SECOND DIVISION
February 21, 2017

No. 1-15-3430

WENDI HANGEBRAUCK, Plaintiff-Appellant, v. ERNST & YOUNG, LLP, DANA HALL, and STEPHEN FERGUSON, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 14 L 11984 Honorable Eileen Brewer, Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court correctly compelled arbitration of plaintiff's claims.

¶ 2 Plaintiff signed an employment agreement which provided that most disputes between her and her employer would be subject to mediation and arbitration. When plaintiff's employment was terminated, the parties entered into a separate settlement agreement in which plaintiff released any and all claims that she had against her employer as of the date of the settlement. The settlement agreement did not contain an arbitration clause. Plaintiff subsequently filed this action alleging that, post-settlement, her former employer and two of its employees interfered with her ability to secure new employment. The trial court granted defendants' motion

to compel arbitration and dismiss plaintiff's complaint. Plaintiff appeals. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 In 2005, Ernst & Young, LLP hired plaintiff, an attorney and certified public accountant, as a Senior Manager in its International Tax Services Group. Plaintiff signed an employment agreement (Employment Agreement), which provides that:

> "I further agree that any dispute, controversy or claim (as defined in Attachment A) arising between myself and the Firm will be submitted first to mediation and, if mediation is unsuccessful, then to binding arbitration in accordance with the terms and conditions set forth in Attachment A, which describes the Firm's Common Ground Dispute Resolution Program. I acknowledge that I have read and understand Attachment A and that I shall abide by it."
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> * * *
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> "This Agreement may not be amended other than in writing signed by the managing partner or managing director of the office to which I am assigned at the time of modification."

¶ 5 Attachment A outlined the Common Ground Dispute Resolution Program (Resolution Program). In Section II of the Resolution Program, "Employee" is defined as:

> "[A]n employee of the Firm who is bound by the terms and conditions of the [Resolution] Program ***. A person remains an Employee for purposes of the [Resolution] Program even if the person ceases employment with the Firm, unless the person becomes a partner in the Firm. An employee of the Firm indicates his or her agreement to the terms and conditions of the [Resolution] Program and is bound by such

terms and conditions by beginning or continuing employment with the Firm after August 1, 2002."

¶ 6 Section IV(F) of the Resolution Program contained a provision that "[a]ny issue about whether a particular claim, controversy or dispute is subject to arbitration, or about how the terms and conditions of the [Resolution] Program should be interpreted or whether they are binding on the parties, shall be decided by an arbitrator or arbitrators."

¶ 7 In May 2007, Ernst & Young terminated plaintiff's employment. In a Settlement Agreement and General Release (Settlement Agreement) dated December 21, 2007, plaintiff and Ernst & Young sought to "resolve their disputes in order to avoid further expenditure of time and money ***." In Section 3 of the Settlement Agreement, plaintiff agreed not to file any "lawsuit, complaint, charge, compliance review, action, grievance proceeding or appeal, investigation or proceeding of any kind *** pertaining or in any way related to her employment or separation from employment with the Firm."

¶ 8 Section 6(a) of the Settlement Agreement states that:

> "[P]laintiff knowingly and voluntarily releases and forever discharges the Firm, its current, former and future partners, *** ("Released Parties"), of and from any and all claims, known and unknown, and whether accrued, contingent, asserted or unasserted which she, *** ha[s] or may have, as of the date of execution of this Agreement, arising out of [plaintiff's] employment or separation from employment with the Firm *** ."

¶ 9 Section 6(b) of the Settlement Agreement states in part that: "This Agreement covers all claims which may exist as of the date this Agreement is executed and does not cover claims which may arise after the date of this Agreement."

¶ 10 Section 8(c) of the Settlement Agreement provides that: "This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, if any, with respect hereto and cannot be modified, amended, waived or terminated, in whole or in part, except in writing signed [*sic*] all Parties."

¶ 11 Section 8(h) of the Settlement Agreement provides in part that:

> "If either party believes there has been a breach of any of the terms of this Agreement, the party shall give notice of the alleged breach to the other side. If the matter cannot be resolved within thirty (30) days, the Parties agree the matter will be submitted to expedited mediation in Chicago, Illinois[.]"

¶ 12 In November 2014, plaintiff initiated this action in circuit court. Her complaint alleges the following facts. From November 2007 to June 2008, plaintiff was employed by Orbitz Worldwide, Inc. (Orbitz) as the company's Director of Tax. During that time, Ernst & Young acted as one of Orbitz's advisors and made false statements to Orbitz about her. Plaintiff ultimately resigned from Orbitz in part because of those false statements. Between April 2010 and November 2013, plaintiff sought employment from various companies that had arrangements or connections with Ernst & Young. According to plaintiff, Ernst & Young, and its employees Dana Hall and Stephen Ferguson, made disparaging remarks about her to those companies, and several of those companies declined to hire her as a result. Plaintiff's complaint contains five counts: (1) tortious interference with prospective economic advantage against all defendants (count I); (2) tortious interference with contract against Ernst & Young and Dana Hall (count II); (3) violations of the Uniform Deceptive Trade Practices Act against all defendants (count III); (4) common law commercial disparagement against all defendants (count IV); and (5) defamation *per se* against Ernst & Young and Dana Hall (count V).

¶ 13 Defendants[1] moved to compel arbitration of plaintiff's claims pursuant to the Illinois Uniform Arbitration Act (710 ILCS 5/1 (West 2014)), and to dismiss plaintiff's complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2014)). Defendants argued that the parties' Employment Agreement contained a valid and enforceable arbitration provision that requires plaintiff to submit all of her claims to arbitration. Defendants further argued that the Employment Agreement required arbitrating the enforceability and scope of the arbitration provision before an arbitrator and not the circuit court.

¶ 14 Plaintiff responded that the Employment Agreement's arbitration provision was superseded by the Settlement Agreement. She argued that her claims neither arose out of, nor were related to, her employment with Ernst & Young. She further argued that the Employment Agreement's arbitration provision was "so overbroad, vague, ambiguous, and contradictory" that there was no meeting of the minds as to the scope of the arbitration provision, and it was therefore unenforceable.

¶ 15 The trial court, in an oral ruling, found that the Employment Agreement and the Resolution Program's arbitration provision were valid and enforceable as to plaintiff. The trial court rejected plaintiff's argument that the Settlement Agreement abrogated the arbitration provision of the Employment Agreement, since plaintiff entered into a unilateral release of her claims and the Employment Agreement could not have been modified by the Settlement Agreement. The trial court found that whether plaintiff's claims were arbitrable was a decision to be made by an arbitrator. The trial court therefore granted defendant's motion to compel

[1] Ernst & Young claims that defendants Hall and Ferguson were never properly served and never filed appearances in the trial court. In the trial court, Ernst & Young moved to compel arbitration on its own behalf, as well as on behalf of Hall and Ferguson. This does not affect our disposition of the issue of whether plaintiff must arbitrate her claims.

arbitration and dismissed plaintiff's complaint with prejudice pursuant to section 2-619(a)(9) of the Code. The trial court entered a written order that states: "for the reasons stated in the transcript, the motion to compel arbitration and to dismiss is granted." Plaintiff filed this timely appeal.

¶ 16 ANALYSIS

¶ 17 On appeal, plaintiff argues that the Settlement Agreement superseded the Employment Agreement's arbitration provision. Alternatively, she argues that the arbitration clause is not enforceable.

¶ 18 We must first decide whether an agreement to arbitrate exists. *Menard County Housing Authority v. Johnco Construction, Inc.*, 341 Ill App. 3d 460, 463 (2003) ("The issue whether a contract to arbitrate exists must be determined by the court, not an arbitrator."); see also *Travis v. American Manufacturers Mutual Insurance Co.*, 335 Ill. App. 3d 1171, 1175 ("At a hearing on a motion to compel arbitration, the only issue before the court is whether an agreement exists to arbitrate the dispute in question."). If there was an agreement to arbitrate, then the trial court correctly compelled arbitration. *Travis*, 335 Ill. App. 3d at 1175-76. Under the Employment Agreement's arbitration provision, the question of arbitrability of plaintiff's claims is an issue for an arbitrator to decide.

¶ 19 Defendants raise an initial argument that New York law applies to the Employment Agreement, the Resolution Program, and the Settlement Agreement, since those agreements contain express provisions stating that they are governed by the laws of the State of New York. Defendants argue that under New York law, the question of whether an arbitration agreement has been rescinded by a subsequent agreement is a question for the arbitrators. See *Town of Amherst v. Granite State Insurance Co.*, 12 N.Y.S. 3d 465, 466 (N.Y. App. Div. 2015).

¶ 20 Plaintiff responds that defendants have forfeited the issue of whether New York law applies by failing to file a cross-appeal from the trial court's application of Illinois law. Defendants, however, are not requesting any relief in this appeal other than asking for the judgment to be affirmed, and therefore no cross-appeal was necessary. See *In re Marriage of Fortner*, 2016 IL App (5th) 150246, ¶ 15. We may affirm the trial court's ruling on any basis appearing in the record, whether or not that was the basis relied on by the trial court. *Id.* We note, however, that defendants' motion to dismiss never argued that New York law applied, and defendants' motion did not cite a single New York case in support of compelling arbitration. Defendants argue on appeal that their reply brief in support of their motion to dismiss asserted that New York law applies, but the portion of the brief to which they cite is completely redacted and we are unable to discern any of the arguments advanced therein. A different portion of the reply brief mentions that the agreements are governed by New York law, but our review of defendants' motion and reply does not make it clear that the defendants expressly argued that New York law governs. Therefore, we will apply Illinois law. See *Zabaneh Franchises, LLC v. Walker*, 2012 IL App (4th) 110215, ¶ 14 (finding that parties' assertion that Missouri law applied for the first time on appeal resulted in forfeiture).

¶ 21 Plaintiff argues that the Settlement Agreement superseded the Employment Agreement, and therefore she is not required to arbitrate her claims against defendants. She contends that the purpose of the Settlement Agreement was to "resolve [the parties'] disputes." She argues that she covenanted to not sue in section 6(a) of the Settlement Agreement by agreeing to give up the right to "initiate any lawsuit, complaint, charge, compliance review, action, grievance proceeding or appeal, investigation or proceeding of any kind *** pertaining to or in any way related to her employment or separation from employment with the Firm." She further argues that the

Settlement Agreement contains a general release, and that the language of the Settlement Agreement "clearly and unmistakably shows that [plaintiff] and Ernst & Young intended for the Settlement Agreement *** to be the final and only agreement between them." Plaintiff contends that section 8(c) of the Settlement Agreement is a merger clause which demonstrates that the parties intended to supersede all prior agreements, including the Employment Agreement. She primarily relies on *ACME-Wiley Holdings, Inc. v. Buck*, 343 Ill. App. 3d 1098 (2003), *Liebl v. Mercury Interactive Corp.*, 06 C 5364, 2006 WL 3626764 (N.D. Ill. Dec. 12, 2006), and *Zandford v. Prudential-Bache Securities, Inc.*, 112 F.3d 723 (4th Cir. 1997), in support of her argument that a separation agreement containing a general release supersedes an original employment agreement.

¶ 22 Defendants argue that the Settlement Agreement does not abrogate the arbitration provision in the Employment Agreement because the two agreements do not involve the same subject matter, and the Settlement Agreement did not satisfy the Employment Agreement's amendment requirements. Defendants contend that the plain language of the Settlement Agreement "does not reflect the parties' intent to nullify the arbitration provision in the Employment Agreement" because the Settlement Agreement did not apply to post-settlement claims that might accrue, and there were post-employment obligations in the Employment Agreement, such as confidentiality, non-disclosure, and non-solicitation provisions that were not addressed in the Settlement Agreement. Defendants primarily rely on the plain language of the agreements, as well as *Aon Corp. v. Utley*, 371 Ill. App. 3d 562 (2006), to support their argument that a later agreement does not merge with and supersede a previous agreement where the agreements to not pertain to the same subject matter.

¶ 23 We review a trial court's dismissal pursuant to section 2-619(a)(9) of the Code *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 631 (2009). Furthermore, where the trial court does not conduct an evidentiary hearing, the trial court's decision to compel arbitration is also reviewed *de novo*. *Watkins v. Mellen*, 2016 IL App (3d) 140570, ¶ 12.

¶ 24 Arbitration contracts are interpreted in the same manner and according to the same rules as are all other contracts. *State Farm Fire & Casualty Co. v. Watts Regulator Co.*, 2016 IL App (2d) 160275, ¶ 27 (citing *J & K Cement Construction, Inc. v. Montalbano Builders, Inc.*, 119 Ill. App. 3d 663, 669 (1983)). "The primary objective in construing a contract is to give effect to the intent of the parties." *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.* "The intent of the parties is not to be gathered from detached portions of a contract or from any clause or provision standing by itself." *Id.* (citing *Martindell v. Lake Shore National Bank*, 15 Ill. 2d 272, 283 (1958)). The interpretation and construction of the Employment Agreement, arbitration provision, and the Settlement agreement are questions of law. *Brown v. Delfre*, 2012 IL App (2d) 111086, ¶ 11.

¶ 25 We agree with defendants that the Settlement Agreement did not supersede the Employment Agreement's arbitration provision.

¶ 26 First, we observe that plaintiff's execution of the Employment Agreement acknowledged that she "read and underst[ood]" the terms of the Resolution Program set forth in Attachment A, including its definition of "Employee." As noted above, that definition provides that "[a] person remains an Employee for purposes of the [Resolution] Program even if the person ceases employment with the Firm[.]" Therefore, if the Employment Agreement's arbitration agreement survives the Settlement Agreement, then "any dispute, controversy or claim (as defined in

Attachment A)" that plaintiff has against Ernst & Young or its employees must be submitted to mediation first, and, if unsuccessful, then to arbitration.

¶ 27 Second, we find that the plain language of the Settlement Agreement does not reflect an intent to supersede or vitiate the Employment Agreement's arbitration provision. Plaintiff points to specific provisions in the Settlement Agreement that she believes collectively demonstrate the parties' intent to abrogate the Employment Agreement, but in giving effect to the parties' agreement, we must read the Settlement Agreement as a whole. *Lenart*, 226 Ill. 2d at 232. By its own terms, the Settlement Agreement relates only to claims that plaintiff had "as of the date of execution of this [Settlement] Agreement." The parties expressly agreed that the Settlement Agreement "does not cover claims which may arise after the date of this Agreement," and that the Settlement Agreement "contains the entire agreement and understanding of the Parties with *respect to the subject matter hereof*, and supersedes all prior agreements and understandings, if any, *with respect hereto*[.]" (Emphasis added.) This is a clear statement that the subject matter of the Settlement Agreement was the claims plaintiff had against defendants as of the date of the settlement, and that the Settlement Agreement does not apply to any claim that might arise after the settlement was executed. Furthermore, the Settlement Agreement's merger clause states that it "supersedes all prior agreements and understandings" with respect to the subject matter of the Settlement Agreement. Contrary to plaintiff's argument, the Settlement Agreement does not contain language "disavowing and rejecting any and all other agreements." The Settlement Agreement's provisions, read together, demonstrate that the parties' Settlement Agreement was only intended to resolve plaintiff's claims as of the date of the settlement, and specifically referenced and carved out claims that might arise post-settlement. Thus, the Settlement Agreement does not govern post-settlement claims.

¶ 28 Furthermore, there is nothing in the Settlement Agreement to suggest that defendants were releasing plaintiff from her obligations under the Employment Agreement. Section 1(c) of the Settlement Agreement provides that "*[plaintiff] hereby waives* any entitlement to and acknowledges and agrees that she is not entitled to any other compensation or benefits of any kind or description *** from the Firm other than as set forth *** above." (Emphasis added.) Section 3 of the Settlement Agreement provides that "*[plaintiff] agrees that she will not* initiate or cause to be initiated against the Firm any lawsuit [or] complaint *** pertaining in any way related to her employment or separation from employment with the Firm." (Emphasis added). Section 6 of the Settlement Agreement provides that "*[plaintiff] knowingly and voluntarily releases* and forever discharges the Firm *** of and from any and all claims, known and unknown, whether accrued contingent, asserted, or unasserted which she *** may have, as of the date of execution of this [Settlement] Agreement ***." (Emphasis added.) Section 7 of the Settlement Agreement provides that "*[plaintiff] agrees that she will* direct any third party inquiries regarding herself from prospective employers" to a specified phone number, and that "*[plaintiff] further agrees that she will not* apply for or accept employment with the Firm or any successor or subsidiary thereof, at any time after executing this [Settlement] Agreement." (Emphasis added.) None of these provisions demonstrate that defendants were releasing plaintiff from anything, including the obligations she had under the Employment Agreement, nor does plaintiff argue that any other provision in the Settlement Agreement can be read as any type of release by defendants.

¶ 29 Under the terms of the Employment Agreement, plaintiff remained an "Employee" for the purposes of the Resolution Program even after she "ceases employment with the Firm." Her obligations under the Employment Agreement include compliance with the mediation and

arbitration requirements, as well as the Knowledge-Sharing and Confidentiality provision, which required plaintiff "[d]uring and after the end of [her] employment" to "hold in confidence and not use or disclose *** any trade secrets or confidential business and technical information of the Firm or its clients," as well as the non-solicitation provision. We see nothing in the Settlement Agreement that reflects any intent to modify or abrogate the plaintiff's continuing obligations under the Employment Agreement, including those related to arbitration of claims against defendants.

¶ 30 Plaintiff contends that we addressed a "near identical" set of facts in *ACME-Wiley*. In *ACME-Wiley*, the former CEO of one of the plaintiffs had an employment agreement that contained an arbitration clause. When defendant was terminated for cause, the parties executed a separation agreement that provided for certain compensation, and in which the parties mutually agreed to release any and all claims against one another. *ACME-Wiley*, 343 Ill. App. 3d at 1100. The separation agreement did not contain an arbitration clause. Defendant initiated arbitration pursuant to the employment agreement after he sent plaintiffs a letter claiming that he was owed certain compensation under his employment agreement and that plaintiffs had libeled him, and he asserted that the separation agreement was unconscionable due to duress. *Id.* Plaintiffs filed a declaratory judgment action seeking to stay arbitration on the grounds that the parties had no agreement to arbitrate, and further sought a declaration that the separation agreement was enforceable. The trial court denied plaintiffs' motion to stay arbitration, but we reversed, finding that the separation agreement's general release was "clear and unambiguous" such that "the original employment agreement was to be regarded as history." *Id.* at 1106. We instructed the trial court on remand to consider the enforceability of the separation agreement. If the separation agreement was enforceable, then the employment agreement's arbitration provision did not

apply, and thus the arbitration should be stayed. If the separation agreement was unenforceable, then the employment agreement's arbitration provision remained valid, and the arbitration should not be stayed. *Id.* at 1107.

¶ 31 We find *ACME-Wiley* distinguishable. Here, the Settlement Agreement, by its terms, was confined to only those claims that plaintiff had or might have had as of the date of the settlement, and specifically carved out post-settlement claims. Ernst & Young did not release plaintiff from her continuing obligations under the Employment Agreement, including being bound by the Resolution Program's arbitration provision. Unlike in *ACME-Wiley*, the Settlement Agreement here does not purport to resolve all future disputes between the parties relating to plaintiff's employment with Ernst & Young. The Settlement Agreement, by its terms, did not apply to any post-settlement claim related to plaintiff's employment. We do not find that the Settlement Agreement clearly indicated that the Employment Agreement "was to be regarded as history."

¶ 32 The two federal cases on which plaintiff relies are also distinguishable. In *Liebl v. Mercury Interactive Corp.*, 06 C 5364, 2006 WL 3626764 (N.D. Ill. Dec. 12, 2006), which plaintiff cites as persuasive, non-binding authority, the federal district court found that an arbitration provision in an employment agreement was superseded by a subsequent separation agreement which reaffirmed certain pre-existing terms in the employment agreements but did not reaffirm the arbitration provision. *Id.* at *4-5. Here, the Settlement Agreement did not expressly reaffirm any provisions of the Employment Agreement, but instead resolved a discrete set of existing and pre-existing claims while excluding post-Settlement Agreement claims. The Settlement Agreement made no specific reference to amending, affirming, or superseding the Employment Agreement, or the arbitration provision contained therein.

¶ 33 Plaintiff's reliance on *Zandford v. Prudential-Bache Securities, Inc.*, 112 F.3d 723 (4th Cir. 1997), is also unpersuasive. There, an employment agreement contained an arbitration provision while a subsequent settlement agreement and general release did not. *Id.* at 726. The court found that the broad, general release contained no exceptions and that the parties "intended their employment contract to be no longer the source of any requirement or liability." *Id.* at 728. Here, plaintiff released only claims in existence as of the date of the Settlement Agreement. The release does not indicate an intention by the parties to otherwise terminate the Employment Agreement in general or the Resolution Program's arbitration provision in particular. As discussed above, we do not find that the language contained in the Settlement Agreement and general release clearly reflects an intent to supersede the Employment Agreement.

¶ 34 Furthermore, there is nothing before us to suggest that the Employment Agreement merged with the Settlement Agreement. "The doctrine of merger provides that where a subsequent contract is executed which relates to the same subject matter and embraces the same terms as a previous contract, then actions by the parties, based upon the contract, must be based upon the provisions of the subsequently executed contact." *Kraft v. Number 2 Galesburg Crown Finance Corp.*, 95 Ill. App. 3d 1044, 1049-50 (1981); see also *Aon*, 371 Ill. App. 3d at 567 (same). Here, the Employment Agreement governed compensation, the nature of the employment relationship, grounds for termination, confidentiality, and dispute resolution. The Settlement Agreement related to claims and potential claims that plaintiff had or may have had arising from her employment and termination as of the date of the Settlement Agreement. The separate agreements addressed different subjects, and the Settlement Agreement did not expressly modify or abrogate any of the terms of the previously executed Employment Agreement. Therefore, we cannot say that the two agreements merged.

¶ 35 In sum, the trial court correctly concluded that the parties had an agreement to arbitrate "all claims, controversies, or other disputes between the Firm and an Employee," including "[a]ny issue about whether a particular claim, controversy or dispute is subject to arbitration," since the Settlement Agreement did not supersede or vitiate the arbitration provision of the parties' Employment Agreement.

¶ 36 Next, plaintiff argues that the arbitration clause is unenforceable because "it is so overbroad that a reasonable person would [not] know to which disputes it applied; nor would a reasonable person know to whom the clause applied." She argues that there was "no meeting of the minds" as to the terms of the arbitration provision. Plaintiff contends that the arbitration provision only requires "that the dispute must involve Ernst & Young in some way, shape, or form." She argues that Employment Agreement defines "Firm" as "Ernst & Young LLP (together with its subsidiaries and affiliates, and any successor entities)," while the Resolution Program defines "Firm" as "Ernst & Young LLP and Ernst & Young U.S. LLP, all their subsidiaries and affiliates, and any successor entities." It also includes "all partners and employees of such entities against whom a claim is asserted for acts arising out of their duties with the Firm." Plaintiff claims that no reasonable person "would have knowledge of or could decipher which entities or individuals to whom the [arbitration provision] applies." Plaintiff appears to take the view that the arbitration provision is unenforceable because its terms are not sufficiently definite or certain.

¶ 37 Defendants argue that whether the arbitration agreement is enforceable and whether plaintiff's claims are within the scope of the arbitration agreement are questions for the arbitrator pursuant to section IV(F) of the Resolution Program, which was incorporated into the Employment Agreement. They claim that plaintiff acknowledged that she had read and

understood the terms of the Employment Agreement and the Resolution Program by signing the Employment Agreement. Defendants argue that an arbitration provision is presumptively valid and enforceable unless the party challenging it can show its invalidity based on equitable or legal grounds used for revocation of a contract.

¶ 38 Whether the arbitration provision is enforceable is a question that we can determine. See *Bess v. DirecTV, Inc.*, 381 Ill. App. 3d 229, 236 (2008) (finding that when a challenge is to the arbitration provision itself, a court can decide whether it is enforceable). Here, plaintiff cites general propositions of law regarding contract formation and interpretation in her challenge to the arbitration provision, but fails to cite any authority that supports her argument that the breadth of an arbitration provision alone is sufficient to find that provision unenforceable. Her failure to develop any coherent legal argument in support of her claim that there was "no meeting of the minds" as to the arbitration provision results in forfeiture. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); see also *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009) (finding that failure to properly develop an argument does "not merit consideration on appeal and may be rejected for that reason alone").

¶ 39 Forfeiture aside, it is well established that a contract "is sufficiently definite and certain to be enforceable if the court is enabled from the terms and provisions thereof, under proper rules of construction and applicable principles of equity, to ascertain what the parties have agreed to." *Morey v. Hoffman*, 12 Ill. 2d 125, 131 (1957). Here, we can discern that the parties broadly agreed that they would mediate and, if necessary, arbitrate all claims by an employee arising out of their employment relationship against Ernst & Young and its employees. That agreement continued even after that employee was no longer employed by Ernst & Young. The parties agreed that any disputes regarding whether a claim falls within the arbitration provision would be

resolved by an arbitrator. Plaintiff signed the Employment Agreement, which, immediately above the signature line, states in all capital letters:

> "I have read this [Employment] Agreement and [the Resolution Program set forth in] Attachment A and fully understand their terms. I acknowledge that I have agreed to waive any right I may have to have a dispute between myself and the Firm determined by a court of law and that all such disputes shall be resolved through mediation and arbitration."

Furthermore, plaintiff cites to nothing in the record that would establish that she, at the time she signed this agreement, did not understand the breadth of the arbitration provision. Here, plaintiff sought to bring claims against Ernst & Young and two of its employees. The defendants clearly fall within the definition of "Firm" contained in the Resolution Program defined in Attachment A. While plaintiff argues the Resolution Program's definition of the "Firm" is broader than the Employment Agreement's definition, we fail to see how that renders the arbitration provision indefinite or uncertain to the point of being unenforceable. Therefore, we find that the arbitration provision contained within the Employment Agreement is enforceable. Whether the claims plaintiff brings against defendants fall with the agreement to arbitrate is an issue for the arbitrator to decide.

¶ 40 CONCLUSION

¶ 41 In sum, the trial court correctly found that the Settlement Agreement did not supersede the Employment Agreement's arbitration provision. The arbitration provision is both valid and enforceable, and, pursuant to the Resolution Program, any question as to whether plaintiff's claims fall within the scope of the arbitration provision is to be determined by an arbitrator.

¶ 42 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.