

**Modica v Radius Pest Mgt.**

2020 NY Slip Op 32041(U)

May 6, 2020

Supreme Court, Bronx County

Docket Number: 29993/2018E

Judge: Mary Ann Brigantti

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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 15**

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**VINCENT A. MODICA and BRANDON MODICA,  
Plaintiffs,**

**ACTION Number 1  
Index No.: 29993/2018E**

**-against-**

**RADIUS PEST MANAGEMENT and MARIO MINUTO,  
Defendants.**

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**RADIUS PEST MANAGEMENT and MARIO MINUTO,  
Third-Party Plaintiffs,**

T.P. Index No.: 43028/2020E

**-against-**

**ARCHIBALD H. BRITTON,  
Third-Party Defendant.**

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX - PART 15**

-----X

**ARCHIBALD H. BRITTON,  
Plaintiff,**

**ACTION Number 2  
Index No.: 25487/2019E**

**-against-**

**RADIUS PEST MANAGEMENT, MARIO MINUTO,  
NEIL H. HANGAN, VERONI A. AVALLONE, JUAN  
FLORENTINO and VINCENT MODICA,  
Defendants.**

-----X

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX - PART 15**

-----X

**JUAN FLORENTINO,  
Plaintiff,**

**ACTION Number 3  
Index No.: 26424/2019E**

**-against-**

**RADIUS PEST MANAGEMENT, LLC., and MARIO MINUTO,  
Defendants.**

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**RADIUS PEST MANAGEMENT, LLC., and MARIO MINUTO,  
Third-Party Plaintiffs,**

T.P. Index No.: 43095/2020E

**-against-**

**ARCHIBALD H. BRITTON,  
Third-Party Defendant.**

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**HON. MARY ANN BRIGANTTI:**

The above-referenced actions, which were consolidate for joint trial, are actions to recover damages for alleged personal injuries sustained in a motor vehicle accident. (See "Joint Trial Order", dated February 4, 2020).

Defendants, RADIUS PEST MANAGEMENT and MARIO MINUTO, move to amend their Answers, in the above-referenced Action Number 1, and Action Number 2, to include Affirmative Defenses alleging that the, respective, Plaintiffs failed to sustain serious injuries pursuant to Insurance Law 5102(d), and failed to use seatbelts, and related relief; and both motions are decided in this same decision and order.

In support of the motions, Defendants' submissions include the pleadings, and the proposed Amended Answers. There was no opposition submitted to these motions.

CPLR 3025(b) "Amendments and supplemental pleadings by leave" provides that:

"A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading."

It has been established that:

“Leave to amend a pleading " 'shall be freely given' absent prejudice or surprise resulting directly from the delay" (*McCaskey, Davies & Assoc. v New York City Health & Hosps. Corp.*, 59 NY2d 755, 757, 450 NE2d 240, 463 NYS2d 434 [1983]; *see also* CPLR 3025 [b]). The movant need not 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 AD3d 499, 500, 901 NYS2d 522 [1st Dept 2010]).”

(*Fairpoint Cos., LLC v Vella*, 134 AD3d 645, 645 [1st Dept 2015]).

Accordingly, Defendants’ motions are granted, without opposition. This shall be effectuated by the moving Defendants’ filing, and serving, the respective Amended Answers, upon all parties in the above-referenced actions, within sixty (60) days from the date of the entry of this Order. (*See* CPLR 3012(a) "Service of pleadings").

This constitutes the decision and order of this Court.

Dated: 5/6 2020

  
HON. MARY ANN BRIGANTTI, JSC