

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS IA Part 2
Justice

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LIPI PAUL, LUCKY PAUL and		Number	<u>27826</u> 2003
SHAMPA PAUL, Infants by their		Motion	
Father and Natural Guardian, BAKUL		Date	<u>March 15,</u> 2006
PAUL, and BAKUL PAUL, Individually,		Motion	
Plaintiffs,		Cal. Number	<u>21</u>
-against-			

FRANK DIRICO and MARY DIRICO,
Defendants.

x

The following papers numbered 1 to 10 were read on this motion by the defendants, pursuant to CPLR 3212, for summary judgment dismissing the complaint interposed against them.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits	1-4
Answering Affidavits - Exhibits	5-7
Reply Affidavits	8-10

Upon the foregoing papers it is ordered that the motion is determined as follows:

The plaintiff infants, through their father, commenced this action seeking damages for lead paint poisoning. They claim their injuries were the result of a lead paint condition at an apartment they leased from the defendants, which is located in a multiple dwelling constructed prior to 1960.

The evidence demonstrates that the infants resided in Bangladesh, India from the time they were born until October 17, 1997, when they moved into the subject apartment. On December 4,

1997, elevated blood lead levels were detected in the infants. At that time, Lipi Paul was nine years old, Lucky Paul was six years old and Shampa Paul was five years old.¹

An order to abate, dated January 7, 1998, was served on the defendants. On January 22, 1998, the Department of Health determined that the lead-hazard violations were cured. Generally, subsequent testing of the infants' blood on February 10, 1998 and November 24, 1998, revealed a reduction in the blood lead levels.

Based upon examinations before trial and the affidavits of experts, the defendants move for summary judgment contending, inter alia, that: (1) Lipi Paul has no cause of action because she was nine years old when she arrived in the United States, and New York City Administrative Code § 27-2056.1 et seq. (Local Law 1) applies only to children under seven years of age; (2) the infants' elevated blood levels were not the result of lead exposure at the apartment and, instead, were the result of their exposure to lead sources in Bangladesh and elsewhere; and, (3) the infants have not suffered any damages and are all doing well in school.²

The infants oppose the motion contending, inter alia, that: (1) the evidence demonstrates that their health, behavior and academic performance declined upon coming to the United States; (2) the defendants failed to demonstrate that they were exposed to lead in Bangladesh or elsewhere; (3) their expert reports demonstrate that they are in the average, low average, below average or deficient range in various areas; and, (4) Lipi Paul may recover under a common-law theory of liability.

Absent controlling legislation, a triable issue of fact is raised when a plaintiff shows that a landlord (1) retained a right of entry to leased premises and assumed a duty to make repairs;

1

Lipi Paul was born August 8, 1988, Lucky Paul was born November 12, 1990 and Sampa Paul was born April 3, 1992.

2

Contrary to the infants' claim, the defendants' motion was timely filed but was rejected for clerical reasons. As a result, the merits of the motion may be addressed.

(2) knew that the premises leased were 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 (see Chapman v Silber, 97 NY2d 9 [2001]; Robinson v Scafidi, 23 AD3d 827 [2005], lv denied __ NY3d __, 2006 NY LEXIS 580 [Mar. 28, 2006])).

Local Law 1 creates a rebuttable presumption in the law that paint in pre-1960 buildings has a lead base, and it charges landlords of multiple dwellings with notice of any lead paint hazard within an apartment which the landlord knows is occupied by a child six years of age and under (see New York City Administrative Code § 27-2056.1 et seq.; see also Rent Stabilization Assn v Miller, 15 AD3d 194 [2005], lv denied 4 NY3d 709 [2005]; O'Neal v New York City Hous. Auth., 4 AD3d 348 [2004]; Galicia v Ramos, 303 AD2d 631 [2003])).

Thus, contrary to the defendants' claims, the infant Lipi Paul possesses a common-law cause of action while the remaining infants have causes of action under Local Law 1.

In addition, the evidence creates issues of fact as to whether, inter alia, the infants' blood lead levels were caused solely by conditions that existed in Bangladesh prior to the infants' arrival at the apartment, or were caused or exacerbated by the lead paint conditions at the apartment. Additional issues of fact exist as to the degree, if any, to which the increased blood lead levels injured the infants.

Accordingly, the defendants' motion for summary judgment is denied.

Dated: 5/11/06

J.S.C.