

<b>Flores v New Line IX Realty Corp.</b>
2015 NY Slip Op 32667(U)
July 9, 2015
Supreme Court, Bronx County
Docket Number: 350662-2009
Judge: Laura G. Douglas
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This opinion is uncorrected and not selected for official publication.

PART 11

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"/>

FLORES, ARELIE

Index No. 0350662/2009

-against-

Hon. LAURA DOUGLAS

NEW LINE IX REALTY

Justice.

The following papers numbered 1 to 3 Read on this motion, PRECLUDE  
 Noticed on April 08 2015 and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of \_\_\_\_\_

	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 by plaintiffs is decided in accordance with the attached memorandum Decision/Order.

JUL 16 2015

Motion is Respectfully Referred to:  
 Justice:  
 Dated:

Dated: 7, 9, 15

Hon. LDJ  
 LAURA DOUGLAS, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: CIVIL TERM, PART 11

-----X  
ARELIE FLORES, TEODORO FLORES and  
JOSEPH FLORES, infants by their mother and  
natural guardian SILVIA HERNANDEZ, and  
SILVIA HERNANDEZ, Individually,

Plaintiffs,

Index No.350662-2009

- against -

**DECISION AND ORDER**

NEW LINE IX REALTY CORP., CATHEDRAL  
PROPERTIES LLC, R& R MANAGEMENT SERVICES  
CORP., WALTON PROPERTIES, INC., PRIME  
REALTY SERVICES, PRIME RESIDENTIAL  
MANHATTAN R&R I LLC, PRIME RESIDENTIAL  
MANHATTAN R&R II LLC, PRIME RESIDENTIAL  
MANHATTAN R&R III LLC, PRIME RESIDENTIAL  
BRONX R&R I LLC, PRIME RESIDENTIAL  
BRONX R&R II LLC, PRIME RESIDENTIAL  
BRONX R&R III LLC, PRIME RESIDENTIAL  
BRONX R&R IV LLC, PRIME RESIDENTIAL  
BRONX R&R V LLC, RICHARD AIDEKMAN,  
ROBERT KLIGERMAN, PRIME REALTY SERVICES  
INC., PRIME RESIDENTIAL R&R HOLDINGS LLC,  
ANDREW GREEN, THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA, PRUDENTIAL REAL  
ESTATE INVESTMENTS, STEVEN B. LABOLD,  
MULTI-DWELLING PROPERTIES IV LLC, EAST 102  
REALTY LLC, THE PINNACLE GROUP, THE PRAEDIUM  
GROUP LLC, 133 SEAMAN REALTY LLC, 16 MARBLE  
HILL REALTY LLC, 240 SEAMAN REALTY LLC,  
30 SEAMAN REALTY LLC, 88 SEAMAN REALTY LLC, 91  
REALTY LLC, ADRIAN REALTY LLC, CATHEDRAL  
REALTY LLC, JACOBUS REALTY LLC, PINEHURST  
REALTY LLC, WEST 106 REALTY LLC, P V MANHATTAN  
II LLC, FRANK P. PATAFIO, 171 EAST 102<sup>ND</sup> LLC,  
SANDRO ESCADON, AVELINO O. CASTILLO, BELCUT  
CORP., FELICE BELFIORE, 4464 PARK AVENUE LLC,  
FINGER MANAGEMENT CORP., RONALD J. FINGER,  
JOSEPH BOVARO, MATTHEW BERENSON AND  
JESUS MANON

Defendants.

----- X  
HON. LAURA G. DOUGLAS:

Plaintiffs seek an order pursuant to CPLR § 3126 precluding defendants

Cathedral Properties LLC, R&R Management Services Corp., and Walton Properties, Inc. (collectively, "Cathedral") from offering evidence at trial as to all issues of liability. The motion is granted solely as ordered below, and is otherwise denied.

The plaintiffs seek monetary damages for injuries purportedly sustained through exposure to lead-based paint at several different premises owned by Cathedral during the period of July 9, 1996 to July 30, 1999. The plaintiffs commenced this action on or about November 13, 2009.

Cathedral's counsel avers that Cathedral Properties LLC dissolved on September 20, 2000, R&R Management Services dissolved on September 20, 2001, and Walton Properties, Inc dissolved on April 9, 2001. As a result, there are no known principals to provide information and assist in the defense of this action and no documents relative to the premises. Any tenant files and other documentation relating to the property were apparently transferred to the subsequent landlord and/or management company in July 1999.

It is undisputed that Cathedral has failed to produce a witness for a court-ordered deposition. Plaintiffs submit that they would be significantly prejudiced if Cathedral is permitted to offer evidence at trial as to liability, since Cathedral has not furnished discovery or any witnesses for deposition, and that an order precluding Cathedral from offering any evidence at trial as to liability is an appropriate sanction. Cathedral argues that preclusion is too drastic a sanction in this case, since Cathedral did not deliberately fail to produce witnesses for deposition. Instead, no witness was ever available, since

each of the Cathedral entities has been dissolved for nearly 15 years. In addition, Cathedral argues that while plaintiffs never requested the names or addresses of any former Cathedral employees for the purpose of seeking a non-party deposition, Cathedral has provided the name and address of former employee, Dominick Guarna, so that plaintiffs may arrange a non-party deposition, if they so choose.

Precluding a party from presenting evidence at trial is a severe sanction which generally requires a showing that a party's lack of cooperation with discovery was willful, deliberate, or contumacious (see *Jennings v. Orange Regional Medical Center*, 104 AD3d 654 [2<sup>nd</sup> Dept 2013]). Here, Cathedral has been unable to produce a witness for deposition because the corporate defendants at issue have been dissolved for almost 15 years. Therefore, the preclusion of all evidence at trial as to the issue of liability is too drastic a sanction in this case (see *Healy v. ARP Cable*, 299 AD2d 152 [1<sup>st</sup> Dept 2002]). A more appropriate sanction is to preclude the testimony of any Cathedral party witness at trial. With respect to Cathedral's failure to provide any discovery, the appropriate sanction is to preclude Cathedral from introducing any documentary evidence at trial unless such evidence was provided to plaintiffs at least 60 days prior to trial.

Accordingly, it is hereby

ORDERED, that the Cathedral defendants are precluded from producing any party witnesses at the trial of this action; and it is further

ORDERED, that the Cathedral defendants are precluded from offering any

documentary evidence at the trial of this action, unless such evidence has been provided to plaintiffs at least 90 days before trial.

This constitutes the decision and order of this Court.

Dated: July 9, 2015

  
\_\_\_\_\_  
HON. LAURA G. DOUGLAS  
J.S.C.