

Johnson v 142 S. St. Corp.

2007 NY Slip Op 30622(U)

April 6, 2007

Supreme Court, New York County

Docket Number: 0107288/2004

Judge: Rosalyn H. Richter

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SCANNED ON 4/10/2007
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. ROSALYN RICHTER

PART 24

Index Number : 107288/2004

JOHNSON, ADL

INDEX NO. _____

vs

142 SOUTH ST.

MOTION DATE _____

Sequence Number : 004

MOTION SEQ. NO. _____

SUMMARY JUDGMENT

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
APR 10 2007
NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE
WITH THE ATTACHED MEMORANDUM DECISION**

Dated: 4/6/07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 24

-----x
ADL JOHNSON, an infant by his mother and natural
guardian ROBIN RICKETT EL-HANEFI, and ANDRE
JOHNSON, an infant by his mother and natural guardian
ROBIN RICKETT EL-HANEFI,

Plaintiffs,

-against-

142 SOUTH ST. CORP., GLORY BEE REALTY
MANAGEMENT CORP., JANICE WILLIAMS a/k/a
JANICE RICKETT, CAC BUSINESS VENTURES, INC.,
CARMINE CANNATELLO, EDWARD MOZGIEL,
KANJIRAMALA GEORGE, SOSAMMA GEORGE
AND GEORGE MANAGEMENT CORP.,

Defendants.
-----x

DECISION AND ORDER
Index No. 107288-2004
Motion Sequence Nos. 4, 5, 6, 7

FILED
APR 10 2007
NEW YORK
COUNTY CLERK'S OFFICE

ROSALYN RICHTER, J.

In this action for personal injuries, plaintiff-infants Adl Johnson (“Adl”) and Andre Johnson (“Andre”), through their mother and natural guardian Robin Rickett El-Hanefi (“El-Hanefi”), allege that they were exposed to lead paint at various residences located in Newburgh, New York due to the negligence of the defendants, and have suffered injuries as a result of such exposure. All defendants, with the exception of Edward Mozgiel, move for an order, pursuant to C.P.L.R. § 3212, granting summary judgment and dismissing plaintiffs’ complaint and all cross claims.¹

In motion sequence number 4, defendants Kanjiramala George (“K. George”), Sosamma George, and George Management Corp. (collectively “the George defendants”) contend that they did not have actual or constructive notice that lead paint existed at the premises which they owned at 145 Washington Street. The George defendants contend that the lead paint hazards were abated ten

¹ Defendant Edward Mozgiel is the owner of 55 Benkard Street, Newburgh, New York. Mozgiel has neither moved for summary judgment nor been previously dismissed from the case.

months before the property was transferred to George Management Corp. and that the evidence indicates that the infant plaintiffs had already relocated elsewhere. The George defendants also argue that after receiving notice of lead paint violations they acted diligently to fix the problems.

In motion sequence number 5, defendant Carmine Cannatello (“Cannatello”), the owner of 43 Johnson Street, argues that Adl and Andre did not reside at 43 Johnson Street, that he did not have actual or constructive notice of lead paint at the subject apartment, and that plaintiffs cannot establish that they suffered injuries as a result of his alleged negligence.

In motion sequence number 6, 142 South Street Corp. and Glory Bee Realty Management Corp. (collectively “the 142 South Street defendants”) contend that they did not have actual or constructive notice that there was lead paint in the subject apartment and contend that there is no proof that Andre resided at the subject premises prior to the lead abatement.

In motion sequence number 7, Janice Williams, the owner of a residence located at 197 First Street and the grandmother of Adl and Andre, contends that she was not aware of the dangers posed by lead paint to young children prior to being notified by the Department of Health, and did not have notice of the presence of lead paint in her home. Williams further argues that Andre did not reside at 197 First Street prior to the lead abatement.

FACTUAL ALLEGATIONS

On June 19, 1989, El-Hanefi gave birth to Adl. Approximately two weeks after giving birth, El-Hanefi was incarcerated for six months. During the time which El-Hanefi was incarcerated, Adl resided at 197 First Street with his grandmother, defendant Williams. Following her release from prison, El-Hanefi and Adl resided at both 197 First Street and at 142 South Street. While at 142 South Street, El-Hanefi and Adl resided with Adl’s father, Charles Johnson (“Johnson”).

On June 28, 1990, Adl was tested for lead poisoning and was diagnosed with an elevated level of lead in his blood. Due to the high level of lead found in Adl's blood, the Orange County Department of Health ("the Department of Health") commenced an investigation to determine the location at which Adl's exposure to lead took place. On October 2, 1990, the Department of Health conducted an inspection of the apartments at 197 First Street and 142 South Street. As a result of the inspections, lead paint violations were issued to Williams and Thomas Amodeo ("Amodeo"), the then president of 142 South Street Corp.

On November 24, 1990, El-Hanefi gave birth to Andre and continued to reside at both 197 First Street and 142 South Street. While residing at both apartments, Adl was tested for lead in January and April of 1991, and was again diagnosed with having a high level of lead in his blood.

Between April and June 28, 1991, El-Hanefi moved with Adl, Andre, Johnson, and her two other children into an apartment located at 43 Johnson Street. While residing at 43 Johnson Street, Adl and Andre were both diagnosed with elevated levels of lead in their blood. As a result of the blood tests, on July 21, 1992, the Department of Health inspected the first floor apartment of 43 Johnson Street and issued lead paint violations to Cannatello.² El-Hanefi testified that between October 1992 and November 1992, Johnson moved to 55 Benkard Street.³ In November of 1992,

² Cannatello owned 43 Johnson Street through CAC Business Ventures, a company incorporated for the purpose of owning real estate properties and whose sole shareholder was Cannatello.

³ El-Hanefi's recollection of Johnson's past residences is flawed. Sheehan Aff., ¶ 28, Plawner Aff., at 8. El-Hanefi testified that Johnson moved from 43 Johnson Street to 145 Washington Street and then, that in the six month period that she lived on Williams Street, Johnson moved from 145 Washington Street to 55 Benkard Street. El-Hanefi Dep., at 82, 91, 93, 124, and 462. Both plaintiff and the George defendants highlight the fact that Department of Health records display that Johnson actually moved from 43 Johnson Street to 55 Benkard Street in the beginning

(continued...)

Adl and Andre allegedly moved to 55 Benkard Street with Johnson and regularly spent weekends at 43 Johnson Street.

In September of 1993, El-Hanefi testified that Johnson moved to 145 Washington Street and Adl and Andre split their time residing between 145 Washington Street with their father and at 43 Johnson Street. At some point in 1993, El-Hanefi moved to an apartment at Williams Street for six months. During this six month period, Adl and Andre allegedly lived at both 145 Washington Street and at Williams Street. In January 1994, an inspection by the Department of Health revealed that lead paint violations existed at 145 Washington Street. Johnson's tenancy ended in August 1995.

The infant plaintiffs allege, through El-Hanefi, that as a result of exposure to lead paint at the various premises, they have suffered injuries including damage to their neurological system, attention deficit hyperactivity disorder, and other lead poisoning-based injuries.

DISCUSSION

"It is well settled that in order for a landlord to be held liable for injuries resulting from a defective condition upon the premises, the plaintiff must establish that the landlord had actual or constructive notice of the condition for such a period of time that, in the exercise of reasonable care, it should have been corrected." *Juarez v. Wavecrest Mgmt. Team*, 88 N.Y.2d 628, 646 (1996). Absent evidence that a landlord had actual or constructive notice of a hazardous lead paint condition, a landlord cannot be held liable to a tenant for injuries a tenant's children sustained as a result of exposure to lead paint. *Carrero v. 266 Himrod Assoc.*, 3 A.D.3d 516 (2d Dept. 2004).

In New York City, a duty has been imposed on landlords to abate lead paint hazards and

³(...continued)

of 1992 and then to 145 Washington Street four months prior to the Department of Health inspection of 145 Washington Street in December of 1993. Sheehan Aff., exs. Q, R and S.

grants landlords a right of entry to make the necessary repairs. *See* Administrative Code of the City of New York § 27-2056.1. New York State has not enacted similar legislation that imposes a duty on landlords to test for or abate lead-based paint hazards, unless the landlord receives official notification of a problem. *Chapman v. Silber*, 97 N.Y.2d 9, 20 (2001), *citing* Public Health Law § 1373.

In *Chapman v. Silber*, *supra*, the Court of Appeals set forth the standard for assessing what evidence a plaintiff-tenant in a lead paint case must establish to survive a landlord's motion for summary judgment. The Court held:

We conclude that, absent controlling legislation, a triable issue of fact is raised when a plaintiff shows that the landlord (1) retained a right of entry to the premises and assumed a duty to make repairs, (2) knew that the apartment was constructed at a time before lead-based interior paint was banned, (3) was aware that paint was peeling on the premises, (4) knew of the hazards of lead-based paint to young children and (5) knew that a young child lived in the apartment.

Id at 15.⁴

Here, plaintiffs have failed to raise a triable issue of fact as to whether each of the moving defendants had actual or constructive notice of the lead paint condition prior to receiving official notice of the violations, and therefore summary judgment must be granted in the moving defendants' favor.

The George Defendants -- 145 Washington Street

Charles Johnson moved into 145 Washington Street in September of 1993. K. George Aff., ¶ 6. Adl and Andre split their time residing between 43 Johnson Street with El-Hanefi and at 145

⁴ In 1978, the Consumer Product Safety Commission banned the manufacture of paint containing more than .06% lead by weight on interior and exterior residential surfaces. Valassis Affirm., cx. Q.

Washington Street until some point in 1993 when El-Hanefi moved into an apartment on Williams Street for six months. El-Hanefi Dep., at 82, 84-85, 88, 92, 109, 112-113, 214, 537. During the six months that El-Hanefi resided at Williams Street, the children split their time between residing at 145 Washington Street with Johnson and at Williams Street with their mother. On October 23, 1993, Adl and Andre were tested for lead poisoning and were found to again be suffering from elevated levels of lead in their blood. K. George Aff., exhs. Z and AA. Adl and Andre continued to display signs of lead paint in their blood as late as June of 1994. *Id.* In December of 1993, the Department of Health inspected the apartment and issued lead paint violations to K. George via a January 10, 1994 letter. K. George Aff., ex. R. On April 25, 1994, K. George was notified that he was in substantial compliance and was cleared of the violations. *Id.* Johnson's tenancy was month-to-month, which ended in August 1995 when Johnson was evicted for non-payment of rent. K. George Aff., ¶ 6.

Defendant K. George and his wife, defendant Sosamma George, purchased 145 Washington Street in 1986. K. George Aff., ¶ 3. K. George avers that while his wife was a deeded owner of the Washington Street building, Sosamma George had nothing to do with its operation. *Id.*, ¶ 5. Prior to purchasing the building, there were no disclosures made by the seller as to whether or not there was lead paint in the building. *Id.*, ¶ 3. In February 1995, 145 Washington Street was sold to George Management Corp., a business which was incorporated for the purposes of managing the seven buildings owned by K. George and Sosamma George. *Id.*, ¶ 4. K. George and Sosamma George served as the sole shareholders of George Management Corp., which was eventually dissolved in 2005. *Id.*

The George defendants admit that plaintiffs satisfied the first *Chapman* prong as K. George

assumed responsibility for all required repairs both inside the apartment as well as to the common areas of the building. Sheenan Aff., ¶ 60. Plaintiffs also satisfy the second *Chapman* prong which requires that the defendant be aware that the subject premises was constructed at a time before lead based interior paint was banned. K. George testified that the apartment was purchased in 1986 and at that time he was aware that the building was more than 30 years old. K. George Aff., ¶ 3.

Next, under the *Chapman* analysis, a plaintiff-tenant must show that the landlord was aware that paint was peeling or chipping in the premises. K. George argues that he did not observe any chipping or peeling paint in the apartment or on the exterior windows. However, an inspection was conducted on September 10, 1993 by the Newburgh Code Compliance Division as a result of K. George's efforts to obtain a certificate of occupancy for the first floor apartment. The inspection revealed six violations existed in the apartment. Violation 93-4662 instructed K. George to replace the entire exterior window sill and frame base where it was rotted away and to scrape and paint the window frame upon completion. K. George Aff., ex. T. Violation 93-4666 notified K. George of holes and cracks in the bathroom walls of the apartment. *Id.* As the violations from the Newburgh Code Compliance Division require paint to be scraped, a question of fact exists as to whether these repairs put K. George on notice that chipping and/or peeling paint existed at the premises.

Plaintiff must also furnish evidence that the landlord knew of the hazards of lead paint to young children. Here, defendant K. George had previously received a notice of violation with regard to high levels of lead paint at another property which he owned. K. George Aff., ¶ 21. More importantly, K. George testified that at the time he received the notice of the violation, he was aware that lead paint adversely affected one's health. K. George Dep., at 147-149. Therefore, plaintiffs have established that K. George had a general awareness that lead paint was a potential health

hazard.

Nevertheless, to establish that a landlord had constructive notice of a lead paint condition, plaintiffs must also show that a landlord was aware that a young child resided in the apartment which contained the lead paint. Plaintiffs have failed to proffer any evidence establishing that the George defendants had knowledge that any child resided in the apartment. K. George testified that he was never made aware that Adl or Andre Johnson were residing with their father in the apartment. K. George Aff., ¶ 7. K. George also testified that he never went into Johnson's apartment when he collected the rent. *Id.*, ¶ 8. As plaintiffs fail to present any evidence which proves that K. George was aware that a child was residing at 145 Washington Street, the fifth *Chapman* factor has not been satisfied. The mere fact that K. George observed children playing in front of the building does not suffice as notice that a child lived in the subject apartment unit. This is particularly true given K. George's testimony that there were children residing in other units of the building and in neighboring buildings.

There is also no evidence presented by plaintiffs that Adl and Andre ingested paint chips after the order of abatement was issued. After an order of abatement has been issued to a property owner, the property owner will not be liable for lead paint related injuries in the absence of proof that a child continued to ingest lead paint and sustained additional injuries. *See Jones v. Cox*, 254 A.D.2d 333 (2d Dept. 1998); *Andrade v. Wong*, 251 A.D.2d 609 (2d Dept. 1998); *Brown v. Marathon Realty, Inc.*, 170 A.D.2d 426 (2d Dept. 1991). Here, although El-Hanefi testified that while residing at 145 Washington Street she observed Adl and Andre have paint chips in their mouths, there is no evidence that the children ingested lead paint after the abatement. El-Hanefi Dep., 129-130, 135.

Summary judgment should also be granted to George Management Corp. as the lead paint

condition was abated prior to the date which George Management Corp. acquired 145 Washington Street. The Department of Health notified K. George on April 25, 1994 that all lead paint conditions had been abated or were in the process of being abated and 145 Washington Street was acquired by George Management Corp. on February 27, 1995. Sheehan Aff., exhs. R, W.

For these reasons, summary judgment is granted in favor of K. George, Sosamma George and George Management Corp.

Carmine Cannatello -- 43 Johnson Street

El-Hanefi avers that between April and June 28, 1991, she moved to 43 Johnson Street with Johnson as well as Andre, Adl, and her two daughters. El-Hanefi Dep. at 76-77, 81, 90, 104, 126-126, 511, 512. This apartment was owned by Cannatello through CAC Business Ventures, a company incorporated for the purposes of owning real estate, whose sole shareholder was defendant Cannatello. Cannatello Dep., at 15-16. In October of 1992, Johnson allegedly moved out of 43 Johnson Street and into 55 Benkard Street. Plawner Affirm., ex. F. During this time, the children continued to spend weekends at 43 Johnson Street. *Id.* In September of 1993, El-Hanefi testified that Johnson moved into 145 Washington Street at which time Adl and Andre split their time residing between 145 Washington Street and 43 Johnson Street until sometime in 1993 when El-Hanefi moved out of 43 Johnson Street. El-Hanefi Dep., 82, 94-85, 88, 92, 109, 112-113, 214, 537. While residing at 43 Johnson Street, Adl and Andre were found to again have elevated levels of lead in their blood. *Id.*, exhs. D, G. On July 21, 1992, the Department of Health inspected the apartment at 43 Johnson Street and issued lead paint violations to Cannatello. Valassis Affirm., ex. M. Cannatello sold the building in late 1992 or early 1993. He testified that lead paint had not been removed from the living room windows, and that he had been advised by his attorney to let the new

owner take care it. Cannatello Dep., at 71-72.

The first *Chapman* factor has been met as Cannatello acknowledged that he retained a right of entry to the premises and assumed a duty to make repairs. Cannatello Dep., at 31-33.

The fourth prong of *Chapman* requires that the defendant knew the hazards of lead paint to young children, while the fifth prong requires that the defendant be aware that young children reside at the premises. A factual dispute exists as to whether or not Cannatello was aware that El-Hanefi and her children resided in the apartment and whether he was aware of the hazards of lead paint to children. Cannatello argues that he was not aware that plaintiffs resided in the apartment. Cannatello Aff., ¶ 4. Although plaintiffs present a June 28, 1991 blood level report which lists 43 Johnson Street as Adl's residence, there is no proof this report was sent to Cannatello and Cannatello further argues that plaintiffs have failed to submit a lease, rental records or documents which prove that the infants resided at the subject apartment. Cannatello testified that the subject apartment was occupied by Patricia Moore and her teenage children and that he was unaware that El-Hanefi or her children lived at the premises. *Id.*, ¶ 7. Cannatello further testified that he had no knowledge of the hazards of lead paint until he received notice from the Department of Health in July 1992 regarding the subject premises. Cannatello Dep., at 13. However, prior to moving into 43 Johnson Street, El-Hanefi alleges she had a discussion with Cannatello regarding her children's illness and inquired whether lead paint was utilized in the subject apartment. El-Hanefi Dep., at 514, 518, 526, 667-668. Therefore, it remains disputed whether Cannatello had knowledge that El-Hanefi and the infant plaintiffs resided at the apartment and whether Cannatello had knowledge of the hazards of lead paint.

The second *Chapman* prong requires that the defendant be aware that the subject premises

was constructed at a time before lead-based interior paint was banned. Cannatello testified that he did not know when the building was built and never took any steps to determine the building's age. He also testified that no one had ever told him the age of the building and did not inquire about such information from the prior owner. Cannatello Dep., at 38-39. Thus, Cannatello has satisfied his prima facie burden on this factor and the burden shifts to plaintiffs to show an issue of fact exists. Plaintiffs, however, fail to meet their burden. They do not present any evidence which disputes Cannatello's testimony and proves that he had knowledge of the age of the building. Indeed, plaintiff hasn't even submitted any evidence as to the building's actual age, such as buildings department or tax records. Nor do plaintiffs argue that Cannatello's testimony on this point is not worthy of belief. Instead, plaintiffs maintain that this prong is satisfied by El-Hanefi's testimony that she prior to moving into the building, El-Hanefi asked Cannatello whether lead paint was utilized in the subject apartment, and that he told her know. This testimony, however, does not establish that Cannatello knew that the building was constructed before lead paint was banned. Indeed, based on his response, the testimony suggests that Cannatello may have believed that the building was constructed after the ban. Because plaintiffs have failed to raise an issue of fact as to this factor, summary judgment in Cannatello's favor is warranted.⁵

Plaintiffs also argue that a question of fact exists as to whether Cannatello acted diligently and reasonably to remove the lead paint after being placed on actual notice. Plaintiffs argue that a delay in the repair work may have further injured Adl and Andre. However, as noted above, courts have held that after an order of abatement has been issued, property owner defendants are not liable

⁵ In light of this conclusion, the Court need not address the third prong of *Chapman* requiring that the defendant have knowledge that paint was peeling in the subject premises.

in the absence of proof that a child continued to ingest lead paint and sustained additional injuries. See *Jones v. Cox*, 254 A.D.2d at 333; *Andrade v. Wong*, 251 A.D.2d at 609; *Brown v. Marathon Realty, Inc.*, 170 A.D.2d at 426. Here, while it appears that lead paint was not removed from the living room windows by the time Cannatello sold the building in late 1992 and early 1993, plaintiffs have not provided evidence that Adl or Andre ingested lead paint after the abatement order was issued in July 1992.

Since plaintiffs fail to provide sufficient evidence, under *Chapman*, to establish that defendant Cannatello had constructive notice of the existence of lead paint in the building, Cannatello's motion for summary judgment must be granted.

142 South Street Defendants --142 South Street

Plaintiffs allege that commencing on June 19, 1989 and continuing through April or June of 1991, Adl and Andre intermittently resided in a second floor apartment at 142 South Street with Johnson as well as at 197 First Street with defendant Williams. *El-Hanafi Dep.*, at 71, 472, 473. On October 2, 1990, prior to Andre's birth, an inspection of the apartment was conducted by the Department of Health which revealed that lead paint was found in the premises, and as a result lead paint violations were issued to Thomas J. Amodeo ("Amodeo"), the then president of 142 South St. Corp. *Szarka Affirm*, ex. G. Adl was tested for lead poisoning on June 28, 1990 and was diagnosed with elevated levels of lead. *Plawner Affirm.*, ex. E. Adl again tested positive for elevated levels of lead in January and April of 1991. *Id.* The 142 South Street defendants contend that, upon receipt of the notice, they immediately took steps to correct the condition. On December 7, 1990, the Department of Health conducted an additional inspection and informed 142 South Street Corp. that the abatement was completed and that it was closing its file with regard to the matter. *Id.*, ex. J.

The first and second prongs of the *Chapman* notice test have been satisfied as defendants do not dispute that they retained a right of entry to the premises and assumed a duty to make repairs (Amodco Dep., at 20, 24), and Amodeo testified that although he was not aware of the exact age of the building, he estimates that the building was over 50 years old. Amodco Dep., at 35-36.

The fourth prong of *Chapman* requires that the plaintiff be aware that lead paint was hazardous to the health of young children. Amodeo testified that he understood that lead-based paint was generally hazardous (Amodco Dep., at 59-60), and could impact one's health. *Id.* at 16-17, 60. In *Chapman*, the evidence on this issue which was deemed sufficient to deny summary judgment by the Court of Appeals was that two of the three owners of the apartment were "aware that lead paint was dangerous" and "aware that lead was dangerous." 97 NY2d at 17.

Nevertheless, the third prong of *Chapman*, which requires that the 142 South Street defendants have previous knowledge that paint was peeling or chipping on the premises, has not been satisfied. Amodco testified that he did not receive any complaints from any of the tenants regarding chipping or peeling paint before receiving the notice of violation from the Department of Health. *Id.* at 41. In addition, Indeed, El-Hanefi testified that she did not remember complaining to anyone regarding the condition of the paint. El-Hanefi Dep., at 485-86. Nevertheless, plaintiffs argue that the following deposition testimony of Amodco reveals that he was aware that paint was peeling:

Q. Did you visit any of your buildings during 1989 through 1991?

A. Not unless there was a problem, no.

Q. Did you recall visiting 142 South St. during that time period?

- A. Just went down there to check the paint and stuff like that, that's about all. I didn't have time to visit.
- Q. Do you remember what the condition was of the paint when you went to go check the paint during that time period at 142 South Street?
- A. Well, it was a little peeling paint, and like I said, we painted it, took care of it right away.

Id. at 40-41. However, in the context of the questioning, Amodeo's statements plainly refer to the peeling paint which was discovered *after* the inspection by the Department of Health on October 2, 1990. Amodeo had earlier testified that as a result of the peeling paint violation, he had the hallways and apartment immediately scraped and painted. *Id.* at 16-17. Thus, in the above exchange, Amodeo refers back to his earlier testimony and says: "Well, it was a little peeling paint, and *like I said*, we painted it, took care of it right away." Thus, there is no question that Amodeo's statement about observing peeling paint referred to the period after the inspection and his receipt of the violation notice. Therefore, as plaintiffs fail to prove that Amodeo had any notice of peeling or chipping paint prior to the Department of Health's inspection, the third prong of *Chapman* has not been satisfied.

Plaintiffs also aver that a question of fact exists as to whether the 142 South Street defendants were on notice that a young child resided in the subject apartment. Amodeo stated that he did not recall seeing children in the apartment, only acknowledging seeing children outside on the street. *Id.* at 54. Amodeo also testified that no one had alerted him that children were residing in the subject apartment. *Id.* As plaintiffs fail to offer any evidence which proves that Amodeo had notice of children occupying the apartment, the fifth prong of *Chapman* is also not satisfied.

Summary judgment dismissing Andre's claims against the 142 South Street defendants is also warranted on the ground that there is no evidence that Andre's injuries were in any way caused

by exposure to lead paint at the apartment.⁶ Andre was born on November 24, 1990 and did not come home from the hospital until November 27, 1990. However, it is undisputed that the lead paint hazard was abated by December 7, 1990, ten days later. Plaintiffs fail to present any evidence whatsoever that Andre ingested any lead as a newborn infant during this ten day period prior to the abatement. Nor have plaintiffs presented any proof that Andre was exposed to or was even near any surfaces which may have had lead paint. Furthermore, Andre did not even test positive for lead in his blood until April 1992, sixteen months after the lead paint condition at 142 South Street was abated. In the interim, however, Andre had moved into 43 Johnson Street, another location with a lead paint problem. Under these circumstances, plaintiff's proof fails on the essential element of causation.

Since plaintiffs fail to satisfy all of the necessary prongs as discussed in *Chapman* to establish constructive notice as to the 142 South Street defendants and fail to provide any evidence of exposure to lead paint chips by Andre at this apartment, summary judgment in these defendants' favor is warranted.

Janice Williams -- 197 First Street

Williams is the mother of plaintiff El-Hanefi and the maternal grandmother of Adl and Andre. It is undisputed that Williams purchased a residence located at 197 First Street in the 1960s and moved out of the premises in the mid-1990s. *Williams Dep.*, at 7, 66. Approximately two weeks after the birth of Adl, El-Hanefi was incarcerated for six months. During this time period,

⁶ Likewise, there is no proof that Adl ingested any paint chips at 142 South Street after the October 1990 notice of violation. Indeed, Adl had moved out of that apartment months before. El-Hanefi testified that from approximately January 1990 through 1991, Adl resided exclusively at 197 First Street. *El-Hanefi Dep.*, at 72, 306.

Williams had legal custody of Adl. El-Hanefi Dep., at 296, 304. After her release from jail in or about December 1989, El-Hanefi moved back into 197 First Street with Adl (*id.* at 305), and continued to reside in the residence until the Spring of 1991. From approximately January 1990 through 1991, Adl resided exclusively at 197 First Street. El-Hanefi Dep., at 72, 306.

Adl was tested for lead poisoning on June 28, 1990 and was diagnosed with elevated levels of lead. Plawner Affirm., ex. D. Adl again tested positive for elevated levels of lead in January and April of 1991. *Id.* On October 17, 1990, Williams received a notice of violation from the Department of Health for lead paint in the subject premises. Granville Affirm., ex. G. On November 29, 1990, the Department of Health determined that the condition was abated and on December 10, 1990, the Department of Health informed Williams that it was closing its file regarding the subject premises. *Id.*

Williams argues that plaintiffs have failed to present any evidence that she had actual or constructive notice of the lead paint in her home prior to receiving the notice of violation from the Department of Health. Williams contends that she did not know that there was lead paint in the house nor did she know the hazards of lead-based paint to young children prior to receiving notice from the Department of Health on October 17, 1990. Williams also avers that immediately following the notification from the Department of Health, she had the lead paint condition abated.

The first, second and fifth prongs of *Chapman* have been satisfied as it is undisputed that Williams had a right of entry to the premises and assumed a duty to make repairs, that Williams knew that the house was built in the 1890s as she received documentation from the township which stated the age of the building; and that both Adl and Andre resided with Williams. Plaintiffs have also satisfied the third *Chapman* prong which requires that Williams be aware that paint was peeling

in the premises. El-Hancfi testified that she observed chipping paint on the porch and on the windows and, more importantly, Williams herself testified that she noticed chipping or peeling paint. Williams Dep., at 49.

However, plaintiffs have failed to provide proof supporting the fourth prong of *Chapman*, which requires that the defendant knew of the hazards of lead paint to young children. Williams testified that the first time she heard of the hazards attributed to lead paint was after the inspection of the subject apartment by the Department of Health on October 17, 1990. *Id.* at 34. Plaintiffs argue that Williams gained knowledge of the hazards of lead paint before that date through local news coverage. Although Williams testified that she had read local newspapers while residing in Newburgh, plaintiffs fail to present any evidence that she read any specific articles pertaining to lead paint. Williams Dep., at 75. While plaintiffs cite to an article published in *The Times Herald-Record* on February 9, 2004, this article was published years after the children moved out of the apartment and has no evidentiary value. Nor does the fact that Williams may have attended a class about buildings suffice to establish her knowledge of the dangers of lead paint.⁷ Thus, plaintiffs have failed to raise a question of fact as to whether Williams knew the dangers of lead paint to young children thus requiring this Court to grant Williams's motion for summary judgment. *See Netral v. Lippold*, 304 A.D.2d 491 (1st Dept. 2003). Accordingly, it is

ORDERED that defendants Kanjiramala George, Sosamma George, and George Management Corp.'s motion for summary judgment (motion sequence number 4) is granted and the complaint and all cross-claims against these defendants are hereby severed and dismissed; and it is further

⁷ Plaintiffs make no other arguments concerning Williams's alleged knowledge of the harm posed by lead paint to children.

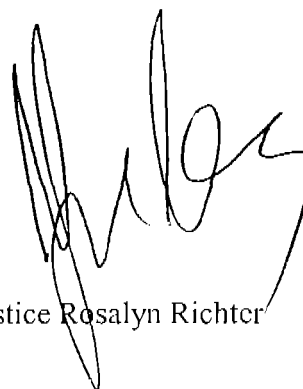
ORDERED that defendant Carmine Cannatello's motion for summary judgment (motion sequence number 5) is granted and the complaint and all cross-claims against this defendant are hereby severed and dismissed; and it is further

ORDERED that defendants 142 South Street Corp. and Glory Bee Realty Management Corp.'s motion for summary judgment (motion sequence number 6) is granted and the complaint and all cross-claims as against these defendants are hereby severed and dismissed; and it is further

ORDERED that defendant Janice Williams's motion for summary judgment (motion sequence number 7) is granted and the complaint and all cross-claims as against this defendant are hereby severed and dismissed.

This constitutes the decision and order of the Court.

Dated: April 6, 2007



Justice Rosalyn Richter

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APR 10 2007
NEW YORK
COUNTY CLERK'S OFFICE