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Recent Developments: Solberg v. Majerle Mgmt.: Reasonable Accommodation for a Tenants' Disability by the Landlord May Be Limited

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RECENT DEVELOPMENT

SOLBERG v. MAJERLE MGMT.: REASONABLE ACCOMMODATION FOR A TENANTS' DISABILITY BY THE LANDLORD MAY BE LIMITED

By: Maria N. Worthington

The Court of Appeals of Maryland held that a landlord's statutory requirement to provide reasonable accommodations for a tenant with disabilities can be limited when the requested accommodations are deemed unreasonable and result in a breach of the lease. *Solberg v. Majerle Mgmt.*, 388 Md. 281, 879 A.2d 1015 (2005). Specifically, when a tenant's requested accommodations prevent the landlord from performing actions that are permitted under the lease, such as an inspection, the landlord may not be required to fulfill the tenant's requested accommodations. *Id.*

In September 1999, Deborah Sossen and Erick Solberg entered into a two year lease for the rental of a residential house. A U.S. Department of Housing and Urban Development Section 8 Lease Addendum was attached to the lease. The lease contained two pertinent sections. First, Section 13 allowed the landlord to enter the home for inspection at any time. Second, Section 27 stated the landlord received testimony regarding the tenants' sensitivity to pesticides and agreed to make reasonable accommodations and modifications for the tenants' disabilities.

On June 22, 2001, the property management company, Majerle Management, Inc. ("Majerle"), sent a letter to the tenants explaining an inspection would occur on July 11, 2001 unless the tenants needed to reschedule. The day before the scheduled inspection, the tenants cancelled because neighbors were applying weed control, which was dangerous to their health. In August 2001, Majerle was able to inspect the property. After the inspection, in December 2001, Ms. Sossen's doctor sent a letter to Majerle indicating the medical necessity that all individuals entering the tenants' home comply with specific requirements to prevent Ms. Sossen from becoming ill. The letter included an exhaustive list of requirements, including such things as no fabric softener residue on a visitor's clothing.

When Majerle scheduled another inspection in April of 2002, the tenants cancelled because they did not know when the neighbors may be applying pesticides and what type of pesticides the neighbors would be using at the time of the inspection. Thereafter, Majerle mailed a letter requesting the tenants vacate the property because of poor exterior conditions of the property, repeated cancellations of inspections and frequent neighbor complaints. The tenants did not vacate the property. Majerle filed a tenant holding over action in the District Court for Montgomery County, which Majerle was forced to dismiss for failing to provide notice, as required by the lease. In early 2003, Majerle initiated another holding over action in the district court after providing the necessary notice. However, the district court determined that the lease was a continuing tenancy that could only be terminated for specific causes and Marjerle did not prove any cause allowing termination of the lease. In November 2003, after the tenants again cancelled an inspection, another tenant holding over action was filed. Before trial, the parties reached an agreement whereby the tenants agreed to an inspection prior to February 2004. The agreement was signed by the landlord, but not the tenants. An inspection never occurred and Majerle filed a motion to seek possession of the property. The motion contended that the tenants' refusal to allow inspections of the property constituted a breach of the settlement agreement and breach of the lease. The district court entered judgment of possession to the landlord.

The tenants appealed to the Circuit Court for Montgomery County which took the appeal *de novo*. The circuit court concluded that the tenants were in breach of Section 27 of the lease allowing inspection of the property with accommodations. The Court of Appeals of Maryland granted certiorari to review the issues of whether the landlord attempted to make reasonable accommodations and whether the tenants' refusal to allow an inspection was a breach of the lease.

Prior to the analysis of the merits, the Court of Appeals addressed the issue of jurisdiction. *Id.* at 293, 879 A.2d at 1021. Majerle argued in its brief that the circuit court lacked jurisdiction to hear the appeal *de novo*, but failed to raise the issue in a cross-petition for writ of certiorari. *Id.* at 292-93, 879 A.2d at 1021. The Court quickly concluded that the issue of jurisdiction was not properly raised in the petition for certiorari, and thus was not before the Court in this case. *Id.* at 293, 879 A.2d at 1021-22.

Nevertheless, the Court addressed the jurisdictional issue in detail. *Id.* at 292, 879 A.2d at 1021. The Court cited to Md. Code Ann., Cts.

& Jud. Proc. § 12-401(f), stating a case that has an amount in controversy over $5,000, can be heard in the circuit court on the record. *Id.* The Court of Appeals found that, by statute, the circuit court should have heard the case on the record, not *de novo*. *Id.*

Although the legislature allows parties to agree that a case will be heard on the record when a statute states it may be heard *de novo*, the reverse is not permitted. *Id.* at 293-94, 879 A.2d at 1022. Moreover, if the issue is raised in a petition for certiorari, the Court may not be deterred from reversing a decision where parties agree for a case to be tried *de novo* that by statute is to be heard on the record. *Id.* at 294, 879 A.2d at 1022. In this case, however, Majerle did not raise the jurisdictional issue in a cross-petition for certiorari. *Id.*

The Court of Appeals then turned to the issue of whether the landlord made reasonable accommodations for the tenants when it performed inspections of the property. *Id.* The Court looked directly to 42 U.S.C. § 3604(f)(2) stating it is unlawful for any person to discriminate in the sale or rental of a house based upon the handicap of a buyer. *Id.* at 295, 879 A.2d at 1023. According to 42 U.S.C. § 3604(f)(3)(B), "discrimination" is "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy the dwelling." *Id.*

To determine whether Majerle was acting in accord with the laws, the Court reviewed the definition of reasonable. *Id.* The Court of Appeals looked to federal cases which have turned to the Rehabilitation Act of 1973 and the Americans with Disabilities Act when defining "reasonable accommodations." *Id.* at 296, 879 A.2d at 1023. According to the federal cases, reasonable accommodation is a highly fact-specific, case-by-case inquiry. *Id.*

After reviewing *Bryant Woods Inn, Inc. v. Howard County, Md.*, 124 F.3d 597 (4th Cir. 1997), the Court of Appeals identified as one important factor the costs and burdens of any requested accommodation. *Id.* at 297, 879 A.2d at 1024. Here, the tenants conditioned the inspection on personal hygiene which crossed the boundary of anything reasonable. *Id.* Furthermore, the tenants conditioned inspections on the actions of what the neighbors might be doing on the day of the inspection which was beyond the control of Majerle. *Id.*

The Court of Appeals was sympathetic toward the tenants' sensitive condition and acknowledged that tenants are afforded protection under Federal law. *Id.* at 298, 879 A.2d at 1024. However,

the requests made by the tenants' were not reasonable. *Id.* Therefore, the Court of Appeals affirmed the circuit court's judgment granting possession of the property to Majerle. *Id.*

Solberg v. Majerle Mgmt. is important because the Court of Appeals held that although a landlord must comply with the laws requiring accommodations for the disabled, the accommodation requests must be reasonable. Whether a tenant's requested accommodations are reasonable is a case-by-case inquiry. Yet, it is apparent that it is not reasonable for a tenant with a disability to set forth an exhaustive list of tedious tasks for the landlord to follow. Therefore, reasonable accommodations are not all encompassing. This may be a benefit for landlords, but a disadvantage to disabled tenants that may need substantial accommodations. Tenants may need to carefully choose their accommodation requests, so as to avoid the requested accommodations being deemed unreasonable.

Additionally, although the Court of Appeals does not apply the jurisdictional issue in this case, the Court discussed it in detail nonetheless. Future parties should heed the warning and recognize that when the statute mandates an appeal to be heard on the record, the parties may not waive the requirement or agree that the appeal can be heard *de novo*. The Court of Appeals stated that it will not hesitate from reversing such a situation.