

Sixth Circuit Court of Appeals Dismisses Minor Plaintiffs' Claims of Violations of Title X for Lack of Standing

By Rebecca H. Filiatraut

A lessee's minor children do not have standing to sue a lessor for failure to disclose information regarding the hazards of lead paint as required by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (commonly known as "Title X") according to the Sixth Circuit Court of Appeals.

Christina Roberts, proceeding solely as the next friend of her two minor children, appealed the Federal District Court's dismissal of her children's claims against lessors, Christopher and Joan Hamer, for violation of the disclosure requirements contained in the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Title X"), 42 USC §§4851-4856. Christina Roberts is the mother of minors Howard Wipfel and Thealyn Wipfel.

In October 2002, Roberts entered into a lease agreement with Christopher and Joan Hamer to rent an apartment in Covington, Kentucky. Before entering into the agreement, Defendants allegedly failed to provide the family with the federally required disclosure forms regarding the potential presence of lead-based paint in the apartment building. Defendants also failed to provide the family with a precautionary pamphlet detailing how to avoid the dangers of lead-based paint, entitled "*Protect Your Family From Lead in Your Home*" which is authored by the Environmental Protection

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From a practical perspective, if a parent brings an individual claim for violation of Title X, a directed verdict and/or motion for summary disposition on the issues of negligence and/or liability still may be filed and treble damages for a "knowing" violation of the statute may still be awarded. But if the parents file the claim for Title X violations, defendants may then be entitled to obtain medical, psychological and/or educational records of the parent as they are maintaining their own individual claim against the defendant. The case law in Michigan provides individuals who are not bringing a claim have an absolute privilege preventing them from having to disclose any personal information contained in medical, academic, psychological or psychiatric records. This may level the playing field quite a bit for defendants who are attempting to argue the type of neuropsychological or neurological damages seen in childhood lead exposure cases are the result of genetics and/or heredity.

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Agency. Roberts alleged as a result of the failure to provide this information as required by Title X, her children were “conceived and resided in the subject property for several years where unknown to them high levels of lead were present.” Roberts’ children allegedly suffered neurological and neuropsychological damages as a result of their exposure to chipping and peeling lead-based paint in the building. Robert’s children allegedly will continue to suffer both physical and mental injuries for the rest of their lives as a result of their lead exposure. Plaintiffs, in their Complaint, alleged violations of Title X as well as violations of both state and federal laws including violations of the Toxic Substances Controlled Act (“TSCA”), 15 USC §§2601-2629. The Sixth Circuit considered only the issue of the alleged Title X violations as it pertained to minor Plaintiffs.

Since the matter was pending in Federal District Court, Defendants moved under Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure to dismiss all of Plaintiffs’ claims. With respect to the alleged violations of Title X, Defendants argued that the children lacked standing to assert any claim under the statute.

Title X compliance requires that “before the purchaser or lessee is obligated under any contract to purchase or lease housing, the seller or lessor shall (A) provide the purchaser or lessee with a lead hazard information pamphlet, and (B) disclose to the purchaser or lessee the presence of any known lead-based paint, or any known lead-based paint hazards in such housing and provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor.”

Title X compliance is enforced through civil actions for money damages. The statute specifically provides, “any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to three times the amount of damages incurred by such individual.” A violation of the provisions of Title X which is not knowing, in other words the lessor had no notice of the requirements of the statute, may still result in a directed verdict for Plaintiffs with regard to negligence and/or liability. On the other hand, a knowing violation of the statute could result in a directed verdict on the issue of negligence and liability as well as the imposition of treble damages against the lessor.

Plaintiff argued on appeal that the childrens’ status as neither purchasers nor lessees, did not negate a claim for Title X violations against the lessor as the children were nevertheless entitled to seek redress for their injuries caused by Defendants’ alleged violations as the children were defacto lessees and/or third party beneficiaries under the lease contract. The Court rejected this argument.

In rejecting Plaintiffs’ argument, the Court considered the purpose of the statute known as Title X. The statute was enacted in 1992 by Congress based upon its findings that low level lead poisoning caused primarily by the ingestion of household dust containing lead from deteriorating or abraded lead-based paint, endangers the health and development of children living in as many as 3.8 million American homes. 42 USC §4851. Title X was enacted to, among other things, “develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible” and to “educate the public concerning the hazards and sources of lead-based paint poisoning and enforce steps to reduce and eliminate such hazards.” The EPA has promulgated regulations for the disclosure of lead-based paint hazards in “target housing” which is generally housing constructed prior to 1978 which is offered for sale or lease.

The Sixth Circuit found that the language of the statute plainly and expressly limits private recovery to a “purchaser or a lessee of target housing and no one else.” Because the language was so plain, the Court held that children of a lessee may not sue a lessor for violations of Title X disclosure requirements. The EPA’s

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definition of a lessee is consistent with the Court's interpretation of "any entity that is capable of entering into a legally binding contract for the purchase or lease of real property."

The Court finally noted that the federal scheme to reduce the hazards of lead-based paint in residential housing is intended to be implemented in conjunction with state and local laws that require abatement of lead-based paint. Therefore, children are not left without a remedy, they can pursue claims against lessors in state courts.

Defendants and lessors should approach the Court's ruling with caution. Simply because a court does not recognize an independent cause of action on behalf of a minor Plaintiff for an alleged violation of the statutory requirements of Title X, does not mean that state court claims for negligence, including a failure to inspect, and repair, as well as various alleged violations of local and city ordinances, do not exist. The fact that minor children do not have standing to bring their own claims for Title X violations, does not mean that the parents cannot file their own individual claims for violations of Title X as they will have standing as lessees.

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