FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-3566

MASTER COLLISION REPAIR, INC.
d/b/a GERBER COLLISION,

Appellant,

v.

MICHAEL WALLER,

Appellee.

On appeal from the Circuit Court for Duval County.
Gary L. Wilkinson, Judge.

November 3, 2021

ROBERTS, J.

In this employment appeal, Master Collision Repair, Inc. d/b/a Gerber Collision ("Employer") seeks review of a final judgment awarding damages to Michael Waller ("Mr. Waller") for improper termination. Employer asks this Court to reverse the final judgment because it properly terminated Mr. Waller under the terms of his Employment Agreement. We agree and reverse.

Facts

Employer hired Mr. Waller as a market manager for its automotive collision repair business, which meant Mr. Waller was responsible for the operational management of several locations

under Employer's umbrella. On March 7, 2018, Mr. Waller was in Employer's Palatka store to conduct fit testing for respiratory masks certain employees had to wear when performing tasks like sanding and painting. While there, Mr. Waller repeatedly referred to the respiratory mask as a "KKK hood." Mr. Waller then asked a black employee who worked in the front office and was not part of the fit test group ("the office employee") if he would be offended if the mask was referred to as a "KKK hood" and if he wanted to try it on.

By the next day, senior management and human resources ("HR") were aware of employee complaints about Mr. Waller's behavior. HR immediately began an investigation wherein the Palatka store's general manager confirmed Mr. Waller asked employees taking the fit test to put on the "KKK hood." Mr. Waller admitted he referred to the mask as a "KKK hood" and admitted he asked the office employee to try it on, but claimed he was joking. A few days later, the office employee tendered a resignation letter detailing Mr. Waller's conduct and the distress it had caused him.

HR presented its findings to senior management who determined the complaints against Mr. Waller were substantiated and determined his conduct violated Employer's policies.* On March 13, 2018, senior management notified Mr. Waller he was

* Mr. Waller had received a copy of the Employee Handbook and was aware of Employer's Unlawful Harassment Policy, which defined harassment to include, among other things: verbal or physical conduct that "denigrates or shows hostility or aversion toward an individual because of their race, color . . . for the purpose or effect of creating an intimidating, hostile or offensive working environment." Other forms of harassment were defined to include: "making slurs or threats; rude, derogatory, or demeaning comments; unwelcome jokes; bullying; and teasing. . . . These types of harassment may be targeted at a person's race, color, personal appearance[.]" The Handbook stated Employer would investigate harassment complaints and take appropriate disciplinary action if necessary, which could include termination.

terminated for cause under section 5.2.4 of the Employment Agreement, effective immediately.

Mr. Waller sued Employer for breach of contract, arguing he was improperly terminated because he had not received written notice and a thirty-day cure period under the terms of the Employment Agreement. After a bench trial, the circuit court entered final judgment in favor of Mr. Waller and awarded him damages of severance pay and health benefits for a six-month period. This appeal followed.

Standard of Review

We review the circuit court's interpretation of the Employment Agreement *de novo*. *See Korkmas v. Onyx Creative Grp.*, 298 So. 3d 690, 693 (Fla. 1st DCA 2020) (citing *Rose v. Steigleman*, 32 So. 3d 644, 645 (Fla. 1st DCA 2010)). As with any contract, when the language of an employment agreement is clear and unambiguous, it must be interpreted and enforced in accordance with its plain meaning. *See Crapo v. Univ. Cove Partners, Ltd.*, 298 So. 3d 697, 700 (Fla. 1st DCA 2020) (citing *CitiMortgage, Inc. v. Turner*, 172 So. 3d 502, 504 (Fla. 1st DCA 2015)).

Analysis

Mr. Waller's Employment Agreement provided, in relevant part:

> 5.2.4 TERMINATION FOR CAUSE. EMPLOYER has the right, at any time during the Term or any renewal thereof, exercisable by serving written notice, effective in accordance with its terms, to terminate EMPLOYEE's employment under this Agreement for "Cause" (as hereinafter defined). If such right is exercised, EMPLOYER'S obligation to EMPLOYEE shall be limited to the payment and/or satisfaction of unpaid Base Compensation and Benefits accrued up to the effective date specified in EMPLOYER'S notice of termination. As used in this Section 5, the term "Cause" shall mean:

a. the willful failure and/or gross negligence of EMPLOYEE in the performance of his duties hereunder . . . or the material breach by EMPLOYEE of the terms and conditions of this Agreement, which willful failure and/or gross negligence, failure or breach, as the case may be, has not been cured within thirty (30) days after EMPLOYEE'S receipt of written notice thereof from EMPLOYER, specifying in reasonable detail the facts and circumstances constituting such gross negligence, failure or breach, as the case may be; or

b. the determination by EMPLOYER, in good faith and in exercise of its reasonable judgment, that EMPLOYEE has committed an act or acts, which constitute:

1. a felony or misdemeanor involving bodily harm, or

2. dishonesty, disloyalty or fraud with respect to Employer, excluding for this purpose an isolated and inadvertent action not taken in bad faith by Employee and which is remedied by Employee promptly after Employer has delivered written notice thereof to Employee;

3. a violation of the terms and conditions of this Agreement.

"The law is . . . well-settled that courts are required 'to read provisions of a contract harmoniously in order to give effect to all portions thereof.'" *Holmes v. Fla. A & M Univ.,* 260 So. 3d 400, 405 (Fla. 1st DCA 2018) (quoting *City of Homestead v. Johnson*, 760 So. 2d 80, 84 (Fla. 2000)).

To "harmonize" section 5.2.4, the circuit court stated:

In order to give effect to both sections 5.2.4(a) and 5.2.b(3), either the contract may be interpreted to require [Employer] to exhaust the requirements contained in section 5.2.4(a) before it can terminate [Mr. Waller] for cause pursuant to section 5.2.4(b)(3), or the requirements

of section 5.2.4(a) may be deemed incorporated into section 5.2.4(b)(3).

The court concluded Employer improperly terminated Mr. Waller without first providing section 5.2.4(a)'s notice and opportunity to cure. This was error. The court's interpretation ignores the plain language of the Employment Agreement, which contains an "or" between subsections (a) and (b). In other words, the Employment Agreement plainly defines "cause" to mean conduct in (a) *or* conduct in (b)(1)–(3). The court's interpretation allows sections 5.2.4(b)(1) and 5.2.4(b)(2) to remain untouched while cleaving section 5.2.4(b)(3) from section 5.2.4(b) and transferring it into section 5.2.4(a). Clearly, the Employment Agreement provides two separate avenues for Employer to terminate an employee for "cause" based upon a violation of the terms and conditions of the Employment Agreement: after notice and cure under section 5.2.4(a) or after Employer determines "in good faith and in exercise of its reasonable judgment" that said violation occurred under section 5.2.4(b)(3). The circuit court erred in conflating the two, and its reading improperly rendered section 5.2.4(b)(3) meaningless. *See Universal Prop & Cas. Ins. Co. v. Johnson*, 114 So. 3d 1031, 1036 (Fla. 1st DCA 2013) ("[A] contract will not be interpreted in such a way as to render a provision meaningless when there is a reasonable interpretation that does not do so.").

Only section 5.2.4(a) contains a thirty-day notice and cure provision; section 5.2.4(b) does not. Section 5.2.4(b)(3) gave Employer leeway to terminate Mr. Waller immediately with written notice for a violation of the terms and conditions of the Employment Agreement without providing an opportunity to cure. Under section 3 of the Employment Agreement, Mr. Waller was responsible for performing his duties "in accordance with the amendable direction, policies, and procedures prescribed from time to time by Employer," which would include Employer's harassment policy in the Employee Handbook. The circuit court erred in concluding Employer failed to properly terminate Mr. Waller.

The circuit court also found Employer did not conduct a good faith investigation or assess the ability to cure before terminating Mr. Waller under section 5.2.4(b). The court found Employer failed

to investigate Mr. Waller's intent, and without intent, Mr. Waller's use of the term "KKK hood" might not be racial harassment. This was error. The record is clear Mr. Waller was not terminated for words alone, but also for his conduct. Mr. Waller not only used the offensive term multiple times; he also invited a black employee to try on the "KKK" hood.

Even so, Mr. Waller's intent was irrelevant to the Employer's determination that his conduct constituted harassment as defined by Employer. Employer's Harassment Policy prohibited employees from making racially offensive comments and from making "rude, derogatory, or demeaning comments; [or] unwelcome jokes." The circuit court improperly interjected a requirement for Employer to prove its "good faith investigation" when the Employment Agreement simply required Employer to make a determination "in good faith and in the exercise of its reasonable judgment." Employer performed an investigation, corroborated the allegations against Mr. Waller, who did not deny them, and determined Mr. Waller's words and conduct violated its policies. Employer properly exercised its right to terminate Mr. Waller for cause under section 5.2.4(b)(3) of the Employment Agreement.

For the foregoing reasons, the final judgment is reversed. The case is remanded with instructions to enter judgment in favor of Employer.

REVERSED and REMANDED.

ROWE, C.J., and JAY, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jeffrey B. Jones and Nicole Dunlap of Littler Mendelson, P.C., Orlando, for Appellant.

T.A. "Tad" Delegal, James C. Poindexter, and Alexandra Elizabeth Underkofler of Delegal & Poindexter, P.A., Jacksonville, for Appellee.