Circuit Court for Baltimore City
Case No. 24-C-17-004476

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2095

September Term, 2021

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MERCEDES LEWIS

v.

OLAYINKA OLASIMBO, *et al.*

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Berger,
Shaw,
Ripken,
JJ.

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Opinion by Ripken, J.

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Filed: January 31, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This appeal arises from the Circuit Court of Baltimore City's grant of summary judgement in favor of Appellees, U.S. Bank National Association ("U.S. Bank")[1] and JPMorgan Chase Bank, N.A. ("Chase")[2] on July 10, 2020. The circuit court determined that neither U.S. Bank nor Chase were "owners" as defined by the Baltimore City Housing Code ("the Housing Code" or "the Code") and, thus, had no duty to remediate the alleged lead-based paint hazards located at 6017 Park Heights Avenue, Baltimore, Maryland 21215 ("the property"). In so determining, the circuit court held that U.S. Bank and Chase could not be held liable for any injury that Appellant, Mercedes Lewis ("Lewis"), on behalf of her child, suffered due to the alleged lead-based paint exposure. For the reasons to follow, we shall affirm the judgment of the circuit court.

## ISSUES PRESENTED

The parties present the following issues for our review:[3]

[1] U.S. Bank was sued in its capacity as trustee for JPMorgan Mortgage Acquisition Corp. 2006-NC2 Asset-Backed Pass-Through Certificates, Series 2006-NC2.

[2] Chase was sued in its capacity as servicer of Olasimbo's loan from U.S. Bank under a pooling and servicing agreement.

[3] Lewis presented the following questions for review:

> I. When does a mortgage servicer and/or trustee of a securitized pool of mortgages become an "owner" under the Baltimore City Housing Code?
>
> II. Does the subsequent dismissal of a foreclosure action following the completion of a valid sale terminate or otherwise impact liability for a servicer and/or trustee once it becomes liable as an owner under the Baltimore City Housing Code?

U.S. Bank and Chase presented the following issues for review, which have been consolidated and rephrased from the parties' individual briefs:

I. Whether the circuit court erred in granting summary judgment on the grounds that U.S. Bank and Chase were not "owners" as defined by the Baltimore City Housing Code and, thus, did not owe Lewis and her child an affirmative duty to remediate the alleged lead-based paint hazards at the property.

II. Whether the circuit court erred in granting summary judgment on the grounds that no reasonable juror could conclude that any U.S. Bank or Chase action or omission was the proximate cause of the child's alleged injury.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. Facts

*1. Olasimbo's interest in the property*

Olayinka Olasimbo ("Olasimbo")[4] purchased the property in February of 2003 through his company, Grace Investment, LLC, of which he was the sole owner. Between 2003 and 2008, Olasimbo hired contractors to make renovations to the property. In April

I. Whether the trial court correctly entered summary judgment in U.S. Bank and Chase's favor on the grounds that U.S. Bank, as trustee of a mortgage-backed securities trust owning the Olasimbo mortgage, and Chase, as U.S. Bank's loan servicer, were not "owners" of the Property within the meaning of the Housing Code such that they owed a duty to Lewis or [the child] to remediate any lead hazards in the Property?

II. Whether the Trial Court correctly entered summary judgment in U.S. Bank and Chase's favor on the grounds that U.S. Bank, as trustee, and Chase, as servicer, did not exercise possession or control over the property such that it owed a duty to Lewis or [the child] to remediate any lead hazards in the Property?

III. Whether the trial court correctly entered summary judgment in U.S. Bank and Chase's favor because there was no evidence establishing that [the child]'s alleged lead-related injuries were proximately caused by any alleged exposure to lead during the time period between [the child]'s birth (February 26, 2012) and the voluntary dismissal of the foreclosure action (March 6, 2012)?

[4] Olasimbo is not a party to this appeal.

of 2006,[5] title was transferred from Grace Investment, LLC to Olasimbo so that the property could be collateral for a $370,000 loan Olasimbo had obtained from Premier Mortgage Funding through a deed of trust.

*2. Securitization of the mortgage*

This loan was later securitized and assigned to U.S. Bank, as trustee.[6] During the time period at issue, Chase was the servicer for the loan under a pooling and servicing agreement between U.S. Bank, Chase, and others. Chase was effectively the "operating agent of the trust," able to make decisions with respect to what actions would be taken on individual mortgages held by the trust, whether they would appoint substitute trustees, when the terms of a loan might be modified, and whether the trust would initiate or drop foreclosure proceedings.[7]

*3. Default and foreclosure proceedings*

By 2007, Olasimbo was having difficulty making the loan payments, so Olasimbo solicited potential tenants to rent the property. Eventually, Olasimbo entered an oral

[5] While the deed was dated April 5, 2006, all transfer taxes were not paid until November 10, 2008.

[6] "Asset securitization is the structured process whereby interests in loans and other receivables are packaged, underwritten, and sold in the form of "asset-backed" securities." *Securitization*, OFF. OF THE COMPTROLLER OF THE CURRENCY, https://www.occ.treas.gov/topics/supervision-and-examination/capital-markets/financial-markets/securitization/index-securitization.html (last visited Jan. 17, 2023). Securitization "enables credit originators to . . . [t]ransfer some of the risks of ownership to parties more willing or able to manage them." *Id.*

[7] The circuit court noted that, under *Allen v. Dackman*, 413 Md. 132 (2010), where a trust is considered an owner of a property, the servicer is potentially liable as an agent of the trust if exercising sufficient control and knowledge of the trust properties.

contract with Lewis's grandmother, who agreed to rent the property. Olasimbo testified that Lewis's grandmother agreed to make mortgage payments directly to Chase because "the bank [was] going to foreclose" due to default, and Olasimbo wanted to attempt to "at least get the house back." Despite agreeing to do so, Lewis's grandmother never made mortgage payments to the bank. When Olasimbo endeavored to contact Lewis's grandmother via the phone number provided to him, the number was disconnected.

After Olasimbo had defaulted on multiple mortgage payments, the substitute trustees for U.S. Bank filed a foreclosure action in the Circuit Court for Baltimore City. *See Burson, et. al v. Olasimbo,* No. 24-O-09-004146 (Md. Cir. Ct. Balt. City Sept. 11, 2009). The foreclosure sale took place in October of 2010, and U.S. Bank was the prevailing bidder. In August of 2011, prior to the sale's ratification, the substitute trustees voluntarily moved to dismiss the foreclosure action without prejudice. In March of 2012, the circuit court vacated the foreclosure sale and dismissed the action in its entirety. As such, Olasimbo retained ownership over the property.

*4. Alleged lead-based paint exposure*

Lewis moved into the property in 2011. Lewis's child was born on February 27, 2012, and Lewis continued to live in the property with the child until Olasimbo evicted them in 2013. Lewis presented two records of the child's blood lead levels ("BLL"): first, a BLL of 18 μg/dL, reported on September 16, 2013; and second, a BLL of 8 μg/dL,

reported on January 8, 2014.[8] Consequently, a representative for the Baltimore City Health Department conducted an investigation of the property in October of 2013 and reported that the child was at risk of lead exposure due to the child's "hand to mouth behavior" in the presence of deteriorated paint or paint chips on fences, railings, play structures, sidings, windows, or trims on the property. In November of 2013, the Baltimore City Health Department issued a notice of violation to Olasimbo.

**B. Lawsuit**

*1. Complaint*

In August of 2017, Lewis filed a complaint against Olasimbo in the Circuit Court for Baltimore City, alleging that, as a result of Olasimbo's negligence, her child had suffered injury due to exposure to lead-based paint during their occupancy at the property from 2012 to 2013. In December of 2018, Lewis amended the complaint to add U.S. Bank and Chase as defendants. In the amended complaint, Lewis claimed that, from the moment Olasimbo defaulted on the mortgage, U.S. Bank, as trustee, and Chase, as loan servicer, "owned, and/or controlled, either individually or by the use of agents, apparent agents, servants and / or employees" the property and, therefore, "had a duty to manage, supervise,

[8] As of May 14, 2021, the U.S. Centers for Disease Control and Prevention considers blood lead levels of at least 3.5 μg/dL to be high compared to most children. However, any amount of lead in a child's blood means that the child was exposed to lead and can negatively impact a child's health. *See Blood Lead Reference Value*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/nceh/lead/data/blood-lead-reference-value.htm#:~:text=CDC%20uses%20a%20blood%20lead,higher%20than%20most%20children%27s%20levels (last visited Dec. 14, 2022).

and maintain" the property pursuant to the Housing Code.[9] Lewis contended that this duty perpetuated throughout the pendency of the foreclosure action and after the sale.

*2. Motions for summary judgment*

After the conclusion of discovery, U.S. Bank and Chase separately filed for summary judgment, both averring that they were not owners of the property under Article 13 of the Housing Code and, thus, had no ability to possess or control the property and did not owe Lewis a duty to maintain the premises. Lewis responded in opposition, reasserting

[9] The amended complaint made the following claims against Olasimbo, U.S. Bank, and Chase:

> Defendants breached [their] duty to the Plaintiff by exposing the Plaintiff . . . to lead poisoning by negligently and carelessly:
>
> a. failing to remove the lead-based pain [sic], chips and dust on the property prior to tenancy;
> b. failing to inform Plaintiffs of the existence of a dangerous level of lead-based paint in the house;
> c. failing to properly inspect the house for the existence of lead-based paint;
> d. failing to properly remove the dangerous lead-based paint from the house;
> e. failing to properly maintain the property to prevent exposure to lead-based paint;
> f. when, after being ordered to remove the lead-based paint from the premises, failing to accomplish the removal in a reasonable and safe manner, and creating greater risk of lead poisoning by scattering lead dust and dirt throughout the premises;
> g. failing to comply with Baltimore City Ordinance Code, Art. 13, Section 702-03 and 06, Maryland Code Annotated, Environmental Article §6-800, et. cert. and other statutory provisions, which prohibit "flaking, loose, or peeling paint" in a rental property located in the City of Baltimore;
> h. failing to comply with other laws, rules, regulations, and ordinances of the State of Maryland and City of Baltimore that prohibit the leasing of dwellings that contain defective lead-based paint or other conditions that render the property unfit for human habitation or dangerous and injurious to human health.

the claim that U.S. Bank and Chase were both owners with a right to control the property. In support, Lewis highlighted the language in the deed of trust, which "irrevocably grant[ed] and convey[ed] to the Trustee, in trust, with power of sale," the property, upon Olasimbo's default on the mortgage payments**.** As such, Lewis claimed that U.S. Bank and Chase were owners that had breached their duty to Lewis and the child as occupants of the property. Lewis therefore urged the circuit court to submit any remaining factual disputes concerning the alleged injury to the finder of fact/jury.

In July of 2020, the circuit court conducted a hearing on the motions for summary judgment. The circuit court concluded that neither U.S. Bank nor Chase could be "considered an owner of the property for purposes of imputing to them any duty under the Baltimore City Housing Code." The circuit court relied upon the Code's exclusion of mortgagees from the definition of owner to support this conclusion. *See* § 105(jj)(2) (noting that owner "shall include in addition to the holder of legal title, any vendee in possession thereof, but shall not include a mortgagee or an owner of a reversionary interest under a ground rent lease"). Additionally, the circuit court found that "whatever increased status U.S. Bank as trustee or [Chase] as the agent of that trust might have acquired during the pendency of the foreclosure proceedings," was immaterial for two reasons: first, the foreclosure sale was never ratified; and second, Lewis's child was "only born one week before those [foreclosure] proceedings were formally dismissed," so any increased status "could not have been in operation at the time that [Lewis's child] was allegedly exposed to lead paint hazards in the property." The circuit court therefore held that Lewis "failed to establish as a matter of law any duty" on the part of U.S. Bank or Chase and granted

summary judgment.

*3. Motion to alter or amend judgment*

In July of 2020, Lewis filed a motion to alter or amend judgment, requesting, in part, that the court reconsider its order granting summary judgment in favor of U.S. Bank and Chase.[10] Lewis disagreed with the court's interpretation of the Housing Code and reiterated that U.S. Bank and Chase were owners under section 105. Lewis posited that "[w]hether Chase and/or U.S. Bank owned, held, or controlled the title is a factual question about which there exists conflicting evidence and the determination of that factual question should . . . have been reserved for the trier of fact." Both U.S. Bank and Chase filed motions in opposition, and the circuit court ultimately denied Lewis's motion to alter or amend judgment.

*4. Motion to revise orders granting summary judgment*

In May of 2021, the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)[11] released *Hector v. Bank of N.Y. Mellon*, 473 Md. 535 (2021). This prompted Lewis to file a motion to revise, petitioning the court to reconsider and reverse its entry of summary judgment. U.S. Bank and Chase opposed the motion, arguing that

[10] Lewis requested, alternatively, that the court alter its judgment to include a determination that there was no just reason for delaying final judgment or that the court certify the case for direct appeal to this Court. Certification for direct appeal would have been necessary because the circuit court's orders granting summary judgment in favor of U.S. Bank and Chase did not dispose of Lewis's claims against Olasimbo.

[11] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

*Hector* did not impact the circuit court's orders in this case because the foreclosure sale at issue here was never ratified and, regardless, there was no evidence that Lewis's child was exposed to lead in the eight days between her birth and the dismissal of the foreclosure action. In a written order, the circuit court denied the motion to revise, explaining that

> even if the Court were to assume (1) that U.S. Bank, as trustee, should be considered an "owner" during the time from the foreclosure sale until the foreclosure action was dismissed and (2) that Chase, as servicer, could have the same liability as the trustee, those conclusions would not alter the undisputed fact that [the child] was born on February 27, 2012, just eight days before the foreclosure action was dismissed on March 6, 2012. Thus, at most Defendant[s] U.S. Bank and Chase had the legal status of owners for only the first eight days of [the child's] life. There is no evidence that [the child] was even in the home during any of those eight days, much less that she could have been exposed to a lead pain [sic] hazard sufficient to cause her any injury.

The circuit court thus concluded that, "even assuming that *Hector* would alter the Court's conclusions about the legal status of either Defendant, the outcome is the same."

*5. Appeal*

After the circuit court denied the motions to amend and revise, Lewis proceeded with the lawsuit against Olasimbo until February of 2022, when the court approved Lewis's dismissal of her remaining claims, with prejudice. Thereafter, Lewis filed a notice of appeal to this Court.

## STANDARD OF REVIEW

When reviewing a circuit court's grant of a motion for summary judgment, we assess, without deference, "whether the trial court was legally correct." *Hector*, 473 Md. at 551 (quoting *Hamilton v. Kirson*, 439 Md. 501, 522 (2014)). We "conduct an independent review of the record to determine whether the parties generated a dispute of material fact

and, if not, whether the moving party was entitled to judgment as a matter of law." *Id.* In doing so, "[w]e review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts in the record against the moving party." *Id.* In analyzing the circuit court's decision, "we consider only the grounds for granting summary judgment relied upon by the court." *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 313 (2019) (quoting *Landaverde v. Navarro*, 238 Md. App. 224, 241 (2018)).

**DISCUSSION**

Typically, to succeed in a negligence claim, a plaintiff must establish four elements: "1) that the defendant was under a duty to protect the plaintiff from injury, 2) that the defendant breached that duty, 3) that the plaintiff suffered actual injury or loss, and 4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Hamilton*, 439 Md. at 523–24 (quoting *Taylor v. Fishkind*, 207 Md. App. 121, 148 (2012)). As to tenant injury claims, in the absence of an applicable statute, "a landlord ordinarily has no duty to keep rental premises in repair, or to inspect the rental premises either at the inception of the lease or during the lease term." *Hector*, 473 Md. at 558 (quoting *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 78 (2003), *abrogated on other grounds by Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594 (2011)). However, "where there is an applicable statutory scheme designed to protect a class of persons which includes the plaintiff, . . . the defendant's duty ordinarily is prescribed by the statute or ordinance and . . . the violation of the statute or ordinance is itself evidence of negligence." *Id.* Maryland common law refers to this as the Statute or Ordinance Rule. *See, e.g.*, *Hector*, 473 Md. at 558–61;

*Brooks*, 378 Md. at 78–80; *Hamilton*, 439 Md. at 524; *Dackman*, 413 Md. at 156–57.

Thus, to establish a *prima facie* case of negligence sufficient to overcome summary judgment under the Statute or Ordinance Rule, a plaintiff in a lead-based paint case need only show evidence of "(a) the violation of a statute or ordinance designed to protect a specific class of persons which includes the plaintiff, and (b) that the violation proximately caused the injury complained of." *Id.* (quoting *Brooks*, 378 Md. at 79). Satisfying both prongs of the Statute or Ordinance Rule does not establish negligence *per se*; it merely establishes that there is sufficient evidence to permit a jury to "evaluate whether the actions taken by the defendant were reasonable under all circumstances." *Dackman*, 413 Md. at 144 (quoting *Brooks*, 378 Md. at 79).

## I. U.S. BANK AND CHASE WERE OWNERS AS OF THE DATE OF FORECLOSURE SALE.

Lewis claims that the circuit court improperly granted summary judgment on the grounds that neither U.S. Bank nor Chase met the definition of "owner" under the Baltimore City Housing Code. According to Lewis, U.S. Bank and Chase were owners and thus owed her and her child a duty to ensure the property was free of Housing Code violations, including the presence of hazardous lead-based paint. Relying upon our Supreme Court's discussions of liability under the Housing Code in *Hector* and *Dackman*, Lewis argues that U.S. Bank and Chase both became owners under the Housing Code at least at the time of the foreclosure sale. Additionally, Lewis posits that U.S. Bank, and Chase as servicer, had the contractual right to possess the property even before the foreclosure sale because the property's deed of trust "irrevocably grant[ed] and convey[ed]" the power of sale. Accordingly, Lewis claims that the parties had a direct right

of possession over the property, including the right to "own[], hold[], or control[] the whole or any part of the freehold or leasehold title, to any dwelling unit, with or without accompanying actual possession thereof." *See* Housing Code, Art. 13 § 105(jj)(1). In support, Lewis raises U.S. Bank and Chase's pooling and servicing agreement, in which U.S. Bank granted to Chase the "explicit right to bring the property into compliance with the Housing Code even prior to them formally assuming ownership or possession" upon Olasimbo's mortgage default. Finally, Lewis argues that the circuit court erred in denying her motion for reconsideration on the grounds that the foreclosure action's subsequent dismissal terminated any owner status they might have obtained and severed any future liability.

In response, U.S. Bank and Chase contend that Lewis's reliance upon *Hector* is unfounded because, unlike in that case, the foreclosure sale at issue here was never ratified. Furthermore, U.S. Bank and Chase argue that lead-based paint claims require more than a showing of a violation of a statute or ordinance to defeat summary judgment; rather, Maryland precedent establishes that such claims require additional evidence of sufficient possession or control of the property. *Balt. Gas & Elec. Co. v. Lane*, 338 Md. 34, 45 (1995) ("[I]t is the possession of property, not the ownership, from which the duty flows."). In so arguing, U.S. Bank and Chase claim that they were never owners who owed Lewis a duty under the Housing Code. U.S. Bank and Chase additionally refute Lewis's claim that the deed of trust imposed upon them an affirmative duty to take control of or maintain the property should Olasimbo default. They argue that while the deed of trust does state that the "Lender *may* take action" to secure the property upon default (emphasis added), the

deed of trust does not impose upon the lender a duty or obligation to do so. Therefore, U.S. Bank and Chase maintain that the circuit court properly granted their respective motions for summary judgment.

For the reasons to follow, we find that U.S. Bank and Chase obtained owner status upon the date of the foreclosure sale.

**A. Relevant Case Law**

We first discuss the pertinent case law to explain the scope of a trustee's individual liability for alleged torts involving a failure to maintain Baltimore City properties.

*1. Hector v. Bank of N.Y. Mellon*

Lewis's arguments rely heavily on the Supreme Court of Maryland's recent *Hector* decision. In *Hector*, tenants brought an action against a trustee of a residential mortgage-backed securitization trust, Bank of New York Mellon ("BNYM"), which owned the mortgage on the tenants' rental property. 473 Md. at 542. When the tenants' landlord defaulted on the mortgage, BNYM, as trustee, brought a foreclosure action against the landlord and purchased the property at the foreclosure sale. *Id.* Shortly thereafter, the Circuit Court for Baltimore City ratified the sale. *Id.* In excess of fourteen years later, the tenants, who no longer lived at the property, filed a complaint against their former landlord, seeking damages, alleging that they had suffered "severe and permanent brain damage" due to lead poisoning during their occupancy at the property. *Id.* at 546. The tenants then filed an amended complaint in which BNYM was added as a defendant as an "owner" of the property under Article 13, section 105 of the Baltimore City Housing Code. *Id.*; *see also* Housing Code, Art. 13 § 105(jj) (2000) (repealed 2002).

BNYM denied liability, claiming that it "ha[d] no personal liability for [the tenants'] claims" because "it was not an owner or holder of legal title, or a vendee in possession of the Property . . . and could not be an owner of the Property . . . because it was acting in an administrative capacity and did not have control over the Property sufficient to be charged with a duty to maintain it." *Hector*, 473 Md. at 547. The circuit court granted summary judgment in BNYM's favor on the grounds that the tenants had not sued an appropriate party. *Id.* at 548–49. The ruling was upheld at a subsequent hearing, and the tenants appealed. *Id.* at 549.

The Appellate Court of Maryland (at the time named the Court of Special Appeals of Maryland)[12] affirmed the circuit court's judgment, relying upon the Supreme Court of Maryland's opinion in *Dackman*. This Court concluded that "in order to be personally at fault, BNYM must have 'personally committed, inspired, or participated' in the alleged tort." *Hector*, 473 Md. at 550 (quoting *Dackman*, 413 Md. at 141). In concluding so, this Court held that the tenants had not produced sufficient facts to show that BNYM's involvement as trustee of the property was more than "passive." *Id.*

The Supreme Court agreed that if the tenants were suing BNYM in its individual capacity for a tort committed during the trust's administration, the tenants were required to show that BNYM was personally at fault. *Id.* at 583. However, the Court held that "[b]ecause BNYM was an 'owner' under the Housing Code by virtue of its direct interest

[12] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

in the Property, the [tenants] were not required to produce facts showing that BNYM as Trustee 'personally committed, inspired, or participated' in the alleged tort." *Id.* Instead, the Court found that the Statute or Ordinance rule merely required the tenants to "produce[] sufficient facts to show that a violation of the Housing Code proximately caused the alleged harm." *Id.* In addressing the point at which BNYM became an owner within the meaning of the Housing Code, the Court held:

> A purchaser of property at foreclosure generally became an "owner" of the property within the meaning of the Housing Code upon ratification of the foreclosure sale. Because BNYM—as the beneficiary of [the property owner's] deed of trust—had the right to seek possession of the Property prior to the ratification of the foreclosure sale, it became an "owner" of the property once it purchased the property at the foreclosure. Prior to the foreclosure sale, BNYM was a mortgagee and, therefore, not an 'owner' of the Property.

*Hector*, 473 Md. at 583.

*2. Allen v. Dackman*

In *Dackman*, the respondent was an individual whose involvement with the property in a lead-based paint claim was limited to managing the day-to-day affairs of the corporate entity that owned the property. 413 Md. at 152, 155. The trial court granted summary judgment on the grounds that the respondent "could not be held personally liable as a matter of law." *Id.* at 138. This Court affirmed the trial court's judgment, finding that the respondent was precluded from liability as a matter of law "because he was not an 'owner' or 'operator' of the property as defined by the Housing Code and because he could not be held liable for the negligence allegedly committed by . . . an LLC." *Id.* Our Supreme Court disagreed and held that the respondent "could be held liable for [the petitioners'] injuries

because a reasonable trier of fact could find that he was an 'owner' of the property, as the Housing Code defined that term, and could find that he personally committed, inspired, or participated in the tort alleged." *Id.* at 141. Furthermore, the Court found that, if the jury were to find that the respondent was an "owner" under the Housing Code, then he owed the petitioners a duty under the Code.[13] *Id.* at 142. "[W]hether [respondent] owned the property under the Housing Code, whether he participated in the alleged tort, whether his actions proximately caused [the petitioners'] alleged injuries, and . . . whether he acted reasonably under the circumstances" were matters of disputed material fact. *Id.* at 160. Consequently, the Court reversed the circuit court's grant of summary judgment and remanded for further proceedings. *Id.*

**B. Relevant Statutory Provisions**

When tasked with engaging in statutory interpretation of the Baltimore City Housing Code, this Court has long held that we begin with the plain language of the Code to ascertain the scope of liability. *See Douglas v. State*, 423 Md. 156, 178 (2011) ("[O]ur primary goal is always to discern the legislative purpose, [and] [w]e begin our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." (quoting *Evans v. State*, 420 Md. 391, 400 (2011))).

[13] We note that the *Dackman* Court recognized the breadth of its interpretation of the Housing Code but ultimately found that this "far-reaching duty . . . was consistent with and supported the explicit intent of the City Council" by "ensuring the safety of those who occupied dwellings and, ultimately, the safety of the public at large." *Dackman*, 413 Md. at 159 n.22.

"We construe local ordinances and charters under the same canons of statutory construction as we apply to statutes." *Hector*, 473 Md. at 576.

*1. Article 13 of the Baltimore City Housing Code*

In drafting the Housing Code, the Baltimore City Council determined that the "establishment and maintenance of minimum housing standards are essential to the prevention of blight and decay, and the safeguarding of public health, safety, morals, and general welfare." Housing Code § 102(c). As such, "[t]he Housing Code is 'liberally construed' to effectuate its 'remedial' purposes that are 'essential to the public interest.'" *Hector*, 473 Md. at 557 (quoting Housing Code § 103(b)). These remedial purposes include, in relevant part:

> (1) establish and maintain basic minimum requirements, standards, and conditions essential for the protection of the health, safety, morals, and general welfare of the public and of the owners and occupants of dwellings in the City of Baltimore;
>
> (2) establish minimum standards governing the condition, use, operation, occupancy, and maintenance of dwellings . . . in order to make dwellings safe, sanitary, and fit for human habitation;
>
> (3) fix certain responsibilities and duties of owners, operators, agents, and occupants of dwellings[.]

Housing Code § 103(a). Under section 703, the Housing Code specifies that keeping a property in "good repair and safe condition" means that "[a]ll walls, ceilings, woodwork, doors, and windows shall be kept clean and free of any flaking, loose, or peeling paint." *Id.* § 703. To effectuate its stated purposes, the Housing Code requires that "[a]ny person who

is either an owner or operator of a property subject to [the] Code shall be responsible for compliance with all of [its] provisions." *Id.* § 310(a).

In this case, all parties' arguments rely upon an interpretation of "owner" as it is defined in section 105 of Article 13 of the Baltimore City Housing Code. Similarly, the circuit court relied upon its interpretation of the Housing Code's definition of owner in deciding to grant U.S. Bank and Chase's motions for summary judgment and to deny Lewis's motions for reconsideration. The Housing Code defines "owner" as "any person, firm, corporation, guardian, conservator, receiver, trustee, executor, or other judicial officer, who, alone or jointly or severally with others, owns, holds, or controls the whole or any part of the freehold or leasehold title to any dwelling or dwelling unit, with or without accompanying actual possession thereof." *Id.* § 105(jj)(1); *see also Dackman*, 413 Md. at 148 (holding that the term "owner" has "a broader meaning than it does in the traditional sense" including "not only to those who actually own the title to a dwelling, but also to those who hold[] or control[] that title as well" (internal quotation marks omitted)). The Code specifies that an owner includes, "in addition to the holder of legal title, any vendee in possession thereof, but shall not include a mortgagee or an owner of a reversionary interest under a ground rent lease." *Id.* § 105(jj)(2).

Notably, the relevant sections of Article 13 of the Baltimore City Housing Code were repealed in December of 2002—a decade prior to the alleged violation. *Hector*, 473 Md. at 557 n.7. However, the Baltimore City Council subsequently enacted the Building, Fire, and Related Codes of Baltimore City, which, at the time of the alleged violation,

incorporated the 2009 edition of the International Property Maintenance Code ("IPMC").[14] The IPMC addressed many of the same topics as the repealed Housing Code and will be discussed in greater detail below.

*3. Related Baltimore City and Maryland statutory provisions*

Valid at the time of the alleged injury, the 2009 edition of the IPMC defined "owner" as

> [a]ny person, agent, *operator*, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

IPMC § 202 (2009) (emphasis in original).[15] Chapter 3 of the IPMC goes on to delineate the general requirements of owners under the code. *Id.* § 301. Section 301.2 defines an owner's responsibilities:

> The *owner* of the *premises* shall maintain the structures and *exterior property* in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy *premises* which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter.

*Id.* § 301.2 (emphasis in original). The IPMC proceeds to specify that it is the owner's responsibility to ensure that "[t]he exterior of a structure [is] maintained in good repair,

[14] As of January of 2023, the Building, Fire, and Related Codes of Baltimore City ("BFR") encompasses, in pertinent part, the 2018 edition of the International Property Maintenance Code. *See* BFR, Part VII § 7-101 (2020) (adopting the 2018 edition of the IMPC).

[15] Of note, the 2015 edition of the IPMC, which was the edition in effect at the time Lewis brought her initial complaint, used language identical to the 2009 edition when defining owner. *See* BFR, Part VII § 7-101 (2015) (adopting IPMC, Part VII § 202 (2015)).

structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare." *Id.* § 304.1.[16]

Separately, the Maryland Reduction of Lead Risk in Housing Act ("the Act")[17] was signed into law in 1994 with the stated purpose to "reduce the incidence of childhood lead poisoning, while maintaining the stock of available affordable rental housing." Md. Code Ann., Env't § 6-802. The Act defines "owner" as "a person, firm, corporation, guardian, conservator, receiver, trustee, executor, or legal representative who, alone or jointly or severally with others, owns, holds, or controls the whole or any part of the freehold or leasehold interest to any property, with or without actual possession." *Id.* § 6-801(o)(1). The Act specifies that "owner" includes "(i) [a]ny vendee in possession of the property; and (ii) [a]ny authorized agent of the owner, including a property manager or leasing agent." *Id.* § 6-801(o)(2). However, the Act expressly excludes "a trustee or beneficiary under a deed of trust or a mortgagee" from its definition of owner. *Id.* § 6-801(o)(3)(i).

Because the parties exclusively cited the repealed Baltimore City Housing Code's definition of owner and because that definition is substantially similar to the IPMC and Act's definitions of owner, we proceed by analyzing the present case under the

[16] The IPMC specifically instructs owners to eliminate "[p]eeling, flaking and chipped paint" and to repaint any surfaces in such condition. IPMC § 304.2.

[17] The Act is sometimes referred to as Maryland's "Lead Law" or "The Lead Poisoning Prevention Program" statute. *See Facts About Maryland's "Lead Law,"* MD. DEP'T ENV'T, https://mde.maryland.gov/programs/Land/Documents/LeadFactSheets/LeadfsStandardOfCare.pdf (last visited Jan. 17, 2023); *see also Maryland Lead Law*, NAT'L CTR. FOR HEALTHY HOUS., https://nchh.org/information-and-evidence/healthy-housing-policy/state-and-local/lead-laws/md/ (last visited Jan. 17, 2023).

Housing Code.[18]

**C. Analysis**

To determine whether summary judgment was proper under the Statute and Ordinance Rule, we must first determine whether U.S. Bank and Chase were among the class of those required to follow the Housing Code's provision and whether Lewis and her child were among the class of persons protected under the Housing Code. *See* Housing Code § 105(jj) (defining "owner"); § 103(a) (outlining the purpose of the Code).

As described above, section 105 of the Housing Code defines an owner as "any person, firm, corporation, guardian, conservator, receiver, trustee, executor, or other judicial officer who, alone or jointly or severally with others, owns, holds, or controls the whole or any part of the freehold or leasehold title to any dwelling or dwelling unit, with or without accompanying actual possession thereof." Housing Code. *Id.* § 105(jj)(1). When tasked with determining whether a party other than the legal title holder is an owner for purposes of the Housing Code, the Supreme Court of Maryland has stated that "the relevant determination . . . is whether [the party] had an ability to change or affect the title to the property at issue," including, for example, "the ability to buy and sell the property." *Hector*, 473 Md. at 558 (quoting *Dackman*, 413 Md. at 149–50 n.13).

Pertinent to the present case, the Housing Code "places a duty personally on a trustee to comply with the statutory requirements of an 'owner'" and "does not permit any such 'owner' to absolve itself of its obligations." *Hector*, 473 Md. at 573–74 (invoking the

[18] We limit our application of the Housing Code to the specific facts and circumstances of this case, including the manner in which it was argued below and briefed in this Court.

Statute or Ordinance Rule to hold that a bank trustee became an owner by virtue of its direct interest in the property at issue and was therefore "personally under a statutory duty to maintain it, including keeping it free of a lead paint hazard"). Accordingly, when a defendant is found to be an owner under the Code, a court need not consider

> whether the defendants personally committed, inspired, or participated in the tort, because they *personally* would have owed the duty to maintain the properties that they owned. . . . [T]he Statute or Ordinance Rule . . . would allow the plaintiff's claim against an individual defendant to go to the jury, because the individual personally owed a duty to the plaintiff by virtue of owning the title to the property. . . . [The] individual title owner would not be entitled to summary judgment on the ground that there was no evidence they had knowledge of the statutory violation and, therefore, they could not have personally committed, inspired, or participated in the tort.

*Hector*, 473 Md. at 572.

The Supreme Court of Maryland's discussion of the Housing Code in *Hector* is instructive. The Court was asked to address the point at which a trustee of a property becomes an "owner" within the meaning of the Housing Code. *Id.* at 582. In *Hector*, when an individual debtor's mortgage became part of and owned by a trust, the trustee, BNYM, "became the equivalent of a mortgagee." *Id.* at 581. Because the debtor retained the right to cure the default up to the point of the foreclosure sale, the court found that "BNYM was not an 'owner' of the Property within the meaning of the Housing Code prior to the foreclosure sale." *Id.* at 581. However, the deed of trust between the debtor and BNYM provided for "possession before judicial sale or court ratification, i.e., upon default." *Id.* at 582 (quoting *Empire Props., LLC v. Hardy*, 386 Md. 628, 650 (2005)). The Court thus concluded that "BNYM became an 'owner' of the Property as of the date of the foreclosure sale" rather than the date of the sale's ratification because "under the . . . deed of trust, the

mortgagee/beneficiary had the right to possession of the Property prior to ratification of the foreclosure sale." *Id.*

We disagree with Lewis that U.S. Bank and Chase became owners upon Olasimbo's default, prior to the foreclosure action. Olasimbo, like the debtor in *Hector*, retained the right to cure his default until the foreclosure sale; thus, U.S. Bank and Chase, like BNYM, did not become owners prior to the date of the foreclosure sale. However, we agree with Lewis that, although the foreclosure sale was later dismissed prior to ratification, *Hector* makes clear that, where a deed of trust gives a trustee an explicit right to possession prior to a sale's ratification, the Housing Code encompasses said trustee and an agent of said trustee, e.g., a servicer, within its definition of owner.

Here, as in *Hector*, U.S. Bank, as the trustee and foreclosure purchaser, and Chase, as the servicer of the trust, "had the right to seek possession of the Property prior to the ratification of the foreclosure sale." *Id.* at 583. The deed of trust on the property at issue provided that Olasimbo, as the "Borrower," "shall have possession of the property until Lender has given Borrower notice of default." The Court construed an identical provision from the deed of trust in *Hector* to conclude that BNYM was "not required to wait until ratification of the sale to seek a court order for possession of the Property." *Id.* at 582. The deed of trust here further stated that, in the event of default, the lender or those acting on its behalf as a trustee may protect the lender's interest in the property by "entering the Property to make repairs, change locks, . . . [or] eliminate building or other code violations or dangerous conditions." Even though the deed of trust in *Hector* did not create an explicit affirmative duty to "eliminate . . . code violations or dangerous conditions," the Court

found that the provisions granting BNYM the right to possession prior to ratification were sufficient to change BNYM's status from mortgagee to owner under the Code. *Id.*

It therefore follows that, like BNYM, U.S. Bank and Chase became legal owners of the property under the Housing Code at the date of the foreclosure sale, even though the sale had not yet been ratified and the action was eventually dismissed. We find nothing in *Hector* to indicate that the subsequent dismissal of a foreclosure sale should retroactively negate U.S. Bank and Chase's potential liability during their period of ownership under the Code. As such, U.S. Bank and Chase did not have the ability to claim the mortgagee exception under section 105(jj)(2) of the Housing Code upon purchase of the property at the foreclosure sale until the date on which the foreclosure action was dismissed.[19]

Just as the foreclosure sale marked the beginning of U.S. Bank and Chase's status as owners under the Code, the dismissal of the foreclosure action necessarily marked the conclusion of their potential liability as owners. *See Hector*, 473 Md. at 583 ("A beneficiary of [the property owner's] deed of trust" only moves from mortgagee to owner when it has the "right to seek possession of the Property," which occurs at the point of sale). If a foreclosure action is dismissed, the beneficiary of the deed of trust no longer holds the right to seek possession of the property. This interpretation and application of the Housing Code

[19] We note that, at oral argument, counsel acknowledged that the Housing Code was repealed prior to the alleged violations in this case and was replaced with the IPMC. While the relevant provisions of the IPMC are substantially similar to that in the Housing Code, the IPMC's definition of owner does not include a mortgagee exception like that found in section 105(jj)(2) of the Housing Code. *See* IPMC § 202, *supra* Section I.B.3. As such, the enactment of the IPMC in place of the repealed Housing Code only weakens U.S. Bank and Chase's arguments concerning the effect of notice on their status as owners.

furthers the Code's express purpose "to protect the occupants of dwellings" and ensure that owners are "as diligent as possible in ensuring the safety of those who occupied dwellings and, ultimately, the safety of the public at large." *Dackman*, 413 Md. at 157, 159 n.22.[20]

## II. THERE WAS INSUFFICIENT EVIDENCE TO PRESENT THE ISSUE OF PROXIMATE CAUSE TO THE JURY.

Lewis argues that the circuit court improperly applied *Hector*'s two-part test for liability, which requires only a showing that U.S. Bank and Chase were owners under the broad Housing Code definition and that a reasonable jury could find them individually liable. Lewis claims that *Hector* stands for the proposition that liability "can stem solely from the institution's failure to adhere to the Code, even absent notice, under the Statute or Ordinance Rule."

U.S. Bank and Chase disagree, asserting that lead-based paint claims require an additional showing that the violation was the proximate cause of the alleged injury. Accordingly, U.S. Bank and Chase argue that, to establish causation at the summary judgment stage, Lewis was required to present evidence by which a finder of fact could

[20] Lewis further contends that U.S. Bank and Chase should be held liable as owners even after the foreclosure sale's dismissal because holding otherwise would create a window of time in which the property was effectively "ownerless," with no individual or entity responsible for ensuring its compliance with the Housing Code. In support, Lewis presented evidence that Olasimbo was neither making mortgage payments nor paying for the property's upkeep once he believed the property had been lost to foreclosure. Lewis thus argues that because Olasimbo lacked notice of the foreclosure sale's dismissal and so believed the banks continued to own the property, public policy compels this Court to hold U.S. Bank and Chase liable as owners even though they had voluntarily dismissed the foreclosure sale. Because we find that U.S. Bank and Chase failed to satisfy the causation prong of the Statute and Ordinance Rule, see *infra* Section II, we need not address Lewis's policy argument concerning notice.

conclude that the child's "injuries were caused in substantial part by lead exposure in the narrow window when [the child] resided at the [p]roperty," during which time U.S. Bank and Chase were the alleged owners. They contend that the circuit court was correct in granting summary judgment and denying Lewis's motion to alter and amend and, later, her motion to reconsider because Lewis failed to meet this initial burden. We agree.

Under the Statute or Ordinance Rule, "[i]t is the existence of [a] cause and effect relationship that makes the violation of a statute *prima facie* evidence of negligence." *Brooks*, 378 Md. at 79 (internal citation omitted). "To prove causation in a lead paint case, a plaintiff must prove that the defendant's negligence was a substantial factor in causing the plaintiff's injury." *Kirson v. Johnson*, 236 Md. App. 384, 392 (2018). That is, a plaintiff must "produce evidence from which a jury could find that lead-based paint was present at the property and that [the plaintiff] was exposed to it there." *Id.* at 393.

In lead-based paint liability cases, circumstantial evidence, without direct evidence, may be sufficient to withstand summary judgement if it establishes a reasonable probability "that the lead in the subject property caused [the claimant's] elevated blood lead levels, and that [the claimant's] elevated blood levels caused him injury." *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 265–66 (2017). In *Ross v. Housing Authority of Baltimore City*, 430 Md. 648 (2013), the Supreme Court of Maryland articulated causation in a lead-based paint claim "as a series of links: (1) the link between the defendant's property and the plaintiff's exposure to lead; (2) the link between specific exposure to lead and the elevated blood lead levels, and (3) the link between those blood lead levels and the injuries allegedly suffered by the plaintiff." *Id*. at 668. The Court has clarified that "the link between a

defendant's property and a plaintiff's childhood exposure to lead paint and dust may be established through circumstantial evidence, even if expert testimony is not available." *Id.* at 669. Elimination of all other potential sources of lead exposure is not required. *Hamilton v. Dackman*, 213 Md. App. 589, 616 (2013). In *Rowhouses, Inc. v. Smith*, 446 Md. 611 (2016), the Supreme Court "rejected the 'more probable than not' standard for lead paint cases." *Rogers*, 453 Md. at 274.

However, "there are still limits to the inferences in a plaintiff's favor that yet could allow summary judgment." *Rowhouses*, 446 Md. at 648 (quoting *Dackman*, 213 Md. App. at 616–17) (internal quotation marks omitted). A mere *possibility* of exposure at a particular property, without more, does not necessarily suggest a *probability* that the claimant was exposed to lead at the property at issue. *See Dackman*, 213 Md. App. at 617–19. Nor does a possibility of exposure suggest that lead-based paint at the property proximately caused the claimant's injuries. *See id.* Even if a claimant presents evidence of a Housing Code violation, a presumption of liability may only apply if the plaintiff "show[s] some 'causal connection' between a violation and the injury." *Hamilton*, 213 Md. App. at 619.

The circuit court concluded, and we agree, that Lewis failed to meet this burden. Lewis did not present any evidence, circumstantial or otherwise, sufficient to demonstrate the series of causal links that the Supreme Court of Maryland outlined in *Ross*. 430 Md. at 668. Lewis failed to present evidence of a causal link between (1) the property and the child's alleged exposure to lead within the eight-day window in which U.S. Bank and Chase were owners under the Code; (2) the child's exposure at the property and the child's

elevated BLL; and (3) the child's elevated blood levels and the alleged injury. As the circuit court found in its order denying reconsideration of summary judgment, there was no evidence that Lewis or her child were at the property during any of those eight days, let alone that the child—an immobile newborn—could have been exposed to lead paint to a degree that would have caused injury during that narrow window of time. The medical report indicating that Lewis's child had an elevated BLL of 18 μg/dL in September of 2013—six months after the foreclosure sale was voluntarily dismissed—and the second report indicating that the child's BLL had decreased to 8 μg/dL in February of 2014—four months after Lewis and her child were evicted—were insufficient to establish a causal link between the violation, exposure, and injury having occurred within the eight-day window.

Therefore, even if Lewis satisfied the Statute or Ordinance Rule's first prong by establishing that U.S. Bank and Chase were owners and presenting evidence that a Housing Code violation had occurred,[21] the causation issue remains unsatisfied. Consequently, Lewis failed to provide sufficient evidence to give rise to a *prima facie* negligence case against U.S. Bank and Chase under the Statute and Ordinance Rule, and the circuit court did not err in granting summary judgment. We affirm.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**

[21] Lewis presented evidence that in November of 2013, the Baltimore Health Department issued Olasimbo a "Violation Notice and Order to Remove Lead Hazard." In said notice, the Baltimore Health Department found impermissible lead levels throughout the property, including in various windowsills and casings, baseboards, a bedroom floor, a bathroom wall, and several doors and porch rails.