

Meza v Garcia

2021 NY Slip Op 34031(U)

July 28, 2021

Supreme Court, Bronx County

Docket Number: Index No. 31812/2018E

Judge: Mary Ann Brigantti

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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 15

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ROY MEZA,

Plaintiff,

-against-

Index No.: 31812/2018E

LOUIS GARCIA, ELVIS DUVERGE, DUV AUTO, INC.,
DINARA T. ZHANPEISSOVA, UBER TECHNOLOGIES, INC.,
NICHOLAS CAICEDO, MARIA MEDINA, and BARRY
MAMADOU,

Defendants.

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HON. MARY ANN BRIGANTTI:

Plaintiff moves to strike the Answer of one Defendant, UBER TECHNOLOGIES, INC., for its alleged failure to provide discovery on certain insurance coverage, and for related relief. Defendant, UBER, cross moves for a protective order permitting UBER “to designate as confidential certain documents, testimony, and information to be produced in discovery, including but not limited to Uber’s excess and umbrella insurance policies’ declaration pages”, and for related relief.

This is an action to recover damages for alleged personal injuries sustained by the Plaintiff, ROY MEZA, in a multi-vehicle accident which occurred on, or about, March 6, 2018, in Queens, New York. Plaintiff alleges that he was a passenger in a car operated by DINARA ZHANPEISSOVA, a driver who utilizes the UBER Driver App.

Defendant UBER denies that Plaintiff's ride was arranged through the UBER App.¹ UBER is a global technology company that creates technology-based marketplaces, including one which permits users to request a ride from independent drivers who utilize the UBER Driver App for the purpose of connecting with potential riders.

In support of the Motion, Plaintiff includes the pleadings, the Preliminary Conference Order, and correspondence.

In support of the Cross Motion, Defendant UBER includes the Affidavit of Paul Picinich, its Manager, and Head of Regulatory Strategy & Operations, North Region, dated February 27, 2020.

Plaintiff's Counsel admits that Defendant UBER did provide the primary insurance coverage information maintained by Defendant UBER on the date of the subject accident, stating that, on January 16, 2020, **Defendant UBER did exchange "the first layer of [insurance] coverage but failed to provide any additional policy information including excess or umbrella policy declarations sheets".** [emphasis added]

¹ (See Affidavit by Paul Picinich, Manager, Head of Regulatory Strategy & Operations, North Region, dated February 27, 2020).

Defendant UBER cross moves for a protective order regarding the latter, permitting UBER to designate such as confidential. Defendant agrees to disclose the outstanding insurance documents if “Plaintiff’s counsel ... execute[s] a standard protective order to protect this commercially sensitive information from public disclosure”.

In the alternative, Defendant UBER argues that, since its records show that Plaintiff did not have a relationship with UBER, and that Plaintiff has not proffered evidence showing otherwise, Plaintiff should not be entitled to further insurance coverage disclosure, and, in particular, its excess and umbrella insurance policies’ declaration pages, pursuant to CPLR § 3101(f) “Contents of insurance agreement”, which provides that:

“A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment”. [emphasis added]

The Court’s Preliminary Conference Order provides that: “Pursuant to CPLR 3101(f), all parties shall exchange insurance and coverage information, including primary, excess and umbrella policies, by 9/24/2019” (Preliminary Conference Order, dated August 6, 2019, ¶ 2 “Insurance Information”).

Defendant UBER alleges that, thus far, it provided Plaintiff with a coverage letter outlining the coverage available for this accident; a copy of the declarations page for the primary policy, which details the \$1 million dollars in automotive liability, uninsured motorist, and underinsured motorist coverages; the declarations sheet for another layer of coverage in the amount of \$5 million; and an entire tree of coverage totaling over \$150 million dollars. (See Defendant UBER's "Response to Preliminary Conference Order", dated October 7, 2020, at NYSCEF Doc No 139). Defendant also maintains that the subject declaration pages for all of the excess and umbrella layers of coverage do not include coverage for the driver, DINARA ZHANPEISSOVA, and are not relevant to this litigation.

Nonetheless, Defendant UBER agrees that it will provide the outstanding insurance disclosure, including further declaration pages for the excess and umbrella insurance policies, and insurance policies, subject to a protective order requiring that the documents remain confidential.

CPLR § 3103 "Protective orders" provides as follows:

"(a) Prevention of abuse. The court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed

to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts”.

In support of its request for a protective order, Defendant UBER’s Manager and Head of Regulatory Strategy & Operations, summarizes its position as follows:

“It is Uber's practice not to publicly disclose its excess and umbrella insurance policies' declarations pages. This commercially sensitive information is confidential, proprietary, and trade secret information. This information cannot be acquired by those outside of Uber or by those inside of Uber without the proper authorization. Uber derives economic value from the fact that this information is not generally known or readily discoverable by proper means. If this commercially sensitive information were disclosed, Uber's competitors would be able to create or improve their own operations, thereby depriving Uber of its significant monetary investment in this area”.

(Affidavit by Paul Picinich, Manager, Head of Regulatory Strategy & Operations, North Region, dated February 27, 2020). Defendant alleges that its insurance documents are not standard-forms, but highly negotiated and custom-made for its unique business model. In the competitive ridesharing business where insurance is difficult to procure, Defendant negotiated creative solutions and better premiums. Defendant believes that this has economic value; and should not be divulged to its competitors.

Thus, under the facts and circumstances presented, Defendant UBER has “raised legitimate concerns about the confidential nature of their data and about some responsive documents being trade secrets, proprietary data, or subject to a


valid privilege" (*Heredia v Uber Tech., Inc.*, 166 AD3d 555, 556 [1st Dept 2018]).

Therein, the Court held that: "the disclosure directed herein is **subject to** the court's determination of Uber's ... cross motion for a protective order for certain confidential and proprietary information, for which the matter is remanded" *Id.* [emphasis added]

Accordingly, herein, Defendant UBER is granted the requested protective order; and so it shall provide the outstanding insurance documents, as it agreed to do, subject to the protective order requiring that the documents remain confidential. To effectuate this, within 30 days from the date of the parties' execution of a stipulation on confidentiality, Defendant shall forthwith turn over the subject insurance documents, stamped "confidential", to Plaintiff's Counsel, who is permitted to use them solely with respect to this case, and for no other purpose; and shall otherwise keep them confidential and not disseminate them to any other person or entity, without further Court Order.

In conclusion, Plaintiff's Motion to strike the Answer of Defendant, UBER, is denied; and the Defendant UBER'S Cross Motion for a protective order is granted, as set forth herein. This constitutes the decision and order of this Court.

Dated: JULY 28 2021



HON. MARY ANN BRIGANTTI, JSC