IN THE COURT OF APPEALS
OF MARYLAND

Misc. No. 11
September Term, 2021

ALISON ASSANAH-CARROLL

APPELLANT

v.

LAW OFFICES OF EDWARD J. MAHER, P.C., et al.

APPELLEES

On Certification of Legal Question from the
United States District Court for the District of Maryland
No. CCB-20-2376
(The Honorable Catherine C. Blake)

BRIEF OF *AMICUS CURIAE* MARYLAND MULTI-HOUSING ASSOCIATION, INC.

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Dated: January 19, 2022

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With the written consent of Appellant Alison Assanah-Carroll and Appellees Law Offices of Edward J. Maher, P.C., Edward J. Maher, E.T.G. Associates '94, LP and Roizman Development, Inc., *Amicus* Maryland Multi-Housing Association, Inc., by its undersigned counsel, submits this Brief:

I. INTEREST OF *AMICUS CURIAE*

Amicus Maryland Multi-Housing Association, Inc. ("MMHA"), a statewide nonprofit organization established in 1996, is Maryland's leading advocate for quality residential rental housing. MMHA serves the interests of

multifamily housing owners, managers, developers and suppliers, and maintains a high level of professionalism in the multifamily housing industry in order to better serve the rental housing needs of the public. Members of MMHA include owners and managers of over 207,000 rental housing homes in over 700 apartment communities that house more than 540,000 residents throughout Maryland.

Appellant asks this Court to hold that Baltimore City Code, Article 13, Subtitle 5-4 ("Art. 13, § 5-4") prohibits collection or retention of rent if a landlord does not have a rental license, even if the rental property is safe, habitable and free of defects, and regardless of the cause of the lapse of the license and whether the landlord later obtains a valid license. Appellant further argues that, when a rental property is unlicensed, that circumstance permanently negates the obligation for a tenant to pay rent, and collection or retention of rent from the unlicensed period gives rise to liability under the Maryland Consumer Debt Collection Act (the "MCDCA") and/or the Maryland Consumer Protection Act (the "MCPA"). The questions of law certified by the United States District Court for the District of Maryland, specifically whether the collection and/or retention of rent without a license would give rise to liability under the MCDCA and MCPA, can only be answered in the affirmative if this Court agrees with Appellant's interpretation of Art. 13, § 5-4. However, Appellant's interpretation of Art. 13, § 5-4 is at odds with

existing case law and contrary to the canons of statutory interpretation. If this Court were to agree with Appellant's interpretation of Art. 13, § 5-4, the departure from *stare decisis* would amount to a legal shift of such a great magnitude that it would disincentivize rental housing providers to rent private property in any jurisdictions with a rental licensing scheme. Given the foregoing, *Amicus* MMHA has a significant interest in the questions presented for review in this matter.

II. STATEMENT OF THE CASE

Amicus MMHA accepts and adopts this portion of Appellees E.T.G. Associates '94, LP ("E.T.G.") and Roizman Development, Inc. ("Roizman")'s Brief.

III. STATEMENT OF FACTS

Appellant is a tenant of a multi-unit apartment building located in historic Reservoir Hill overlooking Druid Lake in Baltimore City known as Renaissance Plaza Apartments ("Renaissance"). App 4. Renaissance contains 146 rental units. App 3. Renaissance did not have the rental license required by Art. 13, § 5-4 for a period of less than a year, from August 15, 2019 through July 14, 2020[1]. App 5, 6. The record does not reflect that Appellant, or other tenants at Renaissance, had complaints regarding the condition or

[1] Apparently, there is a factual dispute about whether the license may have issued in February 2020. *See* Appellees E.T.G. and Roizman's Brief.

safety of their apartments during this time period, apart from Appellant alleging she twice was stuck in the elevator. App 7. Appellant voluntarily paid rent to reside at Renaissance from the inception of her tenancy on April 1, 2019 through September 2019, including while Renaissance did not have a rental license in August and September 2019. App 7. Appellant paid rent for October and November 2019 to redeem a default judgment for possession that was entered when she did not appear for a trial date on December 9, 2019. App 8. Thereafter, Appellant "ceased all rent payments" but continued to live at Renaissance. App 8. Appellant still currently lives at Renaissance. App 1.

Appellant filed a Complaint in the United States District Court for the District of Maryland seeking, among other things, a declaratory judgment that, pursuant to Art. 13, § 5-4, Appellees E.T.G. and Roizman are not allowed to collect or retain rent for the period of time that Renaissance was unlicensed. App 15, 16. Appellant also brought claims for Violation of the Fair Debt Collection Practices Act against Appellees Law Offices of Edward J. Maher, P.C. and Edward J. Maher, and claims for Violation of the Maryland Consumer Debt Collection Act, Violation of the Maryland Consumer Protection Act and Money Had and Received against Appellees E.T.G. and Roizman. App 13-21.

Appellees filed motions to dismiss. On October 26, 2021, before ruling on the motions to dismiss, the federal court issued an Order Certifying Questions to the Court of Appeals of Maryland.

IV. CERTIFIED QUESTIONS OF LAW

1. Can a tenant who paid rent to a landlord in Baltimore City who lacked a license pursuant to Baltimore City Code, Art. 13 § 5-4 maintain a lawsuit under either the Maryland Consumer Debt Collection Act (the "MCDCA") or the Maryland Consumer Protection Act (the "MCPA") to recover the rent paid without a showing of any damages separate from the rental payment itself?

2. Does a currently licensed landlord violate either the MCDCA or the MCPA by collecting rent from a tenant or pursuing summary ejectment actions against a tenant who has failed to pay rent during a prior period when the landlord, or a prior landlord, was not licensed under Baltimore City Code, Art. 13 § 5-4, where the tenant does not allege any damages separate from the rental payment itself?

V. ARGUMENT

1. Art. 13, § 5-4 Controls the Outcome of this Case and Was Not Enacted with the Intent to Allow Tenants to Live in a Habitable but Unlicensed Rental Property Without the Obligation to Pay Rent.

Prior to the enactment of Art. 13, § 5 in 2018, one and two-unit rental dwellings in Baltimore City did not have to be licensed as the City's then-existing rental licensing scheme only applied to multi-unit rental buildings. The legislative history of Art. 13, § 5 indicates that its dual purpose was to: 1) improve the safety and quality of rental properties in the City, by requiring licensing of *all* non-owner-occupied dwellings rather than just multi-unit

properties as was the case at the time, and 2) utilize third-party inspectors to reduce the burden on the City's inspectors that would be generated by the increased number of units that would be required to be inspected in order to obtain a license by allowing inspections by private inspectors. At its core, Art. 13, § 5 was intended to improve housing standards for the City's private affordable rental housing stock by implementing a licensing scheme that relies on private inspectors paid for by rental housing providers to accomplish its mission.

Art. 13, § 5-4(a) has two subparts. Appellant focuses solely on subpart (a)(2) and concludes that it purports to say that an unlicensed landlord may not collect or retain any rent paid by a tenant because a person may not "charge, accept, retain, or seek to collect any rental payment or other compensation" for providing rental housing to another unless the person has a rental license. Art. 13, § 5-4(a)(1) says a person may not "rent or offer to rent to another" rental housing unless the person has a rental license. As a result, the clear intent of Art. 13, § 5-4 titled "License required," when read as a whole, is to require that *all* rental property in the City be licensed. To effectuate this intent, and promote licensure, the City prohibited landlords from renting, and tenants from residing in, unlicensed rental properties. The only intent manifested in Art. 13, § 5-4 is for there to be no unlicensed housing.

MMHA participated in the legislative process that led to the passage of Art. 13, § 5-4 by providing testimony, proposing amendments during the drafting stage, and ultimately supporting the passage of Art. 13, § 5-4. Notably, MMHA's support was not based on an understanding that rent could not be collected upon a lapse in a rental license or that rent must be refunded for an unlicensed period. This interpretation was not considered during the legislative process, as it was not the intent of the legislation, and MMHA would not have supported the passage of Art. 13, § 5-4 had it been. To the contrary, MMHA understood that an unlicensed landlord would be unable to utilize the summary ejectment process to collect rent (or repossess the property) according to *McDaniel v. Baranowski*, 419 Md. 560, 19 A.3d 927 (2011)[2] which was decided several years before the passage of Art. 13, § 5-4. The purpose of the prohibition on unlicensed landlords utilizing the summary

[2] In *McDaniel*, this Court held that "in order to invoke the facile process of summary ejectment, a landlord in those jurisdictions requiring licensure, must affirmatively plead and demonstrate that he is licensed at the time of filing of the complaint for summary ejectment in order to initiate the summary ejectment process." *Id.* at 586. Following the opinion in *McDaniel*, courts now review the Failure to Pay Rent—Landlord's Complaint for Repossession of Rented Property to determine if it complies with the requirement to affirmatively plead a license and/or registration number, as applicable. If a property owner/landlord is unable to demonstrate that it is registered and/or licensed as required by local laws, the Failure to Pay Rent action is deemed facially invalid and dismissed. MMHA does not contend that Appellees were entitled to utilize summary ejectment procedures or obtain a judgment for possession against Appellant during the period that Renaissance was unlicensed.

ejectment process was, among other things, to enforce licensure mandates, not as a means for tenants to profit. MMHA is not aware of any stakeholder interpreting Art. 13, § 5-4 to require return of rent or prohibit collection of rent based on the mere fact of lack of license during the legislative process. In fact, MMHA is not aware of any interpretation of Art. 13, § 5-4 requiring return of rent or prohibiting collection of rent based on the mere fact of lack of license since its passage in 2018, other than *Aleti et ux. v. Metropolitan Baltimore, LLC, et al.* (No. 39, Sept. Term 2021), also currently pending before this Court.

Appellant wants this Court to hold that tenants may live in an unlicensed rental property without the obligation to pay rent, regardless of the condition of the dwelling or the reason for the lack of licensure because the lease is "illegal." This neither improves the safety or quality of rental housing, nor keeps tenants from living in unlicensed rental properties, and therefore is not a logical interpretation of the relevant provision. But, beyond this logical conclusion, Appellant's illegality assertion would more logically support a different outcome – the tenancy ceases immediately to comply with Art. 13, § 5-4(a)(1) prohibiting the "rent or offer to rent to another" without a rental license and Art. 13, § 5-4(a)(2) by eliminating "any rental payment or other compensation" for unlicensed rental housing.

Art. 13, § 5-4 controls the outcome of this case, and was not enacted with the intent to allow tenants to live in a habitable, but unlicensed rental property without the obligation to pay rent.

2. Baltimore City's System of Licensing Does Not Support Appellant's Interpretation of Art. 13, § 5-4.

When local jurisdictions such as Baltimore City issue rental licenses for multi-unit buildings, such as apartment buildings, they routinely issue a single license for the entire building that encompasses all the individual units instead of a license for each individual unit, even though the landlord pays for a license for each individual unit. *See* Baltimore City Code Art. 13, § 5-6 (stating that "*a* rental dwelling license may be issued or renewed" "only if," among other requirements, "all dwelling units and rooming units are currently registered" and "the premises have passed an inspection." (Emphasis added) (capitalization omitted). For example, the multi-unit building in the instant case, Renaissance, contains 146 apartment homes. According to the information provided by Baltimore City's Department of Housing & Community Development, there is one license for the entire building encompassing the 146 units. *See* Appendix 1[3]. While this increases ease and efficiency for DHCD, it means that a single problem affecting one

[3] This information can be obtained at: http://cels.baltimorehousing.org/reg/Reg_MFD_Search.aspx by searching "2601 Madison" in the "Address" search function.

unit in a multi-unit building prevents the property owner/landlord from obtaining or maintaining a rental license for every other unit in the entire building. For example, even if a multi-unit building passed the inspection required by Art. 13, § 5-7, if there were an unabated Code Violation Notice in one unit (which could happen for any number of reasons including, but not limited to: a tenant that refuses repairs and/or a contractor's delay in obtaining a repair part necessary to correct a malfunctioning appliance), the rental property owner would be unable to obtain the license required by Art. 13, § 5 for every single other unit in the building in which no defects are present[4].

Moreover, there are widespread problems with DHCD processing and issuing rental licenses after the required inspection is passed and all necessary paperwork is submitted, leaving landlords with no ability to obtain a license despite being in full compliance with all the prerequisites for an

[4] Upon information and belief, that was *exactly* the issue in the current case. An open violation notice for a defect in one unit out of 146 units prevented the Renaissance from obtaining a rental license because DHCD only issues one license for the entire multi-unit building. *See* Appendix 1. In such a case, *McDaniel* prevents the unlicensed landlord from utilizing the Failure to Pay Rent Complaint to demand payment or possession of the rented property despite the difficulty faced by the landlord in obtaining the rental license.

extended period[5]. The COVID-19 pandemic has exacerbated these delays, as all information related to rental licensure must be submitted via an online portal and it is very difficult, if not impossible, to get assistance if a landlord has questions or encounters problems is obtaining a rental license. In addition, the COVID-19 pandemic has significantly increased the time that it takes for DHCD to process the paperwork associated with licensure after submission and issue the license[6]. Anecdotally, there have been cases of landlords not receiving a license for more than six months after they should have received their license from DHCD.

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[5] Upon information and belief, this was the circumstance at Renaissance because, despite passing the required inspection and submitting all necessary paperwork and payment in February 2020, DHCD delayed in issuing Renaissance's rental license for several months until July 2020 with no explanation. However, the license appears to have been back dated as the initial two-year license expires on February 19, 2022. *See* Appendix 1.

[6] For example, recently, the DHCD posted the following message on its website regarding annual property registration:

> **Annual Property Registration for 2022 DELAYED to *June 1, 2022***
>
> The property registration portal to begin the 2022 annual property registration will NOT open until June 1, 2022. Valid 2021 registration updates and payments will be extended until that date.

This information can be obtained at:
https://dhcd.baltimorecity.gov/pi/alarmproperty-registration

This means that, under Appellant's theory, landlords would also be forbidden to collect rent when they are unable to obtain a rental license due to delays at DHCD that are outside of the landlord's control.

3. This Court Should Adhere to the Law Established by *Citaramanis* and *Galola* Over 20 Years Ago and Not Cast Aside Principles of *Stare Decisis*.

Appellant voluntarily paid rent to reside at Renaissance and did not make any contention that she was suffering damages because her apartment was unsafe, uninhabitable, or suffered from any defects during that time. Now, Appellant belatedly alleges that Renaissance was in disrepair, although no specific allegations about her unit, a tacit acknowledgment that public policy does not support her demands for release from the obligation to pay rent if based solely on the mere lack of license for a perfectly habitable unit.

Licensing schemes such as Art. 13, § 5 have unintentionally created a perverse incentive for some tenants to *want* to live in buildings that are unlicensed, even though lack of licensure may be associated with a lack of habitability or other safety concerns, because the tenant believes they will be able to reside in the property without the obligation to pay rent[7]. This phenomenon can manifest itself in numerous ways such as:

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[7] As discussed above, according to this court's decision in *McDaniel*, if a property owner/landlord is unable to demonstrate that it is registered and/or licensed as required by local laws, a Failure to Pay Rent action is deemed facially invalid and dismissed.

- tenants who refuse access to the property for inspections and/or repairs,
- tenants who intentionally damage or alter the property so that it fails property inspections and/or results in the issuance of a Code Violation Notice, and
- tenants who fail to provide the property owner/landlord with notice of necessary maintenance resulting in failed property inspections.

Each of these circumstances interferes with the ability of a property owner/landlord to obtain a rental license. When these circumstances arise in the context of multi-unit buildings, it means that the property owner/landlord is unable to get a rental license for the entire building, even if only one unit has a problem, and the remaining units are in perfect condition. As a result, Renaissance would be unable to obtain a rental license pursuant to Art. 13, § 5 for its entire building, if there were a single Code Violation Notice applicable to only one unit.

This is precisely why Maryland precedent holds that "[t]he absence of a rental housing license in and of itself does not establish the right to recover rent paid." *Citaramanis v. Hallowell*, 328 Md. 142, 163, 613 A.2d 964, 974 (1991); *see also Galola v. Snyder*, 328 Md. 182, 186, 613 A.2d 983, 985 (1992) ("voluntary payment of rent under an unenforceable lease does not entitle a

tenant to restitution of that rent unless the tenant can establish that he or she was provided less than she had bargained for in the lease."). Notably here, Appellant makes no substantiated claim that she received anything less than what she bargained for, or that the rented premises were unsafe or uninhabitable[8]. To entitle tenants, such as Appellant, to return of all rent they paid while Renaissance was unlicensed would create a financial windfall when tenants have no actual injury or damages from the lack of a rental license.

This Court should not depart from *stare decisis* and should reject Appellant's invitation to overturn the precedent of cases such as *Citaramanis* and *Galola*, both of which expressly hold that the absence of a rental housing license in and of itself does not entitle a tenant to restitution of rent voluntarily paid, unless the tenant received less than bargained for in the lease. There is no reason to depart from *stare decisis* established in *Citaramanis* and *Galola* in the instant case because, although Appellant has no cognizable claim that their rental property was unsafe, uninhabitable or

[8] Except to the extent that Appellant contends that she was twice stuck in the elevator, Appellant does not contend that E.T.G. or Roizman failed to comply with any terms of the Lease, that the apartment she rented was deficient or defective in any way, or that she failed to receive the full benefit of the apartment and other services covered by the Lease. The record is devoid of evidence that Appellant utilized the rent escrow statute (RP § 8-211) and sought to withhold rent withhold rent because dangerous and serious defects existed.

suffered from any defects, there are numerous statutory remedies available to residential tenants who do believe their rented property *is* unsafe or uninhabitable to seek return of their rent. Moreover, if this Court overruled case law such as *Citaramanis* and *Galola* that the rental housing industry has relied on for over 20 years, it would throw the industry into disarray, resulting in harm to landlords and tenants alike as they conformed their rental practices to this abrupt change in law.

4. There Are Numerous Statutory Remedies Available to Residential Tenants Who Involuntarily Reside in Rented Property that is Uninhabitable.

This Court recently discussed the statutory remedies available to residential tenants who wish to raise habitability issues with their rental property at length in *Velicky v. Copycat Building LLC*, and summarized them as follows:

> [T]he Legislature provides statutory remedies to tenants that are intended to ensure that they are protected from unsafe or uninhabitable living conditions for the duration of their tenancy. These remedies include the rights and protections granted under:
>
> > • the rent escrow statute (RP § 8-211), which provides the tenant with the right to withhold rent where dangerous and serious defects exist, until conditions are corrected, as well as the right to seek injunctive relief;
> >
> > • the anti-retaliation statute (RP § 8-208.1), which protects tenants from retaliatory conduct by landlords, including actions taken against a tenant

> for complaining about living conditions to a public agency; and
>
> • the MCPA (CL § 13-101, *et seq*), which provides for public enforcement actions, as well as allows the tenants to seek damages arising from a landlord's conduct in renting an unlicensed premises where such unlawful conduct causes actual injury or loss.
>
> These statutes also allow a prevailing tenant to recover reasonable attorney's fees.
>
> In addition to these statutory remedies under State law, the Baltimore City Public Local Laws ("PLL") also provide tenants with additional protections with respect to housing conditions for the duration of a tenancy, such as an implied warranty of habitability.

___ Md. ___, ___ A.3d ___, 2021 WL 5562319 at * 15 (Nov. 29, 2021).

Given the availability of the aforementioned statutory remedies and the fact that an unlicensed landlord cannot proceed with a summary ejectment action as long as the unit is unlicensed according to *McDaniel*, this Court should decline to adopt Appellant's argument that Art. 13, § 5-4 entitles tenants to live in an unlicensed rental property that is habitable and free of defects without the obligation to pay rent, as these tenants have suffered no injury or damages from the lack of licensure. Such an interpretation would render the numerous statutory remedies discussed above superfluous, and there is no intent manifested in the enactment of Art. 13, § 5-4 to do so, nor would Baltimore City be able to do so even if it was intended.

Moreover, as *McDaniel* has foreclosed the ability of an unlicensed landlord to utilize the summary ejectment process to evict or collect rent from a tenant who has failed to pay rent[9] in accordance with the terms of the lease, unlicensed landlords are already limited in their ability to collect rent from tenants. 419 Md. at 587.

5. Appellant's Interpretation of Art. 13, § 5-4 Would be Unconstitutional.

If this Court concludes that Art. 13, § 5-4 dictates that a tenant may live in an unlicensed rental property without the obligation to pay rent, such a law would be unconstitutional and in violation of Articles 19 and 24 of the Maryland Declaration of Rights, Article III, § 40 of the Maryland Constitution (Takings Clause) and the United States Constitution's Takings Clause and Contract Clause. As a result, Appellant's interpretation of Art. 13, § 5-4 would invite constitutional challenges.

When a statute enacted under the police power of the State, purporting to regulate private property, has the effect of taking private property completely from an individual for a public purpose, the doctrine of eminent domain is invoked, and the State must provide just compensation for the

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[9] Notably, in *McDaniel*, the tenant withheld rent because the tenant *did* complain about the condition of the property and a county inspector issued a letter to the landlord notifying the landlord of numerous code violations involving the poor condition of the property. *Id.* at 565-66.

taking. *Muskin v. State Dept. of Assessments and Taxation*, 422 Md. 544, 564-67, 30 A.3d 962, 973-74 (2011). A failure to provide such just compensation would render any such statute unconstitutional. *Id.*

In *Muskin*, the Ground Rent Registry Statute (Maryland Code (1974, 2010 Repl. Vol.) Real Property Article, § 8-703(a)) took private property from a ground lease owner, who had erred by failing to register the ground lease in accordance with the Statute and transferred it to the lease holders who received the property with clear title, free of the ground rent lease. *Id.* at 551-52. Muskin asserted that the Ground Rent Registry Statute violated "Articles 19 and 24 of the Maryland Declaration of Rights, Article III, § 40 of the Maryland Constitution and the United States Constitution's Contract Clause, 5th Amendment, and 14th Amendment." *Id.* at 552 n.4.

This Court held then that Article III, § 40 of the Maryland Constitution prohibits laws that authorize the taking of private property without just compensation, stating "[t]his Court has long held that the Legislature does not have the power 'to give to a law the effect of taking from one man his property and giving it to another…'." *Id.* at 563-64 (citations omitted). Further, this Court noted that "[a]llowing the 'mere will of the Legislature' to …cancel contractual obligations" would shake "the confidence of citizens in their constitutional protections from governmental interference." *Id.* at 565.

If this Court finds that Art. 13, § 5(a)(2) permits a tenant to seek return of all rent the tenant has paid while residing in a rental dwelling, even if the tenant received what was bargained for by the lease, simply because the landlord did not complete the act of obtaining a rental license, the law will effectuate an unconstitutional taking. *See Willowbrook Apartment Assocs., LLC v. Mayor of Baltimore*, No. 20-CV-01818-SAG, 2021 WL 4441192, *4, n.4 (D. Md. Sept. 27, 2021) (noting that requiring a landlord to return money that tenants had already paid to them would be an unconstitutional taking akin to occupation of physical real property). Accordingly, *Amicus* expects that any such interpretation by this Court would be met with an onslaught of Takings claims cases.

Similarly, Appellant asks this Court to interpret Art. 13, § 5-4 as a requirement that an unlicensed landlord house a tenant without any obligation of the tenant to pay rent, even if the landlord has housed the tenant in accordance with the terms of the lease between the parties. This would result in substantial impairment of the contract between the landlord and the tenant (the lease), violates the United States Constitution's Contract Clause and is thus unconstitutional. *Amicus* likewise expects that any such interpretation would be met with a multitude of challenges based on the violation of the Contracts Clause.

6. Appellant's Untenable Interpretation of Art. 13, § 5-4 Cannot Sustain Claims for Violation of the MCDCA and the MCPA.

Given the difficulties experienced by landlords attempting to license rental property, as discussed above, the mere lack of licensure cannot support claims for violation of the MCDCA or the MCPA. This Court must continue to distinguish between those tenants who can demonstrate housing code violations, apart from the licensing violation, from those who cannot make such a showing. As this Court explained in *Citaramanis*, the intent of the General Assembly was to require a plaintiff to prove actual injury or loss sustained when instituting a private action "to prevent aggressive consumers who were not personally harmed" from "instituting suit 'as self-constituted private attorneys general' over minor statutory violations" or using the private remedy "improperly for harassment and improper coercive tactics." 328 Md. At 151-52 (citations omitted). Permitting tenants to institute claims for violation of the MCDCA or the MCPA and seek restitution of all the rent paid due solely to the lapse of a rental license, without more, would simply serve to make a punitive remedy[10] available to consumers which the General Assembly did not intend.

[10] As this Court noted in *Citaramanis*, the imposition of civil and criminal penalties was intended as the appropriate means for ensuring landlords comply with local licensure requirements for consumer realty, not the transformation of private actions into punitive measures. 328 Md. at 154.

VI. CONCLUSION

This Court should decline Appellant's invitation to overrule its earlier decisions in *Citaramanis* and *Galola*. Art. 13 § 5-4 was intended to benefit the City and the public generally by requiring all rental properties to be licensed, not to permit tenants to reside in unlicensed properties without the obligation to pay rent. Given the overwhelming difficulties experienced by landlords, and particularly landlords of multi-family buildings, in obtaining rental licenses, a shift of the magnitude proposed by Appellant would be punitive and unjust. Accordingly, this Court should answer both certified questions of law in the negative.

Respectfully submitted,

Dated: January 19, 2022

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TEXT OF CITATIONS

MD. CODE ANN., REAL PROP., §8-208.1. Retaliatory actions due to reporting violations or complaints prohibited.

Retaliatory Actions

(a)(1) For any reason listed in paragraph (2) of this subsection, a landlord of any residential property may not:

(i) Bring or threaten to bring an action for possession against a tenant;

(ii) Arbitrarily increase the rent or decrease the services to which a tenant has been entitled; or

(iii) Terminate a periodic tenancy.

(2) A landlord may not take an action that is listed under paragraph (1) of this subsection for any of the following reasons:

(i) Because the tenant or the tenant's agent has provided written or actual notice of a good faith complaint about an alleged violation of the lease, violation of law, or condition on the leased premises that is a substantial threat to the health or safety of occupants to:

1. The landlord; or

2. Any public agency against the landlord;

(ii) Because the tenant or the tenant's agent has:

1. Filed a lawsuit against the landlord; or

2. Testified or participated in a lawsuit involving the landlord; or

(iii) Because the tenant has participated in any tenants' organization.

Retaliatory action used as defense of claim for damages

(b) (1) A landlord's violation of subsection (a) of this section is a "retaliatory action".

(2) A tenant may raise a retaliatory action of a landlord:

(i) In defense to an action for possession; or

(ii) As an affirmative claim for damages resulting from a retaliatory action of a landlord occurring during a tenancy.

Amount of judgment

(c) (1) If in any proceeding the court finds in favor of the tenant because the landlord engaged in a retaliatory action, the court may enter judgment against the landlord for damages not to exceed the equivalent of 3 months' rent, reasonable attorney fees, and court costs.

(2) If in any proceeding the court finds that a tenant's assertion of a retaliatory action was in bad faith or without substantial justification, the court may enter judgment against the tenant for damages not to exceed the equivalent of 3 months' rent, reasonable attorney fees, and court costs.

Conditions required for relief

(d) The relief provided under this section is conditioned on the tenant being current on the rent due and owing to the landlord at the time of the alleged retaliatory action, unless the tenant withholds rent in accordance with the lease, § 8-211 of this subtitle, or a comparable local ordinance.

Time of retaliatory actions

(e) An action by a landlord may not be deemed to be retaliatory for purposes of this section if the alleged retaliatory action occurs more than 6 months after a tenant's action that is protected under subsection (a)(2) of this section.

Rights of landlord or tenant to terminate or not renew tenancy

(f) As long as a landlord's termination of a tenancy is not the result of a retaliatory action, nothing in this section may be interpreted to alter the landlord's or the tenant's rights to terminate or not renew a tenancy.

Construction with comparable ordinances

(g) If any county has enacted or enacts an ordinance comparable in subject matter to this section, this section shall supersede the provisions of the ordinance to the extent that the ordinance provides less protection to a tenant.

MD. CODE ANN., REAL PROP., §8-211. Duty of landlords to repair or eliminate serious conditions and defects of residential dwelling units

Purpose of section

(a) The purpose of this section is to provide tenants with a mechanism for encouraging the repair of serious and dangerous defects which exist within or as part of any residential dwelling unit, or upon the property used in common of which the dwelling unit forms a part. The defects sought to be reached by this section are those which present a substantial and serious threat of danger to the life, health and safety of the occupants of the dwelling unit, and not those which merely impair the aesthetic value of the premises, or which are, in those locations governed by such codes, housing code violations of a nondangerous nature. The intent of this section is not to provide a remedy for dangerous conditions in the community at large which exists apart from the leased premises or the property in common of which the leased premises forms a part.

Public policy of Maryland

(b) It is the public policy of Maryland that meaningful sanctions be imposed upon those who allow dangerous conditions and defects to exist in leased premises, and that an effective mechanism be established for repairing these conditions and halting their creation.

Application of section to residential dwelling units

(c) This section applies to residential dwelling units leased for the purpose of human habitation within the State of Maryland. This section does not apply to farm tenancies.

Application to publicly or privately owned, single or multiple dwelling units

(d) This section applies to all applicable dwelling units whether they are (1) publicly or privately owned or (2) single or multiple units.

Failure of landlords to repair or eliminate serious conditions and defects

(e) This section provides a remedy and imposes an obligation upon landlords to repair and eliminate conditions and defects which constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to the life, health or safety of occupants, including, but not limited to:

(1) Lack of heat, light, electricity, or hot or cold running water, except where the tenant is responsible for the payment of the utilities and the lack thereof is the direct result of the tenant's failure to pay the charges;

(2) Lack of adequate sewage disposal facilities;

(3) Infestation of rodents in two or more dwelling units;

(4) The existence of any structural defect which presents a serious and substantial threat to the physical safety of the occupants; or

(5) The existence of any condition which presents a health or fire hazard to the dwelling unit.

Failure to repair and eliminate minor defects

(f) This section does not provide a remedy for the landlord's failure to repair and eliminate minor defects or, in those locations governed by

such codes, housing code violations of a nondangerous nature. There is a rebuttable presumption that the following conditions, when they do not present a serious and substantial threat to the life, health and safety of the occupants, are not covered by this section:

(1) Any defect which merely reduces the aesthetic value of the leased premises, such as the lack of fresh paint, rugs, carpets, paneling or other decorative amenities;

(2) Small cracks in the walls, floors or ceilings;

(3) The absence of linoleum or tile upon the floors, provided that they are otherwise safe and structurally sound; or

(4) The absence of air conditioning.

Notice of defects or conditions

(g) In order to employ the remedies provided by this section, the tenant shall notify the landlord of the existence of the defects or conditions. Notice shall be given by (1) a written communication sent by certified mail listing the asserted conditions or defects, or (2) actual notice of the defects or conditions, or (3) a written violation, condemnation or other notice from an appropriate State, county, municipal or local government agency stating the asserted conditions or defects.

Reasonable time for landlord to repair or correct conditions

(h) The landlord has a reasonable time after receipt of notice in which to make the repairs or correct the conditions. The length of time deemed to be reasonable is a question of fact for the court, taking into account the severity of the defects or conditions and the danger which they present to the occupants. There is a rebuttable presumption that a period in excess of 30 days from receipt of notice is unreasonable.

Actions of rent escrow

(i) If the landlord refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may bring an action of rent escrow to pay rent into court because of the asserted defects or conditions, or the tenant may refuse to pay rent and

raise the existence of the asserted defects or conditions as an affirmative defense to an action for distress for rent or to any complaint proceeding brought by the landlord to recover rent or the possession of the leased premises.

Requests for relief

(j)(1) Whether the issue of rent escrow is raised affirmatively or defensively, the tenant may request one or more of the forms of relief set forth in this section.

(2) In addition to any other relief sought, if within 90 days after the court finds that the conditions complained of by the tenant exist the landlord has not made the repairs or corrected the conditions complained of, the tenant may file a petition of injunction in the District Court requesting the court to order the landlord to make the repairs or correct the conditions.

Conditions for relief

(k) Relief under this section is conditioned upon:

(1) Giving proper notice, and where appropriate, the opportunity to correct, as described by subsection (h) of this section.

(2) Payment by the tenant, into court, of the amount of rent required by the lease, unless this amount is modified by the court as provided in subsection (m) of this section.

(3) In the case of tenancies measured by a period of one month or more, the court having not entered against the tenant 3 prior judgments of possession for rent due and unpaid in the 12-month period immediately prior to the initiation of the action by the tenant or by the landlord.

(4) In the case of periodic tenancies measured by the weekly payment of rent, the court having not entered against the tenant more than 5 judgments of possession for rent due and unpaid in the 12-month period immediately prior to the initiation of the action by the tenant or by the landlord, or, if the tenant has lived on the premises six months or less, the court having not entered

against the tenant 3 judgments of possession for rent due and unpaid.

Defense to allegations of tenant

(l) It is a sufficient defense to the allegations of the tenant that the tenant, the tenant's family, agent, employees, or assignees or social guests have caused the asserted defects or conditions, or that the landlord or the landlord's agents were denied reasonable and appropriate entry for the purpose of correcting or repairing the asserted conditions or defects.

Court findings and orders

(m) The court shall make appropriate findings of fact and make any order that the justice of the case may require, including any one or a combination of the following:

(1) Order the termination of the lease and return of the leased premises to the landlord, subject to the tenant's right of redemption;

(2) Order that the action for rent escrow be dismissed;

(3) Order that the amount of rent required by the lease, whether paid into court or to the landlord, be abated and reduced in an amount determined by the court to be fair and equitable to represent the existence of the conditions or defects found by the court to exist; or

(4) Order the landlord to make the repairs or correct the conditions complained of by the tenant and found by the court to exist.

Distribution of escrow account funds

(n) After rent escrow has been established, the court:

(1) Shall, after a hearing, if so ordered by the court or one is requested by the landlord, order that the money in the escrow account be disbursed to the landlord after the necessary repairs have been made;

(2) May, after an appropriate hearing, order that some or all money in the escrow account be paid to the landlord or the landlord's agent, the tenant or the tenant's agent, or any other appropriate person or agency for the purpose of making the necessary repairs of the dangerous conditions or defects;

(3) May, after a hearing if one is requested by the landlord, appoint a special administrator who shall cause the repairs to be made, and who shall apply to the court to pay for them out of the money in the escrow account;

(4) May, after an appropriate hearing, order that some or all money in the escrow account be disbursed to pay any mortgage or deed of trust on the property in order to stay a foreclosure;

(5) May, after a hearing, if one is requested by the tenant, order, if no repairs are made or if no good faith effort to repair is made within six months of the initial decision to place money in the escrow account, that the money in the escrow account be disbursed to the tenant. Such an order will not discharge the right on the part of the tenant to pay rent into court and an appeal will stay the forfeiture; or

(6) May, after an appropriate hearing, order that the money in the escrow account be disbursed to the landlord if the tenant does not regularly pay, into that account, the rent owed.

Construction with local ordinances

(o) Except as provided in § 8-211.1(e) of this subtitle, in the event any county or Baltimore City is subject to a public local law or has enacted an ordinance or ordinances comparable in subject matter to this section, commonly referred to as a "Rent Escrow Law", any such ordinance or ordinances shall supersede the provisions of this section.

BALTIMORE CITY, MD. CODE, art. 13 § 5

Article 13 – Housing and Urban Renewal
Division II – Dwellings and Vacant Structures
Subtitle 5 – Licensing of Rental Dwellings

§ 5-4 – License required.

(a) In general.

Except as provided in subsection (b) of this section, no person may:

(1) rent or offer to rent to another all or any part of any rental dwelling without a currently effective license to do so from the Housing Commissioner; or

(2) charge, accept, retain, or seek to collect any rental payment or other compensation for providing to another the occupancy of all or any part of any rental dwelling unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy.

(b) Exception.

A license is not required under this subtitle for any rental dwelling that is owned and operated by the Housing Authority of Baltimore City.

§ 5-6 – Prerequisites for new or renewal license – In general.

A rental dwelling license may be issued or renewed under this subtitle only if:

(1) all dwelling units and rooming units are currently registered as required by Subtitle 4 {"Registration of Non-Owner-Occupied Dwellings, Rooming Houses, and Vacant Structures"} of this article;

(2) all registration fees for these units and all related interest and late fees required by Subtitle 4 have been paid;

(3) the premises have passed an inspection, as required by§ 5-7 {"Prerequisites ... – Inspection"} of this subtitle;

(4) the premises are in compliance with all Federal, State, and City laws and regulations governing lead paint;

(5) for premises that include a hotel or motel subject to City Code Article 15 {"Licensing and Regulation"}, Subtitle 10 {"Hotels"}, the hotel or motel is in compliance with the training, certification, and posting requirements of that subtitle; and

(6) the premises are not subject to any violation notice or order that:

(i) has been issued under the Baltimore City Building, Fire, and Related Codes Article; and

(ii) notwithstanding the passage of more than 90 days since its issuance, has not been abated before the license issuance or renewal.

§ 5-7 – Prerequisites for new or renewal license - Inspection.

(a) In general.

The inspection required by § 5-6 {"Prerequisites ... – In general"} of this subtitle must comply with either:

(1) subsection (b) {"Third-party home inspections"} of this section; or
(2) subsection (c) {"Governmental agency inspections"} of this section.

(b) Third-party home inspections.

(1) Definitions.

(i) In general.

In this subsection, the following terms have the meanings indicated.

(ii) Home inspection.

"Home inspection" means a home inspector's written evaluation of a rental dwelling's compliance with the City's health and safety standards specified in the Housing Commissioner's rules and regulations adopted under this subtitle.

(iii) Home inspector.

"Home inspector" means an individual:

(A) who is licensed as a home inspector under Title 16, Subtitle 3A of the State Business Occupation and Professions Article; and

(B) who, as required by the rules and regulations adopted under this subtitle:

1. has registered with the Housing Commissioner as generally available to inspect and certify rental dwellings under this subsection;

2. has, as specified by the rules and regulations adopted under this subtitle, submitted to the Commissioner a conflict-of-interest statement; and

3. for each home inspection to be performed under this subsection, certifies that neither the home inspector nor any owner, partner, director, officer, employee, or agent of the home inspector or of the home inspector's business has any financial interest in:

a. the rental dwelling to be inspected;

b. the owner or operator of that rental dwelling; or

c. any owner, partner, director, officer, employee, or agent of the rental dwelling's owner or operator.

(2) Applicant to contract for timely inspection.

(i) Before applying for a rental dwelling license or renewal license, the applicant must, at the applicant's expense, contract with a home inspector to perform a home inspection under this section.

(ii) The inspection must be performed as follows:

(A) for a multiple-family dwelling, not more than 90 days before a completed application for a license or renewal license is submitted to the Housing Commissioner; and

(B) for a 1- or 2-family dwelling, not more than 30 days before a completed application for a license or renewal license is submitted to the Housing Commissioner.

(3) Number of units to be inspected.

(i) For any rental dwelling that comprises 9 or fewer dwelling or rooming units, all dwelling and rooming units must be inspected under this subsection.
(ii) For any multiple-family dwelling or rooming house that comprises 10 or more dwelling or rooming units, the number of units that must be inspected are as determined in the rules and regulations adopted under this subtitle.

(4) Inspector's reports and certification.

(i) After the home inspection, the home inspector must issue to the applicant:

(A) a written report of every inspection conducted under this section; and

(B) if the rental dwelling meets the City's health and safety standards specified in the rules and regulations adopted under this subtitle, a certificate of satisfactory compliance with those standards.

(ii) The reports and the certification must be:

(A) in the form required by the Commissioner; and

(B) signed by the home inspector, under oath and under the home inspector's seal.

(c) Governmental agency inspections.

(1) Scope of subsection.

This subsection applies to any rental dwelling unit that is required to undergo periodic inspections conducted by a governmental agency in accordance with Federal or State inspection standards.

(2) Required evidence of compliance with most recent inspection.

For a rental dwelling unit described in paragraph (1) of this subsection, the applicant for a license or renewal license may, in lieu of the requirements of subsection (b) {"Third-party home inspections"} of this section, submit evidence satisfactory to the Housing Commissioner that the unit has passed the most recent periodic inspection by the applicable governmental agency.

(d) Commissioner to audit inspections.

As prescribed by the rules and regulations adopted under this subtitle, the Housing Commissioner must conduct an annual audit of inspections conducted under this section.

(e) Commissioner's inspection authority not affected.

This section does not in any way prevent or limit the authority of the Housing Commissioner to conduct routine, spot, quality-control, or other inspections of rental dwellings under the City Building, Fire, and Related Codes Article.

MD. CONST., DECLARATION OF RIGHTS, art 19. Relief for injury to person or property.

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

MD. CONST., DECLARATION OF RIGHTS, art 24. Relief for injury to person or property.

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

MD. CONST., art III, § 40. Eminent domain

The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation.

U.S. CONST., art I, § 10, cl. 1

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

APPENDIX 1

Home > Property/Alarm Registration > License Search

Property License and Registration Search

The link below will allow you to search license and property registration records by address, block/lot, or by zip code. The address and block/lot search are based on the official tax address of the property. The official tax address may be different from the address posted on the building.

☑ By Address — House Number: 2601 — Dir: — Street Name: madison

☐ By Block/Lot — Block: — Lot:

☐ By Zip Code

Search

Record Count:2

Reg#	Date Insp	License Print	Licensed	License Expiration Date	Valid Reg Year	Address	Zip	Block Lot
003418	02/19/2020	07/14/2020	Y	2/19/2022	2021	02601 MADISON AVE	21217	3420-017
035126					2021	02601 EMADISON ST	21205	1626-013

For additional information, questions or concerns please contact the Property Registration and Licensing Office by email or by calling 410-396-3575. If you would like to report an unlicensed or unregistered property, please contact the Code Enforcement Legal Section by email.

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 5,422 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

RULE 8-504(a)(9) CERTIFICATION

This *Amicus Curiae* Brief was prepared in 13-point, Century Schoolbook, proportionally spaced type.

Dated: January 19, 2022 /s/ *Avery Barton Strachan*
AVERY BARTON STRACHAN, ESQ.
(No. 0106200264)

CERTIFICATION OF COMPLIANCE WITH MD RULE 20-201(f)

I HEREBY CERTIFY that this filing complies with Md. Rule 20-201(f) regarding the exclusion of personal identifier information. The Document in the attached submission does not contain any personal identified information.

Dated: January 19, 2022 /s/ *Avery Barton Strachan*
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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2022 I served two copies of the foregoing Brief of *Amicus Curiae* Maryland Multi-Housing Association, Inc. by first-class mail, postage prepaid on the following:

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