

**Roman v PRC Westchester Ave. LLC**

2019 NY Slip Op 35127(U)

September 4, 2019

Supreme Court, Bronx County

Docket Number: Index No. 23997/2018E

Judge: Lucindo Suarez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

Mtn. Seq. 2

ROBINSON ROMAN,

Index No.: 23997/2018E

Plaintiff,

- against -

**DECISION and ORDER**

PRC WESTCHESTER AVENUE LLC,  
PRC WESTCHESTER AVENUE MANAGING MEMBER LLC  
PROPERTY RESOURCES CORPORATION,  
PRC FOX STREET LLC, PRC FOX STREET MANAGING  
MEMBER LLC, PRC FOX STREET MODERATE II LLC,  
FOX-SIMPSON HOUSING DEVELOPMENT FUND  
CORPORATION, NEW YORK CITY HOUSING  
DEVELOPMENT CORPORATION, and  
THE BRIARWOOD ORGANIZATION LLC,

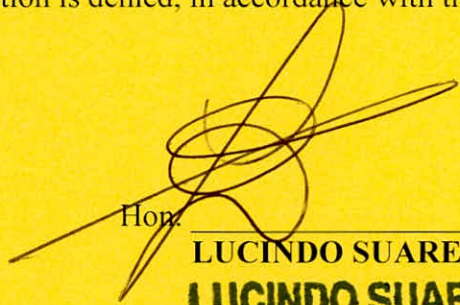
Defendants.

and Third-Party actions.

	<u>Papers Numbered</u>
Notice of Motion, Affirmation, Exhibits	1, 2, 3
Affirmation in Opposition and Cross Motion, Exhibits	4, 5
Affirmation in Partial Opposition	6
Affirmation in Partial Opposition	7

Upon the enumerated papers; and due deliberation; Plaintiff's motion is granted in part and Defendant Managing Member's Cross-Motion is denied, in accordance with the annexed decision and order.

**Dated: September 4, 2019**

Hon.   
**LUCINDO SUAREZ, J.S.C.**  
**LUCINDO SUAREZ, J.S.C.**

**Check one:**

- Case Disposed in Entirety
- Case Still Active

**Motion is:**

- Granted
- Denied
- GIP
- Other

**Check if appropriate:**

- Schedule Appearance
- Settle Order
- Fiduciary Appointment
- Submit Order
- Referee Appointment

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

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ROBINSON ROMAN,

Index No.: 23997/2018E

Plaintiff,

- against -

PRC WESTCHESTER AVENUE LLC,  
PRC WESTCHESTER AVENUE MANAGING MEMBER LLC  
PROPERTY RESOURCES CORPORATION,  
PRC FOX STREET LLC, PRC FOX STREET MANAGING  
MEMBER LLC, PRC FOX STREET MODERATE II LLC,  
FOX-SIMPSON HOUSING DEVELOPMENT FUND  
CORPORATION, NEW YORK CITY HOUSING  
DEVELOPMENT CORPORATION, and  
THE BRIARWOOD ORGANIZATION LLC,

Defendants.

PRC FOX STREET, LLC FOX-SIMPSON  
HOUSING DEVELOPMENT FUND  
CORPORATION, and PRC FOX STREET MODERATE II LLC,

Third-Party Plaintiffs,

- against -

L. RISO & SONS CO., INC. and MELCARA CORP.,

**DECISION and ORDER**

Third-Party Defendants.

L. RISO & SONS CO., INC.,

Second Third-Party Plaintiffs,

- against -

ROCKAWAY CONTRACTING CORP.,

Second Third-Party Defendants.

PRESENT: Hon. Lucindo Suarez

The issue in Plaintiff's motion is whether leave should be given to allow Plaintiff to add parties to this action. The court finds that Plaintiff is entitled to leave to add parties as there is no showing that prejudice or surprise will result. In addition, the issue in Defendant PRC Westchester Avenue Managing Member, LLC's ("Managing Member") cross-motion is whether Plaintiff's amended complaint should be dismissed pursuant to CPLR §3211(a)(7) for failure to state a cause of action.

Pursuant to CPLR §3025, a party may amend a pleading at any time by leave of court. A request to amend is determined in accordance with the general considerations applicable to such motion, including the statute's directive that leave "shall be freely given upon such terms as may be just." CPLR §3025(b); *see also Kimso Apts., LLC v. Gandhi*, 24 N.Y.3d 403, 23 N.E.3d 1008, 998 N.Y.S.2d 740 (2014). New York State Courts have consistently recognized that absent prejudice or surprise, courts are free to permit the amendment of pleadings. *Id.* Further, applications seeking leave to amend pleadings are within the sound discretion of the court. *See Mack v. City of NY*, 165 A.D.3d 443, 84 N.Y.S.3d 481 (1st Dep't 2018).

Plaintiff seeks to add Third-Party Defendant L. RISO & SONS CO., INC. as a direct defendant. Plaintiff argues L. RISO & SONS CO., INC. is the construction manager/general contractor, thus making it proper Labor Law Defendants. There is no opposition by any Defendant, therefore, the court sees no prejudice in adding the Third-Party Defendant as a direct defendant.

On cross-motion, Managing Member seeks to have Plaintiff's amended complaint dismissed as it argued that there are no specific allegations made against Managing Member. In determining a motion to dismiss made pursuant to CPLR §3211, the factual allegations in the complaint are assumed to be true, the plaintiff is to be accorded "the benefit of every possible favorable inference," and the court is to determine only whether the facts as alleged fit within

any cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83, 638 N.E.2d 511, 614 N.Y.S.2d 972 (1994).

In addition, CPLR §3013 provides, “statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.” The test to be applied to the sufficiency of pleadings is not whether the complaint has stated a cause of action but rather, upon examination of the four corners of the pleading, do the factual allegations contained therein indicate the existence of a cause of action. *Melito v. Interboro- Mutual Indem. Ins. Co.*, 73 A.D.2d 819, 43 N.Y.2d 742 (4th Dep’t 1979). Accepting the allegations as true, Plaintiff plead sufficient facts in his complaint to support a cognizable cause of action recognized in Labor Law against Managing Member. As such, Defendant Managing Member’s cross-motion is denied.

Accordingly, it is

ORDERED, that Plaintiff’s motion seeking to add parties is granted; and it is further ORDERED, that the portion of Plaintiff’s motion seeking costs and sanctions against the parties is denied; and it is further

ORDERED, that Defendant Managing Member’s cross-motion to dismiss Plaintiff’s amended complaint is denied; and it is further

ORDERED, that the caption of this action shall be amended to reflect the foregoing and all papers to be served and filed herein shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

ROBINSON ROMAN,

Index No.: 23997/2018E

Plaintiff,

- against -

PRC WESTCHESTER AVENUE LLC,  
PRC WESTCHESTER AVENUE MANAGING MEMBER LLC  
PROPERTY RESOURCES CORPORATION,  
PRC FOX STREET LLC, PRC FOX STREET MANAGING

MEMBER LLC, PRC FOX STREET MODERATE II LLC,  
FOX-SIMPSON HOUSING DEVELOPMENT FUND  
CORPORATION, NEW YORK CITY HOUSING  
DEVELOPMENT CORPORATION, and  
THE BRIARWOOD ORGANIZATION LLC,  
L. RISO & SONS CO., INC., and MELCARA CORP.,

Defendants.

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PRC FOX STREET, LLC FOX-SIMPSON  
HOUSING DEVELOPMENT FUND  
CORPORATION, and PRC FOX STREET MODERATE II LLC,

Third-Party Plaintiffs,

- against -

L. RISO & SONS CO., INC. and MELCARA CORP.,

Third-Party Defendants.

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L. RISO & SONS CO., INC.,

Second Third-Party Plaintiffs,

- against -

ROCKAWAY CONTRACTING CORP.,

Second Third-Party Defendants.

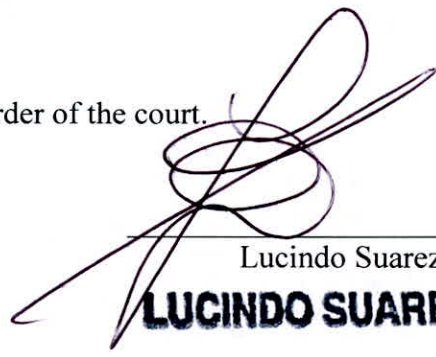
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and it is further

ORDERED, that within thirty (30) days after the date of this decision and  
order, Plaintiff shall serve and file a supplemental summons and amended complaint  
in the above form.

This constitutes the decision and order of the court.

Dated: September 4, 2019

  
\_\_\_\_\_  
Lucindo Suarez, J.S.C.  
**LUCINDO SUAREZ, J.S.C.**