



Lawsuit: Co-op failed to properly remove toxic mold

Type: Settlement

Amount: \$250,000

State: Florida

Venue: Broward County

Court: Broward County Circuit Court, 17th, FL

Injury Type(s):

- *head* - headaches
- *pulmonary/respiratory* - respiratory

Case Type:

- *Toxic Torts* - Mold
- *Contracts* - Breach of Contract
- *Wrongful Death* - Survival Damages
- *Intentional Torts* - Private Nuisance
- *Premises Liability* - Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Bryan Salkin v. Pasadena Gardens, Inc., JNE Management, A/K/A JNE Management, LLC., No. CACE16007496

Date: October 23, 2018

Plaintiff(s):

- Estate of Bryan Salkin (Male)

Plaintiff Attorney(s):

- Gordon Koegler; Law Offices of Gordon Koegler, P.A.; Fort Lauderdale FL for Estate of Bryan Salkin

Plaintiff Expert(s):

- Gary Rosen Ph.D.; Toxic Mold/Mycotoxigenesis; Fort Lauderdale, FL called by: Gordon Koegler
- Glenn Caddy PhD; Psychology/Counseling; Fort Lauderdale, FL called by: Gordon Koegler
- Andres Correa P.E.; Engineering; Fort Lauderdale, FL called by: Gordon Koegler

Defendant(s):

- JNE Management
- Pasadena Gardens Inc.

Defense**Attorney(s):**

- None reported for JNE Management
- Jon Polenberg; Becker & Poliakoff; Fort Lauderdale, FL for Pasadena Gardens Inc.

Facts:

In 2015, plaintiff Bryan Salkin, an unemployed man, noticed a water leak in the wall of the co-op unit he owned on Layne Boulevard, in Hallandale Beach. Salkin claimed that the cooperative, Pasadena Gardens Inc., had failed to properly repair the leak. He also claimed that the cooperative's actions led to the development of toxic mold in his home. Salkin said that he became ill as a result of this mold exposure.

Salkin sued Pasadena Gardens Inc and JNE.Management. Salkin alleged that the defendants were negligent in their maintenance of the premises and that their negligence created a dangerous condition. The lawsuit also included allegations for breach of the cooperative documents and private nuisance claims.

JNE Management was dismissed prior trial.

Salkin passed away in 2017 from causes unrelated to the mold exposure. The case was continued by a personal representative of his estate as a survivor action.

The estate's counsel claimed that after Salkin reported the initial water leak in his living room, the co-op sent over a contractor to fix the problem. The contractor allegedly did not have a proper permit. Counsel further claimed that six months after the initial repair, the water leak returned in both the living room and the master bedroom.

The estate's counsel claimed that another non-permitted contractor came and ripped open the drywall in both rooms. The contractor then allegedly failed to repair the drywall, leaving the unit's corroded pipes exposed. This supposedly created a musty odor in the unit and led to the release of toxins into the air. It was also around this time that black mold began to appear in the home. The mold and the water leak caused two holes to form in the floor of the unit.

The estate's counsel claimed that the pipes in a crawl space under the unit were also corroded. The raw sewage smell then entered the unit through the exposed walls, creating a further nuisance.

The co-op eventually sent someone to the unit to replace the pipes. However, according to the estate's counsel, the co-op still failed to fix the drywall or remove the mold. The defendant also didn't clean or decontaminate the sewage pipes, nor did it obtain the proper permit.

The estate's counsel maintained that the co-op first should have brought in a licensed contractor and obtained the proper permits for the repairs. Counsel additionally claimed that the defendant should have had the city of Hallandale Beach inspect the unit after the repairs to close out the permit. According to the plaintiff, the defendant should have also retained a licensed mold inspector to certify that there was no mold and that the residence was habitable.

The estate's counsel said that the defendant's actions created inhumane conditions in the unit. Counsel further noted that during this time, the co-op had replaced the windows and doors of all the units on the property. Counsel thus claimed that the co-op knew Salkin's home was in a terrible state.

The estate's counsel alleged that the defendant's actions were part of a deliberate attempt to force Salkin from his home. Counsel claimed that the co-op and other residents were not comfortable with Salkin, an obese man, living in the community and using the pool. Counsel specifically pointed to the co-op's internal emails that commented on Salkin's large size. Counsel further noted a letter from the co-op's board of directors suggesting that Salkin sell his home and move out.

The defense initially argued that the estate's claims were based solely on alleged breaches of the co-op's duties pursuant to the cooperative documents. The defense claimed that under Florida law, claims for torts cannot solely rely on a breach of contract.

The defense maintained that it wanted to fix the problems in the unit, but Salkin was not cooperative. The defense thus maintained that Salkin was liable for his own harm, and that Salkin's counsel could not establish that the defendant caused the plaintiff's harm.

The estate's counsel disputed this allegation, noting that Salkin allowed the co-op's contractors to enter his unit. The estate's counsel further argued that Salkin had been willing to stay in a hotel while the proper repairs were completed, but the defendant would not pay for Salkin's hotel room. Defense counsel, however, maintained that the co-op had offered to pay for a hotel, but Salkin had refused to leave his home.

The defense claimed that Salkin, as the unit's owner, should have hired his own contractor or taken care of the various problems himself. The defense also argued that Salkin could have simply moved out of the unit. The defense similarly claimed that Salkin assumed the risks of living in the damaged unit by refusing to find another place to live.

The defense also denied asking Salkin to move out or sell his unit. The defense additionally claimed that Salkin waived his right to recover damages for the nuisance claim when he permitted the defendant to perform work on the premises.

Injury:

Prior to his death, Salkin claimed that the toxic mold exposure caused headaches and respiratory symptoms such as coughing and wheezing. He also alleged that he had flulike symptoms, and that it was hard for him to sleep.

Salkin underwent minimal medical treatment for his mold exposure. However, he did receive prescription medications from his family doctor to help him cope with his breathing problems.

Salkin claimed that the mold exposure affected his mobility. He thus was unable complete swim exercise in the cooperative pool or go for short walks in the years before his death.

Due to his obesity, Salkin had relied on his roommate to help take care of him prior to the mold exposure. Salkin required significantly more assistance from his roommate after the exposure. He specifically needed more help with daily activities such as showering, getting out of bed and getting dressed.

Salkin's estate sought recovery of approximately \$250,000 in past pain and suffering and at least \$500,000 in punitive damages.

Result:

The parties negotiated a settlement shortly before trial. Pasadena Gardens agreed to pay the estate \$250,000. The cooperative also agreed to properly repair the subject unit and to obtain the required city permits and final inspections. The repairs are expected to cost approximately \$50,000.

Trial Information:

Judge: Sandra Perlman

Editor's Comment: This report is based on information that was provided by plaintiff's counsel and Pasadena Gardens' counsel. Additional information was gleaned from court documents. JNE Management's counsel was not asked to contribute.

Writer Melissa Siegel

Landlord failed to remediate moldy townhome: plaintiffs

Type: Settlement

Amount: \$100,000

State: Virginia

Venue: Newport News

Court: Newport News City, Circuit Court, VA

Injury Type(s):

- *head* - headaches
- *other* - allergic reaction
- *face/nose* - sinus

Case Type:

- *Toxic Torts* - Mold
- *Landlord and Tenant* - Habitability
- *Premises Liability* - Negligent Repair and/or Maintenance

Case Name: Will Alvis Cherry and Ashley Aldridge v. Lawson Realty Corporation, Tabb Lane Investment Co. and the Lawson Companies, Inc., No. CL1304256T-01

Date: June 21, 2019

Plaintiff(s):

- Will Cherry (Male, 20 Years)
- Ashley Aldridge (Female, 20 Years)

Plaintiff Attorney(s):

- David S. Bailey; The Environmental Law Group, PLLC; Glen Allen VA for Will Cherry, Ashley Aldridge

Plaintiff Expert(s):

- Stanley Yeskolski; Mold & Fungal Origin and Causation; Virginia Beach, VA called by: David S. Bailey

Defendant(s):

- Lawson Realty Corp.
- Tabb Lane Investment Co.
- The Lawson Companies Inc.

Defense Attorney(s):

- Herbert V. Kelly Jr.; Jones, Blechman, Woltz & Kelly P.C.; Newport News, VA for Lawson Realty Corp., Tabb Lane Investment Co., The Lawson Companies Inc.

Facts:

On May 18, 2012, plaintiffs Will Cherry, 20s, disabled, and Ashley Aldridge, 20s, and their two children took up residence at 1028 Pleasant Court in Liberty Point Townhomes in Newport News. Liberty Point Townhomes was operated by Lawson Realty Corporation. They were subsequently ordered to vacate the premises by a mold inspector who reportedly determined that the townhome in which they were living was unsafe for human occupancy due to mold-related conditions. Cherry and Aldridge finally moved out of Liberty Point Townhomes in November 2012. They claimed that Cherry had developed mold-related allergies while living in the home.

Cherry and Aldridge sued Lawson Realty Corporation, Lawson Companies Inc., and Tabb Lane Investment Company, the investors who owned Liberty Point Townhomes. They alleged that the defendants were liable for violations of the Virginia Residential Landlord-Tenant Act, breach of contract and negligent repair. The lawsuit also alleged that, under Maryland State Code, the plaintiffs possessed a statutory cause of action for personal action under mold statutes as defined by the Landlord-Tenant Act.

A circuit court judge ruled that the plaintiffs only had a claim under the common law cause of action. The plaintiffs' counsel appealed this ruling and the Maryland Court of Appeals overturned the ruling, determining that the plaintiffs had the right to make both claims.

According to the plaintiffs, Cherry began to display symptoms of a mold-related injury, including sinus congestion, coughing and headaches, within a week of moving into the townhome. They said they reported the symptoms to the landlord, but the landlord did not immediately call for a mold inspector or repairs.

The plaintiffs alleged that, on Aug. 11, 2012, workmen hired by Lawson Realty entered their apartment unit to perform repairs on water damage the apartment had sustained. The plaintiffs also claimed that, later in August, they reported that mold was visibly growing on the carpets in their apartment. They said that is when the mold inspector examined the apartment and ordered them to vacate the premises.

The plaintiffs asserted that the apartment had contained mold and moisture damage within the unit when they moved into it, but they did not notice the mold and moisture damage at that time, as the damage was hidden behind the unit's walls. They claimed they reported everything to the landlord, who failed to take immediate and appropriate action. They further testified that the water damage repairs performed in August were negligent and did not help the situation, as mold became visible on the carpet soon thereafter.

The plaintiffs retained the inspectors who examined the house for mold as experts. The experts were expected to have testified regarding the conditions within the unit and the unsafe conditions to which the plaintiffs had been subjected.

The defense was expected to argue that mold in the townhouse could not have been responsible for the plaintiffs' damages because mold does not make people sick.

Injury:

Cherry said he began to experience sinus congestion, coughing and headaches within a week of moving into the unit and that his children displayed similar symptoms while living in the unit.

After moving out of the unit in November 2012, Cherry took the children to a primary care physician who began to treat them for mold-related injuries. Treatment included a series of allergy shots.

Several months later, Cherry went to treat with an allergist who diagnosed him with sinus allergies to mold. The doctor opined that Cherry had developed mold allergies after prolonged and close exposure to mold and water damage. He recommended that Cherry undergo allergy shots and allergy treatment.

Cherry opted out of allergy shots due to a lack of insurance and being financially unable to afford the shots. He treated intermittently for the next two years, but never underwent the full treatment recommended by the allergist.

Plaintiffs' treating doctors were expected to testify that Cherry had been exposed to mold in the apartment, which led to the development of allergies to mold. They were expected to testify that the treatment is vaccine therapy or allergy shots and that Cherry underwent a limited regimen of the treatment. Plaintiffs' counsel was expected to argue at trial that Cherry had a disability and a very limited income, which made him unable to maintain the recommended regimen of allergy shots.

The doctors were expected to opine that Cherry would be allergic to mold for the rest of his life as a result of the exposure.

In addition to physical injuries, the plaintiffs claimed that several pieces of their used furniture sustained mold and water damage.

Cherry and Aldridge sought compensation for medical bills, punitive damages and non-economic damages.

Result:

The parties agreed to a \$100,000 settlement prior to trial. The defendants were self-insured.

Trial Information:**Editor's
Comment:**

This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

Writer

Erik Halberg

Mold and repairs not made at home caused damages: plaintiff

Type: Settlement

Amount: \$30,000

State: California

Venue: Santa Cruz County

Court: Superior Court of Santa Cruz County, Santa Cruz, CA

Injury Type(s):

- *chest* - fracture, rib
- *other* - soft tissue
- *pulmonary/respiratory* - asthma; respiratory

Case Type:

- *Toxic Torts* - Mold
- *Slips, Trips & Falls* - Trip and Fall
- *Premises Liability* - Stairs or Stairway; Negligent Repair and/or Maintenance
- *Landlord and Tenant* - Warranty of Habitability

Case Name: Kathleen Kelley v. Scotts Valley Property Management and Todd Sachi, No. CV174900

Date: July 29, 2015

Plaintiff(s):

- Kathleen Kelley (Female, 55 Years)

Plaintiff Attorney(s):

- David S. Spini; Fitzpatrick Spini & Swanston; Watsonville CA for Kathleen Kelley

Plaintiff Expert (s):

- W. Andrew Fennell P.E.; Construction; Lafayette, CA called by: David S. Spini
- James D. Wolfe M.D.; Allergy/Asthma/Immunology; San Jose, CA called by: David S. Spini
- Andrew T. Mihalik M.D.; Emergency Medicine; Boulder Creek, CA called by: David S. Spini
- Christopher G. Gatward; Industrial Hygiene; Monterey, CA called by: David S. Spini

- Defendant(s):**
- Todd Sachi
 - Scotts Valley Property Management
- Defense Attorney(s):**
- Patricia M. Green Roe; Samuelson Wilson and Roe; San Jose, CA for Scotts Valley Property Management, Todd Sachi
- Insurers:**
- American Modern Insurance Group

Facts: In 2007, plaintiff Kathleen Kelley, a disabled woman in her 50s, began leasing a residential premises in Brookdale. She claimed that immediately upon taking possession of the property, she noted numerous defects, including water intrusion, mold and mildew growth, and deterioration of the exterior decks and stairways. Kelley claimed that these defects were communicated, verbally and in writing, to both the property manager, Scotts Valley Property Management, and the property owner, Todd Sachi, but that substantive repairs were never made.

In May 2011, the property manager's handyman recommended that the exterior deck be replaced. However, this recommendation went ignored, and in April 2012, Kelley tripped over protruding nails on the deck, causing her to fall down five or six stairs.

Kelley eventually vacated the property in September 2012.

Kelley sued Scotts Valley Property Management and Sachi, alleging premises liability.

Prior to vacating the property, the plaintiff's expert construction consultant inspected the premises and determined that the unit was "substandard," pursuant to Chapter 10 of the 1997 Uniform Housing Code. According to plaintiff's counsel, the property was also tested by M3 Environmental, and while the air sampling was fairly normal, visible mold growth was noted throughout.

Injury: Kelley claimed she suffered respiratory issues and adult onset asthma as a result of the indoor environmental conditions within the property. She also claimed that she sustained rib and other soft-tissue injuries as a result of her fall.

Kelley alleged that her total medical expenses amounted to \$2,174, of which Medi-Cal paid approximately \$218.

Result: The lease between Kelley and the defendants contained a prevailing party attorney fee clause. According to plaintiff's counsel, in the event the plaintiff obtained a verdict, the attorney fee exposure would have eclipsed the compensatory value of the claim. As a result, the parties agreed to settle five days before trial for \$30,000, the amount of the statutory offer made by the plaintiff.

Trial Information:

Judge: Rebecca Connolly

**Editor's
Comment:**

This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Writer

Priya Idiculla