

<b>Hines v Co-Op City</b>
2017 NY Slip Op 31312(U)
May 25, 2017
Supreme Court, Bronx County
Docket Number: 301077/15
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK  
BRONX COUNTY

**Part 4**

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**RONALD E. HINES, JR.,**

*Plaintiff*

**Decision and Order**

Index No. 301077/15

-against-

**CO-OP CITY, RIVERBAY CORPORATION and  
MARION SCOTT REAL ESTATE, INC.,**

*Defendants.*

Howard H. Sherman

*J.S.C.*

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The following papers numbered 1-4 read on this motion for an order amending pleadings noticed and duly submitted on the Motion Calendar of October 7, 2016.

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Affirmation and Exhibits A-D	1	
Answering Affidavit and Exhibits	2, 3	
Affirmation in Reply	4	
Memoranda of Law	3A	

Upon the foregoing papers this motion for an order pursuant to CPLR 3025[b] granting leave to serve a supplemental summons and amended complaint is granted pursuant to the terms set forth below.

In this action plaintiff seeks damages for personal injuries alleged to have been sustained as a result of his exposure to legionella bacterium present in a cooling towers of his residential building located in the Co-Op City development in Bronx County. Plaintiff has also asserted a "second cause of action" for punitive damages arising from

the defendants' "willful and contumacious" failure to take steps to prevent the spread of legionnaire's disease despite notice of the contamination of the towers.

Plaintiff now seeks leave to add Industrial Water Technologies, Inc. as a named defendant contending that this entity was hired by the defendant managing agent to provide maintenance and replacement of cooling towers at the Co-Op City development. Plaintiff also requests that the caption be amended to omit as a defendant Co-Op City, as it is neither a corporation nor a business entity, but rather, a fictional business name.

Neither Riverbay Corporation (Riverbay) nor Marion Scott Real Estate, Inc. (MSI) take a position on the proposed amendments, however, each argues that neither the original complaint nor that proposed amended one, allege a sufficient basis in fact or in law for the claim for punitive damages.

#### Discussion

Leave to amend a complaint is typically freely granted, absent prejudice or surprise resulting directly from the delay (See, *McCaskey, Davies & Assoc. v. New York City Health & Hosp. Corp.*, 59 N.Y.2d 755, 757, 450 N.E.2d 240 [1983]; see also CPLR 3025[b] ), with the movant not required to establish the merit of her proposed new allegations, but only that "the proffered amendment is not palpably insufficient or clearly devoid of merit" (*MBIA Ins. Corp. v. Greystone & Co., Inc.*, 74 A.D.3d 499, 500, 901 N.Y.S.2d 522 [1st Dept.2010] ). Plaintiff has made the requisite showing .

While it is clear that a claim for punitive damages may not be maintained as a separate cause of action (see, Roacanova v Equitable Life Assur. Socy. of U.S., 83 NY 2d 603, 616-617, 634 N.E. 2d [1994]; La Porta v Alacra, 142 A.D. 3d 851 [1<sup>st</sup> Dept. 2016]), neither defendant has moved affirmatively for the relief sought. Moreover, upon consideration of the allegations of recklessness here, and as afforded all favorable inferences, there is no showing at this juncture, that any award of punitive damages would not lie. Defendants may move for dispositive relief with respect to this claim, and all others at the completion of discovery.

Accordingly, it is

ORDERED that plaintiff's motion be and hereby is granted, and plaintiff granted leave to serve the proposed supplemental summons and amended complaint, (Exhibit D) upon defendant Industrial Water Technologies, Inc. within thirty (30) days after entry of this decision and order , and it is further

ORDERED that service of a copy of this decision and order and the supplemental summons and amended complaint upon counsel for defendants Riverbay Corporation and Marion Scott Real Estate, Inc., by regular mail within thirty (30) days hereof shall be deemed service of the supplemental summons and amended complaint , and it is further

ORDERED that defendants have thirty (30) days from the date of service to serve an answer or an amended answer or to make any motions addressed to the amended complaint, and it is further

ORDERED that the caption of the action be and hereby is amended as follows.

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Ronald E. Hines, Jr.

*Plaintiff*

-against-

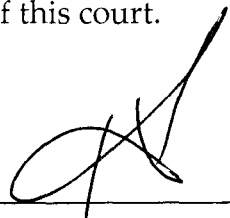
Riverbay Corporation, Marion Scott Real Estate, Inc.,  
and Industrial Water Technologies, Inc.,

*Defendants*

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This shall constitute the decision and order of this court.

Dated: May 25, 2017  
Bronx, New York

  
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Howard H. Sherman  
J.S.C.