STATE OF MICHIGAN

COURT OF APPEALS

DWAYNE PAGE,

Plaintiff-Appellee,

v

INDUSTRIAL SERVICES, INC.,

Defendant-Appellant.

UNPUBLISHED
July 22, 2003

No. 242387
Washtenaw Circuit Court
LC No. 01-000896-CL

Before: Neff, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting summary disposition, in conjunction with which, the court ruled that arbitration of plaintiff's employment discrimination claim was not barred by a time-limitations clause in plaintiff's employment agreement. We affirm in part and reverse in part.

I

In August 2001, plaintiff, a former employee of defendant, filed an action in circuit court, claiming that he was unlawfully discharged in August 2000 in violation of the Michigan Persons with Disabilities Civil Rights Act,[1] MCL 37.1101 *et seq*. Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7) on the ground that plaintiff's claim was barred by the contractual 180-day period of limitation in his employment agreement, or alternatively, that it was barred by his agreement to arbitrate his claim. Plaintiff argued that if the employment agreement governed, as defendant argued, then plaintiff's claim should be governed by arbitration in total and the court should conclude that it lacked jurisdiction to decide the limitations period issue, which would be a matter properly decided by the arbitrator.

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[1] Plaintiff's complaint alleged an action under the Michigan Handicappers' Civil Rights Act; however, that act was replaced by the PWDCRA, effective March 12, 1998. *Bachman v Swan Harbour Associates*, 252 Mich App 400, 402 n 1; 653 NW2d 415 (2002).

In a ruling from the bench, the trial court granted in part and denied in part defendant's motion for summary disposition.[2] The court concluded that plaintiff's claim was subject to arbitration under the terms of the employment agreement, but that the agreement was ambiguous regarding whether the contractual 180-day period of limitations applied to claims subject to arbitration. Thus, the court concluded that plaintiff's claim must be arbitrated, but it was subject to the general statutory three-year period of limitations, and therefore, was not time-barred.

II

Defendant argues on appeal that the trial court erred in ruling on the period of limitations issue because it is within the province of the arbitrator to decide procedural matters arising out of the arbitration dispute. We agree.

This Court reviews de novo a trial court's grant or denial of summary disposition to determine whether the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition is properly granted under MCR 2.116(C)(7) on the basis that an action is barred because of an agreement to arbitrate or because an action is time barred. *Maiden, supra* at 118 n 3; *Vandenberg v Vandenberg*, 253 Mich App 658, 660; 660 NW2d 341 (2002). In ruling on a motion for summary disposition under this subrule, the court considers all affidavits, pleadings, and other documentary evidence submitted. *Maiden, supra* at 119; *Vandenberg, supra*.

The timeliness of a plaintiff's claim is a question to be decided by the arbitrator rather than the trial court. *Amtower v William C Roney & Co (On Remand)*, 232 Mich App 226, 229, 232-233; 590 NW2d 580 (1998); *Bennett v Shearson Lehman-American Express, Inc*, 168 Mich App 80, 83; 423 NW2d 911 (1987). In *Amtower*, this Court observed that the timeliness of a claim is a procedural matter, and that under Michigan law, arbitrators, rather than the courts, should decide the application of such potential defenses to arbitration as contractual limitation periods and statutes of limitation. *Id*. at 232-233.

In this case, the court determined that plaintiff's claim was subject to arbitration. The court erred in further deciding the issue of timeliness and concluding that the three-year statutory limitations period applied to the parties' dispute. "[W]here substantive issues of a dispute are proper subjects for arbitration[,] procedural matters arising out of the dispute are for the arbitrator and not the courts to determine." *Bennett, supra* (footnote omitted).

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[2] The court's subsequent order stated that defendant's motion for summary disposition was granted, but that the dismissal was "without prejudice to Plaintiff's right to initiate an arbitration proceeding pursuant to the parties' pre-dispute arbitration agreement."

III

Defendant also argues that the court erred in concluding that the employment agreement was ambiguous concerning the period of limitations and erred in concluding that the agreement's limitations provision did not apply to arbitration matters. In light of our decision that the matter of the limitations period is within the province of the arbitrator to decide, we need not address these remaining grounds for reversal.

We affirm the grant of summary disposition, but reverse the trial court's decision concerning whether the 180-day limitations period in the parties' pre-dispute arbitration agreement applies to bar arbitration. The timeliness of plaintiff's claim is a matter properly within the province of the arbitrator.

Affirmed in part and reversed in part.

/s/ Janet T. Neff
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello