

Khalilova v Hakeem
2020 NY Slip Op 34280(U)
December 10, 2020
Supreme Court, Kings County
Docket Number: 506743/2017
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 506743/2017
Motion Date: 10-26-20
Mot. Seq. Nos.: 5-8

-----X
ZARRINA KHALILOVA.

Plaintiff,

-against-

DECISION/ORDER

LEONARD HAKEEM, E.S. LIRANZO-CEPEDA,
UBER : TECHNOLOGIES, INC., and LUX CREDIT :
CONSULTANTS LLC,

Defendants.

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Upon reading NYSEF Item Nos. 72-135, the motions are decided as follows:

In this action to recover damages for personal injuries, defendants E.S. Liranzo-Cepeda and Lux Credit Consultants LLC (“Lux”) move pursuant to C.P.L.R. § 3212(b) for an order granting them summary Judgment dismissing plaintiff ZARRINA KHALILOVA'S amended complaint and all cross-claims insofar as asserted against them (**Mot. Seq. # 5**).

The plaintiff cross-moves for an order striking the answer of the defendants Liranzo-Cepeda and Lux for their willful failure to appear for a deposition, and/or precluding them from giving any testimony at the time of trial; and/or conditionally precluding them from giving any testimony at the time of trial unless they appear for a deposition on or before a date certain (**Mot. Seq. # 6**).

Defendant UBER TECHNOLOGIES, INC. (“Uber”) cross-moves for an order granting summary judgment in its favor and dismissing plaintiff’s amended complaint and all cross-claims insofar as asserted against Uber (**Mot. Seq. # 7**).

By separate Notice of Motion, plaintiff moves for an order: (1) pursuant to CPLR §3025(b) granting plaintiff leave to serve a second amended complaint in the form annexed to its motion as Exhibit A; (2) pursuant to CPLR §3214 compelling Uber to appear for a deposition; and (3) extending plaintiff's time to file a Note of Issue (**Mot. Seq. # 8**). The motions and cross-motions are consolidated for disposition.

Mot. Seq. # 5

This action arises out of a two-car accident that occurred on the Belt Parkway in Queens, New York on August 28, 2016. Defendant Liranzo-Cepeda was driving a vehicle owned by defendant Lux on the eastbound Belt Parkway in Queens, New York when it was violently struck in the rear by a vehicle that was apparently fleeing the police and travelling at a high rate of speed. The defendant Leonard Hakeem was the owner of this vehicle but was not the driver at the time of the accident. The driver has not been identified. The plaintiff, Zarrina Khalilova was a passenger in the Liranzo-Cepeda/Lux vehicle and was seated in the rear of vehicle. The plaintiff obtained the ride the Liranzo-Cepeda/Lux vehicle through Uber's rideshare application.

The motion of defendants Liranzo-Cepeda and Lux is **DENIED**. In light of defendants Liranzo-Cepeda's failure to comply with the two court orders dated February 26, 2019 and December 3, 2019 which required him to appear for a deposition, the motion is premature (*Whelan v. Port Auth. of New York & New Jersey*, 19 A.D.3d 483, 484, 797 N.Y.S.2d 113, 113–14). Defendants are granted leave to renew the motion after they have complied with their discovery obligations or until and order has been issued sanctioning the defendants for failing to do so.

Mot. Seq. # 6

Plaintiff's cross-motion for an order striking the answer of the defendants Liranzo-Cepeda and Lux for their willful failure to appear for a deposition, and/or precluding them from giving any testimony at the time of trial; and/or conditionally precluding them from giving any testimony at the time of trial unless they appear for a deposition on or before a date certain is hereby referred to Part CCP for a resolution.

Mot. Seq. # 7.

Defendant Uber's cross-moves for an order granting it summary judgment dismissing plaintiff's amended complaint and all cross-claims insofar as asserted against it is also **DENIED** as premature. The gist of Uber's argument is that since the evidence demonstrates Liranzo-Cepeda freedom from negligence as a matter, there is no basis to find that it is vicariously liable for his negligence. However, as stated above, until defendant Liranzo-Cepeda appears for a deposition or until the court issues an order sanctioning him for failing to do so, it would be improper for the court to determine whether defendant Liranzo-Cepeda's freedom from negligence has been established as a matter of law. Defendant Uber is granted leave to renew its motion once defendant Liranzo-Cepeda has appeared for a deposition or until an order has been issued sanctioning him for his failing to do so.

Mot. Seq. # 8.

Plaintiff's proposed second amended complaint contains no new parties and merely alleges that Uber, through their dissemination of an infographic on their application and website, misrepresented and/or omitted a material fact with respect to the insurance coverage available to riders while on a ride in an Uber rideshare vehicle, that the defendants knew this was false, that such infographic was made to induce reliance upon the facts or false facts contained therein and

that the plaintiff reasonably relied upon such facts to her detriment and has sustained injuries as a result. In support of the motion to file and serve a second amended complaint, the plaintiff submitted her own affidavit in which she averred as follows:

3. I was a passenger in a vehicle being driven by E.S. LIRANZO-CEPEDA and owned by LUX CREDIT CONSULTANTS LLC.
4. I became a passenger in this vehicle when my employer or someone on my employer's behalf utilized the rideshare application known as UBER.
5. Upon seeing advertisements for UBER made throughout New York City prior to my accident, I went onto their website and read about the services they offered. On their website, was the infographic that is annexed to the motion as Exhibit "F."¹
6. I relied upon this information disseminated by UBER regarding insurance coverage, specifically, that I would be entitled to 1 million dollars' worth of insurance coverage should an accident occur while I was engaged in an UBER ride. I relied upon that information in deciding and agreeing to take the UBER ride which is the subject of this lawsuit.
7. As a result of agreeing to that ride, I was involved in an accident and severely and permanently injured.

A motion for leave to amend pleadings should be freely granted absent prejudice or surprise directly resulting from the delay in seeking leave, unless the proposed amendment is palpably insufficient or patently devoid of merit (*see* CPLR 3025[b]; *Bridgehampton Nat'l Bank v. D & G Partners, L.P.*, 186 A.D.3d 1310, 131 N.Y.S.3d 347, 349–50; *Urias v. Daniel P. Buttafuoco & Assoc., PLLC*, 173 A.D.3d 1244, 1245, 104 N.Y.S.3d 712). While the proposed amendment may appear dubious, as defendant Uber contends, allowing the amendment would not result in prejudice or surprise to Uber. Moreover, it would be improper for the Court to deny

¹ The infographic can be construed as indicating that there was \$1 million dollars in coverage available.

the motion on grounds that it is palpably insufficient and patently devoid of merit since there is no evidence before the court demonstrating his to be true.

The court has considered Uber's remaining arguments in opposition to plaintiff's motion to amend and find them unavailing. Accordingly, plaintiff's motion to serve a second amended complaint in the form annexed as Exhibit A to plaintiff's motion to amend is **GRANTED** and the pleading will be deemed served on the parties as of the date of entry of this order.

That branch of plaintiff's motion for an order compelling Uber to appear for a deposition is respectfully referred to CCP.

Accordingly, it is hereby

ORDRED that motions and cross-motions are decided as indicated above. All parties are directed to appear in CCP on January 11, 2021 for resolution of all the discovery issues raised by the motions cross-motions

This constitutes the decision and order of the Court.

Dated: December 10, 2020

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020