

IN THE SUPREME COURT OF MISSOURI

Case No. SC100942

MARCUS E. RAICHLE, JR., and THE MAUNE RAICHLE LAW FIRM,

Appellants,

v.

DIANA MAUNE, as Personal, Representative of the Estate of Neil J. Maune,

Respondent.

**Appeal from the Circuit Court of the City of St. Louis, State of Missouri
The Honorable Kristine Kerr, Circuit Judge
Case No. 24SL-CC00435**

**SUBSTITUTE BRIEF OF APPELLANTS MARCUS E. RAICHLE, JR. AND
THE MAUNE RAICHLE LAW FIRM**

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JURISDICTIONAL STATEMENT

This is an interlocutory appeal from an order denying a motion to compel arbitration. On January 29, 2024, Diana Maune, as Personal Representative of the Estate of Neil J. Maune (the “Personal Representative” or “Petitioner”), filed this lawsuit in the Circuit Court of St. Louis County against Marcus Raichle, Jr. (“Raichle”) and The Maune Raichle Law Firm (“MR Law”) (Raichle and MR Law, collectively, “Appellants”). (Docket No. “D” 2). Raichle and MR Law moved to compel arbitration of the Personal Representative’s claims against them under the Missouri Uniform Arbitration Act, §§ 435.350 and 435.355 RSMo. (D4). In an order dated May 2, 2024 (the “Order”), the circuit court denied the motion to compel arbitration. (D12). Section 435.440 RSMo allows an immediate appeal from any “order denying an application to compel arbitration” to be “taken in the manner and to the same extent as from orders or judgments in a civil action.” §§ 435.440.1(1), 435.440.2 RSMo; *see also Sanford v. CenturyTel of Missouri, LLC*, 490 S.W.3d 717, 719-20 (Mo. banc 2016). On May 10, 2024, Raichle and MR Law timely filed a Notice of Appeal. (D13); *see* Mo. R. Civ. P. 81.04(a).

On November 26, 2024, the Court of Appeals’ Opinion (the “Appellate Opinion” or “Opinion”) affirmed the circuit court’s Order. On January 23, 2025, Appellants filed their Application for Transfer with this Court. Jurisdiction is proper in this Court because this Court granted Appellants’ Application for Transfer on April 1, 2025. *See* Mo. Const. art. V, § 10.

INTRODUCTION

This appeal arises from a dispute relating to the \$10,000,000.00 payout on a life insurance policy (the “Life Insurance Policy”) that insured the life of Decedent Neil J. Maune (“Decedent” or “Maune”), for which the only beneficiary was and always has been MR Law, i.e., the law firm formed by Decedent and Raichle. Maune, Raichle, Hartley, French & Mudd, LLC (“MRHFM”), a subsequently formed law firm, later made premium payments on the Life Insurance Policy, but the beneficiary remained MR Law. Upon Decedent’s death, the insurer paid the \$10,000,000.00 life insurance benefit to the only beneficiary, MR Law.

The Estate of Neil J. Maune (the “Estate”) brought suit in the circuit court in an attempt to obtain the \$10,000,000.00, even though the Estate was never the beneficiary of the Life Insurance Policy. The gravamen of the Petition is that MR Law and Raichle should purportedly be required to transfer the \$10,000,000.00 to MRHFM and that MRHFM should, then, be required to utilize the \$10,000,000.00 to purchase Decedent’s interest in MRHFM. The Estate bases its claims on a provision within MRHFM’s Operating Agreement (“Operating Agreement”) that discusses MRHFM’s purchase of a member’s interest in MRHFM upon the member’s death. That provision within the Operating Agreement provides that upon death, MRHFM shall purchase the deceased member’s interest for the key man life insurance proceeds received by MRHFM, but it also states that MRHFM should purchase the interest for \$1,000,000.00 in the event the life insurance proceeds are unavailable for any reason. Because the life insurance proceeds are unavailable to MRHFM, as it was not the beneficiary, MRHFM has taken the position that,

pursuant to the Operating Agreement, it may purchase Decedent's interest from the Estate for \$1,000,000.00.

This appeal does not relate to the merits of the Estate's claims but, rather, relates only to whether the Estate may bring its claims in the circuit court or must bring its claims in arbitration. The Operating Agreement contains a broad arbitration provision requiring, with limited exceptions, the arbitration of "all claims arising out of or related to [the Operating Agreement]." (Appendix "Apdx." A29; D10, § 11.15). It is readily apparent that the claims within the Petition both "arise out of" and are "related to" the Operating Agreement, as the Petition's allegations explicitly state that they are predicated on the Operating Agreement; the Petition repeatedly and extensively cites to the Operating Agreement in support of its claims; and the Estate, i.e. a non-beneficiary of the Life Insurance Policy, has no argument to procure the \$10,000,000.00 other than by reference to the Operating Agreement. Thus, the Estate's claims are subject to the Operating Agreement's provision requiring arbitration.

The arbitration provision also provides that all arbitrations will be conducted "pursuant to the AAA Rules." (Apdx. A29; D10, § 11.15). As per Missouri case law, the incorporation of the AAA Commercial Arbitration Rules in an arbitration agreement evidences the parties' intent to delegate threshold issues of arbitrability to the arbitrator. Accordingly, not only are the Estate's substantive claims subject to arbitration but, additionally, any issues of arbitrability are also subject to arbitration.

In denying MR Law and Raichle's motion to compel arbitration, the circuit court erred both factually and legally. It is undisputed that Decedent and Raichle entered into

the Operating Agreement containing the arbitration provision, thereby requiring the arbitration of the Estate's claims against Raichle; nevertheless, the circuit court ignored this undisputed fact in its Order and overlooked that Raichle is a party to the Operating Agreement. The circuit court also erred with regard to MR Law because, although MR Law is not a signatory to the Operating Agreement, MR Law has two independent legal bases to compel arbitration here: (a) because the Estate must rely on the terms of the Operating Agreement in bringing its claims against MR Law; and (b) because MR Law has a sufficiently close relationship with Raichle, the co-defendant signatory. The circuit court failed to analyze the first basis, which provides a clearcut and straightforward path for MR Law to compel arbitration. And the circuit court analyzed but misapplied the second basis, i.e., by erroneously focusing on the relationship between MR Law and the Personal Representative rather than the close relationship between MR Law and its co-defendant, Raichle. When the law is properly applied to the undisputed facts, the Estate's claims against both Raichle and MR Law must be compelled to arbitration, including all issues of arbitrability.

The circuit court's Order denying the motion to compel arbitration was error, and the Appellate Opinion erred in affirming the Order for several reasons. As explained more fully below, the Appellate Opinion erred both legally and factually, regarding both some of the same issues as the circuit court and some new issues not discussed in the circuit court's Order. Appellants respectfully request that this Court reverse the decision of the circuit court and remand this case with instructions to grant the motion to compel arbitration.

STATEMENT OF FACTS¹

A. MR Law Purchased the Life Insurance Policy Insuring Decedent and Designated MR Law as the Beneficiary.

Decedent and Raichle initially formed the two-lawyer firm, MR Law, sometime prior to August 2009. (D2, ¶ 8).² Shortly thereafter, MR Law purchased the Life Insurance Policy wherein Decedent was the insured and the initial death benefit was \$10,000,000.00. (D2, ¶ 13). MR Law was the owner and beneficiary of the Life Insurance Policy. (*Id.*).

B. The New Law Firm Began to Pay the Premiums for the Life Insurance Policy, But MR Law Remained the Beneficiary.

In January 2011, Decedent and Raichle formed the law firm MRHFM, at which time they entered into the Operating Agreement, which is formally titled Operating Agreement of Maune Raichle Hartley French & Mudd, LLC. (D2, ¶ 15). Sometime after January 1, 2011, MRHFM took over the premium payments on the Life Insurance Policy. (D2, ¶ 22). Although MRHFM paid the premiums, MR Law remained as the beneficiary. (D2, ¶ 24).

C. Upon Decedent's Death, the Life Insurance Policy Was Paid to the Beneficiary, MR Law.

On July 16, 2023, Decedent died. (D2, ¶ 25). Because MR Law remained the beneficiary of the Life Insurance Policy, shortly following Decedent's death, the insurer

¹ The merits of the underlying claims are not at issue in this appeal. Therefore, this Statement of Facts section focuses on the relevant facts pertaining to this appeal, i.e., the issue of whether the Estate's claims should be compelled to arbitration, and excludes numerous additional facts that are not relevant to the arbitration issue, even though several of those facts would be supportive of Appellants' positions on the merits with regard to the underlying claims.

² For purposes of this appeal, the facts are taken from the allegations within the Petition. Appellants do not admit to any of the facts by citing the Petition's factual allegations herein.

paid the death benefit payment from the Life Insurance Policy to MR Law. (*See* D2, ¶¶ 13, 25-26).

D. Petitioner Seeks to Obtain the Life Insurance Policy Payout Based on Provisions within MRHFM’s Operating Agreement.

On January 29, 2024, the Personal Representative filed the Petition on behalf of the Estate. (D2). Although MR Law was the beneficiary of the Life Insurance Policy at the time of Decedent’s death (and the Estate was never the beneficiary of the Life Insurance Policy), the Estate nevertheless alleges that it is entitled to the \$10,000,000.00 from the Life Insurance Policy based on certain provisions within the Operating Agreement of MRHFM. (*E.g.*, D2, ¶¶ 20-30). Those provisions within the Operating Agreement discuss the payment of life insurance proceeds—under certain circumstances—as a buy-out of a deceased member’s interest in MRHFM. (*Id.*).

Specifically, Section 8.3 of the Operating Agreement discusses the death of a member, insurance, and the purchase of a deceased member’s units. (D2, ¶¶ 20-21) (citing Operating Agreement §§ 8.3a, 8.3d). The Operating Agreement states that MRHFM shall purchase the deceased member’s units with life insurance proceeds only if the insurance proceeds are available to MRHFM; it also states that if the life insurance proceeds are “unavailable for any reason,” the purchase price shall be \$1,000,000.00:

a. Death. Upon the occurrence of a Member’s death, the Company [i.e., MRHFM] (or any assignee chosen by the Company) shall purchase, and such Member’s representative, estate or successor shall sell all of such Member’s Units in exchange for the key man life insurance proceeds received by the Company in connection with such Member’s death. In the event that key man life insurance proceeds are unavailable for any reason (whether because the insurance is not in place, the

claim is denied or otherwise), then the purchase price shall be equal to \$1,000,000 and shall be paid in cash on the one year anniversary of the Member's death or on a more accelerated schedule determined by the Board of Managers. In the event that the purchase price is equal to the key man life insurance proceeds received by the Company, such purchase price shall be paid by the Company's check within ten (10) days of receipt of such proceeds.

...

d. Insurance. To provide funds for the purchase of all or any portion of a Member's Units pursuant to subsection (a) above, the Company has the right, from time to time, or at any time, to apply for, purchase and acquire, life insurance on the life of each Member, each owner of a Member or transferor of each Member. The Company: (i) shall pay all premiums therefor; (ii) shall be the sole owner of the policies issued to it and (iii) may apply any insurance dividends toward the payment of premiums. In the event the Company decides to take out life insurance pursuant to this provision, each Member, each owner of a Member or transferor of each Member, as applicable, hereby agrees to cooperate fully by performing all the requirements of the life insurer which are necessary conditions precedent to the issuance of life insurance policies. Notwithstanding the provisions of this Agreement, any life insurance company which has issued a policy of life insurance subject to the provisions of this Agreement is hereby authorized to act in accordance with the terms of such policy as if this Agreement did not exist, and the payment or other performance of its contractual obligations under any such policy shall completely discharge such company from all claims, suits and demands of all Persons whomsoever. . . .

(D2, ¶¶ 20-21) (citing Operating Agreement §§ 8.3a, 8.3d).³

The Petition contains five Counts: books and records (Count I); tortious interference with contractual rights (Count II); tortious interference with valid business expectancy

³ MRHFM has taken the position that the life insurance proceeds were unavailable to it and has, therefore, sought to purchase Decedent's membership units for \$1,000,000.00, as per the terms of the Operating Agreement. (*E.g.*, D7, ¶¶ 21-22).

(Count III); unjust enrichment (Count IV); and breach of fiduciary duties by Defendant Raichle (Count V). (D2, ¶¶ 38-85). This appeal pertains only to Counts II, III, IV, and V.⁴ The Estate brings Counts II, III, and IV against both MR Law and Raichle and brings Count V against Raichle only.

Counts II, III, IV, and V all arise from and relate to the MRHFM Operating Agreement. *See, e.g.*, (D2, Count II, ¶ 54) (“Raichle and MR Law’s wrongful refusal to transfer the death benefit from the Maune Policy to MRHFM *prevents MRHFM from fulfilling all parties’ expectations under the [Operating Agreement] with respect to §§ 8.3.a and 8.3.d* that the Estate would receive the Maune Policy death benefit . . .” (emphasis added)); (D2, Count III, ¶ 66) (“Raichle and MR Law’s wrongful refusal to transfer the death benefit from the Maune Policy to MRHFM *prevents MRHFM from fulfilling all parties’ expectations under the [Operating Agreement] with respect to §§ 8.3.a and 8.3.d.*” (emphasis added)); (D2, Count IV, ¶ 75) (“By refusing to transfer the death benefit from MR Law to MRHFM, Raichle and MR Law have *caused MRHFM to take the position that insurance proceeds are not available for purposes of [Operating Agreement] § 8.3.a* as the value of Decedent’s ownership interest in MRHFM.” (emphasis added)); (D2, Count V, ¶ 83), (“[B]y *refusing to transfer the death benefit from the Maune Policy to MRHFM* or the Estate when he *knows or should have known that MRHFM had been paying the premiums on that policy so that the proceeds could be used as provided in the [Operating*

⁴ During the hearing on the Motion to Compel Arbitration, counsel for all parties agreed that Count I, i.e., books and records, would not be subject to arbitration. (*See* D12, p. 4).

Agreement], Raichle has breached the fiduciary duties that Raichle owes to his partner, Decedent.” (emphasis added)).

The Petition extensively cites, discusses, and seeks to apply provisions from the Operating Agreement in purported support of its claims. For example, the Petition contains extensive block quotes from the Operating Agreement on pages 4, 5, and 6 of the Petition. The Petition explicitly discusses the Operating Agreement in the general allegations section, within Paragraphs 15, 16, 17, 18, 19, 20, 21, and 22 of the Petition, all of which are incorporated within each of Counts II, III, IV, and V. (See D2, ¶¶ 43, 56, 70, 81). The Petition further explicitly⁵ discusses the Operating Agreement in Paragraphs 44, 45, 47, 48, 50, 52, 54, 57, 60, 62, 64, 66, 71, 73, 75, 77, and 83 of the Petition. These paragraphs of the Petition cite and contain allegations based on several parts of the Operating Agreement, including Section 2.6, Section 6.11.b, Section 8.3.a, and Section 8.3.d of the Operating Agreement, in support of the Estate’s claims that it is purportedly entitled to the \$10,000,000.00 Life Insurance Policy payout.

⁵ In addition to the explicit references and citations to the Operating Agreement, numerous other paragraphs are predicated on the Operating Agreement. As an example, Paragraph 49 of the Petition alleges that “Raichle, and by extension MR Law, has wrongfully refused to transfer the death benefit from the Maune Policy to MRHFM.” (D2, ¶ 49). Although this paragraph does not explicitly reference the Operating Agreement, the obvious purported relevance of such a transfer of the death benefit to MRHFM is that, in the Estate’s view, if the transfer were to take place, MRHFM would then—purportedly *pursuant to the Operating Agreement*—be required to transfer the death benefit to the Estate. Thus, the Petition is replete with references to and presumptions based on the Operating Agreement, even beyond the explicit references to the Operating Agreement, of which there are many.

E. The Arbitration Provision within the Operating Agreement

The Operating Agreement—which forms the basis for the Petition—contains the following binding agreement to arbitrate disputes (“Arbitration Provision”):

11.15 Arbitration. Except as set forth in Sections 8.2(b) and 11.13 or this Section 11.15,⁶ *all claims arising out of or related to this Agreement*, or a breach hereof, that are not otherwise resolved by the parties by negotiation or voluntary mediation *shall be settled by binding arbitration in accordance with the procedures set forth in this Section 11.15. All arbitrations will be conducted* in St. Louis County, Missouri, or at another location mutually approved by such parties, *pursuant to the AAA Rules*, by one arbitrator. . . .

(Apdx. A29; D10, § 11.15) (emphasis added). The Operating Agreement states that “AAA” means “the American Arbitration Association” and that the “AAA Rules” mean the “Commercial Arbitration Rules of the AAA.” (Apdx. A24; D10, p. 5). On the signature page, immediately above the signatures, the Operating Agreement contains the following language: “THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES HERETO AND THE COMPANY.” (Apdx. A30; D10, p. 34). Decedent, Neil J. Maune, signed the Operating

⁶ None of these exceptions apply here. Section 8.2(b) addresses the requirement for a transferee of membership units, where the transferee is not MRHFM itself, to execute a document accepting and adopting MRHFM’s articles of incorporation and Operating Agreement; and Section 11.13 pertains to an action for specific performance or injunctive relief for breach of the Operating Agreement. None of Plaintiff’s Counts II, III, IV, or V fall within these categories. And Section 11.15 contains no independent exemption from the Arbitration Provision. In any event, as explained below, *see infra* Part II, this Court should merely find that a binding arbitration agreement exists between the parties and then, as per the Arbitration Provision’s delegation provision, delegate the issue of arbitrability to the arbitrator. In other words, the arbitrator, not this Court, should determine whether the claims at issue fall within the scope of the Arbitration Provision.

Agreement in his capacity as a manager of MRHFM, as a member of MRHFM, and “**individually**”; and Raichle also signed the Operating Agreement in his capacity as a manager of MRHFM, as a member of MRHFM, and “**individually**” (*Id.*) (emphasis in original).

F. Circuit Court’s Order on the Motion to Compel Arbitration

On March 22, 2024, in response to the Petition, MR Law and Raichle filed their Motion to Compel Arbitration and Stay Proceedings in [the Circuit] Court (“Motion to Compel Arbitration”). (D4). On April 15, 2024, the Estate filed a Response in Opposition. (D6). On April 22, 2024, the Court heard argument from counsel, and on May 2, 2024, the circuit court entered its Order denying the Motion to Compel Arbitration. (*See* Apdx. A1; D12).

Although the circuit court’s Order is eight pages and analyzes three topics, the most relevant part of the Order with regard the issue at hand in this appeal, i.e., arbitration, is merely two paragraphs and is set forth in its entirety below:

2.1 Defendants’ Motion to Compel Arbitration:

Both parties have correctly cited the relevant precedent for this issue. Arbitration is a matter of contract. *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67, 130 S.Ct. 2772, 177 L.Ed.2d 403 (2010). There is no dispute that the only contract governing arbitration is the OA created and signed during the formation of MRHFM. MR Law is not a party to that agreement. Therefore, there could not have been a meeting of the minds between MR Law and decedent Maune. “The existence of a contract necessarily implies there has been a ‘meeting of the minds’ between the parties.” *Arrowhead Contracting, Inc. v. M.H. Washington, LLC*, 243 S.W.3d 532, 535 (Mo. App. 2008). “[E]xistence of the agreement to arbitrate is a prerequisite to compelling arbitration.” *Theroff v.*

Dollar Tree Stores, Inc., 591 S.W.3d 432, 438–39 (Mo. 2020). While parties can agree to arbitrate “gateway” questions of arbitrability through a delegation provision, the court must still first determine if there was an agreement to arbitrate in the first instance. *Id.* at 440. Here, as in *Theroff*, the court finds that MR Law cannot force Mrs. Maune into arbitration by relying on a contract to which it is a stranger. *Id.* Put another way, “one cannot enforce an arbitration agreement if he is not a party to that agreement.” See *Springfield Iron & Metal, LLC v. Westfall*, 349 S.W.3d 487, 490 (Mo. App. S.D. 2011). Instead, only parties to a contract and any third-party beneficiaries of a contract have standing to enforce that contract. *Verni v. Cleveland Chiropractic Coll.*, 212 S.W.3d 150, 153 (Mo. banc 2007).

Defendants argue that MR Law can enforce the arbitration provision in the OA against plaintiff under the two limited circumstances described by *CD Partners, LLC v. Grizzle*, 424 F.3d 795, 798 (8th Cir. 2005) and cited by *Tucker v. Vincent*, 471 S.W.3d 787, 796 (Mo. Ct. App. 2015). The court disagrees. The relationship between MR Law and Mrs. Maune is not sufficiently close that failing to force her to arbitration would eviscerate the arbitration clause in effect between the partners of MRHFM in the OA. By reason of the foregoing and additional reasons cited by plaintiff, defendants’ motion to compel plaintiff to arbitration is **DENIED**.

...

WHEREFORE, by reason of the foregoing, the court DENIES defendants’ motion to compel arbitration and to stay proceedings in this case.

(Apdx. A6-8; D12, pp. 6-8).

G. Court of Appeals Affirms Circuit Court Decision Based on New Reasoning

Raichle and MR Law timely appealed, primarily arguing that, in its Order denying the Motion to Compel Arbitration, the circuit court erred by: (a) only focusing on MR Law and failing to recognize that Decedent and *Raichle* entered into the valid and enforceable

arbitration agreement; (b) overlooking that the incorporation of the AAA Commercial Arbitration Rules into the Arbitration Provision functions as a delegation provision that delegates to the arbitrator all issues of arbitrability; and (c) failing to properly analyze and apply two independent bases for MR Law to enforce the Arbitration Provision against Petitioner, even though MR Law is a nonsignatory to the Arbitration Provision.

On November 26, 2024, the Court of Appeals affirmed the circuit court's decision. The Court of Appeals acknowledged that the Operating Agreement was signed by Decedent and Raichle as *individuals*. (Apdx. A10, A13-14). The Court of Appeals, nevertheless, decided that Raichle was precluded from enforcing the Arbitration Provision that he signed because the Court of Appeals drew a purported legal distinction between Raichle as an individual and Raichle in his corporate capacity as general partner of MR Law (i.e., the general partnership); and the Opinion seemed to presume that Raichle was not sued as an individual but only in a corporate capacity as general partner of MR Law. (See Apdx. A10-11, A13-15). The Opinion discussed each of the two bases for a nonsignatory to enforce the Arbitration Provision and decided that neither of them applied here. (Apdx. A14-16). The Opinion decided that the findings above were dispositive and did not address the issue of delegation of arbitrability, i.e., through incorporation of the AAA Commercial Arbitration Rules. (Apdx. A12).

POINTS RELIED ON

- I. The Circuit Court Erred in Denying the Motion to Compel Arbitration Because the Circuit Court Focused Only on MR Law but Failed to Recognize that Decedent and Raichle Undisputedly Entered Into a Valid and Enforceable Operating Agreement Containing the Arbitration Provision.**
- RSMo § 435.350
 - *Brown v. GoJet Airlines, LLC*, 677 S.W.3d 514 (Mo. 2023)
 - *Theroff v. Dollar Tree Stores, Inc.*, 591 S.W.3d 432 (Mo. 2020), *aff'd* (Jan. 14, 2020)
- II. The Circuit Court Erred in Denying the Motion to Compel Arbitration Because, by Incorporating the AAA Commercial Arbitration Rules into the Arbitration Provision in the Operating Agreement, Decedent and Raichle “Clearly and Unmistakably” Agreed to Delegate to an Arbitrator the Power to Decide Whether Their Claims and Which Claims Must Be Arbitrated.**
- *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36 (Mo. 2017), *abrogated on other grounds by Theroff v. Dollar Tree Stores, Inc.*, 591 S.W.3d 432 (Mo. 2020)
 - *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 130 S. Ct. 2772, 177 L. Ed. 2d 403 (2010)
 - *Valle v. Shack Rest. Group, LLC*, 681 S.W.3d 265 (Mo.App. E.D. 2023)
 - *Latenser v. Tarmac Int'l, Inc.*, 549 S.W.3d 461 (Mo.App. W.D. 2018)
- III. The Circuit Court Erred in Denying the Motion to Compel Arbitration Because, Although MR Law is a Nonsignatory to the Operating Agreement, MR Law has Two Independent Bases to Enforce the Operating Agreement’s Arbitration Provision, and the Circuit Court Wholly Failed to Apply One Basis and Misapplied the Other Basis.**
- *CD Partners, LLC v. Grizzle*, 424 F.3d 795 (8th Cir. 2005)
 - *Barton Enterprises, Inc. v. Cardinal Health, Inc.*, 4:10 CV 324 DDN, 2010 WL 2132744 (E.D. Mo. May 27, 2010)

ARGUMENT

I. The Circuit Court Erred in Denying the Motion to Compel Arbitration Because the Circuit Court Focused Only on MR Law but Failed to Recognize that Decedent and Raichle Undisputedly Entered Into a Valid and Enforceable Operating Agreement Containing the Arbitration Provision.

A. Standard of Review

“Whether a motion to compel arbitration should have been granted is a question of law, to be decided by this Court *de novo*.” *Brown v. GoJet Airlines, LLC*, 677 S.W.3d 514, 520 (Mo. 2023); *Caldwell v. UniFirst Corp.*, 583 S.W.3d 84, 89 (Mo.App. E.D. 2019) (“Whether the trial court should have granted a motion to compel arbitration is a question of law that this Court reviews *de novo*.”).

B. Decedent and Raichle entered into the Operating Agreement, which is a Valid and Enforceable Contract Containing the Arbitration Provision.

It is undisputed that Decedent and Raichle entered into the Operating Agreement and that the Operating Agreement is a valid and enforceable contract. Indeed, in the Petition itself, the Estate alleges—as it must, given that its claims are predicated on the Operating Agreement—that “[t]he [Operating Agreement] is a *valid and enforceable contract*.” (D2, ¶ 44) (emphasis added).⁷ Both Decedent and Raichle signed the Operating Agreement, in their respective capacities as managers of MRHFM, as members of MRHFM, and “**individually**” (Apdx. A30; D10, p. 34) (emphasis in original).

⁷ This allegation that the Operating Agreement is a “valid and enforceable contract,” within Count II of the Petition, is repeated and realleged within Counts III, IV, and V, as well. (D2, ¶¶ 56, 70, 81).

The valid and enforceable Operating Agreement contains the Arbitration Provision at issue. The Estate has not and could not dispute that the Arbitration Provision is part of the Operating Agreement, as the document speaks for itself. (*See* Apdx. A29; D10, § 11.15).

The Missouri Uniform Arbitration Act (“MUAA”) provides, in relevant part, that “a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.” RSMo § 435.350; *see also, e.g., Brown*, 677 S.W.3d at 520 (citing same); *see also, e.g., Bertocci v. Thoroughbred Ford, Inc.*, 530 S.W.3d 543, 555 (Mo.App. W.D. 2017) (“If the parties agreed to arbitrate the dispute, arbitration must be compelled.”). Moreover, the Operating Agreement’s signature page satisfies the MUAA’s statutory notice requirement.⁸ (*See* Apdx. A30; D10, p. 34); (RSMo § 435.460). Thus, the valid and enforceable Arbitration Provision is binding upon the Estate and Raichle.

C. Raichle has a Right to Enforce the Arbitration Provision within the Operating Agreement, to which Decedent and Raichle are parties, and the Circuit Court Erred by Overlooking that Raichle is a Party to the Operating Agreement.

The circuit court erred because it completely overlooked that ***Raichle*** signed, and is

⁸ The MUAA requires that agreements containing agreements to arbitrate include “adjacent to, or above, the space provided for signatures a statement, in ten point capital letters, which read substantially as follows: ‘THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.’” *See* RSMo § 435.460.

a party to, the Operating Agreement.⁹ The circuit court’s analysis of “Defendants’ Motion to Compel Arbitration” *only focused on MR Law*. (Apdx. A6-7; D12, pp. 6-7). With regard to MR Law, the circuit court reasoned as follows:

- Because arbitration is a matter of contract, “the only contract governing arbitration is the [Operating Agreement]” and “*MR Law* is not a party to that agreement,” there could, therefore, “not have been a meeting of the minds between *MR Law* and decedent Maune.” (Apdx. A6; D12, p. 6) (emphasis added).
- The circuit court went on to emphasize that there must be a “meeting of the minds” in order to imply the existence of a contract; that the existence of an agreement is a prerequisite to compelling arbitration; and that, while parties may arbitrate gateway issues of arbitrability, the court must first determine if there is an agreement to arbitrate. (Apdx. A6-7; D12, pp. 6-7).
- Based on this analysis, the circuit court reasoned that “*MR Law*” could not force the Estate to arbitrate by “relying on a contract to which it is a stranger.” (Apdx. A7; D12, p. 7) (emphasis added). The circuit court further explained that “only parties to a contract and any third-party beneficiaries of a contract have standing to enforce that contract.” (*Id.*).

⁹ While the Court of Appeals took a different approach (which resulted in new errors, as will be discussed below), in certain respects it also seemed to focus only on defendant MR Law and ignore defendant Raichle. For example, the Opinion’s conclusion section references defendant MR Law five (5) times and does not mention defendant Raichle a single time. (Apdx. A16).

The circuit court conducted the above analysis with regard to MR Law. But the circuit court did *not* conduct any analysis regarding the other defendant who moved to compel arbitration, i.e., *Raichle*.

When the circuit court's own reasoning is applied to ***Raichle***, it is plainly evident that Raichle should be entitled to enforce the Arbitration Provision. Applying the circuit court's own analysis to Raichle, the circuit court *should have* reasoned as follows:

- Arbitration is a matter of contract; the Operating Agreement is a contract that governs arbitration because it contains the Arbitration Provision; Raichle *is a party* to that Operating Agreement; and, therefore, there *was a meeting of the minds* between Raichle and Decedent.
- That *meeting of the minds is reflected in the Operating Agreement* that exists between Raichle and Decedent; the existence of the Arbitration Provision within the Operating Agreement between them is the *sufficient prerequisite for Raichle to compel arbitration*; and Raichle and Decedent's agreement to arbitrate gateway issues of arbitrability should be enforced, *as there certainly is an agreement to arbitrate* between them.
- Raichle is *not a "stranger"* to the Operating Agreement. On the contrary, Raichle *is a party* to the Operating Agreement.

Thus, applying the circuit court's own analysis to ***Raichle*** leads to the conclusion that Raichle is entitled to enforce the terms of the Arbitration Provision within the Operating Agreement.

In analyzing MR Law’s right to enforce the Arbitration Provision, the circuit court cited *Theroff v. Dollar Tree Stores, Inc.*, 591 S.W.3d 432, 439 (Mo. 2020), *aff’d* (Jan. 14, 2020). *Theroff* dealt with a plaintiff who brought a disability discrimination claim against her employer, Dollar Tree. *Id.* at 435. Dollar Tree sought to compel the case to arbitration. *Id.* One of the electronic documents bearing the employee’s electronic signature contained an arbitration provision, but the employee had informed Dollar Tree that she was legally blind. *Id.* The employee argued that she did not sign the agreement because she did not authorize Dollar Tree to make the operative click and that, even if she clicked the digital document herself, Dollar Tree never informed her of the arbitration agreement, which she could not view or read. *Id.* at 436. The employee, therefore, argued that she did not assent to the agreement. *Id.* at 437.

Under the facts of that case, this Court determined that the circuit court’s denial of the motion to compel arbitration was justified because the circuit court held an evidentiary hearing, reviewed evidence, and “could have believed [the employee’s] account that she could not see the screen, was not able to view or read the arbitration agreement on her own . . . , or did not know the arbitration agreement was included in the onboarding material through which [Dollar Tree] verbally guided her.” *Id.* at 435–36, 439. In that context, this Court explained that the employee’s argument that “assent, or meeting of the minds, did not occur” is a challenge to the “agreement's existence,” and that “existence of the agreement to arbitrate is a prerequisite to compelling arbitration.” *Id.* at 438–39. Those circumstances are wholly distinguished from the facts here, with regard to Raichle.

Here, unlike in *Theroff*, there is no question regarding the existence of the Operating Agreement (that contains the Arbitration Provision), nor is there any question with regard to Decedent's and Raichle's assent thereto. Indeed, the Estate concedes that "[t]he [Operating Agreement] is a *valid and enforceable contract*." (D2, ¶ 44) (emphasis added).¹⁰ Under the circumstances here, the Arbitration Provision is "valid, enforceable and irrevocable." *Brown*, 677 S.W.3d at 520 (citing RSMo § 435.350). The Court should, therefore, compel the Estate to arbitrate its claims¹¹ against Raichle.

D. The Court of Appeals Also Improperly Ignored Raichle's Right to Enforce the Arbitration Provision.

1. The Opinion Improperly Ignores that Raichle, the Individual, is the Named Defendant.

The Opinion acknowledges that Raichle and Decedent signed the agreement to arbitrate, as *individuals*. (Apdx. A10) (stating that "Decedent and Raichle *signed* MRHFM's Operating Agreement *in their individual capacities and* in their corporate capacities as managers of MRHFM" (emphasis and underlining added)); (Apdx. A13-14) (stating that "Decedent and Raichle *signed* the Operating Agreement in their corporate capacities as members and managers of the MRHFM law firm *and in their individual capacities*" (emphasis and underlining added)). The Opinion, nevertheless, denies Raichle his right to compel arbitration based on a purported legal distinction between Raichle *as an individual* and Raichle *as general partner of MR Law*. (See Apdx. A11, A13-15). The Opinion appears to presume that Raichle *as an individual* is not a named party and

¹⁰ See also *supra* n.7.

¹¹ This appeal pertains only to Counts II, III, IV, and V. (See Apdx. A4; D12, p. 4).

presumes that the individual defendant party is Raichle only in his capacity *as general partner of MR Law*. But that overlooks the clear language of the Petition.

In stark contrast to Petitioner, for whom the Petition makes a point of naming “DIANA MAUNE, ***AS PERSONAL REPRESENTATIVE OF THE ESTATE OF NEIL J. MAUNE***,” (emphasis added), with regard to the individual defendant, the Petition simply names “MARCUS E. RAICHLE, JR.,” i.e., in no special capacity. (D2, p.1). Thus, Petitioner’s chosen caption for the case clearly draws this distinction between the parties. The first sentence of the Petition likewise sets forth this same marked distinction: “Plaintiff Diana Maune, ***as Personal Representative of the Estate of Neil J. Maune***, for her Petition against Defendants Marcus E. Raichle, Jr. and The Maune Raichle Law Firm, alleges the following” (*Id.*) (emphasis added). Once again, unlike the Personal Representative, Marcus E. Raichle, Jr., is not named as a party in any special capacity. (*See id.*) Indeed, in defining the party, Raichle, the Petition states: “***Marcus E. Raichle (‘Raichle’) is an individual*** and, upon information and belief, a ***citizen*** of the State of Missouri with a ***personal address*** of” (emphasis added)). (D2, ¶ 3).¹² This allegation is incorporated within each Count of the Petition. (D2, ¶¶ 43, 56, 70, 81).

The Petition does **not** state that it has brought suit against Raichle strictly in his corporate capacity “AS GENERAL PARTNER OF MR LAW.” The Opinion improperly

¹² Although the Petition provides further background information, including that Raichle was both a general partner of MR Law and a manager of MRHFM, (*see* D2, ¶ 3), those statements do not transform the party into Raichle in his corporate capacity as general partner of MR Law nor into his capacity as manager of MRHFM. Raichle, the *individual*, is the named party.

ignored the party actually set forth in the Petition by the Personal Representative—who was the master of her complaint. Instead, the Opinion supplanted the actual named/defined party with the Court of Appeals’ own conception of who the party could (or should) be. Because the actual party sued is Raichle, *as an individual*, he has a right to enforce the Arbitration Provision that he and Maune signed *as individuals*.

2. The Opinion is Unclear and Inconsistent, and It Contravenes Well-Established Missouri General Partnership Law.

Even if, hypothetically, the Petition had clearly stated that Petitioner sued Raichle *in his corporate capacity as general partner* of MR Law, the Opinion would still be unclear, inconsistent, and contrary to the law. For example, the Opinion begs the question of whether—assuming Raichle has been sued strictly in his “corporate capacity” as general partner of MR Law—Raichle’s funds held in his personal capacity, having nothing to do with MR Law, would be subject to liability. To the extent Raichle’s personal funds are *not* at risk, this would be a very important and novel consequence of the Opinion’s holding (that he purportedly was not sued as an individual). While Raichle would welcome such a finding, i.e., that he is not at risk of being personally liable in this litigation, in candor to the Court, such a finding would seem to be inconsistent with established law addressing the liability of general partners in general partnerships. *See, e.g., Schneider v. Schneider*, 347 Mo. 102, 107 (1940) (“Each partner . . . becomes liable to the full extent of his property to the creditors of the partnership”); RSMo § 358.150(1) (“[A]ll partners are liable jointly and severally for everything chargeable to the partnership”).

And to the extent his personal funds *are* at risk in the litigation, the Opinion will have established an inconsistent, incomprehensible rule: the defendant can somehow be treated as an individual only to his detriment (i.e., a judgment against him would need to be paid from his personal funds) but will not be treated as an individual to avail himself of his rights as an individual (i.e., to compel arbitration). In other words, the Opinion would dictate that a general partner defendant is treated like an individual only with regard to his obligations but not his rights. This rule would defy logic and basic notions of fairness, and the Opinion does not cite any case to support this new purported rule. Of course, the more logical and fair rule would be to allow Raichle to assert his rights as an individual (i.e., to compel arbitration) if he has obligations as an individual (i.e., personal liability).

The Opinion relies on its stated, purported legal proposition that MR Law, Raichle in his capacity as general partner, and Raichle as an individual are three “distinct legal entities.” (*See* Apdx. A11, A13-15). The Opinion does not cite a case for this proposition, and the undersigned has found no Missouri case that states such a proposition. On the contrary, cases discussing general partnership law establish the exact opposite. “Missouri adheres to the common-law ‘aggregate theory of partnership,’” under which “a general partnership has no legal existence separate from its members” *Unifund CCR Partners v. Kinnamon*, 384 S.W.3d 703, 705–06 (Mo. App. W.D. 2012) (internal citations and quotation marks omitted).

Missouri cases explain that a general partnership—including a law firm general partnership—is *not* a distinct entity from the individuals who serve as general partners. *E.g., Jeschke AG Serv., LLC v. Bell*, 652 S.W.3d 305, 309 (Mo. App. W.D. 2022)

(explaining that a law office that is a general partnership “is *not a legal entity* suable in the name of the firm. In Missouri, a partnership cannot be sued in the firm name. Instead, the action must be brought against the individual partners.” (emphasis added) (internal citations and quotation marks omitted)).¹³ Thus, the Opinion fundamentally contravenes well-established Missouri general partnership law.¹⁴

II. The Circuit Court Erred in Denying the Motion to Compel Arbitration Because, by Incorporating the AAA Commercial Arbitration Rules into the Arbitration Provision in the Operating Agreement, Decedent and Raichle “Clearly and Unmistakably” Agreed to Delegate to an Arbitrator the Power to Decide Whether Their Claims and Which Claims Must Be Arbitrated.¹⁵

A. Standard of Review

“Whether a motion to compel arbitration should have been granted is a question of law, to be decided by this Court *de novo*.” *Brown*, 677 S.W.3d at 520; *Caldwell*, 583

¹³ Appellants preserve their right to arbitrate, and to raise any and all substantive claims in arbitration, and are not currently seeking dismissal of any parties by this Court. Appellants are merely raising legal issues regarding the Opinion for the purpose of compelling the case to arbitration.

¹⁴ The Opinion seems to hold that Raichle *the general partner* (of the general partnership) should be treated differently than Raichle *the individual*, (*see* Apdx. A14-15), but the cases cited in the Opinion do not support that proposition. Those cases do not discuss general partnerships but, rather, a limited liability company and corporation, respectively, each of which *is* a recognized legal entity distinct from its members and shareholders, respectively. *See Tucker v. Vincent*, 471 S.W.3d 787, 789, 795 (Mo. App. E.D. 2015) (defendant signed stock purchase agreement only in capacity as manager of “Electromedico LLC”); *Jones v. Paradies*, 380 S.W.3d 13, 15, 17 (Mo. App. E.D. 2012) (defendants signed agreement only in capacity as directors of “corporation”). Moreover, the Opinion’s attempt to analogize those cases is further perplexing based on the nature of the respective signatures. Unlike those cases, where defendants did *not* sign in their individual capacities, (*see* Apdx. A14), here, the Opinion acknowledges that Maune and Raichle *did* sign the Operating Agreement containing the Arbitration Provision in their *individual* capacities. (*See* Apdx. A10, A13-14).

¹⁵ The Opinion did not reach, and thus did not dispute, this point. (Apdx. A12) (“Because points one and three are dispositive, we only address those points.”).

S.W.3d at 89 (“Whether the trial court should have granted a motion to compel arbitration is a question of law that this Court reviews *de novo*.”).

B. Raichle’s Right to Enforce the Arbitration Provision Includes His Right to Enforce the Delegation Provision Within it, Which Delegates to the Arbitrator Issues of Arbitrability.

The Court need not, and must not, determine whether the claims in the Petition are arbitrable. Rather, pursuant to the delegation provision within the Arbitration Provision, such threshold questions of arbitrability must be delegated to and resolved by the arbitrator, not a court. *See State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 48 (Mo. 2017), *abrogated on other grounds by Theroff v. Dollar Tree Stores, Inc.*, 591 S.W.3d 432 (Mo. 2020).

Parties can “agree to arbitrate ‘gateway questions of ‘arbitrability,’ such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy.” *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68–69, 130 S. Ct. 2772, 2777, 177 L. Ed. 2d 403 (2010). A valid delegation provision within an arbitration agreement “gives an arbitrator authority to decide even the initial question whether the parties’ dispute is subject to arbitration.” *Valle v. Shack Rest. Group, LLC*, 681 S.W.3d 265, 270 (Mo.App. E.D. 2023) (citing *New Prime Inc. v. Oliveira*, 586 U.S. 105, 112, 139 S. Ct. 532, 538, 202 L. Ed. 2d 536 (2019)); *Rent-A-Ctr.*, 561 U.S. at 68–69 (“The delegation provision is an agreement to arbitrate threshold issues concerning the arbitration agreement.”); *Karlin v. UATP Springfield, LLC*, 706 S.W.3d 810, 814 (Mo. 2025) (“If there is such a [delegation] clause . . . and the nonmoving party does not present a defense specific to the enforcement of that clause, the circuit court must sustain the motion to compel and send both the

principal claim and any such threshold claims to arbitration.”).

This Court has explained that if an arbitration agreement incorporates by reference the Commercial Arbitration Rules of the American Arbitration Association (“AAA Rules”), then threshold issues of arbitrability must be delegated to an arbitrator:

By clearly referencing the *AAA commercial arbitration rules*, the parties expressed their intent to arbitrate any dispute under these rules, including the AAA's “jurisdiction” rule providing that *the “[a]rbitrator shall have the power to rule on his or her own jurisdiction*, including any objections with respect to the existence, scope or validity of the arbitration agreement.” Accordingly, the delegation provision *clearly and unmistakably evidences the parties’ intent to delegate threshold issues of arbitrability to the arbitrator.*

Pinkerton, 531 S.W.3d at 48 (emphasis added); *see also City of Chesterfield v. Frederick Constr. Inc.*, 475 S.W.3d 708, 711 (Mo.App. E.D. 2015) (“The parties incorporated AAA rules into their agreement, which made them as much a part of the contract as any other provision.”); *Latenser v. Tarmac Int’l, Inc.*, 549 S.W.3d 461, 464 (Mo.App. W.D. 2018) (citing *Pinkerton*, finding the delegation provision to be enforceable, and explaining that, because the parties incorporated the AAA rules, they “clearly and unmistakably intended to delegate threshold issues to the arbitrator”).

Substantially similar language is still in effect and appears in the American Arbitration Commercial Rules today, of which the Court should take judicial notice. (See Apdx. A18-19) (containing AAA Rule R-7(a), AAA Rules, amended and effective September 1, 2022; stating that “[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity

of the arbitration agreement or to the arbitrability of any claim or counterclaim, without any need to refer such matters first to a court.”).

Here, like the arbitration provision in *Pinkerton*, the Arbitration Provision incorporates the AAA Rules. (See Apdx. A29; D10, § 11.15) (“All arbitrations will be conducted in St. Louis County, Missouri, or at another location mutually approved by such parties, **pursuant to the AAA Rules**, by one arbitrator.” (emphasis added)); (see also Apdx. A24; D10, p. 5) (stating that “AAA” means “the American Arbitration Association” and that the “AAA Rules” mean the “Commercial Arbitration Rules of the AAA”). Thus, like the parties in *Pinkerton*, Decedent and Raichle agreed that the AAA Rules, which include a rule delegating issues of arbitrability to the arbitrator, would govern arbitration disputes. See *Pinkerton*, 531 S.W.3d at 48. Accordingly, Missouri law mandates that the case be immediately directed to arbitration for an arbitrator to determine whether the issues raised in the Petition are arbitrable and then resolve any such arbitrable disputes. See *id.*

The cases, such as *Pinkerton*—holding that where delegation provisions exist, such as a reference to the AAA Rules, issues of arbitrability must be delegated to the arbitrator—remain unaffected by *Theroff* where, as here, the existence of the arbitration agreement has been established. In discussing the issue of delegation clauses, *Theroff* explained that, in that case, “there simply was no agreement of the parties to arbitrate in the first instance when one party, as the circuit court found, did not agree to arbitrate at all” and that “[the employee’s] challenge to the existence of the mutual agreement in its entirety because of a lack of assent necessarily challenges the existence of any delegation provision it contains.” *Theroff*, 591 S.W.3d at 440. As explained above, see *supra* Part I.C, here, unlike in *Theroff*,

there is no question concerning Decedent and Raichle’s agreement to the Operating Agreement that contains the Arbitration Provision. Petitioner admitted that “[t]he [Operating Agreement] is a *valid and enforceable contract*.” (D2, ¶ 44) (emphasis added).¹⁶ Under the circumstances here, like *Pinkerton*, the “delegation provision acts as an agreement to arbitrate threshold issues concerning the arbitration agreement.” *Brown*, 677 S.W.3d at 521; *see also Karlin*, 706 S.W.3d at 816 (sustaining the motion to compel arbitration and enforcing the delegation clause). Thus, because the valid and enforceable Arbitration Provision incorporates the AAA Rules and thereby contains a delegation provision, the Court must not determine issues of arbitrability but must, rather, delegate all issues of arbitrability to the arbitrator.¹⁷

¹⁶ *See also supra* n.7.

¹⁷ Although the Court should not make any determinations of arbitrability, Appellants note that, if the Court were to make such a determination, it should find that the claims are arbitrable. The broadly worded Arbitration Provision states that, aside from limited exceptions not applicable here, “*all claims arising out of or related to this Agreement, or a breach hereof, . . . shall be settled by binding arbitration . . .*” (Apdx. A29; D10, § 11.15) (emphasis added); *Bertocci*, 530 S.W.3d at 555 (“Where an arbitration provision is broad, there is a strong presumption in favor of arbitrability, and the trial court should order arbitration of any dispute that *touche matters* covered by the parties contract.” (emphasis added)); *Ruhl v. Lee's Summit Honda*, 322 S.W.3d 136, 139 (Mo. 2010) (“There is a strong presumption in favor of arbitrability, and the trial court should order arbitration of any dispute that ‘*touche matters* covered by the parties' contract.’ (emphasis added) (citation omitted)). The gravamen of the Petition is that the Operating Agreement purportedly entitles the Estate to collect the \$10,000,000.00 from the Life Insurance Policy, even though MR Law was the beneficiary. *See supra* Statement of Facts, Part D. That argument does not merely “touch” the Operating Agreement but is predicated upon the Operating Agreement, *see id.*; thus, the Petition’s claims “arise out of” and “relate to” the Arbitration Provision and, therefore, must be arbitrated. Nevertheless, this Court need not and should not decide this issue because, pursuant to the delegation provision, any challenge raised by the Estate with regard to arbitrability must be decided by an arbitrator, not the court.

III. The Circuit Court Erred in Denying the Motion to Compel Arbitration Because, Although MR Law is a Nonsignatory to the Operating Agreement, MR Law has Two Independent Bases to Enforce the Operating Agreement’s Arbitration Provision, and the Circuit Court Wholly Failed to Apply One Basis and Misapplied the Other Basis.

A. Standard of Review

“Whether a motion to compel arbitration should have been granted is a question of law, to be decided by this Court *de novo*.” *Brown*, 677 S.W.3d at 520; *Caldwell*, 583 S.W.3d at 89 (“Whether the trial court should have granted a motion to compel arbitration is a question of law that this Court reviews *de novo*.”).

B. MR Law has a Right to Enforce the Arbitration Provision on Two Independent Bases.

Like Raichle, MR Law is also entitled to enforce the Arbitration Provision. Decedent and Raichle were signatories to the Operating Agreement, and Raichle is, therefore, entitled to enforce the Arbitration Provision against the Estate and compel arbitration, including arbitration of arbitrability, as explained above. *See supra* Parts I-II. Although MR Law is not a signatory to the Operating Agreement, MR Law is likewise entitled to enforce the Arbitration Provision and compel arbitration because, as a non-signatory, it may enforce an arbitration provision under certain circumstances, which are present here:

A nonsignatory can enforce an arbitration clause against a signatory to the agreement in several circumstances. [(1)] One is *when “the relationship between the signatory and nonsignatory defendants is sufficiently close* that only by permitting the nonsignatory to invoke arbitration may evisceration of the underlying arbitration agreement between the signatories be avoided.” . . . [(2)] Another is “*when the signatory* to a written agreement containing an arbitration

clause ‘*must rely on the terms of the written agreement in asserting [its] claims' against the nonsignatory.*’ . . . “When each of a signatory's claims against a nonsignatory makes reference to or presumes the existence of the written agreement, the signatory's claims arise out of and relate directly to the written agreement, and arbitration is appropriate.” . . .

CD Partners, LLC v. Grizzle, 424 F.3d 795, 798 (8th Cir. 2005) (emphasis added); *see also Tucker v. Vincent*, 471 S.W.3d 787, 796 (Mo.App. E.D. 2015) (citing approvingly *CD Partners*). Although *either* of these two circumstances is sufficient to enable a nonsignatory to enforce an arbitration provision, both circumstances are present here, thereby providing two independent bases for MR Law to enforce the Arbitration Provision.

1. MR Law has a Right to Enforce the Arbitration Provision within the Operating Agreement Because the Estate “Must Rely On” the Operating Agreement to Bring Its Claims Against MR Law.¹⁸

The Estate’s Petition “must rely on the terms of the written agreement in asserting [its] claims against the nonsignatory,” i.e., MR Law. *See CD Partners*, 424 F.3d at 798 (internal quotation marks and citation omitted). It is unnecessary to read between the lines of the Petition. A cursory perusal of the Petition makes this abundantly clear, and an in-depth review of the Petition makes it even more clear. *See supra* n.5. The Petition’s claims in Counts II, III, and IV¹⁹ are explicitly, and necessarily, predicated on the Operating Agreement. *See supra* Statement of Facts, Part D. If not for the Operating Agreement, the Personal Representative (of the Estate that is not a beneficiary of the Life Insurance Policy)

¹⁸ This is the second basis discussed in *CD Partners*. *See CD Partners*, 424 F.3d at 798.

¹⁹ Count V is only brought against Raichle, *see* D2, p. 14, and is, therefore, not relevant to the discussion of *MR Law*’s right to enforce the Arbitration Provision.

would have no basis to obtain the \$10,000,000 Life Insurance Policy payout from MRHFM, which is the precise objective of the Petition. *See id.*

Given that the Estate’s claims must rely on the Operating Agreement, it is entirely sensible that the Estate, perforce, cites the Operating Agreement repeatedly and extensively throughout the Petition. (*See* D2, ¶¶ 15, 16, 17, 18, 19, 20, 21, 22) (all of which are incorporated within each of Counts II, III, and IV, *see* D2, ¶¶ 43, 56, 70); (D2, ¶¶ 44, 45, 47, 48, 50, 52, 54, 57, 60, 62, 64, 66, 71, 73, 75, 77, 83); *see also supra* Statement of Facts, Part D. In support of its allegations, the Petition contains several large block quotes from the Operating Agreement and cites numerous sections from the Operating Agreement, including Section 2.6, Section 6.11.b, Section 8.3.a, and Section 8.3.d of the Operating Agreement. *See id.*

Because each of the signatory’s (i.e., the Personal Representative on behalf of the Estate of Decedent) claims against a non-signatory (i.e., MR Law) in Counts II, III, and IV of the Petition “makes reference to or presumes the existence of the written agreement,” (i.e., the Operating Agreement),²⁰ the Estate’s claims “arise out of and relate directly to the written agreement [i.e., the Operating Agreement], and arbitration is appropriate.” *See CD*

²⁰ For example, the two claims for tortious interference (Counts II and III) necessarily reference the Operating Agreement provision to purportedly establish what contractual obligation or business expectancy has purportedly been interfered with, i.e., how the Estate could (even ostensibly) be entitled to the \$10,000,000.00. (*See, e.g.*, D2, ¶¶ 44, 45, 47, 48, 50, 52, 54, 57, 60, 62, 64, 66.). Thus, the Petition explicitly cites and “must rely on” the Operating Agreement in support of those tortious interference claims (and the other claims). *See Barton Enterprises, Inc. v. Cardinal Health, Inc.*, 4:10 CV 324 DDN, 2010 WL 2132744, at *4 (permitting nonsignatory defendant to enforce arbitration agreement against signatory for claims of tortious interference with contract and with business expectancy).

Partners, 424 F. 3d at 798; *see also Barton Enterprises*, 2010 WL 2132744, at *4 (“Because Barton Enterprises’ [tortious interference with contract and tortious interference with business expectancy] claims against Cardinal Health depend on the interpretation of fee terms found in the license agreement, it would be unfair to allow Barton Enterprises to rely on these terms for its complaint, yet disavow the arbitration terms found in the very same license agreement.”).

Although the circuit court’s Order cited and discussed *CD Partners*, the Order erred because it *wholly failed to analyze* this *CD Partners* basis for MR Law to enforce the Arbitration Provision.²¹ (See Apdx. A7; D12, p. 7). When this second basis within *CD Partners* is properly applied to this case, it is readily apparent that, in bringing its claims against MR Law within Counts II, III, and IV, the Estate “must rely on the terms” of the Operating Agreement; “makes reference to” the Operating Agreement; and “presumes the existence of” the Operating Agreement in asserting its claims against MR Law. *See CD Partners*, 424 F.3d at 798. Accordingly, “arbitration is appropriate.” *See id.* MR Law should, therefore, be entitled to enforce the Arbitration Provision on this basis.

2. MR Law has a Right to Enforce the Arbitration Provision Because the Relationship Between Raichle and MR Law is Sufficiently Close.²²

The relationship between the signatory defendant, i.e., Raichle, and the non-

²¹ The Order discusses the “sufficiently close” basis, which is the first basis mentioned in *CD Partners*, but the Order does not discuss the “must rely on the terms” basis, which is the second basis mentioned in *CD Partners*. (Apdx. A7; D12, p. 7); *see also CD Partners*, 424 F.3d at 798.

²² This is the first basis discussed in *CD Partners*. *See CD Partners*, 424 F.3d at 798.

signatory defendant, i.e., MR Law, is “sufficiently close that only by permitting the nonsignatory to invoke arbitration may evisceration of the underlying arbitration agreement between the signatories be avoided.” *See CD Partners*, 424 F. 3d at 798. The Petition acknowledges that Raichle is the only remaining partner of MR Law. (*E.g.*, D2, ¶¶ 12, 27, 34). Relatedly, the Petition alleges that “Raichle, as the only remaining general partner of MR Law, has dominion and control over MR Law’s actions and inactions.” (*E.g.*, D2, ¶¶ 49, 61, 74). Indeed, the Petition alleges that MR Law’s actions and inactions are merely an extension of Raichle’s actions and inactions. (*See id.*) (“Raichle, and by extension MR Law, has wrongfully refused to transfer the death benefit from the Maune Policy to MRHFM.”). Thus, as per the Estate’s own allegations, Raichle’s and MR Law’s actions and inactions are indistinguishable from one another and are sufficiently close. *See CD Partners*, 424 F. 3d at 798; *see also Barton Enterprises*, 2010 WL 2132744, at *4 (explaining that a parent-subsidary relationship is “the type of ‘close relationship’ contemplated by *CD Partners*, and holding that, “[g]iven the close relationship between Cardinal Health (a non-signatory) and MSI (a signatory), Cardinal Health may enforce the arbitration agreement against Barton Enterprises (a signatory).”).

It would, thus, eviscerate the Arbitration Provision to subject only the claims against Raichle to arbitration but permit the Estate to bring the same claims against MR Law in Court. *See CD Partners*, 424 F. 3d at 798; *see also Barton Enterprises*, 2010 WL 2132744, at *4 (explaining that, given the close relationship between the signatory and nonsignatory, rejecting the nonsignatory’s right to enforce arbitration would eviscerate the arbitration

agreement in place). MR Law can, therefore, enforce the Arbitration Provision against the Estate on this basis, as well.

Although the circuit court's Order cited *CD Partners* and ostensibly applied this basis, the Order erred because it failed to *accurately* apply this *CD Partners* basis. In attempting to apply this potential basis for MR Law to enforce the Arbitration Provision, the circuit court reasoned that "[t]he relationship between MR Law and Mrs. Maune is not sufficiently close that failing to force her to arbitration would eviscerate the arbitration clause in effect between the partners of MRHFM in the OA." (Apdx. A7; D12, p. 7). However, the Order erroneously applied the rule. Under the rule, the relationship that must be examined to determine if it is "sufficiently close" is the relationship between "the *signatory* and nonsignatory *defendants*," see *CD Partners*, 424 F.3d at 798 (emphasis added), *not* the relationship between the nonsignatory defendant and the *plaintiff* (as was erroneously examined by the circuit court). When this rule is properly applied, as explained above, it is apparent that the relationship between the signatory defendant (Raichle) and the nonsignatory defendant (MR Law) is, indeed, sufficiently close to enable MR Law to enforce the Arbitration Provision. Thus, this provides a second, independent basis for MR Law to enforce the Arbitration Provision.

The Court should, therefore, compel the claims against both Raichle and MR Law to arbitration.

C. The Court of Appeals Misapplied the Two Bases Allowing a Nonsignatory to Enforce an Arbitration Agreement Against a Signatory.

The Opinion acknowledges both exceptions permitting a nonsignatory to enforce an

arbitration agreement against a signatory. However, the Opinion misapplies both of them. (See Apdx. A14-16) (citing *Tucker*, 471 S.W.3d at 796 and *CD Partners*, 424 F.3d at 798).

1. Petitioner’s Claims “Must Rely On” the Operating Agreement.

The Opinion does not—and cannot—connect the dots to explain how the claims in Counts II through V could be brought against MR Law and Raichle without relying on the terms of the Operating Agreement. That is because the Petition seeks that \$10,000,000.00 (paid to MR Law, as beneficiary, for a life insurance policy) be given to the Estate, which was not a beneficiary of the life insurance policy. It is only by relying on (and interpreting, *see* Apdx. A15) the provisions of the Operating Agreement, which discuss paying money to the estate of a deceased member of MRHFM, that Petitioner could possibly support her claims for the \$10,000,000.00 she seeks in her allegations. *See supra* Part III.B.1. Further, the Opinion’s own summary of the Petition—let alone the Petition itself—makes it abundantly clear that Petitioner’s claims “must rely on” the Operating Agreement.²³ Therefore, pursuant to the “must rely on” exception, nonsignatory MR Law has a right to enforce the Arbitration Provision within the Operating Agreement.

²³ (Apdx. A10-11) (stating that the Petition’s claims arise out of MR Law’s retention of the \$10,000,000.00 life insurance policy proceeds, payment of the premiums by MRHFM, and the Estate’s allegations that “*under the Operating Agreement, the parties agreed that the life insurance proceeds were to be used to purchase Decedent’s ownership interest in MRHFM, but that because the proceeds are being withheld from MRHFM by MR Law, the Estate is only entitled to \$1 million under the provision of the Operating Agreement that controls what happens in the event the life insurance proceeds are unavailable to MRHFM.*” (emphasis added)).

Further, in addition to the Operating Agreement forming the basis to claim and potentially obtain the \$10,000,000.00 altogether, the Opinion also improperly minimizes the importance of the Operating Agreement with regard to Petitioner establishing alleged injuries of \$10,000,000.00. (Apdx. A15).²⁴ Injuries or “damages” are a necessary element for the two tortious interference claims (Counts II and III), *see, e.g., Rail Switching Services, Inc. v. Marquis-Missouri Terminal, LLC*, 533 S.W.3d 245, 257 (Mo. App. E.D. 2017); injuries are necessary to establish the element that “the enrichment was at the expense of the plaintiff” for the unjust enrichment claim (Count IV), *see, e.g., Roberts v. Roberts*, 580 S.W.3d 600, 605 (Mo. App. E.D. 2019); and injuries or “harm” are a necessary element for the breach of fiduciary duty claim, *see, e.g., Pool v. Farm Bureau Town & Country Ins. Co. of Missouri*, 311 S.W.3d 895, 907 (Mo. App. S.D. 2010). Thus, the Opinion improperly minimizes Petitioner’s reliance on the Operating Agreement to establish injuries. Petitioner’s claims for \$10,000,000.00 “must rely on” the Operating Agreement to establish (at least) one necessary element for each of the four claims.²⁵

²⁴ The Opinion somehow states that the Operating Agreement is purportedly not “at issue in the underlying case” and that the Estate’s citations to the Operating Agreement purportedly merely “provide context for the injuries the Estate allegedly suffered as a result of MR Law’s actions, but not the legal basis for relief” (See Apdx. A15).

²⁵ The Opinion cites *Tucker*, (Apdx. A15), but *Tucker* is inapplicable because in that case, the court explained that the claims did not rely on the terms of the contract at issue; that the claims were based on acts that took place before that contract was formed; and that the contract in that case was “wholly irrelevant” to the claims. *Tucker*, 471 S.W.3d at 796, 798. Here, as explained above, the Petition does rely and must rely on the Operating Agreement; the claims are based on acts that took place after the Operating Agreement was formed; and the Operating Agreement is highly relevant, and indeed critical, to Petitioner’s claims, both to form the purported overall basis to obtain the \$10,000,000.00 and to establish one or more elements for each claim. Thus, here, Petitioner “must rely on” the Operating Agreement to bring her claims.

2. The Relationship Between MR Law and *Raichle* is “Sufficiently Close.”

Some of the Opinion’s discussion commits the same error as the circuit court by analyzing the wrong relationship. (See Apdx. A16) (“[T]he relationship between MR Law and the Estate was not close enough” (emphasis added)). The relationship that is supposed to be analyzed—and that is “sufficiently close,” (see, e.g., D2, ¶¶ 12, 27, 34, 49, 61, 74)—is “the relationship between the signatory and nonsignatory defendants,” *CD Partners*, 424 F.3d at 798 (internal quotation omitted), *not* the relationship between the nonsignatory defendant and Petitioner. Thus, the Opinion misapplies the law.

Moreover, even where the Opinion attempts to analyze the relationship between the two defendants, the Opinion misconstrues the “sufficiently close” exception. The Opinion appears to hold that the exception should not apply where the two defendants have different legal capacities, (see Apdx. A14-15), but that is precisely where it does apply. See, e.g., *Barton Enterprises*, 2010 WL 2132744, at *4 (holding that nonsignatory defendant could enforce the arbitration agreement against signatory plaintiff, and explaining that a parent-subsidiary relationship is “the type of ‘close relationship’ contemplated by *CD Partners*”). Moreover, the Opinion’s statement that the legal identities of Raichle as an individual and Raichle as a general partner are “unrelated,” (Apdx. A15), is simply inaccurate, especially if Raichle is subject to personal liability in this litigation. Finally, the Opinion’s implication that the “sufficiently close” exception cannot apply so long as the arbitration agreement remains applicable to some other parties, (see Apdx. A15), is also an incorrect analysis. Inherent within the “sufficiently close” exception, the arbitration agreement

already applies to the signatory defendant and signatory plaintiff; and yet the exception works to allow the nonsignatory defendant to compel the signatory plaintiff to arbitration. *See, e.g., CD Partners*, 424 F.3d at 798.

CONCLUSION

For the foregoing reasons, this Court should reverse the circuit court's denial of Raichle and MR Law's Motion to Compel Arbitration and remand with directions to compel arbitration of Counts II, III, IV, and V, including the threshold questions of arbitrability, both with regard to the claims against Raichle and MR Law.

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06

The undersigned certifies that the foregoing Appellants' Substitute Brief includes the information required by Rule 55.03, and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in Appellants' Substitute Brief is 11,131 words exclusive of the cover, table of contents, table of authorities, signature block, and certificates of service and compliance.

/s/ Tina N. Babel

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification to all parties in interest herein.

/s/ Tina N. Babel