

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

D23035
C/kmg

_____AD3d_____

Argued - March 31, 2009

HOWARD MILLER, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2008-01766

DECISION & ORDER

Jordan Osario, etc., et al., respondents, v Haymraj
Balram, et al., defendants, Nations Credit Financial
Services Corp., appellant (and other titles).

(Index No. 7026/05)

Stim & Warmuth, P.C., Farmingville, N.Y. (Paula J. Warmuth of counsel), for
appellant.

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

In an action, inter alia, to recover damages for personal injuries, the defendant Nations
Credit Financial Services Corp., appeals from an order of the Supreme Court, Kings County
(Rothenberg, J.), dated December 19, 2007, which denied its motion for summary judgment
dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The plaintiffs seek to recover damages as a result of injuries allegedly sustained by the
infant plaintiff due to lead paint he ingested when he resided in an apartment located in a
multiple-dwelling property in Brooklyn that was constructed in 1931.

Contrary to the appellant's contention, the Supreme Court properly denied its motion
for summary judgment dismissing the complaint insofar as asserted against it. The appellant "failed
to demonstrate its entitlement to judgment as a matter of law as it failed to establish that it was not

May 5, 2009

OSARIO v BALRAM

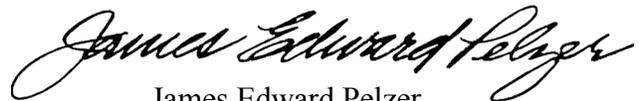
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the ‘owner’ of the property in question” (*Roni v Rahim*, 49 AD3d 851, 852; *see* Administrative Code of City of NY § 27-2056.3, § 27-2056.4).

Moreover, the appellant “offered no evidence that [it was] unaware that a child under the age of seven resided in the [apartment] leased to the infant plaintiff’s family and that [it] had no actual or constructive notice of the alleged existence of peeling paint in [the apartment]” (*Jolicoeur v Great Oaks Assoc. Ltd.*, 43 AD3d 872, 872-873; *see Juarez v Wavecrest Mgt. Team*, 88 NY2d 628, 638).

MILLER, J.P., ANGIOLILLO, ENG and AUSTIN, 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