

A.L. v New York City Hous. Auth.

2019 NY Slip Op 30538(U)

February 15, 2017

Supreme Court, Bronx County

Docket Number: 305654/2011

Judge: Larry S. Schachner

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This opinion is uncorrected and not selected for official publication.

PART IA-17

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

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

-----X
A.L. Infant by his Mother and Natural Guardian
HELENA CHARLES,

Index No. **305654/2011**

-against-

Hon. **LARRY S. SCHACHNER,**

-----X
NEW YORK CITY HOUSING AUTHORITY,

Justice.

The following papers numbered 1 to 3 Read on this motion, **SUMMARY JUDGMENT DEFENDANT**
 Noticed on November 14, 2016 and duly submitted as No. on the Motion Calendar of **February 2, 2017**

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits	2	
Replying Affidavit and Exhibits	3	
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this motion is decided in accordance with
 the attached memorandum decision

Respectfully Referred to: _____

Dated: _____

Dated: 2 / 15 / 17

Hon. _____

LARRY S. SCHACHNER, J.S.C.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - PART IA 17**

A. L. an Infant by his Mother and Natural Guardian,
HELENA CHARLES,

Index No. 305654/2011

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

Present:
Hon. Larry S. Schachner
Justice, Supreme Court

Motion by defendant NYCHA for summary judgment dismissing the complaint is decided as follows:

In this action it is alleged that the infant plaintiff ingested lead paint while residing in defendant's building as the result of defendant's negligence in maintaining the premises. In moving for summary judgment defendant alleges that no lead based paint was found in the subject apartment. Based upon the papers submitted including the pleadings and sworn testimony the court is constrained to grant the motion to dismiss.

The record before the court indicates that a violation was never issued by the Department of Health or any other City agency, for peeling lead paint in the subject premises. Expert testing also did not find any actionable levels of lead in the apartment. Plaintiff mistakenly claims that the subject building was constructed prior to 1960, and thus is entitled to the presumption that any alleged peeling paint contains lead. However, the documentation provided by defendant in the form of the Certificate of Occupancy indicates that construction was completed in 1961. While there may have been peeling paint in the subject apartment during the relevant time period there is no credible proof that the paint contained lead and plaintiff cannot utilize the

presumption. Counsel's speculation and Ms. Charles' conflicting testimony fail to raise an issue of fact.

Accordingly, New York City Housing Authority's motion for summary judgment is granted.

This constitutes the decision and order of the court.

Dated: February 15, 2017



LARRY S. SCHACHNER, J.S.C.