

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
NASSAU COUNTY

<u>Trial/IAS:</u>	<u>Part 42</u>
<u>Motion Date:</u>	<u>12/8/00</u>
<u>Index No.:</u>	<u>28093/98</u>
<u>Mtn. Seq. No.:</u>	<u>001, 002</u>

Present: Honorable Jerald S. Carter

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PHELPS MEMORIAL HOSPITAL, As Assignee of
CAROL MERRELL, PERCELL WILSON, KELLY
MCCABE, CAROLE REXON, "BABY GIRL"
GREEN, LIGA DEMARTINO, VICTORIA
CABEZAS, HELEN PIEBES, JOHN GIROLAMO,
"BABY BOY" SANTUCCI, LISA BYRNES,
KENNETH GARRETT, CATHLEEN POLGREEN,
CHRISTINE EVANS, MACKENZIE FARRELL,
KAREN PIANTIERIDCIFUENTES, MARYBETH
CRAVEN, WILLIAM HERLIHY, CATHLEEN
POLGREENSTEEN KRESS, THOMAS BARNES,
BARBARA CAMPBELL, HAZEL HUDSON,
MICHAELHOLDOMB, DONALD HOFFMAN,
STEVEN KRESS, DANA HILL, KATHLEEN
JOHNS, LAURA SAFFER, PAMELA
SANTOSMARABLE, MIKAL SANTOSMARABLE,
JOSEPH ROD, WILLIAM GELARDI, LINDA
SUAGNUOLO, "BABY GIRL" SPAGNUOLO,
MARY BODDIE, IMELDA HILL, HAKIEM
SIMMONS, PATRICIA WINN, DANIEL WINN,
GERALDINE SCHUTTENBERG, NOCOLE
SCHUTTENBERG, ANNA PAULA FERRAO,
"BABY GIRL" GERRAO, "BABY BOY" CABEZAS,
JANET BEECHERT, JANET BEECHERT,
CHRISTINA BEECHERT, JACQUELINE
BEECHERT, YANET CABREJA, JOEL CABREJA,
STEVEN SASSONE, ZOHA GONDAL, BYRON
SIMMS, GORDON FERGUSON, CHRISTINE
CRIMMINS, WILLIAM BRADY, GERALDINE
LOBUS, CHARLES RICE, TERRY HAYNES,
MICHAEL MUNRO, ANN SULTAN, DOROTHY
COLT, SUSAN BINGELL, JOSEPH ZAIKOVICH,
SALVATORE CATALANO, DENISE CORRIVEAU,
ZEKE BRYNIN, GREGORY PERRONE, FRANK
PERILLI, ANNE SCHERER, FRANK PERILLI,
"BABY BOY" WILLIAMS, JUANITA DEJESUS,
"BABY GIRL" DEJESUS, MARGARET MIDGLEY,
LUIS RIVERA, "BABY BOY" MIDGLEY,
PERCELL WILSON, ROBERT BROMBACK,
ANTHONY IACOVELLI, VIRGINIA MCCARRON,
MARIA URBINO, ELSIE MOTEN, VALERIE
PARHAM, ANAMARIA RIVERA, JASON AUBRY,
STEPHEN DOMINELLO, OLIVIA WALLACE,
CATHERINE MORLEY, ANN SULTAN,
ANAMARIA RIVERA, "BABY BOY" RIVERA,

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DANIELLE FIELDS, BRADEN FIELDS,
ROSEMARIE CORRADINA, "BABY GIRL"
CORRADINA, ALYSSA MANN, CAROLE REXON,

Plaintiffs,

-against-

POMCO,

Defendant.

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The following papers having been read on this motion:

Notice of Motion and annexed Affirmation w/Exhibits	1
Notice of Cross-Motion and annexed Affidavit w/Exhibits	2
Affirmation in Opposition to Cross-Motion w/Exhibits	3
Memorandum of Law in Opposition to Motion	4
Affirmation in Response (Doerr)	5
Supplemental Affidavit w/Exhibits (Dowd)	6

Plaintiff's Motion for Summary Judgment pursuant to CPLR 3212 is denied. Defendant's Cross Motion for Summary Judgment pursuant to CPLR 3211(a) subdivision (1) (2) and (7) et seq. is granted.

This action arises out of an accounting error by Phelps Memorial Hospital.

It is the rule that "summary judgment is a drastic remedy to be granted only when there is no clear triable issue of fact presented and even the color of a triable issue forecloses the remedy." (Matter of Benincosa v. Garrubbo, 141 AD2d 636, 637). Furthermore, "In deciding a summary judgment motion, the evidence must be construed in a light most favorable to the party opposing the motion." (Id.)

On a motion for summary judgment, the Court must accept as true the evidence favoring the plaintiff and must scrutinize the moving papers in a light most favorable to the party opposing the motion. Jorge v. Sutton, supra, Goldstein v. City of Monroe, 77 AD2d 232, 432 NYS2d 966 Fourth Dept. 1980). The Court focus on a motion for summary judgment is issue finding not issue determination. Goldstein v. City of Monroe, supra. On a motion for summary judgment, the burden

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of proof rests with the defendant to show that he is entitled to this drastic remedy, Malary v. New York City Transit Authority, 232 AD2d 380, 648 NYS2d 319 (Second Dept., 1996).

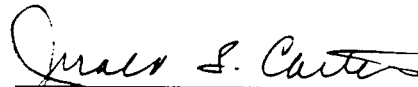
It is clear to this Court that POMCO was merely a conduit through which payments were made and is not the responsible party.

Therefore, Plaintiff's motion is denied and Defendant's cross motion is granted.

So Ordered.

Dated: Mineola, New York
June 8, 2001

ENTER:


A.J.S.C.

ENTERED

JUN 14 2001

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**