

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

D21683  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - December 2, 2008

WILLIAM F. MASTRO, J.P.  
HOWARD MILLER  
EDWARD D. CARNI  
CHERYL E. CHAMBERS, JJ.

2007-09211

DECISION & ORDER

Dior Byrd, etc., et al., respondents, v  
2015 Caton Ave., LLC, et al., appellants.

(Index No. 4272/04)

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Cozen O'Connor, New York, N.Y. (Eric J. Berger of counsel), for appellants.

Levy Phillips & Konigsberg, LLP, New York, N.Y. (Philip Monier III 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 (Schmidt, J.), dated August 27, 2007, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment is granted.

The infant plaintiff allegedly sustained injuries from exposure to lead paint in an apartment owned by the defendant 2015 Caton Ave., LLC. The Supreme Court denied the defendants' motion for summary judgment dismissing the complaint on the ground that triable issues of fact existed as to whether the defendants had actual or constructive notice of a lead-based paint condition in the subject apartment. We reverse.

The defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that they did not have notice that the infant plaintiff, who was under two years old at the relevant time, resided at the subject apartment before he sustained any injuries (*see Chym v*

December 30, 2008

Page 1.

BYRD v 2015 CATON AVE., LLC

*Silber*, 97 NY2d 915; *Juarez v Wavecrest Mgt. Team*, 88 NY2d 628, 646; *Duarte v Community Realty Corp.*, 42 AD3d 480, 481). In opposition to the defendants' prima facie showing, the plaintiffs failed to raise a triable issue of fact as to whether the defendants had such notice (*see Duarte v Community Realty Corp.*, 42 AD3d at 481; *Worthy v New York City Hous. Auth.*, 18 AD3d 352). Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment.

The plaintiffs' remaining contentions are without merit.

MASTRO, J.P., MILLER, CARNI and CHAMBERS, 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