

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

D15224  
W/gts

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

Argued - April 17, 2007

HOWARD MILLER, J.P.  
DAVID S. RITTER  
JOSEPH COVELLO  
RUTH C. BALKIN, JJ.

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2006-02694

DECISION & ORDER

William Davitt, plaintiff, v City of New York, et al.,  
appellants, M.A.C.C. Construction, Inc., respondent,  
et al., defendant.

(Index No. 45999/01)

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Lifflander & Reich LLP, New York, N.Y. (Kent B. Dolan of counsel), for appellants.

McGivney & Kluger, P.C., New York (Christopher A. Bacotti of counsel), for  
respondent.

In an action to recover damages for personal injuries, the defendants City of New York, New York City Transit Authority, and American Bridge Company appeal from an order of the Supreme Court, Kings County (Solomon, J.), dated February 27, 2006, which denied their motion for summary judgment on their cross claim for contractual indemnification against the defendant M.A.C.C. Construction, Inc.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly sustained injuries when he stepped on a piece of plywood covering a portion of a sidewalk that had been excavated in connection with the ongoing repair of columns supporting an elevated subway line above the sidewalk. The Supreme Court properly denied the appellants' motion for summary judgment on their cross claim for contractual indemnification against the defendant subcontractor M.A.C.C. Construction, Inc., because they failed to establish, as a matter of law, that the appellant American Bridge Company, the general contractor, was free from negligence (*see Itri Brick & Concrete Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 786, 795;

May 22, 2007

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*Coque v Wildflower Estates Developers*, 31 AD3d 484, 489-490; *Watters v R.D. Branch Assoc. LP*, 30 AD3d 408, 409-410).

MILLER, J.P., RITTER, COVELLO and BALKIN, 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