

Garcia v Uber Tech., Inc.

2018 NY Slip Op 34526(U)

October 15, 2018

Supreme Court, Bronx County

Docket Number: Index No. 26481/2018E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

-----X
GARCIA, JAIME

Index No. **26481/2018E**

- against -

Hon. **JOHN R. HIGGITT,**

UBER TECHNOLOGIES, INC., et al
-----X

A.J.S.C.

The following papers numbered 14 to 22 and 25 to 31 in the NYSCEF System were read on this motion for **DISMISSAL**, noticed on **August 31, 2018** and duly submitted as No. **67** on the Motion Calendar of **September 28, 2018**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	14-22
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	25-26, 29-30
Replying Affidavit and Exhibits	31
Filed Papers	
Memoranda of Law	
Stipulations	27-28

Upon the foregoing papers, the motion of defendants Uber Technologies, Inc., Dreist-NY, LLC, Rasier-NY, LLC and Uber New York, LLC, to dismiss the complaint against them is granted in part and denied in part, in accordance with the annexed decision and order.

Dated: **10/15/2018**

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted GIP
- Denied Other

Check if appropriate:

- Schedule Appearance
- Fiduciary Appointment
- Referee Appointment
- Settle Order
- Submit Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

-----X
JAIME GARCIA,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 26481/2018E

UBER TECHNOLOGIES, INC., DREIST-NY, LLC,
RASIER-NY, LLC, UBER NEW YORK, LLC, UBER
USA, LLC, TIPU CHOWDHURY, JAIME ENRIQUE
MATUTE BARRERA, DISCOUNT OFFICE SERVICES,
INC.,

Defendants.

-----X

John R. Higgitt, J.

Upon the August 7, 2018 notice of motion of defendants Uber Technologies, Inc., Dreist-NY, LLC, Rasier-NY, LLC and Uber New York, LLC, and the affirmation, affidavits and exhibits submitted in support thereof; the August 24, 2018 affirmation in opposition of defendants Jaime Enrique Matute Barrera and Discount Offices Services, Inc.; plaintiff's September 12, 2018 affirmation in opposition; movants' September 27, 2018 affirmation in reply; and due deliberation; the moving defendants' motion to dismiss the complaint against them is granted in part and denied in part.

Defendants Uber Technologies, Inc., Dreist-NY, LLC, Rasier-NY, LLC, and Uber New York, LLC, move pursuant to CPLR 3211(a)7) to dismiss the complaint against them.

“On a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), it is well settled that courts must liberally construe a pleading, accept all the facts alleged therein to be true, and accord those allegations the benefit of every possible favorable inference in order to determine whether those facts fit within any cognizable legal theory” (*Molina v Phoenix Sound, Inc.*, 297 AD2d 595, 596 [1st Dept 2002]). “A CPLR 3211 dismissal may be granted where documentary evidence submitted conclusively establishes a defense to

the asserted claims as a matter of law” (*Goldman v Metro. Life Ins. Co.*, 5 NY3d 561, 571 [2005] [citations omitted]). “[A] defendant can submit evidence[, such as affidavits,] in support of [a CPLR 3211(a)(7)] motion attacking a well-pleaded cognizable claim” (*Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc.*, 115 AD3d 128, 134 [1st Dept 2014]). The affidavits submitted in support of a motion to dismiss must conclusively establish the lack of a claim or cause of action (*see Godfrey v Spano*, 13 NY3d 358 [2009]; *Anonymous v Anonymous*, 2018 NY Slip Op 05963 [1st Dept 2018]).

In support of the motion, defendant Dreist-NY, LLC (Dreist) submits the affidavit of its manager, who avers that Dreist’s sole relationship with the defendant Tipu Chowdhury and the vehicle Choddhury was driving at the time of the accident was that Dreist served as the “black car base” for the vehicle. Dreist did not own, lease, possess, operate, maintain, manage, repair or control Chowdhury’s vehicle, nor did Dreist employ, control, supervise or direct Chowdhury. Dreist’s showing conclusively refuted the allegations of the complaint, and no party rehabilitated plaintiff’s allegations against Dreist.

Defendant Rasier-NY, LLC (Rasier) argues that it is an improper party but provides no support for its motion beyond the statement of its attorney that it is a transportation network company whose drivers are not authorized by law to pick up passengers within the City of New York. This does not conclusively negate the facts alleged in the complaint.

Defendants Uber Technologies, Inc. and Uber USA, LLC (the Uber defendants) submit the affidavit of one of their employees, who avers that Chowdhury was not logged into the Uber “app” at the time of the accident. The Uber defendants argue that this severs any connection to them. The Uber defendants failed to explain the significance of being logged into the Uber “app” and offer no support for their counsel’s assertion that Chowdhury cannot be considered the Uber

defendants' employee.

Accordingly, it is

ORDERED, that the aspect of the motion of defendant Dreist-NY, LLC, for dismissal of the complaint as against it and all cross claims against it is granted; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of defendant Dreist-NY, LLC, dismissing the complaint as against it and all cross claims against it; and it is further

ORDERED, that the aspects of the motion of defendants Uber Technologies, Inc., Rasier-NY, LLC, and Uber New York, LLC, for dismissal of the complaint as against them and all cross claims against them are denied.

This constitutes the decision and order of the court.

Dated: October 15, 2018



John R. Higgitt, A.J.S.C.