OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

THIERET FAMILY, LLC, ET AL.,	)	No. ED109440
	)	
Appellants,	)	
	)	Appeal from the Circuit Court of
vs.	)	Perry County
	)	
DELTA PLAINS SERVICES, LLC, AND	)	Honorable Scott A. Lipke
JUSTIN A. BROWN, ADAM HORTON AND	)	
MIKE STILL,	)	
Respondents/Defendants.	)	Filed: November 16, 2021

Thieret Family, LLC ("Family") and Dennis A. Thieret, Trustee of the Dennis A. Thieret Revocable Trust dated January 27, 1998 ("Trustee") (Family and Trustee are hereinafter collectively "Appellants") appeal from the judgment of the Circuit Court of Perry County, which dismissed the claims they had brought against Delta Plains Services, LLC ("Delta"), Justin Brown ("Brown"), Adam Horton ("Horton"), and Mike Still ("Still") (Brown, Horton, and Still are hereinafter collectively the "Individual Defendants," while Delta and the Individual Defendants are hereinafter collectively "Respondents"). In their Petition, Appellants alleged fraud in the inducement in connection with their execution of two "finance agreements" with Respondents.

Appellants raise three points on appeal. In their first point, Appellants argue that the circuit court erred in granting Respondents' motion to dismiss their fraudulent inducement claims against the Individual Defendants because they could not invoke the outbound forum selection clauses contained in the subject finance agreements (which designated venue in Dallas County, Texas) in that they are neither parties to nor third-party beneficiaries of the finance agreements. In their second point, Appellants argue that the circuit court erred in granting Respondents' motion to dismiss with respect to their fraudulent inducement claims because the forum selection clauses in the finance agreements lack precise language requiring the litigation of those claims in Dallas County, Texas, and the resolution of those claims does not involve the interpretation of the finance agreements. In their third point, Appellants argue that the circuit court erred in granting Respondents' motion to dismiss their fraudulent inducement claims because enforcement of the forum selection clauses would not be fair and reasonable in that they were procured by fraud, and enforcement would result in the duplication of effort and the risk of collateral estoppel, *res judicata*, or inconsistent adjudications.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

DIVISION ONE HOLDS: With respect to Appellants' first point on appeal, because Delta and Brown were clearly signatories to the subject finance Agreements, they can each enforce the

forum selection clause contained therein. However, because Horton and Still were neither signatories to nor third-party beneficiaries of the subject finance agreements, they may not enforce the forum selection clause contained therein. With respect to Appellants' second point on appeal, the forum selection clause in the subject finance agreements contains language specific enough to encompass Respondents' fraudulent inducement claims because even though these claims do not rely on any specific provisions thereof, the trier of fact will nonetheless be required to generally reference and/or interpret their terms, even if the trier of fact is not called upon to determine whether Delta actually breached the terms thereof. With respect to their third point on appeal, enforcing the forum selection clause would not be unfair or unreasonable on the grounds that it was procured by fraud because there are no specific allegations to that effect in the Petition; rather, Respondents have only alleged that the subject finance agreements were procured by fraud, which are insufficient under applicable Missouri law. Finally, enforcing the forum selection clause would not be unfair or unreasonable due to the risk of collateral estoppel, *res judicata*, or inconsistent adjudications because, even if tried in one action, Appellants would still be required to present evidence supporting their fraudulent inducement claims against each Respondent independently; moreover, while there may be some inefficiency for the parties and the trial courts in trying these claims in two different forums, this consideration does not outweigh the interest of respecting the right of Delta and Brown to enforce the forum selection clause, while also respecting applicable Missouri law that does not permit Horton and Still to enforce the forum selection clause.

For these reasons, we hold that the circuit court correctly dismissed Counts I and II of the Petition as to Delta and Brown, and thus AFFIRM the circuit courts' dismissal thereof. However, we further hold that the circuit court erred in dismissing Counts I and II of the Petition as to Horton and Still, and thus REVERSE the circuit court's dismissal thereof and REMAND for further proceedings consistent with this opinion.

Opinion by: Kelly C. Broniec, J.
Sherri B. Sullivan, P.J. and Kurt S. Odenwald, J. concur.

Attorney for Appellant: David L. Lantognoli, Kevin P. Green and Thomas C. Horscroft

Attorney for Respondent: John M. Reynolds

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