

**DiMaggio v City of New York**

2007 NY Slip Op 30108(U)

March 12, 2007

Supreme Court, Richmond County

Docket Number: 0012566

Judge: Thomas P. Aliotta

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

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**GIOVANNI DiMAGGIO and  
CATARINA DiMAGGIO,**

**DCM Part 1**

**Plaintiffs, Present:**

**HON. THOMAS P. ALIOTTA**

**-against-**

**DECISION AND ORDER**

**THE CITY OF NEW YORK,  
A-ONE TRUCKING, INC., and  
EYAL OHAYON,**

**Index No. 12566/01**

**Defendants. Motion No. 1065-002**

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The following papers numbered 1 to 3 used on this motion the 10<sup>th</sup> day of January, 2007:  
Papers  
Numbered

Notice of Motion with Supporting Papers and Exhibits (dated April 7, 2006).....	1
Affirmation in Opposition (dated July 21, 2006).....	2
Affirmation in Reply (dated September 29, 2006).....	3

Upon the foregoing papers, the motion for summary judgment of defendant the City of New York (hereinafter the "City") is granted, and the complaint is dismissed.

The within action is one to recover monetary damages for personal injuries allegedly sustained by plaintiff Giovanni DiMaggio (hereinafter "plaintiff") as the result of an automobile accident. Plaintiff Catarina Dimaggio has interposed a derivative cause of action for loss of services.

Plaintiff alleges that he was driving eastbound on the Staten Island Expressway on July

25, 2000, when a police officer directing traffic signaled to him to stop his vehicle. Plaintiff claims that he stopped, as directed, and five minutes later was rear-ended by a vehicle operated by co-defendant Eyal Ohayon. In their notice of claim against the City (*see* Movant's Exhibit "A"), the DiMaggios assert that the accident occurred due to the negligence of the police officer, who allegedly stopped and directed traffic in an "unsafe, dangerous and improper manner".

In support of its motion to dismiss, the City asserts, and this Court agrees, that the regulation of traffic "is a classic example of a governmental function undertaken for the protection and safety of the public pursuant to [its] general police powers" (Santoro v City of New York, 17 AD3d 563, 564 quoting Balsam v Delma Eng'g Corp., 90 NY2d 966, 968). As a result, the City cannot be held liable for negligence in the performance of same "unless a special relationship [can be shown to] exist between the municipality and the injured party" (*id.*; *see* Balsam v Delma Eng'g Corp., 90 NY2d at 967; Cuffy v City of New York, 69 NY2d 255, 260-261; Eckert v State of New York, 3 AD3d 470).

Here, the City has made a prima facie showing of its entitlement to judgment as a matter of law by demonstrating the absence of any special relationship between plaintiff and the officer directing traffic. In opposition, plaintiff has failed to raise a triable issue of fact that any such relationship existed (*see* Alvarez v Prospect Hosp., 68 NY2d 320).

Accordingly, it is

**ORDERED** that the motion for summary judgment of defendant the City of New York is granted; and it is further

**ORDERED** that the complaint as against it is severed and dismissed; and it is further

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

This constitutes the decision and Order of the Court.

Law Clerk to notify both sides of this Decision/Order.

DATED: MAR 12, 2007

/s/  
HON. THOMAS P. ALIOTTA, JSC

ASN BY EVE/pt on 3/13/07

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