

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 09-02526

PRESENT: MARTOCHE, J.P., SMITH, FAHEY, PERADOTTO, AND GREEN, JJ.

MICHELLE EDGETT, INDIVIDUALLY AND AS PARENT
AND NATURAL GUARDIAN OF KIYA EDGETT, AN INFANT,
AND CHRISTINA JAQUAY, PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

NORTH FORK BANK, ET AL., DEFENDANTS.

NORTH FORK BANK, THIRD-PARTY
PLAINTIFF-RESPONDENT,

V

KAREN CLARELLI, DOING BUSINESS AS KC RECOVERY,
ET AL., DEFENDANTS,
AND NORTHWAY EXCHANGE AUTO AUCTION, THIRD-PARTY
DEFENDANT-APPELLANT.

CRUSER, MITCHELL & NOVITZ, LLP, MELVILLE (BETH S. GEREG OF COUNSEL),
FOR THIRD-PARTY DEFENDANT-APPELLANT.

STOKES ROBERTS & WAGNER, P.C., ITHACA (PAUL E. WAGNER OF COUNSEL), FOR
THIRD-PARTY PLAINTIFF-RESPONDENT.

CONWAY & KIRBY, LLP, LATHAM (ANDREW W. KIRBY OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Herkimer County
(Michael E. Daley, J.), entered February 17, 2009 in a personal injury
action. The order, insofar as appealed from, denied the motion of
third-party defendant Northway Exchange Auto Auction to dismiss the
third amended third-party complaint against it.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: In an action to recover damages for personal
injuries sustained in a motor vehicle accident, third-party defendant
Northway Exchange Auto Auction (Northway) appeals from an order that,
inter alia, denied its motion for summary judgment dismissing the
third amended third-party complaint against it. Supreme Court
properly denied the motion, regardless of its merits, inasmuch as
Northway failed to provide in support of its motion a copy of all of
the third-party pleadings (see CPLR 3212 [b]; *D.J. Enters. of WNY v*

Benderson, 294 AD2d 825).

We note in addition that, although defendant North Fork Bank (North Fork) purports to cross-appeal from those parts of the order denying its cross motion for summary judgment dismissing the fourth amended complaint against it and for summary judgment on the third amended third-party complaint against Northway, that cross appeal was deemed dismissed nine months after the service of the notice of appeal based on North Fork's failure to perfect it (see 22 NYCRR 1000.12 [b]). North Fork has not moved to vacate that dismissal (see 22 NYCRR 1000.13 [g]), and thus its requests for affirmative relief are not before us.

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court