JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SA CV 17-0583-DOC (AFMx) Date: June 21, 2017

Title: DAVID MAXSON V. BEAZER HOMES HOLDINGS CORP., ET AL.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Deborah Goltz	Not Present
Courtroom Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFF: None Present	ATTORNEYS PRESENT FOR DEFENDANT: None Present

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING MOTION TO COMPEL ARBITRATION [16]

Before the Court is Defendant Beazer Homes Holdings, LLC's ("Defendant" or "Beazer Homes") Motion to Compel Arbitration and to Dismiss, or in the Alternative to Stay the Action Pending Arbitration ("Motion") (Dkt. 16). The Court finds this matter suitable for resolution without oral argument. Fed. R. Civ. P. 78; L.R. 7-15. Having reviewed the papers and considered the parties' arguments, the Court GRANTS the Moving Defendants' Motion.

I. Background

A. Facts

Plaintiff David Maxson ("Maxson" or "Plaintiff") was employed by Defendant as an Assistant Superintendent Builder. Notice of Removal (Dkt. 1) Ex. A at 4 ("Compl.") ¶ 7. In October 2015, Plaintiff sustained a broken left foot and toes, as well as "associated conditions and others," as a result of work activities. *Id.* ¶¶ 8, 9. Plaintiff made a worker's compensation claim. *Id.* ¶ 11. It is not clear from the Complaint whether or not Plaintiff requested CFRA or other leave, or if he did, whether the request was granted. *See id.* ¶ 12.

After sustaining his injury, Plaintiff worked for two to three days a week, but was eventually forced to take five days off of work. *Id.* ¶ 13. Defendant "forced" Plaintiff to obtain a doctor's note confirming that he needed time off. *Id.* This note may have also included information about Plaintiff's work restrictions. *Id.*

On January 13, 2016, Defendant terminated Plaintiff. *Id.* ¶ 14. Plaintiff alleges that the termination was wrongful and based on "false and/or exaggerated and/or pretextual reason(s) of Plaintiff's performance." *Id.*

B. Procedural History

On February 14, 2017, Plaintiff filed the operative complaint in the Superior Court of California, Country of Orange. *See* Compl. at 1. Plaintiff brings five claims against Defendant: (1) perceived and/or physical disability discrimination in violation of California Government Code § 12940 *et seq.*; (2) violation of California Government Code § 12945.2 *et seq.*; (3) violation of California Labor Code § 1102.5 *et seq.*; (4) retaliation and wrongful termination in violation of public policy; and (5) declaratory judgment that Defendant committed, *inter alia*, discriminatory acts, and a permanent injunction enjoining Defendant from doing so. *See* Compl.

Defendant removed this case to federal court on March 31, 2017 (Dkt. 1). Defendant filed this Motion on April 26, 2017. Plaintiff opposed on May 22, 2017 (Dkt. 21); Defendant replied on May 26, 2017 (Dkt. 22).

II. Legal Standard

"An agreement to arbitrate is a matter of contract." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). "It is a way to resolve those disputes—but only those disputes—the parties have agreed to submit to arbitration." *Id.*

The Federal Arbitration Act ("FAA") provides that "any arbitration agreement within its scope shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. It permits any party "aggrieved by the alleged . . . refusal of another to arbitrate" to petition any federal district court for an order compelling arbitration in the manner provided for in the agreement. *Id.* at § 4; *Chiron Corp.*, 207 F.3d at 1130. The Act "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis in original). When a party moves to compel arbitration, interpreting the

parties' intent on certain issues in the agreement remains "within the province of judicial review." *MoPet v. Mastro*, 652 F.3d 982, 987 (9th Cir. 2011).

III. Discussion

Defendant argues all of Plaintiff's claims are subject to a binding arbitration agreement. Mot. at 1. Defendant points to an arbitration agreement signed by Plaintiff "as a part of his employment" with Defendant. *See* Declaration of Angela Helms ("Helms Decl.") (Dkt. 16-4) Ex. J ("Agreement"). The Agreement states that the employee agrees to submit to arbitration any "claims relating to [the employee's] employment, cessation of employment, and/or application for employment, tort claims, breach of contract claims, and claims for violation of any federal, state, local, or other governmental law, statue, regulation, or ordinance." *Id.* at 19. Defendant also points out that Plaintiff acknowledged the Agreement by submitting a "Candidates Assessment Information" document that incorporated the Agreement. Mot. at 3; *see* Helms Decl. Ex. B. Further, Defendant's Employee Handbook confirmed that the Agreement was "the sole and exclusive remedy for employment related claims." Helms Decl. Ex. G. at 44.

In opposition, Plaintiff argues that the FAA does not apply to the Agreement, and that the Agreement is procedurally and substantively unconscionable. *See* Opp'n.

A. The FAA Applies to the Arbitration Agreement

The FAA provides that

> [a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. The Supreme Court has held that the "word 'involving,' like 'affecting,' signals an intent to exercise Congress' commerce power to the full." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 115 (2001) (quoting *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 277 (1995)). Section 2's "language . . . insist[s] that the 'transaction' in fact 'involv[e]' interstate commerce, even if the parties did not contemplate an interstate commerce connection." *Allied-Bruce*, 513 U.S. at 281.

Here, Plaintiff was employed by Defendant in California and performed work in California. Mot. at 4. Defendant is a Delaware corporation with its principal place of business in Georgia. *Id.* It is undisputed that Plaintiff was employed by a national

corporation that does business throughout the United States. *See id.* at 5; Opp'n at 11. It does not appear that Plaintiff's job directly involved interstate commerce—but that is not required by the Supreme Court's "broad" interpretation of § 2's language. Defendant's "multistate nature" is sufficient for the Court to find that the FAA applies to the Agreement. *See Allied-Bruce*, 513 U.S. at 282; *see also CarMax Auto Superstores California LLC v. Hernandez*, 94 F. Supp. 3d 1078, 1099–1102 (C.D. Cal. 2015).

B. Unconscionability

The first prong of the FAA's two-part test—the existence of a valid, written agreement to arbitrate in a contract—is governed by state contract law. *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630–31 (2009); *Circuit City Stores, Inc. v. Adams*, 279 F.3d 889, 892 (9th Cir. 2002); *see also* 9 U.S.C. § 2 ("[Arbitration agreements] shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."). It is "well settled" that the existence of a valid, written agreement to arbitrate in a contract is an issue for a court, not an arbitrator, to decide. *Granite Rock Co. v. Int'l Broth. of Teamsters*, 561 U.S. 287, 296 (2010). If there is a factual dispute regarding whether an agreement to arbitrate was made, a court must try the issue. *See* 9 U.S.C. § 4 ("If the making of the arbitration agreement . . . be in issue, the court shall proceed summarily to the trial thereof. . . . [T]he party alleged to be in default may . . . demand a jury trial of such issue . . . ."); *Clar Prods., Ltd. v. Isram Petition Pictures Prod. Servs., Inc.*, 529 F. Supp. 381, 383 (S.D.N.Y. 1982) (ordering an "evidentiary hearing" because there was an "issue of fact" as to whether a valid arbitration agreement was formed).

Because arbitration is a matter of contract, arbitration agreements "are subject to all defenses to enforcement that apply to contracts generally." *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1170 (9th Cir. 2003) (citing 9 U.S.C. § 2). "It is well-established that unconscionability is a generally applicable contract defense, which may render an arbitration provision unenforceable." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1280 (9th Cir. 2006). "[T]he party opposing arbitration bears the burden of proving any defense, such as unconscionability." *Pinnacle Museum Tower Assn. v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 236 (2012) (citing *Engalla v. Permanente Medical Group, Inc.*, 15 Cal. 4th 951, 972 (1997)).

California courts analyze contract provisions for both procedural and substantive unconscionability. *Nagrampa*, 469 F.3d at 1280. "[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." *Armendariz v. Found. Health Psychcare Servs.*, 24 Cal. 4th 83, 114 (2000) (internal citations omitted).

However, both procedural and substantive unconscionability must be present in some degree for a contract to be unenforceable. *Id.*

1. Procedural Unconscionability

The procedural unconscionability analysis focuses on "'oppression' or 'surprise.'" *Id.* (citing *Flores v. Transamerica HomeFirst, Inc.*, 93 Cal. App. 4th 846, 853 (2001)). "Oppression arises from an inequality of bargaining power that results in no real negotiation and an absence of meaningful choice," while "[s]urprise involves the extent to which the supposedly agreed-upon terms are hidden in a prolix printed form drafted by the party seeking to enforce them." *Flores*, 93 Cal. App. 4th at 853.

Plaintiff argues that the Agreement is *per se* procedurally unconscionable because it is a contract of adhesion. Opp'n at 6–7. Specifically, Plaintiff points to the fact that Defendant conditions employment on signing the Agreement. *Id.* at 7. A contract of adhesion is "a standard-form contract, drafted by the party with superior bargaining power, which relegates to the other party the option of either adhering to its terms without modification or rejecting the contract entirely." *Circuit City*, 279 F.3d at 893. A contract of adhesion is procedurally unconscionable. *Ting v. AT&T*, 319 F.3d 1126, 1148 (9th Cir. 2003).

Here, Defendant does not dispute that the Agreement was a contract of adhesion. *See* Reply at 4–5. Indeed, it cannot: Plaintiff's application to work for Defendant explicitly stated that applicants would not be considered for employment unless they agreed to submit all covered claims to arbitration. Helms Decl. Ex. B at 6; *Armendariz*, 24 Cal. 4th at 114–15. Thus, the Agreement has at least a modest level of procedural unconscionability. *Nguyen v. Applied Medical Resource Corp.*, 4 Cal. App. 5th 232, 248 (2016) (finding a take-it-or-leave-it contract of adhesion in the employment context to establish only a modest degree of procedural unconscionability); *see also Ingle*, 328 F.3d at 1172 ("[W]hen a party who enjoys greater bargaining power than another party present the weaker party with a contract without a meaningful opportunity to negotiate, oppression and, therefore, procedural unconscionability are present." (internal quotation omitted)).

Plaintiff also argues that the Agreement contains misleading statements that render it procedurally unconscionable. Opp'n at 8. Specifically, Plaintiff points to a line in the Agreement stating that it is "intended to facilitate the prompt, fair, and inexpensive resolution of legal disputes . . . ." *Id.* (quoting Helms Decl. Ex. J ("Agreement") at 23). Plaintiff cites no authority for the proposition that this statement is misleading, and courts have found that arbitration offers just these benefits. *See Circuit City*, 532 U.S. at 123;

Stolt-Nielson S.A. v. AnimalFeeds International Corp., 559 U.S. 662, 685 (2010). Accordingly, this argument is unavailing.

Plaintiff also argues that the Agreement is procedurally unconscionable because Plaintiff was not provided with a copy of the American Arbitration Association's ("AAA") rules of arbitration (the "AAA Rules"). Opp'n at 9. The Agreement incorporates the AAA Rules, requiring that both mediation and binding arbitration be conducted in accordance with those rules. Helms Decl. Ex. J at 21–22. The Agreement also states that the rules are available at the AAA website and through Defendant's human resources department. *Id.*

The Supreme Court of California has found that where a challenge to the enforcement of an arbitration agreement "concerns only matters that were clearly delineated in the agreement," the failure to attach the arbitration rules does not affect the unconscionability analysis. *Baltazar v. Forever 21, Inc.*, 62 Cal. 4th 1237, 1246 (2016). Here, Plaintiff is challenging the terms of the Agreement itself, not the substance of the AAA Rules. Thus, Defendant's failure to attach the AAA Rules to the Agreement does not create a higher level of procedural unconscionability. This is especially true because a "contract may validly include the provisions of a document not physically a part of the basic contract." *Wolschlager v. Fidelity Nat'l Ins. Co.*, 111 Cal. App. 4th 784, 790 (2003); *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (holding that "courts must place arbitration agreements on equal footing with other contracts and enforce them according to their terms").

Finally, Plaintiff argues that the Agreement is procedurally unconscionable because it fails to disclose the disadvantages of arbitration, such as lack of a jury trial, limited appellate review, limited discovery, and lower awards. Opp'n at 8–9. To the contrary, however, the Agreement has a section labeled, in capitalized and bolded letters, "Waiver of Right to Jury Trial." Agreement at 21. In addition, the Agreement expressly incorporates by reference the AAA Rules, which state that "[t]he arbitrator may grant any award or relief that would have been available to the parties had the matter been heard in court including awards of attorney's fees and costs, in accordance with the applicable law." Defendant's Request for Judicial Notice (Dkt. 17) Ex. 1 ("AAA Rules") at 29.[1] Finally, the Agreement explains that "[d]iscovery shall be conducted in accordance with the Federal Rules of Civil Procedure, subject to any restrictions imposed by the arbitrator" or Defendant's arbitration program. Agreement at 23. The restrictions are

[1] The Court take judicial notice of the AAA Rules pursuant to Federal Rule of Evidence 201, because they are "generally known within the trial court's territorial jurisdiction," and can be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

detailed in the text of the Agreement. *Id.* The Court thus finds that the Agreement did not fail to disclose the disadvantages or limitations of arbitration.

Because the Agreement is a contract of adhesion, a modest level of procedural unconscionability existed at the time of contract.

2. Substantive Unconscionability

An arbitration provision is substantively unconscionable if it is "overly harsh" or generates "one-sided results." *Armendariz*, 24 Cal. 4th at 114.

Plaintiff argues that the Agreement is substantively unconscionable because it intentionally omits the fact that the prevailing party in Fair Employment and Housing Act ("FEHA") cases is entitled to attorney's fees and costs. Opp'n at 11. Indeed, the Agreement states that "[t]he parties shall each pay their own attorney's fees and costs." Agreement at 24.

The AAA Rules are incorporated into the Agreement by reference, and they allow an arbitrator to "grant any award or relief that would have been available to the parties had the matter been heard in court including awards of attorney's fees and costs, in accordance with the applicable law." AAA Rules at 29. Thus, the Court finds that the Agreement does not expressly limit statutory remedies, and that Plaintiff's rights under FEHA are not waived.

Plaintiff also argues that the Agreement is substantively unconscionable because it limits the pool of arbitrators who can hear Plaintiff's case, giving Defendant an unfair repeat-player advantage. Opp'n at 11. The Agreement provides for a fairly involved process in which both sides actively participate in the selection of an arbitrator. *See* Agreement at 23. The Court finds that this process does not create substantive unconscionability.

Plaintiff also argues that the Agreement fails to provide for sufficient discovery. Opp'n at 11–12. The Agreement allows for each party to propound ten interrogatories and ten requests for admissions, and more if the requesting party can show good cause. Agreement at 23. The parties can each make reasonable and narrowly tailored document requests. *Id.* In addition to the deposition of the party initiating arbitration, each party is allowed three depositions as of right. *Id.* The Court finds that these discovery rules do not rise to the level of substantive unconscionability, particularly because under the terms of the Agreement, the arbitrator is empowered to broaden discovery as appropriate.

Finally, Plaintiff argues that the Agreement is substantively unconscionable because it does not allow for "some enhanced judicial review." Opp'n at 13. Plaintiff suggests that because the Agreement "makes no mention" of enhanced judicial review, judicial review is excluded, rendering the Agreement substantively unconscionable. *Id.* This is not so. An arbitrator's decision is not excluded from judicial review merely because an arbitration agreement makes no mention of review. More importantly, here, the AAA Rules require that the arbitrator issue a written award that includes the reasons for such award. AAA Rules at 29. Further, the Agreement itself contemplates the submission of awards to a court for review and approval. *See* Agreement at 22.

In sum, Plaintiff has failed to establish substantive unconscionability. Because plaintiff must demonstrate both procedural and substantive unconscionability, the Court finds that the Agreement is not unconscionable.

IV. Disposition

Because the Court finds that the Agreement is binding and not unconscionable, the Court GRANTS Defendant's Motion to Compel Arbitration. This case is DISMISSED without prejudice to Plaintiff pursuing arbitration of his claims.

The Clerk shall serve this minute order on the parties.