

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

D24986  
G/kmg

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Argued - October 5, 2009

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
THOMAS A. DICKERSON  
PLUMMER E. LOTT, JJ.

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2008-08026

DECISION & ORDER

Zu-Hua Lin, plaintiff-respondent, v City of New York,  
defendant third-party plaintiff-respondent-appellant,  
Carlos F. Rivera, et al., defendants-respondents,  
Petrocelli Electric Co., Inc., third-party defendant  
appellant-respondent.

(Index No. 1824/03)

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Edward Garfinkel, Brooklyn, N.Y. (Fiedelman & McGaw [Ross P. Masler], of counsel), for third-party defendant-appellant-respondent.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Susan Paulson of counsel), for defendant third-party plaintiff-respondent-appellant.

Caesar & Napoli, New York, N.Y. (Robert Stein of counsel), for plaintiff-respondent.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for defendant-respondent Carlos F. Rivera.

In an action to recover damages for personal injuries, the third-party defendant, Petrocelli Electric Co., Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Rothenberg, J.), dated June 11, 2005, as denied that branch of its motion which was for summary judgment dismissing the third-party complaint, and the defendant City of New York cross-appeals, as limited by its brief, from so much of the same order as denied its cross motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the order is reversed insofar as appealed and cross-appealed from, on the law, with one bill of costs, that branch of the motion of the third-party defendant, Petrocelli

November 10, 2009

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Electric Co., Inc., which was for summary judgment dismissing the third-party complaint is granted, and the cross motion of the defendant City of New York for summary judgment dismissing the complaint and cross claims insofar as asserted against it is granted.

On April 25, 2004, the plaintiff, while operating a motor scooter, collided with two vehicles operated by private individuals. The plaintiff commenced an action against, among others, the defendant City of New York, which brought a third-party action against the third-party defendant Petrocelli Electric Co., Inc. (hereinafter PEC), which was under contract with the City to maintain the traffic signal at the subject intersection.

Neither the plaintiff nor either of the individual defendants involved in the accident testified as to any traffic signal outage at the subject intersection. Moreover, evidence was offered that, prior to the accident, the City received only a single report of a traffic signal outage at the intersection, approximately one month earlier, and that it promptly notified its contractor, PEC, which, in turn, dispatched a worker who found the traffic light fully operational. Thus, the City established, prima facie, that it did not have actual or constructive notice of any outage (*cf. Justice v City of New York*, 8 AD3d 237). In opposition, the plaintiff failed to raise a triable issue of fact. Therefore, the City was entitled to summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

In light of our determination, that branch of PEC's motion which was for summary judgment dismissing the third-party complaint interposed by the City should have been granted.

FISHER, J.P., COVELLO, DICKERSON and LOTT, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court