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Publications

"CLARITY ON THE TERM 'RESIDE' IS GOOD NEWS FOR NY LANDLORDS," LAW360

"Although many lead paint cases turn on whether the landlord or property owner had actual or constructive notice of the alleged hazardous condition in a living space, *Yaniveth* provides the defense with an early arrow for its quiver," write Brendan T. Fitzpatrick and Oliver E. Twaddell of Goldberg Segalla's Appellate and Toxic Torts Practice Groups. "In the wake of *Yaniveth*, defense counsel should be analyzing the living circumstances of every infant plaintiff, particularly where the infant has multiple living arrangements, spreading time among multiple dwellings."

In this article for *Law360*, Brendan and Oliver analyze a New York Court of Appeals decision in *Yaniveth R. v. LTD Realty Co.* that clarifies the term "reside" as used in Local Law 1, which, as they explain, "governs a building owner's duty to remove certain surface-coating material (e.g., lead) from the inside of apartment spaces."

The case involved an infant plaintiff who went to her grandmother's house — later found to have hazardous lead-paint conditions by the New York City Department of Health — for day care during the work week. At a year old, the infant plaintiff was found to have an elevated blood lead level; eight years later, her mother commenced a negligence action against the apartment building owner.

"The plaintiffs argued that because the infant 'spent a significant amount of time' at the grandmother's apartment, the defendant owner had a duty to abate the apartment of its lead condition pursuant to Local Law 1 — and its failure to do so caused the infant plaintiff's injuries," Brendan and Oliver write. "Both the Supreme Court and the Appellate Division found that the infant did not reside with her grandmother, therefore, vitiating any duty to abate."

The New York Court of Appeals agreed, finding that "spending 50 hours per week in an apartment with a non-custodial caregiver is insufficient to impose liability on a landlord under Local Law1." The court rejected the plaintiffs' argument for a broad interpretation of the term "reside" under Local Law 1 to encompass places where a child is physically present or spends significant time.

"This case reinforces a well-established understanding of the term 'resides' in Local Law 1, doing so within the context of persuasive plaintiff-side facts," Brendan and Oliver explain. "It appears that if an infant plaintiff is not considered as 'living' in a particular residence where he or she spends substantial time, a finding of joint custody or some other version of a shared living arrangement would be a prerequisite for liability."

Read the article here:

"Clarity on the Term Reside is Good News for NY Landlords ," *Law 360*, August 26, 2016 (subscription required)

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