



## *Weekly Wright Report* (7/2/17)

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### **What Happens When Condominium Dues Aren't Paid?**

In *Elvaton Towne Condominium Regime II, Inc. v. Rose*, 2017 WL 2712887 (June 23, 2017) the Court of Appeals of Maryland struck down a condominium's action in barring unit owners that were delinquent in dues from using certain common elements such as the pool and parking lot. The Court ruled that the delinquent unit owners owned an undivided percentage interest in the common elements and that restrictions imposed upon them adversely affected their property interests and constituted an impermissible taking in violation of the Maryland Condominium Act. The fact that the restrictions were temporary until the debt was paid did not render the taking permissible. Restriction of use of common elements was not specifically authorized in the condominium declarations and was not a valid form of debt collection. Ask Mike [mstover@wcslaw.com](mailto:mstover@wcslaw.com) or Ken [kdavies@wcslaw.com](mailto:kdavies@wcslaw.com)

### **Government Procurement**

In *Manekin Construction, Inc. v. Maryland Department of General Services*, \_\_\_ A.3d \_\_\_ (June 28, 2017), the Court of Special Appeals reversed summary disposition (summary judgment) in favor of the Department of General Services (DGS) because it found the Board of Contract Appeals (BCA), in granting summary disposition, had erroneously made factual findings and because the Circuit Court for Howard County, the first appellate court, had utilized the wrong standard of review. Manekin contracted with DGS to build barracks and a garage for the Maryland State Police. Throughout the project, Manekin submitted various proposed change orders (PCOs) seeking additional time and compensation, including PCO 68 which sought both. Manekin submitted PCO 68 on December 7, 2011. The PCO was subsequently discussed at various project meetings, but recorded in the PCO Log as "void" (as opposed to "rejected" or "no charge" as listed for other PCOs).

On March 18, 2013, at the conclusion of the project, Manekin submitted a Request for Equitable Settlement (REA) again requesting additional time and compensation based on the same factors and conditions set forth in PCO 68. DGS rejected the REA, and Manekin filed a notice of claim with the procurement officer (PO), which denied the claim as untimely. The PO found that Maneken did not submit its claim within 30 days after it "[knew] or should have

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known of the basis for a claim”, as required by its contract and by COMAR 21.07.02.05-1D. Manekin appealed to the BCA, and, during the evidentiary portion of the hearing, the BCA granted DGS’ then-pending motion for summary disposition, holding that Manekin knew or should have known of its claim in 2011 when it submitted PCO 68, and, therefore, its 2013 claim was untimely. On appeal from the BCA, the Circuit Court for Howard County affirmed, holding that substantial evidence existed to support the PO’s decision that Manekin’s claim was untimely.

The Court of Special Appeals reversed. It held that the 30 day window for submitting a claim began when DGS denied the REA in 2013, because that was the first time DGS disputed Manekin’s right to payment for PCO 68. The Court distinguished prior BCA cases in which a claimant had actual notice of the agency’s rejection of a PCO, which triggered the running of the 30 day window, which did not occur here. The Court also found that the BCA engaged in improper fact finding by determining that Manekin should have known of the basis of its claim when DGS designed the claim as “void” in the PCO Log, despite the fact that subsequent progress meeting minutes indicated that the parties had agreed to leave open the issue of additional time and compensation, and despite the fact that other PCO claims were designated as “rejected” and not “void.”

The Court of Special Appeals also found that the Circuit Court erred, because the grant of a summary disposition, like the grant of summary judgment, is a legal matter on which a reviewing court does not defer to the PO. Therefore, the “substantial evidence” test for factual determinations on which the court relied was inapplicable and the Circuit Court erred in its deference to the PO. Ask Jason [jpotter@wcslaw.com](mailto:jpotter@wcslaw.com)