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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
The Honorable Dale E. Van Slambrook, Circuit Court Judge

Appellate Case No. 2026-001088
Civil Action No. 2025-CP-08-01735

Robin Lee Hatch, ... Respondent,

v.

Cynthia O. Robinson; Lyft, Inc.; Lyft Drives South Carolina, Inc.,

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

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court err by addressing gateway arbitrability issues in the face of the valid, enforceable, and unchallenged delegation clause in the parties' Arbitration Agreement reserving such determinations for the arbitrator?

2. Did the Circuit Court err by finding the Arbitration Agreement in Lyft's Terms of Service unconscionable notwithstanding Respondent's failure to provide any evidence that she lacked meaningful choice or that the terms were illegally one sided and oppressive?

STATEMENT OF THE CASE AND FACTS

This appeal arises from the Circuit Court's Order erroneously denying Appellant Lyft Inc, d/b/a Lyft Drives South Carolina, Inc.'s ("Lyft" or "Appellant") Motion to Compel Arbitration. In denying Lyft's motion, the Circuit Court ignored the parties' valid delegation clause and made improper rulings on the unconscionability of the Arbitration Agreement despite the parties' express agreement to have all gateway issues regarding scope, validity, and enforceability determined by the arbitrator and Respondent's failure to challenge (or even mention) the delegation clause below. Therefore, the Circuit Court erred by "overrid[ing] the contract and decid[ing] the arbitrability question." *Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 700, 869 S.E.2d 859, 864 (Ct. App. 2022) (quoting *Henry Schein, Inc. v. Archer & s Sales, Inc.*, 586 U.S. 63, 69 (2019) (same)). This Court should reverse.

This genesis of this matter was a car accident that occurred on July 13, 2022 while Defendant Cynthia Robinson was performing Rideshare Services for Respondent through the Lyft Platform ("Accident"). Respondent alleges that, during the course of the ride, Defendant Robinson allegedly struck another vehicle causing injuries to Respondent. (*See* Compl. ¶¶ 1–4; R. __.)

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. In other words, Lyft operates a peer-to-peer software platform that connects users seeking rides to certain destinations ("riders") with independent contractor drivers ("drivers") who provide rides using personal vehicles. (Mot. to Compel, Ex. A – Carr Decl. ¶ 4; R. __.) The Lyft software Platform includes Lyft's website, technology platform, and mobile device application (the "Lyft App").

(*Id.*) The Lyft App offers a method to connect drivers and riders and allows those two groups to communicate. (*Id.* ¶¶ 5, 6; R. __.)

Users cannot access the Lyft Platform to request Rideshare Services unless they first create a Lyft user account using the Lyft App and agree to Lyft's Terms of Service ("Terms" or "TOS"). After creating an account, users are prompted periodically to reaffirm their acceptance of Lyft's updated Terms if they wish to continue using the Lyft Platform.

Lyft's Terms have at all times included a mutual arbitration agreement (the "Arbitration Agreement"). (Mot. to Compel, Ex. A ¶¶ 7–8; R. __.) The first page of the Terms contains the following notice in all caps:

> PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION . . .

(Exs. A-3, A-5, A-7– Lyft TOS; R. __.) The "SEE SECTION 17 BELOW" is a blue internal jump link that would take the viewer directly to the full Arbitration Agreement. (*See* Mot. to Compel, Ex. A, ¶ 17; R. __.) The Arbitration Agreement states that Lyft and any prospective user mutually agree that all claims between them "arising out of or relating to . . . the Lyft Platform" and/or "Rideshare Services" are subject to arbitration and that the Federal Arbitration Act would govern. (*See* Mot. to Compel, Exs. A-3, A-5, A-7; R. __.) It states in relevant part:

> **17. DISPUTE RESOLUTION AND ARBITRATION AGREEMENT**
>
> YOU AND LYFT MUTUALLY AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOVLE ANY DISPUTE BY ARBITRATION, as set forth below. This agreement to arbitrate ("Arbitration Agreement") is governed by the Federal Arbitration Act ("FAA"); . . . This

> Arbitration Agreement Survives after the Agreement terminates or your relationship with Lyft ends.
>
> ***
>
> Except as expressly provided below, ALL DISPUTES AND CLAIMS BETWEEN US (EACH A "CLAIM" AND COLLECTIVELY, "CLAIMS") SHALL BE EXCLUSIVELY RESOVLED BY BINDING ARBITRATION SOLELY BETWEEN YOU AND LYFT. These Claims include, but are not limited to, any dispute, claim or controversy, whether based on past, present, or future events, arising out of or relating to: this Agreement and prior versions thereof (including the breach, termination, enforcement, interpretation or validity thereof), the Lyft Platform, the Rideshare Services, . . . your relationship with Lyft . . . and all other federal and state statutory and common law claims. All disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator, except as expressly provided below.

(Mot. to Compel, Exs. A-3, ¶ 17(a), A-5, ¶ 17(a), A-7 ¶ 17(a); R. __.) The Arbitration Agreement further expressly provides that by agreeing to arbitration "YOU AND LYFT ARE WAIVING THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL FOR ALL CLAIMS, EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS ARBITRATION AGREEMENT." (*Id.*) Critically, the Arbitration Agreement contains a delegation clause providing that the arbitrator possesses the ***sole*** authority to resolve any disputes concerning the "arbitrability of a Claim" including the "scope, applicability, enforceability, revocability or validity of the Arbitration Agreement." (*Id.*)

On November 30, 2018, Respondent created a Lyft user account and affirmatively accepted Lyft's TOS dated February 6, 2018. (Mot. to Compel, Ex. A ¶ 12; R. __.) Thereafter, Respondent, like all users, was required to accept periodic updates to the TOS if she desired to continue using the Lyft Platform. (*Id.* ¶¶ 8, 12.) Respondent did so, affirmatively accepting Lyft's updated Terms on three (3) occasions before the Accident as follows:

- Lyft updated its TOS August 26, 2019. (*Id.* ¶12) Lyft notified Respondent of the updated TOS directly by email with the subject line: "We're updating our Terms of Service." (*Id.*) The email explained to Respondent that the August 26, 2019, TOS included revisions regarding "dispute resolution." (*Id.*) The email also provided a pink hyperlink to full text of the August 26, 2019 TOS. (*Id.*) Respondent then affirmatively accepted this version of the TOS within the Lyft App on December 16, 2019, and again on June 23, 2020. (*Id.*)

- Lyft next updated its TOS on December 9, 2020, and again notified Respondent of the by email with the subject line: "We're updating our Terms of Service." The email specifically explained to Respondent that the December 9, 2020, TOS included "revisions to our Dispute Resolution and Arbitration Agreement, which explains how legal dispute are handled." The email also included a blue hyperlink to the December 9, 2020, TOS and stated in bold and underline: **<u>"Your continued use of Lyft will confirm that you have reviewed and agreed to the updated Terms."</u>** (*Id.*; Mot. to Compel, Ex. A-6; R. __.) Respondent then affirmatively accepted the December 9, 2020, TOS on April 7, 2021. (Mot. to Compel, Exs. A ¶ 12, A-2 – Consent History; R. __.)

The December 9, 2020 TOS was in effect as to Respondent on the date of the Accident. (*Id.*) At the time Respondent accepted the December 9, 2020 TOS, she was presented with the full text of the Terms directly on the screen of the Lyft App immediately below a banner stating: "Before you can proceed you must read and agree to Lyft's Terms of Service." (*Id.* at ¶ 15; R. __.) At the bottom of the screen—immediately under the full text of the Lyft Terms—the Lyft App presented Respondent with a large "I Agree" button, which she was required to click to demonstrate consent and agreement to be bound by the Terms to proceed with using the Lyft App. (*Id.* ¶ 16; R.__.) A full copy of the current Terms was also accessible to Respondent at any time on Lyft's website and within the Lyft App. (*Id.* at ¶ 9; R. __.)

By affirmatively accepting Lyft's Terms and reaffirming that acceptance, Respondent agreed to be bound by the Arbitration Agreement. (*Id.*) Because Respondent agreed to be bound the Arbitration Agreement, she was able to use the Lyft App to request and/or purchase Rideshare Services on 55 separate occasions. (Mot. to Compel, Ex. A ¶ 13; R. __.) Respondent could not have requested or purchased those Rideshare Services without affirmatively consenting to the

Terms. (*Id.*) Indeed, Respondent has never disputed that she accepted the Terms or the benefits that flowed therefrom. (*See generally* Memo in Opp'n; R. __.)

Respondent's Complaint alleges that on July 13, 2022, she requested a ride through the Lyft Platform and was riding as a passenger in Defendant Robinson's vehicle while Robinson was providing Rideshare Services. (*See* Compl. ¶¶ 1–3; R. __.) Respondent alleges she was injured when Defendant Robinson ran a stop sign and struck another vehicle while failing to yield the right of way. (*Id.*)

In May 2025, Respondent filed suit asserting claims of negligence, gross negligence, and recklessness against Defendant Robinson. (*Id.* ¶¶ 15–22.; R. __.) Respondent contended that Lyft is liable for Robinson's actions under *respondeat superior* for negligent hiring and negligent supervision since she was providing services on the Lyft Platform when the accident occurred. (*Id.* at ¶¶ 23–40; R. __.)

In response, Lyft filed a Motion to Compel Arbitration (the "Motion") requesting that the matter be compelled to arbitration in light of the Arbitration Agreement in the Lyft TOS. (Mot. to Compel; R. __.) Respondent opposed the Motion, contending that the TOS was an unconscionable adhesion contract and the Arbitration Agreement contained oppressive and one-sided terms. (Mem. in Opp'n pp. 3–4; R. __.) Critically, ***Respondent made no mention of the delegation clause***. Lyft then filed a Reply arguing that Respondent's arguments regarding enforceability and unconscionability must be determined by the arbitrator in light of the unchallenged delegation clause. (Reply; R. __.)

The Circuit Court held a hearing on January 5, 2026. (Transcript of 1/5/2026 Hrg.; R. __.) Respondent again focused her arguments on unconscionability and did not challenge the delegation clause even after Lyft expressly raised the fact that Respondent had ignored this threshold issue entirely. (*Id.* at 14:8–17; R. __.) Respondent argued that she had no understanding of what she was agreeing to when she clicked "I agree" on the Terms more than 15 months before she requested the ride, her claims did not fall within the scope of the Arbitration Agreement, and the lack of meaningful choice rendered the Terms unconscionable. (*See id.* at 11:16–12:1–7; R. __.)

On February 20, 2026, the Circuit Court issued an Order denying Lyft's Motion. The Order failed to mention or address the delegation clause. Instead, the Order proceeded to address the merits of Respondent's unconscionability argument. The Circuit Court found the TOS is an unconscionable adhesion contract, and that Respondent "did not have the business judgment to understand the effect of the arbitration clause contained in the Terms of Service agreement and did not have counsel present to provide assistance during the account creation process." (Order p. 4; R. __.) The Circuit Court further concluded that the Arbitration Agreement contained "several oppressive and one-sided terms," such as "the waiver of a jury trial, inability to appeal the arbitration decision, and inability to participate in a class action." (*Id.* p. 5; R __.)

Lyft timely filed a Motion to Reconsider pursuant to Rule 59(e), SCRCP. (Mot. to Reconsider; R. __.) The Circuit Court denied this motion by Form 4 Order dated April 16, 2026. (Form 4 Order; R. __.) Lyft timely filed and served its Notice of Appeal on April 28, 2026. (Not. of Appeal; R. __.)

STANDARD OF REVIEW

Each of the legal issues on appeal are subject to de novo review. *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007) (appeal from denial of a motion to compel arbitration); *One Belle Hall Prop. Owners Ass'n, Inc. v. Trammell Crow Residential Co.*, 418 S.C. 51, 59, 791 S.E.2d 286, 291 (Ct. App. 2016) (appeal of arbitrability determination); *Smith* *v. D.R. Horton, Inc.*, 403 S.C. 10, 13, 742 S.E.2d 37, 39 (Ct. App. 2013) (determining agreement is unconscionable).

ARGUMENT

I. The Circuit Court erred by deciding gateway issues delegated to the arbitrator.

This case presents a straightforward issue regarding the application of a valid and unchallenged delegation clause. By accepting Lyft's Terms—on four (4) separate occasions—Respondent indisputably agreed to the Arbitration Agreement. The Arbitration Agreement contains a broad delegation clause requiring the arbitrator to resolve all gateway issues, including the scope, applicability, validity and enforceability of the Arbitration Agreement. (Mot. to Compel, Exs. A-3, ¶ 17(a), A-5, ¶ 17(a), A-7 ¶ 17(a); R. __.) Respondent has not raised any challenge to the delegation clause. Therefore, as noted above, the Circuit Court erred by "overrid[ing] the contract and decide the arbitrability question." *Palmetto Wildlife Extractors*, 435 S.C. at 700, 869 S.E.2d at 864 (citing *Henry Schein*, 586 U.S. at 69). This was reversible error.

A. Respondent entered into a binding and enforceable Arbitration Agreement with Lyft containing a delegation clause.

State law governs whether an agreement to arbitrate was formed. *First Options of Chicago, Inc. v. Kaplan* 514 U.S. 938, 944 (1995). To form an agreement in South Carolina, there must be: (1) an offer, (2) acceptance, and (3) valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003).

The Circuit Court correctly found that an agreement to arbitrate exists. Indeed, Respondent has never disputed the existence of such an agreement or that she validly accepted Lyft's TOS on several different occasions by clicking "I agree" in the Lyft App. Respondent thus affirmatively agreed to Lyft's Terms (the offer), acknowledging her consent within the Lyft App by clicking a button labeled "I Agree" (the acceptance) which was presented to her beneath the full text of Lyft's

TOS. (*See* Mot. to Compel, Ex. A, ¶ 15; R. __ ("Plaintiff was required to click to demonstrate consent and agreement to be bound by the Terms of Service and to proceed with use of the Lyft App.").)

The Arbitration Agreement plainly states that Lyft and Respondent "AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION." (Mot. to Compel, Exs. A-3, ¶ 17(a), A-5, ¶ 17(a), A-7 ¶ 17(a); R. __.) Importantly, the Arbitration Agreement also clearly and unmistakably sets forth the parties' "additional antecedent agreement"—a mutual delegation clause expressly delegating to the arbitrator exclusive authority to resolve any disputes regarding arbitrability, including those concerning the "scope, applicability, enforceability, revocability or validity of the Arbitration Agreement." (*Id.*)

In return for Respondent's consent to the TOS, including the mutual Arbitration Agreement, Lyft provided Respondent with access to the Lyft Platform that she used to purchase Rideshare Services on 55 occasions. (*See* Mot. to Compel, Ex. A, ¶ 13; R. __.) This suffices to establish consideration. *See e.g.*, *Osvatics v. Lyft, Inc.*, 535 F. Supp. 3d 1, 10–11 (D.D.C. 2021) (Jackson, J.) (Lyft and plaintiff "exchanged adequate consideration" and were therefore required to arbitrate because, "in return [for the plaintiff's] assent to its arbitration clause, Lyft provided [the plaintiff] with access to its application" and "further agreed to arbitrate any disputes between the parties."); *accord Mohammed v. Uber Technologies, Inc.* No. 16 C 2537, 2018 WL 1184733, at *6, *8 (N.D. Ill. Mar. 7, 2018) ("Uber provided consideration for the agreement through providing [plaintiff] with the benefits of its [ridesharing platform] app and connection to its riders.").

Therefore, Lyft indisputably established the existence of a valid Arbitration Agreement with Respondent, and since Lyft and Respondent have expressly agreed to delegate resolution of all enforceability questions (including unconscionability, as detailed below) to the arbitrator, this ends the Court's inquiry as detailed below.

B. The Circuit Court erred by overriding the delegation clause in the Arbitration Agreement delegating all gateway issues to the arbitrator for determination.

1. The FAA requires that a delegation clause—like any agreement to arbitrate— be enforced according to its terms.

The Arbitration Agreement is governed by the FAA, which Respondent has also never disputed. The FAA provides, in relevant part, that "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. When an action subject to arbitration is brought in court, the court "***shall*** make an order directing the parties to proceed to arbitration." 9 U.S.C. §§ 3–4 (emphasis added).

The FAA "leaves no place for the exercise of discretion . . . but instead mandates that [] courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2001) (The FAA "requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms") (internal quotations omitted)).

Ordinarily, "the court, rather than an arbitrator, will decide 'gateway' issues related to arbitration, including whether the arbitration agreement is valid and enforceable and whether it covers the parties' dispute." *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020). However, arbitration is a matter of contract, and the FAA allows parties to resolve by their contract the question of "who has the primary power to decide" disputes regarding gateway arbitrability questions. *Coinbase, Inc. v. Suski*, 602 U.S. 143, 148–49 (2024). *See also Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 384, 892 S.E.2d 112, 115 (2023) ("[T]he Supreme Court has consistently held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by 'clear and unmistakable' evidence.") (quoting *Henry Schein*, 586 U.S. at 69)).

"Just as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, so the question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about that matter." *First Options*, 514 U.S. at 943 (citations omitted). "As long as the parties' agreement delegates the arbitrability question to an arbitrator 'by clear and unmistakable evidence,' a court may not override the contract and decide the arbitrability question." *Palmetto Wildlife Extractors*, 435 S.C. at 700, 869 S.E.2d at 864 (quoting *Henry Schein*, 586 U.S. at 69). To do otherwise would contravene the FAA's mandate that arbitration agreements—whether governing the resolution of substantive claims, issues of arbitrability, or any other dispute—be placed "on an equal footing with other contracts," and "enforce[d] … according to their terms." *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010) (citations omitted).

2. Lyft and Respondent clearly and unmistakably agreed to arbitrate all gateway issues.

The delegation clause in the Arbitration Agreement is clear and unmistakable. It plainly provides that "***[a]ll disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator.***" (Mot. to Compel, Exs. A-3, ¶ 17(a) & A-5, ¶ 17(a); R. __ (emphasis added).) This statement reflects the parties' clear intention to delegate resolution of all gateway issues, including whether the claims fall within the scope of the Arbitration Agreement and unconscionability, for the arbitrator's exclusive authority. That's why it expressly invokes the terms of "scope, applicability, enforceability, . . . [and] validity" and assigns them to "the arbitrator" with the mandatory word "shall." *See Henderson v. Summerville Ford-Mercury Inc.*, 405 S.C. 440, 453, 748 S.E.2d 221, 228 (2013) (holding that "use of words such as 'shall'" denotes a "mandatory requirement") (citations omitted). The Circuit Court had no discretion to simply ignore this plain and "mandatory" language. Put another way, the clear and unmistakable language of the delegation clause resolves any dispute as to "who should have the primary power to decide." *Coinbase*, 602 U.S. at 148–49. The Circuit Court, therefore, was powerless to "override the contract and decide the arbitrability question." *Palmetto Wildlife Extractors*, 435 S.C. at 700, 869 S.E.2d at 864.

South Carolina precedent makes this clear. Indeed, similar—and more limited—delegation clauses have been consistently enforced by South Carolina courts under the FAA. Start with *Palmetto Wildlife Extractors*. There, like here, the circuit court denied a motion to compel arbitration, finding that the plaintiff's claims "did not implicate the Agreement and were not subject to arbitration." *Id.* at 698, 869 S.E.2d at 863.

The moving party appealed, pointing out that issues of scope were for the arbitrator to decide pursuant to the parties' delegation clause. This Court agreed:

> In the present case, the Agreement provided, 'Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding.' This statement is clear that issues of arbitrability are be [sic] determined by the arbitrator. *See Henry Schein, Inc.*, 139 S. Ct. at 529-30 (finding as long as the parties' agreement delegates the arbitrability question to an arbitrator "by 'clear and unmistakable' evidence," a court may not override the contract and decide the arbitrability question). This includes claims arising out of conduct that Respondents assert was unforeseeable. *See Doe* 430 S.C. at 616, 846 S.E.2d at 881 ("Because the outrageous and unforeseen torts exception relates to . . . the arbitrability of the dispute[,] . . . precedent requires that we

> honor the parties' choice to leave the issue of the exception to the arbitrator.").

Id. at 702, 869 S.E.2d at 866.

In *Doe v. TCSC, LLC*, this Court likewise enforced a delegation clause that the circuit court had disregarded. There, the question before this Court was "whether the parties intended for the court or an arbitrator to decide the threshold issue of whether the Agreement is valid and enforceable" under the FAA. 430 S.C. at 607, 846 S.E.2d at 876. This Court again found that the delegation clause controlled:

> Consistent with *Rent-A-Center*, because it is clear and unmistakable the delegation clause committed disputes over the 'interpretation and scope' of the Arbitration Agreement and issues of 'arbitrability of the claim or dispute' to the arbitrator, the FAA requires us to honor that agreement and leave resolution of these discrete gateway issues to the arbitrator.

Id. at 609, 846 S.E.2d at 877.

However, the *Doe* delegation clause was circumscribed. Unlike Lyft and Respondent's delegation clause, the *Doe* delegation clause "did not mention who decides the gateway validity and enforceability issues." *Id.* As a result, this Court addressed unconscionability since "we must honor the parties' choice to leave these to the court." *Id.*[1] Lyft and Respondent made the opposite choice here. Their Arbitration Agreement expressly delegates issues of "validity" and "enforceability" to the arbitrator for resolution. So, as in *Doe*, this Court "must honor the parties' choice" and allow the arbitrator to decide unconscionability (along with scope). *Id.*

The import of *Palmetto Wildlife Extractors* and *Doe* is unmistakable. In South Carolina, the delegation clause means what it says and must be enforced as written just as the U.S. Supreme

[1] This Court then proceeded to address unconscionability, found that the unconscionable terms alone must be severed from the arbitration agreement under controlling law, and remanded the case for the remainder of the arbitration agreement to be enforced. *Id.* at 614–15, 846 S.E.2d at 880.

Court has continuously instructed. When the parties delegate gateway arbitrability issues to the arbitrator, there is no escape hatch. The arbitrator—not the court—must resolve any challenges regarding these gateway issues. *See also, e.g.*, *Blume v. Starbucks Corp.*, No. 2023-001506, 2025 WL 2159033, at *4 (S.C. Ct. App. July 30, 2025) (reversing circuit court's arbitrability determinations and compelling the dispute to arbitration in light of the delegation clause in the subject arbitration agreement)[2]; *Masters v. KOL, Inc.*, 431 S.C. 28, 41, 846 S.E.2d 893, 899 (Ct. App. 2020) (same).

For the same reason, courts around the country routinely enforce the delegation clause in Lyft's TOS, including in scenarios where the passenger did not even order the subject ride. For example, in *Lyft, Inc. v. Abenante*, 574 P.3d 433, 2025 WL 2414236 (Nev. Ct. App. 2025) (unpublished table decision), the respondent-plaintiffs argued that the Arbitration Agreement in Lyft's TOS was "invalid and inapplicable to [them] because they did not utilize the Lyft app to order the ride." *Id.* at *2. The trial court agreed and denied Lyft's motion to compel arbitration. On appeal, the Nevada Court of Appeals reversed the order of the trial court, finding:

> The arbitration agreements here contained clear and unmistakable delegation clauses, which provided that disputes concerning the arbitrability of a claim, including applicability, scope, enforceability, and validity of the agreements were for an arbitrator to decide. Further, the arbitration agreements incorporated the AAA rules, which further supports that the parties intended to submit the question of arbitrability to the arbitrator. Given the incorporation of the delegation clause and the AAA rules, there is clear and unmistakable evidence of the parties' intent to delegate the question of arbitrability to an arbitrator. Therefore, the district court erred by denying the motions to compel arbitration and concluding the arbitration agreements were inapplicable to respondents in this dispute.

Id. at *3.

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[2] Lyft acknowledges that this Court's unpublished opinion in *Blume* is not binding precedent. It is cited for illustrative purposes only.

In so concluding, the Nevada Court of Appeals expressly "reject[ed] respondents' argument that the arbitration agreements did not apply to them because they did not order the ride at issue." *Id.* On the contrary, the court noted that "clear and unmistakable evidence of intent to arbitrate applies with equal force to passengers who did not order the ride but previously contracted with the rideshare company and assented to its terms and conditions." *Id.* While "it remained to be seen whether the arbitration agreement covered the underlying accident, . . . that was a question for the arbitrator to decide under the plain language of the delegation clause." *Id.*

To conclude, U.S. Supreme Court and South Carolina precedent mandate that an arbitrator alone must decide any arbitrability disputes under a delegation clause like the one in the TOS. This includes the very questions about scope, applicability, validity, and enforceability of the Arbitration Agreement that Respondent has raised here. After all, that is exactly what the parties contracted for. In such circumstances, there is no place for discretion under the FAA: a court cannot rewrite or ignore the parties' wishes. The Circuit Court failed to follow that bedrock principle here.

3. The validity and enforceability of the delegation clause are not at issue.

Respondent never mentioned, let alone challenged, the parties' delegation clause in the Circuit Court. As a result, the delegation clause must be treated as valid and enforced according to its terms. Again, there is no place for discretion.

It is axiomatic that an agreement to delegate "gateway" issues of arbitrability to an arbitrator is itself an agreement to arbitrate, which is severable from any other provision of the contract and presumed to be valid under the FAA. *See Rent-A-Ctr.*, 561 U.S. at 70–72; *see also Palmetto Wildlife Extractors*, 435 S.C. at 699–700, 869 S.E.2d at 864; *Doe*, 430 S.C. at 609, 846 S.E.2d at 877. And like an agreement to arbitrate any other dispute, an agreement to arbitrate gateway issues of arbitrability must be enforced according to its terms unless the party resisting arbitration makes a direct and discreet challenge to the delegation clause itself. *Rent-A-Ctr.*, 561 U.S. at 70–72; *Doe*, 430 S.C. at 609, 846 S.E.2d at 877 ("If such a delegation occurred, the court still retains the right and duty to determine whether the delegation is valid and enforceable as long as the party resisting arbitration has made a direct and discrete challenge to the validity and enforceability of the delegation clause specifically, rather than the arbitration agreement as a whole.").

The Supreme Court's ruling in *Rent-A-Center* is binding and instructive as to this point. In *Rent-A-Center*, the dispute "between the parties [was] whether the [Arbitration] Agreement is unconscionable." 561 U.S. at 68. That arbitration agreement contained a delegation clause whereby the parties agreed the "Arbitrator shall have exclusive authority to resolve any dispute relating to the enforceability of this Agreement including, but not limited to [,] any claim that all or any part of this Agreement is void or voidable." *Id*. (alterations omitted). The Supreme Court explained that an "agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the . . . court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other." *Id.* at 70. Like any other arbitration agreement, an agreement to arbitrate gateway issues is "valid under the FAA save upon such grounds as exist at law or in equity for the revocation of any contract." *Id.* Accordingly, because the delegation clause was not itself challenged, the court held it must treat it as valid under the severability doctrine and any dispute regarding arbitrability—such as the contract's conscionability—were properly delegated to the arbitrator for resolution. *Id*. (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co*., 388 U.S. 395, 403–404 (1967)); *see also Palmetto Wildlife*, 435 S.C. at 699–700, 869 S.E.2d at 864 (discussing *Rent-A-Ctr.*, 561 U.S. at 68–69).

Respondent failed to mount such a challenge here. Indeed, Respondent did not mention the delegation clause ***at all***, let alone raise a direct and discrete challenge to its validity or enforceability. Respondent instead merely attacked the validity of the Terms as a whole, contending that the "subject Terms of Service agreement is a contract of adhesion, Plaintiff lacked meaningful choice and could not negotiate its terms, and the arbitration clause contains several oppressive and one-sided terms." (Mem. in Opp'n p. 4; R. __.) Such an argument is nothing more than one that "challenges the contract as a whole, either on a ground that directly affects the entire agreement (e.g., the agreement was fraudulently induced), or on the ground that the illegality of one of the contract's provisions renders the whole contract invalid." *Rent-A-Ctr.*, 561 U.S. at 70; *see also Wu v. Uber Techs., Inc.*, 78 Misc. 3d 551, 576, 186 N.Y.S.3d 500, 522 (N.Y. Sup. Ct. 2022) ("Furthermore, even where such a challenge [on unconscionability grounds] is directed specifically at the arbitration provision, if the contract also contains a delegation provision delegating resolution of that challenge to an arbitrator and that delegation provision is not itself directly challenged, the *Prima Paint* severability doctrine, as extended by *Rent-A-Center*, operates to foreclose judicial review."), *aff'd*, 219 A.D.3d 1208, 197 N.Y.S.3d 1 (2023), *aff'd*, No. 90, 2024 WL 4874383 (N.Y. Nov. 25, 2024).[3]

The Circuit Court likewise made no mention of the delegation clause before proceeding to address Respondent's arguments regarding the unconscionability of the Arbitration Agreement as a whole. Given Respondent's failure to specifically challenge the delegation clause, the Circuit Court was required to treat the delegation clause "as valid under § 2 [of the FAA]" and "enforce it

[3] Indeed, the AAA Commercial Rules contemplate a scenario in which a party attacks the validity of the contract containing the arbitration agreement, but with the arbitrator still being empowered to decide arbitrability issues: "The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. . . . A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause." Am. Arbitration Assoc. Commercial Rules, Rule 7(b).

under §§ 3 and 4 [of the FAA], leaving any challenge to the . . . the Agreement as a whole for the arbitrator." *Doe*, 430 S.C. at 609, 846 S.E.2d at 877 (citing *Rent-A-Ctr.*, 561 U.S. at 72). There was no room for discretion. The Circuit Court's conclusion that the arbitration agreement is unconscionable despite the clear, unmistakable, and unchallenged delegation provision ignored binding Supreme Court precedent confirming that an arbitrator must decide these questions. *Rent-A-Ctr.,* 561 U.S. at 68.

The Circuit Court erred in reaching gateway issues and by failing to compel the action to arbitration for the arbitrator to determine them in accordance with the terms of the Arbitration Agreement and established South Carolina law.[4] This Court should reverse.

II. The Circuit Court erred by finding the Arbitration Agreement was unconscionable.

While Circuit Court erred by addressing Respondent's unconscionability arguments in violation of the delegation clause, the Arbitration Agreement is not unconscionable in any event.[5] This also warrants reversal.

To establish unconscionability, Respondent was required to show: (1) she lacked a meaningful choice as to whether to arbitrate because the Agreement's provisions were one-sided, and (2) that the terms were so oppressive no reasonable person would make them and no fair and honest person would accept them. *Doe*, 430 S.C. at 612, 846 S.E.2d at 879. Determining whether an arbitration agreement is tainted by an absence of meaningful choice is both fact-specific and

[4] Deferring these issues to the arbitrator is consistent with this South Carolina policy that "arbitration is a matter of contract, and courts must enforce contracts according to their terms." *Palmetto Wildlife*, 435 S.C. at 699, 869 S.E.2d at 864.

[5] Courts from around the country have rejected analogous efforts to challenge the Lyft Terms as unconscionable. *See, e.g.*, *Bekele v. Lyft, Inc., 918 F.3d 181, 190 (1st Cir. 2019); Broadnax v. Lyft, Inc., No. 2:25-CV-00190-APG-BNW, 2025 WL 2379618, at *1 (D. Nev. July 8, 2025); Spain v. Lyft, Inc.*, 711 F. Supp. 3d 1260, 1265 (D. Colo. Jan. 16, 2024); *Speight v. Lyft, Inc.*, No. 3:20CV189-HEH, 2021 WL 298192, at *5 (E.D. Va. Jan. 28, 2021); *Peterson v. Lyft, Inc.*, No. 16-CV-07343-LB, 2018 WL 6047085, at *5–6 (N.D. Cal. Nov. 19, 2018); *Loewen v. Lyft, Inc.*, 129 F. Supp. 3d 945, 966 (N.D. Cal. 2015).

context-specific. *See Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611, 879 S.E.2d 746, 755 (2022) ("A determination of whether a contract is unconscionable depends upon all the facts and circumstances of the case."). Contrary to the case-by-case determination required by *Damico*, the Circuit Court here simply concluded that the Terms of Service are a contract of adhesion and unconscionability is therefore established. (Order at 3–5; R. __.)

This was in error for two reasons. ***First***, Respondent presented no ***evidence*** supporting her arguments that she lacked meaningful choice and could not negotiate the terms. ***Second***, a contract of adhesion is not unconscionable so long as the terms are "even-handed." *Damico*, 437 S.C. at 614, 879 S.E.2d at 756. Unconscionability requires a showing that the terms are "so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Id.* at 612, 614, 879 S.E.2d at 755 (emphasis added). The Circuit Court incorrectly limited its consideration to the adhesive-nature of the contract, relieving Respondent of her burden of proof that she failed to meet. This Court should reverse.

A. Respondent presented no evidence supporting her unconscionability argument.

The Circuit Court erred by finding the Arbitration Agreement unconscionable despite Respondent failure to present any ***evidence*** to demonstrate ***how*** the terms of the Arbitration Agreement were oppressive or one-sided. Nor did Respondent present any ***evidence*** to corroborate her counsel's argument that Respondent did not understand what she was agreeing to or have an opportunity to consult with counsel at any point within the 2 ½ year period when she accepted the TOS ***on four (4) separate occasions***. *See generally Simpson*, 373 S.C. at 24–25, 644 S.E.2d at 668. Respondent instead relied solely on the arguments of counsel, which is not sufficient. *S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003).

Regardless, this alone cannot establish unconscionability as it would vitiate every contract with terms accepted by clear assent unless they were fully negotiated by the parties, with the assistance of counsel, first. This sets an untenable standard and demonstrates why courts must also consider whether the terms are so oppressive that no reasonable person would make them and no fair and honest person would accept them. There is no such evidence in the record here, and this failure of proof should have been fatal to the Circuit Court's unconscionability analysis.

B. The TOS's adhesive nature does not render the arbitration clause unenforceable.

The Circuit Court also erred by finding the Arbitration Agreement unconscionable because the TOS is a "contract of adhesion" presented on a "take-it-or-leave-it" basis. This conclusion wrongly adopted Respondent's challenge to the contract ***as a whole*** rather than any specific challenge to the Arbitration Agreement. As the Fourth Circuit has explained, "[t]hat is precisely the sort of argument that . . . must be deferred for arbitration." *Amos v. Amazon Logistics, Inc.*, 74 F.4th 591, 595 n.4 (4th Cir. 2023).

Regardless, it is well established that adhesion contracts are not unconscionable merely because they are adhesive. The Supreme Court of South Carolina has made this point with unmistakable clarity: "The distinction between a contract of adhesion and unconscionability is worth emphasizing: *adhesive contracts are not unconscionable in and of themselves so long as the terms are even-handed.*" *Damico*, 437 S.C. at 614, 879 S.E.2d at 756 (emphasis in original). The Court further clarified: "unconscionability requires a finding of a lack of meaningful choice *coupled with* unreasonably oppressive terms. Thus, an adhesion contract with fair terms is certainly not unconscionable, and the mere fact a contract is one of adhesion does not doom the contract-drafter's case." *Id.* (emphasis in original). "[T]o constitute unconscionability, the contract terms must be ***so oppressive that no reasonable person would make them and no fair and honest person***

would accept them." *Id.* at 612, 879 S.E.2d at 755 (citing *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc*., 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996)) (emphasis added).

The Circuit Court's Order failed to follow the requirement that courts "focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker" when conducting its analysis. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007). Instead, it incorrectly limited its consideration to the adhesive-nature of the contract, thereby conflating the factors that Respondent had the burden to prove and failed to establish.

The Arbitration Agreement in Lyft's Terms seeks to obtain an unbiased decision by a neutral decisionmaker. The language requires ***both*** Respondent and Lyft to arbitrate any disputes and ***mutually*** waive any respective rights to seek resolution in a court of law. The Agreement contains no carve-out for specific types of claims (whether offensive or defensive) and does not limit or restrict Respondent's rights or remedies except for an inapplicable prohibition on class or representative actions—a limitation which is wholly irrelevant here, and in any event, regularly upheld under the FAA. *See One Belle Hall Prop. Owners Ass'n, Inc. v. Trammell Crow Residential Co.*, 418 S.C. 51, 65, 791 S.E.2d 286, 294 (Ct. App. 2016); *York v. Dodgeland of Columbia, Inc*., 406 S.C. 67, 91–94, 749 S.E.2d 139, 151–53 (Ct. App. 2013) (upholding a class action waiver in an arbitration agreement under the FAA); *see also Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 517 (2018) (collecting cases upholding class action waivers in the arbitration context).

The Circuit Court identified "the waiver of a jury trial" and "inability to appeal an arbitration decision" as "additional oppressive and one-sided terms." (Order at 5; R. __.) However, the mere fact that an arbitration clause contains a limitation or waiver with respect to jury trials (which is inherent in any arbitration agreement) and arbitration appeals does not render it definitively oppressive or one-sided. These are the defining features of arbitration and components of the trade-off parties make in exchange for the efficiency and finality of the arbitral process. And importantly, they apply with equal force to Lyft and Respondent. As this Court has explained, "a party desiring to avoid an arbitration clause on the grounds that no reasonable person would have agreed to it merely because it precludes judicial remedies must demonstrate how he or she has been prejudiced by compelled arbitration." *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 401, 498 S.E.2d 898, 905 (Ct. App. 1998). To treat the inherent characteristics of arbitration as grounds for finding unconscionability would effectively invalidate arbitration itself, a result squarely at odds with both federal and South Carolina policy.

Contrary to the Circuit Court's findings, when the Arbitration Agreement is examined ***standing alone***, as required by case law, it contains no oppressive or one-sided terms. It provides for neutral arbitration administered by the AAA. It applies equally to both parties. It does not limit the remedies available to Respondent in the arbitral forum. It does not shorten the statute of limitations. It does not give Lyft a unilateral right to litigate while requiring the consumer to arbitrate. It is, in short, a straightforward, even-handed arbitration provision—precisely the kind of clause that South Carolina and other courts routinely enforce. The Circuit Court erred as a matter of law by: (1) failing to compel the action to arbitration and leave the issue of whether the TOS were unconscionable to the arbitrator and (2) by finding the Terms unconscionable where Respondent failed to meet her burden of proving unconscionability in any way.

C. The Circuit Court made several incorrect factual findings.

The Circuit Court also made multiple flawed findings in its unconscionability analysis. First, the Circuit Court's statement that the arbitration clause is "buried" in a 43-page document and is "inconspicuous in nature, particularly when viewed on a mobile device," (Order p. 5; R. __), is simply wrong. The ***first page*** of the TOS provides the following notice in all caps:

> PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION . . .

(Mot. to Compel, Exs. A-3, A-5, A-7; R. __.) The "SEE SECTION 17 BELOW" is a blue internal jump link that would take Respondent directly to the full Arbitration Agreement. (*See* Mot. to Compel, Ex. A, ¶ 17; R. __.) Therefore, contrary to the Circuit Court's finding, the TOS put Respondent on notice from the outset of the existence of the arbitration agreement.

As this Court recognized in *Doe v. TCSC*, "commercial transactions in the modern age differ from traditional face-to-face negotiation," and "[a]s more and more transactions are conducted online, arbitration agreements are not presented face to face but digitally, in such forms as 'browsewrap,' 'clickwrap,' 'scrollwrap,' and 'sign-on wrap.'" 430 S.C. 602, 617, 846 S.E.2d 874, 881 (Ct. App. 2020). Conspicuousness is but one factor in the analysis, however, and the Circuit Court failed to address the multiple conspicuous notices in emails, the notice at the outset of the TOS, and the blue internal jump link to the full Arbitration Agreement. (*See* Mot. to Compel, Ex. A, ¶ 17; R. __.) The Circuit Court's mere reliance on the TOS being a contract of adhesion "fails to accommodate the realities of much modern commercial practice." *Id.*; *see also Church v. Hotels.com L.P.*, No. 2:18-0018-RMG, 2018 WL 3130615, at *2 (D.S.C. June 26, 2018) (finding that a consumer impliedly agreed to the company's Terms of Service, including an agreement to arbitrate, when they affirmatively click on a "complete reservation" button online).

Additionally, the Circuit Court incorrectly found that Respondent "did not have the business judgment to understand the effect of the arbitration clause" in the Terms of Service and "did not have counsel present" during account creation. (Order p. 4; R. __.) This ignores the longstanding principle that a party who signs or agrees to a contract is presumed to have read and understood its terms. *See Sanders v. Savannah Highway Auto. Co*., 440 S.C. 377, 892 S.E.2d 112 (2023) (enforcing the duty-to-read doctrine in the arbitration context). "An elementary principle of contract law is that a party signing a written contract has a duty to inform himself of its contents before executing it, . . . and in the absence of fraud or overreaching he will not be allowed to impeach the effect of the instrument by showing that he was ignorant of its contents or failed to read it." *Sydnor v. Conseco Financial Servicing Corp.*, 252 F.3d 302, 306 (4th Cir. 2001). Courts in this State have "consistently rejected" the argument that an arbitration agreement is unenforceable simply because no one explained it to the plaintiff. *See, e.g.*, *Green v. Progressive Cas. Ins. Co.*, No. 2:25-CV-12529-BHH-MGB, 2025 WL 3906480, at *6 (D.S.C. Nov. 5, 2025), *report and recommendation adopted*, No. 2:25-CV-12529-BHH, 2025 WL 3527164 (D.S.C. Dec. 9, 2025) (collecting cases). Moreover, the absence of personal counsel during a routine app sign-up does not render an arbitration clause unconscionable. If that were the standard under the law, virtually every contract in the digital economy would be unenforceable. The Circuit Court's incorrect factual findings further warrant reversal.

D. The unconscionability analysis must focus on the arbitration clause itself, not the entire TOS.

Lastly, the Circuit Court's Order erroneously considered provisions ***outside*** the arbitration clause in its unconscionability analysis—specifically the limitation of liability in Section 15 of the TOS—to conclude that the arbitration clause was unconscionable. That approach is squarely foreclosed by the *Prima Paint* doctrine and its application in South Carolina and also requires reversal.

The Circuit Court's Order directly quoted language from Section 15 of the TOS governing "Limitation of Liability" to conclude that Lyft's Terms are "impermissibly onerous." (Order at 4; R. __.) Section 15 is a general contract provision, however.[6] It is not part or parcel of the Arbitration Agreement located at Section 17 of the TOS. (Mot. to Compel., Exs. A-3, A-5, A-7; R. __.) The only portion of the TOS relevant to unconscionability is the ***Arbitration Agreement*** itself. *See Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 440, (2006) ("[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract"); *D.R. Horton, Inc.*, 417 S.C. at 48, 790 S.E.2d at 4. Thus, the Circuit Court erred when it failed to exclude unrelated language from non-arbitration provisions of the TOS in its unconscionability test. This reliance on external language inherently undermines any finding that the Arbitration Agreement terms are "oppressive" or "one-sided." (Order at 5; R. __.).

Under *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, an arbitration provision is separable from the contract in which it is embedded, and the issue of its validity is distinct from the substantive validity of the contract as a whole. *See* 388 U.S. 395, 403–04 (1967). The court does not consider unconscionable terms outside of the arbitration provision. *See Doe*, 430 S.C. at 607, 846 S.E.2d at 876 ("Because an arbitration provision is often one of many provisions in a contract covering many other aspects of the transaction, the first task of a court is to separate the arbitration provision from the rest of the contract. This may seem odd, but it is the law, known as the *Prima Paint* doctrine.").

This principle was also directly applied by the Supreme Court of South Carolina in *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022), where the Court unanimously

[6] It provides that Lyft shall not be liable for incidental, special, exemplary, punitive, consequential, or indirect damages. However, it also acknowledges that certain jurisdictions may not allow such a limitation and, if so, the limitation may not apply, and the user may have additional rights. As detailed below, the Terms also contain a severability clause.

affirmed that "the circuit court impermissibly considered the terms found in the limited warranty booklet" when analyzing the arbitration provision of the purchase and sales agreement. *Id.* at 607–08, 879 S.E.2d at 753. The Court then analyzed the arbitration provisions "***standing alone***" to determine whether they contained oppressive and one-sided terms. *Id.* at 604, 879 S.E.2d at 751 (emphasis added). This Court applied the same principle in *Mart v. Great Southern Homes, Inc.*, 441 S.C. 304, 315, 893 S.E.2d 360, 365 (Ct. App. 2023), noting "controlling case law does not permit us to consider the language of the separate limited Warranty or the propriety of the waiver of implied warranties in analyzing the standalone arbitration language of the Sales Contract." *Id.* There, this Court emphasized that "[e]ven if the overall contract is unenforceable, the arbitration provision is not unenforceable unless the reason the overall contract is unenforceable ***specifically relates to the arbitration provision***." *Id.* at 313, 893 S.E.2d at 364 (quoting *Huskins v. Mungo Homes, LLC*, 439 S.C. 356, 366, 887 S.E.2d 534, 539–40 (Ct. App. 2023)) (emphasis added).

The Circuit Court's Order committed the precise error that *Damico* and *Mart* prohibit. Rather than analyzing Lyft's Arbitration Agreement on its own terms, the Circuit Court looked to Section 15 of the TOS, the general limitation of liability provision, and improperly construed it as part of the Arbitration Agreement to conclude that it "essentially renders Lyft immune from liability under any scenario, which is impermissibly onerous." (Order at 4; R. __.) But Section 15 is not part of the Arbitration Agreement. It is a separate provision of the broader TOS that applies regardless of whether disputes proceed in court or arbitration. The court's reliance on Section 15 to invalidate the arbitration clause is exactly the kind of impermissible conflation that *Prima Paint*, *Damico*, and *Mart* forbid.[7]

[7] Because the Arbitration Agreement, analyzed standing alone, contains no oppressive or one-sided terms, the question of severance should not arise. However, to the extent the Court finds that Section 15 of the TOS is implicated in the unconscionability analysis, then this provision could be severed in accordance with the severability clause in the TOS. (*See* Mot. to Compel, Exs. A-3, ¶ 17(a), A-5, ¶ 17(a), A-7, ¶ 17(a)

CONCLUSION

The parties delegated consideration of gateway issues related to arbitrability, including the validity, scope, and enforceability of the Arbitration Agreement, to the arbitrator. The Circuit Court erred by overriding the valid and enforceable Arbitration Agreement containing the delegation clause and addressing unconscionability and further erred in its holdings on the same. This Court should reverse and remand to the Circuit Court with instructions to compel the dispute to arbitration.

Respectfully submitted,

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(explaining 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"). As the Supreme Court recently noted, "[w]e have . . .interpreted contracts as severable if consistent with the parties' intent." *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 596, 910 S.E.2d 474, 476 (2024).