IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOAN M. KOMA, Executrix of the ESTATE OF JOAN EVRARD, Deceased, Plaintiff/Appellee	:	
v.	:	No. 20-1756
MAHONING VALLEY CONVALESCENT HOME, INC. d/b/a MAHONING VALLEY NURSING & REHABILITATION CENTER and SAPPHIRE UNLIMITED HOLDINGS, INC., Defendants/Appellants	:	

Christopher J. Culleton, Esquire	Counsel for Plaintiff/ Appellee
Elizabeth A. Stefanski, Esquire	Counsel for Defendants/ Appellants

MEMORANDUM OPINION

Serfass, J. - October 19, 2021

Here before the Court is the appeal of our Order of July 26, 2021 overruling the preliminary objections filed by Defendants Mahoning Valley Convalescent Home, Inc. d/b/a Mahoning Valley Nursing & Rehabilitation Center and Sapphire Holdings Unlimited Corporation (improperly named as Sapphire Unlimited Holdings, Inc.). We file the following Memorandum Opinion pursuant to Pa.R.A.P. 1925(a) and respectfully recommend that our Order of July 26, 2021 be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, Joan M. Koma, executrix of the estate of Joan M. Evrard (hereinafter "the Decedent"), initiated the instant action by writ of summons on July 30, 2020. A complaint was filed on December 21, 2020. Plaintiff seeks damages based on negligence, corporate negligence, wrongful death, and survival claims for alleged injuries sustained by the Decedent while under the care of Defendants which allegedly caused or contributed to her death on November 18, 2018.

The Decedent was admitted to Mahoning Valley Nursing & Rehabilitation Center for long-term care on July 19, 2011. This decision was made pursuant to an agreement between the Decedent and Plaintiff, who had been acting as the Decedent's attorney-in-fact since 2010.

On the date of the Decedent's admission to the facility, the Decedent and Plaintiff met with two (2) staff members of the facility to review the admission paperwork (hereinafter "the Admission Agreement"). The Decedent was seventy-eight (78) years old at the time and "overall in pretty good health." (Plaintiff's Deposition, 6/4/21). Plaintiff testified that both she and the Decedent signed the Admission Agreement, but that neither of them read the agreement in its entirety. (Plaintiff's Deposition, 6/4/21). Plaintiff further testified that the staff informed her that the meeting is "normally about two, two and a half hours" and

that she was not given an opportunity to review the paperwork before or after signing. (Plaintiff's Deposition, 6/4/21). Section 19 on pages 18-21 of the 24-page Admission Agreement contained an agreement to arbitrate titled "19.4 Mandatory, Binding Arbitration." (hereinafter "the Arbitration Agreement").

On March 4, 2021, Defendants Mahoning Valley Convalescent Home, Inc. d/b/a Mahoning Valley Nursing & Rehabilitation Center and Sapphire Holdings Unlimited Corporation (hereinafter "the Defendants") filed preliminary objections to Plaintiff's complaint. Specifically, Defendants raised two (2) preliminary objections: 1) enforcement of an agreement for alternative dispute resolution pursuant to Pa.R.C.P. 1028(a)(6); and 2) insufficient specificity in a pleading pursuant to Pa.R.C.P. 1028(a)(3). In terms of relief, Defendants requested that this Court enforce the Arbitration Agreement between Plaintiff and Mahoning Valley Nursing & Rehabilitation Center and strike Plaintiff's claim of vicarious liability along with all allegations of agency. (Defendants' Preliminary Objections, 3/4/21). Defendants argued that the Arbitration Agreement is valid and enforceable and that arbitration is appropriate in this case. (Defendants' Memorandum of Law, 3/4/21).

On March 17, 2021, Plaintiff filed an answer to Defendants' preliminary objections. Plaintiff argued that the Arbitration Agreement is unenforceable because it is procedurally and

substantively unconscionable, that denying the wrongful death claim would deny the beneficiaries of their constitutional right to a jury trial, and that the complaint sufficiently pled to allegations of agency. (Plaintiff's Memorandum of Law, 3/17/21). Defendants filed a supplemental supporting brief on June 14, 2021, and Plaintiff filed a supplemental brief in opposition on June 15, 2021. Following oral argument before this Court on June 21, 2021, we overruled Defendants' preliminary objections, finding that the Arbitration Agreement was procedurally and substantively unconscionable and that Plaintiff's vicarious liability claim was sufficiently specific to provide Defendants with adequate notice to prepare their defense. (Court's Order of 7/26/21). We also noted that because Defendants' preliminary objections were overruled, there was no need to address bifurcation of Plaintiff's survival action and wrongful death claims. (Court's Order of 7/26/21).

On August 24, 2021, Defendants filed an Appeal to the Superior Court of Pennsylvania requesting review and reversal of this Court's July 26, 2021 Order which overruled the "Preliminary Objections of Defendants, Mahoning Valley Convalescent Home, Inc. d/b/a Mahoning Valley Nursing & Rehabilitation Center and Sapphire Holdings Unlimited Corporation (improperly named as Sapphire Unlimited Holdings, Inc.) to Plaintiff's Complaint". On August 26, 2021, we entered an order directing Defendants to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P.

1925(b). In compliance with our order, Defendants filed their "Concise Statement of Errors Complained of on Appeal" on or about September 9, 2021.

ISSUES

In their Concise Statement, Defendants raise the following issues:

1. Whether the Trial Court, in voiding the Agreement to Arbitrate, violated the standards established by the Federal Arbitration Act and Pennsylvania law, which favor the enforcement of arbitration agreements?; and
2. Whether the Trial Court erred in finding that the Agreement to Arbitrate, contained within the larger Admissions Agreement signed by Joan M. Koma, as the authorized agent of the decedent, Joan Evrard, is void due to substantive and procedural unconscionability?

DISCUSSION

The Federal Arbitration Act "declare[s] a national policy favoring arbitration" that applies in state and federal courts. Preston v. Ferrer, 552 U.S. 346, 353 (2008) (*quoting* Southland Corp. v. Keating, 465 U.S. 1, 10 (1984)). We note that the Superior Court has held that "Pennsylvania has a well-established public policy that favors arbitration, and this policy aligns with the federal approach expressed in the Federal Arbitration Act." Pisano

v. Extendicare Homes, Inc., 77 A.3d 651, 660 (Pa.Super. 2013). This policy favoring arbitration applies to agreements involving nursing homes. MacPherson v. Maggie Mem'l Hosp. for Convalescence, 128 A.3d 1209, 1219 (Pa.Super. 2015).

Pennsylvania law requires that an arbitration agreement be "valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity to the validity, enforceability or revocation of any contract." 42 Pa.C.S.A. § 7303. "[G]enerally applicable state-law contract defenses, such as fraud, duress, or unconscionability, still may be applied to invalidate arbitration agreements." Salley v. Option One Mortg. Corp., 925 A.2d 115, 119 (Pa. 2007).

"[A] contract or term is unconscionable, and therefore avoidable, where there was a lack of meaningful choice in the acceptance of the challenged provision and the provision unreasonably favors the party asserting it. The aspects entailing lack of meaningful choice and unreasonableness have been termed procedural and substantive unconscionability, respectively. The burden of proof, generally, concerning both elements has been allocated to the party challenging the agreement, and the ultimate determination of unconscionability is for the courts." Id. at 119-20 (internal citations omitted).

Both parties referred to the MacPherson case, wherein the Superior Court found that an arbitration agreement was neither

procedurally nor substantively unconscionable. MacPherson, 128 A.3d at 1221-22.

> In reaching that conclusion, [the Superior Court] noted the following terms contained in the agreement: (1) the parties shall pay their own fees and costs, similar to civil litigation practice in common pleas court; (2) a conspicuous, large, bolded notification that the parties, by signing, are waiving the right to a trial before a judge or jury; (3) a notification at the top of the agreement, in bold typeface and underlined, that it is voluntary, and if the patient refuses to sign it, 'the Patient will still be allowed to live in, and receive services' at the facility; (4) a provision that the facility will pay the fees and costs of the arbitrator; (5) a statement that there are no caps or limits on damages other than those already imposed by state law; and (6) a provision allowing the patient to rescind within thirty days.

Cardinal v. Kindred Healthcare, Inc., 155 A.3d 46, 53 (Pa.Super. 2017) (*citing* MacPherson, 128 A.3d at 1221-22).

Based upon our review of the record, we made the following findings regarding the Arbitration Agreement at issue in the instant matter: 1) the Arbitration Agreement is not separate from the Admission Agreement, but rather is included as part of Section 19 on pages 18-21 of the 24-page document; 2) the Arbitration Agreement mentions the jury trial waiver throughout, but the waiver is not conspicuous; 3) the Arbitration Agreement provides no notification within the document that it is voluntary or that care will still be provided if the resident refuses to sign it, but rather the subsection is titled "19.4 Mandatory, Binding

Arbitration."; 4) the Arbitration Agreement indicates that the resident has the right to counsel and the right to have the document reviewed prior to signing; 5) the Arbitration Agreement splits arbitration costs between the resident and the facility, except in collection actions, and requires the facility to pay costs if the resident is eligible for Medicaid; 6) the Arbitration Agreement provides the resident with the option to rescind within thirty (30) days; and 7) the Arbitration Agreement allows the facility to unilaterally modify its terms.

We note that the agreement to arbitrate in MacPherson was a separate document from the admission agreement and clearly identified as an arbitration agreement. Macpherson, 128 A.3d at 1213. Moreover, arbitration was not mandatory and the agreement provided that admission to the facility was not conditioned upon agreeing to arbitrate ("VOLUNTARY AGREEMENT: If you do not accept this Agreement, the Patient will still be allowed to live in, and receive services in, this Center"). Id. Here, by signing the Admission Agreement, the resident or her agent agreed to arbitrate subject only to a "Limited Resident Right to Rescind this Mandatory Arbitration Clause (Section 19.4(a-i) of this Agreement)" within thirty (30) days of the execution of the Arbitration Agreement. It is unclear whether a refusal to arbitrate would result in the denial of admission in the first instance or whether a recission of the mandatory arbitration clause within thirty (30) days of

execution would result in the resident's discharge from the facility.

In MacPherson, the jury trial waiver language was in bold type, much larger than the surrounding type, and thus, conspicuous. Id. at 1213-14. Here, the Arbitration Agreement is located on pages 18-21, in paragraph 19, of a 24-page Admission Agreement. It appears under the general designation "Facility's Grievance Procedure". The jury trial waiver is not in bold type or large font. Unlike the agreement in MacPherson, Mahoning Valley Nursing & Rehabilitation Center designated the arbitrator to serve in the event of a dispute and retained the right to select an alternative arbitration service if the designated arbitrator was unable or unwilling to serve. Moreover, the Defendant facility also retained the right to select the arbitration site and to unilaterally modify the Admission Agreement. The costs of arbitration are borne equally under the Arbitration Agreement herein, unlike the MacPherson agreement where the facility bore all of the costs. Id. at 1217. Taken as a whole, we find that the instant Arbitration Agreement unreasonably favors the Defendant facility and, as a result, that there is no valid agreement to arbitrate.

CONCLUSION

For the foregoing reasons, this Court concludes that the Arbitration Agreement is procedurally and substantively unconscionable, and therefore, void and unenforceable in light of

state and federal arbitration policy. Therefore, we respectfully recommend that Defendants' appeal be denied and that our Order of July 26, 2021 be affirmed accordingly.

BY THE COURT:

Steven R. Serfass, J.