

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

1524

CA 10-01339

PRESENT: SMITH, J.P., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

MICHAEL ANDERSON, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

JOSEPH LADUE, SUSAN JAMES AND CENTER FOR
COMMUNITY ALTERNATIVES, DEFENDANTS-APPELLANTS.

TAYLOR & ASSOCIATES, ALBANY (KEITH M. FRARY OF COUNSEL), FOR
DEFENDANTS-APPELLANTS.

Appeal from an order of the Supreme Court, Oneida County (Samuel D. Hester, J.), entered February 24, 2010. The order, insofar as appealed from, denied the motion of defendants for summary judgment dismissing the complaint.

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

Memorandum: Defendants appeal from an order that, inter alia, denied their motion for summary judgment dismissing the pro se complaint and granted plaintiff's cross motion for leave to amend the complaint. We affirm. In support of their motion, defendants submitted documentary evidence tending to show that the allegedly improper disclosure of confidential information could not have occurred on the date set forth in the complaint. In response to the motion, which was filed before any discovery had been conducted, plaintiff acknowledged that the disclosure occurred the day after that alleged in the complaint, and he therefore cross-moved for leave to amend the complaint to correct that date. Defendants failed to submit any evidence with respect to the merits of the causes of action asserted in the complaint, and thus they failed to establish their entitlement to judgment as a matter of law dismissing the complaint (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562). Contrary to the contention of defendants, Supreme Court properly granted the cross motion inasmuch as they are not prejudiced by the proposed amendment to the complaint (*see generally CPLR 3025 [b]; First Sealord Sur., Inc. v Vesta 24 LLC*, 55 AD3d 423).

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court