

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

1078

CA 13-02228

PRESENT: SMITH, J.P., PERADOTTO, CARNI, VALENTINO, AND WHALEN, JJ.

NICK'S GARAGE, INC., PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ALLSTATE INSURANCE COMPANY, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

GOLDBERG SEGALLA LLP, SYRACUSE (MATTHEW S. LERNER OF COUNSEL), FOR
DEFENDANT-APPELLANT.

BOUSQUET HOLSTEIN PLLC, SYRACUSE (ROBERT K. WEILER OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County (James P. Murphy, J.), entered April 3, 2013. The order denied in part defendant's motion to dismiss the amended complaint.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by granting that part of defendant's motion seeking dismissal of the second cause of action in the amended complaint, and as modified the order is affirmed without costs.

Same Memorandum as in *Jeffrey's Auto Body, Inc. v Allstate Ins. Co.* ([appeal No. 1] ___ AD3d ___ [Feb. 6, 2015]).

Entered: February 6, 2015

Frances E. Cafarell
Clerk of the Court