SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0933-22

DANIEL DELGADO,

Plaintiff-Appellant,

v.

BMW FINANCIAL SERVICES NA, LLC,

Defendant-Respondent,

and

PARK AVENUE BMW and ALLSTATE NEW JERSEY PROPERTY CASUALTY INSURANCE COMPANY SERVICES,

Defendants.

Submitted August 15, 2023 – Decided August 29, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-1755-22.

Maite Matos, attorney for appellant.

Saul Ewing LLP, attorneys for respondent (Ryan L. DiClemente and Kellie A. Lavery, of counsel and on the brief).

PER CURIAM

Plaintiff Daniel Delgado appeals from the November 4, 2022 order dismissing his complaint against defendants BMW Financial Services (BMW) and Park Avenue BMW (Park Ave)[1] and compelling arbitration. We affirm.

Plaintiff leased a 2021 BMW sedan from Park Ave on September 4, 2020. The lease provided:

> This Motor Vehicle Lease Agreement . . . is entered between the lessee [plaintiff] . . . and the lessor . . . named above [Park Ave]. . . . "Assignee" refers to [BMW] or . . . to Financial Services Vehicle Trust. [BMW] will administer this [l]ease on behalf of itself or any assignee. The consumer lease disclosures contained in this [l]ease are made on behalf of [Park Ave] and its successors or assignees.

The lease established the amount of monthly payments due from plaintiff, the value of the car, the adjusted capitalized cost, the residual value, and the option to purchase the vehicle at the end of the lease term. The total cost of the lease, including amounts due at signing or delivery, total monthly payments,

[1] Plaintiff resolved his claims against Park Ave and defendant Allstate New Jersey Property Casualty Insurance Company.

amounts charged at the end of the lease, and the residual value, amounted to $96,553.25.

The lease contained an arbitration agreement (agreement). The agreement stated in bold, red, all-capitalized letters: "PLEASE REVIEW—IMPORTANT—AFFECTS MY LEGAL RIGHTS" under a bold, all-capitalized letter section title reading "ARBITRATION CLAUSE." The clauses in the agreement pertinent to the issues presented here stated:

> NOTICE[2]: Either [Park Ave] or [plaintiff] may choose to have any dispute between us decided by arbitration and not in a court or by jury trial. If a dispute is arbitrated, [plaintiff] will give up [his] right to participate as a class representative or class member on any class claim [he] may have against [Park Ave] including any right to class arbitration or any consolidation of individual arbitrations. Discovery and rights to appeal in arbitration are generally more limited than in a lawsuit, and other rights [Park Ave] and [plaintiff] would have in court may not be available in arbitration.
>
> Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this clause, and the arbitrability of the claim or dispute), between [plaintiff] and [Park Ave] or [Park Ave's] employees, agents, successors or assigns, which arise out of or relate to my credit application, lease, purchase or condition of this [v]ehicle, this [l]ease or any resulting transaction or relationship (including any such relationship with third parties who do not sign this

[2] This is in all-capitalized letters and bolded.

> [l]ease) shall, at [Park Ave's] or [plaintiff's] election, be resolved by neutral, binding arbitration and not by a court action. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action or other mass action. [Plaintiff] expressly waive[s] any right [he] may have to arbitrate a class action. [Plaintiff] may choose the following arbitration organization and its applicable rules: the National Arbitration Forum . . . or any organization that [plaintiff] may choose subject to [Park Ave's] approval. [Plaintiff] may get a copy of the rules of these organizations by contacting the arbitration organization or visiting its website.
>
> . . . .
>
> The arbitrator's award shall be final and binding on all parties . . . .

The agreement included addresses for Park Ave and BMW as assignee.

Just above plaintiff's signature, the lease provided in bold letters:

> By signing below, [plaintiff] acknowledge[s] that: This [l]ease is completely filled out; [plaintiff] ha[s] no ownership rights in the [v]ehicle unless and until [he] exercise[s] [his] option to purchase the [v]ehicle; [plaintiff] ha[s] read all pages of this [l]ease carefully and agree[s] to all of its terms; and [he] ha[s] received a completely filled in copy of this [l]ease.

Both plaintiff and a Park Ave representative signed the agreement.

After leasing the car, plaintiff modified the vehicle with special rims and tires, alleging he spent approximately $17,000 for the alterations.

The vehicle was stolen in December 2021. BMW advised plaintiff the payoff figure was $75,504.08. Plaintiff did not complete any of the required documents or tender the certified funds necessary to purchase the car. Instead, plaintiff made a claim to Allstate for the loss of the car. Allstate retained a market valuation report that determined the value of the vehicle was $93,152. BMW agreed to accept the valuation and Allstate tendered payment to satisfy the claim. Plaintiff asserts he is entitled to the monies he invested in the car.

Plaintiff filed a complaint, asserting claims for breach of contract, conversion, breach of the covenant of good faith and fair dealing, violations of the Consumer Fraud Act, N.J.S.A. 56:8-1 to -227, unjust enrichment, and breach of fiduciary duty.

Thereafter, BMW moved to dismiss the complaint and compel arbitration. BMW sought to arbitrate the claims regarding the actual value of the vehicle at the time it was stolen and the amount Allstate was required to pay BMW. BMW asserted those claims fell within the scope of the agreement. Plaintiff contended the agreement was unclear, and because BMW was not a party to the original lease, the agreement was not enforceable.

In an oral decision issued November 4, 2022, the court held the claims plaintiff alleged in his complaint fell "expressly within the scope of the

arbitration clause." The court found the agreement was valid and enforceable "and it expressly provide[d] that the parties intend[ed] [that] . . . any existing or future controversy . . . be submitted to arbitration." The judge stated,

> There is no dispute that . . . plaintiff executed the agreement as part of the lease of the vehicle and . . . plaintiff's claims unequivocally . . . fall within the scope of the existing arbitration clause in this case.
>
> There is absolutely no doubt before the [c]ourt that this arbitration clause exists and that the plaintiff's claims arise [out of] and relate to the vehicle and the lease.

The court also found the lease clearly defined any assignee would be subject to the lease terms, including the agreement.

The court granted BMW's motion in a memorializing order the same day, dismissing the complaint only as to BMW and Park Ave and compelling arbitration.

On appeal, plaintiff contends the trial court erred in dismissing the complaint and compelling arbitration because the agreement was ambiguous as to his waiver of rights, the party enforcing the agreement was not an original party to it, and enforcement of the agreement detrimentally affects the public interest because it is unconscionable.

"We apply a de novo standard of review when determining the enforceability of contracts, including arbitration agreements." Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019) (citing Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013)). As such, the enforceability of arbitration agreements is a question of law and no deference is owed to the trial court "unless [the appellate court] find[s] it persuasive." Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 316 (2019) (citing Morgan v. Sanford Brown Inst., 225 N.J. 289, 302-03 (2016)). The question of whether a party agreed to arbitrate is also subject to de novo review "because that issue involves the application of established facts to the legal question of what constitutes assent to a contract." Antonucci v. Curvature Newco, Inc., 470 N.J. Super. 553, 561 (App. Div. 2022) (citing Skuse v. Pfizer, Inc., 244 N.J. 30, 50 (2020)).

Plaintiff contends the agreement did not clearly and unambiguously inform him he was waiving his right to present his claims in a court. We disagree.

An arbitration agreement is a waiver of the right to have claims and defenses heard in court. Therefore, a party must have knowledge of the right to use the court system and also the intent to surrender that right. Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442 (2014).

Because the "average member of the public may not know—without some explanatory comment—that arbitration is a substitute for the right to have one's claim adjudicated in a court of law," courts must "take particular care in assuring the knowing assent of both parties to arbitrate." Ibid. A court should therefore determine whether "an arbitration clause, in some general and sufficiently broad way, . . . explain[s] that the plaintiff is giving up [their] right to bring [their] claims in court or have a jury resolve the dispute." Flanzman v. Jenny Craig Inc., 244 N.J. 119, 137 (2020) (quoting Atalese, 219 N.J. at 447). The waiver provision "must state its purpose clearly and unambiguously. In choosing arbitration, consumers must have a basic understanding that they are giving up their right to seek relief in a judicial forum." Atalese, 219 N.J. at 435. There is no set, express language required to uphold an arbitration agreement. Instead, our courts have "upheld arbitration clauses phrased in various ways when those clauses have explained that arbitration is a waiver of the right to bring suit in a judicial forum." Id. at 444.

We are satisfied the agreement here was clear and unambiguous, plainly informing plaintiff of the waiver of his right to institute suit in court but instead to bring his claims in an arbitration proceeding. The agreement appears in its own dedicated, enumerated section and is not hidden or burdensome to read. It

is preceded by bold, all-capitalized text labeling it as an "arbitration clause," and advises plaintiff on the next line in bold, all-capitalized, and red letters, to "please review" the "important" terms that "affect[] [his] legal rights."

The agreement expressly states either party may elect to have any dispute "whether in contract, tort, statute or otherwise (including the interpretation and scope of this clause, and the arbitrability of the claim or dispute)" be addressed in "arbitration and not in a court or by jury trial." Plaintiff was informed that arbitration could be invoked by either party for a broad, but defined, list of claims and this would entail a distinct process from a court or jury trial. The agreement further explained that "discovery and rights to appeal in arbitration are generally more limited than in a lawsuit and other rights [plaintiff] and [Park Ave or BMW] would have in court may not be available in arbitration." We discern no merit to plaintiff's argument that the agreement was confusing, vague, or difficult to read.

Plaintiff further asserts that because BMW was not a signatory to the lease or the agreement, it cannot compel plaintiff to arbitrate his claims. We again disagree.

In section one of the lease, Park Ave and plaintiff were listed as the parties to the lease. Immediately below it, in section two, the lease identified BMW as

an assignee and expressly stated that BMW would administer the lease on its own behalf or on behalf of any other assignee.

As long as the assignment of a contract is valid, the assignee can compel arbitration. See Zirpoli v. Midland Funding, LLC, 48 F.4th 136, 143 (3d Cir. 2022). "[A]n assignment needs no particular form and requires only so much of a description of the intangible assigned to make it readily identifiable." New Century Fin. Servs., Inc. v. Oughla, 437 N.J. Super. 299, 319 (App. Div. 2014) (citing K. Woodmere Assocs., L.P. v. Menk Corp., 316 N.J. Super. 306, 314 (App. Div. 1998)). The key is the intent of the assignor, which can be "gleaned from the documents themselves and surrounding circumstances." Ibid. (citing K. Woodmere, 316 N.J. Super. at 315-16). Assignments must also "be free and clear of ambiguity." Liberty Int'l Underwriters Can. v. Scottsdale Ins. Co., 955 F. Supp. 2d 317, 333 (D.N.J. 2013).

Plaintiff cannot assert he was unaware of the existence of an assignee that was identified on the first page of the lease. There is no ambiguity in the document. It is clear Park Ave had the intent to assign the lease to BMW. See New Century, 437 N.J. Super. at 319. This is a valid assignment and the court did not err in compelling arbitration.

We discern no merit in plaintiff's argument that the court erred in dismissing the complaint because BMW acted unconscionably. As stated, the agreement is a clear and unambiguous waiver of plaintiff's right to bring his claims in court. There is no bad faith or otherwise unconscionable conduct on BMW's part that would warrant invalidating the arbitration agreement. See Cox v. Sears Roebuck & Co., 138 N.J. 2, 18 (1994).

The trial court conducted the appropriate two-pronged inquiry and found there was a valid and enforceable agreement to arbitrate disputes and plaintiff's claims fell within the scope of the agreement. See Wollen v. Gulf Stream Restoration & Cleaning, LLC, 468 N.J. Super. 483, 497 (App. Div. 2021). We see no reason to disturb that conclusion.

Affirmed.