

New York Court of Appeals Issues Ruling Clarifying Residence in Lead-Based Paint Cases

The New York Court of Appeals recently addressed the question of “residence” under New York City’s lead abatement law, better known as “Local Law 1.”¹ Local Law 1 – first enacted in 1982 – imposes a duty on landlords to “remove or cover” lead-based paint in dwelling units where a child six years or younger “resides.” Although the scope of Local Law 1 is restricted to New York City, the Court’s recent ruling could impact lead-paint litigation throughout the state.

In *Yaniveth R. v. LTD Realty Co.*, 2016 NY Slip Op 02550 (N.Y. April 5, 2016), the plaintiff commenced an action against the owners of an apartment building in which plaintiff’s grandmother was a tenant. From the time that plaintiff was three months old, she spent approximately 50 hours per week at her grandmother’s apartment while her parents were at work. The plaintiff did not actually live at her grandmother’s apartment, and returned to her parents’ home each evening. In 1998, the plaintiff exhibited elevated blood lead levels; a subsequent inspection of her grandmother’s apartment revealed potentially hazardous lead-paint conditions. Plaintiff thereafter commenced a negligence action against the grandmother’s landlords, alleging that they had breached their duty to her under Local Law 1. Plaintiff maintained that because of the significant amount of time plaintiff spent at her grandmother’s apartment, the unit constituted a “residence” for the Plaintiff. Defendant landlords moved for summary judgment, and Supreme Court granted the motion; the Appellate Division affirmed that determination, and the matter was appealed to the Court of Appeals.

The Court of Appeals affirmed the trial court’s award of summary judgment. In its opinion, the Court rejected the argument that the term “reside” should be interpreted broadly enough to include places in which a child is “physically present or spends a substantial amount of time.” Since Local Law 1 did not itself define the term “reside,” the Court sought to interpret the term based on its “ordinary meaning.” Although the Court accepted the concept that an individual could have multiple residences, the Court reasoned that to “reside” requires more than mere bodily presence in a given place: it requires living in a particular place. The Court concluded that the plaintiff did not “reside” at her grandmother’s apartment because she did not live at the apartment and there was no evidence that she intended to live or retain the apartment as a residence.

In dissent, Judge Fahey disagreed with the majority’s “narrow” interpretation of the term “reside”, and argued that since the “intent” of Local Law 1 was to protect young children from lead-based paint poisoning, it should be interpreted to allow for “residence” to apply to more than one location.

Lead-paint exposure cases often involve allegation of exposure to lead at a “secondary address”, such as the apartment of a grandparent or day-care provider. Although the Court’s holding directly concerns an interpretation of Local Law 1, it is nevertheless anticipated that the *Yaniveth* decision will be cited in disputes throughout New York State whenever a question of residence arises.

For more information, please contact [Thomas R. Smith](mailto:trsmith@bsk.com) (315.218.8325, trsmith@bsk.com), [Richard L. Weber](mailto:rweber@bsk.com) (315.218.8375, rweber@bsk.com) or [Franz M. Wright](mailto:fwright@bsk.com) (585.362.4819, fwright@bsk.com).

¹ See, NYC Administrative Code § 27-2013 [former (h)]. This provision was later repealed by New York City Childhood Lead Poisoning Prevention Act of 2003 (Local Law 1 of 2004) and transferred to NYC Administrative Code § 27-2056.18. The Court analyzed the facts under Local Law (1982) because that section was in effect during the Plaintiff’s exposure to lead paint.



Commitment • Service • Value • Our Bond



Bond, Schoeneck & King PLLC (Bond, we, or us), has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences.

For information about our firm, practice areas and attorneys, visit our website, www.bsk.com. • Attorney Advertising • © 2015 Bond, Schoeneck & King, PLLC

CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC

FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM