

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

D15816  
C/hu

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

Submitted - May 25, 2007

WILLIAM F. MASTRO, J.P.  
MARK C. DILLON  
JOSEPH COVELLO  
THOMAS A. DICKERSON, JJ.

---

2006-05803

DECISION & ORDER

Anthony Clark, plaintiff-respondent, v City of  
New York, defendant-respondent, Keyspan Energy  
Corporation, appellant, et al., defendant.

(Index No. 3233/03)

---

Cullen and Dykman, LLP, Brooklyn, N.Y. (Dawn C. Wheeler of counsel), for  
appellant.

Steven Lee Zaslav, P.C., New York, N.Y., for plaintiff-respondent.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Barry P. Schwartz and  
Scott Shorr of counsel), for defendant-respondent.

In an action, inter alia, to recover damages for personal injuries, the defendant  
Keyspan Energy Corporation appeals from so much of an order of the Supreme Court, Kings County  
(Hinds-Radix, J.), dated May 26, 2006, as denied its motion for summary judgment dismissing the  
complaint and all cross claims insofar as asserted against it.

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

The defendant Keyspan Energy Corporation failed to meet its initial burden of  
establishing a prima facie case that neither it nor its contractor caused or created the alleged defective  
condition, mounds of tar around a manhole cover, that purportedly caused the plaintiff's accident (*see*  
*Selby v City of New York*, 34 AD3d 440; *Cucuzza v City of New York*, 2 AD3d 389; *St. Clair v City*

August 14, 2007

Page 1.

CLARK v CITY OF NEW YORK

*of New York*, 266 AD2d 277). Accordingly, its motion for summary judgment was properly denied.

MASTRO, J.P., DILLON, COVELLO and DICKERSON, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court