

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

D20009
C/prt

_____AD3d_____

Submitted - April 8, 2008

STEVEN W. FISHER, J.P.
DAVID S. RITTER
ANITA R. FLORIO
EDWARD D. CARNI, JJ.

2007-06799

DECISION & ORDER

Rosa Garcia, et al., plaintiffs-respondents,
v City of New York, defendant-respondent,
Keyspan Energy Delivery N.Y.C., appellant.

(Index No. 16701/04)

Cullen and Dykman LLP, Brooklyn, N.Y. (Nicole M. Snyder and Joseph C. Fegan of counsel), for appellant.

Fraiden & Palen, Bronx, N.Y. (Marion Palen of counsel), for plaintiffs-respondents.

In an action to recover damages for personal injuries, etc., the defendant Keyspan Energy Delivery N.Y.C. appeals from an order of the Supreme Court, Queens County (Flug, J.), dated June 18, 2007, which denied its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendant Keyspan Energy Delivery N.Y.C. for summary judgment dismissing the complaint and all cross claims insofar as asserted against it is granted.

The Supreme Court should have granted the motion of the defendant Keyspan Energy Delivery N.Y.C. (hereinafter Keyspan), for summary judgment dismissing the complaint and all cross claims insofar as asserted against it. Keyspan established its prima facie entitlement to judgment as a matter of law by submitting evidence that it did not create the alleged sidewalk defect that caused the injured plaintiff's fall. The evidence that the plaintiffs submitted in opposition to the motion did not raise a triable issue of fact as to whether certain work performed by Keyspan, which was at least 53 feet away from the site of the accident, created the alleged sidewalk defect (*see Jones v City of*

July 29, 2008

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New York, 45 AD3d 735; *Cendales v City of New York*, 25 AD3d 579, 580-581; *Shvartsberg v City of New York*, 19 AD3d 578).

FISHER, J.P., RITTER, FLORIO and CARNI, 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