

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

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_____AD3d_____

Submitted - September 25, 2006

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
ROBERT A. SPOLZINO
PETER B. SKELOS, JJ.

2005-04661
2005-04665

DECISION & ORDER

Cottie Selby, etc., et al., plaintiffs-respondents,
v City of New York, defendant-respondent,
Keyspan Energy Delivery, NYC, appellant.

(Index No. 28054/02)

Cullen and Dykman, LLP, Brooklyn, N.Y. (Mark J. Rutkowski of counsel), for appellant.

Goidel & Siegel, LLP, New York, N.Y. (Andrew Siegel and David Atlas of counsel), for plaintiffs-respondents.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and Elizabeth I. Freedman of counsel), for defendant-respondent.

In an action to recover damages for personal injuries, etc., the defendant Keyspan Energy Delivery, NYC, appeals from (1) an order of the Supreme Court, Kings County (Partnow, J.), dated November 24, 2004, which denied its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it, and (2) an order of the same court dated March 30, 2005, which denied its motion for leave to renew.

ORDERED that the orders are affirmed, with one bill of costs.

Although the defendant Keyspan Energy Delivery, NYC (hereinafter Keyspan), submitted evidence sufficient to establish its prima facie entitlement to judgment as a matter of law

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(see *Shvartsberg v City of New York*, 19 AD3d 578, 579), in opposition, the plaintiffs raised a triable issue of fact as to whether Keyspan created the alleged defect in the sidewalk which allegedly had caused the infant plaintiff to fall (see *Cucuzza v City of New York*, 2 AD3d 389, 391; *Gerena v Town of Brookhaven*, 280 AD2d 450, 451-452). Accordingly, the Supreme Court properly denied Keyspan's motion for summary judgment.

Contrary to Keyspan's contention, the Supreme Court did not improvidently exercise its discretion in denying its motion for leave to renew (see CPLR 2221).

CRANE, J.P., KRAUSMAN, SPOLZINO and SKELOS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court