

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

D18474
O/prt

_____AD3d_____

Argued - February 8, 2008

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2007-01559

DECISION & ORDER

Christopher Alvino, respondent,
v City of New York, appellant.

(Index No. 47207/00)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Susan Paulson of counsel), for appellant.

Bader Yakaitis & Nonnenmacher, LLP, New York, N.Y. (John J. Nonnenmacher and Adam J. Stein of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Solomon, J.), dated November 9, 2006, as denied its cross motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the defendant's cross motion for summary judgment dismissing the complaint is granted.

The plaintiff commenced this action to recover damages from the defendant City of New York for injuries allegedly sustained when he stepped on a loose metal plate on the sidewalk and fell into a hole. The City cannot be held liable for a defect in a sidewalk unless, inter alia, it received written notice of the defect, or made a written acknowledgment of the condition, and failed to remedy the condition within 15 days after the notification or acknowledgment (*see* Administrative Code of City of NY § 7-201[c][2]; *Bruni v City of New York*, 2 NY3d 319, 324-326). Here, while there was a written acknowledgment of the defect from the City, the accident occurred within the 15-day grace period (*see Kruszka v City of New York*, 29 AD3d 742, 743; *Silva v City of New York*, 17 AD3d 566, 567).

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In opposition to the City's prima facie showing of entitlement to judgment as a matter of law, the plaintiff failed to raise a triable issue of fact as to whether one of the exceptions to the prior notice requirement was applicable (*see Amabile v City of Buffalo*, 93 NY2d 471). There is no evidence that the City either created the defective condition or made special use of the area (*see Oboler v City of New York*, 8 NY3d 888, 889-890; *Kruszka v City of New York*, 29 AD3d at 743; *Silva v City of New York*, 17 AD3d at 567).

Consequently, the Supreme Court should have granted the City's cross motion for summary judgment dismissing the complaint (*see Kruszka v City of New York*, 29 AD3d at 743; *Silva v City of New York*, 17 AD3d at 567).

MASTRO, J.P., COVELLO, ENG and BELEN, JJ., concur.

ENTER:


James Edward Helzer
Clerk of the Court