SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2132-21

ANGEL ONE LLC and
ELAINE BEZDECKI,

Plaintiffs-Appellants,

v.

POP SELLS, d/b/a POP RV,
a Florida corp.,

Defendant-Respondent.

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Argued March 7, 2023 – Decided May 15, 2023

Before Judges Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-2769-21.

Edward F. Bezdecki argued the cause for appellants (Bathgate, Wegener & Wolf, PC, attorneys; Edward F. Bezdecki, of counsel and on the brief).

Maria Dinora Smith argued the cause for respondent (German, Gallagher & Murtagh, PC, attorneys; Jacob C. Lehman, on the brief).

PER CURIAM

This appeal arises from an order dismissing the amended complaint of plaintiffs, Angel One, LLC and Elaine Bezdecki, for lack of jurisdiction pursuant to Rule 4:6-2(b). The parties entered into a marketing agreement (Agreement) for defendant to sell plaintiffs' recreation vehicle (RV). The Agreement contained a forum selection clause stating, in the event of a dispute between the parties, the dispute would be litigated in Sarasota County, Florida. Because the forum selection clause is valid and governs the forum for this dispute, we affirm.

Plaintiff, Angel One, LLC is a Montana limited liability company, and plaintiff Bezdecki is the company's sole member. Bezdecki is a resident of Ocean County, New Jersey. Defendant is a Florida corporation that brokers the sale of RVs, boats, and aircraft for commission. When plaintiffs resolved to sell their RV, they engaged the services of defendant, knowing it was located in Florida.

On November 21, 2019, the parties electronically entered into the Agreement. The pertinent terms involved the advertised sale of the RV for $333,400 unless plaintiffs agreed to a price change by addendum. The parties amended the Agreement with three price change addenda, in February 2020, June 2020, and May 2021 respectively. The final addendum reflected an

advertised sale price of $240,000. Each addenda expressly amended the sale price only and no other provisions of the original Agreement.

Pursuant to the Agreement, defendant would earn a ten-percent commission. Additionally, plaintiffs' payment obligation would vest upon:

> 1) Completion of the transaction and ownership of RV changing from [plaintiffs] to buyer procured by [defendant], or 2) [defendant] produces a bonafide buyer offering to pay the latest advertised Selling Price (as authorized by [plaintiffs]), or more, in writing, and [plaintiffs] decline[] to sell, or 3) [plaintiffs] decide[] not to continue with the sale after a Purchase and Sales Agreement has been agreed to and fully executed by both [plaintiffs] and buyer.

Additionally, the Agreement contained a cancellation provision, providing either party could cancel the agreement fifteen days after notice was received in writing or via phone call. The Agreement also contains the forum selection clause, which states, in full:

> It is understood that [plaintiffs] and [defendant] are operating together in Good Faith to market and sell RV. In the unlikely event of a dispute, the dispute shall be brought in Sarasota County, Florida[,] and the prevailing party shall be reimbursed for its costs and attorneys' fees by the party found to have breached this agreement.

Defendant obtained a buyer, Vincent Riggi, to purchase the RV for $240,000. Defendant drafted a Purchase Sale Agreement (PSA) and provided it

to Riggi and plaintiffs. On September 16, 2021, Riggi signed the PSA. On September 19, 2021, defendant reached out to plaintiffs to inquire whether plaintiffs wished to sign the PSA and confirm they still intended to go forth with the sale.

Despite plaintiffs and buyer signing the PSA, and for reasons that are unclear but nevertheless immaterial to the underlying motion to dismiss for lack of jurisdiction,[1] plaintiffs and buyer did not proceed with the sale. Plaintiffs also did not cancel the contract pursuant to the Agreement prior to the potential buyer's execution of the contract. Defendant notified plaintiffs it was entitled to a $24,000 commission pursuant to the Agreement.

On October 28, 2021, plaintiffs pre-emptively filed a complaint against defendant, alleging breach of contract, breach of good faith and fair dealing, violation of the Fair Debt Collection Practices Act, and defamation. Plaintiffs

[1] When considering a motion to dismiss for lack of personal jurisdiction, the trial court reviews the jurisdictional allegations contained in the complaint, not the merits of a particular cause of action. R. 4:6-2(b); see also Zahl v. Hiram Eastland, Jr., 465 N.J. Super. 79, 91-92 (App. Div. 2020) ("A court should not review a motion to dismiss based on lack of personal jurisdiction using the same indulgent standard employed to decide a motion seeking dismissal for failure to state a claim.").

alleged the prospective buyer[2] terminated the PSA and decided to not buy the vehicle, and defendant breached the Agreement. Plaintiffs also alleged defendant breached its duty of good faith and fair dealing because plaintiffs had incurred costs in selling the RV, and one of defendant's senior salesman defamed plaintiffs by stating they did not actually want to sell the vehicle.

On December 9, 2021, defendant filed a Rule 4:6-2(b) motion to dismiss with prejudice for lack of personal jurisdiction. Highlighting the Sarasota, Florida forum selection clause of the Agreement, defendant argued the New Jersey Superior Court lacked jurisdiction. Although plaintiffs filed an amended complaint in January 2022, before the motion to dismiss was heard, defendant filed another Rule 4:6-2(b) motion in February 2022.

On March 9, 2022, the trial court dismissed plaintiffs' complaint with prejudice. In doing so, the trial court noted forum selection clauses are generally enforceable and such provisions "will not be overturned merely because the parties do not reside in the forum state . . . ." The trial court rejected plaintiffs' forum non conveniens arguments and found the forum selection clause was valid because the parties had agreed Florida was the forum for litigation in the

[2] The prospective buyer was not named as a party to the suit and did not appear at the trial level or on this appeal.

Agreement and its designation was reasonable in light of defendant's corporate headquarters location.

Plaintiffs appeal, contending the Agreement is an invalid contract of adhesion. Plaintiffs also claim the Agreement was created as a result of defendant's inequitable bargaining power, there was no mutual assent between the parties, and the trial court overlooked its arguments regarding forum non conveniens. Finally, plaintiffs argue the forum selection clause failed to give them adequate notice because it was not in bold-faced font and failed to advise plaintiffs that they were surrendering certain rights, and urge us to expand arbitration clause notice requirements, pursuant to Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442 (2014), to encompass all forum selection clauses.

Defendant denies the Agreement is a contract of adhesion and argues the forum selection clause is valid because plaintiffs had full notice of the contract and forum selection clause and could have found another means of marketing and selling the RV. Defendant also contends the trial court correctly disregarded the doctrine of forum non conveniens because it is inapplicable where a valid contract contains a valid forum selection clause. Defendants argue Atalese has not been extended to forum selection clauses, and even if it was, plaintiffs nevertheless had sufficient notice because the forum selection clause in the

Agreement was clear, unobscured, and unchanged by three addenda, as was the forum selection clause in the subsequently executed PSA.

Our standard of review is de novo when interpreting a contract. Serico v. Rothberg, 234 N.J. 168, 178 (2018); Kieffer v. Best Buy, 205 N.J. 213, 222 (2011). Interpretation of a contract is a question of law, and, as such, this court owes "no special deference to the trial court's interpretation and look[s] at the contract with fresh eyes." Kieffer, 205 N.J. at 222-23.

The freedom to contract is a foundational pillar of New Jersey law. Marcinczyk v. State of N.J. Police Training Comm'n, 203 N.J. 586, 592 (2010). In the absence of fraud, duress, illegality or mistake, a contract is fully binding, and the parties are "conclusively presumed" to understand and assent to its legal effect. Id. at 593 (quoting Rudbart v. N. Jersey Dist. Water Supply Comm'n, 127 N.J. 344, 353 (1992)). Absent these findings, a court will not interfere with parties' freedom to enter into binding agreements. See Gross v. Lasko, 338 N.J. Super. 476, 485-86 (App Div. 2001) ("It is not the function of any court to make a better contract for the parties by supplying terms that have not been agreed upon.") (citing Graziano v. Grant, 326 N.J. Super. 328, 342 (App. Div. 1999)).

A contract of adhesion is "presented on a take-it-or-leave-it basis, commonly in a standardized printed form, without opportunity for the adhering

party to negotiate except perhaps on a few particulars." Moore v. Woman to Woman Obstetrics & Gynecology, L.L.C., 416 N.J. Super. 30, 38 (App. Div. 2010) (quoting Rudbart, 127 N.J. at 353). Despite requiring one party to accept or reject the agreement as is, a contract of adhesion is not per se unenforceable. Stelluti v. Casapenn Enters., LLC, 203 N.J. 286, 301 (2010). However, "[A] court may decline to enforce [an adhesion contract] if it is found to be unconscionable." Vitale v. Schering-Plough Corp., 231 N.J. 234, 246 (2017). Focusing on procedural and substantive unconscionability, "the subject matter of the contract, the parties' relative bargaining positions, the degree of economic compulsion motivating the 'adhering' party and the public interest affected by the contract" are evaluated. Id. at 247 (quoting Rudbart, 127 N.J. at 356). The circumstances surrounding the way the contract was formed and whether enforcement implicates matters of the public interest are evaluated on a "sliding scale" to determine whether the contract is unconscionable. Stelluti, 203 N.J. at 301; see also Delta Funding Corp. v. Harris, 189 N.J. 28, 40-41 (2006) (holding an arbitration contract of adhesion enforceable despite finding procedural unconscionability due to one party possessing greater sophistication and bargaining power).

The Agreement is not, as plaintiffs contend, a contract of adhesion. Bezdecki signed the original two-page Agreement, three addenda over two years' time, negotiating an initial price and subsequent decreases in the advertised sale price, and a PSA. Each addendum expressly states: "By signing this agreement, it is understood by both parties that, other than [paragraph] A and its paragraphs, all clauses of the latest executed . . . Agreement between [plaintiffs] and [defendant] are prevailing." Plaintiffs cannot now claim they were deprived of notice of the material terms of the Agreement. Additionally, plaintiffs selected defendant, a Florida company, and negotiated certain terms of the contract, such as sale price and length of the contract.

The two-year duration of the Agreement and the parties' course of conduct throughout those two years demonstrates plaintiffs were not economically forced into the contract in a way that meaningfully deprived them of their ability to consent or abide by the terms. See Rudbart, 127 N.J. at 355-56. They were not in the position of "a consumer who must accept a standardized form contract to purchase needed goods and services." Id. at 355. They were instead free to accept or reject the Agreement and any subsequent addenda and find another purveyor to advertise their RV or do so themselves. They also had the ability to cancel the Agreement upon fifteen-days' notice, which they failed to do.

We note there was disagreement about plaintiffs' counsel of record as to his level of involvement with respect to plaintiffs' execution of the Agreement, addenda, and PSA; however, his involvement is immaterial to the determinative issue in this matter. Irrespective of Edward's[3] involvement, the parties were in relatively equal bargaining positions when the Agreement was signed and the Agreement is not an adhesion contract.

The enforceability of a forum selection clause is also reviewed de novo. Largoza v. FKM Real Est. Holdings, Inc., 474 NJ. Super. 61, 72 (App. Div. 2022). Whether a forum selection clause is enforceable is controlled by notice and reasonableness requirements. Copelco Cap., Inc. v. Shapiro, 331 N.J. Super. 1, 5 (App. Div. 2000). Forum selection clauses are presumed to be enforceable. Largoza, 474 N.J. Super. at 72. Thus, such provisions "will be enforced unless the party objecting thereto demonstrates (1) the clause is a result of fraud or overweening bargaining power, or (2) the enforcement in a foreign forum would violate strong public policy of the local forum, or (3) enforcement would be seriously inconvenient for the trial." McNeill v. Zoref, 297 N.J. Super. 213, 219

[3] We use first names because multiple individuals share the same last name. We intend no disrespect.

(App. Div. 1997) (quoting Wilfred MacDonald Inc. v. Cushman Inc., 256 N.J. Super. 58, 63-64 (App. Div. 1992) (citations omitted) (emphasis omitted)).

Given the detailed standards set forth in our case law for determining the validity of forum selection clauses, we decline plaintiffs' invitation to extend the holding in Atalese applicable to arbitration clauses to forum selection clauses. We note only that plaintiffs are mistaken in claiming both situations involve similar legal rights: arbitration clauses involve one party willfully and knowingly waiving its right to a trial by jury and appeal in any forum, while a forum selection clause simply affords the parties freedom to select where those very rights will be adjudicated.

There is nothing about the forum selection clause itself that warrants a finding of unconscionability. The forum selection clause is located at the end of each Agreement, just above the signature lines, which plaintiffs completed electronically. The clause is not excessively lengthy, nor buried in fine print. To reiterate, plaintiffs selected then freely availed themselves of defendant's services for a period of two years, entering into the Agreement and negotiating changes to the Agreement by written and executed addenda. They also executed a PSA containing the same forum selection clause. Their contention now that the Agreement is not valid is belied by the record. There was plainly mutual

assent between the parties, who had "an understanding of the terms to which they ha[d] agreed." Arafa v. Health Express Corp., 243 N.J. 147, 171 (2020) (quoting Atalese, 219 N.J. at 442). The forum selection clause was and remains enforceable.

Because of the equitable principles invoked by the doctrine, the application of the doctrine of forum non conveniens "is left to the sound discretion of the trial court, and therefore considerable deference must be paid to the court's decision." Yousef v. Gen. Dynamics Corp., 205 N.J. 543, 557 (2011); see Kurzke v. Nissan Motor Corp. in U.S.A., 164 N.J. 159, 165 (2000). "When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 (App. Div. 2007)).

Pursuant to "the doctrine of forum non conveniens, a court using its equitable power can decline to exercise jurisdiction over a defendant if that defendant can demonstrate that the plaintiff's choice of forum is 'demonstrably inappropriate.'" Yousef, 205 N.J. at 548 (quoting Kurzke, 164 N.J. at 171-72). However, as defendant properly illustrates, we have previously held that a trial

court errs as a matter of law where it applies the doctrine of forum non conveniens rather than the law governing the validity of forum selection clauses. See Paradise Enters., Ltd. v. Sapir, 356 N.J. Super. 96, 102-03, 112 (App. Div. 2002).

Finding a valid forum selection clause, the trial court did not abuse its discretion in declining to consider forum non conveniens. Id. at 102-03, 112. The remainder of plaintiffs' arguments are without sufficient merit to warrant written discussion. R. 2:11-3(e)(1)(E).

Affirmed.