

Maryland Court of Appeals says tenant can't recover, despite \$100K verdict

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Byline: Christina Doran

Body

Despite a \$100,000 jury verdict in her favor, a tenant who claimed her landlord deceived her about water damage cannot recover because she filed her suit more than three years too late, the Court of Appeals has held.

"This decision is very significant to every Maryland consumer," said John Hermina of Hermina Law Group, counsel for the appellant. The court focused on "when the problems occurred as opposed to what the legislature had contemplated, which is when the injury or loss occurred," he said.

The outcome hinged on the tenant's timing: specifically, the date on which she knew or should have known about any unfair or deceptive trade practices by the landlord. On that date, the statute of limitations began to run.

"[This case] is precedent that in landlord/tenant relationship the continuation of events or the continuation of harm theory will not toll the statute of limitations, and that the jury's finding of notice is going to continue to be given impressive weight by the court," said Michael B. Kelly of O'Connor, Grant & Samuels, who along with Herbert R. O'Connor III represented the landlord.

However, Hermina disagrees.

"The statute doesn't authorize you to go to court until you have suffered injury or loss," he said. He argued that the injury or loss did not occur until a few months before the lawsuit was filed, and therefore Linda MacBride should have been entitled to the \$100,000 in damages awarded to her by the jury.

Suspicious odor

MacBride leased an apartment at the Little Brook Apartments in Frederick from Michael M. Pishvaian in October 1998. A brief run-through of the apartment didn't result in any misgivings about the condition of the apartment despite a few water spots on the ceiling and a "suspicious odor. "

However, the condition of the apartment began to deteriorate when, during heavy rains, water would soak through the ceiling, walls and carpet. MacBride complained to management about the water damage, along with the presence of an unwelcome family of squirrels. According to Kelly, however, MacBride would not give Pishvaian access to the apartment to make the necessary repairs.

An inspection of the apartment by the city of Frederick in November 2004 uncovered mold, a squirrel's nest in the wall and other items in need of repair. According to Hermina, the city inspector ordered MacBride to vacate the premises that same day.

Two days later, MacBride was examined by a physician, who informed her that she suffered from mold exposure. She sued Pishvaian in December 2004, claiming unfair and deceptive trade practices, fraud, negligence, breach of contract and unjust enrichment.

After a three-day trial, the jury returned a verdict in MacBride's favor on the unfair and deceptive trade practices count.

However, MacBride's victory was short-lived.

Frederick County Circuit Judge Julie S. Sholt entered a Judgment Not Withstanding the Verdict based on MacBride's failure to file suit within three years. The JNOV was based on the jury's finding MacBride "knew or should have known" about the practices on Oct. 28, 1998.

"Once the jury makes those findings of fact, the case law is very clear it is the judge's decision to apply those facts to the law," said Kelly.

No special circumstances

MacBride appealed, arguing that by returning a verdict in her favor, the jury implicitly decided her lawsuit was timely. In the alternative, she argued that the time period for filing her suit should be tolled because of the "continuation of events" or the "continuing harm" theories.

"We felt that the correct analysis isn't when she knew or should have known but rather it is when the continuing violation stopped, keeping in mind the legislative intent," Hermina said. "This happened when she left the property and when she discovered she was exposed to mold. "

The Court of Appeals disagreed, saying the jury was never asked to apply the statute of limitations to her claims.

Additionally, the continuation of events theory only applies when there is a fiduciary relationship between the parties, and "absent special circumstances to the contrary, the landlord-tenant relationship is a contractual relationship. "

"We hold that, as a matter of law, there are no specific facts in this case that would support a determination that the parties had a relationship built on trust and confidence such that appellant had a right to rely on appellee's good faith," wrote Judge Clayton Green Jr. on behalf of the unanimous top court.

"The court very clearly says in this opinion that the landlord/tenant relationship was not fiduciary relationship," said Kelly. "That is one of the things the court clears up in this opinion. "

Even if such a relationship did exist, the court noted, because MacBride knew or should have known about the unfair and deceptive trade practices, the statute of limitations could not be tolled.

Nor does the continuing harm theory apply where, as in this case, the complaints "are merely 'continuing ill effects' from the original alleged violation. " The only violation at issue occurred when MacBride signed the lease. Even if there were more violations, the court said, MacBride knew or should have known of the practices in 1998.

Hermina, though, feels the court got it wrong.

"Ms. MacBride's injury occurred within less than 30 days from when she filed her complaint in this case - well within the three-year period of the statute of limitations," said Hermina. "I hope that the next time this issue comes up that our wonderful high court will take that into consideration. "

WHAT THE COURT HELD

Case: Linda MacBride v. Michael M. Pishvaian, CA No. 42. September 2007. Reported. Opinion by Greene, J. Filed Dec. 13, 2007.

Issue: Does the continuation of events theory or the continuation of harm theory toll the statute of limitations in a consumer protection case involving unfair or deceptive trade practices by a landlord?

Holding: No. Because the tenant knew or should have known about the unfair or deceptive trade practices near or at the signing of the lease, neither theory tolls the statute of limitations, and her claim was untimely filed.

Counsel: John Hermina for appellant; Herbert R. O'Conor III and Michael B. Kelly for appellee.

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