Damas v Mordukhayev
2026 NY Slip Op 31793(U)
April 23, 2026
Supreme Court, Kings County
Docket Number: Index No. 521767/2022
Judge: Sharon A. Bourne-Clarke

At Part 44 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, 320 Jay Street, Brooklyn, New York, on the 23rd day of April, **2026**.

PRESENT:
HON. SHARON A. BOURNE-CLARKE, J.S.C.

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MARIE DAMAS,

Plaintiff,

- against –

GENNADIY MORDUKHAYEV, KOBILJON BEKTOSHOV and UBER TECHNOLOGIES,

Defendants.

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Index No.: 521767/2022

DECISION AND ORDER

The following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF Doc. Nos.
Notice of Motion – Order to Show Cause – Exhibits and Affidavits Annexed	No(s). 56-74
Affirmation in Opposition	No(s). 75, 76
Replying Affidavits and Exhibits	No(s). 78, 79

This action arises from a motor vehicle accident that occurred on December 2, 2019, in Brooklyn, New York. The accident allegedly involved a vehicle operated by defendant Gennadiy Mordukhayev ("Mordukhayev") and owned by defendant Kobiljon Bektoshov. Plaintiff, Marie Damas, claims that she was struck by Mordukhayev's vehicle while crossing the street outside of a designated crosswalk. The incident is alleged to have occurred at approximately 6:00 p.m. in front of 245 Linden Boulevard. It is undisputed that plaintiff was crossing mid-block, between intersections, and not within a marked crosswalk at the time of the collision.

Plaintiff seeks to impose vicarious liability upon Uber Technologies, Inc. ("Uber"), alleging that Mordukhayev was acting as an employee and/or agent of Uber at the time of the accident.

Plaintiff commenced the initial action by filing a Summons and Complaint in the Supreme Court, Kings County, on July 29, 2022, against Mordukhayev and Bektoshov, alleging negligence in the operation and ownership of the subject vehicle. Thereafter, on February 9, 2023, plaintiff commenced a separate action against Uber in the Supreme Court, Kings County. As against Uber, plaintiff alleges, inter alia, that: (1) Uber is vicariously liable for Mordukhayev's conduct under the doctrine of respondeat superior; (2) Uber negligently hired and/or retained Mordukhayev; and (3) Uber is responsible for Mordukhayev's conduct as the purported owner or operator of the vehicle.

Uber interposed an Answer on March 3, 2023, denying the material allegations of the complaint and asserting affirmative defenses. By Order dated May 5, 2023, the two actions were consolidated for all purposes. Plaintiff subsequently filed a Note of Issue on July 21, 2025. Defendant Uber Technologies, Inc. now moves for summary judgment pursuant to CPLR § 3212, seeking dismissal of the complaint and all cross claims insofar as asserted against it.

Uber contends that there are no triable issues of material fact and that it cannot be held vicariously liable for Mordukhayev's alleged negligence because Mordukhayev was, at all relevant times, an independent contractor, not an employee or agent of Uber. Uber asserts that it did not exercise the requisite control over the manner and means of Mordukhayev's work to give rise to an employer–employee relationship. It further maintains that New York courts have consistently maintained that drivers utilizing Uber's platform are independent contractors.

A party moving for summary judgment pursuant to CPLR § 3212 must establish, prima facie, its entitlement to judgment as a matter of law by tendering evidence sufficient to eliminate any material issues of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980).
Once the movant has satisfied this burden, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to demonstrate the existence of a triable issue of fact.

Moreover, in determining whether a worker is an employee or an independent contractor, courts consider various factors, including, inter alia: the degree of control exercised over the work; the

method of payment; the provision of equipment; the right to engage in other employment; the existence of a fixed schedule; and whether the parties' agreement disclaims an employment relationship. See *Barak v. Chen*, 87 A.D.3d 955 (2d Dep't 2011); *Chaouni v. Ali*, 105 A.D.3d 424 (1st Dep't 2013); *Alves v. Petik*, 136 A.D.3d 426 (1st Dep't 2016); *Zeng Ji Liu v. Bathily*, 145 A.D.3d 558 (1st Dep't 2016)

Here, Plaintiff relies, in part, on the Technology Services Agreement ("TSA") between Uber and Mordukhayev as evidence of triable issues of fact as to whether Mordukhayev was, in fact, an employee rather than an independent contractor. Plaintiff argues that provisions of the TSA demonstrate that Uber exercised significant control over Mordukhayev's work, including control over: (1) ride assignments; (2) fare calculation; (3) collection and processing of payments; (4) remittance of fares; (5) issuance of receipts; and (6) the timing and manner of driver compensation. Plaintiff specifically relies upon Section 4.1 of the TSA, which provides, in relevant part, that Uber collects rider payments as the driver's limited payment collection agent and remits such payments to the driver, typically on a weekly basis, subject to certain deductions. Plaintiff contends that these provisions, as well as other sections of the TSA, evidence a level of control sufficient to create an employer-employee relationship. However, a plain reading of the TSA, in full, evinces Mordukhayev's autonomy rather than Defendant Uber's control.

Moreover, Plaintiff fails to address any of the following enumerated factors that the Courts have consistently considered in determining worker classification for the purposes of tort liability: (1) working at one's own convenience; (2) freedom to engage in other work for competitors; (3) non-receipt of fringe benefits; (4) not on company's payroll; (5) lack of fixed schedule; (6) owning and maintaining one's own vehicle; (7) paying for vehicle's insurance; (8) discretion to accept/reject dispatches; (9) non-receipt of W2; (10) agreement disclaiming the existence of employer-employee relationship; (11) no uniform requirement; (12) freedom to take breaks whenever desired; (13) receipt of 100% of tips; (14) no minimum/maximum hours imposed by company; and (15) no fixed salary.

Lastly, Plaintiff relies on *Matter of Vega (Postmates Inc.-Commissioner of Labor)* (35 NY3d 131, 137-140, 125 N.Y.S.3d 640, 149 N.E.3d 401 [2020]) however, such reliance on a case stemming

from the determination of an appeal from an administrative ruling for the proposition that an employment relationship exists between Uber and drivers for the purpose of imposing vicarious liability is misplaced.

Apart from certain exceptions not relevant here, a decision rendered in connection with a disputed claim for unemployment insurance benefits is not entitled to preclusive effect in a subsequent action or proceeding (*see* Labor Law § 623 [2]; *Uy v Hussein*, 186 AD3d 1567, 1569, 131 N.Y.S.3d 70 [2d Dept 2020]).

Defendant has established, prima facie, entitlement to judgment as a matter of law, and Plaintiff has failed to raise a triable issue of fact. Accordingly, Defendant's motion for summary judgment is hereby **GRANTED**.

This constitutes the Decision and Order of the Court.

Dated: April 23, 2026

ENTER:

HON. SHARON A. BOURNE-CLARKE, J.S.C.