

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed April 22, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D08-1965

Lower Tribunal No. 06-6378

**Carlos Torres and Ines Torres, individually and as Natural Parents
and Co-Personal Representatives of the Estate of Jasmine Torres,**
Appellants,

vs.

**MK Tours, Inc., a Florida corporation; Hotelera Canco, S.A., etc.;
Salvador Ornelas, etc.; and Holiday Inns, Inc., etc.,**
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Maria Espinosa
Dennis, Judge.

Podhurst Orseck, Stephen F. Rosenthal and Ramon A. Rasco, for appellants.

Lane, Reese, Summers, Ennis & Perdomo and Kevin D. Franz and William
S. Reece, for appellees

Before GERSTEN, C.J., and COPE and SUAREZ, JJ.

SUAREZ, J.

Carlos and Ines Torres (“Torreses”), Personal Representatives of the Estate of Jasmine Torres, appeal a final summary judgment in favor of MK Tours, Inc., entered upon an order denying the Torreses’ motion for continuance. We reverse the final summary judgment in favor of MK Tours, Inc., on grounds that the trial judge abused her discretion in denying the motion for continuance.

We find as well-taken the Torreses’ contention on appeal that, because discovery was provided late and they did not learn until approximately two months before the summary judgment hearing that MK Tours had destroyed documentary evidence allegedly subject to production, a continuance of the hearing on summary judgment was needed to complete discovery on the issue of the alleged duty to warn.¹ See Erace v. Erace, 683 So. 2d 1114 (Fla. 3d DCA 1996) (concluding that summary judgment is premature prior to plaintiff’s completion of discovery), and cases cited therein.

We therefore remand the cause to the trial court for the purpose of allowing the Torreses the opportunity to complete discovery.

Reversed and remanded with directions.

¹ We do not address the merits of the issue of the alleged duty to warn.