

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D13131  
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Submitted - November 9, 2006

ANITA R. FLORIO, J.P.  
HOWARD MILLER  
ROBERT A. SPOLZINO  
MARK C. DILLON, JJ.

2005-08670

DECISION & ORDER

Ana Alonso, etc., et al., respondents, v Coutinho  
Enterprises, LLC, appellant, et al., defendant.

(Index No. 18137/03)

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Harrington, Ocko, & Monk, LLP, White Plains, N.Y. (Steven R. Kramer and Adam G. Greenberg of counsel), for appellant.

Fitzgerald & Fitzgerald, P.C., Yonkers, N.Y. (John E. Fitzgerald, John M. Daly, Eugene S. R. Pagano, Mitchell Gittin, and John J. Leen of counsel), for respondents.

In an action to recover damages for personal injuries, the defendant Coutinho Enterprises, LLC, appeals from an order of the Supreme Court, Westchester County (Colabella, J.), entered July 21, 2005, which denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The infant plaintiffs sustained lead poisoning as a result of exposure to lead paint in their apartment in a building owned and managed by the defendant Coutinho Enterprises, LLC (hereinafter Coutinho). The plaintiffs commenced this action, inter alia, to recover damages based on Coutinho's alleged negligence. The Supreme Court denied Coutinho's motion for summary judgment dismissing the complaint insofar as asserted against it. We affirm.

To impose liability on a landlord for a lead-based paint condition, a plaintiff must establish that the landlord had actual or constructive notice of, and a reasonable opportunity to

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remedy, the hazardous condition (*see Chapman v Silber*, 97 NY2d 9; *Shafqat v Blackman*, 16 AD3d 574; *Patterson v Brennan*, 292 AD2d 582). As the Supreme Court properly determined, triable issues of fact exist requiring the denial of the motion (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324).

Accordingly, Coutinho's motion for summary judgment dismissing the complaint insofar as asserted against it was properly denied.

FLORIO, J.P., MILLER, SPOLZINO and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court