2014 IL App (2d) 140227-U
No. 2-14-0227
Order filed April 23, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JANA SWANSON and TYLER SIMPSON, Indiv. and on Behalf of All Others Similarly Situated,	)	Appeal from the Circuit Court of Kane County.
Plaintiffs-Appellants,	)	
v.	)	No. 13-L-482
U-HAUL INTERNATIONAL, INC. and U-HAUL CO. OF ILLINOIS, INC.,	)	Honorable Edward C. Schreiber,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting defendants' motion to compel arbitration, where there was a valid arbitration agreement in each plaintiff's rental contract. Affirmed.

¶ 2 Plaintiffs, Jana Swanson and Tyler Simpson, separately rented vehicles from defendants, U-Haul International, Inc., and U-Haul Co. of Illinois, Inc. (collectively "U-Haul"). Subsequently, plaintiffs sued U-Haul, raising consumer fraud (815 ILCS 505/1 *et seq.* (West 2012)) and unjust enrichment claims. They argued that U-Haul's last-minute provision of a

gasoline return policy constituted an unenforceable and unconscionable adhesion contract. U-Haul moved to compel arbitration and stay the trial court proceedings. The trial court granted the motion. Plaintiffs appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010) (interlocutory appeals as of right; appeal from order granting injunction). We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Complaint

¶ 5 On September 24, 2013, plaintiffs filed a two-count class action complaint against U-Haul, raising claims alleging consumer fraud and unjust enrichment. They alleged that, within the past six years, U-Haul, one of whose primary businesses is truck rentals, had changed its gasoline return policy without adequate disclosure to its customers. The old policy required that a customer return a rental truck with a full tank of gasoline. The new policy requires a consumer to estimate the number of gallons used and return the truck with 1/2 tank of gasoline (or another barometer). In the event the customer did not comply with the new policy, U-Haul would charge the customer a $30 fine and $5 per gallon for any shortfall. Plaintiffs alleged that consumers had an incentive under the policy to guess on the conservative side and add enough fuel to avoid penalties; they also alleged that the policy was virtually impossible to meet. The policy, according to plaintiffs, was made for the sole purpose of adding to the advertised price without adequate disclosure to customers.

¶ 6 Plaintiffs further alleged that, when consumers call U-Haul to reserve a truck, they are quoted a price, but the terms and conditions of the gasoline return policy are not disclosed. Plaintiff Swanson rented a truck from U-Haul on September 6, 2013, and plaintiff Simpson, on September 12, 2013, reserved a vehicle for September 21, 2013. Plaintiffs alleged that they were not informed of the gasoline return policy until their arrival to rent the truck. At this point, they

argued, they were captive customers and had no choice but to accept the provision. U-Haul's policy, they argued, preys upon the lack of leverage the consumer possesses in the transaction.

¶ 7 Plaintiffs brought their claim as a class action.[1] 735 ILCS 5/2-801 (West 2012). Plaintiffs alleged in their consumer fraud count that U-Haul's policy was instituted for the sole purpose of charging consumers additional fees over and above the disclosed amount, thereby violating the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2012)) by: (1) knowingly switching from an empirical charge to a standard that is inherently subjective and virtually impossible to meet; (2) quoting (over the phone or online) a price that deliberately omits or otherwise conceals the predatory return policy; (3) tendering a contract at the last minute, whereby the consumer agrees to pay a penalty and $5 per gallon for any fuel less than the subjective measure, while knowing that the target is virtually impossible to meet and that consumers will endeavor to exceed the standard in order to avoid a fine and penalties; and (4) engaging in a deceptive practice in implementing the policy, where the vehicle is returned with excess fuel capacity when that transaction was never bargained for by the consumer (or, in the alternative, the consumer faces charges and fines in the event the arbitrary standard is not met).

¶ 8 In their unjust enrichment count, plaintiffs alleged that the contract "foisted upon" them was void because it is an adhesion contract in that they had no choice but to accept the last-

[1] They proposed the following class:

> "All persons who were residents of the State of Illinois who rented trucks or moving vehicles from Defendant U-HAUL OF ILLINOIS, INC. for the use in intrastate commerce within the State of Illinois who were subject to the U-Haul policy of returning rental vehicles under its addendum to the contract."

minute terms or lose a substantial amount of money invested in the pre-planned move. Plaintiffs further asserted that U-Haul knew when it instituted the new gasoline policy that consumers would be in no position to contest the tenuous return policy, would fill the tank in excess of the required amount to ensure they complied with the policy, and U-Haul has obtained excess benefit from the policy to the consumer's detriment.

¶ 9 Plaintiffs attached to their complaint a copy of the "Doc Holder"/contract addendum, which the customer receives at pickup. A section of the document contains the following language: "RENTAL CONTRACT ADDENDUM, DOCUMENT HOLDER, Additional Terms and Conditions for EQUIPMENT Rental, Place Rental Contract documents in this holder & keep available throughout your move." Below this language, the document sets forth, *inter alia*, the damage policy, cleaning policy, after-hours drop-off policy, and, as relevant here, the gasoline return policy (called the "EZ-FUEL AGREEMENT"). The policy is described in the document as follows: "Customer must return Truck with fuel and with the same fuel-gauge reading as indicated on the Rental Contract or pay fuel charges and a service fee as shown and agreed to on the Rental Contract."[2]

¶ 10 Plaintiffs also attached to their complaint a "U-HAUL EQUIPMENT CONTRACT" for Swanson that appears to have been generated *after* she returned her rental truck and reflects that a credit card authorization was processed. The document does not mention the Arbitration Agreement.

¶ 11 B. Motion to Compel

[2] The after-hours drop-off policy also contains a paragraph referencing the gasoline return policy: "Return vehicle with the same fuel level as indicated on rental contract or we will calculate and charge for missing fuel per contract terms."

¶ 12 U-Haul moved to compel arbitration and stay the trial court proceedings, arguing that plaintiffs' claims must be arbitrated pursuant to the terms of their rental contracts, including the U-Haul Arbitration Agreement. 735 ILCS 5/2-619 (West 2012). U-Haul sought to enforce the U-Haul Arbitration Agreement (pursuant to the Federal Arbitration Act (FAA) (9 U.S.C. § 1 *et seq.* (2012))) "provided to Plaintiffs, incorporated by reference in Plaintiffs' U-Haul Rental Contracts, and expressly agreed to by Plaintiffs." U-Haul argued that both plaintiffs had "ample" notice of its Arbitration Agreement before they executed their rental contracts, as well as multiple opportunities to review the terms of the Arbitration Agreement. The Arbitration Agreement provides that all claims relating to a rental or purchase from U-Haul shall be submitted to binding arbitration and that they may be brought only in an individual capacity and must proceed on an individual, non-class, and non-representative basis.

¶ 13 1. Swanson

¶ 14 Specifically, U-Haul alleged that its customers can rent moving equipment through either company-owned centers or through dealers who have a contractual relationship that permits them to rent U-Haul moving equipment. On September 6, 2013, plaintiff Swanson rented a U-Haul truck from a U-Haul dealer, ACL Storage LLC, in Elgin.

¶ 15 In her (first) affidavit (attached to U-Haul's motion), Stephanie Wells, the property manager at ACL, averred that she provided the rental contract to Swanson when she visited ACL on September 6, 2013, and before she took possession of the truck. According to Wells, she took Swanson's personal information and rental choices and electronically prepared the rental contract. She further averred that she printed the contract and reviewed the hard copy with Swanson. Swanson then signed the contract, and "I provided her with a copy of both her Rental Contract and the U-Haul Rental Contract Addendum/Document Holder ('Doc Holder'), before

she took possession of the U-Haul rental truck." Wells further averred that, if Swanson did not agree to the rental contract's terms, she could have advised U-Haul personnel and her contract would have been voided and she would have immediately been provided with a full refund.

¶ 16 Attached to Wells' affidavit was a more complete copy of the Doc Holder document than that attached to plaintiffs' complaint. The document contains a section entitled: "BINDING ARBITRATION OF DISPUTES." That section states, in part, that "You (the Customer) and Company agree to have all disputes, controversies, actions or claims, and specifically including any personal injury or tort actions or claims *** arising directly or indirectly from the Rental Agreement, decided and settled by an independent and neutral arbitrator in binding arbitration." (The foregoing is in bold type in the document.) Further, it provides "You hereby acknowledge that the Rental Agreement is between you, the Customer, and Company. You acknowledge and agree that this Rental Agreement shall be governed by the Federal Arbitration Act. You acknowledge and agree that the Rental Agreement consists of all the terms and conditions set forth in the Rental Contract and Rental Contract Addendum Document Holder." Finally, the arbitration agreement also provides that no claims may be brought as class actions.

¶ 17 Also attached to U-Haul's motion is a copy of Swanson's check-in document (a U-Haul computer printout) that contains a signature line for her. The check-in document lists the estimated total charges for Swanson's rental and contains the following language: "I agree to verify my truck's fuel level is 1/2 before leaving the premises. I agree to return this truck with this amount of fuel or pay a $30.00 fueling fee and minimum of $5.00 per gallon for fuel used. U-Haul does not reimburse if this truck is returned with more fuel than when it was dispatched. U-Haul pays for oil (save receipts)." It also states "I agree to submit all claims against U-Haul in accordance with the U-Haul Arbitration Agreement, incorporated by reference, and available at

uhaul.com/arbitration or from your local U-Haul representative." The document does not contain Swanson's signature.

¶ 18 2. Simpson

¶ 19 After reserving his rentals (a truck and furniture dolly) on U-Haul's website on September 12, 2013, plaintiff Simpson, on September 21, 2013, visited a company-owned center in Aurora to sign his contract and pick up his equipment. U-Haul alleged that Simpson spoke with a customer service representative at the center, who took his personal information and rental choices and electronically prepared a rental contract. The representative then directed Simpson to U-Haul's Ingenico machine (payment machine) to complete his rental contract. Simpson had to click through several screens on the payment machine in order to arrive at the final signature screen on which was displayed a "See Terms" button. According to U-Haul, "[i]f he clicked on the button to view the terms of his contract, he would have seen the 'U-Haul Arbitration Agreement' in its entirety." After reviewing the terms of the contract, "including the Arbitration Agreement," Simpson signed the electronic screen and clicked the "Accept" button, which transferred his signature onto the hard copy rental contract (check-in document) that he then received. Before taking possession of his equipment, Simpson received the Doc Holder from the representative, which also referenced the Arbitration Agreement.

¶ 20 U-Haul attached to its motion Tamara Primavera's affidavit. Primavera, a U-Haul Co. of Illinois, Inc., employee, worked at the company's Aurora office and, on September 21, 2013, assisted Simpson with his rental. She averred that she electronically prepared a rental contract with the information that Simpson provided to her. Next, she directed Simpson to the Ingenico machine to "complete" the rental contract. "At this time he had the opportunity to review the terms and conditions of the contract, including the full U-Haul Arbitration Agreement; sign the

electronic screen indicating his acceptance of all terms; and click the 'Accept' button." When he clicked to accept the terms, Simpson's signature was transferred onto a hard copy of the rental contract, which he received. (The contract is attached to her affidavit, as are printouts of the screens of the payment machine "Simpson would have viewed on September 21, 2013.") Primavera further averred that she also provided Simpson with the Doc Holder. Finally, Primavera stated that, if Simpson did not agree to the terms of the rental contract and/or Doc Holder, he could have advised her or any other representative and the contract would have been voided with a full refund. Attached to Primavera's affidavit was a copy of Simpson's rental contract (*i.e.*, check-in document) containing his transferred signature. Above his signature, the contract states: "I agree to submit all claims against U-Haul in accordance with the U-Haul Arbitration Agreement, incorporated by reference, and available at *uhaul.com/arbitration* or from your local U-Haul representative." As relevant to the gasoline return policy, the contract states: "I agree to verify my truck's fuel level is 1/2 before leaving the premises. I agree to return this truck with this amount of fuel or pay a $30.00 fueling fee and a minimum of $5.00 per gallon for fuel used. U-Haul does not reimburse if this truck is returned with more fuel than when it was dispatched." Simpson's Doc Holder, also attached to Primavera's affidavit and somewhat different than Swanson's Doc Holder, notifies a customer who purchases SafeMove coverage, which Simpson apparently purchased (although it is not entirely clear he did so),[3] that "[b]y purchasing Super Safemove/Safemove Plus coverage you agree to the U-Haul Arbitration Agreement in the result of any dispute between You and the Company. The U-Haul Arbitration Agreement is available at www.uhaul.com/arbitration or from your local U-Haul rental center." The computer screen printouts reflect that, after a customer swipes his or her credit card and pays

[3] His contract specifies under "Coverage" a $14.00 charge for "SafeMove."

for the transaction, another screen appears, entitled "Fuel Level" and states: "I agree to return this truck with this amount of fuel [a gasoline gauge above the image has a marker at 3/4-tank level] or pay a $30.00 fueling fee and a minimum of $5.00 per gallon for fuel used." Also contained on the screen is an "Accept" button. The next screen contains, *inter alia*, the payment card's expiration date, the transaction's authorization code, a button entitled "See Terms", and the following statement over the signature line: "By clicking Accept, I agree to the terms and conditions of this Rental Contract and Rental Contract Addendum. [Name] please sign below." Next to the signature line is an "Accept" button. If the customer clicks on the "See Terms" button, they can read, *inter alia*, the Arbitration Agreement.

¶ 21 C. Subsequent Proceedings

¶ 22 Plaintiffs moved to strike portions of U-Haul's affidavits (Ill. S. Ct. R. 191 (eff. Jan. 4, 2013)). They targeted nearly identical language contained in paragraph nine of each affidavit. Wells' affidavit states:

> "If Ms. Swanson did not agree to the terms in the Rental Contract, and/or the terms in the Doc Holder that were incorporated by reference into her Rental Contract, then she could have advised me or any other customer service representative that she no longer wanted to rent the subject U-Haul truck[ ], and the Rental Contract would have been voided with a full refund provided immediately."

Similarly, Primavera's affidavit states:

> "If Tyler Simpson did not agree to the terms in the Rental Contract and/or Rental Contract Addendum that he was provided, he could have advised me or any other customer service representative that he no longer wanted to rent the subject U-Haul truck

and furniture dolly, and the Rental Contract would have been voided with a full refund provided immediately."

¶ 23 Plaintiffs argued that the foregoing was self-serving, conclusory, and unsupported by personal knowledge. They also argued that the statements lacked foundation and were inherently speculative, containing the words "if" and "could." Thus, the statements were inadmissible and should be stricken. Plaintiffs asserted that the statement went to the heart of the issue: if plaintiffs could have rejected the "last-second predatory terms foisted upon them" by U-Haul, "the situation would be different." Plaintiffs had no alternative. U-Haul responded that the affiants' statements were based on personal knowledge gained in the course of their employment and that the words "if" and "could" did not render the affidavits inherently speculative. Plaintiffs apparently never sought a ruling on this motion.

¶ 24 In response to U-Haul's motion to compel arbitration, plaintiffs argued that the gasoline policy was not part of the Arbitration Agreement. Plaintiffs argued that there are two separate, but related, phases to the contract: "While the arbitration agreement used by U-Haul may very well be enforceable for those issues which are disclosed, Plaintiffs submit that a consumer cannot possibly agree to arbitrate an issue which the consumer is not aware of." They urged that an undisclosed term cannot be subject to arbitration because terms disclosed after payment has been tendered cannot be bargained for. There is also no consideration for the gasoline policy, therefore, the arbitration clause is unenforceable as to the policy. Plaintiffs also complained that U-Haul never produced a signed contract for Swanson and that Swanson was never given the agreement because the printer was broken. They concluded: "The issue in this case is not whether the U-Haul contract has an arbitration agreement. *It does.* The issue is whether U-

Haul's policy as to the refilling of gasoline is actually part of that contract. Plaintiffs submit it is not." (Emphasis added.)

¶ 25 U-Haul filed a supplemental affidavit by Wells (in support of its motion to compel arbitration). In that affidavit, Wells averred that she was unable to locate a signed copy of the rental agreement for Swanson, but that it is her regular business practice to provide a signed copy of the contract to U-Haul renters, along with the Doc Holder, before they take possession of the rental. Attached to Wells's supplemental affidavit was a copy of the Doc Holder that would have been provided to Swanson. The unsigned contract states above the signature line: "I agree to submit all claims against U-Haul in accordance with the U-Haul Arbitration Agreement, incorporated by reference, and available at *uhaul.com/arbitration* or from your local U-Haul representative." It also states: "I acknowledge that I have received and agree to the terms and conditions of this Rental Contract and the Rental Contract Addendum [*i.e.*, Doc Holder]."

¶ 26 Plaintiffs again objected to the supplemental affidavit, arguing that it was filed without leave of court and violated Rule 191 in that it contained unsupported conclusions and lacked foundation. They noted that Wells did not state that she remembered Swanson or witnessed Swanson execute a contract; she merely averred as to her custom and policy. Plaintiffs urged that Wells's conclusion that Swanson executed the rental contract be stricken. Plaintiffs also argued that Wells's statements that her custom and practice was to print the contract and have a customer review and execute the agreement was contrary to U-Haul's assertion in its motion that contract review and signature execution are done on computer (as to plaintiff Simpson). They also complained that U-Haul produced no signed contract for Simpson and only a transferred signature for Swanson. (They did contend that both plaintiffs *rented* a truck from U-Haul, but maintained that neither plaintiff entered into any *written arbitration agreement* because U-Haul

produced no signed contracts with plaintiffs' signatures, other than Simpson's transferred signature.)

¶ 27 D. Trial Court's Ruling

¶ 28 On February 4, 2014, following hearing, the trial court granted U-Haul's motion to compel arbitration. It found that, notwithstanding the fact that Swanson's signed contract could not be located, Swanson had a valid agreement to arbitrate "for the reasons stated on record." As to Simpson, the court found that she also had a valid agreement to arbitrate all disputes with respect to the U-Haul contract. The court denied plaintiffs' request to file an amended complaint and further noted that the matter was certified for interlocutory appeal pursuant to Rule 307(a)(1). During the hearing, the court noted that:

> "[p]laintiffs may very well have a cause of action and it may be that the gas policy is an unconscionable or at least unenforceable modification, however, that alone doesn't nullify the arbitration provision. The plaintiffs don't allege that the arbitration agreement itself is was unconscionable, just that the modification at the last moment was unenforceable. *** [F]or the most part, the plaintiff[s] do[ ] not dispute the validity of this arbitration agreement."

The court noted Wells's initial affidavit, which stated that Swanson was provided a contract with the Arbitration Agreement and that she signed it. In her supplemental affidavit, Wells further averred as to her business practices. The court also noted that U-Haul submitted Primavera's affidavit as to Simpson, which contained similar statements. The court found that plaintiffs filed no counter-affidavits to either Wells's or Primavera's affidavits. Thus, it found that the uncontradicted evidence showed that plaintiffs were each provided a contract that contained a notice of the Arbitration Agreement. Addressing plaintiffs' allegations that the contracts were

not signed, the court determined this was of no import because there was no dispute that plaintiffs paid for their rentals, possessed a contract, and accepted the trucks. Accordingly, the court found that there was a valid arbitration agreement, requiring that all claims relating to the rentals (including the current dispute) be submitted to binding arbitration.

¶ 29 II. ANALYSIS

¶ 30 We have jurisdiction over this appeal pursuant to Rule 307(a)(1). "[I]n an appeal from an interlocutory order granting or denying a motion to compel arbitration, the only issue before the reviewing court is whether there was a showing sufficient to sustain the order of the trial court granting or denying the motion." *Travis v. American Manufacturers Mutual Insurance Co.*, 335 Ill. App. 3d 1171, 1174 (2002) (trial court's determination that an insurance contract contained a mandatory arbitration clause was a determination made as a matter of law). We review *de novo* the trial court's order granting U-Haul's motion to compel arbitration. *Id.* at 1175.

¶ 31 A. Existence of an Arbitration Agreement

¶ 32 Plaintiffs argue first that there was no valid arbitration agreement because U-Haul has not produced any valid written contract for either plaintiff. They primarily challenge U-Haul's affidavits, arguing they violate Rule 191 because they consist of conclusory statements instead of facts. We reject this argument.

¶ 33 Rule 191(a) states, in relevant part, that affidavits:

> "shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show

that the affiant, if sworn as a witness, can testify competently thereto." Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013).

¶ 34 Well-alleged facts within an affidavit submitted in connection with a proceeding specified in Rule 191, such as one pursuant to section 2-619 of the Code as was filed here, must be taken as true when they are not contradicted by counter-affidavit. *Marquette National Bank v. B.J. Dodge Fiat, Inc.*, 131 Ill. App. 3d 356, 362 (1985). This remains true "notwithstanding the existence of contrary unsupported allegations in the adverse party's pleadings." *Denton Enterprises, Inc. v. Illinois State Toll Highway Authority*, 77 Ill. App. 3d 495, 507 (1979).

¶ 35 Plaintiffs argue that Wells's affidavit does not state that she remembered Swanson and/or witnessed her execute a contract. Thus, Wells's statement that Swanson executed the rental contract should have been stricken under Rule 191. See *Geary v. Telular Corp.*, 341 Ill. App. 3d 694, 699 (2003) ("Unsupported assertions, opinions, and self-serving or conclusory statements do not comply with" rule).

¶ 36 In her supplemental affidavit, Wells averred that she provided the rental contract to Swanson on September 6, 2013. She further averred that her regular business practice is to obtain and input the necessary information from a customer and print out the rental contract to review with the customer. She explained that the customer signs the paper copy and that she then provides the customer with a copy of both the signed rental contract and the Doc Holder/addendum. Wells averred that she employed her regular business practices when she rented the truck to Swanson. She identified an unsigned copy of the rental contract as a true and correct copy of the document that Swanson executed. Wells averred that she retrieved the unsigned copy from U-Haul's electronic records and that, possibly due to a filing error, she could not locate the signed paper copy of Swanson's contract that she normally retains. Wells also

identified a true and correct copy of the Doc Holder/addendum given to Swanson, which also set forth the terms of the arbitration agreement.

¶ 37 We reject plaintiffs' argument that Wells had no personal knowledge of Swanson and that she did not witness Swanson sign the rental contract. Wells's affidavit states that she had personal knowledge of the matters stated in her affidavit and that she was "the individual who provided the U-Haul Truck Rental Contract to Jana Swanson on September 6, 2013." Further, she averred that: (1) her regular business practice is to print the contract; (2) the renter then signs the contract; and (3) she followed her regular business practices while renting to Swanson. Wells also stated that she voids a contract if a customer changes her mind or disagrees with its terms or conditions; however, that circumstance did not present itself during Wells' interaction with Swanson.[4] Wells attached to her affidavit a copy of the check-in contract, which stated: "I agree to submit all claims against U-Haul in accordance with the U-Haul Arbitration Agreement, incorporated by reference, and available at *uhaul.com/arbitration* or from your local U-Haul representative."

¶ 38 We agree that Wells's affidavit is not an example of flawless drafting and that, ideally, it could have contained more specific statements. However, as U-Haul notes, plaintiffs themselves provided copies of the rental contracts that U-Haul emailed to both plaintiffs, corroborating that usual business practices were followed. More critically, plaintiffs submitted no counter-affidavits or other evidence to contradict U-Haul's affidavits. Where an opposing party fails to file a counteraffidavit, the statements in the affidavits submitted by the other party stand as admitted. *Crichton v. Golden Rule Insurance Co.*, 358 Ill. App. 3d 1137, 1147 (2005). Plaintiffs

[4] We also note that plaintiffs never obtained a ruling from the trial court on their motion to strike portions (paragraphs nine) of Wells's and Primavera's affidavits.

assert that, after they were notified of Wells's supplemental affidavit, they had only one day to file any pleading with the court before the scheduled hearing on U-Haul's motion and that Swanson was out of town. This point is not well-taken. Plaintiffs could have presented this information to the court. They chose not to do so, and, therefore, the issue cannot be resolved in their favor.

¶ 39 Plaintiffs also complain that U-Haul has produced no signed contract for Simpson other than the one that was electronically transferred from his credit card payment onto a paper contract form. Without citing to any authority, they assert that there is no binding contract as to Simpson. Illinois Supreme Court Rule 341(e)(7) provides that a litigant's brief must contain citations to the relevant authority supporting the argument on appeal. Ill. S. Ct. R. 341(e)(7) (eff. Feb. 6, 2013). "A court of review is entitled to have the issues clearly defined and to be cited pertinent authority. A point not argued or supported by citation to relevant authority fails to satisfy the requirements of Rule 341(e)(7)." *Canteen Corp. v. Department of Revenue*, 123 Ill. 2d 95, 111-12 (1988). This point is forfeited. However, forfeiture aside, we note that plaintiffs do not contest that they *each* rented a truck from U-Haul *after* they saw the contract. Plaintiffs contend the only authorization they granted U-Haul were estimated payments to their respective credit cards and the later emails to both of them contain no signatures from them. Electronic signatures, in and of themselves, generally satisfy any signature requirement. See 5 ILCS 175/5-120 (West 2012) ("An electronic signature may be proved in any manner, including by showing that a procedure existed by which a party must of necessity have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of such party in order to proceed further with a transaction."). "Included in the formation of a valid contract are offer and acceptance, consideration, and definite and certain terms." *Van Der Molen v. Washington*

Mutual Finance, Inc., 359 Ill. App. 3d 813, 823 (2005). Generally, one of the acts forming the execution of a written contract is its signing. *Hedlund & Hanley, LLC v. Board of Trustees of Community College District No. 508*, 376 Ill. App. 3d 200, 206 (2007). Nevertheless, "a party named in a contract may, by his acts and conduct, indicate his assent to its terms and become bound by its provisions even though he has not signed it." *Landmark Properties, Inc. v. Architects International-Chicago*, 172 Ill. App. 3d 379, 383 (1988). "Under Illinois contract law, an acceptance requiring any modification or change in terms constitutes a rejection of the original offer and becomes a counteroffer that must be accepted by the original offeror before a valid contract is formed." *Finnin v. Bob Lindsay, Inc.*, 366 Ill. App. 3d 546, 548 (2006).

¶ 40 Here, there is no evidence that showed that plaintiffs objected to the terms of U-Haul's contracts and no counteraffidavits stating that the transactions occurred in a manner that differed from Wells' and Primavera's regular business practices. Again, it is undisputed that both plaintiffs rented trucks from U-Haul *after* documents containing the arbitration agreement were completed and presented (or made available) to them, which shows their acceptance of, as relevant here, the Arbitration Agreement. Plaintiffs do not dispute that they *received* the check-in documents; they only challenge their validity because the documents bear no handwritten signature. This argument fails.

¶ 41 In summary, the trial court did not err in granting U-Haul's motion to compel arbitration on the basis of its finding that there was a valid arbitration agreement in each plaintiff's rental contract.

¶ 42 B. Unconscionability

¶ 43 Next, plaintiffs argue that, even if they each entered into a valid and enforceable arbitration agreement with U-Haul, the gasoline return policy is unconscionable. Plaintiffs

repeatedly reference U-Haul's gasoline return policy, arguing that it is invalid. That issue is not properly before this court, and we decline to address it. They also alternatively argue for the first time in their reply brief that the Arbitration Agreement is valid only if the parties have: (1) an agreement to arbitrate the dispute; and (2) "if the contract calling for arbitration is not invalid due to any legitimate contract defense." This argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued [in the opening brief] are waived and shall not be raised in the reply brief * * *."); *Franciscan Communities, Inc. v. Hamer*, 2012 IL App (2d) 110431, ¶ 19 ("[A]rguments may not be raised for the first time in reply briefs."). In their trial court pleadings, specifically, their response to U-Haul's motion to compel, plaintiffs focused on the gasoline return policy. They addressed the Arbitration Agreement only sporadically and did not raise the argument (raised here for the first time in their reply brief) that the Arbitration Agreement is essentially rendered *entirely* unenforceable because another contract provision, the gasoline return policy, is void. We decline to reach the merits of this alternative challenge to the Arbitration Agreement because it is forfeited.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

¶ 46 Affirmed.