

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

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_____AD3d_____

Argued - May 6, 2011

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2011-01270

DECISION & ORDER

Anne F. Bond, et al., appellants, v Rita J. DeMasco,
et al., respondents.

(Index No. 101154/09)

Robert P. Sharron & Associates, P.C., New York, N.Y., for appellants.

James J. Toomey, New York, N.Y. (Evy L. Kazansky of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Richmond County (Fusco, J.), dated December 20, 2010, which denied, as premature, their motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiffs' contention, the Supreme Court properly denied, as premature, their motion for summary judgment on the issue of liability (*see* CPLR 3212[f]; *Lambert v Sklar*, 61 AD3d 939, 940; *Aurora Loan Servs., LLC v LaMattina & Assoc., Inc.*, 59 AD3d 578). The plaintiffs moved for summary judgment on the issue of liability prior to the parties' depositions. The defendants did not have an adequate opportunity to conduct discovery (*see Amico v Melville Volunteer Fire Co., Inc.*, 39 AD3d 784, 785). Moreover, the plaintiff Anne F. Bond and the defendant Rita J. DeMasco submitted, among other things, affidavits containing certain discrepancies pertaining to the circumstances of the subject accident (*see Gardner v Cason, Inc.*, 82 AD3d 930; *Cardone v Poidamani*, 73 AD3d 828).

MASTRO, J.P., LEVENTHAL, AUSTIN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court

May 31, 2011

BOND v DEMASCO