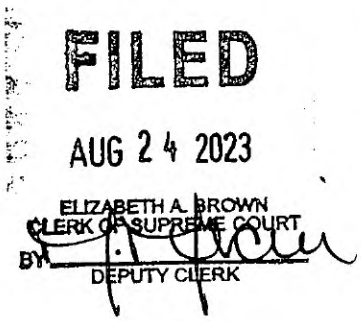
IN THE SUPREME COURT OF THE STATE OF NEVADA

RASIER, LLC, D/B/A UBER AND D/B/A UBERPOOL, A FOREIGN CORPORATION,
Appellant,
vs.
MYA R. BOYKIN; THERESA L. BOYKIN; AND STEVEN M. TERRY, II, ALL INDIVIDUALS, AND ON BEHALF OF ALL THOSE SIMILARLY SITUATED,
Respondents.

No. 84814



ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to compel arbitration. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Appellant Rasier, LLC, operates the Uber rideshare application (the Uber App) and UberPool, a service within the Uber App that allows multiple customers to share a single vehicle en route to their respective destinations. Respondents Mya R. Boykin, Theresa L. Boykin, and Steven M. Terry, II, filed suit against Rasier alleging that UberPool operated illegally in Nevada having failed to acquire the necessary licenses. Pursuant to the Uber App's Terms of Service applicable to each of the respondents,[1] Rasier moved to compel individual arbitration with each

[1]Different versions of the Terms of Service applied to each respondent. Each version contained the same key terms, however, so all versions are referred to jointly herein.

respondent. The district court denied the motion, finding that the Federal Arbitration Act (FAA) did not apply and that the Terms of Service were void in light of UberPool's allegedly illegal operation. This appeal follows.

This court reviews an order denying a motion to compel arbitration de novo. *See Uber Techs., Inc. v. Royz*, 138 Nev., Adv. Op. 66, 517 P.3d 905, 908 (2022). "By its terms, the FAA applies to contracts 'evidencing a transaction involving [interstate] commerce.'" *U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 186, 415 P.3d 32, 38 (2018) (alteration in original) (quoting 9 U.S.C. § 2 (2012)). And here, the parties do not dispute that the Terms of Service involve interstate commerce. Therefore, the FAA applies to the Terms of Service.

Respondents' arguments against application of the FAA center around their challenge to the validity of the Terms of Service as a whole. They make no specific argument about the validity of the arbitration agreement or the delegation clause. In federal or state court, "unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006) (relying on caselaw and various provisions of the FAA). Because respondents generally challenge the Terms of Service and not the arbitration agreement or delegation clause specifically, the arbitration agreement is "enforceable apart from the remainder of the contract" and "[t]he challenge should therefore be considered by an arbitrator, not a court."[2] *Id.* at 446.

[2]As the Supreme Court recognized, this "rule permits a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void." *Buckeye*, 546 U.S. at 448.

Therefore, we conclude the district court erred in relying on respondents' illegality argument to avoid application of the FAA.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter with instructions for it to grant the motion and refer the case to arbitration.

Stiglich, C.J.

Cadish, J.

Pickering, J.

Herndon, J.

Lee, J.

Parraguirre, J.

Bell, J.

cc: Hon. Nadia Krall, District Judge
Ara H. Shirinian, Settlement Judge
Campbell & Williams
Drummond Law Firm
Eighth District Court Clerk