

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ELIZABETH MCALINDON,

Plaintiff-Appellant,

v

CLIO GOLF COURSE, INC.,

Defendant-Appellee.

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UNPUBLISHED

November 9, 2001

No. 225236

Genesee Circuit Court

LC No. 99-066763-CL

Before: Doctoroff, P.J., and Wilder and Schmucker\*, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was hired by defendant in 1997 and discharged in 1999. She claims she was discharged because she refused to serve alcoholic beverages to visibly intoxicated persons and in retaliation for her intent to report the fact that defendant served visibly intoxicated persons alcohol in violation of the Liquor Control Code, MCL 436.1101 *et seq.* She brought this action for wrongful discharge and under the Whistleblower's Protection Act, MCL 15.361 *et seq.*

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), asserting that plaintiff agreed to submit all claims, disputes and matters arising out of or relating to her employment to binding arbitration. When plaintiff was hired, she received a copy of defendant's employee handbook. She signed a document, which she claims she was told was to acknowledge that she received a copy of the employee handbook. That document contains three paragraphs, each followed by a separate signature line. The first paragraph states that employment is at will and that no provision of the handbooks, constructive discharge policies or oral representations of any officer or agent of defendant is to be construed as an employment contract. The second paragraph is an acknowledgment that the person signing the document has read, understands and will abide by the handbook policies. The third paragraph is an arbitration clause, by which the signer agrees "to arbitrate all claims, disputes and matters arising out of or relating to" employment or termination of employment. These three provisions are also found within the

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\* Circuit judge, sitting on the Court of Appeals by assignment.

body of the employee handbook, as is an additional provision reserving for defendant the right to amend, add to, delete or change the handbook at any time.

The trial court granted defendants' motion for summary disposition, concluding that plaintiff agreed to arbitration. Plaintiff appeals, arguing that no binding contract to arbitrate existed. We disagree.

Defendant brought its motion for summary disposition under MCR 2.116(C)(7), arguing that plaintiff's action is barred by the parties' arbitration agreement. The trial court's decision to grant or deny a motion for summary disposition under MCR 2.116(C)(7) is reviewed de novo to determine whether the moving party was entitled to judgment as a matter of law. *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000). In reviewing a decision on such a motion, this Court accepts the plaintiff's well-pleaded allegations as true and construes them in the plaintiff's favor. *Id.* This Court must consider the pleadings, affidavits, depositions, admissions and documentary evidence filed or submitted to the court by the parties and determine whether there exists a genuine issue of material fact. MCR 2.116(G)(5); *Watts, supra*.

Whether an arbitration agreement exists and is enforceable is a question for the court and reviewable de novo. *Id.* There is no dispute that the parties here could enter into a valid agreement to arbitrate claims arising out of plaintiff's employment with defendant. The only question is whether the arbitration agreement can be enforced under the circumstances.

An arbitration provision must be a binding contract to be enforceable. *Heurtebise v Reliable Business Computers, Inc.*, 452 Mich 405, 413; 550 NW2d 243 (1996). In *Heurtebise*, the plaintiff signed an acknowledgment that she received the defendant's employee handbook and agreed to be bound by its terms and policies. The handbook provided an internal review procedure for disputes as to dismissals and that all disputes involving money damages would be submitted to final and binding arbitration. *Id.* at 408-409. The opening statement of the handbook stated that the intent of the handbook was to establish and clarify the defendant's policies, practices, rules and regulations. It provided that the policies applied to all employees and that the policies did not create an employment or personal contract. The statement also provided that the employees and employer each had a right to terminate employment at any time. Finally, through the statement, the defendant reserved the right to unilaterally modify the policies at its discretion. *Id.* at 413.

After considering the opening statement of the policy, the Court concluded: "This demonstrates that the defendant did not intend to be bound to any provision contained in the handbook. Consequently, we hold that the handbook has not created an enforceable arbitration agreement with respect to this dispute." *Id.* at 414. The reasoning of *Heurtebise* was followed in *Lytle v Malady (On Rehearing)*, 458 Mich 153; 579 NW2d 906 (1998) (no just cause employment can be established based on an employer's policy of termination only for cause where an employee handbook specifically disclaimed an intent to create a contract) and *Stewart v Fairlane (On Remand)*, 225 Mich App 410; 571 NW2d 542 (1997).

This case is distinguishable from *Heurtebise*. Here, although the arbitration clause and other provisions are contained within the body of the employee handbook, defendant created a separate document containing the provisions signed by plaintiff. The arbitration clause was made

the subject of a specific agreement separate from the terms, conditions and policies of the employee handbook. This clearly indicates an intent by defendant to be bound by the arbitration provision, and plaintiff executed that agreement. Therefore, the arbitration clause must be enforced.

Affirmed.

/s/ Martin M. Doctoroff  
/s/ Kurtis T. Wilder  
/s/ Chad C. Schmucker