In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1830

JOSHUA JOHNSON,

Plaintiff-Appellee,

v.

MITEK SYSTEMS, INC.,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 22 C 349 — **Ronald A. Guzmán**, *Judge*.

ARGUED DECEMBER 2, 2022 — DECIDED DECEMBER 21, 2022

Before EASTERBROOK, SCUDDER, and LEE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. HyreCar is an intermediary between people who own vehicles and other people who would like to drive for services such as Uber and GrubHub. Before leasing a car, HyreCar tries to ensure that the potential driver is who he says he is and has the license and driving record he claims to have. As part of this check, HyreCar sends an applicant's information, including a photograph, to Mitek Systems, which provides identity-verification services. Joshua

Johnson, one of HyreCar's drivers, contends in this putative class action that Mitek has used that information without the consent required by §15 of the Illinois Biometric Privacy Act, 740 ILCS 14/15. Mitek removed the suit to federal court under the Class Action Fairness Act, 28 U.S.C. §1453, and asked the district court to send it to arbitration. After the court declined, 2022 U.S. Dist. LEXIS 80851 (N.D. Ill. May 4, 2022), Mitek took an immediate appeal on the authority of 9 U.S.C. §16(a)(1).

Johnson's contract with HyreCar includes this clause:

> This Arbitration Agreement applies to [drivers] and [HyreCar], and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Agreement.

Johnson thus agreed to arbitrate with a long list of entities, but the district court concluded that suppliers such as Mitek are not on the list. Mitek contends that it is—that it is a "beneficiary of services or goods provided under the Agreement."

We don't see how. The "services or goods provided under the Agreement" are vehicles, plus some ancillary aid that HyreCar furnishes to drivers. Mitek does not receive "services or goods … under the Agreement" between Johnson and HyreCar. Nor can Mitek be classified as a "user" of HyreCar's services or goods.

Mitek insists that it must be a "beneficiary" because HyreCar pays for its work. But the contract deals with "services or goods" that HyreCar provides to its customers, not money paid to suppliers. Consider a landlord who leases office space to HyreCar. The landlord is a participant in the market for real estate, not a recipient ("beneficiary") of any consumer surplus that a driver may realize from dealing with HyreCar.

Competition in the market for real estate drives prices down until landlords receive only the competitive rate of return; there's no further "benefit" that drivers or HyreCar bestow on them. What's true of landlords, and of the firms that sell office supplies and computers and website management to HyreCar, is equally true of firms that supply HyreCar with identification services. Mitek has its own contract with HyreCar, but it does not have a contract with any of HyreCar's drivers. It would stretch contractual language past the breaking point to conclude that Johnson or any other driver has agreed to arbitrate with Mitek or any of HyreCar's dozens if not hundreds of other suppliers.

According to Mitek, a court must bend over backward to deem it a "beneficiary", because "the Federal Arbitration Act … requires that arbitration agreements be generously construed and that all doubts be resolved in favor of arbitration." That is not, however, what the statute says. The Act requires arbitration agreements to be treated just like other contracts. 9 U.S.C. §2. Courts cannot disfavor arbitration, compared with other agreements, but neither may courts jigger the rules to promote arbitration. See *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708 (2022). We have interpreted this contractual language just as we would have treated it if its subject were installment payments or a warranty. The phrase "users or beneficiaries of services or goods provided under the Agreement" is best understood as a reference to drivers and people aligned with them in interest. Mitek is not in that set.

Mitek's invocation of equitable estoppel is ridiculous. Johnson has not done anything that would estop himself from litigating this suit. The fact that he may have consented to the collection or use of biometric data (a question on the merits,

which we do not address) is unrelated to the identity of the forum that will resolve the parties' disputes.

One observation before we close. Johnson's suit rests on several clauses of §15 of the Illinois Biometric Privacy Act. We have held that claims resting on §15(c) of this statute cannot be litigated in federal court unless a person asserting its benefit can show a concrete harm. See *Thornley v. Clearview AI, Inc.*, 984 F.3d 1241 (7th Cir. 2021). Johnson has not alleged a concrete harm and, on this claim at least, seeks only statutory damages. The district court should not attempt to adjudicate Johnson's claim under §15(c) but must remand it to state court after resolving all claims within the court's adjudicatory competence.

The decision refusing to refer the suit to arbitration is affirmed, and the case is remanded for a decision whether the suit may proceed as a class action followed by a disposition on the merits (except for the claim under §15(c)).