

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

D14063  
G/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 18, 2007

A. GAIL PRUDENTI, P.J.  
GABRIEL M. KRAUSMAN  
MARK C. DILLON  
WILLIAM E. McCARTHY, JJ.

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2005-07125

DECISION & ORDER

David Toste, appellant, v City of New York, et al.,  
respondents.

(Index Nos. 11883/03)

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Gersowitz Libo & Korek, P.C., New York, N.Y. (Edward H. Gersowitz, Jeff S. Korek, and Brian Isaac of counsel), for appellant.

Tromello, McDonnell & Kehoe, Melville, N.Y. (Stephen J. Donnelly of counsel), for respondent Fischer Leverich, LLC.

In a consolidated action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of an order of Supreme Court, Queens County (Elliot, J.), entered June 24, 2005, as granted that branch of the motion of the defendant Fischer Leverich, LLC, which was for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff allegedly was injured on April 2, 2002, when he fell on the sidewalk adjacent to property owned by the defendant Fischer Leverich, LLC (hereinafter Fischer). Fischer established its prima facie entitlement to judgment as a matter of law by establishing that it did not negligently repair the subject sidewalk (*see Hausser v Giunta*, 88 NY2d 449, 452-453; *Hughes v City of New York*, 304 AD2d 618). In response, the plaintiff failed to raise a triable issue of fact,

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particularly since it was admitted that no construction was performed pursuant to a permit for sidewalk repair issued on July 11, 2001, for the accident location (*see Zuckerman v City of New York*, 49 NY2d 557).

PRUDENTI, P.J., KRAUSMAN, DILLON and McCARTHY, 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