

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - May 8, 2007

HOWARD MILLER, J.P.
WILLIAM F. MASTRO
GABRIEL M. KRAUSMAN
EDWARD D. CARNI, JJ.

2006-07982

DECISION & ORDER

Matthew Gambino, respondent, v
Robert Heredia, appellant, et al., defendant.

(Index No. 4045-04)

Faust Goetz Schenker & Blee, New York, N.Y. (Erika C. Aljens of counsel), for appellant.

The Law Office of Mark. E. Nadjar, P.C., Huntington, N.Y., for respondent.

In an action to recover damages for assault and battery, and negligence, the defendant Robert Heredia appeals from an order of the Supreme Court, Suffolk County (Doyle, J.), entered August 7, 2006, which denied his motion for summary judgment dismissing the complaint insofar as asserted against him and granted the plaintiff's cross motion for summary judgment on the issue of liability as to him.

ORDERED that the order modified, on the law, by deleting the provision thereof granting the plaintiff's cross motion for summary judgment on the issue of liability as to the defendant Robert Heredia and substituting therefor a provision denying the cross motion; as so modified, the order is affirmed, without costs or disbursements.

There are issues of fact requiring the denial of summary judgment to both parties to this appeal.

MILLER, J.P., MASTRO, KRAUSMAN and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

June 12, 2007

GAMBINO v HEREDIA