

STATE OF VERMONT

SUPERIOR COURT
Franklin Unit

CIVIL DIVISION
Docket No. 212-8-20 Frcv

ADELLE REBEOR,
Plaintiff,

v.

GENESIS HEALTHCARE, INC. AND ITS
SUBSIDIARY, 300 PEARL STREET
OPERATIONS, LLC, (d/b/a BURLINGTON
HEALTH & HEHAB) (a/k/a GENESIS
CENTERS),
Defendants.

Vermont Superior Court

SEP 1 2021

FILED: Franklin Civil

RULING ON THE MERITS OF DEFENDANTS' AMENDED MOTION TO
COMPEL ARBITRATION

Introduction

In this civil suit, Plaintiff Adelle Rebeor seeks to recover damages from the Defendants, her former employers, for their alleged constructive termination of her employment in violation of state law (First Amended Complaint and Jury Demand). In their Amended Motion to Compel Arbitration, Defendants ask the court to dismiss this suit and order the Plaintiff to proceed to arbitration pursuant to the Federal Arbitration Act (9. U.S.C. §§ 1, *et seq.*).

The sole issue presently before the court is whether the Plaintiff electronically signed the Defendants' "Mutual Arbitration Agreement" on May 31, 2019. The Defendants bear the burden of proving by a preponderance the evidence their contention that the Plaintiff so signed the agreement. If the evidence shows by a preponderance of the evidence that she did electronically sign the agreement as alleged, then this suit must be dismissed, and the parties must be ordered to proceed to arbitration. If the evidence does not establish that she signed the agreement, then the Defendants' Amended Motion to Compel Arbitration must be denied.

The court held an evidentiary hearing on this issue on August 11, 2021. Based upon the credible evidence admitted at the hearing, the court makes the following findings, conclusions and orders.

Defendants operate nursing homes in the State of Vermont and elsewhere. They utilize over one hundred electronic IT systems supported by approximately 1,800 servers. At the time of hire, each new employee is given a generic password and a username by which to access the Defendants' IT systems. New employees are instructed to log in, immediately change their password to one of their own choosing, and to keep their password confidential. From that point onward, only the employee knows his or her password; no one else in the company has access to that password.

Plaintiff was hired by the Defendants in January of 2016. At the time she was hired, Plaintiff was given a generic password and instructions to log in to the Genesis network and reset her password (Exhibits 1 and 2). Plaintiff had no choice but to do this because she would not be able to do her job unless she could access the Defendants' IT systems, and there was no other way to access those systems.

Plaintiff complied with the instructions, logged on to the Defendants' network, and reset her password. One of the first things she then did was to electronically sign an "Electronic Signature and Document Delivery Consent Agreement" (Exhibit 3). The agreement stated, "I understand that attaching my e-signature is the legal equivalent of submitting a document signed by hand, and that clicking on the 'I Agree' option manifests my desire and intent to receive future documents electronically and to sign future documents using an electronic signature where required" (Id.). Plaintiff electronically signed several other documents that same day (i.e., January 19, 2016) (see Exhibit 4 at pp. 28-46, 48-52, and 56-57). In each instance her electronic signature appeared as "Adelle Rebeor" (Id.).

Over the four years during which the Plaintiff was employed by the Defendants, she frequently accessed the Defendants' various IT systems, including their "OnTrack" system, their training systems, and their IT support systems, among others (see Exhibits 10 and 12-15).

In the spring of 2019, the Defendants decided to require all employees to agree to a "Mutual Arbitration Agreement," and the Defendants set a deadline of May 31st for employees to electronically sign the agreement (Exhibits 6 and 7). On the last day of the deadline, the Plaintiff logged on to the Defendants' "OnTrack" system and electronically signed the agreement at 1:50 p.m. (Exhibit 5). Her electronic signature appears on the Agreement as "Adelle Rebeor" (Id.). She signed two other documents at the same time: namely, a "2019 Voluntary Self-Identification of Disability" form, which she signed at 1:51 p.m. on May 31, 2019; and a "2019 Voluntary Self-Identification of Veteran's Status" form, which she also signed at 1:51 p.m. that same day (Exhibit 4 at pp. 23-27). Her electronic signature appears at "Adelle Rebeor" on those documents, as well.

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Having found that the Plaintiff electronically signed the Defendants' "Mutual Arbitration Agreement" at 1:50 p.m. on May 31, 2019, the court has no choice but to dismiss this suit and order the parties to proceed to arbitration. See § 4 of the Federal Arbitration Act (If after trial the court determines that a written arbitration agreement was entered into, then "the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof." (Id.).

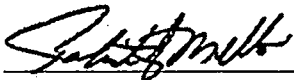
Therefore: Defendants' Amended Motion to Compel Arbitration is GRANTED; Plaintiff's First Amended Complaint and Jury Demand is DISMISSED WITHOUT PREJUDICE; and the parties are hereby ORDERED to proceed to arbitration in accordance with the terms of their "Mutual Arbitration Agreement."

SO ORDERED this 30th day of August, 2021.

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Robert A. Mello
Superior Judge