MISSOURI COURT OF APPEALS
WESTERN DISTRICT

AMANDA MACKEY and GREG MACKEY,

Respondents,

v.

SCHOOLER'S CONSTRUCTION, L.L.C.,

Appellant.

DOCKET NUMBER WD84309

Date: February 15, 2022

Appeal from:

Boone County Circuit Court
The Honorable J. Hasbrouck Jacobs, Judge

Appellate Judges:

Division Three: Anthony Rex Gabbert, Presiding Judge, Lisa White Hardwick, and Thomas N. Chapman, Jr., Judges

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Attorneys:
Rodney J. Stevens, Columbia, for appellant.
Philip J. Christofferson, St. Louis for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

AMANDA MACKEY and GREG MACKEY, Respondents,
v.
SCHOOLER'S CONSTRUCTION, L.L.C., Appellant.

WD84309 Boone County

Before Division Three Judges: Anthony Rex Gabbert, Presiding Judge, Lisa White Hardwick, and Thomas N. Chapman, Judges

Schooler's Construction, LLC ("Schooler's") appeals the circuit court's order denying its motion to compel arbitration of Amanda and Greg Mackey's ("the Mackeys") lawsuit alleging claims of negligence, breach of the implied contractual duty to perform work in a good and workmanlike manner, and breach of the implied warranty of habitability. Schooler's contends the arbitration clause in a limited warranty signed by the Mackeys requires arbitration of their claims.

REVERSED AND REMANDED.

Division Three holds:

(1) The circuit court erred in denying the motion to compel arbitration because the Mackeys' claims fall within the scope of the arbitration clause. The arbitration agreement requires arbitration of any claims that arise out of or relate to the limited warranty. The central issue in each of the Mackeys' claims – Schooler's responsibility for alleged defects in the foundation that affect the structural soundness of the residence and for minor, punch list items of construction – is the same issue that the limited warranty purports to define. Therefore, resolution of the Mackeys' claims may require a determination of the legal effect of the limited warranty on Schooler's responsibility. We cannot say with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the Mackeys' claims, and any doubts as to arbitrability must be resolved in favor of coverage.

(2) The circuit court erred in denying the motion to compel arbitration because the Mackeys failed to establish that the arbitration clause is unenforceable. Pursuant to Section 435.350, RSMo 2016, the limited warranty is

not a contract of adhesion. While the Mackeys contend the entire limited warranty is unconscionable because it contains an allegedly unconscionable provision, the limited warranty includes a severability clause that would retain the arbitration clause's enforceability even if other provisions in the limited warranty were deemed unenforceable. The Mackeys do not make any supported argument that the arbitration clause is unconscionable.

Opinion by: Lisa White Hardwick, Judge February 15, 2022

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