SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1056-22

HELLANA PHARR,

Plaintiff-Appellant,

v.

LOWE'S COMPANIES, INC.,
and ANTHONY PALOMBI,

Defendants-Respondents.

Submitted August 15, 2023 – Decided August 21, 2023

Before Judges Enright and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-0713-22.

Castronovo & McKinney, LLC, attorneys for appellant (Paul Castronovo and Kimberly A. O'Sullivan, of counsel and on the briefs).

Buchanan Ingersoll & Rooney LLP, attorneys for respondents (Lauren J. Glozzy and John L. Lamb, of counsel and on the brief).

PER CURIAM

Plaintiff Hellana Pharr appeals from the December 1, 2022 order compelling arbitration and dismissing her complaint. Based on our review of the record and the applicable legal principles, we affirm.

I.

Plaintiff was hired by Lowe's Companies, Inc. (Lowe's) in Morris Plains in July 2019, and discharged on March 21, 2022. Plaintiff worked as a head cashier. On February 13, 2022, a customer berated a cashier, M.P.,[1] who plaintiff supervised. Plaintiff intervened and advised the customer to leave the store. The customer proceeded to direct racial slurs[2] and other disparaging remarks at plaintiff, both in the store and as the customer drove away. The customer subsequently called Lowe's corporate offices to complain about plaintiff. Plaintiff's manager, defendant—Anthony Palombi—later advised plaintiff she should have contacted a manager and not confronted the customer. Three weeks later plaintiff was terminated.

[1] M.P. has developmental disabilities.

[2] Plaintiff is black.

In connection with her offer of employment, plaintiff signed an "Agreement to Arbitrate Disputes" (Agreement) on July 27, 2019.[3] The Agreement, in pertinent part, provides:

> In exchange for the mutual promises in this Agreement, Lowe's offer of employment, and your acceptance of employment by Lowe's . . . you and Lowe's agree that any controversy between you and Lowe's . . . arising out of your employment or the termination of your employment shall be settled by binding arbitration, (at the insistence of either you or Lowe's, conducted by a single arbitrator under the current applicable rules, procedures and protocols of JAMS Inc. ("JAMS") or the American Arbitration Association ("AAA"), as may be amended from time to time. . . .[4]
>
> THIS AGREEMENT TO ARBITRATE DISPUTES MEANS THAT, EXCEPT AS PROVIDED HEREIN, THERE WILL BE NO COURT OR JURY TRIAL OF DISPUTES BETWEEN YOU AND LOWE'S WHICH ARISE OUT OF YOUR EMPLOYMENT OR THE TERMINATION OF YOUR EMPLOYMENT. . . .
>
> This [Agreement] is intended to be broad and to cover, to the extent otherwise permitted by law, all such disputes between you and Lowe's including but not

[3] Plaintiff does not dispute she executed the Agreement, but contends she has "no recollection" of doing so.

[4] The Agreement further provides: "The most current version of the JAMS and AAA rules are currently available at: http://www.jamsadr.com and http://www.adr.org, respectively. Lowe's can also provide you with hard copies of the JAMS and AAA rules upon request . . . ."

> limited to those arising out of federal and state statutes and local ordinances, such as: Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1866; the Sarbanes-Oxley Act of 2002; the Equal Pay Act; the Fair Labor Standards Act; the Pregnancy Discrimination Act; the Family Medical Leave Act; the Americans with Disabilities Act; the Fair Credit Reporting Act; and any similar federal, state and local laws . . . .
>
> (Emphasis added.)

On April 26, 2022, plaintiff filed a complaint alleging violations of the New Jersey Law Against Discrimination (LAD), arguing—among other theories—Lowe's was obligated to protect her from customers who were abusive to her based on her race. Defendants subsequently moved to compel arbitration and dismiss the complaint.

On December 1, 2022, the trial court heard argument and rendered an oral decision granting Lowe's motion to dismiss. Specifically, the court opined:

> I am going to grant the application . . . . There is no question in my mind that it is absolutely clear.
>
> "You and Lowe's agree that any controversy between you and Lowe's, including agents of Lowe's," et cetera, "arising out of your employment." Well, what is this? A controversy arising out of your employment. It could [not] be clearer. "Or termination of your employment." What is that? Absolutely. "Shall be settled by binding arbitration," period. End of story.
>
> . . . I know [Justice] Albin has talked about you have to have a specific statement about a jury trial . . .

> . This one does. This agreement to arbitrate disputes means that, except as provided herein, there will be no court or jury trial. Could [not] be clearer to me. Does it say you are waiving it? No. But it says there will be no court or jury trial, of disputes between you and Lowe's which arise out of your employment. Again, same language. Or the termination of your employment.
>
> The fact that she does [not] remember signing it is irrelevant. The fact that it is a separate page is helpful in understanding that she had an opportunity to see this document. Could it have been one of 20 pages? I guess it could have, but that doesn't change anything because it [is] not buried within another document. That's really what that language, I think it [is] Atalese[5] that talks about that. You know, you get [forty] . . . different sections in one page and there it is in tiny print, you waived your jury trial. Obviously, that [is] not consistent with Atalese. This is not like this. It [is] a separate page with a title that says arbitration. And as I said that she doesn't remember it . . . [is] not [a] relevant factor[]. . . . [T]he simple fact is she signed a document that said disputes such as this exact one are to go to arbitration and it shall go to arbitration.
>
> . . . My decision is simply based on the plain language of the agreement and the law of Atalese, Martindale,[6] all of the other cases. This is consistent with those cases . . . .

The court granted defendant's motion to compel arbitration and dismissed plaintiff's complaint in the accompanying December 1, 2022 order.

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[5] Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430 (2014).

[6] Martindale v. Sandvik, Inc., 173 N.J. 76 (2002).

II.

On appeal, plaintiff claims the Agreement is invalid because it fails to unambiguously explain what rights she relinquished and how arbitration differs from a court proceeding. Plaintiff further asserts the Agreement failed to state it applies to the LAD or statutory hostile work environment and retaliation claims. Lastly, plaintiff argues the Agreement lacked mutual assent because plaintiff did not knowingly waive her statutory right to redress her claims in court through a trial by jury.

We review the enforceability of an arbitration agreement de novo. Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019) (citing Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013)). Because "[t]he enforceability of arbitration provisions is a question of law," the trial court's decision is not given deference. Ibid. (citations omitted); see Manalapan Realty, L.P. v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference."). When reviewing such orders, we recognize arbitration is a "favored means of dispute resolution," Hojnowski v. Vans Skate Park, 187 N.J. 323, 342 (2006), and "are mindful of the strong preference to enforce arbitration agreements, both at the state and federal level." Hirsch, 215 N.J. at

186; see also Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 133 (2020) (recognizing federal and state policy favoring arbitration).

In determining whether a valid agreement to arbitrate exists, we apply "state contract-law principles." Hojnowski, 187 N.J. at 342; see also Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 317-18 (2019). Indeed, we "cannot subject an arbitration agreement to more burdensome requirements than those governing the formation of other contracts." Leodori v. Cigna Corp., 175 N.J. 293, 302 (2003). Under those principles, "[a]n arbitration agreement is valid only if the parties intended to arbitrate because parties are not required 'to arbitrate when they have not agreed to do so.'" Kernahan, 236 N.J. at 317 (quoting Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 478 (1989)). Thus, a key inquiry is whether the parties actually and knowingly agreed to arbitrate their dispute. Ibid.; see also Atalese, 219 N.J. at 442.

That inquiry begins with the language of the arbitration clause itself. To reflect mutual assent to arbitrate, the terms must be "sufficiently clear to place [an individual] on notice that he or she is waiving a constitutional or statutory right . . . ." Atalese, 219 N.J. at 443. "[A]lthough a waiver-of-rights provision need not 'list every imaginable statute by name to effectuate a knowing and voluntary waiver of rights,' employees should at least know that they have

'agree[d] to arbitrate all statutory claims arising out of the employment relationship or its termination.'" Id. at 447 (second alteration in original) (quoting Garfinkel v. Morristown Obstetrics & Gynecology Assocs., 168 N.J. 124, 135 (2001)).

"No particular form of words is necessary to accomplish a clear and unambiguous waiver of rights." Id. at 444; see also Flanzman, 244 N.J. at 137. Stated differently, "[n]o magical language is required to accomplish a waiver of rights in an arbitration agreement." Morgan v. Sanford Brown Inst., 225 N.J. 289, 309 (2016). If "at least in some general and sufficiently broad way" the language of the clause conveys that arbitration is a waiver of the right to bring suit in a judicial forum, the clause will be enforced. Atalese, 219 N.J. at 447; see Arafa v. Health Express Corp., 243 N.J 147, 172 (2020) (finding jury trial waiver "was knowing and voluntary in light of the . . . broad agreement to resolve 'all disputes' between the parties through binding arbitration"); Martindale, 173 N.J. at 81-82 (upholding arbitration clause stating that "all disputes relating to [the party's] employment . . . shall be decided by an arbitrator" and that party "waive[d] her right to a jury trial").

In the employment setting in particular, an arbitration "provision must reflect that an employee has agreed clearly and unambiguously to arbitrate the disputed claim. Generally, we determine a written agreement's validity by

considering the intentions of the parties as reflected in the four corners of the written instrument." Leodori, 175 N.J. at 302. "To enforce a waiver-of-rights provision[,] . . . the Court requires some concrete manifestation of the employee's intent as reflected in the text of the agreement itself." Id. at 300 (quoting Garfinkel, 168 N.J. at 135). "Although not strictly required, a party's signature to an agreement is the customary and perhaps surest indication of assent." Id. at 306-07. "As a general rule, 'one who does not choose to read a contract before signing it cannot later relieve [themselves] of its burdens.' The onus [is] on plaintiff to obtain a copy of the contract in a timely manner to ascertain what rights they waived by beginning the arbitration process." Skuse v. Pfizer, Inc., 244 N.J. 30, 54 (2020) (internal quotations omitted) (quoting Riverside Chiropractic Grp. v. Mercury Ins. Co., 404 N.J. Super. 228, 238 (App. Div. 2008)).

Guided by these principles, we conclude the Agreement unambiguously signaled to plaintiff she was waiving her right to pursue her discrimination claims in court, and her execution of the Agreement demonstrated her assent to the terms. We address each of plaintiff's arguments in turn.

Plaintiff argues the Agreement is deficient because it fails to clearly state plaintiff is "waiving her right" to file a lawsuit. The Atalese Court noted, "[n]o particular form of words is necessary to accomplish a clear and unambiguous

waiver of rights . . . . Arbitration clauses—and other contractual clauses—will pass muster when phrased in plain language that is understandable to the reasonable consumer." 219 N.J. at 444. Although plaintiff correctly notes the Agreement does not contain the term "waiver" when discussing jury trials, it—nevertheless—utilizes straight-forward and less legalistic language. Instead of stating plaintiff waives her right to a jury trial, the Agreement states in simple understandable terms, "[t]his agreement to arbitrate disputes means that . . . [t]here will be no court or jury trial of disputes between [the parties] which arise out of your employment or the termination of your employment." Furthermore, the Agreement provides the parties "agree that any controversy between [them] . . . arising out of [plaintiff's] employment or the termination of [plaintiff's] employment" shall be resolved through binding arbitration.

Plaintiff attempts to distinguish Skuse and submits the "standard of clarity" is not met by the Agreement here. We disagree. There is no meaningful difference in the body of Pfizer's and Lowe's arbitration agreements because both agreements made clear there would be no jury trial to resolve any employment-related dispute and, instead, the parties would arbitrate such

disputes. In short, we discern no ambiguity whereby plaintiff would not have understood the rights she was waiving by executing the Agreement.[7]

Plaintiff next contends the Agreement did not explain what arbitration is and how it differs from a court proceeding. Atalese requires "the parties must know that there is a distinction between resolving a dispute in arbitration and in a judicial forum." Id. at 445. The Agreement here explains in unmistakable terms there would be no court or jury trial to resolve disputes between the parties. Moreover, it notes disputes arising out of termination of plaintiff's employment would instead be resolved by an arbitrator at "binding arbitration." The Agreement identifies the arbitration organizations whose rules would govern the arbitration proceedings and further offers to provide plaintiff "hard copies of the JAMS and AAA rules upon request." Accordingly, we are unpersuaded by plaintiff's contention and conclude the Agreement satisfies Atalese. See also Martindale, 173 N.J. at 96 (enforcing an arbitration clause because it, in part, "addressed specifically a waiver of the right to a jury trial,

[7] We also find unavailing plaintiff's argument the Agreement is lacking because it does not indicate plaintiff was waiving "her right to be heard by a judge." The Agreement states, "there will be no court or jury trial of disputes" between the parties. Given that there will be no court, it logically follows there will be no judge to adjudicate a dispute.

augmenting the notice to all parties to the agreement that claims involving jury trials would be resolved instead through arbitration.")

Plaintiff next asserts the Agreement did not state it applied to LAD or other statutory hostile work environment and retaliatory claims and therefore should not be enforceable. Plaintiff concedes the Agreement is not required to specifically reference the LAD, but asserts under Garfinkel the Agreement "should . . . reflect the employee's general understanding of the type of claims included in the waiver, e.g. workplace discrimination claims." 168 N.J. at 135. The Garfinkel Court further stated,

> [t]he Court will not assume that employees intend to waive those rights unless their agreements so provide in unambiguous terms. That said, we do not suggest that a party need refer specifically to the LAD or list every imaginable statute by name to effectuate a knowing and voluntary waiver of rights. To pass muster, however, a waiver-of-rights provision should at least provide that the employee agrees to arbitrate all statutory claims arising out of the employment relationship or its termination.
> [Ibid.]

We are satisfied the Agreement here is sufficiently broad and unambiguous to encompass plaintiff's causes of action and satisfy Garfinkel. The Agreement specifically lists a variety of statutes including comparable federal anti-discrimination laws including Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act. Moreover, consistent with

Garfinkel, the Agreement further notes that it is "intended to be broad" and covers "all such disputes" "arising out of federal and state and local ordinances" such as those listed along with disputes arising under "any similar federal, state and local laws."

Lastly, plaintiff argues the Agreement lacked mutual assent because she did not knowingly waive her statutory right to adjudicate her claims in court. Plaintiff asserts she did not carefully read the documents or know she was signing an Agreement. She further argues no one from Lowe's explained to her what she was signing, that she could take home the documents she signed, or consult a lawyer before signing the Agreement. She also claims she did not recall signing the Agreement. Defendant counters plaintiff confuses the standard for reviewing arbitration agreements with the standard for a release of claims.

Plaintiff acknowledged she signed the Agreement. That she did not read the Agreement, obtain a copy of it, or recall signing it, is not dispositive. As noted, generally, a party that failed to read a contract before signing it "cannot later relieve [themselves] of its burden[,]" and it is the obligation of a plaintiff to obtain a copy of the executed contract to ascertain what rights were waived in the agreement. Skuse, 244 N.J. at 54 (internal quotations omitted) (quoting Riverside Chiropractic Grp., 404 N.J. Super. at 238).

Equally unavailing is plaintiff's argument no one explained the Agreement to her. See Goffe, 238 N.J. at 212 ("[T]he argument that [a] plaintiff did not understand the import of the arbitration agreement and did not have it explained . . . is simply inadequate to avoid enforcement of [the] clear and conspicuous arbitration agreement[ ] . . . [the plaintiff] signed"). Lastly, plaintiff has not provided any controlling authority that required Lowe's—under these facts—to advise her to consult an attorney.

In short, we discern no basis to disturb the trial court's order dismissing the complaint and compelling arbitration. To the extent we have not specifically addressed any of plaintiff's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.