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DEFAMATION LAW - ABSOLUTE PRIVILEGE - ADMINISTRATIVE PROCEEDINGS

Facts: This case is a certified question from the United States Court of Appeals for the Fourth Circuit. The question presented for our review is the following:

> In deciding whether a statement that led to an administrative proceeding against a public employee is protected by absolute privilege, should the duties and authority of the employee against whom the statement was made be considered in determining 'the nature of the public function of the proceeding'?

Appellant Offen filed a complaint for defamation in the United States District Court for the District of Maryland against appellee Brenner. The complaint alleged that Brenner made defamatory statements to Offen's supervisor at the Department of Health and Human Services resulting in an employee disciplinary action against Offen. The district court dismissed the complaint on the basis that the statements, made in connection with an administrative proceeding, were protected by absolute immunity.

Offen noted a timely appeal to the United States Court of Appeals for the Fourth Circuit. Offen contended that the district court erred in failing to consider his duties and authority in connection with the nature of the public function of the proceeding. The Court of Appeals for the Fourth Circuit certified a question of law to the Maryland Court of Appeals to see if such an inquiry was proper.

Held: The Court of Appeals stated that when determining whether an absolute privilege should extend to statements that serve to initiate an administrative proceeding, the duties and authority of an employee are a relevant, but not dispositive, factor in considering the nature of the public function of the proceeding. The extension of absolute immunity to administrative proceedings under Gersh v. Ambrose, 291 Md. 188, 434 A.2d 547 (1981), requires sufficient procedural safeguards and that the

nature of the public function of the proceeding acts to protect a socially important interest. The Court indicated that where alleged defamatory statements serve to initiate an administrative proceeding, it is proper to examine the duties and authority of the defamed employee in considering whether the nature of the public function of the proceeding protects a socially important interest. The Court also noted that the duties and authority are a factor to be considered but are not dispositive of the issue.

M. Louis Offen v. Alan I. Brenner, Misc. No. 1, September Term, 2007, filed November 14, 2007. Opinion by Raker, J.

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APPEALS - RIGHT OF REVIEW - DOMESTIC VIOLENCE - PROTECTIVE ORDER

Facts: Judith Suter filed a petition for a temporary protective order (TPO) against Darryl Stuckey on April 13, 2006. The TPO was granted. On April 25, 2006, a final protective order was entered by consent in the District Court pursuant to Md. Code (1984, 2006), § 4-506(c) of the Family Law Article.

On May 17, 2006, Stuckey appealed the final order to the Circuit Court for Prince George's County. Stuckey based his appeal on Md. Code (1984, 2006 Repl. Vol.), § 4-507 of the Family Law Article, which provides for a right of appeal from the entry of a protective order from the District Court to the Circuit Court and the appeal shall be heard de novo. The Circuit Court dismissed the appeal.

Stuckey requested en banc review of the Circuit Court decision. The en banc panel reversed and remanded for a trial de novo based on Md. Code (1984, 2006 Repl. Vol.), § 4-507 of the Family Law Article and Md. Code (1974, 2006 Repl. Vol), § 12-401 of the Courts and Judicial Proceedings Article.

Ms. Suter filed a petition for writ of certiorari, which the Court of Appeals granted on April 11, 2007. *Suter v. Stuckey*, 398

Md. 314, 920 A.2d 1058 (2007). The final protective order expired under its own terms on April 18, 2007.

Held: Judgment vacated; Case remanded to Circuit Court with instructions to dismiss the appeal as moot. Although the case became moot with the expiration of the protective order, the Court of Appeals considered the merits of the case because of the public importance of the Domestic Violence Protection Act and the likelihood that similar factual situations would continually evade review. *Coburn v. Coburn*, 342 Md. 244, 250, 674 A.2d 951, 954 (1996). The Court of Appeals held that, absent fraud or coercion, a party may not appeal a protective order entered by consent pursuant to the Domestic Violence Protection Act.

The Court noted that the right to appeal may be lost by acquiescence in or consent to a final judgment. The long-standing principle that, absent fraud or coercion, no appeal lies from a consent judgment follows from this basic principle.

The Court of Appeals examined the legislative intent of § 4-507 and § 12-401. The Court found that the Legislature intended the ability to enter final protective orders by consent to lessen strain on the District Court system and that allowing an appeal from such an entry would contradict that intent. The Court noted that the Legislature did not express an intent to abrogate the common law rule that no appeal lies from a consent judgment in either § 4-507 or § 12-401.

Judith Suter v. Darryl Stuckey, No. 09, September Term, 2007, filed November 14, 2007. Opinion by Raker, J.

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CRIMINAL LAW - CRIMINAL LAW ARTICLE, § 7-203, UNAUTHORIZED REMOVAL OF PROPERTY - 2002 RECODIFICATION AND REVISION OF STATUTE HAD NO EFFECT ON ELEMENTS OF CRIME AS THEY EXISTED BEFORE 2002

Facts: On 28 October 2003, outside normal business hours,

General Motors delivered several new Hummer motor vehicles to Moore Cadillac's Virginia dealership. While normally each vehicle comes with two sets of keys, on this occasion the delivery driver noticed that one of the Hummers had only one set of keys. On 5 November 2003, when a prospective purchaser inquired about that particular Hummer, employees of the dealership could not locate the vehicle and reported it stolen. The vehicle was found on 5 December 2005 when Officer Gerald Caver of the Prince George's County Police Department stopped it in the County, while it being was operated by Ronald Robert Allen.

A grand jury charged Allen in the Circuit Court for Prince George's County with felony theft, motor vehicle theft, unauthorized use of a motor vehicle, and misdemeanor theft of the license tags. The State *nol prossed* the misdemeanor theft count at the close of its case-in-chief at trial. Allen moved for a judgment of acquittal on the other three charges. With regard to the count of unauthorized use, he argued that the State failed to establish the required elements, and specifically that the State did not offer any evidence that he entered on the property of the Virginia dealership and took the Hummer off its lot. His motion for acquittal was denied.

In his defense, Allen and his mother testified. His mother testified that Allen was in Florida when the Hummer disappeared from Moore Cadillac. Allen testified that he did not take the Hummer from the dealership and did not know that the Hummer was stolen. He claimed that the Hummer belonged to an acquaintance, Marcus Robinson, from whom he borrowed the vehicle on 5 December 2003 in order to go to breakfast. Marcus Robinson did not testify. At the close of all the evidence, Allen renewed his motion for judgment of acquittal. The court denied the motion and the case was sent to the jury.

The judge's instructions to the jury included ones consistent with the Maryland Pattern Instructions on the presumption of innocence, reasonable doubt, and the requirement of impartiality. The judge instructed the jury members further that they may draw reasonable factual inferences based upon their experiences and that they may consider the fact that Marcus Robinson did not testify in Allen's support. The instructions concluded by outlining the requirement for a finding of guilt under the charged crimes. For the crime of unauthorized removal of property, "unauthorized use," Maryland Code (2002), Criminal Law Article (CL), §7-203, at issue in this appeal, the judge read the definition of the crime as it appears in the Maryland Code. No exceptions were taken to the jury instructions. The jury

found Allen guilty of one count of unauthorized use. He was sentenced to four years imprisonment, all but 90 days suspended, with three years probation upon release from incarceration.

On direct appeal to the Court of Special Appeals, Allen argued that the evidence presented at trial was not sufficient to support a conviction of unauthorized use under CL § 7-203, claiming that the statute requires proof that a person, sans permission, entered or was present on the real property where the motor vehicle was taken and participated in the taking of such property from the premises or out of the custody or use of the owner. In reply, the State argued that the 2002 revision of CL § 7-203 did not work a substantive change in the elements of the offense from the predecessor statute and case law interpreting it and that it only was necessary to prove that Allen participated in the continued use of the Hummer under circumstances manifesting an intent to deprive the true owner of possession. In its reported opinion, the intermediate appellate court held that, under a plain meaning reading, the statute requires proof both of entry upon the premises of another by a defendant and the unlawful taking and carrying away of property. *Allen v. State*, 171 Md. App. 544, 911 A.2d 453 (2006). Based on its view of the current statute, the court next considered the sufficiency of the evidence supporting Allen's conviction, concluding that the State presented evidence from which a jury rationally could find that Appellant violated CL § 7-203.

The Court of Appeals granted Allen's Petition for Writ of Certiorari to review the judgment of the Court of Special Appeals finding no error with the evidentiary sufficiency of his conviction of unauthorized use of a motor vehicle under CL § 7-203. The Court also granted a Cross-Petition by the State to consider whether the Maryland Legislature, in the course of its 2002 re-codification of Maryland substantive statutory criminal law, focusing on CL § 7-203, added an element to the crime of unauthorized use of a vehicle beyond that previously required under the predecessor statute.

Held: Affirmed. The Court held that the changes to the statute made during recodification did not effect substantively the requirements of Maryland Code, CL § 7-203. The Court further held that the evidence presented supported the jury's decision to convict Allen.

In reaching this conclusion, the Court reviewed the history and interpretation of the unauthorized use statute, noting that it had required four elements for a conviction. They are: (1) an unlawful taking; (2) an unlawful carrying away; (3) of certain

designated personal property; (4) of another. Proof of these elements may be accomplished in two ways: one may enter the premises of another and take property away, or, one may take property from wherever it is located. After finding that a plain meaning interpretation of the recodified rule would lead to an illogical result, the Court looked to the legislative intent, embodied in both a specific provision of the Session Laws enacting the revised Criminal Law Article and a Revisor's Note to the recodification. It found that the Legislature had no intent to change the Court's pre-existing interpretation of the requirements of the crime of unauthorized use.

The Court then reviewed Allen's arguments that the evidence did not support sufficiently his conviction under the statute. Specifically, Allen argued that the State offered no evidence placing him at the Virginia car dealership, and thus no evidence that he removed the Hummer from the dealership. Allen also argued that the State failed to prove that, when found behind the wheel of the stolen vehicle in Maryland, he knew that the Hummer was stolen. Allen noted that one month passed between the time of its disappearance and its reappearance in the possession of Petitioner, and that the vehicle was transported into Maryland from Virginia. He submitted that this time and distance separation made any inference unsustainable that he removed the Hummer from the Virginia dealership or knew the vehicle was stolen merely because he was found later driving it in Maryland.

Upon review of the evidence, the Court determined that a one month gap, as a matter of law, does not break significantly the permissible inferential chain from the initial disappearance of stolen goods from the premises to the discovery of Allen in possession of the goods. The Court further concluded that a reasonable jury could draw this inference despite Allen's testimony that he merely borrowed the car from Robinson. The Court noted that Allen's possession of the Hummer and keys, the relatively recent time frame of the salient events, and his inability to corroborate his testimony with Robinson's testimony were sufficient for a rational jury properly to draw the inference that Allen committed unauthorized use of an automobile.

Ronald Robert Allen v. State of Maryland, No. 5, September Term, 2007, filed 8 November 2007. Opinion by Harrell, J.

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FAMILY LAW - GUARDIAN AD LITEM - FEES

Facts: Denise Taylor, Petitioner, filed a complaint against Kristi and William Biedenback in the Circuit Court for Baltimore County, seeking custody of, or in the alternative visitation with, Taylor's grandchildren, Tristan and Memorie Biedenback. Taylor subsequently filed a request for a guardian ad litem, which was granted; the circuit court appointed Marc E. Mandel, Esquire, Respondent, as guardian ad litem for the children. Mandel submitted an amended order that was signed by the circuit court, in which the court reserved for future determination the award of guardian ad litem fees upon the filing of a Petition for Counsel Fees and ordered each party to advance to counsel the sum of $1,000.00 to be held in escrow subject to further order of the court regarding apportionment between the parties of their respective obligations to pay the guardian ad litem fees. Taylor did not file an objection to the amended order, request a hearing, or file a motion to reconsider but rather, complied and deposited $1,000.00 into her attorney's escrow account. After Taylor and the Biedenbacks reached an agreement, Mandel filed his petition for guardian ad litem fees, which the circuit court granted, ordering Taylor to pay Mandel a portion of the guardian ad litem fees. Taylor noted an appeal to the Court of Special Appeals, which affirmed the imposition of guardian ad litem fees against Taylor and concluded that Taylor had impliedly consented to the payment of the fees.

Held: Reversed. After concluding that the Taylor had preserved her argument that she could not be held responsible for payment of the guardian ad litem fees because she objected at the time Mandel's petition to recover fees was filed, the Court of Appeals held that the circuit court did not possess the authority to assess guardian ad litem fees against Taylor, the maternal grandmother of the children, under Section 1-202 of the Family Law Article, Maryland Code (1999, 2004 Repl. Vol.), because the use of the term "parent" in the statute only permitted the court to assess the fees on a mother or a father. The Court also rejected the possibility that guardian ad litem fees could be assessed pursuant to Section 12-103 (a) of the Family Law Article, Maryland Code (1999, 2004 Repl. Vol.), because that section did not encompass awards of guardian ad litem fees.

Moreover, the Court also stated that Taylor did not waive her right to object to the guardian ad litem fees or acquiesce in the payment thereof. In this respect, the Court noted that the Amended Order appointing Mandel as guardian ad litem and ordering

Taylor to deposit $1,000.00 into her attorney's escrow account, stated that the $1,000.00 was "subject to further Order of this Court regarding apportionment between the parties of their respective obligations to pay the reasonable counsel fees of the attorney for the minor children," and the court "reserve[d] for future determination" the assessment of guardian ad litem fees. The order, in its ambiguity however, failed to define Taylor's liability, if any, at all. Therefore, Taylor could not have waived her right to object to the fees or acquiesced in the payment thereof. Moreover, the Court stated that when she deposited the money into her attorney's escrow account, she acted involuntarily in compliance with a court order.

Denise Taylor v. Marc Mandel, No. 3, September Term, 2007, filed November 9, 2007. Opinion by Battaglia, J.

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FORFEITURE - DISPOSITION OF PROPERTY OR PROCEEDS - CRIMINAL PROCEDURE § 12-501 REQUIRES FORFEITING AUTHORITY TO RELEASE SEIZED VEHICLE, WITHOUT FURTHER CONDITIONS PRECEDENT, TO INNOCENT LIENHOLDER UPON RECEIPT OF WRITTEN NOTICE OF LIENHOLDER'S INTENT TO SELL, COPIES OF DOCUMENTS GIVING RISE TO LIEN, AND AFFIDAVIT STATING REASONS FOR DEFAULT.

FORFEITURES - DISPOSITION OF PROPERTY OR PROCEEDS - GOVERNMENT TOWING AND STORAGE FEES ARE TO BE PAID FROM PROCEEDS OF SALE OF SEIZED VEHICLE AFTER DEBT OWED TO INNOCENT LIENHOLDER HAS BEEN SATISFIED IN SALE OF COLLATERAL UNDER CRIMINAL PROCEDURE §§ 12-501 TO 12-505.

Facts: Allen S. Cooley and Karen A. Cooley agreed to purchase a 1999 Chevrolet Tahoe from Fox Chevrolet, Inc., with financing provided by WFS Financial, Inc. ("WFS"). The sales contract and security agreement for the vehicle were assigned to WFS. WFS perfected the security interest in the vehicle. The vehicle was later seized by the Baltimore City Police Department subsequent to an investigation into illegal drug trafficking.

The Mayor and City Council of Baltimore ("the City") filed a complaint in the Circuit Court for Baltimore City seeking forfeiture of the vehicle, pursuant to Title 12 of the Maryland Code, Criminal Procedure Article. The City notified WFS of its intent to seek forfeiture via service of the complaint and a summons issued on 3 July 2006. The Cooleys subsequently defaulted on payments owed to WFS under the sales contract and security agreement. WFS, closely following the requirements enumerated in § 12-101 of the Maryland Code, Criminal Procedure Article, notified the City of its intent to sell the vehicle, provided copies of the sales contract, security agreement, assignment, and security interest filing, and provided an affidavit stating the reasons for the default. WFS requested that the City release the seized vehicle to it.

Although the City agreed that the vehicle should be released to WFS, the City demanded that WFS pay approximately $200 in towing and storage fees as a condition precedent to the release of the vehicle. WFS retorted that the City's towing and storage fees should be paid out of the proceeds of the sale of the vehicle, if the vehicle is sold for more than the underlying debt owed on the sales contract. WFS filed a motion in the Circuit Court in the forfeiture action seeking an order releasing the vehicle without the requirement that the towing and storage fees be paid prior to release. The Circuit Court agreed with the City's position. WFS appealed to the Court of Special Appeals. Before that court could decide the appeal, the Court of Appeals granted certiorari, on its initiative, to consider whether an innocent lienholder is required to pay towing and storage fees as a condition precedent to the release of a seized, but not yet forfeited, vehicle.

Held: Order of the Circuit Court vacated. Case remanded to the Circuit Court with directions to order the release of the vehicle without payment of towing and storage costs. The Court first noted that the two statutory schemes under Title 12 of the Maryland Code, Criminal Procedure Article, § 12-402 and §§ 12-501 to 12-505, regarding vehicle forfeiture should be interpreted together, although only §§ 12-501 to 12-505 apply in the present case. The distinguishing feature between the two procedures is the forfeiture hearing. If a forfeiture hearing has been held, § 12-402 applies. By contrast, if a forfeiture hearing has not been held and the property merely has been seized, §§ 12-501 to 12-505 govern. Regarding § 12-402, it is clear from the plain meaning of the statute, corroborated by the legislative history, that the Legislature intended for seizure and maintenance costs to be paid after the balance due the lienholder is paid from the proceeds of sale. The Legislature repealed the earlier statute

prioritizing seizure costs ahead of the lienholder's balance. In its place, the Legislature enacted a law which expressly relegated the payment of seizure and storage costs to payment after the lienholder is satisfied from the proceeds of sale. The legislative Committee Report regarding the statute expressed the purpose of the law as being to affect such a change.

Regarding §§ 12-501 to 12-505, the plain meaning of the statute requires that the lienholder's debt be paid before the towing and storage fees. The Legislature listed specific requirements to be accomplished by the lienholder in order to obtain the release of the vehicle. If the Legislature intended payment of towing and storage fees to be a condition precedent to the release of the vehicle to the lienholder, the Legislature could have inserted such a requirement. It chose not to do so. Any other interpretation would be contrary to the canon of statutory construction *inclusio unius est exclusio alterius* (the expression of one thing is the exclusion of another). This interpretation also promotes consistency between the two statutory schemes regarding forfeiture.

WFS Financial, Inc. v. Mayor and City Council of Baltimore, No. 12, September Term 2007, filed 7 November 2007, Opinion by Harrell, J.

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REAL PROPERTY - DISCOVERY - DISTRICT COURT - LANDLORD-TENANT ACTIONS - MARYLAND CODE, REAL PROPERTY ARTICLE, § 8-402.1, BREACH OF LEASE ACTION - IN BREACH OF LEASE ACTIONS, MARYLAND RULE 3-711 DOES NOT EXCLUDE THE LIMITED DISCOVERY PERMITTED IN DISTRICT COURT CASES UNDER MARYLAND RULE 3-401

Facts: Charles Hudson resided in the Latrobe Housing Development, a subsidized housing project in Baltimore City. On 30 September 2005, the Housing Authority of Baltimore City (HABC), owner and operator of the Latrobe Housing Development, received a copy of a police report implicating Hudson in the

alleged commission of a crime in his rental unit. As a result, on 22 May 2006, HABC filed a "Complaint and Summons Against Tenant in Breach of Lease," under Maryland Code (2003), Real Property Article, § 8-402.1, in the District Court of Maryland, sitting in Baltimore City. The complaint alleged that Hudson breached several lease covenants prohibiting illegal and drug-related activities in the dwelling unit.

Trial was set for 12 June 2006. On 6 June 2006, Hudson, through counsel, served written interrogatories on HABC seeking the limited discovery afforded in District Court cases under Maryland Rule 3-401(a). In response, HABC filed a motion to strike the interrogatories on the ground that Maryland Rule 3-711 prohibits discovery in summary ejectment actions in the District Court. The court denied HABC's motion (and motion for reconsideration), ruling that Rule 3-711 does not apply to "Breach of Lease" cases. The trial date was continued.

HABC appealed to the Circuit Court for Baltimore City on 25 September 2006 the District Court's interlocutory ruling as to discovery, ostensibly in accordance with Maryland Code, Real Property Article, § 8-402.1(b)(2). Specifically, HABC claimed that the District Court's discovery ruling was immediately appealable under the collateral order doctrine and incorrect as a matter of law. The Circuit Court considered the matter on the record made in the District Court. After oral argument, the Circuit Court ruled that the appeal was taken properly under the collateral order doctrine. The Court further held that Rule 3-711 prohibited discovery in "Breach of Lease" cases in the District Court and, thus, reversed the District Court's ruling and remanded the case for further proceedings. Hudson successfully petitioned the Court of Appeals for a Writ of Certiorari.

Held: Judgment of the Circuit Court for Baltimore City vacated. In reaching this conclusion, the Court of Appeals discussed three issues: (1) whether the common law collateral order doctrine permitted on interlocutory appeal of the discovery decision, (2) whether, if the appeal was not authorized, the Court nonetheless should decide the merits of the case, and, if so, (3) whether Maryland Rule 3-711 prohibits discovery in Maryland District Court "Breach of Lease" actions.

The collateral order doctrine may authorize an immediate appeal of an interlocutory decision of the lower court if four conjunctive and strictly construed elements exist. If an interlocutory decision (1) conclusively determines the disputed question, (2) resolves an important issue, (3) resolves an issue

that is completely separate from the merits of the action, and (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment, then the collateral order doctrine applies. Obviously, interrogatories inquiring into the underlying factual grounding of HABC's claim that Hudson breached his lease are critical to the ultimate determination of whether a breach occurred. Thus, the third requirement of an immediately appealable collateral order is not met in this case. Additionally, an appeal from a final judgment ordinarily brings up for appellate review all other orders in the case. Only rare circumstances occurring in the high-level, government official "state of mind" exception discussed in a few Maryland cases, where requiring disclosure during discovery seriously could disrupt administrative governance, have met the "effectively unreviewable" requirement of the fourth prong. The Court thus concluded that the Circuit Court in the present case incorrectly applied the collateral order doctrine to endorse its review of the District Court's Order allowing discovery in the underlying "Breach of Lease" case.

After determining that the collateral order doctrine does not apply in this case, the Court, in light of Maryland Rule 8-131, determined it necessary and desirable to comment on the merits in order to guide the trial court and to resolve division among judges of the District Court and Circuit Courts. The Court noted that Maryland's discovery rules deliberately are designed to be broad and comprehensive in scope. Maryland Rule 3-401 generally provides a civil litigant in District Court limited discovery through 15 interrogatories. Maryland Rule 3-711 provides in pertinent part, however, that no pretrial discovery is permitted in District Court actions for summary ejectment, wrongful detainer, or distress for rent, or an action involving tenants holding over.

Although a "Breach of Lease" action is not part of the itemized exclusions in Rule 3-711, HABC contended that the term "summary ejectment" included "Breach of Lease" actions. The Court determined, however, that the Rule does not include Breach of Lease actions based on its plain meaning, bolstered by the legislative history of the Rule. In reaching this conclusion, the Court determined that summary ejectment refers to an action for failure to pay rent, not a breach of lease action. The Court further determined that, according to the Rule's legislative history, inclusion of a "Breach of Lease" action was specifically considered and rejected by the Rules Committee and the Court. Thus, the plain meaning and legislative history support a conclusion that Rule 3-711 does not include "Breach of Lease" actions.

Charles Hudson v. State of Maryland, No. 24, September Term 2007, filed 7 November 2007. Opinion by Harrell, J.

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REAL PROPERTY - PROPERTY LAW - ZONING - VARIANCES - WHERE THE ANNE ARUNDEL COUNTY CODE GENERALLY AUTHORIZED THE BOARD TO GRANT VARIANCES TO THE ZONING CODE, THAT GENERAL VARIANCE POWER APPLIED TO ALL PROVISIONS OF THAT ZONING CODE UNLESS SPECIFICALLY PROHIBITIVE LANGUAGE EXISTED

Facts: Crandell Cove, a non-profit corporation organized to construct a congregate living facility for the elderly, applied for and received a special exception and several variances that would enable it to construct a nursing home. The special exception and variances had specific time limitations in which they could be utilized. As a result of multi-tiered County and State requirements, Crandell Cove was unable to comply with those time limitations and consequently requested variances. Those time variances, which were initially granted by Anne Arundel County's Administrative Hearing Officer, were appealed by the Lanzarons, who were neighboring landowners. The Lanzarons argued that the general power to grant variances, found in Article 3 of the Anne Arundel County Code, did not authorize the Board to grant time variances, based on several examples of language that evidenced what they believed to be the legislature's intent. The Anne Arundel County Board of Appeals upheld the Hearing Officer's grant of the time variance. The Lanzarons then filed a petition for judicial review in the Circuit Court for Anne Arundel County, which affirmed the decision of the Board. Finally, the Lanzarons appealed to the Court of Special Appeals. The Court of Appeals, on its own initiative, issued a writ of certiorari to determine whether the Anne Arundel County Code in effect at the relevant time authorized the Board to extend by variance the Code's deadline for project implementation and completion under Crandell Cove's previously authorized variances and special exception.

Held: The Court of Appeals held that a plain language reading of the statute, in addition to traditional rules of statutory construction, clearly authorized the Board to grant a variance. While the language of the relevant provisions did place upon Crandell Cove particular time limitations, Crandell Cove was able to avoid the automatic voiding and recession of its special exception and variances by its timely application and the subsequent grant of time variances.

Lanzaron v. Anne Arundel County, Maryland, No. 22, September Term, 2007, filed November 9, 2007. Opinion by Cathell, J.

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TORTS - MARYLAND TORT CLAIMS ACT - NOTICE

Facts: As alleged in the various complaints filed in the Circuit Court for Queen Anne's County in the instant matter, on March 17, 2004, at approximately 12:30 p.m., Deputy Sheriff Mark Barbre of the Queen Anne's County Sheriff's Office attempted to stop a truck driven by Andrew Pope, III. When Pope did not stop, Barbre followed him to Pope's home, whereupon Pope got out of his vehicle and raised his hands in surrender. At that point, Barbre approached Pope with his gun drawn and fired a single shot, striking Pope in the neck. The complaint also contained allegations that Barbre acted with malice or gross negligence in shooting Pope, that Pope was not intoxicated, incapacitated, a threat to the safety of himself or others, or disorderly, and that Barbre had no warrant for the arrest of Pope and no legal cause or excuse to use excessive force against Pope or shoot Pope in the neck. Pope subsequently amended his complaint and removed Queen Anne's County as a defendant, and thereafter amended a second time, reinstating Queen Anne's County and adding the State of Maryland as defendants.

On August 12, 2004, five months after the incident, Pope's attorney sent notice of Pope's intention to sue to a Queen Anne's County Commissioner. Pope later provided notice to the State

Treasurer under the Maryland Tort Claims Act on May 13, 2005, fourteen months after the incident and beyond the one-year period required by Section 12-106 (b)(1) of the State Government Article, Maryland Code (1984, 1995 Repl. Vol., 2003 Supp.).

Barbre, the County and the State, filed motions to dismiss, or in the alternative, for summary judgment on the First Amended Complaint, and filed motions to strike the Second Amended Complaint. The circuit court resolved all outstanding motions by granting the motion to strike the Second Amended Complaint, thereby removing the State and the County as defendants, and by granting summary judgment in favor of Barbre as to all claims asserted in the First Amended Complaint. The Court of Special Appeals affirmed the judgments entered in favor of the State and Queen Anne's County and vacated the judgment entered in favor of Barbre. *Pope v. Barbre*, 172 Md. App. 391, 915 A.2d 448 (2007).

Held: Affirmed in part; modified in part. The Court of Appeals held that because Barbre was classified as "state personnel," the Maryland Tort Claims Act was applicable. The Court concluded that Pope's notice to a Queen Anne's County Commissioner had not expressly complied with the Maryland Tort Claims Act notice statute, Section 12-106 (b)(1) of the State Government Article, Maryland Code (1984, 1995 Repl. Vol., 2003 Supp.), which requires that a claimant submit a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury, so that the Court affirmed the grant of summary judgment under the Maryland Tort Claims Act in favor of the State and the County. Even assuming *arguendo* that substantial compliance with the notice statute was applicable, the Court noted that it could not be invoked in the present case because Pope had failed to provide written notice to the State Treasurer within the one year time period. The Court of Appeals also held, however, that the allegations of Pope's complaints were sufficient to allege malice or gross negligence to preclude summary judgment under the Maryland Tort Claims Act on behalf of Barbre individually.

Mark Barbre v. Andrew Pope, III, No. 17, September Term, 2007, filed November 13, 2007. Opinion by Battaglia, J.

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COURT OF SPECIAL APPEALS

ADMINISTRATIVE LAW - PROCEDURAL DUE PROCESS - MARYLAND ADMINISTRATIVE PROCEDURE ACT - CONTESTED CASE HEARING - STATE RESIDENTIAL CENTER - TITLE 7 OF HEALTH-GENERAL ARTICLE - MEDICAID - DEVELOPMENTAL DISABILITY.

Facts: In 2004, Mary L. Reese, appellant, and the late William Massa, as guardians of Virginia Massa, sought to admit Ms. Massa, the mentally retarded daughter of Mr. Massa, to a State-operated intermediate care facility, known as a State residential center ("SRC"). By letter dated July 19, 2005, S. Anthony McCann, then the Secretary of the Maryland Department of Health and Mental Hygiene (the "Department"), appellee, denied the application, based on his determination that placement in the community was an appropriate, less restrictive alternative. The Department subsequently opposed appellant's request for a hearing at the Office of Administrative Hearings ("OAH"), at which appellant sought to present evidence as to Ms. Massa's condition. The Department claimed that the denial of a request for admission to a SRC is not a contested case under the Administrative Procedure Act ("APA"), Md. Code (2004, 2006 Supp.), §§ 10-201 through 10-226 of the State Gov't. Article ("S.G."), and therefore there was no entitlement to such a hearing. OAH agreed with the Department and denied the request.

Thereafter, Ms. Reese appealed the OAH decision to the Department's Board of Review (the "Board"), which upheld OAH by order dated December 12, 2005. She then filed a petition for judicial review in the Circuit Court for Montgomery County. On March 15, 2006, the court granted the Department's motion to dismiss.

Held: Reversed. The State statutory scheme, set forth in Health-General § 7-501 *et seq.*, provides for a contested case hearing under the APA when the Secretary determines that admission is appropriate to a SRC. *See* Health-General § 7-503. But, it does not afford any opportunity to contest the Secretary's determination denying admission to a SRC. The admission to a SRC is a state benefit. If the applicant meets the eligibility criteria in Health-General § 7-502, the applicant is entitled to admission without regard to the exercise of discretion of the Secretary. Appellant was denied procedural due process because the statutory scheme did not provide for a hearing in connection with the denial of the application for

admission to a SRC. To that extent, the statute is unconstitutional.

Mary L. Reese, Guardian v. Department of Health and Mental Hygiene, No. 514, September Term, 2006. Opinion filed on November 2, 2007 by Hollander, J.

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ATTORNEYS - EXTRINSIC FRAUD

Issue on appeal is whether the unprofessional conduct of a party's attorney may constitute fraud, and if so, extrinsic fraud that would justify vacating an enrolled judgment.

Facts: Appellant Charlain Bland was injured in an auto collision involving appellee's, Joseph and Sylvia Hammond on June 15, 1998. She retained Michael J. Graham, a member of the Maryland bar, to represent her in a civil action against the Hammonds. Graham filed a complaint on Bland's behalf on June 13, 2001. From that point on, however, Graham failed to respond to discovery requests by the appellees, leading to sanctions and, ultimately, dismissal of Bland's case with prejudice on April 9, 2003.

During this time, Graham misled Bland as to the status of her case, repeatedly informing her that it had been postponed. It was not until December 2004 that Bland discovered her case had been dismissed. She filed a complaint with the Attorney Grievance Commission against Graham, only to find that he had been suspended by the Court of Appeals. She then instituted a legal malpractice action against him, obtained a default judgment, only to learn that Graham was uninsured and judgment proof. On February 3, 2006, Bland filed a motion to vacate the enrolled judgment that followed the dismissal of her lawsuit against the Hammonds, contending that Graham's actions constituted extrinsic fraud that, pursuant to Md. Code, Cts. & Jud. Proc. § 6-408 and

Md. Rule 2-535(b), entitled her to set aside the original judgment.

The circuit court for Prince George's County denied appellant's motion to vacate.

Held: Affirmed. Under Md. Code, Cts. & Jud. Proc. § 6-408 and Md. Rule 2-535(b), the circuit court, after the 30 day revisory period has passed, can vacate an enrolled judgment only upon a showing of fraud, mistake, irregularity or the failure of the court to perform a duty required by statute or rule. The purpose of this rule is to ensure the finality of judgments. Maryland courts have interpreted this rule to be significantly narrower in scope than Federal Rule 60(b) and that of other jurisdictions.

The fraud required to vacate an enrolled judgment must be extrinsic fraud, which is fraud that prevents a fair submission of the controversy. The definition of extrinsic fraud found in *United States v. Throckmorton*, 98 U.S. 61, 65-66 (1878), is controlling. The actions of the attorney in this case amount to both negligence/ legal malpractice and fraud, but the fraud did not rise to the level of extrinsic fraud that would justify the striking of the enrolled judgment or decree.

Furthermore, appellant's own actions did not rise to the level of ordinary diligence, nor did appellant satisfy her duty to keep herself informed of the status of her case.

Bland v Hammond, No. 1843, September Term, 2006, filed November 6, 2007. Opinion by Sharer, J.

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CRIMINAL LAW - PROCEDURE - PRE-INDICTMENT DELAY. In *Clark v.*

State, 364 Md. 611 (2001), the Court of Appeals set forth a two-part test for deciding whether a pre-indictment delay violates a defendant's due process rights. The Court of Appeals determined that a defendant would be required to prove *both* (1) that he suffered actual prejudice from the delay, *and* (2) that the delay was the result of a purposeful attempt by the State to gain a tactical advantage over him. That test applies even when the offense is a non-violent property crime for which there is no applicable statute of limitations.

Facts: This case came to the Court of Special Appeals from the Circuit Court for Howard County. Ronald Willis was convicted of committing a theft that allegedly occurred eighteen years earlier. On March 9, 2005, Willis was indicted on several counts relating to a 1987 burglary of an apartment. Although some fingerprints were lifted from the crime scene in 1987, the prints were not utilized until 2003. The case lay dormant until October of 2003, when a Howard County police fingerprint specialist matched Willis's prints to those listed in a Maryland computer fingerprint database while working on a project called "cold case." The "cold case" project was described as "going through all the latent prints stored in our office, and doing searches on cases that were still open [] to determine if there [were] suitable fingerprints in that case for search[ing by]" utilizing a computer program that compared fingerprints to those in the Maryland database. Willis filed a motion to dismiss on the ground that the unreasonably long pre-indictment delay deprived him of due process. The circuit court agreed with the State's position, applied the standard adopted by the Court of Appeals in *Clark v. State*, 364 Md. 611 (2001), and, finding no evidence that there was any intentional delay on the part of the State, denied Willis's motion. Willis appealed to the Court of Special Appeals, challenging the application of the two-part *Clark* test to his case, and arguing that a different standard should apply in cases involving non-violent property crimes.

Held: Judgment affirmed. Noting that there is nothing in the language of *Clark* that suggests that the Court of Appeals would make any distinction based upon the nature of the charges, Judge Meredith wrote that the Court of Special Appeals found no merit in Willis's argument that his case should be measured by a different standard due to the lack of any statute of limitations for prosecuting theft offenses.

Ronald Marvin Willis v. State of Maryland. Case No. 1099, September Term 2005. Opinion filed on September 13, 2007 by Meredith, J.

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CRIMINAL LAW – SEARCH & SEIZURE – PROBABLE CAUSE TO ARREST; CRIMINAL LAW – INEVITABLE DISCOVERY

Facts: Appellant was a passenger in a vehicle stopped by police officers. Prior to the stop, the officers had observed the driver fail to stop at a traffic signal and drive at an excessive speed. The officers also knew that the vehicle had been reported stolen. After the stop, the officers arrested and searched the vehicle's occupants. The officers seized cocaine from appellant's pants pocket. Ten minutes after initiating the stop, the officers learned there was an outstanding arrest warrant for appellant, relating to the stolen vehicle. Appellant was charged with violation of the controlled dangerous substances laws, and he moved to suppress the cocaine, but the circuit court denied the motion.

Held: Affirmed. The Court of Special Appeals concluded that the officers had probable cause to arrest appellant, and thus to conduct a search incident to arrest, based on a reasonable inference that the occupants were engaged in an common enterprise relating to the stolen vehicle. *See* Maryland v. Pringle, 540 U.S. 366 (2003), or, assuming the officers did not have probable cause to arrest appellant, they had reasonable articulable suspicion to stop the vehicle and detain the occupants pending completion of a reasonable investigation. During the stop and detention, the officers learned of an outstanding arrest warrant. At that time, they had probable cause to arrest appellant and conduct a search. Because appellant was lawfully detained in the interim, with no chance to dispose of the cocaine, the cocaine would have been inevitably discovered, absent the arrest and search assumed to be unlawful.

Hatcher v. State, No. 1055, September Term, 2006, filed November 7, 2007. Opinion by Eyler, James R., J.

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CRIMINAL LAW - SEARCH AND SEIZURE - CIVIL INFRACTION - After police officers observed a minor in possession of a cigarette – conduct which is prohibited by Maryland Code (2002), Criminal Law Article, § 10-108, and is a civil offense for which a citation may be issued – the officers' suspicion that the minor might be in possession of additional tobacco products did not justify their frisk and search of the minor's person. Consequently, the court should have granted the minor's motion to suppress the evidence of illegal drugs that the police discovered when they conducted their search.

Facts: The case came to the Court of Special Appeals from the Circuit Court for Wicomico County, sitting as a juvenile court. Calvin S., a 17-year old, was observed riding his bicycle on the wrong side of the road, without a headlight, in violation of traffic regulations for bicycles. As the police officers approached Calvin to inform him of the traffic violations, they noticed he was smoking a cigarette and appeared to be under the legal age for doing so. After confirming that Calvin was underage for the lawful possession of cigarettes, the officers jointly frisked and searched Calvin for the purpose of discovering additional tobacco products he might have on his person. Upon searching Calvin's pants pocket, one of the officers found a small plastic bag containing suspected crack cocaine. The State filed a juvenile delinquency petition and charged Calvin with possession of cocaine, possession of cocaine with intent to distribute, possession of drug paraphernalia, and possession of a tobacco product by a person under the age of 18. After an adjudicatory hearing, the master found Calvin to be delinquent. Calvin filed exceptions to the master's recommendations, and at the hearing on the exceptions made an oral motion to suppress the cocaine on the ground that the observed civil violation of underage possession of tobacco products did not give probable cause to conduct a warrantless search. The motion was denied and the court entered a finding that Calvin was a delinquent child. Calvin noted his appeal to this Court.

Held: Judgment reversed. Possession of cigarettes by a minor is neither a misdemeanor nor a felony, and nothing in the language of Criminal Law § 10-108 or other criminal laws of the State authorizes seizure of cigarettes in the possession of a minor. Probable cause to believe that Calvin possessed additional evidence of a civil violation was insufficient to support a warrantless search of his person. Because the warrantless search was illegal, the court should have suppressed the crack cocaine found in Calvin's pocket. Absent this

evidence, the juvenile court could not have found that the State proved beyond a reasonable doubt that Calvin was guilty of possession of cocaine, possession of cocaine with intent to distribute, or possession of drug paraphernalia. The only remaining charge against Calvin in the delinquency petition is the allegation that Calvin had possessed a tobacco product which cannot support a finding that Calvin was a delinquent child because possession by an adult is not a crime.

In Re: Calvin S., Case No. 607, Sept, Term 2005. Opinion filed on August 31, 2007 by Meredith, J.

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FINANCIAL INSTITUTIONS - SECONDARY MORTGAGES - CIVIL PENALTIES - STATUTE OF LIMITATIONS - Under Maryland's Secondary Mortgage Loan Law, Maryland Code, Commercial Law Article, §§ 12-401 *et seq.*, a lender who "violates any provision" of the subtitle "may collect only the principal amount of the loan and may not collect any interest, costs, or other charges with respect to the loan." *See* § 12-413. Additional civil penalties apply if the lender "knowingly violates any provision" of the subtitle. A borrower must file suit to recover any sums paid in excess of the principal within three years of the date the lender collected the excess amount. Each occurrence of a lender collecting an amount prohibited by § 12-413 gives rise to a separate claim by the borrower for recovery of the amount wrongfully collected by the lender.

DOCUMENTS UNDER SEAL - In the case of a contract under seal, or other instrument under seal, when only one party to the document has signed under seal, the statute of limitations for filing suit against the party that did not sign the document under seal is three years, pursuant to Maryland Code, Courts and Judicial Proceedings Article, § 5-101, rather than the twelve year statute of limitations that is applicable to certain "specialties" under § 5-102(a).

CLASS ACTIONS - PARTIES - The named plaintiffs who file suit hoping to have the suit certified for class action treatment pursuant to Maryland Rule 2-231 must themselves have claims against the named defendants, and cannot rely on "the doctrine of juridical link" to sue defendants against whom the named plaintiffs have no direct cause of action.

Facts: This case comes to the Court of Special Appeals from the Circuit Court for Baltimore City. A number of persons who had borrowed money secured by second mortgages sued the lenders who originated such loans, all subsequent holders of the mortgages, and similarly situated lenders who had purchased similar loans. The plaintiffs hoped to have the action certified for class action treatment pursuant to Maryland Rule 2-231.The circuit court granted numerous defendants' motions to dismiss. As to the defendants who had no privity with the named plaintiffs, the court refused to permit such suits despite the plaintiffs' claims that the "doctrine of juridical link" would have permitted such actions in certain other jurisdictions. As to all remaining defendants who filed motions to dismiss, the circuit court concluded that the plaintiffs' claims were barred by limitations because the suits were filed more than three years after the dates of the respective closings upon the second mortgage loans. The dismissals were certified as final judgments, and the plaintiffs appealed.

Held: Judgment is affirmed in part and reversed in part, based upon the holdings summarized above. The case was remanded for further proceedings as to the defendants against whom the named plaintiffs asserted a direct cause of action that was not barred by limitations. In an opinion by Judge Meredith, the Court of Special Appeals held that the three year statute of limitations was applicable, but that it was not a total bar to relief for the plaintiffs because of the nature of the civil remedy provided by Commercial Law Article § 12-413. That section provides that, in the event a lender violates any provision of the Maryland Secondary Mortgage Loan Law, the lender (and subsequent holders of the loan) "may collect only the principal amount of the loan and may not collect any interest, costs, or other charges with respect to the loan." Because the plaintiffs had alleged prima facie violations of the Secondary Mortgage Loan Law, and had alleged that the defendant lenders were continuing to collect installment payments that included amounts other than principal, the plaintiffs were not barred from seeking declaratory relief and repayment of amounts other than principal which had been paid within three years prior to instituting suit and thereafter.

Ralph S. Crowder, et al. v. Master Financial, Inc., et al.
No. 1784 September Term, 2006. Opinion filed on September 12, 2007 by Meredith, J.

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JUVENILE CAUSES - EXCEPTIONS TO MASTER'S FINDINGS AND RECOMMENDATIONS - RIGHT TO *DE NOVO* HEARING BEFORE A JUDGE - When charges against a juvenile have been heard by a master, Maryland Code, Courts & Judicial Proceedings Article, § 3-807(c)(1) provides that any party "may file written exceptions to any or all of the master's findings, conclusions, and recommendations, but shall specify those items to which the party objects." Maryland Rule 11-111(c) is similar. If the party filing the exceptions is not the State, both § 3-807(c)(2) and Rule 11-111(c) provide that the excepting party "may elect a hearing *de novo* or a hearing on the record." Both the statute and rule also state that "the hearing shall be limited to those matters to which exceptions have been taken." When a party other than the State elects a *de novo* hearing and takes exception to "all of the master's findings, conclusions, and recommendations," the requirement of specificity is satisfied by language in the exceptions that communicates the party seeks a *de novo* hearing on all issues.

Facts: This case came to the Court of Special Appeals from the Circuit Court for Baltimore City, sitting as the juvenile court. Marcus J. was charged under a juvenile citation with the delinquent acts of wearing/carrying/transporting a handgun, wearing/carrying/transporting a dangerous or deadly weapon, and possessing a regulated firearm. An adjudicatory hearing was held before a juvenile master, and the master entered a written recommendation that the court find that Marcus is a delinquent child. Marcus then filed a Notice of Exception and Request for Hearing, excepting to the master's findings and proposed orders from both the adjudicatory and disposition hearing, and requesting a de novo hearing before a judge. When the case was called for a hearing on the exceptions, the

Assistant State's Attorney moved for a postponement because of a calendar mixup that precluded the prosecuting attorney who had been handling the case from being present. The State acknowledged that the "exceptions policy" order which Judge Edward Hargadon required to be filed in all juvenile cases involving exceptions was not filed in this case. After some discussion, the Court dismissed the exceptions filed by Marcus for failure to comply with the Court's exception policy even though no exceptions policy order had been entered in this case. Marcus noted this appeal.

Held: Judgment vacated and remanded for a *de novo* hearing on the exceptions. Judge Meredith wrote for the Court:

> Because a juvenile is, in fact, entitled to elect a *de novo* hearing on exceptions, and is entitled to file exceptions to "all of the master's findings, conclusions, and recommendations," we view the exceptions filed by Marcus as sufficiently specific to communicate his election to avail himself of that right. Indeed, requiring a party who elects a *de novo* hearing with respect to "all of the master's findings, conclusions, and recommendations" to state in greater detail what those findings and recommendations were would be redundant and serve no useful purpose. We conclude that the statute and rule do not impose such a hurdle in the path of a party seeking a *de novo* hearing as to all matters decided by the master.

In Re: Marcus J. Case No. 2503, Sept. Term 2006. Opinion filed on September 10, 2007 by Meredith, J.

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REAL PROPERTY - JOINT TENANCY - SEVERANCE - JUDGMENT CREDITOR - JUDGMENT LIEN.

Facts: On August 18, 2003, appellant, Elizabeth Chambers,

obtained a judgment of $21,950 against her former husband, Richard Chambers, in connection with ongoing domestic proceedings. At the time, Mr. Chambers owned real property in Rockville in a joint tenancy with his new wife, Alon Chambers. The Chambers subsequently entered into a contract of sale on October 17, 2004, and then, on February 8, 2005, they conveyed the property, by deed, to Michael Cardinal and Jamie Gross, appellees. The conveyance occurred *before* appellant sought to execute on her judgment.

On June 30, 2006, appellant sued appellees in the Circuit Court for Montgomery County, seeking a declaratory judgment that she had a valid and enforceable lien on the Property. The circuit court granted appellees' Motion to Dismiss on November 28, 2006.

Held: Affirmed. By the doctrine of equitable conversion, the contract of sale transferred equitable ownership to the contract purchasers. Therefore, the judgment debtor no longer held an interest in the property to which a judgment could attach. Nor did appellees acquire property encumbered by a lien.

Elizabeth Powers Chambers v. Michael Cardinal, et al., No. 2519, September Term, 2006, filed November 8, 2007. Opinion by Hollander, J.

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TAXATION - SALES TAX ON SERVICES - TELECOMMUNICATIONS SERVICES - CALLS TO AREA CODE "900" TELEPHONE NUMBERS. Under Maryland Code, Tax-General Article, § 11-101(o)(2), a long distance carrier that participated in providing informational calls via area code "900" telephone numbers is jointly responsible, as a "representative" of the out-of-state vendors, for collecting and remitting the sales tax. The Comptroller could elect to treat the long distance carrier as an "agent" of the out-of-state vendor. As an agent of the out-of-state content providers that delivered a taxable

service in Maryland, the long distance carrier is liable for the sales tax it failed to collect and remit. Because the long distance carrier had substantial involvement with the content provider that went well beyond mere delivery of the phone calls, the long distance carrier was not a mere "common carrier" with respect to the calls.

Facts: This case came to the Court of Special Appeals from the Circuit Court for Baltimore City, following judicial review of a decision by the Maryland Tax Court. The Maryland Comptroller of the Treasury assessed AT&T $5,160,899.45, plus interest, for unpaid sales taxes, based upon sales of "900 telecommunication services." AT&T appealed to the Maryland Tax Court which affirmed the decision of the Comptroller. AT&T then petitioned for judicial review of the Maryland Tax Court's decision to the circuit court, arguing that it merely acted as a common carrier for the 900 service and did not sell any information or services to Maryland consumers. The circuit court affirmed the order of the Tax Court. AT&T appealed to the Court of Special Appeals.

Held: Judgment affirmed. Judge Meredith wrote for the Court of Special Appeals that AT&T, as an agent of the out-of-state content providers that delivered a taxable service in Maryland, is liable for the sales tax it failed to collect and remit. The Court of Special Appeals held that AT&T is liable for the sales tax because AT&T was (a) not merely a "common carrier" of the 900 service, and (b) was a jointly-responsible agent of the out-of-state vendors.

AT&T Communications of Maryland, Inc. v. Comptroller of the Treasury, No. 1883 September Term, 2005. Case filed on September 13, 2007 by Meredith, J.

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ZONING - VARIANCE - UNDERSIZED LOT - BALTIMORE COUNTY ZONING REGULATION ("BCZR") § 304.1; BCZR § 307 - GRANDFATHER CLAUSE -

MERGER OF LOTS.

Facts: In 1979, Mr. and Mrs. Herman Mueller, Jr., appellants, acquired two adjoining, undersized waterfront lots from Mr. Mueller's parents. The lots were deeded separately. The elder Muellers acquired the first lot (Lot 66) in 1947, and built a summer home on it in 1948. They acquired the second lot (Lot 67) in 1960, but never built any permanent structures on it. The lots conformed to Baltimore County Zoning Regulations with regard to area and width until 1970, when the subdivision was rezoned D.R. 3.5. In order to construct a dwelling on a lot that is zoned D.R. 3.5, a minimum lot area of 10,000 square feet per dwelling unit is required, along with a minimum lot width of 70 feet. *See* BCZR § 1B02.3.C.1.

In 2004, appellants petitioned for a variance as to the undeveloped lot (Lot 67), to make it a buildable lot. The Baltimore County Board of Appeals approved the Petition, but the Circuit Court for Baltimore County reversed the Board.

Held: Reversed. Baltimore County Zoning Regulation ("BCZR") § 304, titled "Use of Undersized Single-Family Lots," is a grandfather clause for undersized lots. Under the principles of statutory construction, it applied here with respect to the variance request, rather than the general variance provision, set forth in BCZR § 307. Therefore, appellants were not required to establish uniqueness or hardship. Appellants satisfied the criteria of § 304.1 because, under the facts of this case, they did not have sufficient land available from Lot 66 so as to conform Lot 67 to the current width and area requirements. Moreover, appellants did not create a self-inflicted hardship by their use of the lots, because neither lot was rendered nonconforming as a result of actions taken by appellants after the change in zoning laws. Lot 66 was improved before the change in the area requirements, and appellants could not "borrow" land from Lot 66 to enlarge Lot 67 without making Lot 66 more substandard than it already is.

Nor did the lots merge under the rationale of *Remes v. Montgomery County*, 387 Md. 52 (2005), so as to bar the variance request. Appellants did not use Lot 67 in service of Lot 66 to such an extent as to give rise to an unintended merger.

Herman Mueller, Jr., et al. v. People's Counsel for Baltimore County, Case No. 319, September Term, 2006. Opinion filed November 2, 2007 by Hollander, J.

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ATTORNEY DISCIPLINE

The following name has been placed upon the register of attorneys in the Court of Appeals of Maryland effective November 1, 2007:

NEIL WARREN STEINHORN
*

By an Order of the Court of Appeals of Maryland dated November 6, 2007, the following attorney has been suspended for ninety (90) days by consent, effective immediately, from the further practice of law in this State:

ANA LUISA AVENDANO
*

By an Opinion and Order of the Court of Appeals of Maryland dated November 8, 2007, the following attorney has been indefinitely suspended from the further practice of law in this State:

PETER RICHARD MAIGNAN
*

By an Order of the Court of Appeals of Maryland dated November 19, 2007, the following attorney has been disbarred by consent from the further practice of law in this State:

ROBYN BETH GLASSMAN (GLASSMAN-KATZ)
*