IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Estela Mendoza, individually and on behalf of herself and all others similarly situated, Plaintiff, v. Advocate Health and Hospitals Corp. and Advocate Aurora Health, Inc., Defendant.	Case No. 2023 CH 07844 Calendar 2

OPINION AND ORDER

JOEL CHUPACK, Circuit Judge

Defendants Advocate Health and Hospitals Corp. and Advocate Aurora Health, Inc. (the "Defendants") filed a combined motion to dismiss and motion for summary judgment (the "Motion") of the Complaint (the "Complaint") filed by Plaintiff Estela Mendoza ("Mendoza") pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-619.1. The Court having reviewed and duly considered the briefs and relevant case law now issues its opinion and order.

I

The facts alleged in the Complaint are taken as true for the purpose of ruling on a motion to dismiss. Mendoza applied to Defendants for the position of Customer Care Associate in or around September 2021. This position is described as non-clinical which indicates no patient contact or exposure is required. As part of the application process for non-clinical positions, Mendoza was instructed to submit to a pre-employment physical at the Downers Grove Facility. During the examination, the medical provider asked Mendoza to disclose her family medical history, including whether medical conditions with genetic predispositions have manifested in her parents, including cardiac health, cancer, and diabetes, among other ailments.

Mendoza also received a questionnaire that requested disclosure of genetic disorders and whether her family ever had various diseases. Mendoza's eyesight was examined and her physical flexibility was tested and the medical provider

verbally asked about her medical history and documented conditions. During this discussion, the provider was writing notes in a file.

Mendoza alleges that she disclosed genetic information, that said disclosure was a condition of her employment with Defendants, and that she did not authorize the use of her genetic information for the furtherance of a workplace wellness program or as a part of evaluating susceptibility for workplace injuries or deaths due to genetic conditions. Because of the requirement to disclose her genetic information, Mendoza alleges that Defendants violated the Genetic Information Protection Act, 410 ILCS 513/25, *et seq.* (the "GIPA"). Specifically, the Complaint states that Defendants solicited, requested, or required to disclose family medical history as a condition of her employment. In doing so, Mendoza alleges that Defendants willfully violated her right to privacy as outlined by the GIPA. Defendants deny the allegations, stating that the only information that was discussed or requested from Mendoza were her current medical conditions, her COVID and flu immunizations, and her drug and tuberculosis screenings. Defendants deny that Mendoza even had to submit to a physical examination.

II.

Motions with respect to pleadings under Section 2-615, motions for involuntary dismissal or other relief under Section 2-619, and motions for summary judgment under Section 2-1005 may be filed together as a single motion in any combination. 735 ILCS 5/2-619.1

A motion to dismiss pursuant to Section 2-619 admits the legal sufficiency of the complaint, but raises defects, defenses, or some other affirmative matter that defeats the plaintiff's claim. *Ball v. County of Cook*, 385 Ill. App. 3d 103, 107 (1st Dist. 2008). The phrase "affirmative matter" encompasses any defense other than a negation of the essential allegations of the plaintiff's cause of action. *Piser v. State Farm Mut. Auto. Ins. Co.*, 405 Ill. App. 3d 341, 344 (1st Dist. 2010). When ruling on a Section 2-619 motion, a trial court must interpret all pleadings, affidavits, and other supporting documents in the light most favorable to the nonmoving party. *Brummel v. Grossman*, 2018 IL App (1st) 162540, ¶23.

Any party may move for summary judgment in its favor on all or part of the relief it seeks or all or part of the relief sought against it. Summary judgment is proper only when the pleadings, depositions, admissions, and affidavits, when viewed in a light most favorable to the non-movant, reveal that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005; *Progressive Universal Ins. Co. v. Liberty Mut. Fire Ins. Co.*, 215 Ill. 2d 121, 127-28 (2005). All pleadings, depositions, admissions, and affidavits are construed strictly against the movant and liberally in favor of the non-movant. *Robinson v. Builders Supply & Lumber Co.*, 223 Ill. App. 3d 1007, 1013 (1st Dist.

1991). The burden of proof and the initial burden of production in a motion for summary judgment lie with the movant. *Meadow v. Flavin*, 336 Ill. App. 3d 20, 28 (1st Dist. 2002).

The movant may meet its burden by affirmatively showing that some element of the case must be resolved in its favor or by establishing that there is an absence of evidence to support the non-movant's case. *Neufairfield Homeowners Association v. Wagner*, 2015 IL App (3d) 140775, ¶ 15. Summary judgment is a drastic means of disposing of litigation and should be granted only when the right to it is clear and free from doubt. *Allstate Ins. Co. v. Tucker*, 178 Ill. App. 3d 809, 812 (1st Dist. 1989).

Dismissal under 2-619(a)(6)

Section 2-619(a)(6) allows for involuntary dismissal based on a claim being released, satisfied, or discharged in bankruptcy. 735 ILCS 5/2-619(a)(6) Defendants state that Mendoza released her claim by signing a release that was a part of the questionnaire she completed during her pre-employment screening. When reviewing a release, we apply contract law principles because a release is a contract. *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 447 (1991). Our primary objective, therefore, is to give effect to the parties' intent. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). "A court must initially look to the language of a contract alone, as the language, given its plain and ordinary meaning, is the best indication of the parties' intent." *Id.* at 233. We will construe the whole contract at issue, and we will not determine the intent of the parties from isolated provisions standing alone. *Id.* Clear and explicit written agreements that are unambiguous will be enforced as written without the assistance of extrinsic or parol evidence. *Rakowski v. Lucente*, 104 Ill. 2d 317, 323 (1984). We will only resort to extrinsic evidence to determine the parties' intent where a contract is susceptible to more than one meaning. *Gallagher*, 226 Ill. 2d at 233. A self-induced or unilateral mistake is not a valid reason to set aside an unambiguous release. *Rakowski*, 104 Ill. 2d at 324. An unambiguous release will be applied as written without the assistance of parol or extrinsic evidence. *Id.* at 233.

Defendants submitted three affidavits in support of the Motion. Attached to the Affidavit of Ellen Sheahan is Mendoza's employment file (the "HR File"). Ms. Sheahan is the Director Recruitment Onboarding. The Sheahan Affidavit properly lays the foundation for admittance of the HR File into evidence. Exhibit 3 to Sheahan's Affidavit is a document entitled "Medical History Questionnaire" and is signed by Mendoza. The paragraph above her signature contains the following sentence: "I release the designated healthcare professional, medical facility, testing laboratory, associates, directors and corporations from liability as a result of the release, and/or the use of results. Also, in uppercase above her signature appears

the following: "THESE QUESTIONS WERE NOT ASKED OF ME UNTIL AFTER I WAS OFFERED A POSITION WITH ADVOCATE."

Defendants also attach the Affidavit of Patricia A. Cupuro. She was employed with Defendants as a Nurse Practitioner at the time that Mendoza was hired. She attest that she was the provider on site during Mendoza's pre-employment screening and was responsible for the clinic that day and that is why her name appears on the documents.

Mendoza argues that the release is invalid due to the enactment of the Illinois Workplace Transparency Act, 820 ILCS 96/1-5 (the "IWTA"). Mendoza cites Section 25(b) of the IWTA which states:

> Any agreement, clause, covenant, or waiver that is a unilateral condition of employment or continued employment and requires the employee or prospective employee to waive, arbitrate, or otherwise diminish any existing or future claim, right, or benefit related to an unlawful employment practice to which the employee or prospective employee would otherwise be entitled under any provision of State or federal law, is against public policy, void to the extent it denies an employee or prospective employee a substantive or procedural right or remedy related to alleged unlawful employment practices, and severable from an otherwise valid and enforceable contract under this Act.

820 ILCS 96/1-25(b)

Such unlawful employment practices are described as any form of unlawful discrimination, harassment, or retaliation actionable under Article 2 of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, or any other related State or federal rule or law enforcement by the Illinois Department of Human Rights or the Equal Employment Opportunity Commission. Mendoza argues that GIPA violations fall directly under this provision.

The issue presented is whether a violation of the GIPA is the type of unlawful employment covered by the IWTA. While Mendoza alleges that completion of the examination was a prerequisite of her employment, a closer look at the pertinent documents paints a more complete picture. First, upon viewing the questionnaire, the information Mendoza was required to disclose largely related to her current medical condition. She was asked to inform Defendants if she was immunized pursuant to the workplace policy. Additionally, the main consequence of not disclosing her information would be a refusal of the Department of Occupational Health not being able to pay for her treatment. The failure of disclosure does not prevent her from reporting unlawful activity or criminal conduct, receiving legal advice, or participating in a proceeding with any appropriate federal state or local

government agency that enforces discrimination laws. It is also reasonable on the part of a hospital to request information regarding Mendoza's and other employees' current health status as a means of protecting patients who are often at their most vulnerable.

Further, the release states that the questions on the questionnaire were not asked of me until after she was offered a position with Advocate. Mendoza did not submit a counter-affidavit contesting the averments in any of the affidavits submitted in support of the Motion. Therefore, there are no pertinent facts in dispute. Mendoza has the burden of proving the waiver is invalid. She attempted to do so by relying on the IWTA. First, by the express language contained in the Medical History Questionnaire, she was already offered a position by that time. Second, Mendoza fails to convince the Court that violations of the GIPA are covered in the IWTA. Therefore, the Court finds that the waiver is a valid contract to which Mendoza consented.

Summary Judgment under 2-1005

Defendants also move for summary judgment because her employment was not conditioned on the disclosure of her medical records. To this effect, Defendants submitted two affidavits: Ellen Sheahan, the Director of Recruitment Onboarding and Alma Nikezic, the Director of Occupational Health. Both of the employees attested to the documentation that Mendoza was asked to complete as a part of her onboarding process. Based on the Court's review of the affidavits as well as the actual documents Mendoza was asked to complete, none of the questions pertain to her family's history. Largely, they pertain to current medical conditions and history which, if she had a certain condition or history, could compromise the health of patients, if her condition was transmissible. The Complaint's sole count is that Defendants violated the GIPA as a matter of law by making the disclosure of her family's genetic history a condition of her employment. Mendoza has not provided any exhibits or evidence that contradict the evidence Defendants provided. Mendoza also has not provided a counter-affidavit to rebut the testimony of the two current employees. Therefore, this Court does not find an issue of material fact that would warrant the denial of a motion for summary judgment.

III.

IT IS HEREBY ORDERED THAT:

1. Defendants' Motion to Dismiss is GRANTED;

2. Defendants' Motion for Summary Judgment is GRANTED;

3. The Complaint is dismissed with prejudice; and

4. This is a final order that disposes of the matter.

Judge Joel Chupack

ENTERED: APR 24 2024

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