IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LYFT, INC., A FOREIGN CORPORATION, Appellant, vs. MICHAEL A. ABENANTE, AN INDIVIDUAL; AND LORRAINE CINTRON, AN INDIVIDUAL, Respondents.	No. 87495-COA
LYFT, INC., A FOREIGN CORPORATION, Appellant, vs. AMANDA ABENANTE, AN INDIVIDUAL, Respondent.	No. 89172-COA

FILED

AUG 20 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Lyft, Inc. brings consolidated appeals from district court orders denying motions to compel arbitration. These cases were consolidated on appeal. *See* NRAP 3(b)(2). Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Frankie Pineda[1] ordered a ride through the Lyft rideshare app in August 2021, and Pineda, along with respondents Michael A. Abenante,

[1]Although Pineda is listed as a respondent in the caption for Docket No. 87495-COA, she is not a party to that appeal as the district court ordered that her claims had to proceed to arbitration. Accordingly, Pineda

Amanda Abenante, and Lorraine Cintron were passengers. During the ride, their Lyft vehicle was involved in a collision with another vehicle. In June 2022, respondents and Pineda filed a lawsuit against Lyft, the Lyft driver, and the driver of the other vehicle involved in the crash.

Lyft thereafter filed a motion to compel arbitration against Pineda, Michael, and Cintron based on the arbitration agreements contained in the Lyft terms of service (Terms) that those individuals had agreed to when they signed up for the Lyft app and as the terms were updated periodically.[2] Lyft argued that the three individuals agreed to arbitrate their disputes with Lyft and that the arbitration agreements' delegation clause expressly delegated any dispute over the scope or enforceability of the arbitration clause to an arbitrator. The Terms advised how claims between the user and Lyft could be brought and provided that the user was generally required to submit claims to a binding and final arbitration. In addition, the Terms provided that, by using the Lyft app, a user expressly acknowledged the dispute resolution and arbitration

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shall be removed from the caption for Docket No. 87495-COA. Similarly, Amande Abenante is listed as a respondent in the caption for both of these consolidated appeals, but the order denying Lyft's motion to compel arbitration of her claims is only at issue in Docket No. 89172-COA. Thus, she too should be removed from the caption for Docket No. 87495-COA. Accordingly, the clerk of the court shall revise the caption for Docket No. 87495-COA to conform to the caption on this order.

[2]While there are different arbitration agreements for each respondent because they consented to Lyft's Terms at different times, each version of the agreement contained the same key terms, and thus our analysis is the same for each of the agreements.

provisions, and if the user did not agree to be bound by the Terms, he or she may not use or access the Lyft platform.

The arbitration agreement stated that, "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 RESOLVE ANY DISPUTE BY ARBITRATION, as set forth below." The agreements covered "any dispute, claim or controversy, whether based on past, present, or future events, arising out of or relating to . . . the Lyft Platform, the Rideshare Services" and "all other federal and state statutory and common law claims." The agreements also included a delegation clause stating that 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 in a narrow set of circumstances that do not apply here). The agreements provided that they were "governed by the Federal Arbitration Act [(FAA)] and survives after the Agreement terminates or your relationship with Lyft ends." Finally, the agreements provided that any arbitration conducted pursuant to the agreements shall be administered by the American Arbitration Association (AAA) pursuant to its Consumer Arbitration Rules.

Pineda, Michael, and Cintron opposed the motion to compel, arguing, in relevant part, that the arbitration agreements were invalid and inapplicable to Michael and Cintron because they did not utilize the Lyft app to order the ride. Lyft filed a reply in support of its motion.

The district court granted the motion as to Pineda, but denied it as to Michael and Cintron, reasoning that the Terms did not apply to them

since they did not use the Lyft app to order the ride at issue, which the court concluded rendered the arbitration agreement inapplicable to them and therefore no contract had been formed "as to them for the Accident." Lyft appealed that decision.

While that appeal was pending, Lyft filed a motion to compel arbitration with respect to Amanda after learning she too had agreed to its Terms by signing up for the Lyft app at one point in time. Amanda opposed the motion. The district court denied the motion to compel for the same reasons it denied the prior motion with respect to Michael and Cintron. Lyft appealed this determination, and the appeals were consolidated.

Relying on *Uber Technologies, Inc. v. Royz*, 138 Nev. 690, 690-91, 517 P.3d 905, 907 (2022), Lyft argues, with regard to both appeals, that the district court erroneously denied its motions to compel because respondents agreed to its contractual terms, which included arbitration agreements with delegation clauses that specify they are governed by the FAA. Lyft asserts these clauses delegated the threshold question of whether the agreements applied to their dispute to an arbitrator, so the district court lacked authority to deny the motion to compel or decide that the agreements were inapplicable. In response, respondents contend that the district court properly denied the motions to compel because the arbitration agreements were not enforceable contracts and did not apply to them because they did not order the ride at issue. Further, respondents contend that the issue of contract formation is a question for the district court, rather than arbitrator, to decide. Respondents, however, do not address or otherwise mention our supreme court's *Uber* opinion.

This court reviews both the district court's decision to deny a motion to compel arbitration and issues of contract interpretation de novo. *Uber*, 138 Nev. at 692, 695, 517 P.3d at 908, 910.

Nevada has a "fundamental policy favoring the enforceability of arbitration agreements," and this court will "liberally construe arbitration clauses in favor of granting arbitration." *Tallman v. Eighth Jud. Dist. Ct.*, 131 Nev. 713, 720, 359 P.3d 113, 118-19 (2015). Where the FAA governs an arbitration agreement, "state courts must enforce the FAA with respect to that agreement." *Uber*, 138 Nev. at 693, 517 P.3d at 908. This court is bound by United States Supreme Court precedent interpreting the FAA. *Id.* Under the FAA, "arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 67 (2019).

"A delegation clause is 'an agreement to arbitrate threshold issues concerning the arbitration agreement . . . such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy.'" *Uber*, 138 Nev. at 693, 517 P.3d at 909 (quoting *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010)); *see also Airbnb, Inc. v. Rice*, 138 Nev. 682, 684, 518 P.3d 88, 90 (2022) (recognizing "that parties may agree to arbitrate gateway questions of arbitrability, such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy" (internal quotation marks omitted)). Where "parties 'clearly and unmistakably' agree to delegate such threshold questions to an arbitrator, courts must enforce the delegation clause like any other arbitration provision under the FAA." *Uber*, 138 Nev. at 693, 517 P.3d at 909. "Where the parties have clearly and unmistakably delegated

the threshold question of arbitrability to the arbitrator, the district court may not decline to refer the case to arbitration on the ground that the arbitration agreement does not cover the dispute." *Id.* at 694, 517 P.3d at 909.

In this case, respondents agreed to Lyft's Terms, including the arbitration agreements, which are governed by the FAA and incorporate the AAA's rules, when they signed up for and used the Lyft app. While respondents assert that their disputes with Lyft did not arise out of their own use of the app, and therefore the Terms and arbitration agreements were inapplicable, whether the parties have a valid agreement to arbitrate and whether the agreement applies to the dispute are "gateway questions of arbitrability" that parties may agree to arbitrate. *See Rent-A-Ctr.*, 561 U.S. at 68-69.

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. *See Airbnb*, 138 Nev. at 685, 518 P.3d at 91 (stating "a valid arbitration agreement that delegates the arbitrability issue to an arbitrator serves as 'clear and unmistakable' evidence of an agreement to arbitrate arbitrability"). Further, the arbitration agreements incorporated the AAA rules, which further supports that the parties intended to submit the question of arbitrability to the arbitrator. *See Uber*, 138 Nev. at 695, 517 P.3d at 910 (collecting cases where courts have found that incorporating the AAA's rules, even without more, constitutes clear and unmistakable evidence of intent to submit the question of arbitrability to the arbitrator); *see also*

Schein, 586 U.S. at 66 (explaining that the AAA's rules "provide that arbitrators hold the power to resolve arbitrability questions"). 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. *See Uber*, 138 Nev. at 694, 517 P.3d at 909; *see also Airbnb*, 138 Nev. at 686, 518 P.3d at 92 ("If there is a delegation clause, the court has no authority to decide the arbitrability question but must instead grant the motion to compel arbitration.").

In reaching this conclusion, we reject respondents' argument that the arbitration agreements did not apply to them because they did not order the ride at issue. Our supreme court addressed this exact argument in *Uber* and concluded, under substantially similar circumstances, 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. *See Uber*, 138 Nev. at 696, 517 P.3d at 911. While the supreme court noted that it remained to be seen whether the arbitration agreement covered the underlying accident, the court explained that was a question for the arbitrator to decide under the plain language of the delegation clause. *Id.* Thus, this argument does not provide a basis for affirming the district court's denial of Lyft's motions to compel arbitration.

To the extent respondents alternatively contend that the district court's denial of Lyft's motions to compel arbitration should be

affirmed because the contract was illusory based on a lack of consideration since Lyft reserved the right to unilaterally modify the arbitration agreement, we are not persuaded by this argument. The district court did not reach this question as to respondents (while nonetheless rejecting the argument as to Pineda) as it concluded that the Terms did not apply to respondents' claims because they did not order the ride through the Lyft app. But as discussed above, under the supreme court's decision in *Uber*, whether the Terms applied to respondents' claims under these circumstances was a question for the arbitrator, not the district court. *See Uber*, 138 Nev. at 694-96, 517 P.3d at 909-911. With regard to respondents' argument that the contract—including the arbitration agreement—was illusory, however, the United States Supreme Court has held that challenges to the validity of the contract and/or the arbitration agreement are to be decided by courts, not the arbitrator. *See Coinbase, Inc. v. Suski*, 602 U.S. 143, 151-52 (2024). Thus, we now turn to address that issue.

Under Nevada law, a contract "must be supported by consideration in order to be enforceable." *Jones v. SunTrust Mortg., Inc.*, 128 Nev. 188, 274 P.3d 762, 764 (2012). "Consideration is the exchange of a promise or performance, bargained for by the parties." *Id.* If a promise is illusory because one side is not obligated to perform, then the contract is unenforceable because there is no mutuality of obligation. *Sala & Ruthe Realty, Inc. v. Campbell*, 89 Nev. 483, 515 P.2d 394, 396 (1973) (stating that a promise is illusory if there is no obligation to perform and "[m]utuality of obligation requires that unless both parties to a contract are bound, neither is bound").

Some courts have held that, if one party to an arbitration agreement has the unilateral right to modify or terminate the agreement, then there is no mutuality because the party with the right to modify or terminate can always decide whether to litigate or arbitrate merely by changing or terminating the agreement. Consequently, that party's promise to arbitrate is illusory. *See In re Zappos.com, Inc., Customer Data Sec. Breach Litig.*, 893 F. Supp. 2d 1058, 1065-66 (D. Nev. 2012) ("Most federal courts that have considered this issue have held that if a party retains the unilateral, unrestricted right to terminate the arbitration agreement, it is illusory and unenforceable, especially where there is no obligation to receive consent from, or even notify, the other parties to the contract." (gathering cases)).

For instance, in *Zappos*, the United States District Court for the District of Nevada deemed an arbitration agreement contained on the Zappos.com website illusory because there was no mutuality of obligation. The arbitration agreement in *Zappos* required that "[a]ny dispute relating in any way . . . to the Site" be submitted to arbitration; however, Zappos could "seek injunctive or other appropriate relief in any state or federal court in the State of Nevada" if a user "violated or threatened to violate [Zappos'] intellectual property rights." Moreover, Zappos' terms of use broadly provided that "We reserve the right to change this Site and these terms and conditions at any time. ACCESSING, BROWSING OR OTHERWISE USING THE SITE INDICATES YOUR AGREEMENT TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, SO PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PROCEEDING." *Id.* at 1063.

By contrast, Lyft's promise to arbitrate in this case was not illusory because Lyft agreed to be bound by the arbitration agreements, and any changes to the terms would not necessarily apply to a pending claim. Indeed, Lyft's arbitration agreements stated that, "YOU AND LYFT MUTUALLY AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW . . . AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION." Under this agreement, respondents and Lyft were mutually bound to arbitration. Moreover, the modification provision states that any modifications "shall be binding on you *only upon your acceptance of the modified Agreement*," and "[c]ontinued use of the Lyft Platform or Services after any such changes shall constitute your consent to such changes." (Emphasis added.) Unless respondents agreed to the modification, changes would not retroactively modify existing claims or allow Lyft to renege on the promise to arbitrate with users who had not consented to the updated Terms, and users with claims against Lyft wishing to maintain the applicability of the existing arbitration agreement can simply choose not to use the platform following a change to the Terms. *See, e.g., Paxson v. Live Nation Entertainment, Inc.*, 2025 WL 894634, *9 (D. Nev. Mar. 21, 2025) (appeal pending) (concluding a modification clause allowing a company to unilaterally modify its terms and providing that a user agreed to the updated terms by using the site after the new terms were posted would not retroactively modify existing claims or allow the company to renege on the promise to arbitrate with users who accessed the site prior

to the changes). Here, Lyft did not attempt to alter the Terms in order to not be bound by the arbitration agreement.[3]

Additionally, in more recent decisions, the United States District Court for the District of Nevada has rejected the argument that the ability to unilaterally modify an arbitration agreement, without more, renders the agreement illusory because, under Nevada law, the implied covenant of good faith and fair dealing requires a party with such a right to exercise it in good faith based on the implied covenant of good faith and fair dealing implicitly included in every contract. *See id.* (concluding that a party with the right to unilaterally modify an arbitration agreement must do so in good faith and not in a way that defeats the opposing party's "reasonable expectation that the parties are mutually bound to arbitration'); *Reno v. W. Cab Co.*, 2020 WL 5606897 (D. Nev. Sept. 18, 2020), at *2 (ruling, in part, that under Nevada law, the implied covenant of good faith and fair dealing preserves the validity of an arbitration agreement with a unilateral modification clause); *Cohn v. Ritz Transp., Inc.*, 2014 WL 1577295 (D. Nev. Apr. 17, 2014), at *2 (concluding that, due to the implied good faith covenant, a "provision that allows employers to unilaterally modify contractual terms, without an actual demonstration of bad faith, does not render a contract illusory"). We find these decisions to be

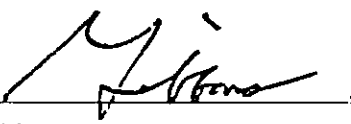
[3]We note respondents did not challenge the arbitration agreement on unconscionability grounds. *Cf. Nat'l Football League v. Gruden*, No. 85527, 2025 WL 2317407, *2-3 (Nev. Aug. 11, 2025) (Order of Affirmance) (discussing the unconscionability of an arbitration clause in an employment contract).

persuasive. As a result, we reject respondents' argument that the arbitration agreement was illusory based on a lack of consideration.

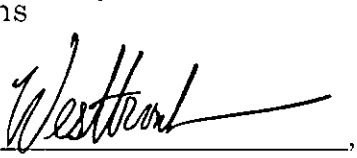
Accordingly, based on the reasoning set forth above, we conclude the district court erred by denying Lyft's motions to compel. We therefore reverse the orders denying those motions and remand this matter to the district court to refer the claims against Lyft to arbitration.

It is so ORDERED.[4]

_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

[4]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered these arguments and conclude they need not be addressed given our resolution of this matter.

In light of our resolution of this matter, the stay imposed by our supreme court's November 22, 2024, order is lifted.

cc: Hon. Mary Kay Holthus, District Judge
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