

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14086
G/gts

_____AD3d_____

Argued - January 30, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
ROBERT A. LIFSON, JJ.

2005-10461

DECISION & ORDER

Rahkeya S. Thomas, et al., respondents,
v New York City Transit Authority, appellant,
et al., defendant.

(Index No. 3557/03)

Wallace D. Gossett (Steve Efron, New York, N.Y., of counsel), for appellant.

Pops & Associates, New York, N.Y. (Timothy J. Callahan of counsel), for respondent
Rahkeya S. Thomas.

In a consolidated action to recover damages for personal injuries, the defendant New York City Transit Authority appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated October 19, 2005, which denied its motion, in effect, for summary judgment dismissing the complaint of the plaintiff Rahkeya S. Thomas.

ORDERED that the order is reversed, on the law, with costs, and the motion, in effect, for summary judgment dismissing the complaint of the plaintiff Rahkeya S. Thomas is granted.

The Supreme Court erred in denying the motion of the defendant New York City Transit Authority (hereinafter the Transit Authority), in effect, for summary judgment dismissing the complaint of the plaintiff Rahkeya S. Thomas. The Transit Authority established that its bus operator did not act negligently under the emergency circumstances presented (*see Roviello v Schoolman*

Transp. Sys., 10 AD3d 356, 356-357; *Huggins v Figueroa*, 305 AD2d 460, 461; *Casanova v New York City Tr. Auth.*, 279 AD2d 495; *Bentley v Moore*, 251 AD2d 612, 613). In opposition, the plaintiff Rakheya S. Thomas failed to raise a triable issue of fact as to whether the driver of the bus was at fault in the happening of this accident (*see Casanova v New York City Tr. Auth.*, *supra*).

MILLER, J.P., SPOLZINO, RITTER and LIFSON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court