

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**JOSEPH ELYACHAR AND MICHAEL ELYACHAR,
RESPONDENTS**

vs.

**BIG BOB'S FLOORING OUTLET OF AMERICA, INC., AND FLOORS & MORE, LLC
AND VINCENT VIRGA,
APPELLANTS**

DOCKET NUMBER WD84118

DATE: SEPTEMBER 21, 2021

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Jack R. Grate, Judge

Appellate Judges:

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

Attorneys:

John M. Duggan, for Respondents

Cameron Grant, for Appellants

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

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WD84118

Jackson County

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

Joseph Elyachar and Michael Elyachar (collectively, “the Elyachars”) entered into a stockholders’ agreement with Big Bob’s Flooring Outlet of America, Inc., Floors & More, LLC, and Vincent Virga (collectively, “Defendants”). Following the break down of the relationship between the parties, the Elyachars filed a petition in the Circuit Court of Jackson County alleging breach of the stockholders’ agreement, breach of fiduciary duty, and seeking an accounting, judicial dissolution, and inspection of the corporate books of Big Bob’s Flooring Outlet of America, Inc. After the Elyachars’ petition was filed, Defendants filed a separate action in the United States District Court for the District of Massachusetts seeking to compel arbitration of the claims brought by the Elyachars in Missouri. Four days later, Defendants filed a motion to stay in the case pending in Jackson County. The trial court denied Defendants’ motion, and they appeal from that denial.

DISMISSED.

Division Three holds:

This Court must determine its jurisdiction over an appeal *sua sponte* if not raised by the parties. “The right to appeal is purely statutory, and where a statute does not give a right to appeal, no right exists.” *PerfectStop Partners, L.P. v. U.S. Bank*, 231 S.W.3d 260, 263 (Mo. App. W.D. 2007). Missouri law does not authorize an appeal from the denial of a motion to stay of the type at issue here. However, a party can appeal from the denial of motion to stay brought under Section 3 of the Federal Arbitration Act (“FAA”). In this case, Defendants’ motion to stay was not brought under Section 3 of the FAA. Rather, the motion simply sought a stay “pending the outcome” of other litigation that it had filed in Massachusetts. As the motion did not implicate Section 3 of the FAA or any other provision that would vest this Court with jurisdiction, we must dismiss the appeal.

Opinion by: Edward R. Ardini, Jr., Judge

Date: September 21, 2021

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