

Montalvo v Neo Taxi Corp.

2018 NY Slip Op 30836(U)

May 4, 2018

Supreme Court, New York County

Docket Number: 158064/2013

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY
PRESENT: Hon. Adam Silvera**

Part 22

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**KIM MONTALVO, ROBERT KINSLOW
and KASANDRA PUFFEER,**

Plaintiff,

DECISION/ORDER

-against-

**INDEX NO. 158064/2013
MOTION SEQ NO 002**

**NEO TAXI CORP. and
KWAMINA F. GHAMSAH.,**

Defendants,

_____ X

**NEO TAXI CORP. and FRANCIS KWAMINA
GHAMSAH S/H/A KWAMINA F. GHAMSHA,**

Third-Party Plaintiffs,

-against-

STEVE ASSOUS,

Third-Party Defendant.

_____ X

ADAM SILVERA, J. :

Upon the foregoing papers, it is ordered that third-party defendant's motion for summary judgment is granted for the reasons set forth below. Third-party defendant Steve Assous moves for summary judgment on the issue of liability in his favor, pursuant to CPLR 3212 and to dismiss defendants' third-party summons and complaint against him. Defendants oppose the motion.

BACKGROUND

The matter at hand involves a chain car collision that occurred on December 1, 2012, at the intersection of 62nd Street and Third Avenue in the County, City and State of New York,

when defendant/third-party plaintiff Francis Kwamina Ghansah, the operator of a motor vehicle owned by defendant/third-party plaintiff Neo Taxi Corp. (“Neo”), attempted to turn right onto 62nd Street and rear ended a motor vehicle operated and owned by plaintiff driver Robert Kinslow, whose vehicle then moved forward and struck the rear of a motor vehicle operated by third party defendant Steve Assous. As a result of this accident, all occupants of the Kinslow vehicle, plaintiffs Kim Montalvo, Robert Kinslow, Kasandra Puffer and non party to this action Jenna Greene, were injured.

Plaintiffs filed suit on September 19, 2013 (“Action #1”), against defendant Neo and defendant Ghansah for injuries allegedly sustained as a result of the accident. Defendants filed a Third-Party Summons and Complaint against third-party defendant, Assous, who joined issue. In a separate action, Index No. 450540/2016 (Action #2), non-party passenger Jenna Greene filed suit against Neo, Ghansah, Kinslow and Assous. The present action and Action #2 were joined for discovery and trial in a September 29, 2014, Decision/Order by the Honorable Arlene P. Bluth. This Decision/Order addresses Action #1, motion sequence 002, third-party defendant’s motion for Summary Judgment.

DISCUSSION

Third-party defendant’s motion for summary judgment is granted and the third-party complaint against Steve Assous is dismissed. As a preliminary matter, third-party plaintiffs’ argument that third-party defendant’s motion is procedurally defective for lack of an affidavit by someone with knowledge of the facts, is unconvincing. The Court has found that “testimony by deposition . . . is a higher order of proof than an affidavit. An affidavit, usually prepared by a lawyer, and signed by the affiant is hardly the equivalent in value of a deposition” (*State v Metz*, 241 AD2d 192, 200 [1st Dep’t]). Here, the summary judgment motion is not procedurally

defective as third-party defendant's counsel relies on and attaches the deposition transcripts of Ghansha, Kinslow, Montalvó, Greene, and Assous (Third-party Dfdt's Mot, Exh D-H).

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

"[A] rear-end collision with a stopped ... vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, ...[and] shift[s] the burden to defendant to come forward with an adequate nonnegligent explanation for the accident" (*Cruz v Lise*, 123 AD3d 514 [1st Dep't 2014] [internal citations omitted]). The assertion that a vehicle in front of another vehicle stopped suddenly, standing alone, is not a nonnegligent excuse for a rear-end collision and is insufficient to rebut the presumption of negligence (*See id.*; *see also Cabrera v Rodriguez*, 72 AD3d 553 [1st Dep't 2010]).

Third-party plaintiffs' argument that third-party defendant's sudden stop of the vehicle is the sole cause for the collision is unconvincing. Preliminarily, the uncontroverted deposition testimony proffered by third-party defendant establishes that the Kinslow vehicle was fully stopped at the time third-party plaintiff's vehicle hit it in the rear. Thus, whether Assous's vehicle stopped short does not relieve defendant's/third-party plaintiffs from liability for this chain car collision. Moreover, as demonstrated above, it is well settled law that a sudden stop argument does not defeat a motion for summary judgment. Third-party defendant has

demonstrated that the vehicle operated by third-party plaintiff Ghansah rear ended the vehicle operated by Kinslow which then rear-ended third-party defendant's vehicle. Here, movant has demonstrated that he was not the driver of the rear vehicle and has made a prima facie showing of entitlement to judgment as a matter of law. Thus, third party defendant Steve Assous's motion for summary judgment and dismissal is granted.

Accordingly, it is

ORDERED that third-party defendant Steve Assous's motion for summary judgment in his favor on the issue of liability and to dismiss the third-party complaint and all cross-claims is granted and the third-party complaint is dismissed in its entirety as against Steve Assous, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said third-party defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the dismissal of the third-party complaint; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that all counsel appear for a previously scheduled compliance conference on June 4, 2018 at 9:30 AM in room 103 of 80 Centre Street, New York, New York; and it is further

ORDERED that within 30 days of entry, third-party defendant shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

Dated: 5/4/18



**HON. ADAM SILVERA
J.S.C.**