

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA DETIZIO

Plaintiff-Appellant,

v

BILL KNAPP'S RESTAURANTS,

Defendant-Appellee.

UNPUBLISHED

August 23, 1996

No. 174960

LC No. 93-306556

Before: Reilly, P.J., and Cavanagh, and R.C. Anderson,* JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order dismissing her complaint alleging breach of employment contract and sex discrimination. The court dismissed the action on the basis of a form signed by plaintiff in which she purported to agree that any lawsuit against defendant arising out of her employment or termination of her employment would be filed within 180 days after the event giving rise to the claim. Although plaintiff's complaint was filed within the three-year limitations period of MCL 600.5805(8); MSA 27A.5805(8), plaintiff's complaint was not filed within 180 days after she was terminated. We reverse and remand.

The form on which defendant relies states, "I agree that any action or suit against the company arising out of my employment or termination of employment . . . must be brought within 180 days of the event giving rise to the claim or be forever barred." By signing the form, the employee acknowledged seeing defendant's orientation film and receiving the employee handbook. "In consideration of my employment", the employee also agrees "to conform to the rules and regulations of Bill Knapp's, Inc. . . ." Significantly, the form states, "I also realize the handbook is not an employment contract."

Initially, we note that a contractual provision limiting the time to bring suit, if reasonable, will be enforced by the courts of this state. *Herweyer v Clark Highway Services, Inc.*, 212 Mich App 105, 107; 537 NW2d 225 (1995). Plaintiff does not argue that the 180-day provision in this case was unreasonable. Rather, the issues raised concern whether the 180-day provision was an enforceable contract.

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

Plaintiff contends that she was not bound by the purported time limitation on bringing a lawsuit because the 180-day provision appears on the acknowledgment form, which was a page of the handbook, and the handbook is not a contract. We agree.

In *Heurtebise v Reliable Business Computers*, ___ Mich ___; ___ NW2d ___ (Docket No. 102019, issued 7/16/96), the plaintiff signed a written acknowledgment of her receipt of the defendant's employee handbook. The acknowledgment stated that the plaintiff agreed to be bound by the terms and policies of the handbook. The handbook contained a provision requiring employees and the defendant to submit all disputes involving money damages to final and binding arbitration. When the plaintiff brought an action for gender discrimination, the defendant brought a motion to dismiss or to compel arbitration. The trial court denied the motion, and this Court granted leave and reversed, 207 Mich App 308; 523 NW2d 904 (1994). The Supreme Court reversed this Court, and held that the defendant was not entitled to summary disposition. According to the Court, the handbook did not create an enforceable arbitration agreement because the opening statement in the handbook "demonstrates that the defendant did not intend to be bound to any provision contained in the handbook." Slip op, at 8. That opening statement provided in part, "It is important to recognize and clarify that the Policies specified herein do not create any employment or personal contract, express or implied"

In this case, defendant indicated that it did not intend to be bound by the provisions of the handbook. The acknowledgment form signed by plaintiff stated, "I further realize that the handbook is not an employment contract," and the provisions and terms "may be changed at any time by Bill Knapp's at its sole discretion and without notice to [the employee]." Therefore, like the defendant in *Heurtebise*, defendant in the present case also indicated that it did not intend to be bound by the provisions of the handbook.

Contrary to defendant's assertions, the provision that purported to shorten the time period for bringing a claim was part of the handbook and was unenforceable. The provision that purportedly required plaintiff to bring the claim within 180 days appeared on the acknowledgment form. Defendant attempts to portray the acknowledgment form as an agreement apart from the handbook. However, the top of the form has the same heading as the pages of the handbook, e.g. "Restaurant Employee Handbook." The page number on the form, 32, was consecutive to the page numbering of the rest of the handbook. Therefore, we agree with plaintiff that the acknowledgment form was part of the handbook. Defendant's indication on the acknowledgment form that it did not intend to be bound by the handbook means that the provision shortening the limitations period, like the other provisions of the handbook, was unenforceable. *Heurtebise, supra*. Accordingly, we conclude that the trial court erred by dismissing plaintiff's complaint on the basis of her failure to bring the action within 180 days of her termination.

Reversed and remanded. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly
/s/ Mark J. Cavanagh
/s/ Robert C. Anderson