In the Missouri Court of Appeals
Eastern District

DIVISION THREE

JEANNIE ASHELIN and COREY SCHEIDEMAN, Plaintiffs/Respondents, v. ED NAPLETON ST. LOUIS IMPORTS, INC. d/b/a OFF LEASE BY NAPLETON, NAPLETON AUTOWERKS/MISSOURI, INC. d/b/a OFF LEASE BY NAPLETON, and FIFTH THIRD BANK, N.A., Defendants/Appellants.	)	ED114278 Filed: September 22, 2026

Appeal from the Circuit Court of St. Louis County
The Honorable Lorne J. Baker, Judge

Introduction

Defendants, Ed Napleton St. Louis Imports, Inc. d/b/a Off Lease By Napleton, Napleton Autowerks/Missouri, Inc. d/b/a Off Lease By Napleton, and Fifth Third Bank, N.A., appeal the order entered by the Circuit Court of St. Louis County denying their amended motion to compel arbitration and stay litigation in the action brought by Plaintiffs, Jeannie Ashelin and Corey Scheideman. The trial court denied Defendants'

amended motion to compel arbitration on the ground the parties' agreements failed to include the notice statement required by section 435.460 RSMo. (2016).[1] Because this Missouri statute is preempted by the Federal Arbitration Act, which applies to contracts involving interstate commerce and which the parties' agreements designated as their choice of law, we reverse and remand to the trial court for an order compelling arbitration.

Factual and Procedural Background

Plaintiffs purchased a 2019 Chevrolet Bolt, an electric vehicle, from Defendant Ed Napleton St. Louis Imports, Inc. d/b/a Off Lease by Napleton. To make their purchase, Plaintiffs agreed to a financing contract containing an arbitration provision, which contract was assigned to Defendant Fifth Third Bank, N.A. In addition to the financing contract, Plaintiffs executed a buyer's order with an arbitration provision and a separate arbitration agreement (collectively "the agreements"). The buyer's order and financing contract each contained the following provisions:

> Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of the Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration, and not be a court action.
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1 All statutory references are to RSMo. (2016).

> Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. [section] 1 et. seq.) and not by any state law concerning arbitration.

The separate arbitration agreement contained substantially similar language:

> Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of the Arbitration Agreement, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase, lease, or condition of the vehicle, any retail installment sale contract or lease agreement or any resulting transaction or relationship (including any such relationship with third parties who do not sign your purchase, lease agreement, or financing contract) shall, at your or our election, be resolved by neutral, binding arbitration, and not be a court action.
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> Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. [section] 1 et. seq.) and not by any state law concerning arbitration.

Shortly after purchase, Plaintiffs contend the vehicle exhibited problems with the high-voltage charging system, and displayed messages advising that the battery coolant level was too low. Plaintiffs took the vehicle to the service department of a different Chevrolet dealer where, they alleged, service technicians discovered the coolant lines to the battery were disconnected and blocked by three strategically placed plastic grocery bags. The cooling system was completely empty, and the battery itself was damaged. Further, Plaintiffs alleged that before they purchased the vehicle, a code for the high-voltage system, which would have alerted them to these issues, appeared to have been cleared, concealing the defective and dangerous nature of the vehicle.

According to Plaintiffs, the other dealership refused to work on the vehicle, and the Defendants ignored attempts to resolve the issue. As a result, Plaintiffs, residents of St. Louis County, Missouri, filed a petition asserting claims for violations of the Missouri Merchandising Practices Act, fraud, negligent misrepresentation, and unjust enrichment against Ed Napleton St. Louis Imports, Inc., an Illinois corporation registered to do business in Missouri; Napleton Autowerks/Missouri, Inc., a Missouri corporation; and Fifth Third Bank, N.A., a nationally organized bank with its principal place of business in Ohio.

Defendants filed an original motion to compel arbitration and stay litigation in conjunction with their answer; attached unauthenticated copies of the buyers' order, financing contract, and separate arbitration agreement; and set their motion for hearing. The day of the hearing, Plaintiffs filed their response to Defendants' motion to compel arbitration. Plaintiffs contended that Defendants failed to prove the existence of a valid and enforceable arbitration agreement because: (1) Defendants failed to attach authenticated copies of the agreement(s) to their motion; and (2) the arbitration agreements failed to include the notice provision required by the Missouri Uniform Arbitration Act ("the Missouri Act"). The trial court continued the hearing to allow time for Defendants to file a reply and Plaintiffs a sur-reply.

Defendants replied, submitting authenticated copies of the buyer's order, financing contract, and separate arbitration agreement. They argued that: (1) the Federal Arbitration Act ("the Federal Act" or "the FAA") applied because of the choice of law provision of each arbitration agreement; (2) the Missouri Act's notice requirement could not apply to

circumvent an arbitration provision within the scope of the Federal Act; and (3) the Missouri Act's notice requirement did not apply to stand-alone arbitration agreements. Plaintiffs filed a sur-reply, arguing that Defendants waived their right to arbitration by referencing only the Missouri Act in their motion. More specifically, Plaintiffs maintained that the parties modified their contract when Defendants invoked only the Missouri Act in their original motion to compel arbitration, and Plaintiffs expressly agreed that the Missouri Act applied. And even if the parties' contract was not modified, Plaintiffs contend, Defendants' original motion expressly waived application of the Federal Act in favor of application of the Missouri Act.

Defendants disagreed with Plaintiffs' position, but nevertheless they sought to amend their motion to compel arbitration to specify that the subject arbitration was governed by the Federal Arbitration Act as opposed to the Missouri Act. The trial court granted Defendants' request to file an amended motion to compel. In their amended motion, Defendants relied on the language in the financing contract, buyer's order, and separate arbitration agreement, each of which contained a provision setting forth the agreement of the parties to proceed under the Federal Act. Defendants attached authenticated copies of the foregoing documents to their amended motion.

Plaintiffs responded to Defendants' amended motion. Plaintiffs argued that the original motion resulted in the parties' agreement that the Missouri Act governs the contract, thus amending it. And even if the contract was not amended, Plaintiffs argue, Defendants already waived application of the Federal Act in favor of the Missouri Act, and the arbitration clauses lack the notice required by RSMo. 435.460.

The trial court never ruled on Defendants' original motion. But having considered the briefing and oral arguments, the trial court denied Defendants' *amended* motion to compel arbitration. The trial court found that:

> [T]he arbitration clauses at issue lack the necessary warning mandated by RSMo. 435.460, which states that each contract containing an arbitration provision *shall* "include adjacent to, or above, the space provided for signatures a statement, in ten-point capital letters, which read(s) substantially as follows: "THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES."
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> Accordingly, the Court finds the Arbitration Agreement as a whole unenforceable and therefore [D]efendant's Amended Motion to Compel Arbitration and Stay Litigation is hereby DENIED.

(Emphases in original). The trial court's order stated no other findings of fact, conclusions of law, or basis for denying Defendants' amended motion to compel arbitration. The order did not address whether the Federal Act or the Missouri Act applied, and it did not address any of the other issues or arguments raised by either party.

Defendants appeal pursuant to section 435.440, which allows for immediate interlocutory appeal from denial of a motion to compel arbitration. *Sanford v. CenturyTel of Mo., LLC*, 490 S.W.3d 717, 718 (Mo. banc 2016).

Standard of Review

When, as here, the parties have not contested the factual existence of an arbitration agreement, we review the denial of a motion to compel arbitration *de novo. Bridgecrest*

Acceptance Corp. v. Donaldson, 648 S.W.3d 745, 751 (Mo. banc 2022);[2] *see also McCann Concrete Products, Inc. v. Raineri Constr., LLC*, 685 S.W.3d 50, 52 (Mo. App. E.D. 2024) (in determining whether Federal or Missouri arbitration law applies, "[w]hether the trial court should have granted the motion to compel arbitration is a question of law that we review *de novo*."). When this Court engages in *de novo* review, we exercise independent judgment to correct erroneous interpretations and give the trial court's decision no deference. *Standifer v. Suntrup Hyundai, Inc.*, 695 S.W.3d 302, 304 (Mo. App. E.D. 2024).

Analysis

In two points on appeal, Defendants challenge the trial court's denial of their amended motion to compel arbitration and to stay litigation. In their first point, Defendants contend the Missouri Act does not apply because the parties agreed that the Federal Act would govern the arbitration provisions in the parties' agreements. Alternatively, in their second point, Defendants contend that section 435.460 of the Missouri Act does not apply to a stand-alone arbitration agreement. Point One is dispositive.

Alleged Violations of Court Briefing Rules

2 Conversely, when the parties dispute whether an arbitration agreement exists, we will affirm the trial court's order denying a motion to compel arbitration unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Standifer v. Suntrup Hyundai, Inc.*, 695 S.W.3d 302, 304 (Mo. App. E.D. 2024).

As a threshold matter, Plaintiffs urge us to dismiss Defendants' appeal because of alleged Rule 84.04 and Rule 84.13(a) briefing violations. Plaintiffs argue that Defendants ignore critical arguments leading to the trial court's challenged ruling and that "[a]llegations of error not properly briefed shall not be considered in any civil appeal."[3]

As a matter of policy, we prefer to rule on the merits whenever possible, and we will do so provided we can ascertain the gist of the appellant's arguments, notwithstanding minor shortcomings in briefing. *Unifund CCR Partners v. Myers*, 563 S.W.3d 740, 743 (Mo. App. E.D. 2018). Because we can understand Defendants' arguments, we decline Plaintiffs' invitation to dismiss the appeal.

Point One—The Federal Arbitration Act, Which Preempts The Missouri Uniform Arbitration Act, Applies To The Parties' Agreements

In their first point, Defendants contend the trial court erred in denying their amended motion to compel arbitration. They argue the Missouri Act does not apply because the parties agreed the Federal Act would govern the arbitration provisions in the agreements.

The Federal Arbitration Act was adopted in 1925. *Bunge Corp. v. Perryville Feed & Produce, Inc.*, 685 S.W.2d 837, 838 (Mo. banc 1985). Its purpose was "to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate," and as such, the Federal Act preempts state laws that render arbitration agreements unenforceable. *McCann Concrete*, 685 S.W.3d at 52 (quoting *Group Health Plan, Inc. v. BJC Health Sys., Inc.*, 30 S.W.3d 198, 203 n.2 (Mo. App. E.D. 2000)). The Federal Act, 9 U.S.C.

3 Mo. Sup. Ct. R. 84.13(a).

section 1, *et seq*., "governs the applicability and enforceability of arbitration agreements in all contracts involving interstate commerce." *Id*. (quoting *Eaton v. CMH Homes, Inc.*, 461 S.W.3d 426, 431 (Mo. banc 2015)); 9 U.S.C. section 2 (Federal Act applies when a contract evidences "a transaction involving commerce").

The United States Supreme Court has determined Congress intended the Federal Act to reach the full expanse of its power under the Commerce Clause. *Duggan v. Zip Mail Servs., Inc.*, 920 S.W.2d 200, 202 (Mo. App. E.D. 1996) (citing *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 274 (1995)). The Supreme Court has also concluded that the phrase "involving commerce" is functionally equivalent to "affecting commerce." *Id*. (citing *Allied-Bruce*, 513 U.S. at 273-74)). Federal courts have interpreted the phrase broadly, and applied the Federal Act where the contract simply relates to interstate commerce even when the relationship was less than substantial. *Id*. Federal courts have found interstate commerce involved in cases where the contracting parties resided in different states, they used the U.S. Postal System, their employees crossed state lines, or they transported materials across state lines. *Id*. Our own Court has found that when contracting parties reside in different states, the agreement relates to interstate commerce within the meaning of the Federal Act. *See, e.g., Swain v. Auto Servs., Inc.*, 128 S.W.3d 103, 106 (Mo. App. E.D. 2003) (resident of Missouri bought service contract from Arkansas corporation).

Here, Plaintiffs are Missouri residents. Defendant Ed Napleton St. Louis Imports, Inc. is an Illinois corporation registered to do business in Missouri while Defendant Napleton Autowerks/Missouri, Inc. is a Missouri corporation. Fifth Third Bank, N.A. is a

nationally organized bank with its principal place of business in Ohio, and it operates bank branches located in Missouri and conducts loan origination and servicing activities in Missouri. Therefore, we find the parties' agreements involve interstate commerce, which brings them within the scope of the Federal Act.

Further, it is undisputed that the parties signed the multiple agreements to arbitrate, and each of the parties' agreements—the buyer's order, the financing contract, and the separate arbitration agreement—contain the following provision:

> Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. [section] 1 *et. seq*.) and not by any state law concerning arbitration.

Defendants invoked this provision in their amended motion to compel. Missouri courts generally enforce choice-of-law provisions. *Curns v. Akins*, 669 S.W.3d 672, 676 (Mo. App. W.D. 2023). Therefore, we conclude the Federal Act applies to the agreements because the parties expressly elected to apply the Federal Act.

Plaintiffs contend that Defendants waived application of the Federal Act, arguing extensively about what Defendants asserted and did not assert in their original motion to compel arbitration. We find Plaintiffs' argument unpersuasive. First, the trial court granted Defendants' leave to amend their motion to compel arbitration, and the court never ruled on the original motion. Defendants amended their motion within the time set by the court, the court ruled only on the amended motion, and the trial court's ruling on the amended motion is the ruling before us on appeal.

In addition, the cases Plaintiffs cite for the proposition that Defendants' original motion waived the choice-of-law provision in the arbitration agreements are readily

distinguishable. In *JTL Consulting, L.L.C. v. Shanahan*, the Court determined that a Delaware choice-of-law contract provision was waived because the parties cited no Delaware law, only Missouri law, in their appellate arguments. 190 S.W.3d 389, 396 (Mo. App. E.D. 2006). The case of *Pilla v. Estate of Pilla* cited by Plaintiffs involved no choice of law issue. 689 S.W.2d 727 (Mo. App. E.D. 1985). Plaintiffs also cite *Lopez v. GMT Auto Sales, Inc.*, 656 S.W.3d 315 (Mo. App. E.D. 2022), for the proposition that "waiver occurs when a party acts inconsistently with contractual rights in the arbitration contract." In *Lopez*, the Court determined that the appellant "waived its right to compel arbitration by acting inconsistently with that right through substantially litigating various claims for seventeen months prior to seeking to compel arbitration." 656 S.W.3d at 319. That is not our case. Here, less than one month after Plaintiffs raised the choice-of-law issue, Defendants obtained leave of court to file an amended motion invoking the Federal Act as agreed to by the parties and filed their amended motion along with authenticated documents within the week the trial court allowed.

Having determined that the Federal Act applies to the parties' arbitration agreements, we now consider the sole reason the trial court gave for denying Defendants' motion to compel arbitration—the lack of the notice required by section 435.460. The Missouri Uniform Arbitration Act was adopted in 1980 and requires contracts containing an arbitration provision to include the following notice statement in ten-point capital letters: "THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES." Section 435.460; *Bunge Corp.*,

685 S.W.2d at 839. Here, it is undisputed that the parties' agreements do not contain this language pursuant to section 435.460.

The Missouri Act, including the notice requirement of section 435.460, governs those Missouri arbitration matters that are not preempted by the Federal Act. *McCann Concrete*, 685 S.W.3d at 53. In addition, state procedures may not be applied to defeat the substantive rights granted by the Federal Act. *Duggan*, 920 S.W.2d at 203. More specifically, the section 435.460 notice requirement cannot be applied to circumvent an arbitration provision within the scope of the Federal Act. *Id*. It is clear that section 435.460, if applied to this case, seeks to impose an additional requirement for contracts to arbitrate that is not included in the requirements of the Federal Act. *Bunge*, 685 S.W.2d at 839. All that is required under the Federal Act is contractual language and format sufficient for an ordinarily written contract. *Id*.

The question then becomes whether the notice provision of section 435.460 is still enforceable given the Federal Act's applicability in this case. We conclude that section 435.460 is not enforceable under these circumstances. The Missouri Act may not be applied to defeat the arbitration provision of a contract that is within the coverage of the Federal Act. *Id*. As our Supreme Court held in *Bunge*, there is a manifest violation of the supremacy clause if the Missouri Act is so applied. *Id*. "Any requirement of state law which adds a burden not imposed by Congress is in derogation of the Congressional power, and *pro tanto* invalid." *Id*.

Enforcing the Missouri Act's notice requirement would render the parties' arbitration agreements unenforceable. *McCann Concrete*, 685 S.W.3d at 53. For this

reason, numerous Missouri decisions have held that the Federal Act preempts the notice requirement found in section 435.460 of the Missouri Act. *E.g.*, *Bunge*, 685 S.W.2d at 839 (application of Missouri Act to defeat arbitration provision of contract within Federal Act's coverage results in manifest violation of supremacy clause); *Swain*, 128 S.W.3d at 106 n.2 (noting Missouri Act cannot apply to circumvent arbitration provision that falls within scope of Federal Act); *Duggan*, 920 S.W.2d at 203 ("Applying the Missouri Act to defeat arbitration in instances where the FAA permits it would place the state act above the federal act, violating the Supremacy Clause of the Constitution.").

Plaintiffs cite *Wind v. McClure* for the proposition that the Missouri Act's notice requirement "is absolute, and all contracts containing an arbitration provision must include the prescribed notice statement. The statute does not authorize any exceptions." 643 S.W.3d 691, 695 (Mo. App. E.D. 2022). This Court reiterated that "*if an arbitration agreement subject to [section] 435.460* does not contain the mandatory notice statement, then it will not be enforced." *Id*. at 696 (emphasis added). *Wind* is inapposite. In that case, the parties agreed that the Missouri Act applied and that section 435.460 applied. *Id*. There was no contention that the Federal Act applied. *Id*. at 698 n.2. Plaintiffs also ignore *Wind's* statement that the notice language is mandatory "if an arbitration agreement [is] subject to [section] 435.460." *Wind* does not hold that the Missouri Act's notice provision applies to defeat the arbitration provision of a contract within the coverage of the Federal Act.

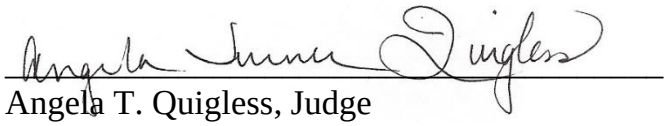
The trial court erred by misapplying the law when it denied Defendants' motion to compel arbitration and stay litigation on the basis that the agreements failed to comply with the notice requirement of section 435.460 of the Missouri Act. We grant Point One.

Point Two—We Need Not Consider Defendants' Alternative Argument

Given our disposition of Point One, we need not address Defendants' alternative argument contained in Point Two.

Conclusion

We reverse the trial court's denial of Defendants' motion to compel arbitration, and we remand to the trial court with instructions to enter an order compelling arbitration pursuant to the parties' agreements.



Angela T. Quigless, Judge

Virginia W. Lay, Presiding Judge, and Thomas C. Clark, II, Judge, concur.