

## **CONSTRUCTION LAW COMMITTEE LEGISLATIVE MEETING**

To: Construction Law Committee

From: Legislative Subcommittee Chair – Sean A. Mickley, Esq.

Re: Proposed House Bill 295 regarding Chapter 558 changes

Date: October 16, 2019

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Meeting started at 12:05pm.

Attendance:

Patrick Howell

Bruce Partington

Tom Dart

Sanjay Kurian – Proxy – Sean Mickley

Fred Barnes

Lisa Van Dien

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Prior to the meeting, Sanjay Kurian shared his thoughts on the proposed bill. His points were read into the record and are attached to this Memorandum.

Following the reading of Sanjay's comments, Patrick Howell noted several other issues with the proposed bill. Specifically, the definition of "association" was removed from Chapter 558. Patrick believed that was because CAI beat back a similar bill last year. In an effort to get the new proposed bill through, it seems that the bill sponsor/drafter decided just to line through the term "association" in an effort to avoid a fight with CAI. The trap, however, is that an "association" would still fall under definition of "claimant" because the definition of claimant includes an "owner" which can be an association. Additionally, the new sub-section (9) in 558.004, Fla. Stat. does not taken into consideration all of the costs and damages that may be included in a judgment in addition to the cost to repair defective work, such as attorney fees, court costs and expert fees, and interest are not taken into account.

Bruce Partington agreed with everything that had been said. Bruce emphasized that the proposed bill implicated constitutional issues such violation of due process and access to courts, as wells as consumer protection issues. Further, the new sub-section (9) of 558.004, Fla. Stat. proposes payment for property that can be repaired; however, what about the instances where the defective work makes the property unrepairable? It just does not make sense and is not workable. Bruce did say that the only point that he would agree to in the proposed bill was the addition of "alleged" defect in Line 94.

Fred Barnes stated that he agreed with all of the prior statements, and echoed that sub-section (9) of 558.004 is so vague and unworkable that it is laughable.

Tom Dart stated that it was his guess the Florida legislature is going to eventually do something with Chapter 558 given the numerous attempts to try to amend the statute. As such, the CLC should either give specific reasons why the proposed bill does not work, or provide alternative language.

Sean Mickley agreed with Tom's statement, and stated that the CLC has a 558 Task Force that may be reconvened for the purpose of making comments on the proposed bill or proposing new language. Once the White Paper is in draft form and the members on the call have an opportunity to make comments on it, Sean will discuss re-initiating the 558 Task Force for the purpose of providing additional comments and edits on the White Paper so that the CLC's position is well-drafted before it is presented to the RPPTL's Executive Council.

Lisa Van Dien made a good point in reference to sub-section (9) of 558.004 in that the new statutory scheme would bring an abundance of issues with Florida's lien law. Specifically, the new statutory scheme envisions a claimant being required to hire a contractor to perform repair work with a third-party (the debtor) making payments for the hired contractor's work. The unintended consequences of this scheme are plentiful. For example, if the hired contractor submits a pay application for repair work and the third party contractor (debtor) fails to make payment, is the claimant responsible for payment? How does the claimant get lien waivers – from third party contractor (debtor) or the hired contractor or both? How does the hired contractor enforce payment against the claimant when a third party contractor is obligated to pay? Does the third party contractor (debtor) become a necessary contracting party to all such contracts? The possibilities are endless and absurd.

Sean Mickley made a motion for the Construction Law Committee to oppose House Bill 295 in its entirety in its current form for the reasons discussed in the meeting. Fred Barnes seconded the Motion. All in favor. None opposed. Motion passes.

Meeting adjourned at 12:35pm.

END.