

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

D27273  
G/kmg

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Argued - February 19, 2010

MARK C. DILLON, J.P.  
FRED T. SANTUCCI  
RUTH C. BALKIN  
SANDRA L. SGROI, JJ.

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2009-06486

DECISION & ORDER

Jean Claude Saint Victor, respondent, v Metropolitan  
Transportation Authority, appellant.

(Index No. 7059/08)

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Sullivan & Brill, LLP, New York, N.Y. (Joseph F. Sullivan and Tara Ganguly of  
counsel), for appellant.

Andrew Hirschhorn, Rosedale, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an  
order of the Supreme Court, Queens County (Rosengarten, J.), entered May 22, 2009, which denied  
its motion to dismiss the complaint and granted the plaintiff's cross motion, in effect, to designate the  
MTA Bus Company as a party defendant in place of the defendant Metropolitan Transportation  
Authority and to deem the summons and complaint served on the MTA Bus Company.

ORDERED that the appeal from so much of the order as granted the plaintiff's cross  
motion, in effect, to designate the MTA Bus Company as a party defendant in place of the defendant  
Metropolitan Transportation Authority and to deem the summons and complaint served on the MTA  
Bus Company is dismissed, as the defendant Metropolitan Transportation Authority is not aggrieved  
by that portion of the order (*see* CPLR 5511); and it is further,

ORDERED that the appeal from so much of the order as denied the motion of the  
defendant Metropolitan Transportation Authority to dismiss the complaint is dismissed as academic;  
and it is further,

May 11, 2010

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ORDERED that one bill of costs is awarded to the plaintiff.

To the extent that the order appealed from granted the plaintiff's cross motion, in effect, to designate the MTA Bus Company as a party defendant in place of the defendant Metropolitan Transportation Authority (hereinafter the appellant) and to deem the summons and complaint served on the MTA Bus Company, the appellant is not aggrieved thereby. Further, since the appellant is no longer a defendant in this case as a result of the Supreme Court's granting of the plaintiff's cross motion, the appeal from so much of the order as denied the appellant's motion to dismiss the complaint must be dismissed as academic.

DILLON, J.P., SANTUCCI, BALKIN and SGROI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court