

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

-----X
RYAN RODRIGUEZ and LISA LOPEZ,

Plaintiff,

-against-

VERIFIED COMPLAINT

Index 158806/2012

FAO SCHWARZ, CO.,
767 FIFTH INTERIM PARTNERS,
BOSTON PROPERTIES, INC.
KERNER ENTERTAINMENT CO.,
JORDAN KERNER,
COLUMBIA PICTURES and
SONY ENTERTAINMENT,

Defendants .

-----X

Plaintiff, RYAN RODRIGUEZ and LISA LOPEZ,

complaining of the defendants by and through his attorneys,
PURCELL & INGRAO, P.C., by GEORGE F. SACCO, ESQ. allege
upon knowledge, information and belief at all relevant
times, as follows:

THE PARTIES

1. The plaintiff RYAN RODRIGUEZ was and still is a resident of the County of Nassau, State of New York.
2. This action falls within one or more of the exceptions set forth in CPLR §1602.
3. The defendants FAO SCHWARZ CO (FAOS), 767 FIFTH INTERIM PARTNERS (767), BOSTON PROPERTIES, INC.

(BOSTON), KERNER ENTERTAINMENT CO., (KERNER CO), COLUMBIA PICTURE INDUSTRIES, (COLUMBIA) and SONY ENTERTAINMENT, (SONY), individually were and still are domestic corporations duly organized and existing under and by virtue of the laws of the State of New York.

4. The defendants individually were and still are foreign corporations authorized to do business in the State of New York.

5. The defendants individually maintained a principal place of business or a place of business in the County of New York, State of New York located at 599 Lexington Avenue, New York, New York 11201.

6. The defendant FAO SCHWARZ was a tenant at premises 767 Fifth Avenue, New York, New York.

7. The defendants maintained a principal place of business or a place of business at 32-12 36th Street, Astoria, Queens, New York.

8. The defendants did business at 767 Fifth Avenue, New York, New York.

9. The defendant 767 FIFTH INTERIM PARTNERS LLC was the owner of premises 767 Fifth Avenue, New York, New York.

10. The defendants 767 FIFTH AVENUE PARTNERS and/or BOSTON PROPERTIES entered into a lease or assumed a

lease for the rental of a portion of 767 Fifth Avenue with
FAO SCHWARZ.

9. 767 FIFTH AVENUE PARTNERS and/or BOSTON
PROPERTIES and /or FAO SCHWARZ entered into a contract with
KERNER COMPANY and/or COLUMBIA PICTURES and/or SONY to
lease a portion of said premises to film the motion picture
"THE SMURFS" in and about May 20, 2010 including work on
the movie on that date.

10. The contract and/or lease involved general
construction and demolition of the FAO SCHWARZ premises for
the purpose of filming said movie.

11. The defendants KERNER CO and their owner,
officer and employee JORDAN KERNER (JK) entered into the
contract and did perform construction work at the premises
767 Fifth Avenue, New York, New York

12. All of the defendants operated, controlled
and supervised the location of the filming in the area of
the demised space of FAO SCHWARZ.

13. The defendants maintained the aforesaid
building and premises.

14. The defendants controlled the aforesaid
building and premises.

15. The defendants managed the aforesaid
building and premises.

16. On or prior to May 20, 2010, the defendants KERNER CO, COLUMBIA and SONY were hired and/or retained to act as the general contractor and/or construction manager for the construction, renovation and/or alteration of premises for "THE SMURFS".

17. On or prior to May 20, 2010, the defendants KERNER CO, COLUMBIA and SONY were hired and/or retained pursuant to a written contract and/or agreement.

18. On or prior to May 20, 2010, the defendants hired and/or retained workers to perform work at the aforesaid premises.

19. Said workers were hired and/or retained pursuant to a written contract agreement.

THE INCIDENT

20. That on May 20, 2010, the plaintiff RYAN RODRIGUEZ was a worker on said premises involved in the filming of the subject movie.

21. On or prior to May 20, 2010, the defendants, their agents, servants and/or employees were engaged in performing construction work, labor and/or services upon the premises located at 767 Fifth Avenue, New York, New York.

22. The defendants, their agents, servants

and/or employees had a duty to provide the plaintiff with a safe place to work.

23. The defendants, their agents, servants and/or employees had a non-delegable duty to see that the work site was kept reasonably safe and free of dangers and hazards to those workers lawfully thereat.

24. On May 20, 2010, while plaintiff RYAN RODRIGUEZ was lawfully and carefully working upon the aforesaid premises, he was caused to fall from a Genie Scaffold by reason of the negligence and/or violation of the Labor Law of the State of New York of the defendants, their agents, servants and/or employees in the ownership, operation, direction, supervision, possession, control, construction, rehabilitation and/or alteration of the said premises and plaintiff sustained the injuries hereinafter alleged.

**THE LIABILITY
THE FIRST CAUSE OF ACTION**

25. On May 20, 2010, there existed in full force and effect within the State of New York, Section 200, 240 and 241 of the Labor Law of the State of New York.

26. By reason of the negligence, actions and/or status of the defendants as aforesaid, the said defendants violated Section 200, 240 and 241 of the Labor Law of the

State of New York.

27. The defendants, their agents, servants and/or employees were negligent, careless and reckless in the ownership, operation, maintenance, control, possession, supervision, direction, construction, inspection, management, renovation, rehabilitation and/or alteration of the said premises in that they failed to provide the plaintiff with a safe place to work; and the defendants were otherwise negligent, reckless and careless.

28. The defendants, their agents, servants and/or employees had actual and/or constructive notice of the dangerous and defective conditions existing upon the work site.

29. The accident and the injuries resulting therefrom were caused solely and wholly by reason of the negligence and/or breach of statute by the defendants, their agents, servants and/or employees without any fault, want of care or culpable conduct on the part of the plaintiff contributing thereto.

30. The defendants committed tortuous acts outside the State of New York that had consequences within the State of New York.

31. The defendants derived substantial revenue within the State of New York.

32. The defendant KERNER CO employed the defendant JACOB KERNER as an officer, owner and/or employee and as the producer in charge of the production of the subject movie.

33. The subject movie was on an extended day expedited schedule without adequate safety and medical personnel on duty at the time of incident.

34. By reason of the foregoing, the plaintiff RYAN RODRIGUEZ has been seriously and permanently injured, and disabled and so remains; that he has been unable to attend to his usual vocational activities as he did pre incident and that he has been obliged to expend and will expend in the future, sums of money, for medial aid and attention and that by reason of the foregoing, plaintiff RYAN RODRIGUEZ will be entitled to recover for past pain and suffering and loss of enjoyment of life, future pain and suffering and loss of enjoyment of life, past economic losses, future economic losses and may have to repay a portion of a workers' compensation claim in excess of \$284,000.00.

35. Plaintiff has been damaged in the amount of greater than the jurisdictional minimum of the Supreme Court of the State of New York estimated to be up to the

amount of FIFTEEN MILLION (\$15,000,000.00) DOLLARS.

**SPOUSAL DERIVATIVE CLAIM
THE SECOND CAUSE OF ACTION**

36. The plaintiffs repeat, reiterate and reallege all previous allegations.

37. The plaintiffs are married.

38. The plaintiff LISA LOPEZ lost the services of her spouse and was required to do things she would not have had to do but for the actions by the defendants herein.

39. Plaintiff has been damaged in an amount greater than the jurisdictional minimum of the Supreme court of the State of New York.

WHEREFORE, the plaintiffs ask for judgment against the defendants herein:


1. On the 1st Cause of Action
2. On the 2nd Cause of action

with the amounts to be determined by the triers of the facts along with interest, costs and disbursements as allowed and taxed by the Clerk of Court.

Dated: January 3, 2013
Mineola, New York

Yours, etc.,

PURCELL & INGRAO, P.C.


By: GEORGE F. SACCO, Esq.
Attorneys for Plaintiff
204 Willis Avenue
Mineola, New York 11501
516-248-6777
File: PM-4466 (GFS)

To:
FAO SCHWARZ CO.
767 Fifth Avenue
New York, New York 11374

BOSTON PROPERTIES INC
599 Lexington Avenue
New York, New York 10022

767 FIFTH INTERIM PARTNERS, LLC
599 Lexington Avenue
New York, New York 10022

KERNER ENTERTAINMENT COMPANY
Kaufman Astoria Studios
34-12 36th Street, 3rd Floor
Astoria, Queens, New York

JACOB KERNER
KERNER ENTERTAINMENT COMPANY
Kaufman Astoria Studios
32-12 36th Street, 3rd Floor
Astoria, Queens, New York

COLUMBIA PICTURE INDUSTRIES, INC.
Kaufman Astoria Studios
32-12 36th Street
Astoria, Queens, New York

SONY PICTURES ANIMATION
Kaufman Astoria Studios
32-12 36th Street
Astoria, Queens, New York

VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF RICHMOND)

GEORGE F. SACCO, ESQ. affirms under the penalties of perjury and pursuant to CPLR §2106 that he is an attorney and counselor at law duly admitted and licensed to practice in the Courts of this State; that he is trial counsel to the firm of PURCELL & INGRAO, P.C., the attorneys for plaintiffs, RYAN RODRIGUEZ AND LISA LOPEZ herein; that he has read the foregoing VERIFIED COMPLAINT, and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the reason this verification is made by your deponent and not by the plaintiffs personally is that the plaintiffs are not presently within the county where your deponent has his office.

That the sources of your deponent's information and the grounds of his belief as to the matters so alleged herein are investigations had by the plaintiffs, their agents, servants and representatives into the subject matter hereof and correspondence relating thereto, reports of which investigations and copies of which correspondence are in the possession of your deponent.

Dated: January 7, 2013
Mineola, New York


_____ GEORGE F. SACCO