

Leased Structure/Mold Damage Claim: Louisiana Appellate Court Addresses Applicability of a Lease's Waiver of Liability



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A Louisiana Court of Appeal (First Circuit) (“Court”) addressed in February 17th Opinion an issue arising out of a lessee’s damage claim against a lessor purportedly caused by exposure to mold. See *Scott v. Adams*, 2022 WL 484465.

A question addressed was whether a waiver of liability in the lease agreement absolved the lessor of responsibility for personal injury and property damages.

Kenneth Adams, III (“Adams”) constructed a residence in Mandeville, Louisiana. Adams lived there with his family for several years. He subsequently entered into a “Standard Residential Lease Agreement” with Ms. Sabrina Scott (“Scott”) for the lease of the home.

Scott subsequently discovered mold growing inside a cabinet (she described it as “a major mold problem”). Adams was also told she was “highly allergic to mold.”

Adams cleaned the surface of the cabinet along with the cooktop.

Approximately nine days later Scott texted Adams stating:

. . . I don’t think this mold is all gone. It needs to be fully remediated. . . I can only be there briefly before feeling sick.

Adams attempted to test for mold but was subsequently prevented from accessing the home. Scott hired a licensed mold remediation contractor to perform an environmental assessment.

Adams initiated an eviction proceeding against Scott the day after the mold remediation contractor was found to be inspecting the home. On August 2, 2017, an Order was signed mandating that Scott vacate the premises.

Scott filed suit against Adams and his wife (collectively “Adamses”) for wrongful eviction and for damages caused by exposure to mold in the home. Her petition stated:

. . . the action or inaction of the Adamses caused the mold, and the mold caused her to suffer substantial health effects and damages to her personal property.

The Adamses alleged in an Answer that Scott violated the terms of the agreement and caused damage to the property.

After discovery the Adamses filed a second Motion for Summary Judgment arguing:

- The terms of the lease agreement contained waivers of liability which absolves them of responsibility for the alleged personal injury and property damage
- Scott could not show general or specific causation required for toxic mold cases because of the absence of medical evidence to show mold exposure caused her to suffer any injury or illness

Scott responded that the waiver of liability in the lease was ineffective because under LA.R.S. 9:322 Adams allegedly knew or should have known of the defect that caused the mold and failed to remedy it within a reasonable time after receiving notice of the defect. She also argued that ample medical evidence was provided to prove she was exposed to mold and it caused her to suffer health problems.

The trial court determined that the waiver in the lease agreement exempted the Adamses from Scott's injury allegedly caused by mold. Consequently, it granted summary judgment and held that most of the remaining issues were moot.

The Court on appeal noted that under Louisiana law the owner/lessor of a building is generally liable for the condition of the leased premises. Nevertheless, it states that Louisiana law contains an exception if the lessee assumes responsibility for the condition of the premises in the lease contract.

Even if a lessee has assumed responsibility for the condition of the leased premises, Louisiana law still allows assertion of liability for injury if the owner:

1. Knew of the defect that caused the injury;
2. Should have known of the defect that caused the injury; or
3. Received notice of the defect and failed to remedy it within a reasonable time.

The Adamses contended that Scott assumed responsibility for the leased premise. They further argued there was an absence of evidence that they knew or should have known of the defect or had received notice thereof and failed to remedy it within a reasonable time.

The lease provided the following relevant language:

NON-LIABILITY OF LANDLORD: Tenant understands and agrees that Landlord and Landlord's agents shall not be liable for injury or damage to person or property of Tenant, his family, guests, employees or invitees, occurring in, on or about the leased premises, or occurring anywhere in or on the apartment building or area in which the leased premises are located, or in or upon the grounds in which the apartment building or house is located, or in any other building or structure on said grounds, however caused or arising except by the direct negligence of Landlord, or Landlord's agents or employees, and agrees to defend, indemnify and hold Landlord and Landlord's agents harmless from any and all claims, suits or damages resulting therefrom.

LEAD-BASED PAINT, ASBESTOS, RADON, MOLD: Tenant is aware that the premises may contain lead-based paint, asbestos, mold or other toxins which may cause serious injury or death if consumed or ingested into the human body, and Tenant acknowledges that the "Protect Your Family from Lead in Your Home" pamphlet has been called to their attention with respect to notice and information of lead based paint. Having knowledge of these facts, Tenant agrees to maintain the premises in a reasonably safe condition, to report to Landlord any condition which may lead to damage or injury because of lead, asbestos, or other toxins, and Tenant further agrees to assume the use and occupancy of the herein leased premises at his own risk and hereby releases Landlord, his agents and/or representatives from any claims relating to or sustained as a consequence thereof, and further agrees to hold harmless, defend and indemnify Landlord, his agents and/or representatives from any claims made by Tenant, residents of his household or others using the premises with the consent and permission of Tenant.

Scott was deemed to have determined that the premises were in an acceptable condition and that the landlord would not be liable for injury or damages to the personal property. Further, as to mold, Scott was held to have assumed the use and occupancy of the leased premises at her own risk and to have released Adams, his agents, and/or representatives from any claims related to or sustained as a consequence thereof.

The Opinion notes that Adamses had argued below:

1. Adams was responsive to the complaint about mold (He cleaned the area where Scott said there was mold)
2. He responded again to test the home for mold
3. He instituted the eviction because Scott did not let him or his wife into the home.
4. He never experienced issues with mold at the home during the time his family lived there

Scott argued below that the mold remediation contractor had determined that defects in the home caused the mold problem and that:

. . . a property owner, especially one that built the home, would have constructive knowledge of this condition.

The Court held that the conclusions by Scott's mold remediation contractor and an HVAC certified specialist fell short of the factual support needed to establish the existence of a genuine issue of fact when there was no evidence of mold for the eight years that Adamses lived in the house. It further noted that Scott did not discover evidence of mold until more than 17 months after living in the home.

The Court also rejected Scott's argument that problems with an air conditioner caused the mold to grow and that any mistakes the air conditioner repair person made should be imputed to Adams. Scott was noted to have not complained about the air conditioner to Adams and never suggested it was causing mold.

The lower court's granting of Summary Judgment to Adams was upheld.

A copy of the Opinion can be downloaded [here](#).