Circuit Court for Anne Arundel County
Case No. C-02-CV-23-001074
Case No. C-02-CV-23-001075

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 1780, 1781

September Term, 2023

IN THE MATTER OF MILANI CONSTRUCTION, LLC

Nazarian,
Friedman,
Zic,

JJ.

Opinion by Zic, J.

Filed: December 5, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This consolidated appeal requires us to interpret Md. Code Ann., State Fin. & Proc. ("SF") § 15-104 (1988, 2015 Repl. Vol.), which governs interest accrual on payments issued by the State. Appellant Milani Construction, LLC ("Milani"), a contractor, contends that it is entitled to interest on payments issued by appellee, the Maryland Department of Transportation's State Highway Administration ("SHA") pursuant to two procurement contracts executed in 2018 and 2015, respectively ("2018 Contract" and "2015 Contract").

In short, Milani argues that the plain language and spirit of SF §§ 15-103–105 require the State to pay interest on procurement payments issued more than 30 days after the State and a contractor agree on a payment amount for finished work. Milani also claims that general common law contract principles entitle it to interest on the SHA's payments. In response, the SHA argues that SF § 15-104 does not require the SHA to complete its internal processes, which are required by law, in 30 days. The SHA additionally maintains that because the respective "agreement[s] to pay" were made within the 30-day period prior to issuing the two payments, the SHA did not breach the terms of either contract at issue.

QUESTIONS PRESENTED

Milani presents one question for our review, which we have recast and rephrased as two:[1]

[1] Milani phrased the question as follows:

(continued)

1. Whether, under SF § 15-104, interest begins to accrue on a procurement payment issued more than 30 days after the State and a contractor agree on the price for completed work.

2. Whether the SHA breached the 2018 Contract or the 2015 Contract.

For the following reasons, we affirm the judgment of the circuit court and remand for additional findings.

BACKGROUND

For context, we begin by reviewing the statutory scheme surrounding the interest accrual provision at issue. SF §§ 15-103–105 provide:

> **§ 15-103.**
>
> It is the policy of the State to make a payment under a procurement contract within 30 days:
> (1) after the day on which the payment becomes due under the procurement contract; or
> (2) if later, after the day on which the unit receives an invoice.
>
> **§ 15-104.**
>
> (a) *In general.* — Except as provided in § 15-105 of this subtitle, interest shall accrue at the rate of 9% per annum on any amount that:
> (1) is due and payable by law and under the written procurement contract; and
> (2) remains unpaid more than 45 days after a unit receives an invoice.

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1. Did the Board err as a matter of law when it held that Milani Construction was not entitled to interest on a payment made over [30 days] after SHA agreed to the amount to which Milani Construction was entitled because payment was not due until SHA completed its own internal paperwork, despite the fact that the timing to complete its paperwork was entirely within SHA's control?

(b) *Interest Accrual.* — Interest shall accrue beginning on the 31st day after:
(1) the day on which payment becomes due under a procurement contract; or
(2) if later, the day on which the unit receives an invoice.

§ 15-105.

A unit is not liable under § 15-104 of this subtitle for interest:
(1) unless within 30 days after the date on the State's check for the amount on which the interest accrued, the contractor submits an invoice for the interest;
(2) if a contract claim has been filed under Subtitle 2 of this title;
(3) accruing more than 1 year after the 31st day after the unit receives an invoice; or
(4) on an amount that represents unpaid interest.

SF §§ 15-103–105 are not the only provisions controlling procurement payments, however. For example, SF § 17-106 requires the recipient contractor to certify in writing that its subcontractors have been or will be paid in a timely manner using the payment received from the State "[b]efore" the payor agency issues payment. Under SF § 13-218(e), payment authorized by a change order is "subject to[] . . . prior certification" of the availability of funds and the effect of the change on the project's total cost. State agencies, therefore, must fulfill several legal requirements separate from SF §§ 15-103–105 before they can issue payments to contractors.

With the statutory framework now briefly described, we turn to the consolidated case before us, reviewing the facts of the two disputed contracts in turn.

The 2018 Contract

In May 2018, the SHA and Milani entered into a contract (previously defined as "2018 Contract") for excavation and grading at a public intersection in St. Mary's County, Maryland. Throughout the project's term, the SHA directed Milani to perform

additional work items. Milani accordingly submitted eight requests for equitable adjustment ("REAs") between June 2018 and November 2018. These REAs resulted in three Price Adjustments Letters ("Letters"), respectively dated July 23, 2018, August 5, 2018, and February 12, 2019. All of the Letters state that "[w]hen fully executed, [each Letter would] serve as the approval and acknowledgement of prices and [that the] SHA [would] prepare a Change Order."

On May 22, 2019, Milani returned to the SHA a modified[2] change order accompanied by a letter stating that the total adjustment "serve[d] to resolve only the negotiated direct costs for items of work necessary in the performance of this change order," and did not include "[t]he matter of time related costs[.]" The SHA emailed Milani the next day, explaining that the change order could not be modified and needed to be returned with only Milani's signature to be further processed.

On June 2, 2019, Milani returned to the SHA another modified[3] change order accompanied by a letter identical to the previous letter sent on May 22, 2019. The SHA reiterated that the change order could not be modified, and Milani responded that it would "not sign the change order as it is. []Unless the language is changed or indicates that the amount is just for direct cost." The SHA again told Milani that the change order could not be processed with a modification to "include any warranty or additional

[2] The modified Change Order was signed by Milani but noted above the signature: "See Milani Letter No. 101."

[3] The second modified Change Order was signed by Milani but noted above the signature: "See Milani Letter No. 103."

amendment," and requested that Milani sign and submit the change order. Milani did not sign and submit the change order.

In early January 2020, Milani notified the SHA that it would be requesting interest "as compensation for late payment" for work performed under the change order. The SHA acknowledged that it received Milani's initial modified change order in May 2019, but explained that "all indirect costs associated with th[e] change order will be reviewed when the costs are known and upon submission of a Time Impact Analysis Schedule." Milani returned to the SHA a signed, unmodified change order on January 14, 2020, and the SHA approved payment on February 14, 2020. After receiving Milani's subcontractor payment certification, the SHA submitted a pay voucher on March 3, 2020. Milani received final payment on March 23, 2020.

The same day it received final payment, Milani notified the SHA that it was requesting interest for the "late [final] payment." More than ten months later, on February 4, 2021, Milani sent another letter to the SHA asking for a decision on its March 23, 2020 interest request. Receiving no response, Milani "submit[ted] [a] claim . . . for interest . . . based on [the SHA's] late payment for additional work" on February 22, 2021.

The SHA initially rejected Milani's claim for interest in July 2021, later finalizing the decision during an internal review in November 2021. The SHA reasoned that the Letters were not invoices because "[t]hey neither [met] the invoice requirement in accordance with [the contract terms] nor [SF § 15-104]." Milani then properly filed a Notice of Appeal with the Maryland State Board of Contract Appeals ("Board"). After

holding a hearing on the parties' cross motions for summary decision, the Board issued an opinion rejecting Milani's motion. The Board found that, despite the SHA's "inexcusable" delay in payment, SF § 15-104 interest does not begin to accrue until after legally required administrative processes are satisfied.[4]

The 2015 Contract

Prior to the formation of the 2018 Contract, Milani and the SHA entered into a contract in March 2015 (previously defined as "2015 Contract") for the improvement of road ramps in Prince George's County, Maryland. After the improvement project was completed, Milani submitted an REA in July 2020 for additional work performed under the 2015 Contract. The SHA sent Milani an REA settlement letter on October 27, 2020, which listed the total payment the SHA expected, "pending final approval from [] SHA's Office of Construction[,]" to give Milani for the additional work. The SHA sent the REA settlement to the Office of Construction on October 30, 2021, and then sent Milani a change order on February 10, 2021. Milani returned the signed, unmodified change order on February 23, 2021, which the SHA fully executed on March 26, 2021. After

[4] In its decision, the Board specifically distinguished SF § 15-112 from § 17-106. Interpreting SF § 15-112(a)(2)'s limiting phrase, "[f]or the purpose of this section," the Board found that § 15-112 only applies to determine "when and under what circumstances [change orders] are required before (or after) a contractor performs work[,]" and "does not apply to other statutory provisions regarding when payment becomes due and payable under law or under the contract." The Board concluded that other statutory provisions, such as SF § 17-106, that do not have limiting phrases need to be fulfilled prior to payment becoming "due and payable" under § 15-104. Milani does not challenge the Board's interpretation of § 15-112 on appeal.

submitting its subcontractor payment certification on April 13, 2021, Milani received payment from the SHA on April 27, 2021.

On May 4, 2021, Milani submitted to the SHA "an invoice for interest due on account of [its] late payment," requesting interest accrued from December 27, 2020 to April 27, 2021. The SHA initially approved Milani's claim in part, stating that Milani was entitled to interest from December 27, 2020 to February 21, 2021. A subsequent internal review by a procurement officer affirmed the SHA's initial determination.

Milani filed a timely appeal to the Board, arguing that payment should have been issued within 30 days of the SHA's October 27, 2020 letter and therefore, the SHA erred in denying Milani interest from December 27, 2020 through April 27, 2021. The Board rejected Milani's claim for interest. In its written decision, the Board reasoned that the October 27, 2020 was not a "written acceptance letter" with "the same force and effect of a change order[,]" and therefore could not make the payment "due" for interest accrual purposes. The Board accordingly granted SHA's motion for summary disposition.

Judicial Review

Pursuant to SF § 15-223(a)(1), Milani appealed the Board's decisions as to the 2018 Contract and the 2015 Contract to the Circuit Court for Anne Arundel County. The circuit court affirmed the Board's decisions, finding the interpretation of SF § 15-104 "not clearly erroneous," but remanded for additional fact-finding concerning Milani's breach of contract and implied duty of good faith and fair dealing claims.

Milani noted this timely consolidated appeal. We supplement with additional facts below as appropriate.

STANDARD OF REVIEW

In reviewing the questions presented, we evaluate the Board's decision directly, not the decision of the circuit court. *Brawner Builders, Inc. v. State Highway Administration*, 476 Md. 15, 30 (2021); *see also*, Matter *of Maryland Bio Energy LLC*, 263 Md. App. 215, 233-34 (2024). As the questions presented are pure questions of law, we review both *de novo*. *Mayor and City Council of Baltimore v. Thornton Mellon*, *LLC*, 478 Md. 396, 410 (2022) (internal citation and quotation omitted).

Furthermore, we may "apply agency deference when reviewing errors of law related to [interpretations of applicable statutes or regulations]." *Comptroller of Maryland v. FC-GEN Ops. Invs. LLC*, 482 Md. 343, 360 (2022); *see also*, *Comptroller of Maryland v. FC-GEN Ops. Invs. LLC*, No. 946, Sept. Term 2020, 2022 WL 325940 at *7 n.1 (Md. App. Feb. 3, 2022) (Friedman, J., concurring) (surveying the application of agency deference in Maryland). When the Board interprets Maryland procurement statutes, however, we do not afford it agency deference.[5]

[5] This Court has traditionally labeled the Board an "administrative agency." *See e.g.*, *Montgomery Park, LLC v. Maryland Department of General Services*, 254 Md. App. 73, 98 (2022), *aff'd*, 482 Md. 706 (2023) ("The Board is an administrative agency whose decisions are subject to the same standard of judicial review as other agencies."); *CSX Transp., Inc., v. Mass Transit Administration*, 111 Md. App. 634, 639 (1996) ("The Board is an 'agency' within the ambit of the Maryland Administrative Procedure Act[.]"); *Department of General Services v. Harmans Ltd.*, 98 Md. App. 535, 542 (1993) ("[The Board] is an 'agency' within the ambit of [Subtitle 2 of the Maryland Administrative Procedure Act][.]"). In 2022, the Supreme Court of Maryland held that the Maryland Tax Court, which is analogous to the Board in structure and purpose, is not owed deference sometimes given to administrative agencies' statutory interpretations because the Tax Court "does not undertake the regulatory or administrative functions that provide the basis for deferential review[.]" *FC-GEN Ops. Invs. LLC*, 482 Md. at 378. (continued)

DISCUSSION

I. SF § 15-104 TRIGGERS INTEREST ACCRUAL AFTER THE PAYMENT BECOMES "DUE AND PAYABLE BY LAW[,]" AND NOT MERELY AFTER THE PARTIES HAVE AGREED ON PAYMENT PRICE.

In its briefs, Milani primarily contends that SF §§ 15-103–105 entitle it to interest on respective payments made pursuant to the 2018 Contract and the 2015 Contract. According to Milani, these provisions "required" the SHA to "complete its internal procedures" so that Milani "received payment . . . within the 30-day period required by the statute." Milani claims that the Board erred in finding that a payment becomes "due" under SF § 15-104 only after a contractor signs "the certification included in the estimate[,]" because this construction "contradicts" the "intent and policy" of the statute, rendering it "meaningless."

Conversely, the SHA argues that SF § 15-104 cannot be read to circumvent other statutory requirements enacted by the General Assembly. The SHA explains that prior to issuing payment, an authorized SHA employee must certify the availability of money to be used for payment. SF § 13-218(e). Additionally, the SHA must receive a certification from the contractor that it has or promptly will pay its suppliers with the payment money. SF § 17-106. Thus, the SHA reasons, it would be contrary to other provisions of the Maryland Code to read SF § 15-104 as automatically triggering interest accrual 30 days after a State agency and a contractor agree on a payment amount for finished work.

We find this case instructive here, and accordingly decline to analyze whether to extend agency deference to the Board's interpretation of SF § 15-104.

A. The plain language of SF § 15-104[6] requires that interest begins to accrue only *after* the SHA has complied with other statutorily-imposed requirements.

We begin with "the cardinal rule of statutory interpretation—to ascertain and effectuate the General Assembly's purpose and intent when it enacted the statute." *Wheeling v. Selene Fin. LP*, 473 Md. 356, 376 (2021) (citation omitted). We first look at "the normal, plain meaning of the language of the statute." *Lockshin v. Semsker*, 412 Md. 257, 275 (2010) (citations omitted). "[T]he meaning of the plainest language is controlled by the context in which it appears." *Elsberry v. Stanley Martin Cos., LLC*, 482 Md. 159, 179 (2022) (citations and internal marks omitted). "If the plain language of the statute is unambiguous, our inquiry ends, and the statute is applied as written." *Mohan v. State*, 257 Md. App. 65, 75 (2023) (citing *Lockshin*, 412 Md. at 275).

Additionally, "[w]e presume the General Assembly 'intend[ed] its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope.'" *Mohan*, 257 Md. App. at 75 (quoting *Lockshin*, 415 Md. at 276). As in all instances of statutory construction, we also search for "a reasonable

[6] SF §§ 15-103, 105, cited to by Milani and reproduced previously, respectively explain the "policy of the State" and when an agency is not liable for interest under § 15-104. As neither party argues that a SF § 15-105 exception applies, it is unnecessary to interpret § 15-105, and we decline to do so. SF § 15-103's description of the State's payment "policy" indicates a procurement payment goal of within 30 days after at least one of two enumerated occurrences. SF § 15-104, however, articulates a different timeline for interest accrual. We, therefore, are not persuaded that the "policy of the State" in § 15-103 is dispositive in determining when a payment is "due" for interest accrual purposes under § 15-104.

interpretation—one that is consonant with logic and common sense." *Mohan*, 257 Md. App. at 76 (citation omitted).

Our interpretation of SF § 15-104 is focused on whether payment becomes "due and payable" after the parties agree on payment amount, or instead, after the SHA complies with all statutorily required procurement processes. In its decisions, the Board reasoned that SF § 15-104(a)(1)'s language, and in particular the phrase "due and payable by law and under [the] written procurement contract[,]" cannot mean that payment becomes "due" simply when one—and not all—of the SHA's statutory obligations have been fulfilled. The Board ultimately concluded that the SHA's payments to Milani were "due" for interest accrual purposes only after the SHA completely satisfied its obligations "by law[,]" which necessarily includes fulfilling the requirements under SF § 13-118(e) and § 17-106.

We agree with the Board's interpretation because the plain language of SF § 15-104 unambiguously defines "due and payable" as a condition occurring *after* compliance "by law[.]" SF § 15-104(a) states that interest "shall" accrue on "any amount that: (1) is *due and payable by law* and under the written procurement contract; and (2) remains unpaid more than 45 days after a unit receives an invoice." (Emphasis added.) Interest only begins to accrue, however, "on the 31st day *after*: (1) the day on which payment *becomes due* under a procurement contract; or (2) if later, the day on which the unit receives an invoice." (Emphases added.) SF § 15-104(a)'s language makes it clear that interest accrual is not triggered 30 days after the State and a contractor

merely reach an agreement on a price to be paid for finished work, but rather on the 31st day "after" the payment "is due and payable by law[.]"

Furthermore, Milani's proposed interpretation of SF § 15-104 would require this Court to ignore payor agencies' other duties "by law[,]" such as those in SF § 17-106 (requiring subcontractor payment certification prior to payment) and SF § 13-218(e) (requiring funds availability and change authorization prior to payment). As "[w]e presume the General Assembly intend[ed] its enactments to operate together as a consistent and harmonious body of law," we cannot reconcile the plain language of SF § 15-104 with Milani's contended interpretation. *Mohan*, 257 Md. App. at 75 (internal marks and citation omitted). Accordingly, we agree with the Board that a procurement payment cannot be "due and payable" under SF § 15-104 until the payor agency has completed its obligations "by law[.]"

Milani also points to subsequent "changes to [SF §§ 15-103–105] . . . [in which] the Legislature reiterated the State's responsibility to make timely payment to contractors and a contractor's entitlement to late payment interest, removed some of the limitations on a contractor's entitlement to late payment interest, and required certain reports from State agencies that are obviously designed to respond to complaints about late payments to contractors." Milani does not list specific changes to the text of SF §§ 15-103–105, but rather cites to a letter written by the Maryland Chapter of the Associated General Contractors of America ("Md. AGC Letter") and submitted during a hearing on Senate Bill 250, a bill introduced and enacted during the 2022 Session, as "relevant" to our interpretation here. *Testimony on SB 250*, Md. Associated Gen. Contractors,

https://perma.cc/5WQ9-CPGX. For three reasons, however, we conclude that the Md. AGC Letter is not relevant to our interpretation of SF § 15-104.

First, we note that "'not all legislative history has equal value.'" *Logan v. Dietz*, 258 Md. App. 629, 669 n.10 (2023) (quoting Schwartz, J. & Stakem Conn, A., *The Court of Appeals at the Cocktail Party: The Use and Misuse of Legislative History*, 54 MD. L. REV. 432, 437 (1995) ("Schwartz & Stakem Conn")). As "there is no legislative control over advocacy pieces that wind up in a bill file[,] [a]ll testimony and letters lobbyists or other groups submit automatically enter the legislative bill file, and [] become part of the legislative history[.]" Schwartz & Stakem Conn, at 456. The "willingness" of this Court and the Supreme Court of Maryland to rely on these advocacy materials thus make it possible for lobbyists to "manufacture self-interested legislative history" in order to "set up a future argument that those planted characterizations of the issue reflect the legislative purpose or goal." *Id.* Here, the Md. AGC Letter was authored by a private organization that has a self-interest in the interpretation advanced by Milani. Milani has not explained how the Md. AGC Letter reflects the legislative purpose or goal. Absent a connection to the intent of the General Assembly, we see no reason why the submission of an advocacy group sheds insight into the legislative purpose or goal, and accordingly, do not afford the Md. AGC Letter persuasive value here.

Second, even if we relied upon all advocacy pieces contained in a bill file, the argument made in the Md. AGC Letter does not apply to Milani's present situation. In its briefs, Milani quotes a portion of the Md. AGC Letter, stating: "[O]ne of the most challenging aspects of construction contracting with state and local governments [is]

getting paid in a timely manner. Although current law requires the [S]tate to pay invoices within 30 days, this virtually never happens." *Testimony on SB 250*, Md. Associated Gen. Contractors, https://perma.cc/5WQ9-CPGX.

Under SF § 15-102, an "invoice" submitted

> by a contractor for a procurement contract shall include [. . .]:
>
> > (1) the contractor's federal employer's identification number [. . .];
> >
> > (2) the procurement contract or purchase order number or another adequate description of the procurement contract; and
> >
> > (3) any documentation required by regulation or the procurement contract.

In the present appeal, Milani did not submit an invoice for changes to either the 2018 Contract or the 2015 Contract. Therefore, even if advocacy materials in bill files held inherent persuasive value, we conclude that the substantive argument in the Md. AGC Letter is inapplicable to the facts in the instant case because Milani did not submit an "invoice" as defined by SF § 15-102.

Third, while it is true that amendments to SF § 15-104 were passed by the Legislature in 2022, none of the changes alter when a payment becomes "due and payable" for interest accrual purposes. Chapter 157, Laws of Maryland 2022 (eff. June 1, 2023); Chapter 158, Laws of Maryland 2022 (eff. June 1, 2023). For example, Chapter 158, § 1 reduced the number of days in SF § 15-104(a)(2) from 45 days to 37 days. Milani's counsel admitted at oral argument that this change does not impact when a payment becomes "due and payable." The Chapter 157, § 2 amendment requires the

Department of Legislative Services and the Department of Information Technology to report a series of procurement statistics to the General Assembly. This change does not impact the text of SF § 15-104, and therefore, does not impact how we read the provision's plain language. Furthermore, each of the 2022 amendments to § 15-104 were passed "[for] the purpose of . . . reducing the number of days *following receipt of an invoice* after which interest begins to accrue on certain unpaid procurement contract amounts[.]" Chapters 157 and 158, Laws of Maryland 2022 (emphasis added). Similar to the Md. AGC Letter, as it is undisputed that Milani has not submitted an invoice for payment under either the 2018 Contract or the 2015 Contract, we conclude that the cited amendments do not apply to Milani's present situation.

II. THE BOARD DID NOT MAKE SUFFICIENT FINDINGS REGARDING MILANI'S BREACH OF CONTRACT CLAIM FOR APPELLATE REVIEW.

Milani additionally argues that the "SHA's failure to timely issue the paperwork necessary for payment was a breach of its obligations" under the 2018 Contract and 2015 Contract. Specifically, Milani claims that the SHA violated TC-7.05(a)(2), a provision identical in both contracts, when it failed to "intiate[] the payment process by preparing a monthly estimate that includes work performed during the previous month." Milani likewise claims that the SHA also breached the implied duty of good faith and fair dealing in both contracts by failing to "timely issue [] estimate[s] containing the required certification[s] [that] prevented Milani [] from signing the certification[s] and moving the process forward." The SHA contends that because the respective "agreement[s] to pay"

were made within the 30-day period before the SHA issued the two payments, the SHA cannot have breached the terms of either contract.

Md. Code Ann., State Gov't § 10-222(h)(3) empowers this Court to review the Board's decisions. When doing so, we evaluate the decisions under the same standards as would the circuit court. *Spencer v. Maryland State Board of Pharmacy*, 380 Md. 515, 523-24 (2004). As a reviewing Court, however, we cannot assess issues outside the scope of the final administrative decision. *Id.* Here, we fail to discern what, if anything, the Board found regarding Milani's breach of contract and implied duty of good faith claims. We agree with the circuit court that the Board's decisions appear "silent" on these issues, and accordingly affirm the orders to remand for the Board to make additional findings relevant to Milani's general contract claims.

CONCLUSION

We hold that, for the purposes of SF § 15-104, a payment becomes "due and payable" 30 days after the State completes the processes required "by law[,]" and not simply 30 days after the parties have agreed on a payment price for completed work. We further decline to reach Milani's breach of contract and implied duty of good faith claims because the record does not contain relevant findings. Therefore, we affirm the Board's interpretation of SF § 15-104 but remand to the Board for further findings on Milani's breach of contract and implied duty of good faith and fair dealing claims.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.