SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1734-16T4

ELIE C. JONES,

Plaintiff-Respondent,

v.

TOWNSHIP OF TEANECK; TEANECK POLICE DEPARTMENT; and LT. THOMAS TULLY,

Defendants-Appellants.

Submitted December 13, 2017 – Decided January 31, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-4596-16.

Chasan, Lamparello, Mallon & Cappuzzo, PC, attorneys for appellants Township of Teaneck and Teaneck Police Department (John L. Shahdanian, II, of counsel; Dennis G. Harraka and Lori A. Johnson, on the brief).

Galantucci, Patuto, De Vencentes, Potter & Doyle, LLC, attorneys for appellant Lt. Thomas Tully, join in the brief of appellants Township of Teaneck and Teaneck Police Department.

Respondent has not filed a brief.

PER CURIAM

Defendants, the Township of Teaneck, the Teaneck Police Department, and Lt. Thomas Tully, appeal from the Law Division's order denying their motion to dismiss the complaint or alternatively, to compel arbitration. After a review of defendants' arguments in light of the record before us and applicable principles of law, we reverse.

Plaintiff Elie C. Jones is a resident of the Township. Defendants assert that he has "a protracted history of instituting meritless claims against [the Township]" and its entities and departments. With the intent of avoiding similar future claims, the parties entered into a settlement agreement in October 2010, under which plaintiff received consideration, to resolve a then pending matter. The settlement agreement provided that in the event of any future dispute between the parties, plaintiff "voluntarily agree[d] to first submit the claim to arbitration in accordance with the rules of the American Arbitration Association." Under this provision, the arbitrator would review the allegations at a hearing to determine if there was sufficient evidence to support the claim. "If the arbitrator determines that there is sufficient evidence to support the claim, [plaintiff] may file a complaint. . . . However, if the arbitrator determines that

there is insufficient evidence to support the claim, [plaintiff] shall not initiate the action."

In July 2016, plaintiff filed a complaint against defendants alleging harassment and discrimination claims against Lt. Tully, without first submitting his claims to arbitration. Defendants filed a motion to dismiss or alternatively, to compel arbitration pursuant to the settlement agreement. In a certification submitted in opposition to the motion, plaintiff stated that he had spoken to the Township clerk several times in an "[a]ttempt[] to [a]rbitrate" as required under the settlement agreement.

During oral argument, plaintiff advised the judge that he had agreed to arbitration at the time he executed the settlement agreement, and he remained willing to arbitrate, however he did not think he should be responsible for paying the filing fee to initiate the proceedings.[1] Plaintiff told the judge that he understood he had waived certain rights including an initial right to file his complaint in court. Plaintiff continued to state that he desired to proceed to arbitration. The judge noted several times that plaintiff was "willing to go" to arbitration. At the conclusion of argument, at the request of defendants, the court

[1] The settlement agreement required plaintiff to pay the initial filing fee. Thereafter, the parties would equally split the arbitration costs.

agreed to carry the motion for two weeks so that defendants could present plaintiff's settlement demand to the Township council and make a determination regarding arbitration costs. The record is devoid of information as to what occurred thereafter.

On November 18, 2016, the judge issued a written decision denying defendants' motion, concluding that the arbitration provision was "devoid of any language sufficiently clear and unambiguous to put plaintiff on notice that he [wa]s surrendering his statutory right to seek relief in a court of law."

On appeal, defendants contend that the judge erred in failing to compel submission of plaintiff's claims to arbitration. We review the court's order de novo. See Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013). The strong "public policy of this State favors arbitration as a means of settling disputes that otherwise would be litigated in a court." Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 556 (2015); accord Hojnowski v. Vans Skate Park, 187 N.J. 323, 343 (2006). The Federal Arbitration Act, 9 U.S.C. §§ 1-16, "expresses a national policy favoring arbitration," Morgan v. Sanford Brown Inst., 225 N.J. 289, 304 (2016), and requires courts to "place arbitration agreements on an equal footing with other contracts and enforce them according to their terms," AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011) (citations omitted). The New Jersey Arbitration Act,

N.J.S.A. 2A:23B-1 to 32, follows these same principles. Leodori v. CIGNA Corp., 175 N.J. 293, 302 (2003).

The parties negotiated a settlement agreement, for which plaintiff received consideration, to resolve prior litigation. The settlement agreement contained a provision providing that, in the event of any future claims by plaintiff against defendants, plaintiff agreed to submit the issues to arbitration first, for a determination by an arbitrator as to whether sufficient evidence existed to support the claim. Plaintiff acknowledged that he understood this provision when he agreed to it and the record demonstrates that plaintiff was well aware of the terms of the settlement agreement, and specifically, that any future claims would be submitted to an arbitrator for consideration prior to a filing in court.

Plaintiff certified in his opposition to defendants' motion that he "made several [a]ttempts to [a]rbitrate" with defendants prior to filing his complaint. At oral argument on the motion, plaintiff reiterated that he was willing to go to arbitration, but objected to paying the entire filing fee as required under the settlement agreement. In response to the judge's statement that he had waived all of his rights by agreeing to the arbitration provision, defendant corrected her, stating that "the arbitration [provision] says that the arbitrator would only decide if the

matter could proceed into the Law Division. It didn't say that they would settle the matter to conclusion." The agreement allowed the institution of suit upon a determination by the arbitrator that there was sufficient evidence to support the claim.

Plaintiff's actions in seeking arbitration, and the statements in his certification and at oral argument demonstrate not only his understanding of the settlement agreement, but also his willingness to have an arbitrator evaluate the sufficiency of his claims against defendants prior to filing a suit in court. Moreover, the arbitration provision in the settlement agreement sufficiently conveys plaintiff's rights and the effect of electing to have an arbitrator determine if there is sufficient evidence to support plaintiff's claims against defendants. See Morgan, 225 N.J. at 294 (reasoning that Atalese v. U.S. Legal Servs. Grp., LP, 219 N.J. 430, 436 (2014), simply requires a contract "to explain in some minimal way that arbitration is a substitute for [the] right to pursue relief in a court of law" (emphasis added)).

It is well settled that a court "will 'not rewrite [a] contract[] in order to provide a better bargain than contained in the parties['] writing.'" Kaur v. Assured Lending Corp., 405 N.J. Super. 468, 477 (App. Div. 2009) (quoting Grow Co. v. Chokshi, 403 N.J. Super. 443, 464 (App. Div. 2008)). A court's role in interpreting contracts "is to consider what is 'written in the

context of the circumstances' at the time of drafting and to apply a 'rational meaning in keeping with the expressed general purpose.'" Sachau v. Sachau, 206 N.J. 1, 5-6 (2011) (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953); accord Dontzin v. Myer, 301 N.J. Super. 507 (App. Div. 1997)).

A review of the record demonstrates that at all times plaintiff understood and assented to the terms of the settlement agreement requiring the submission of any future claims against defendants to arbitration. We, therefore, reverse the court's order and remand to the trial court for an entry of dismissal and order compelling arbitration.

Reversed and remanded for an entry of dismissal and order compelling arbitration. We do not retain jurisdiction.