

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

1008

CA 19-00723

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, CURRAN, AND WINSLOW, JJ.

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ROBERTO A. MORALES, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

GREGORY LACLAIR, DEFENDANT-APPELLANT.

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LAW OFFICES OF JENNIFER S. ADAMS, WILLIAMSVILLE (KEVIN J. GRAFF OF COUNSEL), FOR DEFENDANT-APPELLANT.

CELLINO & BARNES, P.C., BUFFALO (TIM HEDGES OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Monroe County (Debra A. Martin, A.J.), entered October 17, 2018. The order, insofar as appealed from, denied that part of the motion of defendant seeking summary judgment dismissing the complaint against him.

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

Memorandum: Plaintiff commenced this action seeking damages for injuries he allegedly sustained in a motor vehicle accident when the vehicle he was driving was struck by a vehicle owned by defendant. Defendant thereafter moved for, inter alia, summary judgment dismissing the complaint on the ground that plaintiff did not sustain a serious injury in the accident within the meaning of Insurance Law § 5102 (d), and Supreme Court, inter alia, denied that part of the motion. We affirm. Even assuming, arguendo, that defendant satisfied his initial burden on the issue of serious injury, plaintiff submitted in opposition to defendant's motion an affirmation of his treating physician that raised an issue of fact under the permanent consequential limitation of use, significant limitation of use, and 90/180-day categories of serious injury (see *Stamps v Pudetti*, 137 AD3d 1755, 1757 [4th Dept 2016]; see generally *DeAngelis v Martens Farms, LLC*, 104 AD3d 1125, 1126-1127 [4th Dept 2013]).

Entered: November 15, 2019

Mark W. Bennett  
Clerk of the Court