud in the inducement of the agreement falls within the precontract category that *Rattagan* treated as traditionally actionable.

D. Negligence Theories Remain Limited

Sheen, *Aas*, and *Erlich* continue to confine negligence and emotional distress recovery where the duty arises from the contract. Recasting a contract claim as negligent performance will not avoid the rule.

V. Practical Considerations

- Plead fraud with specificity; *Robinson* and *Rattagan* both rely on that requirement as a safeguard.
- Map each alleged misstatement or omission against the contract's representations, disclosure duties, and remedy provisions.
- Plead the source of any duty to disclose (statute, fiduciary relationship, exclusive knowledge, partial disclosure, or active concealment).
- Allege the specific harm that lay beyond the parties' contemplation at contracting.
- Distinguish inducement theories from performance-stage concealment in separate counts.
- Before citing *Dhital* as binding, confirm that the point relied on is consistent with *Rattagan*; rule 8.1115(e)(2) restores binding effect only to that extent.

VI. Authorities Cited

- *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979
- *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1
- *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905
- *Aas v. Superior Court* (2000) 24 Cal.4th 627
- *Erlich v. Menezes* (1999) 21 Cal.4th 543
- *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828
- Supreme Ct. of Cal., Petition Conf. Results (Dec. 18, 2024)
- Cal. Rules of Court, rule 8.1115(e) & Advisory Com. com.

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Practice	Business Torts
Topics	Economic Loss Rule · Robinson Helicopter · Rattagan · Fraud
Publication	Corporate & Business · November 7, 2026

Available online at grandparklawgroup.com/insights/articles/robinson-helicopter-post-closing-fraud-economic-loss. This publication is provided for general information and is not legal advice.
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