

SUPERIOR COURT
(Class Action Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-06-001121-215

Date: February 4, 2022

PRESIDING: THE HONOURABLE STÉPHANE LACOSTE, J.S.C.

9343-4678 QUEBEC INC.

Applicant
v.

UBER CANADA INC.
UBER B.V.
UBER PORTIER B.V.
DOORDASH, INC.
DOORDASH TECHNOLOGIES CANADA INC.
JUST EAT CANADA INC.
SKIPTHEDISHES RESTAURANT SERVICES INC.

Defendants

JUDGMENT ON THE DISCONTINUANCE

[1] **CONSIDERING** the *Amended Application to Authorize the Bringing of Class Action and to Appoint the Status of Representative Plaintiff* (the “**Class Action**”) filed against the Defendants on January 11, 2021, on behalf of the following proposed class:

All restaurants in the province of Quebec who, since January 8, 2018, paid a commission in excess of 15% of the total cost of the customer order to Uber Eats, DoorDash or SkipTheDishes.

- [2] **CONSIDERING** that on March 16, 2021, the National Assembly adopted *An Act to limit certain charges in the restaurant industry*,¹ imposing limitations on delivery charges that applied only when restaurant dining rooms were completely closed because of health measures decreed by the government, or when their operating hours were limited by mandatory curfews;
- [3] **CONSIDERING** that on October 12, 2021, each of the Defendants filed their respective declinatory exceptions, as follows:
- a) Uber Defendants: *Demande des défenderesses Uber en exception déclinatoire*;
 - b) DoorDash Defendants: Application for a Declinatory Exception in Favour of Arbitration;
 - c) SkipTheDishes Defendants: Application for Referral to Arbitration.
- [4] **CONSIDERING** that in support of its declinatory application, the Uber Defendants filed a copy of its new “*Convention de Services Uber Eats*”,² which the Applicant signed on August 30, 2021 and which incorporates by reference the “*Conditions supplémentaires pour les commerçants Uber Eats*”;³
- [5] **CONSIDERING** that the Applicant has agreed to Uber’s new terms and conditions;⁴
- [6] **CONSIDERING** that pursuant to Uber Eats’ agreement (Exhibit Uber-1), any dispute arising out of the agreement or the Uber Eats services must be resolved through arbitration:
- V. Droit applicable et compétence. La présente Convention est régie exclusivement par les lois de la province d’Ontario et les lois fédérales du Canada qui s’appliquent dans cette province et doit être interprétée conformément à ces lois. [...] Les Différends doivent être réglés par voie d’arbitrage et, en convenant de la présente Convention, vous acceptez également de renoncer à participer aux litiges sous forme d’Action collective, comme il est décrit à la clause 17 des Conditions supplémentaires générales.
- [7] **CONSIDERING** that pursuant to Uber’s additional conditions for merchants (Exhibit Uber-2), the arbitration is conducted under the rules of the Arbitration and

¹ *Loi visant à limiter certains frais dans le domaine de la restauration*, LQ 2021, c 4.

² Exhibit Uber-1

³ Exhibit Uber-2

⁴ Exhibit Uber-3.

Mediation Institute of Canada:

17. Règlement des Différends.

a. Règlement des Différends par arbitrage :

i. Tous les Différends découlant de la Convention ou dans le cadre de celle-ci, ou à l'égard de toute relation juridique associée à la Convention ou dérivée de celle-ci, seront définitivement et de façon concluante réglés par voie d'arbitrage, sur une base individuelle, aux termes des règles d'arbitrage (les « Règles IAMC ») de l'Institut d'arbitrage et de Médiation du Canada Inc. (« IAMC »), sans dans leur version modifiée aux présentes.

ii. Le droit applicable, appelé le siège de l'arbitrage, sera celui de l'Ontario. La langue de l'arbitrage sera l'anglais ou le français, à votre choix.

iii. Les audiences et séances d'arbitrage peuvent être tenues à tout endroit que l'arbitre juge approprié. Les audiences peuvent être tenues par téléphone, par courrier électronique, par Internet, par vidéoconférence ou par d'autres moyens de communication, à moins que l'arbitre ne s'y oppose. [...]

[8] **CONSIDERING** that the foregoing Uber Eats agreements contain a clear, unambiguous, final and binding arbitration clause;

[9] **CONSIDERING** that in support of their Application for a Declinatory Exception in Favour of Arbitration, the DoorDash Defendants filed a copy of a contract negotiated and signed between the Applicant and DoorDash on June 3, 2021, which shows *inter alia* that the Applicant benefits from a negotiated Promotion Fee for non-DashPass delivery orders;⁵

[10] **CONSIDERING** that Section 19 of DoorDash's Merchant Terms and Conditions, entitled "Dispute Resolution",⁶ contains a clear, unambiguous, final and binding arbitration provision:

[...]

1. Scope of Arbitration Agreement. Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including the breach, termination or validity thereof, shall be finally resolved by binding arbitration, rather than in court, except that (1) you may assert claims in small claims

⁵ Exhibit R-1

⁶ Exhibit R-2

court if your claims qualify, so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis; and (2) you or DoorDash may seek injunctive relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). DoorDash and Merchant agree that, because both are business entities that mutually benefit from streamlined and confidential resolution, this Arbitration Agreement shall apply to all disputes arising from or relating to the subject matter of this Agreement or the relationship between the parties and their personnel. In that regard, this Arbitration Agreement shall be binding upon and enforceable by not only the parties, but also their affiliates, and their owners, officers, directors, managers and employees. This Arbitration Agreement shall apply, without limitation, to all claims that arose or were asserted before the Effective Date of this Agreement. CASES HAVE BEEN FILED AGAINST DOORDASH—AND OTHERS MAY BE FILED IN THE FUTURE—THAT ATTEMPT TO ASSERT CLASS ACTION CLAIMS, AND BY ACCEPTING THIS ARBITRATION AGREEMENT YOU ELECT NOT TO PARTICIPATE IN SUCH CASES. IF YOU AGREE TO ARBITRATION WITH DOORDASH, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVER MONETARY OR OTHER RELIEF IN ANY SUCH CLASS, COLLECTIVE, AND/OR REPRESENTATIVE LAWSUIT. INSTEAD, BY AGREEING TO ARBITRATION, YOU MAY BRING YOUR CLAIMS AGAINST DOORDASH IN AN INDIVIDUAL ARBITRATION PROCEEDING. IF SUCCESSFUL ON SUCH CLAIMS, YOU COULD BE AWARDED MONEY OR OTHER RELIEF BY AN ARBITRATOR.

2. Arbitration Rules and Forum. This Arbitration Agreement is governed by the Federal Arbitration Act in all respects. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to DoorDash's registered agent. The arbitration will be administered by the International Centre for Dispute Resolution Canada under its rules and pursuant to the terms of this Agreement before one arbitrator mutually agreed upon by the parties, and if no agreement can be reached within thirty (30) days of commencement of arbitration, then by one arbitrator appointed by the ICDR. The arbitration shall take place in Toronto, Ontario, or any other jurisdiction mutually agreed upon by Merchant and DoorDash. The arbitration shall

be conducted in accordance with the ICDR arbitration rules then in effect. Payment of all filing, administration, and arbitration fees will be governed by ICDR's rules. If ICDR is not available to arbitrate, the parties will select an alternative arbitral forum. You may choose to have the arbitration conducted by telephone, video conference, based on written submissions, or in person in the country where you live or at another mutually agreed location.

- [11] **CONSIDERING** that the Applicant was afforded the possibility of opting out of the arbitration provision set forth in DoorDash's Merchant Terms and Conditions, but did not do so;
- [12] **CONSIDERING** the recent judgment of the Québec Court of Appeal in 9369-1426 *Québec inc. (Restaurant Bâton Rouge) c. Allianz Global Risks US Insurance Company*;⁷
- [13] **CONSIDERING**, as the file progressed, and in light of the evidence filed in support of the Defendants' declinatory applications, it became increasingly apparent that the Applicant would not succeed in demonstrating a cause of action (art. 575(2) CCP) and that his action was also doomed to fail on art. 575(4) CCP, notably because:
- a) The Applicant signed new agreements with UberEats and Doordash several months after the filing of his action and continues to use both delivery platforms and will continue using both platforms;
 - b) The Applicant and his counsel concede that the Defendants would have more than likely succeeded on their declinatory applications; and
 - c) Indeed, the allegations contained in the Defendants' respective declinatory applications, as well as their respective affidavits are compelling.
- [14] **CONSIDERING** that the Applicant and his counsel have undertaken not to institute a new class action concerning the same issues raised in the present case and concede that the arbitration clauses provided for in the Applicant's agreements with the Defendants are valid and binding upon the Applicant, such that the Superior Court of Quebec has no jurisdiction upon the Applicant's individual right of action as asserted in the Class Action;
- [15] **CONSIDERING** the representations of the Applicant and his counsel;
- [16] **CONSIDERING** the allegations contained in the Defendants' respective declinatory applications, as well their respective affidavits;

⁷ 2021 QCCA 1594

- [17] **CONSIDERING** the Applicant's *De Bene Esse Application for permission to discontinue the putative class action* and the Discontinuance dated and filed on February 2, 2022;
- [18] **CONSIDERING** that no release is granted by any other member of the putative class in exchange of the discontinuance;
- [19] **CONSIDERING** the consent of the Defendants to the discontinuance of the proceedings against them;
- [20] **CONSIDERING** that the parties all agree that it would not be proportionate in the circumstances to pursue this Class Action;
- [21] **CONSIDERING** that Applicant's counsel has undertaken to publish a copy of the judgment to intervene as to the discontinuance on the class action registry of the Superior Court of Quebec;
- [22] **CONSIDERING** that the Application does not undermine the integrity of the justice system in any way;

FOR THESE REASONS, THE COURT:

- [23] **AUTHORIZES** the Applicant to discontinue its *Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;
- [24] **TAKES ACT** of the discontinuance dated February 2, 2022, filed by the Applicant into the Court record;
- [25] **ORDERS** the Applicant to publish a copy of this judgment as well as the discontinuance on the class action registry of the Superior Court;
- [26] **THE WHOLE** without judicial costs.

STÉPHANE LACOSTE, J.S.C.

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