

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

D26844
G/kmg

_____AD3d_____

Argued - March 19, 2010

PETER B. SKELOS, J.P.
LEONARD B. AUSTIN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-02852

DECISION & ORDER

Anthony Gittens, plaintiff, v City of New York,
respondent, Koch Skanska, Inc., appellant.

(Index No. 12163/05)

Fabiani Cohen & Hall, LLP, New York, N.Y. (Melissa R. Callender-Lee and Mary J. Joseph of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo, Dona B. Morris, and Mark Galen Toews of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Koch Skanska, Inc., appeals from an order of the Supreme Court, Kings County (Miller, J.), dated February 25, 2009, which, in effect, denied its motion for summary judgment dismissing the cross claims for contribution and common-law indemnification asserted by the defendant City of New York against it.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly sustained injuries in an accident that occurred while he was riding his motorcycle on the lower roadway of the Manhattan Bridge. He commenced this action against the defendants City of New York and Koch Skanska, Inc. (hereinafter the appellant), alleging that the accident was caused by a defective “expansion joint” in the roadway.

The Supreme Court did not err by, in effect, denying the appellant’s motion for summary judgment dismissing the City’s cross claims for contribution and common-law indemnification. The appellant failed to eliminate all triable issues of fact as to whether it performed

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any work on the lower roadway of the bridge where the accident occurred and, if so, as to whether it created the condition which allegedly caused the accident (*see Bowers v Northwestern Realty L.P.*, 69 AD3d 892; *LaRosa v City of New York*, 35 AD3d 548). Accordingly, it is not necessary to consider the sufficiency of the City's opposition papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Olic v Pappas*, 47 AD3d 780).

SKELOS, J.P., AUSTIN, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court