

Villarraga v Dey

2026 NY Slip Op 31712(U)

March 5, 2026

Supreme Court, Queens County

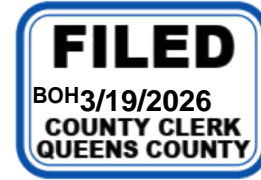
Docket Number: Index No. 721528/2020

Judge: Leonard Livote

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: PART 33



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NURY CONTRERAS VILLARRAGA,
Plaintiff,

INDEX NO. 721528/2020

MOTION DATE 05/27/2025

- v -

KHELON DEY, UBER TECHNOLOGIES, INC., LYFT INC.

MOTION SEQ. NO. 003

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164 were read on this motion to/for DISMISS.

The above-numbered papers were read on this motion by defendant Uber Technologies, Inc. (“Uber”) seeking an order pursuant to: (1) CPLR § 3212 granting summary judgment in favor of Uber and dismissing all claims including cross-claims as against Uber in their entirety and with prejudice; and (2) for such other and further relief as this Court deems just and proper.

Upon the foregoing papers, the motion is determined as follows.

The within action was commenced by plaintiff Nury Contreras Villarraga (“Plaintiff”), a pedestrian, to recover damages for personal injuries sustained as a result of allegedly being struck by the vehicle owned and operated by defendant Khelon Dey (“Mr. Dey”), who obtained rides facilitated by Uber.

In the instant motion, Uber claims Mr. Dey is an independent contractor, and not an employee of Uber, and therefore Uber is not vicariously liable for the acts of Mr. Dey. In support, Uber submitted, *inter alia*, an attorney affirmation, the pleadings, and an affidavit of Benjamin Carroll (“Mr. Carroll”), senior manager at Uber. In opposition, Plaintiff submitted, *inter alia*, an attorney affirmation.

Summary judgment is a drastic remedy that deprives litigants their day in court and should only be employed when there is no doubt as to the absence of triable issues of material fact (*see Vega v Restani Const. Corp.*, 18 NY3d 499 [2012].) The proponent of a motion for summary judgment 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 (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). On a motion for summary judgment, a court must view the evidence in the light most favorable to the non-moving party, and so doing, must determine that the evidence submitted by the moving party eliminated all material issues of fact (*see Richardson v County of Nassau*, 156 AD3d 924 [2d Dept 2017]). The moving party has the initial burden of coming forward with admissible evidence that eliminates all material issues of fact (CPLR § 3212[b]; *GTF Marketing, Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965 [1985]). Once the moving party has met that *prima facie* burden, the burden then

shifts to the non-movant to raise triable issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]).

The doctrine of *respondeat superior* provides that an employer is vicariously liable for the acts of its employee, including tortious acts, when committed within the scope of employment (*see Judith M. v Sisters of Charity Hosp.*, 93 NY2d 932 [1999]). However, in determining whether one is an employee or an independent contractor for purposes of tort liability, the critical factor is the control of the method and means by which the work is to be done (*see Begley v City of New York*, 111 AD3d 5 [2d Dept 2013]). Factors relevant to assessing control include whether a 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 (*see Nachman v Koureichi*, 165 AD3d 818 [2d Dept 2018]).

Here, Mr. Carroll, senior manager at Uber, stated in his affidavit that Mr. Dey was not an Uber employee. According to Mr. Carroll, and as a certain agreement in effect between Mr. Dey and Uber provides, the relationship between Mr. Dey and Uber was identified as an independent contractor relationship, and the means of work performance was not controlled by Uber. Mr. Dey was also free to work any hours he wished or to accept or reject rides offered through the Uber app, was not on the Uber payroll, and was not provided a W-2 form. Mr. Dey was also

not restricted from working with Uber's competitors, such as Lyft (*see Carrion v Orbit Messenger*, 82 NY2d 742 [1993]).

Mr. Dey has not raised any material issues of fact to sufficiently rebut Uber's *prima facie* showing that Mr. Dey was Uber's independent contractor. An analysis of each party's statement of material facts demonstrates no conflict in evidence, in that, only the characterization of the facts as presented is challenged, not the underlying facts themselves. With no conflict in evidence, the question may be properly determined as a matter of law (*see Allstate Vehicle & Property Insurance Company v Glitz Construction Corp.*, 214 AD3d 691 [2d Dept 2023]).

Here, all of the *Nachman* factors enumerated above for determining whether one is an independent contractor and not an employee have been met. Minimal or incidental control over the work product without direct supervision or input over the means used to complete the work is insufficient to establish a traditional employment relationship (*Athenas v Simon Prop. Group, LP*, 185 AD3d 884, 885 [2d Dept 2020]).

Mr. Dey asserts that there are material issues of fact remaining as to whether Mr. Dey was an employee or independent contractor such as imposing license requirements, rule compliance, insurance regulations, and assessing work performance. However, this Court is unpersuaded that these are unresolved issues.

Numerous decisions by courts of coordinate jurisdiction find that an "Uber-type

situation” renders the driver an independent contractor (*see Bullock v Uber Technologies, Inc., et al.*, Index No. 717754/2021 [Sup. Ct. Queens Cty, 2025 J. Lin]; *Gordon v Rasier-NY, LLC et al.*, Index No. 717907/2021 [Sup. Ct. Queens Cty, 2025 J. Sampson]). These aspects of working in the livery business are either controlled and regulated by state and administrative bodies, or as in performance evaluations, are the prerogative of the hiring entity over any independent contractor when considering continuation of services.

Furthermore, Mr. Dey’s reliance upon *Vega v Postmates* 35 NY3d 131 [2020] is misplaced. In that case, the appeal stemmed from an administrative ruling by the Unemployment Insurance Appeals Board. Labor Law § 623 [2] provides that decisions made by an appeal board of an administrative agency shall not preclude litigations of any issue of law or fact in any subsequent action (*see Uy v Hussein*, 186 AD3d 1567 [2d Dept 2020]). Therefore, an affirmance of an appeals board decision by the Court of Appeals does not provide precedent in the within action. Accordingly, it is

ORDERED that Uber’s motion for summary judgment (Motion Sequence 001) is granted in its entirety; and it is further

ORDERED that the caption of the within action is amended as follows:

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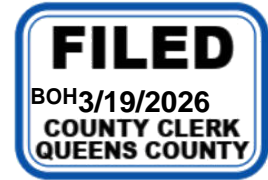
NURY CONTRERAS VILLARRAGA,
Plaintiff,

- v -

KHELON DEY, and LYFT INC.,
Defendants.

-----X;

Any such other relief not described herein is denied. This constitutes the decision of the Court.



3/5/2026
DATE

Leonard Livote
LEONARD LIVOTE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE