On July 27, 2022, in Archer v. Grubhub, the Massachusetts Supreme Judicial Court considered whether Grubhub delivery drivers within the Commonwealth are exempt from arbitration under Section 1 of the Federal Arbitration Act (FAA). FAA Section 1 exempts “seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.” The SJC joined numerous other courts in determining such drivers are not a class of transportation workers exempt from the FAA and that the electronic arbitration agreements with class action waivers among the drivers and Grubhub are binding. The ruling reversed the Superior Court judge’s denial of Grubhub’s motion to compel arbitration.
At the heart of the case was an electronic agreement among the plaintiff drivers and Grubhub that was executed through an online portal through which the plaintiffs had to activate a hyperlink titled “Arbitration Agreement” with an option to view the text of the agreement when navigating to the signature page. The signature page required plaintiffs to acknowledge they had read, understood, and agreed to be bound by the terms of the arbitration agreement. The text of the document contained an agreement to arbitrate all disputes arising out of or relating to employment with Grubhub, including claims related to retaliation or wages. The arbitration agreement also included a class action waiver.

When plaintiffs in 2019 filed suit claiming that Grubhub unlawfully retaliated against their wage complaints, Grubhub filed a motion to compel arbitration on the basis of the electronic agreement. However, the Superior Court judge found the plaintiffs fell within the exemption contained in Section 1 of the FAA because they transported goods manufactured outside of Massachusetts and denied the motion.

Presented with the question whether Grubhub drivers were exempt from the FAA, the SJC conclusively answered in a 21-page unanimous opinion that they are not. The opinion explained, “Notably, all courts that have considered the applicability of the residual clause [the Section 1 exemption] to delivery drivers similar to the plaintiff delivery drivers in this case have reached the same conclusion.” Like those other courts, the SJC reasoned that, given the context and language of the FAA provision in question, “any other class of workers engaged in foreign or interstate commerce” should apply only “to ‘transportation workers’ actually engaged in the movement of goods in interstate commerce,” rather than drivers who have not moved across state or national borders.

Under the Test Set Forth in Kauders, the Electronic Arbitration Agreement Was Enforceable

For businesses entering into contracts with Massachusetts employees and customers, the SJC’s additional analysis of the validity of the Grubhub electronic agreement is of particular interest. Under Massachusetts law, a customer is deemed to have assented to an electronic agreement only if the counterparty business reasonably communicated its terms and reasonably obtained customer assent as set forth in the decision Kauders v. Uber Techs., Inc., 486 Mass. 557, 571 (2021). The SJC elaborated on this standard, explaining “[r]easonable notice of a contract’s terms exists even if the party did not actually view the agreement, so long as the party had an adequate opportunity to do so.” In addition, “[s]o long as the party is required to make some indication of assent, such as selecting ‘I agree’ or ‘I accept,’ the fact that the party chooses not to read the agreement does not render it unenforceable.” In Archer, because plaintiffs were required to provide their electronic signatures on a page that informed them they were signing an arbitration agreement, reasonable notice was provided. Lastly, the SJC held that any alleged delay by Grubhub in providing the arbitration agreement to the plaintiffs before the filing of the suit did not effect a waiver of its enforcement when Grubhub had timely filed its motion to compel arbitration in response to the complaint. In light of these factors, the SJC held Grubhub was entitled to enforce the electronic arbitration agreement.
agreement with its class action waiver.

The Archer decision is important confirmation of the enforceability of electronic arbitration agreements and class action waivers under Massachusetts law, as well as the applicability of the FAA to drivers and other transportation workers contracting with businesses as part of the gig economy in the Commonwealth.

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