

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of THE BUDD COMPANY  
Under MTA Contract No. XO-06-02

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Docket No. MDOT 1034

November 9, 1981

Jurisdiction of MSBCA — Chapter 775 of the Laws of 1980 (Art. 21, Md. Ann. Code) expressly authorizes the MSBCA to hear and decide breach of contract claims.

Jurisdiction of MSBCA — Although Appellant contended that Chapter 775 of the Laws of 1980 (Act) did not grant the MSBCA exclusive jurisdiction over breach of contract claims, the MSBCA concluded that the administrative procedure, provided for by the Act, was exclusive and was required to be exhausted before seeking review by the courts.

Jurisdiction of MSBCA — Although purchases on behalf of the MTA of rolling stock and other property peculiar to the operation of a transit system are not subject to the law governing procurement by the Department of General Services, such purchases are subject to Chapter 775 of the Laws of 1980 and the administrative disputes procedures set forth therein.

Jurisdiction of MSBCA — Chapter 775 of the Laws of 1980 transferred all appeals pending before the MDOT Board of Contract Appeals on July 1, 1981 to the MSBCA.

Jurisdiction of MSBCA — Although § 25 of Chapter 775 of the Laws of 1980 makes the procedural provisions of that Act applicable to contracts entered into prior to July 1, 1981 at the option of the contractor, the Act does not permit a contractor to dismiss its appeal and pursue its claim in court where it otherwise was statutorily and contractually obligated to exhaust an administrative remedy.

Jurisdiction of MDOT Board of Contract Appeals — The MTA was determined to be an organizational entity within the Maryland Department of Transportation (MDOT) and, as such, its contract disputes were subject to resolution by the MDOT Board of Contract Appeals.

Statutory Construction — While Transportation Article, Md. Ann. Code, § 7-702 provides that the exclusive remedy for a breach of contract by the MTA is a "...suit against the Administration...", two subsequent statutes have given the MDOT Board and later its successor, the MSBCA, jurisdiction over breach of contract claims brought against that Administration. Where provisions of two statutes are irreconcilable or mutually repugnant, the later statute may be construed as expressing the present intent of the Legislature.

MEMORANDUM OPINION AND ORDER

This appeal involves a dispute between The Budd Company (Appellant) and the Maryland Department of Transportation Mass Transit Administration (MTA) concerning the MTA's responsibility for escalation payments under a contract for design, manufacturing, testing and delivery of electrically propelled rail passenger vehicles. The issues initially before the Board concern two jurisdictional questions.

The first question raised involves the exclusivity of the Board's jurisdiction. Although Appellant elected to file this appeal with the Board, it also instituted an action against the MTA and Metropolitan Dade County in the U.S. District Court for the Eastern District of Pennsylvania covering the identical issues raised here. Appellant contends that the courts have been granted either exclusive or concurrent jurisdiction over breach of contract claims brought against the MTA, thus entitling it to avoid the statutory administrative remedy before the Board. The captioned appeal apparently has been taken solely to protect Appellant's right to an administrative remedy should it receive an adverse jurisdictional ruling in Pennsylvania.<sup>1</sup>

After listening to the foregoing discussion during a July 17, 1981 prehearing conference, the Board requested the parties to brief the matter. The parties since have filed memoranda and have requested the Board to rule on the nature of its jurisdiction over breach claims brought against the MTA. In view of this request and because the points addressed by Appellant raise a serious challenge to the jurisdiction of this Board to hear and determine virtually every appeal on its docket, the Board treats this matter as a request for declaratory ruling pursuant to the Maryland Administrative Procedure Act (Art. 41, Md. Ann. Code, § 250). This declaratory ruling shall be considered binding upon the parties unless review is sought in the appropriate Maryland court within the time period provided under the Maryland Rules of Procedure.

The second jurisdictional question at issue concerns the timeliness of Appellant's appeal. In particular, the MTA has moved to dismiss the appeal on the grounds that it was mailed or otherwise filed later than 30 days from the date of receipt of the MTA Administrator's decision. However, since a ruling on this motion may have a dispositive effect on the appeal, the Board will defer consideration until the jurisdictional issue is decided finally.

#### I. Jurisdiction of the Maryland State Board of Contract Appeals (MSBCA)

On July 1, 1981, Chapter 775 of the Laws of Maryland of 1980 (Act) became effective. This Act establishes the policies and guidelines to be followed by all State agencies when procuring supplies, services and construction,<sup>2</sup> and further mandates an administrative procedure for resolving claims relating to a State contract. As set forth in § 7-201(A) of the Act, claims relating to a contract include but are not limited to "...those concerning the performance, breach, modification, and termination of the contract." These claims initially are submitted to the using agency's procurement officer who has been given authority to negotiate and resolve them. The procurement officer's decision to "...resolve or not to resolve a claim..." is then reviewable by the agency head and/or departmental secretary as prescribed by regulation and a written decision representing the final action of the using agency is mailed to the contractor (Act, § 7-201(C)). Within 30 days of receipt of this notice of final action "...disapproving a settlement or approving a decision not to settle a dispute relating to a contract entered

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<sup>1</sup>The Board was informed during the prehearing conference of July 17, 1981 that the MTA had moved to dismiss the court action based, in part, on Appellant's failure to exhaust the administrative remedy.

<sup>2</sup>See § 1-202 of Act for statutory language. (Art. 21, Md. Ann. Code, § 1-202)

into by the State, the contractor may appeal to the Maryland State Board of Contract Appeals" (Act, § 7-201(D)(2)).

Appellant initially contends that the foregoing statutory framework does not permit the MSBCA to hear and decide breach of contract claims. We disagree. The language contained in Title 7, subtitle 2 of the Act clearly evidences a legislative intent to resolve administratively all claims relating to a State contract. Accordingly, the procurement officer explicitly was given broad powers to negotiate and resolve claims both arising under a remedy granting provision in the contract and resulting from a breach of contract. Where these claims could not be mutually resolved at the procurement officer's level, a written decision was mandated and an appeal to the MSBCA, an independent agency, was provided for. The MSBCA thereafter was authorized to "hear and resolve" such claims pursuant to its procedures and the provisions of the Maryland Administrative Procedure Act as they relate to contested cases (Act, § 7-201(C)(1) & (2)). In providing this tiered administrative remedy, it seems clear that the Legislature intended the MSBCA to have jurisdiction over the same contract claims which the procurement officer was authorized to decide.

Appellant next argues that the Legislature, in authorizing the MSBCA to hear and decide contract disputes, did not choose to make that jurisdiction exclusive of any other remedy otherwise available to the contractor. However, the general rule in Maryland is that an aggrieved party must use an administrative process where statutorily provided, and if he is unsuccessful "...must seek the judicial review provided by the Legislature<sup>3</sup> rather than invoke the ordinary jurisdiction of the courts." Soley v. State Commission On Human Relations, 277 Md. 521, 356 A.2d 254, 257 (1976). Hence, absent facts or circumstances which, under Maryland law, would relieve an aggrieved party from the requirement to exhaust a statutory remedy, that remedy is exclusive. See White v. Prince George's County, 282 Md. 641, 387 A.2d 260, 265 (1978).

Finally, Appellant contends that § 21 of the Act, revising § 7-403 of the Transportation Article, expressly excludes contracts involving the purchase of rolling stock from its requirements. This provision states that:

"Purchases on behalf of the Administration of rolling stock and other property peculiar to the operation of a transit system are not subject to law governing procurement by the Department of General Services."

Although Appellant contends that the law governing procurement by the Department of General Services (DGS) is intended to refer to the Act itself, the Board does not agree. The express language of the Act clearly makes its requirements applicable to "every expenditure by a State agency for supplies, services, and construction under any contract or similar business agreement." (§ 1-202(A)). Since it is apparent from even a cursory review of the Code that many State departments and agencies other than DGS have procurement authority, it is obvious that the requirements of the Act were not limited to DGS purchases.

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<sup>3</sup>The Maryland Administrative Procedure Act which is expressly applicable to MSBCA procedures provides for judicial review pursuant to Art. 41, Md. Ann. Code, § 255.

The intent of the Legislature in enacting § 7-403 of the Transportation Article appropriately may be ascertained by reviewing the original statutory language. See Springle v. Cottrell Engineering Corp., 40 Md. App. 267, 391 A.2d 456, 468 (1978). The original language provided that:

"Purchases on behalf of the Administration of rolling stock and other property peculiar to the operation of a transit system are not subject to Article 41, §§ 231G through 231K of the Code on State purchases generally."

A further review of Article 41, §§ 231G through 231K shows that the enumerated sections specifically address procurements to be conducted by DGS. Of further significance, Article 41, § 231G(c) requires that:

"Consistent with Article 21 [the Act], it shall be the duty of the Secretary of General Services to contract for or purchase all materials, supplies, and equipment, except those which the Secretary may determine are of a strictly perishable character, or which the Secretary may determine it is impracticable for the using agencies to purchase through or with the approval of the Secretary, or which may be purchased by using agencies under the authority and with the approval of the Secretary." (Underscoring added.)

Without an exemption from this requirement, the MTA would be unable to purchase its rolling stock and property peculiar to a transit system absent either approval by the Secretary of DGS or his determination that such procurements properly should be conducted by the MTA. Certainly, the Legislature intended § 7-403 of the Transportation Article to provide that exemption. The amendment to § 7-403 contained in the Act, appears to be one of phraseology only and we do not construe it to change the prior law. Bureau of Mines v. George's Creek, 272 Md. 143, 321 A.2d 748 (1974).

## II. Jurisdiction of the Former Department of Transportation Board of Contract Appeals

Chapter 418 of the Laws of Maryland of 1978 established the Maryland Department of Transportation (MDOT) Board of Contract Appeals. Effective July 1, 1978,<sup>4</sup> the MDOT Board was authorized to "hear and determine" all disputes within its jurisdiction pursuant to its own promulgated regulations and the provisions of the Maryland Administrative Procedure Act (Ch. 418, §§ 2-603(A)(D), 2-604 (1978)). The jurisdiction of this Board expressly was stated as follows:

"The Board shall have jurisdiction over all disputes other than labor disputes arising under a contract with the Department, or as a result of a breach of a contract with the Department. The Board has no jurisdiction over the awarding of a contract with the Department." (Ch. 418, § 2-603(B), 1978).

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<sup>4</sup>The statute further provided that it was to be construed prospectively (Ch. 418, § 3, 1978).

Appellant acknowledges the preceding statutory language, but contends that the MDOT Board was not granted the power to provide a remedy for breach. This construction, however, would render meaningless the function of the MDOT Board, and further would be contrary to the clear language and purpose of the statute. As we already have noted, § 2-603(A) of Chapter 418 authorized the Board to hear and determine disputes within its jurisdiction. Section 2-603(D) also provided that:

"The Board shall adopt rules and regulations which provide to the fullest extent possible, informal, expeditious, and inexpensive resolution of claims and controversies."  
(Underscoring added.)

Since the terms "determine" and "resolution" contemplate a conclusive disposition of claims, the Legislature obviously intended for the MDOT Board to decide all pertinent questions of entitlement and damages. The Legislature further provided that the finality of an MDOT Board decision would be subject only to the right of either party to seek judicial review pursuant to the Maryland Administrative Procedure Act (Art. 41, Md. Ann. Code, § 255). In the absence of such an appeal, or specified grounds upon which a court could reverse or modify the MDOT Board's decision, that decision and the remedy prescribed therein was intended by the Legislature to stand as a final resolution of any breach claim brought against the MTA. Accordingly, we find that the MDOT Board clearly was authorized to prescribe whatever remedy Maryland law provides for breach of contract actions.

Alternatively, Appellant contends that Chapter 418 of the Laws of 1978 was intended to apply only to contracts entered into by the Maryland Department of Transportation. The MTA, we are told, is either a separate entity from the Department of Transportation, or, an autonomous agency, and therefore was intended to be excluded from the requirements of Chapter 418 of the Laws of 1978. Our review of existing legislation however results in a different conclusion.

The Executive Branch of the Maryland State government is organized into thirteen principal departments (Art. 41, Md. Ann. Code, §§ 2, 2A (1978 Repl. Vol.)). All other executive and administrative offices, boards and other units of State government are statutorily assigned, or placed, at the discretion of the Governor, within these departments (Art. 41, Md. Ann. Code, § 3 (1978 Repl. Vol.)). One of these principal departments is the Department of Transportation, within which the MTA functions as an

organizational entity (Trans. Art., Md. Ann. Code, § 2-107).<sup>5</sup> While the MTA has been given broad general powers to carry out its responsibilities, it still remains a part of MDOT.

The arguments proffered by Appellant concerning the autonomy of the MTA also are applicable to the State Aviation Administration, the Maryland Port Administration, State Highway Administration, and the Toll Facilities Administration. (Compare Tran. Art., Md. Ann. Code, §§ 5-213, 6-208, 7-204, 8-614, 4-204 (1977).) These units together with the MTA have been granted authority to contract for and manage virtually all of the major construction projects undertaken by MDOT. If Appellant's interpretation of Chapter 418 of the Laws of 1978 is correct, then one necessarily would have to conclude that the Legislature established this mandatory administrative procedure solely to remedy disputes which may arise under supply and service contracts directly entered into by the MDOT headquarters. Further since the law in Maryland in 1978 provided that MDOT could purchase its materials, supplies and equipment through the Secretary of DGS, the administrative procedure might further be construed to apply only to service<sup>6</sup> contracts. (See Art. 41, Md. Ann. Code, § 231G(a) (1978 Repl. Vol.)). Although the legislative history concerning Chapter 418 of the Laws of 1978 has not been submitted to the Board, it is inconceivable that the Legislature intended the administrative procedure to be so limited. Accordingly, we construe the term "Department" as used in Chapter 418 of the Laws of 1978 to include all of the units specified in § 2-107 of the Transportation Article. In so doing, we apply the general rule in Maryland which liberally construes statutes relating to remedies and procedures with a view to the effective administration of justice. Criminal Injuries Compensation Board v. Gould, 273 Md. 486, 331 A.2d 55, 61 (1975). See also § 1-201(A) of the Act.

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<sup>5</sup>MDOT was established by Chapter 526 of the Laws of Maryland of 1970. This Act repealed certain sections of Article 41 of the Code and reenacted them to define the structure and responsibility of MDOT. Section 207A of Article 41 was enacted to provide that the State Public Transit Administration "...shall be included within the Department of Transportation." This language later was repealed and reenacted with amendments under Chapter 253 of the Laws of Maryland of 1971. The only substantive change however was to replace the term "Public Transit Administration" with "Mass Transit Administration." Chapter 13 of the Laws of Maryland of 1977 repealed the provisions in the Code addressing transportation and reenacted them with revisions under the Transportation Article. Art. 41, § 207A, with amendments, thus became § 2-107 of the Transportation Article. Absent clear and unmistakable language in revised § 2-107 expressing an intent to remove the MTA from MDOT, it must be presumed that the prior law has not changed. Welsh v. Humphrey, 200 Md. 410, 90 A.2d 686 (1952).

<sup>6</sup>A service contract is one for the rendering by a contractor of its time and effort rather than the furnishing of a specific physical product other than reports incidental to the required performance of services. This includes but is not limited to the contractual services provided by architects, engineers, attorneys, accountants, physicians, consultants, and other professional persons. Compare Art. 21, Md. Ann. Code, §§ 1-101(E)(0)(R).



### III. Impact of Act on MDOT Board of Contract Appeals

Chapter 418 of the Laws of 1978, establishing the MDOT Board, originally was codified under the Transportation Article, §§ 2-601 - 2-604 (1977 Vol., 1978 Supp.). These provisions since have been repealed by the Act. However, in order to provide for the disposition of appeals pending before the MDOT Board on the effective date of the Act, the Legislature included the following language:

"...All appeals pending before the Board of Contract Appeals of the Department of Transportation as of the effective date of this Act are transferred to the Maryland State Board of Contract Appeals." (§ 22, Ch. 775, 1980)

This language is consistent with the general law in Maryland concerning the abolition of a governmental agency which states that:

All petitions, hearings and other proceedings pending before any officer, board, commission, department or other governmental agency which is abolished or superseded by any act of the legislature, and all prosecutions, legal or other proceedings and investigations begun by or before any such agency so abolished or superseded, and not completed at the time of the taking effect of such act, shall continue and remain in full force and effect notwithstanding the passage of such act, and may be completed before or by the department which succeeds to the rights, powers, duties, obligations and functions of the agency so abolished or superseded, or before or by the successor of the agency so abolished or superseded, to the same extent that such agency itself could have done had the same not been abolished or superseded, and all penalties, fines or forfeitures incurred or accrued before such act takes effect or at the time thereof, and which would be subject to enforcement by an officer, board, commission, department or other agency abolished or superseded hereby, shall be enforced by the department to which the rights, powers, duties, obligations, and functions of such agency so abolished or superseded are transferred, or by the successor to the agency so abolished or superseded. (Art. 41, Md. Ann. Code, § 7 (1978 Repl. Vol.))

The legislative intent thus is clear that the MSBCA, as the successor to the MDOT Board of Contract Appeals, is to have jurisdiction to resolve all the appeals which were pending before the MDOT Board on the effective date of the Act.

Although Appellant concedes that its appeal was pending before the MDOT Board on July 1, 1981, it also contends that the Legislature provided it with an option as to whether to continue with the administrative disputes procedure after July 1, 1981. In support of this argument, Appellant cites section 25 of the Act which reads:

"AND BE IT FURTHER ENACTED, That although a presently existing obligation or contract right may not be impaired in any way by this Act, the procedural provisions of this Act, including those requiring review by the Maryland State Board of Contract Appeals, may, at the option of the contractor,

apply to contracts in force on the effective date of such provisions."

The Board reads this language to express the Legislature's intent concerning retroactive application of the procedural provisions of the Act. In this regard, the Legislature expressly provided that no presently existing obligation or contract right may be impaired by such retroactive application. Here Appellant legally was obligated by Chapter 418 of the Laws of 1978 to pursue its breach of contract claims administratively. This was the law in existence at the time of contract and it is presumed that both parties had it in contemplation when the contract was made. Shell Oil Co. v. Ruckman, 43 Md. App. 1, 403 A.2d 379, 383 (Md. App. 1979). Further the contract between the parties provided that:

"MTA: All disputes arising under or as a result of a breach of this Contract which are not disposed of by agreement between the Contractor and Engineer shall be decided by the Administrator or his duly authorized representative who shall reduce his decision to writing and mail by certified or registered mail or otherwise deliver a copy thereof to the Contractor. Any such decision shall be final and conclusive unless, within thirty (30) days of receipt of same, the Contractor mails or otherwise furnishes a written appeal to the Department of Transportation Board of Contract Appeals. Pending any decision by the Board of Contract Appeals of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the decision of the Administrator or his duly authorized representative. (Section 01200, Art. 1.17(A), Contract General Provisions)

This provision expressly obligated Appellant to process its contract claims administratively and contractually entitled the MTA to a determination in the same manner.<sup>7</sup> The administrative remedy made mandatory under Appellant's contract thus is both an obligation and a contract right which Appellant cannot avoid by seeking to apply the Act retroactively.

#### IV. Effect of Transportation Article, § 7-702 on Board Jurisdiction

Appellant contends that neither the MDOT Board of Contract Appeals nor the MSBCA were intended to have jurisdiction over breach of contract claims brought against the MTA. In support of this argument, Appellant cites section 7-702 of the Transportation Article, entitled "Liability for contracts and torts," providing that:

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<sup>7</sup>The proposition that parties to a contract may agree to extra judicial modes of dispute resolution is well established in this State. Such agreements will be enforced absent a showing of fraud, misrepresentation, overreaching, or other unconscionable conduct on the part of the party seeking enforcement. Md. Nat. Cap. Park and Planning Commission v. Washington National Arena, 386 A.2d 1216, 1230 (1978)



"(a) Administration liable for contracts and torts. — Subject to subsection (b) of this section, the Administration is liable for its contracts and torts and for the torts of its officers, agents, and employees in connection with the performance of the duties and functions of the Administration under this title. (b) Exclusive remedy is suit. — The exclusive remedy for a breach of contract or for a tort committed by the Administration, its officers, agents, or employees is a suit against the Administration. No execution may be levied on any property of this State or of the Administration." (Underscoring added.)

As we previously have discussed however, the Legislature later established an administrative remedy covering MTA breach claims beginning with contracts entered into after July 1, 1978. In providing this remedy, the Legislature did not expressly repeal the language contained in § 7-702 of the Transportation Article (Ch. 418, 1978). Two years later when enacting the Act and therein establishing a new administrative remedy for MTA breach claims, the Legislature again failed to repeal expressly § 7-702 of the Transportation Article, providing only that:

"...all laws or parts of laws, public general or public local, including all laws or parts of laws enacted by the 1980 Session of the General Assembly, that are inconsistent with this Act, are superseded to the extent of the inconsistency." (1980, Ch. 775, § 24)

We now must construe these statutes so as to determine the present intent of the Legislature.

The legislative history of § 7-702 of the Transportation Article may be traced to the 1969 session when it first was enacted, as Article 64B, § 49, to prescribe the legal rights and remedies of those doing business with, or otherwise injured by, the former Metropolitan Transit Authority. (1969, Ch. 160, Art. 64B, § 49 (1968 Vol., 1969 Supp.)) In 1970, the Legislature abolished the Metropolitan Transit Authority and replaced it with the Public Transit Administration, an organizational entity within the newly created Department of Transportation, concomitantly amending Article 64B, § 49 to apply to the Public Transit Administration (1970, Ch. 526). When the Public Transit Administration subsequently was renamed the MTA in 1971, Article 64B, § 49 again was revised to refer to the new agency. (1971, Ch. 253, § 1-207A). Finally, in 1977, the Transportation Article was codified, repealing former Code Article 64B, § 49 and reenacting it as § 7-702 thereof. (1977, Ch. 13, § 2).

During each of these years when the Legislature considered the language now codified under § 7-702 of the Transportation Article, the courts had exclusive jurisdiction over breach claims brought against the MTA and its predecessors. Further, a statutory administrative remedy was not then in existence. Accordingly, the term "suit" as used by the Legislature in both § 7-702 of the Transportation Article and former Code Article 64B, § 49 must have been intended to refer to a court action. Compare also Nelson v. Real Estate Commission, 35 Md. App. 334, 370 A.2d 608, 614 (1977).

Appellant first argues that the specific statutory language prescribing a suit as the exclusive remedy for breach of contract claims against the MTA takes precedence over the more general language contained both in Chapter 418 of the Laws of 1978 and the Act. In support of this proposition, Appellant cites Criminal Injuries Compensation Board v. Gould, 273 Md. 486, 331 A.2d 55, 61 (1975) wherein the issue involved whether

an administrative decision was subject to judicial review. The court noted that the Maryland Administrative Procedure Act, enacted in 1957, provided for judicial review of contested cases decided by administrative agencies in general. However, when the Criminal Injuries Compensation Board was established in 1968, the Legislature expressly limited the judicial review available to an aggrieved party. In construing these statutes, the court ruled as follows:

"One of the primary rules concerning statutory construction is that the General Assembly in enacting legislation does so with a full knowledge as to prior and existing law and judicial decisions with respect to such law [citations omitted]. Thus, in enacting Art. 26A, § 10(a) in 1968, and reenacting it in 1970 [Criminal Inj. Comp. Board Leg.], the Legislature did so with full knowledge of the provisions of the Administrative Procedure Act, enacted in 1957, and of our decisions thereunder. It showed its clear intention by this particular and subsequent enactment to exclude decisions by the Board from being within the ambit of Art. 41, § 255(a) and the broad scope of judicial review permitted under Art. 41, § 255(g) of the Administrative Procedure Act. It would seem "an inescapable conclusion that the intended omission was by deliberate choice." (331 A.2d at 63-64)

In the instant appeal, we are faced with opposite circumstances. The specific MTA statute creating the express remedy of suit predated the more general legislation establishing the MDOT and State administrative disputes procedure. When the Legislature subsequently prescribed a mandatory administrative disputes procedure to resolve breach claims brought against MDOT and later all State agencies, it provided no exclusion for claims brought against the MTA. Under the circumstances therefore, we cannot say that the specific legislation pertaining to the MTA is representative of the present intent of the Legislature concerning the forum for proper resolution of breach claims brought against the MTA.

When separate acts of the Legislature, covering similar subject matter, make no reference to each other, if possible, they should be construed together so that they will harmonize with each other and be consistent with their general object. City of Baltimore v. Clerk of the Superior Court, 270 Md. 316, 311 A.2d 261, 263 (1973); State v. LeVitt, 48 Md. App. 1, 426 A.2d 383 (1981). However where the provisions of two statutes are irreconcilable or mutually repugnant, the later statute may be construed as expressing the present intent of the Legislature. Prince George's County v. White, 275 Md. 314, 340 A.2d 236, 239 (1975); Board of Fire Commissioners v. Potter, 300 A.2d 680, 683 (1973).

Both parties have argued that the respective statutes may be harmonized. Appellant, as previously discussed, contends that the statutes are harmonious because the MTA contracts were not subject to the administrative procedures recently created by the Legislature. However, as the Board has concluded, the clear language of both recent statutes subjects MTA breach claims to an administrative disputes procedure. Since this administrative procedure is not a "suit" as that term has been used by the Legislature and courts of this State, the statutes are not harmonious.

The MTA contends that the term "suit" refers to the ultimate jurisdiction which the courts have to review a Board decision pursuant to the Maryland Administrative Procedure Act. We disagree. Section 7-702 of the Transportation Article

provides that the exclusive remedy for a breach of contract committed by the MTA is a suit (i.e., court action). Where a claim is to be brought exclusively in the courts, there is no option, and certainly no prior requirement, to exhaust an administrative remedy.

On the basis of the preceding discussion therefore, the Board concludes that § 7-702 of the Transportation Article is irreconcilable both with Chapter 418 of the Laws of 1978 and Chapter 775 of the Laws of 1980, as each relates to the exclusive forum for resolution of breach claims brought against the MTA. Accordingly, the two latter statutes, prescribing a statutory remedy for these claims, should govern over the earlier statute providing for a court action. In so ruling, we presume the most recent statements of the Legislature to be representative of its present intent.

#### **V. Conclusion**

Based upon the foregoing, the Board rules that:

1. The MDOT Board of Contract Appeals had jurisdiction over breach of contract claims brought against the MTA.
2. The MDOT Board's jurisdiction over breach of contract claims brought against the MTA was exclusive.
3. The instant appeal, having been subject to the MDOT Board's exclusive jurisdiction and docketed before that Board on July 1, 1981, was properly transferred to the MSBCA.
4. The courts were not given concurrent jurisdiction over the instant appeal pursuant to Section 25 of Chapter 775 of the Laws of 1980.
5. The MSBCA has jurisdiction over breach of contract claims brought against the MTA.
6. The captioned appeal properly is within the exclusive jurisdiction of the MSBCA.

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