Aldrete v. Berkshire Hathaway Automotive Incorporated et al

2022 | Cited 0 times | D. Arizona | January 6, 2022

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Sarah Aldrete,

Plaintiff, v. Metro Auto Auction LLC, et al.,

Defendants.

No. CV-21-00622-PHX-SMB ORDER

Pending before the Court is Metro Auto

1 Motion to Compel Arbitration Metro Auto Defendants replied, (Doc. 38). Also pending before the Court is Defendant

BH

2 Motion to Dismiss, (Doc. 32), which has likewise been fully briefed, (see Docs. 43; 47). Having considered the parties briefing and relevant caselaw, the Court will grant BH for the reasons explained below.

I. BACKGROUND

Metro Auto is a Delaware limited liability company and has been doing business in Arizona See Doc. 20 at 2.) In 2009,

1 Kurz. 2 BHA means BH Automotive, LLC, which is a sister company to Metro Auto both companies being owned by Berkshire Hathaway Automotive, Inc., who is another named defendant in this suit. (See Doc. 32 at 2.)

Metro Auto hired Plaintiff, who worked as a Service Coordinator for a portion of her employment

with Metro Auto. (Id.) Defendant Kurz an agent of Metro Auto served as supervisor . (Id.) (Doc. 16 at ¶¶ 25 26, 31.) Plaintiff now alleges discrimination, retaliation, and a hostile work environment under Title VII of the C ; interference and retaliation under the Fair Labor FLSA ; interference and retaliation under the under the Family and Medical Leave Act FMLA ; and state law claims for invasion of privacy, intrusion upon seclusion, public disclosure of private affairs, and intentional infliction of emotional distress. (See Doc 16.)

When Plaintiff began her employment with Metro Auto, she (Doc. 20-2 at 1, 11.) The Arbitration Agreement all statutory, contractual and common law claims or controversies, past, present, or future,

hiring, employment, or termination of (Id. covering Defendant Kurz. (Id.) Additionally, the following are claims covered by the

agreement:

[C]laims of discrimination, harassment, or retaliation under any federal,

state or local statute or ordinance, including but not limited to Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act; claims for retaliation und claims for breach of contract or covenant (express or implied); tort claims (including but not limited to, negligent or intentional injury,

invasion of privacy, defamation, and tortious inference with contract); . . . . claims for violation of any federal, state, or other governmental law,

statute, regulation or ordinance; claims or disputes regarding this Agreement, including but not limited to,

its enforceability, scope or terms; and disputes regarding arbitrability under this Agreement.

(Id. at 4 5.)

For a party to bring a claim covered by the Arbitration Agreement, they must: (1) provide written notice to the opposing party demanding arbitration of that claim; and (2) notify the American Arbi made. (See id. at 6.) The Arbitration Agreement also

ffect when the arbitration demand is made. (Id.)

The existence of the Arbitration Agreement notwithstanding, Plaintiff filed her amended complaint with the Court in July of 2021. (Doc. 16.) Consequently, Metro Auto Defendants filed a Motion to

Compel Arbitration. (Doc. 20.)

II. LEGAL STANDARD

The Federal Arbitration Act (FAA) provides that written agreements to arbitrate

common law for the revocat 9 U.S.C. § 2; see AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011) (discussing the liberal federal policy favoring valid arbitration agreements). district court, but instead mandates that district courts shall direct the parties to proceed to

Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 218 (1985). The court's role is to answer two gateway questions: does a valid agreement to arbitrate exist, and does the agreement encompass the dispute at issue. Adams v. Conn Appliances Inc., No. CV-17-00362-PHX-DLR, 2017 WL 3315204, at *1 (D. Ariz. Aug. 2, 2017) (citing Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000)). If so, the court must compel arbitration. Id.

arbitrability as to particular grievances, and the party resisting arbitration bears the burden

Wynn Resorts, Ltd. v. Atl.- Pac. Capital, Inc., 497 Fed.Appx. 740, 742 (9th Cir. 2012). However, state law is not entirely displaced from federal arbit

defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening § 2 [of the FAA] Ticknor v. Choice Hotels Int'l, 265 F.3d 931, 936-37 (9th Cir. 2001) (citing Doctor's Assocs., Inc. v. Casarotto, 517 U.S. 681, 686 (1996)).

III. ANALYSIS

Metro Auto Defendants argue that the Arbitration Agreement is a valid agreement within the scope of the FAA agreement;

therefore, they contend that the arbitral forum, and not this Court, is the proper place for See Doc. 20 at 6 8.) Conversely, Plaintiff argues that the Arbitration Agreement is both procedurally and substantively unconscionable and, therefore, unenforceable. (Doc. 25 at 1 2.) Accordingly, the Court will first address the validity of the Arbitration Agreement and then its enforceability.

A. Validity of the Agreement Metro Auto Defendants argue that the Arbitration Agreement is valid, and that its scope. (Doc. 20 at 6 8.) Plaintiff does not challenge the Arbitration A See generally Doc. 25.) The and finds that provide that disputes that

. (Doc. 20-2 at 4.) The employment related claims brought by Plaintiff, (Doc. 16), are clearly within the not contend otherwise. Thus, the Arbitration Agreement is valid and, unless Plaintiff can prove it is

unenforceable, arbitration is required. See 9 U.S.C. § 2.

B. Unconscionability As explained s, such as . . . unconscionability, may be applied to invalidate arbitration agreements without Casarotto, 517 U.S. at 687 (1996); AT&T Mobility, 563

U.S. at 339 (same). Thus, state law here, Arizona enforcement of the contract. Under Arizona law, either substantive or procedural unconscionability may be raised as a defense to enforcement. Rizzio v. Surpass Senior Living LLC, 492 P.3d 1031, 1035 (Ariz. 2021). Here, Plaintiff asserts both. (Doc. 25 at 1 2.) Metro Auto

unconscionability defense. (Doc. 38 at 2.) The Court agrees with Metro Auto Defendants.

1. Procedural Unconscionability Under Arizona law procedural unconscionability hinges on unfair surprise, and f the minds of the contracting party: age, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, and whether alterations in the printed terms were Wernett v. Serv. Phx., LLC, No. CIV 09-168-TUC-CKJ, 2009 WL 1955612, at *3 (D. Ariz. July 6, 2009) (quoting Maxwell v. Fidelity Fin. Servs., 907 P.2d 51, 58 (Ariz. 1995)). The court also considers whether the terms comport with the parties' reasonable expectations. Adams, 2017 WL 3315204, at *3 (citing Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co., 682 P.2d 388, 392 99 (Ariz. 1984)). Terms of a contract might run contrary to s reason to believe that the other party would not have accepted the agreement if he had known the agreement contained the particular Harrington v. Pulte Home Corp., 119 P.3d 1044, 1050 (Ariz. Ct. App. 2005).

H ing power is not sufficient to invalidate an EEOC v. Cheesecake Factory, Inc., No. CV 08-1207-PHX-NVW, 2009 WL 1259359, at *3 (D. Ariz. May 6, 2009). ven where terms are non-negotiable or the weaker party does not understand all of them, an agreement will be enforced so long as it is neither unreasonable nor unduly oppressive. Adams, 2017 WL 3315204, at *3.

Plaintiff provides essentially three arguments as to why the Arbitration Agreement

is procedural unconscionable: (1) it was an adhesion contract, presented upon starting her employment with Metro Auto, which she had no time to read and no choice but to sign; (2) it required that the arbitration be governed by the rules, but Metro Auto did not provide those rules; and (3) it required Plaintiff submit a particular form to commence arbitration, but it did not provide said form. (See Doc. 25 at 2 are unpersuasive.

-1 at 3), is contradicted by the plain language of the document she signed, (see Doc. 20-2 at 11 (certifying that Plaintiff carefully read and understood the Arbitration Agreement before signing it)). Additionally, Arizona law provides ke it or

See Brady v. Universal Tech. Inst. of Arizona, Inc., No. CV-09-1044-PHX-FJM, 2009 WL 5128577, at no allegation

as in Brady, Plaintiff has made no argument of concealment or surprise, and the Arbitration

, 733 F.3d 916, 927 (9th Cir. 2013), is misplaces because that case applied California law iefing highlights, (see Doc. 25 at 4).

ly relies on California law and neglects to cite precedent from this jurisdiction. Under Arizona law, an employer presenting an arbitration agreement without the arbitration rules does not render the agreement procedurally unconscionable. See O'Bannon v. United Servs. Auto. Ass'n, No. CV-15-02231-PHX-SRB, 2016 WL 11746053, at *3 (D. Ariz. June 17, 2016) copy of the AAA rules did not make the arbitration provision in this case procedurally Agreement does not render the agreement procedural unconscionable.

Auto, (Doc. 25 at 6), is belied by that form s inclusion in the Corrected Declaration of Debora Doyle, (see Doc. 38 at 6 (explaining that the omission of the form was a clerical error, which has since been corrected) Agreement clearly delineates what was to be on the form and the process for filing a claim.

A party initiating arbitration must send written notice, via certified mail, to the other party facts upon which -2 at 6.) Even without the specified form, Plaintiff could have initiated the arbitration process.

Therefore, the Court finds that the Arbitration Agreement is not procedurally unconscionable.

2. Substantive Unconscionability Under Arizona law, [s] the contract and . . . Duenas v. Life Care

Ctrs. of Am., Inc., 336 P.3d 763, 769 (Ariz. Ct. App 2014) (quoting Maxwell, 907 P.2d at 58). -sided as to oppress or unfairly surprise an innocent party, whether there is an overall imbalance in the obligations and rights imposed, and whether there is a significant cost- Id.

Plaintiff argues that there are four sections of the Arbitration Agreement which are substantively unconscionable. (Doc. 25 at 7 9.) These four sections essentially boil down to two arguments regarding substantive unconscionability. For the first three sections, Plaintiff alleges lack of mutuality [which] equals substantive unconscionability. (Id. at 7 confidentiality section is substantively unconscionable. (Id. at 8 9.)

Agreement govern Case 2:21-cv-00622-SMB Document 49 Filed 01/06/22 Page 7 of 11 pursues through a government agency, such as the Equal Employment Opportunity

Commissio Metro Auto if she retains legal counsel, without a reciprocal duty for Metro Auto. (Id. at 7

8.) Metro Auto Defendants reply that mutuality of obligation generally does not apply to arbitration agreements that are supported by consideration. (See Doc. 38 at 6 9.) Metro Auto Defendants are correct.

have consistently concluded that arbitration agreements contain adequate consideration,

need not have mutuality or equivalency of obligation, and therefore are enforceable Coup v. Scottsdale Plaza Resort, LLC, 823 F. Supp. 2d 931, 951 (D. Ariz. 2011) (quoting Booker v. Robert Half Intern., Inc., 315 F.Supp.2d 94, 101 (D.D.C. 2004) and collecting cases); see also Equal Emp. Opportunity Comm'n v. Cheesecake Factory, Inc., No. CV08- however, to determine whether the Arbitration Agreement is mutually binding because it

is part of an at- bitration provisions, akin to the those challenged here, against mutuality of obligation challenges. See, e.g., Pinto v. USAA Ins. Agency Inc. of Texas (FN), 275 F. Supp. 3d 1165, 1171 (D. Ariz. 2017) (finding a unliteral modification provision not substantively unconscionable because similar provisions are not substantively unconscionable under Arizona law when, as with the plaintiff's employment here, employment is on an at- (quoting Russ v. United Servs. Auto. Ass'n, No. CV-16-02787-PHX-PGR, 2017 WL 1953458, at *4 (D. Ariz. May 11, 2017)); Brady, 2009 WL 5128577, at *2 (finding no substantive - but exempts from arbitration claims that an employer Plaintiff has

not alleged a lack of consideration and the Court does not find one therefore, the

unenforceable.

argument regarding the confidentiality section of the Arbitration

Agreement is based on unpersuasive analogies to legal precedent. For example, Plaintiff relies on Longnecker v. Am. Exp. Co., 23 F. Supp. 3d 1099, 1110 (D. Ariz. 2014), for the proposition that an agreement requi Longnecker

Court found a confidentiality agreement to be substantively unconscionable. 23 F. Supp. 3d at 1110. However, it the confidentiality provision in the arbitration agreements [kept] only plaintiffs in the dark regarding prior arbitration decisions and only defendants would benefit from [the] provision. Id. That is not the case here. A quick comparison of the two provisions illustrates the point.

The provision in Longnecker provided as follows: [A]ll proceedings under this Policy are private and confidential, unless applicable law provides to the contrary. All parties shall maintain the privacy and confidentiality of the arbitration hearing unless applicable law provides to the contrary. The arbitrator shall have the authority to make appropriate rulings to safeguard that confidentiality. Id. However, the provision here provides as follows:

The arbitration, including the hearing and record of the proceeding, are confidential and shall not be open to the public, except (a) to the extent both parties agree otherwise in writing, (b) as may be appropriate in any subsequent proceedings between the parties, or (c) as may otherwise be appropriate in response to a governmental agency or legal process. (Doc. 20-2 at 9.) On its face the confidentiality provision here does not suffer the same one-sided ailment as the provision in Longnecker. Moreover, even if the Court found that it did, it could apply the same remedy as that used in Longnecker and exercise the er of the agreement. See 23 F. Supp. 3d at 1111 12. Because there is no substantively unconscionable provision here, however, the Court need not do so. Therefore, Plaintiff has failed to demonstrate substantive unconscionability, and the Arbitration Agreement must be enforced.

C. Dismiss Defendant BHA filed a motion to dismiss the case against them, essentially arguing

that Plaintiff has not alleged sufficient facts to establish that BHA was an employer or joint employer of Plaintiff. (See Doc. 32.) Plaintiff counters that she has alleged sufficient facts to demonstrate that the relationship between BHA and Metro Auto was that of joint employers. (Doc. 43 at 13 15.) Whether a relationship existed between Plaintiff, Metro Auto Defendants, and Defendant BHA such that BHA may be held liable to Plaintiff for the alleged wrongs of the Metro Auto Defendants is not a question for this Court. There is a valid, enforceable arbitration agreement, and this issue falls squarely within its scope.

The Arbitration Agreement -2 at 4.) The Company is defined or companies, its subsidiary and affiliated entities, its benefit plans, the benefit pla

sponsors, fiduciaries, administrators, affiliates and agents, and any and all successors and Id.) The Arbitration Agreement further provides that Plaintiff and the Company ual and common law (Id.)

arbitration under the plain language of this agreement. This is true not only for the claims against Metro Auto, but , which includes its agents and affiliates. Plaintiff has alleged that Defendant BHA fits that description. (See Doc. 43 at 12 more as Plaintiff correctly notes federal employment claims require her to an element of the claim, which may include joint employers who exercised control over Plaintiff. See, e.g., EEOC v. Glob. Horizons, Inc., 915 F.3d 631, 637 (9th Cir. 2019) . . . [and] [t]he law recognizes that two

entities may simultaneously share control over the terms and conditions of employment, such that both should be liable for discrimination relating to those terms and conditions. . Thus, to ele : namely, Case 2:21-cv-00622-SMB Document 49 Filed 01/06/22 Page 10 of 11 employer. The Court will not do so and, instead, will refer the matter to arbitration along with the rest of claims.

That Defendant BHA was not a signatory to the Arbitration Agreement does not , as the Ninth Circuit has explained, nonsignatories of arbitration agreements may be bound by the agreement

under ordinary contract and Comer v. Micor, Inc., 436 F.3d 1098, 1101 (9th Cir. 2006) (quoting Letizia v. Prudential Bache Securities, Inc., 802 F.2d 1185, 1187 88 (9th Cir.1986)). Moreover, strong public policy, both federal and state, favoring arbitration, Harrington, 119 P.3d at 1051, as well as with Arizona condemnation of dual tracks of dispute resolution, see e.g., Meineke v. Twin City Fire Ins.

Co., 892 P.2d 1365, 1371 (Ariz. App. 1994) To allow parties to proceed on the dual pathways of arbitration . . . and litigation nullifies the time and expense-saving benefits of arbitration. Allowing parallel tracks also wastes over-burdened judicial resources.

arbitration. IV. CONCLUSION

Accordingly, because there exists a valid, binding Arbitration Agreement with no defenses to its enforcement,

IT IS ORDERED granting Metro Auto (Doc. 20).

IT IS FURTHER ORDERED referring De arbitration, (Doc. 32).

IT IS FURTHER ORDERED dismissing this case. IT IS FURTHER ORDERED instructing the Clerk to terminate this case. Dated this 6th day of January, 2022.