SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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DIMO LOUIZOV, **Part C-2**

Plaintiff, **Present:**

HON. THOMAS P. ALIOTTA

-against-

DECISION AND ORDER

THE CITY OF NEW YORK,

Index No. 100161/10

Defendant. **Motion No. 4006-001**

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The following papers numbered 1 to 5 were marked fully submitted the 15th day of February 2012.

	Papers Numbered
Notice of Motion for Summary Judgment by Defendants, with Supporting Papers and Exhibits (dated November 1, 2011)	1
Affirmation in Opposition (dated January 12, 2012)	2
Reply to Plaintiff's Opposition (dated January 21, 2012)	3
Letter by Defendant (dated February 15, 2012)	4
Letter by Plaintiff (dated February 15, 2012)	5

Upon the foregoing papers, defendant's motion for summary judgment and dismissal of the complaint is granted.

This is an action for personal injuries allegedly sustained by plaintiff when his vehicle struck the rear of a Sanitation truck owned by defendant City of New York (hereinafter the "City") on March 27, 2009 at approximately 9:15 a.m. At the time, plaintiff

was attempting to switch from the left to right-hand lane of traffic along Richmond Avenue in order to make a right-hand turn. It is undisputed that, at the time of impact, the sanitation vehicle was at a complete stop in the right-hand lane while Department of Sanitation employees were actively engaged in clearing litter from the curbside (*see* Defendant's Exhibit "E", p 15). Once plaintiff had moved into the right-hand lane, he "slammed" on his brakes when he apparently saw the stopped vehicle, but with insufficient time or distance available"...crashed into the back of the truck" (*see* Defendant's Exhibit "D", p 22). Plaintiff alleges that the City employees were negligent in stopping their vehicle to collect garbage without properly warning drivers that their vehicle had come to a halt.

In support of its motion to dismiss the complaint, the City asserts that plaintiff has wholly failed to prove that any alleged negligence on the part of its workers proximately caused plaintiff to crash into the rear of its sanitation truck (*see* Derdiarian v Felix Contracting Corp., 51 NY2d 308), and in so doing, relies upon Vehicle Traffic Law (hereinafter "VTL") § 1128, which requires that an operator driving on a multi-laned highway shall not change lanes until he has ascertained that it is safe to do so. Accordingly, the City maintains that it has established prima facie that the

accident was caused solely by plaintiff's failure to see the stopped sanitation vehicle.

In opposition to the motion, plaintiff attempts to raise a triable issue of fact by asserting that he did not see any hazard lights or cones situated around the stopped truck. However, he fails to cite the violation of any relevant statute or regulation which would have contributed to his rear-end collision with the stopped vehicle. Neither VTL § 1181, which addresses minimum speed regulations, nor 34 Section 4-07(b)(1) of the Rules of the City of New York (hereinafter "RCNY"), entitled "Obstruction of Traffic", diminishes or undermines the uncontroverted fact that the subject sanitation vehicle was being operated in compliance with the guidelines set forth in VTL § 1103(b), which has heretofore been held to apply to vehicles engaged in highway maintenance (*see* Riley v County of Broome, 95 NY2d 455).

Since it is undisputed that the sanitation truck was actually stopped and engaged in maintenance work on a highway within the meaning of that statute (*id.* at 461-463), the operative standard is that the City may be held liable only if its vehicle is being operated in conscious disregard of a known or obvious risk that was so great as to make it highly probable that harm would ensue (*id.* at 465-466; Saarinen v Kerr, 84 NY2d 494, 501). In this case, plaintiff has failed to raise any such issue of fact, *e.g.* whether,

under the circumstances of the instant case, the sanitation truck had been brought to a halt recklessly, thereby resulting in a risk so great as to make it highly probable that harm would follow (*see* Bliss v State of New York, 95 NY2d 911, 913, Lobello v. Town of Brookhaven, 66 AD3d 646). In this regard, plaintiff's conclusory statement in his opposing affidavit that he merely did "not see any flashing lights or any other light operating on the [sanitation] vehicle" (*see* Plaintiff's Affidavit annexed to Affirmation in Opposition) is insufficient to raise any issue of fact which would warrant trial.

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Accordingly, it is hereby

ORDERED, that defendant's motion is granted and the complaint dismissed.

E N T E R,

__/s/_____
Hon. Thomas P. Aliotta
J.S.C.

Dated: April 9, 2012