

# Real Estate

## Court Rebuffs a Suit Linking Mold to Illness

By JAY ROMANO

**A** DECISION issued last month by a State Supreme Court justice in Manhattan should allow building owners, including co-op and condominium boards, to rest a little easier about potential claims that indoor mold has injured an occupant of their buildings.

After a review of more than 1,000 pages of testimony and more than 70 scientific articles and books, Justice Shirley Werner Kornreich concluded that there was insufficient evidence to support the contention that mold or a damp indoor environment causes illness.

"This throws a lot of cold water on the notion that mold is the cause of personal injury," said Eva Talel, a Manhattan real estate lawyer. "And while this isn't going to be the last word on the subject, the decision is so comprehensive and well thought out that other judges are not going to be anxious to rule differently."

The case was brought by Colin and Pamela Fraser on behalf of themselves and their daughter, Alexandra, against the 301-52 Townhouse Corporation, which owned their co-op building. The Frasers contended that mold near windows and doors in their apartment caused respiratory problems, a rash and fatigue. The Frasers said that after moving into an apartment at 301 East 52nd Street in August 1996, Mr. Fraser developed a leg rash, lethargy and congestion and hearing, nasal and throat problems and Mrs. Fraser and their infant daughter developed respiratory problems.

The couple said their conditions improved when the family moved out of the apartment in 2002.

Before allowing the case to proceed to trial, Justice Kornreich ordered what is known as a Frye hearing to determine whether the Frasers' contention that mold caused their health problems is "generally accepted" by scientists.

A Frye hearing, which is named after a 1923 federal case, is used to determine whether scientific evi-

dence supports a litigant's theory of liability. After 10 days and the testimony of four experts, Justice Kornreich concluded that while one expert testified mold or damp indoor space caused health problems, "the scientific literature did not support his assertions." As a result, Justice Kornreich dismissed the claim for personal injuries.

Three calls to Elizabeth Ellender, the Frasers' lawyer, seeking comment and information about a possible appeal, were not returned.

Andrew Brucker, the lawyer who represented the co-op in the case, said this was the first time a Frye hearing on mold had been held in New York. "This whole mold issue has been blown out of proportion,"

Mr. Brucker said. "We think this is going to have a major impact on lawyers who are thinking about bringing cases alleging injuries caused by mold. And we think that insurance companies are now going to be more inclined to fight these cases instead of settle them."

Dennis Greenstein, a Manhattan co-op lawyer, said that while the decision was good news for property owners concerned that they could be held liable for injuries said to be caused by mold, they and their property managers should still take mold problems seriously.

"People still have to do the best they can when dealing with mold and the leaks that may cause it," Mr. Greenstein said. He pointed out that failure to address mold or leak problems could still leave owners exposed to lawsuits for property damage.

Dr. Joseph Q. Jarvis, an expert in public health who is affiliated with the University of Nevada School of Medicine in Reno, said he was surprised that a comprehensive review of the medical literature led the judge to conclude there was no consensus that mold can cause illness. While it may not be possible to specify the level of exposure needed to cause a problem, he said, it is well documented that exposure to indoor mold can cause respiratory allergies in some people.



Tom Bloom