

N E W S	<h1>Recent Developments in the Law.®</h1>
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L E T T E R	
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In order to keep our clients abreast of pertinent recent developments in the law, Saunders & Schmieler, P.C. creates Recent Developments in the Law® to inform regarding the substance of several decisions of importance recently rendered in and on the jurisdictions of Maryland, Virginia, and the District of Columbia.

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ENVIRONMENTAL LAW

MARYLAND COURT OF APPEALS RULES IMMUNITY PROVISIONS IN THE REDUCTION OF LEAD RISK IN HOUSING ACT UNCONSTITUTIONAL

*Zi'Tashia Jackson v. The
 Dackman Co., et al.,*
 No. 131, 2011 Md. LEXIS 639
 (Md. October 24, 2011).

Until October 24, 2011, Maryland landlords enjoyed immunity protections under the Reduction of Lead Risk in Housing Act. The purpose of the Reduction of Lead Risk in Housing Act, enacted by Ch. 114 of the Acts of 1994 and mostly codified in Maryland Code (1982, 2001 Repl. Vol., 2011 Supp.), subtitle 8, §§ 6-801 through 6-852 of the Environment Article, is to reduce the occurrence of lead poisoning to children while

continuing to maintain a number of affordable rental housing. The Act was divided into a number of parts. The most pertinent to the discussion are Parts III-V. Part III, §6-811(a), requires owners of the properties at issue to register the property with the Department of the Environment on or before December 31, 1995. The owners are also required to renew their registration on or before December 31 of each year to update the information on file. Pursuant to §8-812(b), those owners who purchase affected property after December 31, 1995, must register the property within 30 days after acquisition. If an owner of an affected property does not register or renew the registration, the owner will be deemed in noncompliance with respect to such property for purposes of § 6-836, one of the sections providing for immunity from suit.

Part IV, §§ 6-815 through 6-824, provides for the mandatory risk reduction standards for affected property, establishes a schedule for bringing the affected property into compliance with the standards, and states that the owner of the affected property may lose immunity protection if not in compliance with the standards. Some examples of complying with the standards include: rehanging doors to prevent lead-painted surfaces from rubbing against each other; checking caps of vinyl, aluminum, or any other material are installed in window wells to make them smooth and cleanable; reviewing all exterior and interior painted surfaces; certifying that kitchen and bathroom floors are covered with a smooth, water-resistant covering; repairing any structural defect which causes the paint to chip, peel, or flake in which the owner knows or reasonably should know of. If an owner of an affected property does not comply with the standards as set forth in the previously mentioned sections, such owner will be deemed in noncompliance and ineligible for the immunity provisions.

Part V, §§ 6-826 through 6-842, concerns qualified offers and limitations on judicial actions. A “qualified offer” is an offer of money by an owner, the owner’s agent, or an insurer of the owner, made to a person at risk

or to a parent or legal guardian of a person, who is a minor, at risk. §§ 6-831 through 6-834. The statute defines a “person at risk” as “a child or a pregnant woman who resides or regularly spends at least 24 hours per week in an affected property” § 6-801(p). The statute defines a “child” as an individual under six years old. § 6-801(d). While a qualified offer is meant to cover some of the expenses incurred by an affected person at risk, the maximum amount payable pursuant to a qualified offer is \$17,000, most of which are only payable to the provider of medical or other service and not to the person at risk. If a qualified offer is accepted by a person at risk or his/her parent or legal guardian, then such acceptance “releases all potential liability of the offeror, the offeror’s insured or principal.” § 6-835. However, if a qualified offer is rejected, then “[a]n owner of an affected property is not liable, for alleged injury or loss caused by ingestion of lead by a person at risk in the affected property.” § 6-836. In addition to § 6-835 and § 6-836, §§ 6-827 and 6-828 also provide for liability and immunity from personal injury lawsuits. § 6-827 explains that Part V regarding qualified offers and owners’ immunity from suit is meant to be very broad and § 6-828 grants an owner immunity from personal injury suits, if the owners has complied with the

statute, unless notice is given to the owner on certain dates about certain levels of elevated blood levels of a person at risk and the owner has been given the opportunity to extend a qualified offer.

In a landmark decision on October 24, 2011, in the case of *Zi’Tashia Jackson v. The Dackman Co., et al.*, the Maryland Court of Appeals, the highest court in the state of Maryland, ruled that the immunity provisions in the Reduction of Lead Risk in Housing Act are invalid under Article 19 of the Maryland Declaration of Rights. In the matter at issue, Zi’Tashia Jackson, a minor, and her mother, Tameka Jackson, filed a complaint in the Circuit Court for Baltimore City against The Dackman Company, Jacob Dackman & Sons, LLC, Elliot Dackman, and Charles A. Skirven involving two separate residential, rental properties. The complaint alleged that both of the properties, which contained lead paint, were owned, controlled, managed, or supervised by the defendants. The plaintiffs sought damages based on Zi’Tashia’s alleged permanent brain injuries as a result of her ingestion of lead paint in the properties. The defendants filed a motion for summary judgment arguing that they had complied with the Reduction of Lead Risk in

Housing Act and, as such, were immune from being sued under the statute's immunity provisions. In addition, the defendants stated that they did not receive the written notice of Zi'Tashia's elevated blood lead levels as is required by the statute, and as a result, they did not have the opportunity to make a qualified offer. The plaintiffs opposed the motion for summary judgment by arguing that the statute's immunity provisions were unconstitutional on several grounds, that the defendants did not follow the statute's registration requirements, and that the statute's immunity provisions were inapplicable if the child's blood lead level was below the amounts mentioned in § 6-828. The Circuit Court granted in part the defendants' motion for summary judgment and held that the statute's immunity provisions were constitutional and applied to all blood lead levels. The Circuit Court ultimately granted in full the defendants' motion for summary judgment when the parties furnished a stipulation of the facts in regards to the registration renewals. The plaintiffs appealed to the Maryland Court of Special Appeals, presenting the same argument as in the Circuit Court. The Court of Special Appeals affirmed the Circuit Court's decision on the constitutional issues and the immunity

provision applying to blood lead levels below the amounts below those specified in § 6-828. The plaintiff then filed a petition for writ of certiorari to the Maryland Court of Appeals, and the defendant filed a cross-petition. Both petitions were accepted.

The Court of Appeals held that the immunity provisions of the statute were unconstitutional, and thus, invalid under Article 19 of the Maryland Declaration of Rights. Article 19 provides that every man who is injured in his person or property has the remedy of the course of the Law of the land. The Court explained that the action filed by the plaintiffs, "based upon the defendants' alleged violation of a duty under a statute or ordinance designed to protect a specific class of persons which includes the plaintiff," is considered well-settled Maryland law. *Zi'Tashia Jackson v. The Dackman Co. et al.*, No. 131, 2011 Md. LEXIS 639, at *39 (Md. October 24, 2011). As such, Article 19 protects such a remedy, and any restriction on that remedy must be deemed reasonable. The Court pointed out that the immunity provided by the statute are not considered "traditional or well-established immunity from personal injury actions." *Id.* As a result, the Article 19 rulings in previous Maryland cases do not give support to the grant of immunity

in the current case. The Court stated that the statute really only gives one remedy in place of a personal injury action: a qualified offer by the owners which is accepted by a "person at risk, or a person or legal guardian of a minor who is a person at risk." §6-834. However, the Court stressed that where a qualified offer is not made, as in the present case, injured individuals will have no remedy under the statute. If a qualified offer is made, as mentioned previously, the highest amount payable under the offer is \$17,000, most of which are only payable to the provider of medical or other service and not to the person at risk. The Court concluded that as a result of these two options, a child who is found to be permanently brain damaged from the ingestion of lead paint as a result of the landlord's negligence, only has a "minuscule" amount of compensation tantamount to "almost no compensation." *Zi'Tashia Jackson v. The Dackman Co. et al.*, No. 131, 2011 Md. LEXIS 639, at *41 (Md. October 24, 2011). In sum, the statute replaces traditional personal injury action with a substitute of either no compensation (when a qualified offer is not made or when a qualified offer is rejected) or extremely inadequate compensation (when a qualified offer is made and accepted). *See*

Zi'Tashia Jackson v. The Dackman Co. et al., No. 131, 2011 Md. LEXIS 639, at *42 (Md. October 24, 2011). Moreover, the statute does not have an exception to the owner's immunity for those situations where an injured minor reaches the age of the majority and wishes to bring a personal injury action in his/her own name against the owner. In conclusion, the Court stated that it "cannot countenance a result that would

leave the only innocent victim . . . uncompensated for his or her injuries. . . ." *Id.* However, even though the Court found the statute's immunity provisions unconstitutional, it also made clear that the unconstitutional provisions are severable from the remaining portions of the statute. The Court ruled that the dominant purpose of the statute can still be given effect without the unconstitutional immunity provisions. As a result, from a

defendant's perspective, the Maryland Court of Appeals' ruling has decelerated the Reduction of Lead Risk in Housing Act. While the intent of the statute, to protect children, still exists, Maryland landlords now no longer have the added benefit of being immune from suit when complying with the statute. It is expected that the Court of Appeals' decision will be enforced prospectively and will apply to all pending cases.