

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**ANITA JOHNSON,
RESPONDENT
vs.**

**JF ENTERPRISES, LLC., ET AL.,
APPELLANTS**

DOCKET NUMBER WD73990

DATE: March 27, 2012

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Wesley Brent Powell, Judge

Appellate Judges:

Division Two: Gary D. Witt, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Attorneys:

Joseph M. Backer, for Respondent

Patric S. Linden, for Appellants

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ANITA JOHNSON, RESPONDENT

v.

JF ENTERPRISES, LLC., ET AL., APPELLANTS

WD73990

Jackson County, Missouri

Before Division Two Judges: Gary D. Witt, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Respondent Anita Johnson purchased a new vehicle from Appellant JF Enterprises, LLC, d/b/a Jeremy Franklin's Suzuki of Kansas City, which is owned by Appellant Jeremy Franklin. In the course of purchasing that vehicle, Respondent signed an arbitration agreement ("the Arbitration Agreement") and a retail installment contract and security agreement ("the Retail Installment Contract"). Both documents were signed and dated December 29, 2007.

Respondent subsequently filed a petition in the Circuit Court of Jackson County alleging claims of negligent misrepresentation and general negligence against Appellants. Appellants filed a motion to compel arbitration pursuant to the Arbitration Agreement that Respondent signed when she purchased the vehicle. Respondent opposed the motion, arguing that the Retail Installment Contract, which does not include an arbitration provision or reference the Arbitration Agreement, sets forth the entire agreement between the parties. The trial court denied Appellants' motion to compel arbitration "pursuant to *Krueger v. Heartland Chevrolet, Inc.*, 289 S.W.3d 637, 638 (Mo. Ct. App. 2009)." Appellants now appeal the trial court's denial of their motion to compel arbitration.

AFFIRMED.

Division Two holds:

- (1) The trial court did not err in denying Appellants' motion to compel arbitration because the Retail Installment Contract supersedes the Arbitration Agreement in that the Retail Installment Contract contains a merger clause and does not incorporate or reference the Arbitration Agreement and thereby evidences the parties' intent that the Retail Installment Contract sets forth the entire agreement between the parties. Accordingly, because the Retail Installment Contract did not contain an arbitration provision, there is no agreement to arbitrate applicable to this case. Respondent, therefore, cannot be compelled to arbitrate her claims.

Opinion by Joseph M. Ellis, Judge

Date: March 27, 2012

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