

**MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY**

STEVEN TUCKER,)	No. ED102388
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	
MICHAEL S. VINCENT, et al.,)	Hon. David Lee Vincent III
)	
Respondents.)	FILED: October 6, 2015

Appellant Steven Tucker (“Tucker”) appeals from the trial court’s grant of summary judgment in favor of Respondent Michael Vincent (“Vincent”) on Tucker’s petition for accounting malpractice and negligent misrepresentation against Vincent. On appeal, Tucker contends that if the trial court’s grant of summary judgment was based upon a finding that Tucker’s claims are subject to the mandatory arbitration provision in the Stock Purchase Agreement (“SPA”) entered into between Tucker and Electromedico, LLC, then the trial court erred because Tucker’s tort claims against Vincent are not subject to the SPA. Tucker further argues that if the trial court granted summary judgment because it found that Tucker’s claims barred by res judicata, then the trial court erred because res judicata does not apply to this action. Lastly, Tucker maintains that if it is necessary to determine the basis of the trial court’s summary judgment ruling, we must find that the trial court limited its ruling to a finding that Tucker must pursue his claims in arbitration.

REVERSED AND REMANDED.

DIVISION FOUR HOLDS: Because no valid agreement to arbitrate existed between Tucker and Vincent, and because the limited circumstances under which a non-party to an arbitration agreement may compel arbitration are not present here, Tucker’s claims are not subject to mandatory arbitration. Because there is no identity of parties between the Florida arbitration proceeding and Tucker’s present lawsuit, and no identity of the causes of action filed in Pinellas County and Tucker’s present lawsuit, Tucker’s claims for accounting malpractice and negligent misrepresentation are not barred by the principles of res judicata. Accordingly, the trial court erred in granting summary judgment. We reverse the judgment of the trial court and remand for proceedings consistent with this opinion.

Opinion by: Kurt S. Odenwald, Judge
J., concur.

Sherri B. Sullivan, J., and Patricia L. Cohen,

Attorney for Appellant: Gerald P. Greiman and Thomas W. Hayde

Attorney for Respondent: Yvette Boutaugh

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.
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