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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X PART 9
PROVIDENCE WASHINGTON INSURANCE COMPANY,
a/s/o SCOTT SHELOFSKY and TONI ANN SHELOFSKY,

Plaintiff,

INDEX NO. 5186/04
ACTION NO. 1

MOTION DATE: 4/16/10
SEQUENCE NO: 03, 04

-against-

BINA E. MUNOZ and REBECCA MUNOZ,

Defendants.

-----X
REBECCA MUNOZ,

Plaintiff,

INDEX NO. 8901/06
ACTION NO. 2

-against-

SCOTT E. SHELOFSKY and
TONI ANN SHELOFSKY,

Defendants.

-----X
PROVIDENCE WASHINGTON INSURANCE COMPANY
on its own behalf and as insurer and as
subrogee of Scott Shelofsky and
Toni Ann Shelofsky,

Plaintiff,

INDEX NO. 29850/03
ACTION NO. 3

-against-

BINA MUNOZ and REBECCA E. MUNOZ,

Defendants.
-----X

Notice of Motion, Affirmation, & Exhibits.....	1
Notice of Cross Motion, Affirmation & Exhibits.....	2
Affirmation in Opposition & Exhibits.....	3

Motion by plaintiff Providence Washington Mutual (action 5186/04 & 89101/06) for an order discontinuing action No. 1 (5186/04) for subrogation of no-fault and uninsured motorist damages and Action No. 3 (29850/03) for subrogation of property damages payments to their insureds Scott Shelofsky and Toni Ann Shelofsky is granted.

That part of plaintiff Providence Washington Mutual's motion seeking dismissal of Munoz's counterclaim for property damages in District Court Action No. 3(29850/03) is denied. The District Court counterclaim by Bina Munoz and Rebecca Munoz will be heard jointly with Action No. 2(8901/2006).

Cross-motion by defendant Bina E. Munoz & Rebecca E. Munoz for an order granting attorney fees is granted. The fees shall be determined upon the submission of an affirmation of counsel and will be set at the final disposition of Action No. 2(8901/2006).

The facts as adduced from pleadings and motion papers are that there was a two-car accident on Port Washington Boulevard in Port Washington, N.Y. on June 8, 2003. One car was owned by Bina Munoz and operated by Rebecca Munoz, the other car was operated by Scott Shelofsky; Toni Ann Shelofsky was a passenger.

Litigation began with Action No. 3(29850/03) in District Court wherein Providence Washington Insurance Company as insurer of Scott Shelofsky sought subrogation from Bina E. Munoz and Rebecca E. Munoz for \$13,172.34 that was paid to Shelofsky for damage to his car. In the District Court action, Bina Munoz and Rebecca Munoz counterclaimed for \$14,929.92 for their car damages.


Plaintiff's insured and defendants were involved in a car accident on June 8, 2003 on Port Washington Boulevard in Port Washington, N.Y. Defendants submit the unsworn accident eyewitness statement alleging plaintiff's insured went through a red light and hit defendant Munoz who was making a left turn on a green turning arrow.

Plaintiff in Action No. 1 then commenced an action in Supreme Court to recover those sums paid for personal injuries damages as subrogee from defendant Bina Munoz, the owner of the car, and Rebecca Munoz, the operator of the car. In Action No. 2, Rebecca Munoz seeks damages for personal injuries she allegedly incurred in the accident.

Munozs' argue in opposition that Plaintiff was notified that an independent eyewitness placed the blame for the subject car accident on plaintiff's insureds, the Shelofskys, via letter dated August 23, 2003 from Daniel Trunk, Esq., attorney for Rebecca Munoz as plaintiff in Action No. 2. Mr. Trunk's letter, attached as Exhibit E,

includes the affidavit of Ralph Nabavi, the driver of a vehicle immediately behind the Shelofsky's vehicle. Mr. Nabavi, an independent eyewitness to the accident, states that defendant Munoz had a green turn arrow and plaintiff's subrogors "jumped the red light".

Dated: June 17, 2010



Anthony L. Parga, J.S.C.

ENTERED
JUN 22 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE