



2009

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Recommended Citation

Miller, Robert (2009) "Recent Developments: Pines Point Marina v. Rehak: Upon Forfeit of a Corporate Charter, an Incorporated Council of Condominium Unit Owners Defaults to an Unincorporated Association, but Retains Its Right to Sue and Be Sued," *University of Baltimore Law Forum*: Vol. 40 : No. 1 , Article 14.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol40/iss1/14>

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RECENT DEVELOPMENT

PINES POINT MARINA v. REHAK: UPON FORFEIT OF A CORPORATE CHARTER, AN INCORPORATED COUNCIL OF CONDOMINIUM UNIT OWNERS DEFAULTS TO AN UNINCORPORATED ASSOCIATION, BUT RETAINS ITS RIGHT TO SUE AND BE SUED.

By: Robert Miller

The Court of Appeals of Maryland held that, upon forfeit of a corporate charter, an incorporated council of condominium unit owners defaults to the status of an unincorporated association, but does not lose its power to bring suit on behalf of the unit owners. *Pines Point Marina v. Rehak*, 406 Md. 613, 961 A.2d 574 (2008). Further, once it has defaulted to an unincorporated association, the council must file an amended complaint and sue as an unincorporated association. *Id.* at 638, 961 A.2d at 589.

In July of 1999, Pines Point Marina, a Condominium Council of Unit Owners (“Pines Point”), incorporated as a non-stock, non-close corporation. Between 1999 and 2005, Pines Point contracted with M.V. Ocean Pines Limited Partnership (“Ocean Pines”) to develop a marina and install condominium unit boat slips. Ocean Pines subcontracted with Rehak Floating Docks (“Rehak”) to construct floating docks for the project. Topper Industries, Inc. manufactured and supplied the flotation devices used for the floating docks.

On October 4, 2003, after a severe hurricane season, Pines Point noticed that the flotation devices for many of the floating docks were loose. Consequently, Pines Point filed a complaint against Rehak and the other contractors in the Circuit Court for Worcester County on August 30, 2006, alleging breach of contract and negligence.

Rehak filed a motion for summary judgment, asserting that, due to the forfeiture of its corporate charter on October 7, 2005, Pines Point no longer had standing to sue as a corporation. The circuit court granted summary judgment, and Pines Point appealed to the Court of Special Appeals of Maryland. Before the intermediate appellate court could hear the appeal, the Court of Appeals of Maryland issued a writ of certiorari on its own initiative.

The main issue addressed by the Court of Appeals of Maryland was whether a council of condominium unit owners, upon loss of corporate status, forfeits its ability to sue on behalf of the council of unit owners. *Pines Point Marina*, 406 Md. at 616, 961 A.2d at 576. The court first examined the ambiguities and inconsistencies between section 11-109 of the Real Property Article of the Maryland Code (“section 11-109”) and Titles 3 and 5 of the Corporations and Associations Article of the Maryland Code (“Corporations Article”). *Id.* at 620, 961 A.2d at 578. The court explained that a certified corporation under Title 3 of the Corporations Article may be stripped of all powers conferred by law, including the right to file suit, for noncompliance with the Title. *Id.* at 624, 961 A.2d at 581 (quoting MD. CODE ANN., CORPS. & ASS’NS § 3-503(d) (2008)). In contrast, section 11-109 provides that a council of condominium unit owners constitutes a legal entity for all purposes—“even if unincorporated.” *Id.* at 625, 961 A.2d at 581 (quoting MD. CODE ANN., REAL PROP. § 11-109(a) (2008)). The court noted that nothing in section 11-109 indicates whether the section applies to only councils of unit owners that never incorporated, or if it applies to councils unincorporated by forfeiture. *Id.*

To interpret the statutory language, the court looked to secondary sources. *Id.* at 626, 961 A.2d at 581. The court compared the Uniform Condominium Act (“UCA”) to section 11-109 and determined that the General Assembly intended to allow councils of unit owners to function as legal entities despite corporate status. *Pines Point Marina*, 406 Md. at 630, 961 A.2d at 584. The court bolstered its interpretation, explaining that the UCA had been influential on the General Assembly, as evidenced by an amendment to section 11-109 patterned on the UCA. *Id.* at 632, 961 A.2d at 586. The court concluded that the General Assembly had chosen to adopt certain language from the UCA and declined to adopt the UCA approach that councils of unit owners must incorporate before having standing to sue. *Id.* at 633, 961 A.2d at 586. According to the court, by adopting certain language of the UCA and declining to adopt others, the General Assembly intended that incorporated and unincorporated councils of unit owners are governed by section 11-109. *Id.* at 633-34, 961 A.2d at 586.

The Court of Appeals of Maryland further explained that section 11-109 should be interpreted in light of the General Assembly’s intent to govern condominium communities in a way that maximizes the value of unrelated people with a mutual property interest. *Id.* at 634, 961 A.2d at 586. For that reason, in exercising its governing authority,

the council of unit owners must be able to sue and be sued on its own behalf or on behalf of the unit owners on matters affecting the condominium. *Id.* at 636, 961 A.2d at 587-88. Accordingly, when an incorporated council of unit owners forfeits its corporate charter, the council becomes an unincorporated association with the power to bring and defend suit under section 11-109. *Pines Point Marina*, 406 Md. at 636, 961 A.2d at 587-88. As a result, the court determined that Pines Point was not barred from bringing suit after the forfeiture of its corporate charter. *Id.* at 637, 961 A.2d at 588.

The court next addressed the issue of whether Pines Point's amended claim, filed on October 2, 2007, was still viable with regard to the three-year statute of limitations. *Id.* The court noted that because Pines Point's corporate status had changed, Pines Point should have amended its complaint and sued as an unincorporated association. *Id.* at 638, 961 A.2d at 589. Under Maryland law, any amended complaint filed by Pines Point after the statute of limitations tolled on October 4, 2006, must relate back to its original complaint filed on August 30, 2006. *Id.* at 639-40, 961 A.2d at 590. The Court of Appeals of Maryland remanded the issue of whether Pines Point's amended complaint related back to the original complaint. *Id.* at 641, 961 A.2d at 591.

The court's holding in *Pines Point Marina* established that councils of condominium unit owners are legal entities regardless of their corporate status. Incorporated councils of unit owners are subject to Titles 3 and 5 of the Corporations Article to the extent of incorporation and forfeiture of corporate status. This exception is based on the necessity of councils of unit owners being able to sue in situations where it would be too costly for each unit owner to sue on behalf of the council individually, and a council's unique position as being the only entity with standing to sue on matters affecting only common areas. This is important in Maryland because the legal standing requirements of incorporated and unincorporated councils of unit owners are the same. Maryland practitioners should be aware of the decision in *Pines Point Marina* because a change in the corporate legal status of a council of condominium unit owners does not affect the council's legal standing, but the change must be reflected in an amended complaint if the change occurs after the council files its claim.