

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

D18012
Y/prt

_____AD3d_____

Argued - January 14, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2007-04065

DECISION & ORDER

Marilyn Delacruz, etc., et al., respondents,
v 236-1 Development Associates (Green), LP,
etc., et al., appellants.

(Index No. 31268/06)

Wilson Elser Moskowitz Edelman & Dicker, LLP, New York, N.Y. (Richard E. Lerner and Bianca Michelis of counsel), for appellants.

Friedman & Moses, LLP, New York, N.Y. (Steven B. Dorfman of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Kings County (Kramer, J.), dated March 30, 2007, which denied their motion to dismiss the complaint pursuant to CPLR 3211(a)(1).

ORDERED that the order is affirmed, with costs.

A motion to dismiss a complaint pursuant to CPLR 3211(a)(1) “may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326; *see Long v Allen AME Transp. Corp.*, 43 AD3d 1114; *Sheridan v Town of Orangetown*, 21 AD3d 365). Here, the incomplete copy of the “Order to Abate Nuisance” from the New York City Department of Health and Mental Hygiene submitted by the defendants failed to demonstrate that no lead-based paint was found on a “friction surface” (see Administrative Code of City of New York §§ 27-2056.2[4], 27-2056.4). Accordingly, the Supreme Court properly denied

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the defendants' motion.

In light of our determination, we need not reach the plaintiffs' remaining contention.

RIVERA, J.P., LIFSON, ANGIOLILLO and BALKIN, 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