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Tiffany M. Turner

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Housing Authority of Baltimore City v. Bennett: **Statutory Cap on Damages Does Not Apply to Tort Claims Directly Against Local Governments**

By Tiffany Turner

The Court of Appeals of Maryland held that tort actions directly against a local government do not fall within the Local Government Tort Claims Act (“LGTC”), MD. CODE ANN., CTS. & JUD. PROC. sections 5-301 through 5-304 (1974, 1998 Repl. Vol., 1999 Supp.). Therefore, local governments are not allowed immunity under the \$200,000 damages cap of the statute. *Housing Authority v. Bennett*, 359 Md. 356, 367, 754 A.2d 367, 373 (2000). Additionally, the court held that caps on tort damages under the LGTC are only intended to apply to local governments when they provide a legal defense for the torts of their employees within the scope of employment. *Id.*

Crystal Bennett (“Bennett”) lived in a home owned and managed by the Housing Authority of Baltimore City (“Housing Authority”). *Id.* at 364, 754 A.2d at 371. Bennett’s family had complained about flaking lead paint, but the Housing Authority failed to properly maintain the property. *Id.* As a direct result, Bennett suffered from an elevated blood-lead level, a common indicator of lead-poisoning. *Id.*

As a result of her injury, Bennett brought a negligence claim against the Housing Authority in the Circuit Court for Baltimore City. *Id.* The jury returned a judgment for Bennett in the

amount of \$630,000. *Id.* at 365, 754 A.2d at 371. The circuit court granted the Housing Authority’s motion to amend the judgment to be within the statutory cap of \$200,000 allowed under the LGTC. *Id.* Bennett then moved to amend the judgment, contending that the LGTC does not apply to governments themselves in tort actions, but instead applies only to the indemnification of local government employees. *Id.* at 365, 754 A.2d at 372. The circuit court granted Bennett’s motion in part and increased her monetary judgment to \$350,000, the full amount allowed for non-economic damages under section 11-108(b) of the Courts and Judicial Proceedings Article. *Id.* at 366, 754 A.2d at 372. The court of special appeals affirmed, but remanded the case to the circuit court to determine Bennett’s monetary judgment based on the amount available under the Housing Authority’s liability insurance policy. *Id.* at 367, 754 A.2d at 372-73. The court of appeals granted certiorari to determine whether the Housing Authority would be allowed the \$200,000 cap provided by the LGTC, or whether Bennett could recover \$350,000, the amount available under the Housing Authority’s insurance policy for non-economic damages. *Id.* at 367, 754 A.2d at 373. The court of appeals held that actions directly against local

governments do not fall within the statutory cap provisions of the LGTC, and therefore Bennett was entitled to the maximum amount allowed by the Housing Authority’s insurance policy. *Id.*

The court of appeals began its analysis by using statutory construction to determine the intent of the General Assembly in creating sections 5-302 and 5-303 of the LGTC. *Id.* at 370, 754 A.2d at 374. The court focused on a phrase contained in section 5-303(a)(1), which states, “tortious acts or omissions, including liability arising under subsection (b).” *Id.* The Housing Authority contended that this phrase and the word “including” expressed the legislature’s intent for the LGTC cap to include liability claims against local governmental entities, and not simply the indemnification of its employees in legal actions. *Id.* at 370, 754 A.2d at 374. However, the court reasoned that the meaning of the word “including” depends on the context in which it is used, and can either mean enlargement or limitation of the statute. *Id.* at 372, 754 A.2d at 375. Therefore, the court turned to additional provisions within the statute to determine the LGTC’s context of the word “including.”

First, the court noted that sections 5-301 through 5-303 only expressly state a local government's liability to legally defend its employees, and not actions directly against local governments. *Id.* at 371, 754 A.2d at 375. Additionally, section 5-304 of the LGTCA illustrates that the court was aware of the distinction between actions directly against local governments and actions for the indemnification of employees. Therefore, the legislature did not intend for the cap to apply to direct actions against local governments, or else it would have so indicated. *Id.*

Additionally, the court examined Chapter 594 of the Acts of 1987 as a whole. The language states that the LGTCA's cap on damages may be construed to apply to actions directly against local governments when the tort claim is formed upon a violation of local ordinances. *Id.* at 373, 754 A.2d at 376. However, the LGTCA may not be applied to actions directly against local governments when the basis for the tort claim arises out of other statutes or enactments of the Maryland General Assembly, common law, or state and federal constitutions. *Id.* at 373-74, 754 A.2d at 376. This is due to the statute's express distinction between claims based on local law, as opposed to claims based on state or federal law. *Id.* at 374, 754 A.2d at 376.

Furthermore, the court of appeals determined that Article 44A of the Maryland Code, which specifically applies to housing authorities, is not affected by Chapter 594 and the included monetary caps provision. *Id.* at 374, 754 A.2d at

376. Therefore, the court interpreted Article 44A to mean that the legislature did not intend for the LGTCA to include a cap on tort liability for housing authorities. *Id.*

Housing Authority of Baltimore City v. Bennett has a profound impact on Maryland communities by changing the way damages are awarded in tort actions against local governments. The effects are widespread due to the large number of local government entities defined in the statute, including county and city governments, housing authorities, public libraries, community colleges, taxing districts, and many others. Prior to this holding, local governments, especially housing authorities, had the option of not maintaining their properties, instead taking their chances on a \$200,000 maximum judgment against them. In response, this court has retaliated with a statutory interpretation that supports good public policy and the safety of individual citizens.