

Toro v Garcia
2022 NY Slip Op 35185(U)
December 5, 2022
Supreme Court, Bronx County
Docket Number: Index No. 805732/2022E
Judge: Veronica G. Hummel
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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 31**

-----X
MARITZA TORO,

Plaintiff

-against -

RAMON GARCIA, QILSY ESTRELLA, UBER TECHNOLOGIES,
INC, UBER USA, LLC, and LYFT, INC.,

Defendants.

**Index No.805732/2022E
DECISION/ORDER
Motion Seq. 1**

-----X
HON. VERONICA G. HUMMEL, A.S.C.J.

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all of the papers filed by the parties in NYSCEF regarding the motion by defendants UBER TECHNOLOGIES, INC., and UBER USA LLC. (Uber) [Mot. Seq. 1], made pursuant to CPLR 3211(A)(1) and (7), seeking an order dismissing the complaint of plaintiff MARITZA TORO and all cross-claims against Uber. There is no opposition to the motion.

This is a personal injury action arising out of a motor vehicle accident that occurred on May 19, 2019 at the intersection of Hunts Point Avenue and Faile Street in Bronx County, N.Y. (the Accident). Defendant Estrella was driving a vehicle which collided with a vehicle driven by defendant Garcia. In the complaint, plaintiff alleges that defendant Garcia was employed by Uber and that Uber owned the Garcia vehicle at the time of the Accident.

In support of the motion, Uber submits an attorney affirmation, a copy of the police report, DMV documents, copies of court decisions, and an affidavit by Todd Gaddis (Uber Data Science Manager).

On a motion to dismiss a complaint for failure to state a cause of action, the facts as alleged in the complaint must be accepted as true, the plaintiff afforded the benefit of every possible favorable inference, and the court's function is to determine only whether the facts as alleged fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83 [1994]). A court may consider evidentiary material submitted by a defendant in support of a motion to dismiss, pursuant to CPLR 3211(a)(7) (CPLR 3211; *Sokol v Leader*, 74 AD3d 1180 [2d Dept 2010]).

The evidence submitted in support of the motion makes a *prima facie* showing that, at the time of the Accident, defendant driver Garcia was not utilizing the Uber App and was not furthering the business of Uber and therefore Uber is not vicariously liability for the driver's negligence. Uber also demonstrates that it had no ownership or possessory interest in the Garcia vehicle at the time of the Accident. As such, Uber sets forth a showing warranting the grant of the motion.

Co-defendants and plaintiff, in turn, do not submit opposition to the motion. Accordingly, the motion is granted without opposition.

The court has considered the additional contentions specifically addressed herein. To the extent any relief requested was not addressed by the court, it is hereby denied.

Accordingly, it is hereby

ORDERED that the motion by defendants UBER TECHNOLOGIES, INC., and UBER USA LLC. (Uber) [Mot. Seq. 1], made pursuant to CPLR 3211(A)(1) and (7), seeking an order dismissing the complaint of plaintiff MARITZA TORO and all cross-claims against Uber is granted without opposition; and it is further

ORDERED that the Clerk shall enter judgment in favor of defendant Uber dismissing the complaint of plaintiff and all cross-claims against it; and it is further

ORDERED that the caption of this action shall henceforth read as:

-----X
MARITZA TORO,
Plaintiff, Index No.805732/2022E
-against -
RAMON GARCIA, QILSY ESTRELLA
and LYFT, INC.,
Defendants.
-----X

;and it is further

ORDERED that the Clerk shall mark motion seq 1 decided in in all court records; and it is further

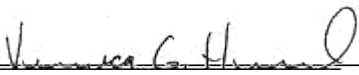
ORDERED that plaintiff shall upload NYSCEF form EF22¹ to NYSCEF within thirty (30) days from upload of this Order to facilitate the amendment of the caption.

The foregoing constitutes the Decision/Order of the court.

Dated: Bronx, New York

December 5, 2022

E N T E R,

Hon. 
HON. VERONICA G. HUMMEL, A.J.S.C.

¹ NYSCEF Form EF22 can be found at:
<https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.to.county.clerk.pdf>

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1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY x CASE STILL ACTIVE
2. MOTIONS ARE GRANTED,
.. X Granted
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER SCHEDULE APPEARANCE
☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT

AMEND CAPTION