

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT JEAN, et al.)	CASE NO. 1:04 CV 1904
)	
Plaintiffs,)	JUDGE CHRISTOPHER BOYKO
)	
v.)	
)	REPLY MEMORANDUM IN
THE STANLEY WORKS, et al.)	SUPPORT OF MOTION FOR
)	LEAVE TO FILE
Defendants.)	SUPPLEMENTAL EVIDENCE
)	IN OPPOSITION TO MOTION
)	TO COMPEL ARBITRATION

Defendant The Stanley Works’ (“Stanley”) opposition to Plaintiffs’ motion for leave to submit supplemental evidence is astounding. Stanley is in effect arguing that the Court should only rely on a partial evidentiary submission, and should ignore efforts by the opposing party to correct and supplement the evidence. Stanley is practically inviting this Court to commit error. More importantly, Stanley does not suggest how it would be prejudiced by having the Court consider evidence relating to unconscionability. Plaintiffs, on the other hand, would be greatly prejudiced if the Court only considers one-sided evidence against them. We note again that in several of the cases cited in the underlying motion, the Court granted leave *sua sponte*, after the motions had been fully briefed, for plaintiffs to submit evidence.

Stanley now states that “Stanley made no representation about whether the remaining 20 declaratory judgment plaintiffs did or did not sign the acknowledgement forms.” Stanley’s Opp. Memo at 3. The impression given by pages 2 and 3 of Stanley’s Reply Memorandum on the Motion to Dismiss and Compel Arbitration was that those 20

plaintiffs received documents at least 5 days ahead of time. Certain plaintiffs can rebut that suggestion, and should be allowed to submit such evidence.

Stanley states that it withheld “personal and confidential financial information pertaining to plaintiffs’ creditworthiness, which has nothing to do with unconscionability.” Stanley’s Memo at 2. On the contrary, whether plaintiffs were wealthy, and therefore “financially sophisticated,” or whether they were not goes to the heart of procedural unconscionability. Certain plaintiffs intend to submit declarations to clarify their background and sophistication.

Plaintiffs argued, and we still believe we are correct in doing so, that Stanley’s motion to compel arbitration was premature absent discovery on the issues of unconscionability. However, IF the Court is inclined to accept the partial evidence submitted by Stanley for the first time in its reply brief, then, in all fairness, leave should be granted to submit a complete record.

Respectfully submitted,

THE MAC TOOL LITIGATION GROUP

s/ Andre’ F. Toce

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CERTIFICATE OF SERVICE

The foregoing Motion for Leave to File Supplemental Evidence in Opposition to Motion to Compel Arbitration was filed electronically this 29th day of April, 2005.

Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

s/ Andre' F. Toce _____