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| Jackson v Dunbar, LLC |
| 2012 NY Slip Op 30493(U) |
| February 28, 2012 |
| Supreme Court, New York County |
| Docket Number: 108586/2008 |
| Judge: Saliann Scarpulla |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: HON. SALIANN SCARPULLA PART 19
J.S.C.

**TAMIKA JACKSON, as Mother and Natural
Guardian of Ralph McNEILL, III, Infant, and
TAMIKA JACKSON, Individually,**

Plaintiffs,

- v -

INDEX NO. 108586/2008
MOTION DATE _____
MOTION Seq. No. 003

**THE DUNBAR, LLC, PINNACLE DUNBAR
MANOR, LLC, PINNACLE DUNBAR MANAGEMENT, LLC,
PINNACLE MANAGING CO., LLC and UNIQUE
PEOPLE SERVICES ,INC.**

Defendants.

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

Notice of Motion/Petition/Order to Show Cause — Affidavits — Exhibits
Answering Affidavits — Exhibits
Replying Affidavits

PAPERS NUMBERED

FILED

MAR 01 2012

Cross-Motion: Yes No

**NEW YORK
COUNTY CLERK'S OFFICE**

It is hereby ordered that this motion is resolved per the memorandum decision dated February 28, 2012, which disposes of motion sequence number 003.

This constitutes the decision and order of the court.

Dated: February 28, 2012

Saliann Scarpulla
Saliann Scarpulla J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG. SETTLE ORDER/JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

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TAMIKA JACKSON, as Mother and Natural
Guardian of RALPH McNEILL, III,
Infant, and TAMIKA JACKSON, Individually,

Plaintiffs,

- against-

Index No.: 108586/2008
Submission Date: 01/11/2012

THE DUNBAR, LLC, PINNACLE DUNBAR
MANOR, LLC, PINNACLE DUNBAR
MANAGEMENT, LLC, PINNACLE MANAGING
CO., LLC and UNIQUE PEOPLE SERVICES, INC.

Defendants.

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FILED

MAR 01 2012

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For Plaintiffs:
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For Defendant Unique People Services, Inc.:
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For Defendants Pinnacle Dunbar Manor, LLC and Pinnacle Management Co., LLC:
Lewis Brisbois Bisgaard & Smith LLP
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New York, NY 10038

Papers considered in review of this motion for summary judgment:

- Notice of Motion 1
- Mem of Law. 2
- Aff in Opposition. 3
- Reply Aff. 4

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, defendant Unique People Services, Inc. (“Unique”) moves for summary judgment dismissing the complaint pursuant to CPLR § 3212.

Unique is a nonprofit organization that provides transactional and permanent housing and support services to individuals in New York City. Unique placed plaintiffs in an apartment located at 2588 7th Avenue in Manhattan (the “apartment”), where Unique was the tenant of record on the lease. The lease lists defendant Pinnacle Dunbar Manor LLC (“Pinnacle”) as the owner. According to plaintiffs, infant plaintiff Ralph McNeill III (“McNeill”), who was under six years old while he resided in the apartment, suffered personal injuries after being exposed to lead and lead-based paint in the apartment.

Plaintiffs commenced this action in August 2009, asserting two causes of action against Unique. In the first cause of action, plaintiffs allege that Unique violated Administrative Code of the City of New York § 27-2013 (“Local Law 1”) by “fail[ing] to cause an investigation to be made for lead-based paint, peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces and impact surfaces.” In their second cause of action, plaintiffs allege that Unique is liable for common law negligence because it controlled and maintained the apartment and “allowed lead-based paint and lead-based paint hazards to exist and remain in the premises.”

Unique now moves for summary judgment, arguing that because it was not the apartment's owner, thus it did not owe plaintiffs a common law or statutory duty to inspect the apartment for lead-based paint. In opposition, plaintiffs maintain that further discovery is needed before the Court grants summary judgment on the Local Law 1 cause of action. Plaintiffs also argue that ownership is not a predicate to common law negligence liability, and that Unique has failed to make a *prima facie* showing that it did not have notice of the apartment's hazardous lead condition.

Discussion

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980).

Local Law 1 requires landlords to remove and cover lead-based paint in apartments where tenants under six years old reside. *See* Administrative Code of the City of New York § 27-2013. Local Law 1 does not establish a separate statutory cause of action for civil remedies, but simply defines a specific statutory duty to abate lead-based paint hazards. *See Juarez by Juarez v. Wavecrest Mgmt. Team*, 88 N.Y.2d 628, 644

(1996). Thus the Court dismisses the first cause of action, which is based solely on Unique's alleged violation of Local Law 1.

However, defendants have failed to make a *prima facie* showing of entitlement to summary judgment on the common law negligence cause of action. Landlords, as well as tenants who sublease their premises, have a common law duty to repair dangerous conditions on leased premises, of which they have notice, if they reserve the right to enter the premises to inspect or make repairs. *Chapman v. Silber*, 97 N.Y.2d 9, 19 (2001). *See also Melendez v. Am. Airlines, Inc.*, 290 A.D.2d 241, 242 (1st Dept. 2002). Local Law 1 extends this duty to the abatement of lead-based hazards, charging New York City landlords with notice of lead-based hazards where landlords know a child under six years of age lives on the premises, and where the premises at issue was erected before 1960. *See Juarez*, 88 N.Y.2d at 649.

Unique maintains that it did not owe plaintiffs a duty to inspect for or repair lead-based hazards in the apartment because Unique did not own the apartment. However, Unique admits that it subleased the apartment to plaintiffs, and the Admission Service Agreement between plaintiffs and Unique states that Unique's "[m]aintenance staff will need to have access to the rooms [of the apartment] once a month for safety inspections." Because it reserved the right to enter and inspect the apartment, Unique may have owed plaintiffs a duty to keep the apartment in a reasonably safe condition, free of lead paint chips. Moreover, retention of this right of access may have been a sufficient ground to

charge Unique with constructive notice of any dangerous condition in the apartment. *See Juarez*, 88 N.Y.2d at 647.

Further, though Unique does not own the apartment, Local Law 1 applies to all parties that control the premises at issue, *see* Administrative Code of the City of New York § 27-2004(a)(45), and Unique has presented no evidence that it did not control the apartment. Consequently, Unique has failed to make a *prima facie* showing that it is not subject to Local Law 1.

In accordance with the foregoing, it is hereby

ORDERED that defendant Unique People Services, Inc.'s motion for summary judgment dismissing the complaint against it is denied; and it is further

ORDERED that all parties are to appear for a discovery compliance conference on April 11, 2012 at 2:15 P.M. at 80 Centre Street, Room 279.

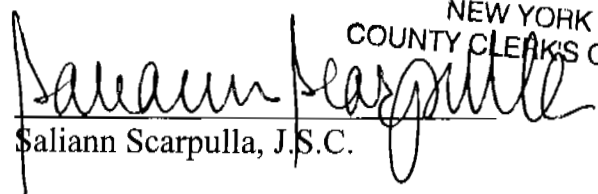
This constitutes the decision and order of the Court.

Dated: New York, New York
February 28 2012

FILED

MAR 01 2012

ENTER:



Saliann Scarpulla, J.S.C.

NEW YORK
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