SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MENBERE LEMMA, et al.	*	
Plaintiffs,	*	
v.	*	**2007 CA 008285 B**
		Calendar 2
DAVID PETER, et al.	*	**Judge Ross**
Defendants.	*	
	*	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON NEGLIGENCE AS A MATTER OF LAW

This is a lead poisoning case concerning the elevated lead levels and resulting neurologic damages suffered by the minor Plaintiff, A.L. The owners and managers of Apartment 610 at 1801 -16th Street, N.W. Washington D.C. violated the lead-safety laws of the District of Columbia. Plaintiffs now move for summary judgment against all Defendants for liability on Count I (Negligence), Count II (Breach of Implied Warranty of Habitability) and Count III (Negligence per se: Violation of District of Columbia Lead Paint Poisoning Statute) of the Amended Complaint.

UNDISPUTED FACTS

The minor Plaintiff, A.L. lived in Apartment 610 at 1801 – 16th Street, N.W. Washington, D.C. (the 1801 building) from his birth in February 2002 until March 2009. See Statement of Material Facts ¶¶ 1 – 3. A.L. suffers from lead poisoning. See Statement of Material Facts ¶¶ 4 – 7). In September 2005, when A.L. was three and one-half, A.L.'s blood lead level was measured at 39 mg/dL. See Statement of Material Facts ¶ 7. The government considers any blood lead level over 10 mg/dL to be abnormal. See D.C. Code §7-871.02 (2). A.L., now seven, continues

to have elevated blood lead levels. See Statement of Material Facts ¶ 7. His most recent testing on May 1, 2009 found a level of 13. See Statement of Material Facts ¶ 7.

Defendants are owners of the 1801 building within the meaning of the District of Columbia's lead-safety law. Ownership in the District of Columbia is expansively defined by 14 DCMR 199.1(b) and includes any person who "[h]as charge, care, or control of any building." While A.L. was being poisoned by the lead-paint hazards found by the District of Columbia in Apartment 610, each Defendant had charge, care, and control of 1801 – 16th Street, N.W. Washington, D.C., as they have admitted in their depositions. See Statement of Material Facts at ¶¶ 10 - 38.

The defendants are: Kramerco DC LLC, Richard Kramer, David Peter, Republic Properties Corporation, Republic Land Development LLC, Pinnacle Realty Management Company and Myles Levin. Kramerco DC LLC is the legal titleholder of 1801 – 16th Street, N.W. Washington, D.C. See Statement of Material Facts ¶¶ 13, 14 and 15. Kramerco DC LLC's sole purpose was to own 1801- 16th Street, N.W. Washington, D.C. See Statement of Material Facts ¶ 15. Richard Kramer is the owner of Kramerco DC LLC and possessed the power to control the building and order lead inspections and lead abatement. See Statement of Material Facts ¶¶ 16, 17, 18 & 19. David Peter actively managed the 1801 building and coordinated the efforts to convert the building to condominiums; he also coordinated the response to the lead-hazards identified for the Lemma family. See Statement of Material Facts ¶¶ 20, 21 & 22. Republic Properties Company was identified as an owner to the tenants at 1801 -

16th Street, N.W. Washington, D.C. See Statement of Material Facts ¶ 23. Republic Properties is a named insured for the building, and it made offers to "buy out" the leases of the tenants, including the Lemmas. See Statement of Material Facts ¶¶23, 24, 25 & 26. Republic Land Development LLC, through its President, David Peter, coordinated the response to the lead hazards identified at the 1801 building Republic Land also is a named insured for the building. In addition Republic Land offered to "buy out" the Lemma's lease. See Statement of Material Facts ¶¶ 27, 29, 30 & 31. The building 1801 – 16th Street, N.W. is listed on Republic Land's website as one of Republic Land's residential development properties. See Statement of Material Facts ¶ 28. Pinnacle Realty Management Company was the managing and on-site agent of the title holders of the 1801 building. See Statement of Material Facts ¶¶ 32, 33 & 34. Myles Levin, an employee of Pinnacle, was property manager of the 1801 building. See Statement of Material Facts ¶¶ 35, 36, 37 & 38. Levin performed annual inspections of the property and was acting as an agent for all the Defendants. See Statement of Material Facts ¶ 36..

Lead-paint hazards have existed at the 1801 building throughout the time of occupancy by the plaintiffs of Apartment 610 there. See Statement of Material Facts at ¶ 39. The lead-paint hazards in Apartment 610 violate the lead-safety laws of the District of Columbia. See Exhibit 18 and See Statement of Material Facts at ¶ 39. Defendants were notified in May 2006 of the lead hazards found within Apartment 610 and received a Notice of Violation and a report detailing the violations of the lead-safety laws and regulations by the D.C. Government, the Notice requires the lead hazards to be fixed within ten days. See Exhibit 18. Defendants were sent

another report a year later when no abatement work had been completed. See Exhibit 30.

In August 2007, more than a year after the Notice of Violation, the defendants offered Plaintiffs Apartment 410 as a relocation site. See Statement of Material Facts at ¶ 61. Apartment 410 failed to meet minimal lead-safety requirements, so the plaintiffs did not move to it. See Exhibit 32 and Statement of Material Facts at ¶¶ 62-63. In May 2008, this Court Ordered Defendants to abate the lead hazards and in February 2009 held Defendants in contempt for failing to do so. See Exhibits 37 & 41. The defendants then finally had Apartment 410 abated of lead, and the plaintiffs moved into that apartment as soon as the unit was cleared by the D.C. inspectors. See Statement of Material Facts at ¶¶ 88-89.

ARGUMENT

I. THE DEFENDANTS ARE LIABLE OF NEGLIGENCE AND NEGLIGENCE PER SE.

The liability of the defendants under Count One of the Amended Complaint (negligence) and Count Three (negligence per se) will be considered together in this memorandum, since the same elements of proof apply.

A. Introduction and Elements of the Claim

There are three questions to consider when determining if negligence *per se* applies to this case. First, did the District of Columbia enact lead-safety laws and regulations to protect against the type of injury, lead poisoning, that occurred here? Second, is A.L. a member of the group the lead-safety law was designed to protect? Third, have the Defendants put forth competent evidence that excused the statutory and regulatory violations and turn negligence *per*

se into mere evidence of negligence?

The Answers to questions one and two are "yes." The lead-safety laws were specifically enacted to protect the public's health and safety. A.L. is a member of the class whom the lead-safety laws were designed to protect. The answer to the third question is "no;" the defendants have no evidence that excuses their repeated failures to fulfill their obligations under the law.

The leading case dealing with the duties and responsibilities owed by building owners to residential tenants regarding lead-paint hazards is *Childs v. Purll*, 882 A.2d 227 (D.C. 2005). The D.C. Court of Appeals set out the usual elements of a negligence claim in that case: "Generally, in order to prevail on a claim of negligence, the plaintiff must establish a duty of care, a deviation from that duty, and a causal relationship between that deviation and an injury sustained by the plaintiff." 882 A.2d at 232, quoting *Youssef v. 3636 Corp.,* 777 A.2d 787, 792 (D.C.2001). Under District of Columbia law, a landholder must always act reasonably to maintain its property in a reasonably safe condition in view of all the circumstances including the likelihood of injury, the seriousness of the injury, and the burden of avoiding the risk. *Nelson v. U.S.*, 838 F.2d 1280, 1285 (D.C. Cir. 1988) (citing *Smith v. Arbaugh's Restaurant*, 469 F.2d 97, 100 (D.C. Cir. 1972).

On each of these three elements, Plaintiffs have met their burden as a matter of law. First, the duty of care is fixed by the D.C. Government's adoption of lead-paint safety laws and regulations. See *Childs v. Purll*, 882 A.2d 227 (D.C. 2005). Defendants, with respect to A.L., have been found by the District of Columbia to be in violation of the lead-safety laws for

Apartment 610. See Exhibit 18. Defendants David Peter and Republic Land Development and Kramerco DC LLC's counsel admit in writing that no lead-free apartments exist in the 1801 building. See Exhibits 15 & 23 and Statement of Material Facts at ¶¶ 44-45.

As to causation, while the extent of the injury is in dispute, there is no question that throughout the time that A.L.'s blood lead levels have been tested, they have been in the abnormal range as defined by the government. See D.C. Code §7-871.02 (5). The District of Columbia defines a lead-poisoned child as "a child with a confirmed blood lead level equal to or greater than 15 micrograms of lead per deciliter of blood, or such other lower threshold as the United States Centers for Disease Control and Prevention may establish." See D.C. Code § 7-871.02 (5). The United States Centers for Disease Control and Prevention has established 10 mg/dL as the threshold. See Exhibit 5.

B. The Defendants Are All Deemed To Be Owners Of The Property In Question Under District Of Columbia Law.

The District of Columbia authorities anticipated that persons in authority over buildings with lead-paint hazards might try to escape personal responsibility by hiding behind corporate shields. Accordingly, the regulation deems that anyone is an owner "who, alone or jointly or severally with others, meets either of the following criteria: (a) Has legal title to any building arranged, designed, or used (in whole or in part) to house one or more habitations; *or* (b) Has *charge, care, or control* of any building arranged, designed or used (in whole or in part) to house one or more habitations, as owner or agent of the owner, or as a fiduciary of the estate of the owner or any officer appointed by the court. *Any persons representing the actual owner shall be*

bound to comply with the terms of this subtitle, and any notice or rules and regulations issued pursuant to this subtitle, *to the same extent as if he or she were the owner*." D.C. Mun. Regs., tit. 14, § 199 (emphasis added).

The defendants herein have all admitted to the requisite right of control that triggers their responsibility as owners:

1. Kramerco DC LLC qualifies under § 199 (a) as an owner of the 1801 building because it is the legal titleholder. See Statement of Material Facts ¶¶ 13, 14 & 15 and Exhibit 7.[1] Kramerco DC LLC's sole purpose was to own 1801- 16th Street, N.W. Washington, D.C. See Statement of Material Facts ¶ 15and Exhibit 9.
2. Richard Kramer qualifies as an owner under § 199 (b) as he is the owner of Kramerco DC LLC and possessed the power to control the building and order lead inspections and lead abatement. See Statement of Material Facts ¶¶ 16, 17, 18 & 19 and Exhibits 9, 10 & 11.
3. David Peter qualifies as an owner under § 199 (b) as he actively managed and controlled the 1801 building and coordinated the efforts to convert the building to condominiums. See Statement of Material Facts ¶¶ 20, 21 & 22. Peter also coordinated the response to the lead-hazards identified for the Lemma family. See Statement of Material Facts ¶¶ 20, 21 & 22 and Exhibits 9, 12 & 15.

[1] Kramerco DC LLC's sale of the building in April 2008 does not relieve it from liability as the owner while lead paint hazards were poisoning A.L. See Statement of Material Facts ¶ 95.

4. Republic Properties Company qualifies as an owner under § 199 (b) as it was identified as an owner to the tenants at the 1801 building; it is a named insured for the building; and it made offers to "buy out" the leases of the tenants, including the Lemmas. See Statement of Material Facts ¶¶ 23, 24, 25 & 26 and Exhibits 10, 13 & 14.

5. Republic Land Development LLC qualifies as an owner under § 199 (b) as it through its President, David Peter, coordinated the response to the lead hazards identified at the 1801 building; it is a named insured for the building; it offered to "buy out" the Lemma's lease; and it lists the 1801 building as one of Republic Land's residential development properties on its website. See Statement of Material Facts ¶¶ 27, 28, 29 , 30 & 31 and Exhibits 10, 15 & 16.

6. Pinnacle Realty Management Company qualifies as an owner under § 199 (b) as it was the managing and on-site agent of the title holders of the 1801 building. See Statement of Material Facts ¶¶ 32, 33 & 34 and Exhibit 17.

7. Myles Levin qualifies as an owner under § 199 (b) because as an employee of Pinnacle, he was the property manager of the 1801 building. See Statement of Material Facts ¶¶ 35, 36, 37 & 38. Levin performed annual inspections of the property and was acting as an agent for all the Defendants with the duties and responsibilities to manage and control the building. See Statement of Material Facts ¶36 and Exhibit 17.

In addition, D.C. law makes any corporate officer personally liable for negligence in any case where the officer failed to carry out duties under the law. See *Perry v. Frederick Investment Corp.*, 509 F.Supp. 2d 11 (D.D.C. 2007). For example, District of Columbia law holds corporate officers personally liable for setting bad policies that end up in hurting an individual plaintiff. In *Camacho v. 1440 Rhode Island Avenue Corp.*, 620 A.2d 242 (D.C. 1993), the Court of Appeals held that the president of a hotel could be personally liable for a tenant's wrongful eviction by the police because, among other things, "he was primarily responsible for setting the policies of the hotel, and he made sure that the policies of the hotel were carried out." *Id.*, 620 A.2d at 247-48. The court noted that the hotel president, Plumley, denied having set up a "self-help" policy of using the police to evict tenants, rather than judicial process, but that a former manager of the hotel had testified to the contrary. This created a fact issue of whether the president's "activities rose to the level of the participation necessary to hold Plumley individually liable." *Id.,* 620 A.2d at 248. Quoting other leading cases, the Court observed:

> Individual liability attaches when a corporate officer either physically commits the tortious conduct, or participates in "'some meaningful sense'" in the tortious conduct. [Quoting *Vuitch v. Furr,* 482 A.2d 811, 823 (D.C. 1984).] Sufficient participation can exist where there is "an act or omission by the officer which logically leads to the inference that he or she had a share in the wrongful acts of the corporation which constitute the offense." [Quoting *Snow v. Capitol Terrace, Inc.*, 602 A.2d 121, 127 (D.C. 1992).] An officer's liability is not based merely on the officer's position in the corporation; it is based on the officer's behavior and whether that behavior indicates that the tortious conduct was done within the officer's area of affirmative official responsibility and with the officer's consent or approval.

Camacho, 620 A.2d at 247. *See also Lawlor v. District of Columbia*, 758 A.2d 964, 977 (D.C.

2000): "Liability must be premised upon a corporate officer's meaningful participation in the wrongful acts." Similarly, in *Snow v. Capitol Terrace, Inc.*, 602 A.2d 121 (D.C. 1992), the court held that the trial judge had erred in removing from the jury the individual landlord's liability for the plaintiff tenant's injuries when a ceiling collapsed in her bedroom. The plaintiff's evidence that the landlord had personally torn down part of her ceiling two years before her injury, and that she had complained to his employees for the next two years about the dangerous condition of the remaining ceiling, was held sufficient to take the issue of the landlord's personal liability to the jury. 602 A.2d at 127.

C. The Defendants Owed A Greater Duty To The Minor Plaintiff.

Defendants owed A.L. greater care for his protection than they would an adult. See *Wheeler Terrace, Inc. v. Lynott*, 234 A.2d 311, 312 & n.1 (D.C. 1967). In *Wheeler*, a tenant's child tripped and fell on a sidewalk defect. 234 A.2d at 312. In setting the standard that applies to children, the Court stated:

> *It is ordinarily necessary to exercise greater care for the protection and safety of a young child* than for an adult person who possesses normal physical and mental faculties. One dealing with children must anticipate the ordinary behavior of children. The fact that they usually cannot and do not exercise the same degree of prudence for their own safety as adults, that they often are thoughtless and impulsive, imposes a duty to exercise proportionate vigilance and caution in those dealing with children.

234 A.2d at 312 (emphasis added) (footnote omitted). The standard jury instruction continues to embody the established law that greater care is necessary for the protection of children than for adults. See Standardized Civil Jury Instructions for the District of Columbia 2007 Revised

Edition: §5-07. The *Wheeler* court went on to state that:

> The presence of young children is a circumstance that must be taken into account in deciding whether appellant's actions were reasonable and prudent. Appellant knew or should have known that children regularly used the walkway and that it owed those children the duty of exercising a degree of care that any reasonably prudent man would exercise under similar circumstances.

234 A.2d at 312 (footnote omitted). Since the defendant in *Wheeler* knew or should have known children were using the sidewalk, the standard of care they needed to meet was elevated.

The defendants knew of the presence of A.L. and other children in the 1801 - 16th Street NW building. Myles Levin testified that it was known that children lived at the 1801 building and that there were at least two families with children living there. See Statement of Material Facts ¶ 97. Pinnacle had a policy to update its files when tenants had children or when children came to live at the 1801 building See Statement of Material Facts ¶ 98.

D. D.C.'s Lead-Safety Laws And Regulations Imposed An Affirmative Duty On The Defendants To Provide A Lead-Safe Apartment To The Minor Plaintiff.

Defendants owed A.L. not only a higher duty, but a duty fixed by statute and regulation.

The duty of care owed to A.L. is fixed by the D.C. statutes and regulations adopted to regulate and protect children from lead-paint hazards. D.C. Code § 8-115.01 (8) defines "Lead-based paint" as any paint or other surface coating containing lead or lead in its compounds in any quantity exceeding .5% of the total weight of the material or more than seven-tenths of a milligram per square centimeter (0.7 mg/cm^2). D.C. Code § 8-115.01 (10) defines a "Lead-based paint hazard" as any condition that causes or may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in

accessible surfaces [defined as any surface accessible to a child], friction surfaces [includes windows], or impact surfaces that could result in adverse human health effects as determined by the Mayor. The District of Columbia has adopted the following regulation to enforce lead-safety:

> 707.3 *The owner of any residential premises in which there resides a child under the age of eight (8) years* or to which a child under the age of eight (8) years is a regular visitor who spends a substantial portion of his or her time in the premises, *shall maintain the interior and exterior surfaces of the residential premises free of lead* or lead in its compounds in any quantity exceeding five-tenths (0.5) of one percent (1%) of the total weight of the material or more than seven-tenths of a milligram per square centimeter (0.7mg/cm2), or in any quantity sufficient to constitute a hazard to the health of any resident of the residential premises or any regular visitor to the residential premises who spends a substantial portion of his or her time in the residential premises.

DCMR 707.3 (emphasis added). Housing Regulations impose maintenance obligations upon owners that they are not free to ignore. See *Kanelos v. Kettler*, 406 F.2d 951, 953, 132 U.S.App. D.C. 133, 135 (1968). An "affirmative duty on the owners and their agents [exists] to provide those premises to the Childs family in a lead-free condition or not at all." *Childs*, 882 A.2d at 236. The Court held that "[i]n effect, § 707.3 presumptively serves to put the landlord on constructive notice of any lead-paint hazard in premises occupied by children under eight." *Childs*, 882 A.2d at 237.

The lead-safety laws and regulations were expressly adopted to protect children from the dangers of lead poisoning. "The Housing Regulations set forth in Title 14 of the District of Columbia Municipal Regulations were promulgated to preserve and promote the public health, safety…." *Childs v. Purll*, 882 A.2d 227, 234 (D.C. 2005). In explaining the purpose of

imposing a duty upon owners to ensure lead safety, the Court in *Childs* stated:

> This provision was intended to protect children from the grave health hazard created by exposure to lead-based paint. Young children, "whose nervous systems are still developing, are particularly vulnerable to the damage caused by lead poisoning. High blood lead levels can produce brain damage, coma or death, and even relatively low levels can lead to significant nervous system damage." *Juarez v. Wavecrest Mgmt. Team Ltd.,* 88 N.Y.2d 628, 649 N.Y.S.2d 115, 672 N.E.2d 135, 139 (1996) (citations omitted).

Childs v. Purll, 882 A.2d at 235. The Court found that the lead-safety provisions set forth in the housing regulations are "designed to protect public safety" and require proactive response from the owners when young children reside or are present in their rental units. 882 A.2d at 236.

E. Failure to comply with a safety statute without good excuse is negligence per se.

The concept that someone who fails to live up to a statutory duty is negligent has strong roots in the law of the District of Columbia. See *Richardson v. Gregory*, 108 U.S.App.D.C. 263, 266, 281 F.2d 626, 629 (1960); *Ceco Corp. v. Coleman*, 441 A.2d 940, 945 (D.C. 1982); and *Zhou v. Jennifer Mall Restaurant, Inc*., 534 A.2d 1268, 1273 (D.C. 1987). In *Richardson,* a case dealing with automobile safety laws, the court held that when the legislature fashions the applicable standards of conduct, failing to meet those standards stamps the offender as negligent. 108 U.S.App. D.C. 263 at 266, 281 F.2d at 629. In *Ceco*, a case dealing with workplace safety, the court held that an "unexplained violation of that standard renders the defendant negligent as a matter of law." 441 A.2d at 945. In *Zhou,* dealing with serving alcohol to a visibly intoxicated patron, the court held that:

> The rule that "[v]iolation of an ordinance intended to promote safety is negligence," *Ross v. Hartman,* 78 U.S.App.D.C. 217, 218, 139 F.2d 14, 15

> (1943), *cert. denied,* 321 U.S. 790, 64 S.Ct. 790, 88 L.Ed. 1080 (1944), is rooted in the principle that failure to comply with a statutory requirement designed to protect public safety "is to fall short of the standard of diligence to which those who live in organized society are under a duty to conform," *Martin v. Herzog,* 228 N.Y. 164, 168, 126 N.E. 814, 815 (1920) (Cardozo, J.).

534 A.2d at 1273.

The standard jury instruction embodies the established law and states: "If you find that the defendant violated this statute/regulation, then you *must find* that the defendant was negligent." See Standardized Civil Jury Instructions for the District of Columbia 2007 Revised Edition: §5-09 (emphasis added). A defendant can be relieved from this "you must find" mandate only if the defendant has a valid excuse for not complying with the law, which these defendants do not have. (See section "G" of this brief.)

F. A.L. Is Within The Class Protected By The Statute And Regulations, And Therefore The Defendants Are Liable For His Elevated Blood Levels Of Lead.

The minor plaintiff, A.L., who is now seven years old, falls squarely into the group of persons the lead-safety laws were adopted to protect. A.L. has lived at 1801 – 16th Street, N.W. Washington D.C. his entire life. See Statement of Material Facts ¶ 2. There is no evidence that A.L.'s elevated blood lead levels are the result of anything other than the specifically identified lead hazards found in Apartment 610. See Statement of Material Facts ¶ 9. Defendants have presented no facts to challenge the District of Columbia Government's findings that Apartment 610 at 1801 – 16th Street, N.W. Washington , D.C. contained lead levels exceeding those permissible in residential housing in the District of Columbia. See Statement of Material Facts ¶ 43.

Defendants' violation of the lead-safety laws renders them negligent as a matter of law. *Childs v. Purll*, 882 A.2d at 235 (citing *Chadbourne v. Kappaz,* 779 A.2d 293, 295 (D.C.2001).

G. The Defendants Have No Excuses For Their Violation Of The Lead-Safety Laws.

A statutory or regulatory violation becomes negligence per se if the statute or regulation is intended to promote public safety and if the defendant offers no viable excuse for his or her violation. In *Ceco Corp. v. Coleman*, 441 A.2d 940 (D.C. 1982);, the court held:

> If a party charged with statutory or regulatory negligence produces competent evidence tending to explain or excuse his or her violation of the statutory or regulatory standard, the jury is properly instructed, upon proper request of the party, that the violation is evidence of negligence, but not negligence as a matter of law.

441 A.2d at 945 (citations omitted).

Not everything counts as a valid excuse allowing the defendant to get out from under negligence per se. In *Perkinson v. Gilbert/Robinson, Inc*., 821 F.2d 686 (D.C. Cir. 1987), an elderly woman who fell on some wooden steps at a restaurant sued the owner for violating the building code requirement of a non-slip surface on its steps. The trial court gave an instruction that violation of the code requirement was "evidence of negligence" but refused the plaintiff's request for a negligence per se instruction. The D.C. Circuit reversed and ordered a new trial, holding that the plaintiff was entitled to the negligence per se instruction because the defendant had offered no excuse for failing to have the non-slip surface. The appellate court quoted the *Restatement (Second) of Torts* in identifying what would count as an excuse:

> The Restatement recognizes five categories of excuses that would remove a violation of a statute from the realm of negligence per se:

(a) the violation is reasonable because of the actor's incapacity;

(b) he neither knows nor should know of the occasion for compliance;

(c) he is unable after reasonable diligence or care to comply;

(d) he is confronted by an emergency not due to his own misconduct;

(e) compliance would involve a greater risk of harm to the actor or to others.

821 F.2d at 692, quoting *Restatement (Second) of Torts* § 288A (1965).

None of these five excuses applies here. The only one that has been even weakly proffered by the defendants is the second – that they neither knew nor should have known of the occasion for compliance. However, this "notice" excuse is invalidated by the holding of *Childs v. Purll,* in which the Court of Appeals reversed a trial court for granting summary judgment to a defendant who claimed no notice of lead-paint hazards in its building. The Court held that "[i]n effect, § 707.3 presumptively serves to put the landlord on constructive notice of any lead-paint hazard in premises occupied by children under eight." *Childs*, 882 A.2d at 237.

The evidence in this case shows that the defendants knew of their duties about lead-paint hazards and nonetheless chose to turn a blind eye to the issue. See Statement of Material Facts ¶ 100. The plaintiffs will prove based on the undisputed evidence that:

1. Defendants knew children lived at 1801 – 16th Street. See Statement of Material Facts ¶ 97.

2. Defendants assumed that there would be lead paint in a building as old as 1801- 16th Street. See Statement of Material Facts ¶ 99.

3. Defendants knew they needed to comply with the laws of the District of Columbia. See

Statement of Material Facts ¶ 100.

4. Defendants had no policy to inspect for lead hazards. See Statement of Material Facts ¶ 101.

5. Defendants did not ever inspect for lead hazards. See Statement of Material Facts ¶ 102.

6. A September 2003 environmental inspection of 1801 – 16th Street expressly excluded lead from the contaminants for which inspection was done. See Statement of Material Facts ¶ 104.

7. When Defendants became aware of children living at 1801 – 16th Street, they had no policies and took no steps to comply with the lead-safety laws. See Statement of Material Facts ¶ 105.

8. Annual inspections of 1801 – 16th Street, N.W. Washington D.C. excluded any inspection for lead hazards. See Statement of Material Facts ¶¶ 106 & 107.

9. Defendants failed to warn the Lemma family of possible lead hazards. See Statement of Material Facts ¶ 95 & 103.

1. Defendants knew that young children lived at 1801-16th Street, N.W. Washington, D.C.

The property manager and agent of all Defendants, Myles Levin, testified that he knew that tenants at 1801 – 16th Street became pregnant and had children. See Statement of Material Facts ¶ 97. He admitted that pregnancy and children were not kept secret and not hidden from himself or the building staff. See Statement of Material Facts ¶ 97. The main lobby door was kept locked at all times, and an employee of the management company was present in an office just off the lobby during business hours to watch comings and goings of tenants and others. Mr. Levin testified:

Q. What if they had children after they had moved in?

A. They sometimes would come down and tell us if they -- we would know that they were having a baby or something.

Q. You -- you'd know they were having a baby because --

A. They would come down and say, I'm going to have a child, the baby was born or something, yeah.

Q. Yeah. And it wasn't -- not a mystery to hide a pregnancy?

A. Exactly.

Q. Okay. So -- so the folks that were working for Pinnacle at the front desk and the rental office, they would -- they would get to know the staff -- the tenants pretty well?

A. Basically.

Q. Okay. So it wouldn't be a secret that someone was pregnant for -- for nine months --

A. No.

Q. -- and that they had a baby --

A. No, that's right.

Q. -- and were going in and out the door with the baby?

A. That's correct.

See Exhibit 17 (Myles Levin at 34: 15 – 35: 17). Mr. Levin further testified that to his knowledge there were two families in the building that had children. See Statement of Material Facts ¶ 97. It is therefore undeniable that the defendants knew that A.L. resided at 1801-16th Street, N.W. Washington D.C. with his parents in Apartment 610.

As defendants knew a minor child resided in their building, the law required that they

provide a lead-safe rental apartment. The undisputed facts are that they failed to do so.

Apartment 610 failed the lead inspection and Apartment 410 (the location defendants offered to move the Lemma family to) also failed D.C.'s lead inspection and was found in violation of the lead-safety provisions of the law. See Exhibits 18. 32 & 40.

This was not the first time the building had been cited by the District of Columbia for failing a lead inspection. In 1991, violations of the lead-safety laws for Apartments 504 and 611 were found. See Exhibit 42. In 1991, 1801-16th Street, N.W. was owned by Richard Kramer's parents. See Exhibit 7. Ownership of the building was later transferred to entities owned and controlled by Richard Kramer and the Kramer family. See Statement of Material Facts ¶¶ 11 -14.

2. Defendants assumed that 1801- 16TH Street contained lead paint.

Defendants demonstrated a willful blindness to the lead hazards they knew an older building like 1801 – 16th Street presented. Ms. Pulliam, the corporate representative of Pinnacle Realty Management, testified: "It's just assumed that buildings built in that era, that they would have lead-based paint." See Exhibit 19 (Pulliam 31: 18-20). Despite this assumption, David Peter as the corporate representative of Kramerco DC LLC testified that he was unaware of any effort to identify whether or not there was lead-paint at 1801 -16th Street. See Exhibit 22.

3. Defendants acknowledged they are obligated to comply with the law.

Defendants admit they had a duty to comply with the housing regulations and the health and safety laws of the District of Columbia. See Statement of Material Facts ¶¶ 101. Mr. Levin, the property manager, testified that: "There was some regulation pertaining to children under a

certain age, that the apartment had to be … should be lead-free….." See Exhibit 17 (Levin at 47: 21 – 48: 3) Kramerco DC LLC's corporate representative David Peter testified that they relied upon Pinnacle Realty Management for all issues regarding compliance with the laws of the District of Columbia. See Exhibit 9 (Kramerco DC LLC at 18: 1 – 19: 2).[2] David Peter testified that "of course" he would comply with what the D.C. laws says an owner of property should do. See Exhibit 22 (David Peter 77: 5 – 13).

Richard Kramer acknowledged that there is a duty to meet health and safety codes by owners of property. See Exhibit 11 (Kramer 13: 16 – 18 & 90: 13 - 18). Mr. Kramer testified that:

> Q. And you would expect those that are managing it on your behalf to comply with the law and meet the regulations and the rules that apply to whether it be a commercial real estate development or residential real estate property?
>
> A. Certainly.

See Exhibit 11 (Kramer 14: 1 – 6).

Mr. Kramer specifically acknowledged that compliance with the lead-paint safety laws was required; he testified:

> Q. You understood that lead paint hazards was one of the things that was in the health and safety laws of the District of Columbia, led paint was a hazard that property owners needed to protect their renters from?
>
> A. Yes, I would assume.

[2] Kramerco DC LLC's sole purpose was to own 1801 – 16th Street, N.W. Washington, D.C. See Statement of Material Facts ¶ 15.

See Exhibit 11 (Kramer 90: 13 – 18).

4. Defendants had no lead inspection policies.

Despite acknowledgment of the duty to comply with the health and safety laws, Defendants had no policies to inspect for lead. See Statement of Material Facts ¶ 101. David Peter as the corporate representative of Kramerco DC LLC, Republic Properties Corporation, and Republic Land Development LLC testified that none of these companies had a lead inspection policy. See Statement of Material Facts ¶ 101. Ms. Pulliam as the corporate representative of Pinnacle Realty Management Company testified that it had no lead inspection policies. See Statement of Material Facts ¶ 101. Myles Levin, the property manager, testified there was no inspection policy. See Statement of Material Facts ¶ 101.

5. Defendants never inspected for lead-paint hazards.

Defendants not only lacked a policy to inspect for lead hazards, they also never actually contracted for or performed any lead inspections. See Statement of Material Facts ¶ 102. David Peter as the corporate representative of Kramerco DC LLC , Republic Properties Corporation and Republic Land Development LLC testified that they had no knowledge of any lead-paint inspection ever being done at their request at 1801 – 16th Street, N.W. See Statement of Material Facts ¶ 102.

Ms. Pulliam as the corporate representative of Pinnacle Realty Management Company testified that Pinnacle was unaware of any lead inspections. See Statement of Material Facts ¶ 102. Myles Levin, the property manager, testified that there were no lead inspections. See

Statement of Material Facts ¶ 102.

6. Defendants conducted an environmental evaluation of 1801 – 16TH Street, N.W. Washington, D.C. in 2002 that expressly excluded lead hazards.

The one environmental inspection performed by the Defendants, as part of a mortgage taken on the property in 2002, expressly excluded lead hazards. See Exhibit 44 and Statement of Material Facts ¶ 104. Mr. Kramer admitted that "physical and environmental assessments, is […] something that you do when you take ownership and control of buildings." See Exhibit 11 (Kramer 86: 3 – 8).

7. Defendants had no policy to inspect or comply with safety laws and regulations when children came to live at 1801 – 16TH Street, N.W. Washington, D.C.

Defendants had no policy and did no inspections to comply with housing codes and health and safety regulations designed to protect children. See Statement of Material Facts ¶ 105. Ms. Pulliam testified that the onsite manager probably would record when children came to live in apartments. See Statement of Material Facts ¶ 98. Mr. Levin testified that:

> Q. Was there any policy that you had as the property manager that when a family had a baby, that you'd go in and do any type of inspection of their apartment to make sure it was safe for the child?
>
> A. No.

See Exhibit 17 (Myles Levin 12/12/08 at page 35: 18 - 22). Ms. Pulliam also testified that even when it became known that children lived in the building, nothing was done to inspect or ensure that compliance with lead-safety laws. See Exhibit 19 (Pulliam 24: 7 – 25: 14)

8. Defendants performed annual evaluations of 1801 – 16th Street, N.W.

without ever looking for lead hazards.

Pinnacle Realty Management performed annual inspections of 1801- 16th Street, N.W. Washington D.C. See Statement of Material Facts ¶ 106. Ms. Pulliam testified that the annual inspections never included any inspection for lead-paint hazards and no certified lead inspector or contractor was present or involved in the annual inspections. See Exhibit 19 (Pulliam 25: 15 – 22).

9. Defendants provided no warning to the Lemma family of lead hazards.

Despite their knowledge of the likelihood of lead paint hazards in their building, the defendants gave no warning to the Lemma family of the potential for lead hazards. See Statement of Material Facts ¶¶ 95 & 103. The Lemma family testified that no warnings were given. Ms. Pulliam, testified that a generic disclosure form is utilized to alert tenants about the potential risks of lead. See Statement of Material Facts ¶ 96. No such form exists for the Lemma family. See Exhibit 19 (Pulliam 17: 13 – 18: 2).

In short, these defendants did absolutely nothing to live up to their statutory duty to protect children from the known lead-paint hazards in their building. There is no evidence that they lacked capacity to act, or tried to comply and were frustrated. They were scofflaws, plain and simple. It took the intervention of this Court with two orders over a period of nearly a year to finally force the defendants to comply with their duty to provide a lead-safe apartment to the Lemma family.

II. THE DEFENDANTS ARE LIABLE AS A MATTER OF LAW FOR BREACH OF THE WARRANTY OF HABITABILITY.

The implied warranty of habitability requires landlords to maintain rental property in compliance with the District's housing regulations. A landlord's failure to timely correct known code violations that render housing unsafe will invalidate the lease and entitle the tenant to a refund of all or part of the rent. *See Chibs v. Fisher,* 960 A.2d 588, 589 (D.C. 2008).

In this case, plaintiffs are entitled to judgment as a matter of law that the defendants violated the warranty of habitability, as alleged in Count II of the Amended Complaint. All that remains for trial is proof of the reasonable amount of rent that should be abated.

III. CONCLUSION

The District of Columbia adopted lead-safety laws to protect minor children from the brain damage that lead exposure at an early age causes. A.L. was lead-poisoned by the lead hazards identified in Apartment 610. Defendants have presented no evidence to excuse their violation of the lead-safety laws, and thus their proven violation of these laws and regulations stands as negligence *per se* and not mere evidence of negligence.

Rather than provide any reasonable excuse for their violations of the law, the undisputed evidence of this case demonstrates that Defendants simply chose to ignore the lead-safety laws. Defendants' actions and inactions both before and after the D.C. Government's inspection of Apartment 610 (and later 410) confirm their inexcusable conduct. Defendants' violation of the lead-safety laws designed to protect the health and safety of minors renders them negligent as a matter of law and in breach of the implied warranty of habitability. *Childs v. Purll*, 882 A.2d at

235 (citing *Chadbourne v. Kappaz,* 779 A.2d 293, 295 (D.C.2001).

Respectfully Submitted,

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