

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

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CA 21-00612

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, NEMOYER, AND CURRAN, JJ.

BRIAN MITCHELL, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

PO N. LAM, M.D., AND ASSOCIATED MEDICAL
PROFESSIONALS OF NY, PLLC, ALSO KNOWN AS A.M.P.,
DEFENDANTS-APPELLANTS.

GALE GALE & HUNT, LLC, SYRACUSE (ANDREW R. BORELLI OF COUNSEL), FOR
DEFENDANTS-APPELLANTS.

COTE & VAN DYKE, LLP, SYRACUSE (JOSEPH S. COTE, III, OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County (Robert E. Antonacci, II, J.), entered April 1, 2021. The order denied defendants' motion for summary judgment dismissing the complaint and granted plaintiff's cross motion for partial summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by denying the cross motion and as modified the order is affirmed without costs.

Memorandum: In this medical malpractice action, defendants appeal from an order that denied their motion for summary judgment dismissing the complaint and that granted plaintiff's cross motion for partial summary judgment on liability on his informed consent claim. Contrary to defendants' contention, Supreme Court properly denied their motion (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). We agree with defendants, however, that plaintiff failed to meet his initial burden on his cross motion (*see generally id.*). The court thus erred in granting that cross motion, and we therefore modify the order accordingly.

Entered: March 18, 2022

Ann Dillon Flynn
Clerk of the Court