

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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LEWIS PINE, KATHRYN PINE, a/k/a KATHRYN
RUBENSTEIN, and ARIEL KORNBLIT and SHIRI
KORNBLIT, individually and as parents and
guardians of Levi Kornblit, their infant child,

Index No: _____

Date Purchased _____

Plaintiffs,

SUMMONS

-against-

ERP WEST 86TH STREET, LLC,

Defendant.

-----X
TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in the above action and to serve a copy of your Answer on the plaintiffs' attorney within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after completion of service, where service is made in any other manner than personal delivery within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

New York County is designated as the place for trial. The basis for venue is the location of the subject real property and residence of the parties.

Dated: New York, New York
July 2, 2013

DAVID ROZENHOLC & ASSOCIATES

By: 

GARY N. MOROWITZ

Attorneys for Plaintiffs

400 Madison Avenue, 19th Floor

New York, New York 10017

(212) 983-4141

To: ERP West 86th Street, LLC
915 Broadway, Suite 1001
New York, New York 10010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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LEWIS PINE, KATHRYN PINE, a/k/a KATHRYN
RUBENSTEIN, and ARIEL KORNBLIT and SHIRI
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Index No: _____

Plaintiffs,

COMPLAINT

-against-

ERP WEST 86TH STREET, LLC,

Defendant.

-----X

Plaintiffs, Lewis Pine, Kathryn Pine, a/k/a Kathryn Rubenstein, and Ariel
Kornblit and Shiri Kornblit, individually, and as parents and guardians of Levi
Kornblit, their infant son, by their attorneys, David Rozenholc & Associates, as and for
their complaint against defendant, ERP West 86th Street, LLC, respectfully allege as
follows:

1. Plaintiff Lewis Pine ("Lewis Pine") is a natural person who is, and at all
times relevant to this action was, a resident of the City, State and County of New York,
and a tenant of record of Apt. 1A ("Apartment 1A") in the building located at and
known as 274 West 86th Street, New York, New York ("Building"), and is the husband of
plaintiff Kathryn Pine.

2. Plaintiff Kathryn Pine, a/k/a Kathryn Rubenstein ("Kathryn Pine") is,
and at all times relevant to this action was, a resident of the City, State and County of
New York, and a tenant of record of Apt. 1A in the Building, and is the wife of plaintiff

Lewis Pine (together, "the Pines").

3. Plaintiff Ariel Kornblit ("Ariel Kornblit") is a natural person who is, and at all times relevant to this action was, a resident of the City, State and County of New York, and the tenant of record of Apt. 2B ("Apartment 2B") in the Building, where he resides with his wife Shiri Kornblit ("Shiri Kornblit") and three month old son, Levi Kornblit ("infant Kornblit") (together, "the Kornblits").

4. Plaintiff Shiri Kornblit is, and at all times relevant to this action was, a resident of the City, State and County of New York, and resides in Apartment 2B with her husband Ariel Kornblit and their child, infant Kornblit.

5. Defendant ERP West 86th Street, LLC is, upon information and belief, a New York limited liability company, with offices at 915 Broadway, Suite 1001, New York, New York, and is the owner and landlord of the Building ("Owner" or "Landlord").

6. Plaintiffs are "rent stabilized" tenants of their respective apartments (Apartment 1A and Apartment 2B, together the "Apartments") under the rent stabilization laws of the City and State of New York, who entered into renewal leases with the landlord in 2013 in the persons of Lewis Pine and Kathryn Rubenstein (Apartment 1A) and Ariel Kornblit (Apartment 2B), respectively.

7. Defendant is, and at all times relevant to this action, was under a duty of care and a duty to maintain the Apartments and the Building and to keep same free of conditions which are dangerous to the life, health and/or safety of the Building's

tenants, occupants, and/or their guests.

8. Sometime in or about April, 2013, the Landlord began an interior renovation, or demolition, project at the Building, including major gut-demolition of apartments in the Building other than plaintiffs' Apartments which included demolishing walls painted with lead paint ("Landlord's Work").

9. Within a short period of time thereafter, the Landlord's Work then underway in a ground floor apartment and in Apartment 1B in the Building (which shares a common landing and wall with Apartment 1A) rendered plaintiffs' Apartments dangerous to inhabit if not completely uninhabitable. Among other things, said Landlord's Work resulted in the release of heavy and excessive dust into Apartments 1A and 2B as well as into common areas of the Building.

10. Tests were thereafter conducted on behalf of plaintiffs by an expert environmental engineer and the results showed, among other things, highly elevated levels of lead, asbestos, as well as elevated levels of other respiratory irritants, including gypsum and fibrous glass.

11. No dust controls were in place at the Building and the Landlord gave no notification to plaintiffs of lead or other hazards.

12. The aforesaid conditions presented and continue to present a risk to the life, health, and/or safety of plaintiffs and others present in the Building.

13. Said conditions are particularly dangerous and toxic to the infant Kornblit, especially with respect to the elevated levels of lead.

14. In the process of entering into renewal leases with plaintiffs Pines and Ariel Kornblit as aforesaid, the Landlord represented on or about June 6, 2013 in writing that it had no knowledge, records, or reports pertaining to lead based paint or lead based paint hazards.

15. Upon information and belief, the Landlord has made filings with the New York City Department of Buildings ("DOB") to permit similar Landlord's Work in other apartments in the Building, thus presenting the prospect of continuing and even increasing, serious life, health, and/or safety threats.

16. On May 17, 2013 the New York City Department of Environmental Protection ("DEP") conducted an inspection at the Building and Apartments and issued a stop work order on the basis of the conditions found ("Stop Work Order").

17. Upon information and belief, despite the aforesaid conditions and issuance of the Stop Work Order, the Landlord illegally has continued to do Landlord's Work at the Building, has other such work planned, and has commenced other work in the backyard of the Building.

18. Defendant has been repeatedly notified by plaintiffs of the aforesaid dangerous conditions and repeatedly requested to cease and desist Landlord's Work including, without limitation, by letters from plaintiffs' attorneys dated May 20, May 22, and June 21, 2013.

19. Defendant has negligently and/or recklessly failed to take appropriate action to prevent or alleviate said dangerous conditions and in the process has exhibited

a gross disregard for the life, health and safety of plaintiffs and the infant Kornblit.

20. Defendant's actions, and/or failures to act, were, and continue to be, deliberate, venal, and calculated to harass plaintiffs, with the sole goal of driving them from their homes in the Building.

21. Plaintiffs have experienced repeated respiratory difficulties, interference and limitation of their enjoyment of their premises, pain and suffering, and, in the case of plaintiff infant Kornblit, potentially catastrophic health problems.

22. Landlord owed plaintiffs a duty to keep the Building and Apartments free of conditions that are, or might be, dangerous to the life, health, and safety of its tenants, occupants and their guests.

23. Appropriate maintenance of the Apartments by the Landlord, which it failed to give, include compliance with the Housing Maintenance Code and guidelines permitted by the New York City and New York State Departments of Health.

24. Defendant knew that the infant Kornblit lived in the Building and intentionally pursued its wrongful conduct as aforesaid solely to try to force Kornblit and his family out of the Apartment 2B.

25. Real Property Law §235-b(1) provides that a landlord covenants and warrants in any residential lease that its leased premises will be fit for human habitation and that the tenants thereof shall not be subjected to conditions which would be dangerous, hazardous or detrimental to their life, health or safety.

AS AND FOR A FIRST CAUSE OF ACTION

26. By reason of the foregoing, plaintiffs have been damaged in an amount to be proved at trial, but believe to exceed \$1 million dollars.

27. Defendant's wrongful conduct, including, without limitation, deliberately exposing an infant to dangerous toxins has been willful, wanton, egregious, malicious, and intentional or reckless, with a gross disregard for the life, health and safety of plaintiffs and their families.

28. Punitive damages should be awarded in the amount to be determined at trial, but believed to exceed \$5 million dollars.

AS AND FOR A SECOND CAUSE OF ACTION

29. Repeat and reallege all of the allegations set forth in paragraphs "1" through "28" as if fully set forth hereat at length.

30. By reason of the foregoing, if defendant is permitted to proceed with its Landlord's Work, plaintiffs will continue to be exposed to conditions threatening to their life, health, and safety and that of occupants, and guests, including that of plaintiff infant Kornblit, as well as the loss of their enjoyment and use of their unique real property.

31. Without injunctive relief, plaintiffs will suffer irreparable harm.

32. Plaintiffs have no fully adequate remedy at law.

33. Therefore, a preliminary and permanent injunction should be granted restraining and enjoining defendant from in any way proceeding as it has with its

Landlord's Work.

WHEREFORE, plaintiffs respectfully request that decree and judgment be entered against defendant as follows awarding:

A. Damages in an amount to be proved at trial, but believed to exceed one million dollars, and punitive damages in an amount to be proved at trial, but believed to exceed five million dollars;

B. A preliminary and permanent injunction enjoining and restraining defendant from proceeding with its Landlord's Work; and

C. Awarding such other and further relief as this court may deem just, proper and equitable.

Dated: New York, New York
July 2, 2013

DAVID ROZENHOLC & ASSOCIATES
Attorneys for Plaintiffs

By: 

GARY N. HOROWITZ
400 Madison Avenue, 19th Floor
New York, New York 10017
(212) 983-4141

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LEWIS PINE, KATHRYN PINE a/k/a KATHRYN RUBENSTEIN,
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Plaintiffs,

-against-

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Defendant.

SUMMONS AND COMPLAINT

DAVID ROZENHOLC & ASSOCIATES

Attorneys for

Plaintiffs

Office and Post Office Address, Telephone

400 Madison Avenue
19th Floor
NEW YORK, N.Y. 10017
(212) 983-4141

To

Signature (Rule 130-1.1-a)

Attorney(s) for

Print name beneath

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Please take notice

NOTICE OF ENTRY

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order
settlement to the HON.
of the within named court, at
on

of which the within is a true copy will be presented for
one of the judges

at

M

Dated,

Yours, etc.

DAVID ROZENHOLC & ASSOCIATES

Attorneys for

To

Attorney(s) for

Office and Post Office Address
400 Madison Avenue
19th Floor
NEW YORK, N.Y. 10017