

SUPREME COURT OF LOUISIANA

No. 2019-C-01854

DESELLE MILTON-GUSTAIN AND DONELL GUSTAIN

VS.

THE SALVAGE STORE, INC. AND COVINGTON SPECIALTY
INSURANCE COMPANY

On Writ of Certiorari to the Court of Appeal, Fifth Circuit, Parish of Jefferson

PER CURIAM

In this case the applicants have been unable to obtain the deposition of the only potential eyewitness to the fall. This potential eyewitness was a former employee of defendant, The Salvage Store, and was actually served with the notice of her deposition and failed to appear, before the motion for summary judgment was filed. When applicants' first attempt at service was unsuccessful, they took the steps necessary to have a special process server appointed. Thereafter, when the alleged eyewitness failed to appear for her deposition on July 9, 2018, after having been properly served, applicants filed a motion to compel. In **Leake & Andersson, LLP v. SIA Ins. Co. (Risk Retention Group), Ltd.**, 03-1600 (La. App. 4 Cir. 3/3/04), 868 So.2d 967, the Fourth Circuit overturned the district court's ruling, finding that summary judgment was premature on the basis that "the information sought by appellant pertains directly to the unresolved factual issue" in that case. Likewise, in **Serpas v. University Healthcare System**, 16-0948 (La. App. 4 Cir. 3/8/17), 213 So.3d 427, 428–29, the Fourth Circuit noted that, "[a]lthough the language of article 966 does not grant a party the absolute right to delay a decision on a motion for summary judgment until all discovery is complete, the law does require that the parties be given a fair opportunity to present their case." The court further noted that summary judgment had been found to be premature "where the party opposing

summary judgment was not afforded a reasonable opportunity to take relevant depositions prior to being required to defend against the motion for summary judgment,” citing to **Doe v. ABC Corp.**, 00-1905 (La. App. 4 Cir. 6/27/01), 790 So.2d 136, 143. As such, under the circumstances of this case, the applicants should have been afforded the opportunity to obtain the deposition of the alleged eyewitness before the motion for summary judgment was heard. For the reasons stated in Judge Wicker’s dissent, the ruling of the trial court granting summary judgment is vacated, and this matter is remanded for further proceedings.

VACATED AND REMANDED.