SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1160-20

ESTHER WAFULA,

Plaintiff-Respondent,

v.

ARTECH INFORMATION SYSTEMS, LLC,

Defendant,

and

SANDOZ, INC.,

Defendant-Appellant.

———————————————

Submitted November 9, 2021 – Remanded April 1, 2022
Resubmitted June 27, 2022 – Decided December 2, 2022

Before Judges DeAlmeida and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-4457-18.

Ogletree, Deakins, Nash, Smoak & Stewart, PC, attorneys for appellant (Peter O. Hughes and Michael J. Riccobono, on the briefs).

O'Connor, Parsons, Lane & Noble, LLC, attorneys for respondent (Gregory B. Noble, of counsel and on the brief; R. Daniel Bause, on the brief).

The opinion of the court was delivered by

DeALMEIDA, J.A.D.

Defendant Sandoz, Inc. (Sandoz) appeals from the November 13, 2020 order of the Law Division denying its motion to dismiss plaintiff Esther Wafula's claims under the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, and to compel arbitration of those claims. We affirm.

I.

Defendant Artech Information Systems, LLC (Artech) is a staffing agency. Sandoz, a division of Novartis Group, manufactures generic pharmaceuticals and biosimilars. The two entities are not related, do not share parents or subsidiaries, and do not have common ownership. Sandoz is a client of Artech.

In 2017, Artech hired Wafula. She signed an employment agreement with Artech in which she agreed to work for Artech's "Client." The agreement, however, does not mention Sandoz or define "Client" as any specific entity. In addition, in the contract Wafula "acknowledges and agrees that he/she is not an employee of any Client" to which she is assigned by Artech. The agreement

requires Wafula to comply with the policies, procedures, rules, and directions of any client to which she is assigned by Artech. Sandoz is not a signatory to the agreement.

The employment agreement contains an arbitration provision. The clause, which refers to Wafula as "Employee," provides, in relevant part:

> ARBITRATION. Except for monetary claims of $5,000.00 or less, Employee explicitly agrees that any dispute in any matter related to Employee's employment with ARTECH, which the parties are unable to resolve through direct discussion, regardless of the kind or type of dispute (excluding claims for unemployment insurance, worker's compensation, or any matter within the jurisdiction of the Labor Commissioner), shall be exclusively subject to final and binding arbitration . . . . Employee agrees to submit all such disputes in writing, specifically requesting arbitration, to ARTECH within one year of termination of Employee's employment with ARTECH.

Shortly after hiring Wafula, Artech assigned her to work at Sandoz. Wafula was terminated by Sandoz in October 2017.

In 2018, Wafula filed a complaint in the Law Division against Artech and Sandoz. She alleged defendants engaged in pregnancy, disability, and perceived disability discrimination in violation of the LAD when they terminated her soon after learning she was pregnant.

Defendants moved to dismiss the complaint and compel arbitration of Wafula's claims. They relied on the arbitration provision of the employment agreement. Sandoz argued that although it is not a party to the agreement, it is a third-party beneficiary of the arbitration clause and is entitled to compel arbitration of Wafula's claims. Wafula opposed the motion.

On November 13, 2020, the trial court issued an order granting Artech's motion, dismissing Wafula's claims against that entity, and compelling her to submit those claims to arbitration. The order also states that "the [m]otion as to [d]efendant Sandoz is DENIED substantially for the reasons set forth in [p]laintiff's opposition papers as to the ability of a non-party to compel arbitration under the specific facts of this matter."

This appeal followed. Sandoz argues that

> the plain language of the agreement and the circumstances surrounding [p]laintiff's execution of same, and the strong public policy of New Jersey favoring arbitration, all support a finding that Sandoz is a third-party beneficiary of the agreement and entitled to enforce the arbitration provision. Any other result would unnecessarily duplicate the proceedings, force the parties to try this matter in two different forums, and potentially lead to inconsistent results.

Sandoz bases its arguments on: (1) various provisions of the employment agreement that vest in Sandoz significant control over "virtually every aspect

of" Wafula's assignment; (2) Wafula's knowledge that the arbitration provision would apply to claims she might raise against Sandoz; (3) the intent of both parties to the contract to give Sandoz the benefit of the arbitration provision; and (4) waiver, in that Wafula should be precluded from arguing Sandoz is not a third-party beneficiary of the contract because she effectively alleged in her complaint that Artech and Sandoz were her joint employers. In addition, Sandoz argues that public policy militates in favor of finding that Sandoz is a third-party beneficiary of the contract to avoid piecemeal litigation.

On April 1, 2022, we remanded the matter to the trial court to issue written findings of fact and conclusions of law on Sandoz's motion. See R. 1:7-4(a).

On April 28, 2022, the trial court issued a comprehensive written opinion explaining the court's denial of Sandoz's motion. Applying long-standing precedents on interpreting contracts, the court found:

> This [c]ourt disagrees with the assertion of Sandoz that "it is clear from the four corners of the Agreement that Sandoz is a third-party beneficiary of same" and that "the Agreement inextricably links Plaintiff's employment together with both Artech and Sandoz." The specific provisions i[n] the Agreement relied upon by Sandoz do not change the basic fact that (1) Artech and Sandoz do not share an agency, parent/subsidiary or common ownership relationship; (2) while the Agreement certainly contains specific terms and conditions of Plaintiff's placement, the Agreement is between Plaintiff and Artech only; (3) the

> "inextricabl[e]" and/or . . . entwinement arguments asserted by Sandoz have been rejected by the [c]ourts; and (4) there is nothing in the record to support a finding of intent on behalf of the Plaintiff to confer a significant and direct benefit to Sandoz by entering into the Agreement with Artech. The fact that Plaintiff signed an Agreement with Artech that provides specific detail as to the nature of her position and contains th[e] phrase "any claims" does not equate to Plaintiff knowingly and purposely conferring the benefit of the arbitration clause in question upon Sandoz. Nor is there anything in the record presented to suggest that the circumstances attendant to the execution of the Agreement somehow should afford Sandoz third-party beneficiary status. Artech and Sandoz have a sophisticated corporate/business relationship. If Sandoz was to be covered by the terms of the Agreement, same could have easily been accomplished with additional direct and express language as contemplated and required by our caselaw when an individual is giving up certain rights with respect to dispute resolution.

The court also found that "[t]he facts and attendant circumstances demonstrate that Plaintiff did not intend Sandoz to benefit from the existence of the Agreement but rather the benefit so derived as argued by Sandoz would arise merely as an unintended incident of the [A]greement and therefore should not be enforced."

While the court acknowledged the public policy favoring arbitration, it relied on the Supreme Court's holding in Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2001), that the "favored status"

of arbitration agreements "is not without limits." The court noted that in Garfinkel, the Court held that "[i]n the absence of a consensual understanding, neither party is entitled to force the other to arbitrate their dispute. Subsumed in this principle is the proposition that only those issues may be arbitrated which the parties have agreed shall be." Ibid. (alteration in original) (quoting In re Arbitration between Grover & Universal Underwriters Ins. Co., 80 N.J. 221, 228 (1979)). The court concluded that

> [n]either the favored status of arbitration nor the recognized preference to avoid piecemeal litigation, when considered in context of the subject Agreement specifically, are enough to outweigh Plaintiff's right to sue, especially based upon a limited and restrictive third-party beneficiary theory where there is an underlying lack of mutual assent, intent and understanding of the parties.

Finally, the court stated that it did not address Sandoz's estoppel argument because it was first raised in its reply brief on the original motion.

The parties declined the opportunity to file supplemental briefs after issuance of the court's amplification opinion.

II.

Our review of the court's interpretation and construction of a contract is de novo. Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014). Our task is to "ascertain the intention of the parties as revealed by the language used,

the situation of the parties, the attendant circumstances, and the objects the parties were striving to attain." Celanese Ltd. v. Essex Cty. Improvement Auth., 404 N.J. Super. 514, 528 (App. Div. 2009). "Where the terms of a contract are clear, we enforce the contract as written and ascertain the intention of the parties based upon the language." Pollack v. Quick Quality Rests., Inc., 452 N.J. Super. 174, 187-88 (App. Div. 2017). "[U]nambiguous contracts are to be enforced as written . . . ." Grow Co., Inc. v. Chokshi, 403 N.J. Super. 443, 464 (App. Div. 2008).

It is well-established that a court must apply state contract principles to determine whether a valid agreement to arbitrate exists. Hojnowski v. Vans Skate Park, 187 N.J. 323, 342 (2006). As our Supreme Court explained when deciding the enforceability of an arbitration provision, "'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.'" Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 188 (2013) (internal emphasis omitted) (quoting Arthur Andersen LLP v. Carlisle, 556 U.S. 624, 631 (2009)). It is under the third-party beneficiary theory that Sandoz claims it is entitled to compel arbitration of Wafula's claims.

"The standard applied by courts in determining third-party beneficiary status is 'whether the contracting parties intended that a third party should receive a benefit which might be enforced in the courts . . . .'" Reider Cmtys., Inc. v. Twp. of N. Brunswick, 227 N.J. Super. 214, 222 (App. Div. 1988) (quoting Brooklawn v. Brooklawn Hous. Corp., 124 N.J.L. 73, 77 (E. & A. 1940)). "[T]he intention of contracting parties to benefit an unnamed third party must be garnered from an examination of the contract and a consideration of the circumstances attendant to its execution." Ibid. "The principle that determines the existence of a third[-]party beneficiary status focuses on whether the parties to the contract intended others to benefit from the existence of the contract, or whether the benefit so derived arises merely as an unintended incident of the agreement." Broadway Maint. Corp. v. Rutgers, The State Univ., 90 N.J. 253, 259 (1982) (footnote omitted).

Having carefully reviewed Sandoz's arguments in light of the record and applicable legal principles, we affirm the November 13, 2020 order for the reasons stated by the trial court in its thorough and well-reasoned April 28, 2022 amplification.

We add only that we have reviewed Sandoz's estoppel argument and conclude that it lacks sufficient merit to warrant discussion in a written opinion.

R. 2:11-3(e)(1)(E). Wafula's allegation in her complaint that Sandoz is her employer for purposes of the LAD is not an admission that Sandoz is a third-party beneficiary of the arbitration provision of the contract between Wafula and Artech. The two concepts are distinct. Thus, the record does not support Sandoz's claim that Wafula should be estopped from opposing its third-party beneficiary claims.

Affirmed.