

VERDICTS & SETTLEMENTS

FRIDAY OCTOBER 22, 2021

— VERDICT: DEFENSE —

REAL PROPERTY

PREMISES LIABILITY

VERDICT: DEFENSE

CASE/NUMBER:

Gary Vedovitch, et al. v. Triton Air Inc. /
30-2017-00899728-CU-OR-CJC

COURT/DATE: Orange Superior /
Sep. 22, 2021

JUDGE: Lon F. Hurwitz

ATTORNEYS:

Plaintiff – John B. Richards,
William P. Frusetta
(Law Office of John B. Richards)

Defendant – Rey S. Yang,
Stephanie Guerra
(Yang Professional Law Corp.)

EXPERTS:

Plaintiff – Robin A. Bernhoft
(Environmental Medicine);
Sanjivan Kohli (Pulmonary Medicine);
Jack Clausen (Home Inspector);
Jeffrey S. Hughes (General Contractor)

Defendant – Howard Sandler
(Occupational Medicine);
Brian P. Daly (Industrial Hygiene)

FACTS:

Plaintiffs, Gary Vedovitch, Rosalind Vedovitch, Kylynn Vedovitch, and Kiara Vedovitch (by and through her guardian ad litem Gal Rosalind Vedovitch), alleged that they were exposed to mold when they resided at a home in Laguna Niguel. Plaintiffs resided at the subject home between 2007 and August 30, 2011, and then between Oct. 1, 2012 and Nov. 21, 2016.

In August 2016, Gary Vedovitch advised the landlord that the air-conditioning unit was not functioning. On Aug. 16, 2016, defendant's HVAC service technician went to the attic and found a clogged condensate line in the air conditioning unit, resulting in excess water in the main drain pan. The rising water in the secondary drain pan, in turn, triggered the overflow safety switch thereby shutting-off the air conditioning unit.

According to Rosalind Vedovitch, during the service call, she asked the service technician if there was mold in the HVAC system, as she was concerned about mold due to standing water in the drain pan. According to her, the HVAC technician responded, "no mold," and she relied upon his representation that there was no mold in her home.

In late August 2016, plaintiff, Rosalind Vedovitch, sought medical treatment for respiratory issues, including pneumonia and lung infections. On Sept. 13, 2016, a medical bronchoscopy apparently showed *Aspergillus* mold/fungus presumably in her lung biopsy.

On Nov. 17, 2016, the landlord retained Jack Clausen, a home inspector, to inspect the home and obtained air samples throughout the home. The air test results apparently showed elevated levels of *Aspergillus/Penicillium* in various areas throughout the home. Clausen returned to the property in December 2016 and January 2017, and found that a rug saturated with dog urine in plaintiffs' master bedroom had elevated levels of *Stachybotrys* mold. Clausen did not observe any visible mold on the HVAC coils or drain pan.

PLAINTIFFS' CONTENTIONS:

Plaintiffs contend that they did not suspect that there were any issues with mold at their

home until after the inspection by Clausen on Nov. 21, 2016. Plaintiffs contend that they relied upon the HVAC technician's representation that there was no mold in the HVAC unit, and that had he not made such representation, they would have requested that the landlord investigate for mold at the property.

DEFENDANTS' CONTENTIONS:

Defendant contends that the communication between Rosalind Vedovitch and the technician relating to mold did not occur and that even if it did, the technician was correct in noting that there was no mold in the HVAC unit as all experts agreed that there was no visible mold or organic growth inside the unit.

INJURIES:

Plaintiff Rosalind Vedovitch, allegedly sustained Allergic Bronchopulmonary Aspergillosis, resulting in lung scarring and a dilating heart, shortening her life-span.

Plaintiff Kylynn Vedovitch, allegedly sustained mold-induced asthma.

Plaintiffs Gary Vedovitch and Kiara Vedovitch, allegedly sustained general damages.

DAMAGES:

Plaintiffs sought \$10 million for non-economic damages (pain and suffering).

SETTLEMENT DISCUSSIONS:

In November 2020, defendant served a statutory offer to compromise for \$10,000. In February 2021, plaintiffs served a statutory offer to compromise for \$1 million.

RESULT: Defense verdict.

FILING DATE: May 3, 2017