SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JAMES G. CLYNES** **PART** **22**

Justice

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DILIP PATEL,

Plaintiff,

- v -

HUI LIANG JIANG, UBER USA, LLC, and LYFT, INC.,

Defendants.

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INDEX NO. 159922/2020

MOTION DATE 07/15/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 84, 85, 86, 87, 88, 91, 92, 93, 94, 95, 96, 97

were read on this motion to/for JUDGMENT - SUMMARY.

In this negligence action arising out of a motor vehicle accident, defendant Uber USA, LLC (Uber USA) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross-claims against it on the ground that it cannot be held vicariously liable for the alleged negligence of defendant Hu Liang Jiang (Jiang).

Background

Plaintiff Dilip Patel commenced this action to recover damages for personal injuries allegedly sustained on February 4, 2020, when the vehicle plaintiff owned and operated was involved in a collision with the vehicle owned and operated by Jiang (NY St Cts Elec Filing [NYSCEF] Doc No. 70, Magardician affirmation, exhibit O, ¶¶ 89-90). Plaintiff alleges that Jiang was employed by Uber USA or defendant Lyft Inc. (Lyft) when Jiang's vehicle "ran a red light" and collided with plaintiff's vehicle at the intersection of Charles and Bleecker Streets in New York County (*id.*, ¶¶ 24, 59 and 91).

Uber USA repeatedly denied any employment or agency relationship with Jiang in its verified answer (NYSCEF Doc No. 71, Magardician affirmation, exhibit P, ¶¶ 6, 8, 20-68, 90-96). Uber USA also asserted as a twelfth affirmative defense that "at no time or place set forth in the Complaint did any other defendant or third person alleged to be at fault operate as the agent or employee of Defendant, such that Answering Defendants can be held vicariously liable for their acts," and Uber alleged as a fifteenth affirmative defense that the complaint " is barred … under the independent contractor defense because at all times relevant hereto … Jiang, was an independent contractor responsible for his own means and methods, thereby making the doctrines of respondeat superior and agency inapplicable" (*id.* at 23-24).

Plaintiff has since discontinued the action against Lyft (NYSCEF Doc No. 89, stipulation of discontinuance). Plaintiff has also been granted summary judgment against Jiang on the issue of Jiang's liability and dismissal of Jiang's first, third and sixth affirmative defenses (NYSCEF Doc No. 81).

Uber USA now moves for summary judgment dismissing the complaint and all cross-claims against it on the ground that Jiang was an independent contractor, not an employee, and as such, Uber USA cannot be held vicariously liable for Jiang's alleged negligence.[1] Uber USA also argues that it did not own Jiang's vehicle when the accident occurred. Uber USA relies on an affidavit from Erin O'Keefe (O'Keefe), Jiang's deposition transcripts, and other exhibits.

O'Keefe, a Senior Manager, Corporate Business Operations, for Uber Technologies, Inc. (Uber Technologies) (together with Uber USA, Uber), avers that she oversees a certain amount of Uber's operations in New York, including those of its wholly owned subsidiary, Uber USA (NYSCEF Doc No. 59, Magardician affirmation, exhibit D, O'Keefe aff, ¶¶ 1, 3, and 8). O'Keefe

[1] Neither Jiang nor Lyft pleaded any cross-claims against Uber USA (NYSCEF Doc No. 31, Jiang amended answer; NYSCEF Doc No. 72, Magardician affirmation, exhibit Q).

explains that Uber Technologies uses "proprietary technology to develop and maintain digital multi-sided marketplace platforms" (*id.*, ¶ 5). Uber provides two versions of its Uber mobile application – a rider version (the Rider App) and a driver version (the Driver App) (*id.*, ¶ 6). The Rider App allows riders to request rides from independent third-party transportation providers, and the Driver App connect drivers with potential riders (*id.*).

O'Keefe states that in New York City, Uber USA sublicenses the Driver App to independent third-party transportation providers licensed by the New York City Taxi & Limousine Commission (TLC) (*id.*, ¶ 8). Prospective drivers signing up for the Driver App must furnish Uber with the documentation required by TLC and provide other documents online before they may access the Driver App (*id.*, ¶ 9). Prospective drivers must also consent to reading, accepting and entering into a Platform Access Agreement (PAA) with Uber USA, after which an electronic receipt bearing a time and date stamp is generated (*id.*, ¶¶ 10 and 12).

O'Keefe avers that Jiang created an account with Uber USA, provided documents, including photocopies of a valid drivers' license and a valid TLC license, proof of commercial insurance, and TLC-plated vehicle registration, and electronically accepted and agreed to the PAA on or about January 10, 2020 (*id.*, ¶¶ 13 and 16). Section 1.1 of PAA reads as follows:

> **"1.1. Company's Relationship with Uber.**
>
> (a) The relationship between you and Uber is solely as independent business enterprises, each of whom operates a separate and distinct business enterprise that provides a service outside the usual course of business of the other. *This is not an employment agreement and you are not an employee of Uber*. You confirm the existence and nature of that contractual relationship each time you access our Platform. We are not hiring or engaging you to provide any service; you are engaging us to provide you access to our Platform. *Nothing in this Agreement creates, will create, or is intended to create, any employment, partnership, joint venture, franchise, or sales representative relationship between you and us*. You have no authority to make or accept any offers or representations on our behalf.

> (b) We do not, and have no right to, direct or control you. Subject to Platform availability, you decide when, where and whether (a) you want to offer For-hire Service facilitated by our Platform and (b) you want to accept, decline, ignore or cancel a Ride (defined below) request; provided, in each case, that you agree not to discriminate against any potential Rider in violation of the Requirements (defined below). Subject to your compliance with this Agreement, you are not required to accept any minimum number of Rides in order to access our Platform and it is entirely your choice whether to provide For-hire Service to Riders directly, using our Platform, or using any other method to connect with Riders, including, but not limited to other platforms and applications in addition to, or instead of, ours. You understand, however, that your Riders' experiences with your Rides, as determined by Rider input, may affect your ability to access our Platform or provide Rides" (NYSCEF Doc No. 65, O'Keefe aff, exhibit J at 3) (emphasis added).

O'Keefe maintains that Jiang was responsible for purchasing his own vehicle, tools and equipment, insurance and gas; could determine when, where, and how long he wished to work, what clothing he wished to wear, and which navigation system to use (NYSCEF Doc No. 59, ¶¶ 16-17). O'Keefe further avers that Uber did not pay Jiang a wage or salary or fringe benefits nor did Uber withhold any taxes (*id.*, ¶ 18). For each trip Jiang completed, Uber deducted a service fee from the trip amount charged to each rider, with Jiang retaining the remainder (*id.*).

Jiang testified at his deposition that he first began driving for Uber and Lyft in 2017 (NYSCEF Doc No. 60, Magardician affirmation, exhibit E, Jiang 3/28/2023 tr at 23-24). Prior to driving for either company, Jiang obtained a license from TLC, which entailed undergoing a background check and a medical examination (*id.* at 29; NYSCEF Doc No. 61, Magardician affirmation, exhibit F, Jiang 4/4/2024 tr at 19). TLC also provided Jiang with training (NYSCEF Doc No. 61 at 20).

Jiang testified that he was subject to Uber's rules (NYSCEF Doc No. 60 at 27). These included a requirement that he post a sign bearing Uber's and Lyft's logos inside his vehicle; he could not accept direct payments from customers; and he could not decline customers who had

requested transportation (*id.* at 28-29). Jiang also stated that he could not drive more than 60 hours per week, though he believed this limitation wasimposed by TLC (*id.* at 55).

Jiang testified that he owned the vehicle he was driving on the date of accident (*id.* at 21 and 56). No one from Uber monitored the vehicle while he was driving it, and Jiang's interactions with Uber were solely through the Driver App (*id.* at 51-52). Uber did not pay for gas, maintenance or inspections of his vehicle (*id.* at 57). Uber did not prohibit Jiang from driving in certain geographic areas (*id.* at 55) nor did Uber prohibit him from using Lyft's app (*id.* at 59). Jiang stated that he created his own schedule, including what days and hours to work and when to take breaks (*id.* at 53-55); chose what clothing to wear while driving (*id.* at 52); purchased his own gas (*id.* at 57); and chose his own navigation system rather than using Uber's navigation system (*id.* at 56). Uber did not help Jiang pay for his vehicle (*id.* at 56). The only "equipment" Uber furnished was its mobile app, which Jiang accessed through his personal cell phone (*id.* at 58). Jiang added that Uber did not furnish him with health insurance, retirement benefits or vacation pay, and that Uber issued a 1099 form to him in 2020 (*id.* at 59-60).

Jiang testified the accident occurred between 5 a.m. and 6 a.m. somewhere "downtown" (*id.* at 15). Jiang was logged into both the Uber and Lyft mobile apps when the accident occurred, though he had not acquired any customers so "that's why [he] was driving slowly in that neighborhood" (*id.* at 24-25; NYSCEF Doc No. 61 at 12). Jiang admitted that video of the accident taken from a camera mounted on his dashboard showed him traveling through a steady red traffic light (NYSCEF Doc No. 60 at 12 and 47).

Plaintiff, in response to the motion, argues that Uber USA has failed to meet its prima facie burden. More specifically, plaintiff maintains that the PAA is not admissible because O'Keefe did not certify or authenticate it as a business record; O'Keefe failed to identify the business records

on which she relied in making her averments; O'Keefe's statement that she has access to Uber's records does not vest her with personal knowledge and constitutes inadmissible hearsay; O'Keefe failed to state that she had personal knowledge of whether Jiang read and consented to the PAA; Uber failed to submit any evidence that Jiang had electronically accepted the PAA; and O'Keefe failed to indicate the source of her knowledge. Plaintiff also contends that Uber exercised sufficient control over Jiang to establish an employment relationship. Last, plaintiff contends that discrepancies between O'Keefe's averments and Jiang's testimony creates issues of credibility that cannot be resolved on summary judgment.

Discussion

A party moving for summary judgment bears the burden of "mak[ing] a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The "facts must be viewed in the light most favorable to the non-moving party" (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024] [internal quotation marks and citation omitted]). If the moving party meets its prima facie burden, "the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for [its] failure so to do" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

"The doctrine of respondeat superior renders an employer vicariously liable for torts committed by an employee acting within the scope of the employment" (*Judith M. v Sisters of Charity Hosp.*, 93 NY2d 932, 933 [1999]). "Pursuant to this doctrine, the employer may be liable when the employee acts negligently or intentionally, so long as the tortious conduct is generally foreseeable and a natural incident of the employment" (*id.*, citing *Riviello v Waldron*, 47 NY2d

297, 304 [1979]; *see also Brothers v New York State Elec. & Gas Corp.*, 11 NY3d 251, 257 [2008], quoting *Feliberty v Damon*, 72 NY2d 112, 117-118 [1988] ["[t]ypically, 'liability in negligence is ... premised on a defendant's own fault, not the wrongdoing of another person' ... [but] '[u]nder the doctrine of vicarious liability, ... liability for another person's wrongdoing is imputed to the defendant'"]).

By contrast, a party who hires an independent contractor is generally not liable for that contractor's negligent acts (*Kleeman v Rheingold*, 81 NY2d 270, 273 [1993]). "The primary justification for this rule is that one who employs an independent contractor has no right to control the manner in which the work is to be done and, thus, the risk of loss is more sensibly placed on the contractor" (*Brothers*, 11 NY3d at 257-258 [internal quotation marks and citation omitted]).

The Court of Appeals has explained:

> "The distinction between an employee and an independent contractor has been said to be the difference between one who undertakes to achieve an agreed result and to accept the directions of his employer as to the manner in which the result shall be accomplished, and one who agrees to achieve a certain result but is not subject to the orders of the employer as to the means which are used" (*Matter of Morton*, 284 NY 167, 172 [1940], *mot to amend remittitur denied* 284 NY 738 [1940]).

Thus, key to the existence of an employer/employee relationship, as opposed to an independent contractor relationship, is "the degree of control exercised by the purported employer over the results produced or the means used to achieve the results" (*Bynog v Cipriani Group*, 1 NY3d 193, 198 [2003], *rearg denied* 2 NY3d 794 [2004]; *Quik Park W. 57 LLC v Bridgewater Operating Corp.*, 148 AD3d 444, 445 [1st Dept 2017] ["control of the method and means by which work is to be performed is a critical factor in determining whether one is an independent contractor or an employee"]). "Factors relevant to assessing control include whether the worker (1) worked at [the worker's] own convenience, (2) was free to engage in other employment, (3) received fringe benefits, (4) was on the employer's payroll and (5) was on a fixed schedule" (*Bynog*, 1 NY3d at

198). "'Minimal or incidental control over a person's work product without direct supervision or input over the means used to complete the work is insufficient to establish a traditional employment relationship'" (*Meehan v County of Suffolk*, 144 AD3d 640, 641 [2d Dept 2016], quoting *Parisi v Loewen Dev. Corp.*, 5 AD3d 646, 647 [2d Dept 2004]). Additionally, "the mere retention of general supervisory powers over an independent contractor cannot form a basis for the imposition of liability against the principal" (*Goodwin v Comcast Corp.*, 42 AD3d 322, 323 [1st Dept 2007]). Whether a worker is an independent contractor or an employee is usually a question for the jury, but the issue may be decided as a matter of law "where the evidence on the issue of control presents no conflict" (*id.* 322-323).

Under these principles, Uber USA has demonstrated its prima facie entitlement to summary judgment. Jiang testified that he worked at his own convenience, was free to engage in other employment, and did not receive employment benefits, like health insurance or vacation pay. Jiang received a 1099 tax form and not a W-2 form from Uber USA. Jiang chose what to wear when he worked and when and where he worked. He purchased his vehicle without Uber USA's assistance, purchased his own automobile insurance, and paid for all gas, maintenance and inspections. Jiang also chose his own navigation system to determine which route to take for each trip. This evidence establishes that Jiang was an independent contractor when the accident occurred (*see Sebrow v Joe & Mike Taxi, Inc.*, 157 AD3d 590, 591 [1st Dept 2018] [driver "who received no salary, retained his own fares, and had the sole responsibility and control over the manner and means of providing taxi services" was an independent contractor]; *Alves v Petik*, 136 AD3d 426, 426 [1st Dept 2016] [driver worked at his own convenience and on his own schedule, was free to work for competitors, did not receive a fixed salary or benefits, and paid all costs associated with the vehicle he owned]; *Sanabria v Aguero-Borges*, 117 AD3d 1024, 1025-1026 [2d Dept 2014] [driver was free to work

for others, did not receive fringe benefits, had no taxes withheld, and received a 1099 form]; *Chaouni v Ali*, 105 AD3d 424, 424-425 [1st Dept 2013] [driver owned and maintained his own vehicle, paid for his own automobile insurance, set his own work schedule, did not have taxes withheld from his paycheck, received a 1099 form, could accept or reject any dispatch, took breaks when he chose, and could work for other dispatch companies]). The fact that Jiang displayed Uber's logo in his vehicle is insufficient (*see Barak v Chen*, 87 AD3d 955, 957 [2d Dept 2011]).

Plaintiff fails to raise a triable issue of fact in opposition. First, plaintiff attacks the admissibility of Uber USA's evidence, such as the PAA and the statements in O'Keefe's affidavit. Assuming, without deciding, that the PAA is inadmissible and that O'Keefe's affidavit is defective (*see e.g. 938 St. Nicholas Ave. Lender, LLC v 936-938 Cliffcrest Hous. Dev. Fund Corp.*, 218 AD3d 417, 418 [1st Dept 2023]), whether a contract labels a worker an independent contractor is not dispositive and is just one factor to consider on the issue of control (*see Brielmeier v Leal*, 226 AD3d 955, 957 [2d Dept 2024]). In this case, Uber USA has presented other evidence in support of its motion.

Plaintiff also argues that Uber's Community Guidelines, which are referenced in the PAA, establishes that Uber exerted significant control over its drivers. Plaintiff, however, has not demonstrated that the guidelines, which were last modified on April 22, 2024 (NYSCEF Doc No. 87, Shafer affirmation, exhibit D), were in effect on the date of the accident in 2020. Furthermore, the guidelines discuss general issues, like treating others with respect and prohibiting physical contact and property damage (*id.*). These guidelines are "indicative of mere incidental or general supervisory control," which is insufficient to establish the requisite control over the means of the actual work (*Alves*, 136 AD3d at 426; *see also Armacida v D.G. Neary Realty Ltd.*, 65 AD3d 984,

984 [1st Dept 2009] [finding that an office manual "merely sets forth guidelines that are not indicative of the control needed to establish an employer-employee relationship"]).

Plaintiff's reliance on *Matter of Vega (Postmates Inc.-Commissioner of Labor)* (35 NY3d 131, 137-140 [2020]), *Matter of Hossain (Goundanywhere LLC-Commissioner of Labor)* (205 AD3d 1282, 1282 [3d Dept 2022]) and *Matter of Lowy (Uber Tech., Inc.-Commissioner of Labor)* (189 AD3d 1863, 1863 [3d Dept 2020], *lv dismissed* NY3d 1045 [2021]) and for the proposition that an employment relationship exists between Uber and drivers is misplaced. Those matters concerned whether an employment relationship between a claimant seeking unemployment insurance benefits and the entity for whom the claimant worked existed. In any event, apart from certain exceptions not relevant here, a decision rendered in connection with a disputed claim for unemployment insurance benefits is not entitled to preclusive effect in a subsequent action or proceeding (*see* Labor Law § 623 [2]; *Uy v Hussein*, 186 AD3d 1567, 1569 [2d Dept 2020]).

Soares v Rahmatulloev (— AD3d —, 2025 NY Slip 00494 [1st Dept 2025]) is also distinguishable. The Uber defendants in *Soares* had argued that the defendant driver, Najibullo Rahmatulloev (Rahmatulloev), was "offline" on the Driver App seven minutes before the accident (*id.* at *1). The Appellate Division, First Department concluded that "[t]his was insufficient to establish that Rahmatulloev was not acting within the scope of his alleged employment with Uber at the time of the accident," and denied the Uber defendants' motion for summary judgment (*id.* at *1-2). The Uber defendants, however, did not argue that Rahmatulloev was an employee or independent contractor in its initial moving papers (brief for appellant in *Soares v Rahmatulloev*, — AD3d —, 2025 NY Slip 00494 [1st Dept 2025], available at 2024 WL 5326396, *18), nor did the Appellate Division, First Department address whether Rahmatulloev was an independent contractor. Instead, the Uber defendants' argument in their underlying motion centered on whether

Rahmatulloev's "offline" status on the Driver App meant that Rahmatulloev could not have been acting within the scope of any employment on Uber's behalf (brief for respondents in *Soares v Rahmatulloev*, — AD3d —, 2025 NY Slip 00494 [1st Dept 2025], available at 2024 WL 5326398, * 3). Here, whether Jiang had logged into the Uber or Lyft apps or both before the accident does not invalidate his status as an independent contractor.

The alleged discrepancy between O'Keefe's averments and Jiang's testimony on whether Jiang visited a physical Uber office to sign-up for the Driver App also fails to raise an issue of material fact whether Uber controlled the results produced or the means used to achieve them.

In *Kleeman*, the Court of Appeals also articulated three exceptions to the general rule against vicarious liability for an independent contractor's negligence: "negligence of the employer in selecting, instructing or supervising the contractor; employment for work that is especially or 'inherently' dangerous; and, finally, instances in which the employer is under a specific nondelegable duty" (81 NY2d at 274). Plaintiff has not raised whether any of these exceptions apply.

Accordingly, it is

ORDERED that motion of defendant Uber USA, LLC for summary judgment (motion sequence no. 003) is granted, and the complaint is dismissed against said defendant; and it is further

ORDERED that the said claims against defendant Uber USA, LLC are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Uber USA, LLC dismissing the claims made against it in this action; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that the amended caption is as follows:

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

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DILIP PATEL, Index No. 159922/2020

Plaintiff,

- against -

HUI LIANG JIANG,

Defendant.

----------x

; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the Decision and Order of the Court.

3/14/2025
DATE

JAMES G. CLYNES, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE