

SCAN

**SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK**

Present:
HON. F. DANA WINSLOW,

**Justice
TRIAL/IAS, PART 11
NASSAU COUNTY**

**FRANK & JOHN RESTAURANT CORP.,
ARMANDO BISCARDI and TINA BISCARDI,**

Plaintiffs,

MOTION DATE: 03/28/06

- against -

**MOTION SEQ. NO. 001
INDEX NO.: 019036/05**

**FRANK PLUS JOHN PIZZA, INC., PASQUALE
BISCARDI, as President and individually, NEW
YORK STATE DEPARTMENT OF TAXATION
AND FINANCE, and NEW YORK STATE
ATTORNEY GENERAL,**

Defendants.

The following papers read on this motion (numbered 1-4):

- Emergency Order to Show Cause.....1**
- Affirmation [Joseph A. Hyland].....2**
- Affirmation in Opposition [Toni E. Logue].....3**
- Reply.....4**

Insofar as plaintiffs have discontinued their claims as against NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE and NEW YORK STATE ATTORNEY GENERAL (the "NY State Defendants"), pursuant to the Stipulation of Discontinuance as Against Defendant New York State Attorney General's Office, dated February 28, 2006, and the Stipulation and Discontinuance [regarding the action against the New York State Department of Taxation and Finance], dated March 28, 2006, Plaintiffs' motion for an Order enjoining the NY State Defendants from enforcing warrants and executions against plaintiffs, more fully described in the foregoing papers, is hereby **dismissed** as moot.

The Court notes that the motion by NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE for a change of venue pursuant to CPLR §506(b)(2) was

not filed with the Clerk of the Court, nor the motion fee paid, in accordance with the applicable rules of the Court. As the motion is also rendered moot by the above stipulations, it will not be considered by the Court.

The remaining parties shall appear for a preliminary conference in the DCM part on **Wednesday, June 7, 2006**, to schedule discovery with respect to the surviving causes of action.

This constitutes the Order of the Court.

ENTER:

Dated:

May 2, 2006

[Signature]
J.S.C.

ENTERED

MAY 25 2006

NASSAU COUNTY
COUNTY CLERK'S OFFICE