



Legal Views

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A Resource from Montgomery County's Office of the County Attorney

February 2008

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Tenant Discrimination Prohibited by County Law

Edward Lattner

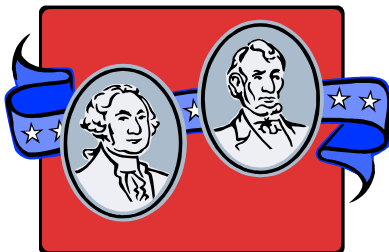
This past November, the Maryland Court of Appeals ruled that a landlord violated the Montgomery County Fair Housing Law's prohibition against discrimination based upon source of income when that landlord refused to rent an apartment to a prospective tenant because that tenant proposed to pay a portion of the rent using vouchers obtained under the federal Housing Choice Voucher Program (colloquially known as the Section 8 Program).

The Section 8 program is a federal program administered by local public housing authorities that provides low-income families with housing vouchers to help defray the cost of rent. Families take these vouchers into the rental marketplace in search of housing within a certain price range. If the family finds an acceptable

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FCC as Franchisor

Clifford Royalty

The Federal Communications Commission was established by the Communications Act of 1934. The FCC's charge, then as now, is to regulate and license the use of radio spectrum. In essence, the FCC has ensured that radio transmissions did not interfere with one another. Throughout its early history, the FCC tended, with some notable exceptions, to operate outside of the political fray; its policy pronouncements were not always known for their resonance. With the advent of the information age, the FCC's policy role has grown. The FCC has become a major player in the creation and implementation of cable and telecommunications policies.

Recent examples of the FCC's enlarged role are provided by two FCC edicts that seek to limit the authority of local governments to franchise providers of cable services. Historically, cable companies have secured the use of public streets through franchise agreements. Before relatively recent corporate consolidations, cable companies operated mini-monopolies confined to a small geographic area. Local governments, as the owners and trustees of the public ways, have long been acknowledged as the proper authority from which the cable operators would receive their franchises.

The FCC has recently concluded that local governments have abused that authority. On very thin (if not nonexistent) evidence, the FCC adopted an order, in December of 2006, that accuses local governments of unreasonably refusing to award franchises to cable operators who desire to compete with incumbents. In order to remove these perceived barriers to entry, the FCC has decreed that local

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apartment, the local public housing authority (the Housing Opportunities Commission [HOC] in Montgomery County) inspects the apartment to make sure it meets federal housing quality standards. If the unit passes inspection, the HOC presents a housing assistance payment contract to the landlord. When the parties sign the contract and the tenant moves in, the HOC begins making subsidy payments directly to the landlord. The housing assistance payment contract also requires the landlord to add a tenancy addendum to the lease, setting forth certain rights of the tenant and the landlord.

In this case, the landlord refused to accept Section 8 vouchers, saying that it did not wish to be saddled with the administrative burdens that accompany the program. The County’s Human Rights Commission concluded that the landlord’s refusal to accept tenants who rely upon Section 8 vouchers violated the County’s Fair Housing Law, which prohibits discrimination based upon source of income.

The Maryland Court of Appeals agreed. The Court stated that, although the federal Section 8 law does not mandate landlord participation in the program, the County’s law did not conflict with the federal law. The County’s law advanced the federal objectives of expanding the availability of decent, safe, affordable housing for low-income families. Moreover, the Court noted, the federal Section 8 regulations expressly state that they do not preempt the operation of state and local laws, like the County’s, that prohibit discrimination against a Section 8 voucher-holder because of the person’s status as a Section 8 voucher-holder. Finally, the Court was persuaded by decisions from the highest courts in four other states, each of which concluded that the Section 8 law does not preempt (by conflict) similar local laws.

Thus, the Court concluded, while a County landlord may consider a family’s background and tenancy history with respect to payment of rent and utility bills, caring for the apartment, respecting the rights of others, and other permissible criteria, a landlord cannot refuse to rent an apartment to an otherwise qualified prospective tenant solely because that tenant proposes to pay a portion of the rent using Section 8 vouchers. ❖

Montgomery County, Maryland v. Glenmont Hills Associates, Privacy World at Glenmont Metro Center, 2007 Md. LEXIS 719.

governments must negotiate a franchise agreement with a competing cable provider within 90 to 180 days of the date of application. If that deadline is not met, the FCC will award an interim franchise. The FCC has also limited the amount of compensation that local governments may receive for the use of their rights of way. In October of 2007, the FCC adopted a second order that applies the December 2006 order to the renewal of franchise agreements.

Local governments from around the country have joined together to challenge the FCC rulings. The cases have been consolidated in a federal court located in the Sixth Circuit. The case is captioned *Alliance for Community Media v. FCC*. ❖

We’re Gonna Have a Resolution

Richard H. Melnick

Montgomery County enters into a large number of contracts on a regular basis. Many contract relationships proceed without incident. Parties to a County procurement contract sometimes disagree regarding contract interpretation or performance. If so, the parties may then engage in a contract dispute resolution process.

Montgomery County Code §11B-35 and Procurement Regulation 14.2 provide the administrative process by which a contractor must pursue a contract dispute. The contractor must first submit the dispute to the Director of Procurement, and may appeal an adverse Director’s decision to the Chief Administrative Officer (CAO). An adverse CAO decision may then be appealed to the Circuit Court, generally, as an administrative appeal under Md. Rule 7-201, *et. seq.* Either party may then appeal the Circuit Court’s decision to the Court of Special Appeals.

The County may initiate a contract dispute in a court with jurisdiction. Where the Circuit Court has jurisdiction, it may assign a contract dispute case to the

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No Cause for a Fall

Maryland Court of Special Appeals issues opinion affirming dismissal of fall case

Heather Mulloy

The Maryland Court of Special Appeals recently issued a published opinion affirming a decision made by the Circuit Court for Montgomery County granting summary judgment in favor of the City of Rockville. On May 8, 2004, on a bright and sunny day, 92-year-old Hanna Garval attended a post-Bar Mitzvah reception at the Glenview Mansion. Following a meal and a glass of wine, Ms. Garval decided to go outside on the patio on the side of the mansion. The patio is a large expanse which has a few steps that descend down to the lawn area. The patio is also flanked by a ramp with railings that go from the patio to the lawn area. Once on the patio, Ms. Garval looked around for a few moments, saw her daughter-in-law sitting in the lawn area, and decided to go down and see her. Ms. Garval fell from the patio to the lawn area and was injured. When asked specifically what happened, Ms. Garval testified that she could not recall how far away from the patio steps she was before the fall, whether she saw the steps before the fall, and

whether or not she had even gone down a step before her fall.

Ms. Garval filed suit against the City of Rockville for negligence, claiming the City of Rockville failed to comply with regulations regarding stairways. The City, in turn, moved for judgment in its favor, arguing that there was not sufficient evidence to support the cause of Ms. Garval's fall, as her fall could have been caused by many different factors. Additionally, the City argued that Ms. Garval assumed the risk of her injuries in failing to utilize a ramp which was readily available to her. Summary judgment was granted in favor of the City of Rockville, dismissing Ms. Garval's case. The Court found that the cause of Ms. Garval's fall was far too speculative to go to a jury. Ms. Garval appealed her case to the Court of Special Appeals.

Not only was the cause of Ms. Garval's fall unknown, but Ms. Garval contributed to her fall in that she could have used the ramp that was available to her

The Court of Special Appeals affirmed the lower court's decision – and then some. The Court of Special Appeals opined that not only was the cause of Ms. Garval's fall unknown, but Ms. Garval contributed to her fall in that she could have used the ramp that was available to her. Judge Moylan pointed out that there were no specific code violations by the City of Rockville regarding the steps and that the City cannot be required to place railings on a patio at every single interval where Ms. Garval may choose to go. But, ultimately, the Court affirmed the lower court's reasoning, noting that Ms. Garval's fall could have been caused by many factors having nothing to do with the City of Rockville. Judge Moylan found the case to be wrought with speculation and questioned whether Ms. Garval slipped on something, became dizzy, was unbalanced on her heels, became entangled in her skirt, or simply lost her balance because of her age. ❖

Hanna Garval, et al. v. the City of Rockville, et al., No. 1999, Court of Special Appeals, September Term, 2006, (December 28, 2007).

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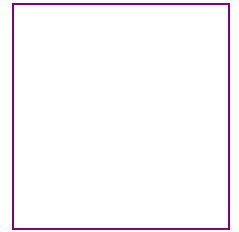
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Legal Views is a quarterly newsletter prepared as part of the County Attorney's preventive law and education efforts. This information is not legal advice, but an informative tool. While we attempt to ensure the accuracy of information, the informal nature of Legal Views does not allow for thorough legal analysis. If you have an interest in a reported article, please contact us. If you wish to be placed on our mailing list, please send your request with your full name, address, and phone number.



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ADDRESS CORRECTION REQUESTED

Resolution

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Business and Technology Case Management Program. Under Md. Rule 16-205, the court may consider seven factors in making this assignment, including: “. . . (5) the degree of novelty and complexity of the factual and legal issues presented, (6) whether business or technology issues predominate over other issues presented in the action, and (7) the willingness of the parties to participate in ADR [Alternative Dispute Resolution] procedures.” Under Md. Rule 17-102, ADR means “the process of resolving matters in pending litigation through a settlement conference, neutral case evaluation, neutral fact-finding, arbitration, mediation, or other non-judicial dispute resolution process. . . .”

Both the contractor and the County may agree to try to resolve the matter through negotiation, mediation, or arbitration at any time. Procurement Regulation 14.2.2.1 requires a contractor to try to resolve a claim with the County’s contract administrator prior to filing a dispute.

And, under County Code §11B-35(g) and Procurement Regulations 14.2.2.3(c) & 14.2.2.10, the County may agree to resolve a contract dispute through mediation or arbitration.

In mediation, a third-party neutral facilitates confidential communications between the parties to help them to focus the issues, identify solutions, achieve self-determination through their own voluntary agreement; and preserve relationships, while saving time and money. On the other hand, an arbitrator acts much like a judge by entering a ruling to resolve the dispute for the parties after hearing the facts and arguments. Although the County’s contract administrators seek to avoid disputes, there are times when a disagreement is unavoidable. In those situations, the parties should consider these options in resolving a contract dispute. ❖