



**Construction Law Update:**  
**Case Law & Legislation**  
**Affecting the Construction Industry**  
**(2013-2014)**

Presented by

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## New Jersey

### Case law:

1. In *Hudson Tea Buildings Condo. Assoc., Inc. v. Block 268, LLC*, 2013 N.J. Super. Unpub. LEXIS 978 (N.J. App. Div. April 29, 2013), Hudson Tea Buildings Condominium Association ("Association") and over two hundred individually named unit owners ("Owners") brought a variety of statutory, tort and contract claims, related to alleged construction defects, against the condominium sponsor and developer. Plaintiffs alleged the defects affected both common elements and individual units. The issue in the case revolved around the enforceability and scope of an arbitration provision contained in the individual Owners' purchase agreements which required arbitration of "any and all disputes" with the seller. While the defendants moved to dismiss the complaint brought in court on the grounds that the dispute was subject to the arbitration provision in the owners' purchase agreements, the Owners argued that the arbitration clause pertained only to issues arising directly out of the Agreement.

The trial court denied defendants' motion on the basis that the arbitration clause was not "sufficiently clear and unambiguous for th[e] Court to dismiss this case and refer the plaintiffs to arbitration." *Id.* at \*9. The court embraced plaintiffs' view that the "type of alleged endemic problem on a project-wide basis is the type of thing that should not be the subject of implementation of individual arbitration clauses and individual subscription agreements[.]" *Id.* at \*10. The court also expressed concern with the possibility of inconsistent results if some claims were referred to arbitration while others were litigated.

The case was appealed to New Jersey's Appellate Division and reversed. First, the Appellate Division disagreed with the trial court's narrow view of the scope of the arbitration clause in the purchase agreement and found the clauses to be broadly written to cover "any and all disputes with Seller[.]" *Id.* at \*13. The arbitration clause specifically extended beyond the Agreement to claims "whether statutory, contractual or otherwise, including but not limited to personal injuries and/or illness ('Claims')[.]" *Id.* at \*14. The court did, however, find that the clause did not apply to claims pertaining to common elements inasmuch as individual unit owners may not pursue such claims as they are generally within the exclusive right of the condominium association. As for what claims pertained to the individual units and were thus subject to arbitration and those pertaining to common elements and therefore claims of the condominium association and not subject to arbitration, the Appellate Division found that as an issue for the arbitrator, and not the court, to decide. The court also followed the United States Supreme Court and rejected the "doctrine of intertwining" pursuant to which some courts claimed they had discretion to deny arbitration of arbitrable claims "[w]hen arbitrable and nonarbitrable claims arise out of the same transaction, and are sufficiently intertwined factually and legally[.]" *Id.* at \*19. Last, the court ordered that to reduce complexity and the possibility of conflicting results, the trial court could stay the non-arbitrated claims pending resolution of the arbitration.

2. In *TBI Unlimited, LLC v. Clear Cut Lawn Decisions, LLC*, 2013 U.S. Dist. LEXIS 41206 (D.N.J. March 26, 2013), the District Court considered whether New Jersey's Prompt Payment Act applied to a contract for lawn mowing services. New Jersey's Prompt Payment

Act, N.J.S.A. § 2A:30A-1*et seq.*, allows contractors, subcontractors, sub-subcontractors and product suppliers that are due money on construction projects for an *improvement on real property* to recover interest on unpaid amounts at prime plus one percent (1%) if payment is not made within the time period provided. The Prompt Payment Act also contains a fee shifting provision and provides that a party who sues under the Act and prevails is entitled to an award of reasonable costs and attorneys fees for bringing the action. In order to reach its decision the court focused on the Act's definition of improvement, which included those things which permanently improve property as opposed to ordinary maintenance. As lawn mowing services involve maintenance work and upkeep of land and do not improve real property, the court found the claimant could not avail itself of the Prompt Payment Act.

**Legislation:**

1. No legislation relevant to the construction industry was amended or enacted in New Jersey in 2013.

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