

Lindo v 1199 Hous. Corp.
2023 NY Slip Op 32985(U)
August 28, 2023
Supreme Court, New York County
Docket Number: Index No. 151297/2021
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK P. NERVO

PART

04

Justice

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RACHARD LINDO,

Plaintiff,

- v -

1199 HOUSING CORPORATION, METRO MANAGEMENT
& DEVELOPMENT, INC., SKYLINE RESTORATION
INC., SPRING SCAFFOLDING LLC, THE CITY OF NEW
YORK, MARION SCOTT REAL ESTATE, INC., ONETEAM
RESTORATION, INC., ALL CITY RESTORATION INC.,

Defendant.

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INDEX NO. 151297/2021MOTION DATE 03/29/2023MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 78, 79, 80, 81, 82, 83, 84, 85, 86, 95

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Plaintiff seeks an order pursuant to CPLR § 3025 granting leave to amend the complaint to add certain parties as defendants and remove other parties as defendants. The motion is opposed.

CPLR § 3025(b) governs permissive leave to amend a pleading upon terms which are just. Leave is to be freely given absent a showing that amendment would cause surprise or prejudice (*Fahey v. County of Ontario*, 44 NY2d 934 [1978]; *170 W. Vil. Assoc. v. G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]; *Lanpont v. Savvas Cab Corp., Inc.*, 244 AD2d 208 [1st Dept 1997]). However, “[i]n order to conserve judicial resources, an examination of the underlying

merits of the proposed causes of action is warranted. Where a court concludes that an application to amend a pleading clearly lacks merit, leave is properly denied” (*Eight Ave. Garage Corp. v. HKL Realty Corp.*, 60 AD3d 404 [1st Dept 2009] [internal citation omitted]).

Here, the motion is unopposed. All City Restoration and Oneteam Restoration defendants are necessary to afford complete relief, and their addition to this labor law matter is neither surprising nor prejudicial given their alleged involvement at the accident site. Removal of Metro Management as a defendant is likewise proper. Plaintiff’s proposed pleading does not clearly lack merit.

Accordingly,

ORDERED that the motion is granted without opposition; and it is further

ORDERED that the amended summons and complaint is deemed served upon answering defendants *nunc pro tunc*; and it is further

ORDERED that the caption in this matter, under Index No. 151297/2021,

shall be amended to read:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
RACHARD LINDO,

Plaintiff,

-against-

1199 HOUSING CORPORATION, SKYLINE
RESTORATION, INC., SPRING SCAFFOLDING LLC,
THE CITY OF NEW YORK, MARION SCOTT REAL
ESTATE, INC., ONETEAM RESTORATION INC. and
ALL CITY RESTORATION INC.,

Defendants.

-----X

; and it is further

ORDERED that within ten days of its entry by the Clerk, Plaintiff shall
serve a copy of this order with notice of entry on the County Clerk and the
Clerk of the Trial Support Office, and it is further

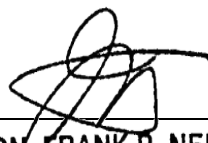
ORDERED that upon service on the County Clerk and Clerk of the Trial
Support Office, the County Clerk and the Clerk of the Trial Support Office
shall amend their records to reflect the above caption change; and it is further

ORDERED that plaintiff shall serve the amended summons and complaint, annexed as exhibit A (NYSCEF Doc. No. 80), upon non-appearing/answering defendants within 20 days of this decision and order; and it is further

ORDERED that all parties shall familiarize themselves with the Part Rules, available on the Court's website; and it is further

ORDERED that following service of the amended summons and complaint, and any answers thereto, all parties shall confer and file, as appropriate, a joint-letter/proposed discovery order via NYSCEF with courtesy copy to chambers within 60 days of this order. Failure to timely file a proposed discovery order may constitute waiver of discovery

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

<u>8/28/2023</u>			
DATE		HON. FRANK P. NERVO	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	J.S.C.
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE