

**Diljohn v Wilmot**

2025 NY Slip Op 35058(U)

December 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 534589/2024

Judge: Wavny Toussaint

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At an IAS Term, Part 70 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 23<sup>rd</sup> day of December, 2025.

PRESENT: HON. WAVNY TOUSSAINT, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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AMRITTA DILJOHN,

Plaintiff,

Index No.: 534589/2024

MS # 1

**DECISION + ORDER**

-against-

TAHIR WILMOT, AR BROWN FONGCHOY,  
DMITRY NESTEROV, UBER TECHNOLOGIES,  
INC., and UBER USA, LLC,

Defendants.  
-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
and Affidavits (Affirmations) Annexed

27-28

Cross Motion and Affidavits (Affirmation) Annexed

46

Answers/Opposing Affidavits (Affirmations)

50

Reply Affidavits (Affirmations)

Affidavit (Affirmation)

Other Papers

Upon the forgoing papers, defendants Uber Technologies, Inc., and Uber U.S.A., LLC move (Seq. 01) for an order pursuant to CPLR § 2201, CPLR § 7503(c), and 9 U.S.C. § 3, for an immediate stay of this action and all discovery proceedings until completion of the arbitration between plaintiff, Amritta Diljohn (“Diljohn”) and defendants, among other

relief. Plaintiff opposes the motion.

### **BACKGROUND**

This action arises out of a motor-vehicle accident that occurred on May 30, 2024, at or around the intersection of Northbound Lefferts Boulevard and Pan Am Road/Aqueduct Road in Queens, New York. At the time of the accident, plaintiff was a passenger in a car operated by co-defendant Dmitry Nesterov, which came into contact with a vehicle leased by Tamir Wilmot and owned by AR Brown Fongchoy. Plaintiff alleges she connected with co-defendant Nesterov through the Uber app. Plaintiff signed an arbitration agreement when she signed up to use the app.

### **PARTIES' CONTENTIONS**

The Uber defendants' argue that the case should be stayed because it involves an arbitrable dispute that is governed by the Federal Arbitration Act. Uber argues that plaintiff waived the right to contest the arbitration by failing to timely file a petition to stay the arbitration, and notes that the process is already underway at the American Arbitration Association.

In opposition, plaintiff argues that defendants' motion should be denied because Uber has not shown that the issues in the pending state court action are inextricably interwoven. Plaintiff also notes that there are individuals named in the action that are not parties to the arbitration and asserts that arbitration cannot resolve the threshold issue of fault among the defendants who are not bound by the arbitration agreement. Finally, plaintiff argues that a full stay of the court action will prejudice both plaintiff and the remaining defendants by delaying litigation of the non-arbitrable claims.

In reply, the Uber defendants argue that plaintiff's reliance on CPLR § 2201 to assert that the Court has discretion to stay an action is misplaced, as that provision does not govern stays related to arbitration or those sought under CPLR § 7503(a). Instead, defendants contend that CPLR § 7503(a), expressly requires the Court to direct the parties to arbitrate and mandates that the order shall stay the action. Furthermore, defendants argue that the arbitrable and nonarbitrable claims are inextricably interwoven, as they arise from the same accident, involve the same parties, concern the same use of the Uber application, reply on the same agreements among the parties, and require resolution of the same issues—most notably, whether defendant Nesterov is an Uber employee. Defendants argue that denying the stay would risk inconsistent rulings from separate tribunals.

### DISCUSSION

Under the Federal Arbitration Act (FAA), when parties have entered into a valid agreement to arbitrate and a lawsuit is commenced that raises issues covered by that agreement, the court must—upon a party's request—pause the litigation until the arbitration is completed in accordance with the terms of the agreement. New York law reflects the same principle. CPLR § 7503(a) directs that when a party seeks to compel arbitration of an issue that arises in a pending action, the application must be brought by motion in that action, and, if granted, the order compelling arbitration automatically stays the court proceeding while arbitration goes forward. Additionally, CPLR § 2201 authorizes the court to issue a stay in appropriate circumstances.

The Second Department has repeatedly emphasized that when claims subject to arbitration are closely connected to claims that must be litigated, the preferred approach is

to suspend the court action until arbitration concludes (*Weiss v Nath*, 97 AD3d 661, 663 [2d Dept 2012]). This is particularly true where the resolution of the arbitrable issues, is likely to bear directly on, or even resolve, the remaining claims. (See *Lake Harbor Advisors, LLC v Settlement Services Arbitration and Mediation, Inc.*, 175 AD3d 479, 480 [2d Dept 2019]).

In the instant action, the record reflects that plaintiff and Uber are parties to a binding arbitration agreement, and the claims asserted against Uber plainly fall within its scope. The complaint sets forth a single, overarching cause of action against all defendants, and no discrete or independent claims exist that could be separated for litigation. (See *Weiss v Nath*, AD3d at 664). Under these circumstances, Uber is entitled to a stay of the current action until the arbitration concludes.

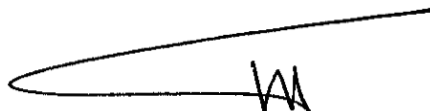
**CONCLUSION**

Accordingly, it is hereby,

**ORDERED** that co-defendants Uber Technologies, Inc., and Uber, U.S.A., LLC's motion for an Order to Show Cause (Seq. 01) is granted in its entirety, and the action is stayed pending the arbitration.

This constitutes the decision and order of the Court.

E N T E R

  
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J.S.C.

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