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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1391-22**

**MAURICE WILLIAMS,
JEANETTE WILLIAMS, and
MICHAEL FLOYD,**

Plaintiffs-Appellants,

v.

**ERIC YSABEL, ERIC
DORTBUCUK, SAJ
TRANSPORTATION NORTHEAST,
LLC, UBER TECHNOLOGIES, INC.,
RASIER LLC, and HEREFORD
INSURANCE COMPANY,**

Defendants-Respondents.

Argued July 18, 2023 – Decided September 7, 2023

Before Judges Susswein and Gummer.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket No. L-1451-22.

Ernest Blair argued the cause for appellants (Law
Offices of Karim Arzadi, attorneys; Ernest Blair, on the
briefs).

Timothy F. Brown argued the cause for respondents Eric Dortbucuk, SAJ Transportation Northeast, LLC, and Hereford Insurance Company (Connell Foley LLP, attorneys; Brian G. Steller, of counsel and on the brief; Patrick S. Brannigan, on the brief).

Michael L. Kichline argued the cause for respondents Uber Technologies, Inc., and Rasier LLC (Morgan, Lewis & Bockius LLP, and Goldberg Segalla LLP, attorneys; Michael L. Kichline, Matthew D. Klayman, and John W. Meyer, of counsel and on the brief).

PER CURIAM

In this automobile-accident case, plaintiffs Maurice Williams, Jeannette Williams, and Michael Floyd appeal from a December 20, 2022 order compelling arbitration of and dismissing their claims against defendants Uber Technologies, Inc. (Uber) and Raiser, LLC (collectively, Uber defendants). We affirm.

I.

Uber has developed and maintains "digital multi-sided platforms" used by businesses and individuals in a variety of ways. Through its "Rides" platform, Uber provides a ride-sharing service, connecting individuals in need of transportation with drivers willing to provide it.

To utilize the Uber Rides platform to connect with a driver, a user downloads the Uber "app" and then registers for an account with Uber. Before

users can complete their registration, they are presented with "an in-app blocking pop-up screen." The top of the pop-up screen contains the phrases "We've updated our terms" and "We encourage you to read our updated Terms in full," followed by bullet points with "Terms of Use" and "Privacy Notice" underlined and printed in blue against a white background, clearly indicating each phrase is a separate hyperlink. Each hyperlink takes users to a display of the respective document. Users must affirmatively check a blank box appearing below the hyperlinks that states: "[b]y checking the box, I have reviewed and agree to the Terms of Use and acknowledge the Privacy Notice. I am at least [eighteen] years of age." Beneath that box is a "Confirm" button.

On the first page of the January 18, 2021 version of Uber's hyperlinked "Terms of Use" document, the following excerpt is shown in capital letters:

IMPORTANT: PLEASE BE ADVISED THAT THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND UBER CAN BE BROUGHT, INCLUDING THE ARBITRATION AGREEMENT (SEE SECTION 2 BELOW). PLEASE REVIEW THE ARBITRATION AGREEMENT BELOW CAREFULLY, AS IT REQUIRES YOU TO RESOLVE ALL DISPUTES WITH UBER ON AN INDIVIDUAL BASIS AND, WITH LIMITED EXCEPTIONS, THROUGH FINAL AND BINDING ARBITRATION (AS DESCRIBED IN SECTION 2 BELOW). BY ENTERING INTO THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND

UNDERSTAND ALL OF THE TERMS OF THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.

Section 2 of the "Terms of Use" document, which appears on the second page, is entitled in larger, bold print: "Arbitration Agreement." The arbitration agreement states that "[b]y agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber on an individual basis in arbitration," claims "will be settled by binding arbitration between you and Uber, and not in a court of law," and "you and Uber are each waiving the right to a trial by jury." It also provides that "the Federal Arbitration Act [(FAA), 9 U.S.C. §§ 1-16] . . . will govern [the arbitration agreement's] interpretation and enforcement and proceedings pursuant thereto."

Each plaintiff registered for an Uber account: Jeannette Williams in 2017; Maurice Williams in 2016; and Michael Floyd in 2015. Each plaintiff followed that process – checking the box to indicate he or she had "reviewed and agree[d] to the Terms of Use" and clicking "Confirm" – before the October 3, 2021 automobile accident at issue: Jeannette Williams on February 20, 2021; Maurice Williams on January 29, 2021; and Michael Floyd on January 24, 2021.

On October 3, 2021, plaintiffs requested a ride through the Uber app. They were picked up in a vehicle owned by defendant SAJ Transportation

Northeast, LLC and operated by defendant Eric Dortbucuk. During the trip, that vehicle and a vehicle owned and operated by defendant Eric Ysabel collided.

On May 3, 2022, plaintiffs filed a complaint in the Law Division, alleging negligence had caused the collision and plaintiffs' resulting injuries. The Uber defendants moved to compel arbitration of the claims against them.

In opposition to the motion, plaintiffs submitted certifications in which they admitted that "when [they] signed up for Uber" on their smartphones, they "went through an online application and filled it out" and "[d]uring this process, [they] had to click on a pop-up or pop-ups in order to continue with the registration." In their opposition brief, plaintiffs conceded, "[a] user cannot register and continue in the Uber rider app - that is, he or she cannot secure a ride unless he or she clicks a box stating that she or he accepts the Terms of Use embedded in the hyperlink." Plaintiffs also acknowledged the Terms of Use contained an arbitration agreement providing claims "will be settled by binding arbitration between you and Uber, and not in a court of law" and that "[y]ou acknowledge and agree that you and Uber are each waiving the right to a trial by jury." Plaintiffs complained the "pop-up" did not expressly advise them of the arbitration agreement and that they were "not directed to or required to read"

the Terms of Use. They argued the Uber defendants failed to demonstrate plaintiffs had agreed to waive their right to a jury trial.

In a written opinion, the motion judge granted the Uber defendants' motion. The judge found the agreement at issue was an enforceable "clickwrap" agreement, meaning an agreement that "require[s] 'that a user consent to any terms or conditions by clicking on a dialog box on the screen in order to proceed with the internet transaction.'" Skuse v. Pfizer, Inc., 244 N.J. 30, 55 n.2 (2020) (quoting Feldman v. Google, Inc., 513 F. Supp. 2d 229, 236 (E.D. Pa. 2007)). The judge also found the hyperlinks were not misleading or ambiguous and that "[p]laintiffs knew that they were executing an agreement, and that agreement contained terms that plainly waived a trial by jury."

The judge stated in the opinion she was granting "Uber's motion to dismiss and compel arbitration" and dismissing with prejudice all claims against the Uber defendants. The judge entered an order on December 20, 2022, granting the motion and directing that plaintiffs' claims against the Uber defendants "are removed from the Superior Court Law Division and to be arbitrated pursuant to the Terms and Service Agreement agreed to by [p]laintiffs."

Plaintiffs appeal from that December 20, 2022 order.¹ On appeal, plaintiffs argue the judge erred by enforcing Uber's arbitration agreement as a clickwrap contract, failing to recognize the agreement is unconscionable, and failing to "inquire as to the desirability or necessity of discovery on any issues material to the arbitration issue." Unpersuaded by those arguments, we affirm.

II.

"We review a trial court's order granting or denying a motion to compel arbitration de novo because the validity of an arbitration agreement presents a question of law." Santana v. SmileDirectClub, LLC, 475 N.J. Super. 279, 285 (App. Div. 2023). "As a result, we 'need not give deference to the [legal] analysis by the trial court.'" Ibid. (alteration in original) (quoting Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019)).

In conducting our review, "we are mindful of the strong preference to enforce arbitration agreements, both at the state and federal level." Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013). Indeed, "the affirmative policy of this State, both legislative and judicial, favors arbitration as a

¹ As an order compelling arbitration, that order was appealable as of right. R. 2:2-3(b)(8). The judge entered another order on December 20, 2022, denying plaintiffs' motion for leave to file an amended complaint. We denied plaintiffs' motion for leave to appeal that order. Thus, in this appeal, we address only the order compelling arbitration.

mechanism of resolving disputes." Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 133 (2020) (quoting Martindale v. Sandvik, Inc., 173 N.J. 76, 92 (2002)). However, that preference, "is not without limits." Gayles by Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 23 (App. Div. 2021) (quoting Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2001)).

"An arbitration agreement must be the result of the parties' mutual assent, according to customary principles of state contract law." Skuse, 244 N.J. at 48. "Thus, 'there must be a meeting of the minds for an agreement to exist before enforcement is considered.'" Ibid. (quoting Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 319 (2019)). "An arbitration provision is not enforceable unless the consumer has reasonable notice of its existence." Wollen v. Gulf Stream Restoration & Cleaning, LLC, 468 N.J. Super. 483, 498 (App. Div. 2021). "But a party may not claim lack of notice of the terms of an arbitration provision for failure to read it." Santana, 475 N.J. Super. at 286. "[A]s a general rule, 'one who does not choose to read a contract before signing it cannot later relieve himself of its burdens.'" Skuse, 244 N.J. at 54 (quoting Riverside Chiropractic Grp. v. Mercury Ins. Co., 404 N.J. Super. 228, 238 (App. Div. 2008)).

New Jersey courts have recognized the validity of consumer web-based contracts "for decades." Wollen, 468 N.J. Super. at 495. As we recently confirmed in Santana, "[t]he enforceability of an internet consumer contract often turns on whether the agreement is characterized as a 'scrollwrap,' 'sign-in wrap,' 'clickwrap,' or 'browsewrap' – or a hybrid version of these electronic contract types." 475 N.J. Super. at 286 (quoting Wollen, 468 N.J. Super. at 495-96).² Clickwrap agreements are "routinely enforced by the courts" because "[b]y requiring a physical manifestation of assent, a user is said to be put on inquiry notice of the terms assented to." Id. at 288-89 (first quoting Skuse, 244 N.J. at 55 n.2; then quoting Applebaum v. Lyft, Inc., 263 F. Supp. 3d 454, 465 (S.D.N.Y. 2017) (alternation in original)).

We agree with the motion judge that the agreement at issue is an enforceable clickwrap agreement. Like the agreement in Santana, the Uber

² "[A] scrollwrap agreement 'requires users to physically scroll through an internet agreement and click on a separate "I agree" button in order to assent to the terms and conditions of the host website.'" Wollen, 468 N.J. Super. at 496 (quoting Berkson v. Gogo LLC, 97 F. Supp. 3d 359, 395 (E.D. N.Y. 2015)). "A sign-in wrap agreement 'couples assent to the terms of a website with signing up for use of the site's services . . .'" Ibid. (quoting Berkson, 97 F. Supp. 3d at 395). "[A] browsewrap agreement generally 'exists where the online host dictates that assent is given merely by using the site.'" Ibid. (quoting Berkson, 97 F. Supp. 3d at 394). "Unlike clickwrap agreements, 'browsewrap agreements do not require users to expressly manifest assent.'" Ibid. (quoting James v. Glob. Tel*Link Corp., 852 F.3d 262, 267 (3d Cir. 2017)).

arbitration agreement "was located within a clearly hyperlinked document." 475 N.J. Super. at 290. "The title of the hyperlinked document" and the language appearing below the hyperlinks next to the blank box "clearly put plaintiff[s] on reasonable inquiry notice that when [they] checked" the box beneath the link, they were agreeing to Uber's "Terms of Use." Ibid. Within the hyperlinked Terms of Use document, the title of the arbitration provision, "Arbitration Agreement," appearing in larger, bold print on the second page of the document, "would have alerted a consumer to the importance of the provision in relation to all others." Id. at 291. Had plaintiffs left the agreement box unchecked, they would not have been able to proceed and would not have been able to access Uber's ride-share services. See ibid. By checking the box, plaintiffs represented they had reviewed and agreed to the Terms of Use and signaled their assent to those terms, including the arbitration agreement.

The language of the arbitration agreement – "[b]y agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber on an individual basis in arbitration," claims "will be settled by binding arbitration between you and Uber, and not in a court of law," and "you and Uber are each waiving the right to a trial by jury" – is "sufficiently clear to place a consumer on notice that he or she is waiving a constitutional or statutory right."

Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 443 (2014); see also Flanzman, 244 N.J. at 137-38. Accordingly, we affirm the aspect of the order compelling the arbitration of plaintiffs' claims against the Uber defendants.

Plaintiffs acknowledge they did not raise their unconscionability argument before the motion judge. Therefore, we decline to consider it. See J.K. v. N.J. State Parole Bd., 247 N.J. 120, 138 n.6 (2021) ("[O]ur appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available." (quoting State v. Robinson, 200 N.J. 1, 20 (2009))); State v. Galicia, 210 N.J. 364, 383 (2012) ("Generally, an appellate court will not consider issues, even constitutional ones, which were not raised below."). Plaintiffs – having conceded they registered for Uber accounts and followed the related procedure, including clicking in a pop-up box – fail to demonstrate how discovery would alter our analysis or conclusion. Thus, we find their discovery argument to be without merit.

Although we agree with and affirm the judge's decision to compel arbitration of plaintiffs' claims against the Uber defendants, we disagree with and reverse her dismissal of those claims with prejudice. See Perez v. Sky Zone LLC, 472 N.J. Super. 240, 251 (App. Div. 2022) ("Under the FAA and the [New

Jersey Arbitration Act], a court must stay an arbitrable action pending the arbitration." (citing 9 U.S.C. § 3; N.J.S.A. 2A:23B-7(g)). Accordingly, we remand the case with an instruction that the judge enter a new order compelling plaintiffs to arbitrate their claims against the Uber defendants and staying the Law Division action, including the claims against the other defendants. See ibid. ("Although not mandatory, when significant overlap exists between parties and issues, claims against parties who have not agreed to arbitrate should be stayed pending the arbitration.").

Affirmed in part, reversed in part, and remanded for entry of a new order.

We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION