



**MEEB WINS CASE AT
MASSACHUSETTS SUPREME COURT:
DEVELOPER ANTI-LITIGATION RESTRICTIONS HELD TO BE VOID AND
VIOLATIVE
OF PUBLIC POLICY**

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In a case of first impression, the Massachusetts Supreme Judicial Court (SJC) in the case of Trustees of the Cambridge Point Condominium Trust vs. Cambridge Point, LLC, has ruled that condominium developers cannot unreasonably restrict the ability of owners to file suits against them. In its Decision, dated January 19, 2018, the Court rejected as violative of public policy, the anti-litigation provisions that developers have been routinely inserting into condominium documents for the last 10-15 years in order to make it difficult if not impossible to sue them for construction and other issues. The typical anti-litigation provision (which was the same one at issue in this case) requires: (1) an 80% unit owner vote prior to suing the developer, (2) the vote must be taken within a narrow 60 day window, (3) a copy of the proposed lawsuit must be circulated within the 60 day window, (4) if the owners vote in favor of suing, the Board must immediately specially assess all the owners the entire estimated cost of the lawsuit (legal fees and costs), and (5) the provision typically can only be amended out of the documents by an 80% vote and/or with developer consent.

The SJC's holding in this case has far ranging implications as it effectively invalidates similar anti-litigation provisions contained in condominium documents throughout Massachusetts. If these provisions were enforceable, then condominium associations would have little or no recourse against developers for construction defects and/or other developer misdeeds.

The case was briefed and argued at the Massachusetts Supreme Judicial Court

by MEEB Partner, Ed Allcock, who also heads the firm's litigation department. Ed has briefed 12 and argued 10 condominium related cases in the Supreme Courts of Massachusetts, New Hampshire and Rhode Island, a record which is only comparable to Tom Brady's recent string of appearances in championship games. Ed and the MEEB litigation department continues to be a tireless advocate for condominium associations throughout New England, which is demonstrated by the difficulty of this particular case, wherein the only option was to convince the SJC that a provision written into the condominium documents, which presumably anyone could have read or understood (with the assistance of counsel), was unenforceable and void for public policy reasons. It is one thing to convince a Court that the law means one thing or another or that the facts are more favorable to one side, but it is another thing entirely to convince a court that a contract is simply unfair or violates public policy and should not be enforced. However, Ed and the MEEB litigation department routinely use their creativity and knowledge gained through their multi-state condominium law practice to turn hard cases into successful outcomes with far ranging precedential value. To that end MEEB partners, Stephen Marcus, Richard Brooks and Janet Aronson, provided valuable insight and legal strategy on this issue.

In this particular case, the 80% vote was a practical impossibility because the developer owned and/or controlled 20% the units at the time the lawsuit was filed. As the SJC noted in its decision, "developers are unlikely to agree to sue themselves." The condominium had filed suit seeking redress for in excess of Two Million Dollars (\$2,000,000) in construction defects.

The SJC reversed the Middlesex Superior Court's ruling favoring the developer, concluding that it was "overreaching" and "contrary to public policy" for a developer to impose a provision that "for all practical purposes, makes it extraordinarily difficult or even impossible for the trustees to initiate any litigation against the developers regarding the common areas and facilities of a condominium." The public policy concerns cited by the court are the habitability of homes and access to the court system.

When the case got to the appellate level, Ed and the MEEB litigation department did more than just file a brief. They asked the Supreme Court to take the case as it was a matter of first impression and the Supreme Court agreed. Additionally, Ed approached the Community Association Institute (CAI) and the Massachusetts Real Estate Bar Association (REBA) to see if they would submit amicus (friend of the court) briefs with the Court, as it was such an important issue for all Massachusetts condominiums and real estate lawyers. Ultimately CAI and REBA agreed and selected well regarded condominium and real estate lawyers to submit amicus briefs supportive of Ed's position that the anti-litigation provision was unenforceable. CAI's amicus brief was filed by fellow

condominium attorneys Ellen Shapiro and Henry Goodman and REBA's amicus brief was filed by fellow real estate attorneys Diane Rubin, Cailin Burke, Julie Heinzelman, Thomas O. Moriarty and Kim Bielan, all of whom worked tirelessly and brought different perspectives and legal nuances on the issue to the Court. The support provided in this case by the amicus lawyers was incredibly valuable and appreciated.

The case is Trustees of the Cambridge Point Condominium Trust vs. Cambridge Point, LLC, et als. For a copy of the Decision [\[click here\]](#).

If you want to discuss this case or any condominium related matter, Ed Allcock can be reached via e-mail at edallcock@meeb.com.