Mold/Common Law Action: Maryland Appellate Court Addresses Negligence/Nuisance Claims

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The Appellate Court of Maryland ("App. Ct.") addressed in a June 27th Opinion issues arising out of alleged mold exposure. *See Candace McCarthy v. Board of Commissioners for Frederick County, Maryland,* 2025 WL 1778818.

The questions addressed were whether the Plaintiff properly alleged negligence and private nuisance.

Candace McCarthy ("McCarthy") filed a judicial action against the Board of Commissioners for Frederick County, Maryland ("County") alleging she suffered respiratory injuries due to exposure to black mold while working in the John Hanson House. McCarthy worked for the Office of the Public Defender.

The John Hanson House is a component of the Frederick County Courthouse Complex, where the Office of Public Defender leased office space.

The County moved to dismiss, or in the alternative, for summary judgment on both claims. The lower court granted summary judgment on the negligence claim concluding it was barred by governmental immunity. Summary judgment was granted on the private nuisance claim on the merits.

The App. Ct. in addressing the negligence/governmental immunity issue stated:

...Unlike the total immunity from tort liability which the State and its agencies possess, the immunity of counties, municipalities and local agencies is limited to tortious conduct which occurred in the exercise of a 'governmental' rather than a 'proprietary' function.

A test for making this distinction was described as:

…whether the act performed is for the common good of all or for the special benefit or profit of the corporate entity.

Therefore, the question considered was whether the alleged mold exposure occurred during the County's performance of a governmental function (i.e., whether the County's maintenance of the John Hanson House is a governmental function).

To answer this question, the App. Ct. summarized the summary judgment evidence regarding the John Hanson House and its relationship with the Courthouse Complex.

Determinations referenced by the App. Ct. include:

- The John Hanson House is a part of the Courthouse.
- Whether the County profited from leasing the John Hanson House was not a question of fact for the jury.

- The County did not profit from leasing space in the John Hanson House.
- The maintenance of the John Hanson House was not a proprietary function.

The App. Ct. held that the lower court did not err in granting summary judgment on the negligence count in the County's favor on the grounds of governmental immunity.

McCarthy also argued that the lower court erred in granting summary judgment on the private nuisance claim on the basis that she did not have a property interest in the leased premises in the John Hanson House where she worked. She argued that the private nuisance claim was viable because she was the lawful occupant of the John Hanson House as she worked in the building pursuant to her employment.

The App. Ct. stated that McCarthy did not cite any legal authority to support the proposition that an employee has sufficient property interest in their workplace to pursue a private nuisance claim. It stated that adopting McCarthy's interpretation would broaden the law of private nuisance to allow claims from licensees, invitees, and others without an interest in the property affected.

The App. Ct. therefore held that the lower court did not err in granting summary judgment on the private nuisance claim.

A copy of the Opinion can be downloaded here.