

STATE OF MICHIGAN

COURT OF APPEALS

MICHELE G. LORENZ, f/k/a MICHELE G.
GOBLE,

Plaintiff-Appellant,

v

BULL HN INFORMATION SYSTEMS,
INC., f/k/a HONEYWELL BULL, INC., f/k/a
HONEYWELL INFORMATION
SYSTEMS, INC., and JACK J. GINSBURG,

Defendants-Appellees.

UNPUBLISHED
September 10, 1996

No. 177502
LC No. 94-076871-CZ

Before: MacKenzie, P.J., and Saad and C.F. Youngblood*, JJ.

PER CURIAM.

Plaintiff, a former nonunion employee of defendant Bull HN Information Systems, Inc. (defendant), filed a twenty-two count complaint alleging gender discrimination in violation of the Elliott-Larsen civil rights act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, wrongful discharge, breach of contract, unjust enrichment, and intentional infliction of emotional distress. She appeals as of right from an order granting summary disposition in favor of defendants on the basis that the claims were subject to arbitration under the terms of defendant's 1993 Sales Compensation Plan. We affirm.

The Sales Compensation Plan provided that "Acceptance of any incentive compensation under this Plan constitutes acceptance by a participant of all terms and conditions of this Plan ... as it is currently constituted and as it may be changed by Bull from time to time." The Plan also included the following arbitration clause:

All disputes which involve claims for \$3000 or more, and which arise out of the participant's employment or termination thereof, including but not limited to claims for

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

wrongful termination, infliction of emotional distress and defamation, whether or not such claims are based exclusively on the terms of this Plan, shall be submitted to arbitration in Boston, Massachusetts if the parties are unable to resolve their dispute after good faith efforts. . . . The parties agree that after the arbitration has been initiated, all other civil actions between the parties shall be stayed until the arbitration proceeding is concluded.

This Plan will be governed in all respects by the law of the Commonwealth of Massachusetts. . . . The arbitration decision shall be binding on the parties and be honored by them without resort to any further court proceedings.

Neither party may demand arbitration or institute any lawsuit in any form arising out of this Plan, or arising in any way out of the employment relationship between the parties, more than two (2) years after the claim or cause of action arose.

In granting summary disposition in favor of defendants, the trial court concluded that plaintiff's claims, including her statutory civil rights claims, were subject to arbitration rather than judicial resolution. This was correct. Unlike *Heurtebise v Reliable Business Computers*, ___ Mich ___; ___ NW2d ___ (Docket No. 102019, decided 7/16/96), the compensation plan in this case clearly set forth the parties' agreement to submit disputes to arbitration, and plaintiff's conduct in accepting compensation clearly conveyed her assent to the contract. See *Ehresman v Bultynck & Co, PC*, 203 Mich App 350, 355; 511 NW2d 724 (1994). A majority of the Justices in *Heurtebise, supra*, were unwilling to address whether an agreement requiring the arbitration of discrimination claims violates public policy. For the reasons set forth by this Court in *Heurtebise v Reliable Business Computers, Inc*, 207 Mich App 308; 523 NW2d 904 (1994), we conclude that it does not. See also, *Gilmer v Interstate/Johnson Lane Corp*, 500 US 20; 111 S Ct 1647; 114 L Ed 2d 26 (1991). Plaintiff's reliance on *Alexander v Gardner-Denver Co*, 415 US 36; 94 S Ct 1011; 39 L Ed 2d 147 (1974), in this regard is misplaced, since that case involved a collective bargaining agreement, see *Gilmer, supra*, at 111 S Ct 1657, and, in any event, its reasoning was largely undercut by the *Gilmer* decision. See *Austin v Owens-Brockway Glass Container, Inc*, 78 F3d 875 (CA4, 1996). Because the arbitration clause was enforceable and precluded plaintiff from litigating her claims, the trial court properly granted summary disposition in favor of defendants.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Henry William Saad