[Cite as *McFadden v. Charter Communications, Inc.*, 2024-Ohio-4564.]

STATE OF OHIO COUNTY OF SUMMIT	))ss:)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT

ROCHELLE MCFADDEN Appellee v. CHARTER COMMUNICATIONS, INC, et al. Appellants	C.A. No. 31001 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV-2020-07-1935

DECISION AND JOURNAL ENTRY

Dated: September 18, 2024

SUTTON, Presiding Judge.

{¶1} Defendants-Appellants Charter Communications, Inc.[1] and Chad Brindley appeal from the judgment of the Summit County Court of Common Pleas denying their motion to stay proceedings and to compel arbitration. This Court affirms.

I.

Relevant Background

{¶2} This appeal arises from race discrimination, retaliation, aiding and abetting, and wrongful discharge claims filed by Plaintiff-Appellee Rochelle McFadden against Charter and Mr. Brindley.

{¶3} Charter and Mr. Brindley filed a motion to stay proceedings and to compel binding arbitration in the trial court. In their motion, Charter and Mr. Brindley alleged that Ms. McFadden

[1] In the motion to stay proceedings and compel arbitration, Charter indicated that its legal name is Charter Communications, LLC.

and Charter had entered into an agreement requiring that employment-related disputes must be resolved through binding arbitration. Ms. McFadden opposed the motion, arguing there was no evidence of an actual agreement between Ms. McFadden and Charter to arbitrate employment-related legal disputes. The trial court held an evidentiary hearing on the motion to stay proceedings and compel arbitration.

{¶4} At the hearing, a copy of an October 6, 2017 email purportedly sent to Ms. McFadden was admitted into evidence. The subject of the email was "Charter's Code of Conduct and Employee Handbook," and sensitivity was marked as "Normal."

{¶5} The body of the email contained six paragraphs. The first three paragraphs discussed Charter's standards for workplace behavior for its employees, described Charter's Code of Conduct, and provided links to access the Code of Conduct and Employee Handbook on a website called Panorama. The fourth paragraph of the email discussed workplace conflicts and described a program called Solution Channel, "a program that allows [the employee] and the company to efficiently resolve covered employment-related legal disputes through binding arbitration." The fifth paragraph notified the employee that by participating in Solution Channel, Charter and the employee both waived the right to initiate or participate in court litigation involving a covered claim and/or the right to a jury trial involving any such claim. This paragraph also said that more detailed information about Solution Channel and instructions for opting out were located on the Panorama website and stated that unless the employee opted out of Solution Channel within thirty days, the employee would be enrolled.

{¶6} The link in the email to the Solution Channel did not lead directly to the arbitration agreement. Instead, the Solution Channel page contained two additional links that, when clicked on, would then lead to the proposed "Mutual Arbitration Agreement" and "Program Guidelines."

The "opt out" language was only available during a thirty-day window, after the October 6, 2017 email, for employees to opt out of participation in the arbitration program.

{¶7} Ms. McFadden denied she had received or read the October 6, 2017 email and also denied she had seen or read the arbitration agreement. Evidence presented at the hearing showed Ms. McFadden opened the email four times but did not click on any of the links in the email. The trial court found credible Ms. McFadden's testimony that she did not read the October 6, 2017 email.

{¶8} After submission of post-hearing briefs, the trial court denied the motion to stay proceedings and compel arbitration, stating in pertinent part:

> Providing an "opt out" provision that then becomes binding, specifically, requiring arbitration, does not provide a meeting of the minds when one of the parties to the contract did not even read the email containing the provision.

The trial court further stated, "[t]his [c]ourt finds that an opt out provision is not sufficient to obligate an employee to a binding arbitration agreement." The trial court, although unnecessary, also indicated "the arbitration agreement which could only be found through a series of emails and hyperlinks was procedurally unconscionable."

{¶9} Charter and Mr. Brindley now appeal raising one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT DENIED CHARTER AND CHAD BRINDLEY'S MOTION TO STAY PROCEEDINGS AND COMPEL ARBITRATION BASED ON ITS INCORRECT CONCLUSION THAT THE MUTUAL ARBITRATION AGREEMENT WAS PROCEDURALLY UNCONSCIONABLE, DESPITE BINDING PRECEDENT THAT REQUIRES AN AGREEMENT TO ALSO BE SUBSTANTIVELY UNCONSCIONABLE BEFORE IT MAY BE HELD TO BE UNENFORCEABLE, AND THE COURT IGNORED A LITANY OF

SISTER COURT DECISIONS THAT COMPELLED ARBITRATION USING THE SAME CHARTER MUTUAL ARBITRATION AGREEMENT WHERE IDENTICAL OR NEARLY IDENTICAL FACTS AS HERE WERE PRESENT. THE TRIAL COURT SHOULD HAVE COMPELLED THE PARTIES TO ARBITRATION, PURSUANT TO THE FEDERAL ARBITRATION ACT, AND APPLIED THE MAILBOX RULE TO ESTABLISH THAT [MS. McFADDEN] RECEIVED AND READ CHARTER'S ANNOUNCEMENT REGARDING ITS MUTUAL ARBITRATION AGREEMENT.

{¶10} In their sole assignment of error, Charter and Mr. Brindley argue that the trial court was required to find that the arbitration agreement was both procedurally and substantively unconscionable before deciding that the agreement was unenforceable. Ms. McFadden argues she never entered into any arbitration agreement with Charter. For the following reasons, this Court concludes a binding contract did not exist between Ms. McFadden and Charter regarding arbitration of employment-related legal disputes.

An Arbitration Agreement is a Contract

{¶11} Before a party may be bound by the terms of an arbitration agreement, there must be a contract requiring arbitration of the parties' disputes and claims. *Gustinski v. Copley Health Center*, 2021-Ohio-4282, ¶ 9 (9th Dist.). *See also Kallas v. Manor Care of Barberton, OH, L.L.C.*, 2017-Ohio-76, ¶ 8 (9th Dist.); *Koch v. Keystone Pointe Health & Rehab*., 2012-Ohio-5817, ¶ 9 (9th Dist.). Whether a contract exists is a matter of law and is subject to de novo review. *Gustinski* at ¶ 9. Although our review of the trial court's determination concerning whether a contract was formed is subject to a de novo review, when a trial court makes factual findings regarding the circumstances surrounding the making of the contract, such factual findings should be reviewed with great deference. *See Taylor Bldg. Corp. of Am. v. Benfield*, 2008-Ohio-938, ¶ 37.

{¶12} In determining whether a party has agreed to arbitrate, we apply ordinary principles of contract formation under Ohio law. "'Essential elements of a contract include an offer,

acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration.'" *Kostelnik v. Helper*, 2002-Ohio-2985, ¶ 16, quoting *Perlmuter Printing Co. v. Strome, Inc.*, 436 F.Supp. 409, 414 (N.D.Ohio 1976). In addition, there must be a meeting of the minds as to the essential terms of the agreement. *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*, 61 Ohio St.3d 366, 369 (1991). Whether a meeting of the minds has occurred as to the essential terms of a contract is a question of fact to be determined from all the relevant facts and circumstances. *See Aber v. Vilamoura, Inc*., 2009-Ohio-3364, ¶ 10 (9th Dist.). A total absence of even an acknowledgement of receipt of an arbitration agreement is indicative of the lack of mutual assent. *See Hardwick v. Sherwin-Williams Co.,* 2003-Ohio-657, ¶ 13 (8th Dist.). Despite Ohio's presumption in favor of arbitration, a party cannot be compelled to arbitrate a dispute the party has not agreed to submit to arbitration. *See Ohio Plumbing, Ltd., v. Fiorelli Constr., Inc*., 2018-Ohio-1748, ¶ 15 (8th Dist.).

{¶13} Here, the record indicates Charter sent an email to its employees on October 6, 2017. The email's subject line read "Charter's Code of Conduct and Employee Handbook." The email's subject line did not contain anything at all about Solution Channel, arbitration, or indicate that action on the part of the employee was required. The email's sensitivity was marked "Normal." Charter's records show Ms. McFadden received the email and opened it four times but she did not click on any links in the email. The email did not have a direct link to the arbitration agreement. In addition, the trial court found Ms. McFadden's testimony credible that she did not read the October 6, 2017 email.

{¶14} As indicated above, contract formation under Ohio law requires an offer, acceptance, consideration, a manifestation of mutual assent, and a meeting of the minds as to the essential terms of the contract.

{¶15} Because Ms. McFadden did not read the October 6, 2017 email, as determined by the trial court, or click on the link leading to the Solution Channel page where a further link led to the arbitration agreement, there was no mutual assent by both parties, and no meeting of the minds as to the essential terms of the arbitration agreement. *See Taylor Bldg. Corp. of Am*. at ¶ 37 ("when a trial court makes factual findings regarding the circumstances surrounding the making of the contract, such factual findings should be reviewed with great deference.").

{¶16} Therefore, because a contract never existed, a legal analysis regarding unconscionability is not necessary.

{¶17} Accordingly, Charter and Mr. Brindley's sole assignment of error is overruled.

III.

{¶18} The sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

BETTY SUTTON
FOR THE COURT

CARR, J.
HENSAL, J.
CONCUR.

APPEARANCES:

JOHN F. HILL and MELEAH M. SKILLERN, Attorneys at Law, for Appellants.

CARLOS A. ORTIZ, Attorney at Law, for Appellants.

DANIEL P. PETROV, Attorney at Law, for Appellee.