
FRIDAY, NOVEMBER 16, 2001

Ruling bolsters lead paint lawsuits

Albany -- Court reinstates Albany case and sets standard to determine whether other claims can go forward

By **CATHY WOODRUFF**
Staff writer

In a decision that opens the door to a battery of lawsuits against upstate landlords on behalf of children poisoned by lead paint, the state's highest court on Thursday reinstated the case of a couple who say the paint in their former Myrtle Street apartment made their son sick.

In a unanimous decision reviving James and Sallie Chapman's lawsuit but upholding dismissal of a second suit by another Albany parent, the Court of Appeals set a new five-part standard to determine whether lawsuits can go forward.

Previously, unless plaintiffs could show that a landlord was explicitly aware that paint contained lead, appellate courts routinely rejected the cases outside New York City, which has a local law making landlords responsible for lead paint abatement.

Court of Appeals Judge Carmen Ciparick wrote that the old standard "leaves plaintiffs in an impossible situation" and allows landlords to deliberately not test paint to avoid liability.

Now, lead paint claims may go to trial if the plaintiff can show that the landlord had the right to enter the house or apartment and responsibility for repairs, knew that the property was built before lead-based interior paint was banned in 1978, was aware that paint was peeling, knew about the hazards of lead paint to young children, and knew that a young child lived in the apartment.

Albany lawyer Peter Danziger, who represents families involved in both appeals decided Thursday, along with about 100 more who have filed lawsuits or are considering them, called the decision a victory for victims and potential victims.

"Over the last 21 years, tens of thousands of children have been poisoned by lead paint," many of whom could not sue under the old standards, he said.

In addition, he predicted, "landlords, realizing that they may have liability if they poison children, are going to take action to repair their buildings."

In the Chapman case, which the high court allowed to go forward, the couple rented a 443 Myrtle Avenue apartment from landlords including Dennis and Jay Silber and their mother, Gertrude, in 1994. The Chapmans moved in with their three children, including a 1-year-old. A year later, that child was hospitalized with high lead levels in his blood, and the family moved out.

In 1999, state Supreme Court Justice Bernard Malone ruled the case could go to trial, saying peeling paint indicated the landlord should have known a dangerous condition was possible. The Appellate Division overturned that decision, on the grounds that the mere presence of chipped paint did not establish liability.

The Court of Appeals upheld the dismissal of a case brought by Carlisa Stover, however. Her 2-year-old son was hospitalized for lead poisoning in September 1994, while they were living in a 22 Judson Street apartment rented from James O'Connor. The court found that O'Connor, who died in 1998, did not have sufficient notice of a lead paint problem to justify a trial.

Prolonged lead exposure can cause brain damage, learning disabilities and behavioral problems. A state Health Department study released in May found that new lead poisoning cases in children under 6 are on the decline in New York, but there still were 3,377 children with elevated lead levels found in 1999.

Syracuse-based Legal Services of Central New York submitted a brief to the Court of Appeals in support of the Albany plaintiffs. "We see poor clients all the time in upstate cities with a very old housing stock," said Dennis Kaufman, executive director. "These old houses that they're living in are just riddled with lead problems."

Albany lawyer John T. Casey, Jr., who represented three of the four Chapman family landlords, said the decision "does not put landlords in a bind, without question," because insurance companies will no longer write policies to cover lead liability losses.