

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

D21151  
Y/hu

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

Argued - October 27, 2008

REINALDO E. RIVERA, J.P.  
DAVID S. RITTER  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

---

2007-08860

DECISION & ORDER

Jeannine Kelley-Blake, et al., respondents, v City of  
New York, et al., defendants, Keyspan, appellant.

(Index No. 12324/01)

---

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

Sean H. Rooney, Brooklyn, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendant Keyspan  
appeals from so much of an order of the Supreme Court, Richmond County (Aliotta, J.), dated  
August 3, 2007, 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 plaintiff Jeannine Kelly-Blake (hereinafter the injured plaintiff) allegedly was  
injured when she tripped and fell on a defect in a roadway on Staten Island, where the defendant  
Keyspan admittedly had performed work within two years prior to the accident. The evidence  
submitted by Keyspan in support of its motion for summary judgment was insufficient to demonstrate  
that it was not liable for the injuries sustained by the injured plaintiff. Thus, Keyspan failed to  
establish its prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*,  
68 NY2d 320, 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Accordingly, the  
Supreme Court properly denied Keyspan's motion, regardless of the sufficiency of the plaintiffs'

November 25, 2008

Page 1.

KELLEY-BLAKE v CITY OF NEW YORK

opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853; *Whitfield v City of New York*, 48 AD3d 798, 799).

RIVERA, J.P., RITTER, ENG and CHAMBERS, 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