SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

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DARNEL ST-LOUIS,

Plaintiff,

- v -

DENISE HARBECK, CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION

Defendant.

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INDEX NO. 155312/2020

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion for SUMMARY JUDGMENT.

Defendant City of New York ("City") moves for summary judgment seeking dismissal of the complaint, contending that pursuant to Vehicle and Traffic Law ("VTL") § 1103(b), liability may be imposed only upon a showing of reckless disregard for the safety of others. The City maintains that the undisputed record establishes no triable issue of fact that Department of Sanitation employee Denise Harbeck ("Harbeck") operated her street-sweeping vehicle without such recklessness on June 20, 2019. For the reasons set forth below, the City's motion is denied.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from a 3:00 a.m. collision near the intersection of Chambers Street and the West Side Highway. Plaintiff Darnel St-Louis ("Plaintiff"), driving westbound in the left lane, alleges that Harbeck, operating a Department of Sanitation ("DSNY") broom truck, abruptly entered his lane and "dragged" his vehicle. Plaintiff testified he saw the sweeper upon turning onto Chambers, that the sweeper was roughly twelve feet ahead, and that he did not apply his brakes before the vehicles contacted.

Harbeck testified she had been sweeping along the north curb line of Chambers, stopped to clear rainwater from her mirrors, restarted, checked her mirrors again, and proceeded at approximately 10–15 mph with her left turn signal activated for 30 seconds to one minute while merging left because the right lane becomes right-turn-only at West Street. She did not see Plaintiff's vehicle before impact.

On a prior motion, the Hon. Judy Kim ("Justice Kim") denied Plaintiff's pre-deposition summary-judgment application, held that VTL § 1103(b) governs, and concluded that a dispositive question of fact remained as to whether "Harbeck's actions leading up to the collision were driven by such 'conscious indifference' rather than the 'failure to see that which may be seen' in a

'momentary lapse of judgment.'" That ruling is law of the case. Following completion of depositions and the filing of the note of issue, the City timely moved for summary judgment.

In opposing the motion Plaintiff points, among other things, to the New York City Police Department ("NYPD") Motor Vehicle Accident Report notation that Harbeck "executed a U-turn," to DSNY supervisory guidance prohibiting U-turns, to testimony that Harbeck last checked her mirrors "30–60 seconds" before the maneuver, and to an expert opinion concluding that her conduct was reckless.

ARGUMENTS

The City argues that because Harbeck was "actually engaged in work on a highway," VTL § 1103(b) applies and ordinary negligence is unavailable; Plaintiff must raise a triable issue of reckless disregard. The City relies on *Riley v County of Broome*, 95 NY2d 455, 463 (2000), and *Deleon v New York City Sanitation Dept.*, 25 NY3d 1102, 1105–1106 (2015) and notes that Justice Kim already applied § 1103(b), which is binding under the law-of-the-case doctrine.

On the merits, the City contends the undisputed facts—slow speed, mirror-checks, active left signal before merging, and the absence of any evidence that Harbeck perceived Plaintiff yet proceeded—do not satisfy the "conscious indifference" required for recklessness. The City cites authority describing recklessness as intentionally doing an act of unreasonable character in disregard of a known or obvious risk so great as to make harm highly probable.

The City further asserts that Plaintiff's reliance on the notation in the New York City Police Department Motor Vehicle Accident Report indicating that Harbeck "executed a U-turn," together with the DSNY's internal prohibition against U-turns, is inadequate to satisfy Plaintiff's evidentiary burden. The City emphasizes that the prior decision in this matter has already rejected any theory sounding in ordinary negligence; that internal departmental rules imposing standards beyond those required by law do not create an independent basis for tort liability; and that the mere performance of a lane change or U-turn, without additional evidence of conscious indifference to a known or obvious risk, does not constitute reckless disregard within the meaning of VTL § 1103(b).

Plaintiff opposes, pointing to the police report's U-turn entry, Harbeck's failure to request a correction, DSNY guidance prohibiting U-turns, alleged failure to re-check mirrors within 30 seconds of the lane change, and an expert opinion concluding Harbeck was "reckless." Plaintiff also invokes *Deleon* for the proposition that a sweeper can be reckless if the driver could have taken evasive action but failed to do so.

In reply, the City asserts that none of the purportedly "new" post-decision materials—whether Harbeck's deposition testimony, including her acknowledgment of a 30-second interval between mirror checks and lane movement, or Plaintiff's expert affidavit—alter the essential conclusion that Plaintiff has not shown conduct rising to the level of conscious indifference. According to the City, these additions merely depict a brief lapse in attentiveness or judgment, which, even if true, falls squarely within the realm of ordinary negligence and remains insufficient

as a matter of law to constitute the "reckless disregard" required under Vehicle and Traffic Law § 1103(b).

DISCUSSION

Vehicle and Traffic Law § 1103(b) "exempts" vehicles "actually engaged in work on a highway" from the ordinary rules of the road; liability attaches only upon proof of "reckless disregard for the safety of others" (*Riley v. County of Broome*, 95 NY2d 455, 463 [2000]; *Deleon v. New York City Sanitation Dept*., 25 NY3d 1102, 1105–1106 [2015]). Justice Kim has already determined that § 1103(b) governs and identified the dispositive factual question: whether Harbeck's conduct reflected "conscious indifference," as opposed to a "failure to see that which may be seen" in a "momentary lapse of judgment." That framing is law of the case and thus informs the present analysis.

Against that backdrop, the City's motion faces the familiar constraints of CPLR § 3212. The court must view the evidence in the light most favorable to Plaintiff, credit Plaintiff's version where supported by admissible proof, and deny the motion where "arguably differing inferences" may be drawn from the same facts (*Brill v. City of New York*, 2 NY3d 648, 651 [2004]). Recklessness under § 1103(b) is a *state-of-mind* inquiry—whether the operator intentionally engaged in unreasonable conduct "in disregard of a known or obvious risk so great as to make it highly probable that harm would follow," and did so "with conscious indifference to the outcome" (*Saarinen v. Kerr*, 84 NY2d 494, 501 [1994]). Where that question turns on contested accounts of timing, distances, perception, and available evasive measures, summary judgment is disfavored.

The City's prima facie showing is robust. The undisputed record demonstrates that Harbeck: (1) was actually engaged in street sweeping along a prescribed route; (2) checked and re-checked her mirrors after clearing rainwater; (3) proceeded at approximately 10–15 mph; (4) activated her left signal 30 seconds to one minute before moving off the curb line; and (5) testified that she did not perceive Plaintiff's vehicle prior to impact.

In response to the City's prima facie showing, Plaintiff marshals several interlocking facts: (1) the Motor Vehicle Accident Report's notation that Harbeck "executed a U-turn"; (2) testimony that Harbeck last checked her mirrors 30–60 seconds before moving laterally; (3) the roadway geometry at Chambers Street approaching West Street, including the right-turn-only configuration; (4) Plaintiff's account that the sweeper entered his lane and "dragged" his vehicle; and (5) an expert opinion explaining why, on these dynamics, a reasonably prudent operator would have re-verified surroundings or taken other evasive steps before initiating a lateral movement across lanes. None of these items is conclusive; but in combination—and viewed as the non-movant is entitled to have them viewed—they allow a rational jury to infer that Harbeck proceeded despite an obvious, immediate risk of adjacent-lane conflict.

The "thirty-second mirror interval" is particularly probative. The City emphasizes that Harbeck checked her mirrors—just not immediately before moving left. A jury could nevertheless conclude that, at 3:00 a.m., on approach to a complex intersection, with the intent to shift lanes to avoid being forced into a right-turn-only lane, the decision to initiate lateral movement without a contemporaneous re-verification (and without braking) evinced a conscious disregard of a plainly

foreseeable hazard—especially if the jury credits Plaintiff's account that his vehicle was already established in the left lane and within the sweeper's path. Those are not "technicalities"; they are the very perceptions and judgments that separate mere inadvertence from blameworthy disregard under § 1103(b).

The City reads *Deleon* as cabining recklessness to rare cases and thus as favoring summary dismissal here. *Deleon* indeed rejects ordinary-negligence liability for sweepers, but it simultaneously recognizes that a factfinder may find recklessness "if [it] concludes that the driver could, but failed to, take evasive action to avoid a forceful collision" (25 NY3d at 1106). The operative question is not whether the operator *actually perceived* the specific vehicle, but whether the operator proceeded in the face of a *known or obvious* risk and with indifference to its consequences. Here, if the trier of fact credits the U-turn/lateral-movement account and the expert's analysis of feasible precautions (re-checking, braking, delaying the maneuver until clear of the turn-only funnel), a finding of conscious indifference is legally permissible under *Deleon*. Put differently: *Deleon* preserves for the jury precisely the kind of evaluative judgment this record requires.

The City relies heavily on a series of decisions which, it contends, treat failures of lookout or judgment by municipal vehicle operators as ordinary negligence rather than recklessness within the meaning of Vehicle and Traffic Law § 1103(b). Among those authorities are *Riley v. County of Broome* (95 NY2d 455 [2000]), *Beverly v. County of Suffolk* (227 AD3d 652 [2d Dept 2024]), *Rascelles v. State of New York* (187 AD3d 953 [2d Dept 2020]), and several cases addressing turns or lane changes by hazard vehicles, such as *Spears v State of New York*, 2019 NY Slip Op 52179[U], *aff'd* 181 AD3d 1219 [4th Dept 2020]), and *Rockland Coaches, Inc. v. Town of Clarkstown* (49 AD3d 705 [2d Dept 2008]). These authorities undoubtedly set forth the governing principles of § 1103(b), yet they are fact-bound and do not compel the grant of summary judgment here.

In *Riley* (95 NY2d at 463–465), the Court of Appeals articulated the "reckless disregard" standard and affirmed dismissal where the record did not permit an inference of conscious indifference. Crucially, however, *Riley* did not establish a categorical rule that failures in observation—such as mirror-check timing, lane-transition decisions near an intersection, or even a contested U-turn—can never constitute recklessness as a matter of law. The court's holding turned on the particular evidentiary record before it. The instant case is distinguishable. Here, the confluence of the Motor Vehicle Accident Report's U-turn notation, the testimony concerning a thirty-to-sixty-second mirror interval, the configuration of the roadway approaching the West Street intersection, and the expert's identification of feasible precautions unavailable in *Riley* together present triable issues of fact that preclude summary judgment.

Similarly, *Beverly* (227 AD3d at 653) and *Rascelles* (187 AD3d at 954–955) reiterate the oft-cited "momentary lapse of judgment" formulation, holding that brief inattention does not rise to recklessness. Yet those Appellate Division, Second Department, cases are neither binding on this court nor dispositive on these facts. In both, the appellate panels were confronted with scant evidence of pre-maneuver risk awareness and little to suggest that the operators consciously disregarded viable evasive measures. By contrast, the record here contains detailed, fact-based expert analysis identifying specific precautions—such as re-verifying mirrors or decelerating

before the lane shift—that a trier of fact could find Harbeck knowingly declined in the face of an obvious, immediate risk. The richer evidentiary foundation in this case therefore distinguishes it from *Beverly* and *Rascelles* and makes summary disposition inappropriate.

The City's reliance on turn- and maneuver-related cases such as *Spears* and *Rockland Coaches* is likewise unavailing. Those decisions involved markedly different circumstances in which the operators' conduct reflected, at most, inattentiveness rather than deliberate risk-taking. In each, the hazard was not readily apparent before the maneuver, and the evidence did not support an inference of conscious disregard. Here, by contrast, if a jury were to credit the Plaintiff's version—that Harbeck executed a U-turn or broad lateral shift across a double yellow line near a funneling intersection, following a non-contemporaneous mirror check and without braking—the fact pattern would differ in kind, not merely in degree. Determining whether such conduct evinces "conscious indifference" or a "momentary lapse of judgment" remains quintessentially a question for the factfinder, not one resolvable as a matter of law.

An additional point of significance arises from the circumstances surrounding the police accident report. The NYPD Motor Vehicle Accident Report memorialized that Harbeck "executed a U-turn" at the time of the collision. Plaintiff underscores that this was not a third-party characterization but rather a statement attributed directly to Harbeck at the scene. During her deposition, Harbeck acknowledged that the report contained this notation but testified that she never executed a U-turn and maintained that she was merely changing lanes. She further explained that she later "wanted to change the report" to reflect what she viewed as the accurate description of events but "did not know how" to do so and ultimately never submitted a request for correction (*see* Affirmation in Support of Motion, NYSCEF Doc. 52; *see also* Denise Harbeck's EBT Transcript, NYSCEF Doc. 59).

This ambiguity in the record—between the contemporaneous official report bearing Harbeck's own admission and her later testimony seeking to disavow it—creates a quintessential credibility issue that cannot be resolved on summary judgment. A factfinder could reasonably infer that Harbeck's contemporaneous statement to police was more reliable than her later litigation-oriented explanation, particularly where she concedes awareness of the report's contents but took no steps to amend it. Conversely, a jury might accept Harbeck's account that the "U-turn" notation was an error or misinterpretation by the responding officer. Either inference bears directly on whether Harbeck's maneuver was a lawful lane change or an impermissible turning movement across a double yellow line—an act which, if found to have been intentional and undertaken without verifying the lane was clear, could satisfy the "conscious indifference" component of recklessness under VTL § 1103(b).

The tension between the contemporaneous police report and Harbeck's subsequent testimony thus reinforces the conclusion that this case presents disputed issues of material fact. Resolution of those contradictions—whether Harbeck's original statement to police reflected an acknowledgment of risky conduct, whether her later effort to change the report stemmed from post hoc rationalization, or whether the discrepancy is a simple misunderstanding—requires assessment of demeanor, credibility, and weight of evidence, all of which are the province of the jury. In light of these unresolved factual and credibility questions, the court cannot say, as a matter of law, that

Harbeck's conduct amounted only to a "momentary lapse of judgment" rather than potential "conscious indifference" to a known or obvious risk.

In sum, while the City's cited cases underscore that mere inattentiveness is insufficient to establish recklessness under VTL § 1103(b), they do not eliminate the role of the jury where, as here, the combination of circumstances—including the disputed maneuver, the timing of mirror checks, and the availability of precautionary measures—could reasonably support a finding that the operator proceeded despite an obvious and imminent risk of harm.

The court agrees with the City's supposition that internal departmental rules do not, by themselves, establish the tort standard absent detrimental reliance (*Galapo v. City of New York*, 95 NY2d 568, 574–575 [2000]). That principle does not render them irrelevant for *all* purposes. A jury may consider such protocols as contextual evidence of what risks were obvious even to the operator's own agency and, thus, probative (though not dispositive) on the operator's appreciation of risk. The weight to assign that context is a trial question.

Nor can Plaintiff's expert be discounted as a matter of law. The affidavit is grounded in record facts (roadway configuration, vehicles' positions, timing of checks and signaling) and articulates how feasible, low-cost precautions (re-verification, braking, delaying the shift) were available and, on Plaintiff's version, consciously not taken. Disagreements with the expert's methodology or emphasis go to weight and credibility, not admissibility, and are properly explored through cross-examination and impeachment at trial (*Vega v. Restani Constr. Corp.*, 18 NY3d 499, 505 [2012]).

Taking the evidence in the light most favorable to Plaintiff, a rational factfinder could determine that Harbeck, intending a lateral movement across lanes near a forced-turn intersection at 3:00 a.m., proceeded after a non-contemporaneous mirror check, without braking, and in a manner consistent with a U-turn or lane incursion into an occupied lane—despite an obvious risk of immediate conflict—thereby acting with "conscious indifference" rather than committing a mere "momentary lapse." That determination turns on credibility and fine-grained factual assessments. It is not amenable to resolution as a matter of law. Accordingly, although the City has made a prima facie showing, Plaintiff has raised triable issues that require a jury's evaluation, and the motion must be denied (*see Brill v. City of New York*, 2 NY3d 648, 651 [2004]).

Accordingly, it is hereby

ORDERED that the City of New York's motion for summary judgment is denied; and it is further

ORDERED that counsel for Plaintiff shall serve a copy of this decision and order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office; and it is further

ORDERED that service of this decision and order upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in

the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the parties shall appear for a settlement conference on Monday November 17, 2025 at 11:30 AM in Part 5 (Room 320) of the courthouse located at 80 Centre Street, New York, New York 10013.

This constitutes the decision and order of the court.

10/28/2025
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**