

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

D28022
G/kmg

_____AD3d_____

Submitted - June 1, 2010

STEVEN W. FISHER, J.P.
PLUMMER E. LOTT
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2010-01067

DECISION & ORDER

Antonia Evangelista, respondent, v Emanuel
Kambanis, et al., appellants.

(Index No. 12198/08)

Jacobson & Schwartz, Rockville Centre, N.Y. (Henry J. Cernitz of counsel), for
appellants.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Lane, J.), entered December 11, 2009, which denied, as premature, their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, without costs or disbursements.

“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” (*Matter of Fasciglione*, 73 AD3d 769, 769; *see* CPLR 3212[f]; *Rodriguez v DeStefano*, 72 AD3d 926). Here, at the time the defendant landowners moved for summary judgment, they had not been deposed. Moreover, it appears that information concerning whether they created the alleged dangerous condition on the sidewalk abutting their property which caused the plaintiff’s accident, or enjoyed a special use of the sidewalk which gave rise to the dangerous condition, may be within their exclusive knowledge (*see Adler v City of New York*, 52 AD3d 549, 549-550). Under these circumstances, the Supreme Court did not improvidently exercise its discretion in denying, as premature, the defendants’ motion for summary judgment dismissing the complaint (*see Matter of Fasciglione*, 73 AD3d at 769; *Gruenfeld v City of New Rochelle*, 72 AD3d 1025; *Rodriguez v*

DeStefano, 72 AD3d at 926; *Harvey v Nealis*, 61 AD3d 935, 936).

FISHER, J.P., LOTT, AUSTIN and SGROI, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court