

IN THE SUPREME COURT OF THE STATE OF NEVADA

BEN MADDOX AND INGRID MADDOX,
Appellants,

vs.

FEDEX GROUND PACKAGE
SYSTEMS, INC., A DELAWARE
CORPORATION; AND STEVE
STALLINGS, AN INDIVIDUAL,
Respondents.

No. 47462

FILED

JAN 23 2008

TRICIE K. LINDEMAN
CLERK OF SUPREME COURT

BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a tort and contract action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

In March of 1999, Ben Maddox (Maddox) entered into an agreement (Agreement) to purchase an independent contractor package delivery route. FedEx Ground (FedEx) eventually became the successor-in-interest of the Agreement arrangement. In time Maddox acquired other delivery routes. FedEx became concerned with Maddox's ability to efficiently provide service to his various routes. Additionally, Maddox and FedEx's management began having difficulties interacting with each other. In February of 2003, Maddox was terminated for unprofessional and abusive behavior toward management.

Maddox filed a complaint for breach of an implied covenant of good faith and fair dealing, tortious interference with prospective economic advantage, civil conspiracy, and breach of contract. Maddox further requested a declaratory judgment that the arbitration provision be declared adhesive, unconscionable, and against public policy. The district court found the Agreement's arbitration provision to be valid and

enforceable. The district court further found the wrongful termination/breach of contract claims to be within the scope of the arbitration agreement, but the other claims were not. Accordingly, the district court bifurcated the wrongful termination claim and ordered it arbitrated, while staying all other claims pending the outcome of arbitration.

“This court reviews a district’s grant of summary judgment de novo, without deference to the findings of the lower court.”¹ “Summary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.”² “This court has noted that when reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party.”³ This court reviews discretionary dismissal under NRCP 41(e) for an abuse of discretion.⁴

The district court eventually vacated the stay and granted summary judgment as to the non-arbitrable claims and summarily dismissed the wrongful termination contract claims for failure to prosecute. Maddox appeals.

¹Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1030 (2005).

²Id.

³Id.

⁴Hassett v. St. Mary’s Hospital Ass’n, 86 Nev. 900, 902, 478 P.2d 154, 155 (1970).

The district court found the arbitration clause to be valid and enforceable. In reaching its findings, the district court 1) found that Pennsylvania law controlled; 2) reviewed whether the clause was unconscionable; and 3) found that the clause only controlled the wrongful termination issues and not the tort claims. We conclude that the record supports not only the district court's findings that the clause was valid, but also rebuts Maddox's claim that the district court did not examine the validity of the clause.

Maddox proffers several arguments that the arbitration clause is unconscionable. We have examined the Agreement and arbitration clause and conclude Maddox's arguments lack merit.

We agree with the district court that the contract provides that Pennsylvania law controls. Pennsylvania law provides that "[a] determination of unconscionability requires a two-fold determination: (1) that the contractual terms are favorable to the drafter, and (2) that there is no meaningful choice on the part of the other party regarding the acceptance of the provisions." This is known as an "adhesion contract."⁵

In the present case, Maddox argues the contract was pre-printed and non-negotiable. The record supports that the contract was commercial in nature and while it was a form contract it was not an unconscionable adhesion contract. Furthermore, the record supports that Maddox had the opportunity to have the contract reviewed by counsel and chose not to do so.

⁵See McNulty v. H&R Block, Inc., 843 A.2d 1267, 1274 (Pa. Super. Ct. 2004) (citing Lytle v. CitiFinancial Serv., Inc., 810 A.2d 643, 658-59 (Pa. Super. Ct. 2002)).

Maddox also contends that the contract is unreasonably favorable to FedEx and consequently substantially unconscionable. We conclude that the record shows that the contract was not unreasonably favorable to FedEx and consequently is fully enforceable. "Pennsylvania law, consistent with the most recent restatement of contracts, does not otherwise require both parties to an agreement to have equivalent obligations to satisfy the standard of mutuality obligation."⁶ The record supports that the provisions of the arbitration clause are reasonable provisions based on the legitimate business needs of FedEx. Consequently, we conclude that the arbitration agreement is not substantially unconscionable.

Maddox also challenges the district court's decision to grant summary judgment as to the claims of civil conspiracy, interference with prospective economic advantage, and breach of an implied covenant of good faith and fair dealing, and to dismiss his breach of contract claim.

The district court found that agents and employees of a corporation cannot conspire with their corporate principal where they are acting in their official capacities on behalf of the corporation. The district court further found that Maddox failed to present evidence that any FedEx manager acted as an individual while conspiring with FedEx against Maddox. We conclude that the record supports the district court's findings. Maddox failed to produce any evidence of a conspiracy in the

⁶Harris v. Green Tree Financial Corp., 183 F.3d 173, 181 (3d Cir. 1999).

record. Consequently, we conclude that the district court did not err in granting summary judgment as to the conspiracy claim.

Maddox contends that the district court erred in granting summary judgment as to the claim for interference with prospective economic advantage.

The tort of intentional interference with prospective economic advantage requires: 1) a prospective contractual relationship between the plaintiff and a third party; 2) knowledge by the defendant of the prospective relationship; 3) intent to harm the plaintiff by preventing the relationship; 4) the absence of privilege or justification by the defendant; and 5) actual harm to the plaintiff as a result of the defendant's conduct.⁷

The district court found that Maddox failed to provide evidence that showed a prospective economic relationship between Maddox and a third party. The record shows that the contract was between FedEx and Maddox; no third party existed. Consequently, we conclude that the record supports the district court's granting of summary judgment as to the claim for interference with prospective economic advantage.

Maddox also contends that the district court erred in granting summary judgment as to Maddox's claim of breach of an implied covenant of good faith and fair dealing. A claim for tortuous breach of the implied

⁷Wichinsky v. Mosa, 109 Nev. 84, 87-88, 847 P.2d 727, 729-30 (1993).

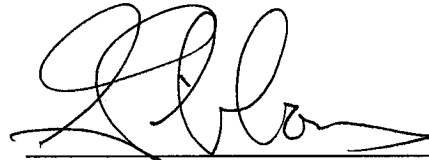
covenant of good faith and fair dealing requires a special element of reliance or fiduciary duty and is limited to “rare and exceptional cases.”⁸ The district court found that the relationship between FedEx and Maddox did not rise to the level of a rare and exceptional case that warrants a tort remedy for breach of the implied covenant of good faith and fair dealing. We conclude that the record fails to show any special relationship of public interest, adhesion, or fiduciary responsibility between FedEx and Maddox. The record does not show any grievous action towards Maddox by FedEx. Consequently, we conclude that the record supports the district court’s granting of summary judgment of Maddox’s claim for tortious breach of the implied covenant of good faith and fair dealing.


Lastly, Maddox argues that the district court erred by dismissing the claim for breach of contract. The district court dismissed Maddox’s claim for breach of contract because Maddox failed to follow the district court’s order to bring the claim to arbitration. Maddox argues that he could not afford the arbitration costs. However, the record does not show any attempt by Maddox to seek any relief from arbitration costs. We conclude that Maddox failed to provide any evidence in the record that the


⁸Great American Insurance v. General Builders, 113 Nev. 346, 354, 934 P.2d 257, 263 (1997).

compelled arbitration was overly burdensome. Consequently, we conclude that the district court did not abuse its discretion in dismissing the breach of contract claim. Therefore we,

ORDER the judgment of the district court AFFIRMED.


_____, C. J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Brent T. Adams, District Judge
Laub & Laub
Littler Mendelson/Reno
Washoe District Court Clerk