IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

APRIL COBB, on behalf of herself and all others similarly situated	:	DECEMBER TERM 2023
	:	No. 02254
	:	Control No. 24041404
v.	:	CLASS ACTION
	:	Appellate No. 2879 EDA 2024
TESLA, INC.	:	COMMERCE PROGRAM

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OPINION

Fletman, J. **January 27, 2025**

This is an appeal from this Court's order and opinion dated and docketed September 26, 2024 (the "September 26 Order"), denying the petition to compel arbitration of defendant Telsa, Inc. The September 26 Order should be affirmed for reasons set forth in the opinion, which is adopted and incorporated by reference and attached as Exhibit A to this filing.

BY THE COURT:

ASG F.

ABBE F. FLETMAN, J.

OPFLD-Cobb Vs Tesla, Inc. [VKS]

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EXHIBIT A

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

APRIL COBB, on behalf of herself and all others similarly situated	: DECEMBER TERM 2023 : : No. 02254 :
v.	: CLASS ACTION :
TESLA, INC.	: COMMERCE PROGRAM : Control No. 24041404

OPINION

Before the Court is the petition of defendant Tesla, Inc. ("Tesla"), to compel arbitration. For the reasons set forth below, the petition is denied.

FACTS

Plaintiff April Cobb began employment as a materials handler at Telsa's Bethlehem, Pennsylvania factory on August 24, 2020. Stipulation of Undisputed Facts ("Stipulation"), Ex. 1 at p. 4, Docket ("Dkt."), 6/20/24. Before starting her job with Tesla, on August 18, 2020, Ms. Cobb signed an agreement (the "Agreement") that set forth the terms of her employment with Tesla. *See id.*, Ex. 1. Tesla presented the Agreement to Ms. Cobb in electronic form, and she made an electronic signature on the Agreement using an electronic device. *Id.* at ¶¶ 3-4. Ms. Cobb no longer works at Tesla. *Id.* at ¶ 7.

The Agreement provided that any disputes arising in connection with her employment would be resolved by binding arbitration. *Id.*, Ex. 1 at p. 2. The provision states that "any and all disputes, claims, or causes of action, in law or equity, arising from or relating to your employment, or the termination of your employment, will be resolved, to the fullest extent permitted by law by final, binding and private arbitration in your city and state of employment

conducted by the Judicial Arbitration and Mediation Services/Endispute, Inc. ('JAMS'), under the then current rules of JAMS for employment disputes. . . ." Stipulation, Ex. 1 at p. 2. The Agreement also provides that "[a]ny claim, dispute, or cause of action between the parties must be brought in a party's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. . . ." *Id.*

The Agreement does not define arbitration. *See id.* The entire agreement is in small print, and the arbitration provision is not in bold, capital letters, large print or a different color from the rest of the text; nor is it set off with a heading. *See id.* While the provision prohibits bringing any claim or dispute as a class action, it nowhere states that by signing the Agreement Ms. Chilutti is waiving her constitutional right to a jury trial. *See id.*

Tesla suffered a data breach on May 10, 2023, when two former Tesla employees allegedly stole the personal identifying information of Ms. Cobb and other former Tesla employees and shared it with a foreign media outlet. *Id.*, Ex. 2 at p.1 . On August 23, 2023, Tesla sent Ms. Cobb a Notice of Data Incident informing her of the data breach. *See id.*, Ex. 2.

On December 19, 2023, Ms. Cobb filed a class action complaint against Tesla for Negligence (Count I), Breach of Implied Contract (Count II), and Breach of Confidence (Count III). *See* Complaint, Dkt. 12/19/23. Ms. Cobb subsequently filed an amended complaint and, on May 4, 2024, a second amended complaint that named Ms. Cobb as the sole class representative. *See* Second Amended Complaint, Dkt. 5/4/24 at p. 32.

On April 5, 2024, Telsa filed a petition to compel arbitration with Ms. Cobb and sought a stay of further consideration of this action until the arbitration is decided. Petition to Compel Arbitration ("Petition"), Dkt. 4/5/2024 at p. 1. A hearing on Tesla's petition to compel arbitration

was held on June 27, 2024. Neither party presented any witnesses and instead relied on agreed facts filed in a stipulation on June 20, 2024. *See* Stipulation, Dkt., 6/20/24.

LEGAL STANDARD

To determine whether to compel arbitration, courts apply a two-part test. *See Smay v. E.R. Stuebner, Inc.*, 864 A.2d 1266, 1270 (Pa. Super. 2004). First, courts determine whether there is a "valid agreement to arbitrate." *Id.* Second, courts consider whether the "dispute is within the scope of the agreement," which is a "matter of contract" with the trial court's conclusion taken as "plenary." *Id.* at 1270, 1272-3. Whether an agreement to arbitrate exists and whether a dispute is within the scope of the agreement are questions of law. *See Provenzano v. Ohio Valley Gen. Hosp.*, 121 A.3d 1085, 1095 (Pa. Super. 2015).

DISCUSSION

A. There is No Enforceable Arbitration Agreement

Just last year, the Pennsylvania Superior Court addressed the enforceability of an arbitration clause that was accepted electronically and failed to explicitly obtain waiver of a jury trial. In that case, *Chilutti v. Uber Technologies, Inc.*, 300 A.3d 430, 444 (Pa. Super. 2023)(en banc), *allocatur granted,* -- A.3d --, 2024 WL 3947922 (Pa. 2024), a ride-share passenger purportedly entered into an arbitration agreement when, to create an account, she clicked a button that also stated, by doing so, she was agreeing to terms and conditions that included an arbitration provision. Relying on the inviolate right to trial by jury guaranteed by the Constitution of the Commonwealth of Pennsylvania, the Pennsylvania Superior Court held that there was no valid agreement to arbitrate when waiver of the right to a jury trial was not explicitly and conspicuously disclosed and the term "arbitration" was undefined. *Id.* at 450.

As in *Chilutti,* the arbitration provision in the Agreement in this case fails to provide reasonably conspicuous notice of the terms that will bind Ms. Cobb. The arbitration clauses on the second of four pages of the Agreement are in the same size and color as the Agreement's other provisions. *See* Stipulation, Ex. 1. Moreover, the arbitration provision is in small font, is not underlined, capitalized or bolded, and is not set off with a heading or in a different color. *See id.* It is not like Tesla was unable to provide headings or capitalize or bold words or phrases. Indeed, the Tesla, Inc. Employee Non-Disclosure and Inventions Assignment Agreement, which is part of the Agreement, employs all those methods of emphasizing text. *See id.*

Like the contract in *Chilutti*, the Agreement fails to define arbitration, contains no link to a definition of arbitration, and fails to explain the difference between binding and non-binding arbitration. *See id.* Additionally, the Agreement fails to explicitly state that Ms. Cobb is waiving her constitutional right to a jury trial by agreeing to the terms of her employment with Tesla. *See id.* The agreement does even contain the words "jury trial" or "waiver." *See id.* For instance, clause (f) of the arbitration provision states, "Both you and Tesla shall be entitled to all rights and remedies that you or Telsa would be entitled to pursue in a court of law." *Id.* at p. 2. After reading clause (f), any non-lawyer like Ms. Cobb could reasonably believe that she is not relinquishing her constitutional right to a jury trial. *See Chilutti,* 300 A.3d at 450 ("Further, we believe that the term, "arbitration," is ambiguous in that there is nothing to explain its meaning and any non-lawyer subscriber could easily believe that arbitration is simply another step in the litigation process that does not involve relinquishing the constitutional right to a jury trial in its entirety.") Based on the foregoing, Ms. Cobb's waiver of her right to a jury trial was not knowingly and intelligently made and the arbitration provision is unenforceable.

Tesla cites *Bonilla v. Adecco USA, Inc.*, 2024 WL 945310 (E.D. Pa. Mar. 5, 2024), in support of the contention that "post-*Chilutti* courts applying Pennsylvania law have enforced arbitration agreements without considering whether the agreement contained an express jury trial waiver or the definition of the term 'arbitration.'" Reply in Further Support of Petition to Compel Arbitration ("Def. Reply") at 6, Dkt, 05/06/24. *Bonilla,* a case from the U.S. District Court for the Eastern District of Pennsylvania, does not bind this Court. Furthermore, *Bonilla* applies only federal law, does not cite *Chilutti*, and makes no reference to Pennsylvania's inviolate right to a jury trial, which was recognized even before the right to a jury trial guaranteed by the U.S. Constitution. *See Western Pennsylvania Socialist Workers 1982 Campaign v. Connecticut Gen'l Life Ins. Co.*, 515 A.2d 1331, 1336 (Pa. 1986) (*citing* Pa. Const. of 1776, Declaration of Rights, § 11 ("The 1776 Constitution . . . guaranteed the right to jury trial consistent with former practice."))

Consequently, Ms. Cobb's arbitration agreement is not enforceable.

B. The Federal Arbitration Act does not Preempt Pennsylvania Contract Law

Tesla argues that the Federal Arbitration Act ("FAA") preempts Pennsylvania law in the underlying case and that Ms. Cobb's erroneous interpretation of *Chilutti* would raise serious concerns under the U.S. Constitution and conflict with U.S. Supreme Court jurisprudence. Def. Reply at 7-8.

The federal policy favoring arbitration, however, "was not intended to render arbitration agreements more enforceable than other contracts and the FAA had not been designed to preempt all state law related to arbitration." *Chilutti,* 300 A.3d at 440 (*quoting Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 660-1 (Pa. Super. 2013)). Instead, "addressing the specific issue of whether there is a valid agreement to arbitrate, courts generally should apply

ordinary state-law principles that govern the formation of contracts, but in doing so, must give due regard to the federal policy favoring arbitration." *Id.* To that end, parties to a contract cannot be compelled to arbitrate absent an agreement between them to arbitrate. *See Cumberland-Perry Area Vocational-Tech. Sch. Auth. v. Bogar & Bink*, 396 A.2d 433, 434–35 (Pa. Super. 1978). Moreover, arbitration agreements, although a favored dispute resolution mechanism, cannot be "extended by implication" and are to be "strictly construed." *Id.*

As discussed above, the arbitration clause in the Agreement fails to provide reasonably conspicuous notice of the terms that will bind Ms. Cobb. *See* Stipulation, Ex. 1 at p. 2. Moreover, as discussed earlier, the Agreement fails to define arbitration or to explain the difference between binding and non-binding arbitration. *See id.* Most important, the Agreement fails to explicitly state that Ms. Cobb is relinquishing her constitutional right to a jury trial by agreeing to employment terms with Tesla. *See id.* The Agreement does even contain the terms "waiver" or "jury trial." *See id.* Consequently, after applying general contract principles to the Agreement, this Court concludes that there was insufficient mutual assent to compel arbitration between Ms. Cobb and Tesla and the FAA does not preempt Pennsylvania law in this case.

C. *Chilutti* Is Not Limited to the Consumer Context

Finally, Tesla contends that *Chilutti* is inapplicable to the Agreement because, in that case, the defendant was seeking to compel arbitration with a consumer while, in this case, the plaintiff was an employee. Def. Reply at 1-5. Nothing in *Chilutti*, however, limits the decision to the consumer context and there is no reason an employee would be any less entitled to trial by jury than a consumer. As the party seeking to compel arbitration, Tesla of course bears the burden of proving that a valid agreement to arbitrate existed between the parties. *Bair v. Manor Care of Elizabethtown, PA, LLC*, 108 A.3d 94, 97 (Pa. Super 2015). While the evidentiary record on this motion is sparse, consisting merely of a nine-paragraph stipulation, there can be no

doubt that the parties to the Agreement possess unequal bargaining power. Tesla is one of the most well-known corporations in the world and is a large, sophisticated organization[1] whereas Ms. Cobb was a former material handler whose position at Tesla was non-exempt, and she was paid $16.25 per hour. Stipulation, Ex. 1 at p. 1. Tesla presented no evidence that Ms. Cobb was a sophisticated party or that she had any ability to negotiate the terms of the Agreement. To the contrary, she was a nonexempt worker, the Agreement was presented to her electronically, and she signed it using an electronic device. *Id.* at ¶¶ 3-4. These circumstances are much more akin to those presented in *Chilutti* than to a situation where sophisticated parties negotiated a binding agreement and agreed to waive rights to a jury trial and class action status. [2]

CONCLUSION

For the foregoing reasons, the petition of defendant Tesla, Inc., to compel arbitration is denied.

BY THE COURT:

Abbe F. FL

ABBE F. FLETMAN, J.

[1] "The court may judicially notice a fact that is not subject to reasonable dispute because it . . . is generally known within the trial court's territorial jurisdiction. . . ." Pa. R. Evid. 201.

[2] Since the *Chilutti* Court's reasoning renders the arbitration provisions in the parties' Agreement invalid, the Court need not reach the question whether the class action waiver is also unconscionable.