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## Recent Developments: Bel Air Carpet, Inc. v. Korey Homes Bldg. Grp., LLC

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## RECENT DEVELOPMENT

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***BEL AIR CARPET, INC. V. KOREY HOMES BLDG. GRP., LLC:  
MARYLAND LAW DOES NOT RECOGNIZE THAT A HOMEOWNER'S  
LENDER HAS A DUTY TO ENSURE PAYMENT TO A  
SUBCONTRACTOR IN THE ABSENCE OF PRIVITY OF CONTRACT  
OR AN INTIMATE NEXUS.***

**By: Daniel Santos**

The Court of Special Appeals of Maryland held that, in an action for negligence, a homeowner's lender does not have a duty to ensure that a general contractor pays a subcontractor when there is no privity of contract or an intimate nexus between the lender and the subcontractor. *Bel Air Carpet, Inc. v. Korey Homes Bldg. Grp., LLC*, 249 Md. App. 109, 141 245 A.3d 64, 83 (2021). The court held that it would be "manifestly unfair" to make a construction lender act as an insurer to the interests of a subcontractor. *Id.* at 137, 245 A.3d at 80. The Court of Special Appeals of Maryland also held that whether a duty existed between a lender and subcontractor was a legal determination, and the trial court did not abuse its discretion when it dismissed the negligence count prior to discovery. *Id.* at 114, 245 A.3d at 67.

Bel Air Carpet, Inc. ("Bel Air Carpet") entered into a contract with Korey Homes Building Group, LLC ("Korey Homes") for the installation of flooring and wall materials in twelve custom homes. Hamilton Bank financed seven of these homes. Bel Air Carpet finished work on all twelve homes and after submitting invoices to Korey Homes never received payment for their services.

Bel Air Carpet filed a seven-count complaint in the Circuit Court for Harford County against Korey Homes, Hamilton Bank, and other parties. The complaint included a negligence claim against Hamilton Bank alleging that Hamilton Bank owed a duty of care to Bel Air Carpet to ensure that the funds it distributed to Korey Homes were used to pay Bel Air Carpet. Specifically, Bel Air Carpet averred that Hamilton Bank breached its duty by failing to obtain mechanic lien releases and by not complying with industry standards before releasing funds to Korey Homes.

Hamilton Bank filed a motion to dismiss arguing that it owed no duty to ensure that Korey Homes paid Bel Air Carpet and that the negligence claim should not prevail as a matter of law. Furthermore, Hamilton Bank asserted that there was no contractual privity between them and Bel Air Carpet. Hamilton Bank also contended that under the economic loss doctrine, an

intimate nexus must exist between them and Bel Air Carpet in order for tort liability to be imposed on Hamilton Bank. Bel Air Carpet failed to allege that any form of relationship existed between them.

After finding that there was no special relationship establishing a duty between Hamilton Bank and Bel Air Carpet, the circuit court granted Hamilton Bank's motion to dismiss the negligence count. Bel Air Carpet timely appealed this decision.

The Court of Special Appeals of Maryland began its analysis by examining the requirements to sustain a cause of action for negligence, focusing on the element of "duty." *Bel Air Carpet, Inc.*, 249 Md. App. at 127-28, 245 A.3d at 74-75. The court also reviewed the scope and rationale behind Maryland's adoption of the economic loss doctrine. *Id.*, at 28, 245 A.3d at 75. The court then explained the rationale for Maryland's adoption of an intimate nexus requirement under the economic loss doctrine. *Id.* at 128-35, A.3d at 75-80. In doing so, the court examined prior case law concerning whether an intimate nexus can satisfy a duty of care requirement in negligence actions. *Id.*

The court noted that a fundamental aspect of establishing whether the intimate nexus test applies in economic loss cases is whether there was conduct showing that a party knew or should have known that another party was relying on them and that this reliance is fact specific. *Bel Air Carpet, Inc.*, 249 Md. App. at 136, 245 A.3d at 80 (citing *Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLC*, 451 Md. 600, 620-21 (2017)). Conduct showing this reliance may take the form of conversations between the parties, a party's knowledge that a third party is relying on them, or some other conduct establishing a relationship and reliance between the two parties. *Bel Air Carpet, Inc.*, 249 Md. App. at 131-32, 245 A.3d at 77-78 (citing *Walpert, Smullian & Blumenthal, P.A. v. Katz*, 361 Md. 645, 81-82 (2000) (explaining that the legal equivalent of privity existed between an accountant and a third party because the parties had met before and the third party relied on information supplied by the accountant to secure a loan); *Chicago Title Insurance Co. v. Allfirst Bank*, 394 Md. 270, 298 (2006) (stating that a bank knew or should have known that a title company relied on them to properly cash checks in clearing the lender's liens).

The Court of Special Appeals found no reported decision in Maryland addressing whether a lender has a duty to ensure that a subcontractor is paid by the general contractor in the absence of a contractual obligation stating that a duty existed. *Bel Air Carpet, Inc.*, 249 Md. App. at 136, 245 A.3d at 80. The closest case on point involved a subcontractor claiming that a lender

was unjustly enriched when the developer defaulted on the project. *Id.* (citing *Richard F. Kline, Inc. v. Signet Bank/Maryland*, 102 Md. App. 727, 731 (1995)). The subcontractor averred that the lender had a duty to inform the subcontractor that the developer defaulted, but the court in that case found that there was no duty on behalf of the lender and that to impose such a duty would inhibit the granting of construction loans. *Id.* at 137, 245 A.3d at 80 (citing *Kline*, 102 Md App. at 734-35). The Court of Special Appeals acknowledged that its earlier decision was distinguishable from the case at hand, but noted that it was instructive in considering if there is a duty of care between a lender and a third party in the absence of a direct relationship between them. *Id.* (citing *Kline*, 102 Md App. at 735).

Based in part on authority from other jurisdictions, the Court of Special Appeals of Maryland stated that, in the absence of a contractual obligation, a lender owes no duty to an unpaid subcontractor. *Bel Air Carpet, Inc.*, 249 Md. App. at 137, 245 A.3d at 81. *Bel Air Carpet* pointed to an Ohio statute that seemingly imposed a duty on a lender ensuring that the subcontractors are paid; however, the Court of Special Appeals noted that the Supreme Court of Ohio clarified that this lender duty applies to homeowners and not subcontractors. *Id.* at 139-40, 245 A.3d at 82 (citing *Thompson Elec., Inc. v. Bank One, Akron, N.A.*, Ohio St. 3d 259, 267 (1988)).

In applying its analysis to the instant case, the Court of Special Appeals of Maryland held that Hamilton Bank did not owe a duty to *Bel Air Carpet*. *Bel Air Carpet, Inc.*, 249 Md. App. at 141, 245 A.3d at 82-83. *Bel Air Carpet* did not allege that there was privity or an intimate nexus between it and Hamilton Bank, nor did it allege any conduct that could justify *Bel Air Carpet's* reliance that Hamilton Bank would ensure the funds were paid to *Bel Air Carpet*. *Id.* at 141-42, 245 A.3d at 83. The complaint alleged a duty between Hamilton Bank and *Bel Air Carpet* by relying on the relationship between *Bel Air Carpet* and *Korey Homes*, but it did not allege any linking conduct as required by Maryland precedent. *Id.*

The court further stated that, in Maryland, there is no general duty requiring a lender to ensure payment to subcontractors for their services and refused to adopt such a duty. *Bel Air Carpet, Inc.*, 249 Md. App. at 142, 245 A.3d at 83. Adopting such a duty would upset the “delicate contractual balance” in the construction industry. *Id.* at 143, 245 A.3d at 84. The court acknowledged that it may be foreseeable that Hamilton Bank’s actions could harm *Bel Air Carpet*, but that Hamilton Bank cannot be liable absent a duty owed to *Bel Air Carpet*. *Id.* at 143, 245 A.3d at 84.

In the future, Maryland courts will likely continue to address similar situations involving a question of privity or linking conduct that could satisfy

the intimate nexus test in a negligence claim. As this case has shown, the establishment of privity or an intimate nexus can be very fact specific and may vary based on the industry from which the negligence claim arises. Subcontractors, however, are now on notice that they likely will not be able to rely on a lender to ensure that the subcontractor is paid for their services.