Uber Technologies v. Heller, 2020 SCC 16 – arbitration agreements; unconscionability

Facts:

David Heller was a driver for Uber's food delivery service in Toronto. He made between $400 and $600 per week. To become a driver, he had to accept Uber's standard form services agreement, without any type of negotiation. The terms of this agreement stated that any dispute between an employee and Uber had to be resolved by arbitration in the Netherlands. The filing fees alone for this process were $14,500 (in U.S. dollars).

In 2017, Heller started a class action lawsuit against Uber, claiming that they had violated Ontario's *Employment Standards Act*. Uber asked the judge to stay the class proceeding. Uber argued that the matter had to be arbitrated in the Netherlands, as stated in the agreement. Heller argued that this clause was unconscionable (or unreasonable).

The motion judge considered whether this matter fell under Ontario's *Arbitration Act* (*AA*) or the *International Commercial Arbitration Act* (*ICAA*). He decided it fell under the *ICAA*, since Heller and Uber were in different jurisdictions. He said the matter would have to be referred to arbitration in the Netherlands, and stayed the class action suit.

The Ontario Court of Appeal reversed this order. The justices did not answer the question of whether the *AA* or *ICAA* applied in this case. They found that the agreement was unconscionable because of the difference in bargaining power between Uber and Heller, and the high cost of arbitration. They felt the result would be the same under either legislation. Uber appealed to the Supreme Court of Canada.

The Decision:

The Court dismissed Uber's appeal.

First, the Court looked at the *ICAA* and *AA*. They decided that although this was an international dispute and was related to commerce, the actual issue was a fairly ordinary employment dispute. Employment and labour disputes do not fall under the applicable definition of "commercial" disputes required by the *ICAA*. Since this type of dispute was not covered by the *ICAA*, the *AA* must apply.

The *AA* says a court must stay proceedings if there is an arbitration agreement in place. However, a court can refuse to stay proceedings if an arbitration agreement is invalid. One way for an arbitration agreement to be invalid is if it is unconscionable.

An agreement might be unconscionable if it involves:
a) an inequality of power, and
b) an improvident (or extravagant) bargain resulting from the inequality of power.

Discussion Questions:

1) Do you agree with the decision in this case? Why or why not?

2) Do you think the court would have decided differently if the arbitration was done in Toronto or was less expensive?

3) What other kinds of class action suits have been filed in Canada?

4) Why would someone want to be part of a class action suit?

Relevant Law:

Section 7 of *Arbitration Act*, 1991, SO 1991 c. 17 [Ontario]

(You may also want to read Manitoba's equivalent law, section 7 of *The Arbitration Act*, CCSM c. A120).

Resources:

You can read the entire case at:

https://canlii.ca/t/j8dvf

You can find Ontario's *Arbitration Act* at:

https://www.ontario.ca/laws/statute/91a17#BK10

You can find Manitoba's *Arbitration Act* at:

https://web2.gov.mb.ca/laws/statutes/ccsm/a120e.php

An inequality can exist where one party is in a much higher position of power than the other. This could be because one party has more money, experience, or knowledge than the other. It could also be because one party is dependent on the other, or where the terms of the agreement are so complicated that one of the parties could not reasonably understand them.

Not every inequality is enough to make an agreement invalid, but it might if the agreement also leads to the more powerful party getting a much better deal out of it than the less powerful party.

The Court noted that Uber is a company that does business in 77 countries, with a customer base of millions. On the other hand, Heller made somewhere around $20,000 to $30,000 dollars per year working for Uber. Heller relied on Uber for employment, and the costs to bring the matter to arbitration would have eaten up most or all of his yearly income from Uber.

While a court should not be too quick to rule an arbitration agreement invalid, in this case there was a very good chance that Heller's concerns with Uber might not be dealt with, if arbitration was the only option available to him. The effect this agreement had overall was that Uber was essentially putting a "brick wall" between themselves and most of their employees who might have grievances. In other words, the benefit to Uber was much larger than the benefit to drivers who had signed the agreement.

The Court found that in the circumstances, the agreement was unconscionable and therefore invalid. They upheld the Court of Appeal's decision and awarded costs to Heller.

Relevant Law:

Note: *This is an Ontario statute, but Manitoba's Arbitration Act (CCSM c. A120) contains nearly identical wording.*

Arbitration Act, 1991, SO 1991 c. 17 [Ontario]

7 (1) If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of another party to the arbitration agreement, stay the proceeding.

(2) However, the court may refuse to stay the proceeding in any of the following cases:

1. A party entered into the arbitration agreement while under a legal incapacity.
2. The arbitration agreement is invalid.
3. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.
4. The motion was brought with undue delay.
5. The matter is a proper one for default or summary judgment.