

THE DAILY RECORD

Friday, November 18, 2009

Volume 121 | Number 28

TheDailyRecord.com

Court OKs HABC suit No immunity in lead paint litigation

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Housing authorities do not have governmental immunity from tort actions related to the maintenance and operation of their buildings, the Court of Appeals held in a decision issued Tuesday.

The decision revives a lead paint lawsuit filed by a Baltimore City teenager and his mother in 2004 against the Housing Authority of Baltimore City, which argued it qualified for immunity because it had exhausted the limits of its liability insurance policy.

But the state's highest court unanimously held Maryland law "effects a complete waiver of immunity" for tort actions related to government functions by housing authorities.

"We repeat, had the General Assembly wished to limit housing authorities' exposure to suits for damages, it knew how to make that limitation plain in law," Judge Mary Ellen Barbera wrote for the court.

Devonte A. Brooks, now 16, and his mother filed suit against the HABC in 2004, alleging he contracted lead poisoning during the mid-1990s while living in public housing. Their case has now been sent back to the circuit court.

Many lead paint cases were put on hold as Brooks' case wound its way through the appeals process, according to attorney Bruce H. Powell, including some Powell settled with the HABC.

"We've already begun sending out letters seeking payment," said Powell, an associate with the Law Offices of Peter T. Nicholl in Baltimore.

Powell and other lead paint litigators not involved with the case uniformly hailed the decision.



Attorney Suzanne C. Shapiro presented a winning argument that housing authorities should not be immune from suit.

Suzanne C. Shapiro, who represents Brooks and his mother, Kimberly C. Wright, also praised the decision.

"Housing authorities shouldn't be treated differently than any other landlord," said Shapiro, of Saul E. Kerpelman & Associates P.A. in Baltimore. "Hundreds of children that have lived in public housing and have been exposed to lead paint now have an opportunity to go to court and be adequately compensated for their injuries."

J. Marks Moore III, the housing authority's lawyer, declined to comment, saying he wanted to review the decision and speak with his client first.

A Baltimore City Circuit Court judge and a divided Court of Special Appeals panel both said the HABC's immunity was "waived only up to the

limits of its insurance coverage, and such limits were exhausted by the time Brooks filed suit," according to the Court of Appeals opinion.

Both parties in Brooks' case agreed that under Maryland law, governmental immunity is waived if the General Assembly authorizes suits for damages and there are funds available or can be raised to satisfy a judgment.

The HABC relied on a 1980 Court of Appeals decision, which said a housing authority's liability is capped at the extent of its insurance. But Barbera agreed with Shapiro that the statement from the 1980 ruling was "dictum" and "unnecessary to the resolution of the question presented in that case," the judge wrote.

Barbera added that the General Assembly "knows precisely" how to limit the waiver of governmental immunity when it wants to. County boards of education must carry a minimum of \$100,000 in liability insurance and can raise a defense of sovereign immunity to any claim greater than that amount, she wrote. Similar legislation is in place for community college boards and the Maryland-National Capital Park and Planning Commission, she added.

"Plainly...the General Assembly expressly authorized housing authorities to satisfy judgments either by purchase of adequate insurance coverage or by self-insurance and to generate funds for that purpose through a variety of fundraising means, without capping in any way the extent of the obligation," Barbera wrote.

Court of Appeals Judge Sally D. Adkins was the dissenting vote in the Court of Special Appeals' unreported opinion from December 2007. She recused herself from the Court of Appeals case and was replaced by retired Judge John C. Eldridge."

What the court held

Case: Devonte A. Brooks, a minor, etc., et al v. Housing Authority of Baltimore City et al, No. 14, Sept. Term 2008. Opinion by Barbera, J. Filed Nov. 17, 2009 Issue: Does the Housing Authority of Baltimore City have governmental immunity in a lead paint lawsuit because it exhausted the limits of its liability insurance coverage?

Holding: No; Maryland law effects a complete waiver of immunity for tort actions related to government functions by housing authorities.

Counsel: Suzanne C. Shapiro for petitioners; J. Marks Moore III and Samuel M. Riley for respondents.

RecordFax : 9-1117-20 (25 pages)