SHORT FORM ORDER

INDEX No. 04-16000
CAL. No. 06-01733-MV

SUPREME COURT - STATE OF NEW YORK
POST-NOTE MOTION PART - SUFFOLK COUNTY

PRESENT:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 12/7/06
ADJ. DATE 2/8/07
Mot. Seq. # 001 - MG;CASEDISP

JULIE CALIMAN	:	MICHAEL G. LoRUSSO, ESQ.
	:	Attorney for the Plaintiff
Plaintiff,	:	316 Jackson Avenue
	:	Syosset, New York 11791
- against -	:	
	:	JAMES P. NUNEMAKER, JR. & ASSOC.
	:	Attorneys for the Defendant
DORRAINE M. THODE,	:	P.O. Box 9347
Defendant.	:	Uniondale, New York 11553-9347

Upon the following papers numbered 1 to 25 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 13; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 14 - 23; Replying Affidavits and supporting papers 24 - 25; Other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that this motion by defendant for an order pursuant to CPLR 3212 granting summary judgment in her favor dismissing plaintiff's complaint on the grounds that plaintiff did not sustain a "serious injury" pursuant to Insurance Law § 5102 (d) is granted.

This is an action to recover damages for injuries allegedly sustained by the then 28 year old plaintiff on January 3, 2003 when the vehicle that she was operating was struck by defendant's vehicle on Route 25 at its intersection with Homecrest Avenue in Huntington, New York. By her verified bill of particulars, plaintiff alleges that as a result of the subject accident she sustained serious injuries including, cervical acceleration/deceleration syndrome; right C5-C6 radiculopathy; headaches; post-concussion syndrome; lumbar acceleration/deceleration syndrome; bilateral L5-S1 radiculopathy; cervical and lumbar muscle spasm; cervical and lumbar subluxation; and right knee sprain with possible meniscal tear. In addition, plaintiff alleges that following the accident she was treated and released from the emergency room of Huntington Hospital and was confined to her bed and home from January 4, 2003 to January 14, 2003 except for visits to her healthcare providers.

Plaintiff also alleges that at the time of this accident, she was employed as an outside salesperson for Prime Pay and that as a result of the accident plaintiff missed one and a half weeks of work. Plaintiff seeks to recover economic loss in excess of basic economic loss as defined in Insurance Law § 5102 (a).

By her verified bill of particulars, plaintiff claims that she sustained a permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment as defined in Insurance Law § 5102 (d).

Defendant now moves for summary judgment dismissing plaintiff's complaint on the grounds that plaintiff did not sustain a "serious injury" pursuant to Insurance Law § 5102 (d). In support of her motion, defendant submits the summons and verified complaint; the answer; the verified bill of particulars; a report of x-rays performed on January 3, 2003 at Huntington Hospital of plaintiff's right wrist and cervical spine; a report of an MRI performed on April 15, 2003 of plaintiff's lumbar spine; a report of an MRI performed on April 24, 2003 of plaintiff's cervical spine; a report dated January 8, 2003 of a cardiologist, Venugopal Palla, M.D. (Dr. Palla), who examined plaintiff five days after the accident; the affirmed report dated August 3, 2005 of defendant's examining orthopedic surgeon, Craig B. Ordway, M.D. (Dr. Ordway), based on an examination of plaintiff on the same date; the affirmed report dated August 2, 2005 of defendant's examining neurologist, Maria A. DeJesus, M.D. (Dr. DeJesus), based on an examination of plaintiff on that date and an addendum report dated September 19, 2006 based on a review of records; and plaintiff's deposition transcript.

Insurance Law § 5102 (d) defines "serious injury" as "a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment."

In order to recover under the "permanent loss of use" category, plaintiff must demonstrate a total loss of use of a body organ, member, function or system (***Oberly v Bangs Ambulance Inc.***, 96 NY2d 295, 727 NYS2d 378 [2001]). To prove the extent or degree of physical limitation with respect to the "permanent consequential limitation of use of a body organ or member" or "significant limitation of use of a body function or system" categories, either objective evidence of the extent, percentage or degree of the limitation or loss of range of motion and its duration based

on a recent examination of the plaintiff must be provided or there must be a sufficient description of the "qualitative nature" of plaintiff's limitations, with an objective basis, correlating plaintiff's limitations to the normal function, purpose and use of the body part (*see*, ***Toure v Avis Rent A Car Systems, Inc.***, 98 NY2d 345, 746 NYS2d 865 [2000]; ***Mejia v DeRose***, 35 AD3d 407, 825 NYS2d 722 [2d Dept 2006]). For a bulging disc or radiculopathy to constitute a serious injury, there must also be objective evidence of the extent or degree of the alleged limitation resulting from the injury and its duration (***Foley v Karvelis***, 276 AD2d 666, 714 NYS2d 337 [2d Dept 2000]). A minor, mild or slight limitation of use is considered insignificant within the meaning of the statute (***Licari v Elliott***, 57 NY2d 230, 455 NYS2d 570 [1982]).

It is for the court to determine in the first instance whether a prima facie showing of "serious injury" has been made out (*see*, ***Tipping-Cestari v Kilhenny***, 174 AD2d 663, 571 NYS2d 525 [2d Dept 1991]). The initial burden is on the defendant "to present evidence, in competent form, showing that the plaintiff has no cause of action" (***Rodriguez v Goldstein,*** 182 AD2d 396, 582 NYS2d 395, 396 [1st Dept 1992]). Once defendant has met the burden, plaintiff must then, by competent proof, establish a prima facie case that such serious injury exists (***Gaddy v Eyler***, 79 NY2d 955, 582 NYS2d 990 [1992]). Such proof, in order to be in a competent or admissible form, shall consist of affidavits or affirmations (***Pagano v Kingsbury,*** 182 AD2d 268, 587 NYS2d 692 [2d Dept 1992]). The proof must be viewed in a light most favorable to the nonmoving party, here, the plaintiff (***Cammarere v Villanova,*** 166 AD2d 760, 562 NYS2d 808 [3d Dept 1990]).

Here, defendant established prima facie that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102 (d) as a result of the subject accident based on, among other things, the affirmed reports of physicians whose opinions of the cervical and lumbar normalcy of plaintiff were based upon specified objective tests and findings that plaintiff currently exhibited no limitations of range of motion (*see*, ***Gonzalez v Baik***, 36 AD3d 854, 830 NYS2d 224 [2d Dept 2007]; ***Cohen v A One Products, Inc.***, 34 AD3d 517, 824 NYS2d 169 [2d Dept 2006]; *see also*, ***Marziotto v Striano***, ___ NYS2d ___, 2007 WL 766078, 2007 NY Slip Op 02086 [NYAD 2 Dept Mar 13, 2007]). To establish her entitlement to summary judgment on the issue of serious injury, defendant was required to submit admissible medical evidence demonstrating that plaintiff's range of motion in her cervical spine and lumbar spine were not significantly limited in comparison to the normal range of motion one would expect of a healthy person of the same age, weight, and height (*see*, ***Frey v Fedorciuc***, 36 AD3d 587, 828 NYS2d 454 [2d Dept 2007]; ***Powell v Alade***, 31 AD3d 523, 818 NYS2d 600 [2d Dept 2006]).

In his affirmed report, defendant's examining orthopedist, Dr. Ordway, indicated that his examination of plaintiff's cervical spine revealed, among other things, upwards gaze to 60 degrees; right to left lateral gaze was 70 degrees, right to left lateral tilt was 45 degrees, symmetrically and his examination of plaintiff's mid and lower back showed, among other things, forward bending to 90 degrees and that right to left lateral bending was symmetrically completed to 30 degrees in each direction. After indicating that plaintiff was able to perform certain specified motions to specified

degrees, Dr. Ordway concluded that aforementioned measurements were considered normal for a patient of the same age and body habitus (*compare*, ***Powell v Alade***, *supra* [physician indicated "normal" extension, flexion or rotation "up to" certain extent leaving court to speculate if failure to move beyond would be abnormal]; *cf.* ***Hernandez v Stanley***, 34 AD3d 428, 824 NYS2d 149 [2d Dept 2006][bilateral rotation measurements provided without comparison to a measurement considered normal or a conclusion that the findings were normal]). In addition, Dr. Ordway performed straight leg raising testing by indirect observation and reported that plaintiff in the seated position flexed her hips to 90 degrees and that her knees could be brought to full extension. Straight-leg raising tests have been consistently treated as objective evidence of serious injury (*see*, ***Kim v Cohen***, 208 AD2d 807, 618 NYS2d 386 [2d Dept 1994]). Dr. Ordway's examination of plaintiff's upper extremities included deep tendon reflexes at the triceps, biceps and brachioradialis measuring +2, brisk and equal bilaterally, and he concluded that his examination did not reveal any limitation of motion of any joint. Dr. Ordway also performed evocative foraminal closure testing at plaintiff's neck and lower back with negative results for nerve root irritation. In conclusion, Dr. Ordway opined that plaintiff had an entirely normal orthopedic/neurologic examination for a woman of the same age and body habitus and that plaintiff was not found to be in need of further orthopedic care or diagnostic evaluation, secondary to the subject accident.

By her affirmed report, defendant's examining neurologist, Dr. DeJesus, performed various neurological tests and range of motion testing. Dr. DeJesus provided detailed results of her range of motion testing with comparisons to measurements deemed normal. Dr. DeJesus reported that there was full range of motion at the neck with no complaints of pain or spasms. Plaintiff's flexion was 50 degrees (50 degrees normal), extension 60 degrees (60 degrees normal), right and left rotation 80 degrees (80 degrees normal), and right and left lateral rotation 45 degrees (45 degrees normal). In addition, Dr. DeJesus reported that plaintiff had full range of motion of the lumbar spine with a complaint of minimal pain only on forward flexion but no spasms. Dr. DeJesus specified that bilateral straight leg raising was normal at 90 degrees, forward bending was 90 degrees (90 degrees normal), backward extension was 25 degrees (25 degrees normal), and right and left lateral bending were 25 degrees (25 degrees normal). Dr. DeJesus added that Patrick's and Kernig's tests were negative. After performing the examination, Dr. DeJesus concluded that plaintiff had a normal neurological examination and resolved cervical and lumbar strain/sprain. She opined within a reasonable degree of medical certainty that plaintiff had completely recovered from any injuries that she may have sustained as a result of the subject accident and that there were no objective findings to substantiate plaintiff's subjective complaints. According to Dr. DeJesus, plaintiff was not disabled from a neurologic point of view and there was no need for further neurologic treatment, diagnostic testing or physical therapy. Said affirmed medical report of defendant's examining neurologist, who examined plaintiff and determined that she sustained a cervical and lumbar sprain/strain from which she had completely recovered, was sufficient to establish a prima facie case that plaintiff did not sustain a serious injury (*see*, ***Little v Lee Yuh Tzong***, 22 AD3d 532, 802 NYS2d 237 [2d Dept 2005]). It is to be noted that the reports of the MRI's performed more than three months after the subject accident indicated a normal cervical

spine MRI and that plaintiff's lumbar spine MRI showed mild scoliosis and desiccated L5-S1 disc but no stenosis or herniated nucleus pulposus. Thus, defendant made a prima facie showing that plaintiff did not sustain a "serious injury" within the permanent consequential limitation or significant limitation categories of Insurance Law § 5102 (d) (*see*, ***Bennett v Genas***, 27 AD3d 601, 813 NYS2d 446 [2d Dept 2006]).

Plaintiff was deposed on June 30, 2005. Plaintiff testified at her deposition that at the time of the subject accident she was employed by Prime Pay as a full time sales representative, that she returned to her full time position two weeks after the accident but that at the end of the month, January 2003, her employer gave her a full time office position at which she remained until July 2003. According to plaintiff, she left said position because she could not sit all day and was uncomfortable typing with her arms up and one week later she took a sales representative position at another company, similar to her original job, driving and cold calling. Plaintiff worked at the new job for two to three months then left and took a long time off, planned her wedding, and was married in November 2003 and went on a cruise. Then, in the Fall of 2004, plaintiff enrolled full time to obtain her Master's Degree in Education from Adelphi University and had completed her Fall and Spring semesters and was planning to attend part time in the summer at the time of the deposition. Plaintiff testified that she drove to and from Adelphi approximately forty minutes each way for her full time classes which were two times a week. In addition, plaintiff testified that she was a member of a gym, that she would walk on the treadmill and lift light weights, but that she had not gone to the gym in three months.

Plaintiff also testified that following the accident she was taken by ambulance to Huntington Hospital with complaints of pain in her right wrist, neck and right knee, that x-rays were taken and that she was given Motrin and released with instructions to follow up with a physician, Dr. Palla[1]. According to plaintiff, after she returned home she began to have pain radiating down her legs, headaches and her arms began to stiffen. Plaintiff next went to Dr. Weissberg, an orthopedist, and Dr. Dedios [sic], a chiropractor, who were both referred by plaintiff's Workers Compensation. Dr. Weissberg recommended physical therapy, which plaintiff went to only once because her insurance would not pay for it, but went for chiropractic treatment with Dr. Dedios three or four times a week for a couple of months and then decreased to two times a week. Plaintiff also saw a neurologist, Dr. Patel, about two times and underwent EMG studies.

Plaintiff further testified that her wrists are now better; that she still gets occasional "really bad" headaches, neck tightness, hip pain and occasional sciatica and occasional knee pain; that she takes Alleve once a week; and that she does not have any future medical appointments. In response to the question of what activities she could not do at all, plaintiff stated an outside sales

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[1]Based on an examination of plaintiff five days after the accident, Dr. Palla indicated in his report a diagnosis of soft tissue injury associated with sprains, which does not satisfy the "serious injury" threshold under Insurance Law § 5102 (d) (*see*, ***Moore v County of Suffolk***, 6 AD3d 408, 774 NYS2d 375 [2d Dept 2004]).

job because she could not drive for hours and hours. As for activities that plaintiff could do only with difficulty, plaintiff responded sleeping and going to the gym and lifting weights and running. Plaintiff stated that she had neck injuries from a prior accident when she was 18 years old and had seen a chiropractor and that those prior injuries resolved a few months thereafter. Therefore, in light of plaintiff's admission that she missed only two weeks of work and then returned to work full time as a driving sales representative then doing office work then back to a driving sales representative for the next five months then voluntarily left in July and proceeded to plan her November wedding, defendant adequately demonstrated that plaintiff's alleged injuries did not prevent her from performing substantially all of the material acts constituting her customary daily activities during at least 90 out of the first 180 days following the accident (*see*, ***Hernandez v Cerda***, 271 AD2d 569, 707 NYS2d 332 [2d Dept 2000]; *see also*, ***Omar v Goodman***, 295 AD2d 413, 743 NYS2d 568 [2d Dept 2002]).

In opposition to the instant motion, plaintiff contends that defendant's examining physicians' reports are deficient because they fail to detail the objective tests performed on plaintiff's cervical and lumbar spine or to indicate the specific findings of such tests or to provide contemporaneous medical evidence demonstrating the absence of the "90 out of 180 days" category, and that even with a finding of a normal medical examination three and a half years after the accident, there was no evidence that plaintiff was not disabled immediately after the accident. Plaintiff further contends that she did sustain a "serious injury" pursuant to Insurance Law § 5102 (d) based on diagnoses of sprains. In support of her opposition, plaintiff submits her properly notarized affidavit dated January 29, 2007; the unsworn purported affidavit of plaintiff's treating neurologist, Allamprabhu S. Patil, M.D.; the unsworn purported affidavit of plaintiff's treating orthopedist, David J. Weissberg, M.D.; copies of plaintiff's emergency room records from Huntington Hospital; copies of medical records from plaintiff's treating chiropractor, Mary F. DiDio, D.C., P.C.; copies of medical records from Venugopal Palla, M.D. of North Shore Cardiopulmonary Associates, P.C.; the unsworn Workers Compensation Board Independent Medical Examination report dated September 9, 2003 of Scott J. Banks, D.C. based on an examination of plaintiff on August 19, 2003; and the unsworn Workers Compensation Board Independent Medical Examination report dated June 15, 2004 based on an examination of plaintiff one day before.

Contrary to plaintiff's assertions, the affirmed reports of defendant's examining physicians cannot be characterized as being "couched in only the most conclusory of language" and "failing to set forth the objective test or tests performed" (*cf.* ***Garcia v Mangaru***, 16 AD3d 547, 790 NYS2d 888, 889 [2d Dept 2005] [internal quotations omitted]; ***Black v Robinson***, 305 AD2d 438, 439,759 NYS2d 741 [2d Dept 2003]; ***Gamberg v Romeo***, 289 AD2d 525, 526,736 NYS2d 64 [2d Dept 2001]; *see also*, ***Meiheng Qu v Doshna***, 12 AD3d 578, 785 NYS2d 112 [2d Dept 2004]). Defendant's examining physicians provided detailed range of motion testing results. Range of motion testing, when findings are compared to normal measurements or the physician provides a conclusion that the findings are normal, constitutes objective testing (*see*, ***Bluth v WorldOmni***

Financial Corp., ___ NYS2d ___, 2007 WL 926833, 2007 NY Slip Op 02687 [NYAD 2 Dept Mar 27, 2007]; ***Mirochnik v Ostrovskiy***, 35 AD3d 413, 825 NYS2d 721 [2d Dept 2006]; ***Iles v Jonat***, 35 AD3d 537, 825 NYS2d 540 [2d Dept 2006]; ***Benitez v Mileski***, 31 AD3d 473, 818 NYS2d 555 [2d Dept 2006]). Nor did defendant's examining physicians merely state that their range of motion testing showed no "limitation of mobility in the head, neck, back, or limbs"or "full range of motion" of the cervical and lumbar spine, which would have required objective testing to demonstrate how they arrived at those conclusions (*see*, ***Geba v Obermeyer***, ___ NYS2d ___, 2007 WL 766214, 2007 NY Slip Op 02064 [NYAD 2 Dept Mar 13, 2007]; ***Larrieut v Gutterman***, 37 AD3d 424, ___ NYS2d ___, 2007 WL 416382, 2007 NY Slip Op 01085 [NYAD 2 Dept Feb 06, 2007]; ***Schacker v County of Orange***, 33 AD3d 903, 822 NYS2d 777 [2d Dept 2006]). It is to be noted that neither examining physician indicated nor conceded that they found any limitations of motion (*compare*, ***McLaughlin v Rizzo***, ___ NYS2d ___, 2007 WL 926515, 2007 NY Slip Op 02720 [NYAD 2 Dept Mar 27, 2007][orthopedic surgeon further conceded existence of limitations in plaintiff's right shoulder range of motion, especially forward flexion and abduction]; ***Buchanan v Celis***, ___NYS2d ___, 2007 WL 926823, 2007 NY Slip Op 02689 [NYAD 2 Dept Mar 27, 2007][orthopedist noted limitations in plaintiff's lumbar spine range of motion, specifically during sitting and supine straight leg raising testing, that were not adequately quantified or qualified to establish absence of significant limitation]; ***Dzaferovic v Polonia***, 36 AD3d 652, 829 NYS2d 148 [2d Dept 2007]).

Next, a review of plaintiff's evidence in support of her opposition reveals that the submissions of plaintiff's treating neurologist and treating orthopedist were without any probative value in opposing defendant's motion since they were not properly affirmed to be true under the penalties of perjury pursuant to the requirements of CPLR 2106 nor were they notarized so as to be in affidavit form (*see*, ***Borgella v D & L Taxi Corp.***, ___ NYS2d ___, 2007 WL 853188, 2007 NY Slip Op 02499 [NYAD 2 Dept Mar 20, 2007]; ***Sully v Kings Luxury, Inc.***, ___ NYS2d ___, 2007 WL 677914, 2007 NY Slip Op 01860 [NYAD 2 Dept Mar 06, 2007]; ***Parente v Kang***, 37 AD3d 687, ___ NYS2d ___ [2d Dept 2007]; ***Grasso v Angerami***, 79 NY2d 813, 580 NYS2d 178 [1991]). In any event, said submissions of plaintiff's treating neurologist and treating orthopedist would be insufficient to raise a triable issue of fact since the findings contained therein were not based on a recent examination of plaintiff (*see*, ***Marziotto v Striano***, ___ NYS2d ___, 2007 WL 766078, 2007 NY Slip Op 02086 [NYAD 2 Dept Mar 13, 2007]; ***Whitfield-Forbes v Pazmino***, 36 AD3d 901, 829 NYS2d 583 [2d Dept 2007]; ***Cerisier v Thibiu***, 29 AD3d 507, 815 NYS2d 140 [2d Dept 2006]). Plaintiff's treating neurologist provided range of motion testing results and NCV test results from March 2003 and plaintiff's treating orthopedist provided examination results for January 2003 and indicated that plaintiff came for follow up visits in February 2003 and March 2003. To defeat defendant's motion, plaintiff was required to come forward with competent admissible medical evidence, based on a recent examination and objective findings, sufficient to verify her subjective complaints of pain and limitation of motion (*see*, ***Oliva v Gross***, 29 AD3d 551, 816 NYS2d 110 [2d Dept 2006]; ***Farozes v Kamran***, 22 AD3d 458, 802 NYS2d 706 [2d Dept 2005]). In any event, plaintiff's treating orthopedist's final diagnoses of neck sprain, lumbosacral

sprain and medial collateral ligament sprain would be insufficient to raise a triable issue of fact (*see*, ***Moore v County of Suffolk***, 6 AD3d 408, 774 NYS2d 375 [2d Dept 2004]).

Plaintiff's emergency room records, absent the x-ray reports already submitted by defendant, were required to be certified to be admissible (*see*, CPLR 4518; ***Iusmen v Konopka***, ___ NYS2d ___, 2007 WL 766192 [NYAD 2 Dept], 2007 NY Slip Op 02073; ***Mejia v DeRose***, *supra*). In addition, the unsworn reports of plaintiff's treating chiropractor, except for the MRI reports already submitted by defendant, were without probative value since they were not notarized (*see*, CPLR 2106; ***Feintuch v Grella***, 209 AD2d 377, 619 NYS2d 593 [2d Dept 1994],*lv denied* 85 NY2d 803 624 NYS2d 373 [1995]). The remaining medical submissions, which amounted to unaffirmed reports of other medical personnel who examined plaintiff, were equally without probative value (*see*, ***Parente v Kang***, *supra*). It is to be noted that even if the Court considered the inadmissible evidence, plaintiff's treating and examining physicians diagnosed sprains and strains which do not constitute serious injuries under the statute (*see*, ***Moore v County of Suffolk***, *supra*).

In her affidavit, plaintiff explains that since the deposition she has moved out of state, is currently pregnant, and still suffers intermittent neck and back pain. Plaintiff states that the first six months after the accident she was unable to do any kind of housework that involved lifting, bending, vacuuming and cleaning floors and was unable to go shopping because he was unable to lift and carry heavy packages. Plaintiff adds that she cannot sit for prolonged periods of time at home or driving her car and still cannot do housework without pain or discomfort. In the absence of objective evidence of injury, plaintiff's self-serving affidavit is insufficient to raise a triable issue of fact as to whether she sustained a serious injury as a result of the subject accident (*see*, ***Parente v Kang***, *supra*; ***Ramirez v Parache***, 31 AD3d 415, 818 NYS2d 238 [2d Dept 2006]). Moreover, plaintiff has failed to proffer competent medical evidence showing that she was unable to perform substantially all of her daily activities for not less than 90 of the first 180 days subsequent to the subject accident (*see*, ***Borgella v D & L Taxi Corp.***, *supra*).

Furthermore, plaintiff submitted no evidence demonstrating that her alleged economic loss exceeded the statutory amount of basic economic loss (*see*, ***Rulison v Zanella***, 119 AD2d 957, 501 NYS2d 487 [3d Dept 1986]).

Accordingly, the instant motion is granted and the action is dismissed in its entirety.

Dated: APR 19 2007

J.S.C.

__X__ FINAL DISPOSITION ____ NON-FINAL DISPOSITION