

Summary of SC94374, *Robert S. Eaton v. CMH Homes Inc.*

Appeal from the Lincoln county circuit court, Judge Chris Kunza Mennemeyer
Argued and submitted January 13, 2015; opinion issued May 26, 2015

Attorneys: CMH Homes was represented by Christopher P. Leritz and Kelly T. Kirkbride of Leritz, Plunkert & Bruning PC in St. Louis, (314) 231-9600; and Eaton was represented by Michael J. Sudekum of Mandel & Mandel LLP in St. Louis, (314) 621-1701.

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 manufactured home seller appeals the circuit court’s decision overruling its motion to dismiss or to stay the court proceeding and to compel arbitration in an action filed by a manufactured home purchaser against the seller. In a decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the circuit court’s decision and remands (sends back) the case because the circuit court erred in refusing to compel arbitration. The arbitration agreement does not fail for a lack of mutuality of obligation because courts look to a contract as a whole to determine whether consideration is adequate rather than looking solely at the consideration given for the agreement to arbitrate. Furthermore, although an anti-waiver provision in the arbitration agreement is unconscionable and invalid, that anti-waiver provision can be severed. Other objections to the arbitration agreement, such as the fact that the seller can choose the arbitration subject to the purchaser’s veto and that the contract is one of adhesion, do not render the contract as a whole unconscionable.

Judge Richard B. Teitelman concurs in part and dissents in part without opinion.

Facts: In 2009, Robert Eaton purchased a manufactured home from CMH Homes Inc. The contract between Eaton and CMH included an arbitration agreement. The arbitration agreement required Eaton to arbitrate all claims but gave CMH the right to bring suit in court to foreclose upon any collateral, to obtain a monetary judgment or to enforce the security agreement. The arbitration agreement also included an “anti-waiver” provision that stated that CMH’s right to bring suit in court for one of the three claims did not constitute a waiver of either party to compel arbitration regarding any other dispute or remedy subject to arbitration in the contract. CMH subsequently delivered and installed the manufactured home on Eaton’s property. In 2012, Eaton sued CMH, alleging fraud, negligence, breach of contract and negligent misrepresentation in regard to CMH’s sale of the manufactured home to him. CMH denied Eaton’s allegations, asserted that Eaton entered into a binding arbitration agreement with CMH, and moved to dismiss or stay the court action and to compel arbitration. The trial court overruled CMH’s motion without opinion. CMH appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) The fact that the arbitration clause required Eaton to arbitrate all claims but gave CMH the right to bring suit in court “to foreclose upon any collateral, to obtain a monetary judgment or to enforce the security agreement” does not render the arbitration

agreement invalid. This Court previously has held that courts will look to a contract as a whole to determine whether consideration is adequate rather than looking solely at the consideration given for the agreement to arbitrate.

\(2) The anti-waiver clause is unconscionable and invalid. The fact that the arbitration agreement requires Eaton to submit all claims to arbitration, including counterclaims, could create the anomalous situation where his affirmative defenses and counterclaims to claims made by CMH in court must proceed in arbitration at the same time as CMH proceeds on those same claims in court. This would require Eaton to proceed in two forums with possibly inconsistent results. But the anti-waiver provision does not render the entire arbitration agreement unconscionable and, as this Court previously has explained in other arbitration cases, the provision can be severed from the remainder of the agreement.

(3) Eaton's other objections to the arbitration agreement, such as the fact that the seller can choose the arbitration subject to the purchaser's veto and that the contract is one of adhesion, do not render the contract as a whole unconscionable.