

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

D30822  
O/kmb

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Submitted - March 8, 2011

JOSEPH COVELLO, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2010-09182

DECISION & ORDER

Norbert Nicholson, appellant, v Ethelyn M. Bader,  
et al., respondents.

(Index No. 2822/10)

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Vincent I. Eke-Nweke, P.C., Brooklyn, N.Y., for appellant.

Brian J. McGovern, LLC, New York, N.Y. (Michelle A. Cohen of counsel), for  
respondent Hazem M. Abouzied.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated August 12, 2010, which denied his motion for summary judgment on the issue of liability, without prejudice to renewal upon the completion of discovery.

ORDERED that the order is affirmed, with costs.

“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, 770; *see* CPLR 3212[f]; *Family-Friendly Media, Inc. v Recorder Tel. Network*, 74 AD3d 738, 739; *Juseinoski v New York Hosp. Med. Ctr. of Queens*, 29 AD3d 636, 637). “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 792, 793; *see Aurora Loan Servs., LLC v LaMattina & Assoc., Inc.*, 59 AD3d 578). Here, the plaintiff moved for summary judgment on the issue of liability approximately one month after joinder of issue and prior to the exchange of any discovery. Under the circumstances of this case, the

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Supreme Court properly denied the plaintiff's motion for summary judgment on the issue of liability, without prejudice to renewal upon the completion of discovery.

COVELLO, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court