SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2514-21

SHADI RAMADAN,

Plaintiff-Respondent,

v.

LIPPOLIS ELECTRIC, INC.,
CARMINE LIPPOLIS,
JASON HUMPHREY,
and KRIS MOLINARI,

Defendants-Appellants.

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Submitted December 5, 2022 – Decided January 3, 2023

Before Judges Whipple, Mawla and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-2064-20.

Trivella & Forte, LLP, attorneys for appellants (Christopher A. Smith, on the briefs).

Brandon J. Broderick, LLC, attorneys for respondent (Marc W. Garbar and William W. Wallis, on the brief).

PER CURIAM

Plaintiff Shadi Ramadan had been employed by defendant, Lippolis Electric, Inc., for three and a half months, from October 2019 until January 2020, when he was fired. He sued, alleging his termination was retaliatory and discriminatory in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -50, because he was subjected to various insults, harassment, and verbal abuse throughout his employment due to his religion and ethnicity.

His case has not yet reached the merits of that claim. Instead, an arbitration provision within the employee handbook forestalled consideration of substantive claims. That provision reads:

> ARBITRATION OF EMPLOYMENT DISPUTES
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> All claims from potential, current or former employees of Lippolis Electric, Inc., accruing at any time including, but not limited to, claims pursuant to all [f]ederal, [s]tate and [l]ocal statutory employment statutes including, but not limited to, any claims for monies that may have been owed for back wages, vacation, overtime, prevailing wage or minimum wage claims, including claims under the Fair Labor Standards Act, the New York State Labor Law or similar law, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the ADA Amendments Act of 2008, the Family and Medical Leave Act, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Genetic Information Nondiscrimination Act, the Equal Pay Act, the Worker Adjustment Retraining and Notification Act, claims

> alleging violations of any state or local law, statute, regulation, executive order, or ordinance, including, but not limited to, the constitution and laws of the State of New York, the New York State Human Rights Law, the New York Executive Law and Administrative Code of the City of New York, (collectively "Covered Claims") must be submitted to binding arbitration before the American Arbitration Association pursuant to the AAA Employment Arbitration Rules and Mediation Procedures then in effect. The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration provision. The costs charged by the arbitrator shall be borne by Lippolis Electric, Inc. and not the employee. The arbitrator shall apply all applicable laws, rules, and regulations when issuing a decision.
>
> No party shall have the right to bring or participate in a class, collective or other representative proceeding concerning any Covered Claims in any forum including any court of law or arbitration. To be clear all Covered Claims submitted to arbitration must be handled on a singular individual basis.
>
> By accepting or continuing your at-will employment you have agreed to this arbitration provision regardless of whether you sign the handbook receipt.
>
> [(Emphasis added).]

Plaintiff signed an Acknowledgement of Receipt of Employee Handbook prior to beginning employment. The acknowledgement contains no reference to the arbitration clause. Instead, it states: "this handbook or any other written

or verbal communication by a management representative is neither a contract of employment nor a legally-binding agreement." (Emphasis added). "[T]he information, policies and benefits described herein are subject to change at any time . . . . [R]evised information may supersede, modify, or eliminate existing policies."

Additional disclaimers appear throughout the handbook, such as: "The policies that make up this handbook serve as a road map and is not intended to be an exhaustive description of all Lippolis Electric, Inc.'s policies or the law. This handbook is not to be construed as an employment contract." (Emphasis added). "Neither the handbook nor any other communication by a management representative is intended in any way to create a contract of employment." (Emphasis added).

Finally, a disclaimer on the cover reads "[t]his handbook does not create a contract for employment for any specified period or definite duration."

Defendant moved for summary judgment to compel arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 3 (FAA), and New Jersey Arbitration Act, N.J.S.A. 2A:23B-1 to -36. The trial court, reasoning that the FAA compelled arbitration in the matter, initially granted defendant's motion with an award of attorney's fees. Plaintiff moved for reconsideration. He

argued the provision was unenforceable—by the document's own terms, there was no contract, and thus the provision could not bind him. The court agreed and reversed its prior decision, reasoning "[p]laintiff's agreement to abide by terms of a document that is declared to be 'neither a contract of employment nor a legally-binding agreement' cannot possibly create an enforceable agreement—under traditional contract law—to submit to arbitration."

We affirm for the thoughtful reasons expressed by Judge Frank Covello, which are attached to the March 23, 2022 order on reconsideration vacating the original grant of summary judgment. We add the following comments.

Basic contract formation principles apply to arbitration agreements. Kernahan v. Home Warranty Adm'r of Fla. Inc., 236 N.J. 301, 307 (2019). Accordingly, to be enforced, an arbitration provision "must be the result of the parties' mutual assent, according to customary principles of state contract law." Skuse v. Pfizer, Inc., 244 N.J. 30, 48 (2020) (quoting Atalese v. U.S. Legal Servs. Grp, L.P., 219 N.J. 430, 442 (2014)). Agreeing to arbitrate involves a waiver of rights, so the party giving up rights "must 'have full knowledge of his legal rights and inten[d] to surrender those rights.'" Id. at 48 (quoting Knorr v. Smeal, 178 N.J. 169, 177 (2003)). This knowing waiver must be

"clearly and unmistakably established." Ibid. (quoting Atalese, 219 N.J. at 444).

Here, defendant contends that even though the employee handbook at issue repeatedly and consistently disclaimed any status as an employment contract or even a "legally binding agreement," plaintiff's signature nevertheless formed an enforceable contract for at-will employment which incorporated the arbitration terms.

We considered a nearly identical situation in Morgan v. Raymours Furniture Co., 443 N.J. Super. 338 (App. Div. 2016). That case concerned an employer who sought to enforce the arbitration provisions of an employee handbook which simultaneously stated "[n]othing in this [h]andbook . . . creates a promise of continued employment, [an] employment contract, term or obligation of any kind on the part of the [c]ompany." Id. at 342 (third alteration in original).

The Morgan court outright rejected the defendant's attempt to enforce the arbitration provision in this context. "[T]he employer would seek both the benefit of its disclaimer . . . , while insisting that the handbook was contractual when it suits its purposes . . . ." Ibid. In sum, "it is simply inequitable for an employer to assert that, during its dealings with its employee, its written rules

and regulations were not contractual and then argue, through reference to the same materials, that the employee contracted away a particular right." Id. at 342-43.

We do not address defendant's remaining arguments as they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION