OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

TODD J. WIND and TODD J. WIND ENTERPRISES, LLC.,	)	No. ED109818
Respondents,	)	Appeal from the Circuit Court of St. Louis County
v.	)	Cause No. 20SL-CC03107
MARK A. MCCLURE,	)	Honorable Kristine A. Kerr
Appellant.	)	Filed: April 26, 2022

Mark A. McClure appeals the circuit court's denial of his motion to compel arbitration. Todd J. Wind and Todd J. Wind Enterprises, LLC filed a breach of contract action against McClure for violating the parties' Asset Purchase Agreement. McClure argues that Wind's claims fall within the Agreement's binding arbitration clause which unambiguously requires arbitration of such claims. Wind argues that the arbitration clause is invalid and unenforceable because it is ambiguous and fails to include the mandatory notice language required by § 435.460 of the Missouri Uniform Arbitration Act. McClure argues that the parties' failure to comply with § 435.460 should be excused because the parties had actual knowledge of the arbitration provision.

AFFIRMED.

Division One Holds: The circuit court did not err in denying McClure's motion to compel arbitration. The parties do not dispute that § 435.460 is applicable to their contract or that they failed to comply with its provisions. The plain language of the statute is clear and unambiguous and there are no exceptions authorized by statute. To the extent that the judicially created exception of actual notice is at odds with § 435.460, it should not be followed. The parties' failure to include the notice language required by § 435.460 renders the arbitration agreement unenforceable.

Opinion by: John P. Torbitzky, J.,
Kurt S. Odenwald, P.J., and Kelly C. Broniec, J., concur.

Attorney for Appellant: John Mark Hongs
Attorneys for Respondent: Narcisa Przulj, Timothy C. Sansone, Joseph F. Devereux, III

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.