

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

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_____AD3d_____

Argued - February 14, 2008

STEVEN W. FISHER, J.P.
MARK C. DILLON
WILLIAM E. McCARTHY
ARIEL E. BELEN, JJ.

2006-12024

DECISION & ORDER

Pio Bonilla, respondent, v Incorporated
Village of Hempstead, appellant, et al., defendants.

(Index No. 10502/06)

Garry & Garry, New York, N.Y. (William J. Garry of counsel), for appellant.

Lipsky, Bresky & Lowe, LLP, Garden City, N.Y. (Michael Lowe and John Marshall of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Incorporated Village of Hempstead appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Spinola, J.), dated November 8, 2006, as denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

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

The Supreme Court properly determined that the defendant Incorporated Village of Hempstead (hereinafter the defendant) failed to establish its prima facie entitlement to judgment as a matter of law on the issues of whether it received prior written notice of the defect and whether the defendant's contractor created the defect through excavation at or near the location of the accident (*see Zuckerman v City of New York*, 49 NY2d 557, 562). Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint insofar as asserted against it.

FISHER, J.P., DILLON, McCARTHY and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

March 25, 2008

BONILLA v INCORPORATED VILLAGE OF HEMPSTEAD