SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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MARTIN AMADOR, **Part C-2**

Plaintiff, **Present:**

HON. THOMAS P. ALIOTTA

-against-

DECISION AND ORDER

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION and JOSEPH R. ESPOSITO, JR., **Index No. 101786/09**

Defendants. **Motion No. 1087-002**

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The following papers numbered 1 to 3 were marked fully submitted on the 20th day of June, 2012:

	Papers Numbered
Plaintiff's Notice of Motion for Summary Judgment (Affirmation in Support)	1
Defendants' Memorandum in Opposition to Summary Judgment (Affirmation, Affidavit in Support)	2
Reply Affirmation	3

Upon the foregoing papers, plaintiff's motion for partial summary judgment on the issue of liability is granted.

This matter arises out of a rear-end collision occurring on March 12, 2009, on Victory Boulevard, near its intersection with Jersey Street, in Staten Island, New York. At the time of the accident, plaintiff was operating his 2004 Honda Odyssey in a northerly direction along Victory Boulevard, and was purportedly slowing for a yellow traffic signal at the subject intersection, when he was struck in the rear by a sanitation truck owned and operated by defendants the City of New York, New York City Department of Sanitation and Joseph R. Esposito, Jr. (hereinafter,

collectively, the "City"). At his July 20, 2009, General Municipal Law ("50-h") hearing, plaintiff testified that as he approached the intersection at "around five miles per hour" (*see* p 24 [Plaintiff's Exhibit D]), he felt heavy contact to the rear of his vehicle. The City's driver, Joseph R. Esposito, testified at his October 27, 2010 deposition (*see* pp 43 - 50 [Plaintiff's Exhibit F]) that as he drove the 40,000 pound sanitation truck slightly downhill toward the intersection at an estimated ten miles per hour, the front of the truck "lightly" struck the rear of plaintiff's van, pushing it two to four feet forward. According to Esposito, the light controlling northbound traffic on Victory Boulevard was green just before the impact, and when he first saw plaintiff's van two to three car lengths ahead of him, plaintiff was "pretty much stopped" (*id.* at 50). Esposito stated: "I was in motion. And when he [plaintiff] stopped, I'm saying to myself, why's he stopping? I hit the brake, and that's it, he gets hit" (*id.* at 50-51). He also testified that he told people at the scene, "this guy just stopped. I don't know why. We were all flowing. It was a green light, and he just stops" (*see* Plaintiff's Exhibit F, p 66; *see also* Police Accident Report [Defendants' Exhibit D][1]).

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[1]The uncertified police report reads: "At [time and place of occurrence] vehicle 1 [sanitation truck] and 2 [plaintiff] were driving N/B on Victory Boulevard. Vehicle 1 was behind vehicle 2. Vehicle 2 stopped for an unknown reason approx[imately] 20 feet before the intersection of Jersey St./Victory Boulevard when vehicle 1 collided into vehicle 2."

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In moving for summary judgment, plaintiff argues that there are no issues of fact which require a trial on the question of liability inasmuch as the City and plaintiff are in agreement as to the salient facts, and the City has failed to provide a non-negligent explanation for the rear-end collision. Indeed, the City admits to striking the rear of plaintiff's vehicle in contravention of Vehicle and Traffic Law §§ 1129 (a) ("Following too closely") and 1180(a) ("Basic rules and maximum limits").

Nevertheless, the City maintains that material issues of fact do exist as to the comparative fault of the respective drivers, particularly insofar as Mr. Esposito testified that plaintiff stopped for no reason at a green light.

"A rear-end collision is sufficient to create a prima facie case of liability and imposes a duty of explanation with respect to the operator of the offending vehicle" (Maccauley v. Elrac, Inc., 6 AD3d 584, 585 [*internal quotations omitted*]). Stated differently, a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of liability with respect to the driver of the rearmost vehicle, absent a non-negligent explanation for the collision (*see* Chepel v. Meyers, 306 AD2d 235; Monahan v. Puthumana, 302 AD2d 437; Filippazzo v. Santiago, 277 AD2d 419). Pertinently, a bare claim that the driver of the lead vehicle stopped suddenly is insufficient, standing alone, to rebut the presumption of negligence which exists in cases involving rear-end

collisions (*see* Ramirez v. Konstanzer, 61 AD3d 837; Jumandeo v. Franks, 56 AD3d 614). That this is so regardless of whether the lead vehicle is stopped or is in steady motion due, at least in part, to the duty on the rearmost driver to maintain a safe distance between his vehicle and the vehicle ahead (*see* Vehicle and Traffic Law §1129[a]; Inzano v. Brucculeri, 257 AD2d 605).

Here, the City's driver was legally obligated to maintain a safe distance between the front of the sanitation truck and the rear of plaintiff's vehicle. Discrepancies regarding the color of the traffic signal and whether plaintiff was stopped or slowing down at the point of impact are of no moment. The presumption of negligence is not rebutted where the only excuse offered by the rearmost driver is that plaintiff stopped short or unexpectedly, leaving him with insufficient time to avoid the collision (*see e.g.*, Ramirez v. Konstanzer, 61 AD3d at 837).

Equally without merit is the City's argument that the subject motion is duplicative of plaintiff's pre-discovery motion for summary judgment, which was denied at oral argument (*see* Defendants' Exhibit E). A denial of summary judgment is not determinative of anything other than the movant's failure to establish its right to such relief at the time that the motion is *sub judice*. It is neither *res judicata* nor law of the case (*see* Cole v. Lawrence Healthcare Admin. Servs, Inc., 15 AD3d 908, 909; Puro v. Puro, 79 AD2d 925).

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Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of liability is granted; and it is further

ORDERED, that upon the filing of any necessary papers and the payment of any required fees, the matter will be scheduled for a trial on the issue of damages; and it is further

ORDERED, that the parties are directed to appear before this Court for conference on September 5, 2012 at 9:30 a.m.

E N T E R,

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HON. THOMAS P. ALIOTTA
J.S.C.

Dated: August 21, 2012