Circuit Court for Baltimore City
Case No. 24-C-18-000611

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 622

September Term, 2020

I'MAYA KELLY

v.

CFNA RECEIVABLES (TX), LLC

Leahy,
Reed,
Beachley,

JJ.

Opinion by Leahy, J.

Filed: February 22, 2022

In this appeal, we address whether a lender who obtained title to property through a judicial foreclosure sale had a duty to holdover occupants to comply with obligations imposed on owners under the Baltimore City Housing Code (2000, 2002 Supp.), Art. 13, §§ 101-1402 ("Housing Code").

Appellant I'Maya Kelly[1] lived at 2349 Lauretta Avenue, Baltimore, Maryland 21223 (the "Lauretta Property") with her grandparents and mother between June 1997 and early 2001, from her birth until she was three, when her family was evicted through the foreclosure process. In 2018, I'Maya filed a three-count complaint in the Circuit Court for Baltimore City against appellee CFNA Receivables (TX), LLC ("CFNA"), and others, alleging negligence, violation of the Maryland Consumer Protection Act, and negligent misrepresentation for injuries sustained from exposure to lead-based paint. I'Maya averred that appellee CFNA was liable as successor in interest to the owner of the property during the period that her family remained on the property as holdover mortgagors.

The circuit court granted CFNA's motion for summary judgment on all three counts. The court granted CFNA's motion on Count I for negligence—the only ruling challenged on appeal—on the ground that CFNA's predecessor did not have any duty to the holdover occupants and could not be held liable until the writ of possession was executed. I'Maya filed a motion to alter or amend the grant of summary judgment, pointing out, among other things, that CFNA's predecessor had the right to access the Lauretta Property pursuant to

[1] Appellant, I'Maya Kelly, is referred to by her first name in this opinion for clarity and to avoid any potential confusion with other members of her family with the same last name who lived at the Lauretta Property.

section 909 of the Housing Code. The Court's order denying the motion was docketed on August 3, 2020, and I'Maya filed her appeal on August 24, 2020.

I'Maya presents four issues for our review,[2] which we have consolidated and recast as follows:

I. Did the circuit court err in granting summary judgment to CFNA by finding, as a matter of law, that a foreclosure purchaser could not be held liable for negligence arising from provisions in the Housing Code until a writ of possession was executed?

[2] The questions presented in I'Maya's opening brief are:

"1. Did the trial court commit legal error in finding an owner that acquired title of a property by way of foreclosure auction ratified by the Circuit Court for Baltimore City is not responsible for compliance with the health and safety provisions of the Baltimore City Housing Code, enacted, in part, to protect children from lead poisoning, until the occupants in physical possession of the property are evicted and the owner has actual possession?

2. Did the trial court commit legal error in finding that charge, care, or control of the physical property, as used in the definition of operator, is required for liability of an owner as defined by the Baltimore City Housing Code and relevant caselaw?

3. Did the trial court commit legal error in performing the role of a fact-finder and weighing the reasonableness of Appellee's actions when determining Appellee could not be liable for violations of the Baltimore City Housing Code as a matter of law?

4. Did the trial court commit legal error in failing to rectify a judgment based on a misunderstanding of the law applicable to the case when that error was brought to its attention in a timely manner?

5. Did the trial court abuse its discretion in denying Appellant's Motion to Alter or Amend, or in the Alternative for Reconsideration of, the Court's Order Granting Appellee's Motion for Summary Judgment?"

II. Did the circuit court abuse its discretion when it denied I'Maya's motion to alter or amend the grant of summary judgment?

We hold that the circuit court erred in granting summary judgment because once CFNA's predecessor in interest became an owner of the Lauretta Property on the date of the foreclosure sale, it had a duty to any occupants, regardless of their legal rights to possess the Property, to keep the Property "in good repair, in safe condition, and fit for human habitation." Housing Code § 702. As the Court of Appeals recently reasserted in *Hector v. Bank of New York Mellon*, in order to establish a *prima facie* case of negligence based on violations of the Housing Code, I'Maya was required to show only two things: "(a) the violation of a statute or ordinance designed to protect a specific class of persons which includes the plaintiff, and (b) that the violation proximately caused the injury complained of." 473 Md. 535, 559 (2021), *reconsideration denied* (July 9, 2021) (quotation omitted). Because I'Maya satisfied this burden, the trier of fact must evaluate whether the actions of CFNA's predecessor were reasonable under the circumstances. In light of the foregoing determinations, we do not reach the second question. Accordingly, we reverse the judgment of the circuit court and remand this case for further proceedings consistent with this opinion.

BACKGROUND

Paul Carter and Delores Carter, I'Maya's grandparents, owned the Lauretta Property as tenants by the entireties after Mr. Carter bought the property in 1987. I'Maya was born in June 1997. She resided with her mother, Erica Carter, and her grandparents at the Lauretta Property from her birth until early 2001 when the family was evicted through the

foreclosure process. According to I'Maya's mother, she observed I'Maya eating dust from a windowsill at the Lauretta Property while she was young. She deposed that a number of windows at the Lauretta Property contained chipping, peeling, and flaking paint. Likewise, I'Maya's grandmother deposed that, throughout the period that they resided at the Lauretta Property, there were "paint chips around the windowsills." On February 9, 2000, the lead level recorded in I'Maya's blood was five micrograms per deciliter.

Foreclosure Proceedings

The Carters obtained mortgage refinancing in 1998 and pledged their interest in the Lauretta Property as collateral through a deed of trust in the principal sum of $45,000. The original beneficiary of this deed of trust was American Mortgage Reduction, Inc., which was defined in the deed of trust as the "Lender." Among other terms and covenants, the deed of trust provided that the Carters, as the "Borrowers," "shall have possession of the property until Lender has given Borrower notice of default[.]" American Mortgage Reduction, Inc.'s interest was assigned to IMC Mortgage Company.

After the Carters defaulted on their mortgage loan, substitute trustees, on behalf of IMC Mortgage Company, filed a foreclosure action on January 11, 1999. The Lauretta Property then was sold to IMC Mortgage Company on February 3, 1999, and the sale was ratified on March 25, 1999. On June 15, 1999, title to the Lauretta Property was conveyed to IMC Mortgage Company, the predecessor in interest to CFNA, through a Substitute

Trustee's Deed. (For ease of reference, we generally refer to CFNA Receivables (MD), LLC and its predecessors as "CFNA.") [3]

On October 19, 1999, IMC Mortgage Company filed a motion for judgment awarding possession of property and asserted that it had "complied with the terms of the sale, however, the property remains occupied by person(s) who have refused to deliver possession to the Purchaser after a demand that he/she/they vacate the property." The court then issued two show cause orders, on November 9, 1999 and August 23, 2000, directing the Carters to show cause before December 10, 1999 and September 8, 2000, respectively, why the motion for judgment awarding possession should not be granted. The Carters did not respond to either show cause order.

Without a response noted on the docket, the court entered an order awarding possession on November 17, 2000 and then issued a writ of possession on November 29, 2000. The sheriff's office then served and executed the writ of possession on January 16, 2001. I'Maya and her family remained on the Lauretta Property after the sale through early 2001.

[3] CFNA is the successor in interest to: Industry Mortgage Company, LP; IMC Mortgage Company; CitiFinancial, Inc.; CFNA Receivables (MD), Inc.; and CFNA Receivables (MD), LLC. IMC Mortgage Company, the successor in interest to Industry Mortgage Company, LP, ceased operation in 2006 when it was succeeded by CitiFinancial, Inc. CitiFinancial, Inc. then amended its name to CFNA Receivables (MD), Inc. in 2013, and then to CFNA Receivables (MD), LLC in 2017. Finally, CFNA Receivables (MD), LLC merged into CFNA Receivables (TX), LLC on July 28, 2017. CitiBank, N.A. is the sole member of CFNA Receivables (TX), LLC.

Lead-Paint Exposure Proceedings

On February 2, 2018, I'Maya filed a complaint in the Circuit Court for Baltimore City against five defendants,[4] including Citibank, N.A. and CFNA, for damages arising from her purported exposure to lead paint at the Lauretta Property. In response, on April 6, 2018, the defendants removed the case to the United State District Court for the District of Maryland on the basis of diversity jurisdiction.

On May 3, 2018, I'Maya filed her first amended complaint, which further alleged that between her birth through approximately 2002, I'Maya was exposed to lead at a second property at 3024 Edmonson Avenue, Baltimore, Maryland ("Edmonson Property"). She joined four additional defendants who operated the Edmonson Property: EBW Limited Partnership; Lawrence Polakoff; the Estate of Lawrence Polakoff; and Chase Management, Inc. (collectively, "Polakoff Defendants"). At least three of these defendants were Maryland residents. I'Maya then moved to remand the case. As a result of the joinder of the Maryland defendants and the federal district court's finding that the issues in the case could not "be resolved without necessary inquiry into the precise allocation of causation and damages for both the Lauretta and Edmondson properties," the federal district court remanded the case to the Circuit Court for Baltimore City.

[4] I'Maya named five defendants in her initial complaint: IMC Mortgage Company; CFNA Receivables, Inc.; Citibank, N.A.; CitiFinancial, Inc.; and Industry Mortgage Company, LP. CFNA was misidentified as CFNA Receivables, Inc., a non-entity. The only entities in business at the time of the filing of the initial complaint were Citibank, N.A. and CFNA.

The Lauretta Property was then tested for the presence of lead paint on October 14, 2019 by Laurence Brand, a senior engineer at Air, Land and Water Engineering, Inc. Mr. Brand "conducted a limited lead-based paint inspection" and tested "accessible interior and exterior building components for lead paint." Testing determined that lead-based paint was present on 49 separate building components in the exterior and interior of the Lauretta Property. Mr. Brand testified during his deposition that, based on a "reasonable degree of certainty," lead-based paint was present in the Lauretta Property in the late 1990s and early 2000s and that the areas that contained chipping, peeling, or flaking paint constituted a hazard "to anyone at the property."

On June 18, 2018, Citibank and CFNA filed a motion to dismiss the amended complaint for failure to state a claim or, alternatively, for a more definite statement. On July 6, 2018, I'Maya filed a second amended complaint against Citibank, N.A., CFNA (as a direct and indirect successor in interest by merger to CFNA Receivables (MD), LLC, IMC Mortgage Corporation, and Industry Mortgage Company, LP), and the Polakoff Defendants. In three separate counts, this operative complaint alleged negligence, violation of the Maryland Consumer Protection Act, and negligent misrepresentation. The complaint stated that I'Maya "sustained injuries from exposure to and ingestion of lead-based paint" at the Lauretta Property and the Edmondson Property "from birth through approximately 2002."

Summary Judgment Motions

On April 20, 2020, after the conclusion of discovery, CFNA and Citibank separately filed for summary judgment. In its motion, CFNA averred that I'Maya failed to establish a cause of action for negligence for two primary reasons: "First, the Housing Code did not apply to [I'Maya]'s occupancy of the Lauretta Property. Second, [I'Maya]'s reliance on the Lead Paint Act is misplaced as the Lauretta Property was not an effected property as defined by statute and [I'Maya] cannot establish that she actually had an elevated blood lead level as defined at that time." CFNA further asserted that I'Maya failed to establish a violation of the Maryland Consumer Protection Act or for negligent misrepresentation because there was no evidence that I'Maya or her family members rented or leased the Lauretta Property from CFNA or its direct and indirect predecessors.

I'Maya voluntarily dismissed with prejudice her claims and causes of action involving Citibank. And in her opposition to CFNA's motion for summary judgment, she did not press her Maryland Consumer Protection Act or negligent misrepresentation claims. Instead, she focused on her negligence claim, averring that she had produced sufficient evidence to support a *prima facie* case. Relying on *Allen v. Dackman*, 413 Md. 132 (2010), I'Maya argued that "CFNA was an 'owner' of the [Lauretta] Property and therefore breached [its] duty to [I'Maya] by violating the Baltimore City Housing Code" due to the presence of flaking, loose, or deteriorating paint. I'Maya claimed that sufficient evidence supported a finding that the breach of this duty proximately caused I'Maya's injuries.

CFNA filed a reply on May 26, 2020. According to CFNA, I'Maya's reliance on *Dackman* was misplaced because neither CFNA nor its predecessors "had control or ability to repair until the *conclusion* of the judicial foreclosure process." CFNA averred that this Court's opinion in *Hector v. Bank of New York Mellon*, 244 Md. App. 322 (2020), *aff'd in part, rev'd in part*, 473 Md. 535 (2021), *reconsideration denied* (July 9, 2021), and our pronouncement that "one's status as an 'owner' under the [Baltimore City] Housing Code does not equate to personal liability for violations of the Code," *id.* at 338, governed and shielded CFNA from liability. CFNA further argued that the alleged violation of the Housing Code was not negligence *per se*, and that "the record is wholly lacking of *any* evidence to demonstrate that IMC Mortgage Company failed to act reasonably following the conveyance of the . . . Deed."

A virtual hearing on CFNA's motion was held on June 17, 2020. Counsel for CFNA maintained that "a foreclosure purchaser with no access or control over a property" is not liable for lead exposure, "which occurred prior to a writ of possession being executed." According to counsel, to hold otherwise "would be to impose strict liability upon the defendant which has committed no wrong and has no capacity to prevent the alleged wrong." Rather, I'Maya's "own grandparents were responsible for the condition of the house until they vacated pursuant to [the writ of possession]."

Counsel for I'Maya, after clarifying that I'Maya was moving forward only on the claim for "negligence involving violations of the Baltimore City Housing Code," asserted that "any argument that [CFNA] makes regarding [its predecessor's] actions . . . should be

held for the jury as the triers of fact." Counsel argued that "[o]wners . . . are responsible [under] the Housing Code and liable for any violations with or without accompanying possession." Accordingly, "any argument that [CFNA] makes regarding possession or control of the physical property itself is completely irrelevant to the analysis of whether or not [I'Maya] has established a prima facie case." Finally, counsel for I'Maya asserted that issues of reasonableness "are simply not appropriate [at the summary judgment stage] as they are reserved for the triers of fact."

The judge then delivered her ruling from the bench:

> [A]s it relates to count 1 of negligence, the problem we have in this case is that [I'Maya] misplaced reliance on [*Dackman*] in this notion of, because you are an owner, you are liable, that you are an owner by definition.
>
> The appellate courts have made it very clear the determination of who is an owner and the ultimate question of negligence are two separate issues. There is no per se negligence by being an owner. There's no . . . per se duty just because there's ownership. The *Hector* [C]ourt makes it very clear that satisfying the definition of owner does not in and of itself create a duty or subject that definition owner to negligence.
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> . . . [U]nder the law there has to be some evidence that [CFNA] actually controlled the property, and I think in *Hector* the language was "authority or responsibility to manage the property purchased."
>
> And it's undisputed that there was no -- not only did [CFNA] not control the property or manage [the Laurette Property], [it] couldn't. Under the law, [it] couldn't. [CFNA] had no ability to access that property until the foreclosure process was completed, and it took them almost a year to be able to do that.
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> Additionally, there would have to be evidence that [CFNA] - - for negligence, there would have to be evidence for - - that [CFNA] either acted or refused to act.
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> * * * * *

> It can be said that they were owners. By definition, they were owners. No doubt about it. . . .
>
> But the case law is that you have to have this additional evidence, and you have to meet these additional factors in order for there to be a claim of negligence. And in this particular case, it is completely undisputed that they had no charge, care, or control over the property, nor did they have the ability to charge, care, or control the property, other than to file the [c]ourt[] orders in the foreclosure and eviction process[.]
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> * * * * *
>
> This is not like some of the other cases that were cited where the landlord sold the property to who would be the next landlord, in which case there was still a lease, a working lease under which either could access the property or be able to have any charge or control over the property while waiting for whatever foreclosure process to complete.
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> * * * * *
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> So for all those reasons, the [c]ourt is satisfied that there is no dispute of material fact, and that [CFNA] is entitled to judgment as a matter of law. So the motion will be granted.

The court then entered a written order granting CFNA's motion for summary judgment "for the reasons stated on the record."

Motion to Alter or Amend

On July 1, 2020, I'Maya filed a motion to amend, or in the alternative, for reconsideration of the court's grant of summary judgment. In her motion, I'Maya argued that the circuit court conflated the definitions of "owner" and "operator" under the Housing Code and that I'Maya "produced facts that would allow a jury to reasonably conclude that [CFNA]'s violations of the [H]ousing [C]ode by allowing chipping, peeling, and flaking paint conditions . . . and [its] failure to act (despite express statutory authorization to require

[I'Maya] to allow [CFNA's predecessor] to enter the premises to inspect and remedy any Housing Code violations) proximately caused [I'Maya]'s injuries."

CFNA countered that, because I'Maya "merely seeks to reargue what she already presented to this [c]ourt" and did not present new evidence or argument, nothing in I'Maya's argument supported amending or altering the court's grant of summary judgment. In reply, I'Maya averred that under the Housing Code's provisions that grant access to owners for repairs, CFNA "merely lacked the power to take possession, not comply with the Housing Code[.]" She postulated that the court had carved a new exception "to ownership responsibility for foreclosure purchasers," which "flies in the face of the plain language of the Baltimore City Housing Code and decades of case law[.]"

The circuit summarily denied I'Maya's motion to alter or amend the grant of summary judgment without a hearing on August 3, 2020. Pursuant to a stipulation of dismissal between the parties, the remaining defendants were dismissed without prejudice on August 20, 2020. I'Maya then filed a notice of appeal against CFNA in this Court on August 24, 2020.

STANDARD OF REVIEW

Summary judgment is proper when the trial court determines that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Md. Rule 2-501. Accordingly, we review the trial court's legal determinations without deference. *Hector v. Bank of New York Mellon*, 473 Md. 535, 551 (2021), *reconsideration denied* (July 9, 2021).

We "independently review the record to determine whether the parties properly generated a dispute of material fact, and, if not, whether the moving party is entitled to judgment as a matter of law." *Kennedy Krieger Inst., Inc. v. Partlow*, 460 Md. 607, 632 (2018) (quoting *Chateau Foghorn LP v. Hosford*, 455 Md. 462, 482 (2017)). In doing so, "[w]e review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Id.* at 632-33 (quoting *Chateau Foghorn LP*, 455 Md. at 482). Should we ascertain a material fact in dispute, summary judgment on that point is improper. *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 313 (2019) ("[O]nly where such dispute is absent will we proceed to review determinations of law[.]") (quoting *Remsburg v. Montgomery*, 376 Md. 568, 579 (2003)). "When analyzing the decision of the circuit court, we consider only the grounds for granting summary judgment relied upon by the court." *Id.*

DISCUSSION

I.

Negligence Based on Violation of the Housing Code

A. Parties' Contentions

In her opening brief, I'Maya avers that the "issues in this case regarding [CFNA]'s liability are straightforward and are plainly addressed by relevant provisions of the Baltimore City Housing Code[.]" I'Maya contends that because CFNA was an "owner" of the Lauretta Property, as defined by the Housing Code, during I'Maya's occupancy, CFNA was required to keep the Lauretta Property "free of hazardous conditions that could threaten

the health, safety, moral, and general welfare of the public," regardless of whether CFNA had "actual possession thereof." According to I'Maya, the "legislature anticipated that owners would need to perform periodic inspections to comply with the essential health and safety provisions of the Code for the protection of occupants, including vulnerable children such as [I'Maya], and thereby granted a specific right of entry" by adopting section 909 of the Housing Code. Relying primarily on *Allen v. Dackman*, 413 Md. 132 (2010), I'Maya concludes that "owners of dwellings as defined by the Code are responsible for compliance with the Code regardless of whether or not the owner has actual possession of the property, their intention to rent the property, or the trespassory status of the occupants."

In I'Maya's view, the circuit court misapplied *Dackman* and this Court's opinion in *Hector v. Bank of New York Mellon*, 244 Md. App. 322 (2020), *aff'd in part, rev'd in part*, 473 Md. 535 (2021), *reconsideration denied* (July 9, 2021), by adding additional requirements before a duty may be imposed on an "owner" under the Housing Code. According to I'Maya, the Court of Appeals in *Dackman* did not "look to the defendant having 'charge, care, or control' of the physical property in determining the defendant's responsibility for compliance with the Code, as it plainly states, both 'owners' or 'operators' are responsible." In sum, I'Maya contends that she

> must merely show facts that would allow a reasonable trier of fact to conclude [CFNA] was an 'owner' under the Code. Here, the trial court affirmed as much . . . Once that was established, in addition to providing undisputed evidence of concurrent Code violations, [I'Maya] met her burden of demonstrating a *prima facie* case of negligence.

Finally, I'Maya asserts that the "trial court improperly weighed the reasonableness of [CFNA]'s actions in determining [CFNA] was not liable for violations of the Housing Code as a matter of law." Because I'Maya provided evidence of a violation, she asserts that it "is then up to the trier of fact to evaluate whether the actions taken by defendant were reasonable under all the circumstances." According to I'Maya, the court had the "incorrect perception that [CFNA] could not access the Property." Instead, CFNA should have, as owner, made efforts to determine whether there were potential lead hazards on the Lauretta Property, and then taken steps to inform I'Maya and her family and to remediate the hazard.

CFNA counters that there are no disputes of material fact and that the circuit court "properly decided that IMC Mortgage [predecessor in interest to CFNA] did not owe a duty to [I'Maya]—an unknown occupant residing with a holdover mortgagor in an unleased property which had never been cited for a lead violation." In its green brief, CFNA explains why, in its view, I'Maya's negligence claim fails on the issue of duty:

> In order to demonstrate a *prima facie* claim for negligence, the plaintiff must demonstrate *with evidence* "(1) the violation of a section of the Housing Code designed to protect a specific class of persons which includes the plaintiff, and (2) that the violation proximately caused the injury complained of." *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 264 (2017) (internal quotation marks and citations omitted). Ms. Kelly, however, failed to establish the threshold issue of an enforceable statutory duty to comply with the Housing Code or an identified violation of the Housing Code.

(Emphasis supplied by CFNA).

CFNA supports its argument with three sub-contentions. First, relying on *Dackman* and this Court's decision in *Hector*, CFNA asserts: "mere ownership does not equate to

liability." CFNA admits that title to the Lauretta Property was conveyed via the Substitute Trustees' Deed dated June 15, 1999, but urges that a foreclosure purchaser's duty to comply with the Housing Code cannot be imposed "until after the completion of the foreclosure action – i.e. after the execution of a court-issued Writ of Possession." CFNA recasts I'Maya's argument as: "because IMC Mortgage met the definition of 'owner' under the Housing Code, it was *per se* liable for any undisclosed lead violation in [the] foreclosed property prior to execution of a writ of possession." CFNA then rejects the contention that the Housing Code holds owners strictly liable for alleged violations, citing, among other cases, *Polakoff v. Turner*, 385 Md. 467, 478 (2005). CFNA underscores our statement in *Hector* that "one's status as an owner under the Housing Code does <u>not</u> equate to personal liability for violations of the Code. [*Hector*,] 244 Md. App. at 341." [5] CFNA contends that the Court of Appeals's decision in *Dackman* and our decision in *Hector* instruct that "mere ownership, without the ability to manage or control, is insufficient to establish impose [sic] a duty upon 'owners' of real property in Baltimore City."

Next, CFNA contends that the Housing Code imposes obligations upon landlords, and that I'Maya offered no evidence of any lease agreement or that any rental payments were made by the Carters on the Lauretta Property. Therefore, CFNA asserts, I'Maya

[5] The Court of Appeals ultimately disagreed with our conclusion in *Hector* that a trustee must have "personally committed, inspired, or participated" in the alleged tort. *Hector*, 473 Md. at 571. Rather, the Court of Appeals underscored that the "Housing Code places a duty personally on a trustee to comply with the statutory requirements of an 'owner,'" and, accordingly, after the trustee "became an 'owner' by virtue of its direct interest in the Property, it was personally under a statutory duty to maintain it, including keeping it free of a lead paint hazard." *Id.* at 573-74.

"improperly seeks to extend the statutory and contractual obligations and duties that *landlords* owe to tenants to foreclosure purchasers prior to obtaining possession of a foreclosed property from holdover mortgagors—***not holdover tenants***—under the foreclosure eviction process." (Emphasis supplied by CFNA). Relying on *Empire Properties, LLC v. Hardy*, 386 Md. 628, 634-35 (2005), CFNA argues that it was not until the writ of possession was executed that CFNA's predecessor in interest obtained possession and the ability to remediate any lead paint or make any necessary repairs.

Finally, CFNA asserts that I'Maya "failed to establish that the Lauretta Property was in violation of the Baltimore City Housing Code, even *if it applied*, based on a lead-based paint hazard which was the source of [I'Maya]'s low blood lead levels." CFNA argues that the deposition testimony by Delores and Erica Carter about the presence of chipping at the Lauretta Property, as well as the testimony by the environmental expert about the presence of lead-based paint on the windowsills 20 years later, "could not establish the condition of the Lauretta Property at the time of Ms. Kelly's occupancy or that the purported dust she licked was dust from lead-based paint, as opposed to general household dust[.]"

In her reply brief, I'Maya asserts that CFNA "cites to no authority that places owners of dwellings purchased at foreclosure sale[s] in a different class of owners that are not obligated to comply with the plain language and well-established legislative intent of the Code." The Housing Code, she claims, places a duty upon all owners to ensure that the dwellings they own comply with the Code. I'Maya points out that CFNA had the

opportunity to access and inspect the Lauretta Property under section 909 of the Housing Code; therefore, the mere fact that CFNA sought a writ of possession did not absolve CFNA of its duty to maintain the Property as required by the Housing Code. Relying on *Dackman*, 413 Md. at 158, I'Maya asserts that CFNA's legal duty does not turn on I'Maya's status but is "owed to all occupants of a property regardless of whether they are 'holdover mortgagors' or 'holdover tenants.'"

Next, I'Maya contends that the trial court's determination that CFNA did not have "the ability to charge, care, or control the property other than to [follow] the Court's orders in the foreclosure and eviction process" displayed the court's "fundamental misunderstanding of the Code and case law." She states that, under the Housing Code, an operator is defined as a person who has "charge, care, or control of a building or part thereof," and that she does not contend that CFNA was an operator. Instead, I'Maya maintains, CFNA's duty stems from its status as an owner, which, under the Code, is defined as ". . . any person, firm, corporation, . . . trustee, executor or other judicial officer, who, alone or jointly or severally with others, owns, holds, or controls the whole, or any part of the freehold or leasehold title to any dwelling or dwelling unit, with or without actual possession thereof." Housing Code § 105(jj)(2).

Finally, I'Maya maintains that CFNA's contentions about whether it was reasonable for CFNA to inspect the Lauretta Property or undertake any remediation while the Property was still occupied are considerations that are "expressly reserved for the trier of fact."

In its Notice of Supplemental Authority,[6] CFNA avers that the Court of Appeals's decision in *Hector* "should not alter or impact the decisions of the [c]ircuit [c]ourt below" for two primary reasons. First, CFNA asserts that *Hector* clarifies that "mere ownership" does not amount to "*per se* liability." Second, according to CFNA, *Hector* is "distinguishable from the undisputed facts in this case." CFNA observes that prior appellate decisions "arose from claims brought by tenants . . . against landlords or successors in interest to landlords who had control over the property." By contrast, the Carters were "record owners and mortgagors" and "ignored all notices of the foreclosure and of CFNA[]'s post-foreclosure efforts to obtain possession." Accordingly, "[g]iven this important distinction, *Hector* cannot be summarily applied to this appeal." CFNA then asserts that it could not remediate the property until the Carters vacated and that, unlike the landlord in *Hector*, CFNA did not have notice of the Lauretta Property's condition or that I'Maya resided there.

I'Maya, in turn, posits that in *Hector* the Court of Appeals clarified that, once the record-title owner is established, additional evidence is not required to establish a *prima facie* case of negligence beyond (a) a violation of a statute or ordinance designed to protect a specific class of persons, and (b) the violation proximately caused the injury complained of. I'Maya rejects CFNA's contention that she is relying on a theory of negligence *per se* or strict liability. Instead, she insists that the grant of summary judgment in this case was

[6] The parties submitted additional briefing after the Court of Appeals issued its decision in *Hector* on May 27, 2021.

improper because she presented a *prima facie* case of negligence. Relying on *Dackman*, 413 Md. at 158, nn. 19, 20, I'Maya reiterates that "the status of the occupant is irrelevant when determining what duty is owed to an occupant by an owner of a property." And, relying on *Hector*, 413 Md. at 560, she asserts that "no notice is required in order to establish a *prima facie* case against an owner of property when a statutory violation exists and the injured was in the class of persons the statute was intended to protect."

B. Provisions of The Housing Code

In keeping with our long-held standard of statutory interpretation, we begin with the plain language of the Baltimore City Housing Code to ascertain the scope of CFNA's duty thereunder. *See SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 640 (2018). In doing so, we read the code "as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." *Douglas v. State*, 423 Md. 156, 178 (2011) (quoting *Evans v. State*, 420 Md. 391, 400 (2011)).

The Baltimore City Council determined that "there exists in the City of Baltimore, structures used for human habitation, which are, or may become in the future, substandard" such that they "constitute a menace to the health, safety, morals, welfare, and reasonable comfort of its citizens." Balt. City Code (2000, 2002 Supp.), Art. 13, § 102(a) ("Housing Code").[7] The City Council concluded that the "establishment and maintenance of

[7] Throughout this opinion, we refer to the version of the Housing Code in effect after CFNA's predecessor in interest became an "owner" of the Lauretta Property—as of the date of the foreclosure sale on February 3, 1999—until I'Maya and her family vacated the Lauretta Property in early 2001.

minimum housing standards are essential to the prevention of blight and decay, and the safeguarding of public health, safety, morals, and general welfare." *Id.* § 102(c). In light of these findings, the stated purposes of the Housing Code are to:

> (1) establish and maintain basic minimum requirements, standards, and conditions essential for the protection of the health, safety, morals, and general welfare of the public and of the owners and occupants of dwellings in the City of Baltimore;
> (2) establish minimum standards governing the condition, use, operation, occupancy, and maintenance of dwellings . . . in order to make dwellings safe, sanitary, and fit for human habitation;
> (3) fix certain responsibilities and duties of owners, operators, agents, and occupants of dwellings[.]

Id. § 103(a). The Housing Code is "remedial and essential to the public interest," and, accordingly, should "be liberally construed to effectuate" its purposes. *Id.* § 103(b).

To effect the stated purposes, the "Housing Code established liability for entities that failed to follow the Code's requirements." *Allen v. Dackman*, 413 Md. 132, 143 (2010). These requirements include that "[e]very building . . . occupied as a dwelling shall, while in use . . . , be kept in good repair, in safe condition, and fit for human habitation." Housing Code § 702. Under section 703 of the Housing Code, "[g]ood repair and safe condition shall include but is not limited to the following standards . . . [a]ll walls, ceilings, woodwork, doors and windows shall be kept clean and free of any flaking, loose, or peeling paint[.]" The Housing Code requires that "[a]ny person who is either an owner or operator of a property subject to this Code shall be responsible for compliance with all of the provisions of the Code." *Id.* § 310(a).

An "owner" is defined to "mean any person, firm, corporation, guardian, conservator, receiver, trustee, executor, or other judicial officer, who, alone or jointly or severally with others, owns, holds, or controls the whole or any part of the freehold or leasehold title to any dwelling or dwelling unit, with or without accompanying actual possession thereof." *Id.* § 105(jj)(1). The Code specifies that an owner includes "in addition to the holder of legal title, any vendee in possession thereof, but shall not include a mortgagee or an owner of a reversionary interest under a ground rent lease." *Id.* § 105(jj)(2).

To allow access for inspection and repairs, the Housing Code provides:

> Every occupant of a dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, or its premises, at all reasonable times for the purpose of making such inspection and such repairs or alterations as are necessary to effect compliance with the provisions of this Code or with any lawful rule or regulation adopted or by any lawful order issued pursuant to the provisions of this Code.

Id. § 909. Although section 909 of the Housing Code "may not explicitly require the landlord to perform periodic inspections, it grants such right to the landlord and shows that the City anticipated that periodic inspections might be necessary to comply with the Code." *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 84 (2003), *abrogated on other grounds by Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594 (2011).

C. The "Statute or Ordinance Rule"

Generally, a plaintiff must establish four elements in any action for negligence:

> 1) that the defendant was under a duty to protect the plaintiff from injury, 2) that the defendant breached that duty, 3) that the plaintiff suffered actual

> injury or loss, and 4) that the loss or injury proximately resulted from the defendant's breach of the duty.

Hamilton v. Kirson, 439 Md. 501, 523-24 (2014) (quoting *Taylor v. Fishkind*, 207 Md. App. 121, 148 (2012)).

In cases "where there is an applicable statutory scheme designed to protect a class of persons which includes the plaintiff, ... the defendant's duty ordinarily 'is prescribed by the statute' or ordinance and . . . the violation of the statute or ordinance is itself evidence of negligence." *Brooks*, 378 Md. at 78 (quoting *Brown v. Dermer*, 357 Md. 344, 358-59 (2000)). Accordingly, a plaintiff may establish a *prima facie* case of negligence based on violations of the Housing Code by showing only two things: "(a) the violation of a statute or ordinance designed to protect a specific class of persons which includes the plaintiff, and (b) that the violation proximately caused the injury complained of." *Dackman*, 413 Md. at 143-44 (quoting *Brooks*, 378 Md. at 79). Our Courts generally "refer[] to this two-part test as the 'Statute or Ordinance Rule.'" *Hector*, 473 Md. at 559.

Proximate cause is established under the Ordinance Rule "by determining whether the plaintiff is within the class of persons sought to be protected, and the harm suffered is of a kind which the drafters intended the [ordinance] to prevent. . . . It is the existence of this cause and effect relationship that makes the violation of a[n ordinance] *prima facie* evidence of negligence." *Brooks*, 378 Md. at 79 (citation omitted). Proving both parts of the Statute or Ordinance Rule does not establish negligence *per se*—the trier of fact must "evaluate whether the actions taken by the defendant were reasonable under all the circumstances." *Dackman*, 413 Md. at 144 (quoting *Brooks*, 378 Md. at 79).

In framing the issue before us on appeal, we must determine whether I'Maya was among the class of persons protected under the Housing Code, and whether CFNA is among "the class of individuals who were required to follow the Code's provisions." *Id.* In granting summary judgment, the circuit court assumed that I'Maya was among the class of persons protected by the Housing Code. *See* Housing Code § 103(a) (explaining that the Code is intended to protect "*occupants of dwellings* in the City of Baltimore." (emphasis added)). And although the court resolved that, "by definition," CFNA was an owner, the court determined that I'Maya failed to establish that CFNA had a duty to prevent her injuries during the period of time when CFNA did not have "charge, care, or control over the property," or the ability to take any actions "other than to file the court's orders in the foreclosure and eviction process." We turn now to our analysis of CFNA's duty to I'Maya as an "owner" under the Housing Code during the time I'Maya resided at the Lauretta Property and CFNA owned the Property.

D. Analysis

1. Duty of an "Owner" under the Housing Code

Maryland has adopted Prosser and Keeton's characterization of "duty" as "an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another." *100 Inv. Ltd. P'ship v. Columbia Town Ctr. Title Co.*, 430 Md. 197, 213 (2013) (quoting W. PAGE KEETON, ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 53 (5th ed. 1984)). "Whether a legal duty exists between parties is a question of law to be decided by the court." *Id.* at 211. Because CFNA's duty is

prescribed by statute, we analyze CFNA's status and duty as an "owner" under the Housing Code.

As we described above, section 310 of the Housing Code requires an owner to "be responsible for compliance with all of the provisions of the Code." Housing Code § 310(a). The Housing Code, in turn, defines an owner as "**any person, firm, corporation, guardian, conservator, receiver, trustee**, executor, or other judicial officer, who, alone or jointly or severally with others, **owns, holds, or controls the whole or any part of the freehold or leasehold title** to any dwelling or dwelling unit, **with or without accompanying actual possession thereof**." *Id.* § 105(jj)(1) (emphasis added). The definition specifically includes "**in addition to the holder of legal title**, any vendee in possession thereof, but shall not include a mortgagee or an owner of a reversionary interest under a ground rent lease." *Id.* § 105(jj)(2).

Construing these provisions, the Court of Appeals held in *Dackman* that the term "owner" in the Housing Code has "a broader meaning than it does in the traditional sense," reaching "not only . . . those who actually own the title to a dwelling, but also those who 'hold[ ] or control[ ]' that title as well." 413 Md. at 148 (quoting Housing Code § 105(jj)). Consistent with this construction, the *Dackman* Court held that the Respondent, Mr. Dackman, could be held individually liable for the alleged injuries that Petitioners, Monica Allen and Shantese Thomas, alleged they suffered as a result of their exposure to lead paint while living at a Baltimore City property owned by Hard Assets, LLC. *Id.* at 135-36. At

the time the Petitioners occupied the property, Mr. Dackman was a member of Hard Assets and managed its day-to-day affairs. *Id.* at 135-36.

The Court granted *certiorari* to consider whether our Court was incorrect in affirming summary judgment in favor of Mr. Dackman, "because he did not own, hold, or control title to the property." *Id.* at 141. The Court held that the trial court erred in granting summary judgment because, even though Mr. Dackman did not personally hold the title to the property at issue, "a reasonable trier of fact could find that he controlled it within the meaning of the Housing Code." *Id.* at 160. In reaching its holding, the Court explained that under the Housing Code, "the relevant determination . . . is whether Respondent had 'an ability to change or affect the' title to the property at issue." *Id.* at 149. Clearly, the term "owner" includes individuals who hold title to a dwelling. *Id.* at 148.

The Court rejected Mr. Dackman's claim that he owed the Petitioners no legal duty. *Id.* at 156-58. He presented the Court with two arguments to support this assertion. *Id.* at 156. First, he argued that the Housing Code imposed no duty on owners of property in regard to persons who are wrongfully in possession of the property. *Id.* Second, he argued that "the Housing Code did not impose a duty on owners of property unless they leased, or at least intended to lease, that property." *Id.* at 156. The Court explained that the Housing Code was intended "to protect occupants of dwellings," and "to protect children from lead paint poisoning." *Id.* at 157-58. Accordingly, the Court concluded that Mr. Dackman owed a duty to the plaintiffs "regardless of whether [plaintiffs] had a legal right to possess

the property," or "if the owners did not intend to lease their dwellings." *Id.* at 157-59.[8] Specifically, regarding Mr. Dackman's contention that the Code applies only to leased dwellings, the Court instructed, "[t]o the contrary, the Code explicitly stated in no uncertain terms that it was intended to fix duties on 'owners, operators, agents, and occupants of dwellings.'" *Id.* at 158-59 (quoting Housing Code, § 103(a)). The Court recognized the breadth of its interpretation of the Housing Code:

> This interpretation of the Housing Code imposes a far-reaching duty, but this duty was consistent with and supported the explicit intent of the City Council. This duty ensured that owners and operators of dwellings would be as diligent as possible in ensuring the safety of those who occupied dwellings and, ultimately, the safety of the public at large.

Id. at 159 n.22.

More recently, the Court of Appeals clarified when an entity meets the definition of owner under the Housing Code and has a corresponding duty to comply with the Code within the context of a foreclosure action. In *Hector v. Bank of New York Mellon*, the Court held that the Bank of New York Mellon ("BNYM"), a bank trustee, "became an 'owner' by virtue of its direct interest in the Property" and, accordingly, was "personally under a statutory duty to maintain it, including keeping it free of a lead paint hazard." 473 Md. 535, 574 (2021), *reconsideration denied* (July 9, 2021).

[8] The Court recognized that the "City Council could have limited the duties of owners" by providing, for example, that the owners only had to comply if they "actually occupied the property" or only "if they intended to lease their dwellings," but the Council did not do so. *Dackman*, 413 Md. at 132, n.21.

By way of background, the Hector children lived with their parents in a rented property that contained lead-based paint. *Id.* at 541-42. While the Hectors lived at the property from sometime in late 2000 or early 2001 through the spring of 2002, "the paint chipped in several rooms," including the children's bedrooms, and blood tests revealed elevated levels of lead. *Id.* at 542, 545. These tests prompted an inspection of the property and a violation notice and order to the Hectors' landlord on April 2, 2002 "to remove the 'lead nuisance' from the property." *Id.* at 546.

The Hectors' landlord had a 99-year lease and executed a purchase money deed of trust, secured by her interest in the property. *Id.* at 543-44. "Among other provisions, the deed of trust stated that [the landlord], as the 'Borrower,' 'shall have possession of the Property until Lender has given Borrower notice of default."' *Id.* at 544. This security, along with many other mortgage instruments, was pooled into a trust, which was created when BNYM and other parties executed a "Pooling and Servicing Agreement." *Id.* The agreement "establish[es] and govern[s] the rights and responsibilities of the parties in the administration of the Trust." *Id.* After the landlord defaulted, BNYM appointed substitute trustees to initiate foreclosure proceedings and then BNYM purchased the property on December 27, 2001. *Id.* at 545. A few months later, the circuit court ratified the foreclosure sale. *Id.* On March 11, 2002, BNYM moved for possession, which the court granted on August 15, 2002, and recorded a deed conveying the property on May 23, 2003. *Id.*

In June 2016, the Hectors' two minor children filed a three-count complaint, "each for negligence against one of the named defendants," the bank and their two former

landlords. *Id.* at 546. After discovery, the circuit court granted summary judgment, concluding that the Hectors had erroneously sued the trustee bank in its individual—as opposed to fiduciary—capacity. *Id.* at 548.

On appeal, we affirmed the judgment of the circuit court on another ground. Relying on *Dackman*, 413 Md. at 155, and the Restatement (Third) of Trusts, although we determined that a trustee could be individually liable for a tort committed in the course of trust administration, we concluded that the Hector children "failed to provide facts demonstrating that BNYM was 'personally at fault' for their injuries in accordance with the standard for trustee liability as set forth in the Restatement (Third) of Trusts." *Hector*, 244 Md. App. at 329. Rather, to be "personally at fault," the trustee must have '"personally committed, inspired, or participated' in the alleged torts." *Id.* at 341 (quoting *Dackman*, 413 Md. at 141). Because BNYM produced uncontroverted facts to show that its role was passive, without authority to manage or improve the property, we concluded that the Hector children could not maintain their action against BNYM in its individual capacity. *Id.* at 341-42. The Court of Appeals granted the Hectors' petition for a writ of certiorari. 468 Md. 544 (2020).

The Court of Appeals affirmed, in part, and reversed, in part. 473 Md. at 584.[9] The Court of Appeals disagreed with our application of *Dackman* because BNYM had a duty

[9] While not relevant to the present case, the Court of Appeals agreed with this Court that "(1) a trustee may be held individually liable for a tort committed in the course of trust administration, if (2) the trustee is personally at fault." *Hector*, 473 Md. at 543.

as an owner to comply with the requirements of the Housing Code. *Id.* at 571. The Court clarified:

> If [the defendants in *Dackman* were title owners], this Court would not have needed to consider whether the defendants personally committed, inspired, or participated in the tort, **because they personally would have owed the duty to maintain the properties that they owned. There is no question that, in such a hypothetical situation involving an individual who owns the title to a property, the Statute or Ordinance Rule would allow the plaintiff's claim against an individual defendant to go to the jury, because the individual personally owed a duty to the plaintiff by virtue of owning the title to the property.** At the trial in such a case, the defendant (if they were so inclined) would be able to introduce evidence and argue that their actions were reasonable. However, that individual title owner would not be entitled to summary judgment on the ground that there was no evidence they had knowledge of the statutory violation and, therefore, they could not have personally committed, inspired, or participated in the tort.

Id. at 572 (emphasis added). While BNYM emphasized its "passive role," the Court countered that the Housing Code "places a duty personally on a trustee to comply with the statutory requirements of an 'owner'" and "does not permit any such 'owner' to absolve itself of its obligations." *Id.* at 573-74. Invoking the Statute or Ordinance Rule, the Court summarized:

> [A]fter BNYM became an "owner" by virtue of its direct interest in the Property, it was personally under a statutory duty to maintain it, including keeping it free of a lead paint hazard. **To the extent BNYM became an "owner" of the Property while the Hectors resided there, the Hectors needed only to produce facts showing a violation of the Housing Code during that time, and that the violation proximately caused their injuries, in order for their claim against BNYM in its individual capacity to go to the jury.** *See Brooks*, 378 Md. at 79, 835 A.2d 616. BNYM does not contend that the Hectors failed to make such a showing. Thus, the only question left for us to decide is whether BNYM became an "owner" of the Property before the Hectors moved out.

Id. at 574-75 (emphasis added).

Next, turning to consider when BNYM became an owner of the property, the Court construed the Housing Code's definition of "owner" and held that a foreclosure purchaser of property generally becomes an "owner" upon ratification of the foreclosure sale by the circuit court. *Id.* at 578-80. The Court specifically stated that it did not believe that "the City Council intended to exempt the purchaser of a property in foreclosure from the definition of 'owner' between the date of ratification of the sale and the date of recordation of the purchaser's interest." *Id.* at 578. The Court rejected BNYM's interpretation of the Housing Code whereby BNYM could only be an owner when it obtained legal title or upon becoming a vendee in possession, explaining:

> [W]e do not believe that, in referring to the "holder of legal title" in subsection (2) of § 105(jj), the City Council intended to exempt the purchaser of a property in foreclosure from the definition of "owner" between the date of ratification of the sale and the date of recordation of the purchaser's interest. BNYM's interpretation would permit a purchaser in foreclosure to avoid the obligations of an "owner" under the Housing Code by delaying its taking possession of the property and the recordation of its interest. **This could result in no "owner" being responsible for the maintenance of a property while it is still occupied by the prior landlord's tenants, and despite the fact that the purchaser by statute may be the landlord upon ratification of the sale. . . . We are confident that the City Council did not intend such a result.** Such an interpretation would run afoul of the Housing Code's directive to liberally construe its provisions to further the Code's remedial purposes. *See* Housing Code § 103(b). Those purposes include the establishment and maintenance of minimum standards "essential for the protection of the health, safety, morals, and general welfare of the public and of the owners and occupants of dwellings in the City of Baltimore" and "governing the condition, use, operation, occupancy, and maintenance of dwellings and other structures, and the utilities, facilities, and other physical components, things, and conditions to be supplied to dwellings in order to make dwellings safe, sanitary, and fit for human habitation." *Id.* §§ 103(a)(1) & (a)(2). **Both of these purposes are furthered by an interpretation of § 105(jj) that includes within its definition of "owner"**

> **an entity that has purchased a property at foreclosure and whose purchase has been ratified by the circuit court**.

Id. at 578-79 (emphasis added). The Court further noted, pursuant to Maryland Code (1996 Repl. Vol., 2002 Supp.), Real Property Article, § 7-105(a), "ratification of the foreclosure sale operates to pass all the title that the borrower had in the property at the time the deed of trust was recorded that reflected their indebtedness." *Id.* at 579. The Court then concluded, relying on *Empire Properties, LLC v. Hardy*, 386 Md. 628 (2005), that BNYM "became an 'owner' as of the date of the foreclosure sale" because, under the deed of trust, the "mortgagee/beneficiary had the right to possession of the Property prior to ratification of the foreclosure sale." *Id.* at 582.[10]

Returning to the case on appeal, we apply the relevant provisions of the Housing Code, and the foregoing decisional law interpreting the same, and conclude that once it became an "owner," as of the date of the foreclosure sale on February 3, 1999, CFNA's predecessor had a duty to keep the Lauretta Property "in good repair, in safe condition, and fit for human habitation." Housing Code § 702. This duty extended to all "occupants of dwellings," Housing Code § 103(a), including I'Maya, regardless of whether they had a legal right to possess the Property. *Dackman*, 413 Md. at 157-59. Even though the Carters

[10] In *Empire Properties*, the Court of Appeals clarified that, generally, a purchaser at a foreclosure sale is entitled to possession when the sale is ratified by the circuit court. 386 Md. at 650. However, the Court recognized, even at "this early stage" before ratification of the sale, a purchaser could be entitled to possession for "sufficient reasons," including, "*e.g.* waste, deed of trust provides for possession before judicial sale or court ratification, *i.e.*, upon default, etc." *Id.*

did not vacate the Lauretta Property until early 2001, CFNA's predecessor may have been able to exercise its right to "access to any part of such dwelling or dwelling unit, or its premises, at all reasonable times for the purpose of making such inspection and such repairs or alterations as are necessary to effect compliance with the provisions of [the Housing] Code[.]"[11] Housing Code § 909. Accordingly, because there is no dispute that CFNA's predecessor was an "owner" and I'Maya was within the class of persons protected under the Housing Code, I'Maya was only required to show "that sufficient facts exist for a jury to conclude that [CFNA] breached a duty the Housing Code imposed upon it as an 'owner' of the Property." *Hector v. Bank of New York Mellon*, 473 Md. 535, 556 (2021), *reconsideration denied* (July 9, 2021).

CFNA avers that it lacked the capacity to control or manage the Lauretta Property, and therefore, it had no duty under the Housing Code to I'Maya. We disagree. In order to establish a *prima facie* case of negligence based on violations of the Housing Code, I'Maya was required to show only two things: "(a) the violation of a statute or ordinance designed to protect a specific class of persons which includes the plaintiff, and (b) that the violation proximately caused the injury complained of." *Dackman*, 413 Md. at 143-44. The question of whether CFNA had the ability to control the Lauretta Property and whether CFNA acted reasonably under the circumstances is a question for the trier of fact. *Id.* at 156.

[11] The record is unclear as to whether CFNA attempted to inspect the Lauretta Property or reasonably attempted to gain access.

In this case, as in *Hector*, CFNA's predecessor, as the foreclosure purchaser, "had the right to seek possession of the Property prior to the ratification of the foreclosure sale." 473 Md. at 583.[12] Moreover, at the time that IMC Mortgage was entitled to the Lauretta Property, CFNA's predecessor may have been able to exercise peaceable self-help. *See Nickens v. Mount Vernon Realty Grp., LLC*, 429 Md. 53, 76 (2012) ("For a foreclosure purchaser dispossessed of his, her, or its property by a defaulted mortgagor's or illegal occupant's recalcitrant possession, the common law right to self-help provides a nonviolent, reasonable approach to reclaiming the realty to which he, she, or it is entitled."), *superseded by statute*, 2013 Md. Laws ch. 514 (H.B. 1308), *recognized in Wheeling v. Selene Fin. LP*, 473 Md. 356, 375 (2021). Also, as the Court clarified in *Brooks*, section 909 of the Housing Code grants landlords and owners of property "with sufficient control of the leased premises during the tenancy to inspect and to rectify a condition of flaking, loose, or peeling paint." 378 Md. at 84.[13] Accordingly, CFNA's contention that it lacked

[12] The deed of trust on the Lauretta Property between the Carters and the original lender provided that the Carters, as the "Borrowers," "shall have possession of the property until Lender has given Borrower notice of default[.]" The Court of Appeals, construing an identical provision in *Hector*, concluded that the lender BYNM, was "not required to wait until ratification of the sale to seek a court order for possession of the Property." 473 Md. at 582. Accordingly, CFNA's predecessor was a legal owner of the Lauretta Property and entitled to seek possession of the Property prior to ratification of the sale.

[13] CFNA asserts that section 909 of the Housing Code "was not properly before the [c]ircuit [c]ourt and thus is not properly before this Court," because I'Maya did not raise this provision until her motion to amend, after summary judgment was granted. We disagree. I'Maya did not raise a new argument but continued to maintain that CFNA had a duty to inspect and repair the Property under the Housing Code. Like any litigant, I'Maya was free to provide additional authority to support her position. Her citation to Section 909 (Continued)

the authority to control or maintain the Lauretta Property until after the writ of possession was served is incorrect as a matter of law; and, whether it reasonably could have exercised the control necessary to keep the Property "in good repair, in safe condition, and fit for human habitation" is a matter for the jury to decide.

CFNA's remaining arguments are also misplaced. As an initial matter, CFNA asserts in both its initial brief and Notice of Supplemental Authority that I'Maya seeks to hold CFNA *per se* liable for lead violations. This mischaracterizes I'Maya's position. Rather, consistent with our precedent, I'Maya merely contends that she hurdled CFNA's summary judgment motion by setting forth a *prima facie* case under the Statute or Ordinance Rule. Of course, neither the Housing Code nor our caselaw imposes "a strict liability regime upon [owners]." *Brooks*, 378 Md. at 84-85. Whether CFNA ultimately "is held liable for an injury to a child, based on lead paint poisoning, will depend on the jury's evaluation of [CFNA]'s actions under all the circumstances." *Id.* at 85.

CFNA also contends that "all of the prior reported appellate decisions – *including Hector* – arose from claims brought by tenants . . . against landlords or successors in interest to landlords who had control over the property" and that I'Maya is "improperly" seeking

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merely pointed out another mechanism under the Housing Code authorizing owners access to properties to comply with their obligations. Further, in accordance with our long-held standard of statutory interpretation, courts are not restricted to the few provisions directed by the parties. Rather, as we explain above and our Court of Appeals has stressed repeatedly, our courts read the statute "as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." *Douglas v. State*, 423 Md. 156, 178 (2011) (quoting *Evans v. State*, 420 Md. 391, 400 (2011)). The parties cannot diminish our authority/responsibility to ascertain the scope of CFNA's obligations under the Housing Code.

to extend a landlord's obligations to a foreclosure purchaser. Although the Court of Appeals acknowledged in *Dackman* that it is "often stated that the Housing Code imposed duties on landlords," the Court clarified that it has "never said, however, that the Housing Code only imposed duties on landlords." *Dackman*, 413 Md. at 159 n.20. Rather, "[t]he Housing Code would not have supported such a statement, as the Code did not use the term 'landlord' or restrict its application to entities that rent property." *Id.* Further, the Housing Code's express purpose was "to protect the occupants of dwellings," particularly children, and ensure that owners are "as diligent as possible in ensuring the safety of those who occupied dwellings and, ultimately, the safety of the public at large." *Id.* at 157, 159 n.22. An owner's duties under the Housing Code are imposed regardless of the status of the occupants. *Id*. at 157, 159.

Finally, CFNA contends, without reference to any authority, that "[i]t is well-recognized that lead abatement cannot be safely undertaken in an occupied property;" and, thus, "CFNA[]'s predecessor could not have remediated the property until after the Carters and [I'Maya] vacated the property." Problematically, CFNA did not present the circuit court with any evidence that remediation would require that the Lauretta Property had to be vacant, or if so, for how long. Indeed, while the Court of Appeals recognized that removing lead paint from a property is "[o]ne surefire way [to] avoid[] lead-paint poisoning liability," the Court also recognized "[l]ess extreme options" including "notifying the tenant in writing and orally of the possible presence of lead paint in the property and its potential danger; asking the tenant to notify the landlord or property manager immediately

if flaking, loose, or peeling paint occurs; and inspecting the property at the inception and at regular intervals throughout the tenancy to ensure that there is no flaking, loose, or peeling paint." *Polakoff v. Turner*, 385 Md. 467, 481 (2005). In any event, it is *the jury* as the trier of fact who "evaluate[s] whether the actions taken by the defendant were reasonable under all the circumstances." *Dackman*, 413 Md. at 144 (quoting *Brooks*, 378 Md. at 79).

2. Violation

CFNA argues in the alternative that summary judgment was proper because "Ms. Kelly failed to establish a violation of the Housing Code at a time when IMC Mortgage had [] control." Although CFNA raised this issue in the circuit court, Judge Ausby did not address this issue in granting summary judgment to CFNA. As the Court of Appeals recently emphasized in *State v. Rovin*, "[w]e must be cognizant of the 'general rule that in appeals from the granting of a motion for summary judgment, absent exceptional circumstances, Maryland appellate courts will only consider the grounds upon which the lower court granted summary judgment[.]'" 472 Md. 317, 373 (2021) (quoting *Bishop v. State Farm Mut. Auto Ins.*, 360 Md. 225, 234 (2000)). However, as a "general rule rather than an absolute one, there are exceptions," including "where the trial court would have had no discretion to deny summary judgment as to that ground" or where the two grounds are so interrelated that they are not considered as separate and distinct. *Id.* Because the existence of a violation is necessary to establish a *prima facie* case of negligence under the Housing Code, the circuit court would be required to grant summary judgment if I'Maya

did not present evidence of a violation of the Housing Code. Accordingly, we will consider this issue.

As we address above, an owner must "be responsible for compliance with all of the provisions of the Code." Housing Code § 310(a). These provisions include that "every building . . . be kept in good repair, in safe condition, and fit for human habitation," including that "walls, ceilings, woodwork, doors and windows shall be kept clean and free of any flaking, loose, or peeling paint." Housing Code §§ 702, 703. "In sum, the presence of flaking, loose, or peeling paint is a violation of the Housing Code." *Brooks*, 378 Md. at 89. This Court has further clarified: "To prove causation in a lead paint case, a plaintiff must prove that the defendant's negligence was a substantial factor in causing the plaintiff's injury." *Kirson v. Johnson*, 236 Md. App. 384, 392 (2018). "Put another way," I'Maya must "produce evidence from which a jury could find that lead-based paint was present at the property and that [s]he was exposed to it there." *Id.* at 393.

I'Maya has met this standard. The Lauretta Property was tested for the presence of lead paint on October 17, 2019 by Mr. Brand. He determined that lead-based paint was present on 49 separate building components in the exterior and interior of the Lauretta Property and deposed, to a "reasonable degree of certainty," that lead-based paint was present in the Lauretta Property while I'Maya lived there with her family. Likewise, I'Maya's mother deposed that she observed I'Maya eating dust from a windowsill at the Lauretta Property, and her grandmother testified at her deposition "paint chips around the windowsills." Consistent with the presence of lead, I'Maya "connect[ed] the dots between

a particular lead-laden environment and a particular child." *Hamilton v. Dackman*, 213 Md. App. 589, 613 (2013). Accordingly, we conclude that I'Maya has presented evidence to support a violation of the Housing Code that proximately caused her injuries.

Because I'Maya has made out a *prima facie* case in negligence based on a violation of the Housing Code, she has provided sufficient evidence for her case to be submitted to the jury. Accordingly, the circuit court erred in granting summary judgment, and we remand this case for further proceedings consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.