

CANADA / JUDGMENT

Ntibarimungu v. DoorDash Technology Canada Inc.

2025 BCSC 1540

COURT

Supreme Court of British Columbia

DECIDED

17 July 2025

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2025 BCSC 1540 Ntibarimungu v. DoorDash Technology Canada Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ntibarimungu v. DoorDash Technology Canada Inc.,

2025 BCSC 1540

Date: 20250717

Docket: S250439

Registry: Vancouver

Between:

Frederic Ntibarimungu

Plaintiff

And:

DoorDash Technology Canada Inc.

Defendant

Before: The Honourable Justice Lawn

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:

F. Ntibarimungu

Counsel for the Defendant:

E. M. MacKinnon

S. Penney

Place and Date of Hearing:

Vancouver, B.C.

July 14, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 17, 2025

- [1] THE COURT: These are my oral reasons in this one-day chambers hearing. These reasons have been edited for clarity and to add citations and long quotations. The substantive result has not changed.
- [2] This is the defendant's application for a stay of proceedings pursuant to s. 7(2) of the Arbitration Act, S.B.C. 2020, c. 2. The style of cause incorrectly names the defendant as DoorDash "Technology" Canada Inc., when in fact its registered name is DoorDash "Technologies" Canada Inc. I will refer to the defendant throughout as "DoorDash" or "the defendant."
- [3] The plaintiff, Mr. Ntibarimungu, performed deliveries for DoorDash as a driver or "Dasher" from March 14, 2022, until the deactivation of his account on November 18, 2024. He now sues DoorDash over that deactivation, the circumstances surrounding which are not at issue in this application. The only question before me is whether this action as pleaded ought to be stayed under the Arbitration Act due to an arbitration clause in the independent contractor agreement ("ICA"). DoorDash says the plaintiff agreed to the ICA when he activated his Dasher Account and again when it was updated several times, but most recently on February 21, 2024 (the "Effective ICA").

Background

- [4] DoorDash is an online delivery platform that consumers can use to obtain delivery of restaurant meals, groceries, and other consumer goods. It is accessible through its web site or the DoorDash app. Those who wish to perform services as a Dasher must sign up through the Dasher version of the DoorDash app. A prospective Dasher must create a Dasher Account.
- [5] The defendant's affiant, Sarim Haque, described that the first step to creating a Dasher Account in March of 2019 required the prospective Dasher to agree to the ICA. This step was accomplished when the prospective Dasher entered basic personal information, after which

they were provided with a clickable hyperlink to the ICA. They agreed to it, checking a box indicating their agreement before clicking on the sign-up button. The words "independent contractor agreement" and "Dasher privacy policy" were hyperlinked immediately above the sign-up button.

- [6] Sarim Haque's evidence was that a person could not create a Dasher Account and perform deliveries as a Dasher without first agreeing to the ICA. It was not in evidence whether it was possible to click the sign-up button without having actually navigated to the text of the ICA via the hyperlink.
- [7] Agreement to subsequent versions of the ICA is obtained by notifying a Dasher of an updated terms and conditions agreement when they log into the app. They must then click on a box which states, "I have read, understand, and agree to the independent contractor agreement," and then click a red button that says "agree," above which the text of the ICA is displayed and available to scroll through, not by hyperlink but directly on the screen. It was not in evidence whether it was mandatory that the Dasher scroll through to the end of the updated terms and conditions before they could click the "agree" button.
- [8] The plaintiff disputes whether or not he agreed to the ICA, either initially in 2019 when he first created a Dasher Account or with regard to any of the subsequent versions. The routinely kept records of DoorDash reveal when any given Dasher's account is created and when they agree to each subsequent version of the ICA. DoorDash's records indicate that the plaintiff performed the steps set out in the above paragraphs on six separate occasions between March 2019 and February 2024, culminating in the Effective ICA.
- [9] In November of 2024, DoorDash deactivated the plaintiff's account after it received reports that he had created an unsafe environment in breach of the company's platform-access policy. This policy provides that a Dasher Account may be immediately deactivated under certain circumstances, including inappropriate behaviour or harassment. As noted above, whether the plaintiff did or did not engage in the conduct alleged is not at issue before me.
- [10] Dashers can appeal an account deactivation, which the plaintiff did twice, once on November 18, 2024, and again on December 11, 2024. On March 11, 2025, DoorDash notified the plaintiff that his appeal had been denied. The plaintiff filed a notice of civil claim on January 17, 2025, alleging that he was discriminated against by DoorDash and that DoorDash failed to respond to his complaints regarding the conduct of certain other persons who were trying to prevent him from working.
- [11] Under "Relief Sought," the plaintiff set out claims which I think can fairly be understood as claims for damages for the following:
 - a) \$50 per hour for 12,960 hours worked in two years, totalling \$648,000;
 - b) wear and tear on his vehicle for 135,000 kilometres;

- c) \$5 million for discrimination, misrepresentation, fraud, breach of trust, willful default, undue influence to contribute to ongoing fight to prevent work; and
- d) company contributions to the Canada Pension Plan, RRSP, bonus, and company employee shares;

[12] Under "Legal Basis," the plaintiff mentioned employment and contract law, the constitution and Charter of Rights and Freedoms, and the law against discrimination, hate, and defamation. In his response and affidavit material in this proceeding, though not in the notice of civil claim, the plaintiff also asserts that DoorDash breached certain provisions of the Employment Standards Regulation, B.C. Reg. 396/95.

Contractual Provisions

[13] The Effective ICA includes the following terms relevant to this application:

Introductory Term of the ICA.

[14] On the first page of the ICA, in bold all-capital script, appears the following:

IMPORTANT: PLEASE REVIEW THIS AGREEMENT CAREFULLY. IN PARTICULAR, PLEASE REVIEW THE MUTUAL ARBITRATION PROVISION IN SECTION 14, 25.1, 25.2 OR 25.3, AS APPLICABLE, AS EACH REQUIRES THE PARTIES TO RESOLVE DISPUTES ON AN INDIVIDUAL BASIS, TO THE FULLEST EXTENT PERMITTED BY LAW, THROUGH FINAL AND BINDING ARBITRATION (UNLESS CONTRACTOR VALIDLY OPTS OUT OF ARBITRATION, AS PROVIDED BELOW). THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. BY ACCEPTING THIS AGREEMENT, CONTRACTOR ACKNOWLEDGES THAT THEY HAVE READ AND UNDERSTOOD ALL OF THE TERMS, INCLUDING SECTION 14, 25.1, 25.2, OR 25.3, AS APPLICABLE, AND HAVE TAKEN THE TIME AND SOUGHT ANY ASSISTANCE NEEDED TO COMPREHEND THE CONSEQUENCES OF ACCEPTING THIS AGREEMENT.

Mutual Arbitration Provision.

[15] The ICA introductory term refers to the Mutual Arbitration Provision listing specific section numbers. The section number relevant to Canada is section 25.1.b.1, which states:

1. Contractor and DoorDash mutually agree to this arbitration agreement, which is governed by the applicable arbitration statute in the province in which contractor performs the majority of the services covered by this Agreement (te "Applicable Provincial Arbitration Statute") and shall apply to any and all claims arising out of or relating to this Agreement, Contractor's classification as an independent contractor, Contractor's provision of Contracted Services to Consumers, Merchants, or other individuals or businesses, the payments received by Contractor for providing services to Consumers, Merchants, or other individuals or businesses, the termination of this Agreement, and all other aspects of Contractor's relationship with DoorDash, past, present or future, whether arising under federal, provincial or local statutory and/or common law, including without limitation

harassment, discrimination or retaliation claims and human rights claims, claims relating to wage and hour laws, provincial and local statutes or regulations addressing the same or similar subject matters, and all other federal, provincial or local claims arising out of or relating to Contractor's relationship or the termination of that relationship with DoorDash. This Mutual Arbitration Provision extends to disputes between Contractor and any DoorDash affiliates, subsidiaries, successors, agents, and employees that arise out of or relate to this Agreement. The parties expressly agree that this Agreement shall be governed by the Applicable Provincial Arbitration Statute even in the event Contractor and/or DoorDash are otherwise exempted from the Applicable Provincial Arbitration Statute. Any disputes in this regard shall be resolved exclusively by an arbitrator, except as explicitly set out below in section 25.1.b.9.

[16] Later on in s. 25.1, the parameters for the arbitration of a dispute are detailed. In particular:

- a) The arbitration is to be governed by the ADR Institute of Canada Inc. ("ADRIC") and the ADRIC arbitration rules unless otherwise stated.
- b) The method and an address for notification of an intent to arbitrate are provided.
- c) While the default location for arbitration is the provincial capital in the province where the Dasher provides the majority of their services, at the Dasher's request, it may be moved closer Dasher's residence.
- d) Either party can request a virtual arbitration.
- e) The parties will share the arbitration filing fees equally. These are on a sliding scale starting at \$350 for disputes with a value of under \$10,000.
- f) DoorDash assumes additional costs, including the cost of ADRIC and the arbitrator, room rental, and technical equipment required, if any.
- g) A single arbitrator will be appointed by a mechanism which has the requesting party naming three individuals that the requesting party (the Dasher) is prepared to appoint as arbitrator, with the responding party agreeing to the appointment of one of them. If none are acceptable, the responding party responds with a list of three alternatives, with a continued exchange of such lists if necessary until 30 days have elapsed, at which point either party may provide copies of the lists to ADRIC, which shall appoint an arbitrator from the lists.

[17] Section 25.1.b.6 provides that the arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of the Mutual Arbitration Provision. This includes but is not limited to any claim that all or any part of the Mutual Arbitration Provision is void or voidable.

Issues

1. Has DoorDash satisfied the test for a stay under s. 7(1) of the Arbitration Act?
2. Has the plaintiff established any of the statutory exceptions under s. 7(2) of the Arbitration Act?

[18] I will address each of these issues in turn.

Test for a Stay Under s. 7.1 of the Arbitration Act

[19] The test for a stay under s. 7(1) of the Arbitration Act reads as follows:

Stay of court proceedings

7 (1) If a party commences legal proceedings in a court in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may, before submitting the party's first response on the substance of the dispute, apply to that court to stay the legal proceedings.

[20] The technical prerequisites for a stay were discussed by the Supreme Court of Canada in the leading case of *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 [Peace River], beginning at para. 81. At para. 83, Justice Côté on behalf of the majority, with Justice Jamal concurring under separate reasons, wrote:

There are typically four technical prerequisites relevant at this stage:

- (a) an arbitration agreement exists;
- (b) court proceedings have been commenced by a "party" to the arbitration agreement;
- (c) the court proceedings are in respect of a matter that the parties agreed to submit to arbitration; and
- (d) the party applying for a stay in favour of arbitration does so before taking any "step" in the court proceedings.

If all the technical prerequisites are met, the mandatory stay provision is engaged and the court should move on to the second component of the analysis.

[21] Justice Côté went on to note that the standard of proof applicable at the first stage is lower than the usual civil standard: at para. 84. A party in the position of DoorDash must establish only an arguable case that the four technical prerequisites are met in order to meet the threshold of engaging the mandatory stay provision. If there is an arguable case, then it falls to the arbitrator to ultimately determine that issue: *Peace River* at para. 39. At that point, the court moves on to determine whether any of the statutory exceptions in s. 7(2) apply. I will return to s. 7(2) below.

- [22] The plaintiff argues under the first subparagraph quoted from Peace River above -- that is whether an arbitration agreement exists -- that no arbitration agreement exists in this case. He says that this contract -- the ICA or the Effective ICA -- never came into existence as between the defendant and him because he did not sign it. He merely clicked on a box.
- [23] The box in question says, "I agree to the independent contractor agreement and have read the Dasher privacy policy." The uncontradicted evidence was that the Dasher could not continue on in the app and accept orders or do deliveries until that box had been clicked.
- [24] The law on contract formation is clear: it requires an objective manifestation of an offer and acceptance. "The question is not what the parties subjectively had in mind but whether their conduct was such that a reasonable person would conclude that they intended to be bound": *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22 at para. 37. The question in every case is: What intention is objectively manifest in the party's conduct?
- [25] Notwithstanding that contracts can be evidenced by signature, the law is also clear that they can be formed by an activity in electronic form. DoorDash relies on s. 15 of the Electronic Transactions Act, S.B.C. 2001, c. 10, which reads as follows:

Formation and operation of contracts

15 (1) Unless the parties agree otherwise, an offer or the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed

- (a) by means of information or a record in electronic form, or
 - (b) by an activity in electronic form, including touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter.
- (2) A contract is not invalid or unenforceable solely by reason that information or a record in electronic form was used in its formation.

- [26] In *Pokornik v. SkipTheDishes Restaurant Services Inc.*, 2024 MBCA 3, leave to appeal to SCC ref'd, 2024 S.C.C.A. No. 71, Justice Steel found that the plaintiff had objectively accepted new terms and conditions in her agreement with the defendant, SkipTheDishes -- which like DoorDash is a food delivery platform for which the plaintiff was a driver -- by clicking on an "I agree" button and continuing to accept delivery orders.
- [27] In that case, the plaintiff had also sent an email to SkipTheDishes saying, "I do not agree". Despite this, the court held that it was an error for the chambers judge to rely solely on her subjective intentions as to whether or not she accepted the new terms. Her subjective agenda saying she agreed under protest was irrelevant to determining whether a contract was formed.

- [28] In this case, there is no evidence that the plaintiff did anything other than indicate that he agreed to the ICA terms and conditions, both initially when he first signed up on the platform and then each of the five times the terms were amended and he was required to click on the "agree" button after checking off that he had read, understood, and agreed to the terms, in order to continue accepting delivery orders. The law does not require DoorDash to force persons in the plaintiff's position to read the ICA or its revisions. If they choose not to do so, that is their choice to make: *Hazell v. DoorDash Technologies Canada Inc.*, 2022 BCSC 2497 at para. 74.
- [29] I therefore find that the plaintiff and DoorDash were parties to the Effective ICA. Given that the plaintiff started this proceeding by filing his notice of civil claim ("NOCC"), both the first and second prerequisites from para. 83 of *Peace River* set out above are met. That is, an arbitration exists, and court proceedings have been commenced by a party to the arbitration agreement.
- [30] The next question is whether the court proceedings are in respect of a matter that the parties agreed to submit to arbitration. I have referenced above the Mutual Arbitration Provision in the ICA. As DoorDash has submitted, it is very broad. It covers, among other things, any and all claims arising out of or relating to the Effective ICA, the payments received by a Dasher for providing services, and the termination of the parties' agreement. It also applies to:
- all other aspects of Contractor's relationship with DoorDash whether arising under federal, provincial or local statutory and/or common law, including without limitation, harassment, discrimination or retaliation claims and human rights claims, claims related to wage and hour laws, provincial and local statutes or regulations addressing the same or similar subject matters, and all other federal, provincial or local claims arising out of or relating to Contractor's relationship or the termination of that relationship with DoorDash.
- [31] DoorDash submits that phrases such as "arising out of" and "relating to" are to be given very broad and expansive meaning, citing *The Owners, Strata Plan BCS 3165 v. 1100 Georgia Partnership*, 2013 BCSC 1708 at paras. 69-78. I agree. The question is whether they are broad enough to encompass the plaintiff's claims.
- [32] The plaintiff is a lay litigant, albeit one with considerable familiarity with the court and its processes. Although the NOCC summarized above at paras. 13-15 is not framed exactly as one might expect a lawyer to present it, read generously, it articulates several distinct types of claims, namely:
- a) employment-law related claims, including remuneration for hours worked, payment for wear and tear on his vehicle, and benefits, including company shares, bonus, and pension contributions;

- b) tort claims related to his work as a Dasher, including discrimination, fraud, misrepresentation, and breach of trust related to an ongoing effort to prevent the plaintiff from working or accessing work;
- c) breach of contract; and
- d) defamation.

[33] The plaintiff also mentions the constitution and Charter of Rights and Freedoms, but it is unclear to me what claims these instruments relate to.

[34] In my view, the claims set out in the NOCC all relate in substantial measure to the relationship between the plaintiff and DoorDash. As such, they are all encompassed by the Mutual Arbitration Provision.

[35] As noted above, the plaintiff also asserts in his motion materials that DoorDash breached the Employment Standards Regulation. I accept the defendant's submission that even if this had been pleaded in the NOCC, the proper venue for such a claim is through the administrative structure available under the Employment Standards Act, R.S.B.C. 1996, c. 113. See also Employment Standards Regulation, s. 47; Macaraeg v. E Care Contact Centers Ltd., 2008 BCCA 182 at paras. 102-103, leave to appeal to SCC ref'd, [2008] S.C.C.A. No. 293.

[36] The final question under s. 7(1) is whether the defendant's application has been brought in a timely manner. I find that it has. The response to civil claim does not engage in the substance of the dispute. It offers only a jurisdictional defence.

Section 7(2) Statutory Exceptions

[37] Section 7(2), "statutory exceptions", reads as follows:

(2) In an application under subsection (1), the court must make an order staying the legal proceedings unless it determines that the arbitration agreement is void, inoperative or incapable of being performed.

[38] The plaintiff bears a heavy onus under s. 7(2) to show that the ICA is either void, inoperative, or incapable of being performed.

[39] The Court of Appeal has recently confirmed that unless the question of whether the agreement is void, inoperative, or incapable of being performed can clearly be answered on a superficial regard to the record, it also must be referred to the arbitrator for determination: Spark Event Rentals Ltd. v. Google LLC, 2024 BCCA 148 at paras. 15-18, 41, 47, leave to appeal to SCC ref'd, [2024] S.C.C.A. No. 253.

[40] I observe that neither party in this matter took the position that I ought not to determine the threshold issue of the substantive validity of the arbitration agreement. I agree that in this case, the issue can be determined by a review of the record before me.

[41] I will address each of the three statutory exceptions in turn.

Voidness

- [42] In *Peace River* at para. 136, the court explained when an arbitration agreement could be considered void. The law here is relatively settled, and the court's discretion is very narrow. The circumstances in which an arbitration agreement will be considered void are rare but include where the agreement is intrinsically defective or where it is undermined by fraud, undue influence, unconscionability, duress, mistake, or misrepresentation.
- [43] In *TELUS Communications Inc. v. Wellman*, 2019 SCC 19 at para. 85, the Supreme Court of Canada stated that "arguments over any potential unfairness resulting from the enforcement of arbitration clauses contained in standard form contracts are better dealt with directly through the doctrine of unconscionability". To be void for unconscionability, the authorities recognize two elements: (a) an inequality of bargaining power, and (b) an improvident bargain.
- [44] The plaintiff's position aligns with an argument that the Mutual Arbitration Provision is unconscionable. Specifically, he says it was not properly explained to him and that he was not afforded the chance to obtain independent legal advice.
- [45] Similar arguments were rejected by Justice Fleming (as she then was) in *Hazell* cited above, which involved a similar agreement. She inferred from the evidence that Mr. Hazell in that case was prepared to enter into the arbitration agreement without reading it. The same inference can be drawn here. As Justice Fleming held at para. 74, "the law does not require one party to compel the other to read an arbitration agreement in order for it to be enforceable". The terms of the ICA clearly urged in the introductory paragraph, in bold and all capitals, for a contracting party to obtain whatever assistance needed to understand the consequences of acceptance.
- [46] The plaintiff's submissions on inequality of bargaining power centred around concerns that an arbitrator, not being a judge of the court, would somehow be in the pocket of DoorDash. I have detailed above the provisions of s. 25.1 of the Mutual Arbitration Clause, which set out the procedure for choosing an arbitrator. Clearly the process provides the party seeking arbitration -- that is, a party in the position of Mr. Ntibarimungu -- with significant agency, in terms of selecting an arbitrator. It places the final decision, if necessary, in the neutral hands of ADRIIC.
- [47] I also heard submissions on inequality of bargaining power from the defendant. Inequality of bargaining power arises from someone's ability to protect their own interests in the contracting process. It can be offset by clear communication and an agreement that is not so lopsided as to be improvident. The leading case is *Uber Technologies Inc. v. Heller*, 2020 SCC 16 at paras. 66-68, 88-92 [Uber].
- [48] DoorDash submits that any inequality of bargaining power is mitigated here in that:

- a) There was a hyperlink to the ICA and the opportunity to review it at leisure before signing up.
 - b) The plaintiff agreed to revised versions of the ICA on five different occasions.
 - c) The entire text of the Effective ICA was set out in the Dasher app with no hyperlink required, such that review was facilitated before acceptance.
 - d) The plaintiff was required to affirmatively check a box indicating that he had read and understood the Effective ICA before he could navigate away from the page and continue to use the app and accept delivery orders.
 - e) There is no evidence that the plaintiff could not understand the language of the ICA.
 - f) The plaintiff argued that DoorDash failed to properly explain the Effective ICA, but the evidence suggests, and I have inferred, that the plaintiff did not actually read it before signing it. This does not render the ICA or the Mutual Arbitration Provision unconscionable.
 - g) The language of the ICA and the Mutual Arbitration Provision is transparent.
- [49] A hyperlink to the ADRIC rules and a fee schedule is provided, and it is clear that it will be DoorDash paying the majority of the costs. The fees to be split between DoorDash and the person requesting arbitration are modest.
- [50] As to the issue of costs, see *Williams v. Amazon*, 2023 BCCA 314 at paras. 120-135, 138-140, and *Petty v. Niantic Inc.*, 2023 BCCA 315 at paras. 32, 77-84, where the courts enforced arbitration agreements with modest fees and modified procedures, allowing an arbitration to go forward in writing. The defendant contrasts this with the situation in *Uber* where the cost and difficulty of arbitration were factors in the court's finding of unconscionability.
- [51] On balance, I find that any inequality between the plaintiff and DoorDash is mitigated by the content and transparency of the ICA.
- [52] The defendant further submits that this was not an improvident bargain, and I agree. As set out in the leading case of *Uber* at para. 74, an agreement will be improvident if it confers undue disadvantage on the weaker party or undue advantage on the stronger party measured at the time the contract was formed.
- [53] In *Uber*, the arbitration clause required a party seeking dispute resolution to travel to Amsterdam and initiate the arbitration by paying a high fee. The court concluded at paragraph 95 that no reasonable person who had understood and appreciated the implications of the arbitration clause would have agreed to it.

- [54] The clause here is very different. There is a first step of informal dispute resolution. The party requesting arbitration can then request the arbitration take place close to their residence or virtually. The parties share the filing fees on a sliding scale as stated above, and DoorDash pays for the lion's share of the costs, being the ADRIC costs and arbitrator's fee, among other costs. These provisions alone render the clause very different from that in Uber. I find that this does not represent an improvident bargain in the circumstances.
- [55] DoorDash also points to the opt-out provision in s. 25.1 of the ICA, which, in the terms of the Effective ICA, state as follows:
11. **New Contractor's Right to Opt Out of Mutual Arbitration Provision.** Arbitration is not a mandatory condition of Contractor's contractual relationship with DoorDash, and therefore each new Contractor may submit a statement notifying DoorDash that Contractor wishes to opt out and not be subject to this Mutual Arbitration Provision. Existing Contractors who have agreed to a prior version of this Agreement with DoorDash without opting out of the Mutual Arbitration Provision contained therein do not have an opportunity to opt out of this Mutual Arbitration Provision. If you are an existing Contractor and have validly opted out of the Mutual Arbitration Provision in a prior version of the Agreement, that opt out will not be effective for disputes arising under this Agreement; if you want to opt out of arbitration for claims arising under this Agreement, you must submit a new opt out to DoorDash. In order to opt out, a new Contractor (or an existing Contractor that validly opted out of arbitration in a prior version of the Agreement) must notify DoorDash in writing of Contractor's intention to opt out by sending a letter, by First Class Mail, to DoorDash, Inc., Re: Opt Out, 176 Yonge St, Toronto, ON M5B 1M4. Any attempt to opt out by email will be ineffective. The letter must state Contractor's intention to opt out. In order to be effective, Contractor's opt out letter must be postmarked within 30 days of the effective date of this Agreement. The letter must be signed by Contractor himself/herself, and not by any agent or representative of Contractor. The letter may opt out, at most, only one Contractor, and letters that purport to opt out multiple Contractors will not be effective as to any. No Contractor (or his or her agent or representative) may effectuate an opt out on behalf of other Contractors. If Contractor opts out as provided in this paragraph, Contractor will not be subject to any adverse action from DoorDash as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If Contractor does not opt out within 30 days of the effective date of this Agreement, Contractor and DoorDash shall be deemed to have agreed to this Mutual Arbitration Provision. Contractor has the right to consult with counsel of Contractor's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
- [56] I observe that the ability to opt out is specifically alluded to in the bolded, all-caps introductory paragraph of the ICA, quoted above at para 14.

- [57] As the defendant submitted in chambers, a Dasher must opt out when initially opening a Dasher Account and then renew that opting out each time new terms and conditions are agreed to. With regard to that point, I was not taken to the terms in force in 2019 when the plaintiff would have had to opt out initially, and it was not clear from the affidavit evidence provided by DoorDash that the 2019 version of the ICA had such an opt-out term.
- [58] The defendant submitted that "it was open to the plaintiff to opt out of the Mutual Arbitration Provision; he did not do so." The defendant's affiant deposes only that they reviewed the ICAs in effect between March 14, 2022, and November 19, 2024, and each of them contained an opt-out provision. They do not give evidence as to the ICA in effect in 2019. They also depose that there was never an opt-out request received from the plaintiff, but without knowing whether there was such a clause in place in 2019, this evidence has less weight.
- [59] Given that the defendant submitted that the opt-out term was only effective if the opting out was done upon a Dasher's initial contract with DoorDash, without evidence of whether the term was present in the 2019 version of the ICA that this plaintiff initially signed on to, I cannot place any weight on the opt-out provisions in the circumstances of this case. Unlike the rest of the Effective ICA, which the plaintiff agreed to when he acknowledged and agreed to the updated terms and conditions, the agreement as to opting out could only be made upon initially opening a Dasher Account in order to be effective, and that evidence was not before me.
- [60] In addition, although this finding is not necessary to resolve the issues here, these provisions are, in my view, too convoluted to have much impact. Unlike other communications between DoorDash and its Dashers, an opting out must be by mail only rather than by email or via the app and must be separately done each time the Dasher agrees to updated terms and conditions. If the Dasher does not successfully opt out upon first contracting, they cannot choose to do so under any later ICA.
- [61] Little turns on this point because there is no evidence that the plaintiff even tried to opt out, either in 2019 or at any later time. In addition, whether an arbitration contract like this is unconscionable or whether the bargain reached is improvident does not turn on the presence or absence of an opt-out clause. It is but one factor to be considered in the mix. The defendant's position would be made stronger upon proof of a valid and easily exercisable opportunity to opt out, which I have found has not been proven to exist on the facts here. Its absence is not fatal to the defendant's position.
- [62] In summary, I find that this was not an improvident bargain. Although obiter, I accept the analysis of Justice Fleming in *Hazell* at paras. 9, 14, 76-77, 79-80, and apply it to this case. Three out of the four factors to she found to exist in that case also exist here.
- [63] The other two statutory exceptions in s. 7(2) can be briefly dealt with.

Inoperative

[64] As the court held at para. 139 of *Peace River*, "[p]ossible reasons for finding an arbitration agreement inoperative include frustration, discharge by breach, waiver, or a subsequent agreement between the parties". None of these circumstances arise in this case.

Incapable of Being Performed

[65] An arbitration agreement is considered incapable of being performed where the arbitral process cannot effectively be set in motion because of a physical or legal impediment beyond the party's control: *Peace River* at para. 144. The types of impediments rendering an agreement incapable of being performed are detailed at para. 145 of that case and include things like the non-availability of a specific named arbitrator and political unrest. Such cases will involve a finding that it is impossible for the parties to obtain the specific procedures for which they bargained. There are no such circumstances in this case.

Public Policy

[66] In the leading case of *Uber*, Justice Brown dealt with the matter on grounds of public policy. I find that the Mutual Arbitration Provision in this case is not contrary to public policy. It does not preclude access to justice by disproportionate up-front costs vis-à-vis the potential value of the claim. Indeed, it is tailored to avoid just such an occurrence, removing financial barriers and providing for low cost and easy to access solutions. In this regard, see also *Hazell* at paras. 76, 81-82.

Conclusion

[67] In conclusion, DoorDash has satisfied the low threshold of determining that the requirements for a stay are met under s. 7(1) of the Arbitration Act. As set out in *Williams* at para. 5, arbitration agreements are presumptively enforceable, even when embodied in a standard-form contract, and the court has no discretion under the mandatory language of s. 7(2). It must stay the action unless the plaintiff can show on a balance of probabilities that the arbitration agreement is void, inoperative, or incapable of being performed, and that has not been shown here.

[68] The action is therefore stayed, and the defendant DoorDash, having been substantially successful, is entitled to its costs on the usual scale.

[69] This concludes my oral reasons for judgment.

"Lawn J."

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