(NOTE: The status of this decision is **Unpublished**.)

NOT FOR PUBLICATION WITHOUT THE

APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-4269-12T4

SARAH JIANG, an individual,

Plaintiff-Appellant,

v.

BUILDING MATERIALS CORPORATION OF AMERICA, D/B/A GAF MATERIALS CORPORATION, and JOBY JOHN, an individual,

Defendants-Respondents.

October 28, 2014

Submitted August 27, 2014 – Decided

Before Judges Ostrer and Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-2420-12.

Timothy J. McIlwain, attorney for appellant.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., attorneys for respondents (Peter O. Hughes and Shira L. Krieger, on the brief).

PER CURIAM

Plaintiff, Sarah Jiang, appeals from the Law Division's February 8, 2013 order dismissing her complaint alleging unlawful workplace gender and national origin discrimination against her former employer, defendant, Building Materials Corporation of America d/b/a GAF Materials Corporation (GAF) and her former supervisor, Joby John (John). The order also compelled plaintiff to submit her claims to arbitration. In granting the motion, the Law Division judge relied upon the contents of an agreement that plaintiff signed at the commencement of her employment in which she agreed to submit any employment disputes to binding arbitration. She also appeals from the court's April 19, 2013 order denying reconsideration of the earlier order.

On appeal, plaintiff argues that "[t]he trial court erred by not determining and/or failing to give [plaintiff] every favorable inference regarding whether the arbitration agreement should be held enforceable as it is a contract of adhesion and is both procedurally and substantively unconscionable." Defendants respond by arguing that plaintiff's appeal is procedurally barred based on the untimeliness of plaintiff's filing of both her motion for reconsideration and this appeal and on plaintiff's failure to file any opposition in the trial court to defendants' motion to dismiss. Defendants also argue that plaintiff's appendix is materially deficient. Substantively, they argue that the trial court's decision was proper in all respects.

We have carefully considered these arguments in light of the record and applicable law. We affirm.

I.

We discern the following facts from our review of the limited record. GAF employed plaintiff from May 2009 to June 2010 as a purchasing manager in its procurement department.[1] When GAF hired her, plaintiff signed an "Agreement to Arbitrate Employment Disputes" (Arbitration Agreement). The agreement expressly addressed any claims relating to her employment and required that they be resolved through arbitration. It stated:

> Claims Covered by this Agreement
>
> The Company and I mutually agree to the resolution, by final and binding arbitration, of all claims relating to my employment by the Company that the Company may have against me, or that I may have against the Company and/or its shareholders, officers, directors, employees or agents, following the termination of my employment. Such claims include, without limitation, claims for wages or

salary, severance or other compensation; claims for breach of any contract or covenant (express or implied); claims for violation of any whistle-blower protections, claims under New Jersey's Conscientious Employee Protection Act ("CEPA"); tort claims; claims for any type of discrimination (race, gender, sexual harassment, sexual orientation, religion, national origin, age, marital status, or medical condition, handicap or disability); claims for benefits (except where any employee benefit or pension plan specifies a different procedure for resolving claims); and claims for violation of any federal statute (Age Discrimination in Employment Act, the Americans with Disabilities Act, Civil Rights Act of 1964, Civil Rights Act of 1991, Employee Retirement Income Security Act, the 1974 Family Medical Leave Act of 1993, Older Workers' Benefit Protection Act, Pregnancy Discrimination Act of 1978), state or other governmental law, statute, regulation, or ordinance (collectively referred to as "Claims") . . . .

. . . .

Knowledge and Voluntary Waiver of Rights

BY SIGNING THIS AGREEMENT, I UNDERSTAND THAT CERTAIN EVENTS MAY LEAD TO MY LEAVING THE COMPANY AND THAT I AM WAIVING MY RIGHTS TO THEREAFTER COMMENCE A LAWSUIT IN ANY COURT REGARDING ANY CLAIMS WHICH I MAY HAVE AGAINST THE

COMPANY AND/OR ITS SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS RELATING TO MY EMPLOYMENT BY THE COMPANY. I HAVE THE RIGHT TO CONSULT AN ATTORNEY BEFORE SIGNING THIS AGREEMENT. ANY QUESTIONS REGARDING THIS AGREEMENT SHOULD BE DIRECTED TO THE COMPANY'S HUMAN RESOURCES DEPARTMENT.[2]

Beginning in September 2009, plaintiff came under the supervision of John who became GAF's director of "sourcing."[3] According to plaintiff, rather than direct plaintiff to pursue and develop relationships with suppliers that could reduce GAF's costs, John insisted that she and other members of her department develop relationships with suppliers selected by John regardless of the cost or negative economic impact on GAF.

Apparently, as alleged by plaintiff, John sought to ensure his suppliers were used by "cursing and/or yelling" at the un-favored, existing suppliers, the result of which was that they would no longer be willing to do business with GAF. During the course of his rants, John would often use foul language in plaintiff's presence. He would also instruct plaintiff and the other employees to "act in a certain way." If she did not or if she did not obtain the results he wanted, John would "reprimand plaintiff both privately and publicly."

Prior to John's involvement in the department, plaintiff had developed a relationship with a supplier over the course of six months. Plaintiff believed that her efforts were going to result in GAF saving over one million dollars. She lost that relationship as a result of John's actions.

In addition to interfering with plaintiff's relationship with suppliers, John also ordered her to discipline other employees. Plaintiff alleged that "he repeatedly bullied her into reprimanding coworkers on his behalf." Plaintiff complained to senior management about John's conduct. Her

complaints were never addressed. She also complained about John in a confidential employee survey circulated by GAF. According to plaintiff, after she completed the survey, she became the subject of GAF's "retaliatory conduct," which ultimately led to her termination on June 9, 2010.

Almost two years after her termination, plaintiff filed a complaint against GAF and John. In her complaint she alleged violations of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1 to -42 (LAD), and a violation of New Jersey's Wage and Hour Law, N.J.S.A. 34:11-56a to -56a38. In response to her complaint, defendants filed a motion to dismiss plaintiff's complaint pursuant to Rule 4:6-2 and to compel arbitration pursuant to the Arbitration Agreement. Defendants filed a supporting certification from GAF's Human Resources Manager. According to that individual, plaintiff signed the Arbitration Agreement when she was hired and GAF "separated Plaintiff from employment due to unsatisfactory work performance." Plaintiff did not file any opposition and, on February 8, 2013, the Law Division granted the motion. On February 12, 2013, defendants' counsel mailed a copy of the court's order to plaintiff's counsel, who later certified he did not receive that copy until February 18, 2013.

Plaintiff subsequently filed a motion for reconsideration on March 8, 2013. In support of that motion, plaintiff filed her attorney's certification in which he argued that by signing the Arbitration Agreement, plaintiff did not specifically waive her right to file suit in court under LAD. Defendants opposed the motion by pointing out that plaintiff did not file any opposition to the original motion to dismiss even though defendants consented, on at least two occasions, to allow plaintiff's counsel additional time to file a response to the motion. Plaintiff's counsel responded to defendant's opposition with a letter brief in which he argued that plaintiff could not be compelled to participate in binding arbitration because the Arbitration Agreement was a contract of adhesion and it did not specifically refer to LAD claims. Notably, plaintiff never filed any certification of her own in support of her motion for reconsideration.

After considering the parties' submissions, the court denied plaintiff's motion for reconsideration on April 19, 2013 without oral argument. On May 14, 2013, plaintiff filed her notice of appeal. On May 31, 2013, the trial court judge, Anthony J. Graziano placed his reasons for entry of both orders on the record:

> [T]he order on the motion to dismiss the complaint was filed on February 8, 2013. The motion to dismiss was unopposed. The employment contract was attached [and] indicate[d] clearly the employee and the company mutually agreed to file [for] binding arbitration on a number of potential issues between them.
>
> The paragraph goes on to cite many different types of disputes, including federal statutes against discrimination and many other ones that are listed therein. For those reasons and for the lack of opposition, that motion was granted on February the 8th.
>
> The motion to reconsider was denied on April 19th of 2013. The only argument urged in support of the motion to reconsider was an argument by the moving party that the employment contract does not specifically state that the employee gave up her rights under the New Jersey [LAD].
>
> However, no authority is cited in support of the proposition that it must so specifically state. On the contrary, the opposition to the motion to reconsider indicated authority in New Jersey case law to the affect that the arbitration

> provision is sufficient. It states a number of different types of employer/employee disputes even without stating any particular statute, such as the New Jersey [LAD].
>
> So for these reasons the motion to reconsider [was] denied on April 19th.

II.

A.

We agree with the judge's reasoning and do not find any merit to plaintiff's challenges to his decision. However, before we reach the substance of plaintiff's arguments on appeal, we first address defendants' procedural challenges.

Defendants argue that plaintiff's appeal is procedurally barred because the filing of plaintiff's motion for reconsideration was untimely and therefore did not toll the forty-five day period for plaintiff to file an appeal from the court's February 8, 2013 order. R. 2:4-1. According to defendants, their counsel served a copy of that order by sending it via regular mail to plaintiff's attorney on February 12, 2013. As a result, service was made effective as of that day. R. 1:5-1(a) and -4(b).[4] Plaintiff, then had until March 29, 2013 to file an appeal, unless the time period was tolled by the timely service of a motion for reconsideration. R. 2:4-3(e); R. 4:49-2.

A timely motion for reconsideration must be served within twenty days after service of the court's judgment or order upon all parties. R. 4:49-2. If the motion is served by ordinary mail, it is the movant's obligation to "effect an earlier mailing" so that service is made within

twenty days, including the three days allowed for mailing. Pressler & Vernierio, Current N.J. Court Rules, comment on R. 1:6-3 (2014).

In this case, therefore, plaintiff had to serve her motion for reconsideration within twenty days of February 12, 2013, which was Thursday, March 4, 2013. The record demonstrates that the motion was not filed with the court until March 8, 2013 and defendants did not receive plaintiff's motion until Monday, March 11, 2013. Technically, therefore, it was untimely and did not toll the period for filing an appeal. Eastampton Center L.L.C. v. Planning Bod. of Eastampton, 354 N.J. Super. 171, 187 (App. Div. 2002). As a result, plaintiff's appeal was untimely. R. 2:4-1(a). However, even if we were to ignore this technical breach of our rules by considering plaintiff's arguments on appeal, we find them to be without any merit.

B.

The Law Division granted defendants motion under Rule 4:6-2(e), alleging that plaintiff failed to state a claim upon which relief could be granted. At the outset, the standard of our review for dismissal of a complaint under that rule, is whether the pleadings even "suggest[]" a basis for the requested relief. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). As a reviewing court, we assess only the legal sufficiency of the claim. Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div.), certif. denied, 185 N.J. 297 (2005). Consequently, "[a]t this preliminary stage of the litigation [we are] not concerned with the ability of plaintiffs to prove the allegation contained in the complaint." Printing Mart, supra, 116 N.J. at 746. Rather, we accept the factual allegations as true, Sickles, supra, 379 N.J. Super. at 106, and "'search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim[.]'" Printing Mart, supra, 116 N.J. at 746 (internal quotations and citation omitted). "However, we have also cautioned that legal sufficiency requires allegation of all the facts that the cause of action requires." Cornett v. Johnson & Johnson, 414 N.J. Super. 365, 385 (App. Div. 2010), aff'd and modified, 211 N.J. 362

(2012). In the absence of such allegations, the claim must be dismissed. Ibid. (citing Sickles, supra, 379 N.J. Super. at 106).

C.

Plaintiff argues that the court should not have granted the motion and enforced the Arbitration Agreement because it was a contract of adhesion and was therefore unconscionable. Plaintiff, however, only raised these arguments on reconsideration before the trial court and then, as to the contract being one of adhesion, in her reply letter brief in response to defendants' arguments. The fact that she attempted to address those issues indirectly in her motion for reconsideration is contrary to our rules requiring that only issues properly raised but overlooked during the original motion can be considered on reconsideration. R. 4:49-2. Contrary to Rule 4:49-2's express requirements, plaintiff's notice of motion for reconsideration did not identify "the matters or controlling decisions which counsel believes the court overlooked or as to which it has erred," and the motion was not supported by a certification from plaintiff attesting to any facts in support of either argument.

Despite these infirmities, we have considered plaintiff's substantive arguments and find them to be without any factual or legal support.

D.

In support of her unconscionability argument, plaintiff argues that the Arbitration Agreement is a contract of adhesion and plaintiff did not agree to specifically waive her right to sue under the LAD. A contract of adhesion does not mean the agreement is unconscionable and automatically unenforceable. "The determination that a contract is one of adhesion . . . 'is the beginning, not the end, of the inquiry' into whether a contract, or any specific term therein, should be deemed unenforceable based on policy considerations." Muhammad v. County Bank of Rehobeth Beach, 189 N.J. 1, 15 (quoting Rudbart v. Water Supply Com'm., 127 N.J. 344, 354, cert. denied, 506 U.S. 871, 113 S. Ct. 203, 121 L. Ed 2d 145 (1992)), cert. denied, 549 U.S. 1338, 127 S. Ct. 2032, 167 L. Ed.2d 763 (2007).

A contract of adhesion is "'[a] contract where one party . . . must accept or reject the contract . . . .'" Rudbart, supra, 127 N.J. at 353 (quoting Vasquez v. Glassboro Serv. Ass'n., 83 N.J. 86, 104 (1980)). Its "essential nature . . . is that it is presented on a take-it-or-leave-it basis, commonly in a standardized printed form, without opportunity for the adhering party to negotiate except perhaps a few particulars." Ibid. (internal quotation marks and citations omitted). It may be "unenforceable if its terms are manifestly unfair or oppressive and are dictated by a dominant party." Howard v. Diolosa, 241 N.J. Super. 222, 230 (App. Div.) (citing Kuzmiac v. Brookchester, 33 N.J. Super. 575 (App. Div. 1955)), certif. denied, 122 N.J. 414 (1990).

Contracts of adhesion "invariably evidence some characteristics of procedural unconscionability," and therefore "require[] a careful fact-sensitive examination into substantive unconscionability." Muhammad, supra, 189 N.J. at 16. "Gross disparity in the relative bargaining positions of the parties [can be] self-evident from the nature of the . . . contract[,]" and we can conclude that an agreement is "clearly a contract of adhesion." Id. at 18.

Where the disparity is not self-evident, determining unconscionability requires consideration of two factors: procedural unconscionability and substantive unconscionability.

The former arises out of defects in the process by which the contract was formed, and "'can include a variety of inadequacies, such as age, literacy, lack of sophistication, hidden or unduly complex contract terms, bargaining tactics, and the particular setting existing during the contract formation process.'" Id. at 15 (quoting Sitogum Holdings, Inc. v. Ropes, 352 N.J. Super. 555, 564-66 (Ch. Div. 2002)). The latter "generally involves harsh or unfair one-sided terms." Ibid. Stated differently, substantive unconscionability "simply suggests the exchange of obligations so one-sided as to shock the court's conscience." Sitogum Holdings, supra, 352 N.J. Super. at 565 (citations omitted).

Generally, a "sliding scale" analysis is utilized in tandem, considering the respective degrees of procedural and substantive unconscionability found to exist. Muhammad, supra, 189 N.J. at 16 n.3 (citing Sitogum Holdings, supra, 352 N.J. Super. at 565-66). Under this approach, overall unconscionability may be found if there is a gross level in one category but only a lesser level in the other. Sitogum Holdings, supra, 352 N.J. Super. at 565-66.

An individual who signs an agreement is assumed to have read it and understood its legal effect. Rudbart, supra, 127 N.J. at 352-53 (citing Fivey v. Penn R.R., 67 N.J.L. 627, 632 (E. & A. 1902)). He is also charged with knowledge of the law and with knowledge of contracts into which he has entered. As a result, he must prove that even a contract of adhesion is unenforceable. A party raising a claim of unconscionability has the burden of proving "some over-reaching or imposition resulting from a bargaining disparity between the parties, or such patent unfairness in the terms of the contract that no reasonable [person] not acting under compulsion or out of necessity would accept them." Rotwein v. Gen. Accident Grp., 103 N.J. Super. 406, 418 (Law Div. 1968). In determining whether a party has met that burden a court must consider "'[(1)] the subject matter of the contract, [(2)] the parties' relative bargaining positions, [(3)] the degree of economic compulsion motivating the 'adhering' party, and [(4)] the

public interests affected by the contract.'" Muhammad, supra, 189 N.J. at 15-16 (alterations in original) (quoting Rudbart, supra, 127 N.J. at 356).

In attempting to establish unconscionability of an arbitration provision in an employment agreement, a plaintiff cannot rely solely on the fact that the agreement, to some degree is a contract of adhesion. In the context of arbitration provisions in employment contracts, the United States Supreme Court has held that "[m]ere inequality in bargaining power . . . is not a sufficient reason to hold that [such] agreements are never enforceable . . . ." Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 33, 111 S. Ct. 1647, 1655, 114 L. Ed.2d 26, 41 (1991). Referring to Gilmer, we have held that "the Supreme Court obviously contemplated avoidance of the arbitration clause only upon circumstances substantially more egregious than the ordinary economic pressure faced by every employee who needs the job." Young v. Prudential Ins. Co. of Am., Inc., 297 N.J. Super. 605, 621 (App. Div.), certif. denied, 149 N.J. 408 (1997). "Virtually every court that has considered the adhesive effect of arbitration provisions in employment applications or employment agreements has upheld the arbitration provision contained therein despite potentially unequal bargaining power between employer and employee." Martindale v. Sandvik, Inc., 173 N.J. 76 at 90-91 (2002) (internal citations omitted).

There is no public policy reason to not enforce properly drafted arbitration agreements in employment contracts. See Garfinkle v. Morristown Obstetrics & Gynecology Assoc's., P.A., 168 N.J. 124, 135 (2001). Parties may agree in a contract to "waive statutory remedies in favor of arbitration." Leodori v. Cigna Corp., 175 N.J. 293, 300 (internal quotation marks omitted), cert. denied, 540 U.S. 938, 124 S. Ct. 74, 157 L. Ed.2d 250 (2003).

Indisputably, arbitration is "favored . . . as a means of resolving disputes." Martindale, supra, 173 N.J. at 84. But "'arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" Angrisani v. Fin. Tech. Ventures, L.P., 402 N.J. Super. 138, 148 (App. Div. 2008) (quoting, AT&T Techs., Inc. v.

Commc'ns Workers of Am., 475 U.S. 643, 648, 106 S. Ct. 1415, 1418, 89 L. Ed.2d 648, 655 (1986)). "'Subsumed in this principle is the proposition that only those issues may be arbitrated which the parties have agreed shall be.'" Garfinkel, supra, 168 N.J. at 132 (quoting In re Arbitration Between Grover & Universal Underwriters Ins. Co., 80 N.J. 221, 228-29 (1979)).

As we have observed:

> [A]n agreement to arbitrate must be the product of mutual assent, as determined under customary principles of contract law. There must be, as our cases instruct, a meeting of the minds. Consequently, the clarity and internal consistency of a contract's arbitration provisions are important factors in determining whether a party reasonably understood those provisions and agreed to be bound by them.
>
> By its very nature, an agreement to arbitrate involves a waiver of a party's right to have her claims and defenses litigated in court. Generally, we determine a written agreement's validity by considering the intentions of the parties as reflected in the four corners of the written instrument. Thus, such a waiver contained in a written provision must reflect that [a party] has agreed clearly and unambiguously to arbitrate the disputed claim.
>
> Moreover, because arbitration provisions are often embedded in contracts of adhesion, courts take particular care in assuring the knowing assent of both parties to arbitrate, and a clear mutual understanding of the ramifications of that assent. This requirement of a

> consensual understanding about the rights of access to the courts that are waived in the agreement has led our courts to hold that clarity is required.
>
> [NAACP of Camden Cnty E., supra, 421 N.J. Super. at 424-25 (internal quotation marks and citations omitted)(alterations in original).]

Therefore, if a party seeks to enforce an arbitration provision in an employment agreement in which an employee waives a constitutional or statutory right to sue, the waiver must be clear. "'A clause depriving a citizen of access to the courts should clearly state its purpose. The point is to assure that the parties know that in electing arbitration as the exclusive remedy, they are waiving their time-honored right to sue.'" Garfinkel, supra, 168 N.J. at 132 (quoting Marchak v. Claridge Commons, Inc., 134 N.J. 275, 282 (1993)). For that reason, "a party's waiver of statutory rights 'must be clearly and unmistakably established, and contractual language alleged to constitute a waiver 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, supra, the arbitration clause in dispute was contained in an employment contract between a doctor and a medical group. The arbitration clause stated: "Except as otherwise expressly set forth in Paragraphs 14 or 15 hereof, any controversy or claim arising out of, or relating to, this Agreement or the breach thereof, shall be settled by arbitration . . . in accordance with the rules then obtaining of the American Arbitration Association . . . ." Id. at 128. The Court held "that because of its ambiguity the language contained in the arbitration clause [did] not constitute an enforceable waiver of plaintiff's statutory rights under the LAD." Id. at 127. Following Garfinkel, we later held that an arbitration clause in an employment contract between a lawyer and a law firm, which required arbitration of "'any controversy, claim,

or dispute arising out of or relating to this Agreement, including the construction, interpretation, performance, breach, termination, enforceability, or validity thereof[,]'" did not apply to plaintiff's LAD claims. Waskevich v. Herold Law, P.A., 431 N.J. Super. 293, 296 (App. Div. 2013).

In order to be effective, the language in the disputed clause must more than mention, "by general reference, statutory claims redressable by the LAD." Garfinkel, supra, 168 N.J. at 134. It is not necessary, however, for the agreement to "refer specifically to the LAD or list every imaginable statute by name to effectuate a knowing and voluntary waiver of rights. Id. at 135. "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.

Applying these standards here, we are satisfied that the Arbitration Agreement "passed muster" and adequately included the type of claims raised in plaintiff's complaint. We are also satisfied that plaintiff failed to establish that the Arbitration Agreement was a contract of adhesion or that its waiver of her right to trial was inadequate or unclear. Plaintiff did not point to any specific record evidence to support that this was a take-it-or-leave-it form contract in which she had no ability to negotiate any terms. There is no evidence that she attempted to alter any terms of the Arbitration Agreement or that GAF would have refused to consider her for employment if she did not enter into that agreement. See Martindale, 173 N.J. 76, 91.

The language used in the short, two-page agreement clearly stated that the Arbitration Agreement included "claims for any type of discrimination" including those under "state law," and it delineated the type of claims to which the waiver of her right to sue applied, which included gender and national origin based claims as alleged by plaintiff in her complaint.[5] In capitalized and bold letters the agreement further stated that plaintiff was waiving her right to

file suit against her employer for any of these claims and, before doing so, she had the choice to confer with an attorney. There is no evidence that plaintiff did not read, understand or agree to that language or that GAF refused to give her time to consult with an attorney or anyone else about the agreement.[6]

Even if plaintiff proved the Arbitration Agreement was in fact a contract of adhesion we are satisfied that, weighing and balancing the Rudbart factors, the waiver of plaintiff's right to commence a law suit against her employer in favor of arbitration was not unconscionable. As to the first consideration, the subject matter of the contract in dispute, the waiver is a valid and legitimate subject to be included in an employment contract, and has been judicially recognized as such. See Garfinkle, supra, 168 N.J. at 135. As to the second factor, plaintiff offered no evidence that although defendants was in a superior bargaining position, it held a monopoly on jobs of the type for which plaintiff was applying. Plaintiff was under no compulsion to pursue her employment with GAF if she was dissatisfied with any of the terms of employment, including the Arbitration Agreement. Rudbart, supra, 127 N.J. at 356-57. This analysis also applies to the third factor, the degree of economic compulsion motivating plaintiff. As we have pointed out, anyone who needs a job is under some level of economic compulsion, but plaintiff has presented no evidence to suggest that her circumstances were any more egregious than the ordinary economic pressure faced by anyone who needs a job. Young, supra, 297 N.J. Super. at 621.

As to the fourth factor, the public interests affected by the contract, we find no adverse effect on public policy or public interests. We recognize that New Jersey has a strong public policy of protecting the rights of workers and prohibiting discrimination in the workplace, as evidenced by various statutory enactments. The policies that support the LAD and the rights it confers on aggrieved employees are essential to eradicating discrimination in the workplace. Courts should not assume that employees intend to waive those rights unless their agreements

so provide in unambiguous terms. Garfinkel, supra, 168 N.J. at 135. That public policy is not harmed by a contractually agreed-upon arbitration provision within which a worker can make a claim against his or her employer through arbitration only. In addition, it promotes New Jersey's public policy in favor of the arbitration of disputes. Wein v. Morris, 194 N.J. 364, 375-76 (2008); see NAACP of Camden Cnty E., supra, 421 N.J. Super. at 424.

In sum, we are satisfied that Judge Graziano properly granted defendants' unopposed motion to dismiss and denied plaintiff's motion for reconsideration.[7]

Affirmed.

[1] Her title was "Purchasing Manager Strategic Outsourcing" according to a certification filed by GAF's Human Resources Manager.

2 This paragraph was the only one printed in bold.

3 According to GAF's Human Resource Manager's certification, John's title was "Director of Strategic Outsourcing and Real Estate."

4 Service of orders that are served by ordinary mail is effective upon mailing. R.1:5-4(b). Service of "motion papers" is presumed to be complete three business days after the day of mailing. R. 1.6-3(c).

5 We note that her complaint states that her claim was brought pursuant to LAD "based upon sexual discrimination, retaliation, disparate treatment, hostile work environment and wrongful termination inflicted upon plaintiff a female Chinese purchasing manager . . . " However, we do not opine as to whether she in fact stated a viable cause of action based on the allegations in her complaint.

6 The only "fact" certified to was by plaintiff's counsel in his certification filed in support of reconsideration. In that certification he stated "the arbitration agreement does not specifically state [Plaintiff] gives up [sic] her rights under [LAD]. . . .Therefore, Plaintiff did not give away this important right to discrimination based on sex etc." However, plaintiff never certified to the fact that she did not knowingly and voluntarily waive such rights. The attorney's certification is alone not competent proof of that or any other fact relating to plaintiff's entry into the Arbitration Agreement. R. 1:6-6.

7 Plaintiff did not brief why the court's denial of reconsideration under Rule 4:49-2 should be reversed. As a result, we do not address this issue. R. 2:6-2(a)(5).
