

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**1363**

**CA 14-00842**

PRESENT: SMITH, J.P., PERADOTTO, CARNI, VALENTINO, AND DEJOSEPH, JJ.

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TAKISHA MOYE, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JOEL A. GIAMBRA AND MICHELLE M. GIAMBRA,  
DEFENDANTS-RESPONDENTS.

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ATHARI & ASSOCIATES, LLC, NEW HARTFORD (MO ATHARI OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

HISCOCK & BARCLAY, LLP, BUFFALO (RYAN C. MAHONEY OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Erie County (John A. Michalek, J.), entered February 10, 2014 in a personal injury action. The order, among other things, granted defendants' cross motion for summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries she allegedly sustained as a result of her exposure to lead paint as a child in an apartment in which she resided. The complaint alleges two causes of action against defendants, the landlords of the subject property, i.e., negligent ownership and maintenance of the premises, and negligent abatement of the lead paint hazards. Plaintiff moved for, inter alia, partial summary judgment on the "issues of liability (notice, negligence and substantial factor)," and defendants cross-moved for summary judgment dismissing the complaint. Supreme Court properly granted the cross motion. "In order for a landlord to be held liable for a lead paint condition, it must be established that the landlord had actual or constructive notice of the hazardous condition and a reasonable opportunity to remedy it, but failed to do so" (*Spain v Holl*, 115 AD3d 1368, 1369; see *Pagan v Rafter*, 107 AD3d 1505, 1506; see generally *Juarez v Wavecrest Mgt. Team*, 88 NY2d 628, 646). We agree with defendants that they met their burden on the cross motion with respect to the cause of action for negligent ownership and maintenance of the premises by establishing that they did not have actual or constructive notice of the hazardous lead paint condition, and plaintiff failed to raise a triable issue of fact (see *Spain*, 115 AD3d at 1369; see generally *Chapman v Silber*, 97 NY2d 9, 15). We further agree with defendants that they met their burden with respect to the negligent abatement cause of action by

establishing that they abated the lead paint hazard in a reasonable manner, and plaintiff failed to raise a triable issue of fact (*cf. Pagan*, 107 AD3d at 1506-1507).

In view of our determination, we do not address plaintiff's remaining contentions.

Entered: February 6, 2015

Frances E. Cafarell  
Clerk of the Court