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Facts: Anne Arundel County is authorized under the Anne Arundel County Code ("AACC") to levy impact fees on "[a]ny person who improves real property and thereby causes an impact upon public schools, transportation, or public safety[.]" If fees collected are not expended or encumbered by the end of the sixth fiscal year following collection, then the Office of Finance shall publish notice of the availability of refunds. Under AACC Section 17-11-210, the Planning and Zoning Officer ("PZO") may extend for up to three years the period for expending or encumbering funds "only on a written finding that within a three-year period certain capital improvements are planned . . . that will be of direct benefit to the property against which fees were charged."

The County began collecting impact fees from Respondent Halle Development, Inc. and other representative plaintiffs ("the Owners") from 1988 through 1996. Beginning in 1994, the PZO issued extensions for expending or encumbering fees. Because the PZO presumed that the extensions were valid, the County never published notice of fees available for refunds. The Owners filed a class action in February of 2001 on behalf of current property owners who had been deprived refunds. The Circuit Court determined, and the County conceded, that extensions were invalid because they failed to (1) identify the properties that would be directly benefitted by the planned improvements and (2) comply with the limitation that extensions be granted only to expend or encumber fees paid with respect to these properties. The court certified a class action, determined that $4,719,359 in fees were

not timely expended or encumbered, and ordered the County to compile the names and addresses of all current owners of refund-eligible properties and issue notice.

The County appealed to the Court of Special Appeals ("CSA") asserting, *inter alia*, that (1) the proper remedy for the County's failure to effectively extend the time for expending or encumbering fees is a remand to the PZO to make new findings under a correct standard; (2) the Owners' claims are barred by limitations; and (3) the procedure under AACC Section 17-11-210, by which owners must claim refunds after public notice, is superior to the ordered class action procedure requiring the County to identify and individually notify owners. The CSA disagreed and affirmed the Circuit Court on these issues. The Court of Appeals issued a writ of certiorari.

Held: Affirmed. The Court rejected the County's reliance on *Frankel v. Bd. of Regents*, 361 Md. 298, 761 A.2d 324 (2000) for the proposition that the court was required to remand the case to County administrative officials for new decisions under AACC Section 17-11-210 after ruling that the County applied the wrong standard in granting extensions. Although the ordinance designated to County officials the task of granting extensions, notifying owners of available refunds, and reviewing refund applications, the ordinance required the County to effectuate valid extensions within a prescribed time period. The County lacked authority under the ordinance to go back and make administrative decisions that it failed to effectively execute when permitted. Because the ordinance authorized a refund, absent an effective extension, at the close of the sixth fiscal year following collection, but provided no remedy to obtain it, the Owners could maintain an action in assumpsit.

The Owners' action was not barred by the three-year statute of limitations set forth in Maryland Code (1974, 2006 Repl. Vol., 2008 Supp.), Section 5-101 of the Courts and Judicial Proceedings Article. Although the owners were presumed to have had knowledge of the impact fee ordinance, this knowledge, alone, was insufficient to prompt an investigation that would reveal their alleged entitlement to a refund and trigger the limitations period. When the County did not publish notice of available refunds within the time prescribed, the owners were entitled to infer that there were no available refunds because either (1) the collected fees had been expended or encumbered or (2) the County officials validly extended the time for expending or encumbering fees. The County did not offer any evidence, other than a presumed knowledge of the ordinance, that the owners were aware of facts that would prompt an earlier inquiry.

The Circuit Court did not err in certifying the Owners'

class action under Maryland Rule 2-231(b). Although the County may face an onerous administrative burden in complying with the class member identification and individual notice requirements of a class action lawsuit due to its record-keeping practices, this burden did not render the class action unmanageable and thus, not superior to the County's proposed impact fee ordinance notice by publication procedure. A class action was maintainable because the court's determination of the fees available for refund, though complicated, had not, nor would require an extensive, individualized, refund inquiry for each class member. The court only had to determine how much refund is owed, in total, after considering all impact fee amounts that the County had timely spent or encumbered for eligible capital improvement projects. The County's proposed method was not, moreover, superior "for the fair and efficient adjudication of the matter" because few deserving property owners would attach significance to, or see, the notification due to the considerable time that had elapsed since the fees were paid.

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Lanay Brown v. Daniel Realty Co., et al., No. 77, September Term, 2008. Opinion filed 22 July 2008 by Harrell, J.

http://mdcourts.gov/opinions/coa/2009/77a08.pdf

CIVIL PROCEDURE - EVIDENCE - DEPOSITIONS - CIVIL TRIALS - IT WAS ERROR FOR A TRIAL COURT TO ALLOW THE DEPOSITION OF A FORMER PARTY/WITNESS, WHO WAS THE NEXT FRIEND OF THE MINOR PLAINTIFF, TO BE USED AS SUBSTANTIVE EVIDENCE IN THE DEFENSE'S CASE-ON-CHIEF, PURSUANT TO MARYLAND RULE 2-419(a)(2), WHERE THE DEPOSED PERSON'S INDIVIDUAL CLAIMS HAD BEEN RESOLVED AGAINST HER BEFORE THE COURT ADMITTED HER DEPOSITION TESTIMONY AS EVIDENCE; HOWEVER, THE ERROR WAS HARMLESS UNDER THE CIRCUMSTANCES BECAUSE THE PREJUDICIAL ASPECTS OF THE DEPONENT'S DEPOSITION TESTIMONY WERE ALREADY IN PLAY BECAUSE THE DEPOSITION HAD BEEN USED FOR IMPEACHMENT PURPOSES DURING THE DEFENSE'S CROSS-EXAMINATION OF HER AT TRIAL, WITHOUT OBJECTION, WHEN SHE TESTIFIED DURING THE PLAINTIFF'S CASE-IN-CHIEF.

EVIDENCE - EXPERT WITNESSES - IN A LEAD PAINT NEGLIGENCE CASE, THE TRIAL COURT DID NOT ERROR BY ALLOWING AS EVIDENCE AN UN-REDACTED REPORT, PREPARED BY A PLAINTIFF'S PROPOSED EXPERT FIVE YEARS AFTER THE PLAINTIFF MOVED OUT OF THE SUBJECT PROPERTY, WHICH DESCRIBED THE PAINT AT THE TIME THE TEST WAS CONDUCTED AT THE SUBJECT PROPERTY AS "INTACT" - THE TRIAL COURT REASONABLY COULD HAVE CONCLUDED THAT THE PLAINTIFF'S EXPERTS RELIED ON THE DOCUMENT AND THE DOCUMENT WAS NECESSARY TO ILLUMINATE THEIR TESTIMONIES UNDER MARYLAND RULE 5-703(b).

EVIDENCE - RELEVANCE - IN A LEAD PAINT NEGLIGENCE CASE, PETITIONER WAIVED HER OBJECTION (THAT THE UN-REDACTED REPORT PREPARED IN 1999 WAS NOT RELEVANT TO THE CONDITION OF THE PAINT AT THE SUBJECT PROPERTY WHEN PETITIONER RESIDED THERE BETWEEN 1990 AND 1994) BECAUSE SHE FAILED TO OBJECT WHEN RESPONDENTS ARGUED THAT THE 1999 REPORT CONSTITUTED EVIDENCE OF THE PAINT'S CONDITION WHEN PETITIONER LIVED AT THE PROPERTY AND FAILED TO REQUEST A LIMITING INSTRUCTION.

Facts: In this lead paint case, Petitioner, Lanay Brown, through her aunt, Catherlina Queen, as her next friend, filed a complaint in the Circuit Court for Baltimore City against the landlord of a property where she resided as a child from 1990 to 1994. Petitioner alleged that the landlord, Daniel Realty, negligently maintained the property and that, as a result, she suffered lead poisoning from ingesting lead paint flakes as an infant. Queen also sued the landlord in her individual capacity, seeking damages resulting from severe emotional distress and Petitioner's medical expenses. In preparation for trial, Petitioner's counsel hired ARC Environmental to test the subject property for lead. The test was conducted in 1999. ARC's report described most of the paint in 1999 as "intact."

During Petitioner's case-in-chief at trial, Queen, Petitioner's next friend, testified that she raised Petitioner since Petitioner's birth, and, when she and Petitioner moved into the property, the paint was in good condition. She stated that the paint started chipping about six months later. During cross-examination, Daniel Realty impeached Queen with previous statements she made during a pre-trial deposition concerning who else lived at the property with her and Petitioner and whether Petitioner's exposure to lead-based paint occurred at another residence. Daniel Realty submitted, and the court accepted, as evidence a 1992 inspection report, completed by the Baltimore City Health Department's Childhood Lead Poisoning Prevention Program, that indicated that there was no loose paint at the property at issue. The report also revealed that Queen informed the inspector, at the time, that Petitioner was exposed to lead at a previous residence.

Petitioner's expert medical witness, Dr. Jerome Paulson, testified that the 1999 report prepared by ARC Environmental pursuant to its testing the premises for lead confirmed that there "was lead paint on . . . multiple surfaces" of the property; however, in the copy of the report that Petitioner's counsel handed to Dr. Paulson for identification, that portion describing the paint's condition as "intact" was redacted. Daniel Realty objected, arguing that Petitioner should have submitted the original. Petitioner asserted that the redacted information was irrelevant because it described the condition of the paint when ARC conducted its testing, not when Petitioner lived at the property five years earlier. The trial judge allowed Petitioner to introduce the redacted version, but stated that Daniel Realty could rely on the un-redacted, original copy when cross-examining Dr. Paulson. Following the close of Petitioner's case, the judge granted Daniel Realty's unopposed motion for judgment on Queen's individual claims.

During its defense case, Daniel Realty introduced the un-redacted ARC report describing the paint in 1999 as "intact." It also read into the record portions of Queen's deposition. Petitioner objected to both pieces of evidence, but was overruled each time. During his closing argument, Daniel Realty's counsel relied on both pieces of evidence to suggest that the paint at the subject property was not chipping or peeling while Petitioner lived there.

The jury found that Petitioner failed to prove that the paint at the property was chipping or peeling, and the trial judge accordingly entered judgment in favor of Daniel Realty. Petitioner moved for a new trial, asserting that the court erred in allowing Daniel Realty to read into evidence during the defense case portions of Queen's deposition and by allowing it to introduce the un-redacted ARC report. The trial judge denied the

motion, and Petitioner appealed. The Court of Special Appeals affirmed. *Brown v. Daniel Realty Co.*, 180 Md. App. 102, 949 A.2d 6 (2008). The Court of Appeals granted a writ of certiorari to consider: (1) Whether the intermediate appellate court erred in holding that the Circuit Court properly allowed Daniel Realty to read into evidence portions of Queen's deposition testimony? And (2) Whether the intermediate appellate court erred in holding that the Circuit Court properly allowed Daniel Realty to introduce the un-redacted ARC report? *Brown v. Daniel Realty*, 404 Md. 505, 954 A.2d 467 (2008).

Held: Affirmed. The Court of Appeals first considered whether Daniel Realty should have been permitted to read excerpts of Queen's deposition into the record during its defense case. The Court looked to Maryland Rule 2-419(a)(2), the express relied on by the trial court to admit the deposition testimony. Rule 2-419(a)(2) provides that the deposition of a "party" may be used at trial, for any purpose, by an adverse party. Petitioner argued that Queen ceased to be a "party" when her individual claims were disposed of by the trial court following Petitioner's case-in-chief and that Queen's status as Petitioner's next friend was not sufficient to qualify her as a "party" at the time Daniel Realty read her deposition testimony into the record as part of its case. The Court surveyed decisions by other state appellate courts interpreting rules similar to Rule 2-419(a)(2), agreeing with persuasively reasoned opinions of those courts recognizing that a person must be a "party" at the time the opponent seeks to use the deposition, even if the deponent was a party when the deposition was taken. The Court then determined that Queen's status as Petitioner's next friend did not render her a party for purposes of Rule 2-419(a)(2), reasoning that an infant who, due to her age, may not prosecute or defend a cause, except through a next friend, should not have the next friend's testimony imputed to her, if to do so effectively would penalize the infant for relying on the next friend. The Court, accordingly, resolved that the trial court's decision, allowing Daniel Realty to read Queen's deposition testimony into the record during its defense case was in error.

Nevertheless, the Court concluded that reversal was not warranted because the error was harmless on this record. The Court noted that much of the deposition testimony that Petitioner claimed was prejudicial had been used by Daniel Realty, without objection, during its impeachment of Queen in Petitioner's case-in-chief.

Next, the Court considered whether Daniel Realty should have been permitted to introduce the un-redacted ARC report and rely on it as evidence of the paint's condition during the company's closing argument. The Court observed that Daniel Realty argued

below that the document was admissible because Petitioner's expert, Dr. Paulson, relied on it in forming his opinion that there was lead on multiple surfaces at the property. Applying Maryland Rule 5-703, which permits juries to consider otherwise inadmissible evidence if it was relied on by an expert and is necessary to illuminate that expert's testimony, the Court concluded that the trial judge did not abuse her discretion in allowing the document. The Court observed that Dr. Paulson testified that he relied upon the ARC report. Moreover, the trial judge reasonably could have concluded that the un-redacted ARC report was necessary to illuminate Dr. Paulson's testimony because the document established that the presence of lead does not mean necessarily that the paint is peeling or chipping. The un-redacted version also undermined the connection asserted by Dr. Paulson between lead paint on "multiple surfaces" and Petitioner's poisoning by clarifying that the paint was actually intact when the test was taken.

The Court determined that Petitioner waived her argument that Daniel Realty improperly used the un-redacted ARC report in the company's closing argument by citing it as evidence that the paint was intact while Petitioner resided at the property. In so doing, the Court reasoned that Petitioner could have objected and/or requested a limiting instruction. Even if the ARC report was admitted improperly for the purpose of demonstrating that paint at the property was intact while Petitioner lived there, the Court concluded that Petitioner failed to show that the trial's outcome probably would have been different had the evidence not been admitted. To that end, the Court noted that the Health Department's lead poisoning inspector did not observe loose paint when visiting the premises in 1992. Moreover, the inspector's notes provided that Queen claimed Petitioner actually was poisoned at another address.

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Robert Lee McFarlin v. State of Maryland, No. 119, September Term 2008, Opinion filed by Greene, J. on July 17, 2009.

http://mdcourts.gov/opinions/coa/2009/119a08.pdf

CONSTITUTIONAL LAW – FOURTH AMENDMENT PROHIBITION AGAINST UNREASONABLE SEARCHES AND SEIZURES - THE EXCLUSIONARY RULE

Facts: On February 3, 2004, Robert Lee McFarlin, was serving a prison sentence at the Maryland House of Correction Annex ("MHCA") for convictions unrelated to this appeal. On that date, McFarlin stabbed and killed fellow MHCA inmate, Damon Bowie. Because McFarlin killed Bowie, he was transferred from MHCA to the Maryland Correctional Adjustment Center ("MCAC"), a maximum security penal institution. While at MCAC, McFarlin wrote a letter to his father that stated: "I done put myself in a deep hole, Pop. I killed someone in prison. I can't explain it." McFarlin placed his letter in an unsealed envelope pursuant to a MCAC rule and dropped the letter in the area designated for outgoing mail. MCAC officials intercepted the letter, photocopied it, and provided a copy to State prosecutors.

The State sought to introduce the letter into evidence at McFarlin's trial for murder. McFarlin moved to suppress the letter and a suppression hearing took place on February 3, 2005. At the hearing, the Circuit Court denied McFarlin's motion to suppress and admitted the letter into evidence. McFarlin appealed to the Court of Special Appeals and in an unreported opinion, the intermediate appellate court upheld the Circuit Court's decision, holding that the Fourth Amendment right to privacy did not protect McFarlin's letter from inspection.

Held: McFarlin's constitutional rights were not violated when MCAC inspected McFarlin's letter to his father and provided a copy of the letter to State officials. Accordingly, we hold that the suppression court did not err in denying the suppression motion. Initially, we conclude that McFarlin did not have an expectation of privacy in his letter to his father that was objectively reasonable. Alternately, we conclude that under our holding in *Thomas v. State*, 285 Md. 458, 404 A.2d 257 (1979), even if we were to assume that McFarlin had an objectively reasonable expectation of privacy in his letter to his father, MCAC's seizure of the letter did not violate McFarlin's Fourth Amendment rights because the seizure was justified by MCAC's legitimate concern for security. The exclusionary rule does not apply in this case because the Fourth Amendment was not violated.

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In Re: Najasha B., No. 114, September Term 2008. Opinion filed by Adkins, J. on June 8, 2009.

http://mdcourts.gov/opinions/coa/2009/114a08.pdf

FAMILY LAW – FAMILY PROTECTION & WELFARE – CHILDREN – PROCEEDINGS – RIGHT TO AN ADJUDICATORY HEARING.

Facts: The Baltimore City Department of Social Services ("DSS"), appellee, filed a child in need of assistance ("CINA") petition with request for shelter care after five-year-old Najasha, appellant, was found in her parents' home without adult supervision during a drug raid. The petition alleged that (1) attempts to locate Najasha's parents were unsuccessful, (2) the police found marijuana throughout the home, and (3) there were no known relative resources willing to provide care for Najasha. After an emergency shelter care hearing with Najasha's parents in attendance, the parties agreed to the entry of an "order controlling conduct" with the following terms: (1) Najasha "shall not be left in the custody of anyone but the parents and or relatives"; (2) Najasha's parents "shall not have any illegal substances in the home"; and (3) Najasha's parents "shall allow DSS to have . . . visits to the home." At a subsequent hearing, the juvenile court scheduled an adjudicatory hearing and added a condition in its order that Najasha's parents "shall ensure [Najasha] attends school on a regular basis[.]"

When the parties convened for the scheduled adjudicatory hearing, DSS filed a motion requesting that the court dismiss the CINA petition. DSS informed the court that the "issues that brought this matter to the attention of the Court have been resolved and no further Court intervention is necessary at this time." Najasha's counsel objected, arguing that school records showed that Najasha was not regularly attending school. When the court granted DSS's dismissal request, Najasha filed a notice of exception, and the court held a *de novo* exception hearing. Najasha argued that the court was required to hold an adjudicatory hearing, under Maryland Code (1974, 2006 Repl. Vol., 2008 Supp.), Section 3-817(a) of the Courts and Judicial Proceedings Article ("CJP"), to determine whether the allegations in the petition were true. CJP Section 3-817(a) provides: "After a petition is filed under [CJP Title 3, Subtitle 8], the court shall hold an adjudicatory hearing." The juvenile court denied Najasha's exception and dismissed the case, concluding that DSS had a right to dismiss the petition, as the moving party. Najasha appealed and the Court of Appeals, on its own initiative, issued a writ of certiorari to consider whether the juvenile court was obligated to hold an adjudicatory hearing to consider allegations of neglect in a petition, notwithstanding DSS's request for dismissal, which was made with the consent of the

child's parents.

Held: Vacated and remanded. The juvenile court erred in ruling that DSS, as the CINA petitioner, had a unilateral right to dismiss its petition, over the child's objection and hearing request. This ruling was error in light of CJP Title 3, Subtitle 8 ("the CINA Subtitle"); the rights of a child as a party to a CINA petition; and the inherent role of the court in protecting the rights of minors. The broad policy of the CINA Subtitle is to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child's best interests when court intervention is required. While the CINA Subtitle places on local departments the initial responsibility of deciding whether to file a CINA petition upon receipt of a complaint, this responsibility does not carry with it a concomitant absolute right to withdraw its petition prior to an adjudicatory hearing when the child, through counsel, objects to its dismissal. Ultimately, it is the court's duty when a petition has been filed to determine the truth of abuse or neglect allegations and whether the child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

The CINA Subtitle provides a child with party status and a right to assistance of counsel at every stage of any proceeding. *See* CJP §§ 3-801(u) and 3-813. These provisions manifest recognition by the Legislature that a child clearly has a stake in the outcome of a case in which abuse or neglect has been alleged and has interests that may be distinct from those advanced by other parties, such as a local department or the child's parents. There are, undoubtedly, circumstances in which, presumptively, a child's best interests will not be served by an adjudicatory hearing, such as when all of the parties, including the child, favor a petition's withdrawal. But in a case in which a child timely requests a hearing on the merits of a petition, the purpose of CJP Section 3-817(a) is not served by a pre-hearing dismissal, even though DSS indicates that the allegations in a petition may have been resolved. It is incumbent upon the juvenile court to hear and consider the reasons why the child objects to the dismissal.

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Douglas M. Armstrong, et al. v. Mayor & City Council of Baltimore, et al., No. 107, September Term, 2008, Opinion filed 23 July 2009 by Harrell, J.

http://mdcourts.gov/opinions/coa/2009/107a08.pdf

REAL PROPERTY - MARYLAND OPEN MEETINGS ACT – LEGISLATIVE COMMITTEE OF MAYOR & CITY COUNCIL OF BALTIMORE – CITY COUNCIL'S SUBSEQUENT ENACTMENT OF ORDINANCE RENDERING UNNECESSARY THE PRIOR OFFENDING ORDINANCE MOOTED ITS EARLIER OPEN MEETINGS ACT VIOLATION

MARYLAND OPEN MEETINGS ACT – FOR THE PURPOSES OF THE ATTORNEY'S FEES AWARD PROVISION IN § 10-510(d)(5)(i), "PREVAILS" MAY BE DETERMINED SOLELY WITH REGARD TO WHETHER COMPLAINANTS PROVE SUCCESSFULLY THAT THE GOVERNMENTAL BODY ACTED IN VIOLATION OF OPEN MEETINGS ACT AND IS NOT DEPENDENT UPON COMPLAINANTS NECESSARILY ACHIEVING OTHER REMEDIES SOUGHT

Facts: Cresmont Properties Ltd. ("Cresmont") owns a 28,132 square-foot parcel of land (the "Property") located at 2807-35 Cresmont Avenue in Baltimore City. Petitioners, a group of nearby residents opposed to Cresmont's development of the Property, challenged in various administrative and judicial fora three construction permits, as well as an occupancy permit, issued by the City of Baltimore (the "City") to Cresmont for construction and operation of an apartment building on the Property, to be known as Cresmont Lofts. The present case was the culmination of one of the Petitioners' legal challenges to the third construction permit, and pertained specifically to the Petitioners' challenging the City's authorization of Cresmont's construction of an on-site parking lot to serve the apartment building's residents.

The Property is located in the City's Parking Lot District II, a special district created by § 10-503 of the Zoning Code of Baltimore City (the "Code" or "Zoning Code"). Prior to the City's amendment of § 10-501 of the Zoning Code's definition of "parking lot," effective 1 January 2005, as discussed *infra*, § 10-504 of the Code prohibited land in Parking Lot District II from being used as a parking lot "unless authorized by an ordinance of the Mayor and City Council," essentially requiring approval as a conditional use. Because of this requirement, on 27 October 2003, Bill 03-1228 ("the Bill") was introduced in the City Council. The purpose of the Bill was to authorize, as a conditional use, a parking lot on the Property. After introduction, the Bill was assigned to the Council's Land Use and Planning Committee ("Committee"), after consideration by the Baltimore City Planning Commission.

The Bill was the subject of a Committee public hearing on 4 February 2004. Although notice of the hearing had been duly posted at the Property and on the City's website, only the Chair of the Committee and one other Committee member were present at the hearing on behalf of the Committee. That hearing lasted nearly three hours and was attended by about forty-five other individuals, including some of the Petitioners, mostly opposing the parking lot. During the hearing, the Committee did not adduce or discuss site plans for the proposed parking lot.

No further public Committee hearing or work session was held. Rather, on 4 March 2004, in a report submitted to the City Council, the Committee recommended that the Bill be enacted with amendments recommended by the Committee. The Committee's method of reaching this recommendation, after the 4 February session, was through the collection of signatures of a quorum of mostly Committee members who had not attended the hearing. Thus, the quorum of the Committee that recommended that the Bill be enacted as amended, including a condition that development be as proposed in a detailed site plan submitted by Cresmont after the public hearing, did so: (1) without having vetted the detailed site plan before the public at the hearing; (2) without having discussed the amendments suggested by members of the public at the 4 February meeting or explaining why they were rejected; and (3) without having presented or discussed in open session the amendments made by the Committee to the Bill. The only evidence of the Committee's deliberations and decision-making process were the signatures of the four members who signed the recommended amended Bill.

As a result of the Committee's favorable recommendation, the Bill was advanced to the full City Council. On 8 March 2004, the amended version of the Bill passed second reader. On 15 March, Petitioners delivered a letter to the City Council President stating their contention, among others, that the quorum of the Committee advancing the Bill did so "without a public open meeting . . . as required by the State Open Meetings Act." Petitioners received no response. At the next City Council meeting, on 22 March 2004, Bill 03-1228 passed on the third and final reading. On 25 March, it was signed into law as Ordinance 04-659.

Petitioners filed a timely complaint in the Circuit Court for Baltimore City, alleging that the City violated Md. Code, State Government Art. § 10-501 to -512 ("Open Meetings Act") (2004 Repl. Vol. & Supp. 2008). The relief Petitioners sought included a declaration that Bill 03-1228 and Ordinance 04-659 were void, that the City Council be enjoined from issuing any permits pursuant to Ordinance 04-659, and that Petitioners be awarded reasonable attorney's fees. The Circuit Court agreed with Petitioners and found that the Committee's actions that

resulted in Bill 03-1228 being advanced to the full City Council violated the State Open Meetings Act. The court, however, rejected Petitioners' prayer that Bill 03-1228 and Ordinance 04-659 be declared void. The court concluded that the City Council's subsequent hearings and actions in approving another bill, which became Bill 03-1219/Ordinance 04-855 (while the litigation was pending), cured the Committee's prior violation of the Open Meetings Act with regard to Ordinance 04-659. The subsequent bill removed the requirement that such a parking lot as was proposed for Cresmont Lofts receive approval as a conditional use. The court's judgment awarded attorney's fees generally to Petitioners, but left open the amount.

All parties were dissatisfied with the trial court's judgment and pursued appeals in the Court of Special Appeals. Petitioners argued that the Circuit Court should have "voided" Ordinance 04-659. The City and Cresmont argued that Petitioners were not entitled to counsel fees. In an unreported opinion, a panel of the intermediate appellate court agreed with the Circuit Court that the Committee violated the Open Meetings Act by recommending an amendment to Bill 03-1228 without first allowing the public an opportunity to hear the reasoning behind the recommendation and comment on it. The panel also concluded that the City Council's subsequent actions on Ordinance 04-855, taken at public meetings, "cured" the earlier violation committed by its Land Use and Planning Committee with regard to Bill 03-1228. The panel concluded, however, that, because Petitioners did not achieve the other relief sought on the merits of their claims, they may not be considered a "prevailing" party, for the purposes of § 10-510(d)(5) of the Open Meetings Act, and, therefore, may not be awarded counsel fees. We granted Petitioners' writ for certiorari. *Armstrong v. Baltimore*, 406 Md. 442, 959 A.2d 792 (2008).

Held: Petitioners' cause of action challenging the City's authorization for Cresmont's construction of the parking lot was mooted by the City Council's enactment of Ordinance 04-855. The case should return to the Circuit Court for final determination of the amount of Petitioners' award of attorney's fees.

The Court agreed with the City's threshold position that Petitioners' challenge to the City's authorization for construction of the parking lot was moot. Under the *Yorkdale* rule (from *Yorkdale Corp. v. Powell*, 237 Md. 121, 205 A.2d 269 (1964), as recently reaffirmed in *Layton v. Howard County Board of Appeals*, 399 Md. 36, 922 A.2d 576 (2007)), because the present litigation was ongoing at the time Ordinance 04-855 was enacted, the substantive zoning textual amendment effected thereby applies retrospectively to the Petitioners' action, with the result that Cresmont did not need a separate ordinance to sanctify the

construction of the parking lot associated with the Cresmont Loft. The change to the zoning text enacted in Ordinance 04-855 excluded accessory parking lots from the separate ordinance requirement of § 10-504. Thus, Petitioners' action was moot because the legal foundation on which their challenge to the legality of the construction of the parking lot was based no longer existed. The Court also rejected Petitioners' unsupported assertions that the parking lot was not "accessory" and that other subsections of the Zoning Code prevented Ordinance 04-855 from applying to the Cresmont Property.

With regard to the Circuit Court awarding Petitioners reasonable counsel fees upon their successful challenge to the Committee's actions in advancing Bill 03-1228, the Court indicated in dicta that the trial court's award of those fees was proper, despite the post hoc mootness of the challenge. The enforcement provision of the Open Meetings Act, § 10-510 of the State Government Article, provides in subsection (d)(5)(i) that, as part of its judgment in hearing an Open Meetings Act challenge, a court may assess against any party reasonable counsel fees and other litigation expenses that the party who prevails in the action incurred." The Court concluded that the award of attorney's fees to a private party upon a successful claim of an Open Meetings Act violation by a governmental body, regardless of the challenging party's success in achieving other relief, would fulfill one of the main goals of the Act—ensuring that public business be performed in an open and public manner—by increasing the accountability of government and, consequently, the faith of the public in that government. The Court also concluded that this interpretation of "prevails"—i.e., to "prevail," the private party need only prove successfully a violation of the Act by a governmental body—most befittingly incorporates § 10-510(c)'s provision of the Act that "[i]n an action [under the enforcement section of the Open Meetings Act], it is presumed that the public body did not violate any provision of th[e Act], and the complainant has the burden of proving the violation."

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Douglas M. Armstrong, et al. v. Mayor and City Council of Baltimore, et al., No. 106, September Term, 2008. Opinion filed 23 July 2009 by Harrell, J.

http://mdcourts.gov/opinions/coa/2009/106a08.pdf

REAL PROPERTY - ZONING – THE BALTIMORE CITY ZONING CODE PROVIDES THAT NO MORE THAN ONE "FAMILY" MAY OCCUPY A DWELLING UNIT AND PERMITS FOUR UNRELATED INDIVIDUALS TO QUALIFY AS A FAMILY IF THEY LIVE TOGETHER AS A "SINGLE HOUSEKEEPING UNIT" – EVIDENCE BEFORE THE BALTIMORE CITY BOARD OF MUNICIPAL AND ZONING APPEALS ESTABLISHED THAT TENANTS OF EACH UNIT SIGNED ONE-YEAR LEASES, HAD JOINT USE OF THE UNIT, AND SHARED RESPONSIBILITY FOR ITS MAINTENANCE – SUBSTANTIAL EVIDENCE SUPPORTED DECISION BY BOARD AFFIRMING ZONING ADMINISTRATOR'S ISSUANCE OF CONSTRUCTION AND OCCUPANCY PERMITS FOR APARTMENT BUILDING CONTAINING TWENTY-SIX DWELLING UNITS.

ZONING – SUBSTANTIAL EVIDENCE SUPPORTED DECISION BY BALTIMORE CITY BOARD OF MUNICIPAL AND ZONING APPEALS THAT ERECTION OF A FENCE BEHIND NEWLY CONSTRUCTED APARTMENT BUILDING DID NOT IMPEDE PETITIONERS' ACCESS TO AN ALLEY OF COMMON USE.

Facts: The Baltimore City Department of Housing and Community Development ("DHCD") issued a construction permit to Cresmont Properties, Ltd. ("Cresmont"), authorizing Cresmont to construct Cresmont Loft, an apartment building containing 26 "dwelling units." Cresmont intended to rent each unit to four college students, each of whom would sign an individual lease agreement with Cresmont and would be placed in an apartment with four bedrooms and shared kitchen, bathroom, and living area. Petitioners, residents of the neighborhood in which Cresmont Loft was to be situated, filed an appeal to the Board of Municipal and Zoning Appeals (the "Board"), complaining that the structure was not permitted by the Bulk Regulations of the Baltimore City Zoning Code (the "Code" or "BCZC"). Construction continued while their appeal was pending before the Board, and, eventually, DHCD issued to Cresmont an occupancy permit for the building, prompting another appeal by Petitioners.

At the hearings on the appeals, Petitioners asserted that the apartment units were not "dwelling units" because the occupants of each would not comprise a "family," as required by the Code's definition of "dwelling unit." For this reason, Petitioners complained that the 26 apartments, each having four individual bedrooms, were actually 104 "rooming units," more than double what the Code's Bulk Regulations permit for a building the size of Cresmont Loft in the particular zone. The Board rejected Petitioners' argument and affirmed DHCD's issuance of the construction and occupancy permits. Petitioners petitioned the

Circuit Court for Baltimore City for judicial review of the Board's decisions. The court consolidated the petitions for hearing and affirmed the Board's actions. Petitioners noted a timely appeal to the Court of Special Appeals, which affirmed in an unreported opinion. The Court of Appeals granted Petitioners' Petition for a Writ of Certiorari to determine whether the Board erred in concluding that the occupants of the apartments at Cresmont Loft qualified as a "family" and, consequently, that each of the 26 apartment suites constituted a "dwelling unit." The Court also granted the petition to determine whether the Board erred in concluding that Cresmont's erection of a fence on its property did not impede access to an alley commonly used by Petitioners. *Armstrong v. Baltimore*, 406 Md. 442, 959 A.2d 792 (2008).

Held: Affirmed. The Court of Appeals observed that the Code's Bulk Regulations operate, in the zone in which Cresmont Loft is situated, to limit a structure the size of Cresmont Loft to no more than 26 "dwelling units" or 51 "rooming units." Thus, in order for Cresmont Loft to be compliant with the Code, each apartment suite must comply with the Code definition of "dwelling unit," which provides, in pertinent part, that a "dwelling unit" is a residential unit occupied by one "family." Turning to the Code definition of "family," the Court noted that a group of not more than four unrelated individuals may qualify as a family if they live together as a "single housekeeping unit." BCZC § 1-142(a)(3). The Court then held that substantial evidence supported the Board's decision that each apartment suite would be occupied by one "family." In so doing, the Court surveyed opinions of other state high courts interpreting similar "single housekeeping unit" standards, resolving that the considerations present in this case are significant indicators that a group of tenants may qualify as a single housekeeping unit. Here, although each Cresmont Loft tenant signed an individual lease agreement with Cresmont, the lease agreement provided that the tenant enjoys shared use of the kitchen and bathroom facilities, as well as the living area, of the suite. In addition, the lease agreement provided that each tenant is liable jointly for damage to the suite.

The Court next held that substantial evidence also supported the Board's conclusion that Cresmont did not impede access to an alley of public use when it erected a fence on its property. The Court noted that the "alley" at issue was closed by a city ordinance, making it part of the Cresmont Loft property. A smaller alley behind the homes of some of Petitioners was not reduced in size by Cresmont's fence.

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McQuitty, a minor, et al., v. Spangler, et al., No. 137, September Term 2008, Opinion filed July 24, 2009 by Battaglia.

http://mdcourts.gov/opinions/coa/2009/137a08.pdf

TORTS – DOCTRINE OF INFORMED CONSENT

Facts: Peggy McQuitty, mother and next friend of Dylan McQuitty, who was born with cerebral palsy, sued Dr. Donald Spangler, alleging that he negligently breached his duty to obtain informed consent when he failed to advise her after she was hospitalized for numerous pregnancy complications, including a partial uterine abruption, that baby Dylan could have been delivered at an earlier date, and thereby prevented her from determining the course of her own treatment. A trial solely on informed consent was held in the Circuit Court for Baltimore County, and a jury awarded $13,078,515.00 in damages. Dr. Spangler moved for judgment notwithstanding the verdict, which the trial judge granted, holding that, "it is well established in Maryland that the doctrine of informed consent pertains only to affirmative violations of the patient's physical integrity." The McQuittys appealed to the Court of Special Appeals, which, in an unpublished opinion, affirmed on the same basis. The Court of Appeals granted certiorari.

Held: The Court of Appeals reversed and remanded to the Circuit Court for consideration of Dr. Spangler's motion for remittitur. Analyzing the historical underpinnings of the informed consent doctrine, as well as the seminal case on informed consent, *Sard v. Hardy*, 281 Md. 432, 379 A.2d 1014 (1977), and the case *Reed v. Campagnolo*, 332 Md. 226, 630 A.2d 1145 (1993), in which a battery concept had been discussed to distinguish medical malpractice actions from informed consent actions, the Court concluded that battery, or an "affirmative violation of the patient's physical integrity," is not a threshold requirement to sustain an informed consent claim, because an informed consent claim is predicated on negligence, and thus, on "the duty of a health care provider to inform a patient of material information, or information that a practitioner 'knows or ought to know would be significant to a reasonable person in the patient's position in deciding whether or not to submit to a particular medical treatment or procedure.' *Sard*, 281 Md. at 444, 379 A.2d at 1022."

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COURT OF SPECIAL APPEALS

Baltimore Street Builders v. Stewart, No. 0828, September Term, 2008, filed July 7, 2009. Opinion by J. Salmon.

http://mdcourts.gov/opinions/cosa/2009/828s08.pdf

APPELLATE PROCEDURES - ALTHOUGH MOTIONS JUDGE SHOULD HAVE GRANTED APPELLANT ADDITIONAL TIME TO RESPOND TO APPELLEE'S MOTION FOR SUMMARY JUDGMENT, REVERSAL WAS NOT WARRANTED BECAUSE APPELLANT FAILED TO DEMONSTRATE THAT IT WAS HARMED BY THAT ERROR.

LICENSE - A CONTRACT BY AN UNLICENSED ENTITY THAT IS REQUIRED TO BE LICENCED MAY BE ENFORCED IF THE CONTRACTOR EITHER: 1) COMPLIED WITH THE REQUIREMENTS OF THE LICENSING STATUTE OR 2) SUBSTANTIALLY COMPLIED WITH THOSE REQUIREMENTS. SUBSTANTIAL COMPLIANCE, HOWEVER, MAY ONLY BE SHOWN BY PROOF THAT THE CUSTOMER WAS NOT PREJUDICED BY THE CONTRACTOR'S LACK OF A LICENSE COUPLED WITH PROOF THAT THE PURPOSE OF THE LICENSING STATUTE HAD BEEN FULFILLED.

Facts: Baltimore Street Builders (BSB) entered into a contract with Thomas Stewart to construct an addition to a building that Stewart owned. During the course of the work, BSB was directed by Stewart to furnish additional labor and materials, which resulted in an increase in the contract price. Stewart paid BSB a portion of the cost, but failed to pay the entire balance. As a result, BSB filed a petition in the circuit court to establish and enforce a mechanic's lien against Stewart.

In response, Stewart provided an affidavit in which he swore, *inter alia*, that prior to signing a home improvement contract with BSB he dealt with Robert Lenkey, who told him that he owned Harbour House Builders, LLC, and that Harbour House would be the entity that would enter into a contract with him. The affidavit further averred that on the day the contract was signed, Lenkey told Stewart that another company he owned, BSB, would perform the home improvement work on Stewart's property, and after the contract was signed, Stewart learned that BSB did not come into existence until near the expiration of Lenkey's work on Stewart's property. Moreover, after the contract was executed, at some unspecified time, Stewart learned that Lenkey and BSB were not licensed as home improvement contractors with the Maryland Home Improvement Commission.

At a hearing, counsel for BSB admitted that BSB did not have a home improvement license, but that James Kunkel, a 50% owner of BSB, held a license through a company called Stonehenge International. According to counsel, Stonehenge did work on

Stewart's home inasmuch as Kunkel, as a representative of Stonehenge, acted as the construction management company on the project. Counsel for BSB further argued that, at some unspecified time, his clients contacted the Commission and were led to believe that they were operating properly because one of the principals in their company held a home improvement license.

At the conclusion of the hearing, the circuit court ruled that because BSB had no home improvement license, it had no right to enforce the contract or to establish a lien based on the contract. Accordingly, the court dismissed BSB's petition. Stewart appealed to the Court of Special Appeals.

Held: Affirmed. The Court noted that under the Maryland Home Improvement Law, as codified in the Business Regulation Article, "except as otherwise provided...a person must have a contractor license whenever the person acts as a contractor in the state. " BR §8-301(a). The purpose of the Maryland Home Improvement Law is, among other things, to protect homeowners from unskilled builders. *See* BR §§8-302, 8-302.1. The Court stated that if the legislature does not indicate otherwise, contracts made by unlicensed persons subject to regulatory statutes designed to protect the public are illegal as against public policy and will not be enforced. *See S.A.S. Personnel Consultants Inc. v. Pat-Pan Inc*. 286 Md. 335, 341 (1979); *Harry Berenter, Inc. v. Berman*, 258 Md. 290, 298-99 (1970).

However, the Court clarified that a strict application of the rule that a contract that violates a regulatory requirement is unenforceable is not always appropriate. At times, stated the Court, the statutory goals are best satisfied by allowing such contracts to be enforced. *See Gannon and Sons, Inc. v. Emerson*, 329 Md. 142 (1992); *Citaramanis v. Hallowell*, 329 Md. 142 (1992).

The Court held that a contract that violates a regulatory requirement will be enforced where the non-licensed party has "substantially complied" with the regulatory requirement. In determining whether there is substantial compliance, the Court noted that other jurisdictions have looked at a number of factors, including: (1) whether the contractor held a valid license at the time of contracting; (2) whether the contractor readily secured a license; and (3) the responsibility and competence of the contractor. *See Latipac, Inc. v. Superior Court of Marin County*, 64 Cal.2d 278 (1966).

Here, the Court held that since neither Lenkey nor BSB ever had a home improvement contractor's license, it cannot be said that the person with whom Stewart contracted complied with §8-301(a), which requires a person to have a contractor's license whenever it acts as a contractor in the state. The Court explained that there

was no substantial compliance on the part of BSB. The fact that Kunkel's company, Stonehenge International, had a license and that, at the time the contract with Stewart was signed, BSB was a partnership with Mr. Kunkel, did not establish substantial compliance.

The Court further distinguished the instant case from *DeReggi Construction Co. v. Mate*, 130 Md. App. 648 (2000), because, there, the contractor obtained the required license prior to starting work on the contract, whereas, here, BSB never acquired the license required.

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Ford v. State, No. 2912, September Term, 2007, filed March 9, 2009. Opinion by J. Salmon.

http://mdcourts.gov/opinions/cosa/2009/2912s07.pdf

CRIMINAL LAW – THE MOTIONS JUDGE'S DECISION THAT DEFENDANT (WHO WAS NOT PRESENT WHEN AN AUTOMOBILE WAS SEARCHED) DID NOT HAVE STANDING TO CHALLENGE THE SEARCH OF THE AUTOMOBILE WAS NOT SUPPORTED BY THE EVIDENCE WHEN IT WAS SHOWN: 1) THE DEFENDANT REGULARLY DROVE THE AUTOMOBILE WITH THE OWNER'S PERMISSION; AND 2) THE DEFENDANT HELPED PAY FOR THE PURCHASE OF THE AUTOMOBILE.

CRIMINAL LAW – DESPITE CERTAIN LANGUAGE FOUND IN *PARKER V. STATE*, 402 MD. 372 (2007), UNDER MARYLAND CONSTITUTIONAL LAW AND/OR COMMON LAW, EXCLUSION OF EVIDENCE AS A RESULT OF POLICE MISCONDUCT IS NOT A REMEDY.

Facts: Maurice Ford lived in Baltimore County with his fiancé. In February 2007, Baltimore County police received an anonymous tip advising that drug related activities were taking place at Ford's residence.

As a result of that tip, the police began surveillance of the house and its occupants. Police officers also began retrieving and inspecting garbage from the house. Through the inspections, officers found numerous empty gel capsules containing heroin powder residue and some marijuana stems.

Two detectives applied for a search and seizure warrant for Ford's house. In May 2007, a district court judge issued a "no knock" search warrant for the residence, permitting the police to search the property and occupants. The warrant did not permit the search of automobiles. The warrant was executed on June 6, 2007. Police recovered various drug paraphernalia inside the residence. One officer went outside of the house to search a car that the police had seen Ford driving before the search. From its trunk, he seized a digital scale and a loaded handgun.

Following his arrest, Ford filed a motion to suppress the evidence recovered as a result of the search of the car. The circuit court denied the motion after finding that Ford lacked standing to challenge the car search. Ford was subsequently convicted by a jury of possession of heroin with intent to distribute and possession of that substance. Ford filed a notice of appeal in the Court of Special Appeals.

Held: Judgment vacated. On appeal, Ford argued that he had standing to challenge the car search because he drove it regularly and helped pay for it. The Court of Special Appeals noted that, although not married to the owner, Ford had a long-time

relationship with her, and he had used the car regularly for five years. The Court also determined that Ford established that his money was used to purchase the vehicle, and that he lived in the house where the vehicle was kept. The Court held that given the totality of the circumstances, the most important of which was that Ford proved that he drove the vehicle regularly with the permission of the owner, Ford met his burden of proving that he had a reasonable expectation of privacy in the vehicle.

Relying upon *Colin and Heath v. State*, 101 Md. App. 395 (1994), the Court noted that, as a general principle, "an individual who uses an automobile with the permission of the owner normally does have standing. " The Court also examined five non-Maryland cases, which further illustrated the point that standing to challenge a warrantless search of an automobile exists notwithstanding the fact that the defendant was not the record owner of the vehicle and was not present at the time of the seizure. *See In Interest of J.R.M.*, 487 S.W.2d 502 (Mo.1972); *United States v. Burke*, 506 F.2d 1165 (9th Cir.1974); *Pollard and Brown, v. Indiana*, 388 N.E.2d 496 (Ind. 1979), *New Mexico v. Soto*, 35 P.3d 304 (N.M. App. 2001); *United States v. Whitehead*, 428 F.Supp.2d 447 (E.D.Va. 2006).

The State argued that, even assuming arguendo that Ford had standing to challenge the search, the search was nonetheless legal because the police had probable cause to search. The Court held that the State had the burden of proving that the warrantless search of the vehicle was legal, but because the motions judge did not require it to do so, the State presented no relevant evidence as to that issue at the suppression hearing. Thus, the Court could not decide whether the State was correct in arguing that the police had probable cause to search the vehicle.

The Court ordered a limited remand pursuant to Rule 8-604(d). The Court directed that, upon remand, the court should hold a new suppression hearing and determine whether the police had probable cause to search the vehicle owned by Ford's fiancé, but used regularly by Ford. *See Parker v. State*, 402 Md. 372, 388, 406 (2007).

The Court further ordered that if, upon remand, the court were to determine that the Baltimore County police officers who searched the car had probable cause to believe that the vehicle contained contraband or other evidence of a crime at the point the search commenced, then Ford's convictions would be permitted to stand. On the other hand, if the motions court determined that probable cause for the search did not exist, then a new trial should be granted.

Ford also argued that a portion of the search warrant allowing the police to enter his home without knocking or otherwise

announcing their presence was invalid and therefore the items seized from his home should have been excluded from evidence. The Court rejected that contention and held: even assuming, arguendo, that the District Court judge erred in signing the warrant allowing the police officers to make a "no knock" entry, suppression of that evidence was not required in light of the U.S. Supreme Court's decision in *Hudson v. Michigan*, 547 U.S. 586 (2006). The Court also held that under both Maryland common law and Maryland constitutional law, exclusion of evidence is not a remedy for police misconduct.

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Howsare v. State, No. 1256, September Term, 2008, filed May 6, 2009. Opinion by J. Salmon.

http://mdcourts.gov/opinions/cosa/2009/1256s08.pdf

CRIMINAL LAW - CHEMICAL DEPENDENTS - HEALTH GENERAL ARTICLE – IF A CIRCUIT COURT JUDGE IS ASKED BY AN INCARCERATED DEFENDANT TO BE COMMITTED FOR DRUG AND/OR ALCOHOL TREATMENT UNDER H.G. ART. §§ 8-505, 507, THE COURT CAN ONLY GRANT THAT REQUEST IF IT SUSPENDS THE UNSERVED PORTION OF THE DEFENDANT'S SENTENCE.

Facts: On March 5, 2001, George Howsare was indicted in the Circuit Court for Charles County for various sex crimes. In accordance with a plea, he was sentenced to a 20-year prison term for the rape count, and a ten-year suspended term for sexual abuse.

Thereafter, Howsare filed a petition for post-conviction relief. At a hearing, an agreement was reached, in which the court signed an order for evaluation by the Maryland Department of Health and Mental Hygiene (DHMH).

DHMH subsequently notified the court that it recommended that Howsare receive in-patient residential treatment for drug and alcohol problems. The court held a hearing to consider DHMH's recommendation. Upon learning that Howsare was then serving an 8-year sentence for a conviction in the Circuit Court for St. Mary's County, which was imposed to run concurrently with the sentences in the instant case, the court declined to order Howsare to undergo drug treatment, unless the judge in St. Mary's County concurred.

Approval for drug treatment was obtained from St. Mary's County, and, on January 31, 2007, the court filed an order that committed Howsare to DHMH for treatment. Howsare remained incarcerated until a bed at the treatment facility became available on June 27, 2007. After successful completion of the program, he was released on January 30, 2008.

On February 12, 2007, Howsare filed a motion for modification of sentence, stating that since the balance of his sentence was stayed in order for him to attend treatment, upon completion, he was required to seek a modification of sentence in order to have the remainder of the sentence suspended, as allowed by HG § 8-507.

The court held a hearing and declined to modify his sentence. The court gave Howsare credit for six years and 271 days (2,432 days) time served, but later modified the order to give him credit for 6 years and 360 days. Howsare filed a notice of appeal in the Court of Special Appeals on June 9, 2008.

Held: Affirmed. On appeal, Howsare argued that if a person,

presently incarcerated, files a petition for drug treatment under HG § 8-507, the only way the court could order treatment is if the court suspends the executed portion of the sentence. The Court of Special Appeals noted that Howsare was correct as to this point because when the entire sentence of incarceration is suspended, the sentence is no longer in effect and therefore the requirements of HG §8-507(e)(1)(iii) are met.

The Court noted however, that the judge did not suspend Howsare's sentence, nor did he intend to do so. Instead, the judge "stayed" the sentence, which was an illegal modification of the sentence.

The State contended that unless the provisions of Rule 4-345 are complied with, the court has no power to suspend a sentence or modify it in any way. The Court held, section 8-507(a), as currently written, allows the court to commit the defendant to drug treatment as a condition of his release after conviction or at any other time. That provision, when read in tandem with the sub-section of § 8-507 prohibiting a court from ordering a defendant into drug or alcohol treatment until any sentence of incarceration for that defendant is no longer in effect, see § 8-507(d), leads to the conclusion that the court may utilize the powers set forth in § 8-507 by suspending the sentence even if the provisions of Rule 4-345 are not met.

The State also argued that § 8-507 means that once a defendant is sentenced and a motion for reconsideration is denied, the defendant must complete his or her sentence before the defendant becomes eligible for the treatment contemplated in HG § 8-505 and 8-507. The State cited *Fuller v. State*, 397 Md. 372 (2007) in support. The Court, relying on *State v. Thompson*, 332 Md. 1 (1993), determined that argument not to be persuasive.

The Court held that under HG § 8-507(e)(1)(iii), the circuit court could not suspend Howsare's sentence and send him to treatment unless St. Mary's County also suspended his sentence. Here, the Court noted, St. Mary's County never suspended his sentence. Rather, it agreed that the sentence would not act as a detainer on Howsare.

The Court ruled that because the trial judge did not suspend any portion of the 20-year sentence, nor did it make the successful completion of the program a condition of his release, Howsare was not entitled to the type of hearing discussed in *Thompson*.

Furthermore, the Court held that when the court stayed Howsare's sentence, that amounted to a new sentence. *See Pitts v. State*, 155 Md. App. 346, 351-52 (2004). This entitled Howsare to file a motion for modification pursuant to Rule 4-345. Howsare's

counsel, filed such a motion on February 12, 2007, and was thereafter granted a hearing. Howsare received exactly what he bargained for.

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Michael Andrew Nelson v. State of Maryland, No. 982, September Term, 2008, filed July 7, 2009. Opinion by Hollander, J.

http://mdcourts.gov/opinions/cosa/2009/982s08.pdf

CRIMINAL LAW - ENHANCED PENALTY - THIRD-TIME FELONY DRUG OFFENDER - ARTICLE 27, § 286(d) - STATUTORY CONSTRUCTION - MOTION TO CORRECT ILLEGAL SENTENCE.

Facts: Michael Andrew Nelson, appellant, was sentenced in 2002 as a three-time felony drug offender. Appellant did not claim that he was not eligible for an enhanced penalty. The Circuit Court for Washington County imposed an enhanced penalty of 25 years without parole, pursuant to Article 27, § 286(d) of the Maryland Code (1996 Repl. Vol. 2001 Supp.).

Appellant subsequently moved to correct an illegal sentence, claiming that the court erred in imposing the 25-year enhanced sentence for a third-time offender, under § 286(d), because appellant was never sentenced as a second offender to the 10-year, no parole enhancement under § 286(c). The circuit court denied the motion.

Held: Affirmed. The Court of Special Appeals concluded that appellant was legally sentenced under Article 27, § 286(d).

Based on express statutory terms, in order for § 286(d) to apply, a defendant must have "been convicted twice" of a qualifying drug offense, where the convictions "do not arise from a single incident," and must have served at least one term of confinement of at least 180 days. Appellant had two prior qualifying drug convictions; the prior offenses did not arise from a single incident; and he served the requisite period of confinement. Therefore, appellant was eligible to be sentenced under § 286(d). The Court reasoned that, if the Legislature had intended to make a 10-year sentencing enhancement a prerequisite for the 25-year enhancement, it would have expressly so required.

Given that the plain text of Article 27, § 286(d) did not require imposition of a mandatory 10-year sentence as a predicate to a 25-year sentence, the Court declined to "add words [to a statute] or ignore those that are there," *Downes v. Downes*, 388 Md. 561, 571 (2005), or to rewrite the statute. *McGlone v. State*, 406 Md. 545, 559 (2008). Moreover, when the Court looked to the statutory scheme as a whole, as well as its purpose, it was satisfied that appellant was clearly afforded the opportunity to reform his behavior, as the Legislature intended. Further, the Court was of the view that appellant's position was at odds with common sense. It said:

There may well be occasions when a prosecutor fails to file a timely or adequate notice; fails to prove the predicates; or the circuit court determines, perhaps erroneously, that the statutory enhancement criteria were not met to justify imposition of an enhanced penalty. If we were to adopt appellant's position, it would mean that a defendant later charged with another qualifying offense could continue to circumvent application of the statute, merely because of a windfall that enabled him to avoid a mandatory penalty on an earlier occasion.

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Christian Darrell Lee v. State of Maryland, No. 270, September Term, 2008, filed July 7, 2009. Opinion by Graeff, J.

http://mdcourts.gov/opinions/cosa/2009/270s08.pdf

CRIMINAL LAW - LAW OF CONFESSIONS - MIRANDA - VOLUNTARINESS - JURY INSTRUCTIONS ON LESSER INCLUDED OFFENSES - MARYLAND RULE 4-325 - JOINDER.

Facts: On September 8, 2006, appellant and two other men robbed, at gunpoint, Randy Hudson, and then entered the residence of Anna and Eric Fountain to steal money that was rumored to be in the house. During the home invasion, Mr. Fountain was shot twice in the torso and died as the result of his wounds.

On September 29, 2006, the police arrested appellant, and transported him to police headquarters. The police advised appellant of his *Miranda* rights, including that "anything you say can and will be used against you in a court of law." During the videotaped interrogation, appellant stated: "this is being recorded [somewhere, aint it?]" The detective responded: "This is between you and me, bud. Only me and you are here, all right? All right?" After this exchange, appellant stated that he shot Mr. Fountain.

The State charged appellant with first-degree murder and other crimes. While incarcerated pending trial, the police recorded a conversation in which appellant and an informant negotiated an agreement to murder a potential witness in appellant's forthcoming murder trial. The police subsequently charged appellant with solicitation of murder. Prior to trial, the court joined for trial the crimes involving the Fountain residence with the crime of solicitation of murder.

On January 14, 2008, trial commenced. At the close of the State's case, defense counsel moved for judgment of acquittal and the State indicated that, although it charged appellant under the statutory form indictment at § 2-208 of the Criminal Law Article for first-degree murder, it intended to proceed only with the charge of first-degree felony murder. The court declined appellant's request to instruct the jury on the uncharged crimes of second-degree murder and manslaughter.

During deliberations, the jury submitted a note with the following question:

> 1. In the case of felony murder anyone present is as guilty as the person who personally commits the murder.
>
> 2. In the case of felony robbery does the same hold true?

The court responded: "The answer to this question is contained in the Jury Instructions provided to you."

The jury convicted appellant of first degree felony murder, first degree burglary, two counts of first degree assault, three counts of use of a handgun in the commission of a felony, and three counts of use of a handgun in the commission of a crime of violence. The court sentenced appellant to an aggregate sentence of life, plus 110 years of incarceration.

Held: Judgment affirmed. Police detective's statement to appellant, during recorded custodial interrogation, that "[t]his is between you and me," did not render appellant's subsequent confession inadmissible. The use of trickery to encourage a suspect to confess is not inherently unlawful, although trickery or deception that interferes with a suspect's *Miranda* rights is prohibited. The detective's statement in this case, in the context in which it was made, did not constitute a promise of confidentiality or contradict the *Miranda* warning that "anything you say can and will be used against you in a court of law."

Although a defendant is entitled to an instruction on a lesser included offense, appellant was not entitled to an instruction on the offenses of second-degree murder and manslaughter because they are not lesser included offenses of first-degree felony murder, the offense submitted to the jury.

Trial court's response to jury note, that "[t]he answer to this question is contained in the Jury Instructions provided to you," was not error. The jury instructions, which had been provided to the jury in writing, were sufficient to answer the jury's question.

Trial court did not err in joining for trial charges for murder and solicitation of murder because the evidence of the two crimes was mutually admissible.

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Kenneth Longus v. State of Maryland, No. 863, September Term 2007, filed March 26, 2009. Opinion by Krauser, CJ.

http://mdcourts.gov/opinions/cosa/2009/863s07.pdf

CRIMINAL PROCEDURE - PARTIAL CLOSURE OF COURTROOM - MOTION FOR CONTINUANCE.

Facts: Kenneth Longus, appellant, was charged with robbery and second-degree assault. On the day of his jury trial, the prosecutor asked the court to remove three spectators from the courtroom during the testimony of Lindsay Wise, a key prosecution witness. The State proffered that the three spectators, one of whom was appellant's father, had intimidated and threatened Wise. Defense counsel did not object to the removal of appellant's father, conceding that he may have communicated inappropriately with the witness but did object to the removal of the other two, namely, Millie Myers and Donald Norris. The State proffered that Myers had passed messages from appellant to Wise telling her to leave town and not to testify and that Norris had also been involved in such communications, including a phone call to the witness the night before trial.

The trial court observed that it took Wise "about seven to eight minutes" to enter the courtroom when called to testify and noted that she "was having some difficulty entering the courtroom as a result of all of this." Based on those observations, and the State's proffer, the trial court granted the State's request to remove appellant's father, Myers, and Norris from the courtroom during the witness's testimony. All other spectators were allowed to remain. Upon taking the stand, but prior to giving any substantiative testimony concerning the case itself, Wise testified that she was "scared" to enter the courtroom and testify and had agreed to be a witness for the prosecution only after the State offered her relocation assistance.

Prior to trial, appellant filed a motion for continuance to allow him to obtain a "necessary defense witness," a juvenile, from the District of Columbia. The motion was granted and the trial was postponed one month. Appellant then filed a second motion for continuance, the day before trial, for the same reason. That motion was denied.

The jury convicted appellant of robbery and second-degree assault.

Held: Affirmed. The State demonstrated a substantial reason for excluding Myers and Norris from the courtroom during Wise's testimony. The interest or reason was to secure testimony, uninfluenced by intimidation, from a witness who was fearful of testifying in the presence of both of them. The Court of Special

Appeals, following the lead of other state and federal courts, adopted the "substantial reason" test for partial courtroom closures, a less stringent standard than the "overriding interest" the State must establish for a full courtroom closure. The Court reasoned that a partial courtroom closure does not implicate the same secrecy and fairness concerns that a total closure does and, therefore, when the closure is partial, the substantial reason test provides adequate protection of a defendant's right to a public trial.

The Court also held that the trial court did not err in denying appellant's motion for continuance. There was no indication in the second motion for continuance, nor in defense counsel's oral argument before the trial court, that any attempts had been made to serve the witness with a subpoena or secure his attendance at trial in the month between the granting of the first continuance and the motion for the second continuance. Nor did the defense rebut or challenge the prosecutor's proffer that it was clear, from a detention center recorded conversation between appellant and the witness the night before trial, that neither the witness nor his family had any intentions of bringing him to Maryland to testify. Accordingly, the Court determined that the trial court had a sound basis for concluding that appellant did not have a "reasonable expectation" of obtaining the witness's presence at trial "within some reasonable time" and that the appellant did not make "diligent and proper efforts" to secure the witness's presence. *See Smith v. State*, 103 Md. App. 310, 323 (1995).

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Lawson v. State, No. 2217, 2008 Term, filed July 7, 2009. Opinion by Eyler, Deborah S., J.

http://mdcourts.gov/opinions/cosa/2009/2217s08.pdf

CRIMINAL LAW - SENTENCING - CREDIT FOR TIME SERVED - SECTION 6-218 OF THE CRIMINAL PROCEDURE ARTICLE.

Facts: Raymond Lawson, the appellant, was incarcerated in the Metropolitan Transition Center in Baltimore. While in custody, the appellant was discovered to be in possession of a cell phone and other contraband. He was charged in the Circuit Court for Baltimore City with violating Md. Code (2002, 2007 Supp.), section 9-412(a)(3) of the Criminal Law Article ("CL"), which proscribes the knowing possession of contraband by a person in confinement. He reached a plea deal, and after his plea was accepted by the court, the trial judge sentenced him on October 8, 2008, to one year's imprisonment, to be "served consecutive to any other Maryland sentence." The court clerk issued a "commitment record" indicating (by hand) that the sentence was "consecutive to all outstanding & unserved MD sent." The commitment record included a box (which was checked) indicating that the sentence was "consecutive to the last sentence to expire of all outstanding and unserved Maryland sentences." The court clerk also wrote on the commitment record, however, that the appellant was entitled to seven months and 12 days credit for time served while awaiting trial on the cell phone/contraband charge.

On October 9, 2008, the State filed a motion to correct commitment record, seeking to remove the erroneous credit for time served, which had not been part of the plea agreement. After a hearing on October 29, 2008, the court granted the State's motion. Later that day, the appellant filed a motion to correct illegal sentence. He contended that under Md. Code (2001, 2008 Repl. Vol.), section 6-218(b)(1) of the Criminal Procedure Article ("CP"), he was entitled to credit for time served, despite the trial judge's statement in open court that the sentence was to be served consecutively. In the alternative, the appellant argued that even if he were not entitled to the credit, the sentencing court could not revoke it after the fact, because to do so constituted an impermissible increase in sentence under Md. Rule 4-345. The court denied the appellant's motion to correct illegal sentence, and he appealed.

Held: Affirmed. The appellate court upheld the denial of the motion to correct illegal sentence. The appellate court held that CP section 6-218(b)(1) is unambiguous, and that its plain meaning is that, upon conviction, a defendant must be credited for time served "because of" the crime for which he was convicted. In this case, the appellant already was in custody "because of" other crimes, not because of the cell phone possession charge. Even if

he had not violated CL section 9-412(a)(3), the appellant would have remained in custody anyway, because of his previous crimes. Therefore, he was not entitled to credit for time served under CP section 6-218(b)(1).

The appellant's alternative argument was unavailing because the transcript clearly indicated the one year cell phone sentence was consecutive to all outstanding Maryland sentences. It is well-settled that whenever there is a conflict between the transcript and the commitment record, the transcript prevails unless it is shown that the transcript is in error. Here, the transcript agreed with the terms of the plea agreement, and consequently, the appellant could not show the transcript was in error.

There was no illegal increase in the appellant's sentence when the sentencing court granted the motion to correct commitment record. Rather, Md. Rule 4-351, regarding commitment records, applied here. There was no modification of sentence, hence Rule 4-345 was inapplicable.

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Drake and Charles v. State, No. 3021, Sept. Term 2007, filed July 7, 2009. Opinion by Eyler, Deborah S., J..

http://mdcourts.gov/opinions/cosa/2009/3021s07.pdf

CRIMINAL LAW - TRIAL PROCEDURE - *VOIR DIRE*

Facts: Dwayne Drake and Jamal Charles, the appellants, were tried jointly in the Circuit Court for Baltimore City on charges arising out of a homicide that took place in a private home where a birthday celebration was being held. During *voir dire*, in response to proposed questions from the State, the trial judge addressed the venire panel about television crime dramas such as "CSI," pointing out that such programs are fictitious and are intended as entertainment. The judge then told the panel: "Therefore if you are currently of the opinion or belief that you cannot convict a defendant without quote, scientific evidence, close quote, regardless of the other evidence in the case and regardless of the instructions that I will give you as to the law, please rise." The State presented no forensic evidence in its case in chief.

During cross-examination of a State's witness, defense counsel tried to impeach her by eliciting testimony that she had been uncooperative with detectives. On re-direct, the State, over defense objection, tried to elicit testimony that the witness was afraid of retribution if she stayed in contact with investigators. In response to repeated defense objections, the trial judge remarked two different times that he thought defense counsel were "beating a dead horse." In the course of granting them a continuing objection, in front of the jury, he also accused defense counsel of objecting not for the purpose of preserving the record, but as a means to obstruct. Although the trial judge instructed the witness to answer only "yes" or "no" to the State's inquiry, she blurted out that she did not stay in contact with investigators "because [she] was afraid." After the witness had finished her testimony, at the end of the day, defense moved for a mistrial. The trial court denied their motion, but the next morning, at the beginning of the proceedings, gave a curative instruction, to which no objection was made.

Before closing arguments, the trial judge informed defense counsel that she would not be permitted to give her "customary" argument, in which she outlines various degrees of certainty beginning with mere rumor or innuendo, progressing through reasonable suspicion, probable cause, preponderance of evidence, clear and convincing evidence, and culminating in proof beyond a reasonable doubt. The trial judge explained that other standards had not been generated by the evidence in this case, that they were thus extraneous, and could lead to juror confusion. He told (both)

defense counsel that they could, however, argue on the basis of the pattern jury instruction, that they could compare and contrast proof beyond a reasonable doubt with preponderance of evidence, and that they could tell the jury that conviction based on mere rumor or innuendo was impermissible.

The appellants both were convicted of second-degree murder and related handgun charges. On appeal, they contended the trial judge had abused his discretion in posing the "CSI-type" *voir dire* question, because the effect of the question was to "catechize" the jurors about the State's theory of the case, and also because the effect of the question was to instruct the jurors that they could convict on the evidence they would hear in the case, regardless of what it was, thereby reducing the State's burden and violating their due process rights to be convicted only upon proof beyond a reasonable doubt. The appellants also contended the trial judge had erred in denying their mistrial motion because the curative instruction was inadequate, that the judge erroneously allowed the State to question the witness about her fear of retribution, and that the judge impermissibly curtailed the defense in closing argument.

Held: The appellate court upheld the convictions. The trial court acted within its discretion when it asked the "CSI-type" *voir dire* question, because the question was intended to elicit bias of potential jurors, a valid basis for striking for cause. The question neither "catechized" the jurors in the State's theory of the case, nor was it akin to a jury instruction. *See Corens v. State*, 185 Md. 561, 564-65 (1946) (rejecting theory that to ask potential jurors to state their views on circumstantial evidence and capital punishment was an inducement "to believe that the judge was convinced before the trial began that the accused was guilty."). Furthermore, the trial judge did not make an incorrect statement of law, nor did he denigrate the reasonable doubt standard.

The trial judge was not required to declare a mistrial after his improvident remarks. The curative instruction was sufficient to cure the error. *Johnson v. State*, 352 Md. 374 (1999), *Suggs v. State*, 87 Md. App. 250 (1991), and *Spencer v. State*, 76 Md. App. 71 (1988), distinguished. Furthermore, the adequacy of the curative instruction could not be challenged on appeal because defense counsel failed to object to it. Md. Rule 4-325(e).

The trial judge reasonably exerted control over the State's re-direct examination of the witness, and cannot be charged with error simply because the witness, directly contrary to the trial court's instruction, blurted out a potentially prejudicial remark. Under the circumstances, the trial judge's immediate action to strike the witness's remark was the only feasible remedy.

The trial judge properly exercised his discretion in limiting defense counsel's closing argument. Defense counsel's proffered argument was based entirely on an explanation of abstract legal principles that were extraneous to the present case. Under *Stevenson v. State*, 289 Md. 167 (1980), *Montgomery v. State*, 292 Md. 84 (1981), and their progeny, counsel may not argue the law to the jury. *Washington v. State*, 180 Md. App. 458 (2008), distinguished.

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Kevin P. Clark, et al. v. Martin O'Malley, et al., No. 768 September Term, 2008, filed June 10, 2009. Opinion by Graeff, J.

http://mdcourts.gov/opinions/cosa/2009/768s08.pdf

EMPLOYMENT LAW - CONTRACTS - LIQUIDATED DAMAGES - MOOTNESS.

Facts: In 2003, Mr. Clark was appointed Police Commissioner of Baltimore City by the Mayor. In February 2003, prior to his confirmation by the City Council, Mr. Clark and the Mayor executed a Memorandum of Understanding ("MOU") in which Mr. Clark agreed "to serve the remaining term of the last Commissioner until June 30, 2008." The MOU provided three ways in which Mr. Clark's employment could be terminated. First, he could be terminated pursuant to Baltimore City Public Local Laws ("P.L.L."), § 16-5(e), which provided that "[t]he Police Commissioner is subject to removal by the Mayor for official misconduct, malfeasance, inefficiency or incompetency, including prolonged illness . . . ." Second, Mr. Clark could be terminated for "just cause." Third, the MOU provided that either party could terminate the employment agreement at any time, *i.e.*, without cause, by giving 45 days written notice.

On November 10, 2004, the Mayor of Baltimore City terminated Kevin P. Clark's employment as Police Commissioner. Shortly after Mr. Clark was terminated, he filed in the Circuit Court for Baltimore City a complaint, and a first amended complaint, for declaratory and injunctive relief. Mr. Clark requested: (1) a declaration that the Mayor's actions in terminating his employment were unlawful; (2) reinstatement to his position as Police Commissioner; and (3) compensatory and punitive damages. The circuit court granted appellees' motion for summary judgment, concluding that the Mayor properly terminated Mr. Clark, without cause, pursuant to the MOU signed by the parties. Mr. Clark appealed.

In *Clark v. O'Malley*, 169 Md. App. 408, 439 (2006), this Court reversed the circuit court's order, holding that the Mayor could remove the Police Commissioner only for cause as set out by P.L.L. § 16-5(e). This Court held that the MOU, which provided that either party could terminate the employment contract by giving 45 days written notice, expanded "the Mayor's authority beyond that granted by the General Assembly," and that provision, therefore, was invalid. *Id.* at 438. Thus, the Court held that summary judgment on this ground was improper, and we remanded the case to the circuit court to address other defenses raised by appellees.

The Court of Appeals affirmed this Court's decision in *Mayor & City Council v. Clark*, 404 Md. 13, 33 (2008). The Court of Appeals agreed that "[t]he removal power, as articulated in § 16-5(e) . . . is not modifiable by a MOU," and it held that the

language in the MOU here, which allowed either party to terminate the contract without cause, conflicted with P.L.L. § 16-5(e) and was unenforceable. *Id.*

On remand, Mr. Clark filed in the circuit court a motion requesting that the court reinstate him as Police Commissioner. On June 17, 2008, the circuit court denied the motion for reinstatement. On July 15, 2008, the circuit court granted appellees' motion for summary judgment on the remaining counts of the complaint. The court then denied as moot a motion to intervene filed by Natasha Clark, Mr. Clark's wife, based on her "interest in protecting the confidentiality" of court records that appellees sought to have introduced into evidence. Mr. Clark and Ms. Clark filed separate appeals.

Held: Judgment affirmed. When an employee has a contract of employment for a fixed term, and the employee is terminated, the expiration of the contract term renders a subsequent claim for reinstatement moot. Mr. Clark's February 2003 contract provided that he was "to serve the remaining term of the last Commissioner until June 30, 2008." Thus, Mr. Clark's contract expired on June 30, 2008. Because his term of employment has expired, Mr. Clark's request for reinstatement is moot.

Mr. Clark's contention that he was entitled to summary judgment because the appellate courts had decided the issue of liability was similarly unavailing. Although the appellate courts held that the portion of the MOU allowing Mr. Clark to be terminated without cause was unenforceable, it did not address whether Mr. Clark's claim for damages was limited to that which he agreed in his contract.

An employee who signs an employment contract that contains a liquidated damages clause setting forth the compensation the employee will receive upon termination generally will be bound by the terms of that contract. Where the amount of compensation set forth in the agreement is reasonable, and the employer has tendered the agreed upon compensation, the employee has received all the damages to which he is entitled. Under these circumstances, and where the contract is not void as against public policy, the employee cannot maintain a suit against the employer for additional damages. Here, the MOU set forth the compensation to which Mr. Clark was entitled upon termination. Because the City has tendered payment pursuant to the bargained for amount in the liquidated damages clause, Mr. Clark has received all the damages to which he is entitled.

Ms. Clark's motion to intervene is moot because the circuit court entered an order sealing the records from public disclosure, and, absent a further appeal, there will be no trial and the records will not be introduced into evidence in this case.

Davis v. Attorney General, No. 123, September Term, 2008, filed July 9, 2009. Opinion by Eyler, Deborah S., J.

http://mdcourts.gov/opinions/cosa/2009/123s08.pdf

ESTATES AND TRUSTS - TRUST SUPERVISION - TERMINATION OF TRUST - VACATION OF ORDER TERMINATING TRUST - APPEALABILITY OF ORDER VACATING TRUST AND OTHER INTERLOCUTORY ORDERS.

Facts: Katherine Anne Porter, the famous 20th Century American writer, executed her last will in 1972. In the will, she created a charitable trust, designated the "Literary Trust" (or "Trust"), by which she intended to dispose of all her literary works and rights. Porter named as beneficiary of the Trust the University of Maryland College Park, which had established the "Katherine Anne Porter Collection" during Porter's lifetime. Porter died in Maryland on September 18, 1980, and the Circuit Court for Montgomery County assumed supervisory jurisdiction over the Trust on July 18, 1983.

In 1993, Barbara T. Davis, the appellant, was named the successor trustee of the Trust. On May 23, 2007, Davis incorporated the "Katherine Anne Porter Foundation" ("Foundation"). On June 8, 2007, Davis transferred all of the Trust's assets to the Foundation, but did not inform E. Barrett Prettyman, Jr., the will's executor, or Charles B. Lowry, then-Dean of the University of Maryland Libraries, of that fact. A week later, she filed in the circuit court a "Notice of Trust Termination." By order docketed on June 20, 2007, the court terminated the Trust subject to Davis's filing a final accounting. The final accounting was then filed and approved by order of July 17, 2007.

On December 27, 2007, the Attorney General of Maryland filed an unverified petition on behalf of the State and the University of Maryland College Park and Lowry, the appellees, to rescind the order terminating the Trust and to award damages against Davis for breach of trust. The appellees claimed that they had not been given the notice required by law of Davis's "Notice of Trust Termination." On January 3, 2008, the court issued an order directing Davis to show cause why the relief sought by the appellees should not be granted, and scheduled a show cause hearing for March 3, 2008. Davis filed a motion to dismiss because the petition was not verified, and a week later filed a motion to strike the show cause order and to postpone the show cause hearing. The Attorney General's Office then filed a verified petition. The show cause hearing was held on March 3, 2008, where the court decided to vacate the order from June 20, 2007 and re-assume jurisdiction over the Trust. The court further ordered Davis not to transfer any Trust assets before providing notice of her intent to do so. Davis appealed, claiming that the circuit court abused its discretion by vacating the June 20, 2007 order, in denying her

motion to strike the show cause order and continue the hearing, and by enjoining her from using the Foundation's assets without court order or consent.

Held: Judgment affirmed. The Court of Special Appeals held that the circuit court order vacating the June 20, 2007 order is treated as a final order, and thus Davis could appeal that order. The other issues Davis raised, which are interlocutory rulings, also may be challenged on appeal because those rulings were intertwined with the court's decision to vacate the June 20, 2007 order.

After a judgment is enrolled, a circuit court can revise the judgment only if there has been a mistake, irregularity, or fraud, and the moving party has acted with ordinary diligence, in good faith, and has a meritorious position. There was overwhelming evidence before the circuit court at the March 3, 2008 hearing that Davis had not provided notice to Prettyman, the State, or Lowry of her "Notice of Trust Termination." Thus, there was evidence of "irregularity" with Davis's termination request and the resulting June 20, 2007 order was entered as a consequence of that irregularity.

The circuit court did not abuse its discretion by denying Davis's motion to strike show cause order, because in vacating the order that had terminated its supervision over the Trust, the circuit court re-assumed jurisdiction over the Trust. The circuit court also did not abuse its discretion by directing that Davis provide notice before any Trust assets are distributed; when the circuit court re-assumed jurisdiction over the Trust, the court became an equity court supervising a trust, and Davis became a trustee under the trust being supervised.

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Jose Henriquez v. Ana S. Henriquez, No. 1774 September Term, 2007, filed May 8, 2009. Opinion by Graeff, J.

http://mdcourts.gov/opinions/cosa/2009/1774s07.pdf

FAMILY LAW - ATTORNEY'S FEES - FAMILY LAW ARTICLE § 12-103.

Facts: The parties were married in 1998. On December 27, 2005, Ms. Henriquez filed in the Circuit Court for Montgomery County a Complaint for Absolute Divorce, which included a request for the legal and physical custody of their children and "reasonable counsel fees and costs" of the proceedings. An attorney with the House of Ruth, a non-profit organization, represented Ms. Henriquez, without charging her for its legal representation.

At trial, counsel for Ms. Henriquez submitted to the court a bill documenting 58.34 hours of work, at $200 per hour, for a total of $11,668. Mr. Henriquez objected, and he argued that the court should not award the House of Ruth attorney's fees for two reasons: (1) Ms. Henriquez did not personally incur any legal expenses; and (2) Ms. Henriquez did not disclose, prior to trial, her bill for attorney's fees. At the conclusion of the trial, the court ordered, among other things, that "Defendant shall pay to the Plaintiff's counsel, the House of Ruth Domestic Violence Legal Clinic, the sum of Five Thousand Dollars ($5,000.00) for attorney's fees . . . ."

Held: Judgment affirmed. A circuit court may award attorney's fees, pursuant to § 12-103 of the Family Law Article, in a case where a party is represented by a non-profit legal services organization, or a pro bono attorney, irrespective of whether a fee agreement exists between the client and the attorney. The criteria for awarding attorneys fees set forth in this statute, and other statutes in the Family Law Article providing for attorney's fees, does not include the status of the legal services provider as a factor that must be considered by the court. Accordingly, pursuant to the plain language of the statute, there is no per se bar to awarding attorney's fees to a party who is represented by a non-profit organization that provides the party with free legal representation. As other courts have noted, the "principle of providing equal access of justice to all" warrants the award of attorney's fees to persons represented by legal services organizations or a pro bono attorney.

The court did not abuse its discretion in failing to sanction Ms. Henriquez for an alleged discovery violation because Ms. Henriquez notified Mr. Henriquez in her complaint that she was seeking attorney's fees, Mr. Henriquez did not specifically request the bill for attorney's fees in discovery, and the court did not rely on the bill in awarding the House of Ruth $5,000 in attorney's fees.

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Hayes v. State, No. 2436, September Term, 2007, filed January 6, 2009. Opinion by Wright, J.

http://mdcourts.gov/opinions/cosa/2009/2436s07.pdf

FAMILY LAW - INFANTS - NEGLIGENCE – BREACH OF DUTY – VIOLATION OF STATUTES AND OTHER REGULATIONS

MARYLAND STATE – ACTION – GROUNDS AND CONDITIONS PRECEDENT – STATUTORY RIGHTS OF ACTION

MARYLAND STATE – JUDGMENT – CONCLUSIVENESS OF ACTION – JUDGMENTS CONCLUSIVE IN GENERAL – NATURE AND REQUISITES OF FORMER ADJUDICATION AS GROUND OF ESTOPPEL IN GENERAL

Facts: Appellant's ex-wife accused him of injuring their minor child at a grocery store, where the checkout clerk, an independent witness, observed no such incident. Although alerted to the existence of this witness, the Prince George's County Department of Social Services (DSS) failed to locate the checkout clerk before finding that plaintiff was an "indicated child abuser," a finding that was ultimately overturned by an Administrative Law Judge. Appellant brought the instant suit against DSS under the Maryland Tort Claims Act, based on DSS's negligent failure to conduct a "thorough investigation" of the child abuse accusation, as required by Md. Code (1984, 2006 Repl. Vol.), Family Law Article ("FL"), § 5-706(a). The Circuit Court for Prince George's County held that the statute does not create a legally cognizable duty to appellant, the alleged abuser and, therefore, appellant failed to state a claim upon which relief could be granted. The circuit court dismissed the suit. This appeal followed.

Held: Affirmed. Under the circumstances of this case, DSS did not owe a legally cognizable duty to appellant because the obligation created by FL § 5-706 runs to an identified or identifiable child or discrete group of children, and not to the accused. Further, appellant demonstrated no legislative intent to create this right of action, and extending the statute to create this right will not help achieve the legislature's goals. For policy reasons, it would be unwise to create a remedy that could be misused by every parent unhappy with a DSS decision.

The breadth of the investigation is left to the discretion of DSS and is therefore not actionable. DSS has no duty to change a finding of "indicated child abuser" once made, as an administrative process is already in place to permit the alleged abuser to appeal such a finding. Moreover, the circuit court's decision in a custody and visitation action – that child abuse did not occur – cannot collaterally estop DSS's investigation of that abuse, as DSS was not a party to the custody case. Thus,

the circuit court did not err in dismissing the suit. ***

Donald Fischbach v. Greer Fischbach, No. 1080, September Term, 2008, decided on July 7, 2009. Opinion by Davis, J.

http://mdcourts.gov/opinions/cosa/2009/1080s08.pdf

FAMILY LAW - QUALIFIED DOMESTIC RELATIONS ORDER - SEPARATION AGREEMENT; Md. Code. Ann. (2006 Repl. Vol., 2008 Supp.), Courts and Judicial Proceedings Article (C.J.), § 5-102(a) - STATUTE OF LIMITATIONS (Providing, in pertinent part, that (a) [a]n action on one of the following specialties shall be filed within 12 years after the cause of action accrues, or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner: . . . (3) Judgment (5) Contract Under Seal.

Facts: A Separation Agreement under seal that was executed by both parties on October 5, 1990, was ultimately incorporated, but not merged, into the Judgment of Absolute Divorce entered on October 22, 1990. The Separation Agreement established that appellant would pay appellee a portion of his pension per the formula enumerated "*as of the date of his retirement*." The divorce decree provided for the court to retain jurisdiction to amend the order issuing the judgment pursuant to subsequently filed Qualified Domestic Relations Orders (QDRO) to conform with the Annotated Code of Maryland, Family Law Article and the United States Code.

Although appellee had assumed that appellant would retire at the age of sixty-five, appellant retired earlier, in September 2001, and began to receive his pension benefits. Neither party made any attempt to contact the other until appellant received a proposed QDRO from appellee's attorney in February or March of 2006 to collect *future* payments from appellant's pension benefits, per the terms of their Separation Agreement.

A QDRO, jointly executed by the parties and entered by the circuit court on March 29, 2006, was subsequently rejected by the pension plan administrator and a second, amended QDRO was signed by both parties and entered by the circuit court on April 23, 2007. In September 2007, appellee received a lump sum payment and subsequent monthly pension benefit payments. Neither of the aforementioned QDROs addressed appellee's claim to the arrears of appellant's payments of pension benefits accumulated from the time of appellant's retirement to the date that the QDROs were filed.

In response to appellant's claim for pension arrears accrued during the period between appellant's retirement and appellee's receipt of the first partial payment pursuant to the approved QDRO, appellant argued that appellee's lawsuit to recover her

portion of pension benefits, *paid to appellant from 2001 through 2007*, was barred by the twelve-year statute of limitations set forth in C.J. § 5-102(a) and the affirmative defenses of laches and waiver.

Held: Affirmed. The circuit court held that appellee's claim was not barred by the statute of limitations because limitations began to accrue from the time appellee knew or should have known that she could receive the benefit.

Because unpaid pension installments, to which appellee asserted she was entitled, fell within the twelve-year period preceding the date of her complaint, appellee's claims were not time barred by the statute of limitations set forth in C.J. § 5–102(a); upon maturation of appellant's liabilities as to payment of his pension benefits, which occurs when an installment payment on those benefits becomes due, appellee is afforded twelve years from that point to enforce her rights as to that pension payment.

The circuit court was not required to give any consideration to appellant's defense of laches; the doctrine of laches is an equitable remedy that is unavailable as a defense in an action at law and appellee's complaint, which sought money damages, was an action at law.

The amended QDRO, signed by both parties and entered by the circuit court on April 23, 2007, did not modify the terms of the separation agreement; in light of appellee's reasonable belief that appellant would retire at age sixty-five and her prompt efforts to effectuate payment immediately after discovery that appellant had retired, the record reflects no conduct on the part of appellee indicating that she sat on her rights or waived her right to pension arrears.

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Skanska USA Building, Inc. v. Smith Management Construction, Inc., et al., No. 221, September Term, 2008, filed March 10, 2009. Opinion by Eyler, J.R., J.

http://mdcourts.gov/opinions/cosa/2009/221s08.pdf

GOVERNMENT CONTRACTS - GOVERNMENT DISPUTES ACT

Facts: Smith Management Construction, Inc. ("SMCI") entered into a contract to develop a biomedical research facility to be leased to the National Institutes of Health ("NIH"). SMCI entered into a subcontract with Skanska USA Building, Inc. ("Skanska"), pursuant to which Skanska agreed to serve as construction manager. The contract documents contained dispute resolution provisions whereby Government Disputes were to be pursued in a federal forum under the procedure applicable to federal procurement contracts, i.e., the Contract Disputes Act of 1978, and Non-Government Disputes were to be pursued in circuit court. A dispute arose with respect to the amount of compensation due Skanska, primarily because of changes in the project. Skanska filed suit in the Circuit Court for Baltimore City against other parties to the transaction, but not including NIH.

The circuit court dismissed the complaint on the ground that the documents required Skanska to pursue its claims under the Contract Disputes Act and the circuit court lacked subject matter jurisdiction.

Held: Consent motion for correction of the record granted. Case remanded to the circuit court with the direction to enter an order staying further proceedings on the merits pending completion of proceedings under the Contract Disputes Act. The Court held that the documents unambiguously required Skanska to pursue its claims under the Contract Disputes Act, and at the conclusion of that procedure in a federal forum, it could pursue any remaining claims against the private parties in circuit court. The circuit court lacked subject matter jurisdiction to determine NIH's liability, but has subject matter jurisdiction to determine any remaining claims between the private parties.

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State Board of Physicians v. Michael Rudman, No. 1856, September Term, 2007, filed March 27, 2009. Opinion by Krauser, CJ.

http://mdcourts.gov/opinions/cosa/2009/1856s07.pdf

HEALTH - ADMINISTRATIVE LAW AND PROCEDURE - CIVIL – STATE BOARD OF PHYSICIANS – PROFESSIONAL DISCIPLINE – ALFORD PLEAS – GUILTY PLEAS – PROBATION BEFORE JUDGMENT – HEALTH OCCUPATIONS ARTICLE SECTION 14-404 – CRIMINAL PROCEDURES ARTICLE SECTION 6-220 – CRIME OF MORAL TURPITUDE – SECOND-DEGREE ASSAULT.

Facts: Appellee, a physician licensed to practice medicine in the State of Maryland, was charged with three counts of second-degree assault and three counts of fourth-degree sexual offense with respect to two of his patients, Ms. E. and Ms. P. Appellee entered an *Alford* plea as to one count of second-degree assault with respect to Ms. P., and the State nolle prossed the remaining charges. The *Alford* plea was preceded by a proffer by which appellee agreed that, if the State had proceeded to trial, Ms. P. would have testified that during a medical examination, appellee pressed his erect penis against her back while massaging her neck. The Circuit Court for Frederick County accepted appellee's *Alford* plea, found him guilty of second-degree assault, and granted appellee probation before judgment under section 6-220 of the Criminal Procedures Article.

Subsequently, the Office of the Attorney General petitioned the Maryland Board of Physicians to revoke appellee's license to practice medicine pursuant to section 14-404(b) of the Health Occupations Article, which mandates that the Board "shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude whether or not any appeal or other proceeding is pending to have the conviction or plea set aside." The Board issued an order directing appellee to show cause why his license to practice medicine should not be revoked. He responded by filing an answer and a motion to dismiss, requesting a hearing on both. Without holding a hearing, the Board revoked appellee's license to practice medicine. The Board rejected appellee's claims that his *Alford* plea was not a guilty plea, that second-degree assault was not a crime of moral turpitude, and that the Board could not act on a guilty plea if the court subsequently granted a probation before judgment.

Appellee filed a petition or judicial review in the Circuit Court for Frederick County. The circuit court vacated the decision of the Board on the ground that the probation before judgment had the effect of striking, or at least suspending, appellee's guilty plea and rendering it of no force and effect pending the conclusion of the probation period. The court also

concluded that second-degree assault should not be considered a crime of moral turpitude absent a hearing on the merits.

Held: The Court of Special Appeals reversed and remanded the case to the Circuit Court for Frederick County with instructions to enter judgment in favor of the Board of Physicians. The Court recognized that an *Alford* plea is a guilty plea, albeit a specialized type of guilty plea, where a defendant, although pleading guilty, continues to deny his or her guilt but enters a plea to avoid the threat of greater punishment. The Court held that an *Alford* plea constitute a guilty plea for purposes of section 14-404(b)(1) of the Health Occupations Article. The Court also held that a guilty plea must precede the granting of probation before judgment, and there is nothing in section 6-220 of the Criminal Procedures Article to suggest that, upon discharge of a defendant under section 6-220(g), a guilty plea is nullified.

With respect to the facts underlying appellee's plea, the Court recognized that they are relevant to the question of whether appellee pleaded guilty to a crime of moral turpitude. The Court held that the Board may consider the facts and circumstances of a crime in determining whether the offense constitutes a crime of moral turpitude. The Court concluded that the facts supported the Board's finding that an assault with a sexual component on a patient while providing medical treatment in a medical office constituted a crime involving moral turpitude for professional disciplinary purposes.

As to appellee's request for a hearing, the Court held that section 14-404(b) of the Health Occupations Article, the purpose of which is to ensure an expedited and summary disposition of charges arising from a guilty plea to a crime involving moral turpitude, does not require a hearing. Rather, an evidentiary hearing is discretionary with the Board based on the existence of genuine issues of material fact or law. The Board did not abuse its discretion in denying appellee's request for a hearing and relying on the proffer made at the time he entered his guilty plea in determining that appellee sexually assault his patient during a medical examination.

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Maryland Automobile Ins. Fund v. Conchita Baxter et al., No. 530, September Term, 2008, filed June 9, 2009. Opinion by Salmon, J.

http://mdcourts.gov/opinions/cosa/2009/530s08.pdf

INSURANCE - COVERAGE - AN INSURER IS NOT REQUIRED UNDER MARYLAND LAW TO PROVIDE UNINSURED MOTORIST COVERAGE TO AN UNINSURED STRANGER PEDESTRIAN WHO IS STRUCK BY AN AUTOMOBILE THAT WOULD HAVE BEEN INSURED BY THE DEFENDANT'S INSURER IF THE VEHICLE HAD NOT BEEN DRIVEN, AT THE TIME OF THE ACCIDENT, BY A DRIVER EXCLUDED FROM COVERAGE UNDER THE DEFENDANT'S INSURER'S POLICY.

Facts: In January 2007 Teresa Ann Palugi owned a 1998 Jeep Cherokee that was insured with Interstate Automobile Insurance Company (Interstate). Ms. Palugi agreed to exclude her husband, William Palugi, from coverage on the insurance policy because he lacked a valid driver's license. The policy stated that when the covered vehicle was operated by an excluded driver, all coverage was excluded for the excluded driver, the vehicle owner, resident family members, and "any other person, except for Personal Injury Protection benefits and Uninsured Motorist coverage if such insurance is not available to that other person under another motor vehicle policy."

On January 21, 2007, William Palugi was driving negligently when he struck and killed Stephanie Scott. Ms. Scott's mother and her personal representative filed a complaint in the Circuit Court for Baltimore City, asking the court to decide whether they were entitled to recovery under Interstate's policy or from the Maryland Automobile Insurance Fund (MAIF), whose uninsured division is responsible for payment of claims (up to $20,000.00) by Maryland residents who are involved in motor vehicle accidents with uninsured motorists and who have no other source of recovery.

Both Interstate and MAIF moved for summary judgment. The circuit court granted Interstate's motion and denied MAIF's motion, finding that MAIF's reliance on the exclusions and exceptions to exclusions in Interstate's policy was misplaced because Ms. Scott was never an insured under the Interstate policy and therefore, could not be excluded.

Held: Affirmed. On appeal, MAIF claimed that the terms of the Interstate policy conflict with provisions of the Maryland Uninsured Motorist Statute, that addressed exclusions to coverage and exceptions to those exclusions. The Court agreed with the circuit court that MAIF's reliance on these provisions was misplaced because Ms. Scott was not an insured as defined in Interstate's policy and exceptions do not create coverage.

MAIF claimed that Ms. Scott was an insured under

Interstate's policy because she was "occupying" the Jeep when it struck her. The policy defined "occupying" as "in, or upon, or entering into, or alighting from." MAIF maintained that because Ms. Scott was struck by the Jeep, she was briefly upon it at the time of the accident. This argument was rejected because, Maryland case law requires that to be an occupant a claimant must have been performing an act normally associated with the immediate use of the vehicle when injury occurred. The Court held that a pedestrian who has had no connection with the insured vehicle, except for the fact of being struck by it, was not "upon" the vehicle and thus not "occupying" it as that term is used in Clause 2 of Interstate's policy.

Moreover, Ms. Scott did not qualify as a person who is required to be covered under the Maryland UM statute. Section 19-509(c)(1) of the Maryland Insurance Article requires insurers to provide UM coverage for damages that either an insured or a surviving relative is entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injuries sustained in a motor vehicle accident arising out of the ownership, maintenance, or use of the uninsured vehicle. The Court of Appeals has interpreted this section as requiring each policy to include coverage for *that policy's insured* for bodily injury sustained by *that policy's insured*. This means that the Maryland UM statute only requires that UM coverage be provided to persons who are insured under the policy, not third parties like Ms. Scott.

MAIF argued that §19-509(f), the exclusions section, provides that when a pedestrian is struck by an insured motor vehicle operated by an excluded driver, an insurer may deny UM coverage to the victim only if he or she is the named insured or a resident family member, or the victim has other applicable motor vehicle insurance. Because Ms. Scott was not a named insured or resident family member and had no other motor vehicle insurance, MAIF argued that Interstate could not deny Ms. Scott coverage. The Court held that this interpretation failed to recognize the difference between determining required coverage and determining the permissible scope of an exclusion from coverage. Ms. Scott was not an insured under the Interstate policy and thus she was not entitled to make a successful UM claim; nor were her representatives.

Lastly, MAIF argued that the legislative history of §§19-509(f)(2) and 27-609(c)(4) (Maryland's driver exclusion statute) supports its position that a stranger pedestrian like Ms. Scott must be provided with UM coverage. The Court held that the legislative history surrounding these statutes indicates that the legislature was trying to protect PIP and UM coverage for individuals already required to be included in such coverage.

The legislature was not enacting a statute that for the first time required UM coverage for a special class of persons—stranger pedestrians. According to the court, to hold otherwise would be to hold that the legislature was requiring every policy to provide UM coverage to an unknown number of people not named in the policy.

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Michael Blackburn et al. v. Erie Insurance Group, No. 0210, September Term, 2008, filed May 11, 2009. Opinion by Salmon, J.

http://mdcourts.gov/opinions/cosa/2009/210s08.pdf

INSURANCE - UNINSURED MOTORIST INSURANCE: MD CODE (2006 REPL. VOL.), INSURANCE ARTICLE §19-513(e) ALLOWS AN INSURER TO CALCULATE THE BENEFITS PAYABLE UNDER AN UNINSURED/UNDERINSURED POLICY BY DEDUCTING MONIES PAID TO THE INSURED BY A WORKERS' COMPENSATION CARRIER, NOT MERELY THE AMOUNT REPAID BY THE INSURED THAT WAS NECESSARY TO SATISFY THE WORKERS' COMPENSATION LIEN.

Facts: Blackburn, a federal employee, was seriously injured in a motor vehicle accident caused by the negligence of Quin. Blackburn filed a workers' compensation claim with the U.S. government, which asserted a lien against him in the amount of $246,305.66.

Blackburn's insurance policy with Erie Insurance Exchange provided uninsured motorist (UM) benefits of up to $250,000 per person. Quin's State Farm policy provided liability coverage of up to $100,000 per person. Blackburn accepted $100,000 from State Farm and then paid the U.S. government $27,396.28 towards the workers' compensation lien. The government closed its lien as satisfied.

Blackburn demanded payment from Erie of his UM benefit, which he claimed was $150,000 after the $250,000 limit had been reduced by the $100,000 he had accepted from State Farm. Erie refused to pay this amount, contending that under Maryland Insurance Article §19-513(e), Erie was entitled to reduce its payment by the amount Blackburn received for his workers' compensation claim, less the monies Blackburn had repaid the U.S. government.

Both parties moved for summary judgment in the Circuit Court for Frederick County. The circuit court found that Blackburn's satisfaction of the lien was not synonymous with reimbursement to the U.S. government because to hold otherwise would result in duplication of benefits to Blackburn. The court therefore accepted Erie's construction of the statute.

Held: Affirmed. Blackburn argued that when the U.S. government received $27,396,28 from him and marked its workers' compensation lien as satisfied, the government voluntarily agreed to accept this lower amount as reimbursement for the $246,305.66 it had paid in compensation benefits. Therefore, according to Blackburn, the government had been fully reimbursed, and Erie still owed Blackburn $150,000 (the $250,000 UM benefit minus the $100,000 State Farm payment). Erie contended on appeal that the proper calculation would be to subtract from $150,00.00, the net

amount Blackburn had recovered from the government, which was $218,909.38 ($246,305.66 [the workers' compensation payment] minus $27,396.28 [the amount Blackburn repaid the government]) leaving a negative balance of $68,909.38.

Section 19-513(e) states that UM and personal injury benefits (PIP) benefits "shall be reduced to the extent that the recipient has recovered benefits under the workers' compensation laws of a state or the federal government for which the provider of the workers' compensation benefits has not been reimbursed." The majority pointed out, citing *State Farm Mut. Auto. Ins. Co. v. Ins. Comm'r*, 283 Md. 663 (1978) that the word "recover" as used in §19-513(e) means "to get," "to obtain," "to come into possession of," "to receive," and that the purpose of §19-513(e) is to allow UM and PIP carriers to deduct the monies received frm the compensation carrier that the insured had not already paid back. Here, Blackburn recovered $246,305.26 in workers' compensation benefits, while his employer was reimbursed for only $27,396.28 of this sum. The court went on to stress that the word "reimbursement" is commonly defined and understood to mean "repayment." Although the federal government chose to consider its lien satisfied, the government was not repaid $218,908.98 of the sum it paid to Blackburn. The majority thus concluded that the government had not been fully reimbursed.

One judge dissented, opining that the majority opinion misconstrued the legislature's intent insofar as it concerned the workers' compensation offset and thus deprived Blackburn of the UM coverage for which he had paid premiums. In the dissents view, the purpose of UM insurance is to place the accident victim in the same position he would occupy if the uninsured tortfeasor had maintained liability coverage equal to the limits of coverage under the victim's own UM policy. This being so, Blackburn was entitled to be placed in as good a financial position as he would have enjoyed if Quin had maintained liability insurance with $250,000.00 limit per person. Had Quin maintained such a limit, Blackburn would have received a $250,000 UM benefit from State Farm, as well as the $246,305.66 from the government, minus the $27,396.28 he repaid the government, for a net recovery of $468,909.38. The majority opinion deprived him of $150,000, which constituted a windfall to Erie.

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Carol F. Simmons v. Comfort Suites Hotel, et al., No. 241, September Term, 2008, filed March 31, 2009. Opinion by Graeff, J.

http://mdcourts.gov/opinions/cosa/2009/241s08.pdf

LABOR AND EMPLOYMENT ARTICLE § 9-660 – MARYLAND WORKERS' COMPENSATION ACT.

Facts: Carol F. Simmons, appellant, was brutally attacked while working as a night auditor at the Comfort Suites Hotel in Chestertown, Maryland. Ms. Simmons filed a claim with the Maryland Workers' Compensation Commission (the "Commission") for the injuries she sustained in the attack. Comfort Suites and its insurer (collectively, "Comfort Suites"), appellees, did not contest the underlying compensability of the claim, and they paid for medical treatment for Ms. Simmons. The Commission awarded Ms. Simmons temporary total disability benefits.

Ms. Simmons thereafter requested that Comfort Suites provide her with a home security system to allay her fear of a home intruder. At a hearing before the Commission, Ms. Simmons submitted a letter from her neuropsychologist recommending the installation of a home security system to reduce her anxiety. The Commission granted Ms. Simmons' request for a home security system. Comfort Suites filed in the Circuit Court for Queen Anne's County a Petition for Judicial Review of the Commission's decision. The circuit court granted summary judgment to Comfort Suites and reversed the Commission's decision.

Held: Reversed and remanded. Md. Code (2002 Repl. Vol., 2008 Cum. Supp.), § 9-660(a)(1) of the Labor and Employment Article provides that an employer shall provide "medical . . . treatment" to an injured employee, as the Commission may require. The determination whether a device or service constitutes medical treatment under the statute should not be based, as a matter of law, on whether the device or service is inherently medical in nature. Rather, where there is a recommendation from a medical professional that a device or service be provided because it will provide a medical benefit, the determination whether it is compensable medical treatment is a question of fact that should be determined under the circumstances of the particular case.

Under the unique circumstances of this case, where the claimant was brutally attacked, where she suffered both physical and mental disability as a result of the attack, and where her treating neuropsychologist recommended a home security system to improve her medical condition by reducing her anxiety and resulting insomnia, the trier of fact could find that a home security system constituted medical treatment pursuant to the statute. Therefore, the circuit court erred in ruling, as a matter of law, that a home security system was not medical treatment pursuant to § 9-660.

Stuart Fisher A/K/A Neil Fisher v. McCrary Crescent City, LLC, et al., No. 1282, September Term, 2007, filed June 8, 2009. Opinion by J.R. Eyler, J.

http://mdcourts.gov/opinions/cosa/2009/1282s07.pdf

PUNITIVE DAMAGES - DISCOVERY SANCTIONS

Facts: This appeal arises from a judgment entered by the Circuit Court for Baltimore City against appellants, Edward V. Giannasca, II ("Giannasca"), Stuart Cornelius Fisher, a.k.a. "Neil Fisher" ("Stuart"), Tamara Jeanne Fisher ("Tamara"), TJ Biscayne Holdings, LLC ("TJB"), Giannasca Crescent City, LLC ("GCC"), Market Street Properties Palm Beach, LLC ("MS"), and Crescent City Estates, LLC ("CCE"), in favor of appellees, Michael C. McCrary ("McCrary"), McCrary Crescent City, LLC ("MCC"), MR Crescent City, LLC ("MRCC"), and CCE. The following chart illustrates the organization of the parties with respect to this litigation:

Plaintiffs (Appellees)	**Defendants (Appellants)**
McCrary MCC MRCC CCE	Giannasca Stuart Tamara GCC MS TJB CCE

Appellants sued appellees to recover insurance proceeds from a building damaged by Hurricane Katrina. The Circuit Court for Baltimore City entered judgment after entering orders of default as to liability against Giannasca, Stuart, and Tamara because they violated court orders and committed discovery failures; entering judgment as to liability against TJB, MS, GCC, and CCE after they failed to answer the complaint; and sanctioning Giannasca, Stuart, Tamara, MS, and TJB by precluding them and their counsel from participating at the damages hearing because they violated court orders and committed discovery failures. The circuit court awarded approximately (1) $17.8 million in compensatory damages in favor of CCE against all appellants with the exception of CCE; (2) $15.8 in million punitive damages in favor of all appellees against all appellants with the exception of CCE; and (3) $8.9 million in compensatory damages in favor of McCrary, MCC, and MRCC against CCE.

Held: Judgment affirmed as to liability of all appellants; judgment otherwise vacated.

The Court held that the circuit court properly denied Stuart's motion to dismiss. The Court held that Stuart was not improperly served because Stuart willingly came to Maryland, both Stuart and McCrary intended to settle and made a good faith attempt to settle the claim while in Maryland, and service occurred only after the bona fide settlement negotiations broke down. The Court held that the circuit court had personal jurisdiction over Stuart under a conspiracy theory because Stuart reasonably expected that acts would be done in furtherance of the conspiracy sufficient to subject him to personal jurisdiction in Maryland before entering into the conspiracy. The Court further held that Maryland was not an inconvenient forum. Giannasca and McCrary are Maryland residents. Giannasca, CCE, and McCrary all maintained offices in Maryland, providing easy access to sources of proofs. Although Stuart and Tamara are nonresidents, Stuart has a history of doing business in Maryland. Moreover, Giannasca and Stuart carried out fraudulent activities in Maryland when they made fraudulent misrepresentations to appellees. There is nothing to indicate that obtaining compulsory process for unwilling witnesses would be difficult, or that the cost of obtaining the attendance of witnesses would be prohibitive. Viewing the premises at issue is not important. The Court also held that Baltimore City was not an improper venue. The Court explained that venue was proper anywhere in Maryland against Stuart and Tamara because they are nonresident individuals. Venue was proper in Baltimore County against GCC, MS, and TJB because they are nonresident corporations with no principal place of business, and one of the plaintiffs, McCrary, resides in Baltimore County. Although CCE also is a nonresident defendant, CCE's principal place of business was in Baltimore City because its only office was in Baltimore City. Giannasca resided in Harford County, and carried on regular business in Baltimore City because he was the sole manager of CCE, and CCE's only office was in Baltimore City. Therefore, no single venue was appropriate for all defendants, meaning that under Maryland's venue selection statute, Baltimore City was an appropriate venue.

The Court also affirmed the circuit court's denial of Tamara and MS's motion to dismiss because the circuit court had jurisdiction over Tamara and MS under a conspiracy theory. Appellees alleged in their complaint that Tamara and MS participated in the conspiracy to defraud appellees by receiving insurance proceeds, and using the insurance proceeds in other investments. Furthermore, appellees alleged in their complaint that Tamara, and consequently MS, knew at the time that they conspired to defraud appellees that Giannasca lived in and maintained his principal office in Maryland. Tamara knew that McCrary was from Maryland and maintained an office in Maryland.

Any reasonable person would have reason to believe that they would be subject to personal jurisdiction in Maryland when they conspire with a Maryland resident with its primary office in Maryland against another individual with personal ties to Maryland and their principal place of business in Maryland.

The Court then addressed the orders of default, contempt , and discovery sanctions. In doing so, the Court provided a roadmap for pursuing and administering such orders. The Court then examined the sanctions imposed upon appellants. As to Giannasca, the Court held that the circuit court erred because it failed to place its finding of constructive civil contempt in writing. Additionally, the circuit court erred because it failed to state how Giannasca could purge his contempt. Rather, the circuit court merely prohibited Giannasca from participating in the damages hearing. Furthermore, the court erred under clearly established case law to the extent that it converted the civil contempt proceeding to a criminal contempt proceeding. As to Stuart, the Court held that the sanctions for total discovery failures against Stuart appeared to be justified but concluded, nevertheless, that completely precluding Stuart or his counsel from participating in the damages hearing was an abuse of discretion. As to Tamara, the Court held that the circuit court properly entered an order of default as a discovery sanction because Tamara completely failed to respond to any discovery requests until June 16, 2008, when she sat for her deposition and produced some documents. At that point, trial was scheduled for June 18, 2008. According to the scheduling order in the record, the discovery deadline expired on February 21, 2008. As to Tamara's belated attempt to cooperate in discovery on the eve of trial, it was too little, too late. The Court explained that providing documents two days before trial, and four months after the discovery deadline constitutes a total failure of discovery within the purpose of Rule 2-432(a). The Court then concluded that completely precluding Tamara or her counsel from participating in the damages hearing was an abuse of discretion. As to TJB and MS, the Court held that the circuit court erred when it found TJB and MS in constructive civil contempt because the court never issued a written order, as required by the rules. Moreover, the court never provided a purge provision. Furthermore, the court erred to the extent that it converted the civil contempt proceeding to a criminal contempt proceeding.

The Court then held that the trial court abused its discretion when it completely prohibited appellants from participating in the damages hearing. The Court explained that the complete prohibition against participation converted the damages hearing into an ex parte proceeding. A party's right to be present at a hearing or trial is a substantial right. That right is independent of the ability to present evidence. When a party and counsel are precluded from participation, counsel

cannot present argument and make objections, thereby preserving the record. As a result, an appellate court must scour the record of the proceeding, looking for reversible error, a function normally not undertaken by an appellate court. The Court conceded that a circuit court may impose sanctions prohibiting a particular claim or defense, prohibiting the use of information called for in discovery and not disclosed, ordering that facts sought to be discovered are taken as established, dismissing the action, and determining liability, all as appropriate to remedy a violation. However, the Court stated that rarely will a prohibition against participation in terms of making arguments and objections be justified.

The Court held that the circuit court erred when it awarded punitive damages to McCrary against CCE in the absence of an award of compensatory damages. The circuit court also erred when it failed to apportion punitive damages. In doing so, the Court traced the line of cases requiring apportionment, and rejected appellees' argument that apportionment is not necessary when the defendants engaged in a conspiracy.

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Washington Mutual Bank v. Susie M. Human et al., No. 1586, September Term, 2008, decided on June 12, 2009. Opinion by Davis, J.

http://mdcourts.gov/opinions/cosa/2009/1586s08.pdf

REAL PROPERTY - EFFECTIVE DATE OF DEED - MD. CODE ANN., REAL PROPERTY ARTICLE (R.P.) § 3-201 (providing that the effective date of a deed is the date of delivery, and the date of delivery is presumed to be the date of the last acknowledgment, if any, or the date stated on the deed, whichever is later. Every deed, when recorded, takes effect from its effective date as against the grantor, his personal representatives, *every purchaser with notice of the deed*, and every creditor of the grantor with or without notice.) (Emphasis added)

MD. CODE ANN., R.P. § 3-203 (providing that every recorded deed or other instrument takes effect from its effective date as against the grantee of any deed executed and delivered subsequent to the effective date, unless the grantee of the subsequent deed has:(1) Accepted delivery of the deed or other instrument: (i) *In good faith*; (ii) *Without constructive notice under § 3-202*; and (iii) *For a good and valuable consideration*; and (2) *Recorded the deed first*.) (Emphasis added).

Facts: Appellees entered into a contract with a builder to purchase Property and build a new home on the Property and to convey the Property to appellees. After several postponements of the settlement, appellees filed a notice of *lis pendens* and lawsuit against the builder (original lawsuit), requesting specific performance on the contract. Summary judgment was awarded in favor of appellees on October 15, 2007 and the court ordered that settlement take place and that the property be conveyed to appellees.

Unbeknownst to appellees or the court, the builder had conveyed its entire interest in the Property, approximately eight months before appellees filed the original law suit, to Edward Moriarty as the “sole owner” of the builder, who subsequently granted a deed of trust on the Property to appellant. Neither the deed of trust nor the quitclaim deed was recorded in the land records until December 14, 2007, more than one year and four months after the deed of trust was granted to appellant and more than two months after the circuit court ordered the builder, in the original lawsuit, to convey the Property to appellees. Appellant maintained that it did not know about the sales contract between the builder and appellees when Moriarty granted the deed of trust to appellant. Appellees became aware of appellant’s deed of trust, as well as several liens and encumbrances against the Property, on December 21, 2007, when

appellees performed a title search in preparation for the settlement ordered in the original lawsuit.

Appellees filed the instant action against appellant and other defendants to establish, *inter alia*, their superior equitable and legal title to the Property and to void any interests acquired in the Property subsequent to the conveyance of the Property from the builder to Moriarty. The circuit court granted partial summary judgment in favor of appellees and against appellant, voiding appellant's interest in the Property, on the grounds that appellees' lawsuit, and the resulting court order awarding appellees legal title to the Property, occurred before appellant recorded its deed of trust, giving appellees a priority claim to the Property.

Held: The circuit court erred in granting summary judgment on the bases (1) that the lawsuit filed by appellees should have put appellant on notice of a prior existing equitable interest in the Property and (2) that if appellant had recorded its interest in August 2006, rather than waiting until December 2007, appellant's interests would have had priority; because appellees only had equitable title and never received legal title to the Property, their equitable interest was subject to extinction by a subsequent *bona fide* purchaser or lender for value who purchased the real property without notice of prior equities, with notice being measured upon conveyance of legal title rather than upon the recording of the subsequent purchaser's deed. The case was remanded for the circuit court to consider whether the facts demonstrate that appellant was a *bona fide* mortgagee or lender for value without notice.

Because appellees failed to establish constructive possession of the Property, as required by § 14-108(a) of the Real Property Article and Maryland case law, the circuit court erred by granting summary judgment in favor of appellees on their count to quiet title.

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Harriette Julian v. Joseph Buonassisi, et al., No. 2740, September Term, 2007, filed January 5, 2009. Opinion by Eyler, James R., J.

http://mdcourts.gov/opinions/cosa/2009/2740s07.pdf

REAL PROPERTY - FORECLOSURE

Facts: Harriette Julian, appellant, an alleged victim of a "mortgage rescue scam," intervened in a foreclosure action and filed exceptions to the foreclosure sale, claiming an interest as the former owner of the property. At the time appellant owned the property, she defaulted on the mortgage then in existence and responded to a radio advertisement by Metropolitan Money Store ("MMS"), advising that it could help people subject to foreclosure actions. Appellant agreed to the procedure recommended by MMS, and conveyed the property to another person suggested by MMS with the understanding that the new owner would be creditworthy, obtain a new mortgage, pay off the existing mortgage, and use the equity from the new financing to make payments on the new mortgage. Appellant further understood that she could continue to live on the property, attempt to improve her creditworthiness, and after a year could buy back the property if she could obtain a loan. Payments were not made on the new loan, it went into default, and the lender initiated this foreclosure proceeding.

Appellant claimed relief under the Protection of Homeowners in Foreclosure Act (PHIFA), Maryland Code, (2005, Supp. 2006), §§ 7-301, et seq., of the Real Property ("RP") Article. Appellant argued that she had a right to rescind the transactions in which she was involved because the persons involved in the scam failed to comply with the notice requirements in the Act.

The Circuit Court for Charles County granted appellant's motion for judgment, finding no evidence that any of Wells Fargo's employees or assignees were involved in any fraud, any entities involved in fraud were not agents of Wells Fargo, and the record owner of the property at issue was not involved in any fraud. Consequently, Wells Fargo, or its assignee, was protected by RP § 7-311(e) as a bona fide lender or assignee.

Held: Motion to dismiss appeal denied. Judgment affirmed. Appellees moved to dismiss the appeal on two grounds. First, appellees argued that the appeal was moot because appellant acted inconsistently with her desire to rescind the transaction by vacating the subject property. The Court held that the act of vacating property was not necessarily inconsistent with rescission. Second, appellees argued that the Court should dismiss the appeal because appellant failed to post a bond required by statute. The Court declined to dismiss the appeal on

this ground because the original mortgagee was the servicer of the loan, appellant alleged fraud, and appellant's appeal of the circuit court's order to post a bond was pending on appeal.

The Court then addressed the merits. First, the court determined that the plain language of the statute indicates the legislative intent to make agreements in violation of PHIFA voidable, not void. In this case, the lender was a bona fide purchaser because none of the parties that carried out the alleged fraud were its agents. Furthermore, the knowledge of the parties that carried out the alleged fraud was not imputable to the lender because their interests were adverse to the interests of the lender.

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Ameriquest Mortgage Company v. Paramount Mortgage Services, Inc., No. 2309, September Term, 2007, filed February 3, 2009. Opinion by Graeff, J.

http://mdcourts.gov/opinions/cosa/2009/2309s07.pdf

REAL PROPERTY - MANDATORY AFFIDAVITS OF CONSIDERATION AND DISBURSEMENT - CURATIVE STATUTE.

Facts: Paramount Mortgage Services, Inc. ("Paramount"), appellee, filed a Complaint for Declaratory Judgment against Ameriquest Mortgage Company ("Ameriquest"), appellant, in the Circuit Court for Calvert County. Paramount sought a declaration that a deed of trust between Ameriquest and a mortgagor was void, or, alternatively, that it was subordinate to a deed of trust by and between Paramount and the same mortgagor. Ameriquest's deed of trust, recorded two days before Paramount's recordation, had an affidavit stating that the money was disbursed not later than the execution and delivery of the deed of trust, but no money was disbursed at that time. The circuit court granted summary judgment in favor of Paramount and declared Ameriquest's deed of trust null and void.

Held: Affirmed. Md. Code (2002 Repl. Vol., 2008 Cum. Supp.), § 4-106 of the Real Property Article requires that an affidavit of consideration and disbursement be provided for a deed of trust to be valid. An affidavit was attached to the deed of trust here, but it falsely stated that the funds were disbursed "not later than the execution and delivery" of the deed of trust. The affidavit did not substantially comply with the statute because the money was not actually advanced as alleged. The deed of trust was therefore invalid pursuant to Section 4-106.

Further, Maryland's "curative statute" does not "cure" a deed of trust with a substantively false affidavit. Section 4-109 of the Real Property Article provides that, with respect to a deed or other instrument, a "failure to comply with the formal requisites" set forth in the statute has no effect unless it is judicially challenged within six months of recording the instrument. The plain language of the statute indicates that it applies only to a failure to comply with "formal requisites," which is interpreted to refer to technical requirements in the form of an affidavit. An affidavit stating that money was disbursed on a certain date, when there was no disbursement as alleged, is not a technical defect as to form. Accordingly, the curative statute did not validate the deed of trust. The circuit court, therefore, properly granted summary judgment in favor of Paramount on the ground that Ameriquest's deed of trust was void and that Maryland's curative statute did not bar Paramount's claim.

Georgia Triantis v. Ottis Gus Triantis, et al., No. 963, September Term, 2007, filed March 26, 2009. Opinion by Krauser, CJ.

http://mdcourts.gov/opinions/cosa/2009/963s07.pdf

REAL PROPERTY - PARTITION - EQUITABLE OWNER'S RIGHT TO FILE FOR PARTITION.

Facts: Georgia and Gus Triantis married in 1955. In 1984, Mr. Triantis and Konstantinos Stamoulis purchased 40 acres of land in Montgomery County, each taking an undivided one-half interest in fee simple. Mr. Triantis and Mr. Stamoulis took title to the property as tenants in common. During their marriage, Mr. and Mrs. Triantis acquired a number of other parcels of property, titling some in just Mr. Triantis's name, others just in Mrs. Triantis's name, and others in both of their names. Some of their parcels were jointly titled in either Mr. or Mrs. Triantis's name and the name of a third party.

By 2000, Mr. and Mrs. Triantis had separated and were living apart. On June 1, 2000, they executed a written agreement (the "Agreement") "to evidence their intent, agreement, and understanding as to the ownership . . ." of the numerous properties acquired during their marriage. Paragraph one of the Agreement provided, in part, that "the parties agree that all of the Property," which by definition included the 40-acre Montgomery County parcel, "was acquired by and for the parties jointly, and for the benefit of both equally" and that "the parties acknowledge and agree that each is the joint legal and/or equitable owner of the Property, notwithstanding the fact that the Property . . . may be titled in the name of one party or the other . . . and notwithstanding the fact that . . . any interest [in the Property] may be held with a third party." The Agreement was subsequently recorded, as an "agreement," in the land records for Montgomery County.

In December, 2006, Mrs. Triantis filed a complaint in the circuit court requesting that the 40-acre Montgomery County parcel be sold in lieu of partition. Mr. Triantis and Mr. and Mrs. Stamoulis (Mr. Stamoulis had previously conveyed his half-interest in the parcel to himself and his wife as tenants by the entirety), responded with a motion for summary judgment claiming that Mrs. Triantis lacked standing to bring the action because she did "not appear as a grantee in any deed vesting an ownership right in her." They argued that only a person with a legal interest in property, established by a duly recorded deed, has standing to bring a partition action under Md. Code Ann., Real Property, §14-107. The circuit court granted the motion for summary judgment based on those arguments.

Held: Reversed and remanded. RP, §14-107(a) provides

that: "A circuit court may decree a partition of any property, either legal or equitable, on the bill or petition of any joint tenant, tenant in common, parcener, or concurrent owner, whether claiming by descent or purchase." If the property cannot be divided without loss or injury to the interested parties, the court may authorize a sale of the property in lieu of its partition. RP, §14-107(a).

The issue in this appeal, one of first impression in Maryland, was whether, and under what circumstances, a person who holds an equitable interest in real property may petition the court for partition or sale of that property. The parties did not dispute that Mrs. Triantis held at least an equitable interest in the Montgomery County parcel. The question for the Court of Special Appeals, however, boiled down to whether Mrs. Triantis's equitable interest in that land qualified her as a "concurrent owner" within the meaning of §14-107(a).

Finding no definition of "concurrent owner" in the Real Property Article or in any other provision of the Maryland Code or the Code of Maryland Regulations, and no Maryland cases addressing the precise issue before it, the Court of Special Appeals construed the term "broadly as simply two or more persons with contemporaneous interests in the same property." After reviewing the history of Maryland's partition statute and giving careful consideration to the statutory language in light of the purpose of the statute, the Court of Special Appeals rejected the appellees' contention that only "concurrent holders of *legal* title" may file a petition for partition. Instead, the Court held that, "when the equitable interest holder claims that she is a concurrent owner of real property that is actually titled in the names of other parties, she may file a lawsuit to establish her rights in the property and to request partition or sale." The Court found that this interpretation of §14-107(a) is consistent with the approach taken in other jurisdictions.

Whether Mrs. Triantis has "equitable title sufficient to give her standing to bring this partition action" was an issue not decided by the circuit court because it had concluded that her lack of legal title precluded her suit for partition. The Court of Special Appeals, therefore, remanded the case to the circuit court to determine whether Mrs. Triantis has the sort of equitable interest that entitles her to bring a partition action.

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ATTORNEY DISCIPLINE

By an Order of the Court of Appeals of Maryland dated August 10, 2009, the following attorney has been disbarred by consent from the further practice of law in this State:

WAYNE ISAIAH McBROOM
*

By an Order of the Court of Appeals of Maryland dated August 14, 2009, the following attorney has been indefinitely suspended by consent from the further practice of law in this State:

CHRISTOPHER K. VARES
*

By an Order of the Court of Appeals of Maryland dated August 20, 2009, the following attorney has been placed on inactive status by consent from the further practice of law in this State:

THOMAS KLEIN
*

By an Order of the Court of Appeals of Maryland dated August 25, 2009, the following attorney has been indefinitely suspended by consent from the further practice of law in this State:

JENNIFER LYNN LEATHERMAN
*

By an Opinion and Order of the Court of Appeals of Maryland dated August 28, 2009, the following attorney has been disbarred from the further practice of law in this State:

JOSE EXPEDITO M. GARCIA
*

JUDICIAL APPOINTMENTS

On July 8, 2009 the Governor announced the appointment of MICHAEL PEARSON to the Circuit Court for Prince George's County. Judge Pearson was sworn in on August 5, 2009 and fills the vacancy created by the retirement of the Hon. Ronald D. Schiff.

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On July 8, 2009 the Governor announced the appointment of PAUL W. BOWMAN to the Circuit Court for Kent County. Judge Bowman was sworn in on August 6, 2009 and fills the vacancy created by the retirement of the Hon. J. Frederick Price.

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On July 8, 2009 the Governor announced the appointment of DANA MOYLAN WRIGHT to the District Court for Washington County. Judge Wright was sworn in on August 21, 2009 and fills the vacancy created by the retirement of the Hon. Ralph H. France.

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