STATE OF MICHIGAN

COURT OF APPEALS

ROBERT W. CLARK, Plaintiff-Appellant, v DAIMLERCHRYSLER CORPORATION, Defendant-Appellee.	FOR PUBLICATION September 13, 2005 9:00 a.m. No. 252765 Macomb Circuit Court LC No. 2003-004042-CK Official Reported Version

Before: Neff, P.J., and Smolenski and Talbot, JJ.

SMOLENSKI, J.

In this wrongful termination case, plaintiff appeals as of right the trial court's order granting summary disposition for defendant. We affirm.

Plaintiff asserts that he was approached sometime in 2001 and asked to accept early retirement as part of a salaried work force reduction. When plaintiff declined to retire, he claims he was told that his position would likely be eliminated and that retirement was in his best interest. Plaintiff accepted early retirement and completed his last day of work on August 31, 2001.

Plaintiff filed this action on September 8, 2003, alleging that defendant had discharged him on the basis of age in violation of the Civil Rights Act, MCL 37.2101 *et seq*. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff 's claim was time-barred by a provision in plaintiff 's employment application. The relevant portion stated:

> I agree that any claim or lawsuit relating to my service with [defendant] or any of its subsidiaries must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. I waive any statute of limitations to the contrary.

The trial court applied the shortened six-month period of limitations to plaintiff 's claim and granted defendant's motion.

We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7). *DiPonio Constr Co, Inc v Rosati Masonry Co, Inc*, 246 Mich App 43, 46;

631 NW2d 59 (2001). The proper interpretation of a contract is a matter of law that this Court reviews de novo. *DaimlerChrysler Corp v G-Tech Professional Staffing, Inc*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003).

Plaintiff contends that the trial court erred by applying the shortened six-month limitations provision of plaintiff 's employment contract. We disagree.

Until recently, the general rule was to uphold contract terms limiting the time to bring suit, provided the limitation was reasonable. See *Herweyer v Clark Hwy Services, Inc*, 455 Mich 14, 20; 564 NW2d 857 (1997), citing *Camelot Excavating Co, Inc v St Paul Fire & Marine Ins Co*, 410 Mich 118, 127; 301 NW2d 275 (1981). However, in *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005), our Supreme Court overruled the reasonableness rule followed by *Camelot* and its progeny. The Court held that

> an unambiguous contractual provision providing for a shortened period of limitations is to be enforced as written unless the provision would violate law or public policy. A mere judicial assessment of "reasonableness" is an invalid basis upon which to refuse to enforce contractual provisions. Only recognized traditional contract defenses may be used to avoid the enforcement of the contract provision. [*Id.*]

The contractually modified period of limitations in question is not ambiguous; therefore, under *Rory*, we are compelled to enforce it as written unless it is contrary to law or public policy, or is otherwise unenforceable under recognized traditional contract defenses.[1]

Because there are no statutes explicitly prohibiting the contractual modification of limitations periods in the employment context, the contract provision is not contrary to law. *Id.* at 472. Furthermore, the Court in *Rory* clarified that public policy must be clearly rooted in the law. *Id.* at 471. Hence, this Court "must look to 'policies that, in fact, have been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and the common law.'" *Id.*, quoting *Terrien v Zwit*, 467 Mich 56, 66-67; 648 NW2d 602 (2002). Michigan has no general policy or statutory enactment prohibiting the contractual modification of the periods of limitations provided by statute. *Rory, supra* at 471. Likewise, even before *Rory*, provisions within an employment contract providing for a shortened period of limitations were held to be reasonable and, therefore, valid and enforceable. See *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234, 240-244; 625 NW2d 101

[1] These include duress, waiver, estoppel, fraud, or unconscionability. *Rory, supra* at 470 n 23.

(2001). Consequently, we are unable to conclude that the limitations period provided in the contract violates public policy.[2]

Plaintiff further contends that this Court should not enforce the contract's period of limitations because it constitutes an unconscionable contract of adhesion. We disagree.

We shall first address plaintiff 's contention that the employment contract in question was one of adhesion requiring close scrutiny. In *Herweyer, supra* at 21, our Supreme Court noted that employers and employees often do not deal at arm's length when negotiating employment contracts; instead, the employee is often placed in the position of having to accept the terms of the employment contract or forgo the job. The *Herweyer* Court concluded, "Where one party has less bargaining power than another, the contract agreed upon might be, but is not necessarily, one of adhesion, and at least deserves close judicial scrutiny." *Id.* However, in *Rory, supra* at 489, the Court overruled the *Herweyer* rule that contracts of adhesion were subject to heightened review. The Court stated that

> it is of no legal relevance that a contract is or is not described as "adhesive." In either case, the contract is to be enforced according to its plain language. Regardless of whether a contract is adhesive, a court may not revise or void the unambiguous language of the agreement to achieve a result that it views as fairer or more reasonable. [*Id.*]

Therefore, we may not consider whether the contract was one of adhesion when determining whether the modified period of limitations was unconscionable.

In order for a contract or contract provision to be considered unconscionable, both procedural and substantive unconscionability must be present. *Northwest Acceptance Corp v Almont Gravel, Inc*, 162 Mich App 294, 302; 412 NW2d 719 (1987). Procedural unconscionability exists where the weaker party had no realistic alternative to acceptance of the term. *Allen v Michigan Bell Tel Co*, 18 Mich App 632, 637; 171 NW2d 689 (1969). If, under a fair appraisal of the circumstances, the weaker party was free to accept or reject the term, there was no procedural unconscionability. *Id.* Substantive unconscionability exists where the challenged term is not substantively reasonable. *Id.* at 637-638. However, a contract or contract provision is not invariably substantively unconscionable simply because it is foolish for one party and very advantageous to the other. *Gillam v Michigan Mortgage-Investment Corp*, 224 Mich 405, 409; 194 NW 981 (1923). Instead, a term is substantively unreasonable where the inequity of the term is so extreme as to shock the conscience. *Id.*

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[2] While we have much sympathy for the dissent's argument that there ought to be limitations on an employer's ability to contractually modify periods of limitations, especially in the civil rights context, we believe such limitations ought to be imposed by the Legislature, not the judiciary.

In the present case, plaintiff did not present any evidence that he had no realistic alternative to employment with defendant. Therefore, while plaintiff's bargaining power may have been unequal to that of defendant, we cannot say that plaintiff lacked any meaningful choice but to accept employment under the terms dictated by defendant. *Allen*, *supra* at 637-638. Furthermore, the six-month period of limitations is neither inherently unreasonable, *Timko*, *supra* at 243, nor so extreme that it shocks the conscience, *Gillam*, *supra* at 409. Consequently, plaintiff failed to establish that the contractually modified period of limitation was either substantively or procedurally unconscionable.

Finally, plaintiff contends that he did not knowingly waive the statutory three-year limitations period applicable to civil rights claims. This argument is unavailing. The law is clear that one who signs an agreement, in the absence of coercion, mistake, or fraud, is presumed to know the nature of the document and to understand its contents, even if he or she has not read the agreement. See *Watts v Polaczyk*, 242 Mich App 600, 604; 619 NW2d 714 (2000).

Because plaintiff has not demonstrated that the disputed contract provision is contrary to law or public policy, and has failed to demonstrate that the contractually provided period of limitations was unconscionable, we are compelled to enforce that term as written. Therefore, the trial court did not err when it applied the contractually modified period of limitations to plaintiff's claim.

Affirmed.

Talbot, J., concurred.

/s/ Michael R. Smolenski
/s/ Michael J. Talbot