

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

589

CA 09-02525

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, GREEN, AND GORSKI, JJ.

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ALDO FARNETI, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

AT&T, DEFENDANT-APPELLANT.

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BOND, SCHOENECK & KING, PLLC, SYRACUSE (JOSEPH C. DOLE OF COUNSEL),  
FOR DEFENDANT-APPELLANT.

JACOBS & JACOBS, ESQS., STAMFORD (ANDREW STAMMEL OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County (Anthony J. Paris, J.), entered October 26, 2009. The order, insofar as appealed from, denied in part the motion of defendant to dismiss the first cause of action.

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

Memorandum: Supreme Court properly denied, without prejudice to renew, that part of defendant's motion pursuant to CPLR 3211 (a) (7) seeking to dismiss the first cause of action insofar as it alleges breach of an employment contract. In determining that part of the motion, the court was required to "accept the facts as alleged in the complaint as true, accord plaintiff[] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88). Here, plaintiff has alleged facts that state a cause of action for breach of contract based upon documents allegedly setting forth the terms of defendant's offer of employment and plaintiff's acceptance thereof. Those documents, however, are not included in the record, and thus the court properly denied the motion in part without prejudice to renew (*see Gatz v Foster*, 159 AD2d 482).

Entered: April 30, 2010

Patricia L. Morgan  
Clerk of the Court