[Cite as *Simms v. Kane's Auto Deals, L.L.C.*, 2026-Ohio-4638.]

# IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

MICHELLE SIMMS et al.,

Plaintiffs-Appellees,

v.

KANE'S AUTO DEALS LLC et al.,

Defendants-Appellant.

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**OPINION AND JUDGMENT ENTRY**
**Case No. 26 JE 0013**

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Civil Appeal from the
Common Pleas Court of Jefferson County, Ohio
Case No. 26-CV-21

**BEFORE:**
Carol Ann Robb, Cheryl L. Waite, Katelyn Dickey, Judges.

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**JUDGMENT:**
Reversed and Remanded.

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*Atty. Daniel J. Myers*, Myers Law, LLC, for Plaintiffs-Appellees and

*Atty. Stefanie L. Deka, Atty. James W. Sandy*, Hinshaw & Culbertson LLP, for Defendant-Appellant Credit Acceptance Corporation.

Dated: November 19, 2026

**Robb, J.**

**{¶1}** Defendant-Appellant Credit Acceptance Corporation appeals the judgment of the Jefferson County Common Pleas Court denying a motion to compel arbitration and stay the case pending such arbitration. Appellant argues the court erred in creating an ambiguity by finding the arbitration notice conflicted with the main arbitration clause and then by construing it against the drafter so that both sides must elect arbitration after a dispute in order for the arbitration clause to be applicable. Within the sole assignment of error, Appellant also argues the court erred by sua sponte raising this issue at the hearing where Plaintiffs-Appellees Michelle and Abram Simms did not appear. For the following reasons, Appellant's assignment of error is sustained, the trial court's decision is reversed, the case is remanded for an order compelling arbitration and staying the case pending arbitration.

STATEMENT OF THE CASE

**{¶2}** On January 14, 2026, Appellees filed a complaint against Kane's Auto Deals LLC and Appellant Credit Acceptance Corporation based on a retail installment contract for the sale and financing of a used vehicle ($23,800 purchase price and $2,773 for a service contract with a $6,000 down payment plus tax, fees, and finance charges). Appellees' complaint did not disclose the date of the transaction and declared they were not attaching a copy of the contracts to the complaint "due to technical issues at the time of filing and the lack of a full version of all contract documents at the time of filing."

**{¶3}** As disclosed within its terms, the installment contract was assigned to Appellant as the finance company who provided the forms. Although the contract showed the purchase of an "optional extended warranty or service contract" and specifically said the buyer "was not required to purchase" it, the complaint expressed a belief the purchase was required by Appellant.

**{¶4}** According to the complaint, when the vehicle's engine failed, the service contract provider or administrator informed Appellees the service contract would not cover the $20,000 estimated repair Appellees received or the $1,100 diagnosis charge Appellees incurred. Apparently, the vehicle was ineligible due to its oversized tires. The

complaint said the service contract was then canceled (with a partial refund applied to the account). It was claimed the defendants knew about the ineligibility and/or tire size at the time of sale and thus misrepresented the service contract to Appellees and falsely completed the application for the service contract (with a separate company), resulting in the purchase of a vehicle with a valueless service contract. In addition to alleging breach of contract, a cause of action was set forth under the Ohio Consumers Sales Practices Act (CSPA). Appellees sought damages or rescission, a declaratory judgment, and injunctive relief.

**{¶5}** Kane's Auto filed an answer (pointing out the failure to attach any contract). After obtaining a short extension, Appellant filed an answer and a motion to compel arbitration and stay the case pending arbitration (hereinafter "arbitration motion"). Appellant's answer raised existence of an arbitration agreement as an affirmative defense (while also explaining Appellant was not a seller or supplier but was an assignee who financed the purchase).

**{¶6}** Appellant's arbitration motion, which was accompanied by an affidavit, supplied the September 17, 2024 installment contract that Appellees failed to attach to the complaint along with Appellees' contractual declaration regarding electronic signatures. On the first page of the contract is a box containing the following arbitration notice:

> **ARBITRATION:** The Contract contains an Arbitration Clause that states You and We may elect to resolve any dispute by arbitration and not by court action. See the Arbitration Clause on page 5 of this Contract for the full terms and conditions of the agreement to arbitrate. By initialing below, you confirm that you have read, understand and agree to the terms and conditions in the Arbitration Clause.

Installment Contract, p. 1 (defining "We" as the creditor-seller and its assignee). Appellees initialed within this box.

**{¶7}** The first page concludes by specifically incorporating by reference "ADDITIONAL TERMS AND CONDITIONS, INCLUDING THE **AGREEMENT TO ARBITRATE** SET FORTH ON THE ADDITIONAL PAGES OF THIS CONTRACT" followed by another set of Appellees' initials. *Id*. The next three pages sets forth the price

for the 12-month optional service contract being purchased, the price of the vehicle with fees and financing charges, terms related to payments and repossession, and the assignment from Kane's Auto to Appellant.

**{¶8}** The final page of the installment contract is labeled "**ARBITRATION CLAUSE**" with only this clause occupying the page. *Id*. at 5 (as cited in the arbitration notice). Near the beginning, the buyer is granted a method to eliminate the arbitration clause without affecting any other contract provision in a paragraph entitled, "Your Right to Reject." Arbitration Clause, ¶ 2 (mail a rejection notice to a listed address within 30 days of the contract date).

**{¶9}** The arbitration clause defines disputes as controversies or claims arising out of or in any way related to the contract "with the broadest meaning possible, and includes contract claims, claims based on tort, violations of laws, statutes, ordinances or regulations or any other legal or equitable theories." *Id*. at ¶ 3 (but does not include repossession or an individual claim by the buyer in small claims court). The clause explains, "any dispute or argument that concerns the validity or enforceability of the Contract as a whole is for the arbitrator, not a court, to decide." *Id*. (while explaining a dispute over the validity, enforceability, coverage, or scope of the arbitration clause, including the class action waiver, is for the court). The complaining party must provide the other written notice of the dispute. *Id*. at ¶ 4.

**{¶10}** Most pertinent to the arguments on appeal regarding the prior arbitration notice, the fifth paragraph of the arbitration clause begins:

> "*Either You or We may* require any Dispute to be arbitrated and may do so before or after a lawsuit has been started over the Dispute or with respect to other disputes or Counterclaims brought later in the lawsuit. *If You or We elect* to arbitrate a Dispute, this Arbitration Clause applies. A Dispute shall be fully resolved by binding arbitrator."

*Id*. at ¶ 5 (emphasis added to parts Appellees now say clash with the arbitration notice).

**{¶11}** Likewise, the next paragraph begins, "If You or We elect to arbitrate a Dispute, neither You or We will have the right to pursue that Dispute in court or have a jury resolve that dispute." *Id*. at ¶ 6. This is followed by a sentence setting forth waivers

applicable "if You or We elect to arbitrate" a dispute. *Id*. (and defines "this sentence" as the "Class Action Waiver").

**{¶12}** A severability provision states if any part of the arbitration clause is invalidated, the rest remains valid. There is an exception: if the class action waiver is invalidated, then "subject to the right to appeal such a ruling, this entire Arbitration Clause (except for this sentence) shall be null and void." *Id*. at ¶ 7.

**{¶13}** The subsequent paragraph says, "Whoever first elects to arbitrate may choose to arbitrate under the rules and procedures of either JAMS or the American Arbitration Association" with the arbitration clause governing in the event the rules conflict with it. The process for seeking a fee waiver is explained with an advisement the buyers' attorney and witness fees would be covered if they prevailed in an arbitration they commenced. *Id*. at ¶ 8.

**{¶14}** The penultimate paragraph explains the arbitrator's decision is final and binding except for any right of appeal in the Federal Arbitration Act (FAA) but if the amount of the Dispute exceeds $50,000 or involves a request for injunctive or declaratory relief that could reasonably exceed this amount, then any party can appeal to a three-arbitrator panel. *Id*. at ¶ 9. The final paragraph expressly agrees the contract evidenced an interstate commerce transaction and the "Arbitration Clause is governed by the FAA and not by any state arbitration law." *Id*. at ¶ 10. Appellees then initialed the end of the arbitration clause.

**{¶15}** In addition to signing the installment contract and initialing various portions of it, Appellees signed a separate declaration acknowledging the legally binding electronic signature process. In so doing, Appellees declared they had the opportunity to review a paper version of the installment contract prior to using electronic signatures, they were in physical control of the mouse, keyboard, or other device in order to click buttons and boxes for signatures or initials, and they received a fully executed copy. In the declaration, they confirmed they were "aware the retail installment contract contained an Arbitration Clause providing that the parties to the contract, as well as Seller's assignee and others described in the Arbitration Clause, may elect to resolve any dispute by arbitration and not by court action."

**{¶16}** After reviewing the existence and scope of this arbitration agreement, Appellant's arbitration motion concluded the complaint involved an arbitrable dispute arising under the contract. Indicating an election to arbitrate and thus the necessity of a stay pending arbitration, Appellant asked the court to compel Appellees to initiate arbitration under the agreement.

**{¶17}** Appellees filed a brief in opposition to arbitration. First, they theorized if they sought rescission under the CSPA and won, then the agreement would not be enforceable, claiming this would likewise eliminate the arbitration clause contained within the contract. Second, they claimed the arbitration clause was unenforceable as a matter of law because the part providing for an appeal to an arbitration panel would likely only be used by the seller or financer and thus was akin to a one-sided escape hatch. Third, they opined Kane's Auto waived arbitration by filing an answer without seeking arbitration and then inquired whether Appellant would want to be dismissed as a party and then be bound by any court judgment against Kane's Auto (suggesting Appellant could be bound by another's waiver).

**{¶18}** Fourth, Appellees argued the arbitration clause was "unenforceable because it is illegible and does not show a meeting of the minds and is procedurally and substantively unconscionable." Referencing the preprinted form provided by the defendants, Appellees said it was illegible because "the arbitration clause is written over [with] other text which makes it nearly impossible to read certain section(s)."[1] Apparently hoping the court would not read the overwritten sentence and although it was Appellees' duty to attach the contract to the complaint, they then complained Appellant's attachment of the contract to the motion failed to include the service contract, which could have different arbitration provisions. Appellees next said the arbitration clause was unconscionable due to the aforementioned ability of either party to appeal a large award to a panel of arbitrators and complained the clause prevented them from acting as a

[1] In the copy of the contract attached to Appellant's arbitration motion, there is only one sentence in the arbitration clause that could be described as "written over"; part of a sentence is overlaid with "COPY OF ELECTRONIC ORIGINAL." These very words indicate they were not on the electronic copy Appellees declared they had unfettered access to during the signing process. We also point out the overlay did not cover all letters in the sentence and was not opaque in any event but was semi-transparent (if not transparent), allowing us to easily read the sentence, which says the arbitration clause controls over any conflicting agreement made before, during, or after this one.

private attorney general and thus eliminated various CSPA remedies they would otherwise have, again claiming the documents were one-sided.

**{¶19}** Fifth, they opined discovery should take place because Appellant sought to compel arbitration instead of simply seeking a stay pending arbitration. In support, they reiterated the belief in their first argument by claiming the existence or validity of the contract is a jury issue, which would require discovery, even with a valid arbitration agreement.

**{¶20}** Appellant filed a reply in support of arbitration, pointing to case law establishing that contract enforceability does not impact the arbitration clause, which is considered a contract within a contract, and the CSPA rescission remedy does not affect the arbitration clause. It was thus noted there is no entitlement to discovery or a jury under the allegations regarding the installment contract. As for the arbitration provision allowing an appeal to a panel, Appellant urged this was not one-sided as it applied equally to all parties. Appellant's reply also emphasized how the other defendant's decision not to demand arbitration would not affect Appellant's ability to compel Appellees to arbitrate their claim.

**{¶21}** In addition, Appellant pointed out the law required the demonstration of both procedural and substantive unconscionability. *Citing, e.g., Taylor Bldg. Corp. of Am. v. Benfield*, 2008-Ohio-938, ¶ 33 (must show substantive unconscionability through unfair terms plus procedural unconscionability through individualized circumstances surrounding the parties); *Dozier v. Credit Acceptance Corp.*, 2019-Ohio-4354, ¶ 4-5, 18-24 (8th Dist.) (on motion to compel arbitration in a CSPA action on contract with a nearly identical arbitration notice and arbitration clause with a class action waiver, the court found the arbitration notice was conspicuous, the main arbitration clause was clear and rejectable, there was no unconscionability, and any policy in the CSPA favoring class actions cannot be applied so as to disfavor arbitration).

**{¶22}** Appellant made the following points in arguing Appellees did not support either aspect of unconscionability: it was Appellees who failed to attach their agreement with a third-party to their complaint; any "hint at ambiguity" in arguing substantive unconscionability by referring to a different arbitration agreement was pure conjecture; there was no indication the "COPY" stamp was on the agreement during the execution;

the sentence is objectively legible; there was no evidence on Appellees' ages, education, jobs, etc. to support procedural unconscionability; a preprinted take-it-or-leave-it contract is not a sufficient showing; and Appellees were permitted to reject the arbitration clause up to 30 days after the contract execution.

**{¶23}** At the hearing on Appellant's arbitration motion, there was no appearance by Appellees or their attorney, despite being served (by Appellant) with a notice of this hearing on the same day the arbitration motion was filed.[2] The attorney for Kane's Auto appeared (but did not present arguments). The trial court presented an argument in favor of the absent Appellees, stating to Appellant's attorney, "I will tell you the problem with your motion." (Tr. 4). The court contrasted the arbitration notice on the first page of the installment contract from the arbitration clause on the last page of the contract, making distinctions based on physical ease of reading and grammar.

**{¶24}** As to the grammar utilized, the court emphasized the arbitration notice used the conjunction "and" ("You and We may elect to resolve any dispute by arbitration") while the arbitration clause used "or" ("Either You or We may require any Dispute to be arbitrated"). The court read the arbitration notice to suggest both sides would have to agree to arbitrate due to the use of "and" between the parties (instead of "or"). *Id*. at 4, 6. Then, reading the "Either You or We" sentence in the main arbitration clause, the court acknowledged, "this is clear." *Id*. at 6. However, the court described the situation as, "The first page giveth, and the last page taketh away." *Id*. at 4.

**{¶25}** As to physical ease of reading, the court noted the arbitration notice was set in a box on page one that drew attention and was easy to follow. (Tr. 4-5). The court distinguished the arbitration clause by opining it had small margins and a "fine print" font requiring the trial judge to use a ruler to help visually stay on the line being read. *Id*. at 4, 8. The court characterized the entire arbitration clause as a "big, long, ugly paragraph" despite there being paragraph breaks (inserted blank lines) between all ten paragraphs. *Id*. at 6-7, 11 (calling the page "mesmerizing" and declaring, "I hate that paragraph").

[2] Appellees' brief claims they did not appear because, although the notice of hearing was filed by Appellant and served on the day the arbitration motion was filed, the court did not send a notice to confirm the date and Appellees misunderstood the process.

**{¶26}** On the latter topic, Appellant's counsel opined the arbitration clause was the same font size and margins as the other contract terms and was regardless set forth on its own page, which was initialed by Appellees. *Id*. at 8-9, 11. Appellant noted the additional reference to arbitration in the declaration acknowledging the electronic signature process and to Appellees' right to reject the arbitration clause in the month after execution. *Id*. at 10-11. On the court's issue with the conjunction in the arbitration notice, Appellant's counsel pointed out the notice used the word "may" (not "must'), which allowed either side to elect arbitration but did not require both to concur in the election (which was consistent with the main arbitration clause as acknowledged by the court). *Id*. at 5-7, 9-10.

**{¶27}** The court theorized this reading would be akin to saying "and" meant the same thing as "or." *Id*. at 7. Taking the matter under advisement, the court said it must decide which interpretation "wins" when the parties sign an arbitration agreement with "and" in one place but "or" in another. *Id*. at 9. The court disclosed, "All the other arguments that the Plaintiff had, I didn't like any of them, but this bothers me." *Id*. at 10.

**{¶28}** Two days after the hearing, the court issued a judgment denying Appellant's arbitration motion. The "easy to read" arbitration notice was quoted with the court emphasizing the word "and" in the "You and We may elect" phrase and concluding this wording "appears to require an agreement" between the parties. The court found this inconsistent with the main arbitration clause using the conjunction "or" in phrases such as "Either You or We may require any Dispute to be arbitrated" allowing either party without agreement to demand arbitration. The trial court opined the latter phrase was "buried in the middle of the last paragraph" in "small print without much formatting making it hard to read" without a ruler.

**{¶29}** The trial court concluded the "discrepancy" between the arbitration notice and the arbitration clause "creates an ambiguity." Pointing out the contract was a preprinted form provided by Appellant who chose the wording, the court then resolved the ambiguity against the drafter by applying the "and" in the arbitration notice (as interpreted by the court) instead of the "Either You or We" from the main arbitration clause. The court ruled, "Therefore, Arbitration must be elected, if at all, by both parties." The court

overruled Appellant's arbitration motion because Appellees "will not agree to Arbitration." (4/29/25 J.E.). Appellant filed a timely notice appeal.

ASSIGNMENT OF ERROR & GENERAL STANDARDS

**{¶30}** Appellant's sole assignment of error provides:

"The Trial Court erred when it denied Appellant's Arbitration Motion because the Arbitration Clause in the Retail Installment Contract was not ambiguous, and even if it was, Appellees never raised the issue of ambiguity with the Trial Court." (consolidating defined-term parentheticals).

**{¶31}** Appellant presents and separately argues two issues under this assignment. We shall separate our analysis accordingly. But first, we set forth some general standards applicable to the case. As reviewed in the above Statement of the Case, the arbitration clause specified the transaction was in commerce, the FAA applied, questions on the validity or enforceability of the contract as a whole were for the arbitrator, but questions on the validity or scope of the arbitration clause were for the court. The law provides likewise.

**{¶32}** That is, a written arbitration agreement "evidencing a transaction involving commerce . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4." 9 U.S.C. 2; *see also* 9 U.S.C. 1 (defining commerce). The corresponding Ohio counterpart similarly states a written arbitration agreement "shall be valid, irrevocable, and enforceable, except upon grounds that exist at law or in equity for the revocation of any contract." R.C. 2711.01(A).

**{¶33}** Upon a motion to compel arbitration, "[t]he 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." R.C. 2711.03(A); 9 U.S.C. 4. A motion for a stay pending arbitration can be granted by the trial court "upon being satisfied that the issue involved in the action is referable to arbitration under an agreement in writing for arbitration . . . provided the applicant for the stay is not in default in proceeding with arbitration." R.C. 2711.02; 9 U.S.C. 3.

**{¶34}** The FAA embodies a national policy in favor of arbitrating disputes regardless of any opposing state policies whether substantive or procedural. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 346 (2011). "The overarching purpose of the FAA . . . is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings." *Id*. Thus, for instance, a state attempting to require the availability of classwide arbitration interferes with fundamental attributes of FAA-consistent arbitration. *Id*. If a state court interprets state law as prohibiting arbitration on a particular type of claim or remedy request, then the FAA displaces the conflicting state rule. *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 533 (2012), citing *Concepcion* at 341 (FAA pre-empted state case law on unconscionability of class action waivers).

**{¶35}** As arbitration is a contract matter, parties cannot be required to submit a dispute to arbitration unless they have agreed to do so. *Concepcion* at 648-649. Unless there is a clear agreement otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator. *Id.* at 649 (in so deciding, the court shall not rule on the merits of the underlying claim).

**{¶36}** Under both the state and federal law, "an arbitration clause is, in effect, a contract within a contract, subject to revocation on its own merits . . . Because the arbitration clause is a separate entity, it only follows that an alleged failure of the contract in which it is contained does not affect the provision itself." *Benfield*, 2008-Ohio-938, at ¶ 40-41 (unconscionability arguments regarding the contract in general, instead of the arbitration clause specifically, are for the arbitrator), quoting *ABM Farms, Inc. v. Woods*, 81 Ohio St.3d 498, 501–502 (1998) ("a party must demonstrate that the arbitration provision itself in the contract at issue, and not merely the contract in general, was fraudulently induced"). Likewise, the United States Supreme Court has explained:

> First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance. Third, this arbitration law applies in state as well as federal courts.

*Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-446 (2006); *see also Prima Paint Corp. v. Flood & Conklin Mfg. Co*., 388 U.S. 395, 403-04 (1967) (the FAA does not permit the court to consider claims against the contract generally). For instance, "[if] the alleged fraud that induced the whole contract equally induced the agreement to arbitrate which was part of that contract—we nonetheless require the basis of challenge to be directed specifically to the agreement to arbitrate before the court will intervene." *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 71 (2010) (and treating an arbitration provision as valid unless a party challenged it specifically).

**{¶37}** Our standard of review for a judgment on a motion to compel arbitration and stay the proceedings depends on the questions raised on appeal. *Midland Credit Mgt., Inc. v. Bowers*, 2025-Ohio-2578, ¶ 20 (7th Dist.). In some circumstances, such as if there existed certain factual weighing or credibility assessments, we apply an abuse of discretion standard asking whether the trial court's attitude was arbitrary, unreasonable, or unconscionable. *Id*. at ¶ 21 (e.g., weighing factors related to waiver of arbitration). However, the denial of an arbitration motion on a legal question is reviewed de novo. *Id*. at ¶ 20.

**{¶38}** Accordingly, the existence or validity of an arbitration agreement initially presents a question of law reviewed de novo. *Id.*; *Hayes v. Oakridge Home*, 2009-Ohio-2054, ¶ 21 (where the Supreme Court applied a de novo review to an argument the arbitration agreement was unenforceable due to unconscionability); *Benfield*, 2008-Ohio-938, at ¶ 68 ("de novo when the issue to be decided is whether the arbitration agreement or clause is unconscionable as a matter of law").

**{¶39}** On the question of ambiguity in a writing, as explained by the Supreme Court, "whether a contract is ambiguous is a question of law, [while] the resolution of an ambiguous term in a contract is a question of fact." *Tera, L.L.C. v. Rice Drilling D, L.L.C.*, 2024-Ohio-1945, ¶ 12. When reviewing a legal question de novo, we are "performing an independent review of the record and giving no deference to the lower court's decision." *Bitounis v. Interactive Brokers, L.L.C.*, 2026-Ohio-2268, ¶ 11.

Issue One: Error in Finding Ambiguity and Construing against Arbitration

**{¶40}** First, Appellant contends the court erred as a matter of law in concluding the arbitration agreement was ambiguous because the arbitration notice said "You and

We may elect to resolve any dispute by arbitration and not by court action" instead of saying "You or We" (as used in the arbitration clause on page 5 of the contract). There is no dispute the main arbitration clause plainly allows either party to elect arbitration. The threshold question is whether the arbitration notice created an ambiguity (and then, if so, whether the court can construe it against the drafter instead of in favor of arbitration).

**{¶41}** As repeatedly emphasized by the Ohio Supreme Court, "If we are able to determine the intent of the parties from the plain language of the agreement, then there is no need to interpret the contract." *Saunders v. Mortensen*, 2004-Ohio-24, ¶ 9. The Court instructs us to apply the plain and unambiguous language found within "the four corners" of the writing. *LRC Realty, Inc. v. B.E.B. Props.*, 2020-Ohio-3196, ¶ 17. In general, courts tend to avoid interpreting a contract in a manner that leaves a clause superfluous or meaningless. *See Transtar Elec., Inc. v. A.E.M. Elec. Servs. Corp.*, 2014-Ohio-3095, ¶ 26. In giving effect to the parties' agreement, courts are not to delete words chosen or to insert words not employed. *Cleveland Elec. Illum. Co. v. City of Cleveland*, 37 Ohio St.3d 50 (1988), paragraph three of the syllabus.

**{¶42}** Still, we read the contract as a whole, giving effect to each part *if reasonable to do so* upon recognizing the intent of each part depends on the whole. *Saunders* at ¶ 16. Under such instruction, contractual words or phrases should not be read in isolation. *Dominish v. Nationwide Ins. Co.*, 2011-Ohio-4102, ¶ 8. "When the terms in a contract are unambiguous, courts will not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties." *Shifrin v. Forest City Ents., Inc.*, 64 Ohio St.3d 635, 638 (1992) (extrinsic evidence not considered unless ambiguity or evidence of special meaning).

**{¶43}** A writing is not ambiguous unless its terms are "susceptible to more than one *reasonable* interpretation." (Emphasis added.) *Corder v. Ohio Edison Co.*, 2024-Ohio-5432, ¶ 14. Common words are given their ordinary meaning *unless a manifest absurdity would result or the instrument clearly evidences some other meaning*. *Shifrin* at 638. Moreover, the law requires this court to read the provisions in harmony with one another if possible. *Denham v. Encino Energy, LLC*, 2025-Ohio-1585, ¶17-18 (7th Dist.), citing *SJBK, LLC v. Northwood Energy Corp.*, 2023-Ohio-4729, ¶ 16 (7th Dist.) ("Even when a contract is unambiguous, a court's construction, when possible, should attempt

to harmonize all provisions rather than reading them so as to produce conflict" unless the conflict is clear).

**{¶44}** Secondary rules of contract construction are not applied unless the contract is ambiguous (and any extrinsic evidence fails to clarify the parties' intent or the meaning of a term). *Corso v. Miser*, 2020-Ohio-5293, ¶ 28 (7th Dist.). Accordingly, the contract language is not construed against the drafter unless the primary rules fail to clarify the meaning. *Id*. It is well established, in general contract cases, only *unresolved* ambiguities are construed against the drafter. *Monnett v. Monnett*, 46 Ohio St. 30, 34-35 (1888) (construe ambiguities against the drafter to avoid a finding of contract uncertainty only *after* applying all other rules of contract construction).

**{¶45}** While urging we need not reach secondary rules due to plain language that either party may elect arbitration, Appellant also alternatively argues the trial court erred in applying the above drafter rule of construction because a different rule prevails in cases of arbitration agreements: "In light of the strong presumption favoring arbitration, all doubts should be resolved in its favor." *Hayes*, 2009-Ohio-2054, at ¶ 15.

**{¶46}** "[A]ny ambiguities in the language of a contract containing an arbitration provision should be resolved in favor of arbitration" but without overriding any *clear* intent of the parties or reaching a result inconsistent with the contract's *plain* language. *Taylor v. Ernst & Young, L.L.P.*, 2011-Ohio-5262, ¶ 20 (after speaking of the scope of the clause), citing *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002); *see also Huffman v. Hilltop Cos., LLC*, 747 F.3d 391, 396-97 (6th Cir. 2014) ("It is true that courts generally rely on the contra proferentum doctrine to resolve ambiguities against the drafter of the agreement. But where ambiguity in agreements involving arbitration exists, such as here, the strong presumption in favor of arbitration applies instead."). It is noted the trial court did not find an arbitration agreement was not formed; rather, the court applied what the court believed the arbitration notice suggested in order to eliminate certain phrases in the main arbitration clause as to who all must elect arbitration after a dispute arises.

**{¶47}** On the threshold issue of plain language versus ambiguity, Appellant says a Ninth District case is directly on point. *Gotham v. Basement Care, Inc.*, 2019-Ohio-3872 (9th Dist.). In *Gotham*, the first page of the contact contained an arbitration notice stating, "[t]his Agreement contains a binding arbitration provision which may be enforced

by the parties." *Id.* at ¶ 2. The arbitration provision at the end of the next page specified "[a]ny controversy or claim arising out of or relating to the contact and/or agreement or breach there of shall be settled by arbitration . . ." *Id*.

**{¶48}** The buyers filed suit alleging breach of contract, failure to perform in workmanlike manner, and violation of the CSPA. *Id*. at ¶ 3. On the defendant's arbitration motion and despite the clear language in the main arbitration clause,

> the [buyers] argued, in part, that the language in the contract indicating that the arbitration provision "may be enforced by the parties" was ambiguous because it was susceptible to more than one reasonable interpretation: it could mean that both parties must consent to arbitration, or it could mean that either party could enforce the arbitration provision. They argued that, since this language was ambiguous, the trial court was required to construe it against the drafter [the defendant] and conclude that the language required both parties to consent to arbitration.

*Id*. The trial court rejected this argument, finding the advisement on the first page "may be enforced by the parties" *merely put a buyer on notice that the contract contained a more specific arbitration provision* and there was no ambiguity as to whether both parties must consent to arbitration. *Id*. at ¶ 4, 9. The appellate court agreed.

**{¶49}** Noting both parties can always agree to arbitration when they both consent even without an arbitration agreement, the Ninth District opined that to interpret "may be enforced by the parties" to mean both must collectively agree arbitration would render other language "superfluous or meaningless and, therefore, is not a reasonable interpretation." *Id*. at ¶ 10. The *Gotham* court pointed out the disputed clause *was merely a notice that the contract contained an arbitration provision*, and the arbitration provision itself unambiguously provided any claim "shall be" resolved by arbitration. *Id*.; *see also Talbott v. Credit Acceptance Corp.*, 2022 WL 4793126, *1-2, 5 (E.D.Pa. Oct. 3, 2022) (after quoting the same arbitration notice and clause at issue here, the court opined, "the arbitration agreement contained on a separate page was a conspicuous part thereof, and its terms were clear and definite.").

**{¶50}** We begin our analysis by observing the trial court did not find the arbitration clause unconscionable and Appellees do not argue any such holding was implicit. We

nevertheless point out Appellees had the right to reject the arbitration clause, even after the contract was signed, and they presented no evidence on their individual abilities or the situation at signing.

**{¶51}** The trial court sua sponte raised criticisms that it believed contributed to an ambiguity that it also sua sponte raised, as if the court sought to defend why Appellees would be justified in deciding not to read the lengthy arbitration clause for details after reading the arbitration notice. However, the court's observations would not justify a party in refusing to read a clause. The arbitration notice specifically directed Appellees to the arbitration clause for the complete terms. The buyer repeatedly attested to reading the arbitration clause, and a party is charged with reading what is signed. *ABM Farms*, 81 Ohio St.3d at 503 ("[t]he legal and common-sensical axiom that one must read what one signs survives"). Moreover, the criticisms were unjustified.

**{¶52}** On the latter point, contrary to the trial court's characterization, the arbitration clause was not one long paragraph. Rather, although each paragraph was not indented, the arbitration clause on page five contained ten distinct paragraphs. *Each paragraph was brief and was separated by a paragraph break (a blank line)*. Notably, page five was occupied by only the arbitration clause, which was boldly labeled as such in all caps and underlined; below that heading, the font was all the same size. Although the trial judge felt a ruler was necessary for him to stay on line, the small margins did not render it difficult to peruse (and the remainder of the contract used the same margins).

**{¶53}** Additionally and as acknowledged by the trial court, the arbitration clause clearly said either party had the right to elect arbitration. The arbitration clause stated this multiple times. A central, but not buried, paragraph begins: "Either You or We may require any Dispute to be arbitrated and may do so before or after a lawsuit has been started over the Dispute or with respect to other disputes or Counterclaims brought later in the lawsuit. If You or We elect to arbitrate a Dispute, this Arbitration Clause applies. A Dispute shall be fully resolved by binding arbitration." The next paragraph likewise begins: "If You or We elect to arbitrate a Dispute, neither You or We will have the right to pursue that Dispute in court or have a jury resolve that dispute. If You or We elect to arbitrate a Dispute . . ." *See* Statement of the Case, above, for more details.

**{¶54}** The language the trial court sua sponte found created an ambiguity was contained in a *mere notice, which introduced the arbitration clause* and ensured the reader proceeded to the final page for the arbitration clause itself. The trial court improperly *isolated a small portion of an arbitration notice that explicitly referred the buyer to a subsequent arbitration clause, cited the specific page number on which the clause could be found, and directed the buyer to the clause for the full terms*. This notice contained an initialed pronouncement that the buyer read, understood, and agreed to the terms in the cited arbitration clause.

**{¶55}** In fact, the buyer initialed three references to the arbitration clause (the arbitration notice, the notice of incorporated additional terms and conditions, and the main arbitration clause). In addition to signing the contract, the buyer also signed a declaration (of electronic signatures) reiterating the right to elect arbitration.

**{¶56}** Contrary to Appellees' argument for the first time on appeal, the summary arbitration notice does not reasonably indicate that, upon signing the contract containing the arbitration clause, no party has the right to arbitration unless the other party agrees to it later after a dispute arises. The word may is permissive. "You and We may elect" is not reasonably susceptible to mean "You and We must both elect" arbitration before the arbitration clause applies when the arbitration agreement is read as a whole. The arbitration notice "You and We may elect" simply identifies who all holds the right but does not reasonably indicate a joint election is mandatory. This is especially true when read in harmony with the arbitration clause on page five. The trial court's reading rendered various governing statements (that either party may elect arbitration) superfluous and meaningless.

**{¶57}** Again, a writing is not ambiguous unless its terms are "susceptible to more than one reasonable interpretation." *Corder*, 2024-Ohio-5432, at ¶ 14. "Otherwise, allegations of ambiguity become self-fulfilling." *State v. Porterfield*, 2005-Ohio-3095, ¶ 11 (construction of ambiguity cannot occur unless definitive meaning is absent after thoroughly evaluating the writing; a provision is not ambiguous merely because "multiple readings are possible" because this results in courts "reading ambiguities into provisions, which creates confusion and uncertainty"). Notably, "[t]he mere fact that a contract's text might be subject to competing interpretations does not mean that the text is ambiguous"

because if one of the competing interpretations of a term in a written instrument conflicts with the writing's purpose or structure or if it strains ordinary usage, then it cannot be considered reasonable. *Corder* at ¶ 14.

**{¶58}** In sum, the arbitration agreement clearly says either party may elect arbitration. This is the only reasonable construction, and the trial court's construction strains ordinary usage. *See id*. Accordingly, the trial court erred in construing the plain language of the arbitration clause against the drafter based on its construction of the introductory arbitration notice, which cited and incorporated the arbitration clause. Because we conclude the contract contains plain language, there was no need to employ secondary rules of construction (or weigh facts on intent). *Accord Shifrin*, 64 Ohio St.3d at 638; *Corso*, 2020-Ohio-5293, at ¶ 27-28 (7th Dist.). As Appellant's first issue presented has merit, the sole assignment of error is sustained. A stay pending arbitration was clearly required. In addition, considering the contents of Appellees' opposition, Appellant demonstrated an order compelling arbitration was warranted.

**{¶59}** A judgment will be entered accordingly, but we continue to address an alternative argument raised by Appellant.

Issue Two: Violation of Party Presentation Principle

**{¶60}** In the second part of the assignment of error, Appellant sets forth a conditional alternative argument in case we disagree with the first issue presented. Here, Appellant argues the trial court erred by even addressing whether the use of "and" in the arbitration notice created an ambiguity (compared to the use of "Either . . . or" language in the arbitration clause) because this issue was not raised by Appellees. Appellant criticizes the trial court for violating the party presentation principle and acting as an advocate for a party who did not specify the issue in the brief in opposition to the arbitration motion and who did not appear at the hearing on the motion.

**{¶61}** "In our adversarial system of adjudication, we follow the principle of party presentation" at the trial level and on appeal, as the system places the responsibility on the parties to advance both the facts and the argument that was supposed to entitle them to relief. *United States v. Sineneng-Smith*, 590 U.S. 371, 375-376 (2020). The Ohio Supreme Court likewise pronounced, "our judicial system relies on the principle of party presentation, and courts should ordinarily decide cases based on issues raised by the

parties." *Epcon Communities Franchising, L.L.C. v. Wilcox Dev. Grp., L.L.C.*, 2024-Ohio-4989, ¶ 15-17 (finding the trial court violated the "party presentment rule" and erred by raising a doctrine to dismiss the case where the motion did not argue the doctrine employed by the trial court), citing *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (under our justice system, "we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present").

**{¶62}** Appellees respond by noting the waiver doctrine applicable to issues a party failed to raise below is discretionary. *See Hill v. Urbana*, 79 Ohio St.3d 130, 133-34 (1997) (the *reviewing* court can exercise discretion to address waived issues, such as when there is plain error or the rights involved warrant it). However, on this issue, Appellant points not to mere waiver but to the error of a trial court in sua sponte raising an issue at a hearing without notice and then using it as the entire basis for its ruling without additional briefing. We also note had the trial court simply rejected Appellees' argument in opposition to arbitration (rather than raise the arbitration notice sua sponte) and had the plaintiffs then appealed, they would be hard-pressed to convince this court to use any discretion we may possess to review the arbitration notice language as conflicting with the arbitration clause so as to create an ambiguity (to construe against the drafter) where such arguments were not presented below.

**{¶63}** We note the party presentation principle is not "ironclad" or without exception, such as where supplemental briefing is permitted or an unargued jurisdictional issue must be analyzed before reaching the raised arguments. *State ex rel. GateHouse Media Ohio Holdings II, Inc. v. Columbus Police Dept.*, 2025-Ohio-5243, ¶ 41, citing *Sineneng-Smith* at 376 (or to protect a pro se criminal defendant's rights). However, in general, a trial court should not present itself as an autonomous cultivator of legal issues (acting as a represented civil litigant's attorney) but rather should remain in the constitutionally assigned sphere of a neutral judge over matters presented by the parties. *Id*.

**{¶64}** Appellees claim the trial court merely used different or more specific facts to support a generally raised issue, claiming they "raised issues with legibility of, and ambiguity of, the likelihood of conflicting provisions, the alleged arbitration clause." (Appellees' Br. 8). Appellant's reply brief complains Appellees fail to cite a page or quote

their opposition to the arbitration motion to show they raised even a general argument on ambiguity or the "You and We may elect" language. Apparently, Appellees are paraphrasing the following portion of their opposition: "Fourth, the arbitration clause is unenforceable because it is illegible and does not show a meeting of the minds and is procedurally and substantively unconscionable." (Opp. 4).

**{¶65}** Appellees suggest their general unenforceability claim allowed the trial court to bring forth additional or more specific reasons (such as ambiguity in "You and We may elect" being in conflict with "Either You or We may require"). Again, the trial court did not find the agreement unenforceable but found an ambiguity created by the prominent arbitration notice's alleged conflict with the more dense arbitration clause and then construed the ambiguity against Appellant as the drafter (so that the arbitration clause governed the process if they both agreed to arbitrate).

**{¶66}** Appellees also imply an argument that the phrase "meeting of minds" raised the general concept of ambiguity. "A meeting of the minds as to the essential terms of the contract is a requirement to enforcing the contract." *Kostelnik v. Helper*, 2002-Ohio-2985, ¶ 16. Although an *unresolved* ambiguity could be utilized to conclude there was no meeting of the minds during contract formation, a claimed lack of meeting of the minds is not necessarily the result of ambiguity via conflicting clauses (especially where specific different reasons are provided). *See Estate of Hodory v. Duke Realty Corp.*, 2025-Ohio-5068, ¶ 45 (1st Dist.). A party's use of the catchphrase "meeting of the minds" does not act as a placeholder for any theory a court may wish to raise.

**{¶67}** Notably, after setting forth the sentence at issue (containing the reference to meeting of the minds), Appellees' opposition then set forth various specific reasons to support their fourth argument. None of those arguments raised conflicting provisions on who can elect arbitration, alleged ambiguous terminology in the arbitration notice's use of "and" between the parties, or said the arbitration notice was reasonably susceptible to more than one meaning. Nor did any other part of their opposition (instead alleging, for instance, the arbitration agreement should be canceled if the remedy of rescission were to be applied to the installment contract).

**{¶68}** Contrary to another suggestion by Appellees, arguing a passage was "illegible" does not invoke ambiguity in conflicting terms on who can invoke a contract.

Illegible deals with the physical characteristics of the writing making it unreadable (as opposed to be unreadable because of unclear grammar or word usage). *See, e.g., Merriam-Webster Online,* www.merriam-webster.com/dictionary/unreadable (providing separate and distinct definitions for unreadable, only one of which encompasses illegible). In fact, their opposition below recognized this definition when arguing the arbitration clause was illegible *because* of overwritten text (apparently referring to the words "Copy of Electronic Original" written over a sentence saying it would apply over any conflicting arbitration provisions in any other agreements).

**{¶69}** Appellees quote from *Appellant's* reply in support of arbitration which used the word ambiguity (such as by saying Appellees "hint at ambiguity"). (Reply in Support of Arbitration 7). Nonetheless, Appellant's reply responded to the sentence claiming illegibility, meeting of the minds, and unconscionability *under the arguments specified by Appellees* in support of that sentence (overwritten text, failure to attach service contact, and one-sidedness due to appeal panel or elimination of some CSPA remedies). More specifically, the "hint at ambiguity" comment in Appellant's reply was made in response to Appellees' argument that Appellant (although the defendant) should have attached a copy of the service contract (between Appellees and a third party) to ensure there were not conflicting arbitration provisions. This in turn relied on the illegibility argument (because the overwritten sentence plainly said this arbitration clause controlled disputes between the parties even if some other agreement to arbitrate was entered). Appellant had no notice there would be a need to analyze whether the arbitration notice's use of "You and We may elect" created an ambiguity prior to the hearing.

**{¶70}** Alternatively, in response to Appellant's argument that a party is deprived of the opportunity to brief an issue where a trial court raises it for the first time at a hearing, Appellees say Appellant had the opportunity to argue with the trial court about whether the arbitration notice conflicted with the arbitration clause when the trial court raised this allegation of ambiguity at the hearing. However, this spur of the moment argument was not an opportunity to read, consider, research, analyze, and present a written reply to a new issue. Appellants appeared at the hearing prepared to address the multitude of issues Appellees actually did raise, but the trial court did not want to discuss any of them (opining they all lacked merit). Instead, the court sua sponte raised a different argument

for absent parties, alleging an ambiguity was created by the arbitration notice on page one of the installment contract, which the court suggested could lead one to believe arbitration would only occur if both parties elect it after a dispute arises.

**{¶71}** We realize Appellant did not request an opportunity for supplemental briefing on the issue while arguing with the court on the meaning of the arbitration notice at the hearing. Still, the court's sole focus at the hearing was a surprise, and with minimal time for counsel to consult the client on requesting an extension for additional briefing before the trial court ruled on the morning of April 29, 2026, which was two days after the hearing. The trial court's position in sua sponte raising the issue with the arbitration notice without providing advance notice or subsequent time for additional briefing by Appellant was unreasonable.

**{¶72}** In any event, the trial court's sua sponte interpretation was incorrect as a matter of law, as discussed in the first issue presented by Appellant.

APPELLEES' ADDITIONAL ARGUMENTS

**{¶73}** The end of Appellees' brief contains a section entitled, "Other reasons support affirming the Trial Court's ruling." They set forth three arguments.

**{¶74}** Initially, we address the observation that Appellant's answer and arbitration motion were file-stamped March 24, 2026 at 8:15 a.m., the day after the extended due date for responding to the complaint. (2/12/26 J.E.) (granting Appellant leave to respond by March 23, 2026). Appellees did not protest this in their April 7, 2026 response in opposition to arbitration or elsewhere. Nevertheless, Appellees now assert Appellant submitted untimely filings without a showing of excusable neglect or seeking leave and is thus in default of demanding arbitration.

**{¶75}** Besides Appellees glaring waiver of the issue below, the e-filing receipt shows the answer and motion to compel were submitted to the clerk on March 23, 2026 at 4:49 p.m. We note there is no local rule ensuring timeliness for the entire day of filing. *Compare* S.Ct.Prac.R. 3.02(A)(3)(e) (e-filing until 11:59:59 p.m., documents after 5:00 p.m. reviewed the next day but file-stamped day of receipt and considered timely). Yet, there is also no local rule explaining any timely e-filing must be submitted prior to the county clerk's official closing hours. Appellant's reply thus asserts the date of submission to e-filing may be applied to a filed document, citing *Nemec v. Morledge*, 2025-Ohio-4752,

¶ 26 (8th Dist.) (motion to be considered filed on the date the movant delivered it to the clerk of courts through its electronic filing system).

**{¶76}** In any event, the certificates of service for the answer and the arbitration motion show timely March 23, 2026 email service on Appellees' attorney. Such service is presumed to have occurred absent evidence to the trial court otherwise. *See, e.g., Paasewe v. Wendy Thomas 5 Ltd.*, 2009-Ohio-6852, ¶ 22 (10th Dist.). Appellees ignore the rules saying the answer must be *served* by the deadline and then filed with the court within *three days after service*. *See* Civ.R. 12(A) ("The defendant shall serve his answer within twenty-eight days after service of the summons and complaint upon him"); Civ.R. 5 (B)(2)(f) (email service to attorney), (D) ("Any paper after the complaint that is required to be served shall be filed with the court within three days after service"). The summons on Appellees' own complaint emphasized this deadline feature. Appellees' argument on untimeliness clearly lacks merit.

**{¶77}** Next, we address Appellees' reiteration of the argument from their opposition to arbitration that they will elect the remedy of rescission instead of damages, and thus, the arbitration clause would be rescinded along with the rest of the contract if the statutory CSPA claims have merit, citing *Wisniewski v. Marek Builders, Inc.*, 2017-Ohio-1035, ¶ 8-9 (8th Dist.). They alternatively present a new argument claiming that at least the class action waiver would be eliminated if the contract were rescinded. They point out the arbitration clause specifically says if the class action waiver were to be invalidated, then the arbitration clause is null and void. However, on the latter point, the class action waiver was within the arbitration clause here, not standing alone in the contract outside of the arbitration clause. If the arbitration clause remained, then the class action waiver remained with it.[3] Appellees cite no authority stating otherwise.

[3] Appellees do not still maintain the private attorney general portion of the class action waiver was unfair. The case cited below reversed the refusal to stay a CSPA action with near identical arbitration provisions finding: a conspicuous arbitration notice; a clear and rejectable main arbitration clause; no unconscionability evidence; and any CSPA policy favoring class actions cannot be applied to disfavor arbitration. *Dozier* at ¶ 4-5, 18-24. In validating arbitration clause waivers of the class action (or private attorney general) aspect of a CSPA claim, other courts have also concluded arbitration enforcement cannot be conditioned on availability of classwide arbitration (a procedural mechanism rather than a substantive right) and any policy favoring a class action cannot be applied to hinder the FAA. *Love v. Crestmont Cadillac*, 2017-Ohio-1555, ¶ 20 (8th Dist.); *Hawkins v. O'Brien*, 2009-Ohio-60, ¶ 34 (2d Dist.); *Wallace v. Ganley Auto Grp.*, 2011-Ohio-2909, ¶ 19 (8th Dist.), citing *Concepcion*, 563 U.S. at 341 (FAA pre-empted state case law on unconscionable class action waiver; state cannot condition the enforceability of arbitration clauses on the availability of classwide arbitration procedures). Even where an arbitration clause does not contain a class action waiver, we observed, "Both federal and Ohio courts have held that an arbitration clause does not authorize class arbitration without an affirmative statement of authority—silence is not enough." *Shakoor v. VXI Glob. Soln.s, Inc.*, 2017-Ohio-8018, ¶ 17

**{¶78}** On the point raised by Appellees below, Appellant observes Appellees are conflating the optional remedy of rescission (which they elected in their opposition over the alternative remedy of damages included in their complaint) with the legal rescinding of a contract due to a formation issue. As Appellant further emphasizes, issues of contract validity are for the arbitrator, according to the terms of the arbitration agreement and the law.

**{¶79}** The case cited by Appellees on rescission is not binding and is wholly distinguishable as it was based on a cancellation of a contract due to a statutory right in the Home Solicitation Sales Act in a case that did not require a court action to determine whether contract rescission was warranted because the failures were undisputed. *Wisniewski* at ¶ 8-9, applying R.C. 1345.23 (C) ("Until the seller has complied with divisions (A) [signed written contract] and (B) [delivery of notice for cancellation deadline] of this section the buyer may cancel the home solicitation sale"). In fact, the same district explained the holding would not apply where the defendant disputed the contract violated the statutory law and disputed the plaintiff had the right to cancel the contract under the statute. *Sebold v. Latina Design Build Grp., L.L.C.*, 2021-Ohio-124, ¶ 37-39 (8th Dist.) (also, "claims that the contract itself is void or invalid based on an alleged HSSA violation are decisions that are best left for the arbitrator to decide").

**{¶80}** As recited in setting forth the general standards above, an arbitration clause is a contract within a contract, which must be attacked on its own flaws, and a failure of the container contract does not result in a failure of the arbitration clause. *Benfield*, 2008-Ohio-938, at ¶ 40-41 (unconscionability arguments on the contract in general, instead of the arbitration clause specifically, are for the arbitrator), quoting *ABM Farms,* 81 Ohio St.3d at 501-502 ("must demonstrate that the arbitration provision itself in the contract at issue, and not merely the contract in general, was fraudulently induced"). The arbitration provision is severable from the contract and "unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance." *Buckeye Check Cashing*, 546 U.S. at 445-446 (no need to first determine state law remedy or void versus voidable); *see also Prima Paint*, 388 U.S. at 403-404 (the FAA

(7th Dist.), citing, e.g., *Stolt-Nielsen v. Animalfeeds Internatl. Corp.*, 559 U.S. 662, 685 (2010) ("it cannot be presumed the parties consented to [classwide arbitration] by simply agreeing to submit their disputes to an arbitrator").

does not permit the court to consider claims of fraud in the inducement of the contract generally); *Rent-A-Center*, 561 U.S. at 71 ("where the alleged fraud that induced the whole contract equally induced the agreement to arbitrate which was part of that contract—we nonetheless require the basis of challenge to be directed specifically to the agreement to arbitrate before the court will intervene"). Accordingly, Appellees' argument lacks merit.

**{¶81}** Furthermore, Appellant says Appellees' argument qualifies an attempt to modify the trial court's decision, not merely an argument to uphold the denial of the arbitration motion to compel on other grounds. "Whether or not an appellee intends to defend an order on appeal, an appellee who seeks to change the order or, should the order be reversed or modified, seeks to change an interlocutory ruling that would be merged into the order must file a notice of cross-appeal . . ." App.R. 3(C)(1). "A party intending to defend an order appealed by an appellant on a ground other than that relied on by the trial court but who does not seek to change the order is not required to file a notice of cross-appeal or to raise a cross-assignment of error." App.R. 3(C)(2).

**{¶82}** By claiming the validity of the contract controls the existence of the arbitration agreement (or the class action waiver, whose elimination would allegedly in turn eliminate the arbitration clause) and thereby claiming the validity of the contract is for a court action, Appellees could be seen as asking the trial court to wait to rule on the arbitration motion until after trial on the claims calling for the remedy of rescission. Under such construction, Appellees should have filed a cross-appeal to raise this argument, which is without merit in any event.

**{¶83}** Lastly, Appellees again mention their illegibility argument (which below was based on overwritten text due to a stamp disclosing it was an electronic copy of the original but which here they do not reiterate). They note the trial court mentioned small margins and use of a ruler (which they did not raise below when referring to a meeting of the minds). Appellees cite no law here, and we rejected arguments on these topics in prior sections. The outlining of these arguments here seems related to a final argument.

**{¶84}** Appellees' opposition to arbitration below concluded with an alternative request for discovery. This was specifically tied to their argument on the enforceability of the contract (seemingly based on their claim that rescission of the installment contract

would eliminate the arbitration clause in the contract). Now, in the conclusion section of their brief, they alternatively ask for discovery on issues related to the validity or existence of the "contract/arbitration" (followed by a hearing after a record is developed).

**{¶85}** To the extent Appellees may be seeking to develop facts Appellant argued were lacking on procedural unconscionability (such as age, education, ability to understand, circumstances at signing, etc.), Appellees failed to raise such contentions within their own knowledge below and failed to appear at the hearing on the arbitration motion. As noted earlier, both aspects of unconscionability are required in any case. *Benfield*, 2008-Ohio-938, at ¶ 52 ("the party challenging a contract as unconscionable must prove 'a quantum' of both procedural and substantive unconscionability").

**{¶86}** To the extent they believe discovery and trial are required on whether they are entitled to rescind the contract, this is a matter for the arbitrator. This is simply a remnant of their circular argument that the arbitration agreement is a topic for the court and if the arbitration agreement was eliminated due to contract rescission, then there would be no arbitration agreement and thus the entire case would stay with the court. However, the underlying argument fails, as discussed previously in this section.

**{¶87}** In conclusion, Appellant's assignment of error is sustained, the trial court's judgment is reversed, and the case is remanded for an order compelling arbitration and staying the case pending arbitration.

Waite, P.J., concurs.

Dickey, J. concurs.

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For the reasons stated in the Opinion rendered herein, the assignment of error is sustained. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Jefferson County, Ohio, is reversed. We hereby remand this matter to the trial court for further proceedings for an order compelling arbitration and staying the case pending arbitration according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellees.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**