

IN THE SUPREME COURT OF MISSOURI

Manuel Lopez, on behalf of himself and all others similarly situated,)	
)	
)	
Plaintiff/Respondent,)	
)	
vs.)	SC95718
)	
H&R Block., et al.,)	
)	
Defendants/Appellants.)	

**MOTION FOR LEAVE TO FILE SUGGESTIONS
IN SUPPORT OF DEFENDANTS/APPELLANTS’
APPLICATION FOR TRANSFER**

Pursuant to Rule 84.05(f), the Missouri Chamber of Commerce and Industry (the “Chamber”) seeks leave to file suggestions as *amicus curiae* in support of Defendants/Appellants’ application for transfer. The Chamber offers the following grounds for its motion:

1. This case presents an issue of general interest and importance concerning the conformity of Missouri law with the Federal Arbitration Act (“FAA”) and the vitality of Missouri’s arbitration regime.

2. The Court of Appeals for the Western District created a novel rule that courts considering a motion to compel arbitration have an obligation to assess *sua sponte* the existence and scope of an agreement to arbitrate before addressing any defenses to enforcement. *Lopez v. H & R Block, Inc.*, --- S.W.3d ---, ---, No. WD78465, 2016 WL 880393, at *4 (Mo. Ct. App. Mar. 8, 2016). This arbitration-disfavoring rule conflicts with the FAA and decisions of this Court and the U.S. Supreme Court applying it.

3. The FAA provides that agreements to arbitrate “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of *any contract*.” 9 U.S.C. § 2 (emphasis added). This provision means that “courts must place arbitration agreements on an equal footing with other contracts.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Any state rule that singles out arbitration agreements for unfavorable treatment conflicts with the FAA and is preempted by it. *Perry v. Thomas*, 482 U.S. 483, 489 (1987); *see also Brewer v. Missouri Title Loans*, 364 S.W.3d 486, 490 (Mo. banc 2012) (holding that states may not adopt rules “that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue”). The FAA’s ban on state rules disfavoring arbitration extends to rules that delay the commencement of arbitration. *See, e.g., Preston v. Ferrer*, 552 U.S. 346, 358 (2008) (holding preempted a state law requiring parties to exhaust state administrative procedures before arbitrating).

4. The Western District’s rule that “we do not address defenses to enforcement of an arbitration agreement unless we are first satisfied that an arbitration agreement exists and that the subject disputes are within its scope,” *Lopez*, 2016 WL 880393, at *4, violates these principles. *First*, it is uniquely hostile to arbitration agreements and will mean that they are enforced less often than other types of contracts. *Second*, by multiplying the issues that must be addressed on a motion to compel arbitration, it will add expense and delay before arbitration can commence.

5. The Chamber has a strong interest in rectifying the conflict between the Western District’s decision and the FAA and related precedents. Together with its affiliate

network, the Missouri Chamber Federation, the Chamber represents over 40,000 employers. Many of these businesses include arbitration provisions in their consumer contracts. These businesses rely on the speed and efficiency of arbitration to avoid the crippling costs associated with civil litigation. *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 280 (1995) (noting that arbitration allows both businesses and consumers to avoid “the delay and expense of litigation” (citation omitted)).

6. The Chamber has a unique perspective on the importance of a well-functioning arbitration system to Missouri businesses and the detrimental effect the Western District’s new rule will have on them. The Western District’s rule undermines Missouri’s arbitration regime by taking a hostile, skeptical view of arbitration agreements and increasing the time and money parties must spend on litigation before courts will enforce a valid arbitration agreement.

7. Counsel for the Chamber has contacted counsel for Plaintiff/Respondent’s but was unable to obtain consent to filing suggestions in support of transfer. Therefore, the Chamber seeks this Court’s leave to present its arguments in support of transfer of this case.

* * *

Wherefore, the Chamber respectfully moves this Court to grant it leave to file suggestions as *amicus curiae* in support of Defendants/Appellants’ application for transfer.

Dated: May 27, 2016

Respectfully submitted,

/s/ Brian Buntten

Brian Buntten, MO #62775

General Counsel

Missouri Chamber of Commerce and
Industry

428 East Capitol Avenue

Jefferson City, MO 65101

Tel: 573-634-3511

Fax: 573-634-8855

bbuntten@mochamber.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served through the

Missouri Supreme Court electronic filing system on May 27, 2016 to:

Robert T. Adams, MO # 34612
Jennifer J. Artman, MO # 63692
SHOOK, HARDY & BACON LLP
2555 Grand Boulevard
Kansas City, Missouri 64108
(t) 816.474.6550
(f) 816.421.5547
rtadams@shb.com
jartman@shb.com

Norman E. Siegel, Esq.
Todd M. McGuire, Esq.
Lindsay Todd Perkins, Esq.
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
siegel@stuevesiegel.com
mcguire@stuevesiegel.com
perkins@stuevesiegel.com

Jeffrey J. Simon, MO # 35558
Derek T. Teeter, MO # 59031
HUSCH BLACKWELL LLP
4801 Main Street, Suite 1100
Kansas City, Missouri 64112
(t) 816.983.8000
(f) 816.983.8080
jeff.simon@huschblackwell.com
derek.teeter@huschblackwell.com

/s/Brian Buntten
Attorney