

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

D17079  
W/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 2, 2007

ROBERT W. SCHMIDT, J.P.  
REINALDO E. RIVERA  
ANITA R. FLORIO  
RUTH C. BALKIN, JJ.

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2006-08123

DECISION & ORDER

Amalgamated Transit Union Local 1181, AFL-CIO,  
et al., respondents, v City of New York, et al.,  
defendants, Metropolitan Transportation Authority,  
appellant.  
(Action No. 1)

Local 100, Transport Workers Union of America,  
AFL-CIO, et al., respondents, v City of New York,  
et al., defendants, Metropolitan Transportation  
Authority, appellant.  
(Action No. 2)

(Index Nos. 07276/05, 21634/05)

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Proskauer Rose, LLP, New York, N.Y. (Aaron J. Schindel, Michael J. Lebowich, and  
Dylan S. Pollack of counsel), for appellant.

Kennedy Jennek & Murray, P.C., New York, N.Y. (Susan M. Jennik and Bernhard  
Rohrbacher of counsel), for respondents.

In two related actions, inter alia, for specific performance of a contract dated August  
8, 1975, the defendant Metropolitan Transportation Authority appeals from so much of an order of

November 27, 2007

Page 1.

AMALGAMATED TRANSIT UNION LOCAL 1181, AFL-CIO v CITY OF NEW YORK  
LOCAL 100, TRANSPORT WORKERS UNION OF AMERICA,  
AFL-CIO v CITY OF NEW YORK

the Supreme Court, Queens County (Hart, J.) entered August 9, 2006, as denied its motion pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against it in Action No. 2.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the motion of the defendant Metropolitan Transportation Authority to dismiss the complaint insofar as asserted against it in Action No. 2 is granted.

The plaintiffs have failed to state a cause of action against the defendant Metropolitan Transportation Authority (hereinafter the MTA) for specific performance of a contract dated August 8, 1975. Accordingly, the Supreme Court should have granted that branch of the MTA's motion which was pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against it in Action No. 2 (*see Amalgamated Transit Union Local 1181, AFL-CIO v City of New York*, \_\_\_\_\_ AD3d \_\_\_\_\_ [Docket No. 2006-08111, decided herewith]).

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

SCHMIDT, J.P., RIVERA, FLORIO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court