

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

D27175  
C/prt

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

Submitted - March 25, 2010

A. GAIL PRUDENTI, P.J.  
STEVEN W. FISHER  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

---

2009-07950

DECISION & ORDER

In the Matter of Vito Fasciglione, deceased.  
Angelo Fasciglione, appellant;  
Karla Fasciglione, respondent.

(File No. 950/08)

---

Andrew W. Sayegh, Yonkers, N.Y., for appellant.

Enea, Scanlan & Sirignano, LLP, White Plains, N.Y. (George A. Sirignano, Jr., of counsel), for respondent.

In a contested probate proceeding, the proponent appeals from an order of the Surrogate's Court, Westchester County (Scarpino, S.), dated July 24, 2009, which denied as premature, without prejudice to renew, his motion for summary judgment dismissing the objections and admitting the decedent's will to probate, and for the imposition of costs and sanctions upon the objectant.

ORDERED that the order is affirmed, with costs payable by the estate.

A party opposing summary judgment is entitled to obtain further discovery when it appears that facts supporting the opposing party's position may exist but cannot then be stated (*see* CPLR 3212[f]; *Juseinoski v New York Hosp. Med. Ctr. of Queens*, 29 AD3d 636, 637; *Urcan v Cocarelli*, 234 AD2d 537). At the time the proponent filed his motion, inter alia, for summary judgment, the court-ordered period for the completion of depositions had not yet expired, and the objectant had not had the opportunity to complete her depositions of nonparty witnesses and had not received all documents requested from the proponent. Under the circumstances of this case, the

May 4, 2010

Page 1.

MATTER OF FASCIGLIONE, DECEASED

Surrogate's Court properly denied the proponent's motion as premature, without prejudice to renewal (see *Groves v Land's End Hous. Co.*, 80 NY2d 978; *Juseinoski v New York Hosp. Med. Ctr. of Queens*, 29 AD3d at 637-638; *Matter of Jacinto*, 172 AD2d 664).

The proponent's remaining contentions are without merit.

PRUDENTI, P.J., FISHER, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court