MISSOURI COURT OF APPEALS
WESTERN DISTRICT

GLENN JAMES DUNCAN,
RESPONDENT

vs.

TITLEMAX OF MISSOURI, INC.,
APPELLANT

DOCKET NUMBER WD83330

DATE: AUGUST 25, 2020

Appeal from:

The Circuit Court of Clay County, Missouri
The Honorable Louis Angles, Judge

Appellate Judges:

Division One: Thomas H. Newton, Presiding Judge, Mark D. Pfeiffer, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Jon M. Krebbs, for Respondent

Bruce B. Brown, Co-counsel for Respondent

Anthony J. Durone, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

GLENN JAMES DUNCAN, JR., RESPONDENT,
v.
TITLEMAX OF MISSOURI, INC., APPELLANT.

WD83330 Clay County

Before Division One Judges: Thomas H. Newton, Presiding Judge, Mark D. Pfeiffer, Judge, and Edward R. Ardini, Jr., Judge

Glenn Duncan sued TitleMax of Missouri, Inc. in the Circuit Court of Clay County, alleging conversion of a vehicle he co-owned with his grandson. The suit stemmed from a consumer loan Duncan's grandson obtained using the co-owned vehicle as collateral. Duncan's grandson made no payments on the loan, and TitleMax repossessed the vehicle. After Duncan initiated this suit, TitleMax filed a Motion to Compel Arbitration, claiming that Duncan was present at the TitleMax store with his grandson when the loan was obtained and signed a Co-Owner Consent that contained an arbitration agreement. Duncan denied ever visiting the store. The trial court denied TitleMax's Motion to Compel Arbitration. TitleMax appeals from that order, raising three points of error. In its first point, TitleMax asserts that the trial court erred in that the delegation clause within the arbitration agreement required the arbitrator to resolve threshold issues of arbitrability and Duncan did not specifically challenge the delegation clause. In its second and third points, TitleMax claims that the trial court's denial was without sufficient evidence and was against the weight of the evidence.

AFFIRMED.

Division One holds:

1. Duncan was not required to specifically challenge the delegation provision because his challenge to the existence of any agreement inherently challenged the existence of the delegation clause. The trial court had a duty to determine whether an arbitration agreement existed at all before it was required to submit the case to an arbitrator for the determination of threshold issues of arbitrability.

2. The trial court's denial of TitleMax's Motion to Compel Arbitration was supported by substantial evidence. The crux of the case was the dispute between the parties as to whether Duncan was present at the TitleMax store and had electronically signed the Co-Owner consent at the time his grandson obtained the loan. Duncan's evidence, in the form of an affidavit from his grandson, provided that Duncan was not at the store and no one with the grandson at the time the loan was obtained possessed Duncan's identification, was sufficient to support the trial court's decision.

3. The trial court's denial of the Motion to Compel Arbitration also was not against the weight of the evidence. As the trial court could reasonably have found from the evidence that Duncan was not present at the TitleMax store at the time the loan was obtained and did not sign the Co-Owner's Consent containing the arbitration provision, TitleMax's argument that the trial court's ruling was against the weight of the evidence must fail.

Opinion by: Edward R. Ardini, Jr., Judge Date: August 25, 2020

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