MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

TINA AND PAUL FOGELSONG, ET AL.

Respondents

v.

JOE MACHENS AUTOMOTIVE GROUP INC., ET AL.

Appellants

DOCKET NUMBER WD82705

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: April 28, 2020

Appeal From:

Circuit Court of Boone County, MO
The Honorable R. Jeffrey Harris, Judge

Appellate Judges:

Division One
Lisa White Hardwick, P.J., Cynthia L. Martin, and Thomas N. Chapman, JJ.

Attorneys:

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

TINA AND PAUL FOGELSONG, ET AL., Respondents,
v.
JOE MACHENS AUTOMOTIVE GROUP INC., ET AL., Appellants.

WD82705 **Boone County**

Before Division One Judges: Hardwick, P.J., Martin, and Chapman, JJ.

Carol Benna, Patrick Bonnot, and Tina and Paul Fogelsong ("Plaintiffs") filed a class action lawsuit against Joe Machens Automotive Group, Inc., Joe Machens Nissan, Inc., and GRD Auto Sales, Inc., (collectively "Machens") in the Circuit Court of Boone County, Missouri. Plaintiffs alleged that they purchased hail-damaged vehicles from Machens, which Machens had fraudulently marketed as "factory fresh" and brand new. Machens moved to compel arbitration, citing a mandatory arbitration provision included in Plaintiffs' purchase contracts. The circuit court denied the motion, ruling that the arbitration provision was unconscionable.

After the circuit court entered its order, the Supreme Court of Missouri handed down its opinion in *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 51 (Mo. banc 2017). In that opinion, the Supreme Court held that the parties can delegate threshold questions of arbitrability to the arbitrator by incorporating by reference the Rules of the American Arbitration Association ("AAA Rules"). Machens appealed to this Court, and we remanded to give the parties the opportunity to litigate the issue of delegation in light of *Pinkerton*. Machens filed a renewed motion to compel arbitration, arguing that under *Pinkerton*, the issue of arbitrability was for the arbitrator to determine. The circuit court denied Machens's renewed motion, finding that the arbitration agreements did not clearly and unmistakably manifest the parties' intent to delegate threshold issues to the arbitrator. Machens appeals.

REVERSED AND REMANDED.

Division One holds:

The parties' arbitration agreements incorporate by reference the AAA Rules, which include a provision delegating arbitrability in the applicable subset. Under *Pinkerton* and its progeny, the parties clearly and unmistakably manifested their intent to delegate gateway questions of arbitrability to the arbitrator. Whether the arbitration agreement is unconscionable and whether the parties' disputes are otherwise arbitrable are issues for the arbitrator to decide. The circuit court's order is reversed, and the case is remanded with directions to grant Machens's motion to compel arbitration and stay the parties' civil proceeding.

Opinion by: Thomas N. Chapman, Judge April 28, 2020

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