

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

D17109
C/cb

_____AD3d_____

Argued - October 30, 2007

GLORIA GOLDSTEIN, J.P.
PETER B. SKELOS
MARK C. DILLON
JOSEPH COVELLO, JJ.

2006-10421

DECISION & ORDER

Amparo Bocanegra, plaintiff-respondent, v City of
New York, et al., defendants-respondents, Cobar
Construction Corp., appellant.

(Index No. 1782/04)

John P. Humphreys, Melville, N.Y. (David R. Holland and Scott Driver of counsel),
for appellant.

Beth J. Schlossman, Brooklyn, N.Y. (David Feinsilver and H. Jonathan Rubinstein of
counsel), for plaintiff-respondent.

In an action to recover damages for personal injuries, the defendant Cobar
Construction Corp. appeals, as limited by its brief, from so much of an order of the Supreme Court,
Queens County (Flug, J.), entered September 29, 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 costs.

The defendant Cobar Construction Corp. failed to establish its prima facie entitlement
to judgment as a matter of law dismissing the complaint and all cross claims insofar as asserted
against it (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851; *Johnston v City of New York*,

November 27, 2007

BOCANEGRA v CITY OF NEW YORK

18 AD3d 712). Under the circumstances, a triable issue of fact exists as to whether it created a depression in the crosswalk which allegedly caused the plaintiff to fall.

GOLDSTEIN, J.P., SKELOS, DILLON and COVELLO, 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

November 27, 2007

BOCANEGRA v CITY OF NEW YORK