

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

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GHANSHAM SINGH, individually and as the Parent and  
Natural Guardian of STEPHANIE SINGH, an infant, and as  
Administrator of the Estate of BIBI SINGH,

Plaintiffs,

-against-

MAACO ENTERPRISES, INC., also doing business as  
MAACO AUTO PAINTING AND BODY WORKS,  
MAACO COLLISION REPAIR AND AUTO, and MAACO  
COLLISION REPAIR AUTO PAINTING,

Defendants.

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GHANSHAM SINGH, individually and as the parent and  
natural guardian of STEPHANIE SINGH, an infant, and  
as the administrator of the Estate of BIBI SINGH,  
decedent, BIBI BASHEERULLA, SHEIK M. BASHEERULLA,  
SALIMA ALLY, HALLIMA IDAN and MOHAMED AMIN,

Plaintiffs,

-against-

SMART CHOICE AUTO SALE, MAACO AUTO PAINTING  
& BODY WORKS, BIBI W. BAICHAN and IVAN BAICHAN,

Defendants.

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HALLIMA IDAN and MOHAMED AMIN,

Plaintiffs,

-against-

MAACO ENTERPRISES, INC., also doing business as  
MAACO AUTO PAINTING AND BODY WORKS,  
MAACO COLLISION REPAIR AND AUTO,  
AND MAACO COLLISION REPAIR AUTO PAINTING,

Defendants.

**MICHELE M. WOODARD  
J.S.C.**

TRIAL/IAS Part 16

Index No.: 17730/07

Motion Seq. No.: 01

**DECISION AND ORDER**

**Action No.: 01**

**Index No.: 019224/05**

**Action No.: 02**

**Index No.: 012643/07**

**Action No.: 03**

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BIBI BASHEERULLA, SHEIK M. BASHEERULLA,  
and SALIMA ALLY,

Plaintiffs,

Index No.: 017880/07

-against-

MAACO ENTERPRISES INC., also doing business as  
MAACO AUTO PAINTING AND BODY WORKS,  
MAACO COLLISION REPAIR AND AUTO,  
AND MAACO COLLISION REPAIR AUTO PAINTING,

Action No.: 04

Defendants.  
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**Papers Read on this Motion:**

Defendant Maaco Enterprises Notice of Motion	01
Plaintiff Ghansham Singh's Opposition	xx
Plaintiff Bashec Rulla's Opposition	xx
Plaintiff Ghasham Singh's Opposition	xx
Defendant Maaco's Reply	xx

The Defendant Maaco Enterprises, Inc. (MEI) moves by Notice of Motion for an order consolidating *Singh v Maaco Enterprises*, Index #17730/2007 and *Idan v Maaco Enterprises Inc.*, Index #12643/2007. Defendant Maaco further requests that upon consolidation the matter be dismissed. A third action *Basheerulla v Maaco Enterprises*, Index #17880/2007 was commenced on or about October 2, 2007. Judge John M. Galasso directed the transfer of a related action in Queens County to Nassau County, and ordered that all actions be consolidated under Nassau County Index Number 192241/05.

These actions arise out of a motor vehicle accident which occurred on October 2, 2005. The accident involved a 2001 Chrysler mini van driven by Bibi Baichan and occupied by nine passengers. Baichan was transporting family members to the grave site of her mother. The vehicle was owned by Group of Baichan's Inc.

Plaintiff Ghansham Singh opposes the portion of the motion seeking Summary Judgment. Ghansham Singh initially brought the action on behalf of himself and as the natural guardian of his daughter Stephanie Singh. He is also serving as the administrator of the estate of his deceased wife Bibi Singh, who died in the accident. The suit was commenced against "Smart Choice Auto Sales," "Maaco Auto Painting and Body Works," Bibi Baichan and Ivan Baichan.

Singh moved and amended his complaint to include "Group of Biachans, Inc." as Defendants and for Summary Judgment. By decision and order on March 2, 2007, Justice Galasso granted the application against Defendants "Smart Choice Auto," "Maaco Auto Painting and Body Works," Bibi Baichan, Ivan Baichan and the "Group of Baichans, Inc." in favor of Singh.

The Court noted in its decision in the matter of Singh v Smart Choice Auto that Ghansham Singh describes "the accident as occurring when Defendant Bibi Baichan, after almost missing an exit ramp on the Wantagh Parkway North, abruptly veered to the right in an attempt to exit the ramp." According to Mr. Singh, Defendant Baichan lost control of the van as the vehicle slid down an embankment and struck a tree.

The Defendant Bibi Baichan claims that her family members knowingly rode in the seven passenger mini van, although they did not have seat belts. In an affidavit attached to motion, the Defendant claimed that her "last recollection of the events leading up to this accident was when the vehicle I was driving was still on the exit ramp from the northbound Wantagh Parkway to the eastbound Northern State Parkway."

As a result of the accident, Bibi Baichan was rendered unconscious, sustained severe head, neck and jaw trauma. She did not regain consciousness until the next day. As a result of her head trauma, she cannot remember all of the events leading up to the accident.

A deposition of Ivan Baichan was held wherein he explained the relationship of the Defendants. During this time, the Plaintiff did not inquire as to the degree of control over MEI by the Baichan Group. No one has disputed how the accident occurred.

At the deposition of Herman Baichan, brother of Defendant Ivan Biachan, he testified that he was the owner of Smart Choice Auto Sales along with his brother. He also testified that Smart Choice bought and sold used cars. Smart Choice was started in 2002.

Herman Baichan explained that Group of Baichans, Inc. was a corporate entity which has several d/b/a's, namely Smart Choice Auto Sales and Maaco Auto Painting and Bodyworks. Herman Baichan also stated that there is a franchise agreement between Maaco Auto Painting and Group of Baichans. According to Herman Baichan, there is one insurance policy for both entities. He further testified that Smart Choice Auto Sales owned the mini van which was involved in the accident. He also stated that the Defendant Bibi Singh had permission to drive the mini van.

He also indicated that Maaco Auto Painting has all the financial accounts. Group of Baichans does not have any bank accounts. However, Group of Baichans does own a spray booth, compressor, computers, mixing machines and framer that have an estimated value of \$60,000.00. These items are used by Maaco.

The application of MEI is **granted**. MEI has made a *prima facie* case to entitle them to Summary Judgment on the issue of liability in this matter. After reviewing all the documents, the Court determines that MEI had no control over the vehicles owned by Smart Choice Auto Sales.

By the testimony of one of the principals of Baichan Group, Herman Baichan, MEI does not have any financial relationship with Smart Choice.

The Plaintiffs argue that the Group of Baichans, Inc. was the agent for Maaco Enterprises and therefore is vicariously liable for the negligence of the driver of the vehicle or principal liable for the

acts of its agent.

The Court does not agree. It is undisputed that MEI did not own the vehicle involved in the accident, nor was MEI in the business of auto body repair and painting. The papers before the Court demonstrate that MEI did not own, operate, maintain and/or control the vehicle and/or the operation of the vehicle that was involved in the accident.

Based on the foregoing, the matters should be consolidated for trial.

The caption shall read as follows:

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GHANSHAM SINGH, individually and as the parent and  
natural guardian of STEPHANIE SINGH, an infant, and  
as the administrator of the Estate of BIBI SINGH,  
decedent, BIBI BASHEERULLA, SHEIK M. BASHEERULLA,  
SALIMA ALLY, HALLIMA IDAN and MOHAMED AMIN,

Index No.: 017730/07

Plaintiffs,

-against-

SMART CHOICE AUTO SALE, MAACO AUTO PAINTING  
& BODY WORKS, BIBI W. BAICHAN and IVAN BAICHAN,

Defendants.  
-----X

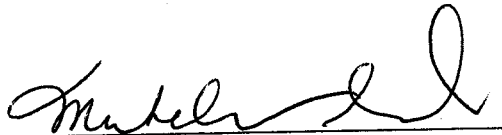
It is evident from the papers before the Court that Smart Choice only owned the vehicle which was involved in the accident. No employees were operating the vehicle, and the vehicle was not being utilized for any business purpose.

The application of Maaco Enterprises, Inc. for Summary Judgment is **granted**, the actions are consolidated and the Plaintiffs' actions against Maaco Enterprises, Inc. are **dismissed**.

This constitutes the **DECISION** and **ORDER** of the Court.

**DATED:** May 20, 2008  
Mineola, N.Y.

**ENTER:**

  
**HON. MICHELE M. WOODARD**  
J.S.C.

**ENTERED**

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MAY 22 2008  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE