

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

830

CA 16-01356

PRESENT: CENTRA, J.P., LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

ABDUL W. ARRAHIM, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CITY OF BUFFALO, CITY OF BUFFALO DEPARTMENT OF
PUBLIC WORKS, PARKS & STREETS, AND JAMES R. EVANS,
DEFENDANTS-APPELLANTS.

TIMOTHY A. BALL, CORPORATION COUNSEL, BUFFALO (DAVID M. LEE OF
COUNSEL), FOR DEFENDANTS-APPELLANTS.

WILLIAM MATTAR, P.C., WILLIAMSVILLE (MATTHEW J. KAISER OF COUNSEL),
FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Mark J. Grisanti, A.J.), entered April 15, 2016. The order denied defendants' motion for summary judgment dismissing plaintiff's amended complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries he sustained when his vehicle collided with a snowplow truck owned by defendant City of Buffalo and operated by defendant James R. Evans. Supreme Court properly denied defendants' motion for summary judgment dismissing the amended complaint. In support of their motion, defendants contended that the reckless disregard rather than the ordinary negligence standard of care applies based on the applicability of Vehicle and Traffic Law § 1103 (b), and Evans did not act with reckless disregard for the safety of others. Vehicle and Traffic Law § 1103 (b) "exempts all vehicles 'actually engaged in work on a highway'--including [snowplows]--from the rules of the road" (*Riley v County of Broome*, 95 NY2d 455, 461). Here, as defendants recognize, there is a triable issue of fact whether Evans was plowing or salting the road at the time of the accident and thus, contrary to defendants' contention, the ordinary negligence standard of care may indeed apply. Although we agree with defendants that Evans may have nevertheless been engaged in work even if the plow blade was up at the time of the accident and no salting was occurring (*see Matsch v Chemung County Dept. of Pub. Works*, 128 AD3d 1259, 1260-1261, 1v denied 26 NY3d 997; *see also Lobello v Town of Brookhaven*, 66 AD3d 646, 646-647), defendants failed to establish as a matter of law that Evans was working his "run" or "beat" at the time of the accident. Section 1103 (b) would not apply if the snowplow driver was merely

traveling from one route to another route (see *Hofmann v Town of Ashford*, 60 AD3d 1498, 1499).

Entered: June 9, 2017

Frances E. Cafarell
Clerk of the Court