Conference October 1, 2012 @10:30 AM

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF PUTNAM

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MARIA NANCY PELAEZ, as mother and natural guardian of SERVANDO REYES PELAEZ, an infant under the age of fourteen and CHRISTOPHER REYES PELAEZ, an infant under the age of fourteen,

Plaintiffs,

-against -

LAURA SEIDE, GARY SEIDE and PETER GLASS, THE COUNTY OF PUTNAM and THE COUNTY OF PUTNAM DEPARTMENT OF HEALTH,

Defendants.

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TRIAL DECISION

Index No. 1523-1998

Sequence No. 11

LUBELL, J.

Plaintiff Maria Nancy Pelaez, as mother and natural guardian of Servando Reyes Pelaez and Christopher Reyes Pelaez, infants under the age of fourteen ("the Children"), now of majority, brings this personal injury action against Laura Seide, Gary Seide, Peter Glass, Putnam County and its Department of Health, claiming that the children suffered neurological and behavioral injury due to defendants' negligence and dereliction of duties arising out of the Childrens exposure to lead paint during their November 1994 through November 1995 tenancy (the "Tenancy") at the two-family residence located at 19 Center Street, Carmel, New York (the "Premises"). The action has since been dismissed as against the Putnam defendants (see Pelaez v. Seide, 2 NY3d 186, 195 [2004]). In addition, by Decision & Order of this Court (Hickman, J.) dated April 30, 1999, a default judgment was granted as against Peter Glass and the case against him was severed. Thereafter, a third-party action was filed by the Seides against Peter Glass and Cynthia Towson Glass. This action, however, was discontinued without prejudice by stipulations of discontinuance respectively dated December 4, 2008 and August 4, 2009. In the end, the trial before this Court and the determinations herein made are limited to the liability of Gary Seide and Laura Seide.

Now, following the bench trial on, among other issues, "[q]uestions of fact . . . as to whether the [Seides] owned or controlled the subject property during the time when the infant plaintiffs sustained their injuries" (Pelaez v. Seide, 49 AD3d 618 [2d Dept 2008] citing Ellers v. Horwitz Family Ltd. Partnership, 36 A.D.3d 849, 831 N.Y.S.2d 417), and upon consideration of the credible testimony and relevant and material aspects of the documentary evidence submitted and the arguments advanced thereon including the extensive post-trial briefs, and after due and deliberate consideration thereon, the Court now makes the following Findings of Facts and reaches the following Conclusions of Law.

On September 29, 1986, defendants Gary Seide and Laura Seide purchased the Premises for $148,000.00 for rental income purposes. The Premises was built in 1901, some seventy-seven years prior to the 1978 ban on lead paint. At the time of their purchase, the Seides encumbered the Premises with an $111,000.00 first mortgage in favor of Putnam County Savings Bank. Balances due at various times relevant to this action include: $107,353.00 on March 9, 1990; $94,978.80 in March 1995; and $77,057.73 on June 8, 2000. In 1987, the Seides further encumbered the Premises, this time with a $35,000 mortgage in favor of Dollar Dry Dock Bank issued in connection with a home equity line of credit (the "HELOC"). In 1998, the Seides re-financed the HELOC with a loan from Chevy Chase Bank.

The Seides did not personally make any alterations, repairs or modifications to the Premises upon taking title in 1986 or thereafter. At least as of March 1990, however, chipping and peeling paint could be observed throughout the Premises.

In March 1990, the Seides and Peter Glass entered into a five-year installment contract of sale for the Premises for $195,000 (the "Installment Sales Contract") payable as follows: $10,000.00, as a down payment; a promissory note in the principal amount of $78,261.70 with 11% annual interest payable monthly from April 1, 1990, to March 1, 1995 (the "Promissory Note"); and, $106,738.30, to satisfy the Putnam County Savings Bank mortgage, payable monthly from April 1, 1990 to February 1, 1995, when the outstanding balance then became due in full. In addition, a lump sum payment of $5,000.00 was payable on August 1, 1990, and one in the sum of $15,000.00 on February 1, 1991. Glass was also obligated to pay all real estate, school, county and other taxes and assessments as well as the insurance premiums associated with the Premises, albeit through the Seides.

Among other obligations, the Seides were obligated to pay off the $8,500 balance on the HELOC and deliver a satisfaction of same to Mr. Glass by February 1, 1991. The Seides were also prohibited from further encumbering the Premises.

The Installment Sales Contract explicitly appointed "Buyer [Glass] as [Sellers'] agent to enter into all leasing agreements with any tenants, collect and keep the rentals, and disposes any non-paying tenants . . . ". Furthermore, "[during the five (5) year period [of the contract] the Buyer [Glass] may treat the house as his own, keep same in repair, do renovations. . . and in general act in such a fashion as an owner even though the deed had not been recorded."

The related and referenced $78,261.70 Promissory Note provided, among other things, that the deed from the Seides to Glass was to be held in escrow by Milton Shermet, Esq. for its ultimate delivery to Mr. Glass on March 1, 1995, upon his fulfillment of the contract terms or for return to the Seides in the event of a "default". The Promissory Note was incorporated into, and overrode, any conflicting Installment Sales Contract provision, including ¶23 thereof which provided that the contract could not be canceled except in writing.

"Default" is defined in the Promissory Note as: (a) non-payment of any monthly mortgage payment, any money owed under the Promissory Note (including a payment of principal, interest, or the balloon payments), insurance premiums, real-estate, school or other property related taxes, if not cured within ten to 30 days; (b) commission of an act of waste, defined as a failure to maintain or repair the premises; or © a bankruptcy petition filing by or against Glass.

The Promissory Note further provided that, upon the happening of a "default," the Note becomes "immediately due and payable without presentation, demand, protest or notice of any kind, all of which [were deemed] waived [by Glass]." Furthermore, upon "default" and Mr. Glass' failure to immediately pay the Note, the Seides were entitled to:

> (a) Demand and receive from the Escrow Agent, the deed . . . transferring the equitable and legal title to the premises back to the Payees [the Seides];
>
> (b) Declare any agreement. . . to convey the premises . . . null and void, and retain all previous payments made as liquidated damages . . . ; and
>
> © Receive . . . an assignment of rents and leases . . . retain the rental proceeds and take possession of the premises.

Aside from fulfilling his contractual obligation to pay the $10,000.00 deposit and the $5,000.00 payment due in August 1990, Glass made no other payments towards the purchase price. Correspondingly, he also advised Mr. Seide of his inability to do so.

The Seides' testimony to the contrary is expressly rejected by the Court. Among other things, the Court notes the absence of any documentary evidence reflecting that Glass subsequently made a single mortgage, promissory note, tax or insurance payment with his own monies or that he forwarded any of his own money to the Seides for such purposes.

In addition to the Installment Sales Contract/Promissory Note breaches, there is no dispute that, as of March 1995, Mr. Glass had failed to pay off the Putnam County Savings Bank mortgage (then in the principal amount of $94,978.80), the $78,000.00 Promissory Note or make the $15,000.00 payment due February 1, 1991. Additionally, the Seides had not yet paid off the HELOC, nor delivered a satisfaction of same to Mr. Glass, as agreed. In fact, and contrary to the contractual provision prohibiting the Seides from further encumbering Premises, the Seides continued to draw on the HELOC to the point where the outstanding balance increased from $8,500.00 on March 9, 1990, to over $30,000, by June 2000.

This Court has not been presented with any evidence that the Installment Sales Contract or Promissory Note were ever re-negotiated, amended, extended or otherwise modified in writing or even orally at any time prior to or even during the Tenancy. Furthermore, the parties, let alone the Court, would be hard pressed to articulate any of the terms of such a written or oral modification or extension of the Installment Sales Contract or Promissory Note since it is very clear that, well before the Tenancy, the parties simply muddled along with, at most, a generalized hope that perhaps a sale would take place sometime later upon yet to be determined terms. Such does not constitute an installment sales contract.

With the Seides experiencing their own financial difficulties and planning to relocate to Oregon in early 1991, Mr. Seide asked Mr. Glass to be the caretaker of the Premises with the promise that, if at a later date Mr. Glass was still interested in purchasing the Premises, they could perhaps come to terms. With no written contract in hand, nor the material terms of an oral agreement worked out, Mr. Glass was left to and did in fact oversee the operation of and did exercise control over the Premises for the Seides with a generalized expectation that his services would be accounted for if and when he and the Seides negotiated a new contract for the premises.

Such a loosely defined arrangement does not render valid an otherwise breached, terminated or abandoned Installment Sales Contract from which it derived.

By virtue of a November 21, 1990, Assignment of Rents prepared by Mr. Shermet at the direction of Mr. Seide,

> (a) Peter Glass delivered to the Seides "all right, title and interest . . . [to] all

> leases . . . relating to the premises . . . and all rents, income and profits . . . due or owing under the leases."
>
> (b) "Assignee [the Seides] [was] vested with full power to, with or without force and with or without process of law, take possession of all and any part of the premises together with all personal property, fixtures . . . and may exclude the Assignor [Glass] . . . wholly therefrom."
>
> (c) "Assignor [Glass] . . . grant[ed] full power and authority to Assignee [the Seides] to exercise all . . . powers herein granted . . . without notice to Assignor . . . to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the premises . . Including . . . the payment of taxes . . . insurance premiums . . . costs of maintaining, repairing, rebuilding and restoring . . . the premises . . ."

Mr. Shermet also prepared a new deed dated December 20, 1990. Therein, Gary Seide and Laura Seide transfer the Premises to Laura Seide as the exclusive grantee. The deed was recorded in the County Clerk's Office on February 4, 1991. No deed to the Premises was ever delivered to Mr. Glass, nor did he request or demand one based upon his well founded belief that he had not fulfilled the terms of the Installment Sales Contract/Promissory Note. Consistent with that, Mr. Glass never applied for a mortgage or otherwise encumbered the Premises. Furthermore, he did not list the Premises as an asset, or the Seides as his creditors, on the bankruptcy petition he filed in 2002.

Consistent with this position, Mr. Seide represented to Putnam County Savings Bank Senior Loan Officer, Brian Whitfield, that his attempt to sell the Premises had fallen through.

In any event and no matter what may have been going on between the Seides and Mr. Glass, the only deeds and other property records filed with the Putnam County Clerk's office, including an RP-5217 Form filed in connection with Mrs. Seides' conveyance of the Premises to Fellow Hat Corp. (see, infra), reflect that Mrs. Seide owned the Premises in fee simple from December 1990 to June 2000.

The determination herein reached that Laura Seide, and not Peter Glass, owned the Premises for all purposes and in all capacities during the Tenancy is made notwithstanding the terms of a June 8, 2000, "Agreement" between Laura Seide and Peter Glass

wherein, among other things, the parties thereto agreed to "transfer her entire right, title and interest in the [Premises] to Fellow Hat . . . with the full consent and approval of Glass by Quitclaim Deed subject to all outstanding liens, tenancies, mortgages, encumbrances and taxes." No matter how viewed and interpreted, the Court concludes that the "Agreement" does not and cannot retroactively change the facts of this case as herein determined with respect to the principal issue of ownership and legal responsibility attendant to the Premises during the period of the Tenancy.

Notwithstanding plaintiff's understanding, Mr. Glass was nothing more than a caretaker of the Premises who acted under the express or implied authority of the Seides until the Premises was sold in 2000. Any collection of rent or remission of same to the Seides in Oregon or to the Putnam County Savings Bank as and for mortgage payments, was done for the credit of the Seides, notwithstanding any hope that a sale to Mr. Glass would eventuate and take into account some or all of the services performed by Mr. Glass on behalf of the Seides in connection with the Premises.

The Pelaez family moved into the Premises in November 1994, when twin sons Christopher and Servando were 18 months old. Mr. Pelaez complained about peeling paint to Mr. Glass. Shortly thereafter, the children were diagnosed with elevated blood lead levels with Christopher's lead level at 24 ug/dl and Servando's at 20 ug/dl.

Following protocol, the Putnam County Department of Health ("DOH") was notified to conduct an environmental investigation of the Premises. Sanitarian, Larry Werper, did so on March 10 and 14, 1995, in connection with which he determined that there were conditions that created a high risk of lead poisoning to tenants, including chipping and peeling lead paint and dust throughout the Premises.

The DOH sent a Notice to Abate to Laura Seide, as the record property owner, on March 14, 1995, advising, among other things, that there were children with elevated blood lead levels residing at the Premises, there existed unlawful deteriorating paint conditions conducive to lead poisoning thereat, and that she had to abate the condition in accordance with enclosed statutory regulations.

In response, Mr. Seide called Mr. Glass and advised him of the Notice to Abate, directed him to contact Sanitarian Werper at the DOH and to take care of the problem. In addition, Mrs. Seide notified attorney Steven Abels, Esq. about the situation and asked him to deal with the DOH on her behalf.

Mr. Abels contacted the DOH on behalf of Laura Seide. When Mr. Glass spoke with Sanitarian Werper, he represented himself as the property manager of the Premises. Thereafter, Mr. Seide and Mr. Glass discussed the situation and agreed that Mr. Glass would follow statutory abatement guidelines.

An April 7, 1995, DOH inspection of the Premises revealed that, contrary to the Order to Abate, cleanup work had not yet commenced. Perhaps worse, the DOH re-inspection of April 24, 1995, revealed that the abatement was being improperly performed, thereby increasing the risk of additional lead poisoning to the Pelaez children who were still then residing at the Premises. The DOH sent Laura Seide a Notice of Hearing, charging her with multiple violations of State and local laws for her failure to properly abate conditions conducive to lead poisoning. An administrative hearing to determine her liability was also scheduled.

Just after this and in an effort to obtain liability insurance for this preexisting condition, Mr. Seide contacted MetLife in May 1995, to obtain liability insurance to cover any claims arising out of the lead poisoning of the Pelaez children. Upon doing so, he did not reveal the existence of the Notice to Abate. Thereafter, he contacted MetLife to increase the policy limits.

A June 7, 1995, DOH re-inspection of the Premises revealed that the abatement was proceeding improperly. Nonetheless, the administrative hearing was cancelled upon Mr. Glass's representation that he would comply with statutory requirements. Even with all of that, the August 9 and September 14, 1995, re-inspections revealed that abatement continued to be performed improperly, thus creating new lead hazards.

A new Notice of Hearing was issued to Mrs. Seide, copied to Mr. Abels, by the DOH on September 14, 1995. Therein, Mrs. Seide was notified that she was charged with multiple violations of the State and County health laws and that the previously cancelled hearing had been rescheduled to October 11, 1995. As with other formal correspondence from the DOH regarding the Premises, Laura Seide was treated as the owner of the Premises. Nonetheless, Gary Glass was carboned copied on this and other formal DOH correspondence in his capacity as caretaker.

Notwithstanding Abels's October 5, 1995, inquiry to the DOH for the names of licensed lead abatement contractors and the receipt of same, Mr. Glass continued to improperly perform abatement at the Premises. This resulted in yet more disbursing of lead paint chips and dust throughout the Premises. On October 13, 1995, follow-up blood lead level tests of Servando and Christopher revealed that Servando's lead level was now 70 ug/dl, and Christopher's was 50 ug/dl. Consequently, the children were immediately hospitalized for emergency medical treatment.

Thereupon, by letter of October 18, 1995, the DOH advised Mrs. Seide: ". . . children residing [at the Premises] had been recently hospitalized due to extremely elevated blood lead levels"; a recent inspection of the Premises found "lead paint abatement being done incorrectly causing an extreme condition conducive to lead poisoning [that has] resulted in the dwelling being . . . declar[ed] unfit for human habitation until further notice"; it is

your "responsibility as owner of this dwelling to provide temporary 'Lead Safe' housing for these children until lead paint abatement has been done" to the DOH's satisfaction; and "[f]ailure to do the above . . . will make you liable for penalties provided by law . . ."

The Seides never informed the DOH, through attorney Abels or otherwise, of their position that Peter Glass, and not they, were the true owner of the Premises who should be held responsible for the abatement, alternate housing, penalties and damages, if any. In fact, it was only upon Mr. Glass identifying himself as the caretaker of the Premises during one of the proceedings before the DOH, that he was added as a respondent to the DOH administrative proceedings.

The DOH administrative hearing concluded on May 8, 1996, in connection with which the Administrative Law Judge issued a Report, with findings of facts, conclusions of law and recommendations. The Report is captioned, in part, In the Matter of the Complaint Against Laura Seide & Peter Glass and makes references therein to "Respondent(s)" as having been duly served but otherwise references "Respondent" without specification as to whether such refers to one or both named respondents.

In pertinent part, the Report notes that "Respondent" had admitted the charges, had violated State and local lead paint laws and that no civil penalty would be assessed. However viewed, there is no doubt that the term "Respondent" references Laura Seide if not Laura Seide and Peter Glass, in his capacity as caretaker.

The Administrative Law Judge's Report was accepted and adopted by Order of the Putnam County Public Health Director, Bruce Foley. No challenge has been made to the findings and conclusions reached therein, including any express or implied finding that Laura Seide owned the Premises and is responsible in that capacity.

Upon receipt of the complaint in this action, Mr. Seide called Peter Glass to see whether he was still interested in purchasing the Premises. In response, Mr. Glass advised Mr. Seide that he was not financially capable of doing so. Thereupon, Mr. Seide inquired as to whether Glass knew of anyone who might be. Mr. Glass responded that his brother, Josh Glass, who owned Fellow Hat Corp., might be interested. That transfer was eventually effectuated.

Again, in line with a finding that the Premises was owned by Mrs. Seide, and not Peter Glass, Mr. Seide filed a claim with his insurance carriers, including MetLife. In connection therewith, Gary Seide indicated in a sworn recorded statement that his wife owned, and Peter Glass maintained, the Premises. A related sworn statement was also taken from Peter Glass wherein he represented to the carrier that he was the caretaker of the Premises.

Additionally, Boeggeman, George, Hodges & Cord filed a Verified Answer on behalf of Gary Seide in November 1998, admitting that Laura Seide owned the Premises and denying that either Mr. Glass or Mr. Seide did. An Amended Answer was filed in March 1999, on behalf of both Mr. and Mrs. Seide, again admitting Laura Seide's ownership and denying that of Mr. Glass and Mr. Seide.

In addition, the firm of Palmer & Gable later filed a Motion to Dismiss on behalf of Mr. Seide supported by an affidavit of Mr. Seide wherein he represented that Mrs. Seide owned the Premises as of December 20, 1990. Thereafter, a Motion for Summary Judgment was filed on behalf of Mr. Seide wherein it was claimed that Mrs. Seide, and not Mr. Seide, owned the property as of December 20, 1990, and that the "the County recognized that Laura Seide was the owner of the premises at the time they issued their Notice in 1995 . . ."

It was only upon the motion for summary judgment filed in 2006 by Wilson, Elser, Moskowitz, Edelman & Dicker on behalf of both Mr. and Mrs. Seide that, for the first time, the Seides took the position that neither of them owned the Premises because they sold it to Peter Glass in March 1990. No attempt was made therein to explain the earlier and repeated admissions that Mrs. Seide was the owner, Peter Glass was not the owner, and Gary Seide owned the property only up to December 20, 1990, rather than March 9, 1990, as now claimed.

Based upon the foregoing, the Court finds that the Installment Contract of Sale and/or Promissory Note automatically terminated upon the admitted multiple breaches by Glass and the Seides as are more fully set forth herein (see, supra). Reliance on such doctrines as waiver, partial performance or estoppel are unavailing on the instant record. The actions, inactions and representations of the Seides and Glass before, during and after the Tenancy, clearly reflect a breached, terminated and/or abandoned Installment Sales Contract. While it may be difficult if not impossible to determine the exact date, precise breach, act or omission through which beneficial ownership in Glass reverted to the Seides, it is clear from this record that such occurred well before the period of the Tenancy, if not on December 20, 1990, upon the execution of a deed to the Premises from Gary Seide and Laura Seide to Laura Seide. Whether the execution of the December 20, 1990 deed was for "financial purposes" or not, the Court finds that Gary Seide's act of divesting himself of the Premises is consistent with the Seides' belief that the Installment Sales Contract was not then still viable, for whatever reason, and Glass did not and could not take exception thereto. The Seides act of executing the December 20, 1990 deed is, in any event, inconsistent with any belief that the Premises was still subject to a viable Installment Sales Contract.

"As a general rule, liability for a dangerous condition on real property must be predicated upon ownership, occupancy,

control, or special use of the property" (Franks v. G & H Real Estate Holding Corp., 16 A.D.3d 619, 620, 793 N.Y.S.2d 61). Accepting the December 20, 1990, deed at face value at this juncture and for the other reasons herein articulated, the Court decides the issues of ownership and control of the Premises for the period during which the infant plaintiffs sustained their injuries (Pelaez v. Seide, 49 AD3d 618 [2d Dept 2008] citing Ellers v. Horwitz Family Ltd. Partnership, 36 A.D.3d 849, 831 N.Y.S.2d 417) in favor of plaintiff. Laura Seide owned the Premises for all intents and purposes during the entire Tenancy and she and Gary Seide controlled it during that period such that both are subject to liability for the injuries herein sought to be redressed.

Although the actions and inactions of the Seides and Glass also suggest that they may have been informally working towards or hoping to eventually formulate some kind of binding arrangement or agreement through which to transfer ownership of the Premises to Peter Glass, the Seides have failed to come forward with any written or even oral terms of any such meeting of the minds such that this Court could conclude that there existed a valid and binding extension or modification of the Installment Sales Contract which was effective during the Tenancy such that liability can be said to fall upon the Peter Glass, as a beneficial owner or otherwise. Such a conclusion would be contrary to the law and the facts as herein determined.

Having decided the issue of ownership and control in favor of plaintiffs, the Court will now address the notice issue.

There is no dispute and the Court expressly finds by virtue of the March 14, 1995, letter from the DOH to Mrs. Seide that, as of mid-March 1995, the Seides had actual notice of the existence of a hazardous condition caused by lead-based paint used at the Premises and that the Premises was then occupied by the Pelaez children who were found to have elevated blood lead levels.

In addition, the Court concludes that the defendants had constructive knowledge that such a condition existed at the Premises during the Tenancy.

Contrary to defendants' position, Chapman v. Silber (97 NY2d 9 [2001]) applies. The Court of Appeals therein expressly "decline[d] to impose a new duty on landlords to test for the existence of lead in leased properties based solely upon the 'general knowledge' of the dangers of lead-based paints in older homes" and expressly held that "a landlord who actually knows of the existence of many conditions indicating a lead paint hazard to young children may, in the minds of the jury, also be charged constructively with notice of the hazard" (Chapman v. Silber, 97 NY2d 9, 21 [2001]). This rule, the Court indicated, "is merely an application of familiar notice principles, as illustrated by [the 1919 decision of] Queeney v. Willi (225 NY 374)" (id).

> In Chapman v. Silber, 97 N.Y.2d 9, 734 N.Y.S.2d 541, 760 N.E.2d 329 [2001], the Court of Appeals held that, in the absence of proof that an out-of-possession landlord had actual notice of the existence of a hazardous condition caused by a lead-based paint being used on the landlord's premises, a plaintiff can establish that the landlord had constructive notice of that condition by showing "that the landlord (1) retained a right of entry to the premises and assumed a duty to make repairs, (2) knew that the apartment was 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" (id. at 15, 734 N.Y.S.2d 541, 760 N.E.2d 329 . . . [citations omitted].

(Charette v. Santspree, 68 AD3d 1583, 1584 [3d Dept 2009]).

"The general rule [not shown to be inapplicable here] is that knowledge acquired by an agent acting within the scope of his agency is imputed to his principal and the latter is bound by such knowledge although the information is never actually communicated to [him or her]" (Center v. Hampton Affiliates, Inc., 66 NY2d 782, 784 [1985] citing Farr v. Newman, 14 NY2d 183, 187; Henry v. Allen, 151 NY 1, 9; Restatement [Second] of Agency §272, at 591).

The Court concludes that Peter Glass acted as the agent of Laura Seide, the owner of the Premises, and Laura Seide and Gary Seide, as those in control thereof, and, as such, each acquired the knowledge obtained by agent Glass in connection with his dealings with the Premises including such dealings as occurred in connection with and during the Tenancy of the Pelaez family.

Most noteworthy and, in addition, the Court finds that in their own right and through their agent, Peter Glass, the Seides retained a right of entry to the Premises and assumed a duty to make repairs, knew that the Premises was constructed at a time before lead-based interior paint was banned, through agent Glass were aware that paint was peeling at the Premises, through agent Glass knew of the hazards of lead-based paint to young children, and through agent Glass knew that young children lived at the Premises (see Chapman v. Silber, supra, at 15).

In sum, the Court finds by a preponderance of the evidence that Laura Seide owned the Premises and Laura Seide and Gary Seide controlled the Premises "during the time when the infant plaintiffs sustained their injuries" (Pelaez v. Seide, 49 AD3d 618 [2d Dept

2008]) and that each had actual or constructive notice of the existence of a hazardous condition caused by lead-based paint used at the Premises and existing during the period of the Tenancy within the meaning of Chapman v. Silber, supra.

Having ruled as such, the parties are directed to appear before the Court at 10:30 a.m. on October 1, 2012 to schedule the trial as to damages.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: Carmel, New York
September 18, 2012

S/ _____
HON. LEWIS J. LUBELL, J.S.C.

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