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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 17**

**Present: HON. WILLIAM R. LaMARCA
Justice**

**MARY E. CONNELLY and KATHLEEN NOLAN,
Plaintiffs,**

**Motion Sequence #1
Submitted November 29, 2007**

-against-

INDEX NO: 5069/07

**JOSE CRUZ, ANNETTE A. GAYLE, JUAN A.
MENDOZA and ELON B. TULLOCH,
Defendants.**

The following papers were read on this motion:

Notice of Motion.....	1
Stipulation to Withdraw Motion as to Certain Parties, dated November 30, 2007.....	2

Plaintiffs, MARY E. CONNELLY and KATHLEEN NOLAN, move for an order, pursuant to CPLR § 3215, directing a default judgment in favor of the plaintiff and against the defendants, JOSE CRUZ, JUAN A. MENDOZA and ELON B. TULLOCH, for the relief demanded in the Complaint, on the ground that said defendants have failed to answer the Complaint within the time prescribed by law. In a Stipulation, dated November 30, 2007, counsel for the parties agreed that the motion was withdrawn as to defendants, JOSE CRUZ, ANNETTE A. GAYLE and JUAN MENDOZA, and remains pending only as to defendant, ELON B. TULLOCH. An Affidavit of Service reflects that said defendant was

duly served with the summons and complaint at his place of residence, by "nail and mail" service under CPLR §308(4), after three (3) prior attempts to personally serve him at his residence were unsuccessful. The instant motion was duly served on said defendant on September 27, 2007, but no papers are submitted in connection with the motion, which is determined as follows:

This action seeks to recover damages from defendants for personal injuries sustained by the plaintiffs, on or about April 3, 2004 at approximately 3:00 P.M., as a result of a three (3) car automobile accident in which it is alleged that the vehicle owned by defendant, JUAN A. MENDOZA, and operated by defendant, JOSE CRUZ, and the unregistered vehicle owned by defendant, ELON B. TULLOCH, and operated by defendant, ANNETTE A. GAYLE, came into contact, causing the TULLOCH/GAYLE vehicle to come into contact with the motor vehicle operated by plaintiff, MARY E. CONNELLY, in which plaintiff, KATHLEEN NOLAN was a passenger. The complaint alleges that the collision resulted solely from the negligence of the defendants and caused both plaintiffs to sustain serious personal injuries as defined in New York Insurance Law §5102(d). After a careful reading of the submission herein, and there being no opposition, it is hereby

ORDERED, that plaintiffs' motion for an order directing a default judgment for the relief demanded in the Complaint is granted to the extent that plaintiffs are granted a default judgment on the issue of liability against defendant, ELON B. TULLOCH. However, as the plaintiffs have not submitted proof of "serious injury", the Court grants judgment as to fault only, which does not include any finding that the plaintiffs have satisfied the "threshold" serious injury requirements. *Shafareko v Fu Cheng*, 772 NYS2d 862, NY

App.Div. Lexis 2687 (2nd Dept. 2003); *Reid v Brown*, 308 AD2d 331, 764 NYS2d 260 (1st Dept. 2003); and it is further

ORDERED, that at the time of Trial and Inquest of this action, damages, costs and disbursements awarded by the Court, if any, shall be apportioned among the defendants found to be responsible; and it is further

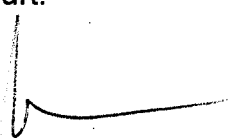
ORDERED, that plaintiff shall serve a copy of this order upon defendant, ELON B. TULLOCH, by regular and certified mail, return receipt requested, at his last known address, and upon counsel for the appearing defendants, JOSE CRUZ, ANNETTE A. GAYLE and JUAN MENDOZA, by regular mail, within twenty (20) days of entry; and it is further

ORDERED, that all appearing parties shall attend a Preliminary Conference on February 26, 2008, at 9:30 A.M. in Differentiated Case Management Part (DCM) at 100 Supreme Court Drive, Mineola, New York, to schedule all discovery proceedings. A copy of this order shall be served on all parties and on DCM case Coordinator Richard Kotowski. **There will be no adjournments**, except by formal application pursuant to 22 NYCRR § 125.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: January 24, 2008



WILLIAM R. LaMARCA, J.S.C.

ENTERED

JAN 28 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

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