[Cite as *Pyle v. Wells Fargo Financial*, 2005-Ohio-6478.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Walter D. Pyle,	:	
Plaintiff-Appellant,	:	
v.	:	No. 05AP-644 (C.P.C. No. 03CVH01-150)
Wells Fargo Financial et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellees.	:	

O P I N I O N

Rendered on December 6, 2005

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.

TRAVIS, J.

{¶1} Appellant, Walter D. Pyle, appeals from the decision and entry of the Franklin County Court of Common Pleas, filed March 22, 2005, in which the court granted appellees' motion to stay proceedings pending arbitration. Appellant asserts that the trial court failed to follow the law of the case as set forth in this court's previous decision. For the reasons that follow, we affirm the decision of the trial court.

{¶2} On June 7, 1999, appellant entered into a loan agreement with appellee Wells Fargo Financial ("Wells Fargo") relating to his purchase of a used vehicle. At the same time, appellant also executed a credit involuntary unemployment insurance agreement ("insurance agreement") underwritten by appellee Centurion Casualty Company ("Centurion"). Pursuant to the insurance agreement, Wells Fargo purchased a collateral protection insurance policy from Centurion, on appellant's behalf, and increased appellant's monthly payments to cover that cost. Appellant alleges he never read any of the documents, did not receive copies of them, 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 insurance.

{¶3} Shortly after purchasing the vehicle, appellant lost his job. Appellant contends he advised Wells Fargo that he would be unable to make payments due to his unemployment, but Wells Fargo encouraged him to continue to make payments anyway. According to appellant, Wells Fargo represented to him that it would not repossess the vehicle if he continued to make payments. Appellant asserts he continued to send at least partial payments, but Wells Fargo repossessed the vehicle from a repair shop in late 1999. The truck was sold at auction in early 2000. Wells Fargo obtained a deficiency judgment against appellant and his father who had co-signed appellant's loan.

{¶4} On January 6, 2003, appellant filed an action against appellees alleging claims for misrepresentation, breach of contract, bad faith, civil conspiracy, and violations of the Ohio Consumer Practices Act and the Truth in Lending Act. Appellant sought damages and a declaratory judgment. On February 14, 2003, appellees filed a motion to compel arbitration and to stay or dismiss the proceedings. Appellees contended that

appellant executed two separate arbitration agreements that encompassed all of appellant's claims and provide for the exclusive remedy of arbitration.

{¶5} On May 22, 2003, appellees filed a motion to stay discovery. Appellees argued that in order to protect their arbitration rights, discovery should be delayed at least until after the court could rule on the motion to compel arbitration or to stay proceedings. Appellant opposed any delay of discovery and continued to make requests for documents and admissions. On June 12, 2003, appellees moved for a protective order to prevent discovery. Appellant then filed a motion to compel discovery.

{¶6} On November 17, 2003, without holding a hearing, the trial court granted appellees' motion to compel arbitration. Also on November 17, 2003, by separate decision, the trial court denied as moot appellees' motion to stay discovery, appellees' motion for a protective order, and appellant's motion to compel discovery. On December 18, 2003, the trial court filed an entry of dismissal which granted the motion to compel arbitration and to stay or dismiss proceedings and dismissed the action subject to arbitration.

{¶7} Appellant appealed those decisions to this court asserting the trial court erred by: (1) granting the motion to compel; (2) failing to hold a hearing; and (3) denying all discovery. On September 16, 2004, this court issued a decision reversing the trial court and remanding the matter for further consideration. We held: (1) the trial court was not required to hold any type of hearing or trial on the motion to stay proceedings; (2) the making of the arbitration agreement was sufficiently in issue so as to require a trial pursuant to R.C. 2711.03(B) and the corresponding provision of Section 4 of the Federal Arbitration Act before ruling on the motion to compel arbitration; and (3) the trial court was

incorrect in characterizing the discovery motions as moot. *Pyle v. Wells Fargo Financial*, Franklin App. No. 04AP-6, 2004-Ohio-4892.

{¶8} Upon remand, the trial court set a hearing before a magistrate on appellees' motion to compel arbitration. Prior to the hearing, appellees withdrew their motion to compel arbitration, but renewed their motion to stay proceedings pending arbitration. The magistrate's hearing was then cancelled. On March 22, 2005, without a hearing, the trial court granted appellees' motion to stay the case. The trial court also denied all requests for discovery. Appellant appeals from the decision.

{¶9} Appellant asserts one assignment of error:

> The trial court erred by compelling arbitration, denying discovery, and staying the trial court proceedings pending arbitration.

Appellant argues that the trial court ignored the law of the case and acted contrary to our previous order. Appellant contends the stay effectively compels arbitration without the hearing we required. Appellant believes the trial court should have held a hearing on the validity of the arbitration clause regardless of whether the motion to compel arbitration was still pending. Further, appellant argues our previous decision required the trial court to permit discovery.

{¶10} Although appellant has asserted a single assignment of error, appellant essentially contends the trial court erred in making three separate decisions: (1) compelling arbitration; (2) denying discovery; and (3) staying the trial court proceedings pending arbitration. We will address each decision separately. We begin with the trial court's decision to stay the case pending arbitration.

{¶11} A decision to stay a case pending arbitration is reviewed under an abuse of discretion standard. *Hampton v. Swad*, Franklin App. No. 03AP-294, 2003-Ohio-6655. In order to find that the trial court abused its discretion, we must find more than a mere error of law or judgment. *Boggs v. Columbus Steel Castings Co.*, Franklin App. No. 04AP-1239, 2005-Ohio-4783. We must find that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶12} A presumption favoring arbitration over litigation arises when the claim in dispute falls within the scope of an arbitration provision. *Williams v. Aetna Fin. Co.* (1998), 83 Ohio St.3d 464, 471. This presumption applies even when the case involves some arbitrable and some non-arbitrable claims; with non-arbitrable claims being determined by a court after completion of arbitration. *DH-KL Corp. v. Stampp Corbin Corp.* (Aug. 12, 1997), Franklin App. No. 97APE02-206. In this instance, appellant seeks to avoid arbitration and remain in the courts. Appellees seeks to resolve all claims in arbitration.

{¶13} There are four pertinent statutes that relate to the enforcement of arbitration agreements: Sections 3 and 4 of the Federal Arbitration Act ("FAA") contained in Title 9, U.S.Code, 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.

{¶14} 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.

{¶15} 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.

{¶16} 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.

{¶17} 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.

{¶18} 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.

{¶19} Appellees' motion to stay was based upon the FAA, rather than the Ohio Revised Code section. However, 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 is "very

similar" to R.C. 2711.03, and that 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, ¶20.

{¶20} A party may choose to move for a stay, petition for an order to compel arbitration, or seek both. In the present case, because appellees withdrew the motion to compel arbitration, only the motion for a stay of the proceedings was ruled upon by the trial court.

{¶21} As we stated in our previous decision in this case, a trial court is not required to hold a hearing on a motion to stay that is based on either Section 3 of the FAA or R.C. 2711.02. Both statutes require only that a court be "satisfied" that the issue is referable to arbitration. Neither statute references a hearing. While R.C. 2711.03 and Section 4 of the FAA do require a hearing on a motion to compel arbitration, the Ohio Supreme Court has held that if a party moves only to stay a case pending arbitration, "it is not necessary for a trial court to comply with the procedural requirements of R.C. 2711.03." *Maestle,* at ¶18. The *Maestle* court clearly stated:

> [A] trial court considering whether to grant a motion to stay proceedings pending arbitration filed under R.C. 2711.02 need not hold a hearing pursuant to R.C. 2711.03 when the motion is not based on R.C. 2711.03.

Id. at ¶19. See, also, *Cheney v. Sears, Roebuck and Co.*, Franklin App. No. 04AP-1354, 2005-Ohio-3283, ¶19.

{¶22} In this instance, two arbitration agreements purportedly apply to the claims made by appellant. The arbitration agreement between Wells Fargo and appellant states, in pertinent part:

> Any party covered by this Agreement may elect to have any claim, dispute or controversy ("Claim") of any kind (whether in contract, tort or otherwise) arising out of or relating to your Loan Agreement, or any prior or future dealings between us, resolved by binding arbitration. A Claim may include, but shall not be limited to, the issue of whether any particular Claim must be submitted to arbitration, or the facts and circumstances involved with your signing of this Agreement, or your willingness to abide by the terms of this Agreement or the validity of this Agreement. * * *
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> * * * IF ARBITRATION IS ELECTED BY EITHER PARTY UNDER THIS AGREEMENT: (A) YOU WILL NOT HAVE THE RIGHT TO GO TO COURT OR TO HAVE A JURY TRIAL; (B) YOU WILL NOT HAVE THE RIGHT TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES[.] * * *

The Wells Fargo arbitration agreement is separate from the loan agreement and bears the signature of both appellant and his co-signor.

{¶23} The arbitration agreement between Wells Fargo, Centurion, and appellant states, in pertinent part:

> Any party covered by this Agreement may elect to have any claim, dispute or controversy ("Claim") of any kind (whether in contract, tort, or otherwise) arising out of or relating to your Loan Agreement, any prior or future dealings between us, or any insurance purchased by you at your option and financed by us at your request, resolved by binding arbitration. A Claim may include, but shall not be limited to, the issue of whether any particular Claim must be submitted to arbitration, or the facts and circumstances involved with your signing of this Agreement, or your willingness to abide by the terms of this Agreement or the validity of this Agreement. * * *
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> * * * IF ARBITRATION IS ELECTED BY EITHER PARTY UNDER THIS AGREEMENT: (A) YOU WILL NOT HAVE THE RIGHT TO GO TO COURT OR TO HAVE A JURY TRIAL; (B)

> YOU WILL NOT HAVE THE RIGHT TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES[.] * * *

This agreement is incorporated by reference into the insurance agreement. The insurance agreement bears the signature of appellant.

{¶24} After examining the agreements, the trial court found:

> * * * that in conjunction with the loan agreement and Plaintiff's acceptance of Defendant Wells Fargo's offer of involuntary employment insurance, Plaintiff and Defendant entered into two separate Arbitration Agreements, which were both executed by the parties on June 7, 1999. The Court further finds that each Arbitration Agreement was broadly worded and expressly provided for arbitration of "any claim, dispute or controversy ('Claim') of any kind (whether in contract, tort or otherwise) arising out of or relating to your Loan Agreement, or any prior or future dealings between us." As such, the Court again finds that the parties agreed to arbitrate all claims relating to the Loan Agreement, including the claims asserted by Plaintiff in his Complaint. Therefore, since the Court finds that the issues in Plaintiff's Complaint are referable to arbitration under the two above referenced arbitration agreements, pursuant to R.C. 2711.02, the Court hereby **GRANTS** Defendants' Motion to Cancel Hearing and to Stay Proceedings, and **ORDERS** that the trial of this action be stayed until the arbitration of the issues in Plaintiff's Complaint has been had in accordance with the agreements.

(Emphasis sic.) The trial court was satisfied that the issues before it were referable to arbitration under the two written arbitration agreements.

{¶25} Having reviewed the record and the trial court's determination, we find no basis for reversal. The trial court complied with the requirements of Section 3 of the FAA, R.C. 2711.02, and our prior decision. Further, the trial court was not unreasonable, arbitrary, or unconscionable in its decision.

{¶26} Appellant argues that a stay essentially compels arbitration and therefore the trial court should have held a hearing even after the motion to compel was formally withdrawn. As the *Maestle* court made clear, a stay is not tantamount to compulsion and the respective statutes need not be read in pari materia. Therefore, once the motion to compel was withdrawn, there was no longer a need for a hearing. Additionally, appellant's other arguments regarding the inefficiency and time involved in arbitration are not factors a trial court need consider in ruling on a motion to stay. As such, we affirm the trial court's decision to stay the case pending arbitration. Further, we find appellant's assignment of error based on the trial court's alleged decision to compel arbitration to be misplaced. The trial court did not compel arbitration; it merely stayed the case pending arbitration.

{¶27} Lastly, appellant asserts the trial court erred in denying discovery. We disagree. The trial court properly stayed the matter pending arbitration. It would be nonsensical to stay the matter and yet still allow discovery. Appellant argues our former decision required the trial court to allow discovery. Appellant misinterprets our prior decision. We previously held that, since the decision on the motion to compel arbitration was incorrectly decided without a hearing, the discovery disputes were no longer moot. At no time did we order the trial court to do anything but consider the discovery issues, which it did.

{¶28} Therefore, appellant's single assignment of error is overruled and the judgment of the trial court is affirmed.

Judgment affirmed.

PETREE and SADLER, JJ., concur.