

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

Index No.  
Date Filed

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LAWRENCE PHILLIPS,

Plaintiff,

Plaintiff designates New York County as the place of trial.

-against-

BLUE RIO, LLC and BETTER DAYS  
CONSTRUCTION, LLC,

Defendants.

Basis of venue is Defendant Blue Rio's principal office is in New York County.

Plaintiff resides at  
89 Main Street  
Hackensack, New Jersey.

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**SUMMONS**

To the above named defendant(s)

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff(s)' Attorney(s) within 20 days after the service of this summons, exclusive of the day of service, (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York  
April 20, 2016

LURIE, ILCHERT, MAC DONNELL & RYAN, LLP  
Attorneys for Plaintiff

By:   
\_\_\_\_\_  
GEORGE W. ILCHERT

475 Park Avenue South  
New York, New York 10016  
(212) 685-7411

Defendants' Addresses:

Blue Rio, LLC  
c/o Peter Fine  
183 Madison Avenue, Suite 1601  
New York, New York 10016

Better Days Construction, LLC  
183 Madison Avenue, Suite 1601  
New York, New York 10016

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

-----X  
LAWRENCE PHILLIPS,

Plaintiff,

VERIFIED COMPLAINT

-against-

BLUE RIO, LLC and BETTER DAYS  
CONSTRUCTION, LLC,

Defendants.

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Plaintiff by his attorneys, LURIE, ILCHERT, MAC DONNELL & RYAN, LLP,  
respectfully allege, upon information and belief:

FIRST CAUSE OF ACTION

1. At all the times mentioned herein, defendant BLUE RIO, LLC (hereinafter “BLUE RIO”) was a limited liability company organized and existing under the laws of the State of New York.
2. At all the times mentioned herein, defendant BLUE RIO was authorized to do business in the State of New York.
3. At all the times mentioned herein, defendant BLUE RIO regularly did business in the State of New York.
4. At all the times mentioned herein, defendant BETTER DAYS CONSTRUCTION, LLC (hereinafter “BETTER”) was a limited liability company organized and existing under the laws of the State of New York.
5. At all the times mentioned herein, defendant BETTER was authorized to do business in the State of New York.

6. At all the times mentioned herein, defendant BETTER regularly did business in the State of New York.

7. On August 14, 2015, plaintiff was caused to fall from an elevation on the premises known as 203 Gramatan Avenue, Mount Vernon, County of Westchester, State of New York.

8. At all the times mentioned herein, said premises was in the process of construction, demolition, repairing, altering, painting, cleaning or pointing.

9. At all the times mentioned herein, defendant BLUE RIO owned said premises.

10. At all the times mentioned herein, defendant BLUE RIO operated said premises.

11. At all the times mentioned herein, defendant BLUE RIO managed said premises.

12. At all the times mentioned herein, defendant BLUE RIO controlled said premises.

13. At all the times mentioned herein, defendant BLUR RIO maintained and repaired said premises.

14. At all the times mentioned herein, defendant BLUE RIO inspected said premises.

15. At all the times mentioned herein, defendant BETTER operated said premises.

16. At all the times mentioned herein, defendant BETTER managed said

premises.

17. At all the times mentioned herein, defendant BETTER controlled said premises.

18. At all the times mentioned herein, defendant BETTER maintained and repaired said premises.

19. At all the times mentioned herein, defendant BETTER inspected said premises.

20. Prior to August 14, 2015, defendant BLUE RIO entered into a contract with defendant BETTER, to, inter alia, perform construction, demolition, repairing, altering, painting, cleaning or pointing at said premises.

21. Prior to August 14, 2015, defendant BLUE RIO entered into a contract with Kingspan, Inc. to, inter alia, perform construction, demolition, repairing, altering, painting, cleaning or pointing at said premises.

22. Prior to August 14, 2015, defendant BETTER entered into a contract with Kingspan, Inc. to, inter alia, perform construction, demolition, repairing, altering, painting, cleaning or pointing at said premises.

23. At all the times mentioned herein, Kingspan, Inc., was in the business of, among other things, performing construction, demolition, repairing, altering, painting, cleaning or pointing.

24. At all the times mentioned herein, plaintiff was employed by the said Kingspan, Inc.

25. Prior to August 14, 2015, defendant BLUE RIO prepared, or caused to be

prepared, plans and specifications for said construction, demolition, repairing, altering, painting, cleaning or pointing work and directed, ordered and requested the type, dimension, quality, quantity and location of materials, supplies, ladders and scaffolding, and the manner and method of their use, and the places of said premises where said work was being performed.

26. Prior to August 14, 2015, defendant BETTER prepared, or caused to be prepared, plans and specifications for said construction, demolition, repairing, altering, painting, cleaning or pointing work and directed, ordered and requested the type, dimension, quality, quantity and location of materials, supplies, ladders and scaffolding, and the manner and method of their use, and the places of said premises where said work was being performed.

27. On August 14, 2015, defendant BLUE RIO was in charge of and supervised, controlled, inspected and directed the construction, demolition, repairing, altering, painting, cleaning or pointing work being performed at the said premises, and generally supervised and directed the said work.

28. On August 14, 2015, defendant BETTER was in charge of and supervised, controlled, inspected and directed the construction, demolition, repairing, altering, painting, cleaning or pointing work being performed at the said premises, and generally supervised and directed the said work.

29. At all the times mentioned herein, defendant BETTER was the general contractor for the said work being done on the said premises.

30. On August 14, 2015, plaintiff was performing construction, demolition, repairing, altering, painting, cleaning or pointing work at the said premises.

31. Solely as a result of defendants' negligence, plaintiff was personally injured,

lost earnings, and incurred medical expenses.

32. As a result of the foregoing, plaintiff was damaged in a sum in excess of the jurisdictional limits of the lower courts which might otherwise have jurisdiction.

### SECOND CAUSE OF ACTION

33. Plaintiff repeats each allegation previously made in this complaint.

34. At all the times mentioned herein, defendants failed to furnish the proper scaffolds, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, iron loops or other devices, which were so constructed, placed and operated so as to give proper protection to plaintiff for the performance of his work.

35. At all the times mentioned herein, defendants failed to construct, shore, equip, guard, arrange, operate and conduct the said work as to provide reasonable and adequate protection and safety to plaintiff.

36. At all the times mentioned herein, defendants failed to provide a safe place and means to perform the work that plaintiff was engaged to perform.

37. At all the times mentioned herein, defendants failed to control or eliminate hazards to plaintiff which exposed him to injury.

38. Plaintiff was an employee within the definition of Sections 200, 240, 241 and 241(a) of the Labor Law, and Rule 23 of the New York State Industrial Code.

39. By reason of the foregoing, defendants were in violation of Sections 200, 240, 241 and 241(a) of the Labor Law, and Rule 23 of the New York State Industrial Code, and the applicable OSHA Safety and Health Standards for the construction industry, as well as the Rules of the Board of Standards and Appeals.

40. Solely by reason of the defendants' said violations, plaintiff was personally injured, incurred medical expenses, and sustained loss of earnings.

41. As a result of the foregoing, plaintiff was damaged in a sum in excess of the jurisdictional limits of the lower courts which might otherwise have jurisdiction.

WHEREFORE, plaintiff demands judgment against defendant on the first and second causes of action for personal injuries for sums of money to be reasonably and fairly compensated for damages sustained; together with the costs and disbursements of this action.

Dated: New York, New York  
April 20, 2016

Yours, etc.

LURIE, ILCHERT, MAC DONNELL & RYAN, LLP  
Attorneys for Plaintiff

By: 

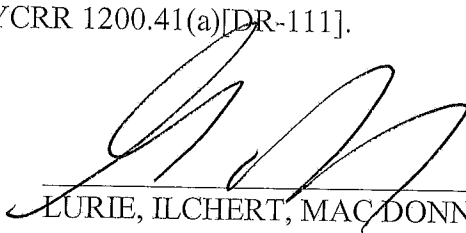
GEORGE W. ILCHERT

475 Park Avenue South  
New York, New York 10016  
(212) 685-7411

CERTIFICATION

I, GEORGE W. ILCHERT, certify that to the best of my knowledge, information and belief, after inquiry reasonable under the circumstances, the presentation of these papers and the contentions herein are not frivolous as defined in Sec. 130-1,1(c) of the Rules of the Chief Administrator and that this matter was not obtained through illegal conduct and the matter was not obtained in violation of 22 NYCRR 1200.41(a)[DR-111].

Dated: April 20, 2016



LURIE, ILCHERT, MAC DONNELL & RYAN, LLP  
Attorneys for Plaintiff(s)  
BY: GEORGE W. ILCHERT



STATE OF NEW YORK, COUNTY OF NEW YORK

SS:

I, the undersigned, am an attorney admitted to practice in the courts of New York State, and

( ) certify that the annexed  
has been compared by me with the original and found to be a true and complete copy thereof.

(X ) say that: I am the attorney of record, or of counsel with the attorney(s) of record, for the plaintiffs. I have read the annexed Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge, is based upon the following: any and all facts, reports, statements, documents, data, etc., in my file pertaining to this matter.

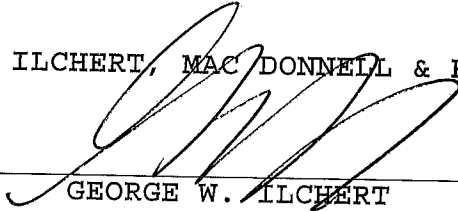
The reason I make this affirmation instead of plaintiff is that plaintiff is presently not in the county where deponent maintains his practice.

I affirm that the foregoing statements are true under penalties of perjury.

Dated: April 20, 2016

LURIE, ILCHERT, MAC DONNELL & RYAN, LLP

By: \_\_\_\_\_

  
GEORGE W. ILCHERT

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SUMMONS AND VERIFIED COMPLAINT  
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LURIE, ILCHERT, MAC DONNELL & RYAN, LLP  
Attorneys for Plaintiff  
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