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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CORLISA LAY, Plaintiff and Respondent, v. SPRING VALLEY POST ACUTE, LLC, Defendant and Appellant.	E071125 (Super.Ct.No. CIVDS1805665) OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Pacheco, Judge. Reversed with directions.

Lewis Brisbois Bisgaard & Smith, Melissa T. Daugherty, Lann G. McIntyre and Mason T. Smith, for Defendant and Appellant.

Law Offices of Ramin R. Younessi, Ramin R. Younessi and Samvel Greshgian, for Plaintiff and Respondent.

I.

INTRODUCTION

Plaintiff and respondent, Corlisa Lay, entered into an arbitration agreement (the Agreement) with her former employer, defendant and appellant, Spring Valley Post Acute, LLC (SVPA). The Agreement provides that it covers "all claims arising from or otherwise related to your employment or the termination of your employment, such as all claims for wages or other compensation due, *excepting* those initiated by [administrative agencies], claims of wrongful termination, claims for breach of any contract," and about a dozen other types of claims. The trial court held that all claims listed after the word "excepting" were not covered by the Agreement, found none of Lay's claims was subject to arbitration, and denied SVPA's motion to compel arbitration.

SVPA appeals, arguing the trial court misinterpreted the Agreement and erred in denying the motion. We conclude the trial court's interpretation of the Agreement was incorrect and reverse its order denying SVPA's motion to compel arbitration. We direct the trial court to enter an order granting the motion and compelling the parties to arbitrate Lay's claims, except for her non-arbitrable claim under the Private Attorneys General Act of 2004 (PAGA) (Lab. Code, § 2698 et seq.), which the trial court must stay pending the arbitration.

II.

FACTUAL AND PROCEDURAL BACKGROUND

The parties entered into the Agreement as a condition of Lay's employment. The Agreement's first paragraph provides, in relevant part: "[SVPA] and [Lay] agree to alternative dispute resolution of all employment disputes that [SVPA] may have against [Lay] or [Lay] may have against [SVPA] . . . . except as provided otherwise herein. The claims covered by [this Agreement] include, without limitation, all claims arising from or otherwise related to your employment or the termination of your employment, such as all claims for wages or compensation due, *excepting those initiated by the Division of Labor Standards Enforcement* [(DLSE)]*, Department of Labor or other administrative agency*, claims of wrongful termination, claims for breach of any contract or covenant . . . claims for personal, physical, or emotional injury, or for any tort, claims for defamation, claims for discrimination or harassment . . . claims for benefits, claims for constructive termination, and claims for violation of any federal, state or other governmental law, statute regulation, or ordinance." (Italics added.)

Immediately after this provision, the Agreement further provides: "[Lay] and [SVPA] acknowledge and agree that the following types of disputes *are expressly excluded and not covered by this Agreement*: (a) disputes related to workers' compensation and unemployment insurance; and (b) disputes or claims that are expressly excluded from arbitration by federal law or ones expressly required to be arbitrated under

a different procedure pursuant to the terms of an employment benefit plan." (Italics added.)

After SVPA terminated Lay, she sued SVPA for wrongful termination, conversion, declaratory judgment, unfair competition, and for violating various California Labor Code provisions and the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Lay also asserted a PAGA claim based on SVPA's alleged Labor Code violations. The thrust of her claims is that SVPA discriminated against her and terminated her due to her disability, failed to pay her wages accurately, and failed to provide her with meal and rest breaks.

SVPA moved to compel arbitration of Lay's claims under the Agreement. The trial court ruled that "[t]he [Agreement] by its very own terms and conditions specifically excludes the causes of action asserted in [p]laintiff's [c]omplaint . . . . [SVPA] chose to specifically insert the term 'excepting' where it did, either by mistake or not, and therefore is bound by its effect on the overall [Agreement]." The trial court noted that Lay's wage-and-hour claims "could possibly be covered by the [Agreement]" based on its covering "'all claims arising from or otherwise related to your employment or the termination of your employment, such as all claims for wages or other compensation.'" Nonetheless, the trial court held those claims were "specifically excluded by the [Agreement]" because of its "exclusion of 'claims for violation of any [statute].'" The trial court therefore determined that

none of Lay's claims were covered by the Agreement and denied SVPA's motion to compel arbitration.

SVPA timely appealed.

III.

DISCUSSION

A. *Standard of Review*

When, as here, "the language of an arbitration provision is not in dispute, the trial court's decision as to arbitrability is subject to de novo review." (*Gravillis v. Coldwell Banker Residential Brokerage Co.* (2006) 143 Cal.App.4th 761, 771.) Similarly, when, as here, "no conflicting extrinsic evidence is introduced to aid the interpretation of an agreement to arbitrate," we review the trial court's ruling on a motion to compel arbitration de novo. (*California Correctional Peace Officers Assn. v. State of California*, (2006) 142 Cal.App.4th 198, 204.)

B. *Legal Principles*

"The scope of arbitration is a matter of agreement between the parties." (*Larkin v. Williams, Woolley, Cogswell, Nakazawa Russell* (1999) 76 Cal.App.4th 227, 230.) Because a party can be compelled to arbitrate only claims it has agreed to arbitrate, "the terms of the specific arbitration clause under consideration must reasonably cover the dispute as to which arbitration is requested." (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1063.)

Any doubts as to whether a plaintiff's claims are covered by an arbitration agreement are resolved in favor of arbitration. (*Vianna v. Doctors' Management Co.* (1994) 27 Cal.App.4th 1186, 1190.) "'"[A]rbitration should be upheld unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute."' [Citation.]" (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 397.) A plaintiff opposing arbitration bears the burden of showing that the agreement does not apply. (*Gravillis v. Coldwell Banker Residential Brokerage Co.*, *supra*, 143 Cal.App.4th at p. 772.)

When interpreting an arbitration agreement, we apply the ordinary rules of contract interpretation. (*Hotels Nevada, LLC v. Bridge Banc, LLC* (2005) 130 Cal.App.4th 1431, 1435.) When an agreement's language is "clear and explicit, that language governs." (*Esparza v. Sand & Sea, Inc.* (2016) 2 Cal.App.5th 781, 789.) We must interpret the arbitration agreement to give effect to the parties' mutual intent at the time they entered into the contract. (*Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 763.) In doing so, we must interpret the entire agreement to give "'force and effect to *every* provision, and not in a way which renders some clauses nugatory, inoperative or meaningless.' [Citation.]" (*Hemphill v. Wright Family, LLC* (2015) 234 Cal.App.4th 911, 915, original italics.)

C. *The Agreement Covers Lay's Claims*

The Agreement states that it applies to "all claims arising from or otherwise related to [Lay's] employment . . . , such as all claims for wages or compensation due, excepting those initiated by the Division of Labor Standards Enforcement, Department of Labor or other administrative agency," and then enumerates a series of other claims. The trial court interpreted the Agreement to exclude from its coverage any claim listed after "excepting." We conclude this interpretation is incorrect.

The Agreement broadly covers "*all* employment disputes . . . except as provided herein" between the parties and applies to "all claims arising from or otherwise related to [Lay's] employment or termination of [her] employment." This "plain, clear, and very broad" language evinces the parties' intent to arbitrate all of their disputes related to Lay's employment subject to a few explicit exceptions. (*EFund Capital Partners v. Pless* (2007) 150 Cal.App.4th 1311, 1322; see also *Lane v. Francis Capital Management, LLC* (2014) 224 Cal.App.4th 676, 681 [agreement to arbitrate "'all claims, disputes and controversies arising out of, relating to or in any way associated with [plaintiff's] employment by [defendant] or the termination of that employment'" covered plaintiff's wage-and-hour and wrongful termination claims].)

The Agreement then makes those exceptions clear in the second, separate paragraph by "'expressly exclud[ing]'" certain claims, and provides that they are "'not covered by th[e] Agreement.'" It would make little sense for the parties to exclude the dozen-plus claims listed after the "excepting" clause from the Agreement's coverage and

then, in a separate paragraph, "'expressly exclude[]'" three additional kinds of claims. On a more fundamental level, it would make even less sense for the parties to agree to arbitrate "'all employment disputes,'" yet agree not to arbitrate "claims of wrongful termination, claims for breach of any contract . . . claims for discrimination or harassment . . . claims for benefits, claims for constructive termination . . . and claims for" violating the Labor Code and FEHA. We agree with SVPA that if the parties intended to exclude these routine employment claims from arbitration, "the purpose of having an arbitration agreement at all is difficult to conceive." The trial court's interpretation impermissibly renders the arbitration agreement inapplicable to most (if not all) employment-related disputes between the parties. (*Estate of Petersen* (1994) 28 Cal.App.4th 1742, 1753, fn. 4 ["A contract term should not be construed to render some of its provisions meaningless or irrelevant."].) In light of the parties' intent to arbitrate "*all* employment disputes" except the five unambiguously excluded from the Agreement's coverage—wage claims initiated by a government agency, unemployment insurance claims, workers' compensation claims, nonarbitrable claims, and claims covered by another arbitration agreement—we cannot discern, and Lay does not offer, any reason why the parties also would agree not to arbitrate virtually all other employment claims.

The trial court's interpretation also renders the Agreement internally self-contradictory. Lay does not dispute that the parties specifically agreed to arbitrate "all claims for wages or compensation due." The series of claims after the "excepting" clause includes "claims for breach of any contract or covenant" and "claims for violation of any

federal, state, or other governmental law, statute, regulation, or ordinance." Every "claim for wages or compensation due" is based on the employer's violation of the law or breach of contract. (See *Voris v. Lampert* (2019) 250 Cal.Rptr.3d 779, 784-786, 792-793.) If the "excepting" clause applied to these claims, then it would mean that all wage and compensation claims are excluded from the Agreement's coverage, which would contradict its earlier provision that specifically includes such claims. The "excepting" clause therefore cannot logically apply to the series of claims that follows.

Here, the "excepting" clause modifies only the clause immediately before it—"'such as all claims for wages or other compensation due.'" As SVPA acknowledged in the trial court, the "excepting" clause would have been more clear had it been separated by parentheses to read as follows: "[A]ll claims for wages or compensation due (excepting those initiated by the Division of Labor Standards Enforcement, Department of Labor or other administrative agency)." But when, as here, "a phrase 'is set off from the rest of the main sentence by commas,' it 'should be read as a parenthetical [phrase],' because such a grammatical structure 'indicates an intent to segregate th[e] [phrase] from the rest of the sentence.' [Citation.]" (*Dow v. Lassen Irrigation Co.* (2013) 216 Cal.App.4th 766, 783.) We agree with SVPA that the "excepting" clause is properly read as a parenthetical to the phrase immediately before it, "such as all claims for wages or other compensation due." Taken together, the most natural reading of these provisions is that the parties agreed to arbitrate Lay's claims for wages or compensation due *except for* wage-related claims initiated by a government agency, such as the DLSE.

Based on the foregoing, we conclude the trial court erroneously interpreted the Agreement to exclude Lay's claims. When read properly, the Agreement unambiguously applies to all employment-related causes of action Lay may have except for the few "expressly excluded" by the Agreement and the wage claims excluded vis-à-vis the "excepting" clause. Because Lay does not assert any such claims, the Agreement applies to all of her claims, and the trial court erred in concluding otherwise. We therefore reverse the trial court's order denying SVPA's motion to compel arbitration.

D. *Lay's PAGA Claim Must Be Stayed Pending Arbitration*

Because the trial court denied SVPA's motion to compel arbitration on the ground the Agreement did not apply to any of Lay's claims, the trial court did not address Lay's argument that her PAGA claim is not arbitrable as a matter of law. We agree. (See *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 [holding plaintiffs cannot be compelled to arbitrate PAGA claims].) Because Lay's PAGA claim is predicated on her Labor Code claims, the trial court must stay her PAGA claim on remand pending the outcome of arbitration of her other claims. (See *Franco v. Arakelian Enterprises, Inc.* (2015) 234 Cal.App.4th 947, 966 ["Because the issues subject to litigation under the PAGA might overlap those that are subject to arbitration of [plaintiff's] individual claims, the trial court must order an appropriate stay of trial court proceedings."].)

IV.

DISPOSITION

The trial court's order denying SVPA's motion to compel arbitration is reversed and this matter is remanded to the trial court. The trial court is directed to compel the parties to arbitrate Lay's non-PAGA claims and to stay the proceedings on all of her claims pending the outcome of the arbitration. (Code Civ. Proc., § 1281.4.) The parties shall bear their own costs on appeal.

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CODRINGTON
J.

We concur:

MILLER
Acting P. J.

MENETREZ
J.