

Summary of SC91728, *Lavern Robinson v. Title Lenders, Inc., d/b/a Missouri Payday Loans*
Appeal from the St. Louis circuit court, Judge Donald L. McCullin
Argued and submitted Nov. 9, 2011; opinion issued March 6, 2012

Attorneys: Title Lenders was represented by Claudia Callaway of Katten Muchin Rosenman LLP in Washington, D.C., (202) 625-3590, and Jane E. Dueker and Cicely I. Lubben of Stinson Morrison Hecker LLP in St. Louis, (314) 863-0800. Robinson was represented by John Campbell, John Simon and Erich Vieth of The Simon Law Firm in St. Louis, (314) 241-2929.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A lending company appeals a circuit court's determination that the arbitration agreement in its payday loan contracts is unconscionable and unenforceable. In a 7-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the circuit court's decision. In light of the United States Supreme Court's recent decision in *AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740 (2011), the trial court here erred in finding the arbitration agreement unconscionable (unfair) because of the class waiver it contained. The trial court should have decided whether the arbitration agreement was enforceable under state law principles of contracts that do not single out or disfavor arbitration. There are factual issues remaining for the trial court to consider in determining unconscionability.

Judge Michael A. Wolff, a retired judge of the Supreme Court of Missouri, sat in this case by special designation in place of Judge George W. Draper III.

Facts: Lavern Robinson entered into 13 separate loan contracts with Title Lenders Inc. over the period of one year. Each contract Robinson signed contained Title Lenders' standard arbitration agreement language, which waived the right to a jury trial or class action proceeding against Title Lenders. Robinson testified she never read the arbitration clause when she signed the contracts. Robinson sued Title Lenders in a class action for violations of the state merchandising practices act and other regulatory statutes. Title Lenders moved to compel Robinson to bring her claims under individual arbitration or in small claims. Robinson alleged the class waiver provision was unconscionable and unenforceable. The trial court granted Title Lenders' motion to stay the case and compel arbitration but declared the class waiver provision of the arbitration agreement unconscionable and unenforceable and struck it from the agreement. In *Stolt-Nielsen S.A. v. AnimalFeeds Intern. Corp.*, 130 S.Ct. 1758 (2010), the United States Supreme Court held there must be express consent by the parties to compel class arbitration. Robinson asked the trial court to deny Title Lenders' motion to stay in light of *Stolt-Nielsen*, and Title Lenders asked that the court modify its order granting the stay. The court found that, in light of the recent decision, it could compel only individual arbitration and was precluded from compelling class arbitration. It vacated its stay and overruled Title Lenders' motions to stay and compel arbitration. Title Lenders appeals.

REVERSED AND REMANDED

Court en banc holds: The trial court erred in finding the arbitration agreements were unenforceable based solely on their class waiver provisions. In *Concepcion*, the United States Supreme Court found that a state law regarding class action waivers was preempted by the federal arbitration act, which

places arbitration agreements on equal footing with other contracts by preserving the right to claim contracts defenses like fraud, duress and unconscionability but not defenses applying solely to arbitration agreements. Ordinary state-law principles governing contracts must be applied to the entire arbitration agreement to consider if it is proper. Courts may not apply state public policy concerns to invalidate arbitration agreements under *Concepcion* because such concerns conflict with and are preempted by the federal act. The trial court here should have decided whether the arbitration agreement was enforceable under state law principles of contracts that do not single out or disfavor arbitration.