

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

D26505  
C/kmg

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

Argued - February 16, 2010

WILLIAM F. MASTRO, J.P.  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT  
LEONARD B. AUSTIN, JJ.

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2009-03752

DECISION & ORDER

Tawana Hill, plaintiff, v Afaf N. Ackall, appellant,  
Metropolitan Transit Authority Bus Company,  
respondent.

(Index No. 20496/08)

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Kaplan & McCarthy, East Elmhurst, N.Y. (Alease A. Brown of counsel), for appellant.

Marulli, Lindenbaum, Edelman & Tomaszewski, LLP, New York, N.Y. (Rita Renjen and Richard O. Mannarino of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Afaf N. Ackall appeals from an order of the Supreme Court, Queens County (Grays, J.), dated February 6, 2009, which denied her motion for summary judgment dismissing the complaint insofar as asserted against her.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendant Afaf N. Ackall for summary judgment dismissing the complaint insofar as asserted against her is granted.

The Supreme Court should have granted the motion of the defendant Afaf N. Ackall for summary judgment dismissing the complaint insofar as asserted against her. Ackall made a prima facie showing of her entitlement to judgment as a matter of law by submitting her affidavit, in which she averred that her vehicle had been stopped at a red light behind the plaintiff's vehicle for approximately one minute, when a bus owned by the defendant Metropolitan Transit Authority Bus Company (hereinafter MTA Bus) struck the rear of her vehicle, causing her vehicle to strike the

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plaintiff's vehicle (*see Staton v Ilic*, 69 AD3d 606; *Garner v Chevalier Transp. Corp.*, 58 AD3d 802; *Kimyagarov v Nixon Taxi Corp.*, 45 AD3d 736). MTA Bus opposed the motion on the grounds that Ackall did not establish her prima facie entitlement to judgment as a matter of law, and that the motion was premature. However, MTA Bus did not submit any evidence with respect to the merits in opposition to the motion and, thus, failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Contrary to the contention of MTA Bus, the motion was not premature (*see CPLR 3212[f]*; *Staton v Ilic*, 69 AD3d 606; *Garner v Chevalier Transp. Corp.*, 58 AD3d at 802). MTA Bus failed to offer an evidentiary basis to suggest that discovery may lead to relevant evidence or that facts essential to opposing the motion were exclusively within the knowledge and control of the plaintiff (*see Kimyagarov v Nixon Taxi Corp.*, 45 AD3d at 737; *Lopez v WS Distrib., Inc.*, 34 AD3d 759, 760).

MASTRO, J.P., LEVENTHAL, LOTT and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court