

COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

TRICIA MASON, et al.,  
Plaintiffs-Appellants,

v.

WASATCH PROP. MGMT., INC., et  
al.

Defendants-Appellees

2 CA-CV No. 2008-0162

2 CA-CV No. 2008-0165

KAITLYN MORRIS, et al.,  
Plaintiffs-Appellants,

v.

WASATCH PROP. MGMT., INC., et  
al.

Defendants-Appellees

Cause Nos. C20035581

consolidated with

C20041766;

C20024299 consolidated

with

C20024542

APRIL ABAD, et al., ALICIA  
STEWART, et al.

Plaintiffs-Appellants,

v.

WASATCH PROP. MGMT., INC., et  
al.

Defendants-Appellees

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE  
NATIONAL APARTMENT ASSOCIATION

The National Apartment Association ("NAA"), which is headquartered in Arlington, Virginia, through its counsel, files this motion for leave to file the attached Brief of Amicus Curiae in the above titled action. As support therefore, NAA respectfully states as follows:

1. Movant, NAA, is the leading national advocate for quality rental housing. NAA is a federation of 167 state and local affiliated associations, representing more than 36,000 members responsible for more than 5.7 million apartment units nationwide. NAA is the largest broad-based organization dedicated solely to rental housing.

2. Movant has read all relevant briefs, motions and petitions in this matter.

3. An amicus-curiae brief is desirable, and the matters to be asserted are relevant to the disposition of the case, for the following reasons: Despite the lack of scientific evidence supporting the theory that mold causes adverse health effects, mold litigation similar to the instant case is a serious threat to the

investments of NAA's members and the availability of affordable housing for residents. The facts presented in this case are analogous to litigation in other jurisdictions throughout the country where courts granted dispositive motions of defendant apartment owners, citing the lack of scientific evidence to support plaintiffs' claims that mold in an apartment building caused adverse health effects.

As providers of rental housing, NAA members face the prospect of occasionally defending lawsuits in which residents allege personal injuries suffered as a consequence of the action or inaction of the owners or managers of the rental property. Claims of physical injuries attributed to the presence of mold in housing have been the basis for an explosion of litigation over the past twenty years. In 2003, the Insurance Information Institute estimated that 10,000 mold-related suits were pending nationwide; a 300 percent increase since 1999. See U.S. Chamber of Commerce, Executive Summary of *The Growing Hazard of Mold Litigation*, page iii (2003). This type of litigation

represents significant risks to providers of rental housing as evidenced by a recent jury award of \$3.3 million to a plaintiff who blamed her illnesses on her exposure to mold in her rental home. *Minium v. Pillar Communities LLC, et al.*, No. CV-2004-014906 (Ariz. Super. Ct. Maricopa City). Litigation and judgment awards based on junk science harm the apartment industry, and greatly increase the cost of housing for residents. Now more than ever, families need access to quality affordable housing.

Over time, a number of scientific studies (which are described in the accompanying brief) debunked the notion of a causative effect between the presence of mold and the wide ranging health related damages claimed in these cases. Citing studies from the American Industrial Hygiene Association and the National Institute of Occupational Safety and Health (NIOSH), the U.S. Chamber of Commerce observed that "science has confirmed common sense since mold is not some rare exotic toxic material but is everywhere, making up 25 percent of the earth's biomass..." If

mold were extremely toxic, one could expect to see epidemics wherever people are exposed to the highest levels of mold - vacation spots and outdoor camps, for example.<sup>1</sup>

As discussed in greater detail in our brief, courts in Arizona and elsewhere began to reject proffered expert testimony in mold cases because of plaintiffs' failures to satisfy the admissibility standards under *Frye* or, more recently, *Daubert*, in the federal courts. In a strikingly similar case, the U.S. District Court of Arizona ruled that plaintiff's expert testimony did not meet the *Daubert* standard and entered judgment for the defendants in *Killian v. Equity Residential Trust*, 2004 U.S. Dist. LEXIS 23939 (D. Ariz. July, 27 2004). That judgment was later affirmed by the Ninth Circuit, 191 Fed. Appx. 537; 206 U.S. App. LEXIS 16876.

This appeal is significant because there is no decision from this Court<sup>2</sup> applying the *Frye* standard to

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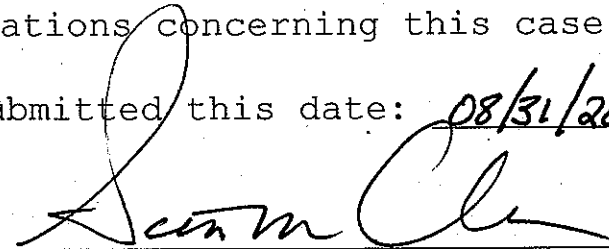
<sup>1</sup> U.S. Chamber of Commerce, *The Growing Hazard of Mold Litigation* - release July 2003.

<sup>2</sup> It is of interest to note that unlike the extensive *Frye* hearing conducted by the trial court in this case, no such

claims of toxic mold. This case represents an opportunity for this Court to provide guidance to the trial courts in Arizona and elsewhere on the proper application of the familiar *Frye* standard to this relatively recent strain of tort litigation.

WHEREFORE, NAA respectfully requests that this Court grant this Motion For Leave to File Brief of Amicus Curiae, and take such brief under advisement in its further deliberations concerning this case.

Respectfully submitted this date: 08/31/2009



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hearing was conducted in *Minium v. Pillar Communities, supra.*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the Brief of Amicus Curiae of the National Apartment Association, was served on the parties hereto by Scott Clark on 08/31/2009, at the following addresses:

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