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COURT OF APPEALS

Board of Public Works, et al. v. K. Hovnanian's Four Seasons at Kent Island, LLC, No. 57, September Term 2014, filed June 3, 2015. Opinion by Greene, J.

http://www.mdcourts.gov/opinions/coa/2015/57a14.pdf

ADMINISTRATIVE LAW – EXHAUSTION OF ADMINISTRATIVE REMEDIES AND FINAL JUDGMENT

ADMINISTRATIVE LAW – JUDICIAL REVIEW – MANDAMUS

Facts:

Appellee K. Hovnanian's Four Seasons at Kent Island, LLC ("Hovnanian") seeks a State wetlands permit from Appellant, the Board of Public Works ("the Board") in order to begin construction on its long-proposed development project located on Kent Island in Queen Anne's County. Previously, in 2007, despite receiving favorable recommendations from the State Department of the Environment and the Board's Wetlands Administrator, Mr. Moore, the Board denied Hovnanian's application. Hovnanian petitioned for judicial review of the denial. On review before the Court of Appeals in 2012, the Court held that the Board had exceeded its authority by considering factors outside the scope permitted by Maryland Code (1982, 2014 Repl. Vol.), § 16-202 of the Environment Article ("Env.") when it denied the application. *Maryland Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island, LLC*, 425 Md. 482, 522, 42 A.3d 40, 63 (2012) ("*Hovnanian I*"). The Court then remanded the case to the Board with directions for further proceedings.

Following remand, Hovnanian revised its wetlands application by removing and/or redesigning the potentially problematic elements, such that the revised application included only two of the original elements. As part of the revisions, Hovnanian explained that it had removed "Phase V" from the project. Upon receipt of the revised application, the Board adopted an expedited review process under which Mr. Moore would submit a supplement to his 2007 report, and the Department would then issue comments on that supplemental report. Both Mr. Moore and the Department again recommended approval of the license. At the Board's meeting on July 24, 2013, Hovnanian's attorney, Charles Schaller, explained that Hovnanian had reduced the density of the project, had removed some of the concerning stormwater drainage features, and was in negotiations with Queen Anne's County for implementation of the transfer of the "Tanner Parcel," where Phase V would have been located, to the County for recreational uses. Ultimately, the Board deferred a vote on Hovnanian's application to provide "ample time" to

"figure out better assurances" that the Tanner Parcel would be conveyed to the County for an ecopark or other non-private development use.

Around October 23, 2013, the Board learned that Mr. Moore had a previously undisclosed relationship with Mr. Schaller and Mr. Schaller's law firm. Concluding that this prior relationship between Mr. Moore and Mr. Schaller created, at least, an appearance of impropriety, the Board placed Hovnanian's application on hold while it determined how best to protect the integrity of the administrative record. In particular, the Board proposed that it would (1) strike from consideration Mr. Moore's 2013 supplemental report and the Department's comments thereto; (2) require the Department to initiate a new review of the application and render an additional report; and (3) retain two independent environmental experts/professors from the University of Maryland to "stand in the shoes" of the Wetlands Administrator and conduct a review of the application and prepare a report of their findings. Hovnanian objected to the Board's proposed plan.

On January 13, 2014, Hovnanian filed its current Complaint for Declaratory and Injunctive Relief and for a Writ of Mandamus in the Circuit Court for Queen Anne's County. Following a hearing on July 7, 2014, the Circuit Court granted summary judgment in favor of Hovnanian, concluding that the Board had acted beyond its authority by deferring its vote on Hovnanian's application, and that any further attempt by Hovnanian to advance its application would be "an exercise in futility." The Circuit Court further concluded that there existed no conflict of interest, and that the only thing left for the Board to do was to take a vote, therefore, a writ of mandamus was properly within the court's authority to issue. Thus, the Circuit Court ordered the Board to vote on Hovnanian's application and to limit its consideration to the impact to State tidal wetlands from the proposed sewer line under Cox Creek and the ten slip community marina. The Board noted a timely appeal to the Court of Special Appeals. Prior to any meaningful proceedings in that court, the Court of Appeals granted the Board's petition for certiorari.

Held: Vacated.

Absent a specific legislative grant of review authority or immediate and irreparable harmful legal consequences, a party must exhaust all exclusive administrative remedies and await a final administrative decision before filing suit in the circuit court to challenge an action by an administrative agency. In this case, the Court of Appeals held that Hovnanian's allegation that the Board applied an "unauthorized procedure" does not fall under the recognized exceptions to the finality doctrine.

In addition, the Court of Appeals held that mandamus was improper, where Hovnanian challenged an action that is within the discretion of the Board. In order for mandamus to lie for the courts to review a discretionary action of an administrative agency, there must be both no adequate administrative remedy and an alleged illegal, arbitrary, or capricious action. The Court held that an adequate remedy exists to challenge the Board's actions on judicial review following a final administrative decision. Because the lawsuit was premature, the Court did not reach the parties' remaining arguments on the merits.

Attorney Grievance Commission of Maryland v. Gerald Isadore Katz, Misc. Docket AG No. 6, September Term 2014, filed June 23, 2015. Opinion by Adkins, J.

http://www.mdcourts.gov/opinions/coa/2015/6a14ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – DISBARMENT

Facts:

Petitioner, Attorney Grievance Commission ("AGC"), acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action against Respondent, Gerald Isadore Katz. Bar Counsel charged Katz with violating Maryland Lawyers' Rules of Professional Conduct ("MLRPC") 8.4(a), (b), (c), and (d), stemming from his failure to timely file federal income tax returns and pay the appropriate amount of federal income taxes due in tax years 1996 through 2010.

Judge Jordan found the following facts by clear and convincing evidence. At the time of his disciplinary hearing, Katz was indefinitely suspended from practicing law in Maryland as a result of his failure to file Maryland state tax returns for tax years 2004 and 2005. In November 2012, Katz signed an Agreed Order in a civil tax action pending against him in the United States District Court for the District of Maryland. In this Order, Katz and the federal government consented to entry of a tax judgment against Katz in the amount of $5,462,935.25, which represented the amount of federal income tax owed between tax years 1996 and 2009, plus interest and penalties. Katz filed late tax returns for tax years 1996 through 2005 and 2007 through 2010, and "grossly underpaid" his income taxes for tax years 1996 through 2010. Regarding the criminal nature of Katz's conduct, the hearing judge found that Katz "unquestionably" violated 26 U.S.C. § 7203 (2012) by willfully failing to pay his taxes and timely file his tax returns.

The hearing judge concluded that Katz's misconduct violated MLRPC 8.4(a), (b), and (d). He did not conclude that Katz violated MLRPC 8.4(c) because he did not find by clear and convincing evidence that Katz exhibited dishonest conduct. Judge Jordan also concluded that Katz's lack of prior discipline over his lengthy legal career and his acceptance of responsibility were mitigating factors weighing in his favor.

Bar Counsel and Katz filed exceptions to the hearing judge's conclusions of law. Bar Counsel argued that Katz violated MLRPC 8.4(c), and Katz argued that he did not violate MLRPC 8.4(a), (b), or (d).

Held:

After conducting an independent review of the record, the Court sustained Bar Counsel's exception, concluding that Katz violated MLRPC 8.4(c) because the repeated failure to file tax returns is a dishonest act as a matter of law. The Court also overruled all of Katz's exceptions, agreeing with the hearing judge that his repeated, willful failure to file his tax returns and pay his taxes violated MLRPC 8.4(a), (b), and (d). Specifically, the Court determined that Katz's criminal misconduct reflected adversely on his fitness as an attorney and was prejudicial to the administration of justice.

The Court imposed a sanction of disbarment, highlighting that Katz's misconduct was far more egregious than that of other attorneys the Court had suspended for failure to file and pay their incomes taxes. The Court also explained that disbarment was warranted because Katz's malfeasance represented intentional dishonest conduct for personal gain and there were no mitigating factors or compelling extenuating circumstances justifying a lesser sanction.

Attorney Grievance Commission of Maryland v. Dennis Alan Van Dusen, Misc. Docket AG No. 5, September Term 2014, filed June 23, 2014. Opinion by McDonald, J.

http://www.mdcourts.gov/opinions/coa/2015/5a14ag.pdf

ATTORNEY DISCIPLINE − INTENTIONAL OMISSION OF MATERIAL FACTS IN CONNECTION WITH BAR ADMISSION – CRIMINAL CONDUCT INVOLVING DECEIT – DISBARMENT

Facts:

Respondent Dennis Alan Van Dusen was an applicant for admission to the Maryland Bar when, over a two-year period, he used hidden cameras to secretly view and record his tenants in their private bedrooms in intimate moments without their knowledge or consent.

Mr. Van Dusen's bar application had been delayed by the local Character Committee for unrelated reasons. After the State Board of Law Examiners ("SBLE") recommended to the Court of Appeals that he be admitted to the Maryland Bar, Mr. Van Dusen appeared before the Court of Appeals and expressly stated that, in the interim since the SBLE had recommended his admission to the Maryland Bar, he had not engaged in any criminal conduct. (Mr. Van Dusen later admitted that he knew his statement to the Court was an "absolute…downright lie" because he knew that surreptitious surveillance of his tenants was illegal).

Mr. Van Dusen's activities were still undiscovered when the Court of Appeals ordered on October 4, 2012 that he be admitted to the Maryland Bar. The swearing-in ceremony was scheduled for November 1, 2012. However, on October 12, 2012, one of Mr. Van Dusen's tenants discovered hidden cameras in her bedroom. A police investigation followed. Although Mr. Van Dusen had certified in his bar application that he would update his application with any material information, he failed to disclose to the admission authorities his use of hidden cameras and the police investigation.

On November 1, 2012, Mr. Van Dusen took the oath to become a member of the Maryland Bar. In December 2012, criminal charges were filed against Mr. Van Dusen as a result of the police investigation. Shortly thereafter, three civil actions were filed against Mr. Van Dusen relating to his surreptitious viewing of his tenants.

On April 16, 2013, Mr. Van Dusen entered guilty pleas as to three counts of violating Maryland Code, Criminal Law Article, §3-902(c) (visual surveillance of an individual in a private place without consent and with prurient intent). Mr. Van Dusen was sentenced to three years' incarceration, all suspended, and placed on five years supervised probation.

Subsequent to his admission to the Maryland Bar, Mr. Van Dusen did not alert the Court, SBLE, or the Attorney Grievance Commission concerning his use of hidden cameras to spy on his tenants, or the police investigation, criminal conviction, and civil complaints that followed.

On April 12, 2014, the Attorney Grievance Commission charged Mr. Van Dusen with violating several provisions of the Maryland Lawyers' Rules of Professional Conduct ("MLRPC"): 3.3(a), 8.1(a) and (b), and 8.4(a), (b), (c), and (d).

Held:

The Court concluded that Mr. Van Dusen did not violate MLRPC 3.3(a) because at the time of his false statements before the Court, he was only an applicant and was not an attorney. However, Mr. Van Dusen violated MLRPC 8.1(a) and (b) by knowingly making a false statement of material fact to the Court of Appeals regarding his suitability for admission to the Maryland Bar.

Furthermore, Mr. Van Dusen violated MLRPC 8.4(b) because, subsequent to his admission to the bar, he pled guilty to three criminal offenses that reflected adversely on his honesty and trustworthiness. Mr. Van Dusen violated MLRPC 8.4(c) because, after his admission to the bar, he deliberately failed to disclose his criminal conviction, the police investigation and civil complaints. Mr. Van Dusen violated MLRPC 8.4(d) because his conviction and his failure to disclose material facts during the admission process put into question the integrity of the bar.

The Court of Appeals held that disbarment was the appropriate sanction because Mr. Van Dusen committed criminal acts that adversely affected his fitness to practice law. Mr. Van Dusen also intentionally and deliberately concealed material information during the bar admission process, deliberately lied to the Court, and failed to disclose his subsequent convictions after admission to the bar. The Court reasoned that Mr. Van Dusen's conduct demonstrated a serious lack of candor and truthfulness that warranted disbarment.

Attorney Grievance Commission of Maryland v. Earl Americus Smith, Misc. Docket AG No. 73, September Term 2013, filed June 23, 2015. Opinion by McDonald, J.

http://www.mdcourts.gov/opinions/coa/2015/73a13ag.pdf

ATTORNEY DISCIPLINE – NEGLECT OF CLIENTS – MISHANDLING OF ATTORNEY TRUST ACCOUNT – DELEGATION OF ATTORNEY'S DUTIES TO NON-LAWYER WITHOUT SUPERVISION – DISBARMENT.

Facts:

Respondent, Earl Americus Smith, established a law practice under the name Bryan & Smith, P.C. that focused on personal injury matters. Mr. Smith hired Dawn Staley-Jackson in 1993, who served as his legal assistant for two decades. Mr. Smith delegated substantial authority to Ms. Staley-Jackson, but without providing significant supervision.

From January 2009 to September 2012, Mr. Smith failed to maintain meaningful records for his personal injury trust account. From January 2009 to September 2012, Ms. Staley-Jackson systematically misappropriated over $600,000 from the firm's personal injury trust account for her personal use. Upon discovering that this trust account was out of trust, Mr. Smith did not undertake a reasonable investigation, but commingled personal funds in the account to cover the shortfall. The result was that his discovery of the fraud was delayed.

Additionally, Mr. Smith neglected several of his clients: 1) Orin Thomas - resulting in the prejudicial dismissal of his case; 2) Terry Hardy and the Hardy children – with the result that neither Mr. Hardy nor his children received settlement proceeds, 3) Sharon Hardy – resulting in a settlement without Ms. Hardy's consent, and from which she received no settlement proceeds; and 4) Sheila Matthews – resulting in a settlement without Ms. Matthews consent, and from which she received no settlement proceeds.

Held:

Mr. Smith delegated to his non-lawyer assistant broad authority without supervision. She engaged in the unauthorized practice of law in sending demand letters to insurance companies, advised clients, communicated with medical providers, and drafted and signed pleadings and other court filings. In failing to provide adequate supervision, Mr. Smith violated MLRPC 5.3(a) and (b) (Responsibilities Concerning Non-Lawyer Assistants). This failure facilitated Ms. Staley-Jackson's unauthorized practice of law, in violation of MLRPC 5.5(a) (Unauthorized Practice of Law).

Mr. Smith failed to competently handle his cases or manage his personal injury trust account, and settled cases without his client's consent. In doing so, he violated MLRPC 1.1 (Competence) and 1.2(a) (Scope of Representation). Mr. Smith filed complaints, but subsequently failed to advance those cases. Additionally, Mr. Smith neither adequately communicated with his clients nor provided them with written, settlement disbursement sheets. Because of these failures, Mr. Smith violated MLRPC 1.3 (Diligence), 1.4 (Communication), and 1.5(c) (Fees).

Mr. Smith deposited more than $220,000 of personal and borrowed funds into his attorney trust account, failed to maintain records, failed to notify his clients of when he received settlement funds, and failed to disburse the portion of those funds promised to medical providers. In doing so, he violated MLRPC 1.15(a) and (b) (Safekeeping of Trust Funds), 1.15(d) (Notice of Receipt of Funds and Prompt Disbursement), 1.15(e) (Prompt Disbursement of Funds Not in Dispute), Maryland Rules 16-606.1 (Trust Account Records), 16-607 (Commingling Funds), and 16-609 (Trust Account).

Mr. Smith violated MLRPC 8.4(c) (Fraud) by concealing from Mr. Thomas that his case had settled. Mr. Smith violated MLRPC 8.4(d) (Conduct Prejudicial to the Administration of Justice) in failing to manage his trust account, commingling client and person funds, permitting overdraft, and failing to keep records.

Mr. Smith is responsible for the misconduct of Ms. Staley-Jackson under MLRPC 5.3(c)(2) (Supervision of Non-Lawyer Assistants) because: 1) the misconduct of Ms. Staley-Jackson would have violated the MLRPC if done by Mr. Smith, 2) Mr. Smith had direct supervisory authority over Ms. Staley-Jackson, 3) Mr. Smith eventually knew of Ms. Staley-Jackson's wrongdoing, and 4) Mr. Smith failed to take reasonable remedial action despite his knowledge that his trust account was out of trust.

The Court's decision to disbar Mr. Smith was predicated on three considerations. First, Mr. Smith demonstrated an inexcusable pattern of neglect with respect to his clients, his fiduciary obligations, and his promises to disburse funds to third parties. Second, Mr. Smith failed to investigate the shortage in his account, and instead commingled funds. Third, the violations resulted in injury to Mr. Smith's clients and third parties: settlement proceeds were never appropriately distributed, his client's cases were dismissed, and his clients and other third parties did not receive funds to which they were entitled to on a timely basis, or at all.

Suzanne Scales Windesheim, et al. v. Frank Larocca, et al., No. 71, September Term, 2014, filed June 23, 2015. Opinion by Adkins, J.

http://www.mdcourts.gov/opinions/coa/2015/71a14.pdf

MARYLAND CODE (1973, 2013 REPL. VOL.), § 5-101 OF THE COURTS AND JUDICIAL PROCEEDINGS II ARTICLE – THREE-YEAR STATUTE OF LIMITATIONS – INQUIRY NOTICE

MARYLAND SECONDARY MORTGAGE LOAN LAW, MARYLAND CODE (1975, 2013 REPL. VOL.), § 12-403(a) OF THE COMMERCIAL LAW ARTICLE – STATUTORY CONSTRUCTION – INDIRECT ADVERTISING

Facts:

In 2006 and 2007, Respondents, three married couples (collectively, "Borrowers"), became interested in selling their current homes and purchasing new homes. Borrowers contracted with Long & Foster Real Estate, Inc., the Creig Northrop Team, and Crieghton Northrop (collectively, "Realtor Defendants") to represent them in the real estate transactions. Realtor Defendants advised and encouraged Borrowers to "buy-first-sell-later" by simultaneously applying for two mortgage loans—a "bridge financing" HELOC against their current homes and a primary residential mortgage for their new homes. To facilitate these lending transactions, Realtor Defendants referred Borrowers to Michelle Mathews, a loan officer with Prosperity Mortgage Company ("Prosperity"). Mathews told Borrowers that bridge loan financing was a "common lending tool at Prosperity." Borrowers provided accurate financial information to Mathews for the purpose of qualifying to purchase their new homes.

Because loan underwriting standards would not permit Prosperity to approve a HELOC secured by a home intended for sale, Mathews had to get National City Mortgage ("National City"), a separate mortgage lender, to provide the HELOCs. Unbeknownst to Borrowers, Mathews sent Borrowers' financial information to Windesheim, a loan officer for National City. Using the financial information that Mathews provided, Windesheim completed Uniform Residential Loan Applications ("HELOC Applications") on behalf of Borrowers without ever speaking with them. Because National City's underwriting standards would also not permit them to approve a HELOC for a home intended for sale, Windesheim falsely represented on the HELOC Applications that the HELOCs would be secured by Borrowers' "primary residences." Based on this misrepresentation, National City eventually approved the HELOCs. At the HELOC closings in 2006 and 2007, Borrowers signed the HELOC Applications that Windesheim had prepared.

With the bridge financing arranged, Mathews submitted Borrowers' Uniform Residential Loan Applications for the primary residential mortgages on the new homes ("Primary Mortgage Applications") to Prosperity's underwriters. Because the Primary Mortgage Applications would not be approved with the new debt created by the HELOCs and without the proceeds from the sales of Borrowers' current homes, however, Mathews needed to create additional monthly

income for Borrowers. To accomplish this, one or more Defendants fabricated leases between Borrowers and fictitious tenants and forged Borrowers' signatures. As alleged, one or more Defendants then surreptitiously inserted fraudulent rental income on the Primary Mortgage Applications that Borrowers signed when they settled on their new homes and closed their primary residential mortgages in 2006 and 2007.

In 2011, Borrowers filed a class action lawsuit, alleging 11 Counts against Petitioners—Windesheim and National City's successor, PNC Mortgage, a division of PNC Bank, N.A. ("PNC")—and numerous other Defendants. Defendants moved for summary judgment on all Counts. Concluding that the statute of limitations barred Counts I–IX and XI and that no Defendants violated Count X, the Maryland Secondary Mortgage Loan Law ("SMLL"), Maryland Code (1975, 2013 Repl. Vol.), § 12-403(a) of the Commercial Law Article ("CL") as a matter of law, the Circuit Court granted Defendants' motions. Borrowers appealed. In a reported opinion, the Court of Special Appeals reversed the Circuit Court's grant of summary judgment as to Counts I–IX and XI against all Defendants, and as to Count X against PNC and Windesheim. Defendants appealed, and we granted the Petitions for Writ of Certiorari filed by Windesheim and her Employer only.

Held: Reversed, with instructions to affirm the Circuit Court as to Petitioners.

The Court held that Petitioners were entitled to judgment as a matter of law that the three-year statute of limitations barred Counts I–IX and XI because Borrowers were on inquiry notice when they closed their HELOCs and primary residential mortgages in 2006 and 2007. The Court determined there was no dispute that Borrowers signed the HELOC and Primary Mortgage Applications (the "Applications"). Relying on the signature doctrine, the Court concluded that Borrowers were presumed as a matter of law to have read and understood the content of the Applications. Because presumptions of law do not trigger the running of the statute of limitations, the Court conducted a separate review of the content of the Applications to determine whether it was sufficient to place them on inquiry notice of a potential fraud.

Citing *Bank of New York v. Sheff*, 382 Md. 235, 854 A.2d 1269 (2004) and *Miller v. Pacific Shore Funding*, 224 F. Supp. 2d 977 (D. Md. 2002), *aff'd*, 92 F. App'x 933 (4th Cir. 2004), the Court concluded that Borrowers' knowledge of the contents of the Applications was sufficient to place them on inquiry notice. With knowledge of several facts about which they claim they were deceived and that suggested that their loan transactions were not proceeding as they expected, Borrowers had information that "would cause a reasonable person in the position of [Borrowers] to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged [fraud]." *Pennwalt Corp. v. Nasios*, 314 Md. 433, 448–49, 550 A.2d 1155, 1163 (1988) (citation and internal quotation marks omitted).

The Court rejected Borrowers' arguments that the statute of limitations was tolled because Petitioners concealed the fraud from Borrowers and were in a fiduciary relationship with Borrowers.

The Court also held that Petitioners were entitled to judgment as a matter of law that they did not violate Count X, CL § 12-403(a), because there was no evidence that Petitioners "indirectly" advertised false or misleading statements regarding secondary mortgage loans or their availability. The Court concluded that the General Assembly intended that a person would have to "bring about" the placing of a false or misleading statement before the public to be liable for violating CL § 12-403(a) by advertising "indirectly." The Court found no evidence in the record that Windesheim or PNC did anything to bring about the false advertising of HELOCs. The Court also rejected Borrowers argument that Petitioners could be liable for indirect advertising based on a conspiracy theory.

Tommy Garcia Bonilla v. State of Maryland, No. 63, September Term 2014, filed May 22, 2015. Opinion by Adkins, J.

http://www.mdcourts.gov/opinions/coa/2015/63a14.pdf

SENTENCING – MARYLAND RULES 4-243(c)(3) AND 4-345(a) – SENTENCES BELOW A BINDING PLEA AGREEMENT – ILLEGAL SENTENCES

Facts:

In 1989, a Prince George's County grand jury indicted Petitioner, Tommy Garcia Bonilla, on two counts of first degree murder and several other serious crimes. At an August 28, 1990 hearing in the Circuit Court for Prince George's County, Bonilla pleaded guilty to Counts I and III pursuant to a binding plea agreement with the State. This agreement provided that Bonilla would, if called by the State, testify truthfully against one of his co-defendants, Freddy DeLeon, and would plead guilty to Counts I and III. In exchange, the State agreed that Bonilla would receive a sentence of life imprisonment on Count III with a consecutive sentence of life imprisonment, with all but 20 years suspended, on Count I. The State further agreed that it would withdraw its notice of intent to seek a sentence of life without the possibility of parole and would enter a *nolle prosequi* to the remaining counts in the indictment. This was presented to the judge as a proposed binding plea agreement.

After a proffer of facts by the State, the hearing judge determined that Bonilla was knowingly and voluntarily pleading guilty and accepted his guilty pleas. The hearing judge then approved the plea agreement—stating on the record that he was "bound" by its terms—and postponed sentencing until after DeLeon's trial.

On February 20, 1991, having fulfilled his obligation to testify truthfully against DeLeon, Bonilla appeared before the Circuit Court for sentencing. When outlining the sentencing terms of the plea agreement, defense counsel reversed the terms—incorrectly stating that the Parties agreed to a sentence of life imprisonment on Count I and a consecutive sentence of life imprisonment, with all but 20 years suspended, on Count III. The State did not recognize this error and agreed with the sentence presented by defense counsel. Consistent with the Parties' representations, the court sentenced Bonilla to life imprisonment on Count I and a consecutive sentence of life imprisonment, with all but 20 years suspended, on Count III.

Over two decades later, on November 7, 2011, Bonilla filed a Motion to Correct Illegal Sentence and Motion for Credit Against Time Spent in Custody, arguing that his sentence on Count I was illegal because it "exceed[ed] the sentence agreed upon by the parties under the terms of the binding plea agreement." On February 7, 2012, the Circuit Court issued a Memorandum and Order, concluding that the sentences on both counts were illegal and ordering a resentencing "in accordance with the original plea agreement." At the resentencing hearing, the Circuit Court resentenced Bonilla to life imprisonment on Count III and a consecutive sentence of life imprisonment, with all but 20 years suspended, on Count I. Bonilla appealed.

The Court of Special Appeals affirmed the judgment of the sentencing court, agreeing that Bonilla's original sentence on Count III was illegal because it was below the binding plea agreement. *Bonilla v. State*, 217 Md. App. 299, 92 A.3d 595 (2014), *cert. granted*, 440 Md. 114, 99 A.3d 778 (2014). Bonilla petitioned for writ of certiorari, which this Court granted to answer the following question: Did the Court of Special Appeals err by affirming the Circuit Court's judgment that a sentence below a binding plea agreement constitutes an illegal sentence [within the meaning of Rule 4-345(a)]?

Held: Affirmed.

Bonilla argued that his original sentence on Count III was legal under Rule 4-345(a) because it was the product of an "error in pronouncement" and was not inherently illegal. The State, concurring there was error, disagreed that the sentence was legal, arguing that "any sentence imposed in violation of a binding plea agreement constitutes an inherently illegal sentence, whether a sentence exceeds or falls below the plea agreement." To resolve this dispute, the Court first examined Maryland Rule 4-243(c)(3).

At the time of the Court's decision, Rule 4-243(c)(3) provided, as it did in 1991 when Bonilla was first sentenced, that when "[a] plea agreement is approved, the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement." Thus, the Court determined that Rule 4-243(c)(3) required the sentencing court to impose the sentencing terms in the binding plea agreement, and the Parties had agreed to a sentence of life imprisonment on Count III—not the lower sentence that the sentencing court imposed.

Because the Maryland Rules "have the force of law," the Court concluded the sentencing court committed legal error when it deviated from the plea agreement by imposing a lower sentence on Count III. This did not end the Court's inquiry, however, because in order to determine whether the original sentence on Count III was illegal under Rule 4-345(a), the Court had to resolve whether the sentencing court's error rendered the sentence inherently illegal.

The Court discussed two cases in which it held that sentences were inherently illegal within the meaning of Rule 4-345(a) when the sentencing courts violated Rule 4-243(c)(3) by imposing sentences that exceeded the binding plea agreements. The Court clarified that these cases were not limited to sentences that exceeded binding plea agreement; they applied to circumstances in which a sentencing court violated Rule 4-243(c)(3) by deviating, in either direction, from binding plea agreements. The Court also found a third case instructive because in that case, the Court concluded that Rule 4-243(c)(3) prohibits a sentencing court from imposing a sentence below a binding plea agreement if the parties do not agree to the deviation.

Considering these cases, the Court held that when a sentencing court violates Rule 4-243(c)(3) by imposing, without consent, a sentence that falls below a binding plea agreement, the resulting sentence is inherently illegal under Rule 4-345(a). Applying that rule to the facts at hand,

because the original sentence on Count III was below the binding plea agreement and the State did not consent to this deviation, the sentence was inherently illegal and subject to correction under Rule 4-345(a).

State v. Ronnie A. Hunt, Jr., No. 72, September Term 2014; *State v. Kevin Hardy*, No. 73, September Term 2014, filed June 18, 2015. Opinion by Harrell, J.

http://www.mdcourts.gov/opinions/coa/2015/72a14.pdf

CRIMINAL LAW – WRIT OF ACTUAL INNOCENCE – PLEADING – MERITS HEARING

Facts:

These two consolidated cases were sparked by the 2007 revelation that a high-ranking Maryland law enforcement ballistics expert named Joseph Kopera ("Kopera"), who testified frequently as an expert witness for the prosecution in various trials throughout the state, lied allegedly about his academic qualifications for over twenty years.

Pursuant to Maryland Code (2001, 2008 Repl. Vol, 2014 Cum. Supp.), Criminal Procedure Article, § 8-301, Ronnie A. Hunt, Jr. ("Hunt"), and Kevin Hardy ("Hardy") (collectively, "Respondents"), both incarcerated currently, filed on 31 January 2011 and 31 July 2012, respectively, Petitions for Writ of Actual Innocence in their unrelated cases. Both Respondents alleged that newly discovered evidence relative to Kopera, who testified in their trials as a prosecution witness, created a substantial or significant possibility that the outcomes (convictions) in their respective 1991 and 1989 trials may have been different (had Kopera's lies been discovered earlier), but that such evidence could not have been discovered in time for them to move timely for a new trial pursuant to Maryland Rule 4-331. Their petitions characterized the questions about Kopera's qualifications as "newly discovered evidence" that warranted reversals of their convictions and/or new trials.

Hunt was convicted on 25 September 1991 in the Circuit Court for Baltimore City of first-degree murder and use of a handgun in the commission of a crime of violence. He was sentenced to life imprisonment for murder, plus a consecutive twenty years for the handgun offense, and his convictions were affirmed in 1993 by the Court of Special Appeals on direct appeal in an unreported opinion. Hunt argued in his pro se Amended Petition that, as the State had not produced any DNA, fingerprints, or eye witnesses who placed him at the scene of the murder, Kopera's testimony in his capacity as the State's ballistics expert was the State's "only evidence" against him and "the lynch [sic] pin in the State's case."

Hardy was convicted on 16 November 1989 in the Circuit Court for Baltimore City of first-degree murder, use of a handgun in a crime of violence, and unlawfully wearing, carrying, and transporting a handgun. He was sentenced to life imprisonment, plus forty-five years, and his convictions were affirmed by the Court of Special Appeals on direct appeal and ultimately the Court of Appeals. *Nance and Hardy v. State*, 93 Md. App. 475, 613 A.2d 428 (1992), *aff'd*, 331 Md. 549, 629 A.2d 633 (1993). Hardy argued in his pro se Petition that, in light of an eye witness's arguably inconsistent testimony, Kopera's testimony "was desperately needed and used in[] [the State's] case to bolster the State's theory of two shooters of the victim . . . ." Hardy

concluded that Kopera's allegedly false testimony "absolutely, affected the judgment of the jury in [Hardy's] case."

Both Respondents requested hearings on their petitions. In both cases, the Circuit Court for Baltimore City denied their petitions without a hearing because the petitions "fail[ed] to state a claim or assert grounds for which relief may be granted pursuant to [§ 8-301(a)]." On direct appeal to the Court of Special Appeals, the intermediate appellate court reversed in both instances the rulings of the Circuit Court and remanded for further proceedings. In each case, the State of Maryland (the "State") petitioned for a writ of certiorari, which petitions we granted on 21 October 2014 to consider the following common question: "Did the Court of Special Appeals incorrectly reverse the circuit court's denial of Hunt's amended petition for writ of actual innocence without a hearing where Hunt did not satisfy the statutory requirements of Section 8-301 and where the Court of Special Appeals' ruling was inconsistent with its own case authority on the issue?" *State v. Ronnie A. Hunt, Jr.*, 440 Md. 225, 101 A.3d 1063 (2014); *State v. Kevin Hardy*, 440 Md. 225, 101 A.3d 1063 (2014).

Held: Affirmed.

The standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is *de novo*, whereas after a hearing on a petition for writ of actual innocence, reviewing courts limit their review to whether the trial court abused its discretion.

After reviewing the text of § 8-301 and its implementing Maryland Rule, 4-332, the Court of Appeals discussed *Douglas v. State*, 423 Md. 156, 31 A.3d 250 (2011), in which the Court discussed § 8-301's pleading standard. In *Douglas*, the Court concluded that *Douglas* was entitled to a hearing where he alleged that Kopera's alleged misrepresentations (analogous to Kopera's misrepresentations in Hunt's and Hardy's cases) constituted newly discovered evidence under the meaning of § 8-301(b)(3). Because Hunt and Hardy satisfied the pleading requirements of § 8-301, they are entitled to hearings on their petitions. The Court discussed also whether Hardy's Petition satisfied the additional requirements of Rule 4-332, which took effect 1 October 2011.

In considered dicta, the Court of Appeals discussed the developing concept (in reported opinions from the Court of Special Appeals, including *Kulbicki v. State*, 207 Md. App. 412, 53 A.3d 361 (2012), *rev'd*, 440 Md. 33, 99 A.3d 730 (2014), petition for cert. filed, *Maryland v. Kulbicki*, U.S., Jan. 16, 2015 (No. 14-848), and *Jackson v. State*, 216 Md. App. 347, 86 A.3d 97 (2014)) of "impeaching," as opposed to "merely impeaching," "newly discovered evidence." After suggesting that the distinction between "impeaching" and "merely impeaching" evidence, in the context of § 8-301 petitions for writs of actual innocence, might be overly rigid, the Court concluded that Hunt's and Hardy's Petitions are not doomed necessarily because the newly discovered evidence, as characterized by the Court of Special Appeals, may be only "impeaching" or "merely impeaching." Specifically, the Court determined that it would not be an abuse of discretion for a hearing judge to find that a defense attorney might fail, after nonetheless exercising due diligence before the revelations of 2007, to discover Kopera's alleged

fraud. When an expert is called to testify, it is conceivable that, based on the cumulative body of evidence presented at a given trial, falsity regarding the expert's credibility and qualifications might "create[] a substantial or significant possibility that the result may have been different." § 8-301(a)(1). The determination of whether the evidence of Kopera's alleged perjury warrants a new trial depends in large part on the particular set of facts and comprehensive body of evidence introduced at trial in each case, as in some trials the testimony of an expert such as Kopera may be assigned greater or lesser value, weight, and consequence.

Jessica N. Woznicki v. GEICO General Insurance Company, No. 52, September Term 2014; *Jeannine Morse v. Erie Insurance Exchange*, No. 54, September Term 2014, filed May 27, 2015. Opinion by Greene, J.

McDonald, J., concurs and dissents.

http://www.mdcourts.gov/opinions/coa/2015/52a14.pdf

INSURANCE LAW – INS. ART. § 19-511 (UNINSURED MOTORIST COVERAGE – SETTLEMENT PROCEDURES) – WAIVER

INSURANCE LAW – INS. ART. § 19-511 (UNINSURED MOTORIST COVERAGE – SETTLEMENT PROCEDURES) – PREJUDICE UNDER INS. ART. § 19-110 (DISCLAIMERS OF COVERAGE ON LIABILITY POLICIES)

Facts:

This case arises out of two separate automobile accidents. Because of the common issues of law, the Court consolidated two civil cases for the purpose of this opinion. On November 12, 2010, in Cecil County, Jessica N. Woznicki ("Woznicki") sustained injuries in a motor vehicle collision caused by James Bowman Houston ("Houston"). Woznicki asserted a claim against Houston through her then-counsel, Ben T. Castle ("Castle"), a Delaware attorney. At some time in March, 2011, Nationwide Insurance Company ("Nationwide"), Houston's insurer, offered to settle all claims for $20,000 in exchange for a release of all claims against Nationwide and Houston. Castle contacted GEICO on or about July 7, 2011, and obtained what was characterized as GEICO's oral consent to settle without prejudice to any potential UM claim against GEICO. Following this conversation Castle accepted Nationwide's offer and executed a release of all claims against Nationwide and the tortfeasor. As a result of Castle's failure to obtain GEICO's written consent to settle, Woznicki was denied "any and all Underinsured Motorist (UIM) coverage[.]"

Woznicki filed a Complaint and Demand for Jury Trial against GEICO seeking to hold GEICO liable for damages in excess of the $20,000 she received from Nationwide. GEICO moved for and was granted summary judgment on the grounds that Woznicki failed to obtain GEICO's consent to settle as required by Maryland law and the insurance policy. The Court of Special Appeals upheld the decision of the trial court, holding that (1) an insurer could waive the requirements of Section 19-511 of the Insurance Article, (2) Woznicki failed to demonstrate a dispute as to material fact concerning whether GEICO had waived such requirements, and (3) GEICO was not required to demonstrate prejudice caused by Woznicki's breach of Section 19-511 or the insurance policy in order to deny her UM coverage. *Woznicki v. GEICO Gen. Ins. Co.*, 216 Md. App. 712, 90 A.3d 498 (2014).

Jeannine Morse ("Morse") was injured in a motor vehicle collision on April 28, 2007, in Delaware, when her vehicle was struck by a vehicle driven by Paula Smallwood ("Smallwood").

On October 13, 2008, Nationwide, Smallwood's insurer, offered Morse its entire $15,000 policy limit in settlement of Morse's claims against Smallwood. Morse accepted Nationwide's settlement offer and signed a Release of All Claims on November 3, 2008. On February 4, 2009, Bove first informed Erie by telephone that she had accepted Nationwide's settlement offer and signed a release. On November 5, 2009, Erie wrote Bove to advise her that it had denied Morse's UM claim. On June 17, 2011, Morse sued Erie in the Circuit Court for Cecil County for breach of contract. A jury trial was held on April 22-23, 2013, with a verdict in favor of Erie. On appeal, the Court of Special Appeals affirmed the decision. *Morse v. Erie Ins. Exch.*, 217 Md. App. 1, 12, 90 A.3d 512, 518 (2014).

Held: Affirmed.

With respect to Petitioner Woznicki, the Court concluded that, consistent with the underlying purpose of § 19-511, an insurer may waive strict compliance with the relevant provisions at issue–namely the insured's duty to send the insurer written notice of the pending settlement offer and obtain the insurer's written consent prior to settlement. The Court agreed with the Court of Special Appeals and concluded that there existed no dispute as to a material fact concerning the alleged waiver. Therefore, the Circuit Court's grant of summary judgment was proper as a matter of law.

The Court then turned to the issue of prejudice. The prejudice rules apply where an insurer disclaims coverage as a result of the insured's noncompliance with a condition contained in the insurance policy requiring notice or cooperation. The Court concluded that noncompliance with § 19-511 and the liability policies' consent to settle provision is neither a failure to notify nor a failure to cooperate as contemplated by the prejudice rules. Therefore, the instant cases fell outside of the ambit of the rules.

That § 19-110 applies only where the insured breached the policy by failing to give notice or cooperate with the insurer, the Court found, reflects a deliberate decision by the Legislature to limit the scope of the statute. A consent to settle clause acts separate and apart from a duty to notify. *Waters v. United States Fidelity & Guaranty Co.*, 328 Md. 700, 717, 719, 616 A.2d 884, 892-3 (1992). Apart from providing an insurer greater protection than a notice clause, an insured's obligations under § 19-511 and the consent to settle clauses contained in the policies extend beyond mere notice and include permitting an insurer to make a determination to consent to the acceptance of the settlement offer within the specified time frame. Consequently, the failure goes beyond a technical failure to provide notice. Rather it is a failure to provide notice *and* to allow an insurer the legislatively supplied period to decide whether to consent or refuse to consent prior to entering into a settlement agreement.

Washington Suburban Sanitary Commission v. Lafarge North America, Inc., No. 69, September Term 2014, filed June 18, 2015. Opinion by Harrell, J.

http://www.mdcourts.gov/opinions/coa/2015/69a14.pdf

PUBLIC UTILITIES – WASHINGTON SUBURBAN SANITARY COMMISSION – REFUND CLAIMS – DENIAL BY OPERATION OF LAW FOR FAILURE TO RENDER A TIMELY DECISION – JUDICIAL REVIEW

Facts:

Lafarge North America, Inc. ("Lafarge") operated a ready-mix concrete plant in Rockville, Maryland, during the time relevant to this case. It sought a refund from the Washington Suburban Sanitary Commission ("WSSC") for allegedly erroneously assessed and paid water and sewer service charges for the operation of the plant. Lafarge sought initially from the WSSC administrative review and action on its refund request. The WSSC did not hold a hearing or decide the refund request within 180 days of its filing, as it was obliged to do by Maryland Code (1998, 2010 Repl. Vol.), Public Utilities Article, § 25-106 ("PUA"). The same statutory scheme decreed that the refund request was deemed denied by operation of law because of the WSSC's failure to render a timely decision.

Lafarge turned to the Circuit Court for Montgomery County for judicial review, noting that its claim was deemed denied by the WSSC's inaction. The WSSC filed a motion for a stay of the proceedings until it could hold a hearing so that a fuller evidentiary record could be developed and actual final administrative action taken. The Circuit Court denied the WSSC's motion.

The WSSC filed thereafter with the court the "agency record." The "record" consisted of, in its entirety, Lafarge's letter requesting a refund and Lafarge's hearing request (both of which had supporting documents attached). Lafarge responded with a motion requesting that the court require the WSSC to supplement the "record" with any documents created during the agency's investigation of the claim, if any. The WSSC opposed the motion. The Circuit Court granted Lafarge's motion. Thereafter, the WSSC provided to the Circuit Court additional documents.

Considering the merits, the Circuit Court concluded that the deemed denial was not supported by substantial evidence in the record and was arbitrary and capricious because the WSSC failed to act timely. As a result, that court remanded the matter to the WSSC with directions to determine and issue an appropriate refund. On direct appeal by the WSSC, a panel of the Court of Special Appeals affirmed unanimously the judgment of the Circuit Court. We granted the WSSC's petition for a writ of certiorari to consider the following questions:

1) Did the Court of Special Appeals err in holding that a [circuit court] may exceed the permissible scope of judicial review when considering a "deemed" rejection of a refund claim under PUA § 25-106?

2) Did the Court of Special Appeals err in upholding the [Circuit Court's] order mandating that WSSC's investigative files be produced as part of the agency record pursuant to Md. Rule 7-206?

Held:

A reviewing court is authorized to reverse a deemed denial pursuant to PUA § 25-106(d) of the WSSC (assuming that the denial was not supported by substantial evidence and/or was arbitrary and capricious on the record) and remand the case to the WSSC with directions to calculate and issue the appropriate refund, thus foreclosing the agency's ability to consider anew on remand the potential for denial of the refund request.

Ottis E. Breeding, Jr., et al. v. Christian Nicholas Koste, No. 66, September Term 2014, filed May 22, 2015. Opinion by Watts, J.

http://www.mdcourts.gov/opinions/coa/2015/66a14.pdf

"WOODLANDS EXCEPTION" – ADVERSE POSSESSION

Facts:

Christian Nicholas Koste ("Koste"), Respondent, filed in the Circuit Court for Caroline County ("the circuit court") a "Complaint for Title by Adverse Possession and Bill to Quiet Title" against adjoining landowners, Ottis Breeding, Jr., James "Rick" Breeding, and Terry Breeding (together, "the Breedings"), Petitioners, concerning the ownership of a piece of land known as the Landing on Watts Creek ("the Landing"). The Landing is a triangular parcel of land, more than 10,000 square feet in area, that abuts the southern side of a small body of water known as Watts Creek. The Landing is located between the northeast corner of Koste's property ("the Koste property") and the northwest corner of the Breedings' property ("the Breeding property"). The Koste property and the Breeding property are adjoining tracts of land that are bound to the north by Watts Creek. The Koste property is mostly wooded; and Koste resides in a home that overlooks the Landing. The Breeding property is used for surface mining. The circuit court conducted a five-day bench trial, which included the circuit court's viewing the Landing.

The circuit court issued a Memorandum Opinion and Order, ruling that Koste had established a claim to the Landing by adverse possession. As to the Koste property, the circuit court found that, in December 1944, Koste's grandparents purchased the Koste property, and by 1950, had built and moved into a new home in the middle of the Koste property, close to Watts Creek. In 1999, Koste's grandfather died, and in 2004, a portion of the Koste property was conveyed to Koste. In 2004, Koste applied for a building permit to construct a home, and in 2008, Koste received an occupancy permit for his newly constructed home. As to the Breeding property, the circuit court found that, when Koste's grandparents purchased the Koste property in 1944, Beatrice Butler owned the Breeding property. Title to the Breeding property changed hands several times and in 1987, the Breeding property was conveyed to the Breedings and their father as joint tenants. The Breedings' father died and in 2006, title to the Breeding property changed from the Breedings' holding the Breeding property as joint tenants to the Breedings' holding the Breeding property as tenants in common. As to the Landing, the circuit court found that Koste's grandfather constructed a road from the Koste property to the Landing and cleared the Landing, creating a loop or turn-around so boats and a truck could make it down to the Landing and back. Koste's grandfather also placed metal stakes all the way down to Watts Creek along what he believed to be his boundary line, and erected a "no trespassing" sign facing the Breeding property. Koste's grandfather constructed and repaired a dock and duck blind on the Landing, as well as a large storage box in the middle of the loop on the Landing. The Kostes used the Landing for recreational purposes continuously from the late 1940s. The circuit court also found that Koste's grandparents acted as though the Landing was part of the property conveyed to them by deed in 1944

The Breedings appealed and, in an unreported opinion, the Court of Special Appeals affirmed. The Breedings petitioned for a writ of *certiorari*, and the Court of Appeals granted the petition.

Held: Affirmed.

The Court of Appeals held that the "woodlands exception"—which provides that, "[w]hen an easement is claimed on land that is unimproved or in a general state of nature, there is a legal presumption that the use is by permission of the owner"—previously applied only to prescriptive easements, also applies to adverse possession where the land at issue is unimproved or otherwise in a general state of nature. The Court of Appeals held that the various similarities between adverse possession and prescriptive easements, and the rationale underlying the application of the "woodlands exception" in cases involving prescriptive easements, warranted extension of the "woodlands exception" to adverse possession cases.

The Court of Appeals held that the "woodlands exception" did not apply in the case because the Landing is not unimproved or otherwise in a general state of nature. The Court of Appeals concluded that the Landing is improved property; *i.e.*, it is land that has been enhanced during the forty-year period of adverse possession by human-created additions that increased the land's utility and made it more useful for humans. The Court of Appeals stated that property need not include a building to be considered "improved" if man-made additions have been added to the property to increase its value or utility or to enhance its appearance.

The Court of Appeals determined that, where recreational activities are coupled with improvements that are visible, long-standing, and indicative of a claimant's ownership, there is sufficient notice of adverse use to the owner. The Court of Appeals concluded that Koste's grandparents engaged in more than mere recreational activities on the Landing—Koste's grandparents made improvements in the form of visible and long-standing structures. In addition to using the Landing for recreational purposes—such as hunting, fishing, and boating—Koste's grandfather made improvements to the Landing that were visible, present for long periods of time, and indicative of his belief that he owned the Landing. Specifically, Koste's grandfather added the road and the connecting loop, duck blinds, and a storage box in the middle of the loop. These improvements existed even when Koste's grandparents were not using the Landing for recreational activities; *i.e.*, the loop did not suddenly disappear when Koste's grandparents were not on the Landing. In other words, in addition to the Kostes' recreational activities, these improvements were visible and constituted notice of adverse use to the owner and a claim of ownership by the claimant.

The Court of Appeals held that because the "woodlands exception" did not apply, no presumption of permissive use arose; instead, the burden was on the Breedings to demonstrate that the Kostes' use of the Landing was permissive. The Court of Appeals concluded that the Breedings failed to meet the burden of demonstrating permissive use. Thus, the Court of

Appeals determined that the Court of Special Appeals and the circuit court were correct in holding that Koste obtained title to the Landing by adverse possession.

Maryland Department of State Police v. Teleta S. Dashiell, No. 84, September Term 2014, filed June 25, 2015. Opinion by Battaglia, J.

Greene and Watts, JJ., dissent.

http://www.mdcourts.gov/opinions/coa/2015/84a14.pdf

MARYLAND PUBLIC INFORMATION ACT – RECORDS OF INTERNAL AFFAIRS INVESTIGATION – PERSONNEL RECORDS OR INVESTIGATORY RECORDS

Facts:

Teleta S. Dashiell brought a declaratory judgment action under the Maryland Public Information Act, Maryland Code (1984, 2010 Repl. Vol.), Sections 10-611 *et seq*. of the State Government Article against the Maryland State Police Department, alleging that the State Police improperly denied disclosure of records of an internal investigation conducted by them in response to a complaint Ms. Dashiell filed against Sergeant John Maiello of the State Police. In 2009, according to Ms. Dashiell's complaint, Sergeant Maiello left a voicemail for Ms. Dashiell, in which he used a racial epithet. Ms. Dashiell further alleged that she complained to the State Police, thereafter, it investigated and disciplined Sergeant Maiello, the particulars of which were included in his personnel file, but the details of which were not disclosed to Ms. Dashiell. Ms. Dashiell subsequently requested access to records pertaining to Sergeant Maiello's internal investigation, which the State Police denied.

The State Police moved to dismiss the complaint, or in the alternative, for summary judgment, arguing that it properly denied inspection of the records under, *inter alia*, the "personnel record" exemption or the "investigatory records" exemption of the Public Information Act. After a hearing, the Circuit Court Judge granted the State Police's motion for summary judgment, concluding that the requested records constituted personnel records under the Public Information Act.

Ms. Dashiell noted an appeal, and the Court of Special Appeals, in a reported opinion, vacated the ruling and remanded the case for further proceedings because of its conclusion that the Circuit Court erred in failing to require the State Police to create an index of the withheld documents and, in addition, by not conducting an *in camera* review of the documents. The State Police petitioned for certiorari as to whether it properly denied disclosure of the internal investigation records under the "personnel records" exemption of the Public Information Act. Ms. Dashiell cross-petitioned, asking the court to consider if she, in her role as a complaining individual, could be considered the subject of an investigation, such that she is a "person of interest" under the Act.

Held: Vacated and remanded.

The Court of Appeals vacated and remanded to affirm the judgment of the Circuit Court. The Court, relying on *Kirwan v. The Diamondback,* 352 Md. 74, 721 A.2d 196 (1998) and *Montgomery County v. Shropshire*, 420 Md. 362, 23 A.3d 205 (2011), determined that the requested records were specific to Sergeant Maiello and related to his discipline, and therefore constituted "personnel records", exempt from disclosure pursuant to Section 10-616(i) of the State Government Article. The Court further concluded that *in camera* review would not alter the classification of the requested records as personnel records, and that the records were not capable sufficiently of redaction such as to render the records "sanitized" for possible disclosure, were disclosure necessary.

The Court, further, to provide guidance to the Circuit Court, determined that Ms. Dashiell did not constitute, as a complaining individual, a "person of interest" under the "investigatory records" exemption of the Public Information Act, because she was not the "subject" of the public record under the plain language definition of a "person of interest" in the Act.

Nancy Lee Kathryn Thompson, et al. v. UBS Financial Services, Inc., et al., No. 76, September Term 2014, filed May 22, 2015. Opinion by Watts, J.

Barbera, C.J., Adkins, and McDonald, J.J., concur.

http://www.mdcourts.gov/opinions/coa/2015/76a14.pdf

CONVERSION OF INTANGIBLE PROPERTY – STARE DECISIS – CONSTRUCTIVE FRAUD – CONFIDENTIAL RELATIONSHIP

Facts:

In the Circuit Court for Baltimore City ("the circuit court"), Nancy Lee Kathryn Thompson ("Kathy"), Barbara Ann Clements (together, "Petitioners"), and Karen Lee Kirlin ("Karen") sued Gordon H. Witherspoon ("Witherspoon"), Respondent, and multiple companies for multiple causes of action, including conversion and constructive fraud as to Witherspoon. At trial, the circuit court admitted evidence of the following facts. Albert E. Thompson, Jr. and Nancy Schenuit Thompson (together, "the Thompson Parents") were the parents of Petitioners, Karen, and three other children (together, "the Thompson Children"). The Thompson Children purchased a life insurance policy as to which they were the owners and beneficiaries, the Thompson Parents were the insureds, and Witherspoon was the broker. Each year from 1990 through 1995, the Thompson Parents paid each of the Thompson Children the amount of his or her share of the annual life insurance premium. Because Kathy disliked Witherspoon, the Thompson Parents paid Kathy's share directly to her, and Kathy transferred her share directly to the life insurance company. The Thompson Parents deposited the shares of the rest of the Thompson Children into their respective accounts with UBS; the shares were then automatically transferred to the life insurance company.

Each year from 1996 through 2003 (except for 1997), the Thompson Parents did not pay each of the Thompson Children the amount of his or her share of the annual life insurance premium. Thus, in each of those seven years, the life insurance company automatically issued a loan to the Thompson Children from the life insurance policy's cash value to cover the amount of the unpaid annual life insurance premium. The life insurance company mailed to Witherspoon policy statements and policy notices that mentioned the loans. Witherspoon knew about the loans, but never told Petitioners about them. Around the years in which the Thompson Parents did not pay each of the Thompson Children the amount of his or her share of the annual life insurance premium, the Thompson Parents provided Witherspoon and his wife with various gifts and loans.

A jury found Witherspoon liable for negligence, negligent misrepresentation, deceit, conversion, and constructive fraud. Witherspoon filed a motion for judgment notwithstanding the verdict, which the circuit court denied. Witherspoon appealed, and the Court of Special Appeals reversed and remanded, holding that Petitioners failed to establish claims for conversion and

constructive fraud, and that the trial court made other errors that necessitated a new trial as to the claims other than conversion and constructive fraud.

Held: Affirmed.

The Court of Appeals reaffirmed *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 562, 731 A.2d 957, 965 (1999), and again held that a defendant does not convert a plaintiff's intangible property where the defendant does not convert a document that embodies the plaintiff's right to the plaintiff's intangible property; far from archaic, *Jasen* remains as suitable to society today as it was when the Court issued it. Petitioners' attack on *Jasen* was based on the false premise that, for conversion's purposes, the document that embodies the plaintiff's right to the plaintiff's intangible property must be paper (as opposed to digital). To the contrary, such a document need not be paper, as long as it is tangible and transferable. Digital media is both tangible (*i.e.*, capable of being seen on an electronic device's screen) and transferable (*i.e.*, subject to an exertion of ownership or dominion). Thus, for conversion's purposes, there is no distinction between hard copy and electronic data, as long as a document, either paper or digital, embodies the plaintiff's right to the plaintiff's intangible property.

In sum, because digital media is capable of being converted, there was no need for the Court to "modernize" conversion by adopting Restatement (Second) of Torts § 242(2) (1965) ("One who effectively prevents the exercise of intangible [property] rights of the kind customarily merged in a document is subject to a liability similar to that for conversion, even though the document is not itself converted."). Several other considerations militate against adopting Restatement (Second) of Torts § 242(2)—i.e., removing conversion of a document as an element of conversion of intangible property. Specifically, to remove conversion of a document as an element of conversion of intangible property: (1) would destroy conversion's common law foundation; (2) would expand conversion so much that it could essentially swallow other torts, such as unfair competition and wrongful interference with contractual or business relations, also known as tortious interference with contract or with economic relations; and (3) could lead to expanding and distorting conversion one small step further—by removing as an element of conversion of intangible property the existence of a document that embodies a plaintiff's right to the plaintiff's intangible property. Additionally, no other jurisdiction has expressly adopted Restatement (Second) of Torts § 242(2).

Applying its holding to this case's facts, the Court concluded that Petitioners failed to establish a claim against Witherspoon for conversion of the life insurance policy, as Petitioners failed to establish that Witherspoon converted any document that embodied Petitioners' right to the life insurance policy.

The Court of Appeals also concluded that Petitioners failed to establish a claim against Witherspoon for constructive fraud, as Petitioners failed to establish that the parties were in a confidential relationship.

Mark G. Hranicka v. Chesapeake Surgical, Ltd., et al., No. 83, September Term 2014, filed June 18, 2015. Opinion by Watts, J.

Barbera, C.J., Greene and McDonald, JJ., concur.

http://www.mdcourts.gov/opinions/coa/2015/83a14.pdf

WORKERS' COMPENSATION – MD. CODE ANN., LABOR & EMPL. (1991, 2008 REPL. VOL.) § 9-709(b)(3) – STATUTE OF LIMITATIONS – CLAIM FOR BENEFITS – ELECTRONIC SUBMISSION – FILING

Facts:

Mark G. Hranicka, Petitioner, filed a workers' compensation claim as a result of an injury sustained during a motor vehicle accident on January 6, 2010. On January 14, 2010, Chesapeake Surgical, Ltd. ("the Employer"), Respondent, prepared a first report of injury or illness. The Employer and NorGUARD Insurance Company ("the Insurer"), Respondent, mailed to the Workers' Compensation Commission ("the Commission") the first report of injury or illness, which was received and filed by the Commission on January 21, 2010. On January 14, 2010, Petitioner completed and executed a C-1 Claim Form, which was filed on paper with and date stamped by the Commission on January 28, 2010. Respondents contested the claim. On May 20, 2010, at a hearing before the Commission, Petitioner requested that his workers' compensation claim be withdrawn. On May 24, 2010, the Commission ordered that the workers' compensation claim be withdrawn.

On January 17, 2012, Petitioner electronically submitted to the Commission a second C-1 Claim Form, identifying the date of the accident as January 6, 2010. The Commission's online program recorded the date and time of the electronic submission at the bottom of the second C-1 Claim Form, underneath the signature and date lines, as "Received: 1/17/2012 11:26:13 AM." On January 20, 2012, Hranicka executed two forms: (1) the second C-1 Claim Form, which he had electronically submitted on January 17, 2012; and an "Authorization for Disclosure of Health Information." On January 24, 2012, the executed second C-1 Claim Form was filed on paper with and date stamped by the Commission. On that same day, the authorization form was filed with the Commission. Respondents contested the claim, contending that the claim was time-barred by Md. Code Ann., Labor & Empl. (1991, 2008 Repl. Vol.) ("LE") § 9-709(b)(3).

On May 31, 2012, the Commission conducted a hearing at which Commissioner Cynthia S. Miraglia ("Commissioner Miraglia") presided. During the hearing, Commissioner Miraglia stated: "[Petitioner]'s claim form came in on the 17th. When an electronic claim is filed, we accept the claim for statu[t]e [of limitations] purposes. . . . But just for everyone's edification, when an electronic claim form comes in to the Commission, that date is the date we use for limitation[s] purposes." At the conclusion of the hearing, Commissioner Miraglia determined that the claim was not time-barred, and on June 12, 2012, issued an order stating the same. On June 18, 2012, Respondents filed with the Commission a request for rehearing, arguing that the

June 12, 2012, decision was "incorrect as a matter of law." On July 11, 2012, the Commission denied the request for rehearing. On July 18, 2012, Respondents filed in the Circuit Court for Baltimore City ("the circuit court") a petition for judicial review. On February 5, 2013, Respondents filed in the circuit court a motion for summary judgment, alleging that Petitioner's claim was barred by LE § 9-709(b)(3) and that, under Code of Maryland Regulations ("COMAR") 14.09.02.02A, electronic submission of a claim does not constitute "filing" of a claim. Petitioner filed a response in opposition to the motion for summary judgment as well as a request for a hearing, and the circuit court denied the motion for summary judgment.

Respondents appealed and, in an unreported opinion, the Court of Special Appeals reversed, holding that using the electronic submission date of the claim form for purposes of the statute of limitations instead of the date that the claim form is filed on paper with and date-stamped by the Commission is inconsistent with the Commission's regulations and incorrect as a matter of law. Petitioner petitioned for a writ of *certiorari*, and the Court of Appeals granted the petition.

Held: Affirmed.

The Court of Appeals held that, upon review of the application COMAR regulations, even after giving deference to the Commission's interpretation of them, pursuant to COMAR 14.09.02.02A, a claim is filed with the Commission when the claim is filed on paper with and date-stamped by the Commission. In other words, pursuant to COMAR 14.09.02.02A, electronic submission of a claim does not constitute "filing" of a claim. COMAR 14.09.01.04A is a general regulation that does not govern the filing of claim forms; the more specific provisions of COMAR 14.09.02.02A apply to the filing of claim forms.

The Court of Appeals held that the clear language of COMAR 14.09.02.02A and the Commission's website's instructions provided at the time of Petitioner's electronic submission of the second claim—and continue to provide—that electronic submission of a claim form does not satisfy the requirement for "filing" a claim, and, therefore, the date of electronic submission is not controlling in determining whether a claim was filed within the two-year limitations period.

The Court of Appeals held that Petitioner's claim was time-barred under LE § 9-709(b)(3) because it was not filed on paper with and date-stamped by the Commission until after expiration of the two-year deadline. As such, the Commission erred in ruling that the date of a claim could relate back, for purposes of the statute of limitations, to the date of the claim's electronic submission.

The Court of Appeals concluded that, absent regulations governing the electronic filing of claims, the Court would not read into the existing regulations procedures for electronic filing of workers' compensation claims. The Court of Appeals stated that nothing in the opinion precludes the Commission from promulgating new regulations to permit electronic filing of claims, nor was the Court expressing a preference that workers' compensation claims necessarily be filed in paper form. The Court simply held that, currently, under COMAR, electronic submission of claim forms does not constitute filing.

COURT OF SPECIAL APPEALS

Trashawn Johnson v. Roberta Franklin, No. 1216, September Term 2014, filed May 29, 2015. Opinion by Wright, J.

http://www.mdcourts.gov/opinions/cosa/2015/1095s14.pdf

EQUITY – BILL OF DISCOVERY

EQUITY – BILL OF DISCOVERY – HOW TO OBTAIN

EQUITY – BILL OF DISCOVERY – STANDARD OF REVIEW

Facts:

Appellant filed a lead-paint poisoning suit against the previous owners of property where he formerly resided in the Circuit Court for Baltimore City. In a separate action, appellant filed a complaint for discovery against appellee, the current owner of the property, seeking to inspect the property to test for the presence and extent of lead paint to support his lead-paint poisoning suit. Appellant propounded discovery of interrogatories and request for admissions of facts on appellee, who failed to respond to the admissions. Based on the discovery, appellant moved for summary judgment citing a lack of genuine dispute of material fact because, according to appellant, appellee had admitted to all of the facts based on her failure to respond to the request for admissions. After an evidentiary hearing, the circuit court denied appellant's motion and denied appellant's complaint.

Appellant contends that the circuit court erred in transforming his complaint into a request. Because of this alleged error, appellant argues that summary judgment should have been granted in this case and urges us to accept a *de novo* standard of review. In support of his argument, appellant cites appellee's failure to respond to his request for admissions, which he argues amount to an admission that there was no genuine dispute of material fact.

Held: Vacated and remanded.

In *Stokes v. 835 N. Washington Street, LLC*, 141 Md. App. 214 (2001), we held that a circuit court can order inspection of a non-party's property through an equitable bill of discovery. We cited the failure of the Maryland Rules to provide such a mechanism for relief and held that an equitable bill of discovery is the only way for plaintiffs in a lead-paint poisoning case to obtain

the information that they need. We did not, though, explain how a party can obtain a bill of discovery or how we would review the grant or denial of one.

Historically, a party could obtain a bill of discovery through either the action in which they seek to use the discovery or through a complaint in a separate action. In this case, appellant filed a complaint seeking a pure bill of discovery. The "complaint" here differs from a typical complaint because it is used only for discovery and is, therefore, more like a request.

Although it is called a "complaint," summary judgment is not an appropriate disposition for a bill of discovery. Under *Stokes*, a trial court must examine four factors at an evidentiary hearing:

> [T]hat: (1) what they seek to discover is material and necessary for proof of the other action already brought; (2) the moving party has no other adequate means of obtaining discovery of the essential information; (3) the moving parties' right of access to the rights of both the owner and the occupants of the property; and (4) issuance of an equitable bill of discovery will not impose an unreasonable hardship upon the owner or upon any occupant of the property;

As a result, determinations cannot be made as a matter of law, because a trial court must consider all four factual factors in evaluating a bill of discovery.

Because a bill of discovery cannot be disposed of via summary judgment, *de novo* is not the appropriate standard of review. Notably, bills of discovery have historically been favored at equity and should be granted unless there is a well-founded objection. We, thus, shall review the grant or denial of a bill of discovery under an abuse of discretion standard.

Here, the trial court did not make findings as to all four factors enumerated in *Stokes*. Because the court failed to give such consideration and, therefore, apply the proper legal standard, the court abused its discretion in denying appellant's bill of discovery.

Kamal Muhammad a/k/a Melvin Caldwell v. State of Maryland, No. 826, September Term 2014, filed May 29, 2015. Opinion by Eyler, Deborah S., J.

http:/www.mdcourts.gov/opinions/cosa/2015/826s14.pdf

CRIMINAL LAW – HEARSAY EXCEPTIONS

Facts:

In the Circuit Court for Baltimore City, Melvin Caldwell, AKA Kamal Muhammad, the appellant, was charged with attempted murder, rape, attempted rape, and other sexual offenses arising from a stabbing and a sexual assault in a vacant row house in Baltimore. The victim testified in detail about the events of the day in question. Her injuries during the encounter, which included serious stab wounds, resulted in her admission to Shock Trauma. Four days later, after she came out of sedation, a police detective interviewed her, and she gave him a detailed narrative of the events. At trial, after the victim testified, the State called the detective to testify about what the victim told him during the interview. Over objection, the court ruled that the detective could so testify, because, although the victim's oral statement to him was hearsay, it was admissible as a prompt complaint of sexual assault. The detective testified about the details of the interview, which were virtually identical to the victim's trial testimony.

The appellant testified, giving a version of events completely different from the victim's testimony. DNA evidence did not connect the appellant to the knife used in the stabbing and did not support the victim's version of events.

The appellant was convicted of attempted second-degree murder, two assault charges, a weapon charge, and fourth-degree sexual offense.

Held: Reversed.

The trial court erred in permitting the interviewing detective to recount, under the prompt complaint of sexual assault exception to the rule against hearsay, the victim's detailed factual narrative of the events on which the charges against the appellant were based. Under that exception, when the victim testifies, the State may introduce in its case-in-chief the fact that a prompt complaint was made by the victim, the circumstances surrounding the making of the complaint, and the date, time, crime, and identity of the perpetrator as reported by the victim. The purpose of this exception is to enable the State to provide some corroboration of the victim's testimony in sexual crime prosecutions, because those crimes by their nature usually are committed in isolation, without witnesses, and the prosecutions are credibility battles. The exception does not allow admission of the victim's full factual narrative of the events. That type of out-of-court statement is a prior consistent statement, and only is admissible if the hearsay exception for such a statement is satisfied.

The trial court's error in admitting the victim's full narrative of the events as a prompt complaint of sexual assault was not harmless beyond a reasonable doubt. The narrative likely bolstered the victim's credibility in a case in which a credibility determination was essential.

Mark R. Geier v. Maryland State Board of Physicians, No. 1095, September Term 2014, filed May 29, 2015. Opinion by Graeff, J.

http://www.mdcourts.gov/opinions/cosa/2015/1095s14.pdf

RES JUDICATA – CROSS-APPEAL – SUBSTANTIAL EVIDENCE – PEER REVIEW REPORTS – HO § 14-405(g).

Facts:

The Maryland State Board of Physicians (the "Board) issued charges against Dr. Mark Geier ("Dr. Geier") for alleged violations of numerous provisions of the Medical Practice Act (the "Act"), Md. Code (2009 Repl. Vol.) §§ 14-401 *et seq.*, of the Health Occupations Article ("HO"), including HO §§ 14-404(a)(3)(ii) (unprofessional conduct in the practice of medicine), 14-404(a)(11) (willfully making or filing a false report or record in the practice of medicine), 14-404(a)(22) (failing to meet standards, as determined by peer review report, for the delivery of quality medical care), 14-404(a)(40) (failing to keep adequate medical records), and 14-404(a)(12) (willfully failing to file or record any medical report as required under law, willfully impeding or obstructing the filing or recording of the report, or inducing another to fail to file or record the report). An Administrative Law Judge held a hearing on the charges against Dr. Geier and recommended that Dr. Geier's license be revoked.

Dr. Geier filed exceptions to the ALJ's proposed decision. After the Board held an exceptions hearing, it revoked Dr. Geier's license. The Board found, among other things, that Dr. Geier treated patients with Lupron, a medication that was not approved by the U.S. Food and Drug Administration for use on children in the absence of precocious puberty, and Dr. Geier did not perform an adequate examination to determine if the patients had precocious puberty. Although it noted Dr. Geier's opinion that Lupron therapy was appropriate for purposes not approved by the FDA or the American Academy of Pediatrics, and his testimony that he treated patients who met his profile with Lupron, it found that, with the exception of one patient, "none of these patients met even Dr. Geier's profile for Lupron therapy." The Board also found that Dr. Geier prescribed chelation therapy to patients who failed to display the need for chelation, and began this therapy without documenting a reason for the treatment and without adequate documented informed consent. The Board also found that he violated the standard of quality care by prescribing for patients a drug not approved for any use in the United States.

The Board found that Dr. Geier "egregiously violated basic medical standards in his treatment of these patients by not evaluating them properly, lying about which drug he was prescribing, and failing to evaluate in any realistic medical way whether his intensive and very expensive treatment was effective."

On judicial review, the Circuit Court for Montgomery County affirmed the Board's decision. On appeal from that decision, Dr. Geier raised multiple issues, including that there was not substantial evidence that he violated the standard of care for quality medical care or engaged in

unprofessional conduct in the practice of medicine and the Board failed to present evidence of two peer review reports.

Held: Affirmed.

The Board initially argued that Dr. Geier's petition for judicial review in the Circuit Court for Montgomery County was barred on *res judicata* grounds because Dr. Geier voluntarily dismissed two other petitions for judicial review that he had filed to contest the Board's decision. The Board acknowledged that a voluntary dismissal typically is done without prejudice, but it argued that, pursuant to Md. Rule 2-506(c), a notice of voluntary dismissal "operates as an adjudication upon the merits when filed by a party who has previously dismissed in any court of any state or in any court of the United States an action based on or including the same claim." The circuit court denied the Board's motion to dismiss, and it affirmed the Board's decision on the merits.

This issue is not properly before this Court. Because the Board is seeking to attack, as opposed to affirm, the circuit court's decision, the Board was required to file a cross-appeal, which it failed to do

The Board's conclusion that Dr. Geier violated the standard of care and committed unprofessional conduct was supported by the record. With respect to the Board's conclusion that Dr. Geier failed to meet the standard of quality care required by HO § 14-404(a)(22) by "failing to properly evaluate patients before treating them with an intensive regimen of drug therapy." Dr. Geier diagnosed his patients with precocious puberty, but he did not perform the required evaluations to support that diagnosis, which was the purported basis to treat them with Lupron. Although Dr. Geier asserted that he was not prescribing Lupron for its "on label" use, to treat precocious puberty, his correspondence with the patients insurance companies contradicts that argument. Moreover, even with respect to the claim that Dr. Geier properly used Lupron "off-label" to treat patients for autism, the record supports the Board's finding that, with the exception of one patient, none of the patients met the profile Dr. Geier said that he used.

With respect to Dr. Geier's assertion that the Board failed to present evidence of the peer review reports, although HO § 14-401(e)(1)(ii) provides that, for each allegation it refers for peer review, the Board "shall obtain two peer review reports," HO Section 14-405(g) provides that "the hearing of charges may not be stayed or challenged by any procedural defects alleged to have occurred prior to the filing of charges." Accordingly, Dr. Geier is not permitted to challenge on appeal any deficit in the pre-charge peer review process.

American Civil Liberties Union Foundation of Maryland, et al. v. John R. Leopold, et al., No. 85, September Term 2014, filed May 28, 2015. Opinion by Nazarian, J.

http://www.mdcourts.gov/opinions/cosa/2015/0085s14.pdf

MARYLAND PUBLIC INFORMATION ACT – WRONGFUL COMPILATION

COUNTY OFFICIAL – PUBLIC OFFICIAL IMMUNITY

PUBLIC INFORMATION ACT REQUEST – TIMELINESS OF DISCLOSURE

PUBLIC INFORMATION ACT – WITHHOLDING DOCUMENTS – MOOTNESS

Facts:

John R. Leopold served as Anne Arundel County Executive and was indicted in early 2012 for misconduct in office, partly because of claims that he abused his office and directed subordinates to assemble dossiers on certain individuals whom he viewed as potential political challengers. Some of those individuals and the American Civil Liberties Union Foundation of Maryland tried to obtain this information using the provisions of the Maryland Public Information Act ("PIA"), by serving notices not just on Mr. Leopold (in his individual capacity and as County Executive), but also on James Teare (then the Anne Arundel County Chief of Police), and, generically, the custodian of records, under the PIA. Although Anne Arundel County provided some responses, the appellants were dissatisfied with the response and sued in the Circuit Court for Anne Arundel County alleging that Mr. Leopold, Chief Teare, and the County violated the PIA, and asking the court to compel the production of additional documents, enter a declaratory judgment, and award damages. The circuit court granted the appellees' Motion to Dismiss and/or for Summary Judgment, and the ACLU appealed.

Held: Reversed in part, affirmed in part, and remanded.

The Court of Special Appeals held that the circuit court erred in dismissing Count I, in which the appellants alleged that the appellees violated the PIA by wrongfully compiling and using information about the appellants for use in Mr. Leopold's reelection campaign. Specifically, the Court reasoned that the appellants could properly invoke a provision of the PIA that imposes liability where a person "willfully and knowingly permits inspection or use of a public record" in violation of the PIA. See Md. Code (1984, 2009 Repl.Vol.), § 10–626 of the State Government Article. Moreover, County officials were not protected by public official immunity, and in fact the doctrine did not apply in the first place, where the behavior complained of did not fall within the universe of conduct protected by it. Public official immunity protects against "errors in judgment," which applies to officials who act negligently in the course of their discretionary duties. It does not apply where the complainants alleged that the public officials intentionally

put together information about political adversaries in a context that had nothing to do with *any* duties of the official, discretionary or otherwise.

The Court of Special Appeals affirmed the trial court's grant of summary judgment on the remaining counts. *First*, it held that the trial court properly granted summary judgment on the appellants' claim alleging delays in production of documents on the part of the County. Although the statute imposed a thirty-day deadline to respond to requests, the County *responded* to the original request within thirty days, even though it did not provide all requested documents within thirty days, and the broad scope of the requests (and the ongoing dialogue between the parties about what was responsive) warranted some leeway to the County. *Second*, the appellants' claim that certain taped interviews were wrongfully withheld under the PIA was moot where the County ultimately produced the tapes as soon as its perceived justification for withholding them had passed, and no useful purpose would be served by reaching the merits of appellants' claim that they should have been disclosed sooner.

A Guy Named Moe, LLC t/a Moe's Southwest Grill v. Chipotle Mexican Grill of Colorado, LLC, et al., No. 2270, September Term 2013, filed May 29, 2015. Opinion by Krauser, C.J.

http://www.mdcourts.gov/opinions/cosa/2015/2270s13.pdf

LAND USE – SPECIAL EXCEPTION – STANDING – JUDICIAL REVIEW

Facts:

Moe's, a Virginia LLC, leases 122 Dock Street in Annapolis and has operated a restaurant at that location since 2006. On August 27, 2012, Chipotle, a competitor of Moe's, filed an application for a special exception with the city's Department of Planning and Zoning, so that it could open a "standard restaurant" at 36 Market Space in downtown Annapolis, a location just four to five hundred feet from one of Moe's restaurants.

Chipotle's application sought permission to modify the use of the Market Space property, which had been previously occupied by a coffeehouse with a bookstore. Among other things, it requested the right to increase the interior seating for customers, to "remove the bookstore component from the current restaurant license," and to maintain its daily hours of operation from 11 a.m. to midnight.

On September 25, 2012, the City's zoning department issued a staff report recommending approval of Chipotle's application. That report was then transmitted to the Board of Appeals of the City of Annapolis, a public hearing was subsequently held by the Board on Chipotle's application. Following that hearing, the Board voted to approve Chipotle's application for a special exception and latter issued a written opinion confirming and explaining its decision.

Contesting that decision, Moe's filed a petition for judicial review in the circuit court. Although the filing fell within the 30-day period for filing such a petition under Rule 7-203(a), it notably occurred several years after Moe's right to do business in Maryland had been forfeited, a right that was not restored until September 24, 2013, over four months after the 30-day filing period for such petitions had lapsed. That is to say, Moe's had lost its right to do business in Maryland when it filed its otherwise timely petition for judicial review. What is more, notwithstanding the forfeiture of its right to do business in this state, Moe's continued to do business in Maryland without pause or interruption and, in fact, was conducting business in Maryland on the very day that it invoked the assistance of the Maryland judiciary by filing the petition at issue.

Chipotle responded to that petition, by filing a motion to dismiss in the circuit court, contending that, because Moe's had been stripped of its right to do business in Maryland and nonetheless continued to do business in this state, it lacked standing to seek judicial review. Nor could it file such a petition, Chipotle added, as either a "person aggrieved by the decision or action" of the Board, under L.U. § 4-401(a)(1), or as a "taxpayer," under L.U. § 4-401(a)(2), as it was neither.

On December 4, 2013, the circuit court granted Chipotle's motion to dismiss "with prejudice," stating that Moe's "does not have standing" because it "is not a taxpayer within the meaning of the statute and therefore on that basis alone the Court must grant the motion." The court went on to state that, because it was granting Chipotle's motion to dismiss on Moe's lack of taxpayer status, it did not "have to get into" other issues, though it appeared to do precisely that when it expressed the belief, in ruling on that motion, that Moe's opposition to Chipotle's request for a special exception was "a matter of competition," which, if true, would have denied Moe's "aggrieved" party status.

Held:

A foreign LLC, like Moe's, that had its right to do business in Maryland forfeited but nonetheless continued to do business in this state, in violation of Maryland law, cannot maintain a suit in Maryland. And, if it files a petition for judicial review during that time, that action is void *ab initio*.

ATTORNEY DISCIPLINE

*

By an Order of the Court of Appeals dated June 1, 2015, the following attorney has been suspended:

SEUNG OH KANG

*

By an Order of the Court of Appeals dated June 5, 2015, the following attorney has been disbarred by consent:

BRYNEE KYONNE BAYLOR

*

By a Per Curiam Order of the Court of Appeals dated June 5, 2015, the following attorney has been disbarred:

KENNETH HALEY

*

By an Order of the Court of Appeals dated June 4, 2015, the following attorney has been placed on inactive status by consent, effective June 16, 2015:

NORRIS CARLTON RAMSEY

*

By an Opinion and Order of the Court of Appeals dated June 23, 2015, the following attorney has been disbarred:

EARL AMERICUS SMITH

*

By an Order of the Court of Appeals dated June 24, 2015, the following attorney has been disbarred by consent:

STEPHEN HOWARD CHIRUMBOLE

*

UNREPORTED OPINIONS

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Church, Treyvon Lemar v. State	1580 *	June 3, 2015
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Valderrama, Mariela v. Eden Brook Condo.	0387	June 3, 2015
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In re: Yaritza H.	1846	June 3, 2015
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Medimmune v. Univ. of Mass. Biologic Labs.	0008 *	June 3, 2015
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In re: Juwan S.	0314	June 8, 2015
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Kingman, Stephen v. Personnel Board	0748	June 10, 2015
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In re: Adoption/Guardianship of Shyreese J.	2251	June 10, 2015
In re: Terrez C.	2223 *	June 11, 2015
Sewell, Darnell v. State	1341 *	June 11, 2015
Wills, Branden Lamar v. State	2435 **	June 11, 2015
Evans, Marcus v. State	1851 *	June 11, 2015
In re: Koreem M.	1499	June 11, 2015
Tyler, George v. State	0828	June 11, 2015
Jackson, Antonio v. State	2176 **	June 11, 2015
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Madigan, Kelly & Everett, Larai v. State	2263 *	June 22, 2015
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