NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5312-10T3

JAMES WAGNER,

Plaintiff-Respondent,

v.

OPEN ROAD AUTO GROUP,
OPEN ROAD MAZDA OF MORRISTOWN,
ORM MOTOR CO., LLC,

Defendants-Appellants.

Argued December 6, 2011 – Decided January 10, 2012

Before Judges Yannotti and Espinosa.

On appeal from Superior Court of New Jersey, Law Division, Union County, Docket No. L-606-11.

Glenn A. Montgomery argued the cause for appellants (Montgomery, Chapin & Fetten, P.C., attorneys; Robert C. Chapin, on the brief).

Paul A. O'Connor, III, argued the cause for respondent (O'Connor, Parsons & Lane, L.L.C., attorneys; Gregory B. Noble, on the brief).

PER CURIAM

Defendants Open Road Auto Group, Open Road Mazda of Morristown, and ORM Motor Co., LLC, appeal from an order entered

by the Law Division on June 1, 2011, denying their motion to stay the litigation in this matter and compel arbitration. We reverse.

Plaintiff James Wagner was employed as a service manager for Open Road Mazda. He began his employment in February 2009. On March 10, 2009, plaintiff signed a one-page arbitration agreement, which stated that the "[e]mployer and [e]mployee have determined that they would prefer to arbitrate any dispute arising between them, instead of going to court before a judge or jury." The agreement stated that the parties agreed to submit any dispute between them to binding agreement, and "to waive any right to present any dispute between them to a court, to a judge, or to a jury."

The arbitration agreement additionally stated that the term "dispute" means:

> any claim, dispute, difference, or controversy, whether or not related to or arising ou[t] of the employment relationship, and including any claim, dispute, difference, or controversy (i) arising under federal, state or local statu[t]e or ordinance (including claims of discrimination and harassment); (ii) based on any common-law rule of practice, including breach of contract or fraud; (iii) involving the validity or interpretation of this [a]greement; or (iv) any other claim, dispute, difference, or controversy whatsoever.

The agreement further provided that the arbitrator's award would be final and binding. It also stated in bold face capital letters that the parties have read and understand the agreement constitutes a waiver of any right to a trial before a judge and jury.

On February 9, 2011, plaintiff filed a complaint in the Law Division, in which he alleged that the company's finance manager had sexually harassed female employees and engaged in sexually inappropriate conduct with a customer. He alleged that he brought the finance manager's conduct to the attention of David Branch, the division vice-president, and Branch failed to take any action to remedy the situation. Plaintiff was terminated on August 20, 2010. He alleged that he was fired because of his "repeated attempts to expose and remedy the sexual harassment taking place" in the workplace.

Plaintiff claimed that the termination of his employment constituted unlawful retaliation in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49 (LAD). He also claimed that his termination violated the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 to -14 (CEPA). He sought compensatory, consequential and punitive damages, attorney's fees, costs of suit, interest and any other relief the court deemed just and equitable.

On April 22, 2011, defendants filed a motion to stay the litigation and compel arbitration. Defendants argued that plaintiff's LAD and CEPA claims were clearly encompassed by the arbitration agreement and, therefore, plaintiff should be compelled to submit his claims to binding arbitration. Plaintiff opposed the motion. He argued that the arbitration agreement did not apply to the claims asserted in this case because the agreement did not specifically mention claims arising out of a termination of employment or claims of retaliation.

The trial court filed a written opinion dated June 1, 2011, in which it concluded that plaintiff was not required to arbitrate his claims. The court noted that the arbitration agreement was broad and required binding arbitration of any dispute, which the agreement defined to include any claim "whether or not related to or arising ou[t] of the employment relationship[.]" The court determined, however, that because the agreement did not explicitly state that it applied to "termination or retaliation," it did not apply to the claims asserted here. The court entered an order dated June 1, 2011, denying defendants' motion.

On appeal, defendants argue that the trial court erred by refusing to stay the litigation and compel arbitration because the agreement between the parties is sufficiently broad to

encompass the claims asserted by plaintiff based on wrongful termination or retaliation. We agree.

We note initially that it is undisputed that the trial court's order of June 1, 2011 is a final order that may be appealed as of right pursuant to Rule 2:2-3(a). In GMAC v. Pittella v. Pine Belt Enterprises, Inc., 205 N.J. 572 (2011), the Court held that the court rules should be amended to permit appeals as of right from "all orders permitting or denying arbitration." Id. at 586. We therefore turn to the merits of the appeal.

New Jersey has a strong public policy favoring arbitration as a means of resolving disputes. Garfinkel v. Morristown Obstetrics & Gynecology Assocs. P.A., 168 N.J. 124, 131 (2001). Parties to an agreement may waive statutory remedies in favor of arbitration. Ibid. "'[A]greement[s] to arbitrate should be read liberally in favor of arbitration.'" Id. at 132 (quoting Marchak v. Claridge Commons, Inc., 134 N.J. 275, 282 (1993).

However, the "favored status" of arbitration "is not without limits." Ibid. An agreement to waive access to the courts "'should clearly state its purpose.'" Ibid. (quoting Marchak, supra, 134 N.J. at 282). Furthermore, the waiver of statutory rights "'must be clearly and unmistakably established, and contractual language alleged to constitute a waiver [of such

rights] will not be read expansively." Ibid. (quoting Red Bank Reg'l Educ. Ass'n v. Red Bank Reg'l High Sch. Bd. of Educ., 78 N.J. 122, 140 (1978)).

In Garfinkel, the agreement stated that, except as otherwise provided (regarding post-termination employment restrictions and pension benefits), "any controversy or claim arising out of, or relating to, this [a]gremeent or the breach thereof, shall be settled by arbitration . . . ." Id. at 128. The Court held that this language was insufficient to compel the plaintiff to arbitrate his claims under the LAD for wrongful termination. Id. at 134-35.

The Court noted that the arbitration clause "suggest[ed] that the parties intended to arbitrate only those disputes involving a contract term, a condition of employment, or some other element of the contract itself." Id. at 134. The Court also noted that the arbitration clause "was silent in respect of plaintiff's statutory remedies." Id. at 135.

The Court said that it would not assume that employees intended to waive rights under the LAD unless the agreement "so provide[s] in unambiguous terms." Ibid. The Court added that it was not suggesting:

> 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. It should also reflect the employee's general understanding of the type of claims included in the waiver, e.g., workplace discrimination claims.
>
> [Ibid.]

In Quigley v. KPMG Peat Marwick, LLP, 330 N.J. Super. 252 (App. Div.), certif. denied, 165 N.J. 527 (2000), the arbitration clause stated that "[a]ny claim or controversy between the parties arising out of or relating to this [employment] [a]greement or the breach thereof, or in any way related to the terms and conditions of the employment of [employee] by [employer], shall be settled by arbitration[.]" Id. at 257. The employee filed a lawsuit, claiming that his termination violated the LAD, and the trial court ordered the employee to submit his claims to arbitration. Id. at 256-57. The employee appealed claiming that the arbitration clause only applied to disputes within the employment relationship and did not extend to termination, the violation of statutory rights or employment discrimination. Id. at 256-57, 267, 270.

We agreed with the employee and refused to compel arbitration relying on "the well-settled principle that '[a] cause depriving a citizen of access to the courts should clearly

state its purpose.'" Id. at 273 (quoting Marchak, supra, 134 N.J. at 282). We stated that

> [p]laintiff did not agree to arbitrate "any dispute" between plaintiff and defendant arising out of "termination" of employment. The [agreement] refers to claims or controversies arising out of the agreement, . . . or concerning the terms and conditions of employment, suggesting that a question concerning the meaning of the agreement language, or a dispute concerning the enforcement of a term or condition of employment was of the type of claim subject to arbitration. If defendant wanted to enter into an agreement to bind plaintiff to arbitration under all circumstances, it should have written an inclusive [agreement]. In the circumstances, the [agreement] should be construed against the interest of [the employer].
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> [Id. at 273 (internal citation omitted).]

We are convinced that the arbitration agreement between the parties in this matter requires plaintiff to submit his claims to binding arbitration. The agreement clearly and unequivocally applies to statutory claims, including claims for discrimination and harassment. It also makes clear that both parties are waiving their rights to take their disputes to court and have them resolved by a judge or jury.

Moreover, unlike the agreement at issue in Quigley, the agreement at issue here is not limited to disputes arising out of the employment agreement or the terms and conditions of employment. It states that binding arbitration is required for

"any claim, dispute, difference or controversy, whether or not related to or arising ou[t] of the employment relationship[.]" (Emphasis added). Thus, the arbitration agreement at issue here clearly and unambiguously applies to claims for wrongful termination of the sort asserted by plaintiff.

Reversed.