

<b>Hines v Riverbay Corp.</b>
2017 NY Slip Op 32398(U)
October 18, 2017
Supreme Court, Bronx County
Docket Number: 301077/2015
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. 301077/2015

-against-

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

*Defendants*

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**Riverbay Corporation**

*Third-Party Plaintiff*

-against -

**JUSTEQ, LLC.**

*Third-Party Defendant*

Howard H. Sherman  
*JSC*

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The following papers numbered 1-3 read on this motion for an order pursuant to CPLR 3025[b] granting leave to amend the complaint to assert a claim against JUSTEQ, LLC., submitted 08/16/17

Notice of Motion - Affirmation and Exhibits A-F	1	
Affirmation in Opposition , Exhibit A	2	
Affirmation in Reply	3	

**Plaintiff's motion for an order granting leave to serve a second supplemental summons and amended complaint adding JUSTEQ LLC, as a party defendant is granted.**

In this action , plaintiff seeks damages for personal injuries alleged to have been sustained as a result of Legionnaire's disease contracted due to exposure to legionella

bacteria present in a cooling tower in a Bronx County residential complex.

Plaintiff now seeks to amend his complaint to assert a direct claim against third-party defendant Justeq, LLC., the manufacturer of a biocide, which after December 2014, was used in the water treatment program for the cooling towers.

Justeq, LLC opposes the motion on the grounds that the complaint lacks merit as the New York City Department of Health concluded that it was impossible to determine conclusively that the use of the biocide had anything to do with the legionella outbreak at the site. Additionally it is argued that plaintiff cannot maintain, as proposed, a separate cause of action for punitive damages (see, *Rocanova v. Equitable Life Assur. Society of the U.S.*, 83 N.Y.2d 603 [1994]).

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 his or 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 such a showing here, as the proof tendered by the proposed defendant, does not dispositively establish that the claim is patently without merit. While it is clear that requests for punitive damages possess no viability absent attachment to a substantive cause of action,

it is also settled that plaintiff is entitled to include in his prayer for relief a request that he be awarded punitive damages in the event he proves the requisite degree of culpability on his cause of action for negligence.

Accordingly, it is ORDERED that plaintiff's motion be and hereby is granted , and plaintiff granted leave to serve the proposed second supplemental summons and amended complaint, (Exhibit F) upon JUSTEQ, LLC , by counsel within thirty (30) days hereof, 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, Marion Scott Real Estate Inc. , and Industrial Water Technologies , Inc., by regular mail within twenty (20) days hereof shall be deemed service of the second 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 motion 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,**

*Plaintiff*

-against-

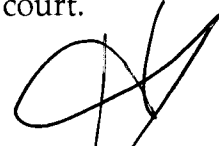
**Riverbay Corporation , Marion Scott Real  
Estate , Inc., Industrial Water Technologies, Inc.,  
and JUSTEQ, LLC**

*Defendants*

-----X

This shall constitute the decision and order of this court.

Dated: October 18, 2017



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Howard H. Sherman