SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3116-16T1

ALEXIS RUSSO,

Plaintiff-Respondent,

v.

J.C. PENNEY CORPORATION, INC.,[1] MATT JOHNSON, RICHELLE CALLENDER, and SUSIE SCHAECHNER,

Defendants-Appellants.

Submitted November 14, 2017 – Decided December 13, 2017

Before Judges Hoffman and Mayer.

On appeal from Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3118-16.

LeClairRyan, attorneys for appellants (Carmon M. Popler and Brandon R. Sher, on the briefs).

Elizabeth T. Foster, attorney for respondent.

PER CURIAM

[1] Incorrectly designated as JC Penney.

Defendants J.C. Penney Corporation, Inc. (JCPenney), Matt Johnson, Richelle Callender, and Susie Schaechner appeal from a March 3, 2017 Law Division order denying their motion to compel binding arbitration and dismiss the complaint filed on behalf of plaintiff Alexis Russo. We reverse.

Plaintiff began working for JCPenney in 2014. On her first day of work, plaintiff toured the East Brunswick store and then went to a training room to complete new hire paperwork. New hires at JCPenney go through an "onboarding process." The onboarding process required a computer with access to JCPenney's intranet and included: confirmation of the employment offer; completion of various forms; execution of JCPenney's Binding Arbitration Agreement (Agreement); and review of the corporate attendance policy and dress code. The steps in the onboarding process must be completed sequentially. If an employee misses a step, the employee cannot proceed to the next step.

New employees are given the one-page Agreement to review online. The Agreement included a description of the rules governing arbitration of employment disputes (Rules), a link to the full text of the Rules, and a signature box. To access the full text of the Rules, the Agreement stated: "Click on the link below to read the JC Penney Rules of Employment Arbitration. The [R]ules will open in a separate browser window. After you have

finished reading the Rules, close the other browser window to return to this form."

The Rules identified claims subject to binding arbitration, including discrimination, retaliation, wrongful termination, and breach of common law obligations or duties. Below the link to the Rules, the Agreement specified that the employee and JCPenney "voluntarily agree to resolve disputes arising from, related to, or asserted after the termination of . . . employment through mandatory binding arbitration under the J.C. Penney Rules of Employment Arbitration." By signing the Agreement, the employee acknowledged that she was given the opportunity to review the Rules and consult with an attorney, and agreed to be bound by the document and the Rules even if she did not review the Rules or consult with an attorney. The employee was required to sign the Agreement electronically in order to complete the onboarding process.

Eight months after she was hired, JCPenney terminated plaintiff. One year later, plaintiff filed a complaint alleging defendants violated the New Jersey Law Against Discrimination (LAD) and the New Jersey Conscientious Employee Protection Act (CEPA), engaged in a civil conspiracy, and discriminated against her because she had young children.

Defendants filed a motion to dismiss the complaint pursuant to Rule 4:6-2(a) and compel binding arbitration in accordance with the Agreement. In opposition to defendants' motion, plaintiff denied executing the Agreement.

The motion judge denied defendants' motion and ordered the parties to conduct limited discovery related to plaintiff's claim that she did not execute the Agreement. Upon completion of the limited discovery, defendants re-filed their motion to compel arbitration and dismiss the complaint.

In opposition to defendants' re-filed motion, plaintiff claimed that she was rushed during the onboarding process. Plaintiff also contended that if she signed the document, she did so without realizing she was signing the Agreement. Plaintiff further suggested that someone else at JCPenney clicked the "agree" button while she was out of the room. Plaintiff then claimed that "someone" completed her onboarding process without identifying who might have completed the paperwork.

The motion judge rejected plaintiff's claims. The judge found that plaintiff signed the Agreement "knowingly and voluntarily," and "that she did see everything on the click-on-page, read every word of it, understood every word of it and then moved on to the next page." However, the judge denied defendants'

motion because the list of claims subject to binding arbitration was not set forth on the one-page Agreement.

Defendants moved for reconsideration, arguing that the Agreement was valid under New Jersey law. The motion judge affirmed her previous findings that plaintiff reviewed and electronically signed the Agreement. The judge acknowledged that the Rules were incorporated into the Agreement through a hyperlink, and that the information found in the Rules was sufficient to pass muster under New Jersey law. However, the judge found the description of the Rules to be "misleading" and therefore invalid. In denying defendants' motion for reconsideration, the judge concluded that the Agreement should have advised employees that the Rules identified the claims to be resolved through binding arbitration.

On appeal, defendants argue that: 1) the judge's conclusions are inconsistent with federal and state law, and that the Agreement constitutes a valid contract to arbitrate; and 2) the judge mandated that the Agreement satisfy more stringent requirements for validity and enforceability than established by case law.

Rule 2:2-3(a)(3) provides that an order compelling or denying arbitration shall "be deemed a final judgment of the court for appeal purposes." A trial court's decision regarding the validity of an arbitration agreement is reviewed de novo. Atalese v. U.S.

Legal Servs. Grp., 219 N.J. 430, 445-46 (2014), cert. denied, ___ U.S. ___, 135 S. Ct. 2804, 192 L. Ed. 2d 847 (2015). In reviewing an order on a motion to compel arbitration, courts must be "mindful of the strong preference to enforce arbitration agreements." Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013).

We first address whether the motion judge's legal conclusion was contrary to state and federal law governing arbitration agreements. The Federal Arbitration Act (FAA), 9 U.S.C.A. §§ 1 to 16, favors enforcement of arbitration agreements. AT&T Mobility, LLC v. Concepcion, 563 U.S. 333, 339, 131 S. Ct. 1740, 1745, 179 L. Ed. 2d 742, 750-51 (2011). The "overarching purpose of the FAA . . . is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings." Id. at 344, 131 S. Ct. at 1748, 179 L. Ed. 2d at 753-54.

The New Jersey Arbitration Act, N.J.S.A. 2A:23B-1 to -32, is similar to the FAA. See Atalese, supra, 219 N.J. at 440; see also Yale Materials Handling Corp. v. White Storage & Retrieval Sys., Inc., 240 N.J. Super. 370, 375 (App. Div. 1990) (confirming that New Jersey law, like federal law, "liberally enforces arbitration agreements").

When deciding a motion to compel arbitration, trial courts apply state contract law principles to assess whether a valid

agreement to arbitrate exists. Hirsch, supra, 215 N.J. at 187. Arbitration clauses "will pass muster when phrased in plain language that is understandable to the reasonable consumer." Atalese, supra, 219 N.J. at 444.

The page on which an employee acknowledges and assents to an arbitration agreement "need not recite [the full] policy verbatim so long as the form refers specifically to arbitration in a manner indicating an employee's assent, and the policy is described more fully in an accompanying handbook or in another document known to the employee." Leodori v. CIGNA Corp., 175 N.J. 293, 307 (2003). An arbitration agreement is valid and enforceable even though the specific arbitration rules were merely referenced in the agreement. Young v. Prudential Ins. Co. of Am., Inc., 297 N.J. Super. 605, 618 (App. Div.), certif. denied, 149 N.J. 408 (1997).

In this case, the Agreement plainly stated that plaintiff was agreeing "to resolve disputes arising from, related to, or asserted after the termination of [her] employment through mandatory binding arbitration under the JC Penney Rules of Employment Arbitration" and "waiv[ing] the right to resolve these disputes in courts." The scope of plaintiff's agreement to arbitrate disputes was described in greater detail in the hyperlinked Rules. Further, the Rules were referenced several times in the Agreement. Plaintiff was expressly directed to the Rules on the face of the

Agreement. Because the Rules were provided to plaintiff, the Agreement is valid and enforceable.

We next consider whether plaintiff's lack of information regarding the Agreement or her failure to read the Agreement renders the document unenforceable. "Failing to read a contract does not excuse performance unless fraud or misconduct by the other party prevented one from reading." Gras v. Assocs. First Capital Corp., 346 N.J. Super. 42, 56 (App. Div. 2001) (quoting Young, supra, 297 N.J. at 619), certif. denied, 171 N.J. 445 (2002).

Plaintiff claims she was not informed that she would be bound by an arbitration agreement before she began working for JCPenney. Plaintiff contends she was deceived into thinking that her employment would be at-will and gave up her previous job based on that belief. As such, plaintiff argues the Agreement lacks consideration and is unenforceable.

Plaintiff fails to provide any authority to support her claim that she needed to be informed about binding arbitration prior to her acceptance of employment. Contrary to plaintiff's argument, JCPenney provided consideration for plaintiff's executing the Agreement, including her agreement to arbitrate. See Martindale v. Sandvik, Inc., 173 N.J. 76, 89 (2002) (holding that the employer's evaluation of the employee's application, extension of

an offer, commencement of employment, payment of compensation, and ongoing employment constituted sufficient consideration to support an arbitration agreement).

Plaintiff further claims that she did not have an opportunity to inform herself fully as to the entirety of the Agreement because she was rushed during the onboarding process. As a result, plaintiff claims her consent to arbitrate disputes was invalid. However, the motion judge specifically found that plaintiff saw, read, and understood the Agreement. The judge did not find that plaintiff was rushed or interrupted while completing her paperwork. The judge's factual findings are supported by adequate, substantial, and credible evidence and are entitled to deference. Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974).

Finally, we address plaintiff's contention that the Agreement places improper restrictions on discovery related to the arbitration process. The sole issue on appeal is whether defendants' motion to compel arbitration and dismiss plaintiff's complaint should have been granted. Plaintiff did not file a cross-appeal. Thus, her claim that discovery is unduly limited in the arbitration process is not before us. In the absence of an appeal from an order of the trial court, we cannot examine the merits of underlying claims or defenses. See R. 2: 2-3.

We agree with the motion judge that plaintiff saw, read, understood, and signed the Agreement. However, we disagree with the motion judge's legal conclusion that the Agreement was invalid because the list of claims subject to binding arbitration was not included on the face of one-page Agreement. We find that the claims subject to binding arbitration were described fully in the hyperlink to the Agreement and that plaintiff expressly acknowledged she had an opportunity to review the entire Agreement, including the Rules.

Reversed.