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

JOSEPH GRIFFIN,

Plaintiff-Appellant,

v.

BURLINGTON VOLKSWAGEN, INC.
and AUGUSTINE STAINO,

Defendants-Respondents.

September 18, 2014

Argued October 17, 2013 – Decided

Before Judges Fuentes, Simonelli and Fasciale.

« Citation
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On appeal from Superior Court of New Jersey, Law
Division, Burlington County, Docket No. L-2756-08.

J. Craig Currie argued the cause for appellant (J. Craig

Currie & Associates, P.C., attorneys; Mr. Currie, of counsel and on the brief).

Jeffrey S. Craig argued the cause for respondents (Craig, Annin & Baxter, LLP, attorneys; Mr. Craig, on the brief).

The opinion of the court was delivered by

FUENTES, P.J.A.D.

We are asked to decide in this appeal whether the trial court correctly upheld an arbitrator's determination dismissing plaintiff Joseph Griffin's cause of action based on certain tort claims, malicious prosecution and abuse of process. We conclude the trial court correctly rejected plaintiff's application to vacate the arbitrator's decision under the standards established by the Legislature in N.J.S.A. 2A:23B-23a(1) as to plaintiff's claims governed by a two-year statute of limitations, and mistakenly failed to vacate the part of the award that dismissed claims governed by a six-year statute of limitations. We thus affirm in part, reverse in part, and remand.

This case arises from the purchase of a car by plaintiff from defendant Burlington Volkswagen, Inc. This is the second time plaintiff has appealed a decision of the trial court. In Griffin v. Burlington Volkswagen, Inc., 411 N.J. Super. 515 (App. Div. 2010), we upheld the trial court's decision to enforce the arbitration provision in the purchase contract requiring plaintiff to submit his claims against defendants to arbitration. Writing for the panel in Griffin, Judge Skillman gave the following description of the salient facts underlying plaintiff's claims against defendants:

In August 2006, plaintiff Joseph Griffin purchased a car from defendant Burlington Volkswagen. This purchase required Griffin to obtain financing. According to Griffin, he was assured at the time of the sale by defendant Augustine Staino, an employee of Burlington Volkswagen, that he had already been approved for such financing. After paying a \$1,000 deposit and signing a retail order form, Griffin obtained possession of the car and thereafter received what he described as a "certificate of ownership." Griffin subsequently drove the car to Texas where he was enrolled in college.

Approximately a month after entering into this transaction, Griffin was informed by Burlington Volkswagen that the third-party lender it had expected to provide financing for Griffin's purchase of the car had changed its mind and was unwilling to provide financing. Moreover, Burlington Volkswagen declined to finance the purchase itself and instead undertook efforts to repossess the car from Griffin. According to Griffin, these efforts consisted of harassing telephone calls to Griffin and his employer at Griffin's place of employment and to Griffin and his girlfriend at their residence.

According to Griffin, Burlington Volkswagen also reported to the Burlington Police Department that Griffin had stolen the car by forcibly removing it from their premises. As a result of this report, a warrant was issued for Griffin's arrest. Based on this warrant, Griffin was arrested while driving the car in Mississippi and incarcerated overnight. Griffin had to retain local counsel, post a bond, and remain in Mississippi until he provided an explanation for his possession of the car sufficient for Mississippi law enforcement authorities to allow his release. Griffin also alleges that the Mississippi police seized the car and that he has not seen the car since.

Thereafter, Griffin had to return to New Jersey to respond to the criminal charges brought against him as a result of Burlington Volkswagen's report of his theft of the car. On May 7, 2007, those charges were dismissed.

Griffin subsequently brought this damages action against Burlington Volkswagen and Staino in the Law Division, asserting common law claims for false arrest, false imprisonment, malicious prosecution, abuse of process, invasion of privacy, and intentional infliction of emotional distress and a statutory claim under the New Jersey Civil Rights Act of 2004, N.J.S.A. 10:6-1 to -2.

[Id. at 516-17 (emphasis added).]

With the exception of malicious prosecution and abuse of process, which have a six-year statute of limitations under N.J.S.A. 2A:14-1, all other claims sounding in tort and statutory Civil Rights violations are subject to a two-year statute of limitations

under N.J.S.A. 2A:14-2. Plaintiff did not oppose before the arbitrator defendants' motion to dismiss as untimely the statutory Civil Rights claims and the claims for emotional distress. According to the arbitrator, there were four grounds left: (1) common law false arrest or false imprisonment; (2) malicious prosecution; (3) abuse of process; and (4) invasion of privacy.

Defendants argued to the arbitrator that the "key dates" that start to run on all of the tort claims was either May 7, or May 8, 2007, when "the [criminal] charges were voluntarily dismissed." The following procedural history governs the timeliness of plaintiff's claims:

May 7, 2007 Criminal charges dismissed – Statutes of limitations begin to run.

May 8, 2008 The one-year statute of limitations for defamation actions including Invasion of Privacy/False Lights expires.

September 9, 2008 Complaint filed in the Law Division in Burlington County – Statute tolls at 1 year, 2 months and 2 days.

December 19, 2008 Order entered by the Law Division dismissing plaintiff's complaint with prejudice and referring the dispute to arbitration.

February 8, 2009 Appeal filed – Statute tolls again at 1 year, 2 months and 21 days.

February 8, 2010 Release of this court's decision affirming the Law Division, leaving 10 months, 9 days in limitations period.

August 18, 2010 The two year Statute of limitations expires.

December 28, 2011 Arbitration Demand filed with AAA.

Defendants correctly argue that plaintiff's claims for false arrest and invasion of privacy were barred under the two-year limitations period on August 18, 2010, because plaintiff did not take any action to seek arbitration until December 28, 2011. In response, plaintiff characterizes his cause of action as asserting breach of contract claims. This characterization is not legally correct. The arbitration provision in the purchase contract is merely a forum selection clause. It does not change the legal bases of the claims submitted to arbitration.

The Legislature has established the following legal grounds for vacating an arbitrator's decision:

[T]he court shall vacate an award made in the arbitration proceeding if:

(1) the award was procured by corruption, fraud, or other undue means;

(2) the court finds evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this act, so as to substantially prejudice the rights of a party to the arbitration proceeding;

(4) an arbitrator exceeded the arbitrator's powers;

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in

section 9 of this act so as to substantially prejudice the rights of a party to the arbitration proceeding.

[N.J.S.A. 2A:23B-23.]

We apply a de novo standard of review in determining whether the Law Division correctly denied plaintiff's motion to vacate the arbitration award. Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013). We discern no legal basis under N.J.S.A. 2A:23B-23 to disagree with the trial court's ruling upholding the arbitrator's dismissal of plaintiff's cause of action. The claims based on invasion of privacy and false arrest are barred because they are subject to a two-year statute of limitations. N.J.S.A. 2A:14-2.

We acknowledge that the arbitrator applied an incorrect statute of limitations period to dismiss plaintiff's claims under malicious prosecution and abuse of process. A cause of action grounded on these theories of liability are governed by a six-year statute of limitations. Earl v. Winne, 14 N.J. 119 (1953); Cabakov v. Thatcher, 27 N.J. Super. 404 (App. Div. 1953). Ordinarily, mere legal error does not constitute "undue means" under N.J.S.A. 2A:23B-23a(1). Here, the arbitrator applied a two-year statute of limitations to dismiss all of plaintiff's claims, including those that have a six-year statute of limitations period.

To constitute a valid ground for vacating an arbitration award under "undue means" in N.J.S.A. 2A:23B-23(a)(1), the error must be "so gross as to suggest fraud or misconduct." Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 357 (1994) (internal citation omitted). The Supreme Court has also vacated arbitration awards that violate "a clear mandate of public policy." Weiss v. Carpenter, 143 N.J. 420, 443 (1996). To warrant judicial intervention in this context, the violation of public policy has to be clearly discernable and beyond reasonable debate. Ibid. Here, the applicability of the six-year statute of limitations to plaintiff's claims based on malicious prosecution and abuse of process is not reasonably debatable. It is equally beyond dispute that in adopting a statute of limitations, the Legislature was expressing and codifying the public policy of this State.

Under these circumstances, the part of the arbitrator's decision that dismissed plaintiff's malicious prosecution and abuse of process claims as barred by a two-year

statute of limitations must be vacated under N.J.S.A. 2A:23B-23a(1). This part of the award was procured by undue means under N.J.S.A. 2A:23B-23a(1), because it violates this State's public policy of permitting litigants six years to commence legal action to recover damages based on these claims.

We affirm the part of the Law Division's order that confirmed the arbitrator's award dismissing plaintiff's claims based on common law false arrest or false imprisonment and invasion of privacy, reverse the part of the order pertaining to plaintiff's claims based on malicious prosecution and abuse of process, vacate the part of the arbitrator's award dismissing these claims, and remand the matter for arbitration.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

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