



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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February 4, 2026

VIA EMAIL ONLY

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RE: *Ying Feng v. Uber Technologies, Inc., et al.*, Case No. CL-2024-10120

Dear Counsel:

This matter comes before the Court on the Motion to Compel Arbitration and to Stay Action (the "*Motion*") filed by Defendants Uber Technologies, Inc., Rasier, LLC, and Rasier-CA,

LLC (collectively, “**Uber**”). Uber seeks to require Plaintiff Ying Feng (“**Rider**”) to arbitrate her personal injury claims under the Terms of Use governing users of the Uber ride-sharing application. The Motion presents a question of first impression:¹ Whether a third-party beneficiary is bound to an arbitration clause merely by her status as a third-party beneficiary.

Uber operates and advertises a ride-sharing service accessible through a mobile phone application (or “app”). Rider alleges that she was seriously injured when an Uber driver assaulted her and drove in a manner that caused her to be ejected from the vehicle.

Rider filed suit against the driver and Uber, alleging assault and battery, negligence, and negligent training and supervision. Uber moves to compel arbitration of those claims and to stay this action pending arbitration.

For the reasons that follow, the Court denies the Motion.

Though Uber’s Terms of Use may include an enforceable arbitration clause, Rider is not a party to them. Moreover, the common law concepts that have led other courts to compel the arbitration of claims brought by a party that did not expressly agree to arbitration do not apply to the case at bar. Rider has not assumed the obligation to arbitrate. Her son’s assent to the Terms of Use before arranging her Uber ride was not done on her behalf or under her control. Rider is not seeking to enforce any right under the Terms of Use. Finally, Rider is not a third-party beneficiary to the Terms of Use; even if she were, that status alone would not require her to submit her claims to arbitration.

FACTUAL FINDINGS²

Rider alleges that, on August 13, 2022, she was a passenger in a vehicle being operated as part of Uber’s ride-sharing service by an employee or agent of Uber. According to the Complaint, that driver “brutally assaulted” Rider and drove in such a manner as to eject Rider from the vehicle,

¹ See *Cochran-Gray v. Uber Technologies, Inc.*, Case No. CL-2023-6664, Order Denying Motion to Compel Arbitration (“In a matter of first impression, the Court recognizes that under the [Uber] service contract the Plaintiff is a third-party beneficiary of her daughter’s account, which includes an arbitration provision and broadly covers claims of personal injury. Consequently, . . . the Court finds that the Plaintiff, as a third-party beneficiary is under the contractual obligation to [a]rbitration under her daughter’s account and not under the account she holds with Uber.”) (denied on other grounds) (Fairfax Co. May 3, 2024) (Tran, J.). This question has not been answered by either of the Commonwealth’s appellate courts.

² The facts material to the Motion are not in dispute. Rider’s allegations are contained in her Complaint. The Terms of Use are attached to Uber’s memorandum in support of the Motion. Other facts relevant to the Motion are contained in the Affidavit of Jacqueline Pare, attached as Exhibit 2 to Uber’s memorandum in support of the Motion, and the Affidavit of Ying Feng, attached as Exhibit 1 to Rider’s opposition to the Motion. Neither party raised any objection to consideration of the affidavits.

causing her severe injuries. Uber moves to compel arbitration and stay this action, arguing that Rider is bound to arbitrate her claims under the Terms of Use of the “rider version” of the Uber app, despite the fact that Rider is not a registered user of the app.

The Terms of Use states that *Uber is not a transportation service or common carrier*.³ Instead, *Uber provides a digital platform* on which persons may arrange the transportation of persons or things by third-party drivers.⁴ Uber collects payment for those services, on behalf of the drivers.⁵

Only registered users may use the Uber platform; it is not available to the general public.⁶ Not everyone is eligible to become a registered user.⁷ Moreover, registered users may not authorize third-parties to use their accounts.⁸

The Terms of Use contain the following arbitration clause:

By 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 as set forth in this Arbitration Agreement, and not as a class, collective, coordinated, consolidated, mass and/or representative action. This Arbitration Agreement will preclude you from bringing any class, collective, coordinated, consolidated, mass and/or representative action against Uber, and also preclude you from participating in or recovering relief in any current or future class, collective, coordinated, consolidated, mass and/or representative action brought against Uber by someone else—except as provided below in Section 2(a)(3)(c). Thus, the parties agree that the Arbitrator shall not conduct any form of class, collective, coordinated, consolidated, mass and/or representative arbitration, nor join, coordinate, or consolidate claims of multiple individuals against Uber in a single proceeding—except as provided below in Section 2(a)(3)(c). For the avoidance of doubt, except as provided below in Section 2(a)(3)(c), this Arbitration Agreement precludes you from bringing or participating in any kind of class,

³ See Terms of Use, § 3 (“UBER IS NOT A COMMON OR MOTOR CARRIER, [AND] DOES NOT TRANSPORT YOU”).

⁴ See Terms of Use, §§ 1 & 3-5.

⁵ See Terms of Use, § 4 (“With respect to Third-Party Providers, Charges you incur will be owed directly to Third-Party Providers, and Uber will collect payment of those charges from you, on the Third-Party Provider’s behalf as their limited payment collection agent”).

⁶ See Terms of Use, § 3 (“USE OF THE UBER MARKETPLACE PLATFORM IS ONLY OPEN TO REGISTERED USERS OF THE UBER MARKETPLACE PLATFORM AND NOT TO THE GENERAL PUBLIC”) & 4.

⁷ See Terms of Use, § 4.

⁸ See *id.*

collective, coordinated, consolidated, mass and/or representative or other kind of group, multi-plaintiff or joint action against Uber, other than participating in a classwide, collective, coordinated, consolidated, mass and/or representative settlement of claims.

See Terms of Use, § 2.

Rider's son ("**Son**") expressly agreed to the Terms of Use. Rider was a passenger in an Uber vehicle on August 13, 2022 because Son requested the ride for her, using the Uber app. Rider did not request the ride from Uber, expressly agree to the Terms of Use, or download or use the Uber app.

ANALYSIS

The Court assumes, without deciding, that: (1) the arbitration clause of the Terms of Use is valid, enforceable, and irrevocable; and (2) if Son were to bring claims like those alleged by Rider, Son's claims would be arbitrable under the arbitration clause. Even in light of these assumptions, the Motion must be denied.

I. VIRGINIA LAW GOVERNS WHETHER RIDER CAN BE REQUIRED TO SUBMIT HER CLAIMS TO ARBITRATION UNDER THE TERMS OF USE.

State law governs "which contracts are binding under §2⁹ [of the Federal Arbitration Act] and enforceable under §3¹⁰ 'if that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally.'" *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630-31, 129 S. Ct. 1896, 1902 (2009) (citations omitted). Thus, "state – not federal – law should govern whether a nonsignatory is bound to an arbitration provision." *Hetrick Cos. LLC v. Iink Corp.*, 710 F. Supp. 3d 467, 484 (E.D. Va. 2024).

⁹ "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4." 9 U.S.C. § 2.

¹⁰ "If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." 9 U.S.C. § 3.

II. GENERALLY RECOGNIZED STATE LAW PRINCIPLES OF CONTRACT AND AGENCY LAW PROVIDE NO BASIS FOR BINDING RIDER TO THE ARBITRATION CLAUSE OF THE TERMS OF USE.

“[W]hile there is a strong and ‘liberal federal policy favoring arbitration agreements,’ such agreements must not be so broadly construed as to encompass claims and parties that were not intended by the original contract.” *Thomson-CSF, S.A. v. Am. Arbitration Ass’n*, 64 F.3d 773, 776 (2d Cir. 1995) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625, 87 L. Ed. 2d 444, 105 S. Ct. 3346 (1985) (quotations omitted)). Generally, “a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582, 4 L. Ed. 2d 1409, 80 S. Ct. 1347 (1960).

However, “‘traditional principles’ of state law allow a contract to be enforced by or against nonparties to the contract through ‘assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.’” *Arthur Andersen*, 556 U.S. at 631, 129 S. Ct. at 1902 (citing 21 R. Lord, *Williston on Contracts* § 57:19, p. 183 (4th ed. 2001)). See *NC Fin. Sols. of Utah, LLC v. Commonwealth ex rel Herring*, 299 Va. 452, 460 n.4, 854 S.E.2d 642, 646 (2021) (noting the United States Supreme Court’s explanation); *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 417 (4th Cir. 2000) (citations omitted). While all of these common law principles are cognizable under Virginia law, only four – assumption, agency, estoppel, and third-party beneficiary status – have any possible applicability to the case at bar.

A. Rider has not assumed the obligation to arbitrate her claims.

A nonsignatory “may be bound by an arbitration clause if its subsequent conduct indicates that it is assuming the obligation to arbitrate.” *Thomson-CSF*, 64 F.3d at 777 (citations omitted); *Hetrick Cos.*, 710 F. Supp. 3d at 484-85 (citing 21 *Williston on Contracts* at § 57:19). Assumption may be found where the nonsignatory willingly participates in the arbitration process¹¹ or conducts themselves as though they have a valid agreement to arbitrate.¹²

Here, Rider has not willingly participated in any arbitration process or conducted herself as if she is bound by a valid arbitration agreement. She has engaged in no conduct indicating an assumption of an obligation to arbitrate. In fact, she is not even alleged to have known about the arbitration clause of the Terms of Use before it was raised in this litigation.

¹¹ See *Gvozdenovic v. United Air Lines, Inc.*, 933 F.2d 1100, 1105 (2d Cir. 1991).

¹² See *Integrated Health Servs. of Green Briar, Inc. v. Lopez-Silvero*, 827 So. 2d 338, 338-39 (Fla. 3d Dist. Ct. App. 2002).

B. Son was neither the actual nor apparent agent of Rider and, thus, could not bind Rider to the Terms of Use.

“Traditional principles of agency law may bind a nonsignatory to an arbitration agreement.” *Thomson-CSF, S.A.*, 64 F.3d at 777 (citations omitted). *See also R.J. Griffin & Co. v. Beach Club II Homeowners Ass’n*, 384 F.3d 157, 164 (4th Cir. 2004); *Hetrick Cos.*, 710 F. Supp. 3d at 486 (citations omitted). When an agent, acting with actual or apparent authority, enters into a contract on behalf of a disclosed principal, the principal and third party are bound but the agent is not, absent an agreement to the contrary. Restat. 3d of Agency, § 6.01.¹³

Here, Son lacked actual authority to bind Rider to the arbitration clause of the Terms of Use. An agency relationship requires the principal to assent to the agent’s acting on her behalf and subject to her control. *Chowdhury v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 3:21cv799 (DJN), 2022 U.S. Dist. LEXIS 68812, at *10 (E.D. Va. Apr. 13, 2022) (citing Restatement (Third) of Agency § 1.01). Nothing in the record suggests Son agreed to the Terms of Use under Rider’s control or that Rider assented to Son’s agreement to those terms.

Moreover, Son lacked apparent authority to bind Rider to the arbitration clause of the Terms of Use. Apparent authority arises only where a third party’s belief in the agent’s authority to act for the principal is traceable to the principal’s manifestations to *that third party* that the agent is authorized to act on the principal’s behalf. Restat. 3d of Agency, § 3.03 (emphasis added).¹⁴

Rider had no contact with Uber before August 13, 2022. She did not, and could not have, manifested toward Uber any assent to Son’s acting on her behalf. Accordingly, any belief by Uber of Son’s apparent authority is not traceable to Rider. Rider cannot be bound to the arbitration clause on this basis.

C. Rider is not equitably estopped from pursuing her claims outside of arbitration.

Courts have also bound nonsignatories to arbitration agreements under the doctrine of equitable estoppel. *See Thomson-CSF*, 64 F.3d at 778; *Int’l Paper Co.*, 206 F.3d at 417 (citations omitted). Equitable estoppel precludes a party from asserting a right when her own conduct makes the assertion of that right “contrary to equity.” *Int’l Paper Co.*, 206 F.3d at 417-18 (quoting *First Union Commercial Corp. v. Nelson, Mullins, Riley & Scarborough (In re Varat Enters., Inc.)* 81 F.3d 1310, 1317 (4th Cir. 1996)); *Lowery v. Stovall*, 92 F.3d 219, 223 (4th Cir. 1996).

¹³ Virginia courts often rely on the Restatement (Third) of Agency in setting forth the law of agency applicable in the Commonwealth. *See, e.g., Tingler v. Graystone Homes, Inc.*, 298 Va. 63, 101, 834 S.E.2d 244, 266 (2019).

¹⁴ “In effect, the third party has an option to bind the principal that is limited to the extent of the *principal’s prior manifestations of assent to the agent or to third parties.*” Restat. 3d of Agency, § 6.05, Cmt. B (emphasis added).

In the arbitration context, a party may be equitably estopped from avoiding the effect of an arbitration clause when it contemporaneously seeks to enforce other provisions of the agreement containing the arbitration clause. See *Int'l Paper Co.*, 206 F.3d at 418; *Deloitte Noraudit A/S v. Deloitte Haskins & Sells*, 9 F.3d 1060, 1064 (2d Cir. 1993) (holding that a non-signatory is bound to arbitrate when it knew of the arbitration agreement and “knowingly accepted the benefits of” that agreement); *Hughes Masonry Co. v. Greater Clark Cty. Sch. Bldg. Corp.*, 659 F.2d 836, 838-39 (7th Cir. 1981) (“It would be manifestly inequitable to permit Hughes to both claim that J.A. [a non-signatory] is liable to Hughes for its failure to perform the contractual duties described in the [arbitration agreement] and at the same time deny that J.A. is a party to that agreement in order to avoid arbitration of claims clearly within the ambit of the arbitration clause.”). Here, Rider has not sought to enforce any right under the Terms of Use; thus, her opposition to arbitration of her claims is not estopped.

D. Rider is not bound by the arbitration clause as a third-party beneficiary of the Terms of Use.

Uber’s assertion that Rider is bound by the arbitration clause by virtue of her status as a third-party beneficiary of the Terms of Use presents a novel legal issue: Whether a third-party beneficiary is bound to an arbitration clause merely by her status as a third-party beneficiary. This judge concludes that she is not.

1. ***A third-party beneficiary to an arbitration agreement, like Rider, is not bound by that agreement, absent special circumstances not applicable here.***

The third-party beneficiary doctrine works only one way: It permits a third-party beneficiary to sue to enforce a contract to which it is not a party; it does not permit a contracting party to enforce the contract’s terms against a third-party beneficiary as if that third-party beneficiary was a signatory to the contract.

While “[a] third party beneficiary might in certain circumstances have the power to sue under a contract; it certainly cannot be bound to a contract it did not sign or otherwise assent to.” *Comer v. Micor, Inc.*, 436 F.3d 1098, 1102 (9th Cir. 2006) (citing *Motorsport Eng’g, Inc. v. Maserati SPA*, 316 F.3d 26, 29 (1st Cir. 2002)). See also *Abraham Zion Corp. v. Lebow*, 761 F.2d 93, 103 (2d Cir. 1985). “The third-party beneficiary doctrine does not permit two parties to bind a third—without the third party’s agreement—merely by conferring a benefit on the third party.” *Mendez v. Hampton Court Nursing Ctr., LLC*, 203 So. 3d 146, 149 (Fla. 2016) (citations omitted).¹⁵

¹⁵ See also *Szantho v. THI of N.M. at Sunset Villa, LLC*, 570 P.3d 203, 217 (N.M. 2025); *Coleman v. United Health Servs. of Ga.*, 344 Ga. App. 682, 686, 812 S.E.2d 24, 28 (2018) (“To conclude otherwise would allow contracting parties to bind an unsuspecting third party to arbitration without providing a benefit desired or accepted by the third party.”); *Cent. Tr. Bank v. Graves*, 495 S.W.3d 797, 803 (Mo. Ct. App. 2016) (“Mere status as a third-party beneficiary,

In cases holding that a third-party beneficiary is bound to the arbitration provision of a contract, the result is not driven by the third-party beneficiary status alone. The vast majority of those cases involve an independent basis for requiring the third-party beneficiary to submit their claim to arbitration.

Courts have required a third-party beneficiary to arbitrate claims where: (1) the third-party sued on the contract containing the arbitration clause;¹⁶ (2) the third-party otherwise claimed third-

alone, is not sufficient to support binding an unwilling nonsignatory to an arbitration agreement. Even if a party is a third-party beneficiary of an agreement containing an arbitration provision, the third-party must still manifest some agreement to arbitrate or otherwise be bound..... ”); *Drury v. Assisted Living Concepts, Inc.*, 245 Or. App. 217, 223, 262 P.3d 1162, 1165 (2011) (holding that binding a third-party beneficiary to the arbitration provision of an agreement is improper “without an examination of whether the third-party beneficiary somehow manifested assent to be bound by the agreement—for example, by ratifying it or asserting a claim for relief under the agreement. To hold otherwise is to allow contracting parties to alter the rights of a third party, based on whatever consideration the contracting parties intended to provide to the third party, and without regard for whether the third party deems that consideration to be an adequate exchange for the contractual obligations.”).

¹⁶ “Of course, a third-party beneficiary who sues a contracting party for breach of the contract would normally be estopped from disclaiming an arbitration provision contained therein. In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him.” *Int'l Paper Co.*, 206 F.3d at 417-18. *See also Szantho v. THI of N.M. at Sunset Villa, LLC*, 570 P.3d 203, 217 (N.M. 2025); *Mendez*, 203 So. 3d at 149; *Carvant Fin. LLC v. Autoguard Advantage Corp.*, 958 F. Supp. 2d 390, 396 (E.D.N.Y. 2013) (“several district courts have held that a non-signatory third-party beneficiary suing for breach of contract is bound by an arbitration clause in the contract”); *Dickerson v. Longoria*, 414 Md. 419, 452, 995 A.2d 721, 742 (2010) (“a third-party beneficiary who sues to enforce a contract is bound by an arbitration agreement in that contract”); *Dickerson v. Longoria*, 414 Md. 419, 453, 995 A.2d 721, 742 (2010) (“a third-party beneficiary to an arbitration agreement cannot be required to arbitrate a claim unless the third party is attempting to enforce the contract containing the arbitration agreement”) (citations omitted); *Cleveland-Akron-Canton Advert. Coop. v. Physician's Weight Loss Ctrs. of Am.*, 184 Ohio App. 3d 805, 811, 922 N.E.2d 1012, 1017 (2009) (“By maintaining an action for breach of contract against PWLC for promises made in the franchise agreements, the Co-op has bound itself to the terms therein. The Co-op must submit this dispute to arbitration as outlined in the franchise agreements.”); *Bybee v. Abdulla*, 189 P.3d 40, 50 (Utah Sup.Ct. 2008) (“Courts typically invoke the doctrine of estoppel to compel a third-party beneficiary of a contract to arbitrate a claim he seeks to pursue that arises from the contract containing the arbitration clause.”); *Lewis v. Cedu Educ. Servs.*, 135 Idaho 139, 143, 15 P.3d 1147, 1151 (2000) (“A third party beneficiary must comply with all of the terms of a contract the third party beneficiary seeks to enforce. However, the third party beneficiary is only bound to the extent those terms apply to him or her.”).

party beneficiary status;¹⁷ (3) one of the contracting parties is the principal or agent of the third-party beneficiary;¹⁸ (4) one of the contracting parties is the parent of a third-party beneficiary minor child unable to enter into the contract for themselves;¹⁹ or (5) the third-party beneficiary had previously agreed to an identical arbitration clause.²⁰ None of those circumstances exist in this case.

The Court believes the prevailing and proper rule of law to be that – absent the effect of assumption, agency, or estoppel – a third-party beneficiary to an arbitration agreement cannot be required to arbitrate a claim unless the third-party is suing to enforce the agreement containing the arbitration clause.²¹ Under that rule, Rider cannot be required to arbitrate her claims, even if she

¹⁷ See *Javorsky v. Javorsky*, 81 N.E.3d 971, 974 (Ohio Ct. App. 2017).

¹⁸ See, e.g., *RN Sol., Inc. v. Catholic Healthcare W.*, 165 Cal. App. 4th 1511, 1520, 81 Cal. Rptr. 3d 892, 900 (2008); *JP Morgan Chase & Co. v. Conegie*, 492 F.3d 596, 600 (5th Cir. 2007) (holding that nursing home resident was bound to arbitrate as a third-party beneficiary when the contract was expressly made “with, or on behalf of” her).

¹⁹ See, e.g., *Doyle v. Giuliucci*, 62 Cal. 2d 606, 610, 43 Cal. Rptr. 697, 699, 401 P.2d 1, 3 (1965).

²⁰ See *Cochran-Gray v. Uber Technologies, Inc.*, Case No. CL-2023-6664, Order Denying Motion to Compel Arbitration (“In a matter of first impression, the Court recognizes that under the [Uber] service contract the Plaintiff is a third-party beneficiary of her daughter’s account, which includes an arbitration provision and broadly covers claims of personal injury. Consequently, . . . the Court finds that the Plaintiff, as a third-party beneficiary is under the contractual obligation to [a]rbitration under her daughter’s account and not under the account she holds with Uber.”) (denied on other grounds) (Fairfax Co. May 3, 2024) (Tran, J.). Though Uber asserts that, by virtue of the entry of the order in *Cochran*, this Court has already concluded that a third-party beneficiary to an agreement with an arbitration clause is bound to that clause, *Cochran* was decided on other grounds and is inapposite to the case at bar. In *Cochran*, the Plaintiff assented to Uber’s Terms of Use by signing up to use the rider version of the Uber app. See *Cochran-Gray v. Uber Technologies, Inc.*, Case No. CL-2023-6664, Uber’s Memo. in Sup. of Mot. to Compel Arbitration and Stay Action, at 4. Here, the Rider never assented to the Terms of Use or used the Uber app.

²¹ See, e.g., *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates*, S.A.S., 269 F.3d 187, 197 (3d Cir. 2001); *Industrial Electronics Corp. v. Power Distribution Group, Inc.*, 215 F.3d 677, 680 (7th Cir. 2000); *Campbell v. Anesthesia Mgmt. Solution, LLC*, No. 5:20-cv-3538-SAL, 2021 U.S. Dist. LEXIS 174366, at *8 (D.S.C. Sep. 14, 2021); *Torres v. Starbucks Corp.*, No. 8:20-CV-1311-CEH-TGW, 2021 U.S. Dist. LEXIS 47821, 2021 WL 964219, at *5 (M.D. Fla. Mar. 15, 2021) (“Florida courts will not enforce an arbitration [agreement] against a third-party who does not bring suit as a third-party beneficiary for the benefit of a contract signed by others.”); *Dickerson v. Longoria*, 414 Md. 419, 453, 995 A.2d 721, 742 (2010); *Sher v. Cella*, 114 Haw. 263, 270, 160 P.3d 1250, 1257 (Ct. App. 2007); *Jankovsky v. Grana-Morris*, 2001 Ohio App. LEXIS 3938 (“mere status as a beneficiary does not bind a party to perform contractual duties. Instead, the obligation [to arbitrate] arises where a beneficiary seeks to enforce the contract.”).

is a third-party beneficiary of the Terms of Use, because her lawsuit does not seek to enforce the Terms of Use or any obligation contained therein.

2. ***Nonetheless, Rider is not bound by the arbitration clause because she is not a third-party beneficiary of the Terms of Use.***

Even if a third-party beneficiary to an arbitration agreement is bound to that agreement, the Terms of Use do not require Rider to arbitrate her claims because she is not a third-party beneficiary to that agreement.

To establish that a person is a third-party beneficiary, it must be shown that “the parties to the contract *clearly and definitely* intended it to confer a benefit upon him.” *Prof'l Realty Corp. v. Bender*, 216 Va. 737, 739, 222 S.E.2d 810, 812 (1976) (citation omitted) (emphasis added). Determining the intention of the parties is a matter of construction; the intention of the parties is revealed “by the terms of the contract as a whole.” *Envtl. Staffing Acquisition Corp. v. B & R Constr. Mgmt.*, 283 Va. 787, 793, 725 S.E.2d 550, 553 (2012) (quoting *Valley Landscape Co. v. Rolland*, 218 Va. 257, 261, 237 S.E.2d 120, 123 (1977)).

A third-party beneficiary must be an *intended*, and not merely an incidental or consequential beneficiary,²² of the contractual undertaking. An intended beneficiary must be “such an integral part of the obligations assumed by the contract parties that a court will permit him to sue on that contract.” *Thorsen v. Richmond SPCA*, 292 Va. 257, 273, 786 S.E.2d 453, 463 (2016).

The Terms of Use expressly identify Apple as a third-party beneficiary. They also clearly and definitely contemplate that third-party drivers, on whose behalf Uber is collecting payment from users of the Uber app, will benefit from the Terms of Use. However, neither Rider nor third-party riders generally are referenced as third-party beneficiaries of the Terms of Use.

Other than to provide that “you may not allow persons under the age of 18 to request or receive transportation, delivery or logistics services from third-party providers unless they are accompanied by you,” the Terms of Use makes no reference to the possibility that an Uber user will use his or her account to arrange transportation for a third person. In fact, the Terms of Use make clear that third-parties are not intended to access or benefit from the (marketplace) services that Uber actually provides.

Thus, while an Uber user may use the service to arrange the transportation of another person, that rider is not authorized to access the Uber platform by virtue of that arrangement. A

²² An incidental beneficiary is “sometimes referred to as an indirect or consequential beneficiary.” *Wedgewood Homes, Inc. v. S. Title Ins. Corp.*, 24 Va. Cir. 262, 264 (Fredericksburg Co. 1991) (citing Restat. 2d of Contracts § 302).

mere third-party “rider” cannot access the services which are the subject of the Terms of Use (the Uber platform) and, therefore, cannot be said to be an intentional or direct beneficiary thereof.

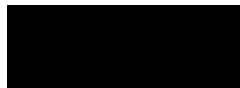
The contractual undertaking represented by the Terms of Use is for access to a digital marketplace platform, not transportation. The primary purpose of the Terms of Use is to govern the transaction by which registered users of the Uber app use the platform to engage with third-party drivers to provide “transportation, logistics and/or delivery services.” Uber has failed to show that, in assenting to the Terms of Use, Uber and Son “clearly and definitely” intended to confer a benefit on Rider. There is no evidence that Rider ever sought, or accepted, the theoretical benefits of alternative dispute resolution as set forth in the Terms of Use. Accordingly, Rider is not a third-party beneficiary of the Terms of Use. *Cf. Kelly Health Care, Inc. v. Prudential Ins. Co.*, 226 Va. 376, 380, 309 S.E.2d 305, 307 (1983) (holding that a medical practice was not a third party beneficiary under an health insurance policy, which required the insurance company to pay certain healthcare expenses of the insured, because it was “only one member of a large class of health care providers”); *Brantley v. Republic Mortg. Ins. Co.*, 424 F.3d 392, 396-97 (4th Cir. 2005) (denying plaintiff’s attempt to enforce an arbitration agreement because the underlying contract made no reference to plaintiff and did not mention the transaction in which plaintiff was involved).

CONCLUSION

Under Virginia law governing whether a nonsignatory can be compelled to arbitrate claims subject to an arbitration agreement, Rider is not bound by the arbitration clause in Uber’s Terms of Use. Rider did not voluntarily assume the obligation to arbitrate, was not so bound by the actions of an agent, is not equitably estopped from pursuing her claims outside of arbitration, and cannot be bound as a third-party beneficiary to the Terms of Use.

Accordingly, the Motion must be denied. An appropriate order will follow.

Sincerely,



Jonathan Frieden
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Jonathan D. Frieden
Judge, Fairfax County Circuit Court