Baionne Coleman, Respondent V. Impact Public Schools, Appellant

2024 | Cited 0 times | Court of Appeals of Washington | February 12, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

BAIONNE COLEMAN,

Respondent,

v.

IMPACT PUBLIC SCHOOLS, a State or municipal government agency,

Appellant. No. 84421-1-I

UNPUBLISHED OPINION

BOWMAN, J. Baionne Coleman sued her former employer, Impact Public Schools (Impact), alleging employment discrimination under the Washington Law Against Discrimination (WLAD), chapter 49.60 RCW. Impact appeals the trial ismiss the complaint under CR 12(b)(1) and compel arbitration. Because the arbitration clause in Coleman employment contract is valid and enforceable, we reverse and remand for further proceedings.

FACTS

Impact operates Impact Puget Sound Elementary School in Tukwila. On June 28, 2017, Impact Chief Executive Officer Jen Wickens offered Coleman a job at the elementary school as School Leader Resident via a two-page offer

letter attached to an e-mail. Two provisions of the letter included:

At-Will Employment: Your employment with the organization [Impact] may terminate your employment at any time for any reason or no reason, with or without advance notice, without further obligation or liability. The terms of your employment also may be altered at any time, at the discretion of [Impact].

Waiver: You agree that any dispute or claim arising out of or related to your employment shall be settled by binding arbitration conducted in King County and administered by the American Arbitration Association [(AAA)] under its National Rules for the Resolution of Employment Disputes. This shall include, without limitation, disputes relating to employment with [Impact] or termination thereof, and any claims of discrimination or any other claims under federal, state, or local law or regulation.

Wickens concluded her e-mail by telling Coleman, Please let me know if you

Coleman read the offer letter, including the arbitration provision, the same

day Wickens e-mailed it to her. She then the

and signed her full name at the bottom of the letter.

In July 2019, Coleman resigned from Impact. On May 25, 2022, she sued

Impact, asserting a single claim of employment discrimination under the WLAD.

Impact moved under CR 1 subject matter jurisdiction and compel arbitration according to the arbitration

provision in her offer letter. In response, Coleman argued that the arbitration

provision is ambiguous, illusory, and procedurally and substantively

Impact appeals.

ANALYSIS

Impact argues that the trial court erred by denying its motion to dismiss

compel arbitration de novo. Verbeek Props., LLC v. GreenCo Env t, Inc., 159 Wn. App. 82, 86, 246 P.3d 205 (2010).

Baionne Coleman, Respondent V. Impact Public Schools, Appellant

2024 | Cited 0 times | Court of Appeals of Washington | February 12, 2024

The federal arbitration act (FAA), 9 U.S.C. sections 1 to 16, applies to all

employment contracts except for employment contracts of certain transportation

Zuver v. Airtouch Commc ns, Inc., 153 Wn.2d 293, 301, 103 P.3d 753

(2004) (citing Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 119, 121 S. Ct.

1302, 149 L. Ed. 2d 234 (2001)). Under the FAA, written arbitration agreements

section 2 of the FAA is to create a body of substantive federal law on arbitration

that state and federal courts must apply to arbitration agreements that fall under

the act s coverage. Romney v. Franciscan Med. Grp., 186 Wn. App. 728, 734,

349 P.3d 32 (2015); Perry v. Thomas, 482 U.S. 483, 489, 107 S. Ct. 2520, 96 L.

Ed. 2d 426 (1987).

Washington has a strong public policy favoring arbitration. Heights at

Issaquah Ridge, Owners Ass n v. Burton Landscape Grp., Inc., 148 Wn. App.

400, 405, 200 P.3d 254 (2009). 1 The party opposing arbitration bears the burden

of showing the arbitration clause is inapplicable or unenforceable. Verbeek, 159

1 Citing Zuver, 153 Wn.2d at 301, Impact argues we must indulge every presumption in favor of arbitration. Amicus Curiae Washington Employment Lawyers Association point out that under federal law, there is no longer a presumption in favor of arbitration. See Armstrong v. Michaels Stores, Inc., 59 F.4th 1011, 1014 (9th Cir. 2023) (courts must hold a party to its arbitration contract just as the court would to any other kind [and] may not devise novel rules to favor arbitration over litigation (quoting Morgan v. Sundance, Inc., 596 U.S. 411, 418, 142 S. Ct. 1708, 212 L. Ed. 2d 753 (2022)). Because we determine that the contract here is unambiguous, we need not resolve the issue. Wn. App. at 86-87. When the validity of an agreement to arbitrate is challenged,

we apply ordinary state contract law. McKee v. AT & T Corp., 164 Wn.2d 372,

383, 191 P.3d 845 (2008). Arbitration agreements stand on equal footing with

other contracts and may be invalidated by [g]eneral contract defenses such as unconscionability. Burnett v. Pagliacci Pizza, Inc., 196 Wn.2d 38, 47, 470 P.3d 486 (2020) 2 (quoting McKee, 164 Wn.2d at 383).

Coleman argues that the arbitration provision in her offer letter or employment contract is unenforceable because it lacks mutual assent and consideration. She also contends the provision is procedurally and substantively unconscionable. We address each argument in turn.

A. Mutual Assent

Coleman argues that the arbitration provision is unenforceable because it

We disagree.

To form a contract, the parties must manifest their mutual assent to the same bargain at the same time. Burnett, 196 Wn.2d at 48 3 (quoting Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d 371, 388, 858 P.2d 245 (1993)). Contract law rests on the principle that one is bound by the contract which [s]he voluntarily and knowingly signs. H. D. Fowler Co. v. Warren, 17 Wn. App. 178, 180, 562 P.2d 646 (1977) (quoting Bank of Wash. v. Equity Invs., 81 Wn.2d 886, 912-13, 506 P.2d 20 (1973)). So, when a party signs a contract, we presume they objectively manifested their assent to its

2 Alteration in original. 3 Internal quotation marks omitted. contents absent some misrepresentation or wrongful act ignorance of the

contents of a contract expressed in a written instrument does not ordinarily affect

the liability of one who signs it. Tjart v. Smith Barney, Inc., 107 Wn. App. 885, 897, 28 P.3d 823 (2001).

Coleman argues she did not know she assented to arbitrate her claims in lieu of a trial when she executed the employment contract. She likens her case to the circumstances in Burnett. In that case, Pagliacci Pizza and Burnett executed an employment contract. Burnett, 196 Wn.2d at 42-43. The contract cci did not provide to Burnett until after he signed the contract. Id. at 43, 56-57. Buried in the handbook was a mandatory arbitration clause. Id. at 43. After Pagliacci terminated Burnett, he sued, alleging various wage related claims. Id. at 45. Pagliacci moved to enforce the mandatory arbitration provision. Id.

Our Supreme Court concluded the arbitration clause was not valid because Burnett did not assent to arbitration when he executed the contract. Burnett, 196 Wn.2d at 56-57. It reasoned Id. at 49.

Instead, must be clear that the parties to the agreement had knowledge of and assented to the incorporated terms. Id. (quoting Burnett v. Pagliacci Pizza, Inc., 9 Wn. App. 2d 192, 200, 442 P.3d 1267 (2019) (quoting W. Wash. Corp. of Seventh-Day Adventists v. Ferrellgas, Inc., 102 Wn. App. 488, 494-95, 7 P.3d 861 (2000))). Because Burnett did not have the employee handbook at the time he signed the contact, he did not know of the incorporated terms, and he could not have assented to the mandatory arbitration provision. Burnett, 196

Wn.2d at 49-50.

than Burnett. The plain language of

contract states, of or

[Impact] or that the claims not subject to arbitration are only

Unlike the contract in Burnett, contains clear

language assenting to arbitration. And that language is on the face of a 2-page

offer letter rather than buried in an employee handbook incorporated by

reference. See Burnett, 196 Wn.2d at 43 (arbitration provision on page 18 of 23-

page handbook).

Still, Coleman argues the contract lacks mutual assent because the clause

According to Coleman, the term

alternative and vastly divergent concepts,

leaving it unclear how disputes would be resolved.

Washington courts follow the objective manifestation theory of contracts.

Hearst Commc ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262

focusing on the objective manifestations of the agreement, rather than on the Id. We impute an intention

corresponding to the reasonable meaning of the words in a contract their ordinary, usual, and popular meaning unless the entirety

of the agreement clearly demonstrates a contrary intent. Id. at 503-04. To

determine the ordinary meaning of an undefined term, we look to the dictionary.

Boeing Co. v. Aetna Cas. & Sur. Co., 113 Wn.2d 869, 877, 784 P.2d 507 (1990).

contract provision is not ambiguous merely because the parties to the contract

GMAC v. Everett Chevrolet, Inc., 179 Wn. App.

126, 135, 317 P.3d 1074 (2014). And w Id. 4

(quoting Mayer v. Pierce County

Med. Bureau, Inc., 80 Wn. App. 416, 421, 909 P.2d 1323 (1995)).

ny dispute or claim arising out of or related

to . . . employment shall be settled by binding arbitration conducted in King

County and administered by the [AAA]. not define t , the parties [usually] WEBSTER S THIRD NEW INTERNATIONAL

DICTIONARY 2079 (2002). Viewed in context of th resolving any qualifying dispute or claim out of court

through binding arbitration administered by the AAA.

4 Internal quotation marks omitted. Coleman fails to show that the language in the arbitration clause is

ambiguous. And the dispute or claim arising out of or related to

B. Consideration

Coleman and amicus curiae argue that the arbitration provision in her

contract is not binding because the agreement lacks consideration. They

-Will

the terms of employment, such as the agreement to arbitrate, 5

the discretion of [Impact]. We disagree.

Every contract must be supported by consideration to be enforceable.

King v. Riveland bargained-for exchange of promises, modification or destruction of a legal relationship, or return promise given in

Labriola v. Pollard Grp., Inc., 152 Wn.2d 828, 833, 100 P.3d 791

(2004) (quoting King, 125 Wn.2d at 505).

An obligation based on an illusory promise is unenforceable:

If the provisions of an agreement leave the promisor s performance entirely within [their] discretion and control, the at all, there is an absence of consideration. Thus, if a promise is

illusory, there is no consideration and no enforceable obligation.

SAK & Assocs., Inc. v. Ferguson Constr., Inc., 189 Wn. App. 405, 411-12, 357

P.3d 671 (2015) (quoting Felice v. Clausen, 22 Wn. App. 608, 611, 590 P.2d

5 Impact does not dispute on appeal that the agreement to arbitrate is a term of So, we do not address that issue. 1283 (1979)). We give preference to reasonable interpretations of contracts

rather than to those that would make the contract unreasonable or its obligations

illusory. Id. at 412 n.18 (quoting , 704 F.2d 426, 434 (9th

Cir. 1983)).

Washington is a terminable-at-will employment state. Ford v. Trendwest

Resorts, Inc., 146 Wn.2d 146, 152, 43 P.3d 1223 (2002). Terminable-at-will

employment may be terminated by either the employer or the employee at any

time, with or without cause. Id.; Roe v. TeleTech Customer Care Mgmt. (Colo.),

LLC, 152 Wn. App. 388, 399, 216 P.3d 1055 (2009). Implicit in the right to

terminate at will is the right to unilaterally modify the terms of the employment.

Duncan v. Alaska USA Fed. Credit Union, Inc., 148 Wn. App. 52, 73, 199 P.3d

991 (2008). So, an employer may unilaterally change terms of at-will employment so long as the employee receives reasonable notice of the change. Id. at 70 (quoting Cole v. Red Lion, 92 Wn. App. 743, 751, 969 P.2d 481 (1998)). If the employee accepts the new terms by continuing to work after receiving notice of the change, a new contract is formed. Cascade Auto Glass, Inc. v. Progressive Cas. Ins. Co., 135 Wn. App. 760, 769, 145 P.3d 1253 (2006). At-will agreements are not illusory because a party changing terms must provide the other party notice a legal detriment sufficient to satisfy the requirement of consideration. SAK, 189 Wn. App. at 413.

Here, Coleman offer letter says that employment with Impact will be on an at will basis As such, it advises Coleman that the terms of her employment

This accurately describes terminable-at-will-employment and does not render to arbitrate illusory. Should Impact propose to modify the arbitration provision, Coleman can either accept or reject the modification. If she accepts, a new at-will employment agreement is formed. If not, the parties may choose to continue under the contract, reach an alternative agreement, or terminate employment. As a result, Impact has no absolute right to refuse arbitration, and its promise to arbitrate is not illusory.

C. Procedural Unconscionability

Coleman argues that the arbitration provision is procedurally unconscionable. We disagree.

Zuver, 153

Wn.2d at 303 (quoting Nelson v. McGoldrick, 127 Wn.2d 124, 131, 896 P.2d

1258 (1995)). To determine whether an agreement is procedurally

unconscionable, we (2) whether [the signatory] had a reasonable opportunity to understand the terms

of the contract, and (3) whether the important terms were hidden in a maze of

Burnett applied mechanically without regard to whether in truth a meaningful choice

Zuver, 153 Wn.2d at 303 6 (quoting Nelson, 127 Wn.2d at 131). The

key inquiry is whether the party Id. at 305.

6 Second alteration in original. Citing Mattingly v. Palmer Ridge Homes LLC, 157 Wn. App. 376, 238 P.3d

AAA Rules mentioned in her offer letter shown or made available

to her. In Mattingly, the plaintiffs entered an agreement with Palmer Ridge

Homes, obligating it to construct a custom home for them. Id. at 382. Six

months later, the Mattinglys signed an application to enroll in Palmer Ridge s

ew Home Warranty program . Id. at 383. They

acknowledged that they read a sample copy of the warranty booklet but did not in

fact see a copy of the warranty before they signed the enrollment application. Id.

After discovering problems with the construction of their home, the Mattinglys

sued Palmer Ridge. Id. at 386. Palmer Ridge moved for summary judgment,

Warranty s

limitations provisions. Id.

Division Two of this court concluded that the Home Buyers Warranty

limitations were procedurally unconscionable and unenforceable. Mattingly, 157

Wn. App. at 392. It held that the circumstances surrounding the warranty were

[was] no evidence in the record that the Mattinglys had a

reasonable opportunity to understand the terms contained within the booklet, and

th Id. Specifically, the court observed that

the plaintiffs did not receive a sample copy of the booklet before signing the

warranty enrollment, and that even if they had received the booklet, the

limitations provisions though in bold and larger typeface than surrounding

text were on page 7 of a 32-page booklet. Id. at 391-92. Unlike in Mattingly, Impact does not seek to hold a consumer to hidden

terms of a warranty. Instead, it seeks to enforce an arbitration provision in an

employment contract. contract specifically identifies AAA as the

agreed body to administer arbitration. And incorporation of the AAA rules by

reference amounts to agree to be bound by those rules. Brennan v. Opus Bank, 796 F.3d 1125, 1130

(9th Cir. 2015) (incorporation of AAA rules showed that parties agreed to

delegate arbitrability to the arbitrator under those rules); see also Raven Offshore

Yacht Shipping, LLP v. F.T. Holdings, LLC, 199 Wn. App. 534, 541, 400 P.3d

347 (2017) (by incorporating Maritime Arbitration Association rules into a

contract, the parties clearly and unmistakably manifested their agreement to be

bound .

Still, citing Ingalls v. Spotify USA, Inc., C16-03533 WHA, 2016 WL

6679561 (N.D. Cal. Nov. 14, 2016) (court order), Coleman argues that

upon unsophistica Ingalls, the Northern District of California

District Court considered

that contracting parties agreed to be bound by those

Id. at *3. The court

determined the plaintiffs, a music teacher and an architect seeking to stream

music on Spotify significance of incorporating the AAA rules in a long contract, which Spotify presented online with a maze of terms and a check box to show consent. Id. at

*4, *1-*2.

Unlike the plaintiffs in Ingalls, Coleman is not an unsophisticated

consumer seeking to purchase a product online, and the circumstances

surrounding her acceptance of the terms of her contract are different. The record

shows that when Coleman signed her employment contract, she had worked as

a public school administrator and teacher for nearly 15 years. And the

employment contract is a short, two-page document in which the arbitration

clause and reference to the AAA rules are easily identifiable. Finally, Coleman

had time to consider the contract and investigate its terms when Wickens invited

her about the offer

of employment.

The arbitration provision is not procedurally

unconscionable.

D. Substantive Unconscionability

Finally, Coleman argues that the arbitration provision is substantively unconscionable. Again, we disagree.

Substantive unconscionability exists when a provision in the contract is one-sided. Adler v. Fred Lind Manor, 153 Wn.2d 331, 344, 103 P.3d 773, 780 (2004). In determining whether a contractual provision is one-sided or overly

Id. at 344-45 7 (quoting Nelson, 127 Wn.2d at 131).

Coleman argues that the arbitration provision is substantively unconscionable as applied to her] the [act] mandate to eradicate [discrimination]. 8 Our Supreme Court rejected this same argument in Adler. There, the plaintiff challenged the enforceability of a mandatory arbitration provision, arguing that the WLAD requires a judicial

Adler, 153 Wn.2d at 342-43. The c dividual employee-employer arbitration agreement exists, the FAA requires that employees arbitrate federal

Id. 343-44 (citing Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 27-28, 111 S. Ct. 1647, 114 L. Ed. 2d 26 (1991)). Coleman provides no authority distinguishing Adler.

Coleman fails to show that the arbitration provision in her employment

contract lacks mutual consent or consideration. And the provision is not

7 Internal quotation marks omitted 8 Coleman points to AAA employment rule 9, which states, The arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of Procedures R. 9 (Nov. 1, 2009, rev. Oct. 1, 2017), https://www.adr.org/sites/default/files/

EmploymentRules_Web_0.pdf [https://perma.cc/5BUU-JSKP]. She also cites rule 23, providing that have the authority to make appropriate rulings to safeguard that confidentiality, unless

the parties agree otherwise or the law provides Employment Arbitration Rules and Mediation Procedures R. 23. procedurally or substantively unconscionable. We reverse and remand for

further proceedings. 9

WE CONCUR:

9 Because we reverse, we entitled to an evidentiary hearing to resolve disputed facts.