

<b>Greene v Neo Taxi Corp.</b>
2018 NY Slip Op 30842(U)
May 4, 2018
Supreme Court, New York County
Docket Number: 450540/2016
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY  
PRESENT: Hon. Adam Silvera**

**Part 22**

\_\_\_\_\_ X

**JENNA GREENE,**

**Plaintiff,**

**-against-**

**NEO TAXI CORP., FRANCIS KWAMINA  
GHANSAH, ROBERT M. KINSLOW, and  
STEVE ASSOUS,**

**Defendants,**

\_\_\_\_\_ X

**DECISION/ORDER**

**INDEX NO. 450540/2016  
MOTION SEQ NO 003**

**ADAM SILVERA, J. :**

Upon the foregoing papers, it is ordered that defendant Steve Assous’s motion for summary judgment is granted for the reasons set forth below. Defendant Assous moves for summary judgment on the issue of liability in his favor, pursuant to CPLR 3212 and to dismiss plaintiff Jenna Greene’s summons and complaint against him. Defendant Neo Taxi Corp. and defendant Francis Kwamina Ghansah (collectively “Co-defendants”) oppose the motion.

**BACKGROUND**

The matter at hand involves a chain car collision that occurred on December 1, 2012, at the intersection of 62<sup>nd</sup> Street and Third Avenue in the County, City and State of New York, when defendant Francis Kwamina Ghansah, the operator of a motor vehicle owned by defendant Neo Taxi Corp. (“Neo”), attempted to turn right onto 62<sup>nd</sup> Street and rear ended a motor vehicle operated and owned by defendant driver Robert Kinslow, whose vehicle then moved forward and struck the rear of a motor vehicle operated by defendant Steve Assous. As a result of this accident, plaintiff Jenna Greene, was injured.

A related suit, Index No. 158064/2013, involving the same motor vehicle incident, was first filed on September 19, 2013, (“Action #1”), against Co-defendants for injuries allegedly sustained as a result of the accident. Here, Plaintiff filed suit on January 28, 2014 (“Action #2”) against defendants for injuries allegedly sustained as a result of the accident. The present action and Action #1 were joined for discovery and trial in a September 29, 2014, Decision/Order by the Honorable Arlene P. Bluth. This Decision/Order addresses Action #2, motion sequence 003, defendant Steve Assous’s motion for Summary Judgment.

### DISCUSSION

Defendant Assous’s motion for summary judgment is granted and the present complaint against Steve Assous is dismissed. As a preliminary matter, co-defendants’ argument that Assous’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 Assous’s counsel relies on and attaches the deposition transcripts of Ghansha, Kinslow, Montalvo, 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]).

Co-defendants' argument that Assous's sudden stop of his vehicle is the sole cause for the collision is unconvincing. Preliminarily, the uncontroverted deposition testimony proffered by Assous establishes that the Kinslow vehicle was fully stopped at the time the Neo/Ghansah vehicle hit it in the rear. Thus, whether Assous's vehicle, which was hit in the rear by Kinslow's vehicle, stopped short does not relieve Co-defendants 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. Movant has demonstrated that the Co-defendants vehicle rear ended the vehicle operated by defendant Kinslow which then rear-ended defendant Assous's vehicle. Assous 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, defendant Steve Assous's motion for summary judgment and dismissal is granted.

Accordingly, it is

ORDERED that defendant Steve Assous's motion for summary judgment in his favor on the issue of liability and to dismiss plaintiff's complaint and all cross-claims is granted and the 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 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 complaint; and it is further

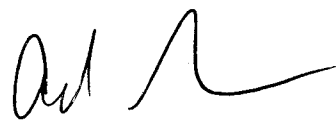
ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

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.**