

**Roy v Chen Hong**

2018 NY Slip Op 31830(U)

July 31, 2018

Supreme Court, New York County

Docket Number: 153984/2016

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  
COUNTY OF NEW YORK: PART IAS MOTION 22

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SATARUPA GHOSH ROY,  
  
Plaintiff,

INDEX NO. 153984/2016

- v -

MOTION DATE 06/29/2018

CHEN HONG, ZT GROUP INDUSTRIAL, INC., D/B/A ZT  
SYSTEMS, ZT GROUP INC., ADALBERTO ROSARIO-ULLOA,  
UBER TECHNOLOGIES, INC., RASIER, L.L.C.

MOTION SEQ. NO. 002

Defendant.

**DECISION AND ORDER**

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 76, 79, 80, 81, 82, 83, 84

were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is ORDERED that plaintiff's motion for leave to file an Amended Complaint pursuant to CPLR 3025(b) is granted. The underlying incident at bar involves a motor vehicle incident that allegedly seriously injured plaintiff when she was a passenger traveling in a vehicle operated and owned by defendant Adalberto Rosario-Ulloa under the scope of his employment with defendant Uber Technologies, Inc and defendant Raiser, L.L.C., when it was struck by a vehicle operated by defendant Chen Hong and owned by ZT Group International, Inc., d/b/a ZT Systems and ZT Group, Inc., after defendant Hong allegedly fell asleep at the wheel and crossed over the double yellow line at a speed of between 100 and 110 miles per hour on the Meadowlands Parkway approximately 1000 feet south of the intersection with American Way in the town of Secaucus and State of New Jersey.

Plaintiff, in the present motion, motion sequence 002, seeks leave to serve an Amended Verified Complaint that asserts a cause of action for punitive damages pursuant to N.J.S.A. 2A:

15-5.12 (i.e., New Jersey Punitive Damages Act), under “choice of law” rules, against all defendants in addition to the claims asserted in plaintiff’s original May 5, 2016 Verified Complaint. The Order/Decision of the court is as follows:

#### Leave to Amend

Leave to amend pleadings is generally freely granted, absent prejudice and surprise (*See Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]; *Antwerpse Diamantbank N.V. v Nissel*, 27 AD3d 207, 208 [1<sup>st</sup> Dep’t 2006]). To find prejudice, there must be some indication that the defendant has been hindered in the preparation of his case or prevented from taking some measure in support of his position (*See Abdelnabi v NYC Transit Authority*, 273 AD2d 114, 115 [1<sup>st</sup> Dep’t 2000]). Pursuant to CPLR 3025(b) “a party may amend his or her pleading, or supplement it by setting forth addition or subsequent transactions or occurrences, at any time by leave of court.” “The movant need not establish the merit of her proposed new allegations, but only that ‘the proffered amendment is not palpably insufficient or clearly devoid of merit’” (*Fairpoint Cos., LLC v Vella*, 134 AD3d 645 [1<sup>st</sup> Dep’t 2015] quoting *MBIA Ins. Corp v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1<sup>st</sup> Dep’t 2010]). The party opposing a motion to amend must demonstrate prejudice or surprise to said party due to the proposed amendment (*Edenwald Contracting Co., Inc. v City of New York*, 60 NY2d 957 [1983]).

#### Choice of Law

In motor vehicle cases involving conflicts of choice of law between New York and foreign states, in *Neumeier v Kuehner*, 31 NY2d 121, 128 [1972] the Court of Appeals delineated the three following principles:

1. When the guest-passenger and the host-driver are domiciled in the same state, and the car is there registered, the law of that state should control and determine the standard of care which the host owes to his guest.

'2. When the driver's conduct occurred in the state of his domicile and that state does not cast him in liability for that conduct, he should not be held liable by reason of the fact that liability would be imposed upon him under the tort law of the state of the victim's domicile. Conversely, when the guest was injured in the state of his own domicile and its law permits recovery, the driver who has come into that state should not—in the absence of special circumstances—be permitted to interpose the law of his state as a defense.

'3. In other situations, when the passenger and the driver are domiciled in different states, the rule is necessarily less categorical. Normally, the applicable rule of decision will be that of the state where the accident occurred but not if it can be shown that displacing that normally applicable rule will advance the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants. (Cf. Restatement, 2d, Conflict of Laws, P.O.D., pt. II, ss 146, 159 (later adopted and promulgated May 23, 1969).)'

### Conclusion

Here, defendants have failed to demonstrate that they will be prejudiced or surprised by the selection of the New Jersey Punitive Law. The underlying incident at bar occurred in New Jersey. Further, defendant will not be hindered in the preparation of his case or prevented from taking some measure in support of his position. Plaintiff has demonstrated that its claim for punitive damages, whether under New York or New Jersey law, will be based on discovery that has already been exchanged between the parties. Thus, having demonstrated that defendants will be neither prejudiced nor surprised by the proposed amendment, the court shall now examine the "choice of law" rules.

Pursuant to the principles explained in *Neumeier v Kuehner*, the driver in the case at bar is domiciled in New Jersey and plaintiff passenger is domiciled in New York. Thus, the applicable rule of decision is the state of New Jersey where the accident occurred. Defendants have not proffered any evidence that displacing New York punitive damages law will impair the multi-state system or produce uncertainty for litigants. In opposition, defendants allege that punitive damages are not warranted in cases of excessive speeding. However, the court is not

determining at this junction whether plaintiff is entitled to such damages. The court is merely granting plaintiff the opportunity to assert a cause of action for punitive damages which shall be determined at trial. Thus, plaintiff is entitled to choose the punitive law of New Jersey and plaintiff's motion to amend is granted.

Accordingly, it is

ORDERED that plaintiff's motion to amend the complaint herein is granted and the amended complaint in the form annexed to the moving papers shall be deemed to have been served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint or otherwise respond within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 103, 80 Centre Street, on August 24, 2018, at 9:30AM; and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry upon the Trial Support Office (Room 158)

7/31/2018

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE