

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

D33160
C/kmb

_____AD3d_____

Argued - November 15, 2011

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2011-04796

DECISION & ORDER

Brenda Brown, plaintiff-respondent, v City of
New York, appellant, Soo Gil Cho, et al.,
defendants-respondents.

(Index No. 34164/08)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and
Michael Shender of counsel), for appellant.

Avanzino & Moreno, P.C., Brooklyn, N.Y. (Angelicque Moreno and Oliver R.
Tobias of counsel), for plaintiff-respondent.

In an action to recover damages for personal injuries, the defendant City of New York appeals from an order of the Supreme Court, Kings County (Sherman, J.), dated February 25, 2011, which denied its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the order is affirmed, with costs payable by the defendant City of New York to the plaintiff.

On its motion for summary judgment in this action to recover damages for personal injuries, the defendant City of New York failed to establish its prima facie entitlement to judgment dismissing the complaint and all cross claims insofar as asserted against it. The City contended, inter alia, that the Big Apple Map for the area where the plaintiff fell did not provide it with prior written notice of the alleged defect that caused the plaintiff to fall.

December 6, 2011

BROWN v CITY OF NEW YORK

Page 1.

Where, as here, “there are ‘factual disputes regarding the precise location of the defect that allegedly caused a plaintiff’s fall, and whether the alleged defect is designated on the map, the question should be resolved by the jury’” (*Bradley v City of New York*, 38 AD3d 581, 582, quoting *Cassuto v City of New York*, 23 AD3d 423, 424; see *Vertzberger v City of New York*, 34 AD3d 453, 455-456; *Almadotter v City of New York*, 15 AD3d 426, 427; *Quinn v City of New York*, 305 AD2d 570, 571).

Accordingly, the Supreme Court properly denied the City’s motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

In light of our determination, we need not reach the parties’ remaining contention.

RIVERA, J.P., LEVENTHAL, ROMAN and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court