

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14805
G/cb

_____AD3d_____

Submitted - March 19, 2007

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
MARK C. DILLON, JJ.

2006-02634

DECISION & ORDER

Frank Amico, appellant, v Melville Volunteer
Fire Company, Inc., respondent, et al., defendant.

(Index No. 07004/05)

Tantone & Gulotta, Ronkonkoma, N.Y. (Anthony J. Gulotta of counsel), for
appellant.

Furey, Furey, Leverage, Manzione, Williams & Darlington, P.C., Hempstead, N.Y.
(Susan Weihs Darlington of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Berler, J.), entered February 24, 2006, which granted the motion of the defendant Melville Volunteer Fire Company, Inc., for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendant Melville Volunteer Fire Company, Inc., for summary judgment dismissing the complaint insofar as asserted against it is denied as premature, with leave to renew upon completion of discovery.

April 24, 2007

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A party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment (*see Urcan v Cocarelli*, 234 AD2d 537). Here, the plaintiff has not had an adequate opportunity to conduct discovery, and the motion by the defendant Melville Volunteer Fire Company, Inc., should have been denied as premature (*see CPLR 3212[f]*; *Fazio v Brandywine Realty Trust*, 29 AD3d 939; *Juseinoski v New York Hosp. Med. Ctr. of Queens*, 29 AD3d 636; *Manufacturers & Traders Trust Co. v North Fork Bank*, 16 AD3d 467).

CRANE, J.P., KRAUSMAN, GOLDSTEIN and DILLON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court