**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**TELISSAH JOHNSON,**
**RESPONDENT**

**vs.**

**MENARD, INC.,**
**APPELLANT**

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DOCKET NUMBER WD84138

DATE: JULY 27, 2021

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Appeal from:

The Circuit Court of Platte County, Missouri
The Honorable James Van Amburg, Judge

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Appellate Judges:

Division Three: Edward R. Ardini, Jr., Presiding Judge, Mark D. Pfeiffer. Judge and W. Douglas Thomson, Judge

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Attorneys:

Kenneth D. Kinney, for Respondent

Alex R. Meyers, for Appellant

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**TELISSAH JOHNSON, RESPONDENT,**
**v.**
**MENARD, INC., APPELLANT.**

WD84138 Platte County

Before Division Three Judges: Edward R. Ardini, Jr., Presiding Judge, Mark D. Pfeiffer, Judge, and W. Douglas Thomson, Judge

Plaintiff, Telissah Johnson, sued her former employer, Menard, Inc. (Menard), in the Circuit Court of Platte County, alleging discrimination and retaliation. Menard filed a motion to compel arbitration based on an employment agreement signed by Johnson when she began working for the company. Menard appeals from the trial court's denial of the motion to compel. Menard claims the trial court erred in denying its motion to compel, asserting that the arbitration agreement includes a valid delegation provision requiring an arbitrator to decide threshold issues of arbitrability; that the arbitration agreement was supported by sufficient consideration; and that previous dispositions entered against Menard in other cases involving similar employment agreements do not implicate principles collateral estoppel.

**AFFIRMED.**

**Division Three holds:**

The arbitration agreement signed by Johnson does include a delegation provision; however, the consideration supporting the delegation provision is illusory due to the unfettered authority granted to the President of Menard to unilaterally modify the delegation provision at any time and without notice. Therefore, because the delegation provision lacks valid consideration, it is not enforceable and the trial court had the authority to determine threshold issues of arbitrability.

Similarly, the provision allowing the President of Menard to unilaterally modify the delegation clause also permits the President to modify the arbitration agreement itself. This authority similarly renders Menard's promise to arbitrate disputes illusory. As such, the arbitration agreement as a whole also lacks valid consideration and is unenforceable.

**Opinion by: Edward R. Ardini, Jr., Judge** Date: July 27, 2021

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