

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU
PRESENT: HONORABLE JOHN M. GALASSO, J.S.C.

.....
ANTHONY MENCY,
Plaintiffs,

Action No. 1
Index No. 017750/06
Part 41
Sequence ~~#002~~ ~~#003~~

- against -

U. NDIDI JIBUIKE, SEAN M. HARRIS,
NICHOLAS McCARTHY, MELANIE N. GARY,
BERNARD DEREK GRIFFIN and
SHAWN PETERSON, Defendants.

4/29/2008

.....
MELANIE GARY,
Plaintiffs,

Action No. 2
Index No. 07/15073

- against -

NICHOLAS A. McCARTHY, NDIDI U. JIBUIKE,
SEAN M. HARRIS, DEREK BERNARD GRIFFIN,
and SHAWN PETERSON, Defendants.

Notice of Motion.....	1
Affidavit In Opposition.....	2

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Upon the foregoing papers and without opposition, with the exception of defendant Nicholas McCarthy, plaintiff Melanie Gary's motion under Index No. 15073/2007 is determined as follows:

Her motion to sever the action from Index Number 17750/06 is denied as moot since that case was dismissed by a decision dated March 27, 2008.

Plaintiff's motion for partial summary judgment on the issue of liability as against defendants Ndidi Jibuike and Sean Harris is granted and all counterclaims against her are dismissed (*Berner v. Koegel*, 31 AD3d 591).

In their answers, defendant Nicolas A. McCarthy cross-claimed against defendants Jibuike and Harris and defendants Griffen and Peterson. Defendants Jibuike and Harris counterclaimed against plaintiff and cross-claimed against his co-defendants.

It is alleged that defendants Griffen and Peterson have failed to answer under this index number. The Court has not been apprised if a default judgment was entered against them in Suffolk County where the action was originally commenced and assumes it was not.

Plaintiff has no recollection regarding how the multi-vehicle accident took place. However, the accident was witnessed by Police Officer Savino who described it in his report.

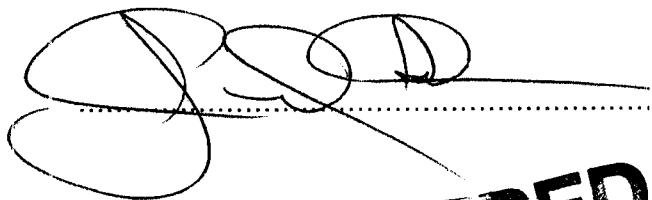
According to Officer Savino, the Harris vehicle passed a red light and collided with the McCarthy vehicle that had the green light. McCarthy's automobile in turn struck plaintiffs's car, which overturned onto a fourth vehicle driven by defendant Peterson. Both drivers Harris and Peterson left the scene and their vehicles were impounded.

On a motion for summary judgment the Court is permitted to search the record without the necessity of a cross-motion and grant summary judgment to the non-moving parties (CPLR §3212(b); see *Santagata v. Vinegar Hill Group, LLC*, 41 AD3d 576).

Since plaintiff has not proffered any evidence that the other co-defendants were in any way a proximate cause of the accident, plaintiff's complaint as against defendants McCarthy, Griffin and Peterson are dismissed. Likewise, defendants Ndidi Jibuike and Sean Harris' cross-claims are dismissed.

The action that remains is solely as against defendants Jibuike and Harris on the issue of damages. Before a trial date is set, the parties are directed to appear for a Pre-Trial Conference when notified it has been scheduled.

Dated: May 5, 2008



J.S.C.

**ENTERED**

MAY 07 2008

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**