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Table of Contents

COURT OF APPEALS

COURT OF SPECIAL APPEALS

Return to ToC

COURT OF APPEALS

Attorney Grievance Commission of Maryland v. Dawn R. Jackson, Misc. Docket AG No. 9, September Term 2020, filed January 31, 2022. Opinion by Booth, J.

https://mdcourts.gov/data/opinions/coa/2022/9a20ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – DISMISSAL

Facts:

This attorney grievance matter involves charges relating to violations of the Maryland Attorneys' Rules of Professional Conduct ("MARPC") 19-305.5 ("Rule 5.5") (unauthorized practice of law; multi-jurisdictional practice of law). Dawn R. Jackson is a lawyer who is admitted to the District of Columbia Bar who is not licensed in Maryland. She is a partner in a law firm, Jackson & Associates. In addition to Ms. Jackson, the law firm also employs Maryland attorneys. In 2014, the law firm relocated its office from the District of Columbia to Maryland. In 2015, Senior Assistant Bar Counsel, Dolores Ridgell met with Ms. Jackson in her Maryland office. During that meeting, Ms. Ridgell made specific recommendations to Ms. Jackson concerning how to maintain her Maryland law office in accordance with the Maryland rules of professional conduct. Ms. Jackson incorporated Ms. Ridgell's recommendations and continued to practice law from her Maryland office. She limited her own practice to matters arising under the District of Columbia laws, where she was barred, while also performing administrative matters for this firm.

Three and one-half years after Ms. Ridgell's visit to Ms. Jackson's law office, Bar Counsel commenced an investigation after receiving materials from an anonymous source. The investigation resulted in Bar Counsel filing a Petition for Disciplinary or Remedial Action, charging Ms. Jackson with numerous violations of the MARPC as well as violations of the Business Occupations and Professions Article ("BOP") of the Maryland Code. Despite the multiple rule violations charged, the hearing judge found only one violation of Rule 5.5(a) related to Ms. Jackson's signature on two lines requesting that a summons be reissued in a Maryland case that had been filed in 2012. The case had been handled by her former law partner who was licensed in Maryland. The hearing judge found that Ms. Jackson had not entered her appearance in the case or performed any other legal services for the client. The hearing judge

concluded that Bar Counsel did not establish by clear and convincing evidence any other violations of the MARPC or BOP as charged.

Held:

Although the Court of Appeals concluded that Ms. Jackson violated Rule 5.5, the Court determined that, given the significant and unusual mitigating facts that were present in this case, it would impose no action and that dismissal of the proceeding was appropriate.

The Court upheld the hearing judge's conclusion that Ms. Jackson violated Rule 5.5(a) by signing the two lines requesting a reissuance of summons. The Court noted that the conduct occurred in 2012—two years prior to Ms. Jackson moving her office to Maryland, during a chaotic period while her law partner was under a fraud investigation by the Securities Exchange Commission (SEC). The Court further noted that the conduct occurred six years prior to Bar Counsel's investigation and agreed with the hearing judge that the filing of the pro forma line was a violation of Rule 5.5(a) in the most technical sense.

The Court also concluded that Ms. Jackson violated Rule 5.5(b)(2) between 2014 and 2015 by failing to identify her jurisdictional limitations on the firm's letterhead, business cards, email signatures, and website. The Court upheld the hearing judge's factual finding that Ms. Jackson complied with Ms. Ridgell's suggestions concerning the placement of jurisdictional limitations on her website, letterhead, email signature, etc. after Ms. Ridgell made them in 2015.

With respect to Ms. Jackson's maintenance of a law office in Maryland, the Court concluded that Ms. Jackson violated Rule 5.5(b)(1) by establishing a physical presence in Maryland. The Court concluded that the plain language of the rule prohibits Ms. Jackson from maintaining an office in Maryland. However, the Court observed that the modern trend in some other jurisdictions, such as Arizona and New Hampshire, is to permit out-of-state attorneys to maintain an office in-state so long as they do not practice the host's laws. The Court questioned whether the "physical presence" limitations set forth in Rule 5.5(b)(1) continue to strike the appropriate balance between protecting the public and the profession on the one hand and recognizing the realities of the modern practice of law on the other. Additionally, as written, the rule may create complications for multi-jurisdictional law firms maintaining an office in Maryland where some lawyers employed by the law firm are not licensed in Maryland but practice in another jurisdiction. Accordingly, the Court referred Rule 5.5(b)(1) to the Standing Committee on Rules of Practice and Procedure for consideration and recommendation regarding whether an amendment may be warranted.

As for a sanction, the Court determined that no sanction was appropriate given the substantial and unusual mitigating factors that were present in this case. The Court dismissed the case pursuant to Maryland Rules 19-740(c)(1)(F) and 19-706(a)(6).

Return to ToC

Attorney Grievance Commission of Maryland v. Edward Allen Malone, Misc. Docket AG No. 47, September Term 2020, filed January 31, 2022. Opinion by Biran, J.

https://mdcourts.gov/data/opinions/coa/2022/47a20ag.pdf

ATTORNEY DISCIPLINE – MISCONDUCT – APPLICATION OF THE FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION – LIMITED REMAND

Facts:

Respondent Edward Malone was admitted to the Bar of Maryland and the Bar of the Commonwealth of Virginia in 1999. He has also been admitted to practice in several United States District Courts, including the United States District Court for the District of Maryland in 2003. On November 20, 2020, the Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action (the "Petition") against Mr. Malone for allegedly providing false information to the Texas Board of Law Examiners on several occasions in an ongoing effort to gain admission to the Texas Bar. Bar Counsel alleged that Mr. Malone violated the following Maryland Lawyers' Rules of Professional Conduct ("MLRPC"): 8.1(a) and (b) (bar admission and disciplinary matters), and 8.4(a), (b), (c), and (d) (misconduct).

On February 3, 2021, Mr. Malone filed an answer to the Petition admitting to a majority of Bar Counsel's factual allegations, including: (1) that he knowingly and intentionally failed to disclose his Virginia bar admission and disciplinary history to the Texas Board; and (2) that he made a knowing and intentional misrepresentation to the Texas Board when purporting to explain why he failed to disclose his Virginia license and discipline.

In pretrial discovery, Mr. Malone invoked the Fifth Amendment privilege against self incrimination in response to two of Bar Counsel's requests for production of documents, as well as in response to every question Bar Counsel asked at Mr. Malone's deposition, including a question asking him to identify the mitigating factors he would be seeking to establish at the upcoming evidentiary hearing on Bar Counsel's allegations of professional misconduct. Although Bar Counsel's position was that Mr. Malone invoked the Fifth Amendment improperly, Bar Counsel did not file a motion to compel discovery under Maryland Rule 2-432(b). Instead, Bar Counsel filed a motion *in limine* while the discovery period was still ongoing, seeking to preclude Mr. Malone from testifying at the evidentiary hearing.

On April 26, 2021, the hearing judge held a hearing on Bar Counsel's motion *in limine*. Mr. Malone argued that a litigant should be allowed to "assert the privilege pretrial" but later "change [one's] mind and then testify" at trial. Mr. Malone also told the hearing judge that he probably would not testify as part of his "case in chief" at the upcoming evidentiary hearing, but that, if he were found "guilty" at the hearing, he would want to "address the Court" concerning

the "sentence" to be imposed. The hearing judge found that Mr. Malone invoked his Fifth Amendment privilege in bad faith at the deposition by refusing to answer basic questions such as how to spell his name. The hearing judge also concluded that allowing Mr. Malone to testify at the hearing would prejudice Bar Counsel, and that there was not sufficient time in the schedule issued by this Court for Mr. Malone to be deposed again. For these reasons, the hearing judge granted Bar Counsel's motion *in limine* and precluded Mr. Malone from testifying at the evidentiary hearing.

Following the evidentiary hearing, the hearing judge concluded that Mr. Malone violated MLRPC 8.1(a) and (b) and 8.4(a), (b), (c), and (d). The hearing judge also found that Bar Counsel established the existence of several aggravating factors: (1) prior disciplinary offenses; (2) a dishonest or selfish motive; (3) a pattern of misconduct; (4) bad faith obstruction of the disciplinary proceeding; and (5) substantial experience in the practice of law. The hearing judge found that Mr. Malone failed to establish the existence of any mitigating factors.

Mr. Malone filed exceptions to the hearing judge's findings and conclusions, arguing that the hearing judge improperly sanctioned him for his assertion of the Fifth Amendment privilege against self-incrimination during discovery.

Held: Limited remand

The Court rejected Mr. Malone's argument that the hearing judge "punished" him for invoking the Fifth Amendment privilege. The hearing judge did not sanction Mr. Malone for what the hearing judge believed to be a legitimate invocation of the privilege against self-incrimination. However, the Court explained that Mr. Malone's exception to the hearing judge's exclusion of his testimony at the evidentiary hearing raised two important questions. First, when a discovering party believes that a person has improperly invoked the Fifth Amendment to avoid answering a question in a deposition or to respond to a written discovery request, what relief may the party seek? Second, how should a trial judge in a civil case proceed when a party, who invoked the Fifth Amendment regarding a particular subject during pretrial discovery, subsequently indicates a desire to testify at trial on the same subject?

As to the first question, the Court explained that, when a party in a civil action believes that a person has improperly invoked the Fifth Amendment privilege against self-incrimination to avoid answering a question in a deposition or to provide documents or other information in response to a discovery request, the Maryland Rules provide the discovering party with tools to obtain relief. With respect to a deposition, Maryland Rule 2-415(i) provides: "When a deponent refuses to answer a question, the proponent of the question shall complete the examination to the extent practicable before filing a motion for an order compelling discovery." In response to a blanket assertion of the privilege against self-incrimination, this entails at least asking the deponent questions sufficient to identify each topic or area of inquiry that the discovering party wants to cover at the deposition. After completing the deposition, the proponent of the question(s) that were not answered may file a motion under Maryland Rule 2-432(b) for an order

compelling the deponent to answer the questions. Similarly, if a party fails to answer an interrogatory submitted under Rule 2-421 or fails to comply with a request for production or inspection under Rule 2-422, the discovering party may seek an order compelling discovery under Rule 2-432(b). At a hearing on the discovering party's motion to compel, the hearing judge should determine whether the invocation of the Fifth Amendment was proper, on a question-by-question basis. If the court concludes that the invocations were justified, the court should deny the motion to compel discovery. To the extent the court determines that the person who invoked the privilege cannot possibly incriminate himself or herself by answering particular questions or interrogatories, or by producing documents in response to particular discovery requests, the court should grant the motion to compel and order the person to provide the requested discovery.

If the court enters an order compelling discovery, and the person subject to the order fails to comply with that order – either by continuing to invoke the Fifth Amendment privilege in response to the questions the court ordered the person to answer, or otherwise withholding the requested discovery – the court may order sanctions under Rules 2 433(a) and (c).

In this case, Bar Counsel should have filed a motion to compel, rather than what was, in substance, an immediate motion for sanctions. The Court rejected Bar Counsel's argument that Mr. Malone's blanket assertion of the privilege permitted the imposition of immediate discovery sanctions. When a deponent asserts the Fifth Amendment privilege in blanket fashion at a deposition, that assertion does not convert the deponent's appearance for the deposition into a failure to appear that would permit immediate sanctions under Maryland Rules 2-432(a) and 2-433(a). Rather, the deponent has appeared for the deposition, but failed to answer any questions based on a claim of privilege. Under those circumstances, the discovering party's remedy is no different than if the deponent answers some questions but invokes the privilege as to other questions. If the discovering party believes that the invocation of the privilege as to one or more questions, or even all questions, is improper, the discovering party may move to compel the deponent to answer the questions.

With respect to the second question, the Court held that a civil litigant who invokes the Fifth Amendment privilege against self-incrimination in discovery is not forever precluded from waiving the privilege and testifying at trial or submitting substantive responses to discovery requests. The Court further held that a trial court should respond to a request to withdraw the privilege – if contested by a party – by considering the totality of the circumstances surrounding the prior invocation and the prejudice that the objecting party will suffer if the request is granted.

Conducting this analysis with respect to the hearing judge's exclusion of Mr. Malone's testimony, the Court concluded that the hearing judge acted within his discretion in precluding Mr. Malone from testifying at the evidentiary hearing concerning his alleged violations of the MLRPC. However, the balance of interests favored allowing Mr. Malone to testify as to mitigating factors. Thus, the Court sustained Mr. Malone's exception to the extent the hearing judge precluded Mr. Malone from testifying with respect to mitigation.

The Court concluded that Mr. Malone violated MLRPC 8.1(a) and (b) (bar admission and disciplinary matters) and 8.4(a), (b), (c), and (d) (misconduct). The Court ordered a limited remand to the hearing judge to reopen the evidentiary hearing for the sole purposes of: (1) allowing Mr. Malone to testify fully concerning mitigating factors; (2) allowing Bar Counsel to call witnesses and introduce exhibits in rebuttal of Mr. Malone's testimony with respect to mitigation; (3) allowing the parties to make arguments to the hearing judge concerning mitigating and aggravating factors; and (4) allowing the hearing judge to issue supplemental findings of fact and conclusions of law as to mitigating factors and, if necessary, aggravating factors. Following the conclusion of the reopened evidentiary hearing, the hearing judge shall issue supplemental findings of fact and conclusions of law concerning mitigating factors and, if necessary, aggravating factors. The parties shall then file any exceptions to the hearing judge's supplemental opinion in this Court. Following the filing of exceptions, the Clerk of this Court shall schedule oral argument. The Court deferred ruling on aggravating factors and mitigating factors and determining the appropriate sanction for Mr. Malone's violations of the MLRPC pending such oral argument.

Return to ToC

COURT OF SPECIAL APPEALS

Gisell Paula, et al. v. Mayor and City Council of Baltimore, et al., No. 1272, September Term 2020, filed January 27, 2022. Opinion by Ripken, J.

https://www.courts.state.md.us/data/opinions/cosa/2022/1272s20.pdf

ACTIONS – GROUNDS AND CONDITIONS PRECEDENT – PERSONS ENTITLED TO SUE

STANDING – GENERAL – SPECIAL INTEREST REQUIREMENT

STANDING – TAXPAYER STANDING – IN GENERAL

CONSTITUTIONAL LAW – DUE PROCESS – SUBJECTS OF RELIEF

Facts:

Gisell Paula, Megan Kenny, and the Baltimore Action Legal Team filed a complaint in the Circuit Court of Baltimore City against the Mayor and City Council of Baltimore City, and various related entities. They claimed that the Baltimore City Civilian Review Board ("CRB") was not functioning as an independent agency required by the Public Local Laws, but was under the control of the Mayor and the City. Complainants sought declaratory and injunctive relief.

The City filed a motion to dismiss arguing that the complainants did not have standing to bring the action. Complainants responded with a joint opposition to the motion to dismiss and a motion for summary judgment. They included affidavits and exhibits supporting their general standing, taxpayer standing, and constitutional standing. The circuit court held a hearing on the various motions. The court granted the City's motion to dismiss. It found that complainants did not have standing to pursue their claim. Complainants noted a timely appeal and argued that the circuit court erred in concluding they lacked standing.

Held: Affirmed.

The Court of Special Appeals held that the trial court did not err when it granted the City's motion to dismiss for lack of standing because complainants did not demonstrate that they had general standing, taxpayer standing, or constitutional standing to contest a disciplinary board's proceedings.

As to standing, the Court held that complainants lacked general standing. Where a plaintiff seeks to redress what is claimed to be a public wrong, the plaintiff must demonstrate that he or she has an interest such that he or she is personally and specifically affected in a way that differs from the public generally. Here, the complainants failed to show how the alleged lack of independence of the CRB injured them in a way that differed from the public. Second, the Court held that complainants did not have taxpayer standing because they did not demonstrate a nexus between the ultra vires act complained of and an effect on the taxpayer's property. Third, the complainants did not have a life, liberty, or property interest in the CRB's recommendation concerning a complaint against a police officer, and thus did not have constitutional standing to pursue a claim.

Return to ToC

Leslie Williams v. eWrit Filings, LLC, No. 206, September Term 2021, filed January 26, 2022. Opinion by Beachley, J.

https://mdcourts.gov/data/opinions/cosa/2022/0206s21.pdf

MARYLAND DEBT COLLECTION LICENSURE REQUIREMENTS – DEBT COLLECTION ACTIVITY – FAILURE TO PAY RENT ACTIONS CONSTITUTE DEBT COLLECTION ACTIONS

Facts:

In October 2017, Leslie Williams executed a lease to rent an apartment. When she failed to fully pay her rent on time, the property manager hired eWrit to file Failure to Pay Rent ("FTPR") actions against her. eWrit ultimately filed nine FTPR actions against Ms. Williams, but did not possess a collection agency license when it filed the first four FTPR actions.

Thereafter, Ms. Williams filed a complaint in the Circuit Court for Anne Arundel County seeking class certification for a class action lawsuit, and alleging that eWrit violated the Maryland Collection Agency Licensing Act ("MCALA"), the Maryland Consumer Debt Collection Act ("MCDCA"), and the Maryland Consumer Protection Act ("MCPA"). Her claims concerned the fact that eWrit filed four FTPR actions against her without holding the requisite license to perform debt collection activity as required by the MCALA. Inherent in her argument is the notion that filing FTPR actions constitutes debt collection activity.

The circuit court initially denied eWrit's motion to dismiss the complaint, but on a motion for reconsideration, eWrit successfully persuaded the court that the filing of FTPR actions does not constitute debt collection activity and therefore no debt collection license was required. Accordingly, the circuit court granted eWrit's motion to dismiss.

Held: Reversed and remanded.

Under a plain reading of the MCALA, an FTPR action constitutes debt collection activity. Here, the FTPR complaints requested "possession of the property and a judgment for the amount determined to be due." The FTPR actions therefore constituted a "consumer claim" as defined in the MCALA because they represent a claim for "money owed" arising from a transaction for personal property (the leasehold interest).

A review of the legislative history of the MCALA vindicates this plain reading. Two weeks after issuance of a 1980 Attorney General Opinion which asserted that all entities collecting rent for others are debt collectors, the General Assembly introduced a bill to clarify what entities constitute collection agencies. Ultimately, the bill only exempted real estate brokers from the

definition of a collection agency in the context of rent collection. Accordingly, the General Assembly has never manifested an intent to exclude other rent collectors such as eWrit from the definition of a debt collection agency.

Finally, the enactment of Courts and Judicial Proceedings Article ("CJP") § 5-1201 et seq. do not impact the licensure requirements of parties who file FTPR actions on behalf of others. To be sure, those statutes impose safeguards and procedural hurdles against debt collectors seeking to file claims in Maryland. Nevertheless, the statutes were never intended to modify the MCALA's licensure requirements.

Playmark, Inc. et al. v. James P. Perret, No. 91, September Term 2020, filed January 28, 2022. Opinion by Friedman, J.

https://mdcourts.gov/data/opinions/cosa/2022/0091s20.pdf

CORPORATIONS AND BUSINESS ORGANIZATIONS – SUCCESSOR LIABILITY

CORPORATIONS AND BUSINESS ORGANIZATIONS – TRANSFER OF ASSETS – ALL OR SUBSTANTIALLY ALL OF A CORPORATION'S ASSETS

LABOR AND EMPLOYMENT – WAGE PAYMENT AND COLLECTION LAW – WAGES – COVENANTS NOT TO COMPETE

Facts:

James Perret worked for AAA Sport Systems, Inc. (AAA) and its successors from the late 1990s until 2018. In 2000, Perret and AAA entered into an Executive Management Agreement (EMA), under which AAA agreed to pay Perret a total of $250,000 in retirement benefits over ten years if Perret continued to work in a managerial capacity from 2000 to 2015.

In 2005, the joint owners of AAA, spouses Tilford Jones and Sarah Rodowsky, split the company into two new LLCs: Sportco, LLC (Sportco) and Sport Systems, LLC ("Sport Systems"). AAA's assets were divided between the two new companies, and they continued to operate together. AAA ceased to exist when it merged with and into Sportco; and Perret and the other employees were subsequently employed by Sport Systems, the operating arm of the business. In accordance with the terms of the EMA, Sport Systems made payments to Perret from 2015 through 2018, for a total of $100,000.

In 2017, Jones and Rodowsky began divorce proceedings and eventually divided their interests in Sportco and Sport Systems into two new companies, each fully owned and controlled by one of them: Pro Recreation, LLC, owned and controlled by Jones; and Playmark, Inc., owned and controlled by Rodowsky. Although Jones and Rodowsky initially assured Perret that they would continue making payments to him under the terms of the EMA, no further payments were made after 2018.

Perret filed suit in the Circuit Court for Montgomery County against Playmark and Pro Rec; their predecessor, Sport Systems; and Jones and Rodowsky, individually. Perret alleged that the missed payments (1) were a breach of the EMA, and (2) violated the Maryland Wage Payment and Collection Law ("Wage Act"). Perret also sought a declaratory judgment that he was entitled to receive the quarterly EMA payments from Playmark and Pro Rec going forward. Before trial, the circuit court dismissed Perret's claims against Jones and Rodowsky in their individual capacities. The circuit court also found that the payments were not "wages" subject to the Wage Act and dismissed this claim. After a bench trial, the circuit court entered judgment for breach of

contract and a declaratory judgment in favor of Perret and against Playmark and Pro Rec. Playmark and Pro Rec appealed the breach of contract and declaratory judgments. Perret cross appealed the circuit court's pre-trial dismissal of his claim under the Wage Act.

Held: Affirmed in part, reversed in part, and remanded

The Court of Special Appeals affirmed the circuit court's breach of contract judgment against Playmark and Pro Rec for the overdue payments as well as the circuit court's declaratory judgment that Perret has a right to receive the remaining future payments from Playmark and Pro Rec. The Court held that both Playmark and Pro Rec were liable for their predecessor's obligation to pay Perret under the terms of the EMA because (1) both were "successors," as defined by MD. CODE, CA § 1-101(dd); and (2) both expressly assumed liability for the obligation. Reasoning that more than one transferee in a transfer of assets could be a "successor" under the statute, the Court expressly rejected Playmark and Pro Rec's argument that neither company could be a successor because each received half of their predecessor's assets.

The Court of Special Appeals also held that the circuit court erred in finding that the EMA payments were not "wages" subject to the Wage Act when the payments were both (1) promised in exchange for employment; and (2) not expressly conditioned on continuing compliance with a covenant not to compete post-employment. Perret may, therefore, also be entitled to recover enhanced damages, attorney's fees, and costs. The Court consequently reversed the circuit court's judgment regarding the Wage Act and remanded for further proceedings.

Return to ToC

Crystal Linton, et al. v. Access Funding LLC, et al., Case No. 1398, September Term 2020, filed January 26, 2022. Opinion by Nazarian, J.

https://mdcourts.gov/data/opinions/cosa/2022/1398s20.pdf

ARBITRATION – EXISTENCE OF AGREEMENT TO ARBITRATE

Facts:

Crystal Linton and Dimeca D. Johnson, and other putative class members, had obtained structured settlements, and the resulting stream of payments, after the resolution of their lead paint exposure claims. Ms. Linton, Ms. Johnson, and the others ("Plaintiffs") later signed Purchase and Sale Agreements ("Agreements") that purported to transfer their rights to those income streams to Access Funding LLC and/or affiliated entities ("Access") in exchange for discounted lump sum cash payments. Ms. Linton and Ms. Johnson filed this action in July 2016, alleging claims of negligence, misrepresentation, fraud, and conspiracy in connection with those Agreements.

Plaintiffs alleged that the Defendants conspired to convince them to transfer their structured settlement annuity benefits to Access in exchange for unfairly discounted lump sum payments. Transfers of annuity benefits at a discount are not inherently improper, but under a statute enacted in 2000, the Structured Settlement Protection Act, any transfers must be authorized by a court. Maryland Code (1973, 2020 Repl. Vol.), § 5-1102 of the Courts and Judicial Proceedings Article ("CJ"). Before authorizing such a transfer, the court expressly must find, among other things, that the transferor received "independent professional advice" about the transfer. CJ § 5-1102(b)(3).

The Act defines "independent professional advice" as "advice of an attorney, certified public accountant, actuary, or other licensed professional adviser" who, among other things, "is not affiliated with or compensated by the transferee of the transfer." CJ § 5-1101(d), (d)(2). And during the times relevant to Ms. Linton's and Ms. Johnson's transfers, "independent professional advice" was defined further to mean the advice of a professional "[w]ho is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights." 2000 Md. Laws Ch. 366. The Plaintiffs allege that after signing the Agreements, Access placed them in contact with an attorney, Charles E. Smith, who did not meet the "independent professional advice" requirement because he was affiliated with, and paid by, Access. Mr. Smith then signed form letters falsely representing to the court that he had explained to the Plaintiffs fully the legal and financial implications of the transfer. Access then submitted the letters to the court in support of its petitions for approval of the transfers, which the court granted.

After the circuit court's subsequent approval of a class action settlement was reversed on appeal, the case was remanded to the circuit court for further proceedings. The Agreements contained

arbitration clauses, and the Defendants filed petitions to compel arbitration. The circuit court granted the petitions, and Plaintiffs appealed.

Held: Reversed and remanded.

Defendants argued that the line of cases originating with the United States Supreme Court's decision in *Prima Paint Corp. v. Flood & Conklin Mfg. Co*., 388 U.S. 395 (1967) required arbitration to be compelled because Plaintiffs had alleged the purchase and sale agreements as a whole were obtained by fraud, as opposed to alleging that the arbitration clauses themselves had been obtained by fraud. The Court of Special Appeals rejected that argument because the *Prima Paint* line of cases proceeds from the premise that the agreements were entered into at arm's length. That was not the case here—by statute, the Agreements weren't, and couldn't be, arm's-length agreements because they weren't effective unless and until the circuit court approved the transfers. Because the fraud and misrepresentation alleged here was directed not only at the Plaintiffs, but also at the court, and because the arbitration clause was expressly conditioned on the court's authorization of the transfers, the question of whether a valid arbitration agreement existed was for the court to decide.

Return to ToC

Davon Wilkins v. State of Maryland, No. 112, September Term 2021, filed January 26, 2022. Opinion by Berger, J.

https://mdcourts.gov/data/opinions/cosa/2022/0112s21.pdf

CRIMINAL PROCEDURE – SENTENCING JUDGE – DEFENDANT'S RIGHT OF ALLOCUTION – REQUIREMENTS IMPOSED ON SENTENCING JUDGE – DISCRETION OF SENTENCING JUDGE

Facts:

In 2012, Davon Wilkins was found guilty by a jury sitting in the Circuit Court for Baltimore City of involuntary manslaughter, use of a handgun in the commission of a crime of violence, and wearing, carrying, and transporting a handgun. The court sentenced Wilkins to 10-years' incarceration for involuntary manslaughter. Wilkins was further sentenced to a consecutive term of 20-years' incarceration for unlawful use of a handgun, the first 5-years without the possibility of parole, as well as a concurrent term of 3-years' incarceration for wearing, carrying, and transporting a handgun. These judgments were affirmed on direct appeal.

Wilkins then sought postconviction relief, and in 2019, was awarded a new sentencing hearing. The new sentencing hearing was held in 2021 and was assigned to another judge because the original sentencing judge had retired. After expressing unfamiliarity with the record, the sentencing court conducted a full sentencing hearing and heard from the parties' witnesses. Then, Wilkins exercised his right of allocution. Having heard the arguments and considered the evidence presented, the sentencing court re-imposed Wilkins' original sentence. Wilkins appealed from that ruling and claimed that the sentencing court violated his right of allocution and/or Maryland Rule 4-342, and further, that the court abused its discretion in failing to be fully familiar with the record.

Held: Affirmed.

The Court of Special Appeals held that the sentencing court did not deprive Wilkins of his right of allocution under Maryland Rule 4-342(e). The Court agreed with the State's argument that although the sentencing judge acknowledged unfamiliarity with the case, that the sentencing hearing provided both parties a full opportunity to present evidence relevant to sentencing, and also that Wilkins was fully provided his right to address the court in allocution. The Court further held that the sentencing court's failure to state the reasons for re-imposing the sentence on the record as required by Rule 4-342(f) was not properly preserved for appeal.

The Court also held that the sentencing court did not abuse its discretion in stating that it had not been fully familiarized with the record prior to the sentencing hearing. The Court determined that

Return to ToC

Maryland Rule 4-361(b) permits a judge to sentence a defendant after a verdict has been issued if the judge is satisfied the he or she can properly perform the required duties. Accordingly, the Court agreed with the State that even though the sentencing court acknowledged unfamiliarity with the record, that it was not an abuse of discretion for the court to resentence Wilkins. The Court held that the sentencing court was presumed to be satisfied that it could properly perform its sentencing duties and that Wilkins had failed to rebut that presumption.

Return to ToC

Gateway Terry, LLC v. Prince George's County, et al., No. 708, September Term 2020, filed January 27, 2022. Opinion by Arthur, J.

https://mdcourts.gov/data/opinions/cosa/2022/0708s20.pdf

TRANSFER AND RECORDATION TAXES – EXEMPTIONS

Facts:

Gateway Terry, LLC, is a California limited liability company, wholly owned and managed by the Los Angeles County Employees Retirement Association. In 2017, Gateway Terry purchased a group of residential condominium units in College Park, Maryland for $186,460,000.

After the sale, Gateway Terry presented a deed and other documents for recordation among the land records of Prince George's County. The County's Office of Finance collected $2,610,440 in County transfer taxes and $1,025,530 in State recordation taxes. The Clerk of the Circuit Court for Prince George's County collected $932,300 in State transfer taxes.

Gateway Terry applied for a refund. As grounds for the refund, Gateway Terry invoked the exemption from State recordation and transfer taxes on transfers to "the State[,] an agency of the State[,] or a political subdivision in the State." Md. Code, §§ 12-108, 13-207(a)(1) of the Tax-Property Article. In addition, Gateway Terry invoked the exemption from County transfer taxes for "[c]onveyances to the State, any agency of the State, or any political Subdivision of the State." Prince George's County Code § 10-187(a)(1). Gateway Terry claimed that, as a limited liability company owned by a pension fund for employees of Los Angeles County, it is a "political subdivision" in or of the "State" of California.

Both the County and the State of Maryland denied the request for a refund. Gateway Terry appealed to the Maryland Tax Court. The tax court affirmed the decisions to deny the exemptions. The tax court concluded that, under the applicable statutes, the term "the State" refers to the State of Maryland. The tax court determined that, because Gateway Terry is not a political subdivision in or of the State of Maryland, Gateway Terry does not qualify for the exemptions.

Gateway Terry petitioned for judicial review. The Circuit Court for Prince George's County affirmed the tax court's decision. Gateway Terry appealed.

Held: Affirmed.

The Court of Special Appeals concluded that Gateway Terry, which claimed to be a political subdivision of the State of California, was not entitled to the exemptions from State recordation

taxes, State transfer taxes, or County transfer taxes. The Court determined that the term "the State" in the exemption statutes refers to the State of Maryland, and not any other State.

Maryland Code (1986, 2019 Repl. Vol., 2021 Supp.), § 12-108 of the Tax-Property Article ("TP") creates an exemption from State recordation taxes for an instrument of writing that transfers property to "the State," "an agency of the State," or "a political subdivision in the State." TP § 13-207(a)(1) creates an exemption from State transfer taxes "to the same extent" that an instrument of writing is exempt from recordation taxes under TP § 12-108(a).

The use of the definite article "the" in TP § 12-108(a)(1) indicates that the term "the State" refers to one particular State, which, in context, could only mean the State of Maryland. The language of TP § 12-108 is derived from former Article 81, § 277 of the Maryland Code, which had created an exemption for "conveyances to: (1) This State; (2) Any agency of this State; or (3) Any political subdivision of this State." The revisor's note indicates that the substitution of the words "the State" for the words "this State" was not intended to effectuate a substantive change. Accordingly, the exemption applies only to transfers to the State of Maryland, an agency of the State of Maryland, or a political subdivision in the State of Maryland.

Section 10-187(a) of the Prince George's County Code creates an exemption from County transfer taxes for "[c]onveyances to the State, any agency of the State, or any political Subdivision of the State." Section 10-102(33) of the Prince George's County Code expressly defines "State" to mean "the State of Maryland." Consequently, the County exemption applies only to conveyances to the State of Maryland, an agency of the State of Maryland, or a political subdivision of the State of Maryland.

Return to ToC

ATTORNEY DISCIPLINE

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This is to certify that the name of

RICHARD MARK PAVLICK

has been replaced upon the register of attorneys in this State as of January 12, 2022.

*

This is to certify that the name of

RAJ SANJEET SINGH

Has been replaced upon the register of attorney in this State as of January 14, 2022.

*

Return to ToC

JUDICIAL APPOINTMENTS

*

On November 2, 2021, the Governor announced the appointment of **HON. CARLOS FEDERICO ACAOSTA** to the Circuit Court for Montgomery County. Judge Acosta was sworn in on January 7, 2022 and fills the vacancy created by the retirement of the Hon. Ronald B. Rubin.

*

On October 26, 2021, the Governor announced the appointment of **CHARLES MARIO BLOMQUIST** to the Circuit Court for Baltimore City. Judge Blomquist was sworn in on January 14, 2022 and fills the vacancy created by the retirement of the Hon. Marcus Z. Shar.

*

On January 6, 2022, the Governor announced the appointment of **MAGISTRATE STEPHANIE P. PORTER** to the Circuit Court for Howard County. Judge Porter was sworn in on January 14, 2022 and fills the vacancy created by the retirement of the Hon. Richard. S. Bernhardt.

*

On January 6, 2022, the Governor announced the appointment of **HON. HEATHER LYNNE PRICE** to the Circuit Court for Caroline County. Judge Price was sworn in on January 21, 2022 and fills the vacancy created by the death of Hon. Jonathan G. Newell.

*

On January 12, 2022, the Governor announced the appointment of **MICHAEL ORMOND GLYNN, III** to the District Court for Montgomery County. Judge Glynn was sworn in on January 27, 2022 and fills the vacancy created by the retirement of the Hon. Patricia L. Mitchell.

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Return to ToC

UNREPORTED OPINIONS

The full text of Court of Special Appeals unreported opinions can be found online:

https://mdcourts.gov/appellate/unreportedopinions

	Case No.	*Decided*
A		
Austin, Leroy Antonio v. State	0551 *	January 10, 2022
B		
Blackman, Renison v. Davis	0138	January 31, 2022
Blackman, Renison v. Davis	0790	January 31, 2022
Blake, Shaidon v. State	1499 *	January 25, 2022
Bot, Emmanuel D. v. McFarland	0578	January 10, 2022
Boward, Anthony v. State	1451 *	January 10, 2022
Braboy, Lee v. State	0506 **	January 19, 2022
Brous, Sheilah F. v. Mirmiran	1349 *	January 27, 2022
C		
Cannady, Vincent v. State	1325 *	January 26, 2022
Carter, Drew Skyler v. State	0121 *	January 19, 2022
Chase, Charles, III v. State	0485	January 25, 2022
Cockburn, Patricia C. v. Best Buy Co. Inc.	0452	January 31, 2022
Collick, Laron Jeffery v. State	0103	January 31, 2022
Cook, Keith, Jr. v. State	0980 *	January 6, 2022
D		
Davis, Blyden v. Turner	0445	January 5, 2022
Donaldson, Michael, Jr. v. State	0792	January 28, 2022
Drew, DeVaughn v. State	2314 **	January 18, 2022
E		
Elsberry, Ernest v. Stanley Martin Companies	0172	January 10, 2022
Enow, Ndokley v. State	0826	January 25, 2022
F		
Farmer, Xavier v. State	1802 **	January 4, 2022

September Term 2021
* September Term 2020
** September Term 2019

Farmer, Xavier v. State	1803 **	January 4, 2022
First Horizon Home Loan Corp. v. Jay	2163 **	January 10, 2022
Fulco, David Ross v. State	0526	January 31, 2022
Fulco, David Ross v. State	0527	January 31, 2022
G		
Green, Anthony v. State	0723 *	January 21, 2022
H		
Hamilton, Henry Eric v. State, et al.	1390 *	January 28, 2022
Howard Cnty. v. McClain	1166 *	January 21, 2022
Hunter, Antonio v. State	0303	January 20, 2022
Hunter, Antonio v. State	0304	January 20, 2022
Hyman, Karaca v. State	0165	January 27, 2022
I		
In re: Estate of Mirmiran, Fred	0388	January 27, 2022
In re: R. P.	0669	January 20, 2022
In the Matter of Hampel, Natalya	1299 *	January 28, 2022
In the Matter of Sheath, Sylvia	0815 *	January 31, 2022
In the Matter of Stemple, Michael	0471	January 27, 2022
Irving, John v. Irving	0350 *	January 7, 2022
J		
Jean-Baptiste, Ronald v. Jean-Baptiste	0579	January 27, 2022
Johnson, Arnold v. State	0413	January 31, 2022
L		
Lee, John Wesley, Jr. v. State	0478	January 25, 2022
Lee, John Wesley, Jr. v. State	0781	January 25, 2022
Loren E.J. v. Antoine T.W.	1485 *	January 27, 2022
M		
Marc, David J. v. Richmond American Homes of Md.	0805 *	January 18, 2022
Mason, Janice v. Indian Acres Club of Chesapeake Bay	1156 *	January 26, 2022
Matter of Ingram, Tracey M. v.	0199	January 21, 2022
Mayor & City Cncl. Of Balt. v. Friends of Gwynns Falls	1274 *	January 7, 2022
McQuaid, Tracey Lenhardt v. Kane	0204	January 24, 2022
Miles, Arnold D. v. State	0768	January 27, 2022
Mohsin, Mohammed v. Sadia	0362	January 31, 2022
Morrison, Thomas v. Morrison	1364 *	January 18, 2022
Moustafa, Moustafa M. v. Moustafa	0089	January 19, 2022

September Term 2021
* September Term 2020
** September Term 2019

N		
Nartey, Theophilus v. Nartey	0520	January 10, 2022
P		
Patrick, Bailey Randal v. State	0068 *	January 18, 2022
Patrick, Michael v. State	0195	January 25, 2022
Potts, Zachary v. State	0855 *	January 26, 2022
R		
Richardson, Devon v. State	1771 **	January 24, 2022
Roseberry, Cynthia v. Chesapeake Lighthouse HOA	0766 *	January 28, 2022
S		
Sawyer, John William v. State	0414	January 21, 2022
Schiff, Graham v. State	0887	January 27, 2022
Sewell, Starsha v. Dept. of Social Services	0401	January 31, 2022
Sheikh, Ibrahim v. Faooq	0188	January 24, 2022
Shubert, Matthew v. Shubert	1497 *	January 28, 2022
Sinclair, Delonte v. State	1369 **	January 10, 2022
State v. Proctor, James D.	0104	January 19, 2022
State Farm Fire & Casualty v. Moreland	1479 *	January 20, 2022
State v. Lee, Kason K.	0972	January 24, 2022
Stokes, Lamar v. Stokes	0118	January 18, 2022
T		
Topper, Kossandra v. Thomas	0170	January 4, 2022
Torrence, Dwayne v. State	1344 *	January 25, 2022
Tortilla Werks v. Town of Elkton	0290	January 21, 2022
Tyler, DaQuan v. State	0202	January 25, 2022
V		
Vazquez, Marquis v. State	0220	January 19, 2022
Vicente, Miguel v. Vicente	0461	January 10, 2022
W		
Warner, Darren v. State	0368	January 31, 2022
Williams, Artiis Ricardo v. State	2058 **	January 24, 2022

September Term 2021
* September Term 2020
** September Term 2019