SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3560-16T4

JANG WON SO,

Plaintiff-Respondent,

v.

EVERBEAUTY, INC.,

Defendant-Appellant.

Submitted December 12, 2017 – Decided January 2, 2018

Before Judges Reisner and Mayer.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-7491-16.

Cole Schotz, PC, attorneys for appellant (Edward S. Kiel and Eric S. Latzer, of counsel and on the briefs).

Najib, Kim, Feliz and Bullwinkel, LLC, attorneys for respondent (Yoonki Kim, on the brief).

PER CURIAM

Defendant EverBeauty, Inc. appeals from an order dated March 17, 2017, denying its motion to compel arbitration of a lawsuit filed by plaintiff Jang Won So. For the reasons that follow, we

reverse the order on appeal and remand this matter to the trial court with direction to enter an order submitting the matter to binding arbitration.

The essential facts are undisputed. On October 19, 2016, plaintiff filed a complaint alleging that defendant, his employer, violated his rights under the New Jersey Law Against Discrimination and the Workers' Compensation Law. In a December 16, 2016 conversation with plaintiff's counsel, defendant's attorney asserted that the matter should be submitted to arbitration pursuant to a clause in plaintiff's employment contract. On December 20, 2016, plaintiff's counsel sent defense counsel an email stating that his law firm was "leaning towards . . . going to arb" but needed to speak with plaintiff, who was away on a trip. Defendant's counsel followed up on December 29, 2016, with an email asking plaintiff's counsel if his client would agree to arbitration. On December 30, 2016, plaintiff's counsel sent a responding email, stating: "I was able to speak to my client and we will proceed to arbitration. I can draft a stip of dismissal."

More than two weeks later, on January 16, 2017, defendant's counsel sent a follow-up email inquiring whether the stipulation had been filed. Plaintiff's counsel sent a responding email on January 25, 2017, stating that plaintiff "has had a change of heart and has instructed me to make efforts to avoid arbitration."

Apparently anticipating a motion to enforce arbitration, the email concluded, "we'll be awaiting your motion."

In its enforcement motion, defendant conceded that the arbitration provision in the employment agreement was not sufficiently specific and, therefore, was unenforceable. However, defendant asserted that the phone call and subsequent exchange of emails between the attorneys created a separate, binding agreement to arbitrate.

The trial court denied the motion, reasoning that the attorneys' communications did not "evidence a bargain[ed] for exchange but only a statement by [p]laintiff's counsel as to what his intentions were going forward in response to inquiries from defense counsel." The court concluded that "any 'agreement' to proceed to arbitration was not supported by consideration." The court also reasoned, by analogy with Rule 4:35-1(d), which governs bench trials, that giving up the right to a jury trial by agreeing to arbitration required proof "that the promise was actually bargained for."

Our review of an order denying a motion to compel arbitration is de novo. See Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013); Barr v. Bishop Rosen & Co., Inc., 442 N.J. Super. 599, 605 (App. Div. 2015). Both federal and state law reflect a preference for arbitration and a strong policy in favor of

enforcing arbitration agreements. Hirsch, 215 N.J. at 186; Bernetich, Hatzell & Pascu, LLC v. Med. Records Online, Inc., 445 N.J. Super. 173, 179 (App. Div. 2016). Nevertheless, "[a]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." Bernetich, 445 N.J. Super. at 179 (citation omitted).

Courts apply "ordinary state-law principles that govern the formation of contracts" to decide whether the parties agreed to arbitration. Id. at 179-80 (citation omitted). Courts should not, however, "subject an arbitration agreement to more burdensome requirements than those governing the formation of other contracts." Id. at 180 (quoting Leodori v. CIGNA Corp., 175 N.J. 293, 302 (2003)).

"Basic contract principles render a promise enforceable against the promisor if the promisee gave some consideration for the promise." Martindale v. Sandvik, Inc., 173 N.J. 76, 87 (2002). "[A] very slight advantage to one party, or a trifling inconvenience to the other, is a sufficient consideration to support a contract . . . ." Id. at 87-88 (citation omitted). Courts will not "inquire into the adequacy of consideration in determining whether to enforce a contract." Seaview Orthopedics

ex rel. Fleming v. Nat'l Healthcare Res., Inc., 366 N.J. Super. 501, 508-09 (App. Div. 2004).

In light of those principles, we cannot agree with the trial court's reasoning in this case. An agreement to arbitrate is analogous to the settlement of litigation. N.J. Mfrs. v. O'Connell, 300 N.J. Super. 1, 7 (App. Div. 1997). By analogy here, if defendant's counsel had emailed plaintiff's counsel, stating that "we will settle this case for $1000," and if plaintiff's counsel had sent a responding email stating that "we agree to settle the case for $1000," that exchange would have created a binding settlement agreement. Plaintiff's later change of heart could not vitiate the agreement.

This case is no different in substance. Defense counsel communicated to plaintiff's counsel his client's willingness to submit the matter to arbitration. After first stating that his client needed time to consider the matter, plaintiff's counsel later emailed defense counsel his client's unequivocal agreement to arbitrate and offered to draft a stipulation of dismissal of the lawsuit. At that point, the parties had agreed on the essential terms and "manifested an intention to be bound by those terms," thus creating a binding contract to resolve the case by arbitration and file a stipulation of dismissal with the court. See Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992).

Plaintiff's change of heart a few weeks later could not undo the contract. "A party is bound to the contract it made at the time, even if it turns out to be a poor deal." Ibid.

In addition to finding that the promise to arbitrate was bargained for, we cannot agree with the trial court's reasoning that the agreement lacked consideration. Because arbitration is faster and less expensive than a trial, the agreement provided benefits to both parties. See Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 131 (2001). Further, by agreeing to arbitration, each side gave up its right to a jury trial. That was sufficient consideration to support the formation of a contract. See Martindale, 173 N.J. at 87. Accordingly, we reverse the order on appeal and remand this matter to the trial court for entry of an order submitting the matter to binding arbitration.

Reversed and remanded. We do not retain jurisdiction.