

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

D30203  
O/kmb

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Submitted - February 2, 2011

PETER B. SKELOS, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
L. PRISCILLA HALL, JJ.

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2009-10424

DECISION & ORDER

Barbara Anderson, respondent, v CD Fleetwood Associates, LLC, defendant, City of Mount Vernon, appellant.

(Index No. 24646/07)

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Loretta J. Hottinger, Corporation Counsel, Mount Vernon, N.Y. (Hina Sherwani of counsel), for appellant.

Scott Baron & Associates, P.C., Howard Beach, N.Y. (W. Bradford Bernardt of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant City of Mount Vernon appeals, as limited by its brief, from so much of an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered September 23, 2009, as denied that branch of its cross motion which was for summary judgment dismissing the complaint insofar as asserted against it.

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

The defendant City of Mount Vernon submitted evidence sufficient to establish, prima facie, that it did not have prior written notice of the alleged hole in the sidewalk which proximately caused the plaintiff to fall (*see De La Reguera v City of Mount Vernon*, 74 AD3d 1127; *Trinidad v City of Mount Vernon*, 51 AD3d 661; *Regan v City of New York*, 8 AD3d 462). However, in opposition to the City's cross motion for summary judgment, the plaintiff raised a triable issue of fact as to whether the City affirmatively created the alleged defect by removing a parking meter from the sidewalk (*see Cabrera v City of New York*, 21 AD3d 1047).

March 1, 2011

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The City's remaining contentions are without merit.

Accordingly, the Supreme Court properly denied that branch of the City's cross motion which was for summary judgment dismissing the complaint insofar as asserted against it.

SKELOS, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court