SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 25-00044

PRESENT: LINDLEY, J.P., MONTOUR, OGDEN, GREENWOOD, AND HANNAH, JJ.

CORBIN ANDERSON, PLAINTIFF-RESPONDENT,

V MEMORANDUM AND ORDER

THOMAS G. NEUBAUER, THOMAS G. NEUBAUER, II, KAILA ROSE VEACH, DEFENDANTS-RESPONDENTS, DEANNA CATHERINE MORRIS AND JOHN F. MORRIS, DEFENDANTS-APPELLANTS.

LAW OFFICE OF DANIEL R. ARCHILLA, BUFFALO (EMILY M. COBB OF COUNSEL), FOR DEFENDANTS-APPELLANTS.

THE LAW OFFICES OF STEVE BOYD, P.C., BUFFALO (LEAH COSTANZO OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Catherine R. Nugent Panepinto, J.), entered November 22, 2024, in a case involving a motor vehicle accident. The order denied the motion of defendants Deanna Catherine Morris and John F. Morris for summary judgment dismissing the complaint and all cross-claims against them.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In this negligence case arising from a multi-vehicle automobile accident, Deanna Catherine Morris and John F. Morris (defendants) appeal from an order that denied without prejudice their motion for summary judgment dismissing the complaint and all cross-claims against them. Even assuming, arguendo, that defendants met their initial burden on the motion, we conclude that defendants' motion is premature (*see Michael P. v Dombroski*, 211 AD3d 1469, 1473 [4th Dept 2022]). A party opposing summary judgment on the basis that additional discovery is needed must "demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant" (*Lowes v Anas*, 195 AD3d 1579, 1580 [4th Dept 2021] [internal quotation marks omitted]; *see Bratge v Simons*, 173 AD3d 1623, 1624 [4th Dept 2019]; *see also* CPLR 3212 [f]). To meet that burden, the party opposing the motion as premature must "make an evidentiary showing supporting [the conclusion that facts essential to justify opposition may exist but cannot then be stated, and] mere speculation or conjecture [is] insufficient" (*Resetarits Constr. Corp. v Elizabeth Pierce Olmsted, M.D. Center for the Visually Impaired* [appeal No. 2], 118 AD3d 1454, 1456 [4th Dept 2014]; *see also Dunn v*

Covanta Niagara I, LLC [appeal No. 2], 181 AD3d 1340, 1341 [4th Dept 2020]). In opposing defendants' motion, plaintiff established that not a single party, aside from plaintiff, had been deposed in the case (*see Michael P.*, 211 AD3d at 1473; *Schlichting v Elliquence Realty, LLC*, 116 AD3d 689, 690 [2d Dept 2014]). We conclude that Supreme Court properly denied defendants' motion without prejudice (*see Ruggio v PCCB, Inc.*, 59 AD3d 999, 999 [4th Dept 2009]; *Fellows v County of Onondaga*, 2 AD3d 1462, 1462 [4th Dept 2003]; *see generally* CPLR 3212 [f]).

Entered: November 21, 2025

Ann Dillon Flynn
Clerk of the Court