

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

D22130  
C/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 5, 2009

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

---

2007-09540

DECISION & ORDER

Aurora Loan Services, LLC, etc., respondent, v  
LaMattina & Associates, Inc., et al., defendants,  
Washington Title Insurance Company, appellant.

(Index No. 103092/06)

---

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, White Plains, N.Y. (Jacob E. Amir of counsel), for appellant.

Tompkins, McGuire, Wachenfeld & Barry, LLP, New York, N.Y. (William C. Sandelands of counsel), for respondent.

In an action, inter alia, to recover damages for fraud, the defendant Washington Title Insurance Company appeals, as limited by its brief, from so much of an order of the Supreme Court, Richmond County (Maltese, J.), dated September 13, 2007, as denied, as premature, its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Although Washington Title Insurance Company (hereinafter Washington Title) demonstrated its prima facie entitlement to summary judgment dismissing the complaint insofar as asserted against it (*see Alvarez v Prospect Hosp.*, 68 NY2d 320), the Supreme Court properly denied the motion as premature (*see Ruiz v Griffin*, 50 AD3d 1005, 1006; *Juseinoski v New York Hosp. Med. Ctr. of Queens*, 29 AD3d 636, 637; *Baron v Incorporated Vil. of Freeport*, 143 AD2d 792, 792-793). “CPLR 3212(f) permits a party opposing summary judgment to obtain further discovery

when it appears that facts supporting the position of the opposing party exist but cannot be stated” (*Juseinoski v New York Hosp. Med. Ctr. of Queens*, 29 AD3d at 637; see *Ruiz v Griffin*, 50 AD3d at 1006). “This is especially so where the opposing party has not had a reasonable opportunity for disclosure prior to the making of the motion” (*Baron v Incorporated Vil. of Freeport*, 143 AD2d at 793). Here, the plaintiff raised issues warranting further discovery. Accordingly, the Supreme Court properly denied, as premature, the motion of Washington Title for summary judgment dismissing the complaint insofar as asserted against it.

SPOLZINO, J.P., SANTUCCI, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court