



2004

## Recent Developments: Brooks v. Lewin Realty III, Inc.: A Prima Facie Case in a Negligence Action Involving Lead Paint Violations May Be Established without Notice to the Landlord

Sarah M. Miller

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

### Recommended Citation

Miller, Sarah M. (2004) "Recent Developments: Brooks v. Lewin Realty III, Inc.: A Prima Facie Case in a Negligence Action Involving Lead Paint Violations May Be Established without Notice to the Landlord," *University of Baltimore Law Forum*: Vol. 34 : No. 2 , Article 4.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol34/iss2/4>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

**Brooks v. Lewin Realty III, Inc.:****A Prima Facie Case in a Negligence Action Involving Lead Paint Violations May Be Established Without Notice to the Landlord**

By: Sarah Miller

The Court of Appeals of Maryland held a *prima facie* case in a negligence action involving lead paint violations may be established without notice to the landlord. *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 835 A.2d 616 (2003). Additionally, the court held a landlord is presumed, as a matter of law, to have notice of a defective paint condition. *Id.*

In August 1988, Shirley Parker (Parker) rented a house in Baltimore City. The house's interior was painted at the beginning of the tenancy. Soon thereafter, Parker's daughter, Sharon, moved into the house and Sharon gave birth to a son, Sean. In the early spring of 1991, Lewin Realty (Lewin) purchased the house at auction. Marvin Sober, a Lewin stockholder, did a walk through inspection of the house and discovered peeling, chipping, and flaking paint in many areas, including Sean's bedroom. Parker and Lewin entered into a new lease agreement, and Lewin did not re-paint the house's interior. Sean was diagnosed with an elevated blood lead level in February 1992. Four months later, the Baltimore City Health Department (BCHD) contacted Sharon about Sean's blood lead level and issued a lead paint violation notice for the property to Lewin. Upon inspection of the property, BCHD found fifty-six areas

of peeling, chipping, and flaking lead paint.

Sharon filed a five-count complaint individually and on behalf of her son against Lewin in the Circuit Court for Baltimore City. Four claims were dismissed, leaving the complaint of alleged negligence with regard to Sean. A jury found Lewin liable. Lewin appealed and the court of special appeals reversed and remanded. The court of appeals granted certiorari to elucidate the notice requirement in negligence actions based on lead paint violations of the Baltimore City Housing Code (BCHC).

The existing Maryland rule regarding the notice requirement in lead paint cases comes from the holdings of *Richwind v. Brunson*, 335 Md. 661, 645 A.2d 1147 (1994) and its progeny. *Id.* at 75, 835 A.2d at 619. *Richwind's* holding placed the burden of pleading and proving the landlord knew or had reason to know of the defective paint condition on the plaintiff to establish negligence. *Id.* That court also held a landlord has no duty to inspect a premises for defective paint conditions during the lease period. *Id.*

The issues before the court were whether 1) a landlord has a duty to inspect a premises for a defective paint condition at any time during the lease period; 2) a plaintiff has the

burden of pleading and establishing the landlord had notice of a defective paint condition; and 3) the landlord should, as a matter of law, be presumed to have notice of the dangerous paint condition. *Id.* at 75-76, 835 A.2d at 619.

From the beginning, the court endorsed Petitioners' argument that *Richwind* applies only in the absence of an applicable statutory scheme. *Id.* at 78, 835 A.2d at 620. Specifically, Petitioners argued *Richwind* incorrectly joined two common-law lines of cases requiring notice to an alleged tortfeasor – failure to warn of known latent defects and breaches of covenants to repair – in determining liability for injuries resulting from a violation of a statute or ordinance. *Id.* at 76, 835 A.2d at 619. Neither of these common-law doctrines applied in this case since the controlling standard was provided in the BCHC. *Id.*, 835 A.2d at 620. The court noted when a defendant's duty is set out in a statute or ordinance, "violation of the statute or ordinance is itself evidence of negligence." *Id.* at 78, 835 A.2d at 620.

Under this common-law rule, a *prima facie* case in a negligence action may be made if the plaintiff proves a violation of a statute or ordinance designed to protect a specific class of persons which

includes the plaintiff and that the violation proximately caused the injury. *Id.* at 79, 835 A.2d at 621. Proximate cause is determined by evaluating whether the harm suffered was the type that the statute's drafters intended to thwart and whether the plaintiff was within the protected class. *Id.*

Applying this rule to the instant case, the court opined Sharon and Sean were obviously within the class of persons protected by the BCHC. *Id.* at 81, 835 A.2d at 622. The court continued by laying out all relevant BCHC sections and how the BCHC supports the notion that a landlord has a duty to keep a leased premises in good repair and safe condition. *Id.*, 835 A.2d at 623. Under the plain meaning of the BCHC's language, the "nature of the landlord's duty is continuous" throughout the lease period. *Id.* at 84, 835 A.2d at 624.

BCHC Section 909 enables a landlord to carry out his or her duty by allowing a landlord to enter a leased premises for such continuous maintenance as necessary during the lease period. *Id.* Lewin's primary argument was the landlord surrendered control of the premises at the inception of the lease and thus, had no duty to inspect the premises during the lease period. *Id.* The court refuted Lewin's argument because of the control granted to a landlord under Section 909. *Id.*

The court ended its analysis by explaining *Richwind's* major flaw. *Id.* at 87, 835 A.2d at 626. *Richwind* extended to occupants the notice requirements of Sections 301 and 303 of the BCHC, which require the

Commissioner of Housing and Community Development to notify a landlord of alleged violations. *Id.* Sections 301 and 303 address only the notice requirements of an administrative agency before the agency may act upon a BCHC violation; the sections do not address notice requirements of occupants. *Id.* at 88, 835 A.2d at 626. The court held the BCHC "does not make the landlord's notice of defective condition a factor with regard to the landlord's duty to the tenant." *Id.* at 89, 835 A.2d at 627.

By removing the burden of notice from the plaintiff, the court made the establishment of a *prima facie* case based on negligence more attainable for Maryland plaintiffs. To avoid liability, landlords must have a greater awareness of their leased premises' condition and must conduct periodic inspections to remain in compliance with the BCHC.

## ***The University of Baltimore Law Forum***

### **Articles Solicitation**

**The University of Baltimore  
*Law Forum* is currently  
requesting articles for sub-  
mission relating to issues of  
importance in Maryland and/  
or Federal law.**

**Please contact or  
submit materials to:**

**Articles Editor  
University of Baltimore  
*Law Forum***

**1420 North Charles Street  
Baltimore, Maryland 21201  
(410) 837-4493**

**E-Mail:**

**lawforum@ubalt.edu**

**or visit our website**

**at**

**www.ubalt.edu/  
lawforum**