

**SHORT FORM ORDER****SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NASSAU****PRESENT:****HON. IRA B. WARSHAWSKY,****Justice.****TRIAL/IAS PART 10**

ALFONSO AMORIZZO, CHARLES CHIN-SANG,  
EDMUND CHIN-SANG, GREGORY CONNORS,  
JOHN DELAHANTY, PETER DILL, RAYMOND  
DODGE, ROBERT DODGE, NEIL R. DOHREN,  
VANESSA ESPEJO, ESTATES HOME DELIVERY,  
LTD., JAMES FRAZZITTA, LAURENCE FURNELL,  
CHARLES HAGEMEYER, CAROL HAZELDINE,  
JUSTIAN A. NICKMICK OF TIME, INC., MAKO  
ASSOCIATES, INC., SAME MARTINEZ, DIANE  
McDONALD d/b/a DIANE M. McDONALD  
ENTERPRISES, JAMES McMULLEN, MICHAEL  
RANDANO, REIN DISTRIBUTION, INC., KEITH J.  
RUMM, GARY SPIERER, CAROL-ANNE STAUER,  
TJ'S PARTY TENTS, INC., TOP DOG DELIVERY  
SERVICE, INC., LEN TORCHIN, JOSEPH VETRO,  
MARK VON WIEDING, MAREK WADOLOWSKI,  
WDC, INC., RHONDA ZELKIIND, VINCENT  
ROMANO, On Behalf of Themselves and On Behalf  
of All Others Similarly Situated,

Plaintiffs,

INDEX NO.: 012200/2005  
MOTION DATE: 10/17/2008  
MOTION SEQUENCE: 006 and 007

-against-

ANTHONY CONTE, ANTHONY CONTE d/b/a  
I-MEDIA CORPORATION, ANTHONY CONTE  
d/b/a I MEDIA, ANTHONY CONTE d/b/a  
IMEDIA CORPORATION, ANTHONY  
CONTE d/b/a IMEDIA CORPORATION,  
ANTHONY CONTE d/b/a AMERICAN HOME TV  
TIME MAGAZINE, ANTHONY CONTE d/b/a  
AMERICAN HOME DISTRIBUTION NETWORK,

Defendants.

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ANTHONY CONTE,

Third-Party Plaintiff,

-against-

COUNTY OF NASSAU, NEW YORK  
NASSAU COUNTY DISTRICT ATTORNEY'S OFFICE,  
DENIS E. DILLON, Individually and as Former  
District Attorney of Nassau County, New York,  
BOB EMMONS, Individually and as Assistant  
District Attorney of Nassau County, New York,  
PHILIP WASILAUSKY, Individually and as Assistant  
District Attorney of Nassau County, New York,  
WILLIAM WALLACE, Individually and as Assistant  
District Attorney of Nassau County, New York,  
MIKE FALZARANO, Individually and as Special  
Investigator for the Office of the District Attorney  
of Nassau County, New York,  
TEFTA SHASKA, Individually and as a Detective  
for the Police Department of the City of New York,  
LISA BLAND, Individually and as attorney for the  
Police Department of the City of New York,  
ROBERT VINAL, Individually and as Deputy  
Commissioner for the Police Department of  
the City of New York,  
THE CITY OF NEW YORK,  
THE POLICE DEPARTMENT OF THE CITY OF  
NEW YORK,  
LARRY GUERRA,  
MARK HARRINGTON,  
NEWSDAY, INC.,  
"JOHN" AND "JANE" DOES, 1-30, Individuals  
and Business Entities,  
CONSUMERS WAREHOUSE CENTER, INC.,  
JAMES S. BALOGA, SR.,  
JAMES S. BALOGA, JR.,  
MARIO ESCAMILLA,

Third-Party Defendants.

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The following papers read on this motion:

Notice of Motion, Affidavit & Exhibits Annexed .....	1
Notice of Motion, Affidavit & Exhibits Annexed .....	2

Respective motions by third-party defendants Larry Guerra and by Tefta Shaska, individually and as a detective in the Police Department of the City of New York, to dismiss the third-party complaint as to said third-party defendants are granted pursuant to CPLR 3211(a)(4).

The claims asserted against Larry Guerra and Tefta Shaska in the third-party complaint herein are basically identical to those asserted by defendant/third-party plaintiff Anthony Conte in the second amended complaint filed in the federal action commenced by him in the United States District Court : Eastern District of New York under case no. 06-CV-4746 (JFB-ETB).

With respect to Larry Guerra and Tefta Shaska, both the third-party complaint and the federal complaint (second amended complaint) allege, *inter alia*, that Larry Guerra, who signed a route distribution agreement with Anthony Conte's company, I Media Corporation, breached that agreement by failing to make the final payment of \$4,500 due in February, 2004. As a result, defendant/third-party plaintiff advised Mr. Guerra that the agreement was terminated and the \$4,500 previously paid by him would be retained as liquidated damages. In response, Anthony Conte alleges that Guerra, in an effort to recoup his money, falsely alleged, in a small claims action brought to recoup the \$4500, that Conte's publishing business was illegitimate and a fraud.

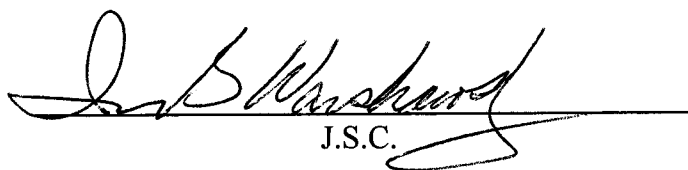
With respect to Tefta Shaska, defendant/third-party plaintiff alleges, *inter alia*, that she commenced an investigation of Mr. Conte, and used her position as a New York City Police detective to obtain private documents regarding I Media Corporation and made false and defamatory allegations [that Conte and I Media Corporation had committed fraud and were illegitimate] to several route distributors and a printer with whom I Media Corporation did business.

Courts possess broad discretion to dismiss an action predicated on the grounds of a prior pending action where, as here, there is substantial identity of the parties and causes of action and both suits arise out of the same subject matter or series of alleged wrongs. *Fischer v RWSP Realty, LLC*, 53 AD3d 594, 595 [2<sup>nd</sup> Dept. 2008]; *Coppa v Fabozzi*, 5 AD3d 718 [2<sup>nd</sup> Dept.

2004]. As a general matter, deference is accorded to the first action filed, (*Reckson Associates Realty Corp. v Blasland, Bouck & Lee, Inc.*, 230 AD2d 723, 725 [2<sup>nd</sup> Dept. 1996]), and no reason has been shown why the court should depart from that rule here. In fact, defendant/third-party plaintiff Anthony Conte has offered no opposition to the dismissal motions which are hereby granted pursuant to CPLR 3211(a)(4). Now, therefore, it is

ORDERED that the third-party complaint is dismissed against Larry Guerra and Tefta Shaska.

Dated: December 1, 2008

  
J.S.C.

**ENTERED**

DEC 03 2008

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**