

Joseph v Blake

2025 NY Slip Op 32186(U)

June 17, 2025

Supreme Court, Kings County

Docket Number: Index No. 500618/19

Judge: Wayne P. Saitta

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17th day of June, 2025.

P R E S E N T:

HON. WAYNE P. SAITTA,

Justice.

-----X

GOUDELIN JOSEPH,

Plaintiff,

-against-

BRANDON BLAKE,
MAN ZHANG,
UBER TECHNOLOGIES, INC.,
and UBER U.S.A., LLC,

Defendants.

-----X

DECISION/ORDER

Index No. 500618/19

Mot. Seq. No. 8

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

| | |
|---|----------------|
| Notice of Motion, Affirmations, and Exhibits Annexed_____ | <u>124-181</u> |
| Affirmation in Opposition and Exhibits Annexed_____ | <u>186-202</u> |
| Reply Affirmation and Exhibits Annexed_____ | <u>203-211</u> |
| Uber Defendants' Pre-Argument Submission_____ | <u>213-219</u> |

On Sunday evening, September 23, 2018, plaintiff Goudeline Joseph (“plaintiff”) was allegedly injured while riding as a passenger in a for-hire vehicle owned and operated by defendant Man Zhang (“Zhang”). During the ride, Zhang allegedly rolled through a stop sign and entered an intersection, resulting in his vehicle being struck on the side by the vehicle owned and operated by co-defendant Brandon Blake (“Blake”).¹ At the time of the accident,

¹ Plaintiff’s EBT transcript, page 42, line 2 to page 43, line 9; page 49, lines 5-14 (NYSCEF Doc No. 24). Blake’s EBT transcript, page 30, lines 18-24; page 33, lines 9-16 (NYSCEF Doc No. 25). Unlike plaintiff and Blake, Zhang attributed the cause of the accident to Blake’s failure to turn on the headlights immediately before and at the intersection. Zhang’s EBT transcript, page 31, lines 8-11; page 35, lines 7-8 (“The other driver told (footnote continued)

both plaintiff and Zhang were participants in the Rides Platform owned and operated by defendants Uber Technologies, Inc. and Uber USA, LLC (incorrectly sued herein as Uber U.S.A., LLC) (collectively, “Uber”).

In October 2020, plaintiff commenced an action to recover damages for personal injuries against, among others, Uber, alleging that Zhang was employed by Uber and was acting within the scope of his employment for Uber at the time of the accident. After Uber answered the complaint and the parties engaged in discovery, Uber moved, pre-Note of Issue, for summary judgment dismissing plaintiff’s claims and co-defendants’ cross-claims against it. Plaintiff opposed. On June 4, 2025, the Court reserved decision on Uber’s motion.

The record reflects that Uber offers a consumer-oriented version of its application (the “User App”) that operates by matching those in need of a ride (such as plaintiff) to ride-hailing drivers (such as Zhang) available to give them rides using their own vehicles. Riders (such as plaintiff) log into their personal accounts with Uber through the latter’s User App and request a ride from one place to another.² In turn, Uber matches riders with the nearby drivers who are then logged into Uber’s driver-oriented version of its application (the “Driver App”) and who affirmatively accept giving rides. Uber encourages riders to obtain transportation from –

me [that he had] the stop sign, I should stop and let [him] go first. And I said I didn’t see [his] vehicle” because “the headlight of [his] vehicle was not on.”) (NYSCEF Doc No. 173); Zhang’s EBT transcript, page 34, lines 2-4 (“I said [the driver of the other vehicle] didn’t . . . turn on the headlight, . . . so I didn’t see him.”); Zhang’s EBT transcript, page 58, line 11 to page 59, line 10.

² Plaintiff’s EBT transcript, page 27, lines 17-22; page 33, lines 4-13; page 33, line 21 to page 34, line 2.

and for drivers to drive for – Uber through the User App and the Driver App, respectively, as well as through its Web site.

An equally important part of Uber’s business model focuses on finding qualified transportation providers, both businesses and individuals. In this case, Zhang, as the independent owner/driver, acted both as an Uber’s business customer and as an Uber driver. To enroll into the Rides Platform, Zhang visited an office where he was asked to produce his social security number, his New York State driver’s license, his TLC license, and the photograph of his vehicle (a 2015 Lexus RX 350).³ During his office visit, Zhang was taught how to use the Driver App.⁴ He was cautioned that he could not use the Driver App “more than 40 hours a week.”⁵

Zhang was taught that once a rider’s request was queued into the Rides Platform, he was required to either accept or reject the rider’s request if he was online (*i.e.*, logged into the Driver App) and was located nearby (as determined by Uber’s algorithm). He was required to respond to the rider’s request either affirmatively or negatively, but could not let it expire.⁶ As Zhang explained in his pretrial testimony, once he accepted a rider’s request, the Rides Platform controlled the means and methods of his job of “tak[ing] the customer from point A to point B,” as more fully set forth in the margin.⁷ According to Zhang, if he rejected too many

³ Zhang’s EBT transcript, page 38, line 8 to page 39, line 8.

⁴ Zhang’s EBT transcript, page 39, line 24 to page 40, line 14.

⁵ Zhang’s EBT transcript, page 42, lines 17-20.

⁶ Zhang’s EBT transcript, page 43, lines 13-19.

⁷ Zhang’s EBT transcript, page 63, line 10 to page 67, line 19 (“Q. Does Uber control the method in which you get that job? A. I think it is automatic by the computer.” Q. Is Uber’s [platform] providing you with option of
(footnote continued)

ride requests while logged into the Rides Platform, “it would have a negative consequence” to him, in that he could “probably get [a] bad review.”⁸ As Zhang understood it, once he accepted a ride, he had “no right to reject it” afterward.⁹

While transporting his passengers, Zhang was using the Uber-provided navigation system, although he could have (if he had wanted) used a non-Uber-provided navigation system.¹⁰ In general, Zhang “follow[ed] [the] [Rides Platform] . . . [and the] Uber navigation, unless it [was] requested [otherwise] by the [rider],”¹¹ with a proviso that Uber “may adjust [*i.e.*, reduce] a particular Rider Payment (including the Fare portions) for . . . inefficient

jobs to choose from prior to you choosing on the Uber [platform] which Uber job to take? . . . A. No.” Q. . . [Five second before the accident] occurred, were you in the course of performing an Uber taxi job? . . . A. Yes. Q. . . [With respect to plaintiff’s request for a ride,] . . . did you choose to accept that job on the Uber platform? A. Yes. Q. Did you have other options to choose from on the Uber [platform] prior to selecting [plaintiff’s request for a ride] on the Uber platform? A. No. Q. When you selected . . . [plaintiff’s request for a ride] on the Uber platform, . . . were there other jobs [*i.e.*, requests for a ride] available to choose from . . . in that area on your map? . . . A. No. . . . Q. . . . [I]s it fair to say that Uber controls the method in which you perform your employment, your work? . . . A. Yes. Q. . . . [I]s it fair to say that you understand the question now and you are saying yes, in the affirmative[,] [to] that question? A. Yes. Q. Other than the method, . . . does Uber control the manner in which you perform your taxi services work? . . . A. I just follow whatever Uber told me. . . . Q. [I]s it fair to say that Uber . . . has the right to control whether or not you continue to perform your taxi services on the Uber platform? . . . A. Yes.”) (emphasis added).

⁸ Zhang’s EBT transcript, page 43, line 23 to page 44, line 12; page 70, lines 20-21 (“[I]f I keep rejecting [rides], of course, it is not good.”); page 72, lines 17-19 (“I think if you reject [rides] so many times, I think your account [with Uber] will directly go off[-]line.”); page 74, lines 17-20 (“I think Uber . . . categorize[s] its drivers [on] many different levels, so if you reject the offer[ed] rides too many times, [then] you would be downgraded to a certain level.”); page 74, line 23 to page 75, line 2 (“[T]he number of rides you rejected was showing on the [Uber] platform. . . . [I]f you reject so many rides, you will be downgraded to another level.”).

⁹ Zhang’s EBT transcript, page 68, lines 16-19.

¹⁰ Zhang’s EBT transcript, page 46, line 19 to page 47, line 18.

¹¹ Zhang’s EBT transcript, page 47, line 19 to page 48, line 6.

routes.”¹² According to Zhang, Uber withheld taxes from his earnings before transferring them to his bank account.¹³

The contract between Uber and a transportation business, such as that of Zhang (known as the “Technology Services Agreement” or “TSA”), provides that their relationship is not one of employment. Rather, the TSA specifies that the parties are in “a direct business relationship,” and that “Uber does not, and shall not be deemed to, direct or control, its Customer or Drivers generally[,] or in their performance under [the TSA] specifically, including in connection with the operation of the Customer’s business, the provision of [rides], the acts or omissions of Drivers, or the operation or maintenance of any Vehicles.”¹⁴

¹² Uber USA, LLC’s Addendum, last updated on May 22, 2017 (the “Financial Terms Addendum”), § 4.1. The Financial Terms Addendum replaced the entirety of Section 4 (Financial Terms) of the TSA, as more fully described below. Zhang electronically accepted the May 22, 2017 version of the Financial Terms Addendum.

¹³ Zhang’s EBT transcript, page 54, lines 20-23; page 55, lines 18-25. Zhang equivocated in his pretrial testimony as to whether he could collect cash tips (*compare* Zhang’s EBT transcript, page 57, lines 2-12, *with* Zhang’s EBT transcript, page 57, lines 13-17).

¹⁴ TSA, with the last update of December 11, 2015, § 2.4; see also § 13.1 (“[T]he relationship between the parties under this Agreement is solely that of independent contracting parties.”) (bold-faced type omitted). The entirety of the TSA and other Uber-related documents which Zhang electronically accepted are annexed as Exhibits to the pretrial deposition transcript of Erin O’Keefe (“O’Keefe”), dated December 17, 2024 (NYSCEF Doc No. 180).

When deposed in December 2024, O’Keefe was a senior manager in Uber’s Department of City Operations in the Chicago office, with the Chicago office being only one of Uber’s five, US-based offices which included New York’s office. *See* O’Keefe’s EBT transcript, page 13, lines 3-7; page 18, lines 12-19. O’Keefe conceded that, as a Chicago-based senior manager for the local Department of City of Operations, she was not familiar with the operations of Uber’s New York office, which she characterized (at page 39, lines 9-13) as “unique” and “a rather large market place.” In addition, O’Keefe conceded (at page 15, lines 3-18) that she had no specific familiarity with the Rides Platform because she was not a Product Engineer, nor did she work on the Product Team. According to O’Keefe (at page 17, lines 11-18), “[t]he Engineering Team [was] responsible for all of the infrastructure behind [Uber’s technology],” whereas “the Product Team [was] responsible for the technology and software applications.” Lastly but equally important, O’Keefe’s pretrial testimony was circumscribed by her endless use of broad qualifiers, such as: (1) “typically”; (2) “likely”; (3) “[i]n general”; (4) “that’s possible”; (5) “[n]ot specifically, though it can be possible”; (6) “[t]here is a potential”; (7) “[n]ot necessarily”; (8) “I’m just imagining the outside scenario”; (9) “it would be dependent on what’s happening in the market at that time”; and (10) “[i]t would depend on the individual circumstances.” *See* O’Keefe’s EBT transcript (footnote continued)

As the condition precedent to being able to drive for Uber, Zhang (now in the capacity as a driver for his own transportation business) separately accepted Uber's "Driver Addendum" ("DA").¹⁵ The DA operates on a more granular level than the TSA. As a general matter, the DA recites that Uber has no right to direct or control the drivers.¹⁶ Rather, the DA merely allows drivers to use the Driver App, with the drivers deciding whether and when to log into the Driver App, and whether to accept or decline a ride request, albeit "subject to Uber's then-current cancellation policies."¹⁷ After accepting a ride request, drivers are provided by the Rides Platform with "certain [rider] information . . . via the Driver App, including the [rider's] first name and pickup location,"¹⁸ but not the rider's destination.¹⁹ Drivers are recommended (but not required) to wait at least ten minutes for their riders to show up at the requested pick-up locations.²⁰ Drivers "will obtain the destination from the [riders], either in person or upon pickup[,] or from the Driver App if the [riders] elect[] to

transcript, page 32, line 15; page 33, line 14; page 34, lines 3 and 15; page 35, lines 16 and 24; page 36, lines 7, 13, 18, and 25; page 38, line 25 to page 39, line 2; page 44, lines 11 and 18; page 46, line 9; page 52, line 3; page 61, line 11; page 65, lines 2 and 20; page 68, line 22; page 69, line 8; page 71, lines 7 and 18-19; page 72, lines 5-6; page 74, line 24; page 75, lines 14-17; page 76, line 9; page 77, line 18; page 78, lines 20-21 and 25; page 79, line 21; page 79, line 25 to page 80, line 2; page 81, lines 3-4 and 12; page 82, line 5; page 95, line 16; page 97, lines 12 and 25; page 101, line 16.

¹⁵ Because Zhang was both a transportation business and a driver of that business, he electronically accepted both the TSA and the DA. Although the last update of the TSA and the DA, as annexed in paper form to Uber's motion, are both dated December 11th, Zhang electronically accepted both documents one day prior, on December 10th, as indicated in the "Reg Doc Title" column of Uber's list of Zhang's electronically accepted documents. The court record does not reflect whether there is any variance between the December 10th version of the TSA and the DA which Zhang electronically accepted, and the December 11th version of the same documents which are annexed in hard copy to Uber's motion.

¹⁶ DA, § 2.3 ("Uber does not, and shall not be deemed to, direct or control Driver generally or in Driver's performance of [rides] or maintenance of any Vehicles.").

¹⁷ DA, § 2.3

¹⁸ DA, § 2.2.

¹⁹ O'Keefe's EBT transcript, page 61, lines 16-17 ("The ride request wouldn't have destination information.").

²⁰ DA, § 2.2.

enter such destination via Uber’s [User app].”²¹ In turn, Uber “may provide certain information about [the drivers] to [the corresponding riders], including [their] first name, contact information, . . . and [their] Vehicle make and license plate number.”²² Drivers may not bring their friends along while providing rides.²³ Drivers must “transport all [riders] directly to their specified destination, as directed by [them], without unauthorized interruption or unauthorized stops.”²⁴

Uber ensures that its drivers meet certain standards before authorizing them to use the Driver App and to hold themselves out as providers of the Uber transportation services. The drivers are required to pass “certain background and driving record checks from time to time in order to qualify to provide, and remain eligible to provide, [rides].”²⁵ They are required to “maintain high standards of professionalism, service and courtesy.”²⁶ They must agree that their vehicles will be properly registered and insured,²⁷ as well as (and more broadly) “meet[] the then-current Uber requirements for a vehicle on the Uber [platform].”²⁸ Although drivers’ vehicles may (but need not) display an Uber sign, Zhang’s vehicle “had the [Uber] logo on the window of the driver’s side.”²⁹

²¹ DA, § 2.2.

²² DA, § 2.2.

²³ DA, § 2.2.

²⁴ DA, § 2.2.

²⁵ DA, § 3.

²⁶ DA, § 3.

²⁷ DA, §§ 3 and 6.

²⁸ DA, § 1.13; TSA, § 1.20.

²⁹ Blake’s EBT transcript, page 28, lines 11-14.

Uber offers incentives for drivers to drive at times when (or in areas where) there is higher demand. Uber may monitor or collect information about drivers' locations, communications with riders, and driving habits.³⁰ Utilizing the Uber Platform, drivers and riders may (but need not), at the conclusion of each ride, rate each other from 1 to 5, with 1 being the lowest and 5 being the highest rating. Although Uber does not monitor the ratings in real time, its technology is capable of using (and does use) riders' ratings to deactivate the accounts of unpopular drivers.³¹

Riders pay fares through the User Apps, and Uber deducts fees for each ride and remits the remainder of the payments to the drivers. Uber unilaterally sets the base fare rate, and, at the conclusion of each ride, calculates the time and distance rates.³²

Uber maintains a bank account for the benefit of drivers, separate from its corporate accounts, into which fares and tips are paid, then transmits to the drivers the fares and tips, less its fees. Uber does not compensate drivers for the time during which they are logged into the Driver App but are not transporting passengers. Uber does not provide overtime premiums

³⁰ DA, § 2.6; TSA, § 2.8.

³¹ The DA is silent as to the minimum rating which a driver is required to maintain to remain eligible to drive for Uber. For the Uber drivers who are enrolled in the UberBLACK and UberSUV program (as Zhang was in this case but who was not operating under that program at the time of the accident), the minimum average rating of 4.8 over a course of 100 qualifying trips is required. *See* Uber USA LLC Technology Services Agreement Addendum: UberBLACK and UberSUV Eligibility – New York, dated January 3, 2017, § 2.1 (which is included with the Exhibits to O'Keefe's EBT transcript).

³² O'Keefe's EBT transcript, page 53, lines 7-9 (The fare is "calculated by [Uber's] technology, and would include, and be affected by certain information, provided by the rider."); page 63, lines 12-14 ("[T]he final calculation [of the fare] would be based on the actual time and distance. . . . at the completion of the ride."). A driver cannot alter that price on his own, absent his/her subsequent appeal to (and the consent, if any, by) Uber's Customer Support.

or paid rest periods. Nor does Uber reimburse drivers for the expenses necessary to perform their work, such as vehicle maintenance, a mobile phone and data usage, or gasoline.

Uber (rather than drivers) exclusively addresses riders' complaints. A dissatisfied *rider* may bring his/her complaint to Uber's Customer Support. A dissatisfied *driver* may also bring his/her complaint to Uber's Customer Support and, absent resolution with Uber, may further escalate his/her complaint to the local chapter of the Independent Drivers Guild if he/she is its member.

In this action, Uber maintains that Zhang did not provide services for Uber (nor was he an employee of Uber) but instead was an independent contractor who paid for the use of the Driver App to find opportunities to earn money. Uber maintains that it is a technology company that develops and maintains (among others) the Rides Platform "where riders and drivers can be connected."³³ Uber asserts that the Rides Platform provides its users (meaning, drivers as sellers and riders as buyers) with matching and payment-processing services. Uber contends, in essence, that its employees are only those who work on its technology and who provide support services (such as compliance with federal and local laws), rather than the drivers in the field who use the leads and payment-processing functions of the Rides Platform to find and receive compensation from passengers. In opposition, plaintiff contends that under the circumstances of this case, a triable issue of fact exists as to whether Zhang is (or is not) an employee of Uber.

³³ O'Keefe's EBT transcript, page 9, lines 18-20.

“The doctrine of respondeat superior renders a master vicariously liable for a tort committed by his servant within the scope of employment” (*Rivera v Fenix Car Serv. Corp.*, 81 AD3d 622, 623 [2d Dept 2011]). “Conversely, the general rule is that an employer who hires an independent contractor is not liable for the independent contractor’s negligent acts” (*id.*). “[T]he critical inquiry in determining whether an employment relationship exists pertains to the degree of control exercised by the purported employer over the results produced or the means used to achieve the results” (*Brielmeier v Leal*, 226 AD3d 955, 956-957 [2d Dept 2024] [internal quotation marks omitted]). “The fact that a contract exists designating a person as an independent contractor is to be considered, but is not dispositive” (*Fernandez v Conklin*, 189 AD3d 784, 784 [2d Dept 2020] [internal quotation marks omitted]). “Whether an actor is an independent contractor or an employee is usually a factual issue for a jury” (*Brielmeier*, 226 AD3d at 957).

Here, Uber failed to establish, *prima facie*, that Zhang was an independent contractor at the time of the accident. Zhang’s pretrial testimony (as quoted in detail in the margin above) reflected his understanding that Uber controlled the methods and means of his work; namely, that Zhang (in his words) “just follow[ed] whatever Uber told [him].” Further, O’Keefe’s pretrial testimony (as also quoted in detail in the margin above) was inadequate to support Uber’s *prima facie* case for three major reasons: (1) she was working in a compliance-type position for the Chicago area in Uber’s local office, whereas the New York City was (in her words) “unique” and “a rather large market place”; (2) she was not involved with the technological aspects (*i.e.*, the substance) of Uber’s operations; and (3) her pretrial testimony,

taken as a whole, was not probative on the true relationship between Uber's New York City operations and its drivers because her testimony was replete with generalities and unsupported conclusions, as well as hedged about by qualifications further limiting its applicability to Uber's New York City operations in 2018.

Uber's recitation of several motion court-level dismissals as a defendant from personal injury cases involving its drivers is neither controlling nor persuasive. Ample appellate court precedent warrants denial of Uber's motion without the sufficiency of plaintiff's opposition (*see Soares v Rahmatulloev*, 234 AD3d 644, 645 [1st Dept 2025]; *Brielmeier*, 226 AD3d at 957; *Fernandez*, 189 AD3d at 785; *Uy v A. Hussein*, 186 AD3d 1567, 1570 [2d Dept 2020]; *Rivera*, 81 AD3d at 623).

The Court has considered the parties' remaining contentions and found them either unavailing or moot in light of its determination.

WHEREFORE, it is hereby ORDERED that Uber's motion is denied in its entirety.

This constitutes the decision/order of the Court.

ENTER,



J. S. C.