

**Deleon v New York City Sanitation Dept.**

2012 NY Slip Op 33772(U)

November 2, 2012

Supreme Court, Bronx County

Docket Number: 300612/11

Judge: Larry S. Schachner

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX - PART IA3

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ALEX IRRIZARRY DELEON,

Plaintiffs,

- against -

INDEX NO. 300612/11

NEW YORK CITY SANITATION DEPARTMENT,  
THE CITY OF NEW YORK, AND ROBERT P.  
FALCARO,

DECISION/MOTION

Defendants.

-----x  
HONORABLE LARRY S. SCHACHNER

Motion and cross motion for summary judgment are consolidated and decided as follows:

This matter involves a motor vehicle accident involving plaintiff's jeep and defendant's sanitation sweeper in Bronx County. In moving for summary judgment plaintiff contends that his vehicle was struck in the rear by defendant's sanitation sweeper. The city has cross moved for summary judgment dismissing the complaint. It argues that the subject street sweeper was a "hazard vehicle" under VTL Section 1103(b) not subject to the ordinary negligence standard of liability. Rather, the City maintains that it can only be liable if the sweeper was operated with reckless disregard for the safety of others.

Based upon the record currently before the court, plaintiff's motion is denied and the City's motion is granted. Defendant's street sweeper was a "hazard vehicle" engaged in

street sweeping at the time of the accident under VTL 1103(b), Riley v County of Broome, 95 NY2d 455 (2000), and Small v City of New York 54 AD3d 747 (2<sup>nd</sup> Dept, 2008). Therefore, in order for the City to be found liable plaintiff must establish that Mr. Falcaro was operating the sweeper recklessly.

A review of the sworn testimony and photographs before the court reveal no evidence of any recklessness by the operator of the sweeper. There is no credible evidence that he was speeding, that he ignored any traffic control device, or failed to observe plaintiff's vehicle. Plaintiff's vehicle was not stationary when it was struck, as this was not a simple hit in the rear. Rather, the testimony was that plaintiff's vehicle moved seconds before impact and that the street sweeper tried to avoid the accident by moving to the left. The photos indicate that the accident caused damage to the right front fender and bumper of the sweeper and the right rear of the plaintiff's jeep.

As the record fails to raise an issue of fact as to whether the operator of the sweeper was reckless, the City's cross motion to dismiss is granted, and plaintiff's motion is denied.

This constitutes the decision and order of the court.

Dated: November 2, 2012

  
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LARRY S. SCHACHNER, JSC