219 N.J. 430

**Patricia ATALESE, Plaintiff–Appellant,**

**v.**

**U.S. LEGAL SERVICES GROUP, L.P., Defendant–Respondent.**

Supreme Court of New Jersey.

Argued April 9, 2014.

Decided Sept. 23, 2014.

**Background:** Consumer, who contracted with company for debt-adjustment services, brought action against company, alleging that company violated the Consumer Fraud Act (CFA) and the Truth–in–Consumer Contract, Warranty and Notice Act (TCCWNA). Company moved to compel arbitration. The Superior Court granted company's motion to compel arbitration pursuant to the contract, and consumer appealed. The Superior Court, Appellate Division, affirmed. Consumer filed petition for certification.

**Holding:** The Supreme Court, Albin, J., held that absence of any language in the arbitration provision in contract between consumer and company, that consumer was waiving her statutory right to seek relief in a court of law, rendered the arbitration provision unenforceable.

Reversed and remanded.

**1. Alternative Dispute Resolution ⚿152**

Arbitration provisions are commonplace in consumer contracts, and consumers can choose to pursue arbitration and waive their right to sue in court, but should know that they are making that choice.

**2. Alternative Dispute Resolution ⚿132**

Arbitration clause, like any contractual clause providing for the waiver of a constitutional or statutory right, must state its purpose clearly and unambiguously.

**3. Alternative Dispute Resolution ⚿152**

In choosing arbitration in consumer contracts, consumers must have a basic understanding that they are giving up their right to seek relief in a judicial forum.

**4. Alternative Dispute Resolution ⚿114**

Federal Arbitration Act (FAA) and the nearly identical New Jersey Arbitration Act enunciate federal and state policies favoring arbitration. 9 U.S.C.A. § 1 et seq.; N.J.S.A. 2A:23B–1 et seq.

**5. Alternative Dispute Resolution ⚿114**

Federal Arbitration Act (FAA) requires courts to place arbitration agreements on an equal footing with other contracts and enforce them according to their terms, and thus, a state cannot subject an arbitration agreement to more burdensome requirements than other contractual provisions. 9 U.S.C.A. § 1 et seq.

**6. Alternative Dispute Resolution ⚿134(1)**

Arbitration clause cannot be invalidated by state-law defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.

**7. Alternative Dispute Resolution ⚿113**

Arbitration's favored status does not mean that every arbitration clause is enforceable.

**8. Alternative Dispute Resolution ⚿134(1)**

Federal Arbitration Act (FAA) permits agreements to arbitrate to be invalidated by generally applicable contract defenses. 9 U.S.C.A. § 2.

**9. Alternative Dispute Resolution ⚿134(1)**

Federal Arbitration Act (FAA) permits states to regulate arbitration agreements under general contract principles, and a court may invalidate an arbitration clause upon such grounds as exist at law or in equity for the revocation of any contract. 9 U.S.C.A. § 2.

**10. Alternative Dispute Resolution ⚿132**

Agreement to arbitrate, like any other contract, must be the product of mutual assent, as determined under customary principles of contract law.

**11. Contracts ⚿15**

Legally enforceable agreement requires a meeting of the minds.

**12. Alternative Dispute Resolution ⚿112**

Parties are not required to arbitrate when they have not agreed to do so.

**13. Contracts ⚿15**

Mutual assent requires that the parties have an understanding of the terms to which they have agreed.

**14. Estoppel ⚿52.10(2)**

Effective waiver requires a party to have full knowledge of his legal rights and intent to surrender those rights.

**15. Alternative Dispute Resolution ⚿152**

By its very nature, an agreement to arbitrate involves a waiver of a party's right to have her claims and defenses litigated in court.

**16. Alternative Dispute Resolution ⚿152**

Average member of the public may not know—without some explanatory comment—that arbitration is a substitute for the right to have one's claim adjudicated in a court of law.

**17. Alternative Dispute Resolution ⚿134(3)**

Because arbitration involves a waiver of the right to pursue a case in a judicial forum, courts take particular care in assuring the knowing assent of both parties to arbitrate, and a clear mutual understanding of the ramifications of that assent.

**18. Alternative Dispute Resolution ⚿132**

Requirement that a contractual provision be sufficiently clear to place a consumer on notice that he or she is waiving a constitutional or statutory right is not specific to arbitration provisions; rather, any contractual waiver-of-rights provision must reflect that the party has agreed clearly and unambiguously to its terms.

**19. Alternative Dispute Resolution ⚿137**

Arbitration clauses are not singled out for more burdensome treatment than other waiver-of-rights clauses under state law.

**20. Alternative Dispute Resolution ⚿134(1)**

Arbitration clause depriving a citizen of access to the courts should clearly state its purpose.

**21. Estoppel ⚿52.10(2)**

No particular form of words is necessary to accomplish a clear and unambiguous waiver of rights.

**22. Alternative Dispute Resolution ⚿134(1)**

**Antitrust and Trade Regulation ⚿135(1)**

Arbitration clauses—and other contractual clauses—will pass muster when phrased in plain language that is understandable to the reasonable consumer. N.J.S.A. 56:12–2.

**23. Alternative Dispute Resolution ⚿134(1)**

Waiver-of-rights language in arbitration agreement must be clear and unambiguous—that is, the parties must know that there is a distinction between resolving a dispute in arbitration and in a judicial forum.

**24. Appeal and Error ⚿893(1)**

Supreme Court's review of a contract, generally, is de novo, and therefore, Supreme Court owes no special deference to the trial court's or Appellate Division's interpretation.

**25. Alternative Dispute Resolution ⚿213(5)**

Supreme Court's approach in construing an arbitration provision of a contract is governed by de novo standard of review.

**26. Alternative Dispute Resolution ⚿134(6)**

Absence of any language in the arbitration provision in contract between consumer and debt-adjustment services company, that consumer was waiving her statutory right to seek relief in a court of law, rendered the arbitration provision unenforceable; arbitration clause appeared on page 9 of a 23 page contract, nowhere in the arbitration provision was there any explanation that consumer was waiving her right to seek relief in court for a breach of her statutory rights, arbitration provision did not explain what arbitration was, nor did it indicate how arbitration was different from a proceeding in a court of law, nor was it written in plain language that would be clear and understandable to the average consumer that she was waiving statutory rights.

**27. Alternative Dispute Resolution ⚿134(1)**

Arbitration clause does not have to identify the specific constitutional or statutory right guaranteeing a citizen access to the courts that is waived by agreeing to arbitration, but the clause, at least in some general and sufficiently broad way, must explain that the plaintiff is giving up her right to bring her claims in court or have a jury resolve the dispute.

**28. Estoppel ⚿52.10(2)**

Effective waiver requires a consumer to have full knowledge of her legal rights before she relinquishes them.

**29. Alternative Dispute Resolution ⚿134(1)**

Whatever words compose an arbitration agreement, they must be clear and unambiguous that a consumer is choosing to arbitrate disputes rather than have them resolved in a court of law, and in this way, the agreement will assure reasonable notice to the consumer.

**30. Alternative Dispute Resolution ⚿132**

Under state contract law, Supreme Court imposes no greater burden on an arbitration agreement than on any other agreement waiving constitutional or statutory rights.

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William D. Wright argued the cause for appellant.

Thomas M. Barron, Moorestown, argued the cause for respondent.

Jed L. Marcus, Florham Park, submitted a brief on behalf of amicus curiae Pacific Legal Foundation (Bressler, Amery & Ross, attorneys; Mr. Marcus and Deborah J. La Fetra, a member of the California and Arizona bars, on the brief).

Justice ALBIN delivered the opinion of the Court.

435[1–3] Arbitration provisions are now commonplace in consumer contracts. Consumers can choose to pursue arbitration and waive their right to sue in court, but should know that they are making that choice. An arbitration clause, like any contractual clause providing for the waiver of a constitutional or statutory right, must state its purpose clearly and unambiguously. In choosing arbitration, consumers must have a basic understanding that they are giving up their right to seek relief in a judicial forum.

Here, plaintiff, Patricia Atalese, contracted with defendant, U.S. Legal Services Group, L.P. (USLSG), for debt-adjustment services. The contract contained an arbitration provision for the resolution of any dispute between the parties, but the provision made no mention that plaintiff waived her right to seek relief in court. Plaintiff brought a lawsuit against USLSG in the Special Civil Part alleging violations of two consumer-protection statutes.

The trial court granted USLSG's motion to compel arbitration pursuant to the service contract. The Appellate Division affirmed, finding that "the lack of express reference to a waiver of the right to sue in court" did not bar enforcement of the arbitration clause.

436We now reverse. The absence of *any* language in the arbitration provision that plaintiff was waiving her statutory right to seek relief in a court of law renders the provision unenforceable. An arbitration provision—like any comparable contractual provision that provides for the surrendering of a constitutional or statutory right—must be sufficiently clear to a reasonable consumer. The provision here does not pass that test. We therefore vacate the judgment of the Appellate Division and remand to the Special Civil Part for proceedings consistent with this opinion.

I.

A.

This case arises from a civil complaint filed in the Special Civil Part. Plaintiff alleged that defendant violated the Consumer Fraud Act (CFA), *N.J.S.A.* 56:8–1 to –20, and the Truth–in–Consumer Contract, Warranty and Notice Act (TCCWNA), *N.J.S.A.* 56:12–14 to –18. She sought treble damages, statutory penalties, and attorney's fees.

The trial court's decision to compel arbitration was based on the pleadings. *See R.* 4:46–2(c). We briefly review those pleadings.

B.

Plaintiff entered into a service contract with USLSG, which promised to provide debt-adjustment services. For those services, she paid USLSG approximately $5000, which included $4083.55 in legal fees, $940 in supplemental legal fees, and $107.50 in other fees. Plaintiff alleged that USLSG misrepresented that the monies were spent on numerous attorneys negotiating with creditors on her behalf. She maintained that the only work done by an attorney was the preparation of a single one-page answer for a collection action in which she represented herself. Plaintiff also alleged that USLSG settled only a single debt for her and "knowingly omitted" that it was not a licensed debt adjuster in 437New Jersey. Last, plaintiff contended that USLSG violated New Jersey's usury law.

USLSG denied the allegations in the complaint.

C.

USLSG moved to compel arbitration based on an arbitration provision in the twenty-three-page service contract. The arbitration provision is located on page nine, paragraph sixteen, of the contract and states:

> **Arbitration:** In the event of any claim or dispute between Client and the USLSG related to this Agreement or related to any performance of any services related to this Agreement, the claim or dispute shall be submitted to binding arbitration upon the request of either party upon the service of that request on the other party. The parties shall agree on a single arbitrator to resolve the dispute. The matter may be arbitrated either by the Judicial Arbitration Mediation Service or American Arbitration Association, as mutually agreed upon by the parties or selected by the party filing the claim. The arbitration shall be conducted in either the county in which Client resides, or the closest metropolitan county. Any decision of the arbitrator shall be final and may be entered into any judgment in any court of competent jurisdiction. The conduct of the arbitration shall be subject to the then current rules of the arbitration service. The costs of arbitration, excluding legal fees, will be split equally or be born by the losing party, as determined by the arbitrator. The parties shall bear their own legal fees.

The trial court granted USLSG's motion to compel arbitration and dismissed the complaint without prejudice. The court found the arbitration clause to be "minimally, barely ... sufficient to put the [plaintiff] on notice that if [the parties] have any sort of dispute arising out of [the] agreement, it's going to be heard in [a]rbitration." The court also believed that the arbitration clause met the criteria outlined in *Curtis v. Cellco Partnership*, 413 *N.J.Super.* 26, 33–37, 992 *A.*2d 795 (App.Div.), *certif. denied*, 203 *N.J.* 94, 999 *A.*2d 462 (2010). There, the Appellate Division held that an arbitration provision will be enforced so long as it is "sufficiently clear, unambiguously worded, satisfactorily distinguished from the other [a]greement terms, and ... provide[s] a consumer with reasonable notice of the requirement to arbitrate." *Id.* at 33, 992 *A.*2d 795. The trial court concluded that although [438] upholding the arbitration provision was not "a slam dunk," the policy favoring arbitration compelled the outcome.

Plaintiff appealed.

II.

In an unpublished opinion, the Appellate Division affirmed the trial court's order compelling arbitration, relying heavily on language in *Curtis*, *supra*, 413 *N.J.Super.* at 33, 992 *A.*2d 795, in reaching that conclusion. The panel held that "the lack of express reference to a waiver of the right to sue in court or to arbitration as the 'exclusive' remedy" did not bar enforcement of the arbitration clause. The panel stated that while the arbitration clause "did not explicitly state that plaintiff agreed to waive her right to try her dispute in court, it clearly and unambiguously stated that ... *any* dispute relating to the underlying agreement *shall* be submitted to arbitration and the resolution of that forum shall be *binding* and *final.*" It noted that other appellate panels had upheld arbitration provisions that did not have explicit waiver-of-rights language. (Citing *Griffin v. Burlington Volkswagen, Inc.*, 411 *N.J.Super.* 515, 518, 988 *A.*2d 101 (App.Div.2010); *EPIX Holdings Corp. v. Marsh & McLennan Cos.*, 410 *N.J.Super.* 453, 476, 982 *A.*2d 1194 (App.Div.2009), *overruled in part on other grounds by*

*Hirsch v. Amper Fin. Servs., LLC,* 215 *N.J.* 174, 192–93, 71 *A.*3d 849 (2013)).

The panel concluded that the language of the arbitration clause gave the "parties reasonable notice of the requirement to arbitrate all claims under the contract," and that "a reasonable person, by signing the agreement, [would have understood] that arbitration is the sole means of resolving contractual disputes."

We granted plaintiff's petition for certification. *Atalese v. U.S. Legal Servs. Grp., L.P.,* 214 *N.J.* 117, 67 *A.*3d 1191 (2013). We also granted Pacific Legal Foundation's request to participate as amicus curiae, limited to the filing of a brief.

439 III.

A.

Plaintiff contends that the arbitration clause does not comply with New Jersey law, specifically *Curtis* and our decision in *Marchak v. Claridge Commons, Inc.,* 134 *N.J.* 275, 281, 633 *A.*2d 531 (1993), because it "does not clearly and unequivocally state its purpose in depriving [plaintiff] of her time-honored right to sue." She asserts that New Jersey courts do not uphold "arbitration provisions that fail to: (1) indicate that the parties waive their right to sue; or (2) indicate that arbitration is the parties' exclusive remedy." Plaintiff does not suggest that an incantation of "magic words" is necessary for a waiver of rights but does assert that the language for such a waiver must be clear and unequivocal.

B.

USLSG contends that the term "arbitration" is universally understood and that "[n]o reasonable consumer could have any doubt that arbitration is different than litigation." USLSG emphasizes that the Federal Arbitration Act (FAA) reflects a "liberal federal policy favoring arbitration" and requires courts to "place arbitration agreements on an equal footing with other contracts and enforce them according to their terms." (Citations and internal quotation marks omitted) (quoting *AT & T Mobility LLC v. Concepcion,* 563 *U.S.* ——, ——, 131 *S.Ct.* 1740, 1745–46, 179 *L.Ed.*2d 742, 751 (2011)). It argues that the language in *Marchak, supra*—that an arbitration "clause depriving a citizen of access to the courts should clearly state its purpose," 134 *N.J.* at 282, 633 *A.*2d 531—as construed by plaintiff, is in conflict with *Concepcion* and New Jersey case law. Last, USLSG submits that the arbitration clause is sufficiently clear and "adequately advised" plaintiff that her lawsuit would be resolved "in an arbitral forum."

C.

Pacific Legal Foundation, participating as amicus curiae, urges this Court to affirm the Appellate Division and enforce the arbitration 440 agreement. Amicus emphasizes that arbitration provisions in contracts must be viewed with favor, consistent with the dictates of federal and state law, and not with "suspicion or hostility." Amicus maintains that consumers entering into contracts with arbitration clauses are "presumed" to be sufficiently competent to understand what they are signing and that "the law does not require invocation of particular terms of art to create an enforceable arbitration contract." In short, amicus insists that plaintiff signed an arbitration agreement "written in standard form and simple language" and should be bound by it.

IV.

A.

**[4]** The Federal Arbitration Act (FAA), 9 *U.S.C.A.* §§ 1–16, and the nearly

identical New Jersey Arbitration Act, *N.J.S.A.* 2A:23B–1 to –32, enunciate federal and state policies favoring arbitration. *Concepcion, supra,* 563 *U.S.* at ——, 131 *S.Ct.* at 1745, 179 *L.Ed.*2d at 751 (describing Section 2 of FAA as reflecting "a 'liberal federal policy favoring arbitration' " (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,* 460 *U.S.* 1, 24, 103 *S.Ct.* 927, 941, 74 *L.Ed.*2d 765, 785 (1983))); *Hojnowski v. Vans Skate Park,* 187 *N.J.* 323, 342, 901 *A.*2d 381 (2006) (noting that Legislature, in enacting New Jersey's Arbitration Act, codified existing judicial policy favoring arbitration as "means of dispute resolution"); *Martindale v. Sandvik, Inc.,* 173 *N.J.* 76, 92, 800 *A.*2d 872 (2002) ("[T]he affirmative policy of this State, both legislative and judicial, favors arbitration as a mechanism of resolving disputes.").

**[5, 6]** Section 2 of the FAA provides that

> [a] written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.
>
> [9 *U.S.C.A.* § 2.]

441 The FAA requires courts to "place arbitration agreements on an equal footing with other contracts and enforce them according to their terms." *Concepcion, supra,* 563 *U.S.* at ——, 131 *S.Ct.* at 1745–46, 179 *L.Ed.*2d at 751 (citations omitted). Thus, "a state cannot subject an arbitration agreement to more burdensome requirements than" other contractual provisions. *Leodori v. CIGNA Corp.,* 175 *N.J.* 293, 302, 814 *A.*2d 1098, *cert. denied,* 540 *U.S.* 938, 124 *S.Ct.* 74, 157 *L.Ed.*2d 250 (2003). An arbitration clause cannot be invalidated by state-law "defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *Concepcion, supra,* 563 *U.S.* at ——, 131 *S.Ct.* at 1746, 179 *L.Ed.*2d at 751.

**[7–9]** Arbitration's favored status does not mean that every arbitration clause, however phrased, will be enforceable. *See Hirsch, supra,* 215 *N.J.* at 187, 71 *A.*3d 849 ("[T]he preference for arbitration 'is not without limits.' " (quoting *Garfinkel v. Morristown Obstetrics & Gynecology Assocs.,* 168 *N.J.* 124, 132, 773 *A.*2d 665 (2001))). Section 2 of the FAA "permits agreements to arbitrate to be invalidated by '*generally* applicable contract defenses.' " *Concepcion, supra,* 563 *U.S.* at ——, 131 *S.Ct.* at 1746, 179 *L.Ed.*2d at 751 (emphasis added) (quoting *Doctor's Assocs., Inc. v. Casarotto,* 517 *U.S.* 681, 687, 116 *S.Ct.* 1652, 1656, 134 *L.Ed.*2d 902, 909 (1996)). Accordingly, the FAA "permits states to regulate ... arbitration agreements under general contract principles," and a court may invalidate an arbitration clause " 'upon such grounds as exist at law or in equity for the revocation of any contract.' " *Martindale, supra,* 173 *N.J.* at 85, 800 *A.*2d 872 (quoting 9 *U.S.C.A.* § 2); *see First Options of Chi., Inc. v. Kaplan,* 514 *U.S.* 938, 944, 115 *S.Ct.* 1920, 1924, 131 *L.Ed.*2d 985, 993 (1995) ("When deciding whether the parties agreed to arbitrate a certain matter ..., courts generally ... should apply ordinary state-law principles that govern the formation of contracts."); *Hojnowski, supra,* 187 *N.J.* at 342, 901 *A.*2d 381 ("[S]tate contract-law principles generally govern a determination whether a valid agreement to arbitrate exists." (citing *First Options,* 442 *supra,* 514 *U.S.* at 944, 115 *S.Ct.* at 1924, 131 *L.Ed.*2d at 993)).

B.

**[10–12]** An agreement to arbitrate, like any other contract, "must be the product

of mutual assent, as determined under customary principles of contract law." *NAACP of Camden Cnty. E. v. Foulke Mgmt.*, 421 *N.J.Super.* 404, 424, 24 *A.*3d 777 (App.Div.), *certif. granted*, 209 *N.J.* 96, 35 *A.*3d 679 (2011), *and appeal dismissed*, 213 *N.J.* 47, 59 *A.*3d 1083 (2013). A legally enforceable agreement requires "a meeting of the minds." *Morton v. 4 Orchard Land Trust*, 180 *N.J.* 118, 120, 849 *A.*2d 164 (2004). Parties are not required "to arbitrate when they have not agreed to do so." *Volt Info. Scis. v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 489 *U.S.* 468, 478, 109 *S.Ct.* 1248, 1255, 103 *L.Ed.*2d 488, 499 (1989); *see Garfinkel*, *supra*, 168 *N.J.* at 132, 773 *A.*2d 665 (" '[O]nly those issues may be arbitrated which the parties have agreed shall be.' " (quoting *In re Arbitration Between Grover & Universal Underwriters Ins. Co.*, 80 *N.J.* 221, 228, 403 *A.*2d 448 (1979))).

**[13–16]** Mutual assent requires that the parties have an understanding of the terms to which they have agreed. "An effective waiver requires a party to have full knowledge of his legal rights and intent to surrender those rights." *Knorr v. Smeal*, 178 *N.J.* 169, 177, 836 *A.*2d 794 (2003) (citing *W. Jersey Title & Guar. Co. v. Indus. Trust Co.*, 27 *N.J.* 144, 153, 141 *A.*2d 782 (1958)). "By its very nature, an agreement to arbitrate involves a waiver of a party's right to have her claims and defenses litigated in court." *Foulke*, *supra*, 421 *N.J.Super.* at 425, 24 *A.*3d 777. But an average member of the public may not know—without some explanatory comment—that arbitration is a substitute for the right to have one's claim adjudicated in a court of law.

**[17]** Moreover, because arbitration involves a waiver of the right to pursue a case in a judicial forum, "courts take particular care in assuring the knowing assent of both parties to arbitrate, [443] and a clear mutual understanding of the ramifications of that assent." *Ibid.*

**[18]** The requirement that a contractual provision be sufficiently clear to place a consumer on notice that he or she is waiving a constitutional or statutory right is not specific to arbitration provisions. Rather, under New Jersey law, any contractual "waiver-of-rights provision must reflect that [the party] has agreed clearly and unambiguously" to its terms. *Leodori*, *supra*, 175 *N.J.* at 302, 814 *A.*2d 1098; *see, e.g., Dixon v. Rutgers, the State Univ. of N.J.*, 110 *N.J.* 432, 460–61, 541 *A.*2d 1046 (1988) (holding that collective bargaining agreement cannot deprive one of statutory rights to evidentiary materials in anti-discrimination case because "[u]nder New Jersey law[,] for a waiver of rights to be effective it must be plainly expressed"); *Red Bank Reg'l Educ. Ass'n v. Red Bank Reg'l High Sch. Bd. of Educ.*, 78 *N.J.* 122, 140, 393 *A.*2d 267 (1978) (explaining, in public-employment labor-relations context, that any waiver of statutory right to file grievances "must be clearly and unmistakably established"); *W. Jersey Title & Guar. Co.*, *supra*, 27 *N.J.* at 152–53, 141 *A.*2d 782 ("It is requisite to waiver of a legal right that there be a clear, unequivocal, and decisive act of the party.... Waiver presupposes a full knowledge of the right and an intentional surrender ...." (citations and internal quotation marks omitted)); *Christ Hosp. v. Dep't of Health & Senior Servs.*, 330 *N.J.Super.* 55, 63–64, 748 *A.*2d 1156 (App.Div.2000) (requiring "clear and unmistakable waiver" of statutory right to hearing following refusal to renew license); *Franklin Twp. Bd. of Educ. v. Quakertown Educ. Ass'n*, 274 *N.J.Super.* 47, 53, 643 *A.*2d 34 (App.Div. 1994) (holding that waiver of court-ordered, strike-related expenses must be "clear and unmistakable" (citation and internal quotation marks omitted)); *Otis*

*Elevator Co. v. Stafford*, 95 *N.J.L.* 79, 82, 111 *A.* 695 (Sup.Ct.1920) ("Clear and unmistakable evidence is necessary to hold that the right to file a [mechanics'] lien has been waived."); *Amir v. D'Agostino*, 328 *N.J.Super.* 141, 160, 744 *A.*2d 1233 (Ch. Div.1998) (holding that waiver of statutory rights under Condominium Act requires that party "kn[ow] that there [i]s a statutory protection available and |444then elect[ ] to waive it" because "conduct that purports to constitute a waiver must be clear and unmistakable"), *aff'd o.b.*, 328 *N.J.Super.* 103, 105, 744 *A.*2d 1212 (App.Div. 2000); *cf. Wright v. Universal Mar. Serv. Corp.*, 525 *U.S.* 70, 80, 119 *S.Ct.* 391, 396, 142 *L.Ed.*2d 361, 371 (1998) (holding that "union-negotiated waiver of employees' statutory right to a judicial forum for claims of employment discrimination" must be "clear and unmistakable").

**[19, 20]** Arbitration clauses are not singled out for more burdensome treatment than other waiver-of-rights clauses under state law. Our jurisprudence has stressed that when a contract contains a waiver of rights—whether in an arbitration or other clause—the waiver "must be clearly and unmistakably established." *Garfinkel, supra*, 168 *N.J.* at 132, 773 *A.*2d 665 (citation and internal quotation marks omitted). Thus, a "clause depriving a citizen of access to the courts should clearly state its purpose." *Ibid.* (quoting *Marchak, supra*, 134 *N.J.* at 282, 633 *A.*2d 531). We have repeatedly stated that "[t]he point is to assure that the parties know that in electing arbitration as the exclusive remedy, they are waiving their time-honored right to sue." *Ibid.* (quoting *Marchak, supra*, 134 *N.J.* at 282, 633 *A.*2d 531); *Hirsch, supra*, 215 *N.J.* at 187, 71 *A.*3d 849 (same).

**[21, 22]** No particular form of words is necessary to accomplish a clear and unambiguous waiver of rights. It is worth remembering, however, that every "consumer contract" in New Jersey must "be written in a simple, clear, understandable and easily readable way." *N.J.S.A.* 56:12–2. Arbitration clauses—and other contractual clauses—will pass muster when phrased in plain language that is understandable to the reasonable consumer.

Our courts have upheld arbitration clauses phrased in various ways when those clauses have explained that arbitration is a waiver of the right to bring suit in a judicial forum. For example, in *Martindale, supra*, we upheld an arbitration clause because it explained that the plaintiff agreed "to waive [her] right to a jury trial" and that "all disputes relating to [her] employment ... shall be decided by an arbitrator." 173 *N.J.* at 81–82, 96, 800 *A.*2d 872 |445(stating that "arbitration agreement not only was clear and unambiguous, it was also sufficiently broad to encompass reasonably plaintiff's statutory causes of action"). In *Griffin, supra*, the Appellate Division upheld an arbitration clause, which expressed that "[b]y agreeing to arbitration, the parties understand and agree that they are waiving their rights to maintain other available resolution processes, such as a court action or administrative proceeding, to settle their disputes." 411 *N.J.Super.* at 518, 988 *A.*2d 101. In *Curtis, supra*, the Appellate Division found the arbitration provisions were "sufficiently clear, unambiguously worded, satisfactorily distinguished from the other [a]greement terms, and drawn in suitably broad language to provide a consumer with reasonable notice of the requirement to arbitrate." 413 *N.J.Super.* at 33, 992 *A.*2d 795. The arbitration agreement in *Curtis* stated:

> Instead of suing in court, we each agree to settle disputes (except certain small claims) only by arbitration. The rules in arbitration are different. There's no

judge or jury, and review is limited, but an arbitrator can award the same damages and relief, and must honor the same limitations stated in the agreement as a court would.

[*Id.* at 31, 992 *A.*2d 795 (emphasis omitted).]

**[23]** *Martindale, Griffin,* and *Curtis* show that, without difficulty and in different ways, the point can be made that by choosing arbitration one gives up the "time-honored right to sue." *See Garfinkel, supra,* 168 *N.J.* at 135, 773 *A.*2d 665 (declining to "suggest that a party need refer specifically to the [Law Against Discrimination] or list every imaginable statute by name to effectuate a knowing and voluntary waiver of rights"). The waiver-of-rights language, however, must be clear and unambiguous—that is, the parties must know that there is a distinction between resolving a dispute in arbitration and in a judicial forum.

With those principles in mind, we turn to the arbitration provision before us.

V.

**[24, 25]** Our review of a contract, generally, is de novo, and therefore we owe no special deference to the trial court's or
446 Appellate Division's interpretation. *Kieffer v. Best Buy,* 205 *N.J.* 213, 222–23, 14 *A.*3d 737 (2011). Our approach in construing an arbitration provision of a contract is governed by the same de novo standard of review. *Hirsch, supra,* 215 *N.J.* at 186, 71 *A.*3d 849.

**[26]** The arbitration clause at issue appears on page nine of a twenty-three-page contract between plaintiff and USLSG. Under the terms of the agreement, USLSG promised to provide plaintiff with debt-adjustment services. In her civil complaint, plaintiff alleged that USLSG failed to deliver the services promised, misrepresented that various attorneys were working on her case, and knowingly omitted that it was not a licensed debt adjuster in this State. Plaintiff asserted that USLSG violated two consumer-protection statutes, the CFA and the TCCWNA, both of which explicitly provide remedies in a court of law. *See N.J.S.A.* 56:8–19 ("Any person who suffers any ascertainable loss . . . may bring an action or assert a counterclaim therefor in any court of competent jurisdiction."); *N.J.S.A.* 56:12–17 ("A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of [the TCCWNA] and the court in its discretion may void the contract.").

**[27, 28]** Nowhere in the arbitration clause is there any explanation that plaintiff is waiving her right to seek relief in court for a breach of her statutory rights. The contract states that either party may submit any dispute to "binding arbitration," that "[t]he parties shall agree on a single arbitrator to resolve the dispute," and that the arbitrator's decision "shall be final and may be entered into judgment in any court of competent jurisdiction." The provision does not explain what arbitration is, nor does it indicate how arbitration is different from a proceeding in a court of law. Nor is it written in plain language that would be clear and understandable to the average consumer that she is waiving statutory rights. The clause here has none of the language our courts have found satisfactory in upholding arbitration provisions—clear and unambiguous language that the plaintiff is waiving her right to sue or go to court to secure relief. We do not
447 suggest that the arbitration clause has to identify the specific constitutional or statutory right guaranteeing a citizen access to the courts that is waived by agreeing to arbitration. But the clause, at least in some general and sufficiently broad way, must explain that the plaintiff is giving up her right to bring her claims

in court or have a jury resolve the dispute.[1] Mutual assent to an agreement requires mutual understanding of its terms. After all, "[a]n effective waiver requires a [consumer] to have full knowledge of [her] legal rights" before she relinquishes them. *See Knorr, supra*, 178 *N.J.* at 177, 836 *A.*2d 794.

In the employment setting, we have stated that we would "not assume that employees intend to waive [their rights under the Law Against Discrimination] unless their agreements so provide in unambiguous terms." *Garfinkel, supra*, 168 *N.J.* at 135, 773 *A.*2d 665. We indicated that although a waiver-of-rights provision need not "list every imaginable statute by name to effectuate a knowing and voluntary waiver of rights," employees should at least know that they have "agree[d] to arbitrate all statutory claims arising out of the employment relationship or its termination." *Ibid.*

**[29, 30]** We emphasize that no prescribed set of words must be included in an arbitration clause to accomplish a waiver of rights. Whatever words compose an arbitration agreement, they must be clear and unambiguous that a consumer is choosing to arbitrate disputes rather than have them resolved in a court of law.[2] In this way, the agreement will assure reasonable notice to the consumer. To be clear, under our state contract law, we impose no greater burden on an arbitration agreement than on any other agreement waiving constitutional or statutory rights.

[448]In the matter before us, the wording of the service agreement did not clearly and unambiguously signal to plaintiff that she was surrendering her right to pursue her statutory claims in court. That deficiency renders the arbitration agreement unenforceable.[3]

## VI.

The judgment of the Appellate Division is reversed. We remand to the trial court

1. Article I, Paragraph 9 of the 1947 New Jersey Constitution guarantees that "[t]he right of trial by jury shall remain inviolate." That guarantee has appeared in every New Jersey Constitution. *See N.J. Const. of 1776* art. XXII; *N.J. Const. of 1844* art. I, § 7.

2. Both plaintiff and USLSG reference *EPIX Holdings, supra*, 410 *N.J.Super.* 453, 982 *A.*2d 1194, in their briefs. There, a panel of the Appellate Division enforced an arbitration provision that stated that "[a]ny other unresolved dispute arising out of this Agreement must be submitted to arbitration," and that "the arbitrators would have 'exclusive jurisdiction over the entire matter in dispute, including any question as to arbitrability.' " *Id.* at 461, 482, 982 *A.*2d 1194. The parties in *EPIX Holdings* did not challenge whether that language satisfied the standard for a waiver of rights. We find that the language there is not sufficient to constitute a clear and unambiguous waiver of a consumer's right to sue in court.

3. Our opinion should not be read to approve that part of the arbitration clause that states: "The costs of arbitration, excluding legal fees, will be split equally or born by the losing party, as determined by the arbitrator. The parties shall bear their own legal fees." *See Delta Funding Corp. v. Harris*, 189 *N.J.* 28, 44, 912 *A.*2d 104 (2006) (stating that "defendant [ ] may not limit a consumer's ability to pursue the statutory remedy of attorney's fees and costs when it is available to prevailing parties" and explaining that "[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral[,] rather than a judicial forum.") (internal quotation marks omitted); *see also N.J.S.A.* 56:12–16 (stating that under TCCWNA "[n]o consumer contract ... shall contain any provision by which the consumer waives his rights under this act"); *N.J.S.A.* 56:8–19 ("In all actions under [the CFA], ... the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.").

for proceedings consistent with this opinion.

*For reversal and remandment*—Chief Justice RABNER and Justices LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ–VINA and Judges RODRÍGUEZ (temporarily assigned) and CUFF (temporarily assigned)—7.

*Opposed*—None.


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**C.A., a Minor, by Her Mother and Guardian ad Litem, Esther APPLEGRAD, Esther Applegrad, Individually, and Gedalia Applegrad, Individually, Plaintiffs–Respondents,**

**v.**

**Eric BENTOLILA, M.D., and Gita Patel, R.N., Defendants,**

**and**

**The Valley Hospital, Kourtney Kaczmarski, R.N., Mary Brown, R.T., and Yie–Hsien Chu, M.D., Defendants–Appellants.**

Supreme Court of New Jersey.

Argued Nov. 6, 2013.
Reargued Feb. 3, 2014.
Decided Sept. 29, 2014.

**Background:** Patient filed medical malpractice suit against hospital, nurse, respiratory therapist, and physician, alleging that her infant was negligently deprived of oxygen at birth, resulting in brain damage. The Superior Court, Law Division, Passaic County, denied patient's motion to compel production of investigative document relating to infant's birth. Patient sought leave to appeal. After initially granting appeal, the Superior Court, Appellate Division, 2011 WL 13700, vacated its order and remanded to trial court for further proceedings. On remand, the trial court denied motion to compel. Patient sought leave to appeal, which was granted. The Superior Court, Appellate Division, Sabatino, J.A.D., 428 N.J.Super. 115, 51 A.3d 119, affirmed in part, reversed in part, and remanded. Defendants filed motion for leave to appeal, which was granted.

**Holding:** The Supreme Court, Patterson, J., held that document was not discoverable under Patient Safety Act.

Reversed and remanded.

Cuff, J., filed dissenting opinion, in which Rabner, C.J., and Albin, J., joined.

**1. Appeal and Error ⚿961**

Appellate court applies abuse of discretion standard to decisions made by trial courts relating to matters of discovery.

**2. Appeal and Error ⚿961**

Appellate courts generally defer to trial court's disposition of discovery matters unless court has abused its discretion or its determination is based on mistaken understanding of applicable law.

**3. Appeal and Error ⚿893(1)**

Supreme Court conducts de novo review of trial court's construction of a statute.

**4. Statutes ⚿1080**

Legislature's intent is paramount goal when interpreting a statute and, generally, the best indicator of that intent is statutory language.

**5. Statutes ⚿1080**

When interpreting statutory language, goal is to divine and effectuate Legislature's intent.