

Mintu v AP-Amsterdam 2 181 St LLC
2017 NY Slip Op 32415(U)
October 11, 2017
Supreme Court, Bronx County
Docket Number: 305591-11 [005]
Judge: Fernando Tapia
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C.

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: Part 13

MD MILON HOSSAIN MINTU, JAHANARA MINTU
And M ■ I ■ ■ ■ ■ K ■ ■ ■ ■, an infant under the age of
fourteen (14) years, by his father and natural guardian,
MD MILON HOSSAIN MINTU individually

Plaintiffs,

v.

Index No. 305591-11 [005]

AP-AMSTERDAM 2 181 ST LLC, R&D 2 181 ST LLC,
2 EAST 181 ST ASSOCIATES, LLC and TOWNHOUSE
MANAGEMENT CO.,

Defendants.

DECISION

This case is a lead poisoning personal injury action in which Plaintiffs sustained injuries as a result of allegedly being exposed to lead hazards while living at 2 East 181st Street, #2G, Bronx, NY.

Defendant/2 East 181 Street Associates, LLC, through counsel, moves under CPLR 3212 for summary judgment based on liability.

After careful review of the motion papers, this Court **DENIES** Defendant's summary judgment motion because material issues of fact exist regarding the degree of 2 East 181 Street Associates, LLC's ["2 East's"] liability.

Under CPLR 3212(b), the motion shall be denied if any party shall show facts sufficient to require a trial on any issue of fact. See *Vega v. Restani Constr. Corp.*, 18 NY 3d 499, 502 (App Ct 2012) (where the Appeals Court stressed that summary judgment is a drastic remedy which can only be granted upon the movant showing sufficient evidence to show the absence of

any material issues of fact; if the non-movant fails to show that there are material issues of fact, the case proceeds to trial). Moreover, the purpose of the motion court is issue-finding, and not issue-determination. *Sanchez v. Finke*, 288 AD2d 122, 123 (App Div, 1st Dept 2001); *Pirrelli v. Long Island Rail Road*, 226 AD2d 166 (App Div 1st Dept 1996). Thus, a party can prove prima facie entitlement to summary judgment through an attorney affirmation based upon documentary evidence. *Prudential Securities Inc. v. Rovello*, 262 AD2d 172 (App Div, 1st Dept 1999). Lastly, the non-movant of a summary judgment motion is entitled to all favorable inferences. *ConEd of NY, Inc. v. Jet Asphalt Corp.*, 132 AD2d 296, 300 (App Div, 1st Dept 1987).

A landlord who has notice of a child under seven years old living in the apartment building is a landlord who has notice of any hazardous lead condition in that apartment causing injury to that child. *Woolfalk v. NYCHA*, 263 AD2d 355 (App Div, 1st Dept 1999).

Here, material issues of fact exist regarding the extent of 2 East's liability. From 5 July 1996-20 September 2005, 2 East owned 2 East 181st Street from. On 20 September 2005, the subject building was sold to Defendants/AP-Amsterdam 2 181 St LLC and R & D 2 181 St LLC. See Rimland Opp. at ¶ 8. Plaintiffs moved to 2 East in Unit 2G in 2003 and lived there for nine years. Id. at ¶ 6. Plaintiff/MIK was almost three years old when he lived in Unit 2G. See Jahanara Tr. at p. 68, lines 5-8.

There were problems with Unit 2G from the time they moved in, necessitating repairs to the ceilings in the living room, bathroom and kitchen [in which the kitchen ceiling collapsed, as well as the living room ceiling, which injured Mrs. Jahanara Mintu's brother]. See MD Milon Tr. at p. 144, lines 8-16; & p. 150, lines 22-25; see also Jahanara Tr. at p. 15, lines 22-25; p. 16, lines 2-7; p. 20, lines 20-22; & p. 141, lines 3-11.¹

¹ Plaintiffs moved out of Unit 2G because Mr. MD Milon Hossein Mintu bought a house. See MD Milon at p. 17, 7-12.

It wasn't until November 2008 that MIK's mother, Plaintiff/Mrs. Jahanara Mintu, had a blood test that showed elevated levels of lead in her bloodstream. Id. Shortly thereafter, MIK and Mr. Mintu had their blood checked for lead levels again. The NYC Department of Health [DOHMH] came to 2 E. 181 Street to check for lead at the end of 2008. See Jahanara Tr. at p. 18, lines 21-25. Plaintiff/MIK attested that he remembered the ceiling in Unit 2G collapsing and debris flying everywhere. See MIK Tr. at p. 70, lines 16-24.

Movant/2 East 181 St Associates, LLC, through counsel, argues that none of the plaintiffs were exposed to lead during 2 East's ownership. See Dougherty Aff. at ¶ 30. Movant's counsel also argues that Plaintiff/MIK only recorded a blood lead level of 3ug/dL on 18 March 2005, after living in 2G for almost one and a half years. Id. at ¶ 27. In retort, Plaintiff's attorney contends that 2 East superficially covered up structural apartment unit problems that ultimately caused Unit 2G to become covered in lead paint dust. See Rimland Opp. at ¶ 5.

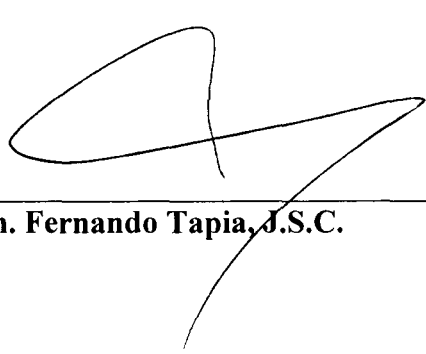
More importantly, Plaintiffs, through counsel, argue that 2 East failed to abate the lead paint, pursuant to NYC Administrative Code § 27-2056.11(a)(2)(i) ["Work practices for lead poisoning prevention and control"]. Id. at ¶ 11. In turn, Mr. David Cohen, Vice President of Operations at Townhouse Management Co., attested that he does not recall if there was a standard policy to test for lead before a tenant moved into a unit. See Cohen Tr. at p. 28. He also attested that if there was a lead issue, then there would be "lead dust swipe sampling" done and then a report would be issued. Id. In addition, Mr. Cohen attested that there was a work order to perform dust swipes analysis after abatement work [which was done by a contractor]. Id. at p. 49, lines 17-25. It should be noted that DOHMH sent a letter dated 12 December 2008 to Townhouse Management to abate the nuisance. Id. at p. 36, lines 15-25.

Landlords who have notice of children under seven in an apartment building that was constructed before 1950 have the duty to properly inspect the apartment and take reasonable measures to alleviate the lead contamination. *Velez v. Stopanjac*, 273 AD2d 22 (App Div, 1st Dept 2000). Again, Defendants were aware that MIK is a minor child, especially since there were work orders issued to fix the bathroom ceiling in Unit 2G, for example. *Id.* at p. 58, lines 15-19 & p. 59, lines 2-11.²

Thus, despite a change of ownership of the subject premises,³ coupled with the time frame of which Plaintiffs had lead in their bloodstream, 2 East is not entitled to summary judgment because there are genuine issues of fact regarding liability, based on the EBTs and documentary evidence. Furthermore, how and when the exact exposure to lead occurred is in question, as counsel for AP-Amsterdam 2 181 St LLC, R&D 2 181 St LLC, and Townhouse Management Co. assert. See Gelsomino Opp. at ¶ 11.

In sum, 2 East's liability summary judgment motion is **DENIED**. Movant's attorney is **ORDERED** to file Notice of Entry within fourteen [14] business days from the date this Decision is entered.

Dated: October 11, 2017
Bronx, NY



Hon. Fernando Tapia, J.S.C.

² Additionally, Work Order and Purchase Order 7742 show eleven [11] DOHMH lead paint violations, as well as MIK being tested as having high level of lead in his bloodstream, which the DOHMH noted, "Please address ASAP." See Cohen Tr. at p. 52, lines 22-24 & p. 53, lines 2-18.

³ See Dougherty Reply at ¶ 16.