

**In the
SUPREME COURT of ILLINOIS**

GLORIA S. GELLER, as Independent Administrator of the
Estate of Mark Geller, Deceased,

Plaintiff-Appellant,

vs.

UBER TECHNOLOGIES, INC. and RAISER, LLC,

Defendants-Appellees,

and

ERIN MURPHY, as Special Representative of the Estate of Ejaz Rathore, Deceased,

Defendant.

On Appeal from the Appellate Court of Illinois
First Judicial District, No. 1-24-1458

**AMENDED *AMICUS CURIAE* BRIEF OF THE
ILLINOIS TRIAL LAWYERS ASSOCIATION
AND AMERICAN ASSOCIATION FOR JUSTICE
IN SUPPORT OF THE PLAINTIFF-APPELLANT**

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INTRODUCTION

The Illinois Trial Lawyers Association (hereinafter “ITLA”) is a not-for-profit association whose members specialize in representing injured victims of torts and ensuring access to justice through courts and the Seventh Amendment right to trial by jury. ITLA has a longstanding tradition of promoting access to the courts and protecting the rights of persons who have been injured. ITLA members prepare pro bono briefs amicus curiae on issues that are of significant interest to its members' clients. ITLA believes the opinion of this Honorable Court on the issues presented in this case will have a substantial effect upon those persons represented by the ITLA's members, as well as having a substantial effect upon public safety throughout Illinois.

The American Association of Justice (hereinafter “AAJ”) is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury and protect access to the courts for those who have been wrongly injured. With members in the United States, Canada and abroad, AAJ is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases and other civil actions across the nation, including in Illinois. Throughout its 79-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

Based on their members' experience with similar litigation, and their organizational concern for the development of law in this area, ITLA and AAJ are well-positioned to explain why this Court should reverse the First District Appellate Court's decision. ITLA and AAJ tender this brief as Amicus Curiae to provide the Court with its views in resolving

certain questions raised by this case. This brief is submitted in support of the position of Plaintiff-Appellant.

Mindful that it is a privilege and not a right to appear as an Amicus Curiae before the Court, ITLA and AAJ are grateful to do so in this case.

Corporations like Uber have fought for many years to close the courts to consumers and restrict claims brought against them to arbitrations. As a result, when a consumer assents to binding contractual terms with almost any corporation, for almost any type of transaction, the consumer is often left with only one pathway to redress illegal misconduct: private arbitration.

In this case, the appellate court's Order upsets and overturns Illinois' well-settled law with respect to the application of arbitration agreements in the context of wrongful death cases. First, the appellate court held that standard delegation language in the administrator's [Sheridan Geller] personal acceptance of Uber's "Terms of Use" mandated that a wrongful death case be sent to arbitration contrary to this Court's decision in *Carter v. SSC Operating Company, LLC*, 2012 IL 113204, which clearly held that an administrator was merely a nominal party. Second, the Order held that the wrongful death case of Mark Geller had to go to arbitration because his widow Sheridan, as a statutory beneficiary, who was not making a claim for independent damages, had an Uber app herself, and therefore had accepted its "Terms of Use."

This decision by the appellate court is one of first impression and without precedent in the State of Illinois. The fact that Sheridan Geller herself had an Uber account is entirely separate and remote from her husband's use of his Uber account to secure the subject ride

during which he was tragically killed on April 19, 2022. The appellate court relied upon the decision of the U.S. Supreme Court in *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019), and held that despite fact that the Plaintiff had absolutely nothing to do with her husband's use of the Uber app or the circumstances involving his death, the wrongful death claim should still be sent to arbitration. This ruling and reversal of the circuit court constitutes error and mandates reversal.

ARGUMENT

I. It is the Circuit Court's Responsibility to Determine the Validity of the Arbitration Agreement

In this case, Uber Technologies, Inc. (hereinafter "Uber") seeks an extraordinary, extratextual expansion of the preemptive scope of the Federal Arbitration Act, 9 U.S.C.A. § 1 *et seq.* In doing so, Uber argued that the circuit court had no right or ability to interpret the subject arbitration agreement. Rather, Uber argues that this case must proceed to arbitration and that an arbitrator, rather than a court of law, resolve any and all disputes regarding the scope of the arbitration agreement.

In *Lloyds*, the Fifth Circuit Court of Appeals described a two-step analysis for determining whether a claim should be arbitrated. At step one, "the court must determine 'whether the parties entered into any arbitration agreement at all.'" *Lloyds Syndicate 457 v. Floatec, LLC.*, 921 F.3d 508, 514 (5th Cir. 2019). "This first step is a question of contract formation only—did the parties form a valid agreement to arbitrate some set of claims." *Id.* Put simply, the inquiry is for the court: Where the very existence of any [arbitration] agreement is disputed, it is for the *courts* to decide at the outset whether an agreement was reached. *Id.* (citing *Will-Drill Res., Inc. v. Samson Res. Co.*, 352 F. 3d 211, 218 (5th Cir.

2003)). Only if the court answers “yes” at this initial first step does it proceed to the second step. At step two, a court must engage in a “limited” inquiry as to whether the parties’ agreement contains a valid delegation clause. *Lloyds*, 921 F.3d at 514-15.

Here, the circuit court completed the analysis as required and arrived at the proper destination, ruling that the Plaintiff’s wrongful death claim was not subject to the arbitration agreement. However, the appellate court skipped the crucial initial first step of the analysis. The appellate court, in reversing the circuit court ruled that the Plaintiff’s wrongful death claim should be sent to arbitration pursuant to Uber’s delegation clause, contained within its “Terms of Use”. The court’s analysis failed to perform the initial step of the required analysis, which required to first determine whether the Plaintiff had formed a valid arbitration agreement with Uber to begin with. Indeed, the appellate court states at ¶38 of its opinion:

“Sheridan argues that her late husband's arbitration agreement with Uber does not bind her as the administrator of his estate. That may be true (see *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204 ¶60), but that is beyond the question presented to this court. The question here is *who decides* whether Sheridan's claims for wrongful death fall within the scope of *her* arbitration agreement with Uber. The delegation clause answers that question clearly: the arbitrator decides.”

Geller v. Uber Techs., Inc., 2025 IL App (1st) 241458-U, at ¶38.

In reaching the decision that the presence of a delegation clause in Uber’s arbitration agreement automatically sends the matter to an arbitrator, the appellate court relied upon *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 67-68 (2019).

The court's reliance was misplaced. In *Henry Schein*, the parties to the contract at issue had agreed to delegate the arbitrability question to an arbitrator. The issue at bar was, despite this clear agreement between the parties to arbitrate, could a court nevertheless decide arbitrability itself if the argument for arbitration appears "wholly groundless." *Id.* at 68. The Supreme Court found that courts could not "short-circuit the process" in this way because "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract." *Id.* at 65. Moreover, *Schein* explicitly endorsed certain cases finding that courts delegate threshold questions of arbitrability only when the parties have agreed to do so by clear and unmistakable evidence. *Id.* at 69. The appellate court's reliance on *Henry Schein* is overreaching.

Arbitration is a "creature of contract" and under basic principles of contract law, only parties to the arbitration contract may compel arbitration or be compelled to arbitrate. *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204. The Federal Arbitration Act's policy favoring arbitration does not alter these principles. The FAA directs courts to place arbitration agreements on equal footing with other contracts, but it does not require parties to arbitrate when they have not agreed to do so. *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989). Arbitration is a matter of consent, not coercion. It goes without saying that a contract cannot bind a nonparty. *Equal Employment Opportunity Comm'n v. Waffle House, Inc.*, 534 U.S. 279, 293-94 (2002).

As the United States Supreme Court has explained, “[a] court may invalidate an arbitration agreement based on generally applicable contract defenses, but not on legal rules that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *Kindred Nursing Ctrs. Ltd. P’ship v. Clark*, 581 U.S. 246, 247 (2017) (internal quotes omitted). A court may only compel arbitration where there is a valid agreement to arbitrate. *Travis v. American Manufacturers Mutual Insurance Co.*, 335 Ill. App. 3d 1171, 1175 (5th Dist. 2002) (“Where there is no valid arbitration agreement...the trial court may not compel it.”). As stated above, the threshold question of the validity of the arbitration agreement is one the Court must answer before ordering a party to arbitration. *Coinbase, Inc. v. Suski*, 144 S.Ct. 1186, 1194 (2024).

Where there is a valid arbitration agreement and the parties' dispute falls within the scope of that agreement, arbitration is mandatory and the trial court must compel it. *TDE Ltd. v. Israel*, 185 Ill.App.3d 1059, 1063 (1st Dist. 1989) (holding that parties to an arbitration agreement are irrevocably committed to arbitrate all disputes clearly arising under the agreement). On the other hand, where there is no valid arbitration agreement or where the parties' dispute does not fall within the scope of that agreement, the trial court may not compel it. *Roubik v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 181 Ill. 2d 373 (1998) (holding that a party cannot be forced to arbitrate a dispute that the party has not agreed to submit to arbitration).

A delegation clause is merely a specialized type of arbitration agreement. *New Prime v. Oliveira*, 139 S.Ct. 532, 538 (2019). The principals of contract law apply and a delegation clause is controlling “only where the court is satisfied that the parties agreed to

delegate gateway questions as to the specific dispute. In *Slaughter v. Nat'l R.R. Passenger Corp.*, 460 F. Supp. 3d 1 (D.D.C. 2020), the plaintiff, a visually impaired woman, alleged Amtrak failed to make its mobile app and website accessible to the visually impaired. *Id.* at 5. Amtrak's mobile app was subject to an end user license agreement ("EULA") containing a venue clause. *Id.* at 4. The EULA also provided that, by virtue of using the app, a user had accepted the Web Notices & Site Terms of Use ("Website Agreement") containing a similar venue provision. *Id.* at 4. But in order to access the app and website to purchase tickets, customers needed to agree to Amtrak's Terms and Conditions, which contained a broad arbitration provision "intended to be as broad as legally permissible" and apply "to all claims, disputes, or controversies, past, present, or future." *Id.* Its scope was similarly broad, purportedly subjecting to arbitration any "claims Amtrak may have against You and claims You may have against Amtrak . . . based upon or related to: these Terms and Conditions, breach of contract, tort claims, common law claims, Your relationship with Amtrak, tickets, services and accommodations provided by Amtrak, carriage on Amtrak trains and equipment, any personal injuries and any claims for discrimination and failure to accommodate. . ." *Id.*

Amtrak moved to compel arbitration, arguing that the Terms and Conditions covered every possible dispute between the parties. But the court readily dismissed that argument, finding that "plaintiff's claims arise from her relationship with Amtrak as a mobile application user and mobile website user - not her relationship with Amtrak as a train passenger." *Id.* at 11. Therefore, the court refused to allow "distinct contracts to intermix dispute resolution terms." *Id.*

Here, it is clear that Sheridan Geller, as Administrator of her deceased husband Mark's estate was a nominal party to this cause of action. A nominal party is one whose interest is only formal or technical. *Lyons v. Ryan*, 201 Ill.2d 529, 534 (2002). As argued within Plaintiff's briefs to the appellate court, Sheridan Geller had no involvement with her husband's use of the Uber app and subsequent Uber ride on April 19, 2022. Sheridan's role as the Administrator of her husband's estate did not bind her to the Uber arbitration agreement.

This Court has previously ruled on this exact issue in *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, a case relied upon by the circuit court here which established that "under Illinois law, a personal representative [is] not bound by the decedent's agreement to arbitrate for purposes of the wrongful death claim." In *Carter*, this Court considered whether two arbitration agreements between the defendant (the nursing home where plaintiffs mother resided prior to her death), required arbitration of the daughter's wrongful death claim. This Court affirmed the appellate court's determination that the arbitration agreements did not bind the daughter even though one of the arbitration agreements was signed by the daughter in her capacity as the decedent's representative.

Relying on basic principles of contract law, the appellate court held the daughter could not be compelled to arbitrate a wrongful death claim against a defendant based on an arbitration agreement that was not executed by plaintiff (acting in her own capacity) but was instead executed by the decedent (or on behalf of the decedent). *Id.* at ¶¶30-31. On appeal, this Court rejected defendant's argument that, during a decedent's lifetime, a wrongful death action is an asset of the decedent's estate that the decedent can limit,

including limiting the forum in which the action may be heard. *Carter*, 2012 IL 113204, ¶¶36-46. This Court similarly rejected the defendant's argument that, as a “derivative claim,” the wrongful death claim was subject to the decedent's agreement to arbitrate. *Id.* at ¶¶48-56. This Court stated unequivocally that “only parties to the arbitration contract may compel arbitration or be compelled to arbitrate.” *Id.* at ¶55. As this Court recognized, “Although a wrongful-death action is dependent upon the decedent's entitlement to maintain an action for his or her injury, had death not ensued, neither the Wrongful Death Act nor this court's case law suggests that this limitation on the cause of action provides a basis for dispensing with basic principles of contract law in deciding who is bound by an arbitration agreement.” *Id.* at ¶54.

This Court held that the plaintiff, the decedent's daughter, was not bound by the arbitration agreement at issue in *Carter*, even though it purported to bind the decedent's successors, assigns, agents, heirs and representatives, including the personal representative or executor of her estate. *Id.* at ¶56. This Court recognized, arbitration is a “creature of contract”, and “under basic principles of contract law, only parties to the arbitration contract may compel arbitration or be compelled to arbitrate.” *Id.* at ¶55.

Moreover, similar to the circuit court here, this Court ruled in *Carter* that a survival statute claim, which accrued prior to the decedent's death and which was brought in her stead for the benefit of her estate, was subject to the arbitration clause. But, with respect to a wrongful death action brought for the benefit of the decedent's next of kin “who are the true parties in interest”, the Court recognized, “Plaintiff is not prosecuting the

wrongful-death claim on behalf of [decedent], and thus plaintiff is not bound by [decedent's] agreement to arbitrate for purposes of this cause of action.” *Id.* ¶ 57.

The circuit court, in denying Uber’s argument to arbitrate the Plaintiff’s wrongful death claim, undertook the two-step analysis in determining that this Court’s reasoning in *Carter* was proper. The appellate court erred in reversing that sound decision.

II. Third Parties Generally May Not Commit a Non-Party to Arbitration

It is undisputed that Uber and the decedent Mark Geller are the only parties to the subject Arbitration Agreement. The appellate court’s ruling misapplies the standard regarding the circuit court’s responsibility in determining the applicability of an arbitration clause. The appellate court stated that “Sheridan argues that her late husband's arbitration agreement with Uber does not bind her as the administrator of his estate. That may be true, but that is beyond the question presented to this court.” *Geller*, 2025 IL App (1st) 241458-U, at ¶38. The appellate court goes further in stating that “The wrongful death claims belong to Sheridan individually and she is the plaintiff on those claims. *Id.* at ¶40.

Neither the FAA nor any U.S. Supreme Court decision mandates arbitration of the wrongful death claims. While the FAA makes arbitration agreements “valid, irrevocable, and enforceable,” it does not require parties to arbitrate when they have not agreed to do so. *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989). The FAA's liberal federal policy favoring arbitration applies to issues concerning the scope of an arbitration agreement. It does not extend the reach of an arbitration agreement to parties who never agreed to arbitrate in the first place. *Grundstad*

v. *Ritt*, 106 F.3d 201, 205 n.5 (7th Cir. 1997). Here, decedent's next of kin never agreed to arbitrate the wrongful death claims.

In *Cole v. Granite Nursing & Rehabilitation*, No. 22-cv-312-JPG, 2022 WL 1306333 (S.D. Ill. May 2, 2022), an arbitration agreement was created and entered into by and between Granite Nursing & Rehab and a resident named Curtis Cole. The matter arose following Mr. Cole's death in January of 2020. The plaintiff brought claims on behalf of the decedent's estate under the Illinois Survival Act as well as the Illinois Wrongful Death Act. The defendants moved the court to compel the plaintiff to arbitrate all her claims based on the arbitration clause signed by Granite Nursing and Curtis Cole when he entered the facility in March 2018. *Cole* at 1-2.

The plaintiff did not dispute that the claims under the Survival Act must be arbitrated because those are really claims of Curtis Cole that survived his death. However, the plaintiff argued that her wrongful death claims never belonged to her husband such that he could have agreed to arbitrate them, and that she herself never agreed to arbitrate them. The Court applied *Carter* for the conclusion that the claims for the Wrongful Death claim were not subject to the arbitration agreement. Specifically, the Court reasoned:

Carter relied on a fundamental principle of contract law that in no way depended on the nature of the decedent's agreement as an arbitration clause. That fundamental principle—that a party to an agreement cannot bind a non-party—applies to all sorts of agreements. Indeed, had the decedent's agreement been about choice of law, judicial forum, allocation of costs and fees, confidentiality, or any number of standard contract provisions, the results would have been the same. Curtis Cole could not have bound his personal representative to those agreements for her wrongful death claims. The application of this rule did not depend in any way on the agreement being one for arbitration, as it did in *Kindred*. *Id.* at ¶3-4.

As the circuit court correctly ruled when it followed this Court's precedent from *Carter*, the survival action was subject to the arbitration agreement, but the wrongful death claim was not. The *Cole* court reasoned that even though the "Legal Representative" who signed the arbitration agreement is also decedent's heir seeking wrongful death damages, the agreement was signed on behalf of the decedent and not in the heir's individual capacity. Since the arbitration agreement was signed on behalf of decedent and not in an individual capacity, the agreement was only binding on decedent.

The important conclusion, not only for this case, but in the interest of justice for all plaintiffs across the state of Illinois, is that the applicability of the arbitration agreement does not impermissibly treat an agreement to arbitrate differently than other contracts because of its nature as an arbitration agreement. *Cole*, 2022 WL 1306333 at *5. The Court concluded that the enforcement of Illinois law in this regard does not violate the FAA.

Here, the appellate court erred in reversing the circuit court's denial of Uber's request to arbitrate the Plaintiff's wrongful death claim pursuant to the Arbitration Agreement and delegation clause. Sheridan Geller, as Administrator for her husband's estate, is a nominal party to this cause of action. She had no involvement in Mark's use of his Uber app on April 19, 2022. She also did not own Mark's wrongful death claim due to her having her own Uber app. There was no valid agreement to arbitrate Mark Geller's wrongful death claim based upon the language within Mark's Uber arbitration agreement.

CONCLUSION

The Illinois Trial Lawyers Association and American Association for Justice request that this Court apply the Illinois precedent under the holdings of *Carter, Slaughter* and *Peterson v. Devita*, 2023 IL App (1st) 230356, ¶¶35-36, and reverse the Appellate Court's holding which was entered in error when it compelled arbitration and reversed the correct and appropriate ruling of the Circuit Court.

Respectfully submitted,

/s/ Sean M. Houlihan

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a), 341(b), Rule 315(h) and Rule 345. The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance and the certificate of service is 13 pages.

By: /s/ Sean M. Houlihan

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