

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

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CA 20-00303

PRESENT: PERADOTTO, J.P., CARNI, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

LLOYD CUYLER, JR., PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CHRISTINE SEPCIC, DEFENDANT-RESPONDENT.

PARISI & BELLAVIA, LLP, ROCHESTER (TIMOTHY C. BELLAVIA OF COUNSEL),
FOR PLAINTIFF-APPELLANT.

HAGELIN SPENCER LLC, BUFFALO (LAURA B. GARDINER OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from an order and judgment (one paper) of the Supreme Court, Monroe County (William K. Taylor, J.), entered February 14, 2020. The order and judgment granted the motion of defendant for summary judgment, dismissed the complaint and denied the cross motion of plaintiff for partial summary judgment.

It is hereby ORDERED that the order and judgment so appealed from is unanimously modified on the law by denying defendant's motion and reinstating the complaint and as modified the order and judgment is affirmed without costs.

Memorandum: Plaintiff commenced this action to recover damages for the injuries he allegedly sustained in a motor vehicle accident. Supreme Court thereafter denied plaintiff's cross motion for partial summary judgment on the issue of serious injury and granted defendant's motion for summary judgment dismissing the complaint on that same issue (*see generally* Insurance Law § 5102 [d]). Plaintiff appeals.

We reject plaintiff's contention that the court erred in denying his cross motion (*see Brown v Ng*, 163 AD3d 1464, 1465 [4th Dept 2018]). We agree with plaintiff, however, that the court erred in granting defendant's motion (*see Cook v Peterson*, 137 AD3d 1594, 1596-1598 [4th Dept 2016]). We therefore modify the order and judgment accordingly.

Entered: July 16, 2021

Mark W. Bennett
Clerk of the Court