

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

**499**

**CA 21-00548**

PRESENT: LINDLEY, J.P., NEMOYER, CURRAN, WINSLOW, AND BANNISTER, JJ.

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JAMES BAKER, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

TRENISA GILL, JOSEPH MILLER,  
ALLISON L. YUNA AND CHRISTIAN LYNCH,  
DEFENDANTS-RESPONDENTS.

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HOGAN WILLIG PLLC, AMHERST (RYAN C. JOHNSON OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

RUPP BAASE PFALZGRAF CUNNINGHAM LLC, ROCHESTER (NICHOLE M. AUSTIN OF  
COUNSEL), FOR DEFENDANT-RESPONDENT TRENISA GILL.

CARMAN, CALLAHAN & INGHAM, LLP, FARMINGDALE (TRACY S. REIFER OF  
COUNSEL), FOR DEFENDANT-RESPONDENT JOSEPH MILLER.

CHELUS HERDZIK SPEYER & MONTE, P.C., BUFFALO (NICHOLAS M. HRICZKO OF  
COUNSEL), FOR DEFENDANT-RESPONDENT ALLISON L. YUNA.

OSBORN, REED & BURKE, LLP, ROCHESTER (MICHAEL C. PRETSCH OF COUNSEL),  
FOR DEFENDANT-RESPONDENT CHRISTIAN LYNCH.

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Appeal from an order of the Supreme Court, Monroe County (Christopher S. Ciaccio, A.J.), entered March 26, 2021. The order denied the motion of defendant Trenisa Gill for summary judgment and granted the motion of defendant Joseph Miller and the motions and cross motions of Allison L. Yuna and Christian Lynch for summary judgment and dismissed the complaint and all cross claims against said defendants.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by denying the motions and cross motions of defendant Allison L. Yuna and defendant Christian Lynch and reinstating the complaint and cross claims against those defendants, and as modified the order is affirmed without costs.

Memorandum: In this action to recover damages for injuries sustained in a motor vehicle accident involving five vehicles, plaintiff appeals from an order that, among other things, granted the motion of defendant Joseph Miller, the motion and cross motion of defendant Allison L. Yuna, and the motion and cross motion of defendant Christian Lynch, all seeking summary judgment dismissing the complaint and cross claims against them.

Contrary to plaintiff's contention, Miller met his initial burden on his motion, and plaintiff failed to raise a triable issue of fact in opposition (see *Paterson v Sikorski*, 118 AD3d 1330, 1331 [4th Dept 2014]). Supreme Court therefore properly granted Miller's motion. We agree with plaintiff, however, that Lynch and Yuna failed to meet their initial burdens on their respective motions and cross motions (see *Craig v Haynos*, 57 AD3d 1503, 1503 [4th Dept 2008]; *Owsian v Cobo*, 45 AD3d 1368, 1369 [4th Dept 2007]; see also *McMorrow v Trimper*, 149 AD2d 971, 972-973 [4th Dept 1989], *affd for the reasons stated* 74 NY2d 830 [1989]; *Burg v Mosey*, 126 AD3d 1522, 1523 [4th Dept 2015]). The court thus erred in granting the motions and cross motions of Lynch and Yuna, and we modify the order accordingly.

Entered: August 4, 2022

Ann Dillon Flynn  
Clerk of the Court