

Bond Case Briefs

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LIABILITY - NEW YORK

Perez v. City of New York

Pedestrian allegedly injured when he fell upon stepping onto a sunken portion of a roadway brought personal injury action against city. The Supreme Court, Kings County, Ash, J., granted city's motion for summary judgment, and pedestrian appealed.

The Supreme Court, Appellate Division, held that:

- City established its prima facie entitlement to summary judgment, and
- Affidavit of pedestrian's expert engineer did not raise triable issue of fact as to whether city created the alleged defective condition.

City established its prima facie entitlement to summary judgment, in personal injury action alleging that pedestrian was injured when he stepped into a sunken portion of a roadway, by demonstrating that it did not have the required prior written notice of the alleged defective condition and that it did not affirmatively create the alleged defective condition.

Summary judgment evidence in personal injury action alleging that pedestrian was injured when he stepped into a sunken portion of a roadway, consisting principally of the affidavit of pedestrian's expert engineer, did not raise triable issue of fact as to whether city created the alleged defective condition. Conclusions set forth by expert were not supported by empirical data or any relevant construction practices or industry standards, and his affidavit failed to explain how he reached the conclusion that the alleged defective condition was created by work performed by city.