SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0176-23

THE VILLAGE COURTYARD CONDOMINIUM ASSOCIATION, INC.,

Plaintiff-Respondent,

v.

68-72 FRANKLIN PLACE, LLC,

Defendant-Appellant,

and

THE BIBER PARTNERSHIP, d/b/a THE BIBER PARTNERSHIP AIA, TBP-CM-2, LLC, CASEY & KELLER, INC., BELLA CONTRACTING CORPORATION, GENERAL METAL MANUFACTURING CO., INC., d/b/a GM FENCE, AIR MASTER HEATING & COOLING CO. and/or AIR MASTER, INC., ALL TERRAIN EXCAVATING, INC., C&M DOOR CONTROLS, INC., COOK MASONRY, LLC, CUSTOM FIBERGLASS INSTALLATION, LLC, EASTERN CONTRACTOR SERVICES, LLC, F&C

PROFESSIONAL ALUMINUM RAILING CORP., MELI PLUMBING AND HEATING, INC., and/or ALLIED BOILER, LLC, NEXT LEVEL CONSTRUCTION, INC., and RIVA CONCRETE, INC,

Defendants-Respondents.

Submitted May 21, 2024 – Decided June 13, 2024

Before Judges Smith and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-0318-23.

O'Toole Scrivo, LLC, attorneys for appellant (Steven A. Weiner, of counsel and on the briefs; Christopher A. Ferriero, on the briefs).

Hoagland, Lungo, Moran, Dunst & Doukas, LLP, attorneys for respondents The Biber Partnership, PC (Lawrence P. Powers, of counsel; Peter K. Oliver, on the brief).

Goldberg Segalla, LLP, attorneys for respondents Bella Contracting Corp. (Michael J. Leegan, of counsel and on the brief; John W. Meyer, on the brief).

PER CURIAM

Defendant appeals the trial court's order denying its motion to compel arbitration. We affirm for the reasons which follow.

I.

Plaintiff, The Village Courtyard Condominium Association, Inc. (association), is a non-profit condominium association created to manage and operate the common affairs of The Village Courtyard Condominium residential development, which is governed by a Master Deed and bylaws. Defendant, 68-72 Franklin Place, LLC (Franklin Place), is a New Jersey real estate development company that served as the "sponsor" of the development. The remaining defendants are numerous design and construction firms.

The bylaws state the "affairs of the condominium shall be administered and managed by an association of unit owners," and that all "power and authority of the association shall be exercised through its governing board" consisting of three members. Article I, section 3 provides, "[a]ll present and future owners, lessees, and mortgagees, their employees, and other person who may use the facilities of the condominium in any manner will be subject to these [b]ylaws."

Article V, section 19, titled "Arbitration" states:

> In the event of internal disputes arising from the operation of the condominium among unit owners, associations, agents, and assigns, there shall be voluntary, binding arbitration conducted under New Jersey law. The decision of the arbitrator shall be final.

On January 27, 2023, the association sued Franklin Place as well as numerous design and construction firms. Plaintiff alleged design and

construction defects in different project areas, including: roofing, gutters, balconies, siding, windows, doors, retaining walls, site drainage, fencing, utilities, and HVAC systems. Plaintiff pursued multiple theories against defendants: negligence; professional malpractice against the design defendants; violations of the Planned Real Estate Development Full Disclosure Act[1] (PRED); breach of express warranties; breach of implied warranties; breach of contract; and breach of the duty of good faith and fair dealing.

Defendant eventually moved to dismiss the complaint for failure to state a claim and to compel arbitration. The court denied the motion, making several findings. Among them, the court found a plain reading of the arbitration clause showed it only applied to what it described as "internal disputes" regarding the operation of the condominium. Interpreting the contract, the court also concluded presence of the word "voluntary" in the arbitration clause showed "the [clause] would not prevent a party from bringing their claims in a court of law rather than pursuing binding arbitration."

The trial court denied defendant's reconsideration motion, finding the arbitration clause "unenforceable due to a lack of mutual assent by all parties as

[1] N.J.S.A. 45:22A-21 to -56.

is required by Atalese.[2]" On appeal, defendant argues that the court erred by not compelling plaintiff to arbitrate its claims, and that it failed to properly interpret the arbitration clause in the by-laws.

II.

We review a trial court's order granting or denying a motion to compel arbitration de novo because the validity of an arbitration agreement presents a question of law. Skuse v. Pfizer, Inc., 244 N.J. 30, 46 (2020) ("[W]e need not defer to the interpretative analysis of the trial . . . court[] unless we find it persuasive" (quoting Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 316 (2019))). We owe no special deference to the trial court's interpretation of an arbitration provision, which we view "with fresh eyes." Morgan v. Sanford Brown Inst., 225 N.J. 289, 303 (2016).

The Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16, and the New Jersey Arbitration Act (NJAA), N.J.S.A. 2A:23B-1 to -32, represent a legislative choice "to keep arbitration agreements on 'equal footing' with other contracts." Roach v. BM Motoring, LLC, 228 N.J. 163, 174 (2017) (quoting Atalese, 219 N.J. at 441). Under both statutes, "arbitration is fundamentally a matter of contract," and should be regulated according to general contract principles.

[2] Atalese v. U.S. Legal Services Group, L.P., 219 N.J. 430 (2014)

Ogunyemi v. Garden State Med. Ctr., 478 N.J. Super. 310, 315 (App. Div. 2024) (quoting Antonucci v. Curvature Newco, Inc., 470 N.J. Super. 553, 561 (2022)).

"An agreement to arbitrate . . . 'must be the product of mutual assent,'" and "requires 'a meeting of the minds.'" Ibid. (quoting Antonucci, 470 N.J. at 561). "'[T]o be enforceable, the terms of an arbitration agreement must be clear,' and the contract needs to explain that the agreement waives a person's right to have their claim tried in a judicial forum." Ibid. (quoting Antonucci, 470 N.J. at 561).

III.

Defendant contends the court erred by not enforcing the arbitration clause. We are unpersuaded, and our well-settled jurisprudence informs the outcome. The arbitration clause is unenforceable according to the principles espoused by Atalese. The clause at issue is relatively short, consisting of only two sentences identifying the parties covered and the scope of the claims to be arbitrated. The clause does not inform the parties they are waiving their right to seek relief in court. Atalese, 219 N.J. at 444-45. Additionally, as evidenced by the parties' dispute over whether arbitration is voluntary, the clause does not "state[s] its purpose clearly and unambiguously." Id. at 435.

Because the clause lacks clear and unambiguous language notifying the parties they waived their right to sue as required by Atalese, it is unenforceable. We conclude the court's order denying defendant's motion to compel arbitration was proper.

Affirmed.