[Cite as *Pyle v. Wells Fargo Fin.*, 2004-Ohio-4892.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Walter D. Pyle,	:	
Plaintiff-Appellant,	:	No. 04AP-6 (C.P.C. No. 03CVH-01-150)
v.	:	(REGULAR CALENDAR)
Wells Fargo Financial et al.,	:	
Defendants-Appellees.	:	

O P I N I O N

Rendered on September 16, 2004

Law Offices of James P. Connors, and *James P. Connors*, for appellant.

Thompson Hine LLP, Scott A. King and *Chad D. Cooper*, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} Walter D. Pyle, plaintiff-appellant, appeals from judgments of the Franklin County Court of Common Pleas, in which the court granted the motion to compel arbitration and to stay or dismiss proceedings filed by Wells Fargo Financial ("Wells Fargo") and Centurion Casualty Company ("Centurion"), defendants-appellees.

{¶2} On June 7, 1999, appellant entered into a loan agreement with Wells Fargo relating to his purchase of a vehicle. At the same time, appellant also executed a credit involuntary unemployment insurance agreement underwritten by Centurion. In August

1999, Wells Fargo purchased a collateral protection insurance policy related to appellant's vehicle and increased appellant's monthly payments accordingly. Appellant alleges he never received copies of any of these documents, was not advised of any of the terms of the various agreements, other than the monthly payment amount, and was never told that he had purchased the unemployment or loan collateral insurance.

{¶3} Shortly after purchasing the vehicle, the vehicle was rendered inoperable as the result of an error made by an oil change company, and appellant was laid off from his job. Appellant allegedly advised Wells Fargo that he would be unable to make payments on the vehicle. Wells Fargo allegedly encouraged appellant to continue to make payments on the vehicle and represented to him that it would not repossess the vehicle if he continued to make payments; however, in late 1999, Wells Fargo repossessed the vehicle from the repair shop and sold the truck at auction in early 2000. Wells Fargo then obtained a deficiency judgment, on which appellant continues to make payments.

{¶4} On January 6, 2003, appellant filed the present action against appellees, alleging claims for misrepresentation, breach of contract, bad faith, violations of the Ohio Consumer Practices Act and the Truth in Lending Act, and civil conspiracy, and seeking declaratory judgment against appellees. On February 14, 2003, appellees filed a motion to compel arbitration and to stay or dismiss proceedings, contending that appellant executed two separate arbitration agreements in conjunction with the loan agreement and the involuntary unemployment agreement. On May 22, 2003, appellees filed a motion to stay discovery. On June 12, 2003, appellees moved for a protective order to prevent discovery, and appellant filed a motion to compel discovery on August 13, 2003.

{¶5} Without a hearing, on November 17, 2003, the trial court granted appellees' motion to compel arbitration. Also on November 17, 2003, by separate decision, the trial court denied as moot appellees' motions to stay discovery and for a protective order and appellant's motion to compel discovery. On December 18, 2003, the trial court filed an entry of dismissal granting the motion to compel arbitration and to stay or dismiss proceedings and dismissing the action subject to arbitration. Appellant appeals both judgments of the trial court, asserting the following assignments of error:

> 1. The trial court erred by granting defendants' motion to compel arbitration.
>
> 2. The trial court erred by granting defendants' motion to compel arbitration without a hearing on the merits.
>
> 3. The trial court erred by denying discovery essential to the issue of whether the underlying claims against both defendants were governed by a valid arbitration agreement.

{¶6} We will address appellant's second assignment of error first. Appellant argues in his second assignment of error that the trial court erred when it granted appellees' motion to compel arbitration without a hearing on the merits. We agree. There are four pertinent statutes that relate to the enforcement of arbitration agreements: Section 3 and Section 4 of the Federal Arbitration Act, Sections 1-16, Title 9, U.S.Code ("FAA"), R.C. 2711.02, and 2711.03. Section 3 of the FAA and R.C. 2711.02 apply to motions to stay proceedings pending arbitration. Section 4 of the FAA and R.C. 2711.03 apply to motions to compel arbitration.

{¶7} R.C. 2711.02(B) provides:

> If any action is brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending, upon being satisfied that the issue involved in the action is referable to arbitration under an

> agreement in writing for arbitration, shall on application of one of the parties stay the trial of the action until the arbitration of the issue has been had in accordance with the agreement, provided the applicant for the stay is not in default in proceeding with arbitration.

{¶8} Similarly, Section 3 of the FAA provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

{¶9} R.C. 2711.03(A) provides, in pertinent part:

> The party aggrieved by the alleged failure of another to perform under a written agreement for arbitration may petition any court of common pleas having jurisdiction of the party so failing to perform for an order directing that the arbitration proceed in the manner provided for in the written agreement. * * * The court shall hear the parties, and, upon being satisfied that the making of the agreement for arbitration or the failure to comply with the agreement is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the agreement.

{¶10} R.C. 2711.03(B) provides:

> If the making of the arbitration agreement or the failure to perform it is in issue in a petition filed under division (A) of this section, the court shall proceed summarily to the trial of that issue. If no jury trial is demanded as provided in this division, the court shall hear and determine that issue. Except as provided in division (C) of this section, if the issue of the making of the arbitration agreement or the failure to perform it is raised, either party, on or before the return day of the notice of the petition, may demand a jury trial of that issue. Upon the party's demand for a jury trial, the court shall make an order referring the issue to a jury called and impaneled in the manner provided in civil actions. If the jury finds that no

> agreement in writing for arbitration was made or that there is no default in proceeding under the agreement, the proceeding shall be dismissed. If the jury finds that an agreement for arbitration was made in writing and that there is a default in proceeding under the agreement, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with that agreement.

{¶11} Section 4 of the FAA contains similar provisions as R.C. 2711.03(A) and (B), and provides, in pertinent part:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court * * * for an order directing that such arbitration proceed in the manner provided for in such agreement. * * * The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. * * * If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, * * * the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may * * * demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find[s] that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find[s] that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

{¶12} Although appellees' motion to compel was based upon the FAA, because the Ohio Supreme Court has found that Section 3 of the FAA "closely resembles" R.C. 2711.02, and Section 4 of the FAA and R.C. 2711.03 are "very similar," and the procedural requirements under these statutes are the same, our analysis will discuss

such requirements under both the federal and state statutes. See *Maestle v. Best Buy Co.*, 100 Ohio St.3d 330, 2003-Ohio-6465, at ¶20 ("*Maestle I*").

{¶13} A party may choose to move for a stay, petition for an order to compel arbitration, or seek both. In the present case, appellees' motion sought both to stay the proceedings pending arbitration and to compel arbitration. With regard to appellees' motion to stay the proceedings pending arbitration, it is clear that the trial court was not required to hold any type of hearing or trial. See id., at ¶19-20 (a hearing is not required when a motion to stay is based upon Section 3 of the FAA or R.C. 2711.02). Thus, appellant's argument in this respect is without merit.

{¶14} With regard to appellant's contention that the trial court was required to hold a hearing before ruling on appellees' motion to compel arbitration, there are two provisions in Section 4 of the FAA and two substantially identical provisions in R.C. 2711.03 that require some type of hearing when a motion to compel arbitration is filed: (1) R.C. 2711.03(A) and the corresponding provision of Section 4 of the FAA, which provide that, after a party files a motion to compel arbitration, the court "shall hear the parties"; and (2) R.C. 2711.03(B) and the corresponding provision of Section 4 of the FAA, which provide that, if the making of the arbitration agreement or the failure to perform it is "in issue," "the court shall proceed summarily to the trial" of that issue. The "shall hear" requirements contained in R.C. 2711.03(A) and the corresponding provision of Section 4 of the FAA and the "trial" requirements in R.C. 2711.03(B) and the corresponding provision of Section 4 of the FAA plainly contemplate distinct procedures. We note that many courts have not distinguished between the "shall hear" procedure under R.C. 2711.03(A) and the corresponding Section 4 of the FAA and the "trial" procedure under

R.C. 2711.03(B) and the corresponding Section 4 of the FAA in addressing whether a "hearing" must be conducted pursuant to a motion to compel arbitration.

{¶15} We will first address R.C. 2711.03(B) and the corresponding provision of Section 4 of the FAA, as we find they unambiguously apply to the present case to require a trial. R.C. 2711.03(B) and the corresponding provision of Section 4 of the FAA require a "trial" if "the making of" the arbitration agreement or the failure to perform it is "in issue." When determining whether a trial is necessary under R.C. 2711.03(B) and the corresponding provision of Section 4 of the FAA, the relevant inquiry is whether a party has questioned the validity or enforceability of the arbitration provision and presented sufficient evidence to challenge such. *McDonough v. Thompson*, Cuyahoga App. No. 82222, 2003-Ohio-4655, at ¶12; *Garcia v. Wayne Homes, LLC* (Apr. 19, 2002), Clark App. No. 2001 CA 53. R.C. 2711 and the FAA do not set forth the amount of evidence that must be produced to receive a trial under R.C. 2711.03(B) and the corresponding provision of Section 4 of the FAA. However, some courts have addressed the matter as they would a summary judgment exercise, proceeding to trial where the party moving for the jury trial sets forth specific facts demonstrating that a genuine issue of material fact exists regarding the validity or enforceability of the arbitration agreement. See *Garcia*, supra, citing *Cross v. Carnes* (1998), 132 Ohio App.3d 157, 166; *McDonough*, supra, citing *Garcia*.

{¶16} It is well-established that an unconscionable arbitration provision is inequitable and not enforceable. See *Williams v. Aetna Fin. Co.* (1998), 83 Ohio St.3d 464, 471-473. Likewise, it is well-established that an adhesive arbitration provision or an arbitration provision that is part of an adhesive contract may be unenforceable and

invalid. Id. An unconscionable contract clause is one where there is the absence of meaningful choice for the contracting parties, coupled with draconian contract terms unreasonably favorable to one party. *Collins v. Click Camera & Video, Inc.* (1993), 86 Ohio App.3d 826, 834. Similarly, an adhesion contract exists when a party with little or no bargaining power is required to submit to terms to which he has no realistic choice. See *Nottingdale Homeowners' Assn., Inc. v. Darby* (1987), 33 Ohio St.3d 32, 37, fn. 7.

{¶17} In the present case, we find that "the making" of the arbitration agreement was sufficiently put "in issue" as to require a trial. In appellant's memorandum contra appellees' motion to compel, appellant specifically argues that the arbitration provision was part of an adhesion contract, was unconscionable, and was inequitable. In addition, the trial court conceded in its decision granting the motion to compel arbitration that appellant argued that the arbitration provision was part of an adhesion contract, was not negotiated, was not discussed, was part of a boilerplate provision he was not permitted to read, and was unconscionable and inequitable. Thus, as appellant asserted the arbitration clause was unconscionable and part of an adhesion contract, he has set forth sufficient facts demonstrating that a genuine issue of material fact exists regarding the validity and enforceability of the arbitration agreement. See *McDonough*, supra, at ¶12 ("the making of" the arbitration agreement is in issue when the party questions the validity or enforceability of arbitration provision); *Garcia*, supra (same); see, also, *Williams*, supra, at 471-473 (arbitration provision that is unconscionable and part of an adhesive contract may be invalid and unenforceable). Further, appellant has presented sufficient evidence to support his challenge to the validity and enforceability of the arbitration provision. Appellant submitted an affidavit in which he averred that there was no discussion about

the arbitration agreement, there was no discussion of methods to resolve disputes, and he was unaware that any of the documents contained an arbitration agreement because he was not given the opportunity to review the terms of the arbitration agreement, not permitted to read any documents, and not given a copy of the arbitration agreement. Therefore, although appellant may not prevail at trial on the above issues, we find his assertions and averments sufficiently put the making of the arbitration agreement "in issue" for purposes of R.C. 2711.03(B) and Section 4 of the FAA so as to require a trial.

{¶18} Because we have found that the making of the arbitration agreement was in issue so as to require a trial, pursuant to R.C. 2711.03(B) and the corresponding provision of Section 4 of the FAA, the issue is moot whether the "shall hear the parties" language in R.C. 2711.03(A) and Section 4 of the FAA required the trial court to first hold a "hearing" to determine if the making of the arbitration agreement was in issue. However, we do note there appears to be some support for the interpretation that the "shall hear the parties" language in R.C. 2711.03(A) and Section 4 of the FAA mandates an initial oral hearing in every case. See *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 2004-Ohio-829, at ¶19-20 (because R.C. 2711.03(A) specifically provides that "the court shall hear the parties," it follows that, pursuant to this plain language, a trial court is explicitly required to hold a "hearing" on a motion to compel arbitration); *Miller v. Household Realty Corp.*, Cuyahoga App. No. 81968, 2003-Ohio-3359 (Karpinski, J., concurring) (the statutory language "shall hear the parties" mandates the court to conduct a "hearing" to determine the legitimacy of the arbitration clause being challenged); *Maestle v. Best Buy Co.*, Cuyahoga App. No. 79827, 2002-Ohio-3769, at ¶32, reversed on other grounds in *Maestle I*, supra, citing *Poling v. Am. Suzuki Motor Corp.* (Sept. 13, 2001), Cuyahoga

App. No. 78577 (R.C. 2711.03 requires a court to conduct a hearing to determine if there is a legitimate challenge to the validity of the arbitration clause; and, if it so finds, the court is required to proceed to a summary trial on the sole issue of the validity of the arbitration provisions); *Dunn v. L & M Bldg.*, *Inc*. (Mar. 25, 1999), Cuyahoga App. No. 75203 (the language "shall hear the parties" requires a "hearing" to determine whether the validity of the arbitration provision is in issue; if it is in issue, the court should proceed summarily to a jury trial on the sole issue of the validity of the arbitration provision); 5A Ohio Jurisprudence 3d (1997) 319, Alternative Dispute Resolution, Section 250 (R.C. 2711.03 provides that "after notice and hearing" a court must issue a order requiring arbitration upon being satisfied that the making of the agreement or the failure to comply with the agreement is not in issue); see, also, *Maestle I*, supra, at ¶3 (implying that the language in R.C. 2711.03(A) stating the court "shall hear the parties" requires a hearing). Nevertheless, we do not decide this issue here.

{¶19} For the reasons delineated above, we find the trial court erred in failing to grant a trial before determining appellees' motion to compel arbitration. Therefore, appellant's second assignment of error is sustained.

{¶20} Appellant argues in his third assignment of error that the trial court erred when it denied discovery essential to the issue of whether the underlying claims against both appellees were governed by a valid arbitration clause. In its November 17, 2003 decision and entry, the trial court found moot appellees' motion to extend initial joint disclosure deadline and to stay discovery, appellees' motion for protective order, and appellant's motion to compel discovery; thus, the court did not address the merits of any of these motions. The trial court based its mootness determination upon its prior decision

granting appellees' motion to compel arbitration and to stay proceedings. As we have found that the trial court erred in granting appellees' motion to compel arbitration without a trial, the trial court's ground for finding these discovery motions moot is no longer viable. However, we decline to address the merits of these motions for the first time on appeal. See *Glassco v. Ohio Dept. of Job & Family Serv.*, Franklin App. No. 03AP-871, 2004-Ohio-2168, at ¶29. Therefore, upon remand, the trial court must address these motions. Accordingly, appellant's third assignment of error is sustained insofar as the trial court erred in finding the discovery motions moot.

{¶21} Appellant argues in his first assignment of error that the trial court erred when it granted appellees' motion to compel arbitration. As we have determined that the matter must be remanded for a trial on appellees' motion to compel arbitration, we need not address the merits of appellant's first assignment of error. Therefore, appellant's first assignment of error is overruled as moot.

{¶22} Accordingly, appellant's second and third assignments of error are sustained, appellant's first assignment of error is moot, and the judgments of the Franklin County Court of Common Pleas are reversed and this matter is remanded to that court to hold a hearing consistent with the above opinion.

Judgments reversed and cause remanded.

LAZARUS, P.J., concurs.
SADLER, J., dissents.

SADLER, J., dissenting.

{¶23} I disagree that the record contains evidence raising an issue of fact as to the unconscionability of the arbitration agreements at issue, and because I believe that

the record does not demonstrate an abuse of discretion by the trial court, I respectfully dissent.

{¶24} Absent an abuse of discretion, an appellate court must not overturn a factual determination of the trial court. *Leslie v. Baltes*, 10th Dist. No. 89AP-1220; *Midwestern College of Massotherapy v. State Med. Bd. of Ohio* (1996), 110 Ohio App.3d 677, 682, 675 N.E.2d 31. Yet, without identifying the specific basis for a finding that an abuse of discretion occurred in this case, and, in my view, in a departure from this court's recent line of cases dealing with alleged unconscionability of arbitration clauses in consumer transactions, my colleagues believe that this case warrants reversal.

{¶25} The majority relies upon *Williams v. Aetna Fin. Co.* (1998), 83 Ohio St.3d 464, 700 N.E.2d 859, for support of its conclusion that the arbitration provisions in the instant case may be unconscionable and unenforceable. But, as this court has previously noted, after *Williams*, it appears that trial courts must conduct an individualized review of the particular facts in each case in determining whether an arbitration provision is unconscionable and thus unenforceable. *Vincent v. Neyer* (2000), 139 Ohio App.3d 848, 856, 745 N.E.2d 1127; *Battle v. Bill Swad Chevrolet, Inc.* (2000), 140 Ohio App.3d 185, 191, 746 N.E.2d 1167.

{¶26} Writing for the four-member majority, Justice Resnick went to great lengths to emphasize that the reason for the majority's finding of unconscionability in *Williams* was that the record contained evidence of an egregious, multi-party scheme to defraud low-income, elderly, African-American homeowners by securing mortgages on their property to finance repair work that one of the conspirators suggested was needed and promised to perform, but never intended to complete. The Supreme Court of Ohio noted

that the conspiracy engaged in by the defendants was the "fundamental reason" for the plaintiff having entered into the loan agreement in the first place. The court set forth no syllabus law, and its opinion contains at least six instances where the court emphasized that its discussion was limited to the particular facts of that case,[1] which, in my view, indicates it did not envision broad application of its ultimate conclusion. As this court has previously noted, the important concept to be gleaned from *Williams* is that the facts and circumstances surrounding the making of an arbitration provision – particularly one contained in an agreement involving a consumer transaction – must be inquired into on a case-by-case basis.

{¶27} The trial court in the instant case made such an inquiry, and I believe that the conclusion it reached was not an abuse of discretion and thus should not be disturbed. The facts of record, as set forth in appellant's affidavit, are wholly unlike those in *Williams*. I believe that our review is more properly guided by the cases of *DiPietro v. Ginther*, 10th Dist. No. 01AP-1047, 2002-Ohio-4772 and *Kidwell v. Buckeye Terminix Co., Inc.*, 10th Dist. No. 02AP-1285, 2003-Ohio-2881, discussed infra.

{¶28} In the present case, appellant contends that he was prejudiced by the failure of the trial court to hold a trial on the issue of arbitrability on the grounds that the arbitration clauses involved herein were adhesive and unconscionable, and thus unenforceable. In support of this position, appellant states, at paragraph two of his affidavit, that the documents he signed were prepared before he arrived at the offices of Wells Fargo Financial f/d/b/a Norwest Financial, and he was not provided with any of the

[1] The court at 472-473 used phrases such as: "given all of the attendant facts and circumstances," "[a]fter taking into account * * * the complete record," "[w]hen the further complete situation of this case is taken into account," "based on the specific circumstances present here," and "based on the entire record of this case * * *."

documents prior to that day. He states that no one told him anything about the loan terms except with respect to the monthly payment. At paragraph three, he avers, "[t]here was no discussion of any of the loan terms or the documents, nor was I allowed to negotiate any terms. * * * I never discussed arbitration or any means of resolving a dispute concerning the loan or any claims that I might have."

{¶29} At paragraph four, appellant states that, when he arrived at Norwest Financial's offices, he was told to sign the loan papers if he wanted the truck. He further avers that, there was no discussion or negotiation concerning the loan terms or documents other than appellant being directed where to sign the documents. Appellant states that Norwest Financial did not offer to let him read any of the documents, and did not offer or provide any opportunity to read the documents. He states that he was unaware that any of the documents contained an arbitration agreement, and that no such agreement was discussed.

{¶30} In *DiPietro*, supra, the plaintiff homeowners sued the defendant home inspection company on theories of negligent inspection, fraud and breach of contract. The defendant sought a stay and reference to arbitration based upon an arbitration clause contained in the written inspection agreement. The trial court denied the motion, finding that it would be unconscionable to force the plaintiffs to arbitrate their claims.

{¶31} Like appellant herein, the plaintiffs had asserted in their complaint and in their memorandum in response to the motion to compel arbitration that the inspection agreement, as a whole, was a contract of adhesion and therefore should not be enforced. In reversing and remanding with instructions to enter an order compelling arbitration, this court reviewed all of the applicable case law and the plain language of R.C. Chapter

2711. Then the court noted that the plaintiffs did not seek rescission of the contract (as some of their claims were based upon it) and did not dispute that they had in fact signed the agreement and that it contained an arbitration clause.

{¶32} Applying the language of R.C. 2711.03 to the facts, this court concluded that the plaintiffs had not challenged either the "making of the agreement" or any "failure to comply" therewith. Finding the record devoid of evidence that *any discussion* about the terms of the agreement had occurred, or that the plaintiffs had ever requested to remove or modify any of the terms, we concluded that no trial was warranted on the issue of arbitrability prior to entry of an order compelling arbitration.

{¶33} More recently, this court dealt with similar facts in the same manner in *Kidwell*, supra. That case involved an arbitration provision contained in a written contract for termite damage protection services. The plaintiff sought recovery against the defendant on several theories, including breach of contract, and sought to avoid the arbitration agreement because, he said, it was never mentioned, discussed or specifically agreed upon. We reversed the trial court's denial of the defendant's motion to compel arbitration.

{¶34} In *Kidwell*, this court explained:

> [Mr. Kidwell] remains in the rather awkward position of having filed pleadings that designate the Termite Protection Plan as the basis of recovery while simultaneously alleging that [he] is not bound by the terms of the same contract with respect to arbitration. Though such an argument may be feasible given circumstances in which the arbitration provision of the contract, as separate from the contract itself, is fraudulently induced, such circumstances do not exist in the instant case. *Rather, [Mr. Kidwell] asserts that, because the arbitration provision was not specifically discussed, he is not subject to its terms*.

> However, "the law does not require that each aspect of a contract be explained orally to a party prior to signing" or otherwise accepting the terms contained therein. Upon receipt of the contract, Mr. Kidwell had the opportunity to object to the arbitration requirement, but failed to raise any such objection to the contract as a whole or to any of its individual provisions. Instead, [he] tendered annual renewal payments to Buckeye Terminix, as provided on the front page of the contract, in order to ensure its continued existence and protective warranties. Moreover, he accepted the written contract to the point of founding his lawsuit upon it.

Id. at ¶8-9. (Citations omitted.) (Emphasis added.)

{¶35} In the present case, appellant does not contend that he did not sign the contracts including the arbitration provisions, and does not claim mistake or inadvertence. He does not contend that his primary inducement for entering into the agreements was an egregious scheme to defraud him like the one found present in *Williams*. Like the plaintiff in *Kidwell*, appellant bases one of his theories of recovery upon the very contract containing the arbitration provision he seeks to avoid, yet, rather than asserting a claim that he was somehow unfairly preyed upon like the plaintiff in *Williams*, appellant asserts that he is not subject to the terms of the arbitration provision simply because the same was not specifically discussed.

{¶36} Appellant claims that appellees did not offer him the opportunity to read the documents he signed in conjunction with his automobile loan, yet he fails to allege that he ever asked or attempted to do so. He attempts to portray the agreements as adhesive, yet he never states that he tried to negotiate any of the terms, or that appellees affirmatively indicated that the same were non-negotiable. Appellant claims he was unaware of the substantive provisions of the contracts, but does not claim that he ever attempted to become aware of them, that anyone physically prevented him from reading

the documents, or that, due to some infirmity, illiteracy, or unfamiliarity with the English language, he was prevented from doing so.

{¶37} In summary, the facts alleged are insufficient to raise an issue as to the making of the agreements for arbitration. Pursuant to the plain language of R.C. 2711.03 and the foregoing authorities, the trial court did not abuse its discretion when, after performing an analysis of the facts of record, as required by *Williams*, it found the arbitration provisions enforceable. I would thus affirm the judgments and overrule all three of appellant's assignments of error.

{¶38} Finally, I do not join in the majority's suggestion that the Supreme Court of Ohio in *Maestle v. Best Buy Co.*, 100 Ohio St.3d 330, 2003-Ohio-6465, 800 N.E.2d 7, held or implied that trial courts must always conduct an oral hearing when a motion is made pursuant to R.C. 2711.03, based upon that statute's language requiring the trial court to "hear the parties" on the issue of arbitrability.

{¶39} For all of the foregoing reasons, I respectfully dissent.
