

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

D25264
H/kmg

_____AD3d_____

Argued - October 19, 2009

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2008-08619

DECISION & ORDER

Amparo Bocanegra, plaintiff-respondent, v Verizon
New York, Inc., appellant, City of New York, et al.,
defendants-respondents
(and a third-party action).

(Index No. 27585/05)

Greenfield & Ruhl, Uniondale, N.Y. (Scott L. Mathias of counsel), for appellant.

Beth J. Schlossman, Brooklyn, N.Y. (The Feinsilver Law Group, P.C. [H. Jonathan Rubinstein and David Feinsilver] of counsel), for plaintiff-respondent.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and Ronald E. Sternberg of counsel), for defendant-respondent City of New York.

In an action to recover damages for personal injuries, the defendant Verizon New York, Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (Flug, J.), dated August 1, 2008, as denied those branches of its motion which were for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

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

On December 27, 2002, the plaintiff allegedly sustained injuries when she tripped and fell while crossing a street in Queens. She commenced this action to recover damages for personal injuries against, among others, the defendant Verizon New York, Inc. (hereinafter Verizon). Verizon commenced a third-party action against its contractor, Corzo Contracting Company, Inc. (hereinafter Corzo), which performed conduit installation work for Verizon in the vicinity of the accident.

December 1, 2009

Page 1.

BOCANEGRA v VERIZON NEW YORK, INC.

Verizon then moved, inter alia, for summary judgment dismissing the complaint and all cross claims insofar as asserted against it, arguing, inter alia, that the evidence established that no work had been performed on its behalf at the precise location where the accident occurred. The Supreme Court denied those branches of Verizon's motion which were for summary judgment dismissing the complaint and all cross claims insofar as asserted against it. We affirm.

Verizon failed to demonstrate its prima facie entitlement to judgment as a matter of law by eliminating all triable issues of fact as to whether its contractor Corzo performed any work where the accident occurred (*see Lavaud v City of New York*, 45 AD3d 536, 536; *Johnston v City of New York*, 18 AD3d 712, 713; *cf. Cohen v Schachter*, 51 AD3d 847, 848). Accordingly, the Supreme Court properly denied those branches of Verizon's motion which were for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

DILLON, J.P., DICKERSON, BELEN and ROMAN, 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