

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

D30277
C/prt

_____AD3d_____

Submitted - February 8, 2011

JOSEPH COVELLO, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2010-02858

DECISION & ORDER

Compton Case, respondent, v City of New York, et al.,
defendants, Verizon New York, Inc., appellant.

(Index No. 4294/07)

Cullen and Dykman LLP, Brooklyn, N.Y. (Kevin M. Walsh and Wendy Tobias of counsel), for appellant.

Law Office of Vincent I. Eke-Nweke, P.C., Brooklyn, N.Y., for respondent.

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, Kings County (Solomon, J.), dated February 18, 2010, as denied that branch of its 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 plaintiff allegedly tripped and fell over a manhole cover, which was allegedly uneven with the street level, located on East 21st Street at its intersection with Church Avenue in Brooklyn.

The defendant Verizon New York, Inc. (hereinafter Verizon), established its prima facie entitlement to judgment as a matter of law by submitting, inter alia, the affidavit of its scheduling manager, Aaron Crawford, which demonstrated that there were no manhole covers belonging to Verizon located in the area where the plaintiff fell. Crawford asserted that the manhole cover located in the area of the plaintiff's fall did not belong to Verizon because it did not contain Verizon markings

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and it had a hole in the center (*see DeSilva v City of New York*, 15 AD3d 252, 254). In opposition, however, the plaintiff raised a triable issue of fact as to whether work performed by Verizon in the immediate area caused or contributed to the manhole cover being uneven with the street level (*see Cendales v City of New York*, 25 AD3d 579, 581).

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

COVELLO, J.P., LOTT, ROMAN and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court