

Padgett v Ullah

2026 NY Slip Op 31769(U)

April 13, 2026

Supreme Court, Kings County

Docket Number: Index No. 513011/2022

Judge: Genine D. Edwards

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At an IAS Term, Part JCP1 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 13th day of April 2026.

P R E S E N T:

HON. GENINE D. EDWARDS,

Justice.

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JERMAINE PADGETT,

Plaintiff,

-against-

SANAH ULLAH, MD NAZRUL ISLAM,
UBER TECHNOLOGIES, INC. and LYFT, INC.,

Defendants.

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DECISION AND ORDER

Index No.: 513011/2022

Mot. Seq. No. 4

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	71-89
Opposing Affidavits (Affirmations) _____	92-104
Affidavits/Affirmations in Reply _____	113-128

Upon the foregoing papers, in this action by plaintiff Jermaine Padgett (plaintiff) against defendants Sanah Ullah (Ullah), MD Nazrul Islam (Islam), and Uber Technologies, Inc. (Uber),¹ to recover damages for personal injuries, Uber moves for an order, pursuant to CPLR 3212, granting summary judgment on the issue of liability dismissing all claims, including cross-claims, as against it.

¹ This action was discontinued against defendant Lyft, Inc.

Facts and Procedural Background

On March 1, 2022, Ullah, a driver for Uber, was driving a vehicle that was registered to Islam, when he collided with plaintiff, who was operating an electric scooter. Plaintiff alleges that Uber is vicariously liable for Ullah's acts on the theory of respondeat superior. Uber denies plaintiff's claim, and contends that Ullah is an independent contractor.

On May 5, 2022, plaintiff commenced this action by the filing of a summons and complaint. NYSCEF Doc No. 1. On June 14, 2022, Uber filed its answer. NYSCEF Doc No. 6. On July 8, 2022, Ullah and Islam filed their answer. NYSCEF Doc No. 10.

On July 28, 2022, Justice Lawrence Knipel issued a preliminary conference order, which provided that "[s]ummary judgment motions shall be made no later than 60 days after the filing of the Note of Issue. This time limit may only be extended by motion upon 'good cause shown.'" NYSCEF Doc No. 11 at ¶13. The Kings County Supreme Court Uniform Civil Term Rules Part C (6) similarly provides that "motions for summary judgment may be made no later than sixty (60) days after the filing of a Note of Issue," and that this "time limitation may only be extended by the Court upon good cause shown." NYSCEF Doc No. 96. The individual part rules of Justice Karen B. Rothenberg, who was the original assigned IAS judge to this matter, were silent on the deadline for filing summary judgment motions. NYSCEF Doc No. 98.

On October 6, 2023, plaintiff filed his note of issue. NYSCEF Doc No. 70. On January 3, 2024, 89 days after plaintiff filed his note of issue, this case was reassigned to Justice Lisa S. Ottley, whose Part Rules allow for summary judgment motions to be filed

and served within 120 days of the filing of the note of issue. NYSCEF Doc No. 99.² On February 5, 2024, 122 days after the filing of plaintiff's note of issue and 62 days after the deadline to file a summary judgment motion had already passed, Uber filed its instant motion for summary judgment. NYSCEF Doc No. 71.

Discussion

Pursuant to the doctrine of respondeat superior, an employer can be vicariously liable for the torts of an employee committed during the scope of employment. *See D.S. v. Positive Behavior Support Consulting & Psychological Resources, P.C.*, 197 A.D.3d 518, 151 N.Y.S.3d 690 (2d Dept. 2021). In contrast, the well-settled general rule is that “a party who retains an independent contractor is not liable for the negligence of the independent contractor because it has no right to supervise or control the work.” *Sultan v. 6810 Wai, Inc.*, 237 A.D.3d 773, 230 N.Y.S.3d 723 (2d Dept. 2025), quoting *Backiel v. Citibank*, 299 A.D.2d 504, 505, 751 N.Y.S.2d 492 (2d Dept. 2002). “[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 A.D.3d 955, 210 N.Y.S.3d 209 (2d Dept. 2024) (internal quotation marks omitted).

Uber contends that it cannot be held liable for plaintiff's claimed injuries, which were allegedly caused and created by Ullah, because Ullah was an independent contractor, over whom it did not exercise any supervision, direction, and/or control,

² This case was subsequently assigned to Justice Kenneth P. Sherman, and due to his recusal, it is now before this Court (NYSCEF Doc No. 137).

including the means and methods or the manner in which Ullah's work was to be performed. Uber claims that the record indisputably establishes that even if the alleged incident was a result of the negligent acts of Ullah, he was acting in his capacity as an independent contractor.

Plaintiff opposes Uber's motion, contending that Ullah was Uber's employee. Plaintiff asserts that the instant record presents numerous triable issues of fact as to Uber's control over the means and results of Ullah's work, which must be resolved by the trier of fact.

Plaintiff points out that Uber did not submit the contract in effect between it and Ullah with its motion. Uber acknowledges this error and submits for the first time with its reply papers the January 1, 2022 Platform Access Agreement, which states that "[t]his is not an employment agreement and you are not an employee of Uber." NYSCEF Doc No. 127. In any event, this January 1, 2022 Platform Access Agreement is not dispositive on the issue of the lack of creation of an employment relationship between Uber and Ullah, but is merely a factor to consider, along with other factors. *See Fernandez v. Conklin*, 189 A.D.3d 784, 986 N.Y.S.2d 553 (2d Dept. 2020).

The Court, however, shall not reach the merits of Uber's summary judgment motion due to its untimely filing of its motion.

CPLR 3212 (a) provides that the Court may set a date after which no motion for summary judgment may be made, except with leave of Court on good cause shown. *See Brill v. City of New York*, 2 N.Y.3d 648, 781 N.Y.S.2d 261 (2004). Here, that date was no later than 60 days from the filing of the note of issue. "In the absence of a showing of

good cause for the delay in filing a motion for summary judgment, the court has no discretion to entertain even a meritorious, nonprejudicial motion for summary judgment.” *Bivona v. Bob’s Discount Furniture of NY, LLC*, 90 A.D.3d 796, 935 N.Y.S.2d 605 (2d Dept. 2011) (internal quotation marks omitted); *see also Miceli v. State Farm Mut. Auto. Ins. Co.*, 3 N.Y.3d 725, 786 N.Y.S.2d 379 (2004); *Bargil Assoc, LLC v. Crites*, 173 A.D.3d 958, 100 N.Y.S.3d 897 (2d Dept. 2019).

Whether good cause exists is a matter committed to the Court’s discretion and requires a showing of a “satisfactory explanation for the untimeliness - rather than simply permitting meritorious, nonprejudicial filings, however tardy.” *Brill v. City of New York*, 2 N.Y.3d 648, 781 N.Y.S.2d 261 (2004). “No excuse at all, or a perfunctory excuse” does not constitute “good cause.” *Id.*

Here, Uber, in its moving papers, simply states that its motion is timely, without addressing the fact that it filed its motion 122 days after plaintiff filed his note of issue. NYSCEF Doc No. 72 at ¶11. Thus, Uber failed to establish good cause for its delay in moving for summary judgment. *See Navarro v. Damac Realty, LLC*, 202 A.D.3d 1100, 159 N.Y.S.3d 887 (2d Dept. 2022).

While plaintiff, in its opposition papers, addresses the untimeliness of Uber’s motion, Uber, in its reply papers, without explanation, merely sets forth its conclusion that its motion is timely and if not considered timely, good cause is shown. In support of this conclusion, Uber only states that when its instant motion was filed, Justice Ottley was the assigned judge. Although this fact would not in any way render Uber’s motion timely, even an actual good cause argument may not be considered when raised for the

first time in reply papers. *See Nationstar Mtge., LLC v. Weisblum*, 143 A.D.3d 866, 39 N.Y.S.3d 491 (2d Dept. 2016). Thus, in view of the untimeliness of Uber's motion and its failure to establish good cause for its delay in moving for summary judgment, its instant summary judgment motion must be denied. *See Lanza v. M-A-C Home Design & Constr. Corp.*, 188 A.D.3d 855, 135 N.Y.S.3d 495 (2d Dept. 2020); *Gonzalez v. Pearl*, 179 A.D.3d 645, 113 N.Y.S.3d 584 (2d Dept. 2020); *Quinones v. Joan & Sanford I. Weill Med. Coll. & Graduate Sch. of Med. Sciences of Cornell Univ.*, 114 A.D.3d 472, 980 N.Y.S.2d 88 (1st Dept. 2014); *Goldin v. New York & Presbyt. Hosp.*, 112 A.D.3d 578, 975 N.Y.S.2d 892 (2d Dept. 2013).

Conclusion

Based upon the foregoing, it is

ORDERED that Uber's motion, under motion sequence number four, is denied.

This constitutes the Decision and Order of the Court.

E N T E R,

Genine D. Edwards
J. S. C.