United States Court of Appeals
For the First Circuit

No. 24-1535

PABLO ENRIQUE ROSADO SÁNCHEZ,

Plaintiff - Appellant,

v.

TRAVIS KALANICK; GARRET CAMP; DARA KHOSROWSHAHI; UBER TECHNOLOGIES, INC.,

Defendants - Appellees.

Before

Gelpí, Kayatta and Rikelman,
Circuit Judges.

JUDGMENT

Entered: January 13, 2025

In the underlying action involving claims of employment discrimination, the district court granted the motion of Defendants-Appellees Uber Technologies, Inc., and certain of its present or former executives (collectively, "Uber") to compel arbitration, and then entered a judgment dismissing the case without prejudice.[1] Plaintiff-Appellant Pablo Enrique Rosado Sánchez ("Appellant") proceeded to notice this appeal. In its brief, Uber suggests that the court lacks statutory appellate jurisdiction, but we assume, in Appellant's favor, that the matter properly is before the court. See, e.g., Restoration Pres. Masonry, Inc. v. Grove Eur. Ltd., 325 F.3d 54, 58-60 (1st Cir. 2003) (discussing bypass of statutory-jurisdiction issues in favor of affirming on the merits).

[1] Just one day after the district court entered judgment in this case, the Supreme Court held in Smith v. Spizzirri that, "[w]hen a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the [Federal Arbitration Act] compels the court to stay the proceeding." 601 U.S. 472, 478 (2024). However, in this case, it does not appear that Appellant requested a stay prior to the district court's judgment of dismissal, and, regardless, Appellant has failed on appeal to develop any argument based on Spizzirri.

Having reviewed the record and the parties' arguments, we conclude that summary affirmance is in order. As the district court observed, Appellant failed to develop any arguments in opposition to the motion to compel arbitration. "The law in this circuit is crystalline: a litigant's failure to explicitly raise an issue before the district court forecloses that party from raising the issue for the first time on appeal." Boston Beer Co. Ltd. P'ship v. Slesar Bros. Brewing Co., 9 F.3d 175, 180-81 (1st Cir. 1993).

Further, even if the foregoing were not so, Appellant has failed in his appellate briefs to develop any claim of error legitimately addressed to the reasoning of the district court; as a result, he has waived any appellate challenge. See United States v. Nishnianidze, 342 F.3d 6, 18 (1st Cir. 2003) (pro se appellants may waive challenges through a failure to develop them on appeal); see also Sparkle Hill, Inc. v. Interstate Mat Corp., 788 F.3d 25, 29-30 (1st Cir. 2015) (discussing waiver principles).

Therefore, the judgment of the district court is **affirmed**. See Local R. 27.0(c).

By the Court:

Anastasia Dubrovsky, Clerk

cc:
Pablo Enrique Rosado Sánchez
Anabel Rodríguez-Alonso
Lady E. Cumpiano

IN THE UNITED STATES COURT
FOR THE DISTRICT OF PUERTO RICO

PABLO ENRIQUE ROSADO SÁNCHEZ, Plaintiff, v. UBER TECHNOLOGIES, INC.; TRAVIS KALANICK; GARRET CAMP; DARA KHOSROWSHAHI, Defendants.	CIV. NO.: 22-1500 (SCC)

OPINION AND ORDER

Pending before the Court is Defendants Uber Technologies, Inc., Travis Kalanick, Garret Camp and Dara Khosrowshahi's Motion to Compel Arbitration ("Motion to Compel") which is brought under the Federal Arbitration Act ("FAA"). *See* Docket No. 26. The same stands unopposed. *See* Docket No. 78. For the reasons set forth below, the Motion to Compel at Docket No. 26 is GRANTED.

I. STANDARD OF REVIEW

The Defendants bear the burden of showing that arbitration must be compelled. *Air-Con, Inc. v. Daikin Applied Latin Am., LLC*, 21 F.4th 168, 176 (1st Cir. 2021). So, to evaluate the Defendants' request, the First Circuit directs the Court to "apply the summary judgment standard to evaluate motions to compel arbitration under the FAA." *See id.* at 175.[1] This is so because "the summary-judgment standard, which evaluates the evidentiary supportability of claims, better aligns with the FAA's command to evaluate whether the moving party has met its burden of demonstrating that an agreement to arbitrate is not in issue[.]" *See Rodríguez-Rivera v. Allscripts Healthcare Solutions, Inc.*, 43 F.4th 150, 168 (1st Cir. 2022) (internal citations and quotation omitted).

To defeat the Defendants' request, the Plaintiff is tasked with advancing "materials that create a genuine issue

[1] The Court is cognizant of the fact that the summary judgment standard is not to be applied automatically because "there could be exceptional cases where the parties have foregone the submission of record materials and have relied solely on the pleadings to support or oppose the motion." *See Rodríguez-Rivera v. Allscripts Healthcare Solutions, Inc.*, 43 F.4th 150, 168 n. 15 (1st Cir. 2022). In those cases, district courts should apply FED. R. CIV. P. 12(b)(6)'s motion to dismiss standard. *Id.* Here, the Defendants have advanced materials that fall outside of the pleadings. Accordingly, the Court has applied the summary judgment standard.

of fact about a dispute's arbitrability." *Air-Con, Inc.*, 21 F.4th at 175. The Court, for its part, will review the record "in the light most favorable to [the Plaintiff] and draw all reasonable inferences in his favor."[2] *García-García v. Costco Wholesale Corp.*, 878 F.3d 411, 414 (1st Cir. 2017). But in doing so, the Court will cast aside and ignore all "conclusory allegations, improbable inferences, and unsupported speculation." *See id.* at 417.

II. ANALYSIS

The FAA was enacted by Congress with the goal of "overcom[ing] judicial resistance to arbitration." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006). Section 2 of the FAA constitutes the "primary substantive provision of the Act." *See Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). It "provides that written arbitration agreements 'shall be valid, irrevocable, and enforceable.'" *Immediato v. Postmates, Inc.*, 54 F.4th 67, 73 (1st Cir. 2022) (quoting 9 U.S.C. § 2). To that end, Section 2 "embodies the national policy favoring arbitration and places

[2] The Court has not overlooked the fact that Plaintiff's filings must be liberally construed since he filed this suit *pro se*. *See McCants v. Alves*, 67 F.4th 47, 53 n. 4 (1st Cir. 2023). So while conducting its analysis, the Court also kept that principle in mind.

arbitration agreements on equal footing with all other contracts." *See Buckeye*, 546 U.S. at 443.

The general rule when considering a motion to compel arbitration is that the Court must consider the following four factors: (1) if a valid arbitration agreement exists; (2) if the moving party is entitled to invoke the arbitration clause; (3) whether the non-moving party is bound by the arbitration clause; and (4) whether the claim is within the scope of the arbitration clause. *See Nat'l Fed'n of the Blind v. The Container Store, Inc.*, 904 F.3d 70, 79-80 (1st Cir. 2018). This four-part test confirms that "a [C]ourt should not compel arbitration unless and until it determines that the parties entered into a validly formed and legally enforceable agreement covering the underlying claim[s]." *Escobar-Noble v. Luxury Hotels Int'l of P.R., Inc.*, 680 F.3d 118, 121-22 (1st Cir. 2012). But general rules have exceptions and "[w]here there is a clear and unmistakable delegation of arbitrability issues, the [C]ourt's proper inquiry before referring a dispute to an arbitrator is limited to determining (1) whether a valid arbitration agreement exists but (2) if a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a [C]ourt may not decide the arbitrability issue." *Bossé v. N.Y.*

Life Ins. Co., 992 F.3d 20, 28 (1st Cir. 2021) (cleaned up). Here, the Defendants argue that the Court must only consider the first element of the four-part test because the agreement containing the arbitration provision that they are invoking contains a delegation clause.[3]

First thing is first, which is the agreement that reportedly contains the arbitration provision that the Defendants are invoking? According to the Defendants, the agreement in question is the Platform Access Agreement (the "PAA") entered into by Portier, LLC ("Portier") and the Plaintiff.[4] The Defendants reason that the Plaintiff had to sign-in to the Uber Driver App to gain access to the Uber Eats marketplace. And to do so, it had to agree to the PAA, which

[3] The First Circuit "refer[s] to an agreement to submit issues of arbitrability to the arbitrator . . . as a 'delegation clause.'" *See Bossé v. N.Y. Life Ins. Co.*, 992 F.3d 20, 27 n. 7 (1st Cir. 2021).

[4] Specifically, the Defendants contend that the applicable PAA is the PAA dated January 1, 2022 between Portier and the Plaintiff and that the Plaintiff accepted the same on or around January 8, 2022. *See* Docket No. 26, pg. 10. In support of that contention, they cite to the Declaration of Deborah Soh, a paralegal at Uber who is familiar with its business records. *See* Docket No. 26-1, pgs. 5-6. Defendants acknowledge that there is also a similar agreement that was entered into by the Plaintiff and Schleuder LLC ("Schleuder"). *See* Docket No. 26, pg. 1-2 n. 2; *see also* Docket No. 26-1, pgs. 5-6. Uber is Schleuder's parent company. But since the pertinent arbitration provisions track the ones in the January 1, 2022, Portier PAA, the Court will refer to that agreement throughout this Opinion and Order.

in turn, includes an arbitration provision. Since Plaintiff's claims are allegations that stem from having accessed the Uber Eats marketplace, the PAA is at the crux of Plaintiff's claims.

Defendants claim that the PAA contains a delegation provision "that clearly and unmistakably delegates any and all threshold issues related to the scope, enforceability, and validity of the arbitration agreement to an arbitrator to decide." Docket No. 26, pg. 2. So the Court will first consider whether the PAA entails a valid arbitration agreement. Then, it will consider whether the arbitration provision contains a delegation clause.

To determine whether the PAA entails a valid arbitration agreement, the Court turns to state contract law. *See Campbell v. Gen. Dynamics Govt. Sys. Corp.*, 407 F.3d 546, 552 (1st Cir. 2005). Here, the Defendants argue that Puerto Rico law applies. That reasoning is supported by the "Governing Law" section of the PAA which provides, in pertinent part, that "[e]xcept as specifically provided in this PAA, this PAA is governed by the applicable law of the state where you reside (or where your entity is domiciled) when you accepted this PAA." *See* Docket No. 26-1, pg. 24.

Furthermore, in his Complaint, the Plaintiff included his Puerto Rico address and all notices regarding this case are sent by the Court to that address. Additionally, the allegations in the Complaint took place in Puerto Rico. Therefore, the Court will go ahead and apply Puerto Rico law.

Under Puerto Rico contract law, "consent is shown by the concurrence of the offer and acceptance of the thing and the cause which are to constitute the contract." *See Rivera-Colón v. AT&T Mobility P.R., Inc.*, 913 F.3d 200, 209 (1st Cir. 2019) (internal quotations and citations omitted). This follows that "[y]ou need to have a definitive object which may be the subject of the contract and the cause for the obligation which may be established." *Id.* at n. 7 (cleaned up). In their Motion to Compel, the Defendants detail the process that the Plaintiff went through to sign-in to the Uber Driver App and access the Uber Eats marketplace. *See* Docket No. 26, pgs. 8-13. Since that process entailed the acceptance of the PAA, the Defendants provided evidence attesting to the fact that the Plaintiff agreed to be bound by the PAA. *See* Docket No. 26-1, pgs. 5-6 and 138. Furthermore, the PAA clearly stated that the Plaintiff could have opted out of the arbitration provision of the PAA. *See* Docket No. 26-1, pgs. 24-25. However, the

records show that Plaintiff did not opt out of the arbitration provision. *Id.* at pgs. 6-7. And at the end of the day, the Plaintiff did not advance any evidence that could create a material issue of fact regarding these issues. So the Court holds that the Defendants have shown the Plaintiff consented to be bound by the PAA which contains an arbitration provision and that he did not opt out of the arbitration provision. Moving on to the delegation of the arbitrability issue.

Here, the Defendants claim that the PAA contains a delegation clause. Specifically, they direct the Court to Section 13.1(b) of the PAA, which states, in pertinent part that:

> [t]his Arbitration Provision applies to all claims whether brought by you or us, except as provided below. . .[S]uch disputes include without limitation disputes arising out of or relating to the interpretation application, formation, scope, enforceability, waiver, applicability, revocability or validity of this Arbitration Provision or any portion of this Arbitration Provision.

See Docket No. 26-1, pg. 25.

The clear text of the delegation clause shows that the arbitrability question was delegated to the arbitrator and is therefore not for the Court to decide. So, considering the

delegation clause, the Court's inquiry ends here. Arbitration is to be compelled.

In any event, assuming *arguendo* that "there were any ambiguity," *see Bossé*, 992 F.3d at 23, surrounding the delegation clause, the Court still finds that arbitration is warranted because the Defendants satisfied the remaining three factors of the four-part test outlined above.

The second part of the four-part test calls for the Court to consider whether the Defendants can invoke the arbitration clause of the PAA. The Defendants are not the contracting parties. Per the PAA, the contracting parties are Portier and the Plaintiff. However, Section 13.1(a) of the PAA states, in pertinent part,

> [e]xcept as it otherwise provides, this Arbitration Provision applies to any legal dispute, past, present or future, arising out of or related to your relationship with us or relationship with any of our agents, employees, executives, officers, investors, shareholders, affiliates, successors, assigns, subsidiaries, or parent companies (each of which may enforce this Arbitration Provision as third party beneficiaries), and termination of that relationship, and survives after the relationship terminates.

See Docket No. 26-1, pg. 25.

This clause confirms that the individual defendants and Uber are third party beneficiaries to the PAA and can therefore move to enforce the Arbitration Provision. So the Court holds that the Defendants have satisfied the second prong.

Third, the Court considers if the Defendants have shown that the Plaintiff is bound by the arbitration clause of the PAA. As previously discussed, the clear text of the PAA states that the Plaintiff could have opted out of the arbitration clause. However, the Defendants have advanced evidence showing that the Plaintiff did not opt out of the arbitration provision of the PAA, so he is bound by it.

Lastly, the Court must consider if the Defendants have shown that Plaintiff's claims are covered by the Arbitration Provision in the PAA. Defendants underscore that in his Complaint, the Plaintiff is advancing claims pursuant to Title VII, the ADEA and the ADA. So, in support of their argument, the Defendants direct the Court to Section 13.1 (c) of the PAA which states, in pertinent part that:

> [e]xcept as it otherwise provides, this Arbitration Provision also applies, without limitation, to disputes between you and us, or between you and any other entity or individual, arising out of or related to your application for

> and use of an account to use our Platform and Driver App, the Deliveries that you provide . . . and claims arising under . . . Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981 . . . American with Disabilities Act [and] Age Discrimination in Employment Act[.]

See Docket No. 26-1, pgs. 25-26.

Considering this explicit language, and the fact that the Plaintiff has not provided any evidence that would create a material issue of fact regarding this point, the Court finds that the Defendants have shown that the PAA covers Plaintiff's claims. Once again, all roads lead to arbitration.

III. WHETHER TO DISMISS OR STAY

Having determined that arbitration must be compelled, the following question remains: what should the Court do with Plaintiff's suit? Well, the First Circuit has instructed that when arbitration is to be compelled, the district court may either stay or dismiss the pending action. *See Escobar-Noble*, 680 F.3d at 126. Specifically, the First Circuit has held that when all claims are arbitrable, the district court may dismiss (instead of stay) the action. *See Bercovitch v. Baldwin Sch., Inc.*, 133 F.3d 141, 156 n.21 (1st Cir. 1998).[5] Here,

[5] The Court acknowledges that there is a circuit split regarding whether district courts should dismiss (instead of stay) such actions given the

the Defendants vote in favor of dismissal. And the Court agrees since the delegation clause instructs that the arbitrability issue is to be decided by the arbitrator. Moreover, in any event, a review of Plaintiff's claims confirms that they all fall under scope of the PAA's arbitration provision. Therefore, dismissal is appropriate in this case.

IV. CONCLUSION

In light of the above, the Defendants' Motion to Compel at Docket No. 26 is **GRANTED** and is to be compelled pursuant to the process delineated in the PAA. Plaintiff's suit is hereby **DISMISSED WITHOUT PREJUDICE.**

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 15th day of May 2024.

S/ SILVIA CARREÑO-COLL
UNITED STATES DISTRICT COURT JUDGE

FAA's text which indicates, in pertinent part, that when arbitration is to be compelled the district court "shall on application of one of the parties stay the trial of the action until such arbitration has been had [.]" *See* 9 U.S.C. § 3. The Court is also aware that the question whether to stay or dismiss an action pending arbitration will be decided by the Supreme Court. *See Smith v. Spizzirri*, No. 22-1218, 2024 WL 133822, at *1 (2024). But until the Supreme Court says otherwise, the Court is bound by what the First Circuit has decided.

IN THE UNITED STATES COURT
FOR THE DISTRICT OF PUERTO RICO

PABLO ENRIQUE ROSADO SÁNCHEZ, Plaintiff, v. UBER TECHNOLOGIES, INC.; TRAVIS KALANICK; GARRET CAMP; DARA KHOSROWSHAHI, Defendants.	CIV. NO.: 22-1500 (SCC)

JUDGMENT

In view of the Court's Opinion and Order at Docket No. 79, this case is hereby **DISMISSED WITHOUT PREJUDICE.** Each party shall bear their own costs and attorneys' fees.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 15th day of May 2024.

S/ SILVIA CARREÑO-COLL
UNITED STATES DISTRICT COURT JUDGE

United States Court of Appeals
For the First Circuit

No. 24-1535

PABLO ENRIQUE ROSADO SÁNCHEZ,

Plaintiff - Appellant,

v.

TRAVIS KALANICK; GARRET CAMP; DARA KHOSROWSHAHI; UBER TECHNOLOGIES, INC.,

Defendants - Appellees.

Before

Gelpí, Kayatta and Rikelman,
Circuit Judges.

ORDER OF COURT

Entered: February 12, 2025

Plaintiff-Appellant Pablo Enrique Rosado Sánchez has filed a "Response Against Judgment Entered: January 13, 2025," which this court has construed as a petition for panel rehearing. The petition is denied.

By the Court:

Anastasia Dubrovsky, Clerk

cc:
Pablo Enrique Rosado Sánchez
Anabel Rodríguez-Alonso
Lady E. Cumpiano

Additional material from this filing is available in the Clerk's Office.