

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

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CA 18-00907

PRESENT: CENTRA, J.P., PERADOTTO, DEJOSEPH, AND WINSLOW, JJ.

KEVIN MCINTOSH, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL
UNION 118, DEFENDANT-APPELLANT.

TREVETT CRISTO, P.C., ROCHESTER (MICHAEL T. HARREN OF COUNSEL), FOR
DEFENDANT-APPELLANT.

KAVINOKY COOK LLP, BUFFALO (R. SCOTT DELUCA OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Evelyn Frazee, J.), entered March 20, 2018. The order, insofar as appealed from, granted in part the motion of plaintiff for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the second ordering paragraph and as modified the order is affirmed without costs.

Memorandum: Plaintiff commenced this action for, inter alia, breach of contract arising from defendant's failure to provide him with certain benefits, including post-retirement health insurance benefits and accrued vacation pay. Defendant appeals from those parts of an order granting plaintiff's motion insofar as it sought summary judgment on his first and second causes of action. During oral argument of this appeal, plaintiff correctly conceded that Supreme Court's second ordering paragraph regarding the measure of damages should be vacated as premature. We modify the order accordingly and otherwise affirm.

Entered: April 26, 2019

Mark W. Bennett
Clerk of the Court