Circuit Court for Montgomery County
Case No. 486124-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1910

September Term, 2021

EDMUND AWAH

v.

REGENCY CAB, INC., *et al.*

Friedman,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 14, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Edmund Awah, a taxi driver for Regency Cab, Inc. ("Regency"), filed a complaint against Regency and others in the Circuit Court for Montgomery County. Appellant named Regency as a defendant in all counts, asserting various causes of action, including breach of contract, unjust enrichment, and "hostile work environment." Of the named individual defendants, only appellee Chrissy Ketterman, Regency's office employee, is an appellee in this appeal.[1] Appellees filed a motion to dismiss, averring that the Montgomery County Code required the parties to engage in alternative dispute resolution, including arbitration. Appellees also asserted that appellant failed to state a claim upon which relief could be granted under Maryland Rule 2-322(b). After a hearing, the circuit court dismissed appellant's complaint with prejudice. Appellant timely appealed, and we have consolidated his questions to a single question:

Did the circuit court err in dismissing appellant's complaint with prejudice?

As we shall explain, we conclude that the circuit court erred in dismissing appellant's complaint with prejudice.

FACTS AND PROCEEDINGS

In 2003, appellant began working as a taxi driver for Regency, a transportation company located in Montgomery County, Maryland. Appellant worked as a driver for Regency during various periods between 2003 and 2019. On June 15, 2021, appellant filed

[1] Appellant also sued two financial institutions, "Does 1" and "Does 2," and a former Regency taxi driver, Boniface Sossi. Appellant dismissed his claims against those defendants and thus they are not parties to this appeal.

a complaint in the Circuit Court for Montgomery County. Appellant's operative complaint against Regency contained the following counts: 1) Independent Contractor Misclassification; 2) Breach of Contract; 3) Unjust Enrichment/*Quantum Meruit*; 4) Negligence; 5) Hostile, Unsafe, Harassing, and Intolerable Workplace Environment; 6) Emotional Distress, Mental Anguish, and Violation of Debt Collection Laws; 7) Civil Conspiracy; and 8) Tortious Interference with Contractual and/or Advantageous Relations. Appellant's only cause of action against Ms. Ketterman was the "Hostile Workplace Environment" count, in which he alleged that Ms. Ketterman made threatening telephone calls and derogatory comments to him.

On November 3, 2021, appellees filed a motion to dismiss. Appellees first argued that § 53-219 of the Montgomery County Code required all counts of appellant's complaint to be arbitrated. Appellees alternatively argued that appellant's complaint should be dismissed for failure to state a claim. On January 12, 2022, the circuit court held a hearing on the motion to dismiss. At the hearing, appellees argued that § 53-219 mandates the following dispute resolution procedure: the complainant must file an internal grievance, followed by voluntary mediation; if mediation is unsuccessful, binding arbitration is required. Appellant resisted arbitration, arguing that his claims "fall well, well beyond the scope" of the Montgomery County Code, and thus are not subject to the § 53-219 dispute resolution process.

The circuit court dismissed appellant's complaint, stating:

> for the purposes of what happens to this case at this point, what matters is what the law says in Montgomery County, and that says that in this situation

> you've got a disagreement between the cab company and the cab driver, who is a licensed cab driver, and that requires arbitration. There's no wiggle room.

Notably, the court did not hear argument concerning appellees' "failure to state a claim" contentions. On January 27, 2022, the court issued an order dismissing appellant's complaint with prejudice. Appellant timely appealed. We shall provide additional facts as necessary.

DISCUSSION

As previously noted, appellees asserted in their motion to dismiss that all counts in appellant's complaint were subject to "the statutorily-mandated dispute resolution procedure" set forth in Section 53-219 of the Montgomery County Code. That provision governs dispute resolution between taxicab drivers and their fleet or association, even where it is not specified in the employment contract. Section 53-219(c) provides:

> If a fleet or association has an agreement with an affiliate or driver that does not include a dispute resolution procedure meeting the requirements of subsection (b), then disputes will be subject to resolution under this subsection.

This subsection requires that any dispute between a taxi driver and their fleet or association "must first be the subject of an internal grievance procedure." Montgomery County Code § 53-219(c)(1). "If the dispute is not resolved through the internal grievance procedure, both parties may agree to informal or formal mediation of the dispute." § 53-219(c)(2). "Where neither the internal grievance procedure nor mediation, if attempted, has resolved the dispute, either party may submit the matter to arbitration, which is binding upon the parties." § 53-219(c)(4).

Under the Montgomery County Code, "dispute" is defined as:

> [A] disagreement between a person who holds a taxicab driver identification card issued under this Chapter and the fleet or association under whose colors the person drives over whether an action taken by the fleet or association to terminate, suspend or impair the person's ability to drive under the fleet or association's colors, or to terminate, suspend or impair the person's right to enjoy the resources and benefits provided by the fleet or association, on the same basis as other similarly situated fleet or association drivers, was reasonable and based upon good cause.

§ 53-219(a)(1).

Appellant argues in his reply brief that his causes of action do not qualify as "disputes" as defined in § 53-219(a)(1). In determining whether a claim is subject to arbitration under a statute, the Court of Appeals has stated that the reviewing court should consider whether there is "no way" the legislature intended the claim to be covered by the statute. *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 296 (2018) (citing *Jewell v. Malamet*, 322 Md. 262, 274 (1991)); *Nichols v. Wilson*, 296 Md. 154, 161 (1983). Additionally, when one count is arbitrable, all other counts are likewise arbitrable in order to promote "the efficient administration of justice" and to "avoid[] the piecemeal resolution of controversies." *Nichols*, 296 Md. at 159; *see also Cannon v. McKen*, 296 Md. 27, 38 n.4 (1983). Where there is ambiguity in the scope of arbitration, resolution of that ambiguity is generally a question for the arbitrator, not the court. *NRT Mid-Atlantic, Inc. v. Innovative Props., Inc.*, 144 Md. App. 263, 280-81 (2002) (citing *Bel Pre Med. Ctr., Inc. v. Frederick Contractors, Inc.*, 21 Md. App. 307, 321-22 (1974)).

Although appellant's complaint is not a model for clarity, we can reasonably distill from his breach of contract and unjust enrichment counts that he claims Regency

improperly increased his daily rent, unlawfully applied a "15% charge on [his] MetroAccess income," and otherwise denied or impaired resources available to other drivers. In our view, those allegations ostensibly fall within § 53-219(a)(1)'s definition of a "dispute," *i.e.*, a disagreement "over whether an action taken by the fleet or association . . . to terminate, suspend or impair the person's right to enjoy the resources and benefits provided by the fleet or association, on the same basis as other similarly situated fleet or association drivers." Although an arbitrator may need to determine the scope of arbitrable issues, the court did not err in concluding that appellant's claims against Regency were subject to § 53-219's dispute resolution procedure, which requires binding arbitration if the internal grievance procedure and mediation fail to result in settlement of the dispute.[2] Further, the circuit court's decision is consistent with the principle that favors arbitration of all counts where one count is arbitrable. *See Cannon*, 296 Md. at 38 n.4.

Although the court correctly ruled that appellant's claims against Regency should proceed to arbitration, we note that the single cause of action against Ms. Ketterman individually alleges that her conduct created a "[h]ostile, [u]nsafe, [h]arassing, and intolerable [w]orkplace [e]nvironment." The parties made little or no attempt to address the count against Ms. Ketterman in the circuit court, nor have they done so in their appellate

[2] In his reply brief, appellant asserts that appellee waived any right to arbitration. Because that argument was not raised in the circuit court or appellant's opening brief, we shall not consider it. *DiCicco v. Balt. Cnty.*, 232 Md. App. 218, 224-25 (2017) (citing Md. Rule 8-131(a)) (stating that appellant fails to preserve a claim for appeal if he did not raise it below).

briefs. In our view, Ms. Ketterman may not invoke the arbitration provisions of § 53-219 because the statute's plain language states that it applies only to disputes between taxicab drivers and their "fleet or association." Moreover, appellant's allegations that Ms. Ketterman engaged in threatening telephone calls and other harassing conduct do not appear to fall within § 53-219(a)(1)'s definition of "dispute." Therefore, the court erred to the extent that it determined that the alleged cause of action against Ms. Ketterman individually was subject to arbitration. On remand, the court should convene a hearing to consider Ms. Ketterman's alternative claim that appellant's complaint fails to state a cause of action against her.

Having concluded that the court properly determined that appellant's claims against Regency are subject to arbitration, we turn to consider the court's decision to dismiss appellant's complaint with prejudice.

A court's decision to dismiss a case with prejudice is reviewed for an abuse of discretion. *Zdravkovich v. Siegert*, 151 Md. App. 295, 310 (2003).

> The words "without prejudice" permit a refiling; the words "with prejudice" prohibit refiling. Generally speaking, a dismissal with prejudice is ordered in cases where the dismissal is based on an appraisal of the legal sufficiency of the claim. It touches the substantive merits of the case. A dismissal without prejudice, on the other hand, is more likely to be ordered in cases where the dismissal is based on some procedural glitch or lapse in the necessary formalities, something that does not engage the merits of *res judicata* and that can be readily rectified on the next try.

Mohiuddin v. Drs. Billing & Mgmt. Sols. Inc., 196 Md. App. 439, 452 (2010). In its oral ruling, the court stated that it was "not commenting at all about the merits of [appellant's] claims." Nevertheless, when the court issued its order, it dismissed appellant's complaint

with prejudice. Because the court expressly disavowed "commenting at all about the merits of [appellant's] claims," it is clear that the court did not base its dismissal on the legal sufficiency of appellant's claims; indeed, the court expressly stated that dismissal was required by the arbitration provisions of § 53-219. Accordingly, we hold that the court improperly dismissed appellant's complaint with prejudice.

CONCLUSION

As to the claims against Regency, although a dismissal without prejudice or a stay in favor of arbitration would have been appropriate, we cannot countenance the court's "with prejudice" dismissal. Similarly, the court improperly dismissed with prejudice appellant's claim against Ms. Ketterman individually; as noted above, we shall remand that count to the court to consider whether appellant has stated a viable claim against her in Count V of his complaint. For the reasons stated, we shall vacate the court's "with prejudice" dismissal and remand the case for further proceedings consistent with this opinion.[3]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. CIRCUIT COURT'S DISMISSAL WITH PREJUDICE VACATED AS TO BOTH REGENCY AND KETTERMAN. CASE REMANDED TO CIRCUIT COURT FOR MONTGOMERY COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.

[3] We summarily reject appellant's assertion that the court is required to supervise or otherwise arrange for arbitration. Appellant has not cited any authority for this proposition, and we are not aware of any supporting authority.