[Cite as *Ross v. Menards, Inc.*, 2023-Ohio-2246.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

Kelly Jo Ross	Court of Appeals No. WM-22-003
Appellant	Trial Court No. 22CI000105
v.	
Menards, Inc., et al.	**DECISION AND JUDGMENT**
Appellees	Decided: June 30, 2023

* * * * *

Brian D. Spitz, Rocco J. Screnci, and Fred M. Bean, for appellant.

Sarah E. Pawlicki and James B. Yates, for appellees.

* * * * *

DUHART, P.J.

{¶ 1} Appellant, Kelly Jo Ross, appeals from an order entered by the Williams County Court of Common Pleas, granting a motion to compel arbitration and stay proceedings that was filed by appellees Menard's, Inc., Joe Eich, and Dan Shinhearl (collectively, "appellees"). For the reasons that follow, the trial court's judgment is affirmed.

Statement of the Case

{¶ 2} On April 14, 2021, Ross filed a complaint against appellees, who were her former employers, asserting claims for gender discrimination under R.C. 4112.02(A) and unlawful retaliation under R.C. 4112.02(I) and R.C. 4123.90. She voluntarily dismissed her complaint without prejudice on July 12, 2021, and, within a year, re-filed a complaint bringing the same claims.

{¶ 3} On August 3, 2022, appellees moved to compel arbitration and stay proceedings under R.C. 2711.02(B) and R.C. 2711.03(A). Ross opposed the motion, urging that her claims were outside the scope of the arbitration agreement. Appellees filed a reply brief, and on September 27, 2022, the trial court granted the motion, ruling that Ross's claims were arbitrable and, further, ordering the proceedings stayed pending arbitration. Ross timely appealed from this decision.

{¶ 4} Statement of Facts

{¶ 5} Ross became employed with appellee Menards, Inc. on June 1, 2020. In connection with her employment, she signed an "Employee/Employer Agreement," which contains an arbitration clause that makes arbitration the "sole and exclusive forum and remedy for all covered disputes." The arbitration clause describes the type of claims to which it applies as follows:

> Problems, claims or disputes subject to binding arbitration include, but are not limited to: statutory claims under 42 U.S.C. §§ 1981-1986; Age Discrimination in Employment Act of 1967; Older Workers' Benefit

Protection Act ("OWPBA"); Fair Labor Standards Act; Title VII of the Civil Rights Act of 1964; Title I of the civil Rights Act of 1991; Americans with Disabilities Act; Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"); Family Medical Leave Act; and non-statutory claims such as contractual claims, quasi-contractual claims, tort claims and any and all causes of action arising under state or common law.

Assignment of Error

{¶ 6} Ross asserts the following assignment of error on appeal:

I. The trial court erred in granting appellees' motion to compel arbitration and stay proceedings.

Analysis

{¶ 7} Ross alleges in her assignment of error that her claims asserting violations of R.C. 4123.90 and R.C. 4112.02 are not "covered disputes" under the arbitration clause set forth in the Employee/Employer Agreement.

Standard of review

{¶ 8} "The scope of an arbitration clause, that is whether a controversy is arbitrable under the provisions of a contract, is a question for the court to decide upon examination of the contract." *Divine Constr. Co. v. Ohio-American Water Co.*, 75 Ohio App.3d 311, 316, 599 N.E.2d 388 (10th Dist.1991). "'Contract interpretation is a matter

of law, and questions of law are subject to de novo review upon appeal.'" *Amalgamated Transit Union, AFL-CIO, Local 697 v. Toledo Area Regional Transit Authority*, 2020-Ohio-6655, 164 N.E.3d 569, ¶ 25 (6th Dist.), quoting *St. Marys v. Auglaize Cty. Bd. of Commrs.*, 115 Ohio St.3d 387, 2007-Ohio-5026, 875 N.E.2d 561, ¶ 38.

Contract interpretation

{¶ 9} "'We have consistently explained that parties may contract for the terms they want and that the 'intent of the parties is presumed to reside in the language they chose to use in their agreement.'" *Hope Academy Broadway Campus v. White Hat Mgt., L.L.C.*, 145 Ohio St.3d 29, 2015-Ohio-3716, 46 N.E.3d 665, ¶ 35. "Common words in a contract are given their plain and ordinary meaning, unless another meaning is clearly evident from the face or overall content of the contract, or unless the result is manifestly absurd." *Id.* at ¶ 36.

{¶ 10} "As a matter of law, a contract is unambiguous if it can be given a definite legal meaning." *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 11. "If a reasonable interpretation of the language exists, [the court] should give the agreement its intended legal effect." *Buehrer v. Myers*, 2020-Ohio-3207, 155 N.E.3d 222, ¶ 15 (6th Dist.), quoting *Laboy v. Grange Indemn. Ins. Co.*, 144 Ohio St.3d 234, 2015-Ohio-3308, 41 N.E.3d 1224, ¶ 10. To this end, [c]ourts are commanded to refrain from inserting or deleting words to a contract while also giving effect to the words used, which we cannot pretend do not exist or have no meaning." *Buehrer* at ¶ 16,

citing *Cleveland Elec. Illum. Co. v. City of Cleveland*, 37 Ohio St.3d 50, 524 N.E.2d 441 (1988).

Arbitrability of Ross's claims under the Employee/Employer Agreement arbitration clause

{¶ 11} Ross argues that the only permissible construction of the Employee/Employer Agreement arbitration clause is one that omits statutory state-law claims from the universe of disputes that are covered under the contract. Specifically, Ross interprets the contract as providing that disputes fall within one of two categories, either statutory claims or non-statutory claims, and that those non-statutory claims include "contractual claims, quasi-contractual claims, tort claims and any and all causes of action arising under state or common law." Ross goes on to state that the covered statutory claims exclude state-law statutory claims, because "if Menards wanted to mention state-law claims when listing the types of covered statutory claims, it could have done so."

{¶ 12} Appellees correctly point out that Ross's proposed interpretation would require this court to ignore the concluding phrase "any and all causes of action arising under state and common law." This we decline to do.

{¶ 13} Upon this court's examination of the language of the contract, we observe that the first nine types of claims covered by the arbitration clause -- although explicitly part of a non-exclusive list -- are specifically-identified federal statutory claims. By contrast, the remaining covered claims are increasingly broadly described: (1) first as

"non-statutory claims, including but not limited to contractual claims, quasi-contractual claims, and tort claims;" and then (2) with an express extension of the scope of the arbitration clause to encompass "any and all causes of action arising under state or common law." Under this reading of the language of the arbitration clause, as opposed to that proposed by Ross, effect is given to all of the words used and a definite legal meaning can be discerned, including the unambiguous intention of the parties to extend the scope of the arbitration clause to cover statutory state-law claims.

{¶ 14} We therefore find, on de novo review, that the terms of the arbitration clause cover Ross's claims brought under R.C. 4123.90 and R.C. 4112.02 and that, consequently, those claims are subject to arbitration. Ross's sole assignment of error is found not well-taken.

Conclusion

{¶ 15} The judgment of the William County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Christine E. Mayle, J. _____
JUDGE

Myron C. Duhart, P.J. _____
JUDGE

Charles E. Sulek, J. _____
CONCUR.
JUDGE