STATE OF MICHIGAN

COURT OF APPEALS

THOMAS LYDDY,

Plaintiff-Appellant,

v

DOW CHEMICAL COMPANY and GULF STATES, INC.,

Defendants-Appellees.

UNPUBLISHED
January 19, 2010

No. 290052
Midland Circuit Court
LC No. 08-003311-CZ

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.[1]

I. Basic Facts

The facts of this case are undisputed. Plaintiff was a pipefitter, hired as a subcontractor by Gulf States, Inc. (GSI) to work on projects for Dow Chemical (Dow). While at work, plaintiff was injured by an allegedly hazardous condition of Dow's facility, i.e., sharp bolts that injured his head. This was treated as a work-related injury and, thereafter, plaintiff's employment was terminated at Dow's request because plaintiff committed an unsafe act.

Plaintiff sued both defendants in a two-count complaint, alleging that Dow tortiously interfered with plaintiff's contractual relationship with GSI and that both defendants retaliated against him for filing the worker's compensation claim. In response, defendants moved for summary disposition under MCR 2.116(C)(7), asserting that the complaint was barred in its entirety by the arbitration agreement[2] set forth in the GSI application for employment signed by plaintiff and the GSI employee handbook, also signed by plaintiff.

[1] This appeal has been decided without oral argument pursuant to MCR 7.214(E).

[2] There is no dispute that the arbitration provided for in his employment contract was statutory arbitration.

The provision in the application for employment entitled, "Arbitration of certain disputes," stated in relevant part:

> Except for certain exceptions described below, all *claims* seeking damages (including punitive damages), injunctive relief, reinstatement and/or any other legal or equitable form of relief *arising out of or in any way related to your employment* are all subject to final and binding arbitration in accordance with the most current Rules of the American Arbitration Association for the Resolution of Employment Disputes. "*Claims*", as used herein, includes, but is not limited to, disputes, claims and/or causes of action alleging personal injury or damage to personal property, discrimination, sexual harassment, failure to hire, failure to promote, wrongful termination, breach of contract (actual or implied), tortious interference with contract or with prospective business relations, infliction of emotional distress (intentional or negligent), and/or any other claim or cause of action arising in contract and/or tort. "*Arising out of or in any way related to your employment*" as used herein, includes, but is not limited to: (a) *claims* against GSI, GSI's parent, sister or subsidiary corporations and any affiliated, partners joint ventures of GSI; (b) *claims* against any person, company or entity (or any of their property) for whom or with whom GSI has done or may be doing work at any time during your employment; (c) *claims* against any person, company or entity to whom GSI owes any duty of indemnity.
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> The employee handbook also included a section entitled "Arbitration Policy:" Virtually everyone today is aware of the high cost of lawsuits throughout the United States, and the fact that such lawsuits can last for years. GSI believes that neither the employer nor the employee benefits from lengthy disputes in court, which can result in enormous legal fees, and results that are unsatisfactory to both sides. Therefore, GSI has adopted the flowing policy of mandatory, binding arbitration of all claims involving GSI and its employees. This policy applies to claims by the employee as well as claims by the employer.

This section then restates in full the "Arbitration of certain disputes" provision contained in the application for employment, *supra*. Plaintiff signed the "Employee handbook acknowledgement," which served as his acknowledgement that he agreed to the rules and regulations in the employee handbook and that he was an at-will employee. The acknowledgement also stated:

> [GSI] reserve[s] the right to modify, revoke, suspend, terminate or change any or all policies or procedures contained herein, in whole or in part, at any time, with or without notice, at our discretion, except that the policies and procedures contained herein regarding arbitration shall not be modified, revoked, suspended, terminated or changed unless you consent to such modification, revocation, suspension, termination or change by signing a new jobsite policies document or other document containing revised arbitration policies and procedures.

The trial court found that the express terms of the arbitration policy, incorporating claims against any entity for whom or with whom GSI had done or might be doing work during the time

of employment, precluded plaintiff's suit against Dow. The sole issue now raised on appeal is whether plaintiff's agreement with GSI requires plaintiff to arbitrate his claims against Dow.

II. Standards of Review

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Issues of contract interpretation are questions of law reviewed de novo, *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006), as are issues of statutory interpretation, *Keifer v Markley*, 283 Mich App 555; 769 NW2d 271 (2009). Finally, a trial court's determination that an issue is subject to arbitration is also reviewed de novo. *Madison Dist Pub Schools v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001).

III. Analysis

Plaintiff argues that the trial court erred in granting summary disposition as to Dow because MCL 600.5001 requires an express written agreement between the parties in order for the requirements of statutory arbitration to be met. It follows, in plaintiff's view, that because Dow was not a party to the arbitration agreement between plaintiff and GSI, plaintiff was not bound by the agreement to arbitrate with Dow. We do not agree with plaintiff.

In certain instances, an arbitration agreement may be extended to persons who were not parties to the agreement. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 162-164; 742 NW2d 409 (2007). This Court must look to the terms of the agreement to determine the scope of arbitration and whether the dispute is expressly exempt from arbitration by the terms of the contract. *Id*. at 163.

Here, Dow was a third party beneficiary of the contract between plaintiff and GSI. See MCL 600.1405 (defining beneficiary as "Any person for whose benefit a promise is made by way of contract . . . has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promise."). The unambiguous terms of the arbitration provision indicate that all claims against a company for whom GSI is completing work are subject to arbitration. Dow was a company for whom GSI was completing work and, thus, was clearly a third party beneficiary of the agreement. Accordingly, plaintiff is bound by the terms of the contract that he signed and the trial court properly concluded that plaintiff's claims against Dow must be sent to arbitration.

Further, there is no merit to plaintiff's argument that MCL 600.5001(2) requires that both plaintiff and Dow must have entered into a written arbitration contract. MCL 600.5001 provides, in relevant part:

> (2) *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. [Emphasis added.]

Nothing in the language of this provision prohibits beneficiaries of contractual arbitration agreements from availing themselves of the benefits, or pitfalls, of binding statutory arbitration. Were we to adopt plaintiff's reading of this provision, we would be required to read additional terms into the clear and unambiguous statutory language. To do so would be inapposite to our role in interpreting clearly written statutory provisions; in such instances, we must apply and enforce the language as written. *Lantz v Banks*, 245 Mich App 621; 628 NW2d 583 (2001). Moreover, we note that Dow is arguably a party to the contract between GSI and plaintiff because of its beneficiary status.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck