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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge
Case No.: 2024-CP-10-06252

Appellate Case No. 2025-002283

David White..Respondent,

v.

Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc., Alicia White, and Jane Doe,

Of whom Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc. is the..............Appellant.

FINAL BRIEF OF RESPONDENT

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II. Pursuant to Rule 220(c), this Court should affirm the circuit court's ruling correctly finding that Respondent's tort claims lack a "significant relationship" to Appellant's contract and therefore do not fall within the scope of the arbitration clause, when Respondent was merely a passenger in a vehicle whose driver happened to be providing rideshare services to a passenger with no connection to Respondent at the time of the collision.

III. Pursuant to Rule 220(c), this Court should affirm the circuit court's ruling that the arbitration clause is unconscionable and unenforceable under South Carolina law, where the Terms of Service are a contract of adhesion presented on a take-it-or-leave-it basis with oppressive and one-sided terms including a broad limitation of liability provision that exempts Appellant from virtually all liability.

STATEMENT OF THE CASE

Pursuant to S.C. App. Ct. R. (208)(b)(2), Respondent David White (hereinafter "Respondent") presents his own Statement of the Case. This appeal arises from the circuit court's Order denying Appellant Lyft Inc., d/b/a Lyft Drives South Carolina, Inc.'s ("Lyft" or "Appellant") Motion to Compel Arbitration and Stay Proceedings. The circuit court correctly concluded that: (1) Lyft's Terms of Service ("TOS") do not apply to Respondent David White's ("Respondent") claims because he was not actively using the Lyft Platform at the time of the collision; (2) Respondent's tort claims lack a "significant relationship" to the TOS; and (3) the arbitration clause is unconscionable and unenforceable under South Carolina law. The circuit court's well-reasoned decision should be affirmed.

This case arises from a motor vehicle collision that occurred on December 26, 2021, when Respondent was a passenger in a vehicle driven by Defendant Alicia White ("Defendant White") that was illegally parked on the side of Delano Street in Charleston, South Carolina. (Compl. ¶ 8; R. 17.) At the time of the collision, Defendant White had a passenger in the backseat who had requested transportation from Lyft. (*Id.*) Respondent, however, had no affiliation with this backseat passenger and was not using the Lyft Platform, had not requested transportation through the Lyft application, and was merely riding with Defendant White when she chose to accept a rideshare request. (Aff. of David White ¶¶ 8–11; R. 333.) As a result of the motor vehicle collision, Respondent sustained injuries and sought medical treatment. (Compl. at ¶¶ 14–15; R. 17.) Respondent sustained damages including mental anguish, pain, suffering, injuries, medical bills, and property damage. (*Id.* at ¶ 16; R. 18.)

Lyft is a transportation network company that "uses a digital network, platform, or Internet-enabled application to connect a passenger to a transportation network driver for the purpose of providing transportation for compensation using a vehicle." S.C. Code Ann. § 58-23-1610(1). Lyft operates a peer-to-peer software platform connecting users seeking rides with its drivers. (Mot. to Compel, Ex. A ¶ 4; R. 82.) On October 21, 2020, Respondent created a Lyft user account and accepted Lyft's TOS dated August 26, 2019. (Mot. to Compel, Ex. A ¶ 12(a); R. 83.) On February 7, 2021, Respondent accepted Lyft's December 9, 2020 TOS. (Id. at ¶ 12(c); R. 84.) Respondent does not dispute that he previously accepted Lyft's TOS or that he has used the Lyft Platform on other occasions. However, on the date of the December 26, 2021, collision, Respondent was not utilizing the Lyft Platform. (Aff. of David White ¶ 8; R. 333.) Respondent was not driving for or on behalf of Lyft. (*Id.* at ¶ 9; R. 333.) Respondent had not personally requested transportation through the Lyft Platform. (*Id.* at ¶ 10; R. 333.) Respondent was not with anyone who had requested transportation through the Lyft Platform resulting in his presence in the vehicle. (*Id.* at ¶ 11; R. 333.) Rather, Defendant White unilaterally chose to accept a rideshare request from an individual (Brandon Simmons) while Respondent was already a passenger in her vehicle. (*Id.* at ¶¶ 5–7; R. 333.)

Respondent filed his Complaint against Lyft, Defendant Alicia White, and Defendant Jane Doe in Charleston County Court of Common Pleas on December 18, 2024. (Compl.; R. 16.) Respondent alleged three causes of action: (1) negligence against Defendant Doe; (2) negligence against Defendant White; and (3) negligence against Lyft based on vicarious liability under respondeat superior and negligent hiring, training, supervision, and retention. (*Id.* at ¶¶ 17-37; R. 18-22.) Appellant filed its Answer on February 20, 2025. (Lyft Answer; R. 32.)

On March 24, 2025, approximately three months after Respondent filed his Complaint, Appellant filed a Motion to Compel Arbitration and Stay Proceedings. (Mot. to Compel; R. 58.) On June 19, 2025, Respondent filed a Memorandum in Opposition to Lyft's Motion to Compel Arbitration. (Mem. in Opp'n; R. 170.) Respondent argued that: (1) Respondent's claims do not fall within the scope of the arbitration agreement because he was not using the Lyft Platform at the time of the collision; and (2) the arbitration clause is unconscionable and unenforceable. (*Id.* at 3-8; R. 172-177.)

The circuit court heard oral arguments pertaining to Lyft's Motion on July 31, 2025. (Tr. of July 31, 2025 Hrg.; R. 41.) During the hearing, Respondent's counsel explained that Respondent was not a Lyft passenger and did not order a Lyft nor ride with someone else who ordered a Lyft to a requested destination. (*Id.* at 8:9-11:7; R. 48-51.)

On August 21, 2025, the circuit court issued an Order denying Appellant's Motion to Compel Arbitration and Stay Proceedings. (Order; R. 4.) The circuit court found that Lyft's Motion should be denied for two independent reasons.

First, the circuit court found that the TOS do not apply to Respondent's claims. (Order at 1-4; R. 4-7.) The court explained that the TOS "clearly define the scope of the agreement" and "only govern a user's active use or access of the Lyft Platform or Defendant Lyft's services." (*Id.*

at 2; R. 5.) The court noted that "[Respondent] was not a 'Lyft' passenger at the time of the incident. He was riding with someone who was a Lyft driver. He did not order a Lyft nor ride with someone else who ordered a Lyft to a requested destination." (*Id.;* R. 5.) The court found that "[Respondent's] claims do not stem from his use of either the Lyft Platform or its Rideshare Services" and therefore there is no "significant relationship" between Respondent's claims and the TOS. (*Id.* at 3-4; R. 6-7.) The court concluded: "As there is no link between Plaintiff's claims in his Complaint and the TOS, there is no 'significant relationship' between the contract containing the arbitration clause and the allegations within this Complaint as required by the South Carolina Supreme Court in *Aiken v. World Finance Corporation of South Carolina.*" (*Id.* at 4; R. 7.)

Second, the circuit court found that even if it was decided the TOS did apply, the arbitration clause is unconscionable and therefore unenforceable. (*Id.* at 4-7; R. 7-10.) The court found that the TOS "between the [Respondent] and [Appellant] is clearly an adhesion contract" presented on a "take-it-or-leave-it basis." (*Id.* at 5; R. 8.) The court found that "[Respondent] did not have the business judgment to understand the effect of the arbitration clause contained in the TOS, and did not have counsel present to provide assistance during the account creation process." (*Id.* at 6; R. 9.) The court identified several oppressive and one-sided terms in the arbitration clause. First, the court found that Section 15 of the TOS "contains broad language purporting to exempt Lyft from virtually all liability" which "essentially renders Lyft immune from liability under any scenario, which is impermissibly onerous." (*Id.*; R. 9.) Second, the court noted that "the arbitration clause contains additional oppressive and one-sided terms including the waiver of a jury trial, inability to appeal an arbitration decision, and inability to participate in a class action." (*Id.*; R. 9.) Third, the court found that "the arbitration provision is buried within a 38-page document and is inconspicuous in nature, particularly when viewed on a mobile device as most users would experience it." (*Id.* at 6-7; R. 9-10.) The circuit court concluded: "As the subject TOS is a contract of adhesion, this Court determines that [Respondent] lacked meaningful choice and could not negotiate its terms, and that the arbitration clause contains several oppressive and one-sided terms. For these reasons, the arbitration clause of the TOS is unconscionable, and thus unenforceable." (*Id.* at 7; R. 10.)

On September 2, 2025, Appellant filed a Motion to Reconsider pursuant to Rule 59(e), SCRCP. (Mot. to Reconsider; R. 269.) Lyft argued that the circuit court erred by: (1) failing to enforce the delegation clause; (2) finding that Respondent's claims do not fall within the scope of the arbitration agreement; and (3) finding the arbitration clause unconscionable. (*Id.* at 1-18; R. 269-286.)

In response, on September 12, 2025, Respondent filed a Memorandum in Opposition to Lyft's Motion to Reconsider. (Resp. in Opp'n to Mot. to Reconsider; R. 321.) Respondent argued that Lyft's Motion merely repeated the same arguments already rejected by the court and that the court correctly applied South Carolina law. (*Id.* at 1–10; R. 321-331.) Respondent also filed the Affidavit of David White, which provided sworn testimony regarding his non-use of the Lyft Platform at the time of the collision. (Aff. of David White; R. 333.) On September 15, 2025, Lyft filed a Motion to Strike Respondent's Affidavit, arguing that it was untimely and improper under Rule 59(e). (Mot. to Strike; R. 334.)

On October 15, 2025, the circuit court denied Lyft's Motion to Reconsider by Form Order. (Form 4 Order; R. 12.) The court stated: "[Appellant] filed a Motion to Reconsider with this Court on September 2, 2025. . . . This Court DENIES [Appellant's] Motion to Reconsider without the necessity of a hearing and decided on the record and briefs." (*Id.*; R. 12.) The circuit court did not strike Respondent's Affidavit when it issued its Order. On November 12, 2025, Lyft filed its Notice of Appeal. (Not. of Appeal; R. 349.)

STANDARD OF REVIEW

"Arbitrability determinations are subject to de novo review." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22 (2007). "Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings." *Id.* Pursuant to Rule 220(c), the Appellate Court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal. This matter should be affirmed as to both ruling as stated in the circuit court's Order Denying Defendant's Motion to Stay and Compel Arbitration.

ARGUMENT

I. The Court should affirm the circuit court's determination that the threshold question of whether the Terms of Service apply to Respondent's claims is proper before addressing arbitrability.

Under the FAA and South Carolina law, a delegation clause presupposes the existence of a contract that applies to the dispute giving rise to the lawsuit. *Doe v. TCSC, LLC*, 430 S.C. 602, 610 (S.C. App. 2020). While parties may clearly and unmistakably delegate questions of arbitrability to an arbitrator, courts still retain the antecedent authority to determine whether the disputes arise out of a significant relationship to the contract at all. *First Options of Chicago, Inc. v. Kaplan*, 5144 U.S. 938, 943-945 (1995); *see also Doe*, 430 S.C. at 610-11. There must be a threshold inquiry of whether an underlying contract applies to the cause of action giving rise to a lawsuit. *Aiken v. World Fin. Corp.*, 367 S.C. 176, 183-84 (S.C. App. 2005). If the claims fall outside the scope of the agreement, the analysis must end, and arbitration cannot be compelled. *Id.* at 184. Additionally, Respondent's claims can be proven independent of the agreement at issue further proving his causes of action fall outside the scope of the agreement. *Id.*

Arbitration is a matter of contract. To constitute a valid contract under South Carolina law, parties must be able to contract, consideration given to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406 (2003). Critically, "a party cannot be required to arbitrate a dispute which he did not agree to." *Aiken v. World Finance Corp.*, 373 S.C. 144, 149 (2007). In *Aiken*, Defendants attempted to compel arbitration pursuant to a loan agreement after Plaintiff Aiken filed a lawsuit for damages arising out of intentional infliction of emotional distress, negligence, negligent hiring/supervision, and unfair trade practices. *Id.* at 149-50. The circuit court denied Defendant World Finance's motion, which was subsequently appealed. *Id.* at 147-48. Both this Court and the South Carolina Supreme Court affirmed the circuit court's order denying the motion to compel arbitration. *Id.* at 152. The lower court concluded that Aiken's tort claims were independent of the loan agreement because those claims arose after the loans were paid in full and, therefore, were not subject to arbitration and ultimately the South Carolina Supreme Court affirmed this determination. *Id.* at 149-50.

This Court in *Aiken* extensively referenced and relied on its similar *Chassereau v. Global-Sun Pools, Inc.*, opinion. *Chassereau v. Glob.-Sun Pools, Inc.*, 363 S.C. 628 (S.C. App. 2005). In *Chassereau*, a homeowner entered into a contract for the construction of a pool by Global-Sun Pools. *Id.* at 630. The contract contained an arbitration provision that applied to "any disputes arising in any manner relating to this agreement." *Id.* at 633. After construction was completed, the homeowner began to experience problems with the pool. *Id.* at 630. Because Global-Sun Pools failed to repair the pool, the homeowner stopped making payments on the pool. *Id.* The homeowner subsequently filed a complaint against the pool company and one of its employees, alleging this employee and other employees made a series of harassing and intimidating telephone calls to her workplace. *Id.* The homeowner claimed the pool company's employees made defamatory statements about her to her co-workers and they disclosed information regarding her personal finances. *Id.* at 630-31. Additionally, the homeowner asserted these same employees made numerous telephone calls to her home as well as to her relatives in an effort to intimidate and harass her. *Id.* In Plaintiff Chassereau's complaint, "Chassereau asserted causes of action for (1) defamation; (2) violation of South Carolina law prohibiting unlawful use of a telephone, S.C. Code Ann. § 16-17-430 (2003); and (3) intentional infliction of emotional distress." *Id.* at 631. The pool company and its employee filed a motion to compel arbitration, alleging the provisions of the construction contract mandated arbitration. The circuit court denied the motion, finding "[t]he complaint is based upon tortious conduct of the employees of [Global-Sun Pools] unrelated to the contract" and the "allegations of the complaint do not arise out of nor do they relate to the contract." *Id.*

More recently, the United States Supreme Court in *Coinbase, Inc. v. Suski*, reiterated this concept when two contracts conflicted regarding which forum governed dispute resolution between the parties. 602 U.S. 143 (2024). In *Coinbase*, the Supreme Court determined that a court, not an arbitrator, must decide which contract controls. *Id.* at 148. The Court explained that this threshold determination is for courts because "[a]rbitration is a matter of contract and consent, and we have long held that disputes are subject to arbitration if, and only if, the parties actually agreed to arbitrate those disputes." *Id.* at 145. "[B]efore either the delegation provision or the forum slection clause can be enforced, a court needs to decide what the parties have agreed to." *Id.*

Here, the threshold question is whether the TOS apply to Respondent's claims at all. This is precisely the type of gateway question that courts must decide. The circuit court correctly recognized that before it could enforce any arbitration clause, or any delegation provision within that clause, it first had to determine whether the contract containing those provisions governed the dispute before it. Appellant attempts to argue that the delegation clause in the TOS requires the arbitrator to decide all questions of "scope, applicability, enforceability, revocability or validity" of the arbitration agreement. (Appellant's Br. at 11.) This argument, though, puts the cart before the horse. A delegation clause can only operate if the contract containing it applies to the dispute. As this Court, the South Carolina Supreme Court, and the United States Supreme Court have previously determined, courts must first decide whether a contract between parties containing an arbitration agreement applies to the underlying dispute before enforcing any delegation provision.

The circuit court properly applied this principle. The court examined the language of the TOS contract, which states it governs "use of the Lyft application, website, and technology platform" and "the Rideshare Services." (Order at 2; R. 5.) The circuit court then examined the facts of this case and found that Respondent "was not a 'Lyft' passenger at the time of the incident" and "did not order a Lyft nor ride with someone else who ordered a Lyft to a requested destination." (*Id.*; R. 5.) Based on these findings, the circuit court concluded that the TOS contract does not apply to Respondent's claims because "Plaintiff's claims do not stem from his use of either the Lyft Platform or its Rideshare Services." (*Id.* at 3; R. 6.)

This analysis is consistent with *Aiken* and *Chassereau*. *Chassereau*, 363 S.C. at 634; *Aiken*, 373 S.C. at 152. The circuit court did not decide whether Respondent's claims fall within the scope of an arbitration agreement found within the contract between Respondent and Appellant. Rather, the court decided the antecedent question of whether the contract containing the arbitration clause applies to this dispute at all. Based on legal precedent, that is a question for the court, not an arbitrator. Appellant's reliance on cases involving delegation clauses is misplaced because those cases all involved disputes where the underlying contract clearly applied. In those cases, the only question was whether particular claims fell within the scope of an arbitration clause in a contract that admittedly governed the parties' relationship at the time the cause of action arose. In this case, by contrast, the circuit court found that the TOS do not govern Respondent's claims because he was not using the Lyft Platform in any way when he was injured. That finding removes this case from the ambit of the TOS entirely, including any delegation provision contained therein.

In order to reach this conclusion, the circuit court analyzed this case under South Carolina law requiring courts to determine whether a "significant relationship" exists between claims and the contract containing the arbitration clause. *Aiken*, 373 S.C. at 149. South Carolina law imposes an additional requirement before arbitration may be compelled: the claims must have a "significant relationship" to the contract containing the arbitration clause. *Id.* This requirement ensures that parties are not forced to arbitrate disputes they never agreed to arbitrate. In *Zabinski v. Bright Acres Assocs.*, the South Carolina Supreme Court held that "[a] broadly-worded arbitration clause applies to disputes that do not arise under the governing contract **when a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained.**" 346 S.C. 580, 598 (2001) (emphasis added). The Court explained that this requirement flows from the fundamental principle that "a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." *Id.* at 596. In *Zabinski*, an attempt to compel arbitration arose based on language found in a partnership agreement. *Id.* at 586. The South Carolina Supreme Court stated "[d]espite South Carolina's presumption in favor or arbitration, we find the remaining third party claims are not subject to arbitration because a significant relationship does not exist between the following claims and the partnership agreement: (1) any attorney malpractice action against Westmoreland; (2) any attorney malpractice action against Massey's attorney, Bullard;

and (3) any action between Massey and Leutwiler concerning the purchase agreement entered into by Massey to buy Leutwiler's interest in the partnership." *Id.* at 598.

Appellant relies heavily on *Rent-A-Ctr., W., Inc. v. Jackson*, and similar cases, for the proposition that delegation clauses are severable and must be enforced. *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63 (2010). The flaw in Appellant's arugument though is that those cases involved contracts that applied to the disputes at issue. *Rent-A-Center*, for example, involved an employment agreement that clearly governed the employment relationship giving rise to the dispute. 561 U.S. at 65-66. In *Rent-A-Center*, the question was whether unconscionability challenges should be decided by the court or the arbitrator whereas, here, the initial inquiry is whether the contract applied at all. *Id.* at 66.

By contrast, the circuit court found that the TOS do not apply to Respondent's claims because he was not using the Lyft Platform or driving on behalf of Lyft when he was injured in this case. This finding is fatal to Lyft's argument. A delegation clause cannot operate to compel arbitration of a dispute that falls outside the contract containing that clause. If a "significant relationship" does not exists, the analysis should end there. *See Zabinski*, 346 S.C. at 598. The circuit court's finding that the TOS do not apply to Respondent's claims is supported by both the language of the TOS and the undisputed facts. The TOS explicitly define their scope. The opening paragraph states that the TOS "constitute a legally binding agreement . . . governing [Respondent's] use of the Lyft application, website, and technology platform." (Mot. to Compel, Ex. A-5 at 1; R. 133.) The TOS further provide: "IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE LYFT PLATFORM OR ANY OF THE SERVICES PROVIDED THROUGH THE LYFT PLATFORM." (*Id.*; R. 133.)

This language makes clear that the TOS govern a user's use or access of the Lyft Platform and services. The TOS do not purport to govern every aspect of a user's life or every tort that might occur involving a Lyft driver. Rather, it governs the contractual relationship created when a user actively uses the Platform to request or provide rideshare services. The circuit court correctly interpreted this language to mean that the TOS "only govern a user's active use or access of the Lyft Platform or [Appellant] Lyft's services." (Order at 2; R. 5.) This interpretation is consistent with the plain language of the TOS and with basic principles of contract law. The undisputed facts establish that Respondent was not actively using the Lyft Platform at the time of the collision. Respondent's sworn affidavit states:

- "At the time of the collision, I was not utilizing Lyft's platform for rideshare services." (Aff. of David White ¶ 8; R. 333.)

- "At the time of the collision, I was not driving for, or on behalf of, [Appellant] Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc." (*Id.* at ¶ 9; R. 333.)

- "Just prior to the collision, I personally had not utilized Lyft's platform for rideshare services to request transportation by a Lyft driver." (*Id.* at ¶ 10; R. 333.)

- "Just prior to the collision, I was not with anyone utilizing Lyft's platform to request rideshare services." (*Id.* at ¶ 11; R. 333.)

These sworn facts are consistent with the allegations in the Complaint, which state that Respondent "was a passenger in a vehicle driven by Defendant White" and that "Defendant White also had a passenger in the backseat that had requested transportation from [Appellant] Lyft earlier in the day." (Compl. ¶ 8; R. 17.) Nowhere does the Complaint allege that Respondent requested transportation through the Lyft Platform or was otherwise using Lyft's services at the time of the collision.

Appellant argues that Respondent failed to present sufficient evidence that his claims do not arise from use of the Lyft Platform. This argument fails for two reasons. First, Respondent presented a sworn affidavit stating that he was not using the Lyft Platform at the time of the collision. (Aff. of David White; R. 333.) Lyft's argument that the affidavit should be stricken because it was filed in opposition to the Motion to Reconsider is without merit. The affidavit provides sworn testimony regarding facts that were already alleged in the Complaint and argued by Respondent's counsel and, therefore, is evidence in this matter. Second, Lyft presented no evidence that Respondent was using the Lyft Platform at the time of the collision. Lyft's own evidence shows only that Respondent previously created an account and used the Platform on other occasions. (Mot. to Compel, Ex. A; R. 81.) Lyft argues that statements by Respondent's counsel are not evidence. (Appellant's Br. at 20–21.) Lyft cites *S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, (S.C. App. 2003), and *McManus v. Bank of Greenwood*, 171 S.C. 84, 89 (1933), for the proposition that arguments by counsel are not evidence. These cases do not aid Appellant's argument herein. The circuit court did not rely solely on counsel's arguments. The court relied on the allegations in the Complaint, which state that Respondent was a passenger and that another unrelated passenger had requested transportation from Lyft. (Compl. ¶ 8; R. 17.) These allegations are evidence for purposes of a motion to compel arbitration. Moreover, Respondent subsequently provided a sworn affidavit confirming these facts. (Aff. of David White; R. 333.)

Lyft also argues that Respondent's affidavit was untimely because it was not filed until Respondent opposed the Motion to Reconsider. Lyft filed a Motion to Strike the affidavit, arguing that it violates Rule 6(d), SCRCP, which requires opposing affidavits to be served no later than two days before a hearing. (Mot. to Strike; R. 334.) This argument is meritless. Rule 6(d) applies to motions heard at a noticed hearing. Here, the circuit court denied the Motion to Reconsider "without the necessity of a hearing and decided on the record and briefs." (Form 4 Order; R. 12.) Therefore, Rule 6(d)'s two-day deadline did not apply. Moreover, the affidavit merely confirmed facts already alleged in the Complaint and argued by Respondent's counsel. It did not present new evidence; it simply provided sworn testimony supporting Respondent's position. Even if the affidavit were stricken, the result would be the same. The Complaint alleges that Respondent was a passenger in Defendant White's vehicle and that a different passenger had requested transportation from Lyft. (Compl. ¶ 8; R. 17.) These allegations are sufficient to establish that Respondent was not using the Lyft Platform in any capacity at the time of the collision.

As this Court is aware, Appellant has not provided evidence to dispute Respondent's position that the platform was not being utilized by Respondent at the time of the subject incident. Appellant cannot do us because these facts do not exist. Should these facts exist, Appellant would have most certainly cited to them in order to defeat Respondent's argument. To date, that has not occurred despite Appellant having access to Respondent's account on Appellant's platform, which would show whether he was providing rideshare services on behalf of Lyft or utilizing the Lyft platform for his personal use of the rideshare service. The answer as to why this has not occurred is straightforward, Respondent simply was not participating in any of these activities at the time the collision occurred. Lyft's own evidence shows only that Respondent previously created a Lyft account and used the Platform on **other** occasions. (Mot. to Compel, Ex. A; R. 81.) Additionally, no evidence has been provided showing any relationship between Respondent and the additional passenger who was actually attempting to use Appellant's services when the collision occurred.

The circuit court credited these facts, or lack thereof, and found that Respondent "was not a 'Lyft' passenger at the time of the incident" and "did not order a Lyft nor ride with someone else who ordered a Lyft to a requested destination." (Order at 2; R. 5.) Based on these findings, the circuit court followed legal precedent and concluded that "[Respondent's] claims do not stem from his use of either the Lyft Platform or its Rideshare Services." (*Id.* at 3; R. 6.)

Appellant attempts to argue that Respondent's prior acceptance of the TOS binds him to arbitrate all claims against Lyft, regardless of whether or not he was using the Platform in any capacity when injured. But this argument proves too much. Under Lyft's theory, anyone who has ever created a Lyft account would be required to arbitrate any claim against Lyft for the rest of her life, even if the claim has nothing to do with her use of the Platform. Such an interpretation would extend the TOS far beyond its plain language and would violate the fundamental principle that parties cannot be compelled to arbitrate disputes they did not agree to arbitrate. Respondent's claims arise from an automobile collision caused by the alleged negligence of two drivers. The fact that one of the defendant drivers happened to be providing rideshare services to a different, unaffiliated-to-Respondent passenger at the time does not transform Respondent's tort claims into claims "arising out of or relating to" his use of the Lyft Platform. Therefore, the circuit court's ruling is consistent with South Carolina precedent requiring a "significant relationship" between the claims and the contract. The collision was an unforeseeable tort unrelated to any agreement between Respondent and Appellant. The circuit court correctly found that the TOS do not apply to these claims.

For these reasons, the circuit court did not err in holding that no significant relationship existed between Respondent's causes of action and the TOS contract to which he previously agreed.

II. The Court should affirm the circuit court's decision that the arbitration clause is unconscionable and therefore, unenforceable, because the arbitration clause is included in an adhesion contract in which Respondent lacked any meaningful choice as to its terms, the provisions in the arbitration clause are oppressive and one-sided, and such terms cannot be severed.

Should this Court decide the contract does apply to Respondent's tort claims, which Respondent maintains it should not for reasons previously discussed, public policy in South Carolina does not favor arbitration. *Lampo v. Amedisys Holding, LLC*, 445 S.C. 305, 317 (2025). The Supreme Court of South Carolina previously dispensed with this incorrect notion of favoring arbitration five years ago. *See Palmetto Constr. Grp. v. Restoration Specialists, LLC*, 432 S.C. 633, 639 (2021). An arbitration contract is like any other contract, and if it exists, it will be enforced according to its terms. *See Morgan v. Sundance, Inc.*, 596 U.S. 411, 417-19 (2022).

When a court is determining the enforceability of an arbitration clause, the court must use the general principles of the state's contract law. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. at 24-25. A party may seek revocation of a contract on the grounds of unconscionability. *Id.* "[U]nconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Id.* at 25. Whether one party lacks meaningful choice in entering into the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process. *Gladden v. Boykin*, 402 S.C. 140, 148 (2013). "If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause or so limit its application as to avoid an unconscionable result." S.C. Code Ann. § 36-2-302(1).

In this matter, the circuit court properly found that Respondent lacked any meaningful choice in negotiating the terms of the contract and that the arbitration clause included several oppressive and one-sided terms based on the facts of this case. (Order at 6; R. 9.). Therefore, the circuit court correctly analyzed and applied South Carolina law and held that the arbitration clause contained in the TOS between Respondent and Appellant was unconscionable and unenforceable. (*Id.* at 7; R. 10.)

A. South Carolina law requires both procedural and substantive unconscionability.

Under South Carolina law, an arbitration clause is unconscionable if it involves "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them." *Simpson*, 373 S.C. at 25; *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48 (2016); *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 612 (2022). This test requires both procedural unconscionability (absence of meaningful choice) and substantive unconscionability (oppressive terms). *Damico*, 437 S.C. at 611. If a court finds an arbitration clause unconscionable, the court may refuse to enforce the clause or limit its application to avoid an unconscionable result. S.C. Code Ann. § 36-2-302(1). South Carolina courts have repeatedly held that unconscionable arbitration clauses are unenforceable. *See Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 597 (2024); *Damico*, 437 S.C. at 624; *Simpson*, 373 S.C. at 30.

B. The TOS are a contract of adhesion presented without meaningful choice.

"Generally, an adhesion contract is a standard form contract offered on a take-it or leave-it basis with terms that are not negotiable." *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 541 (2001). While an adhesion contract is not *per se* unconscionable, it is a strong indication that there was a lack of meaningful choice in negotiating the terms of the contract and is met with considerable skepticism by courts. *Simpson*, 373 S.C. at 26-27. In determining whether there was an absence of meaningful choice, South Carolina courts consider: (1) whether the arbitration clause was included in a contract of adhesion between a commercial entity and a consumer; (2) whether the consumer lacked the business judgment necessary to make her aware of the implications of the arbitration agreement; and (3) whether the consumer had a lawyer present to provide assistance. *Id.*

All three factors support a finding of procedural unconscionability in this case. First, the TOS are indisputably a contract of adhesion between a commercial entity (Appellant) and a consumer (Respondent). As Appellant conceded, "a user cannot access the Lyft software platform without first creating a Lyft user account and cannot request or purchase rideshare services through the Lyft App unless they have affirmatively accepted Lyft's Terms of Service." (Mot. to Compel, Ex. A ¶ 8; R. 83.) The terms are not negotiable. Users must click "I Agree," or they cannot use the Platform. This is the quintessential "take-it or leave-it" contract. Second, Respondent lacked the business judgment necessary to understand the implications of the arbitration clause. The TOS are thirty-eight (38) pages long, contain complex legal language, and are inconspicuous in nature, particularly when viewed on a mobile device as most users would experience it. (Order at 6; R. 9.) The arbitration clause is buried in Section 17 of the document. (Mot. to Compel, Ex. A-5; R. 147.) While the first page of the TOS contains a notice about the arbitration clause, this notice does not explain the full implications of arbitration, including the waiver of jury trial rights, the inability to appeal, and the limitation on class actions. Third, Respondent did not have a lawyer present when he created his Lyft account and accepted the TOS. The account creation process is designed to be completed quickly on a mobile device. Users are not given time to consult with counsel or to carefully review thirty-eight (38) pages of legal terms. The circuit court correctly found that "[Respondent] did not have the business judgment to understand the effect of the arbitration clause contained in the TOS, and did not have counsel present to provide assistance during the account creation process." (Order at 6; R. 9.) This finding is consistent with South Carolina precedent.

C. The arbitration clause contains oppressive and one-sided terms.

South Carolina courts have found arbitration provisions unconscionable where they unfairly limit statutory remedies or create one-sided obligations. *See Simpson*, 373 S.C. at 28-30; *Huskins*, 444 S.C. at 596.The circuit court identified several oppressive terms:

First, Section 15 of the TOS contains "broad language purporting to exempt Lyft from virtually all liability." (Order at 6; R. 9.) Specifically, Section 15 states: "IN NO EVENT WILL LYFT . . . BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES . . . ARISING OUT OF OR IN CONNECTION WITH THE LYFT PLATFORM, THE RIDESHARE SERVICES, OR THIS AGREEMENT, HOWEVER ARISING INCLUDING NEGLIGENCE." (Mot. to Compel, Ex. A-5 at 15; R. 146.) The circuit court correctly found that this provision "essentially renders Lyft immune from liability under any scenario, which is impermissibly onerous." (Order at 6; R. 9.) South Carolina courts have consistently held that arbitration clauses that limit statutory remedies or exempt parties from liability are unconscionable. *See Simpson*, 373 S.C. at 28–30; *Huskins*, 444 S.C. at 596.

Second, the arbitration clause contains "additional oppressive and one-sided terms including the waiver of a jury trial, inability to appeal an arbitration decision, and inability to participate in a class action." (Order at 6; R. 9.) While some of these terms may be permissible in isolation, when combined with the broad limitation of liability in Section 15, they render the arbitration clause unconscionable as a whole.

Third, the circuit court found that "the arbitration provision is buried within a thirty-eight (38) page document and is inconspicuous in nature, particularly when viewed on a mobile device as most users would experience it." (Order at 6-7; R. 9-10.) This finding is supported by the record. While the first page of the TOS contains a notice about the arbitration clause, the full terms of the clause are not revealed until Section 17, many pages later. Most users accessing the TOS on a mobile device would not read all thirty-eight (38) pages before clicking "I Agree." Appellant argues that the notice on the first page of the TOS is sufficient to make the arbitration clause conspicuous. But conspicuousness is only one factor in the unconscionability analysis. Even if the clause is conspicuous, it can still be unconscionable if it contains oppressive terms and the consumer lacks meaningful choice.

The circuit court's finding of unconscionability is consistent with South Carolina precedent. In *Smith v. D.R. Horton, Inc.*, the South Carolina Supreme Court found an arbitration clause unconscionable where it was contained in a home purchase agreement and limited the buyer's remedies to repair or replacement, excluding monetary damages. 417 S.C. at 50. The court found that the buyers lacked meaningful choice because of the disparity in bargaining power, and the clause was oppressive because it limited remedies. *Id.* Similarly, in *Damico*, the South Carolina Supreme Court found an arbitration clause unconscionable where it was contained in a home construction contract and restricted the buyers' ability to name parties in arbitration. 437 S.C. at 624.

Similar to *Smith* and *Damico*, the TOS contain oppressive terms. The broad limitation of liability in Section 15 effectively eliminates Respondent's ability to recover meaningful damages. When combined with the adhesive nature of the contract and Respondent's lack of meaningful choice, the arbitration clause is unconscionable.

D. The limitation of liability provision renders the arbitration clause unenforceable.

Appellant argues that the circuit court erred by considering Section 15 (the limitation of liability provision) in its unconscionability analysis because courts may only consider the provisions of the arbitration agreement itself, instead of those of the whole contract. *Smith*, 417 S.C. at 48. However, this argument misunderstands the circuit court's analysis. The circuit court considered Section 15 because it is inextricably intertwined with the arbitration clause. If a consumer is forced to arbitrate but Appellant is exempt from all meaningful liability, the arbitration clause becomes a vehicle for denying the consumer any effective remedy. This is precisely the type of oppressive term that renders an arbitration clause unconscionable.

Moreover, even if Section 15 is considered separate from the arbitration clause, its presence in the same contract supports a finding of unconscionability. South Carolina courts have recognized that unconscionable terms in one part of a contract can infect the entire agreement, including the arbitration clause. *See Damico*, 437 S.C. at 618 (refusing to sever unconscionable provisions because "the illegality pervaded the entire agreement").

E. Severance is inappropriate under South Carolina law.

Appellant argues that even if Section 15 is unconscionable, the Court should sever it and enforce the remainder of the arbitration clause. This argument fails under South Carolina law. In *Huskins*, the South Carolina Supreme Court held that an arbitration clause that shortened the statute of limitations to ninety (90) days violated public policy and was unenforceable. 444 S.C. at 596-97. The Court declined to sever the illegal clause, finding that it was material to the contract and that severance would incentivize overreaching in adhesion contracts. *Id.* at 597.

Similarly, in *Damico*, the South Carolina Supreme Court declined to sever unconscionable provisions from an arbitration agreement, holding that "severing terms from an unconscionable contract of adhesion . . . discourages fair, arms-length transactions" and "would encourage sophisticated parties to intentionally insert unconscionable terms—that often go unchallenged—throughout their contracts." 437 S.C. at 604.

These cases establish that South Carolina courts will not sever unconscionable terms from arbitration clauses and related sections in adhesion contracts. To do so would encourage companies like Appellant to include oppressive terms in their contracts, knowing that courts will simply excise the offending provisions should they be challenged, while enforcing the rest of the agreement.

In Appellant's TOS, the limitation of liability provision in Section 15 is material to the TOS as a whole. It reflects Appellant's intent to shield itself from liability while forcing consumers into arbitration. Severing this provision would not cure the unconscionability of the arbitration clause because the clause would still be presented on a take-it-or-leave-it basis to consumers who lack the business judgment to understand its implications. The circuit court correctly declined to sever the unconscionable provisions and instead found the entire arbitration clause unenforceable. This decision is consistent with *Huskins* and *Damico* and should be affirmed. *Huskins*, 444 S.C. at 598; *Damico*, 437 S.C. at 624.

Appellant points to the severability clause in the TOS, which states that "in the event that any portion of this Arbitration Agreement is deemed illegal or unenforceable . . . such provision shall be severed and the remainder of the Arbitration Agreement shall be given full force and effect." (Mot. to Compel, Exs. A-3, ¶ 17(h), 5, ¶ 17(h); R. 114, 152.) However, South Carolina courts have repeatedly held that severability clauses do not prevent courts from finding entire arbitration agreements unenforceable when they are unconscionable. *See Damico*, 437 S.C. at 604 (declining to sever unconscionable provisions despite presence of severability clause). The question is not what the parties agreed to in the severability clause, but whether severance would be appropriate as a matter of public policy. *Id.* at 622. It would not be appropriate in this case. The circuit court's finding of unconscionability is supported by substantial evidence and is consistent with South Carolina law; and therefore, this Court should affirm the circuit court's decision.

CONCLUSION

For the foregoing reasons, Respondent David White respectfully requests that this Court affirm the circuit court's Order denying Lyft's Motion to Compel Arbitration and Stay Proceedings. The circuit court correctly determined that it, not an arbitrator, must decide the threshold question of whether the TOS apply to Respondent's claims. The circuit court correctly found that the TOS do not apply as Respondent was not actively using the Lyft Platform in any capacity at the time of the collision. The circuit court correctly found that Respondent's tort claims lack a "significant relationship" to the TOS and therefore, do not fall within the scope of the agreement. Finally, the circuit court correctly found that the arbitration clause is unconscionable and unenforceable under South Carolina law. Each of these findings provides an independent basis for denying Lyft's Motion to Compel Arbitration, and this Court should affirm on any or all of these grounds.

[SIGNATURE PAGE TO FOLLOW]

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