

2026 IL App (1st) 250690-U
No. 1-25-0690
Order filed September 25, 2026

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

SPENCE PC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 24 CH 09267
	)	
AFFORDABLE WELDING, US, INC.,	)	Honorable
	)	Lynn Weaver Boyle,
Defendant-Appellant.	)	Judge, Presiding.

Presiding JUSTICE ODEN JOHNSON delivered the judgment of the court.
Justices Mikva and Wilson concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the circuit court's order compelling arbitration where the defendant did not sign the attorney-client engagement agreement that contained the arbitration clause but received and paid for legal services pursuant to the unsigned agreement, and where the arbitration clause was not unconscionable.
- ¶ 2 Defendant Affordable Welding, US, Inc. appeals the grant of plaintiff Spence PC's motion to compel arbitration. On appeal, defendant contends that the circuit court erred in compelling arbitration based solely on its continued use of legal services, where the arbitration clause appeared

only in a series of unsigned attorney-drafted engagement letters and the record shows no informed consent to waive court rights. For the following reasons, we affirm.

¶ 3 The underlying facts are not in dispute. Plaintiff, a law firm, filed suit to compel arbitration against defendant, its former client. Plaintiff relied on an arbitration clause that was included in its attorney-client engagement letters from 2017 and 2023. However, defendant never signed any of the engagement letters. Plaintiff, while acknowledging that none of the engagement letters were executed by defendant, nevertheless asserted that by proceeding with the proposed representation, defendant impliedly assented to arbitration.

¶ 4 The arbitration clause in question appears in each unsigned agreement in a section captioned, “Choice of Law and Arbitration,” and provides as follows:

“Affordable Welding and Spence PC agree that any dispute, controversy or claim arising out of, or relating to, this Agreement or the breach thereof shall be resolved by binding, final arbitration between the parties. The arbitration shall be administered by the JAMS in accordance with its Streamlined Rules for Arbitration and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. There shall be one arbitrator agreed to by the parties within thirty (30) days of receipt by Affordable Welding or Spence PC of the request for arbitration or, in default of such agreement, by JAMS pursuant to its Streamlined Rules or for Arbitration. The seat or place of arbitration shall be Chicago, IL. The arbitration shall be held, and the award shall be rendered, in the English language. By agreeing to binding arbitration, you waive and thereby eliminate your right to submit the dispute for determination by a court, thus waiving your right to a jury trial. The grounds for appeal of an arbitration award are very

limited as compared to a court judgment or jury verdict. Therefore, you should consult with independent counsel and carefully consider whether arbitration is acceptable to you.”

¶ 5 Plaintiff’s principal asked defendant’s principal to review, sign, and return the engagement letters; however, defendant asserts that the emails transmitting the engagement letters did not call attention to or even reference the arbitration agreement embedded therein. Defendant did not sign the engagement letters. Subsequently, plaintiff claimed that defendant owed legal fees exceeding \$290,000 and filed an arbitration demand with JAMS.

¶ 6 In the circuit court, defendant argued that the arbitration provision was unconscionable. Defendant claimed that the arbitration clause was vague and one-sided: it waived defendant’s right to a jury trial and said nothing about costs or discovery and conferred no identifiable benefit in return. Defendant also claimed that the clause was embedded on page five of a boilerplate agreement, grouped under a compound heading, and transmitted to defendant without explanation. According to defendant, plaintiff made no effort to highlight the provision, secure informed consent, or obtain a signature. Defendant argued that plaintiff thus failed to satisfy its obligation to obtain the client’s informed and voluntary agreement.

¶ 7 The circuit court granted plaintiff’s motion to compel arbitration, finding that the arbitration provisions in the engagement letters to defendant were not substantively unconscionable or procedurally unconscionable, and were enforceable as written. The court subsequently ordered defendant to participate in the JAMS arbitration proceeding initiated by plaintiff. The circuit court’s written order was entered on March 26, 2025.

¶ 8 Defendant filed its timely notice of interlocutory appeal pursuant to Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017) on April 15, 2025.

¶ 9 On appeal, defendant contends that the arbitration clause, embedded in unsigned attorney-drafted engagement letters, is unenforceable as procedurally and substantively unconscionable.

¶ 10 Defendant appeals the March 26, 2025, order granting plaintiff's motion to compel arbitration. Rule 307(a)(1) permits interlocutory appeals from orders granting or refusing an injunction. *Id.* An injunction is a judicial process requiring a party to do a particular thing or refrain from doing a particular thing. *Herns v. Symphony Jackson Square LLC*, 2021 IL App (1st) 201064,

¶ 14. An order granting or denying a motion to compel arbitration is injunctive in nature and is appealable under Rule 307(a)(1). *Id.* Accordingly, this court has jurisdiction pursuant to Rule 307(a)(1).

¶ 11 A circuit court's order granting or denying a motion to compel arbitration that was made without an evidentiary hearing and raises only a legal issue is reviewed *de novo*. *Clark v. Foresight Energy, LLC*, 2023 IL App (5th) 230346, ¶ 21. *De novo* review means that we examine the evidence unconstrained by the reasoning of the circuit court. *Zameer v. City of Chicago*, 2013 IL App (1st) 120198, ¶ 12. If all the circuit court did was apply the law to an uncontested set of facts, we would have no reason to defer to the circuit court's decision, because the trial court is in no better position than we to apply the law. *Shulte v. Flowers*, 2013 IL App (4th) 120132, ¶ 17. In this case, the record does not indicate that the circuit court held an evidentiary hearing, thus our review is *de novo*.

¶ 12 A motion to compel arbitration raises the sole and narrow issue of whether the parties agreed to arbitrate the dispute. *Clark*, 2023 IL App (5th) 230346, ¶ 22. When presented with a motion to compel arbitration, the circuit court's inquiry is limited to whether the parties have a valid arbitration clause. *Id.* The decision whether to compel an

arbitration is not discretionary. *LRN Holding, Inc. v. Windlake Capital Advisors, LLC*, 409 Ill. App. 3d 1025, 1027 (2011). Where there is a valid arbitration agreement and the parties' dispute falls within the scope of that agreement, arbitration is mandatory and the circuit court must compel it. *Id.* On the other hand, where there is no valid arbitration agreement or where the parties' dispute does not fall within the scope of the agreement, the circuit court may not compel it. *Id.*

¶ 13 Plaintiff contends that defendant forfeited the argument of whether the unsigned engagement letters made the arbitration provision unenforceable because the argument was not made in the circuit court. It is well settled that the failure to make an argument in the circuit court may result in forfeiture of an argument on appeal (Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020)), we do not believe that defendant has forfeited its argument in this particular case. As plaintiff acknowledges, defendant argued in the circuit court that the engagement letters were procedurally and substantively unconscionable. On appeal, they make the same arguments but also note that the engagement letters were unsigned, which plaintiff also acknowledges. The fact that the engagement letters were unsigned was fully presented in the parties pleadings and arguments in the circuit court. We therefore reject plaintiff's forfeiture argument.

¶ 14 Illinois considers arbitration to be a favored method of dispute resolution. *Clark*, 2023 IL App (5th) 230346, ¶ 23. However, arbitration is still a matter of contract and parties are bound to arbitrate only those issues they have agreed to arbitrate (*Gaines v. Ciox Health, LLC*, 2024 IL App (5th) 230565, ¶26), as shown by the clear language of the agreement and their intentions expressed in that language (*Clark*, 2023 IL App (5th) 230346, ¶ 23). Their agreement will not be extended by construction or implication. *Id.* An attorney-client agreement may include an arbitration provision, "provided such agreements are enforceable and the client is fully informed of the scope

and effect of the agreement.” *Dick-Ipsen v. Humphrey, Farrington & McClain, P.C.*, 2024 IL App (1st) 241043, ¶18 (quoting Ill. R. Prof’l Conduct (2010) R. 1.8 cmt. 14 (eff. Jan. 1, 2010)).

¶ 15 The primary objective in interpreting any contract, including an arbitration agreement is to give effect to the intent of the parties. *Clark*, 2023 IL App (5th) 230346, ¶ 24. The language of the contract alone, given its plain and ordinary meaning, is the best indication of the parties’ intent. *Id.*

¶ 16 The attorney-client relationship is a voluntary contractual relationship formed when a client authorizes the attorney to act on his or her behalf, and the attorney accepts the authorization. *Leroy v. ERA Valdivia Contractors, Inc.*, 2023 IL App (1st) 211323, ¶ 21. A formal or written agreement is not necessary to form the relationship. *Id.* ¶ 26. A contract of retainer may be express or implied, written or oral. *Zych v. Jones*, 84 Ill. App. 3d 647, 651 (1980).

¶ 17 Here, the record indicates, and the parties agree, that the attorney-client engagement letters contained an arbitration agreement. The record also reflects, and the parties agree, that the engagement letters were never executed by defendant. Nor does either party dispute that plaintiff performed legal services for defendant and defendant paid for some of the legal services rendered. Thus, it is clear that the parties agreed to an attorney-client relationship, despite the absence of a signed written agreement.

¶ 18 Plaintiff, however, argues that the engagement letters, although unsigned by defendant, should govern their attorney-client relationship, thus making the arbitration clause apply. Arbitration can only be used to resolve disputes that the parties have agreed to arbitrate. *In re Estate of Dukes*, 2025 IL App (5th) 240645, ¶ 19. Based on the plain language of the IUAA there is no requirement that a written agreement to arbitrate must be signed. We agree with the federal

case law and will not depart from the plain language of the statute to impose a limitation not expressed by the legislature. *Clark*, 2019 IL 122891, ¶ 23. In the absence of such requirement in the statute, we adhere to the longstanding rule that arbitration agreements are controlled by state-law contract principles. *Ragan v. AT&T Corp.*, 355 Ill. App. 3d 1143, 1148 (2005); see also. Under contract law principles, it is well settled that a party named in the contract may assent to the contract's provisions by his acts or conduct, even when the party did not sign it. *Soelzer v. Soelzer*, 382 Ill. 393, 399 (1943); *Welsh v. Jakstas*, 401 Ill. 288, 299 (1948); *West Bend Mutual Insurance Co.*, 2015 IL App (2d) 140441, ¶ 24. We therefore find the IUAA does not require a *signed* written agreement.

¶ 19 Here, we have already found that the agreement was based on the terms of the written, albeit unsigned, engagement letters sent by plaintiff. It is undisputed that the engagement letters contained an express arbitration clause. Thus, if we find, as we do here, that the terms of the agreement were consistent with the engagement letters, then we must find that the arbitration agreement contained therein was also agreed.

¶ 20 Additionally, defendant persists that the arbitration agreement was unconscionable because it was vague, one-sided, buried in the boilerplate language of the agreement, never explained to him by the attorney, and waived his right to a jury. Under Illinois law, an arbitration clause is unenforceable as unconscionable when it is procedurally unconscionable, substantively unconscionable, or a combination of both. The Illinois Supreme Court definitively established in *Razor v. Hyundai Motor Am.*, 222 Ill. 2d 75 (2006) and *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1 (2006) that a finding of unconscionability does not require both elements to be present simultaneously — either type, standing alone, can suffice, though in practice courts often find that

some degree of both is present. Procedural unconscionability focuses on the process of contract formation and whether a party had a meaningful opportunity to understand and agree to the arbitration term. Substantive unconscionability focuses on whether the terms themselves are so one-sided, oppressive, or cost-prohibitive as to be commercially unreasonable. The party challenging the arbitration clause bears the burden of proof *Hubbert v. Dell Corp.*, 359 Ill. App. 3d 976 (2005). Unconscionability is a question of law reviewed de novo *Razor v. Hyundai Motor Am.*, 222 Ill. 2d 75, (2006).

¶ 21 We do not find the agreement herein to be unconscionable, especially where defendant received the emails and for many years made no attempt to dispute, get clarity, or understand the provisions contained therein. Instead, he continued to accept and pay for legal services pursuant to the agreement, and apparently ignored the remainder of the agreement including the arbitration clause. Further, the arbitration clause was sufficiently specific as to who would conduct the arbitration (JAMS), applied equally to both parties, and advised defendant to consult independent counsel to “consider whether arbitration is acceptable to you.” As such, we find that the agreement was not unconscionable.

¶ 22 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 23 Affirmed.