STATE OF MICHIGAN

COURT OF APPEALS

ARCONCEPTS, INC and SHIRLEY GHANNAM, Plaintiffs-Appellants, v PAYCHEX, INC, Defendant-Appellee.	UNPUBLISHED February 3, 2004 No. 242753 Wayne Circuit Court LC No. 02-209432-CK

Before: Smolenski, P.J., and Saad and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal the trial court's grant of summary disposition under MCR 2.116(C)(7), and we affirm.

We review de novo the following matters: constitutional issues, *In re Carey*, 241 Mich App 222, 225-226; 615 NW2d 742 (2000); whether a dispute is arbitrable, *Madison Dist Public Schools v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001); interpretation of a contract, *Rednour v Hastings Mut Ins Co*, 468 Mich 241, 243; 661 NW2d 562 (2003); and the determination of the legal effect of a contractual clause, *Quality Products and Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003). A motion for summary disposition under MCR 2.116(C)(7) is also reviewed de novo. *Glancy v City of Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998).

Most of plaintiffs' issues were argued before and decided by the trial court and are, therefore, preserved for appeal. *Fast Air, Inc, v Knight*, 235 Mich App 541, 550; 599 NW2d 489 (1999). Plaintiffs raised the remaining issues in a brief that was misplaced by the trial court. Plaintiffs appear to have properly filed that brief and will not be punished for the trial court's error. *Peterman v DNR*, 446 Mich 177, 183; 521 NW2d 499 (1994). The issues are, therefore, preserved. *Id.*

I

Plaintiffs allege a denial of due process because the trial judge refused to read their misplaced brief at the motion hearing or because the trial judge did not allot counsel sufficient time for oral argument. Our Supreme Court has explained that "the touchstone of procedural due process is the fundamental requirement that an individual be given the opportunity to be heard 'in a meaningful manner.'" *Mudge v Macomb Co*, 458 Mich 87, 101; 580 NW2d 845 (1998).

Plaintiffs have not cited any law in support of their argument that they were denied due process by the trial court's failure to read their brief at the motion hearing. Further, the record reflects that the trial court gave plaintiffs' counsel ample opportunity to argue the motion. A trial court's decision regarding oral argument at a motion hearing is reviewed for an abuse of discretion. *Fast Air, supra* at 550. Here, plaintiffs had a hearing and the transcript shows that the trial judge allowed counsel as much time as he wanted to argue his case. Indeed, the trial judge never told counsel that he was out of time or needed to stop his argument; rather, the trial court repeatedly allowed plaintiffs' counsel to *continue* to argue his case. For these reasons, we reject plaintiffs' argument on this issue.

II

Plaintiffs also contend that the arbitration clause in the contract is inapplicable to the facts of the case. "To ascertain the arbitrability of an issue, the court must consider whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract." *Madison Dist Public Schools, supra* at 595. "Any doubts regarding the arbitrability of an issue should be resolved in favor of arbitration." *Id*.

Plaintiffs concede, as they must, that the contract between the parties contains an arbitration provision, and that the arbitration provision does not contain any express exemptions. However, plaintiffs argue that defendant engaged in deliberate misconduct that should not be considered within the scope of the arbitration provision. Any alleged misconduct by defendant involved the services defendant provided pursuant to the parties' agreement. The only case cited by plaintiffs holds that arbitration clauses are to be liberally construed and that all doubts regarding arbitrability are to be resolved in favor of arbitration. *Detroit Automobile Inter-Insurance Exchange v Reck*, 90 Mich App 286, 290; 282 NW2d 292 (1979). "Absent an express provision excluding a particular grievance from arbitration, or the most forceful evidence of a purpose to exclude the claim, the matter should go to arbitration." *Kentwood Public Schools v Kent Co Ed Ass'n*, 206 Mich App 161, 164-165; 520 NW2d 682 (1994).

Further, though plaintiffs argue that they did not "agree" to the arbitration clause, plaintiffs admittedly signed and are, therefore, bound by the express terms of the contract. Once again, in plaintiffs' only cited case, the Court found that the arbitration clause constituted a valid agreement to arbitrate. *DAIIE*, *supra* at 290. Unambiguous contracts must be enforced as they are written. *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). Our Supreme Court " 'has many times held that one who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms.' " *Id*. at 567-568, quoting *Komraus Plumbing & Heating, Inc v Cadillac Sands Motel, Inc*, 387 Mich 285, 290; 195 NW2d 865 (1972). Further, the location of a clause within a contract does not render it ambiguous or unenforceable. *Farm Bureau, supra* at 568. This Court has also explicitly held that the failure to read or understand a contract containing an arbitration agreement is no defense to submitting a claim to arbitration. *Christy v Kelly*, 198 Mich App 215, 216-217; 497 NW2d 194 (1992). Therefore, here, the arbitration clause is enforceable.

III

Plaintiffs maintain that the arbitration clause should not be enforced because it constitutes a waiver of their constitutional right to judge and jury that was not voluntary, knowing, or intentional. Our Supreme Court has held that the right to a civil jury trial is permissive, and a voluntary waiver through an agreement to arbitrate does not constitute a deprivation of a fundamental constitutional right. *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167, 182-183; 405 NW2d 88 (1987). In *McKinstry*, the Supreme Court also specifically rejected plaintiffs' argument that defendant must prove that plaintiff knowingly, intelligently, and voluntarily waived court access. *Id.* Accordingly, there is no merit to plaintiffs' argument on this issue.

IV

Plaintiffs further contend that Michigan courts may not compel arbitration in a foreign jurisdiction. However, this Court and the United States Supreme Court have held that forum-selection clauses are generally valid, as long as they are enforced against a party bound by the contract, and provided they are freely entered and neither unreasonable nor unjust. *Offerdahl v Silverstein*, 224 Mich App 417, 419-420; 569 NW2d 834 (1997); *Burger King Corp v Rudzewicz*, 471 US 462, 473 n 14; 105 S Ct 2174; 85 L Ed 2d 528 (1985). MCL 600.745(3) provides that forum-selection clauses that mandate that an action be brought in another state are to be enforced unless the other state would be "a substantially less convenient place." MCL 600.745(3)(c). Although plaintiffs assert that arbitration in New York would be slow and expensive, delay is explicitly not a ground for refusing enforcement, MCL 600.745(3)(b), and plaintiffs have provided no information to support a contention that they would incur greater expense by arbitrating in New York rather than in Michigan. Further, while plaintiffs claim that judicial intervention is warranted because enforcement of the arbitration clause would be neither speedy nor inexpensive, plaintiffs' cited case actually states that arbitration clauses are enforceable, and, because they are speedy and inexpensive, public policy favors their enforcement. *E E Tripp Excavating Contractor, Inc v Jackson Co*, 60 Mich App 221, 246-247; 230 NW2d 556 (1975). Moreover, this Court has held that a lack of judicial economy is also no reason to refuse enforcement of a valid arbitration agreement. *Christy*, *supra*, 198 Mich App at 217. Finally, to the extent plaintiffs argue that a contractual provision that requires arbitration in another state is *per se* unenforceable, the argument is incorrect.[1]

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kirsten Frank Kelly

[1] Plaintiffs also claim that the doctrine of intertwining should serve to keep this matter in the Michigan courts, *Liskey v Oppenheimer & Co, Inc*, 717 F2d 314, 317 (CA 6, 1983). The doctrine of intertwining does not apply here because all of plaintiffs' claims are arbitrable.