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RECENT DEVELOPMENT

SVF RIVA ANNAPOLIS, LLC V. GILROY: THE POSSESSION AND CONTROL EXCEPTION TO THE STATUTE OF REPOSE IS NOT LIMITED TO CASES INVOLVING EXPOSURE TO ASBESTOS.

By: Klara Kim

The Court of Appeals of Maryland held that injuries caused by improvements to real property are barred by a 20-year statute of limitations except for cases involving exposure to asbestos and to any defendants that are in possession and control of the property as owner, tenant, or otherwise. *SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 655, 187 A.3d 686, 700 (2018). Furthermore, the court emphasized that the language of Maryland’s statute of repose and its structure separated the listed exceptions. *Id.* In analyzing the statutory language, Maryland courts first look to the plain meaning of the language in the statute and will only analyze the legislative history if the language is ambiguous. *Id.* at 645-46, 187 A.3d at 694-95.

On January 12, 2012, the decedent, Sean McLaughlin (“Mr. McLaughlin”) arrived at the Chuck E. Cheese (“CEC”) restaurant located in Festival at Riva Shopping Center in Annapolis to repair a HVAC unit located on the rooftop of the restaurant. Mr. McLaughlin ascended towards the building’s roof using a ladder that was placed on one of the exterior walls of the CEC. After Mr. McLaughlin reached the top, he mounted the wall and fell 20 feet to the concrete pad on the other side. Mr. McLaughlin sustained severe injuries and died 12 days later.

After the death of Mr. McLaughlin, his estate, Moreen Elizabeth Gilroy and other survivors (“Gilroy”) filed a wrongful death suit against SVF Riva Annapolis, LLC (“SVF”), the owner of the shopping center where Chuck E. Cheese was located. Gilroy’s suit alleged negligence and premises liability, arguing SVF was liable in failing to warn McLaughlin that the wall had no roof access. SVF moved to have the case dismissed, arguing the statute of repose barred Gilroy’s claims since the building had been constructed more than 20-years before the accident.

The circuit court ruled in favor of the defendants allowing the claims to be barred under § 5-108 of the Courts and Judicial Proceedings Article (“CJP”) finding that the exceptions to the statutes 20-year limitation were only applicable to cases involving asbestos. *Gilroy*, 459 Md. at 643, 160 A.3d at 692. The Court of Special Appeals reversed the circuit court, holding the possession and control exception was not limited to asbestos cases, but to any claims in which the defendant had actual possession and control of the property. *Id.* at 638, 187 A.3d at 690. The Court of Appeals granted writ of *certiorari* to address the proper statutory interpretation of § 5-108 CJP. *Id.*

The court began its analysis by looking at the plain language of the statute. *Gilroy*, 459 Md. at 641, 160 A.3d at 692. The court stated that the proper

interpretation of the statute turned on use of the conjunction “or”. *Id.* at 643, 187 A.3d at 692. When Maryland legislators have used “or,” the meaning is commonly disjunctive and the two bodies of text are taken independently. *Id.*

The court continued its analysis by considering the different approaches taken by Maryland courts in handling cases involving CJP § 5-108. *Gilroy*, 459 Md. at 644, 160 A.3d at 694. The court acknowledged that Maryland courts had not yet analyzed the possession and control exception outside the context of asbestos-related claims. *Gilroy*, 459 Md. at 644, 160 A.3d at 693-94 (citing *Rose v. Fox Pool Corp.*, 335 Md. 351, 643 A.2d 906 (1994); *Hagerstown Elderly Assoc. Ltd P’ship v. Hagerstown Elderly Bldg. Assocs. Ltd. P’ship*, 368 Md. 351, 793 A.2d 579 (2002)). Nonetheless, the court emphasized that the possession and control exception was independent from the asbestos exceptions. *Id.* The court stated that the proximity of the three asbestos exceptions should not limit the applicability of the possession and control exception to asbestos related claims. *Id.* at 645, 187 A.3d at 694.

Subsequently, the Court of Appeals of Maryland found that the broad protection offered in §5-108(a) protected all classes of defendants unless they were recognized by one of the four exceptions. *Gilroy*, 459 Md. at 644, 160 A.3d at 693. The court noted that the named defendants had control and possession of the real property, and therefore, the 20-year limitation imposed by the statute of repose did not apply to bar Gilroy’s claims. *Id.* at 644, 187 A.3d at 693-94. The Court of Appeals of Maryland reviewed the lower court’s decision and agreed that the possession and control exception to the 20-year statute of repose was not limited to asbestos cases, and was applicable to any defendant in actual control or possession of the property. *Id.* at 639-40, 187 A.3d at 691.

Finally, the Court of Appeals of Maryland assessed both the Petitioner’s and Respondent’s reliance on the legislative history of § 5-108. The court began its analysis by looking at the original legislative body and the subsequent amendments that passed through the Legislature. *Gilroy*, 459 Md. at 649, 160 A.3d at 696. First, the court pinpointed that the original statute of 1970 did not include any mention of asbestos, but had a possession and control exception. *Id.* Looking at the amendments made in 1973, 1979, and 1980, the possession and control exception to the statute was present; however, the legislators had not yet adopted the asbestos exceptions. *Id.* at 649, 187 A.3d at 697. Finally, the court looked at the final amendment passed in 1991, which first introduced the three asbestos exceptions. *Id.* The court explained that the policy behind the “asbestos amendments” was to allow plaintiffs to seek relief for latent injuries related to asbestos exposure beyond the 20-year limitation imposed by the statute of repose. *Id.* The court finally stated that there was no support in the legislative history linking the asbestos exceptions to the possession and control exception. *Id.* at 652-53, 187 A.3d at 698-99.

In *Gilroy*, the Court of Appeals of Maryland applied statutory analysis to hold that the four exceptions to the statute of repose were not limited to asbestos-related claims. Therefore, the 20-year limitation imposed by the statute of repose will not shield defendants that are in possession and control

of the property. This decision may result in increased litigation because plaintiffs who were injured by a defective or unsafe condition resulting from the improvements to real property may have assumed the statute precluded their non-asbestos claims. However, this holding affirms that the possession and control exception eliminates the statute's protection for defendants in possession and control of real property.