

Deleon v NYC Sanitation Dept.
2014 NY Slip Op 3131 ĩ (U)
March 14, 2014
Supreme Court, Bronx County
Docket Number: 0300612/2011
Judge: Larry S. Schachner
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[* 1]

PART 03

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed
Settle Order
Schedule Appearance

-----X
DELEON, ALEX IRRIZARRY

Index No. **0300612/2011**

-against-

Hon. **LARRY S. SCHACHNER**

NYC SANITATION DEPT
-----X

Justice.

The following papers numbered 1 to 2 Read on this motion, **REARGUE/RENEW/RESETTLE/RECONSIDER**
Noticed on **August 26 2013** and duly submitted as No. 4 on the Motion Calendar of **November 18, 2013**

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits	2	
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this *motion is decided in accordance with the annexed memorandum decision.*

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

MAR 19 2014

Dated: 3/14/14

Hon. 
LARRY S. SCHACHNER, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART IA-3

-----X
ALEX IRRIZARRY DELEON, :

Plaintiff, :
: **DECISION/ORDER**

- against - :
: **Present:**

NEW YORK SANITATION DEPARTMENT, : **Hon. Larry S. Schachner**
THE CITY OF NEW YORK and ROBERT P. : Justice, Supreme Court
FALCARO, :

Defendants. :

-----X
Recitation, as required by CPLR 2219(a) of the papers considered in the review of this motion for renewal and reargument:

Papers	Numbered
Notice of Motion, Affirmation and Exhibits Annexed	1
Affirmation in Opposition and Exhibits Annexed	2

Plaintiff commenced this action to recover monetary damages for personal injuries allegedly sustained as a result of a motor vehicle accident involving plaintiff's jeep and defendant's sanitation sweeper which occurred on October 19, 2010 in Bronx County, New York. Defendants are the operator and owners of the New York City street sweeper which plaintiff contends struck the rear of his vehicle in the subject motor vehicle collision.

Plaintiff now moves to renew and reargue this court's decision dated November 2, 2012 which denied plaintiff's motion for summary judgment on the issue of liability and granted defendant City's cross motion for summary judgment dismissing plaintiff's complaint against it.

A motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion..." CPLR 2221 (d) (2). In addition, a motion to reargue

“shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry.” CPLR 2221 (d) (3).

In the instant matter, the City served a copy of its notice of entry and order upon plaintiff on or about November 21, 2012. As plaintiff’s current motion before the court was served on or about July 30, 2013, the reargument portion of it is untimely.

A motion for renewal “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion.” CPLR 2221 (e) (2), (3).

Plaintiff moves for renewal based on a change in the law, to wit, the New York City Department of Transportation’s adoption of certain amendments to the Rules of the City of New York, Traffic Rules which amendments were adopted on March 4, 2013 and went into effect on April 3, 2013.

The relevant amendment states, in pertinent part,

“(iv) Highway workers and vehicles. Unless specifically made applicable, the provisions of these rules shall not apply to persons, teams, motor vehicles, and other equipment working on behalf of the City of New York, the State of New York or the federal government while actually engaged in work [authorized by the City of New York, the State of New York or the federal government] while on a highway. **Section 1103 of the Vehicle and Traffic Law** provides, such persons are not relieved from the duty to proceed at all times during all phases of such work with due regard for the safety of all persons nor shall the foregoing provisions of this subparagraph protect such persons or teams or such operators of motor vehicles or other equipment from the consequences of their **reckless disregard for the safety of others.**”

Plaintiff states that The City amended Traffic Rule 4-02 so that City “sweepers will now be subject to the general exemption.” Plaintiff asserts that the amendment to 34 RCNY 4-02 should change the prior determination of this court as lawmakers have ‘rewritten the statutory standard of care’ and the “amendments certainly demonstrate that the law existing at the time of the subject accident was at least ambiguous.” In addition, plaintiff argues that “City sweepers were NOT entitled to the exemption, and therefore were subject to an ordinary negligence standard.” Plaintiff further argues that VTL § 1103 was not applicable to the subject City sweeper on a City street at all.”

Plaintiff’s motion for renewal based upon a change in the law is granted. However, upon renewal and notwithstanding plaintiffs contentions, plaintiff has failed to show that the change in the law would change the prior determination.

In the prior decision, the court found that “[d]efendant’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 (2d Dept 2008).” As such, on the prior motion plaintiff needed to establish that defendant Falcaro was operating the sweeper recklessly and failed to do so.

Plaintiff now reiterates his claim that VTL § 1103 is not applicable, that defendants were not entitled to the recklessness standard, and that an ordinary negligence standard applied based on the amendment and/or the ambiguity of the law at the time of the subject accident. However, according to the Statement of Basis and Purpose in City Record Mar. 4, 2013, the legislative intent of the amendment was to “eliminate a redundancy such that operators of DOT and New York City Department of Sanitation snow plows, sand/salt spreaders and sweepers will now be

subject to the general exemption set forth in paragraph (iv) of that same subsection.” Thus, the amendment did not change the applicability of the recklessness standard, but rather was enacted to eliminate the redundancy in the law and in effect clarify that the VTL § 1103 exemption is applicable to workers and vehicles working on behalf of the City of New York, the State of New York or the federal government.

Moreover, the “Statement of Basis and Purpose in City Record Sept. 18, 2007 (which precedes the date of the subject accident) indicated that rule 4-02 was being amended at that time “to clarify the applicability of § 1103 of the Vehicle and Traffic Law in the City of New York” and “...specifically, to make clear that the recklessness standard set forth in [VTL] § 1103 applies to highway workers.” The amendment of March 4, 2013 did not change the applicability of the recklessness standard to highway workers. In the instant action, there are no material issues of fact that defendant Falcaro was engaged in highway street maintenance at the time of the subject accident, or that his conduct was not reckless. Since the amendment to the law did not change the recklessness standard that was already in place at the time of the accident, plaintiff’s motion for renewal does not change the prior determination and the original decision is adhered to.

Accordingly, upon renewal, plaintiff’s motion is denied.

This constitutes the decision and order of the court.



LARRY S. SCHACHNER, J.S.C.

Dated: March 14, 2014