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# Recent Developments: University System of Maryland v. Mooney: Third Party Assignees to a Contract with the State of Maryland or Its Units, When Seeking to Recover Funds Due under the Contract, Must Exhaust Administrative Remedies Prior to Seeking Judicial Relief

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## RECENT DEVELOPMENT

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### **UNIVERSITY SYSTEM OF MARYLAND v. MOONEY: THIRD-PARTY ASSIGNEES TO A CONTRACT WITH THE STATE OF MARYLAND OR ITS UNITS, WHEN SEEKING TO RECOVER FUNDS DUE UNDER THE CONTRACT, MUST EXHAUST ADMINISTRATIVE REMEDIES PRIOR TO SEEKING JUDICIAL RELIEF.**

**By: Kristin Drake**

The Court of Appeals of Maryland held that third-party assignees to a contract with the state or any of its units, who are looking to recover funds due to them under the contract, are required to exhaust all available administrative remedies prior to seeking relief in the courts. *Univ. Sys. of Md. v. Mooney*, 407 Md. 390, 966 A.2d 418 (2009). Specifically, the court held that assignees of a contract governed by the State Finance and Procurement Article were persons within the meaning of the Article and thus required to follow the same administrative procedures as original contracting parties. *Id.* at 412, 966 A.2d at 430-31.

In October 2002, Kevin and Teresa Mooney (“Mooneys”) lent Chesapeake Cable, LLC (“Chesapeake”) \$250,000 in exchange for two promissory notes and a security agreement. In April 2003, after Chesapeake defaulted on the loan, the Mooneys perfected their security interest and became the assignee of Chesapeake’s accounts receivable. Shortly thereafter, the University System of Maryland (“University”) issued a check to Chesapeake for services previously rendered.

On June 4, 2004, the Mooneys filed suit against the University in the Circuit Court for Prince George’s County. The suit alleged that the University violated section 9-406(a) of the Commercial Law Article of the Maryland Code, which requires an account debtor to discharge his or her obligation by paying the assignee directly after receiving notification that an amount due has been assigned. The circuit court held that, because there was no written contract between the Mooneys and the University, the Mooneys’ claim was a tort action. The Mooneys appealed to the Court of Special Appeals of Maryland, which held that the circuit court erred and remanded the case.

On remand, the circuit court held that the Mooneys could not sue the University because of the principle of sovereign immunity. The Mooneys again appealed to the Court of Special Appeals of Maryland, which held that the Mooneys could enforce Chesapeake's contractual rights. The judgment of the circuit court was vacated and the case was remanded. The University then petitioned the Court of Appeals of Maryland for a writ of certiorari, which the court granted.

Before the Court of Appeals of Maryland, the University argued that, before the Mooneys could bring their contract action to court, they were required to seek administrative relief by filing an appeal with the Maryland State Board of Contract Appeals ("Appeals Board"). *Mooney*, 407 Md. at 400, 966 A.2d at 424. The court determined that, despite the University raising it for the first time in its petition for certiorari, the issue of exhaustion of administrative remedies is treated like a jurisdictional question, and thus may be raised by the court *sua sponte*. *Id.* at 401-02, 966 A.2d at 425 (citing *Sec'y, Dep't of Human Res. v. Wilson*, 286 Md. 639, 645, 409 A.2d 713, 717 (1979)).

The Court of Appeals of Maryland began its analysis by discussing *Zappone v. Liberty Life Insurance Co.*, which provided the factors for determining whether the administrative remedies under a statute are exclusive, primary, or concurrent. *Id.* at 403, 966 A.2d at 426 (citing *Zappone v. Liberty Life Ins. Co.*, 349 Md. 45, 60-61, 706 A.2d 1060, 1067-68 (1998)). *Zappone* held that, in the absence of statutory language to the contrary, there exists a rebuttable presumption that administrative remedies are intended to be primary. *Id.* at 404, 966 A.2d at 426 (citing *Zappone*, 349 Md. at 63, 706 A.2d at 1069). The court relied on factors used in *Zappone* to evaluate when the presumption is refuted. *Id.* (citing *Zappone*, 349 Md. at 64-65, 706 A.2d at 1070). These factors included the comprehensive nature of the administrative remedy, the agency's view of the breadth of its jurisdiction, and the nature of the separate judicial cause of action sought by the plaintiff. *Id.*

The Court of Appeals of Maryland first looked at Title 15, Subtitle 2 of the State Finance and Procurement Article, which governs contract disputes with the University. *Mooney*, 407 Md. at 406, 966 A.2d at 427. In particular, the court analyzed four sections: section 15-211, which grants the Appeals Board jurisdiction over all appeals; section 15-217, which provides that a person awarded a procurement contract may submit a claim to a procurement officer; section 15-220, which states that a contractor may appeal a final action to the appeals

board; and section 15-223, which allows for judicial review of final decisions of the Appeals Board. *Id.* at 407, 966 A.2d at 428. (citing MD. CODE ANN., STATE FIN. & PROC. §§ 15-211, 15-217, 15-220, 15-223 (2006)).

In applying the *Zappone* factors to this statutory scheme, the court noted that it had considered these four sections in an earlier decision, wherein it deemed that the remedy was either exclusive or primary, but not concurrent. *Id.* at 408, 966 A.2d at 429 (citing *SEFAC Lift & Equip. Corp. v. Mass Transit Admin.*, 367 Md. 374, 788 A.2d 192 (2002)). The court determined that, although the use of the words “all appeals” in section 15-211 seemed to grant exclusive jurisdiction to the appeals board, no such inference could be drawn from section 15-217 or section 15-220. *Id.* at 407-08, 966 A.2d at 428. The court found that the language in these sections did not explicitly require that claimants exhaust administrative remedies prior to seeking judicial relief, in part because the language is discretionary (“may appeal”) rather than mandatory (“shall appeal”). *Id.* The court determined that the language used in these sections indicated that the remedy for contract disputes was not intended to be exclusive. *Id.*

In finding that the remedy under the statute was not exclusive, the court determined that the statutory language in question did not support a rebuttal of the presumption that the remedies were primary. *Mooney*, 407 Md. at 408, 966 A.2d at 428. The court reasoned that the Appeals Board viewed its jurisdiction as primary because it was able to decide all contractual disputes with any state agency. *Id.* (quoting MD. CODE REGS. 21.02.02.02 (2009)). The language giving the Appeals Board jurisdiction over all disputes, taken together with the statutes considered by the court, led the court to conclude that the administrative remedy for contract disputes with state agencies was primary. *Id.* at 409, 966 A.2d at 429.

Next, the court considered whether the Mooneys were “a person” for the purpose of section 15-217. *Id.* at 410-12, 966 A.2d at 429-30 (citing MD. CODE ANN., STATE FIN. & PROC. § 15-217). The court noted that section 15-217 used the definition found in section 11-101, which defined a “person” as “an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative . . . .” *Id.* at 411, 966 A.2d at 430 (quoting MD. CODE ANN., STATE FIN. & PROC. § 11-101 (2006)). The court determined that this language indicated that section 15-217 should be applied to third parties representing the interests of original contracting parties. *Id.* The court reasoned that the Mooneys were “a person” as defined by the statute because the

Mooneys were collecting funds that were originally due to another party. *Mooney*, 407 Md. at 411, 966 A.2d at 430.

The court then analyzed the Mooney's rights as assignees. *Id.* The court relied on section 9-404(a) of the Commercial Law Article of the Maryland Code, which states that assignees of a contract are subject to the terms of the original agreement. *Id.* (citing MD. CODE ANN., COM. LAW § 9-404(a) (2002)). Expanding on this concept, the court determined that, because an assignee was subject to the same contract terms as the original parties, the assignee was also subject to the same procedural requirements. *Id.* at 412, 966 A.2d at 430-31. Therefore, the court held that the Mooneys were required to follow the same procedure that Chesapeake would have been required to follow, and exhaust all administrative remedies prior to seeking judicial relief. *Id.* at 412, 966 A.2d at 431.

In holding that assignees are subject to the same procedural requirements as original contracting parties in state contracts, the court has clarified where assignees should seek relief. Under the State Finance and Procurement Article, both original and third-parties must first file their claim administratively before seeking a judicial remedy. In cases where an attorney is uncertain as to whether a statute requires an exhaustion of administrative remedies, the safest practice is to file the claim both administratively and judicially. If necessary, the trial court can stay the claim pending an administrative decision.