

Summary of SC91658, *State ex rel. Robert McKeage and Janet McKeage and Those Similarly Situated v. The Honorable Michael J. Cordonnier*

Proceeding from the Greene County circuit court, Judge Michael J. Cordonnier
Argued and submitted Nov. 9, 2011; opinion issued Jan. 17, 2012

Attorneys: The McKeages were represented by Steve Garner, Chandler Gregg and Jeff Mitchell of Strong-Garner-Bauer PC in Springfield, (417) 887-4300; and David Baylard of Baylard, Billington, Dempsey & Jensen PC in Union, Mo., (636) 583-5103. Bass Pro was represented by James D. Griffin of Husch Blackwell Sanders LLP in Kansas City, (816) 983-8000; and Jason C. Smith, Bryan O. Wade and Ginger K. Gooch of Husch Blackwell Sanders LLP in Springfield, (417) 268-4000.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A couple challenges the circuit court’s definition of a class in an action challenging a document preparation fee charged by a boat retailer. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri holds that the circuit court abused its discretion by limiting the putative class members to only those whose transactions occurred in Missouri. There are sufficient common issues of fact favoring class certification at this preliminary stage of litigation. All of the putative class members were charged a document preparation fee and were required to sign the same purchase agreement, which provides that any suit arising from the agreement must be tried in Missouri under Missouri law.

Facts: Robert and Janet McKeage bought a boat from Bass Pro Outdoor World LLC store in St. Charles County. The purchase agreement required them to pay a \$75 document preparation fee. They filed suit in St. Charles County challenging the fee and seeking rescission of the sale. Bass Pro moved to transfer venue based on a clause in the purchase agreement requiring parties “to litigate any claim” arising from the agreement in Greene County. The St. Charles County circuit court transferred the case to Greene County, where the McKeages sought class certification of both in-state and out-of-state customers who were charged a document preparation fee and whose purchase agreements contained a provision requiring application of Missouri law to all transactions. The Greene County circuit court certified a class that was limited to contracts entered into within Missouri. The McKeages seek this Court’s review of the class definition.

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Court en banc holds: The circuit court abused its discretion by limiting the putative class members to only those whose transactions occurred in Missouri. Whether an action should proceed as a class action pursuant to Rule 52.08 rests within the circuit court’s discretion. In close cases, however, courts should err in favor of certification because the class can be modified as the case progresses. Here, all of the claims of each putative member of the nationwide class arise out of the same purchase agreement documents, all of which were drafted by Bass Pro and which, by the agreement’s terms, are to be litigated in Greene County. As such, there is no need to engage in a state-by-state choice-of-law analysis. Further, Bass Pro’s allegation of potential differences in the laws of the home states of non-Missouri plaintiffs regarding the unauthorized practice of law is insufficient to defeat the class. All the purchase agreement documents required the application of Missouri law to any claim, and there are sufficient common issues of fact that favor class certification at this preliminary stage of the litigation.