

STATE OF MICHIGAN
COURT OF APPEALS

SARAH COLLINS,

Plaintiff-Appellee,

v

MASCOTECH COLD PRECISION, d/b/a HI-VOL
PRODUCTS, d/b/a AMCOR, and GEORGE
THANOPOULOS,

Defendants-Appellants.

UNPUBLISHED

June 22, 1999

No. 201430

Wayne Circuit Court

LC No. 96-632061 NZ

Before: Doctoroff, P.J., and Markman and J.B. Sullivan*, JJ.

PER CURIAM.

Defendants appeal by leave granted from an order denying their motion for summary disposition on the basis that plaintiff had contractually agreed to arbitrate any claims arising out of her employment. We reverse and remand.

In the course of her employment with defendants, plaintiff signed several restricted stock award agreements, the last in 1991. This last agreement, like the earlier ones, contained an arbitration clause requiring that all claims arising out of plaintiff's stock incentive plan, her stock award agreement, and her employment, including claims of wrongful discharge and discrimination, be resolved by arbitration. The arbitration clause read as follows:

In addition, it is agreed that if for any reason a claim against the Company or a subsidiary or affiliated company or any officer, employee or agent of the foregoing (other than a claim involving non-competition restrictions or the Company's, a subsidiary's or an affiliated company's trade secrets, confidential information or intellectual property rights) which (1) arises out of or relates to your employment with or termination of employment from the Company, or any of its subsidiaries or affiliated companies; (2) is premised on claims of wrongful discharge, discrimination, breach of contract, or other civil claims; (3) subverts the provisions of Paragraph 3 of the Plan; or

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

(4) involves any of the provisions of this agreement or the Plan or claims of any persons to the benefits of this agreement, in order to provide a more speedy and economical resolution arbitration shall be the exclusive remedy to resolve all disputes, claims or controversies which could be the subject of litigation involving or arising out of the Plan, this agreement, or your employment. The provisions of this paragraph shall be binding upon our respective successors, heirs, personal representatives and designated beneficiaries, and shall supersede the provisions of any prior agreement between you and the Company or its subsidiaries or affiliated companies with respect to any of the Company's option or restricted stock incentive plans to the extent the provisions of such other agreement requires arbitration between you and your employer. It is our mutual intention that the arbitration award will be final and binding and that a judgment on the award may be entered in any court of competent jurisdiction.

Plaintiff's employment with defendant was terminated in 1993 when her position with the company was eliminated. She subsequently filed this action, alleging claims for sexual discrimination under the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, and retaliatory discharge in violation of public policy. Defendants moved to dismiss under MCR 2.116(C)(7), asserting that plaintiff's claims were barred by the agreement to arbitrate. The trial court ruled that the agreement was ambiguous as to its duration and, because plaintiff may have believed that it had expired prior to her discharge, claims arising after the agreement's expiration were not subject to arbitration.

A trial court's ruling on a motion for summary disposition brought under MCR 2.116(C)(7) is reviewed "de novo to determine whether the moving party was entitled to judgment as a matter of law." *DeCaminada v Coopers & Lybrand, LLP*, 232 Mich App 492, 496; 591 NW2d 364 (1998). The existence and enforceability of an arbitration agreement are questions of law that are likewise reviewed de novo on appeal. *Burns v Olde Discount Corp*, 212 Mich App 576, 580; 538 NW2d 686 (1995); *Schroeder v Detroit*, 221 Mich App 364, 366; 561 NW2d 497 (1997).

Assuming, without deciding, that the trial court correctly determined that the agreement was ambiguous as to its duration, the issue nevertheless is one that should be resolved by the arbitrator, provided that the arbitration agreement is otherwise valid and "the arbitration clause is broad and arguably covers disputes concerning contract termination." *Aacon Auto Transport, Inc v Barnes*, 603 F Supp 1347, 1348 (SDNY, 1985). See also *Harmer v Doctor's Associates, Inc*, 781 F Supp 1225, 1229 (ED Mich, 1991). Because the arbitration agreement here applies to "all disputes, claims or controversies which could be the subject of litigation," and did not expressly exclude the issue of its duration, the issue was properly one for the arbitrator to resolve if the agreement was otherwise valid and enforceable. Because the trial court did not address the issue whether the agreement was otherwise valid and enforceable, we remand for consideration of this issue.¹

We note that, in light of this Court's recent decision in *Rembert v Ryan's Family Steak Houses, Inc*, ___ Mich App __; ___ NW2d __ (Docket No. 196542, issued 4/9/99), prospective agreements to arbitrate statutory employment discrimination claims are not void as against public policy provided "(1) the parties have agreed to arbitrate the claims (there must be a valid, binding, contract

covering the civil rights claims); (2) the statute itself does not prohibit such agreements; and (3) the arbitration agreement does not waive the substantive rights and remedies of the statute and the arbitration procedures are fair so that the employee may effectively vindicate his statutory rights.” *Id.*, slip op at 16.²

Concerning the first of the *Rembert* factors, although the agreement is in writing and expressly includes wrongful discharge and discrimination claims, the trial court needs to determine whether the agreement is binding. Concerning the second of the *Rembert* factors, we believe that it has been clearly satisfied because ELCRA does not contain a provision precluding arbitration agreements, *Rembert, supra*, slip op at 16, and because plaintiff’s retaliatory discharge claim is not expressly premised upon any statute. The third *Rembert* factor requires that the arbitration procedures provide clear notice to the employee that he or she is waiving the right to a judicial determination of discrimination claims in favor of arbitration, the right to counsel, a neutral arbitrator, reasonable discovery, and a fair hearing. *Id.*, slip op at 17-18. The parties’ agreement here requires that an arbitrator “be chosen in accordance with the commercial arbitration rules of the American Arbitration Association” and that the hearing be held at the Association’s local principal office. Whether this means that the Association’s rules governing arbitration are to apply to the hearing as well is unclear; further, if they are to apply, it is not possible for this Court to determine whether they satisfy the requirements of *Rembert* because they have not been set forth here. Accordingly, the case should be remanded to the trial court for consideration of whether the third *Rembert* factor has been satisfied.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Stephen J. Markman

/s/ Joseph B. Sullivan

¹ In the event that it becomes necessary, the trial court should also address defendants’ claim that the arbitration agreement is subject to § 2 of the Federal Arbitration Act, 9 USC 2. At first blush, it would appear that the agreement might well be valid because it complies with the requirements of the Uniform Arbitration Act, MCL 600.5001(2); MSA 27A.5001(2), which is similar to §2 of the FAA and provides in part:

A provision in a written contract to settle by arbitration under this chapter, a controversy thereafter arising between the parties to the contract, with relation thereto, and in which it is agreed that a judgment of any circuit court may be rendered upon the award made pursuant to such agreement, shall be valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the rescission or revocation of any contract.

See *Gilmer v Interstate/Johnson Lane Corp*, 500 US 20; 111 S Ct 1647; 114 L Ed 2d 26 (1991).

² In defense of the trial court, *Rembert* was decided more than two years after the trial court's decision to deny defendant's motion for summary judgment. *Rembert* resolved a matter of considerable judicial controversy. See, for example, *Heurtebise v Reliable Business Computers*, 452 Mich 405; 550 Mich 243 (1996); *Rushton v Meijer* (On Remand), 225 Mich App 156; 570 NW2d 271 (1997); *Stewart v Fairlane Community Mental Health Center* (On Remand), 225 Mich App 410; 571 NW2d 542 (1997); *Rembert v Ryan's Family Steakhouse*, 226 Mich App 821; 575 NW2d 287 (1997)(*Rembert I*).