

SUPREME COURT OF MISSOURI

State ex rel. Gayle Vincent, et al. v. Honorable Nancy Schneider, Judge

194 S.W.3d 853 (Mo. banc 2006) · No. SC 87203 · Decided June 30, 2006

SUMMARY

The Supreme Court of Missouri reviewed a mandamus action concerning a trial court order compelling arbitration of home purchasers' claims against a builder. The court held that the contractual method for selecting an arbitrator and the provision shifting arbitration fees to the purchasers were unconscionable and unenforceable, while the remainder of the arbitration provision could be enforced. The writ was quashed, and the case was ordered to proceed with an arbitrator appointed by the trial court under Missouri law.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	William Ray Price, Jr.; Michael A. Wolff; Richard B. Teitelman; Laura Denvir Stith; Stephen N. Limbaugh, Jr.; Ronnie L. White; Russell
JURISDICTION	Missouri
DECIDED	June 30, 2006
DOCKET	SC 87203
DISPOSITION	quashed
PROCEDURAL POSTURE	Original proceeding in mandamus challenging the trial court's order compelling arbitration.
STANDARD OF REVIEW	De novo review of the legal question whether the motion to compel arbitration should have been granted and whether a valid agreement to arbitrate existed.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Missouri, en banc
PARTIES	State ex rel. Gayle Vincent, et al. v. Honorable Nancy Schneider, Judge

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QUESTIONS PRESENTED

1. Whether the home-purchase contracts were contracts of adhesion such that the arbitration provisions were unenforceable under Missouri law.
2. Whether the arbitration provisions were substantively unconscionable because the arbitrator-selection method placed selection in the hands of a potentially biased individual.
3. Whether the cost-shifting provision requiring purchasers to bear arbitration fees and costs was substantively unconscionable.
4. Whether the arbitration clause was unenforceable for lack of mutuality because only McBride could elect arbitration.
5. Whether the unconscionable portions of the arbitration provisions could be severed while enforcing the remainder of the arbitration agreement.

HOLDINGS

1. Relators failed to prove that the home-purchase contracts were contracts of adhesion; the preprinted nature of the contracts and the fact that the arbitration provision had not been negotiated were insufficient without proof that relators could not obtain more attractive contracts elsewhere or were forced to purchase from McBride.
2. The provision requiring the president of the Homebuilders Association of Greater St. Louis to select the arbitrator was unconscionable and unenforceable because it placed selection in the hands of an individual in a position of bias.
3. The provision shifting all arbitration fees and costs to the purchasers was substantively unconscionable at the time the contracts were made and was unenforceable.
4. The arbitration clause was not invalidated for lack of mutuality of obligation because consideration supported the contract as a whole; there is no additional requirement that the arbitration obligation itself be mutual.
5. The unconscionable arbitrator-selection and cost-shifting provisions could be severed or replaced without invalidating the remainder of the arbitration provision.

KEY QUOTATIONS

“Even if the president of the Home Builder Association of Greater St. Louis was not also the president of McBride, this portion of the arbitration provision would be unconscionable.” (859)

“It is unconscionable to have a provision in an arbitration clause that puts all fees for arbitration on the consumer.” (861)

“The rest of the arbitration provision is enforceable; the preliminary writ of mandamus ordering Respondent to deny McBride's motion to compel arbitration is quashed and the case shall proceed consistent with this

FACTUAL BACKGROUND

Relators purchased single-family homes from McBride under written, preprinted contracts containing an arbitration clause giving McBride the unilateral option to require arbitration of claims arising from the contracts or residences. The clause required selection of the arbitrator by the president of the Homebuilders Association of Greater St. Louis, who was also McBride's president when the dispute arose, and required the purchaser to pay specified court, arbitration, attorney-fee, and cost amounts. After discovering problems with their homes, relators sued McBride, and McBride moved to compel arbitration.

PROCEDURAL HISTORY

Relators, purchasers of homes from McBride & Son Homes, Inc., sued McBride on claims involving construction defects and consumer and contract-related misconduct. The trial court granted McBride's motion to compel arbitration and found that the contracts were not contracts of adhesion and that the arbitration provisions were not unconscionable. Relators sought mandamus directing the trial court to deny the motion; the Supreme Court of Missouri issued an alternative writ and ultimately quashed the preliminary writ while requiring the case to proceed under the modified arbitration provisions described in the opinion.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The preliminary writ ordering the respondent to deny McBride's motion to compel arbitration was quashed. The case was to proceed with an arbitrator selected by the trial court under Mo. Rev. Stat. § 435.360, with arbitration costs allocated under § 435.395, while the remainder of the arbitration provision remained enforceable.

CASES CITED

- State ex rel. PaineWebber, Inc. v. Voorhees, 891 S.W.2d 126, 128 (Mo. banc 1995)
- Triarch Industries, Inc. v. Crabtree, 158 S.W.3d 772, 774-75 (Mo. banc 2005)
- Dunn Industrial Group, Inc. v. City of Sugar Creek, 112 S.W.3d 421, 428-29 (Mo. banc 2003)
- Robin v. Blue Cross Hospital Service, Inc., 637 S.W.2d 695, 697 (Mo. banc 1982)
- Estrin Construction Co. v. Aetna Casualty & Surety Co., 612 S.W.2d 413, 418 (Mo. App. 1981)
- Swain v. Auto Services, Inc., 128 S.W.3d 103, 107 (Mo. App. 2003)
- Bracey v. Monsanto Co., Inc., 823 S.W.2d 946, 950, 953 (Mo. banc 1992)
- Whitney v. Alltel Communications, Inc., 173 S.W.3d 300, 308-14 (Mo. App. 2005)
- Harris v. Green Tree Financial Corp., 183 F.3d 173, 181 (3d Cir. 1999)
- Doctor's Associates, Inc. v. Distajo, 66 F.3d 438 (2d Cir. 1995)
- Butler v. Mitchell-Hugeback, Inc., 895 S.W.2d 15, 21 (Mo. banc 1995)

- Mason v. Mason, 873 S.W.2d 631, 635 (Mo. App. 1994)
- Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 126 S. Ct. 1204, 163 L. Ed. 2d 1038 (2006)
- Showmethemoney Check Cashers, Inc. v. Williams, 342 Ark. 112, 27 S.W.3d 361, 366-67 (2000)
- Taylor v. Butler, 142 S.W.3d 277, 286-87 (Tenn. 2004)
- Ingle v. Circuit City Stores, Inc., 328 F.3d 1165, 1172-73 (9th Cir. 2003)
- Dumais v. American Golf Corp., 299 F.3d 1216, 1219 (10th Cir. 2002)
- Floss v. Ryan's Family Steak Houses, Inc., 211 F.3d 306, 315-16 (6th Cir. 2000)

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