

Forde v Curb Mobility, LLC
2022 NY Slip Op 31156(U)
April 6, 2022
Supreme Court, Kings County
Docket Number: Index No. 520627/2020
Judge: Lillian Wan
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 17

-----X
PATRICIA J. FORDE,

Plaintiff,

Index No. 520627/2020
Motion Seq. No.: 03

-against-

DECISION AND ORDER

CURB MOBILITY, LLC,

Action #2

Defendant.

-----X
CURB MOBILITY, LLC,

Third-Party Plaintiff.

-against-

MOHAMMED HAFEEZ and RAMEEZ SHAHID,

Third-Party Defendants.

-----X
PATRICIA J. FORDE,

Action #1

Plaintiff.

-against-

MOHAMMED HAFEEZ and RAMEEZ SHAHID,

Defendants.

-----X
Recitation, as required by CPLR § 2219(a), of the papers considered in the review of
the defendant's motion to dismiss.

The following e-filed documents, listed by NYSCEF document number (Motion 03)
51-58, 65, and 67-68 were read on this motion by the defendant for dismissal pursuant to CPLR
§ 3211(a)(7).

This action arises from a motor vehicle accident that occurred on February 17, 2018,
while the plaintiff was a passenger in a 2009 Ford motor vehicle owned by defendant,
Mohammed Hafeez, and operated by defendant, Rameez Shahid, allegedly causing the plaintiff
to sustain serious injuries. The plaintiff is a participant in the New York City Transit Authority's
(NYCTA) Access-A-Ride Program (AAR Program), and requested transportation through the

program. The NYCTA contacted defendant/third-party plaintiff Curb Mobility (Curb), one of multiple vendors used by the NYCTA, which arranged for transportation for the plaintiff through its technology system. The defendant, Curb, seeks dismissal of the plaintiff's claims for negligent entrustment and negligent hiring, training, supervision and retention, pursuant to CPLR §3211(a)(7), arguing that the plaintiff's complaint does not properly state a cause of action for these claims. In support of the motion, the defendant submits the pleadings, and a certified copy of the police report. After oral argument and upon careful consideration of the parties' submissions, the defendant Curb's motion is granted.

Curb asserts that defendant Mohammed Hafeez (Hafeez) was the owner and defendant Rameez Shahid (Shahid) was the operator of the vehicle, as contained in the certified police report, and that the plaintiff was a passenger at the time of the accident. Shahid operated the vehicle with the knowledge, permission and consent of the owner, Hafeez. The accident occurred when the vehicle operated by Shahid came into contact with another vehicle operated by Andrew J. Kirkley.

The plaintiff's complaint against Curb alleges a cause of action under the theory of respondeat superior, claiming that Shahid was an employee of Curb and was operating the vehicle in the scope of his employment at the time of the accident. Curb alleges that the plaintiff's complaint adequately stated a cause of action for respondeat superior, however there are no factual allegations in the complaint concerning negligent entrustment or negligent hiring, training, supervising or retention. Curb contends that the plaintiff improperly asserted such claims for the first time in her bill of particulars.

The plaintiff opposes the motion, arguing that it should be converted to a summary judgment motion, and be denied as it is only supported by an attorney's affirmation. The plaintiff further argues that the complaint sufficiently states a cause of action for negligent hiring, training, supervision and retention because it alleges that defendant Shahid was an employee, agent, servant, and/or contractor of Curb, and that Shahid operated the motor vehicle within the course and scope of his employment. The plaintiff does not directly address the branch of Curb's motion concerning dismissal of the negligent entrustment claim.

To establish a cause of action under a theory of negligent entrustment, "the defendant must either have some special knowledge concerning a characteristic or condition peculiar to the [person to whom a particular chattel is given] which renders [that person's] use of the chattel unreasonably dangerous ...or some special knowledge as to a characteristic or defect peculiar to the chattel which renders it unreasonably dangerous." *See Cook v Schapiro*, 58 AD3d 664, 666 (2d Dept 2009), quoting *Zara v Perzan*, 185 AD2d 236 (2d Dept 1992) (internal quotation marks omitted).

Moreover, “[a] necessary element of such causes of action [for negligent hiring, retention and supervision] is that the employer knew or should have known of the employee’s propensity for the conduct which caused the injury” [citations omitted]. See *Johansmeyer v New York City Dept. of Educ.*, 165 AD3d 634, 635-636 (2d Dept 2018), quoting *Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159 (2d Dept 1997). “The employer’s negligence lies in having placed the employee in a position to cause foreseeable harm, harm which would most probably have been spared the injured party had the employer taken reasonable care in making decisions respecting the hiring and retention of the employee” (internal quotation marks omitted). *Id.*

In considering a motion to dismiss a complaint pursuant to CPLR § 3211(a)(7), a court “must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Lubonty v U.S. Bank N.A.*, 159 AD3d 962, 963 (2d Dept 2018) (internal quotation marks omitted); see also *TMCC, Inc. v Jennifer Convertibles, Inc.*, 176 AD3d 1135 (2d Dept 2019). The Court may consider evidentiary material submitted by the movant in support of a motion to dismiss for failure to state a cause of action. Where a party offers evidentiary proof on a motion to dismiss a complaint for failure to state a cause of action, the focus of the inquiry turns from whether the complaint states a cause of action rather than whether the plaintiff actually has one. See *Louzon v Gentry Apts., Inc.*, 191 AD3d 776 (2d Dept 2021); *Bonavita v Government Empls. Ins. Co.*, 185 AD3d 892 (2d Dept 2020). Dismissal results only if the movant demonstrates conclusively that the plaintiff has no cause of action, or that a material fact, as claimed by the pleader to be one, is not a fact at all, and unless it can be said that no significant dispute exists regarding it. See *Matter of Valderrama*, 184 AD3d 650 (2d Dept 2020); *MJK Bldg. Corp. v Fayland Realty, Inc.*, 181 AD3d 860 (2d Dept 2020). Moreover, “[a] bill of particulars may not be used to allege a new theory not originally asserted in the complaint.” See *Linker v County of Westchester*, 214 AD2d 652, 652 (2d Dept 1995).

Here, the plaintiff has failed to state a cause of action for negligent entrustment, as the factual allegations contained in the complaint do not allege that defendant Curb had some special knowledge concerning a characteristic or condition peculiar to Shahid which rendered Shahid’s use of the vehicle unreasonably dangerous, or some special knowledge as to a characteristic or defect peculiar to the vehicle which rendered it unreasonably dangerous. Likewise, the plaintiff has failed to state a cause of action for negligent hiring, training, supervision and retention. As the defendant, Curb, correctly points out, the complaint merely alleges that Shahid operated the vehicle within the scope and course of his employment with Curb and that he was Curb’s employee. Nothing in the complaint alleges that Curb knew or should have known of Shahid’s propensity for the conduct which caused the injury, or that Curb placed Shahid in a position to cause foreseeable harm which would not have occurred had Curb taken reasonable care with

respect to Shahid's hiring and retention. As such, defendant Curb's motion to dismiss the claims sounding in negligent entrustment and negligent hiring, training, supervision and retention, which were asserted for the first time in the plaintiff's bill of particulars, is granted.

The remaining contentions are without merit.

Accordingly, it is hereby

ORDERED, that the motion of defendant Curb is **GRANTED** in its entirety.

This constitutes the decision and order of the Court.

Dated: April 6, 2022



HON. LILLIAN WAN, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020