

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

ROBERT JEAN, et al.	)	CASE NO. 1:04 CV 1904
	)	
Plaintiffs,	)	JUDGE CHRISTOPHER A. BOYKO
	)	
v.	)	
	)	<b>REPLY TO PLAINTIFFS'</b>
THE STANLEY WORKS, et al.	)	<b>DECLARATIONS AND SUR-REPLY IN</b>
	)	<b>SUPPORT OF MOTION TO COMPEL</b>
Defendants.	)	<b>ARBITRATION</b>

Nothing in the declarations filed by the small subset of the plaintiffs alters the fact that the 93 named plaintiffs who agreed to arbitrate with Stanley must proceed to arbitration under the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* First, as explained in Stanley's briefs in support of this motion, a finding of unconscionability under Ohio law requires a showing of **both** procedural and substantive unconscionability. See Rickard v. Teynor's Homes, Inc., 279 F. Supp. 2d 910, 915 (N.D. Ohio 2003). There is nothing in the declarations to support any claim that the arbitration provisions in the plaintiffs' contracts with Stanley are substantively unconscionable. See Stanley's Reply Brief at pages 6-11. For this reason alone, Stanley's motion to compel arbitration should be granted as to all of the 93 plaintiffs with arbitration provisions.

Second, of the 93 plaintiffs who agreed to arbitration, only 23 have submitted any evidence at all regarding alleged procedural unconscionability.<sup>1</sup> The remaining 70 plaintiffs who signed agreements to arbitrate with Stanley have not even attempted to meet their burden of showing procedural unconscionability. See Anderson v. Delta Funding Corp., 316 F.Supp.2d 554, 558 (N.D. Ohio 2004) (noting that plaintiffs bear the burden of showing that an arbitration agreement is unenforceable). Unquestionably, these 70 plaintiffs have no reason to avoid the arbitrations to which they agreed.

Third, 10 of the 23 plaintiffs who filed declarations were employed by Stanley under the MDSR program before converting to distributors. These plaintiffs all concede that they had one to four days to review Stanley's contract documents in advance of signing and returning them to Stanley. (See declarations of R. Barnhart, D. Clemens, D. Flanagan, T. Franz, J. Johnson, C. Perry, T. Perry, J. Skiff, K. Thompson, and D. Wecker.) The claim that these plaintiffs felt compelled to return the documents to Stanley as quickly as possible does not undermine the fact that they had the opportunity to read the contract documents before signing them.<sup>2</sup> That some of these plaintiffs chose not to do so does not create a basis to void their arbitration provisions. See Burlile v. McCluskey Chevrolet-GEO, 22 Fed. Appx. 507, \*509, 2001 U.S. App. LEXIS 24210 (6th Cir. 2001) (applying Ohio law) (recognizing that, absent fraudulent inducement, an arbitration clause should be upheld even if the party did not read the contract containing the arbitration provision before signing it) (attached as Exhibit 1); see also ABM Farms v. Woods, 81 Ohio St. 3d 498, 503 (1998) ("It will not do for a man to enter into a contract, and, when

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<sup>1</sup> Plaintiffs filed 27 declarations in support of their efforts to avoid arbitration. Twenty-three are from currently-named plaintiffs who signed arbitration agreements with Stanley. Two are from former Stanley management employees. One is from the wife of a currently-named plaintiff, and one is from Robert Broz, an individual who purportedly "will soon be named" as a plaintiff in this action. (See Declaration of R. Broz.)

<sup>2</sup> Stanley told the plaintiffs that those who returned their documents would be converted sooner, not that quick turnaround was required to be converted at all. (See declarations of R. Broz, J. Skiff, K. Thompson.)

called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted, contracts would not be worth the paper on which they are written' . . . The legal and common-sensical axiom that one must read what one signs survives this case.”) (quoting Upton v. Tribilcock, 91 U.S. 45, 50 (1875).)

Of the remaining 13 plaintiffs who signed declarations nine claim that they signed the agreements without knowing that the agreements contained an arbitration provision, which again contradicts the legal principle discussed above that one still is bound by the agreement even if he or she signs without reading it first. (Tim Blackwell, Richard Chavez, Dale Glime, Don Goddard, Kent Hadley, Lance Reed, Chris Shelton, Lane Thomas, and Victor Wenzel.) These plaintiffs assert they did not know that arbitration was required – which means that they did not even read the distributor agreement which they signed. On the other hand, the declarations of John Contursi, Henry Deemer, Jerry Feld, and Sean Phillips do not even include allegations that they were unaware that they agreed to arbitration. Like the first nine, the four plaintiffs who understood that arbitration was required cannot avoid their agreements to arbitrate. See Raasch v. NCR Corp., 254 F.Supp.2d 847, 867 (S.D. Ohio 2003) (former employee required to arbitrate, even though agreement was non-negotiable, because he was aware of requirement).

Moreover, the statements of most of the plaintiffs/declarants who said they were unaware of the arbitration requirement is contradicted by the factual record previously submitted to this Court. For example, of the nine who allege that they did not see Stanley’s contract documents until the last day of training, seven of them signed forms acknowledging receipt of the contracts well in advance of signing them – in some instances, more than one month. (Richard Chavez, Dale Glime, Don Goddard, Kent Hadley, Lance Reed, Chris Shelton, and Lane Thomas.)<sup>3</sup>

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<sup>3</sup> In addition, these plaintiffs’ declarations contradict record evidence on other points as well. For example, Dale Glime’s declaration asserts that he did not have experience in business, but in his application with Stanley, he

Under the “cardinal rule” of procedural unconscionability, “in the absence of fraud or willful deceit, one who signs a contract which he has had an opportunity to read and understand, is bound by its provisions.” Anderson, 316 F.Supp. 2d at 564. Stanley’s arbitration clause is simple, straightforward, and understandable. See Ohio Univ. Bd. of Trustees v. Smith, 132 Ohio App. 3d 211, 724 N.E.2d 1155, 1161 (Ohio Ct. App. 1999) (“[T]he crucial question is whether each party to the contract, considering his obvious education or lack of it [had] a reasonable opportunity to understand the terms of the contract, or were the important terms hidden in a maze of fine print...”). None of the plaintiffs claim that Stanley made any misrepresentation concerning the arbitration provision or barred the plaintiffs from taking the time to read the contracts before signing them. Therefore, these plaintiffs have failed in their burden of establishing procedural unconscionability. See Anderson, 316 F. Supp. 2d at 564 (plaintiff who did not read arbitration agreement nonetheless bound by it); Burlile, 22 Fed. Appx. 507, \*509 (same). But plaintiffs’ attempt to establish procedural unconscionability cannot prevent arbitration in any event. Without a showing of substantive unconscionability – which no plaintiff attempts to make – none can avoid their agreement to arbitrate their claims. See Rickard, 279 F. Supp. 2d at 915.

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reported owning his own business, Glime Business Financial Services. The declarations of Kent Hadley and his wife assert that he has a central auditory processing disorder such that he could not understand the contract language without help. But, his records show that he holds a B.A. in sociology and owned his own business, Accurate Building Solutions, for more than 15 years before becoming a Mac distributor. Don Goddard also claimed in his declaration not to have any business experience, but he reported to Stanley on his application form that he owned his own company, Extreme Auto.

**CONCLUSION**

Arbitration of the claims of all of these 93 plaintiffs is required because they have not shown, or even attempted to show, substantive unconscionability. For the reasons stated herein, Stanley's motion should be granted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The foregoing defendant's reply to plaintiffs' declarations and sur-reply in support of motion to compel arbitration was filed electronically this 17th day of June 2005. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

*s/ Thomas S. Kilbane* \_\_\_\_\_