

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

D26765
H/prt

_____AD3d_____

Argued - March 8, 2010

WILLIAM F. MASTRO, J.P.
HOWARD MILLER
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2008-10651

DECISION & ORDER

Zaair Nafiz Abdal Wali, etc., et al., appellants, v
City of New York, respondent, et al., defendants.

(Index No. 30869/06)

Lipsig Shapey Manus & Moverman P.C. (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J. Isaac], of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Larry A. Sonnenshein and Julian L. Kalkstein of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Miller, J.), entered October 24, 2008, as granted that branch of the motion of the defendant City of New York which was for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with costs.

“[L]iability for a dangerous condition on real property must be predicated upon ownership, occupancy, control, or special use of the property” (*Franks v G & H Real Estate Holding Corp.*, 16 AD3d 619, 620; *see Casale v Brookdale Med. Assoc.*, 43 AD3d 418, 418; *Schwalb v Kulaski*, 29 AD3d 563, 563). The plaintiffs commenced this action to recover damages for personal injuries, alleging, inter alia, that the infant plaintiff Zaair Nafiz Abdal Wali (hereinafter the infant plaintiff) was exposed to lead-based paint in a building that was owned, managed, maintained, and controlled by the City of New York. The City demonstrated its prima facie entitlement to judgment as a matter of law by establishing that it neither owned, occupied, controlled, nor made a special use

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of the building in which the infant plaintiff allegedly was injured by his exposure to lead. In opposition, the plaintiffs failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Accordingly, the Supreme Court properly granted that branch of the City's motion which was for summary judgment dismissing the complaint insofar as asserted against it.

MASTRO, J.P., MILLER, AUSTIN and ROMAN, 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