

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

D31521
C/ct

_____AD3d_____

Submitted - May 13, 2011

JOSEPH COVELLO, J.P.
RANDALL T. ENG
JOHN M. LEVENTHAL
JEFFREY A. COHEN, JJ.

2010-03601

DECISION & ORDER

Carlos Cezar Faria, respondent, v City of
Yonkers, etc., et al., appellants, et al., defendant
(and third-party action).

(Index No. 002414/03)

Mark W. Blanchard, Yonkers, N.Y. (Michael Levinson of counsel), for appellants.

Scott Baron & Associates, P.C., Corporation Counsel, Howard Beach, N.Y. (John
Burnett of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants City of Yonkers and James O'Connor appeal from an order of the Supreme Court, Westchester County (Bellantoni, J.), entered December 21, 2009, which denied their motion for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

Vehicle and Traffic Law § 1103(b) exempts statutorily defined “hazard vehicles” engaged in highway work from the rules of the road, and thus limits the liability of their owners and operators to reckless disregard for the safety of others (*see Riley v County of Broome*, 95 NY2d 455, 462-463, 465-466). Here, the appellants made a prima facie showing of their entitlement to judgment as a matter of law by submitting evidentiary proof that the street sweeper the appellant James O'Connor was operating at the time of the accident was a hazard vehicle engaged in highway work, and that he did not operate the vehicle in reckless disregard for the safety of others (*see Curella v Town of Amherst*, 77 AD3d 1301, 1302; *Lobello v Town of Brookhaven*, 66 AD3d 646, 647; *Small*

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v City of New York, 54 AD3d 747, 748). However, the evidence submitted in opposition to the motion, which included the plaintiff's testimony at a hearing pursuant to General Municipal Law § 50-h and at a deposition, was sufficient to raise a triable issue of fact as to whether O'Connor operated the street sweeper in reckless disregard for the safety of others (*see Ryan v Town of Smithtown*, 49 AD3d 853, 854; *Bicchetti v County of Nassau*, 49 AD3d 788; *Haist v Town of Newstead*, 27 AD3d 1133, 1134; *Badalamenti v City of New York*, 30 AD3d 452, 453). Accordingly, the Supreme Court properly denied the appellants' motion for summary judgment dismissing the complaint insofar as asserted against them.

COVELLO, J.P., ENG, LEVENTHAL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court