

Larsson v Uber Tech., Inc.

2021 NY Slip Op 30185(U)

January 20, 2021

Supreme Court, New York County

Docket Number: 161681/2019

Judge: Debra A. James

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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TINA LARSSON,

Petitioner,

- v -

UBER TECHNOLOGIES, INC.,

Respondent.

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INDEX NO.	161681/2019
MOTION DATE	3/12/2020
MOTION SEQ. NO.	001
DECISION + ORDER ON MOTION	

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for DISCOVERY - PRE-ACTION.

ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that the petition is GRANTED only as to items (a) "Name, address and contact information of Uber drivers who dropped off passengers on East 81st Street between First Avenue and Second Avenue, in the County, City and State of New York, on October 25, 2019 between 3:21 p.m. and 3:30 p.m.", and (c) "Make, model and registration/license plate number of Uber vehicles which dropped off passengers on East 81st Street between First Avenue and Second Avenue, in the County, City and State of New York, on October 25, 2019 between 3:21 p.m. and 3:30 p.m." and, within fourteen (14) days of service of a copy of this order with notice of entry, respondent shall produce to petitioner such records with the foregoing specified temporal

and geographic limitations concerning the identity of any Uber drivers and vehicles respectively coming within the ambit of the requested search parameters of the Show Cause Order, and it is further

ORDERED that the relief sought in the petition is otherwise DENIED, and the proceeding is resolved accordingly.

DECISION

The court shall grant the petition subject to the limitations set forth herein.

Petitioner was allegedly struck by the door of a vehicle operated by a driver of respondent's service on October 25, 2019 along a stretch of East 81st Street between First and Second Avenues in New York County. Petitioner alleges that a passenger opened the door of the vehicle into the path of the petitioner, while the petitioner was riding a bicycle, as a result of which she suffered serious injuries. The petitioner states that the unidentified passenger in the vehicle was seen on video entering the premises at 318 East 81st Street. No police report was prepared at the accident scene although one apparently was filed later, on which neither the driver nor the passenger were identified. In her affidavit in support of the application, petitioner also states that respondent's driver drove her home after the accident and at that time the respondent learned from the driver that he worked for the respondent.

Petitioner now seeks discovery pursuant to CPLR 3102(c), which provides, in pertinent part, that "before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order." Petitioner seeks the following: "a. Name, address and contact information of Uber drivers who dropped off passengers on East 81st Street between First Avenue and Second Avenue, in the County, City and State of New York, on October 25, 2019 between 3:21 p.m. and 3:30 p.m.; b. Name, address and contact information of Uber passengers who were dropped off on East 81st Street between First Avenue and Second Avenue, in the County, City and State of New York, on October 25, 2019 between 3:21 p.m. and 3:30 p.m.; and, c. Make, model and registration/license plate number of Uber vehicles which dropped off passengers on East 81st Street between First Avenue and Second Avenue, in the County, City and State of New York, on October 25, 2019 between 3:21 p.m. and 3:30 p.m."

Respondent opposes the application arguing that it "fails to set forth a prima facie cause of action against Uber Technologies, Inc." and that "[t]here is absolutely no nexus on the part of Uber alleged with respect to the accident."

The court shall partially grant the application. "CPLR 3102 (c) allows a party to obtain disclosure prior to commencing an action, but only by court order. In order to obtain such an

order, the applicant must show the existence of a prima facie cause of action. Pre-action disclosure under CPLR 3102 (c) is not available to the would-be plaintiff to determine if he or she has a cause of action. In determining whether petitioner has demonstrated a prima facie case, the evidence presented must be considered in the aspect most favorable to petitioner and petitioner is entitled to the benefit of every favorable inference which can reasonably be drawn from the evidence. Additionally, documents submitted to demonstrate the existence of a prima facie cause of action must be based on first-hand knowledge." Matter of Ero v Graystone Materials, Inc., 252 AD2d 812, 813-14 (3d Dept 1998).

Petitioner has met such burden in this case. Contrary to respondent's argument, the question is not whether petitioner has a claim against the party against whom pre-action discovery is sought, but whether petitioner has a claim, period, and that the discovery sought is needed to identify the parties' against whom that claim may be asserted.

It is an appropriate exercise of CPLR 3102(c) to seek to identify the operator of the vehicle involved in an accident (see Champion v Metro. Tr. Auth., 70 AD3d 587, 588 [1st Dept 2010] ["Petitioner's requests . . . are material and necessary to petitioner's viable negligent operation claim, because they will assist her in identifying prospective defendants,

particularly the operator of the motor vehicle, and in framing her complaint”]); Christiano v Port Auth. of New York and New Jersey, 1 AD3d 289 (1st Dept 2003); Matter of Stewart v New York City Tr. Auth., 112 AD2d 939, 940 (2d Dept 1985). Further, the petitioner’s requests are limited in scope to a nine minute period on a single day on a single block and respondent fails to support its assertion that this request is burdensome.

The court, however, shall only grant the petition as to items (a) and (c) as set forth in the order to show cause, the identity of the Uber drivers and vehicles respectively, as the petitioner affirms having interacted with and receiving a ride from the driver in the subject vehicle and thus any identifying information received could be confirmed by the petitioner under oath. The court shall for now deny the application to the extent that it seeks the identity of the passenger as the identification of the driver and vehicle possibly involved in the incident will narrow the need to disturb the privacy of respondent’s customers who are unconnected with the incident.

<u>1/20/2021</u> DATE	<u>DEBRA A. JAMES, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SUBMIT ORDER	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	