
This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 188
Keith Haywood,
Appellant,
v.
Curtis Drown,
Respondent.
(Action No. 1)

Keith Haywood,
Appellant,
v.
Pat Smith, et al.,
Respondents.
(Action No. 2)

Gary J. Mennitt, for appellant.
Robert M. Goldfarb, for respondents.

* * * * *

Upon reargument, following remand by the Supreme Court of the United States, order in Haywood v Drown reversed, with costs, motion to dismiss denied and case remitted to Supreme Court, Wyoming County, for further proceedings, and order in Haywood v Smith modified, without costs, by denying the motion to dismiss the cause of action predicated on 42 USC § 1983 and remitting to Supreme Court, Wyoming County, for further proceedings on that cause of action and, as so modified, affirmed (see Haywood v Drown, 556 US ___, 129 S Ct 2108 [2009]). Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided September 8, 2009