

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

923

CA 22-00828

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, CURRAN, AND BANNISTER, JJ.

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RENEE V. SLOMBA, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

KRISTAN E. KLEPP, DEFENDANT-APPELLANT.

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BURDEN, HAFNER & HANSEN, LLC, BUFFALO (DONNA L. BURDEN OF COUNSEL),  
FOR DEFENDANT-APPELLANT.

THE JOY E. MISERENDINO LAW FIRM, P.C., ORCHARD PARK (JOY E.  
MISERENDINO OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Catherine R. Nugent Panepinto, J.), entered April 22, 2022. The order denied the motion of defendant to dismiss the complaint.

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

Memorandum: In this personal injury action arising from a motor vehicle accident, defendant moved to dismiss the complaint on the ground that plaintiff was required, and failed, to serve a notice of claim pursuant to General Municipal Law § 50-e (1) (b). Defendant appeals from an order that denied her motion. Contrary to defendant's contention, we conclude that Supreme Court did not abuse its discretion in denying the motion without prejudice to renew after limited discovery on the issue whether plaintiff was required to serve a notice of claim (*see* CPLR 3211 [d]; *Gonzalez-Doldan v Kaleida Health, Inc.*, 160 AD3d 1384, 1384 [4th Dept 2018]; *see generally Herzog v Town of Thompson*, 216 AD2d 801, 803 [3d Dept 1995]).

Entered: February 3, 2023

Ann Dillon Flynn  
Clerk of the Court