

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

976

CA 18-00244

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

JOSEPH ANDALORO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

DAISY CHARLES, DEFENDANT,
AND PATRICIA FLOYD-ECHOLS, DEFENDANT-RESPONDENT.

O'HARA, O'CONNELL & CIOTOLI, FAYETTEVILLE (STEPHEN CIOTOLI OF COUNSEL), FOR PLAINTIFF-APPELLANT.

FERRARA FIORENZA P.C., EAST SYRACUSE (HEATHER M. COLE OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County (Gregory R. Gilbert, J.), entered August 23, 2017. The order granted the motion of defendant Patricia Floyd-Echols for summary judgment dismissing the complaint against her.

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

Memorandum: Plaintiff appeals from an order that granted the motion of Patricia Floyd-Echols (defendant) for summary judgment dismissing the complaint against her. We reject plaintiff's sole contention on appeal that Supreme Court erred in determining that defendant established as a matter of law that plaintiff did not suffer special damages, a requisite element of plaintiff's malicious prosecution cause of action (*see generally Thyroff v Nationwide Mut. Ins. Co.*, 57 AD3d 1433, 1435 [4th Dept 2008], *appeal dismissed* 12 NY3d 911 [2009], *lv denied* 13 NY3d 710 [2009]; *Rossi v Attanasio*, 48 AD3d 1025, 1028-1029 [3d Dept 2008]). Defendant established that the allegations of damages contained in plaintiff's complaint and deposition testimony were insufficient to constitute a "concrete harm that is considerably more cumbersome than the physical, psychological or financial demands of defending a lawsuit" (*Engel v CBS, Inc.*, 93 NY2d 195, 205 [1999]) and plaintiff failed to raise a triable issue of material fact in response thereto. In light of our conclusion, we need not address defendant's alternative bases for affirmance (*see generally Cleary v Walden Galleria LLC*, 145 AD3d 1524, 1526 [4th Dept 2016]).

Entered: September 28, 2018

Mark W. Bennett
Clerk of the Court