

<b>Cosidente v City of New York</b>
2007 NY Slip Op 31821(U)
June 22, 2007
Supreme Court, Richmond County
Docket Number: 0011580/1995
Judge: Thomas P. Aliotta
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

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WILLIAM COSIDENTE,

Plaintiff,

C-2  
Present:  
Hon. Thomas P. Aliotta

-against-

THE CITY OF NEW YORK, THE BROOKLYN  
UNION GAS COMPANY, CONSOLIDATED  
EDISON CO. OF NEW YORK INC., L.K. COMSTOCK  
COMPANY, INC. and MORTON L. CHAIT,  
Defendant(s).

Decision and Order  
Index No. 11580/95  
Motion Nos. 3411-003  
3654-005

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The following papers numbered 1 to 6 were used on the motions the 21<sup>st</sup> day of March, 2007:

	Pages Numbered
Notice of Motion and Supporting Papers (dated October 24, 2006).....	1
Notice of Cross Motion and Supporting Papers (dated November 24, 2006).....	2
Affirmation in Opposition (dated February 12, 2007).....	3
Affirmation in Opposition (dated March 1, 2007).....	4
Affidavit in Opposition (dated March 16, 2007).....	5
Reply Affirmation (Dated March 19, 2007).....	6

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Upon the foregoing papers, the motion (No. 341) and cross motion (No. 3654) for summary judgment by defendant Brooklyn Union Gas Company (hereafter “BUG”) and the City of New York are granted, and the complaint as against them is dismissed.

This is a personal injury action in which plaintiff alleges that he tripped and fell on a metal

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plate in the roadway near a partially open trench. The accident occurred on Forest Avenue near the intersection of Willow Road West, approximately 8-12 feet from the corner (see Verified Bill of Particulars, Movant's Exhibit "C") in Staten Island, New York. In support of its motion, BUG annexes a copy of the deposition testimony and affidavit of William Stone, a Senior Coordinator with Keyspan, the successor company. Mr. Stone avers that after inspecting the site of the accident and reviewing the photographs, paving and work orders of BUG/Keyspan, he can definitively state that his company did not do any roadwork or paving at the location of plaintiff's accident, nor was the metal plate depicted in the photographs a type that BUG/Keyspan would use (see Affidavit of Walter Stone, dated October 24, 2006; see also Movant's Exhibit "E" p 36).

On these papers, BUG has made a *prima facie* showing of its entitlement to summary judgment by establishing that it did not cause, create or contribute to the alleged defect (see Lau v. City of New York, 22 AD3d 529). In opposition, plaintiff has failed to raise a triable issue of fact.

The City's cross motion for summary judgment is also granted. In support of the City's position that plaintiff cannot demonstrate compliance with the prior written notice requirement of §7-201(c) of the Administrative Code, the City annexes the sworn affidavit of Janet Tagliereni, a Department of Transportation record searcher (City's Exhibit "D"). Ms. Tagliereni states that only one permit application, two permits and one cutform were found on file for the location in question, none of which satisfies the prior written notice requirement (see DeSilva v. City of New York, 15 AD3d 252, 253).

Additionally, even assuming arguendo that plaintiff could establish that the accident occurred at the exact location where work had been performed by the City, plaintiff has failed to make a *prima facie* showing that the defect in question was the immediate result of any affirmative negligence on the part of the municipal defendant (see Walker v. City of New York, 34 AD3d 226).

Finally, the simple fact that the accident occurred within the three-year time period set forth

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in 34 RCNY §2-11(e)(16)(ii) is not sufficient to impose liability upon the City in the absence of prior written notice where, as here, no proof of affirmative negligence has been adduced (see Ingles v. City of New York, 309 AD2d 835).

Accordingly, it is hereby

**ORDERED** that cross motions for summary judgment by defendants Brooklyn Union Gas Company and the City of New York are granted, and the complaint as to the foregoing defendants is severed and dismissed; and it is further

**ORDERED** that the Clerk shall enter judgment accordingly.

ENTER,

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J.S.C.

DATED: JUN 22, 2007

HON. THOMAS P. ALIOTTA

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ALL PARTIES NOTIFIED BY EVE/pt on 6/25/07

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