OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

EM MEDICAL, LLC,	)	No. ED108965
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	19SL-CC00974
	)	
STIMWAVE LLC,	)	
	)	
Appellant,	)	
	)	Honorable Stanley J. Wallach
and	)	
	)	
ANDREA BERRY, et al.,	)	
	)	
Defendants.	)	Filed: June 15, 2021

Stimwave LLC ("Stimwave") appeals the trial court's denial of its motion to compel arbitration of claims between EM Medical, LLC ("EM Medical") and Stimwave in the underlying suit in this case.[1] Stimwave's motion to compel arbitration was based on an arbitration provision in a written agreement which Stimwave presented to EM Medical in January 2016 ("Proposed January 2016 Agreement").

AFFIRMED.

Division One holds: The trial court could have reasonably concluded from the evidence that the parties did not mutually agree to be bound by the terms and arbitration provision in the Proposed January 2016 Agreement. Accordingly, Stimwave, as the party seeking to compel arbitration,

[1] As explained in this Court's opinion, the claims between EM Medical and Stimwave in the underlying suit in this case consist of, (1) EM Medical's claim alleging Stimwave owed EM Medical money and damages for unpaid commissions earned by EM Medical before the parties' business relationship was terminated (Count I of EM Medical's final amended petition); (2) EM Medical's claims relating to Stimwave's alleged tortious interference with alleged employment agreements entered into between EM Medical and underlying defendants Andrea Berry, Kaitlin Brenzel, and Ingrid Flaspohler (Counts V, VI, and VII of EM Medical's final amended petition); (3) EM Medical's claim relating to Stimwave's termination of the parties' alleged franchise relationship (Count VIII of EM Medical's final amended petition); and (4) Stimwave's counterclaim relating to EM Medical's alleged failure to promptly return approximately $148,130 of Stimwave's medical equipment inventory after the parties' business relationship had ceased. EM Medical also filed breach of contract claims against underlying defendants Andrea Berry, Kaitlin Brenzel, and Ingrid Flaspohler. The trial court's decision denying Stimwave's motion to compel arbitration certified the decision for appeal as to all claims between EM Medical and Stimwave in the underlying suit pursuant to Missouri Supreme Court Rule 74.01(b) (2020), and found there was no just reason for delay of an appeal.

has failed to meet its burden of proving the existence of a valid arbitration agreement under Missouri law. Therefore, the trial court's decision denying Stimwave's motion to compel arbitration is not erroneous.

Opinion by: Robert M. Clayton III, J.
Colleen Dolan, P.J., and Mary K. Hoff, J., concur.

Attorney for Appellant: Aaron E. Schwartz

Attorney for Respondent: Allen P. Press, Matthew B. Vianello, Bruce R. Bartlett

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.