

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

In the Matter of the Application of NEW YORK CITY COALITION TO END LEAD POISONING, *et al.*

Petitioners-Plaintiffs-Respondents,

for a Judgment pursuant to Article 78 and § 3001 of the Civil Practice Law and Rules

-against-

PETER VALLONE, as Speaker of the New York City Council; *et al.*

Respondents-Defendants-Appellants.

New York County
Clerk's Index No.
120911/99

**AFFIDAVIT OF MARY GEARHART
IN OPPOSITION TO
RESPONDENTS-DEFENDANTS-APPELLANTS'
MOTION FOR A STAY**

State of New York }
County of New York } :ss.:

MARY GEARHART, being duly sworn, states as follows under oath:

1. I make this affidavit in opposition to respondents-defendants-appellants' ("appellants") motion for a stay of the Judgment entered below on February 22, 2001. This affidavit is based upon my own personal knowledge.

2. I reside at 250 Mott Street, Apt. 18, New York, New York. The building has about 20 apartments. On information and belief, the building was built around 1900.

3. I reside there with my adopted son, Jacob Gearhart, who will shortly turn one year of age (born April 9, 2000).

4. In October of 2000, I became concerned about the possible hazards of lead paint and lead dust in my home. The landlord was renovating the building, and there was a lot of dust in the common hallways, as well as in my apartment.

5. I tried calling various City agencies about the dust problem. I was told that they could not do any testing unless my son was already lead poisoned.

6. As a result, on October 18, 2000, I hired an independent testing firm, Enviro-test, Inc., to test the lead dust. The inspector, Arthur Morales, took three dust wipe samples inside my apartment and two dust wipe samples in the hallway outside my apartment. The results are in the report attached as Exhibit 116.

7. I am informed that the federal Environmental Protection Agency defines a lead hazard as 40 micrograms per square foot (":g/ft²"). Four out of the five samples taken had results far in excess of this federal definition of a lead hazard. In one room of my apartment the dust had a lead level of 1,636 :g/ft² - over 40 times the hazard level. My kitchen floor was 442 :g/ft² - ten times the hazard level. Because Jacob is at a crawling stage, I was extremely concerned.

8. However, the landlord refused to clean up the lead dust, nor relocate me and my young child until the hazardous work

was completed. Because of my concern for my son's health, I began staying elsewhere, and am currently staying with a friend until the conditions are corrected.

9. I began a rent strike in December of 2000 because of the conditions. In February of this year, the landlord commenced a non-payment proceeding against me in Housing Court. In response to my request, the court ordered an inspection of my apartment by the Department of Housing Preservation and Development ("HPD"). In my February 27, 2001, inspection request (attached as Exhibit 117), I specifically listed, among other conditions, "dust from building demolition and renovation (contains lead)" as well as "walls, ceiling - holes, falling cracked plaster/paint."

10. When the inspector from HPD arrived, I told him about my concerns about lead and the fact that I had a young child. In fact, the inspector and I discussed our commonality of being adoptive parents. Nonetheless, I was shocked when the inspection report (attached as Exhibit 118) came back without any lead paint violations. Instead, the inspector wrote up the damaged paint as a class "B" non-lead paint violation! See inspection report item 5 ("repair the broken or defective plastered surfaces and paint in a uniform color water damaged ceiling and walls"). I don't understand this -- HPD was informed I had a young child, and the inspection report acknowledges that this is an "old law tenement."

