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IN THE
COURT OF APPEALS OF INDIANA

Cliff Decker and
Wendy Decker, individually and on behalf of all others similarly situated,

Appellants-Plaintiffs,

v.

Star Financial Group, Inc.,

Appellee-Defendant.

April 20, 2022

Court of Appeals Case No. 21A-PL-2191

Appeal from the Allen Superior Court

The Honorable Craig J. Bobay, Judge

Trial Court Cause No. 02D02-2103-PL-116

Tavitas, Judge.

Case Summary

[1] Cliff Decker and Wendy Decker ("the Deckers"), individually and on behalf of all others similarly situated, brought a class action complaint against their bank, Star Financial Group, Inc. ("Star Financial"), for the allegedly improper assessment and collection of overdraft fees. The Deckers appeal the trial court's grant of a motion to compel arbitration filed by Star Financial. The arbitration provision was part of a modification of the Terms and Conditions of the account and was attached to the end of the Deckers' monthly statement, which was provided electronically. The Deckers contend, in part, that they did not receive reasonable notice of the addition of the arbitration provision, and reasonable notice was required by the Terms and Conditions. We conclude that the Deckers did not receive reasonable notice of the arbitration provision and, thus, the trial court erred by granting Star Financial's motion to compel arbitration. Accordingly, we reverse and remand.

Issue

[2] The Deckers raise several issues. We find one issue dispositive and restate the issue as whether Star Financial provided the Deckers with reasonable notice of the addition of an arbitration provision to the Terms and Conditions of the Deckers' account with Star Financial.

Facts

[3] Star Financial is the parent company of Star Financial Bank, and the Deckers had a checking account with Star Financial Bank. The Terms and Conditions of the account provided, in relevant part:

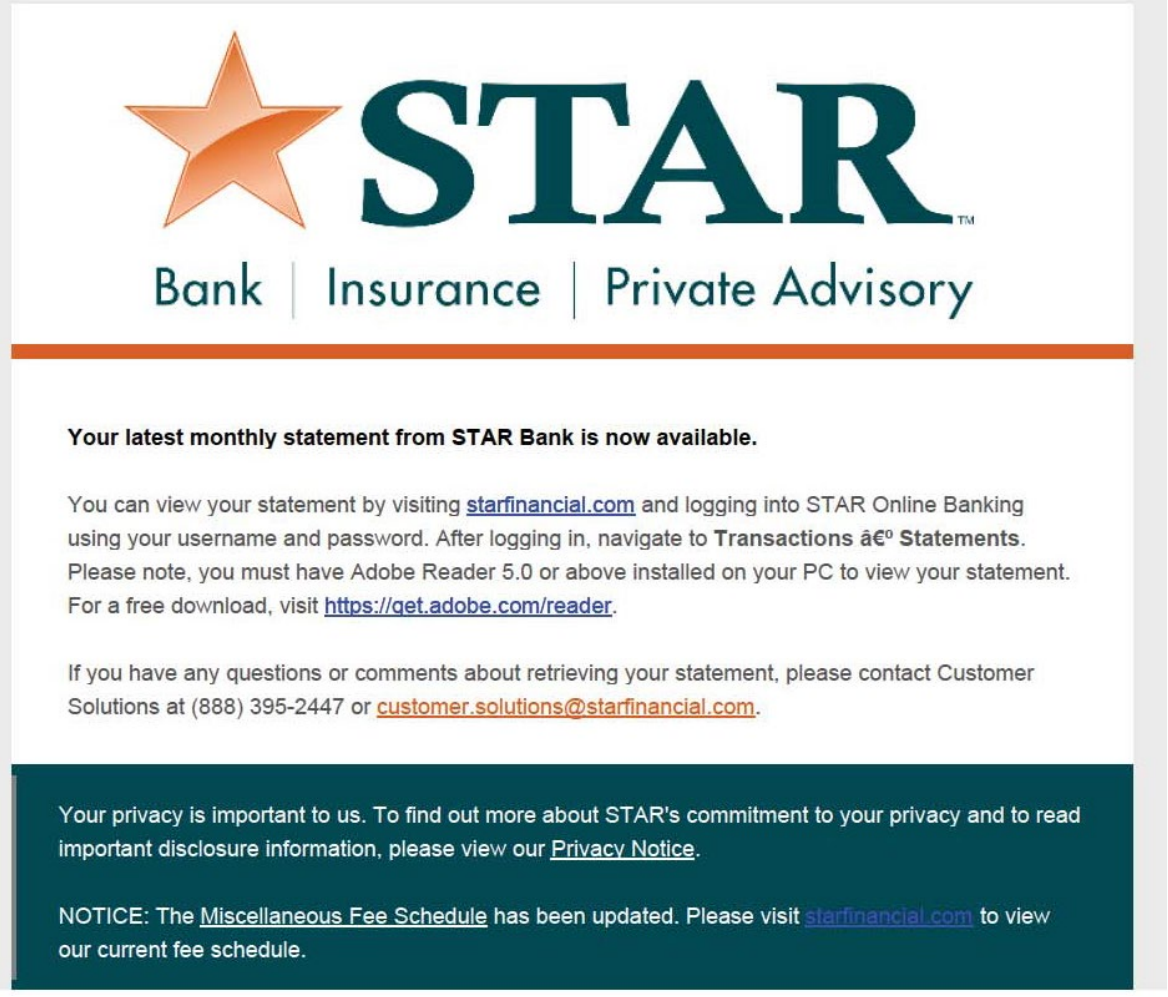
> **(2) Agreement.** This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us. . . .
>
> * * * * *
>
> **(10) Amendments and Termination.** We may change a term of this agreement. Rules governing changes in interest rates are provided separately in the Truth-in-Savings disclosure or in another document. *For other changes, we will give you reasonable notice* in writing or by any other method permitted by law. . . . *Reasonable notice depends on the circumstances* . . . . If we have notified you of a change in any term of your account and you continue to have your account after the effective date of the change, you have agreed to the new term(s).

Appellants' App. Vol. II pp. 53, 57 (emphasis added).

[4] On October 17, 2019, Star Financial assessed a $37.00 overdraft fee against the Deckers, and the Deckers allege that the overdraft fee was improper. In approximately June 2020, the Deckers' counsel contacted Star Financial's general counsel. They discussed Star Financial's overdraft fee practices, and the Deckers' counsel emailed Star Financial's general counsel examples of

complaints brought against other banks and credit unions for allegedly similar conduct.

[5] The Deckers are "e-statement customers, meaning they have directed [Star Financial] to send them their checking account statements and other notices and disclosures relating to the terms and conditions of their checking account via email." *Id.* at 86. On August 26, 2020, Star Financial sent the Deckers an email, which provided:


STAR™

Bank | Insurance | Private Advisory

Your latest monthly statement from STAR Bank is now available.

You can view your statement by visiting starfinancial.com and logging into STAR Online Banking using your username and password. After logging in, navigate to **Transactions â€º Statements**. Please note, you must have Adobe Reader 5.0 or above installed on your PC to view your statement. For a free download, visit https://get.adobe.com/reader.

If you have any questions or comments about retrieving your statement, please contact Customer Solutions at (888) 395-2447 or customer.solutions@starfinancial.com.

Your privacy is important to us. To find out more about STAR's commitment to your privacy and to read important disclosure information, please view our Privacy Notice.

NOTICE: The Miscellaneous Fee Schedule has been updated. Please visit starfinancial.com to view our current fee schedule.

Id. at 215, 221. Although the email included links to the updated Miscellaneous Fee Schedule and the Privacy Notice, the email did not mention changes to the account's Terms and Conditions.

[6] When the Deckers logged into their account as directed by the email, they would have found a fourteen-page monthly statement, which contained: (1) eleven pages of information on transactions for the account; (2) a page of images of the checks; and (3) the following Arbitration and No Class Action Clause Addendum ("Addendum") on pages thirteen and fourteen of the statement:

Please see an update to the terms and conditions of your account agreement with STAR Financial Bank.

ARBITRATION AND NO CLASS ACTION CLAUSE ADDENDUM TO THE TERMS AND CONDITIONS OF YOUR ACCOUNT AGREEMENT

PLEASE READ THIS ADDENDUM CAREFULLY: UNDER THIS ADDENDUM, YOU WAIVE YOUR RIGHTS TO TRY ANY CLAIMS COVERED BY ARBITRATION (AS DEFINED BELOW) IN COURT BEFORE A JUDGE OR JURY AND TO BRING OR PARTICIPATE IN ANY CLASS OR OTHER REPRESENTATIVE ACTION.

PURSUANT TO SECTION 10 OF YOUR ACCOUNT AGREEMENT (AND ANY PRIOR VERSION THEREOF) REGARDING REASONABLE NOTICE FOR ANY AMENDMENT TO YOUR ACCOUNT AGREEMENT, THIS ADDENDUM SHALL BE EFFECTIVE TEN (10) DAYS FROM THE DATE OF MAILING OR ELECTRONIC NOTIFICATION OF THIS ADDENDUM. IN ACCORDANCE WITH SECTION 10 OF YOUR ACCOUNT AGREEMENT, IF YOU STILL HAVE AN ACCOUNT WITH US AFTER THE EFFECTIVE DATE OF THIS ADDENDUM, YOU HAVE AGREED TO THE NEW TERM(S).

The following provisions apply to any claim, cause of action, proceeding, or any other dispute between you, on the one hand, and us, our respective parents, subsidiaries, affiliates, agents, employees, predecessors-in-interest, personal representatives, heirs and/or successors, and assigns, on the other hand, that are the subject of "Claims Covered by Arbitration" defined below (each a "Claim" defined below under the heading "Claims Covered by Arbitration"), including all questions of law or fact related thereto.

Agreement to arbitrate: Either you or us may elect in writing, and without the consent of the other, to exclusively arbitrate all Claims Covered by Arbitration. Notice by you to arbitrate shall be to: General Counsel, STAR Financial Bank, 127 W. Berry Street, Second Floor, Fort Wayne, IN 46802. Notice by us to arbitrate shall be to: the address of record you have with us.

Arbitration is a method of resolving disputes in front of one or more neutral individuals, instead of having a trial in court in front of a judge and/or jury.

Claims Covered by Arbitration: Claims subject to our agreement to arbitrate are all of the following: (1) Claims related to or arising out of your account Agreement, any prior or later versions of your account Agreement, and any changes to the terms of your account Agreement; (2) Claims related to or arising out of any aspect of any relationship between us that is governed by your account Agreement, whether based in contract, tort, statute, regulation, or any other legal theory; and (3) Claims that relate to the construction, scope, applicability, or enforceability of this arbitration provision. Claims include Claims that arose before we entered into your account Agreement, before your account Agreement was amended, and after termination of your account Agreement, after you become bound by this Addendum. Claims Covered by Arbitration shall be exclusively determined by arbitration.

Claims Not Covered by Arbitration: Claims subject to our agreement to arbitrate shall not include any Claim you file in a small claims court, so long as the Claim remains in small claims court and advances only an individual claim for relief; and any Claim not defined above under the heading "Claims Covered by Arbitration."

Commencing Arbitration: The arbitration forum shall be chosen by mutual agreement of you and us. The arbitrator must be a retired judge or active attorney with more than 10 years' experience. If we are unable to agree mutually on an arbitrator, then the party initiating arbitration must choose the following arbitration forum to administer the arbitration:

American Arbitration Association ("AAA")
1633 Broadway, 10th Floor

New York, NY 10019
www.adr.org
(212) 716-5800

If the chosen arbitration forum is for any reason unable to serve, then the parties may agree to a comparable substitute organization. If the parties are unable to agree, then a court of competent jurisdiction shall appoint a substitute organization.

Arbitration Procedure: The arbitration shall be decided by a single neutral arbitrator selected in accordance with the applicable forum rules or by mutual agreement of the parties, as described above. The arbitrator will decide the dispute in accordance with the terms of your account Agreement, the rules of the forum, and applicable substantive law, including the Federal Arbitration Act, and applicable statutes of limitation. The arbitrator shall honor claims of privilege recognized at law. The arbitrator may award damages or other relief (including injunctive relief) available to the claimant under applicable law, excluding punitive or exemplary damages. The arbitrator will not have the authority to award relief to, or against, any person or entity who is not a party to the arbitration. The arbitrator will take reasonable steps to protect customer account information and other proprietary or confidential information. Any documentary or other evidence exchanged by the parties before the arbitration hearing or at the arbitration hearing shall be treated as confidential and shall not be disclosed to any third party except as required by law. Any arbitration hearing shall take place in Fort Wayne, Indiana, unless you and us agree in writing to a different location or the arbitrator so orders. If all Claims are for $10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, without witnesses, and through a telephonic hearing.

At your or our request, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The arbitrator's award shall be final and binding, subject to judicial review only to the extent allowed under the Federal Arbitration Act. You or us may seek to have the award vacated or confirmed and entered as a judgment in any court having jurisdiction.

No Class Action or Joinder of Parties: You and us agree that no class action, private attorney general, or other representative claims may be pursued in arbitration (nor may such action be pursued in court if the Claim is subject to arbitration). Claims must be brought in an individual capacity and not as a class member or plaintiff in any purported class proceeding, nor shall any class member be joined to a purported class action proceeding by a plaintiff who is not subject to the terms of this Addendum. There shall be no right or authority for any Claims to be held on a class basis. Unless mutually agreed to by you and us, Claims of two or more persons may not be joined, consolidated, or otherwise brought together in the same arbitration (unless those persons are joint account owners or beneficiaries on your account and/or related accounts, or parties to a single transaction or related transaction). If this specific paragraph is determined by the arbitrator to be unenforceable, then this entire Addendum shall be null and void.

Arbitration Costs: Unless the applicable arbitration rules at the time of filing a Claim are more favorable to you, we will advance (i) all arbitration costs in an arbitration that we commence, and (ii) the first $1,500 in arbitration filing, administration, and arbitrator's fees in an arbitration that you commence. You and us are responsible for our own respective attorneys' fees and expenses.

Applicable Law: You and us agree that this provision and any resulting arbitration are governed by the Federal Arbitration Act. To the extent state law applies, the laws of the state governing your account relationship apply. No state statute pertaining to arbitration shall apply.

Severability: Except as this Addendum otherwise provides, if any part of this provision is deemed to be invalid or unenforceable by the arbitrator, that part will be severed from the remainder of this provision and the remainder of this provision will be enforced.

Id. at 100-01. The monthly statement did not mention the revised Terms and Conditions except for the inclusion of the Addendum at the end of the statement. The Deckers did not see or review the Addendum and continued to be customers of Star Financial.

[7] The Deckers filed a class action complaint against Star Financial on March 18, 2021, regarding the overdraft fees. In April 2021, Star Financial filed a motion to compel arbitration and to dismiss the Deckers' complaint. Star Financial argued that all of the Deckers' claims against Star Financial are "subject to mandatory individual arbitration pursuant to the parties' written agreement to arbitrate." *Id.* at 68. The Deckers filed a response and argued that the Deckers did not assent to the Addendum because: (1) the Terms and Conditions allows for "changes" but not "additions"; (2) the Addendum was made in bad faith or is unreasonable; and (3) the Deckers did not have "reasonable notice" of the Addendum. *Id.* at 112.

[8] After a hearing, the trial court granted Star Financial's motion to compel arbitration. The trial court found: (1) the word "change" in the Agreement permitted Star Financial to add the arbitration provisions; (2) the Addendum was clear and the Deckers accepted the terms of the Addendum by continuing to maintain their account with Star Financial; (3) the duty of good faith and fair dealing in the relationship between bank and checking account holder is recognized only where the alleged injury is fraud; and (4) Star Financial provided reasonable notice to the Deckers of the Addendum. Accordingly, the

trial court granted Star Financial's motion to compel arbitration and dismiss the Deckers' complaint.[1] The Deckers now appeal.

Analysis

[9] The Deckers appeal the trial court's grant of Star Financial's motion to compel arbitration. "A trial court's decision on a motion to compel arbitration is reviewed de novo." *Doe v. Carmel Operator, LLC*, 160 N.E.3d 518, 521 (Ind. 2021). Also, to the extent we must interpret the parties' agreements, we apply a de novo standard of review to questions of contract interpretation. *Lake Imaging, LLC v. Franciscan All., Inc.*, 182 N.E.3d 203 (Ind. 2022).

[10] The Addendum provides that it is governed by the Federal Arbitration Act ("FAA"). Our Supreme Court has held, however, that the FAA "applies only if the parties agree to arbitrate." *MPACT Const. Grp., LLC v. Superior Concrete Constructors, Inc.*, 802 N.E.2d 901, 904 (Ind. 2004). "State law contract principles apply to determine whether parties have agreed to arbitrate." *Earley v. Edward Jones & Co., LP*, 105 N.E.3d 1094, 1099 (Ind. Ct. App. 2018).

[11] "Both Indiana law and federal law recognize a strong public policy interest in favor of enforcing arbitration agreements." *Reitenour v. M/I Homes of Indiana, L.P.*, 176 N.E.3d 505, 510 (Ind. Ct. App. 2021). Arbitration agreements "can

[1] Although the Deckers filed a motion to certify the trial court's order for interlocutory appeal, the trial court noted that "it entered a final order in this cause on September 10, 2021. The case has been dismissed. The Order issued is not interlocutory, it is final." Appellants' App. Vol. III p. 38.

keep legal costs down, ensure parties' confidentiality, and provide a flexible alternative to the traditional court system." *Carmel Operator*, 160 N.E.3d at 520. "Therefore, if we are satisfied that the parties contracted to arbitrate their dispute, we will affirm the order compelling arbitration." *Reitenour*, 176 N.E.3d at 510. Under Indiana contract law, the party seeking to compel arbitration—here Star Financial—has the burden of demonstrating the existence of an enforceable arbitration agreement. *Progressive Se. Ins. Co. v. Empire Fire & Marine Ins. Co.*, 88 N.E.3d 188, 197 (Ind. Ct. App. 2017).

[12] In construing arbitration agreements, we resolve every doubt "in favor of arbitration, and the parties are bound to arbitrate all matters, not explicitly excluded, that reasonably fit within the language used." *Nat'l Wine & Spirits, Inc. v. Ernst & Young, LLP*, 976 N.E.2d 699, 706 (Ind. 2012), *cert. denied*, 569 U.S. 1018, 133 S. Ct. 2780 (2013). Our Supreme Court has held, however, that "imposing on parties a policy favoring arbitration before determining whether they agreed to arbitrate could frustrate the parties' intent and their freedom to contract." *MPACT Const. Grp.*, 802 N.E.2d at 906. Our courts, thus, recognize that arbitration is a matter of contract, and "a party cannot be required to submit to arbitration unless the party has agreed to do so." *Reitenour*, 176 N.E.3d at 510.

[13] We note that, in general, an arbitration agreement, like a typical contract, requires "offer, acceptance of the offer and consideration." *Reitenour*, 176 N.E.3d at 511. "If these elements are present, the parties are generally bound by the terms of the agreement." *Id.* "A mutual assent or a meeting of the

minds on all essential elements or terms must exist in order to form a binding contract." *DiMizio v. Romo*, 756 N.E.2d 1018, 1022 (Ind. Ct. App. 2001), *trans. denied*. "[A]ssent to those terms of a contract may be expressed by acts which manifest acceptance." *Id.* "If these elements are present, the parties are generally bound by the terms of the agreement." *Reitenour*, 176 N.E.3d at 511. "[A]rbitration agreements will not be extended by construction or implication." *Showboat Marina Casino P'ship v. Tonn & Blank Const.*, 790 N.E.2d 595, 598 (Ind. Ct. App. 2003).

[14] Star Financial attempted to modify the Terms and Conditions to add an arbitration provision. "[T]he modification of a contract, because it is also a contract, requires all of the requisite elements of a contract." *AM Gen. LLC v. Armour*, 46 N.E.3d 436, 443 (Ind. 2015). Thus, the Addendum to the Terms and Conditions is subject to the same scrutiny as any other modification of a contract. Our Courts have held that "the modification of a contract can be implied from the conduct of the parties." *SWL, L.L.C. v. NextGear Cap., Inc.*, 131 N.E.3d 746, 753 (Ind. Ct. App. 2019). Silence can, under certain circumstances, constitute acceptance. *See Mueller v. Karns*, 873 N.E.2d 652, 657-58 (Ind. Ct. App. 2007) (quoting Restatement (Second) of Contracts § 69(1)).[2]

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[2] The Restatement (Second) of Contracts § 69 provides:

> Where an offeree fails to reply to an offer, his silence and inaction operate as an acceptance in the following cases only:

[15] Here, the original Terms and Conditions entered into by the parties did not contain an arbitration provision, and there is no dispute that the Deckers agreed to the initial Terms and Conditions. Under the Terms and Conditions, Star Financial could "change a term of this agreement" but was required to give "*reasonable notice* in writing or by any other method permitted by law. . . ." Appellants' App. Vol. II p. 57 (emphasis added). The Terms and Conditions did not define "reasonable notice" and merely noted that what constitutes reasonable notice "depends on the circumstances." *Id.* Pursuant to those Terms and Conditions, if Star Financial notified the customer of a "change in any term" and the customer continued to have the account "after the effective date of the change," the customer "agreed to the new term(s)." *Id.* Accordingly, the question here is whether Star Financial gave the Deckers "reasonable notice" of the Addendum.

[16] "When, as here, the parties leave contract terms undefined, we apply Indiana common law to determine their meaning." *Secura Supreme Ins. Co. v. Johnson*, 51 N.E.3d 356, 360 (Ind. Ct. App. 2016). Although not controlling here, in the

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> (a) Where an offeree takes the benefit of offered services with reasonable opportunity to reject them and reason to know that they were offered with the expectation of compensation.
>
> (b) Where the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction, and the offeree in remaining silent and inactive intends to accept the offer.
>
> (c) Where because of previous dealings or otherwise, it is reasonable that the offeree should notify the offeror if he does not intend to accept.

due process context, we have held that in order to find that reasonable notice has been given:

> The notice must be reasonably calculated, under all the circumstances, to offer the interested parties an opportunity to present their objections. Such notice must reasonably convey the required information to the affected party, must afford a reasonable time for that party to respond, and is constitutionally adequate when the practicalities and peculiarities of the case are reasonably met.

Melton v. Ind. Athletic Trainers Bd., 156 N.E.3d 633, 658 (Ind. Ct. App. 2020) (internal citations and quotation omitted), *trans. denied*. Although we are not faced with a constitutional due process issue here, we find this language instructive. We conclude that the "reasonable notice" here must have been notice reasonably calculated to reach the intended audience.

[17] The Deckers received an email with a link to their regular monthly statement. The email noted links to the updated Miscellaneous Fee Schedule and the Privacy Notice but did not mention changes to the account's Terms and Conditions. After clicking the link and logging into their account, the Deckers would have received a fourteen-page statement, which included eleven pages of information on transactions for the account; a page of images of the checks written that month; and an Arbitration and No Class Action Clause Addendum on pages thirteen and fourteen. The beginning of the Addendum was in bold capital letters and noted that the Addendum would become effective in ten days if the customer still had an account with Star Financial at that time.

[18] The Deckers contend that the Addendum was "bur[ied]" at the "at the end of an account statement in an online portal—with no other notice whatsoever that it was located there and that action was required . . . ." Appellants' Br. p. 45. The Deckers acknowledge that "[p]arties can be bound by terms they choose not to read, but not by terms they have no reasonable notice even exist or require action or attention." *Id.* at 55.

[19] In support of their argument, the Deckers rely on *Gibbs v. Firefighters Cmty. Credit Union*, 177 N.E.3d 294, 296 (Ohio Ct. App. 2021), *appeal not allowed*, *reconsideration denied*, which also involved a customers' complaint against a credit union for allegedly overcharging on overdraft fees.[3] The credit union filed a motion to dismiss or stay pending arbitration. The arbitration provision had been sent to the customers in an email with the subject "We've updated our terms of services" and provided:

> Dear Valued Member,
>
> We're writing to let you know that we've updated our terms of service. These updates apply to all members and accounts at Firefighters Community Credit Union. We believe these updates will help us serve all of our members better. The changes in terms are attached to this email. We recommend that you familiarize yourself with these updated agreements. As you continue to use FFCCU for your banking needs, you agree to these updated terms. If you have any questions, please don't

[3] The Deckers also cite trial court decisions, which is inappropriate. *Millenium Club, Inc. v. Avila*, 809 N.E.2d 906, 912 n.5 (Ind. Ct. App. 2004*); Indiana Dep't of Nat. Res. v. United Mins., Inc.*, 686 N.E.2d 851, 857 n.1 (Ind. Ct. App. 1997), *trans. denied*. Accordingly, we do not rely upon or discuss those decisions.

> hesitate to contact us at * * *. We look forward to continuing to serve you and to help you meet your financial goals.

Gibbs, 177 N.E.3d at 296. The Notice of Change in Terms was attached to the email and included an arbitration and waiver of class action relief provision. The trial court concluded that no agreement to arbitrate existed.

[20] On appeal, the Ohio Court of Appeals agreed that the customers did not assent to the arbitration provision. The Court pointed out that the email "did not provide any indication that the changes to the account agreement" involved an arbitration provision. *Id.* at 299. The email "implied that all members already agreed to the updated terms" and "did not call attention to the arbitration provision or opt-out requirements." *Id.* "Simply put, clear notice was not provided for appellees to make an informed decision or to demonstrate they agreed to be bound by the arbitration provision." *Id.* Instead, "[t]he Plaintiffs were thus lulled into not giving a thought to the unilateral addition of the arbitration provision . . . ." *Id.*

[21] The Deckers also rely on *Kortum-Managhan v. Herbergers NBGL*, 204 P.3d 693, 699 (Mont. 2009), in which the Montana Supreme Court considered the modification of the terms and conditions of a credit card account to add an arbitration provision. The modification was included on a "bill stuffer," which was mailed with the customer's monthly statement. The Court emphasized that arbitration clauses, by their very nature, waive a consumer's fundamental state constitutional "rights to trial by jury, access to the courts, due process of law and equal protection of the laws" and a waiver of the fundamental rights

"must be proved to have been made voluntarily, knowingly and intelligently." *Kortum-Managhan*, 204 P.3d at 699. The Court concluded that the "bill stuffer" was "ambiguous and misleading because it seeks to waive the cardholder's fundamental constitutional rights with a clause blended into the end of a document when bold type, capital letters and larger fonts are used to draw attention to other clauses." *Id.* at 700. The Court held that the use of the "bill stuffer" was "sneaky and unfair." *Id.* Thus, the Court concluded that "making a change in a credit agreement by way of a "bill stuffer" does not provide sufficient notice to the consumer on which acceptance of the unilateral change to a contract can be expressly or implicitly found." *Id.*

[22] Finally, the Deckers rely on *Sgouros v. TransUnion Corp.*, 817 F.3d 1029 (7th Cir. 2016). In *Sgouros*, the Seventh Circuit considered whether a customer of a credit reporting agency was required to arbitrate his dispute with the credit reporting agency. The arbitration provision was in a hyperlinked Service Agreement, but the language of the website was "actively mislead[ing]." *Sgouros*, 817 F.3d at 1035. After the Service Agreement hyperlink, the website provided:

> You understand that by clicking on the "I Accept & Continue to Step 3" button below, you are providing "written instructions" to TransUnion Interactive, Inc. authorizing TransUnion Interactive, Inc. to obtain information from your personal credit profile from Experian, Equifax and/or TransUnion. You authorize TransUnion Interactive, Inc. to obtain such information solely to confirm your identity and display your credit data to you.

Id. at 1033. The paragraph did not indicate that clicking "I Accept & Continue to Step 3" also bound the customer to an arbitration agreement "buried at page 8 of the full, 10-page printable version of the Service Agreement." *Id.* The Seventh Circuit concluded that the District Court properly found no agreement to arbitrate.

[23] In response to the Deckers' arguments, Star Financial contends that the cases cited by the Deckers are distinguishable and the inclusion of the Addendum in the normal monthly statement was proper because the statement "would surely [be] examine[d] in a close and timely manner." Appellee's Br. p. 28. According to Star Financial, inclusion in the monthly statement was better "than a standalone email or mailer that might be mistaken for junk mail or a marketing piece." *Id.* Star Financial also points out that the arbitration provision was in bold font with capital letters.

[24] We find the Deckers' arguments persuasive. The Terms and Conditions, which were created by Star Financial, required it to provide customers with "reasonable notice" of a change to the Terms and Conditions. Star Financial provided notice to the Deckers by sending them an email with a link to the Deckers' monthly statement. We note that customers do not have a deadline to review their monthly statements for a bank account, and a monthly statement is not a contract. Although the email itself included links to an updated Miscellaneous Fee Schedule and the Privacy Notice, the email did not mention time-sensitive changes to the account's Terms and Conditions or the addition of an arbitration provision. Moreover, when the Deckers would have clicked the

link to their monthly statement and logged in, the first page of the monthly statement did not mention changes to the account's Terms and Conditions or the addition of an arbitration provision. Rather, the arbitration provision was placed on pages thirteen and fourteen of the monthly statement. The Deckers would have found the arbitration provision only by scrolling to the end of the monthly statement, which they may or may not have reviewed within ten days. Nothing in the email or monthly statement alerted the Deckers that a time-sensitive modification to the Terms and Conditions, which included an arbitration provision, was included at the end of the monthly statement.

[25] We conclude that Star Financial failed to provide the Deckers with reasonable notice of the arbitration provision. Placing the Addendum, which contained the arbitration provision and time-sensitive opt out provision, at the end of the routine monthly statement with no notice to the Deckers that something was unusual about the monthly statement was not reasonably calculated to provide the Deckers with notice. Under these circumstances, we conclude that the Deckers were not provided with reasonable notice, which was required by the Terms and Conditions. Accordingly, the Deckers did not assent to the arbitration provision. The trial court, thus, erred by granting Star Financial's motion to compel.

Conclusion

[26] Star Financial failed to provide the Deckers with reasonable notice of the addition of the arbitration provision to the Terms and Conditions.

Accordingly, the trial court erred by granting Star Financial's motion to compel arbitration, and we reverse and remand.

[27] Reversed and remanded.

Bradford, C.J., concurs.

Crone, J., dissents with opinion.

Cliff Decker and
Wendy Decker, individually and on behalf of all others similarly situated,
Appellants-Plaintiffs,

v.

Star Financial Group, Inc.,
Appellee-Defendant.

Court of Appeals Case No.
21A-PL-2191

Crone, Judge, dissenting.

[28] As mentioned above, "[s]tate law contract principles apply to determine whether parties have agreed to arbitrate." *Earley*, 105 N.E.3d at 1099. "[U]nder Indiana law, a failure to read a contract does not relieve a party from the obligations and limitations of the document." *Urschel Farms, Inc. v. Dekalb Swine Breeders, Inc.*, 858 F. Supp. 831, 838 (N.D. Ind. 1994). Pursuant to the Terms and Conditions of the Deckers' account with Star Financial—of which the Deckers had at least constructive notice—their August 2020 monthly statement was "a contract that establishe[d] rules which control [their] account[.]"

Appellants' App. Vol. 2 at 53. The statement changed the existing rules by requiring arbitration of most claims and prohibiting initiation of or participation in class actions. The change notice was printed in bold type and capital letters and appeared in the account statement itself, not in an electronic version of a "bill stuffer." In my view, the Deckers' failure to seasonably read the change notice does not relieve them from their contractual obligations. I am unpersuaded by the majority's reliance on cases from different jurisdictions with different facts, so I must respectfully dissent. If the time has come when the failure to read a written notice within ten days of receipt renders that notice unreasonable as a matter of law, then we have entered a new era of contract law with which I am unfamiliar.