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COURT OF APPEALS

BANKING - CONSUMER PROTECTION - CREDIT CARD AGREEMENTS - GOVERNING LAW PROVISIONS - FEDERAL PREEMPTION - CONTRACT LAW INTERPRETATIONS

Facts: Appellant, Dale Wells and Appellee, Chevy Chase Bank, F.S.B. entered into a credit-card agreement which purportedly bound the parties to comply with the provisions of Subtitle 9 of the Commercial Law Article, which addresses the form of the notice required when a Cardholder Agreement is amended, and other "applicable federal law." The Cardholder Agreement provided for an annual fee, a minimum late charge fee of fifteen dollars, described the method of computing the finance charge, and stated that the "ANNUAL PERCENTAGE RATE will never exceed 24%."

Chevy Chase Bank moved its home office to Virginia. With the periodic statements mailed in January and February of 1996 to its cardholders, Chevy Chase included a notice of change of terms of the Cardholder Agreement. The notice of change took the form of a restatement and revision of the Cardholder Agreement, with the new or revised terms italicized and, with respect to a waiver of jury trial provision, both italics and all uppercase print was used.

Although both parties agree that state laws purporting to regulate the appellees' lending activities have been preempted by § 5(a) or the Homeowners Loan Act, 12 U.S.C. 1464(a) and its implementing regulations, the appellants seek to recover damages for breach of contract with the appellants to comply with Subtitle 9 when amending the Cardholder Agreement. The Circuit Court for Baltimore City rejected the appellant's argument noting it "seems both implausible and inconsistent with federal preemption to claim that a state regulatory scheme was agreed to between [the] parties by a mere reference to Subtitle 9."

The appellants noted an appeal to the Courts of Special Appeal and this Court issued on its own initiative, a Writ of Certiorari Wells v. Chevy Chase, 369 Md. 570, 801 A2d 1031 (2002), prior to any proceedings in the intermediate appellate court.

Held: Reversed. Where a credit-card agreement, contractually binds a party to comply with provisions of Subtitle 9 of the Commercial Law Article, Md. Code (1975, 200 Repl. Vol.), §§ 12-901 - 12 924 and applicable federal law, in a governing law provision, a purported breach of that section of the agreement is not preempted by the Homeowners Loan Act, 12 U.S.C. 1464(a) and its

governing regulations. Rather, such a purported breach is subject to the traditional objective law of contract interpretation and construction, articulated in Taylor v. NationsBank, 365 Md. 166, 178 A.3d 645, 653 (2001). Contract interpretation will determine what the agreement means, the intent of the parties in entering into the agreement, Chevy Chase's intent in drafting it and, in particular, the scope and extent of the parties' obligations and rights under it

Dale Wells v. State, et al. v. Chevy Chase Bank, F.S.B., et. al., No. 41, September Term, 2002, filed September 23, 2003. Opinion by Bell, C.J.

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CRIMINAL LAW - COMPETENCE TO STAND TRIAL - COMPETENCE TO WAIVE COUNSEL - *SUA SPONTE* OBLIGATION OF TRIAL JUDGE TO CONDUCT COMPETENCY EVALUATION - RULE 4-215

Facts: Petitioner Gregg was charged in the District Court of Maryland, sitting in Anne Arundel County, with second degree assault. The District Court ordered a competency evaluation of Gregg. Upon its completion, the court held a competency hearing, after which the District Court judge found Gregg competent to stand trial, notwithstanding the medical opinion of one of Gregg's evaluators that he was not competent to stand trial. Gregg then prayed a jury trial and the case was transferred to the Circuit Court for Anne Arundel County. The transcript of, and exhibits from, the District Court's competency proceedings did not accompany the file when transferred to the Circuit Court, although the District Court's CR-51 form committing Gregg to the Department of Health and Mental Hygiene for evaluation was included, as well as a docket entry noting the District Court's conclusion as to competency.

In the Circuit Court, Gregg proposed a waiver of his right to counsel, which was accepted by the court after finding the waiver to be knowing and voluntary. Although Gregg acted oddly

at stages of the trial and sentencing, no additional competency evaluation was requested or undertaken. Gregg was convicted by a jury of second degree assault. The court imposed a sentence of five years imprisonment, all but six months suspended, with five years probation. Petitioner, through assigned counsel, appealed to the Court of Special Appeals, which affirmed in an unreported opinion. Gregg's counsel's petition for certiorari was granted by the Court of Appeals.

In the Court of Appeals, Gregg noted that Maryland follows the federal standard regarding competency determinations, that being whether the accused rationally can understand and communicate with his attorney and both rationally and factually understand the proceedings against him or her. That being so, an examination of an accused against this standard should occur when triggered by: (1) motion of the accused; (2) motion of defense counsel; or (3) a *sua sponte* inquiry by the court occasioned by the court's concern as to the defendant's competency to stand trial. Gregg maintained that the Circuit Court should have conducted a separate inquiry into his competency to stand trial and to waive counsel, and that its failure to do so was reversible error.

Held: Affirmed. The determination whether to instigate a competency evaluation must be made based on the evidence of record in the Circuit Court. When not raised by the defense, clear indicium of potential incompetence sufficient to trigger the court's *sua sponte* duty to evaluate defendant's competency to stand trial must be identified. The mere facts that (1) a competency evaluation was conducted in the District Court, resulting in a finding of competency, and (2) there may exist a psychiatric report generated for the District Court proceeding finding the defendant not competent, are not alone sufficient indicia of incompetency to trigger the Circuit Court's *sua sponte* duty to make an independent competence determination. Because the proceedings in the Circuit Court were separate and distinct from the proceedings in the District Court, the complete documentary record of the competency deliberations in the District Court was not transferred automatically to the Circuit Court. The defendant's competence to stand trial must be raised anew in the Circuit Court proceedings - by motion of the defendant or defense counsel, or by conduct by the defendant sufficient to trigger *sua sponte* consideration by the trial judge - in order to compel the need for a new or subsequent competency evaluational determination. Gregg's conduct in the Circuit Court proceedings, when compared to conduct in analogous reported appellate cases, was not such that, other than being characterized as odd or stubborn, it triggered the trial judge's

duty to make further inquiry. Because Petitioner's competency to stand trial was not properly at issue before the Circuit Court, his follow-on argument failed that there should be a heightened standard applied to the Circuit Court's assessment of Gregg's competency to waive counsel. Maryland has not adopted a higher standard for assessing competency to waive counsel than that required by the Federal Due Process Clause or Maryland Rule 4-215. Because Petitioner received from the circuit court judge each and every on-the-record advisement required by Rule 4-215, his waiver of counsel was valid and effective.

Gregg v. State, No. 112, September Term 2002. Filed October 16, 2003. Opinion by Harrell, J.

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EMINENT DOMAIN – EVIDENCE – VALUE OF PROPERTY – EVIDENCE OF THE REMOTE PURCHASE PRICE OF PROPERTY IN A CONDEMNATION PROCEEDING IS RELEVANT ONLY WHEN THE PRICE IS PROPERLY ADJUSTED FOR TIME AND THERE EXISTS A LACK OF COMPARABLE SALES.

EMINENT DOMAIN – CONDEMNATION – JURY VIEW – MARYLAND RULE 12-207(C) DOES NOT REQUIRE JURY VIEWS OF PROPERTY ACQUIRED BY "QUICK-TAKE" CONDEMNATION.

Facts: Bern-Shaw Limited Partnership (Bern-Shaw) owned a property at 324 West Baltimore Street that was more than 100 years old and contained 25,000 square feet of space. On October 3, 2000, the Mayor and City Council of Baltimore (City of Baltimore) instituted a "quick-take" condemnation action for immediate possession and title of the property.

Shortly after taking possession of the five-story building, the City of Baltimore proceeded to evict the tenants and to turn off the electricity to the building. In the process of moving out, the tenants apparently ripped fixtures from the walls and left trash scattered over the floors. At this point, title, possession, and responsibility for the premises was in the City

of Baltimore. At the time of trial fourteen months later, the building was full of trash and infested with rats. This was the building's condition at the time of a jury view on December 11, 2001.

Bern-Shaw had objected to the jury being allowed to view the building's interior as it was at the time of trial. The City of Baltimore asked that the jury be allowed to see the interior of the building. Over objection by Bern-Shaw, the trial court ordered that the jury view the first two floors of the building.

At the trial itself, the City of Baltimore called two expert appraisal witnesses. The first expert testified that the value of the property was $225,000.00 while the second testified that the value was $234,000.00. Bern-Shaw also called two expert appraisal witnesses. Bern-Shaw's first expert appraisal witness testified that the value was $500,000.00 and the second testified that the value was $513,000.00. To determine these valuations, all four of the expert appraisal witnesses used comparable sales approximately within five years of October 3, 2000, the day of the "quick-take" acquisition. Several of these comparisons were of buildings within the same block, and all of the expert appraisal witnesses adjusted the sales prices to account for the lapse of time between the date of the comparable sale and the date of the take. In all, twelve comparable sales were introduced at trial.

A representative of Bern-Shaw, Harry Shapiro, was also called to testify as to the value of the building in question. During the cross-examination of Mr. Shapiro by the City of Baltimore, Shapiro was asked how much had been paid for the property when Bern-Shaw acquired it in 1982, 18 years prior to the condemnation. Bern-Shaw objected on the grounds that an 18-year-old sale was too remote in time to be of value to the jury, *i.e.*, was irrelevant. The trial court overruled the objection, and Shapiro testified that the building had been purchased in 1982 for $85,000.00.

The jury returned a verdict of $140,000.00. This verdict was considerably lower than any of the valuations given by either Bern-Shaw's or the City of Baltimore's expert appraisal witnesses. The only evidence of any value less than the appraisals was the testimony that the purchase price of the 18-year-old sale had been $85,000.00. Bern-Shaw moved for a new trial, but the motion was denied. Bern-Shaw then appealed to the Court of Special Appeals. The Court of Special Appeals affirmed the trial court's judgment as to both the jury verdict and the denial of a motion for a new trial.

Held: Reversed and remanded for further proceedings. The Court of Appeals held that evidence as to prior purchase price of a property involved in condemnation proceedings is irrelevant under Maryland Rules 5-401 & 5-402 where the prior purchase price is found to be remote in time, *i.e.*, generally more than five years prior to the condemnation, unless it can be shown that the remote prior sale is the only comparable sale that can be produced at trial. Even then, the price paid at such a remote in time sale would have to be adjusted for present value in order to be relevant. No such adjustment was made in the present case. At trial, twelve recent comparable sales were introduced by expert appraisal witnesses. Therefore, the Court of Appeals determined that evidence concerning the 18-year-old purchase price of the condemned property was not relevant for the jury's determination of fair market value of the condemned property.

The Court of Appeals further held that, in a "quick-take" condemnation, Maryland Rule 12-207(c) does not require a jury view of the property. Because Maryland Rule 12-207(c) states that it pertains to property "sought to be condemned," the Rule does not mandatorily apply to "quick-take" condemnations, which by their nature involve property already "taken." Therefore, the trial court was in error to allow a jury view over Bern-Shaw's objection. Furthermore, because Bern-Shaw had no control of the property's condition for fourteen months prior to trial, the Court found that it was unfairly prejudicial to Bern-Shaw for the jury to view the property as it existed at the time of trial.

Bern-Shaw Limited Partnership v. Mayor and City Council of Baltimore. No. 1, September Term, 2003, filed October 8, 2003. Opinion by Cathell, J.

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JUDGES - DE FACTO OFFICER - - COLLATERAL ATTACK - QUO WARRANTO A JUDGE VALIDLY APPOINTED AND DULY ELECTED WHO, IN CONTRAVENTION OF THE RESIDENCY REQUIREMENTS ENUMERATED IN THE MARYLAND CONSTITUTION, MOVES HIS OR HER RESIDENCE FROM THE COUNTY OF THE

COURT TO WHICH APPOINTED AND ELECTED, BUT ACTS UNDER THE COLOR OF THAT OFFICE IS A DE FACTO JUDGE, IF NOT A JUDGE DE JURE, WHOSE ACTIONS MAY NOT BE COLLATERALLY ATTACKED.

Facts: The petitioner, Wesley Eugene Baker, who was convicted by jury of murder, was sentenced to death by Circuit Court Judge Cypert O. Whitfill. Following an unsuccessful direct appeal and unsuccessful collateral attacks on the judgment, Judge Whitfill signed a warrant of execution authorizing the petitioner's execution. Subsequently, the petitioner filed motions in the Circuit Court for Harford County to quash his sentence and the execution warrant on the basis that Judge Whitfill lacked the authority to preside over, or issue a sentence in his case. More particularly, the petitioner alleged that, because Judge Whitfill lived, for a period of time during his elected term, outside of the jurisdiction to which he was appointed and then elected, he failed to satisfy the residency requirements enumerated in Article IV, Section 2 of the Maryland Constitution, and thus lacked, as a matter of law, the authority to preside over the petitioner's case or any case in Harford County.

The Circuit Court for Baltimore County denied the petitioner's motions without a hearing. The petitioner noted an appeal to the Court of Special Appeals, but prior to any proceedings in the intermediate appellate court, the case was transferred, pursuant to Md. Code (1973, 2002 Repl. Vol.) § 12-307 of the Courts and Judicial Proceedings Article and Maryland Rule 8-132, to the Court of Appeals.

Held: Affirmed. When a judge is properly appointed and duly elected, that judge does not lose judicial authority, by operation of law, upon his change of residence. Even if, by virtue of a change of residence, Judge Whitfill ceased to be a de jure judge, he was, at the very least, a de facto judge for the period relevant to this case. Furthermore, the legality of the acts of a de facto judge, or that judge's entitlement to office, may not be attacked in a proceeding to which the de facto judge is not a party.

Baker v. State, No. 109, September Term, 2002, filed, October 17, 2003. Opinion by Bell, C.J.

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REAL PROPERTY – RIGHT-OF-WAY EASEMENTS – EXPRESS GRANT – OBSTRUCTION – IN THE ABSENCE OF A RESERVATION OR CONTRARY CUSTOM/USAGE, A PERMANENT OBSTRUCTION INTERFERES, AS A MATTER OF LAW, WITH THE DOMINANT TENEMENT'S RIGHT TO THE USE OF ALL THE EXPRESS EASEMENT

CIVIL PROCEDURE – TRIALS – MOTION FOR RECUSAL – A MOTION FOR RECUSAL IS UNTIMELY THAT IS FILED AFTER AN UNFAVORABLE JURY VERDICT AND IS USED TO COMPLAIN ABOUT THE TRIAL JUDGE'S GENERALLY UNOBJECTED TO CONDUCT PRIOR TO AND DURING THE TRIAL

Facts: In July 2000, the Kirkpatricks, standing in title as grantors of the subject easement, erected two parallel barbed wire fences ("the fences"), inside the drainage ditches, along each side of an access road within a right-of-way easement created by deed and benefitting the Millers. The fences were approximately twelve feet apart and foreclosed the Millers' ability to use or maintain forty percent of the right-of-way and prevented access directly from the right-of-way to the Millers' farm fields.

The trial judge preliminarily found, as a matter of law, that the Millers possessed an express grant of a right-of-way easement, twenty feet in width, accomplished by a reservation in a deed, across the Kirkpatricks' property. He then submitted to the jury the Millers' claim for monetary damages for interference with the easement. The jury found that the Kirkpatricks were not liable and declined to award compensatory damages. Following return of the jury verdict, the trial judge proceeded to rule on the Millers' equitable claim for removal of the fences and refused to order removal. On direct appeal by the Millers, the Court of Special Appeals affirmed in an unreported opinion.

The Court of Appeals granted the Millers' petition for writ of certiorari to consider: (1) whether a twenty foot right-of-way, expressly granted by deed to the dominant tenement, may be narrowed to twelve feet by the unilateral action of the subservient tenement, and (2) whether a different judge should have heard and decided the recusal motion because of the nature of the allegations of judicial misconduct by the trial judge.

Held: Reversed. As regards the right-of way, the Court

found that, given the absence in the Kirkpatricks' deed creating the easement of a reservation in them to modify the express easement prospectively, the Court of Special Appeals and the Circuit Court should not have concerned themselves with whether the Kirkpatricks' alteration of the express easement, by installation of the fences, nonetheless afforded the Millers reasonable access to their home and farm property. The Court concluded that was the wrong question to be analyzed. The Court held, as a matter of law, that the Kirkpatricks, standing in chain of title as grantors of an express easement, may not unilaterally narrow the right-of-way easement from twenty feet to twelve feet by the installation of the fences. Therefore, the trial court should have ordered removal of the fences, notwithstanding the jury's failure to award monetary damages for interference with use of the right-of-way.

As regards the Millers' motion for recusal of the trial judge, the Court concluded that the Millers inappropriately waited until after an unfavorable jury verdict to file a motion for new trial and recusal, reciting perceived wrongs or slights by the trial judge only alleged generally to have occurred throughout or even prior to the trial, and without proper preservation of the averred trial misconduct. Under the circumstances present in this case, the Court held that the motion for recusal was, at a minimum, untimely.

Harold M. Miller v. Roger M. Kirkpatrick, No. 2, Sept. Term, 2003, filed 9 October 2003. Opinion by Harrell, J.

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TAXATION - ADMISSIONS AND AMUSEMENT TAX - PURSUANT TO MD. CODE § 4-101(B)(1)(V) OF THE TAX-GENERAL ARTICLE THERE IS AN INSUFFICIENT CONNECTION BETWEEN THE TAXATION OF THE GROSS RECEIPTS OF REFRESHMENTS SOLD IN A RESTAURANT DURING PERIODS WHERE MUSIC WAS PLAYED WHERE THE RESTAURANT DID NOT CHARGE PATRONS TO ENTER THE FACILITY, DID NOT INCREASE THE PRICE OF REFRESHMENTS DURING THE LIVE ENTERTAINMENT AND DID NOT REQUIRE

ANY PURCHASE OF REFRESHMENTS IN ORDER FOR A PERSON TO BE PRESENT.

Facts: Clyde's Chevy Chase location is a two-floor restaurant whose main dining area is located at street level just inside the primary entrance. The bar area is located one floor below street level. At the end of the room where the bar is located is a raised stage/display area where musicians hired by Clyde's perform on certain nights.

Clyde's provides music to enhance the restaurant's ambiance, increase revenue, expand patronage, and maintain a varied atmosphere in the bar area. It provides live music three nights per week. On the remaining nights of the week, at lunch and in the upstairs restaurant, the restaurant provides background music played through a cable music system.

The restaurant announces the live musical performances on the back of the restaurant's menu, on the restaurant's web site and in free unsolicited listings in local newspapers. While there is no dance floor in the Chevy Chase location and Clyde's does not encourage dancing, occasionally patrons will spontaneously dance.

The restaurant does not impose any admission fee or cover charge when it provides live entertainment. It similarly does not increase the prices of any food or drinks, nor does it require any minimum purchase in order for a patron to be present for the live entertainment. A person could be present for the entertainment without purchasing any product or service from the restaurant. Musicians are paid out of the till at the end of the night regardless of the amount of sales from food or beverages.

The prices at the Clyde's restaurant in Chevy Chase are competitive with the prices of similar local establishments. Clyde's prices are driven by competition with other local restaurants and overhead costs, including the cost of food, drinks, utilities, payroll, supplies, menus and music. The restaurant considers all of these factors, compares them with what the market can bear, and accordingly determines the prices for its food and beverages.

The Columbia restaurant is a one-floor establishment located in the Columbia Town Center. This restaurant has a cable music system similar to that of the Chevy Chase location for the purpose of providing background music to enhance the atmosphere and dining experience. Thursday night is the only night the Columbia location provides other music. No location for dancing is provided and dancing is not encouraged.

Similar to the Chevy Chase location, the Columbia restaurant does not charge an admissions or cover charge, raise its prices or require any minimum purchase on Thursday evenings when the musicians play. Its prices are competitive in relation to the other local restaurants. The performers are paid in a similar manner to the entertainers in the Chevy Chase location. The restaurant only announces its live music on the restaurant's menu board, as there are no local publications that regularly announce the Columbia restaurant's entertainment.

The Comptroller's audit revealed that the proprietor of the Chevy Chase location had not regularly collected or remitted admissions and amusement tax on sales of refreshments made in the bar of the restaurant during the periods when the restaurant provided live entertainment. The Comptroller's audit of the Columbia location revealed that while the proprietor of that restaurant had, on a regular basis, remitted the admissions and amusement tax on refreshment sales made during the time that live entertainment was provided, they had underpaid the tax. A tax assessment was thus issued against both.

Held: The Court of Appeals held that the Tax Court correctly found that taxing gross receipts of refreshments, where the restaurant did not charge patrons to enter the facility or increase the price of refreshments during the live entertainment, did not require a minimum charge to be present for the entertainment and did not require refreshments to be bought in order for a person to be present, was too attenuated a connection with the entertainment pursuant to § 4-101(b)(1)(v). The Court of Appeals held that the phrase "in connection with entertainment" is inherently ambiguous where the statute is silent as to the extent of the nexus necessary between refreshment sales and entertainment. The Court further held that § 4-101(b)(1)(v) requires a direct financial nexus, beyond mere overhead expenses paid for the music, between refreshments sold and entertainment provided by Clyde's.

Comptroller of the Treasury v. Clyde's of Chevy Chase, Inc., et al. No. 11, September Term, 2003, filed October 15, 2003. Opinion by Cathell, J.

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COURT OF SPECIAL APPEALS

CIVIL PROCEDURE – CLAIM PRECLUSION – MATERIAL OPERATIVE FACTS OCCURRING AFTER THE DECISION IN AN ACTION WITH RESPECT TO THE SAME SUBJECT MATTER MAY IN THEMSELVES, OR TAKEN IN CONJUNCTION WITH THE ANTECEDENT FACTS, COMPRISE A TRANSACTION THAT MAY BE MADE THE BASIS OF A SECOND ACTION NOT PRECLUDED BY THE FIRST.

Facts: In 1992, a dispute arose between Margaret Hughes and William Russell Insley, Jr. ("Russell, Jr."), over a 186-acre parcel of land located in Dorchester County. The record title holder was Mrs. Hughes, but the Insleys, the family who owned property next to the 186 acres, claimed the land by adverse possession.

William Russell Insley, Sr. ("Russell, Sr."), and his relatives had developed ties to the 186-acre parcel in the 1930's, when Russell, Jr.'s, grandfather, Curtis Insley, used the land for hunting, trapping, and removing timber. Curtis died intestate in 1960, but his son, Russell Insley, Sr., continued treating the 186-acre parcel as if he owned it. Russell, Sr., died in 1992, and bequeathed all his property to his wife, Lottie Mae Insley. Russell, Sr.'s, will named Lottie Mae as his personal representative. After Russell, Sr., died, Russell, Jr., carried on activities on the property similar to those engaged in by his father. In 1993, Lottie Mae filed a quitclaim deed conveying all her interest in the 186-acre parcel to Russell, Jr.

Mrs. Hughes filed suit in the Circuit Court for Dorchester County in 1993 to quiet title to the 186-acre parcel. Lottie Mae and Russell, Jr., filed counterclaims to quiet title in which they alleged that their predecessors had adversely possessed the land in excess of twenty years. The court entered partial summary judgment in favor of Mrs. Hughes, ruling that she had paper title to the disputed property. In regard to the counterclaim, a jury found that Russell, Jr., had failed to prove that his possession had been without interruption for at least twenty consecutive years. The court entered judgment against the Insleys on their counterclaims. With respect to Mrs. Hughes's complaint, the court found that Mrs. Hughes had failed to prove "peaceable possession" of the 186-acre

tract and therefore was not entitled to quiet title. Judgment on Mrs. Hughes's claim was granted in favor of Russell, Jr., and Lottie Mae.

In 2000, Mrs. Hughes filed a complaint for trespass and ejectment against Russell, Jr., Lottie Mae, individually, and Lottie Mae as personal representative of the estate of Russell, Sr. The defendants filed a counterclaim alleging that (1) in 2001, Lottie Mae, in her capacity as personal representative of the estate of Russell, Sr., had executed a deed of the 186-acre parcel to herself, as the surviving spouse of Russell, Sr.; (2) Russell, Sr., had acquired fee simple title to the property through adverse possession before Mrs. Hughes initiated her first suit; (3) the estate of Russell, Sr., acquired the property when he died; (4) Lottie Mae had acquired the property when she executed the 2001 deed conveying the land to herself; and (5) Lottie Mae and Russell had acquired fee simple absolute title to the property by adverse possession. Mrs. Hughes later filed an amended complaint in which she asked the court to declare the 2001 deed null and void.

The trial judge found that Russell, Jr., would have acquired the disputed property by adverse possession, but under the doctrine of claim preclusion, his failure to prevail in the first suit barred him from successfully asserting an adverse possession claim against Mrs. Hughes in the second suit. The judge also found that Mrs. Hughes's claims for trespass and ejectment were barred by *res judicata* as a result of her failure to prevail in the first suit. A declaratory judgment was entered declaring that title to the 186-acre parcel was vested in Mrs. Hughes. As a result, Mrs. Hughes, who purportedly had legal title, could not prevent Russell, Jr., from using the land, and Russell, Jr., could not assert legal title to that land. Mrs. Hughes appealed, and Russell, Jr., and Lottie Mae, individually and as personal representative of Russell, Sr.'s, estate, filed a cross-appeal.

Held: Reversed in part, affirmed in part. The Court determined that Russell, Sr., had acquired title to the 186-acre parcel by adverse possession before his death and that the title passed to his estate when he died. The Court held that even though Lottie Mae had quitclaimed her interest in the property to Russell, Jr., he did not acquire any interest in the land at that point. Russell, Jr., only acquired an interest when Lottie Mae, as representative of her husband's estate, deeded the property to herself. At that point, Lottie Mae's earlier quitclaim to Russell, Jr., took effect as a matter of law, under the doctrine of after-acquired property.

The Court held that Russell, Jr., was not barred from asserting a claim of after-acquired property against Mrs. Hughes in the second

suit because a material operative fact had occurred after he lost the first suit that allowed him to prove, for the first time, that his father's interest in the property had passed to him by deed, i.e., Lotttie Mae, as representative of the estate of Russell, Sr., deeded the land to herself, which by operation of law, conveyed title to Russell, Jr. In so holding, the Court adopted the rule set forth in the Restatement (Second) of Judgments, section 24, comment *f* (1982), which reads: "Material operative facts occurring after the decision in an action with respect to the same subject matter may in themselves, or taken in conjunction with the antecedent facts, comprise a transaction that may be made the basis of a second action not precluded by the first."

The Court remanded the case to the circuit court to (1) issue a judgment declaring that Russell, Jr., was the owner of the 186-acre parcel and (2) enter a judgment in favor of Russell, Jr., and Lottie Mae on Mrs. Hughes's complaint for ejectment and trespass.

Margaret M. Hughes v. William R. Insley, Jr., et al., No. 558, Sept. Term, 2002, filed October 7, 2003. Opinion by Salmon, J.

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CRIMINAL LAW - EXPUNGEMENT - STATE HAS THIRTY DAYS FROM SERVICE OF EXPUNGEMENT PETITION TO OBJECT - EXPUNGEMENT HEARING MAY NOT BE HELD BEFORE THE STATE HAS AN OPPORTUNITY TO OBJECT AND/OR PRIOR TO EXPIRATION OF THIRTY-DAY PERIOD - STATUTORY CONSTRUCTION - TWO OR MORE CHARGES ARISING FROM SAME TRANSACTION ARE CONSIDERED A UNIT - A PETITIONER IS NOT ENTITLED TO EXPUNGEMENT ON ONE CHARGE OF A UNIT IF NOT ENTITLED TO EXPUNGEMENT ON ANY OTHER CHARGE IN THE UNIT.

Facts: Phillip Nelson was arrested for possession of stolen property (license plates stolen from a car dealer). In a lawful search incident to arrest, officers discovered nine individually wrapped bags of marijuana containing 8 grams each. The State charged Nelson with theft under $500, possession of marijuana, and possession with intent to distribute. In the Circuit Court for Charles County, Nelson entered a guilty plea to the possession

count and an Alford plea to the theft count, and the State entered a *nol pros* to the possession with intent to distribute count.

In order to facilitate his enlistment to military service, on October 18, 2002, Nelson filed a petition to have the *nol pros* charge expunged. Three days later, the State's Attorney's Office was served with a copy of the petition. The petition quickly came to a hearing two days later (October 23, 2002), before the State had answered the petition. Nobody from the State's Attorney's Office attended the hearing, and the court granted the petition.

The day after the hearing, October 24, 2002, the State filed an objection to the expungement petition. The State argued that the possession with intent to distribute charge was part of a unit of charges and, because Nelson was not entitled to expungement as to the charges for which he was convicted, he was not entitled to expungement of the other charges in the unit.

The court also denied the State's motion to vacate the order.

Held: Reversed. In this case of first impression, the trial court erred in granting the expungement petition prior to the expiration of time provided in the Criminal Procedure Article and Maryland Rules. Under § 10-105(d)(2) and Md. Rule 4-505(b), the State has thirty days to object to a petition for expungement. If the State files a timely objection, a hearing must be held pursuant to § 10-105(e) and Md. Rule 4-507(b). The court erred by holding a hearing and granting the petition before the State had an opportunity to object within thirty days from the time of service.

Equally compelling, the court erred in granting the petition because the charge that had been *nol prossed* was part of a unit of charges as to which the defendant was not entitled to expungement. Pursuant to § 10-107(a) of the Criminal Procedure Article, because the possession with intent to distribute arose out of "the same incident, transaction, or set of facts" the charges were considered a "unit." Therefore, according to § 10-107(b), Nelson was not entitled to expungement of any of the other charges in the unit.

State v. Nelson, No. 2335, September Term 2002, filed August 27, 2003 Opinion by Sharer, J.

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CRIMINAL LAW – SENTENCING – COURT MAY ORDER HOME DETENTION, MONITORED BY A LICENSED PRIVATE HOME DETENTION MONITORING AGENCY, AS A CONDITION OF PRE-TRIAL RELEASE, AND WHERE SUCH HOME DETENTION HAS BEEN ORDERED DEFENDANT IS ENTITLED TO CREDIT AGAINST HIS SENTENCE FOR TIME SPENT IN HOME DETENTION.

Facts: The appellant, Wesley Eugene Spriggs, was involved in a traffic accident in which one person was killed. He was charged with homicide while under the influence of alcohol, among other offenses.

Spriggs was arrested on the charges and spent 165 days in the Prince George's County Detention Center, with bail set at $25,000.00. The court eventually reduced Spriggs' bail to $10,000.00 on the condition that Spriggs arrange for home detention with a licensed private monitoring agency. Spriggs then met bail and was released to privately-monitored home detention.

Spriggs remained in privately-monitored home detention for 240 days, until the date of his trial in the Circuit Court for Prince George's County. He then entered an *Alford* plea to homicide while driving under the influence of alcohol. The court sentenced Spriggs to three years in the Prince George's County Detention Center with all but 18 months suspended in favor of three years probation. It gave him credit for the 165 days he spent in the county detention center prior to trial, but refused to give credit for the 240 days spent in privately-monitored home detention. The court stated that it did not believe that private "home confinement for which someone else pays and someone has an economic relationship with the person who monitors them is the same as our jail and our county correctional center."

Held: Sentence vacated and case remanded to the Circuit Court for Prince George's County for re-sentencing.

The Court of Special Appeals explained that, in accordance with § 6-218(b)(1) of the Criminal Procedure Article, "A defendant who is convicted and sentenced shall receive credit against a reduction of the term of a definite or life sentence, or the minimum and maximum terms of an indeterminate sentence, for all time spent in the custody of a correctional facility . . . or other unit because of: (i) the charge for which the sentence is imposed; or (ii) the conduct on which the charge is based." Quoting *Dedo v.*

State, 343 Md. 2, 11 (1996), the Court explained that

> [a] defendant is not in custody for purposes of [§ 6-218 of the Criminal Procedure Article] if the conditions of the defendant's confinement do not impose substantial restrictions on the defendant's freedom of association, activity and movement *such that unauthorized absence from the place of confinement would be chargeable as the criminal offense of escape* . . . .

(Emphasis added.) There was no dispute that while in home detention Spriggs' activities were electronically monitored, he was confined to his home unless he had specific permission to leave, he was granted permission to leave his home in order to work, and his activities were reported by the monitoring agency to the court.

The Court of Special Appeals stated that it was satisfied that, had Spriggs left his home without permission during the period of home confinement, he could have been prosecuted for escape. It observed that § 5-201(b) of the Criminal Procedure Article provides:

> In accordance with eligibility criteria, conditions, and procedures required under the Maryland Rules, the court may require, as a condition of a defendant's pretrial release, that the defendant be monitored by a private home detention monitoring agency licensed under Title 20 of the Business Occupations and Professions Article.

The Court explained that, under § 9-404(a) of the Criminal Law Article, a person is guilty of escape in the first degree if he or she "knowingly escape[s] from a place of confinement." Under § 9-401(f)(2) of the Criminal Law Article, "[p]lace of confinement" means, *inter alia*, "a place identified in a home detention order or agreement." Section 9-404(c)(1)(ii) specifically provides that: "This subsection applies to a person who is . . . committed to home detention under the terms of pretrial release . . . ." Section 9-404(c)(2) states:

> A person may not knowingly:
>
> (i) violate any restriction on movement imposed under the terms of a . . . home detention order or agreement; or

> (ii) fail to return to a place of confinement under the terms of . . . a home detention order or agreement.

The Court of Special Appeals opined that the statutory scheme could not be more clear. It summarized that a court may order home detention, monitored by a licensed private home detention monitoring agency, as a condition of pre-trial release. A place identified in such an order is a place of confinement, and a defendant who violates a restriction on movement or fails to return under a home detention order or agreement may be found guilty of first degree escape. The Court concluded that the trial court erred in refusing to give Spriggs credit against his sentence for the 240 days he served in home detention prior to trial.

Wesley Eugene Spriggs v. State of Maryland, No. 1943, September Term, 2001, filed August 28, 2003. Opinion by Smith, J. (retired, specially assigned).

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CRIMINAL LAW - SPEEDY TRIAL - HICKS RULE - WHERE GOOD CAUSE FOR CONTINUANCE DOES NOT EXIST STATE CANNOT NOL PROS CASE AND THEN REINDICT DEFENDANT. *STATE v. HICKS*, 285 MD. 310, ON MOTION FOR RECONSIDERATION, 285 MD. 334 (1979); *STATE v. BROWN*, 341 MD. 609 (1996); *STATE v. GLENN*, 299 MD. 464 (1984); *CURLEY v. STATE*, 299 MD. 449 (1984); MD. CODE ANN., ART. 27, § 591, MARYLAND RULES 4-271 AND 4-247; IN CASE WHERE STATE HAD ENTERED *NOL PROS* AFTER CIRCUIT COURT DENIED REQUEST FOR A CONTINUANCE AND STATE FAILED TO COMPLY WITH ORDER TO COMPEL DISCOVERY REGARDING DNA EVIDENCE WITHIN TEN DAYS, CIRCUIT COURT PROPERLY GRANTED APPELLANT'S MOTION TO DISMISS BASED ON ITS DETERMINATION THAT "THE ACTION OF THE STATE WAS INTENDED TO CIRCUMVENT THAT PART OF THE RULE, WHICH LEAVES TO THE ADMINISTRATIVE JUDGE TO DECIDE WHETHER A CASE, ONCE SET WITHIN 180 DAYS, SHOULD BE CONTINUED FOR GOOD CAUSE SHOWN."

Facts: Wilbert Pelzie Price, appellee, was charged with robbery, first degree assault and second degree assault by an

indictment filed on May 9, 2002 in the Circuit Court for Montgomery County. At a status conference on June 21, 2002, the State requested that the scheduled trial date of July 23, 2002 be postponed due to the unavailability of the assigned prosecutor. The court granted the request and rescheduled the case as a two-day trial to begin on August 12, 2002.

Appellee filed a motion to compel discovery on June 20, 2002. On July 30, 2002, the court ordered the State to file a written answer to appellee's motion for discovery and to provide the requested materials to appellee's counsel by August 10, 2002. Although the order mandated sanctions for failure to comply, the State did not comply with the order.

A status conference was held on August 12, 2002, before an administrative judge. The State requested a continuance because of the unavailability of deoxyribonucleic acid (DNA) test results. The court demanded a reason for the delayed DNA results but the State failed to submit a satisfactory explanation. The court denied the request for a continuance, finding a lack of good cause. In response, the State immediately entered a *nolle prosequi*.

On September 19, 2002, appellee was again charged under a new indictment with robbery, first degree assault and second degree assault. The charges originated from the same subject matter as the previous indictment filed against appellee. Appellee filed a motion to dismiss for lack of speedy trial on September 23, 2002, and a hearing was held on November 27, 2002. The court granted the motion on the grounds that the State was attempting to circumvent Maryland Rule 4-271(a), thus violating the 180-day *Hicks'* Rule.

Held: Affirmed. Maryland Rule 4-271(a) has two components - an administrative judge's determination of good cause and the 180-day time limit. The good cause portion is to be viewed in conjunction with the 180-day limitation. By entering a *nol pros* and subsequently reindicting appellee, the State circumvented the administrative judge's denial of the request for additional time and therefore circumvented the good cause portion of Rule 4-271(a). Specifically, the *nol pros* was an attempt to circumvent the authority of the administrative judge because the judge had decided that there was not good cause for continuing the case. The *nol pros* also acted to circumvent the discovery order and accompanying sanction. Absent the *nol pros*, the State was precluded by the discovery sanction from introducing the DNA evidence because the State failed to comply with the discovery order. As a result of the circumvention, the 180-day *Hicks'* limitation began at the time of the filing of the initial indictment and did not begin to run anew at the time of the second indictment. Therefore the trial

judge did not err by dismissing the case on November 27, 2002 - day 194.

State of Maryland v. Wilbert Pelzie Price, No. 2487, September Term, 2002, decided October 10, 2003. Opinion by Davis, J.

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CRIMINAL LAW - USE AT TRIAL OF DEFENDANT'S STATEMENTS MADE DURING PLEA NEGOTIONATIONS. ***WRIGHT v. STATE***, 307 MD. 552 (1986), ***ALLGOOD v. STATE,*** 309 MD. 581 (1987); THE COURT OF APPEALS, IN DISTINGUISHING ***WRIGHT*** AND ***ALLGOOD***, HELD THAT, WHEN THE STATE AND A CRIMINAL DEFENDANT ENTER INTO A PLEA AGREEMENT WHICH RECITES COOPERATION BY A DEFENDANT IN EXCHANGE FOR REDUCING THE CHARGES OR ***NOLLE PROSEQUI*** OF THE CHARGES AGAINST HIM OR HER, ANY STATEMENT MADE BY A DEFENDANT MAY BE ADMITTED AGAINST HIM OR HER AT TRIAL IN THE STATE'S CASE-IN-CHIEF IF IT WAS THE DEFENDANT WHO RENEGED (***WRIGHT***); IF THE STATE RESCINDS, REPUDIATES, OR BREACHES THE PLEA BARGAIN AGREEMENT, FOR WHATEVER REASON AFTER THE STATEMENTS ARE OBTAINED, THE STATEMENTS ARE INADMISSIBLE ***PER SE*** IN THE STATE'S CASE-IN-CHIEF AT TRIAL ON THE MERITS (***ALLGOOD***); TRIAL JUDGE ERRED BY ADMITTING STATEMENTS AGAINST APPELLANT IN INSTANT CASE IN WHICH ASSISTANT STATE'S ATTORNEY DECLARED APPELLANT'S CONTRACT "NULL AND VOID DUE TO HIM NOT DISCLOSING THE INFORMATION," AFTER APPELLANT HAD RECANTED EARLIER EXCULPATORY STATEMENT AND ADMITTED COMPLICITY IN THE BURGLARY ALONG WITH AN ACCOMPLICE; ADMISSION OF LIST JOINTLY PREPARED BY HUSBAND AND WIFE VICTIMS SETTING FORTH VALUE OF ITEMS STOLEN WAS HARMLESS ERROR WHEN ONLY HUSBAND TESTIFIED AS TO HOW AMOUNTS WERE CALCULATED; EVIDENCE THAT AGGREGATE VALUE OF THE GOODS STOLEN WAS OVER THREE HUNDRED DOLLARS WAS PROPERLY ADMITTED; APPELLANT FAILED TO OBJECT TO FOUR HUNDRED THOUSAND DOLLAR RESTITUTION AWARD AND, THUS, WAIVED HIS RIGHT TO CHALLENGE THAT AWARD ON APPEAL.

Facts: Charles Lee Pitt, appellant, was arrested for his involvement in a residential burglary in Joppa, Maryland. Following the arrest, appellant entered into a plea bargain agreement with investigators, whereby he disclosed information concerning the burglary. Appellant disclosed information relating to the items stolen but denied having any knowledge of who committed the burglary. Subsequently, investigators discovered the information appellant provided was incomplete and as a result the plea agreement was determined to be "null and void." On May 8 and 9, 2002, appellant was tried by a jury for the burglary and the statements appellant made under the void plea agreement were

admitted into evidence. Ultimately, appellant was convicted of burglary, theft over $500, and malicious destruction of property.

Held: The statements made by appellant in reliance on the plea agreement were inadmissible *per se*. The statements were not voluntary absent the plea agreement, but the plea agreement conferred voluntary status upon the statements. When the State rescinded the agreement, the statements lost their voluntary status and became inadmissible. Also, public policy supports the holding that the statements were inadmissible. Plea bargaining is a necessary practice in the administration of justice and permitting the statements in the case *sub judice* to be admitted into evidence would chill a defendant's willingness to enter a plea bargain.

Charles Lee Pitt v. State of Maryland, No. 1264, September Term, 2002, decided September 23, 2003. Opinion by Davis, J.

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EVIDENCE- SUFFICIENCY OF THE EVIDENCE

Facts: Howard Thomas was robbed at gunpoint and shot in the chest after buying marijuana from Tylance Belton. During the police investigation, Thomas identified Belton as the shooter from a photo array. Later, in a taped statement, he again identified Belton. At trial, however, Thomas recanted his original identification of Belton, stating that now he believed Mark Bates was the shooter. Belton objected to the State playing Thomas's taped statement at trial. The circuit court overruled the objection based on Maryland Rule 5-802.1, which provides for the inclusion of inconsistent statements as substantive evidence, and the tape was played for the jury. Belton was convicted of attempted second degree murder; first and second degree assault; reckless endangerment; wearing, carrying, and transporting a handgun; possession of a handgun after a predicate felony; robbery with a dangerous weapon; robbery; and two counts of use of a handgun in a crime of violence.

Held: Affirmed. The circuit court did not err in playing the taped statement at trial. The statement was hearsay under Maryland Rule 5-801(c), but admissible as an exception to the hearsay rule. The statement qualified under Maryland Rule 5-802.1 as a prior inconsistent statement or as a prior extra-judicial identification.

Moreover, the evidence presented was sufficient to sustain Belton's convictions. Pursuant to Maryland Rule 5-802.1, an inconsistent extra-judicial statement is admissible as substantive evidence. Accordingly, it is the jury's responsibility to weigh the evidence presented and the credibility of the witnesses testifying. The trier of fact has the right to accord more weight to the inconsistent extra-judicial statement than to the in-trial testimony. ***Gibbs v. State***, 7 Md. App. 35, 253 A.2d 466 (1969), has been effectively overruled by Rule 5-802.1.

Belton v. State, No. 2078, September Term, 2002, filed October 6, 2003. Opinion by Kenney, J.

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FAMILY LAW - CHILD SUPPORT - CALCULATION -INCOME - INCLUSION OF BONUSES.

Facts: On February 13, 1997, Robert and Ann Johnson entered into a separation and marital property settlement agreement by which Mrs. Johnson would have custody of the parties' three minor children and Mr. Johnson would pay $1,250 per month in child support.

Mr. Johnson, an underwriter with AGM Financial Services ("AGM"), earned a base salary of $75,000 when he was hired in 2000 which increased by $5,000 in 2002. Bonuses were paid by AGM depending on the company's profitability, Mr. Johnson's job performance, and the company owner's discretion. In February 2002, Mr. Johnson received a bonus of $41,400 and dividends in the amount of $1,500. Mrs. Johnson, a legal secretary, earned $28,000 in 2002.

On July 10, 2002, the parties modified their child support

agreement by addendum providing that Mr. Johnson pay $1,534 per month in child support. This amount was reached based on an understanding that Mr. Johnson earned $96,000 annually and Mrs. Johnson earned $28,000 per year. At the time the addendum was signed, Mrs. Johnson was unaware that Mr. Johnson had received a $41,400 bonus in 2002. Mrs. Johnson first became aware of the bonus amount in August 2002. Mr. Johnson testified that he reached the $90,000 figure used in negotiating the addendum by estimating an average bonus of $10,000 per year.

By a judgment of absolute divorce dated October 7, 2002, the Circuit Court for Baltimore County dissolved the parties' marriage and awarded custody of the parties' children to Mrs. Johnson. The order also required Mr. Johnson to pay $1,860 per month in child support.

The child support amount was based on Mr. Johnson's annual income of $122,900 in 2002. This amount was calculated by adding a bonus of $41,400, plus dividends in the amount of $1,500, to appellant's base salary of $80,000. With the inclusion of Mr. Johnson's bonuses, the parties' total monthly income exceeded $10,000, making this an "over guidelines" case in which the judge must use discretion in setting the amount of child support.

Mr. Johnson contended that the trial court erred by including his bonus in the calculation of his actual income because the amount of his future bonuses, if any, is unknown. He argued that child support should have been calculated pursuant to the child support guidelines based only on his annual salary of $80,000 or, in the alternative, an estimated future bonus of $10,000 for a total of $90,000.

Held: Judgment affirmed. Section 12-201(c)(3)(iv) of the Family Law Article of the Annotated Code of Maryland provides that, in calculating child support, a court must consider the "actual income" of the parents. "Actual income" includes bonuses received.

Although the amount of future bonuses may be uncertain, the inclusion of bonuses already received involved no speculation. And, even though it is unknown whether a bonus will be received in the future, a child support order must be based on currently existing circumstances – not upon conditions that may, or may not, occur.

The Court held that bonuses and overtime pay do not stand "on the same legal footing" and concluded that to accept Mr. Johnson's position and base his income on an amount significantly lower than

the amount he actually earned would violate the principle that a child is entitled to a standard of living that corresponds to the parents' economic position.

Robert Johnson v. Ann Johnson, Case No. 2049, September Term, 2002, filed October 3, 2003. Opinion by Salmon, J.

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TORTS - FRAUD - FRAUDULENT INDUCEMENT - HOME IMPROVEMENT CONSTRUCTION CONTRACT.

Facts: Madonna Andrew, appellee, entered into a home improvement contract to build a two-story addition to an existing home. She initially met with two individuals, Stan Mell and Carroll Sass, at her home after receiving a flyer from Innerstate Design Builders, Inc., Mell's company. According to appellant, Mell introduced Carroll Sass, appellant, as his business partner. Andrew met with both men again on August 31, 1999, and signed a contract executed by Sass and Sass's company, Atlantis Painting & Decorating.

Work began on the project in November 1999. Although Andrew made payments to Mell as stipulated in the contract, the project was abandoned by December 1999. On December 5, 2000, Andrew filed a complaint in the Circuit Court for Anne Arundel County against Sass, Mell, Atlantis, and Innerstate. She obtained default judgments against Mell and Innerstate. As to Sass, Andrew sued him only for fraud, not breach of contract, alleging that he "falsely represented" that he would complete all the work pursuant to the contract, and claiming that she relied on his representations.

At trial, Andrew was the only witness for her case. She acknowledged that when she met Mell, Sass was present but she "had no conversation" with him. Moreover, she claimed that she thought she was entering into a contract with Mell and Innerstate, and admitted that she never read the contract before signing it. It was undisputed that Sass worked on the framing and, because Andrew thought the project was "going along pretty good," she tendered a progress payment to Mell.

Sass testified that he did not sign the contract. Instead, he asserted that he was merely hired by Mell as a subcontractor to do the framing on the project, and stopped work when Mell failed to pay him.

The trial judge granted Atlantis's motion for judgment,

because it was sued as a corporate entity but is not a corporation. Sass was the only remaining defendant.

The court instructed the jury as to fraudulent inducement. Neither party noted any exceptions to the court's instructions. Then, the court submitted the fraud claim against Sass to the jury. It found Sass liable, awarding Andrew $28,797 in damages.

Held: Reversed. The Court of Special Appeals determined that the evidence was not legally sufficient to establish that the contractor's conduct amounted to fraudulent inducement.

Noting that fraud in the inducement is a means of committing fraud, the Court observed that Sass did make any affirmative misrepresentations upon which Andrew relied; appellee testified that she did not have any conversations with Sass before signing the contract. Indeed, she stated that she did not know that she was contracting with Sass. Moreover, the evidence did not show that Sass induced Andrew to enter into the contract; Andrew discovered Sass's signature on the contract after she had already signed it.

Further, Sass's conduct did not evidence that, when he executed the contract, he never intended to perform the contract. Although Sass's failure to fully perform may have amounted to a breach of contract, his actions in working on the framing were inconsistent with an assertion that he never intended to perform the contract.

Carroll Sass v. Madonna Andrew, No. 798, September Term, 2002, filed September 17, 2003. Opinion by Hollander, J.

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WORKERS' COMPENSATION - CAUSATION - COMPLEX MEDICAL QUESTION - EXPERT EVIDENCE REQUIRED TO SUPPORT CAUSATION - EXPERT TESTIMONY MUST HAVE SUFFICIENT FACTUAL BASIS - EXPERT TESTIMONY MUST BE PRODUCT OF RELIABLE PRINCIPLE AND METHODS - MOTION FOR JUDGMENT AND

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

Facts: Tivey Booker filed a workers' compensation claim after developing adult on-set asthma. He alleged that his exposure to Freon gas as a warehouse employee at Giant Foods caused his asthma. Booker had been exposed to Freon during his rescue of two other employees in a work-place accident. The Workers' Compensation Commission denied Booker's claim finding no permanent partial disability and no causal connection between the Freon exposure and the asthma.

Booker sought *de novo* judicial review in the Circuit Court for Prince George's County. Defendants at trial (now appellants), Giant Foods and Lumberman's Mutual Casualty Co., conceded that Booker had asthma, but moved for judgment on the basis that there was no expert testimony to sufficiently establish the cause of Booker's asthma. The court denied defendants' motion and the jury returned a verdict in favor of Booker on each issue. Appellants filed a motion for judgment notwithstanding the verdict on the same basis. The court denied the post trial motion.

Held: Reversed. The circuit court erred in denying appellants' motions for judgment and judgment notwithstanding the verdict, because no legally sufficient evidence on causation had been presented that would have justified submission of the case to the jury. The diagnosis of adult on-set asthma in this case is a complex medical question which requires expert testimony to prove causation. Booker's medical expert, was qualified to render an expert opinion, but the opinion lacked a sufficient factual basis. The medical expert's testimony regarding the cause-and-effect relationship did not rise above the level of mere speculation or conjecture. Moreover, the expert's testimony was not the product of reliable principles and methods.

Giant Foods, Inc., et. al. v. Booker, No. 1934, September Term 2002, filed September 3, 2003 Opinion by Sharer, J.

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ATTORNEY DISCIPLINE

By an Order of the Court of Appeals of Maryland dated September 23, 2003, the following attorney has been indefinitely suspended by consent from the further practice of law in this State:

ANTOINE I. MANN
*

The following attorney has been replaced upon the register of attorneys in this State effective October 3, 2003:

CORNELL D.M. JUDGE CORNISH
*

The following attorney has been replaced upon the register of attorneys in this State effective October 3, 2003:

THOMAS R. HENDERSHOT
*

By an Order of the Court of Appeals of Maryland dated September 8, 2003, the following attorney has been suspended for one year by consent, effective October 8, 2003, from the further practice of law in this State:

MARSDEN SMITH COATES
*

By an Order of the Court of Appeals of Maryland dated October 8, 2003, the following attorney has been suspended for thirty days by consent, effective October 10, 2003 from the further practice of law in this State:

DAVID HANAN GREENBERG
*