Circuit Court for Baltimore City
Case No.: 24-C-14-003921

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1108

September Term, 2016

MARKEYS A. STEDMAN

v.

IAN DAVID TURK, Personal Representative for the Estate of PAUL WARTZMAN

Meredith,
Graeff,
Reed,

JJ.

Opinion by Reed, J.

Filed: November 9, 2018

Markeys A. Stedman (hereinafter "Appellant") alleges that he contracted lead paint poisoning while living at 1524 E. 28th Street, Baltimore, Maryland 21218 (hereinafter the "Property") sometime in 1995 or 1996. Appellant is now twenty-five years old. Paul Wartzman and Mary Ellen Robinson were appointed as co-personal representatives for the Property, which was owned by William Koons until his death in March of 1993. On June 25, 2014, Appellant initiated the suit underlying this appeal. Initially, Appellant sought to hold both Mr. Wartzman and Ms. Robinson liable for the alleged harm he suffered while residing at the Property. However, Appellant subsequently abandoned his claims against Ms. Robinson, leaving Mr. Wartzman ("Appellee") as the only remaining party with respect to the claims here relevant.[1]

Following a hearing that was held on June 29, 2016, the Circuit Court for Baltimore City entered summary judgment in favor of Appellee. Appellant subsequently noted a timely appeal, presenting the following questions for our review:

> I. Did the [circuit] court err in finding that a personal representative of an estate is not an "owner" of residential real property as that term is defined by § 105 of the Housing Code of Baltimore City?[2]

[1] In addition to Mr. Wartzman and Ms. Robinson, the Complaint also initially named Lawrence F. Rouse, Jr., the Estate of Lawrence F. Rouse, Jr., Sharon L. Rouse, and the Estate of Sharon L. Rouse as defendants. While the claims against Mr. Wartzman and Ms. Robinson related to alleged lead paint poisoning contracted inside the 1524 28th Street property, the claims against the other four defendants related to alleged lead paint poisoning contracted inside a different property previously owned by Mr. Koons, the one located at 941 Montpelier Street, Baltimore, Maryland 21218. Only the claims against Mr. Wartzman, however, are relevant to the instant appeal.

[2] After Appellants filed their notice of appeal in this case, § 105 of the Housing Code of Baltimore City was recodified to the Code of Public Local Laws for Baltimore City PLL § 9-15, which does not include the definition for an "owner".

II. Did the circuit court err in finding that the quantum of care or control [Appellee] exerted over the property was, as a matter of law, insufficient to qualify him as an "operator" of residential real property as that term is defined by § 105 of the housing code of Baltimore City?[3]

Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

William Koons owned the real property known as 1524 E. 28th Street (hereinafter the "Property") until his death in March of 1993. Upon his death, an estate was opened and Paul Wartzman ("Appellee") became a co-personal representative of the estate, which included the Property. Markeys A. Stedman (hereinafter "Appellant") resided in the Property in 1995 through 1996. Appellee eventually sold the Property in July of 1997. During the time Appellant resided in the Property, he had a blood-lead level of 21ug/dl. On July 23, 2003, Appellant's counsel filed a nearly identical lawsuit against Appellee (hereinafter "*McManus* case").[4]

During the *McManus* case, Appellee testified that Mary Ellen Robinson, Mr. Koons' daughter and the co-personal representative of Mr. Koons' estate, was employed by the estate at her request as the Office Manager of Koons Management Company, which managed all of the estate's rental properties. Appellee further testified that although both

[3] After Appellants filed their notice of appeal in this case, § 105 of the Housing Code of Baltimore City was recodified to the Code of Public Local Laws for Baltimore City PLL § 9-15(a)(5).

[4] *McManus, et al. v. JP Properties, et al.*, Case No. 24C03005360.

he and Ms. Robinson decided to hire Don King to be the property manager, Ms. Robinson was responsible for "overseeing the day-to-day operations of the real estate office and making decisions regarding the rental properties." However, Appellee did admit in his testimony that he participated in some decisions relating to the rental properties—*e.g.*, disposing of operational records and determining the timing of sale of the properties. Lastly, Appellee testified that he never visited any of the rental properties, was not employed by the Koons Management Company, and did not provide any advice concerning the management of the properties. Finally, although Ms. Robinson testified to the contrary, Appellee testified that he was not involved in the process of setting rental rates for any of the properties.

On June 25, 2014, Appellant filed a Complaint in the Circuit Court for Baltimore City against Appellee *inter alios*,[5] alleging that Appellant suffered lead paint poisoning while residing at the Property between 1993 and 1997 and consequently suffered permanent brain damage. The Complaint contained two claims against Appellee—one for negligence and one for violation of the Maryland Consumer Protection Act ("MCPA")—both of which were based on the allegation that Appellee, while serving as co-personal representative of the Property, "owned and/or controlled and/or managed, either individually or by the use of agents, servants and/or employees."

[5] *See* n.1, *supra*, and accompanying text.

On May 23, 2016, Appellee filed a Motion for Summary Judgment, arguing, *inter alia*,[6] that he was neither an Owner nor an Operator of the Property as those terms are defined by the Housing Code of Baltimore City (the "Code" or the "Housing Code"). Because Appellee was simply acting as co-personal representative on behalf of the estate, Appellee argued that, pursuant to Md. Code Ann., Est. & Trusts § 8-109(c), he could not be held liable for Appellant's injuries. On June 10, 2016, Appellant filed an Opposition to Appellee's Motion for Summary Judgment, and Appellee filed a Reply to Plaintiff's Opposition on June 22, 2016.

The court heard arguments from both sides at a motions hearing held on June 29, 2016. At the conclusion of the hearing, the court granted Appellee's Motion for Summary Judgment on the grounds that he was neither an Owner nor an Operator of the Property. The court stated as follows:

[6] Mr. Wartzman's Motion for Summary Judgment also contained an argument that the claims were time-barred by Md. Code Ann., Est. & Trusts § 8-103(a). The trial court, however, rejected this argument, stating:

> I believe the Estates and Trusts Article provisions are not applicable here, because the claim is not against the estate. And the claim is clearly filed against Mr. Wartzman in his personal capacity; although, as personal representative as I said earlier, that is the theoretical basis of the claim that identifies Mr. Wartzman as an owner/operator under the City Code as articulated by the Plaintiff, here. So, for those reasons, the Motions with regard to the estate's statute [sic] is denied.

The Estate of Paul Wartzman raises the statute of limitations contained in Est. & Trusts § 8-103(a) as an alternative ground for affirmance, but we agree with the finding of the circuit court with respect to this issue.

> However, I will be granting the Motion for Summary Judgment with regard to [Appellee] on the basis that he is not an owner and/or operator.
>
> The Court believes that there is not present here any evidence that would rise to a dispute of material fact; first, that [Appellee] is an owner. The City Code does not state expressly that personal representatives fall under the classification of owner.
>
> To the extent that the identification of trustees and executors, arguably may encompass a personal representative, the Court believes that doing so, is in fatal conflict with established Maryland law that protects personal representatives in circumstances like this, where the personal representative – and this leads into the second point – where the personal representative is not individually liable as an operator.
>
> So, here, I do not believe that the sworn testimony that's been provided creates any potential inference that [Appellee] was involved in the day-to-day operations. I believe [Appellee] was operating exclusively in his capacity as personal representative, as an attorney would in terms of transferring properties and occupying the unique and quintessential position of a personal representative.
>
> So, for those reasons, the Motion will be granted.

On August 4, 2016, Appellant filed a timely appeal. Mr. Wartzman passed away on December 10, 2016, and Ian David Turk, the personal representative for his estate (hereinafter "Appellee"), has been substituted as Appellee.

STANDARD OF REVIEW

Appellate review of an order granting summary judgment is a two-step process. The first is to decide whether there were disputes of material fact before the circuit court. *Koste v. Town of Oxford*, 431 Md. 14, 24-25(2013). We perform this review de novo. *Id*. at 25.

In granting a motion for summary judgment, the circuit court must determine that the evidence was insufficient to generate an issue of material fact for the jury to decide. Summary judgment is proper where the trial court determines that there are no genuine disputes as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Md. Rule 2-501.The trial court should not resolve any issue regarding the credibility of witnesses as those matters are left to the trier of fact.

In reviewing the grant of a motion for summary judgment, appellate courts focus on whether the trial court's grant of the motion was legally correct. The parameter for appellate review is determining "whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed to trial …" *Laing v. Volkswagen of Am., Inc*., 180 Md. App. 136, 152-53. Additionally, if the facts are susceptible to more than one inference, the court must view the inferences in the light most favorable to the non-moving party. *Id.*

An appellate court ordinarily may uphold the grant of summary judgment only on the grounds relied on by the trial court.

DISCUSSION

A. Parties' Contentions

Appellant argues that, "[c]ontrary to the trial court's interpretation of the Code, the Mayor and City Council of Baltimore—in enacting the Code—unequivocally intended for Personal Representatives to be included in the list of those who fall into the category of Owners." Appellant asserts that Appellee, as an Owner of the Property, "had a duty to act reasonably under the circumstances." Appellant contends that Appellee's failure to act

reasonably with respect to the chipping, flaking, or peeling paint inside the Property should subject him to personal liability, according to Appellant. Appellant argues that "Section 8-109(c) [of the Estates and Trusts Article] states that there are, indeed, situations where the Personal Representative may be personally responsible for an alleged harm." Appellant argues that "*somebody* has [to] comply with the Code and keep the property free of chipping, flaking, and peeling paint" because, "[i]f the duty died with the decedent, the outcome would be untenable."

Appellant also contends that "the circuit court erred in finding that the quantum of care or control Appellee exerted over the Property was, as a matter of law, insufficient to qualify him as an 'operator' under the [Code]." Appellant points to various statements made by Appellee in a 2005 deposition[7] as providing sufficient evidence that he had "some involvement in the decision making regarding the operation of the [P]roperty."

Appellee responds that "[Appellee] was . . . entitled to judgment, as a matter of law, because he was neither an 'owner' nor an 'operator' of the property located at 1524 E. 28th Street." Regarding whether Appellee was an "owner" under the Code, Appellee argues that, "[even if] this Court were to agree with Appellant that the Baltimore City Council intended the Housing Code's definition of 'owner' to include Personal Representatives, although not expressly included in the definition, any such interpretation would be

[7] The "2005 deposition" refers to a deposition of Mr. Wartzman taken pursuant to an earlier case filed against him by the Appellant's counsel based on the same theory of liability. *See McManus, et al. v. J.P. Properties, et al.,* Case No. 24C03005360 (Cir. Ct. for Baltimore City, filed July 23, 2003). The Appellant's counsel did not depose Mr. Wartzman in conjunction with the present case, which, again, was filed on June 25, 2014.

preempted by state law," namely, Est. & Trusts § 8-109(c). "In the instant case," according to Appellee, "Appellant's inclusion of Personal Representative as an 'owner' of property under the Housing Code is . . . preempted by [both] conflict and implication." Appellee asserts that personal representatives constituting owners under the Code is preempted by conflict because "Est. & Trusts § 8-109(c) . . . clearly precludes the liability of Personal Representatives solely by virtue of their status." This is critical, Appellee contends, because Appellant's sole basis for attempting to hold Appellee individually liable is Appellee having served as co-personal representative of the estate. Appellee further argues that any intent by the Baltimore City Council to include personal representatives in the definition of Owner would be preempted by implication because the Maryland Legislature, in enacting Est. & Trusts § 8-109(c), "acted with such force that an intent by the State to occupy the entire field must be implied." (Quoting *Talbot Cty. v. Skipper*, 329 Md. 481, 488 (1993)). Appellee acknowledges that a personal representative can act in his individual capacity in the course of administering an estate, thus subjecting him to liability. However, Appellee argues that is not the case here because there is no evidence that Appellee acted "outside the scope of the ordinary duties of a Personal Representative."

Finally, Appellee asserts that he did not, in his individual capacity, have "charge, care, or control" over the Property. Regarding the statements made by Appellee in 2005, Appellee contends that "Appellant mischaracterizes [Appellee's] prior deposition testimony in a blatant attempt to create personal liability where it does not exist."

B. Analysis

i. The Definition of Owner Under the Code

Appellant argues that "[t]he Code imposes an obligation—a duty in negligence—upon Owners to provide a residence that is free from chipping, flaking, or peeling paint." *See* Code § 703(2)(c) ("All walls, ceilings, woodwork, doors and windows shall be kept clean and free of any flaking, loose or peeling paint and paper."). In order to breach this duty and, thus, be held personally liable for any resulting harm, one must fall under the definition of Owner or Operator. We shall first address whether the circuit court correctly found that Appellee was not an Owner of the Property.

The Code defines Owner as follows:

> *Owner* shall 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, and shall include 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.

Code § 105 (italics in original) (underlining added).[8] Appellant argues that, because the Code defines Person to include personal representatives, Appellee clearly falls under the definition of Owner. *See Id.* ("*Person* shall mean any individual, firm, co-partnership, corporation, company or association, and shall include any personal representative, trustee, receiver, assignee or other similar representative." (italics in original) (underlining added)).

[8] *See* n.2, *supra*, and accompanying text.

In other words, it is Appellant's position that, when reading the definitions of Owner and Person together, it is clear that the Baltimore City Council intended personal representatives to be considered Owners of residential real property. Appellee disagrees, claiming that the City Council's failure to include personal representatives in the definition of Owner is evidence of an intent not to consider them as such. In the alternative, Appellee argues that any indirect inclusion of personal representatives in the Code's definition of Owner is preempted by § 8-109(c) of the Estates and Trusts Article.

Md. Code Ann., Est. & Trusts § 8-109(c) provides:

> A personal representative is not individually liable for obligations arising from possession or control of property of the estate or for torts committed in the course of administration of the estate unless he is personally at fault.

We have previously explained that "counties are subject to the legislature's control, and where legislation conflicts with local law, the state law prevails." *Holmes v. Maryland Reclamation Assocs., Inc.*, 90 Md. App. 120, 142 (1992). Moreover, "state law may preempt local law in one of three ways: 1) preemption by conflict, 2) express preemption, or 3) implied preemption." *Skipper*, 329 Md. at 487–88. "Preemption by conflict exists if a local ordinance 'prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law.'" *Perdue Farms Inc. v. Hadder*, 109 Md. App. 582, 588 (1996) (quoting *Skipper*, 329 Md. at 487 n.4). Preemption by implication, on the other hand, exists where "the local law 'deal[s] with an area in which the [State] Legislature has acted with such force that an intent by the State to occupy the entire field must be implied.'" *Skipper*, 329 Md. at 488 (quoting *County Council v.*

Montgomery Ass'n, 274 Md. 52, 59 (1975)). In the instant case, we hold that even if the Baltimore City Council intended to include personal representatives within the definition of Owner, such an intent is preempted, by both conflict and implication, by state law, which provides that a personal representative in Appellee's position is not individually liable unless he is *personally at fault*. *See* Est. & Trusts § 8-109(c).

We agree with Appellee that "Appellant has provided no facts or allegations to support his argument that [Appellee] was an 'owner' under the Housing Code other than that he was Co-Personal Representative of the Estate." As such, Appellee did not constitute an Owner of the Property in his individual capacity, which means he could not have been "personally at fault" as an Owner for the lead paint poisoning allegedly suffered by Appellant during the time in which the Koons Estate was being administered. Est. & Trusts § 8-109(c).

Accordingly, we hold that the circuit court was legally correct in finding that there are no genuine disputes as to any material fact. As such, Appellee cannot be held personally liable as an Owner in the case at bar.

ii. Quantum of Care

After Appellants filed their notice of appeal in this case, § 105 of the Housing Code of Baltimore City was recodified to the Code of Public Local Laws for Baltimore City PLL § 9-15. The Code of Public Local Laws for Baltimore City defines Operator as "any person who has charge, care, or control of all or any portion of a structure or premises on behalf of the owner." PLL § 9-15(a)(5). Therefore, Appellee's individual liability as an Operator depends on whether the "charge, care or control," *id.*, he exerted over the property was

sufficient to make him "personally at fault," Est. & Trusts § 8-109(c), for Appellant's alleged injury. For the following reasons, we hold that Appellee, as a matter of law, did not have sufficient "charge, care, or control" of the Property to subject him to individual liability.

In *Toliver v. Waicker*, 210 Md. App. 52 (2013), we held that "[t]o be found to have 'charge, care or control' over property, a person must have some involvement in the decision making regarding the operation of the property." 210 Md. App. at 69. The appellants in *Toliver* contended that Mr. Waicker controlled the property at issue and, therefore, constituted an Operator under the Housing Code. We held, however, that:

> [t]he record does not support this assertion. As indicated, IRS, by its agreement, was responsible for the management of the Property. Mr. Waicker, as President of IRS, was solely responsible for overseeing the financial affairs of the corporation. IRS employed property managers, who were in charge of managing 600 properties and overseeing all inspections, maintenance, and repairs needed for the properties managed by IRS, and individuals to handle renting the properties for the property owners. Mr. Waicker testified that the employees ran IRS, not Mr. Waicker.
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> Mr. Waicker testified that he did not advise Mr. Mosley, the property manager during the relevant time period, what his duties were, nor did he "put any policies in place." Rather, his sole instruction to Mr. Mosley was to comply with the Housing Code. Mr. Waicker did not conduct any type of verification to make sure that Mr. Mosley was keeping the properties in compliance, he was not aware of Mr. Mosley's routine in conducting inspections of IRS managed properties, and he did not direct Mr. Mosley's maintenance of the properties. In other words, it was up to Mr. Mosley to determine what actions were necessary to comply with the Housing Code.
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> Mr. Waicker had no knowledge or information about the condition of the Property while it was being managed by IRS,

> nor was he personally involved with, or informed or consulted about, the rental or maintenance of the Property. He was not involved in the day-to-day operations of the Property.

Id. at 68–69.

Although Mr. Waicker was not a personal representative of an estate, the facts in *Toliver* bear a substantial resemblance to the facts before us now. In the case at bar, the record demonstrates that Appellee served alongside Ms. Robinson, Mr. Koons' daughter, as co-personal representative of the Koons Estate. After Mr. Koons' death, Ms. Robinson was employed by the Estate as the Office Manager of the Koons Management Company. Mr. Wartzman and Ms. Robinson both participated in the decision to hire Don King to be the property manager of the approximately 160 rental properties that became assets of the Estate upon Mr. Koons' death. Appellee and Ms. Robinson delegated the authority to make decisions regarding repairs to the various properties to Mr. King.

Although Appellee participated in some decisions relating to the rental properties—*e.g.*, disposing of operational records and determining the timing of sale of the properties—he was not involved in any of the day-to-day operations of the management company. Furthermore, Appellee never visited any of the rental properties, was not employed by the Koons Management Company (unlike Ms. Robinson), and did not provide any advice concerning the management of the properties. Finally, although Ms. Robinson testified to the contrary, Appellee testified that he was not involved in the process of setting rental rates for any of the properties.

Based on the record before us, we hold that the circuit court was legally correct when it granted Appellee's motion for summary judgment. The record does not show any

evidence that Appellee was involved in the day-to-day operations of the rental properties or had sufficient "charge, care or control" over the Property to subject him to individual liability.

As such, while the facts may have been sufficient for a finder of fact to determine that Ms. Robinson and/or Mr. King were personally at fault for the lead paint poisoning suffered by Appellant, the facts were not so sufficient with respect to Appellee.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.