Jackson v Uber Tech., Inc.

2026 NY Slip Op 30179(U)

January 9, 2026

Supreme Court, New York County

Docket Number: Index No. 161447/2018

Judge: Christopher Chin

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CHRISTOPHER CHIN, *Justice*	PART 22
DARREN JACKSON, Plaintiff, - v - UBER TECHNOLOGIES, INC. and FIRUZA SAMIEVA, Defendants.	INDEX NO. 161447/2018
	MOTION DATE 09/24/2024, 10/29/2024
	MOTION SEQ. NO. 004 005
	DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 3, 4, 5, 6, 7, 8, 53, 57, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 123, 124, 125, 126

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 141, 142, 143, 144, 145, 146, 147, 148

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

Upon the foregoing documents, motion sequences 004 and 005 are consolidated for disposition and decided as follows. In motion sequence 004, plaintiff Darren Jackson (plaintiff) moves for summary judgment on the issue of liability against defendant Firuza Samieva (Samieva) and to strike her third affirmative defense. Plaintiff also moves to strike defendant Uber Technologies, Inc.'s (Uber's) second and fourth affirmative defenses. Samieva and Uber oppose the motion. In motion sequence 005, Uber moves for summary judgment dismissing the complaint and the cross-claim against it. Uber also moves for summary judgment dismissing the counterclaim against it.[1] Only plaintiff opposes Uber's motion.

[1] There is, however, no counterclaim against Uber as it is not the plaintiff. "A counterclaim may be any cause of action in favor of one or more defendants or a person whom a defendant represents against one or more plaintiffs, a person whom a plaintiff represents or a plaintiff and other persons alleged to be liable" (CPLR § 3019 [a]).

For the reasons stated below, plaintiff's motion is granted to the extent that the court finds defendant Samieva was negligent in causing the subject accident and is otherwise denied; and Uber's motion is denied except that portion with respect to dismissing the cross-claim.

Procedural history

Plaintiff, a bicyclist, commenced this action in December 2018 against defendants Uber and John Doe (Doe), alleging that he was injured on July 20, 2018 when he was struck by Doe's motor vehicle (NYSCEF Doc No. 76, summons and complaint). As alleged in the complaint, Doe was operating his own motor vehicle at the time of the accident pursuant to a contract with Uber.

Uber answered the complaint in May 2019 (NYSCEF Doc No. 77). In the answer, Uber denies an employment relationship with Doe, asserts ten affirmative defenses, and asserts three cross-claims against Doe. The second, fourth, seventh, and tenth affirmative defenses are relevant to the instant motions. The second affirmative defense is that plaintiff assumed the risk arising from the activity that he was participating in at the time of the accident, and therefore he is not entitled to damages. The fourth affirmative defense is that if plaintiff is entitled to damages, his recovery should be reduced in proportion to which his culpable conduct caused the accident. The seventh affirmative defense is that Uber did not own, operate, or control the vehicle involved in the accident. And the tenth affirmative defense is that plaintiff's claims "are barred, in whole or in part, under the independent contractor defense, as the defendant [Doe] was an independent contractor responsible for his own means and methods, making the doctrine of respondeat superior inapplicable" (*id.* at 6).

During the discovery stage of this action, plaintiff moved for leave to amend the summons and complaint to substitute Samieva in place of defendant Doe. The court granted the motion by

decision and order dated November 8, 2019. Notice of entry was filed on February 26, 2020 (NYSCEF Doc. No. 12). Samieva answered the amended complaint in July 2020 (NYSCEF Doc No. 79). In the answer, Samieva denies material allegations, asserts eight affirmative defenses, and asserts a cross-claim against Uber. The third affirmative defense and the cross-claim are relevant to the instant motions. The third affirmative defense alleges culpable conduct on the part of plaintiff, including contributory negligence or assumption of risk. The cross-claim against Uber is for indemnification and/or contribution.

Plaintiff was deposed in December 2021 and Erin O'Keefe (O'Keefe), a senior manager for Uber's corporate business operations, was deposed in March 2024 (NYSCEF Doc Nos. 84 and 85, deposition transcripts). Samieva repeatedly failed to appear for a deposition and was never deposed. As a result, the court issued an order precluding Samieva from testifying at trial (NYSCEF Doc No. 83 at 2, order dated February 26, 2024).

Plaintiff filed a note of issue and certificate of readiness for trial in August 2024 (NYSCEF Doc No. 75). Plaintiff filed motion sequence 004 in September 2024. Uber filed motion sequence 005 in October 2024. Without leave of the court, Uber filed an answer to the amended complaint in November 2024 (NYSCEF Doc. No. 123).

Procedural Issue

Before reaching the gravamen of the motions, the court must address a procedural issue with respect to Uber's answers. In motion sequence 004, plaintiff notes that Uber did not answer the amended complaint. In opposition, Uber asserts that it was not served with the amended complaint, but that it still answered the amended complaint.[2] Uber filed the answer to the amended

[2] The Order provided that "the Amended Verified Complaint shall be deemed served upon service of a copy of [the] order, with notice of entry," which was done on February 26, 2020 (NYSCEF Doc. No. 12).

complaint in November 2024, fifteen days after it filed motion sequence 005 (its motion for summary judgment), and nearly two and half months after plaintiff filed the note of issue and certificate of readiness for trial. In motion sequence 005, Uber solely relies upon its original answer.

Plaintiff's motion (motion sequence 004)

Plaintiff's motion is predicated on Vehicle and Traffic Law (VTL) §§ 1128 (a) and 1163 (a). VTL § 1128 (a) provides that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." VTL § 1163 (a) provides that "[n]o person shall… turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety." A driver, therefore, has "a duty not to enter a lane of moving traffic until it [is] safe to do so, and [the] failure to heed this duty constitutes negligence per se" (*Chavis v Zorrilla*, 222 AD3d 581, 581 [1st Dept 2023]; *Sanchez v Oxcin*, 157 AD3d 561, 563-564 [1st Dept 2018]).

Plaintiff's counsel argues that summary judgment on the issue of whether Samieva was negligent in causing the subject accident is appropriate, as the evidence establishes that Samieva violated VTL §§ 1128 (a) and 1163 (a), causing the accident. Specifically, counsel contends that Samieva violated these statutes when her vehicle unsafely crossed into plaintiff's lane of traffic. Further, based on these violations, counsel asserts that plaintiff did not cause the accident and the affirmative defenses related to plaintiff's conduct must be stricken. In support, counsel submits, among other things, a post-accident photograph of the subject vehicle's license plate (NYSCEF Doc No. 86), a certified copy of the New York State Department of Motor Vehicles (DMV) title

record for the subject vehicle (NYSCEF Doc No. 87), and the transcripts of plaintiff's and O'Keefe's deposition testimony (NYSCEF Doc Nos. 84-85).

Plaintiff gave the following testimony at his deposition (NYSCEF Doc No. 84). Before the accident, he was biking up Sixth Avenue in the right lane, approaching the traffic light at the intersection of Sixth Avenue and 32nd Street. The traffic light turned from green to yellow, he heard a horn behind him and, when he turned to look, he saw the vehicle that was repeatedly sounding its horn. Plaintiff recalled that he heard the driver accelerate to go around him. He thought the driver wanted to make a right turn at the intersection before the traffic light turned red. When the vehicle was going around plaintiff, it hit his knee, causing him to fall off the bicycle. Plaintiff noted that before the vehicle hit his knee, he was biking at a leisurely speed in the right lane as close to the curb as he could get. He was admittedly not in the designated bicycle lane. After the accident, plaintiff caught up to the vehicle, photographed its license plate, spoke to its driver, and saw a passenger in the back of the vehicle. Plaintiff also called the police.

The license plate number depicted in plaintiff's post-accident photograph is T751173C (NYSCEF Doc No. 86). The certified copy of the DMV title record shows that the DMV issued that license plate number to Samieva and that she owned the subject vehicle on the accident date (NYSCEF Doc No. 87). O'Keefe, on Uber's behalf, testified that Samieva was using the Uber application (Uber app) and had a rider in the vehicle at the time of the accident (NYSCEF Doc No. 85).

Samieva opposes the motion, submitting only an attorney affirmation. Counsel in the affirmation cites to VTL § 1231, which provides that "a person riding a bicycle on a roadway has the same rights and responsibilities as a driver of a motor vehicle" (*Felix v Polakoff,* 178 AD3d 561, 563 [1st Dept 2019]). "Therefore, a bicyclist is required to use reasonable care for his or her

own safety, to keep a reasonably vigilant lookout for vehicles, and to avoid placing himself or herself into a dangerous position" (*id.*). Counsel argues that summary judgment is improper because there are questions of fact as to whether plaintiff violated the statute and is contributorily negligent in causing the accident. The purported questions are whether plaintiff kept a proper lookout, biked at a reasonable speed, and exercised reasonable care to avoid contact with the subject vehicle.

Uber, in opposition, contends that its second and fourth affirmative defenses have merit in part because plaintiff testified that he was not biking in the designated bicycle lane at the time of the accident. It is Uber's position that plaintiff was contributorily negligent and assumed the risk of the accident by biking in a regular traffic lane, rather than the designated bicycle lane. Uber also asserts that plaintiff was contributorily negligent and assumed the risk of the accident because he did not take any action to maintain his safety after hearing Samieva sound her vehicle's horn.

A "proponent of a summary judgment motion must make 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" (*Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 [2019] quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Bahnyuk v Reed*, 174 AD3d 481, 482 [1st Dept 2019] quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If the proponent of a summary judgment motion makes the requisite showing, "the part[ies] 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 his failure so to do, and the submission of a hearsay affirmation by counsel alone does not satisfy this requirement" (*Fuller v KFG Land I, LLC*, 189 AD3d 666, 669 [1st Dept 2020] quoting *Zuckerman*

v City of New York, 49 NY2d 557, 560 [1980]). In deciding the motion, the court "must view the evidence in the light most favorable to the nonmoving part[ies], including drawing all reasonable inferences in favor of the nonmoving part[ies]" (*Vega v Metropolitan Transp. Auth.*, 212 AD3d 587, 588 [1st Dept 2023]).

In the case at bar, plaintiff met his prima facie burden for summary judgment on the issue of Samieva's negligence in causing the subject accident. Specifically, plaintiff's evidence establishes that Samieva drove her vehicle into plaintiff's traffic lane before it was safe to do so in violation of VTL §§ 1128 (a) and 1163 (a) and that her negligence was a cause of the accident (*Silverio v Ford Motor Co.*, 168 AD3d 608, 609 [1st Dept 2019] ["[p]laintiff made a prima facie showing of negligence...by submitting...deposition testimony, which stated that the accident...occurred when [defendant] changed lanes into a lane of moving traffic"]; *see also Sanchez*, 157 AD3d at 563 ["[p]laintiff established...entitlement to summary judgment as to liability [because] [h]er uncontested deposition testimony demonstrate[ed] that defendant['s]...vehicle sideswiped the vehicle in which she was a passenger when it suddenly tried to enter another lane of traffic"]).

Here, in opposition, Samieva failed to raise a triable issue of fact to preclude summary judgment. Samieva did not submit an affidavit that contradicts plaintiff's testimony as to how the accident occurred (*Sapienza v Harrison*, 191 AD3d 1028, 1030 [2d Dept 2021]; *see also Rosario v Vasquez*, 93 AD3d 509, 509 [1st Dept 2012]).[3] And, contrary to the argument made by counsel, issues of fact related to comparative negligence and assumption of risk are not dispositive in the summary judgment context (*see Ayala v Pascarelli*, 168 AD3d 613, 614 [1st Dept 2019] [holding that "[p]laintiff was not required to demonstrate her own freedom from comparative negligence

[3] There was no order precluding Samieva from submitting an affidavit. The court precluded Samieva from testifying at trial (NYSCEF Doc No. 83 at 2, order dated February 26, 2024).

nor to show that defendants' negligence was the sole proximate cause to be entitled to summary judgment as to defendants' liability"]). Accordingly, plaintiff is entitled to summary judgment on the issue of negligence against Samieva.

However, plaintiff is not entitled to the striking of Samieva's third affirmative defense and Uber's second and fourth affirmative defenses. Triable issues of fact remain as to whether plaintiff was negligent and could have acted to avoid the accident (*see Dieubon v Moore*, 229 AD3d 686, 688 [2d Dept 2024]). Further, the court cannot hold, as a matter of law, that plaintiff is free from fault and did not assume the risk of injury as he failed to use the road's designated bicycle lane. Any finding at trial as to plaintiff's negligence will reduce the amount of damages awarded to plaintiff (*see* CPLR §§ 1411, 1412).

Uber's motion (motion sequence 005)

Uber seeks summary judgment dismissing the complaint and all claims against it. Uber contends that summary judgment is warranted on the ground that it cannot be held vicariously liable for Samieva's actions as she was an independent contractor and not an Uber employee. "The doctrine of respondeat superior renders an employer vicariously liable for torts committed by an employee acting within the scope of the employment" (*RJC Realty Holding Corp. v Republic Franklin Ins. Co.*, 2 NY3d 158, 164 [2004] [citation omitted]). "The general rule is that a party who retains an independent contractor, as distinguished from a mere employee or servant, is not liable for the independent 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 v New York State Elec. & Gas Corp.*, 11 NY3d 251, 257-258 [2008] quoting *Kleeman* at 274 [internal quotation marks omitted]).

"[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" (*Bynog v Cipriani Group*, 1 NY3d 193, 198 [2003]). This inquiry is comprised of a variety of factors, including "whether the worker (1) worked at his 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" (*id.* at 198). "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] [citation omitted]). "Whether an actor is an independent contractor or an employee is usually a factual issue for a jury" (*Brielmeier v Leal*, 226 AD3d 955, 957 [2d Dept 2024]).

In support of the motion, Uber submits, among other things, a copy of a document entitled "Uber USA, LLC Technology Services Agreement" (TSA), which was last updated on December 11, 2015 (NYSCEF Doc No. 106). The TSA states that it is an agreement between Uber USA, LLC and the customer. It defines the customer as "an independent company in the business of providing transportation services" (*id.* at 2). Counsel contends that the TSA clearly provides that drivers who use the driver version of the Uber app are independent contractors. This contention largely rests on sections 2.4 and 13.1 of the TSA. Section 2.4, entitled "Customer's Relationship with Uber," provides in pertinent part that:

> "Uber does not, and shall not be deemed to, direct or control Customer or its Drivers generally or in their performance under this Agreement specifically, including in connection with the operation of Customer's business, the provision of Transportation Services, the acts or omissions of Drivers, or the operation and maintenance of any Vehicles....Drivers retain the sole right to determine when, where, and for how long each of them will utilize the Driver App or the Uber

> Services….Drivers retain the option, via the Driver App, to attempt to accept or to decline or ignore a User's request for Transportation Services via the Uber Services, or to cancel an accepted request for Transportation Services…subject to Uber's then-current cancellation policies. With the exception of any signage required by local law or permit/license requirements, Uber shall have no right to require…any Driver to: (a) display Uber's or any of its Affiliates' names, logos or colors on any Vehicle(s); or (b) wear a uniform or any other clothing displaying Uber's or any of its Affiliates' names, logos or colors. Customer acknowledges and agrees that it has complete discretion to operate its independent business…[and] understands that Customer retains the complete right to provide transportation services to its existing customers and to use other software application services in addition to the Uber Services" (*id.* at 5).

Section 13.1, under the heading "Relationship of the Parties," reads:

> "Except as otherwise expressly provided herein with respect to Uber acting as the limited payment collection agent solely for the purpose of collecting payment from Users on behalf of Customer, the relationship between the parties under this Agreement is solely that of independent contracting parties. The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment relationship, between Uber and Customer or Uber and any Driver; and (b) no joint venture, partnership, or agency relationship exists between Uber and Customer or Uber and any Driver" (*id.* at 15).

In addition, Uber submits an affidavit from O'Keefe who avers that "Uber is a technology company that uses its proprietary technology to develop and maintain digital multi-sided marketplace platforms" and that she works on the team "responsible for Uber's rides business in different cities…including New York City" (NYSCEF Doc No. 104 ¶¶ 2, 4). O'Keefe states that the Uber app has a "rider version" and a "driver version" (*id.* ¶ 5). She claims that Uber USA, LLC, a subsidiary of Uber Technologies, Inc., "sublicensees the use of the driver version of the Uber app to independent third-party transportation providers licensed" by the New York City Taxi & Limousine Commission (TLC) (*id.* ¶¶ 7, 8). According to O'Keefe, such transportation providers must complete a sign-up process to use the driver version of the Uber app. She describes this process, in part, as the driver opening an Uber account online and uploading a copy of their driver's license, their TLC license, their TLC vehicle registration, and proof of their commercial

insurance. Notably, O'Keefe asserts that a provider must "electronically accept and enter into a [TSA] with Uber USA, LLC before using the driver version of the Uber app," and that "[a]n electronic receipt is generated at the time the independent driver electronically accepts and agrees to the [TSA], which includes a time and date stamp" (*id.* ¶¶ 12, 13).

With respect to Samieva, O'Keefe avers that Samieva uploaded the requisite documentation and electronically accepted and agreed to the TSA in August 2017. These averments, however, are conclusory as they lack evidentiary support. Absent from Uber's motion papers are any copies of the documents that Samieva provided in the sign-up process. More significantly, Uber does not submit the electronic receipt as an exhibit. Thus, since Uber did not unequivocally establish that Samieva accepted and entered into the TSA with Uber USA, LLC, Uber failed to make a prima facie showing of entitlement to judgment as a matter of law dismissing the amended complaint insofar as asserted against it. Moreover, Uber's summary judgment motion is further defective since it was filed prior to Uber serving an answer to plaintiff's amended complaint (see CPLR 3212 [b] ["Supporting proof....A motion for summary judgment shall be supported by...a copy of the [relevant] pleadings..."].[4]

Conclusion and Order

Accordingly, it is

ORDERED that the portion of plaintiff's motion (motion sequence 004) seeking summary judgment on liability against defendant Firuza Samieva is granted to the extent that the court finds defendant Samieva was negligent in causing the subject accident, and the motion is otherwise denied; and it is further

[4] The court notes that Uber's amended answer is materially different from the original answer. The original answer asserts ten affirmative defenses and the amended answer asserts thirty-three affirmative defenses.

ORDERED that Uber Technologies Inc.'s motion (motion sequence 005) for summary judgment is denied; and it is further

ORDERED that within 30 days of entry of this order, plaintiff shall serve a copy of this decision and order upon defendants with notice of entry.

Dated: January 9, 2026

Chin, Christopher, J.S.C.

HON. CHRISTOPHER CHIN
J.S.C.