

STATE OF MICHIGAN
COURT OF APPEALS

JESSE ROBERTS and CONSTANCE ROBERTS,

Plaintiffs-Appellees,

v

MEIJER, INC., and PATRICK D. WISNESKI,

Defendants-Appellants.

UNPUBLISHED

May 21, 1996

No. 177489

LC No. 93-005630-NO

Before: Griffin, P.J., and Smolenski and L. P. Borrello,* JJ.

MEMORANDUM.

In this case of alleged wrongful discharge and related torts, defendants appeal by leave granted an order denying their motion for summary disposition. We reverse.

The dispositive issue on appeal is whether plaintiff Jesse Roberts, a former employee of defendant Meijer, Inc., is barred from pursuing his claims in circuit court because he failed to exhaust his remedies under defendant's grievance and arbitration procedure. We hold that plaintiff is so barred. Liberally construing the arbitration clause to which each party was bound and resolving doubts in favor of arbitration, plaintiff's contract and tort claims were subject to the arbitration procedure at issue. See *Heurtebise v Reliable Business Computers, Inc*, 207 Mich App 308, 311; 523 NW2d 904 (1994); *Kentwood Public Schools v Kent Co Ed Ass'n*, 206 Mich App 161, 164-165; 520 NW2d 682 (1994); *Huntington Woods v AJAX Paving Industries, Inc (After Remand)*, 196 Mich App 71, 74-75; 492 NW2d 463 (1992); *Omega Construction Co, Inc v Altman*, 147 Mich App 649, 655; 382 NW2d 839 (1985). Indeed, plaintiff's contract and tort claims arise from and relate to the allegations of theft and embezzlement that provide the basis for plaintiff's termination from employment. See *Burns v Olde Discount Corp*, 212 Mich App 576, 58; 538 NW2d 686 (1995); *Dahlman v Oakland University*, 172 Mich App 502, 507-508; 432 NW2d 304 (1987).

Further, the arbitration procedure expressly requires an impartial arbiter and is not inherently unfair. See generally, *Renny v Port Huron Hosp*, 427 Mich 415, 434; 398 NW2d 327 (1986).

* Circuit judge, sitting on the Court of Appeals by assignment.

Therefore, the trial court's speculative assessment regarding the potential partiality of the arbiters was premature. See *Dahlman, supra* at 505-506; compare *Renny, supra* at 434 (contemplating that the fairness of an arbitration proceeding be reviewed subsequent to arbitration). Finally, the criminal action that the state commenced against plaintiff was not inconsistent with defendants' right to arbitrate this matter. See *Burns, supra* at 583. Accordingly, the circuit court erred in denying defendants' motion for summary disposition.

Reversed. Pursuant to MCR 7.216(7) and (9), we hereby order that this matter be submitted to arbitration in accordance with the arbitration procedure at issue. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Michael R. Smolenski

/s/ Leopold P. Borrello