

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2203

September Term, 2015

SHANECE COLEY

v.

23RD STREET REALTY COMPANY, et al.

Wright,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: February 9, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Shanece Coley (hereinafter “Ms. Coley”) was born on May 21, 1993. From shortly after her birth until August 1994, she lived at 916 N. Monroe Street in Baltimore City. The Monroe Street house in which she lived was owned by Martha Marks. From August 1994 until January 1995, Ms. Coley lived with her mother at 2229 St. Paul Street, Baltimore, Maryland, a property owned and operated by 23rd Street Realty Company, a/k/a 23rd Street Realty, LLC, Consumer Management Services, Inc., Gary P. Aiken, and Louis F. Friedman (collectively “23rd Street Realty” or “defendants”).

On April 28, 2014, Ms. Coley filed an amended complaint in the Circuit Court for Baltimore City against 23rd Street Realty¹ in which she alleged that she suffered permanent injury from exposure to lead paint while she lived at 2229 St. Paul Street. Count One of the amended complaint alleged that her injuries were caused by the negligence of the defendants. Count Two alleged that the defendants engaged in deceptive and unfair trade practices in violation of Md. Code (2013 Repl. Vol.), Commercial Law Article § 13-303; she also alleged that the defendants violated provisions of the Baltimore City Housing Code.

On December 4, 2014, 23rd Street Realty filed a third-party complaint against Martha Marks, the owner of 916 N. Monroe Street. The third-party complaint alleged that in the event that a judgment was entered against defendants then Ms. Marks owed defendants indemnity and/or contribution toward the payment of any such judgment.

¹ Additional defendants were also named in the amended complaint, but they were later dismissed by Ms. Coley’s counsel without prejudice.

On September 3, 2015, 23rd Street Realty filed a motion for summary judgment against Ms. Coley alleging that judgment should be granted because Ms. Coley could not produce reliable evidence that she ever had elevated blood lead levels while she lived at 2229 St. Paul Street.² This allegation was based solely upon the contention that the definition of the term “elevated blood lead” set forth in Md. Code (2013 Repl. Vol.) Environment Article (“Envir.”), § 6-801(f) was applicable in this matter. The definition just mentioned is part of the Reduction of Lead Risk in Housing Act (hereinafter the “Lead Paint Act”) set forth in Envir. §§ 6-801 through 6-852. Section 6-801(a) begins: “*In general.* – In this subtitle the following words have the meanings indicated.”

Section 6-801(f) reads:

(f) *Elevated blood lead, EBL.* – (1) “Elevated blood lead” or “EBL” means a quantity of lead in blood, expressed in micrograms per deciliter (µg/dl), that exceeds the threshold level specified in this subtitle and is determined in accordance with the following protocols:

(i) A venous blood test; or
(ii) Two capillary blood tests taken in accordance with paragraph (2) of this subsection.

(2) If the capillary blood test method is used, an individual shall:
(i) Have a first sample of capillary blood drawn and tested; and
(ii) Have a second sample of capillary blood drawn and tested within 84 days after the first sample is drawn.

(3) If the result of one capillary blood test would require action under this subtitle and the other result would not, an individual’s elevated blood lead level shall be confirmed by a venous blood test.

² Other grounds for summary judgment were also advanced by 23rd Street Realty, but because those other grounds were not relied upon by the motions judge in granting summary judgment, those grounds are not here relevant. *See Ross v. Housing Authority of Baltimore City*, 430 Md. 648, 667 (2013).

The defendants asserted in their summary judgment motion that Ms. Coley had a capillary blood test performed on December 15, 1994 while she lived at 2229 St. Paul Street. That capillary blood test resulted in a score of 15 micrograms per deciliters. A second capillary blood lead test was performed on March 15, 1995, which showed a blood lead level of 13 micrograms per deciliter. Relying on the definition of “elevated blood lead level” set forth in Envir. § 6-801(f), 23rd Street Realty asserted that the first capillary blood test results were invalid because the second capillary test was done 90 days after December 15, 1994, and thus not within the 84 day window set forth in § 6-801(f)(2)(ii). According to 23rd Street Realty, because the tests were invalid, Ms. Coley could produce no admissible evidence that she had an elevated blood lead level while she lived at 2229 St. Paul Street.

Ms. Coley countered that the definition of an elevated blood lead level set forth in Envir. § 6-801(f) was applicable only to cases brought under the Lead Paint Act and had no application to the amended complaint she filed that alleged common law negligence, breach of the Baltimore City Housing Code and violation of § 13-303 of the Commercial Law Article.³

While 23rd Street Realty’s summary judgment motion was pending, Martha Marks filed a summary judgment motion against 23rd Street Realty. She asserted that 23rd Street Realty could produce no evidence that any exposure to lead that Ms. Coley experienced while she

³ Section 13-303 of the Commercial Law Article, is part of the Consumer Protection Act, which is set forth in §§ 13-101–13-501 of the Commercial Law Article.

resided at 916 N. Monroe Street was a substantial factor in causing Ms. Coley's lead poisoning.

A hearing was held on the pending motions on October 2, 2015; at the end of the hearing, the motions judge granted the summary judgment motions filed by both 23rd Street Realty and Martha Marks.

Ms. Coley moved for reconsideration of the summary judgment entered against her but that motion was denied. Ms. Coley filed a timely appeal to this Court. Subsequently, 23rd Street Realty noted an appeal from the order granting summary judgment in favor of Martha Marks.

In this appeal, Ms. Coley raises one question that she phrases as follows:

Did the circuit court err in resorting to Env[ir]. Art. § 6-801(f)'s definition of elevated blood lead to exclude [p]laintiff's reliable evidence of lead poisoning and grant summary judgment?

In its cross-appeal, 23rd Street Realty also raises one question: Did the circuit court err in granting summary judgment in favor of Martha Marks?

I.
FACTS PRESENTED TO THE CIRCUIT COURT RELEVANT TO 23RD STREET REALTY'S SUMMARY JUDGMENT MOTION

When persons are tested for lead poisoning, blood is drawn from patients in two ways. One is by a finger prick, which is called a capillary blood test. The second testing method is performed by taking blood from a patient's veins, which is called a venous blood test. From the time Ms. Coley was eleven months old until she was 15 years old, she underwent blood

lead level tests on seven occasions. The date, lead level and addresses in Baltimore City where she lived on the date when the blood was drawn are set forth below:

DATE	LEAD LEVEL	PROPERTY
4/13/94	4 µg/dl (u)	916 N. Monroe St.
12/15/94	15 µg/dl (c)	2229 St. Paul Street
3/15/95	13 µg/dl (c)	2641 Loyola Southway
5/12/95	12 µg/dl (v)	2641 Loyola Southway
10/31/95	11 µg/dl (u)	2641 Loyola Southway
6/10/96	4 µg/dl (u)	1007 W. Lanvale Street
10/13/08	1 µg/dl (v); "less than 3"	3911 Brooklyn Avenue

In the above chart "µg/dl" means micrograms per deciliter, "u" means unknown testing method, "c" means capillary test method and "v" means venous test method.⁴

Stephen W. Siebert, MD was designated by Ms. Coley's counsel as an expert who would testify in regard to the source of lead in Ms. Coley's blood and whether Ms. Coley's

⁴ In Ms. Coley's opposition to 23rd Street Realty's motion for summary judgment, counsel states: "On December 15, 1994, while the [p]laintiff was residing at 2229 Saint Paul Street, the [p]laintiff's blood lead level was tested using a capillary, or 'fingerstick' test by her pediatrician" At the hearing on the motion for summary judgment, as well as in Ms. Coley's motion for reconsideration, and in this Court, Ms. Coley's position was different inasmuch as counsel asserted that the laboratory report concerning the December 15, 1994 blood test "does not reflect whether the blood sample type was capillary or venous." For the purposes of this appeal only, we will assume that the blood sample taken on December 15, 1994 was by the capillary method. This assumption, however, will have no effect on the outcome of this appeal.

exposure to lead when she lived at 2229 St. Paul Street was a substantial factor in causing or contributing to her lead paint injuries. He concluded that Ms. Coley's lead exposure while a resident at 2229 St. Paul Street was a substantial factor that caused or contributed to her elevated blood lead levels; he also concluded that those elevated lead levels caused Ms. Coley to suffer a neurological disorder, learning difficulties, and lowered her IQ. In reaching these opinions, he relied, *inter alia*, on the accuracy of the December 15, 1994 and March 15, 1995 blood tests.

In an affidavit that he filed along with his report, Dr. Siebert stated: "Shanece Coley's 12/15/94 blood lead level of 15 [micrograms per deciliter] is neither unknown or unreliable." He also said in his affidavit that blood lead testing was routine pediatric testing that "any physician would rely upon to make an assessment, and draw conclusions with reasonable medical certainty, regarding Shanece's exposure to lead in her environment." Additionally, Dr. Siebert opined in his affidavit that capillary testing, with a good collection protocol, is an acceptable method to measure blood lead levels, and is "sufficiently accurate to be used interchangeably with venous sample results."^[5]

⁵ The American Academy of Pediatrics advises:

The standard procedure to determine BLLs [blood lead levels] requires a blood sample that has been collected properly by venipuncture and analyzed accurately. When feasible, venous blood samples should be used for initial screening. A capillary (fingerstick) blood sample may be a practical screening alternative. When collected properly, the capillary specimen can approach the venous

(continued. . .)

Dr. Hung K. Cheung performed an independent medical evaluation on Ms. Coley on behalf of 23rd Street Realty. On March 2, 2015, he wrote a report in which he set forth his conclusions, *viz.*:

[B]ased on the information available for my review, the IME (independent medical exam), my education, training and experience, and my review of the relevant literature, it is my opinion to a reasonable degree of medical certainty, that the evidence available does not support:

1. any identifiable and/or quantifiable LBPH [lead-based paint hazard] exposure that meets the health-based standard as defined by EPA [Environmental Protection Agency][,] 40 CFR 745.65 at 2229 St. Paul Street, Baltimore, MARYLAND, or

(. . continued)

blood sample in accuracy. A poorly collected fingerstick sample is contaminated easily by environmental lead, thereby increasing the false-positive rate. Fingerstick values >10 µg/dL should be confirmed with a venous blood sample.

pediatrics.aappublications.org (last visited December 9, 2016).

The issue of the reliability of capillary blood tests has been raised, at least tangentially, in several cases, but in those cases evidence of elevated BLLs reported from capillary blood testing was never excluded from evidence. *See, e.g., Butler v. S & S P'ship*, 207 Md. App. 60, 103 (2012), *aff'd in part, rev'd in part*, 435 Md. 635 (2013) (plaintiff's expert's affidavit excluded from evidence on the grounds of a discovery violation, but when presented with an argument similar to 23rd Street Realty's—that evidence of elevated BLL should be excluded because capillary blood tests are not reliable—the trial court ruled, "I am, however, expressly not making a decision as to the admissibility of the capillary or capillary test."); *Bartholomee v. Casey*, 103 Md. App. 34, 41 n.5 (1994) (Plaintiffs' expert testified that the finger-stick blood tests were notoriously inaccurate, "as there was no way to avoid contamination of the sample by lead on the surface of the skin. He indicated that although these tests could reflect either a lower or a higher lead level than a simultaneous venous sample, on average they indicated a lead level approximately 5 µg/dl too high. He thus placed the greatest weight on venous blood tests taken in August 1981 and December, 1981." Evidence of elevated BLL determined by means of capillary blood tests was, however, not excluded.).

2. that any alleged LBPH exposure from 2229 St. Paul Street, Baltimore, Maryland was a significant contributing or causative factor in any reported cognitive, behavior or attention issues of Ms. Shanece Coley.

The above opinions are made based upon my review of the available records. I reserve the right to add or adjust my opinion if other information should become available for my review.

(Emphasis added.)

After hearing argument on the motion for summary judgment, the motions judge orally ruled in favor of 23rd Street Realty and, shortly thereafter, filed a written order that read, in material part, as follows:

FOUND pursuant to Md. Ann. Code, Environment § 6-801(f) in lead paint cases, “if the capillary blood test” method is used, an individual shall: (i) [h]ave a first sample of capillary blood drawn and tested; and (ii) [h]ave a second sample of capillary blood drawn and tested within 84 days after the first sample is drawn,” it is further

FOUND that Plaintiff Shanece Coley’s blood lead levels were tested using the capillary blood test method on December 15, 1994, it is further

FOUND that Plaintiff Shanece Coley’s blood lead levels were tested a second time using the capillary blood test method on March 15, 1995, 90 days after the first test was performed, it is further

FOUND that because Plaintiff’s capillary blood test was not repeated within 84 days pursuant to Md. Ann. Code, Environment § 6-801(f), it is hereby

ORDERED, that Defendants 23rd Street Realty Company A/K/A 23rd Street Realty Consumer Management Services, Inc., Gary P. Aiken, and Louis F. Friedman’s Motion for Summary Judgment (#83) is hereby **GRANTED[.]**

As mentioned earlier, the motions judge also granted summary judgment in favor of the third-party defendant, Martha Marks. That motion was granted on the grounds that 23rd

Street Realty had proffered no evidence that the property Marks owned, which was located at 916 N. Monroe Street, contained lead that was a substantial factor in producing the injuries for which Ms. Coley sought recompense.

II.
GRANT OF SUMMARY JUDGMENT IN FAVOR OF 23RD STREET REALTY

A. Standard of Review

When a circuit court grants summary judgment, a reviewing court must determine whether there is any genuine dispute of material fact and, if no such genuine dispute exists, whether the moving party was entitled to judgment as a matter of law. *Hamilton v. Kirson*, 439 Md. 501, 522 (2014); *Hendrix v. Burns*, 205 Md. App. 1, 18, *cert. denied*, 427 Md. 608 (2012). This Court must “review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the well-plead facts against the moving party.” *Hamilton*, 439 Md. at 522 (citations omitted). “Evidentiary matters, credibility issues, and material facts which are in dispute cannot properly be disposed of by summary judgment.” *Frederick Road Ltd. P’ship v. Brown & Sturm*, 360 Md. 76, 93, (2000) (citations omitted).

Moreover, “[i]n conducting this review, an appellate court is confined to the basis relied on by the trial court.” *Ross v. Housing Authority of Baltimore City*, 430 Md. 648, 667 (2013) (citation omitted).

Insofar as 23rd Street Realty’s summary judgment motion was concerned, there was no material dispute of fact; instead, there only existed a question of law to be resolved.

B. Discussion

23rd Street Realty asserts, correctly, that in lead-based paint exposure cases, it is the plaintiff's burden to prove that a defendant's conduct was a substantial factor in causing the plaintiff's injuries. *See Pittman v. Atlantic Realty Co.*, 359 Md. 513, 521, n.4 (2000). In support of its argument that Ms. Coley could not prove that her lead exposure, while living at 2229 St. Paul Street, was a substantial factor in causing her injuries, 23rd Street Realty argues:

In the case *sub judice*, [p]laintiff allegedly resided at 2229 St. Paul Street from approximately August 1994 to January 1995. Plaintiff's single blood lead level during her occupancy at 2229 St. Paul Street was the result of a capillary blood test performed on December 15, 1994. This capillary test was not followed up with another test within 84 days as required by § 6-801(f). Therefore, [p]laintiff cannot establish that she had an elevated blood lead level as a result of her occupancy of 2229 St. Paul Street. As such, any link between specific exposure to lead and an elevated blood lead level, and any link between that elevated blood lead level and the injuries allegedly suffered by the [p]laintiff, cannot be established. *Ross v. Hous. Auth. Of Baltimore City*, 430 Md. 648 (2013). Accordingly, summary judgment in favor of 23rd Street Realty was appropriate.

In response, Ms. Coley points out that her amended complaint was not based on an allegation that 23rd Street Realty had violated the Lead Paint Act. Instead, the amended complaint was based on allegations of common law negligence, violation of the Baltimore City Housing Code and a violation of § 13-303 of the Commercial Law Article which, *inter alia*, forbids unfair and deceptive trade practices.

By the words used in the section of the Lead Paint Act here at issue, it is clear that all the definitions were intended to be used to interpret the Lead Paint Act and no other statute. As mentioned earlier, Envir. § 6-801, which sets forth the definition (of "elevated blood

lead”) upon which the motions court relied, begins with these words: “In this subtitle the following words have the meanings indicated[.]” (emphasis added). The words “In this subtitle” means subtitle 8. The Lead Paint Act, in its entirety, is set forth in Envir. subtitle 8 (see §§ 6-801–6-852). Under such circumstances, it cannot be plausibly argued that the definition of elevated blood lead level as set forth in subtitle 8, should apply in any case not brought under the Lead Paint Act.

The forgoing conclusion is supported by Envir. § 6-822(a)(1), which reads:

(a) *Effect of subtitle on State and local laws and housing codes.* – The provisions of this subtitle do not affect:

(1) The duties and obligations of an owner of an affected property to repair or maintain the affected property as required under any applicable State or local law or regulation.

(Emphasis added.)

Envir. § 6-822 is, of course, a part of subtitle 8. The language of § 6-822(a)(1) makes it clear that the definition of elevated lead level as set forth in § 6-801(f), does not have any affect upon cases alleging a breach of the Baltimore City Housing Code or a breach of § 13-303 of the Commercial Law Article.

Moreover, as Ms. Coley points out, other articles of the Maryland Code employ the Maryland Department of Health and Mental Hygiene’s requirements for conducting lead poisoning risk assessments and blood tests for lead poisoning, as set forth in the Code of Maryland Regulations (“COMAR”) §10.11.04.02B (1), which makes no distinction between lead poisoning blood results drawn via venous and capillary methodology. *See, e.g.*, § 7-403 of the Education Article, relating to blood tests for lead poisoning for children entering

school and § 18-106 of the Health-General Article, which establishes a lead poisoning screening program and requires the Secretary of Health and Mental Hygiene to administer it.

23rd Street Realty argues that “Maryland courts have repeatedly applied the definitions of [Envir. § 6-801] to claims of negligence.” In support of that argument, it directs our attention to *Dyer v. Criegler*, 142 Md. App. 109, *cert. granted sub nom. Dyer v. Otis Warren Real Estate Co.*, 368 Md. 526, *affirm’d* 371 Md. 576 (2002). In *Dyer v. Otis Warren*, the Court of Appeals (371 Md. at 588-89) affirmed this Court’s decision based on the analysis provided by Judge James R. Eyler, speaking for this Court, in *Dyer v. Criegler*. The principal question presented to us in *Dyer* was “whether a real estate agent or broker who lists and promotes residential property for rental is an ‘owner’ within the meaning of” the Lead Paint Act. We answered that question in the negative. 142 Md. App. at 112. We held that under the Lead Paint Act, the definition of owner, that is set forth in Envir. § 6-801(o), did not include an agent or broker who lists and promotes residential property for rental. In that case, we, of course, used the definition set forth in § 6-801(o) because the plaintiff’s negligence claim was based on a violation of the Lead Paint Act. *Id.* at 112-13.

A second question presented in *Dyer* was whether the Consumer Protection Act as set forth in §§ 13-101–13-501 of the Commercial Law Article applied to real estate agents or brokers. In deciding whether an agent or broker was an “owner” within the meaning of the Consumer Protection Act, we resolved the question by applying the definition of owner set forth in the Consumer Protection Act and not on the definition of owner set forth in the Lead

Paint Act, and held that the Consumer Protection Act “specifically exempts real estate agents and brokers from its provisions.” 142 Md. App. at 120.

As can be seen, the fact that both this Court and the Court of Appeals used the definition set forth in Envir. § 6-801(o) to resolve a negligence claim brought under the Lead Paint Act does not aid 23rd Street Realty in this case, which was based upon alleged violations of other statutes. In fact, the *Dyer* decision undermines 23rd Street Realty’s position because, when considering the plaintiff’s claim under the Consumer Protection Act, both this Court and the Court of Appeals indicated that the definition of “owner” as set forth in that Act, rather than the definition in the Lead Paint Act, was applicable. *See Dyer v. Otis Warren*, 371 Md. at 580, n.6.

For the above reasons, we hold that the definition of “elevated blood lead” as set forth in the definition section of the Lead Paint Act does not have any application in a lead paint poisoning lawsuit in which the plaintiff contends that the defendants breached their duties under the Baltimore City Code or the Consumer Protection Act. Accordingly, the motions judge erred in granting summary judgment in favor of 23rd Street Realty on the basis that blood lead testing taken on December 15, 1994 could not be considered in determining whether Ms. Coley’s blood contained elevated lead levels.

III.
GRANT OF SUMMARY JUDGMENT IN FAVOR OF THIRD-PARTY
DEFENDANT MARKS

The motions judge granted Marks's motion for summary judgment because "[t]here's been no establishment of any evidence of causation that this property [916 N. Monroe Street] is a substantial contributing factor to any elevated blood levels in this matter."

In order to show that Ms. Coley's stay at 916 N. Monroe Street was a "substantial factor" in causing her injuries, 23rd Street Realty was required to prove: (1) that the Monroe Street address was a "source" of Ms. Coley's lead exposure; (2) that the Monroe Street exposure contributed to Ms. Coley's elevated blood lead levels; and (3) that the contribution towards Ms. Coley's blood lead levels was substantial enough to contribute to Ms. Coley's injuries. *Ross v. Hous. Auth.*, 430 Md. at 668.

In its opening brief and in its reply brief, 23rd Street Realty never directly challenged the court's finding that there was no evidence that the Monroe Street Property was a "substantial contributing factor" to Ms. Coley's elevated blood lead level. Instead, 23rd Street Realty asserts that the motions judge: 1) "disregarded" evidence of the presence of lead paint at the Monroe Street address; 2) disregarded the fact that a test of Ms. Coley's blood on April 13, 1994 (when Ms. Coley lived at the Monroe Street address) showed a blood lead level of 4 micrograms per deciliter; 3) disregarded the fact that Ms. Coley's mother testified in deposition that, while she and plaintiff lived there, the Monroe Street address contained chipping paint; and 4) because counsel for 23rd Street Realty had not had an opportunity to depose Dr. Siebert, it was impossible to know what he would have concluded as to the role of Ms. Marks's property as a contributory factor to plaintiff's injuries.

As Ms. Marks accurately points out, 23rd Street Realty never proffered any admissible evidence to the motions judge that 916 N. Monroe Street ever contained lead-based paint. To prove injuries due to exposure to lead paint, the fact that a dwelling contains cracking and/or deteriorated paint, standing alone, is irrelevant. The plaintiff must prove that the deteriorated paint was lead-based. *Davis v. Goodman*, 117 Md. App. 378, 412 (1997). 23rd Street Realty proffered no such proof. Movant did prove that while Ms. Coley lived at the Monroe Street address she had a lead level of 4 μ g/dl. But 23rd Street Realty produced no expert evidence to show that this blood lead level was a substantial factor in producing Ms. Coley's injuries. And, in this regard, expert testimony was required. *See Johnson v. Rowhouses, Inc.*, 120 Md. App. 579, 593-94 (1998). In *Johnson* we said:

It is important to note that, under the test enunciated in *Bond [v. NIBCO, INC.]*, 96 Md. App. [127] at 134 [1993], . . . once a defendant points out the absence of evidence needed by plaintiff to support a cause of action, plaintiff must come forward to show that he (or she) has such evidence. That test, as applied here, means that, if Rowhouses, Inc., showed (by Dr. James's deposition testimony) the absence of evidence required to prove causation, the burden was upon appellants to show that they possessed evidence from which a jury could reasonably find that appellee's negligence was a substantial factor in causing [appellant] harm. It was not appellee's burden to prove a negative, i.e., that no action or inaction on its part caused injury.

The issue of whether [appellant] received injury due to her exposure to lead-based paint at the Emerson Avenue premises is one which requires the testimony of an expert. *Bartholomee*, 103 Md. App. at 59.

Id. (emphasis added, secondary citations omitted).

23rd Street Realty's expert, Dr. Cheung, did not opine that the Monroe Street property was a substantial factor in producing Ms. Coley's injuries. His report was silent as to that issue.

In this appeal, counsel for 23rd Street Realty tacitly admitted that it could presently proffer no evidence to meet its “substantial factor” burden. Instead, counsel for 23rd Street Realty suggests, but does not specifically argue, that the court should not have granted summary judgment in favor of Marks until 23rd Street Realty has had a chance to depose Dr. Siebert, who, purportedly, might opine that the Monroe Street address was a substantial factor in causing Ms. Coley’s injury. 23rd Street Realty’s exact argument is:

Marks’[s] counsel argued at the summary judgment hearing that he “suspect[ed]” Dr. Stephen Siebert, [p]laintiff’s medical causation expert, to limit the scope of his opinions regarding [p]laintiff’s lead exposure, to 23rd Street Realty’s property. However, it is important to note that 23rd Street Realty was not afforded the opportunity to depose [p]laintiff’s medical causation expert, Dr. Siebert. In fact, the lower court entered an order on October 2, 2015, the same day as the summary judgment hearing, finding that [p]laintiff’s excuses for not producing Dr. Siebert earlier for deposition were “insufficient” and ordering Dr. Siebert be made available for deposition within fifteen (15) days. Marks’[s] contention that Dr. Siebert would not testify to lead exposure at 916 N. Monroe Street during deposition questioning is speculative. 23rd Street Realty’s inability to depose Dr. Siebert prior to the summary judgment hearing, due to the actions of [p]laintiff, makes it impossible to know what Dr. Siebert would have concluded at deposition as to 916 N. Monroe Street’s role in [p]laintiff’s alleged lead exposure.

(References to record extract omitted.)

In paragraph 6 of Dr. Siebert’s report dated September 16, 2015, which was considered by the motions judge, he said, referring to the Monroe Street Property:

Although Shanece lived at a prior residence with chipping paint from ages 1 [month to] 14 months, there is no evidence that she was exposed to lead paint

hazards, and she did not have significantly elevated lead levels while living in this residence.^[6]

Given the foregoing statement in Dr. Siebert's report, it is hard to give much credit to counsel's assertion that it is "impossible to know what Dr. Siebert would have concluded at deposition as to 916 N. Monroe Street's role in" producing Ms. Coley's injuries. But even if we fully credited counsel's assertion as to what Dr. Siebert might say in testimony, we fail to see how this makes any difference because 23rd Street Realty never asked that the hearing on Marks's motion be continued until after counsel had a chance to take Dr. Siebert's deposition. Absent a request for continuance, the motions judge was fully justified in granting Marks's summary judgment motion based on the fact that 23rd Street Realty could point to nothing in the record that would show that Marks's property was a substantial factor in causing Ms. Coley's injury.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY GRANTING SUMMARY JUDGMENT IN FAVOR OF THIRD-PARTY DEFENDANT MARTHA MARKS AFFIRMED; JUDGMENT GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS THIRD-PARTY PLAINTIFFS REVERSED; CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR TRIAL; COSTS TO BE PAID BY DEFENDANTS/THIRD-PARTY PLAINTIFFS.

⁶ Until 2012, a BLL [blood lead level] higher than 10 micrograms per deciliter in a child under the age of six years was considered elevated and "of concern." In 2012, the Centers for Disease Control and Prevention ("CDC") changed its standard, recommending that public health initiatives be taken when BLLs above 5 micrograms per deciliter are measured in a child aged one to five. Centers for Disease Control and Prevention, www.cdc.gov/nceh/lead (Last visited December 7, 2016).