

LEAD PAINT PLAYGROUND HAZARD EVIDENCE
Gonzalez v. Curt Realty, 2007 NY

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The injured plaintiff in a personal injury lawsuit bears the burden of proof to allege sufficient facts which could establish by a “preponderance” of the evidence (i.e., better than 50-50) that defendant’s alleged negligence was indeed the “proximate cause” of plaintiff’s injury

more likely than not, plaintiff would not have been injured, or injured as severely, absent the alleged negligence of the defendant.

less than 50-50 amounts to mere conjecture and speculation regarding the legal cause of plaintiff’s injury

plaintiff’s negligence claim should fail for lack of evidence.

general, landowners owe a legal duty to their invitees (i.e., those authorized to enter and use the premises for public or business purposes keep the premises reasonably safe under the circumstances

landowner may be liable for ordinary negligence where an unreasonably dangerous condition on the premises causes injury to an invitee.

To impose liability for ordinary negligence a judge or jury must find, more likely than not, the injury sustained by the invitee would not have occurred in the absence of an unreasonably dangerous defect on the premises.

Lead paint on playground equipment has been generally recognized as a potentially unreasonably dangerous condition on the premises.

potential lead poisoning hazard primarily for children six years old and younger.”
levels of lead in the paint on older playground equipment that were “high enough to be recognized as a federal priority for lead hazard control measures.”

deteriorating lead paint in older homes was the leading cause of lead poisoning in children

CPSC acknowledged that it had “no reports of children with lead poisoning from paint on playground equipment.”

mere existence of lead paint on playground equipment is not sufficient to impose landowner liability for negligence

no evidence that the child was ever exposed to the foreseeable risk of injury associated with painted playground equipment, i.e., lead ingestion.

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court found no evidence to indicate that the high level of lead in this child's blood was, more likely than not, caused by any cumulative effect from ingesting lead in both the home and visits to the public playground.

EXPOSURE PROOF

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Jaqueline Gonzalez, age 3, was allegedly injured after being exposed to lead paint in an apartment owned by defendant Curt Realty.

Curt Realty filed a third party negligence claim against the New York City Parks and Recreation Department alleging the high levels of lead in the playground were also responsible for the child's lead exposure.

contended that the City should also be held liable for damages associated with the child's condition.

City argued that there was no evidence that infant plaintiff's elevated blood lead level was caused by exposure to a lead paint hazard in the park

inspection of the playground conducted by Curt Realty, "high levels of lead were found on the slide handrail, the swing set beam support and the toddler play area gate and fence."

City argued that "the infant plaintiff did not come into contact with any of these areas." city health department had found lead violations in the apartment it rented to Betancourt, Curt Realty claimed that there was still a "question of fact as to where the infant plaintiff was exposed to the lead which caused her injuries."

"failed to show that infant plaintiff had contact with a lead source in the park,"