

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ANTHONY LATERZA,
Appellant,

v.

HARRY WINDERMAN,
Appellee.

No. 4D20-783

[December 16, 2020]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Glenn D. Kelley, Judge; L.T. Case No. 502018CA011917XXXMB.

Anthony Laterza, North Palm Beach, pro se.

Harry Winderman, Boca Raton, pro se.

GERBER, J.

The plaintiff appeals from the circuit court's final judgment in the defendant's favor, but more specifically from two orders leading to the final judgment.

We affirm without further discussion the circuit court's order granting the defendant's motion for summary judgment on the plaintiff's then-pending causes of action against the defendant, which causes of actions we deem as having been disposed with prejudice.

However, we reverse in part the circuit court's order summarily denying the plaintiff's motion for rehearing, to the extent the plaintiff requested leave to amend his complaint to plead an alternative cause of action against the defendant for unjust enrichment. *See, e.g., Hart Props., Inc. v. Slack*, 159 So. 2d 236, 240 (Fla. 1963) ("In circumstances such as this where a summary judgment should be entered, yet the matters presented indicate that the unsuccessful party may have a cause of action or defense not pleaded, or a better one than that pleaded, the proper procedure is to enter the summary judgment with leave to the party to amend").

Based on the foregoing, we remand for the circuit court to vacate its final judgment and enter an order granting the plaintiff leave to file a fourth amended complaint which shall be limited to pleading a cause of action against the defendant for unjust enrichment. In so holding, we do not suggest that the plaintiff has a viable cause of action for unjust enrichment, only that he be given the opportunity to plead such a claim.

Affirmed in part, reversed in part, and remanded with instructions.

DAMOORGIAN and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.