

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

D17252  
W/kmg

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Argued - November 8, 2007

GLORIA GOLDSTEIN, J.P.  
STEVEN W. FISHER  
EDWARD D. CARNI  
WILLIAM E. McCARTHY, JJ.

2007-02082

DECISION & ORDER

Joseph Venables, appellant, v  
Philip J. Sagona, et al., respondents.

(Index No. 15433/06)

Mintz & Fraade, P.C., New York, N.Y. (I. Frederick Shotkin of counsel), for  
appellant.

John J. Meglio, Flushing, N.Y., for respondents.

In an action, inter alia, to recover on a promissory note and for damages for breach of contract and fraud, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (Lally, J.), dated January 29, 2007, as granted those branches of the defendants' motion which were for summary judgment dismissing the first, third, fourth, and fifth causes of action.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and those branches of the motion which were for summary judgment dismissing the first, third, fourth, and fifth causes of action are denied as premature, with leave to renew upon completion of discovery.

“The defendants' contentions that they are entitled to summary judgment because the plaintiff failed to plead fraud with specificity is without merit, as the alleged insufficiency of a pleading is not a proper basis for a summary judgment motion” (*Valloni v Crisona*, 192 AD2d 648, 648; *Gee v Gee*, 113 AD2d 736, 737).

The remaining contentions advanced by the defendants in support of their motion are

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raised prematurely. “A party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment” (*Amico v Melville Volunteer Fire Co. Inc.*, 39 AD3d 784, 785). On the limited facts presented in this pre-discovery record, those branches of the defendants’ motion which were to dismiss the first, third, fourth, and fifth causes of action should have been denied as premature, with leave to renew upon completion of discovery (*see* CPLR 3212[f]; *Amico v Melville Volunteer Fire Co. Inc.*, 39 AD3d 784; *Olmedo-Garcia v Dobson*, 31 AD3d 727).

GOLDSTEIN, J.P., FISHER, CARNI and McCARTHY, JJ., concur.

ENTER:

  
James Edward Selzer  
Clerk of the Court