

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROSALIND SMITH : CIVIL ACTION  
: :  
v. : :  
: :  
CREATIVE RESOURCES, INC. d/b/a :  
PSI SERVICES II INC., TROY :  
HUGHES, AND JOHN DOES 1-10, :  
J/S/I : NO. 97-6749

M E M O R A N D U M

WALDMAN, J.

November 20, 1998

Plaintiff alleges that while employed as an administrative assistant by the defendant corporation she was sexually harassed at work by defendant Hughes, a corporate employee, and that her supervisor, Norma Romano, failed to take appropriate action when plaintiff complained to her. Plaintiff alleges that Mr. Hughes made vulgar sexual remarks to her, inappropriately touched her clothing on one occasion and her buttocks on another. Plaintiff alleges that Mr. Hughes and Ms. Romano at all pertinent times were "agents and employees of Defendant PSI II" and "acting within the scope of their authority." Plaintiff alleges that she was then terminated on April 18, 1996 in retaliation for complaining about the sexual harassment to which she had been subjected by Mr. Hughes.

In her amended complaint, plaintiff asserts parallel Title VII and PHRA claims for sexual harassment and retaliatory

discharge.<sup>1</sup> She also asserts a claim for assault and battery by defendant Hughes which she alleges the defendant employer "intended and authorized."

Presently before the court are the motions of defendants Creative Resources and Hughes to dismiss this action.<sup>2</sup> Defendants argue that plaintiff's claims are subject to binding arbitration.

Plaintiff's employment contract includes a mandatory arbitration clause which provides:

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<sup>1</sup> It appears that plaintiff's PHRA claims may be barred. The last alleged act of discrimination occurred on April 18, 1996 when plaintiff was discharged. Plaintiff asserts that she filed an administrative complaint with the EEOC and the PHRC on January 6, 1997, which was 263 days after her discharge. By virtue of federal law, a plaintiff has 300 days in a deferral state to file a complaint with the EEOC to preserve her Title VII claims. To preserve her PHRA remedies, however, a plaintiff must show that within 180 days she filed with or the EEOC transmitted to the PHRC her complaint. See Woodson v. Scott Paper Co., 109 F.3d 913, 925-26 (3d Cir.) (worksharing agreement relevant only to federal exhaustion requirements but to preserve PHRA remedies plaintiff must show administrative complaint was timely filed with or received by PHRC within 180 days of alleged act of discrimination), cert. denied, 118 S. Ct. 299 (1997).

<sup>2</sup> These are the only named defendants. Nowhere in the body of her complaint or her brief does plaintiff mention any "John Doe" defendant, let alone describe or characterize any such defendant. It is one thing to name a "John Doe" defendant whose culpable conduct is described and whose identity one reasonably hopes to learn through discovery. It is quite another thing merely to list "John Doe" defendants in a caption with no allegations describing them or the conduct for which the plaintiff may seek to hold them liable. Plaintiff also provides no information from which the court can discern who or what "J/S/I" may be. Perhaps this is a heretofore unencountered abbreviation for jointly, severally and individually, but this is necessarily speculation on the court's part.

## SECTION TWELVE: ARBITRATION

Any controversy or claim arising out of or relating to Employee's employment with PSI or the termination thereof shall be settled by arbitration in the District of Columbia in accordance with the laws of the District of Columbia and the applicable rules of the American Arbitration Association or such other rules as are agreed upon by the parties to this Agreement. The parties agree to accept the arbitration award as final and binding upon them, and judgment may be entered upon that award in accordance with the practice of any court having jurisdiction.

Plaintiff does not dispute that her claims arise out of and relate to her employment and termination and are thus clearly within the scope of the arbitration provision. Rather, she argues that the agreement is unconscionable and the arbitration provision is unenforceable.<sup>3</sup>

State law contract principles govern disputes over agreements to arbitrate. See First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995).<sup>4</sup> Consistent with the strong policy in favor of arbitration, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration."

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<sup>3</sup> Plaintiff has not disputed the contention of defendant Hughes that if the arbitration agreement is valid, it encompasses the claims against him. See Pritzker v. Merrill Lynch, 7 F.3d 1110, 1121-22 (3d Cir. 1993) (agents and employees of principal bound by valid arbitration agreement are also covered thereby).

<sup>4</sup> The parties agree that the law of Pennsylvania applies to issues regarding the effect and validity of their contract.

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985).

Plaintiff argues that her employment contract is unconscionable because she had no "meaningful choice" when she signed it and it unreasonably favors the employer. She asserts that the employer had superior bargaining power, that she did not read the entire contract, that she was not advised to consult counsel and that the arbitration provision was inconspicuous.

That plaintiff may not have read or understood the agreement does not render it invalid. A literate adult may not avoid a contractual obligation on the ground she did not read or understand the terms of the contract. Tose v. First Pennsylvania Bank, N.A., 648 F.2d 879, 900 (3d Cir. 1981) ("Ignorance of the contents of a document or failure to read before signing is no defense to a contractual obligation under Pennsylvania law"); Simeone v. Simeone, 581 A.2d 162, 165 (Pa. 1990) (contracts cannot be voided on ground that an unhappy party failed to read or understand the terms "irrespective of whether the agreements embodied reasonable or good bargains"); Thrasher v. Rothrock, 105 A.2d 600, 604 (Pa. 1954) (that contract was not read or was signed in haste is not grounds for reformation or invalidation). Creative Resources had no obligation to ensure plaintiff digested the contract terms, consulted with counsel or had time to deliberate or negotiate. An employer may offer a contract to a

prospective employee on a take-it or leave-it basis. See Seus v. John Nuveen & Co., 146 F.3d 175, 183 (3d Cir. 1998).

There is nothing about the format of the contract which would prevent an observant person from seeing and reading the arbitration provision. The agreement is only six pages long, the print size of the arbitration provision is large enough to be easily read and the arbitration provision is clearly identified by a header in bold typeface. See, e.g., Trott v. Paciolla, 748 F. Supp. 305, 309 (E.D. Pa. 1990) (upholding arbitration term written in reasonably sized print and identified by caption in bold letters).

Inequality of bargaining power does not render a contract or contract term unenforceable. See Great Western Mortg. Corp. v. Peacock, 110 F.3d 222, 229 (3d Cir.), cert. denied, 118 S. Ct. 299 (1997); Witmer v. Exxon Corp., 434 A.2d 1222, 1228 (Pa. 1981). Even an adhesionary contract term is enforceable unless it is "so one-sided as to be oppressive." Seus, 146 F.3d at 184. See also Koval v. Liberty Mut. Ins. Co., 531 A.2d 487, 491 (Pa. Super. 1987) (term enforceable unless it "unreasonably favors the other party to the contract"). An arbitration term does not favor one party over the other since it does not prevent either party from enforcing a substantive right in a neutral forum. Trott, 748 F. Supp. at 409. Plaintiff does

not suggest that she can not receive a fair adjudication in arbitration.

Plaintiff also argues that the entire contract should be voided because of the inclusion of Section Thirteen which states:

SECTION THIRTEEN: PSIA POLICIES AND PRACTICES

Notwithstanding any other provision of this Agreement, all references to PSI policies and practices contained herein shall mean such policies and practices as are in effect from time to time. As of the effective date of any new policy or practice or any amendment to an existing policy or practice, this Agreement shall be implemented and interpreted accordingly.

Plaintiff contends this provision unconscionably granted the employer a right unilaterally to alter any term of the contract. This extreme interpretation is not supported by the language of the contract as a whole.

Section Thirteen provides only that certain policies referenced in the agreement may be modified. Clearly, only those policies referred to in the agreement are covered by this provision and the only such policies referred to are the employer's "written personnel policies" which have no bearing on the arbitration provision. Moreover, the agreement expressly provides that: "Whenever the written personnel policies are in conflict with this Agreement, this Agreement will prevail." Thus, no modification which would conflict with the agreement would be effective. The agreement provides that any modification

to the agreement itself must be in writing and signed by both parties. Thus, the agreement to arbitrate could not be unilaterally modified.

Further, it will ordinarily benefit both parties to permit the employer to modify general personnel policies without requiring the execution of a new agreement to ensure continued employment. Any changes in general personnel policies, of course, may well benefit employees by, for example, encouraging safe workplace practices, increasing eligibility for personal leave or promoting civility and tolerance in the workplace.

Plaintiff finally argues that the arbitration agreement unfairly compels her to pay arbitration expenses and to arbitrate in Washington thereby "possibly forcing her to take vacation time, unpaid leave or even face termination" from her current employment.

The parties' agreement is silent on the payment of arbitration costs. When an arbitration agreement between an employee and her employer does not specify who must pay the costs of arbitration, the employer must pay. See Cole v. Burns Int'l Sec. Serv., 105 F.3d 1465, 1485 (D.C. Cir. 1997). Moreover, the defendant employer has agreed to pay any arbitration costs.

There is no apparent reason why arbitration proceedings could not be concluded within a short span of time. Washington is not a distant location. One can travel between Philadelphia

and Washington in less than two hours by train at a cost of less than the court filing fee. Moreover, court litigation almost invariably requires greater expenses and a greater commitment of time than does arbitration. Indeed, this is one reason why arbitration of disputes is favored. In any event, defendants have agreed to consent to arbitration in Philadelphia if that is now plaintiff's preference.

Plaintiff executed a valid agreement to submit to final and binding arbitration any dispute or claim arising from or related to her employment. All of her claims are thus within the scope of the arbitration provision. In such circumstances, an order of dismissal is appropriate. See Seus, 146 F.3d at 179.

Accordingly, defendants' motions will be granted. An appropriate order will be entered.

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O R D E R

AND NOW, this                    day of November, 1998, upon  
consideration of defendants' Motions to Dismiss (docs. #16 &  
#18), and plaintiff's responses thereto, consistent with the  
accompanying memorandum, **IT IS HEREBY ORDERED** that said Motions  
are **GRANTED** and accordingly this action is **DISMISSED**.

BY THE COURT:

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JAY C. WALDMAN, J.