

MSBA REAL ESTATE DISCUSSION GROUP THE 2006 REAL ESTATE CASE HIT PARADE

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This report attempts to gather all reported cases and important unreported cases decided by the Maryland State and Federal courts in the past calendar year in the area of “traditional” real estate law. Detailed treatment is given to cases with something interesting or amusing to say. Cases in the areas of zoning, land use, insurance and torts usually are not included, but there were several major policy decisions last year relating to Baltimore City zoning, so those made the list. The year 2006 was marked by several important discussions of areas which have not been talked about for many years, as well as a couple of cases of first impression. Of particular note is the Weston Builders case, which is virtually a book about the doctrine of *lis pendens* during appeal, and Chesapeake Bank, a definitive opinion about late lease renewals. Both are worthy of close study. Some cases last year had aspects that appeared silly on the surface – e.g., the Court of Appeals squabbling about a vent for clothes dryer in a 4-3 decision. A disturbing trend is the growing length of unreported decision in the Court of Special Appeals. This year’s list includes unreported opinions of 68, 48 and 42 pages. Some unreported cases not on my list were even longer! When opinions are this long, they tend not to get read, even by the parties.

My selection of hits follows:

1. **Lis Pendens During Appeal – Maryland’s Answer – Weston Builders & Developers, Inc. v. McBerry, LLC**, 167 Md.App. 24, 891 A.2d 430 (Moylan, J.) (February 1, 2006), cert. denied, 392 Md. 726 (May 12, 2006) – distinguished writers on the subject of *lis pendens* during appeal of an adverse judgment at trial level characterized this area of the law as “a vast wasteland”. Kratovil and Werner, “Appeals and Reversals – A Vast Wasteland”, 49 Notre Dame Lawyer 844 (1974). I would venture to guess that most real estate attorneys in Maryland would say that if a party loses at trial level and wants to continue the *lis pendens* effect of the lawsuit during an appeal, that party would have to obtain an order staying the judgment and normally would have to file a *supersedeas* bond in accordance with Maryland Rule 8-422. Now, thanks to Judge Moylan, we have an answer in cases not involving money judgments. After an extended discussion of the history and nature of the doctrine of *lis pendens*, Judge Moylan speaking for the Court of Special Appeals, holds as a matter of first impression in Maryland that throughout the pendency of the appeal, *lis pendens* continues with unabated force. He distinguishes cases like Creative Development Corp. v. Bond, 34 Md.App. 279 (1976), on the basis that such cases involved a judicial sale or a foreclosure and are totally different from the way that *lis pendens* operates in private contract litigation where the prevailing party does not obtain a money judgment.

The subject was somewhat elaborated on by the Court of Appeals later in 2006 in Baltrotsky v. Kugler, 395 Md. App. 468, 910 A.2d 1089 (November 13, 2006). The Court of Appeals cited the Weston Builders case with approval and reiterated the rule in cases involving appellate challenges to ratified foreclosure sales. In those cases, an appeal becomes moot if the property is sold to a bona fide purchaser after ratification in the absence of a *supersedas* bond. The Baltrotsky case also ruled on a challenge to a 5% commission to the trustee who made the foreclosure sales in that case. The mortgagor attempted to equate the trustee's commission with a late fee and then argued the United Cable case as a precedent. This argument was rejected by the Court of Appeals. It characterized the 5% commission as "a standard rate of compensation for a trustee's services". Baltrotsky implored the court to lower the trustee's commission under its inherent power to review compensation paid to trustees. The Court of Appeals took notice of the multiple appeals and constant litigation engaged in by the mortgagor. "Nothing in the facts of this case amounts to sufficient cause to lower, much less eliminate, [the trustee's] commission for executing his duties, in light of [the mortgagor's] persistent efforts to frustrate such execution." The Court cited reported opinions of both the Court of Appeals and the Court of Special Appeals from 1867 to 1996 in rejecting this latest attack on the trustee's commission in a foreclosure case.

2. **Those Gross Easements** – Fogelman v. Mathis, CSA No. 701, Sept. Term 2004 (Kenney J.) (September 27, 2006) – While the Fogelman case is unreported, it is a 47 page opinion by Judge Kenney with a detailed consideration of the law of non-commercial easements in gross, citing cases from many states as well as a law review article, Hagi, "The Easement in Gross Revisited: Transferability and Divisibility since 1945", 39 Vand. L. Rev. 109 (1986). Although the opinion is unreported, it is a scholarly opinion which reminds us that while the majority of jurisdictions have recognized that commercial easements in gross, such as those involving easements for pipelines, telephone and telegraph lines, and railroads are transferable, only a few states have concluded that non-commercial easements in gross are assignable or devisable. The Court also analyzes the cases and reminds us that an easement in gross is an easement benefiting a particular person [or entity] and not a particular piece of land. Accordingly, there is a servient tenement burdened by the easement, but no dominant tenement. The Court cites Colonial Pipe Line Co. v. SDAT, 371 Md. 16, 29 n.17 (2002), and Delmarva Power and Light Co. v. Eberhard, 247 Md. 273, 277 n.2 (1967). In reaching its conclusion, the Court says that it had not been directed to, nor did it locate a single case permitting the transfer or assignment of a non-commercial easement in gross obtained by prescription. The Court's conclusion is a refusal to adopt the position that non-commercial easements in gross obtained by prescription are transferable. "Such a departure from the common law rule is a matter better considered by the General Assembly".

3. **Perpetuities are Perpetual** – Harrison v. Harrison, CSA No. 1550, Sept. Term, 2004 (Sharer, J.) (January 11, 2006), cert. denied May 12, 2006, and Cattail Associates, Inc. v. Sass, 170 Md.App. 474, 907 A.2d 828 (Kenney, J.) (September 15, 2006) – cases involving alleged violations of the Rule against Perpetuities continue to result in judicial opinions going through every aspect of the Rule. In Harrison, the parties were arguing over a family buy-sell agreement which said that if either party desired to sell his interest in jointly owned property he would give the other party "an absolute, irrevocable first option to purchase said interest". John Harrison argued that the agreement created a right of first refusal without limit of time. Relying

on Arundel Corp. v. Marie, 383 Md. 489 (2004), he argued that the rights of first refusal were void as a violation of the Rule against Perpetuities. Hale Harrison argued that by reason of the decision of the Court of Appeals in Park Station Ltd. Partnership v. Bosse, 378, Md. 122 (2003), the right of first refusal was personal, did not run to successors and assigns, and therefore did not violate the Rule. However, Section 16 of the contract in this case provided that the contract was binding upon successors and assigns. The Court of Special Appeals adopted Judge Eldridge's reasoning in Park Station that the successors and assigns provision is merely "boiler plate" and not enforceable. What an extraordinary result! Perhaps if the drafter of the contract had said, "This agreement is binding upon the successors and assigns of the parties, and this provision is not mere boiler plate but really means what it says", the clause would have been enforced.

In Cattail Associates, the Court was dealing with a 1995 contract of sale which contemplated subdivision of the property with settlement to occur 45 days after subdivision is complete. It then stated, "the parties agree that this contract shall expire ... on the last day of the time period legally permitted by the Rule against Perpetuities in the State of Maryland". The seller wanted out of the contract and argued that the contract violated the Rule against Perpetuities because no measuring lives were stated. The Court then entered into a discussion of the designation of measuring lives for a perpetuities saving clause, and relied on a 1908 Supreme Court case and a 1999 Delaware case to designate all of the named sellers as the measuring lives for the perpetuities provision. Thus, there was no violation of the Rule.

Perhaps we will get some relief from unexpected applications of the Rule if the Governor signs House Bill 188, which was enacted by the General Assembly this year.

4. **This year's drafting tips** – A number of the 2006 cases contain what can be characterized as drafting tips for real estate documents. For instance, Hagen Family Ltd. Partnership v. Balamar, Inc., CSA No. 321, Sept. Term 2004 (Meredith, J.) (March 10, 2006) deals with a contract where the Recitals stated that certain payments were "in lieu of interest", while the operative language in the contract did not contain this characterization. The Court cites the governing rule of law in Maryland, "that the operative provisions of a contract control the interpretation of the contract when recitals and operative provisions are in conflict". The lesson to be learned from this is that it might be a good idea to include a provision stating that the Recitals are incorporated into the contract as substantive terms. This can at least let the Recitals be used as aids to interpretation should there be an ambiguity, and will prevent them from being disregarded totally.

We have already seen above another "successors and assigns" decision, Harrison v. Harrison, *supra*. Fedder Development Corp. v. FB Hagerstown, LLC, 181 Fed. Appx. 384 (4th Cir., June 23, 2006) is a *per curiam* decision by the 4th Circuit decision involving whether a contract had been entered into. The seller's attorney sent a draft contract with a letter stating that "the contract is not binding on either party unless and until executed by both parties". The buyer's attorney advised that he had in his possession a signed agreement and check. Clearly, there was no fully signed agreement, but Fedder sought to get around the Statute of Frauds by saying that an email from the seller's attorney satisfied the requirement for "a written memorandum signed by the party to be charged or some other person lawfully authorized by

him”. Md. Real Prop. Code § 5-104. The 4th Circuit found, for several reasons, that the email from the seller’s attorney did not constitute a signed memorandum satisfying the Statute of Frauds. In this age of increasing email communication, this is an important case to know about.

5. **Finally – A Decision!** – Chesapeake Bank of Md. v. Monro Muffler/Brake, Inc., 166 Md. App. 695, 891 A.2d 384 (Kenney, J.) (January 31, 2006), *cert. denied*, May 12, 2006 – Contrary to popular understanding, and contrary to what many lawyers have probably written in briefs over the years, there has been no Maryland decision on the law regarding late renewal of commercial leases since the first settlers landed at St. Mary’s City in 1635. There have been cases that have talked around this subject and skirted this subject, and the D.C. Court of Appeals in the Duncan case, 526 A.2d 1358 (D.C. App. 1987), purported to apply Maryland law on this subject, but it was only in January of 2006 that we finally had a decision directly on point regarding late renewal of a lease. The Court of Special Appeals issued what many consider a surprising opinion. Basically, it said that a late attempt to exercise a renewal option just won’t work in this State. Equity has no role in changing the deal made by landlord and tenant in the absence of collusion, mistake or fraud. The mistake referred to is not a mistake in calculating the date when the notice is due.

A common argument in these cases is that the late exercise of the renewal has caused no harm or prejudice to the landlord. The tenant here equated the loss of its option to renew to a forfeiture of its leasehold. The Court took a different view. It did not view the tenant’s request as seeking equitable relief from a forfeiture; rather, the tenant failed to meet a condition precedent for the exercise of an option to which it has a right only under the lease provision. If a tenant simply fails to exercise its option, “the relative hardships are immaterial”. Equity should not grant an extension of time when the tenant fails to exercise an option only due to its own oversight.

People expected that in view of the great public interest in this decision and the great number of people affected, a grant of *certiorari* would be routine. However, the Court of Appeals denied *cert.*, and we have a very strong precedent to rely upon in this important area of commercial landlord-tenant law.

6. **The Doubtful Reach of a Radius Restriction** – Wells Fargo Bank Minnesota N.A. v. Diamond Point Plaza L.P., 171 Md.App. 70, 908 A.2d 684 (Davis, J.) (September 29, 2006), *cert. granted* on 2 separate appeals from this decision – This is only a brief report on the Diamond Point case because the case is now at the Court of Appeals and will probably be decided in 2007 definitively. The important thing to understand and learn from this case is that the lease had a radius restriction prohibiting the tenant from operating any business within 7 miles from Diamond Point Shopping Center “similar to that then being conducted upon the demised premises”. The problem is that WalMart, which had leased premises in Diamond Point, had closed its doors and was not operating, and therefore had a very good argument that it could not violate this radius restriction. The drafting point learned from this decision so far is that the lease should have prohibited WalMart from operating any store within 7 miles similar to that “permitted to be conducted upon the demised premises”. Had the lease said that, several pages of discussion would have been eliminated. We will have to see what the Court of Appeals does in interpreting this lease.

7. **Venting One's Spleen and Dryer – Garfink v. The Cloister at Charles, Inc.**, 392 Md. 374, 897 A.2d 206 (Cathell, J.; dissent by Wilner, J.) (April 13, 2006) - The Beatles sang about fixing a hole where the rain came in. The four judge majority of the Court of Appeals sang about creating a hole so that a dryer could be vented to the outdoors. While the case might seem to be about a trivial point, it raises many issues about the rights of condominium owners and the relation of the law of condominiums to the traditional law of easements. It may be that Judge Cathell felt like writing about implied negative reciprocal easements. It may be that the Court of Appeals started down the road of taking a case which is not to be general application, and did not want to turn back from that road. But it seems that there came a point in its deliberations that the majority realized that the case should not be used as a launching pad for general changes in the law regarding the rights of condominium owners to alter their buildings. In any event, the Court ended by saying, "Our holding is limited, however, to the particular situation here extant." 897 A.2d at 220.

The dissenting Judges latch onto this language and say that the majority created a "bubble" which amounts to an attack on critical elements of nearly every residential condominium project, and that it will likely generate a good bit of litigation in an area that should remain absolutely clear and certain. The dissenters also point out that if the majority could make its decision really unique to the situation of Mr. Garfink, that would be inconsistent with the long held view of the Court that *certiorari* is not to be granted except to consider an issue of public importance. "It is hardly consistent with that notion for this Court to establish a rule applicable only to one unique situation such as this, that has no interest to anyone beyond Ms. Garfink and the council of unit owners ...". Taking into account what the dissent had to say, this case would have lent itself very nicely to an unreported opinion in the Court of Special Appeals, which is what happened. Perhaps it would have been better if the Court of Appeals here had issued a per curiam reversal of the unreported opinion in the Court of Special Appeals. However, it did not do this, and we now have an extended discussion of the law of easements and the Maryland Condominium Act, although much of that opinion amounts to dicta. It remains to be seen if this case will be used as precedent in the future.

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2006 REAL ESTATE CASES

<u>DATE</u>	<u>CASE NAME</u>	<u>HISTORY / COMMENTS</u>	<u>SUBJECT</u>
11/28/06	Rosenblatt v. Fay, Trustee, CSA No. 81, Sept. Term, 2006 (Deborah Eyler, J.)		Foreclosure – Lender buy in- Future profits belong to lender
11/28/06	Nendongo v. Walters, CSA No. 2537, Sept. Term, 2005 (James Eyler, J.)		Bankruptcy – Post-petition sales contract by bankrupt-enforceable
11/14/06	Neifert v. Md. Dept. of Environment, 395 Md. 486, 910 A.2d 1100 (Raker, J.)		Utilities – Denial of sewer service not unconstitutional taking
11/13/06	Baltrotsky v. Kugler, Trustee, 395 Md. 468, 910 A.2d 1089 (Harrell, J.)	Affirming 166 Md.App. 321 (2005)	Foreclosure – Abatement of interest – Trustee commission.
11/13/06	Standard Fire Ins. Co. v. Berrett, 395 Md. 439, 910 A.2d 1072 (Battaglia, J.)	6 – 1 decision	Fire Insurance – Remainderman has insurable interest.
11/9/06	SDC 214, LLC v. London Towne Property Owners Association, Inc., 395 Md. 424, 910 A.2d 1064 (Eldridge, J.)		Restrictive Covenant - Educational Use.
10/31/06	Taxi, LLC v. Mayor & City Council of Baltimore, 171 Md.App. 430, 910 A.2d 536 (Deborah, Eyler, J.)		Tax Sale – Sale not valid.
10/17/06	Lowden v. Bosley, 395 Md. 58, 909 A.2d 261 (Eldridge, J.)		Restrictions – Residential Purposes - Short Term Rentals Permitted
10/16/06	Maryland Overpak Corp. v. Mayor & City Council of Baltimore, 395 Md. 16, 909 A.2d 235 (Harrell, J.)		Amendment to PUD is zoning action subject to judicial review
10/3/06	Garner v. Rochkind, CSA No. 1125, Sept. Term, 2005 (Krauser, J.)		Negligence – Personal liability of corporate officer – No need to pierce corporate veil
9/29/06	Wells Fargo Bank Minnesota v. Diamond Point Plaza L.P., 171 Md.App. 70, 908 A.2d 235 (Harrell, J.)	Cert. granted, 1/10/07 (Wal-Mart v. Wells Fargo); Cert. granted, 1/20/07 (Diamond Point v. Wells Fargo)	Lease – Radius Restriction - Interpretation

9/29/06	Quillens v. Parker, 171 Md.App. 52, 908 A.2d 674 (Rodowsky, J.)	Cert. granted, 12/14/06 argued 4/10/07	Tax Sale – Conflict with mortgage foreclosure – mortgagee must pay delinquent taxes.
9/27/06	Fogelman v. Mathis, CSA No. 701, Sept. Term, 2004 (Kenny, J.)		Easement in Gross – Not Transferable.
9/15/06	Cattail Associates, Inc. v. Sass, 170 Md.App. 474, 907 A.2d 828 (Kenney, J.)		Perpetuities – Savings Clause – valid even though no lives designated.
9/14/06	In re Antoine M., 394 Md. 491, 907 A.2d 158 (Eldridge, J.)	4-3 Decision. Dissent by Wilmer, J. Argued 5/6/04!	Criminal Trespass
9/6/06	Martino v. Arfaa, 169 Md.App. 692, 906 A.2d 945 (Meredith, J.)	Cert. granted, 12/14/06 Argued 3/13/07.	Lease – Reformation – Right to redeem.
9/1/06	Armstrong v. Mayor & City Council of Baltimore, 169 Md.App. 655, 906 A.2d 415 (James Eyler, J.)	Cert. denied, 1/12/07 (Armstrong v. Baltimore)	Ordinance granting conditional use is “zoning action” subject to judicial review
9/1/06	Bailiff v. Woolman, P.R. of Est. of Gordy, 169 Md.App. 646, 906 A.2d 409 (Krauser, J.)	Cert. denied, 12/15/06	Constructive Trust – Used to correct mistake
8/31/06	College Bowl, Inc. v. Mayor & City Council of Baltimore, 394 Md. 482, 907 A.2d 153 (Wilner, J.)		Condemnation – No relocation assistance for tenant where city never acquires property.
8/25/06	Armstrong v. Board of Municipal & Zoning Appeals CSA No. 2525, Sept. Term, 2004 (Hollander, J.)	Dissent by Deborah Eyler, J. Publication refused, 11/20/06	Building Permit- Negative appeal- Stay of construction
8/25/06	Swartzentruber v. Mellott, CSA No. 2832, Sept. Term 2004 (Woodward, J.)		Survey – Monuments take priority over plat or surveyor’s notes
8/14/06	Pometto v. Piaskowski, CSA No. 2683, Sept. Term, 2004 (Barbera, J.)		Piers
8/10/06	Natl. City Bank of Ind. v. Turnbaugh, 463 F.3d 325 (4 th Cir.) (Goodwin, D.J.)		OCC regs. preempt Md. limits on prepayment penalties
8/1/06	Banks v. Pusey, 393 Md. 688, 904 A.2d 448 (Cathell, J.)		Easement – Prescriptive – Permissive vs. adverse use

7/31/06	Chaires v. Carini's Pizza, CSA No. 1112, Sept. Term, 2005 (Woodward, J.)	Cert. denied, 11/13/06	Lease - Renewal
7/31/06	Henderson v. The Elmcroft Co., CSA No. 1063, Sept. Term, 2005 (Sharer, J.)		Tax Sale
7/31/06	Miller v. Bay City Property Owners Association, Inc., 393 Md.620, 903 A.2d 938 (Cathell, J.)		Covenants – Failure to record plat showing restricted area – not enforceable
7/28/06	Ellis v. Delauter, CSA No. 83, Sept. Term, 2005 (Wenner, J.)		Specific Performance- Land not yet legally subdivided.
7/17/06	Dufour v. Taylor, CSA No. 918, Sept. Term, 2005 (Krauser, J.)		Life Estate.
7/13/06	Plumtree, LLC v. Parker, CSA No. 00518, Sept. Term, 2005 (Sharer, J.)		Easement - Implied Easement – Effort to Terminate.
6/29/06	Law Offices of T. Agbaje v. JLH Properties, II, LLC, 169 Md.App. 355, 901 A.2d 249 (Kenney, J.)		Landlord & Tenant – Tenant may assert rent abatement claim in summary ejectment case.
6/27/06	Whitaker v. Whitaker, 169 Md.App. 312, 901 A.2d 223 (Meredith, J.)		Land Installment Contract – Law applies here and buyer entitled to full refund.
6/23/06	Fedder Development Corp. v. FB Hagerstown LLC, 181 Fed. Appx. 384 (4 th Cir.) (Per curiam)		Statute of Frauds – email from buyer's attorney not sufficient writing.
6/12/06	Sohrabi v. Bekele, CSA No. 1347, Sept. Term, 2005 (Deborah, Eyler, J.)		Specific Performance
6/12/06	Smith v. Spencer, CSA No. 1259, Sept. Term, 2005 (Davis, J.)	Cert. denied, 10/18/06	HOA Covenants- Amendment- Retroactive Effect Allowed
6/6/06	8621 Limited Partnership v. LDG, Inc., 169 Md.App. 214, 900 A.2d 259 (Adkins, J.)	Cert. denied, 9/15/06	Contract for easement – if can be reasonably provided – enforceable – analogous to “best efforts” clause.
5/17/06	Knight. v. Princess Builders, Inc., 393 Md. 31, 899 A.2d 156 (Battaglia, J.)	Affirming 162 Md.App. 526 (2005)	Contract purchaser from estate has standing to appeal adverse order of Orphans' Court.

5/15/06	Lessane v. Watson, CSA No. 1275, Sept. Term, 2005 (Alpert, J.)		Tax Sale – Hearing required if requested
4/25/06	Webb v. Montgomery County, CSA No. 1281, Sept. Term, 2005 (Deborah, Eyler, J.)		Eminent Domain- Property owner has no right of first refusal to reacquire property not used.
4/13/06	Garfink v. The Cloisters at Charles, Inc., 392 Md. 374, 897 A.2d 206 (Cathell, J.)	(4 – 3 decision)	Condominium – Easement – Bringing dryer vent to unit - Compliance with codes
4/12/06	Twigg v. Riverside Apartments, LLC, 168 Md.App. 351, 896 A.2d 439 (Davis, J.)	Cert. granted, 8/29/06; Aff'd, 1/10/07	Permits – Agreement with City to waive fees not valid.
4/10/06	Norkunas v. Cochran, 168 Md.App. 192, 895 A.2d 1101 (Meredith, J.)	Cert. granted, 7/26/06; Aff'd <u>sub nom.</u> Cochran v. Norkunas, 3/20/07	Contract signed but not delivered
4/10/06	Piven v. Comcast Corp., 168 Md.App.221, 895 A.2d 1118 (Rodowsky, J.)	Cert. granted, 8/29/06; Aff'd, 2/9/07	Trespass – Venue – Plaintiffs in different counties.
4/5/06	Wilson v. Draper & Goldberg, 443 F.3d 373 (4 th Cir) (Traxler, J.)	2-1 decision, Widener, J., dissenting.	Lawyer as trustee foreclosing Md. mortgage subject to Fair Debt Collection Practices Act.
3/27/06	Safeway, Inc. v. Sugarloaf Partnership, LLC, 423 F. Supp.2d 531 (Titus, J.)		Bad notice under RP §8-402.1- eviction removed to Fed. Ct.
3/27/06	Capital Centre LLC v. Wilkinson, 2006 U.S. Dist. Lexis 13121 (D. Md.) (Bennett, J.)		Waiver of jury trial – Personal claim vs. entity signer.
3/22/06	Simard v. White, CSA No. 994, Sept. Term, 2005 (Barbera, J.)		Foreclosure – Attorney fees on appeal re: surplus proceeds.
3/21/06	Great Christian Books, Inc. v. County Banking & Trust Co., CSA No. 1813, Sept. Term 2004 (Barbera, J.)	Cert. denied, 393 Md. 245 (6/14/06).	UCC Foreclosure – claim vs. lender – Statute of Limitations applies
3/10/06	Roberson v. Buckley, CSA No. 837, Sept. Term, 2004 (Salmon, J.)		Piers – Tenants in Common- Right to use property
3/10/06	Hagen Family Limited Partnership v. Balamar, Inc., CSA No. 321, Sept. Term, 2004 (Meredith, J.)	Cert. denied, 7/28/06	Contracts – Rules of Interpretation – conflict of recitals and operative provisions

3/6/06	Canaj, Inc. v. Baker and Division Phase III, 391 Md. 374, 893 A.2d 1067 (Cathell, J.)		Tax sale foreclosure – Owner must pay all unpaid taxes
3/6/06	Cottage City Mennonite Church, Inc. v. JAS Trucking, Inc., 167 Md.App. 694, 894 A.2d 609 (Davis, J.)		Mechanic’s Lien- Failure to file answer
2/9/06	Myers v. Kayhoe, 391 Md. 188, 892 A.2d 520 (Raker, J.)		Contract – Financing contingency – Buyer need make only one application for a loan.
2/8/06	Gray v. County Executive of Anne Arundel County, 413 F. Supp. 2d 573 (D. Md.) (Bennett, J.)		Property owner has standing to claim unconstitutional diminution of property rights, but no proof.
2/2/06	Rau v. Collins, 167 Md.App. 176, 891 A.2d 1175 (Davis, J.)		Easement – implied way of necessity – review of the law.
2/1/06	Weston Builders & Developers, Inc. v. McBerry, LLC, 167 Md.App. 24, 891 A.2d 430 (Moylan, J.)	Cert. denied, 5/12/06	Lis Pendens – continues during appeal without supersedeas bond.
1/31/06	Chesapeake Bank of Md. v. Monro Muffler/Brake, Inc., 166 Md.App. 695, 891 A.2d 384 (Kenney, J.)	Cert. denied, 5/12/06	Lease Renewal - Late notice
1/25/06	Williams v. Austin, CSA No. 106, Sept. Term, 2005 (Davis, J.)		Joint Tenants – One tenant liable for mortgage debt.
1/24/06	Carmel Realty Assocs. v. City of Baltimore Development Corp., CSA No. 682, Sept. Term, 2005 (Getty, J.)	Aff’d. and remanded, 395 Md. 299	Open Meetings Law – Applies to BDC
1/17/06	Baltrosky v. Kugler, Trustee, CSA No. 2892, Sept. Term, 2004 (Salmon, J.)	Aff’d., 395 Md. 468 (11/13/06)	Foreclosure – Attorney fees allowed, <u>United Cable</u> does not apply
1/11/06	Harrison v. Harrison, CSA No. 1550, Sept. Term, 2004 (Sharer, J.)	Cert. denied, 5/12/06	Rule Against Perpetuities – Right of first refusal is personal to grantee.

This list includes 61 cases decided by State and Federal Maryland Courts in 2006 in areas of interest to real estate lawyers (but excluding land use cases) - 14 cases are from the Court of Appeals, and 41 are from the Court of Special Appeals (24 unreported). The list also contains 3 cases from the U.S. Court of Appeals for the 4th Circuit, and 3 cases from the U.S. District Court for the District of Maryland.