

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

D28202
H/kmg

_____AD3d_____

Argued - June 21, 2010

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-08457

DECISION & ORDER

Roy L. McBryde, plaintiff-respondent, v City of
New York, defendant, New York City Transit
Authority, appellant, et al., defendant-respondent.

(Index No. 24222/08)

Wallace D. Gossett, Brooklyn, N.Y. (Michael Rabinowitz of counsel), for appellant.

Molod Spitz & DeSantis, P.C., New York, N.Y. (Marcy Sonneborn and Salvatore J.
DeSantis of counsel), for plaintiff-respondent.

In an action to recover damages for personal injuries, the defendant New York City Transit Authority appeals from an order of the Supreme Court, Kings County (Miller, J.), dated June 26, 2009, which denied its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it, with leave to renew after the completion of discovery.

ORDERED that the order is affirmed, with costs to the plaintiff.

Contrary to the appellant's contention, the Supreme Court properly denied its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it, with leave to renew after the completion of discovery, since discovery is warranted on the issue of whether it owned or maintained the sidewalk grating where the accident occurred (*see Campbell v City of New York*, 220 AD2d 476).

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

ENTER:


James Edward Pelzer

August 24, 2010

McBRYDE v CITY OF NEW YORK

Clerk of the Court

August 24, 2010

McBRYDE v CITY OF NEW YORK