APPENDIX

TABLE OF APPENDICES

Appendix A

In the Missouri Court Of Appeals

Eastern District

ED106282-01

ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, THE CITY OF ST. LOUIS AND THE COUNTY OF ST. LOUIS, RESPONDENTS

vs.

NATIONAL FOOTBALL LEAGUE, ET AL, DEFENDANTS AND THE RAMS FOOTBALL COMPANY, LLC AND E. STANLEY KROENKE, APPELLANTS

ORDER

EMSTY Motion for Stay

of the Mandate Pending the Filing and Disposition of a Petition for Writ of Certiorari in the US Supreme Court; Electronic Filing Certificate of Service.

_____ Sustained

_____ Granted

__✓__ Denied

_____ Taken with Case _____

_____ Granted Until _____

_____ Other _____

_____

_____

By: _____ 9/12/2019
PHILIP M HESS Date

EXHIBIT B

Supreme Court of Missouri
en banc

SC97929
ED106282-01

September Session, 2019

St. Louis Regional Convention
and Sports Complex Authority, et al.,
Respondents,
vs. (TRANSFER)

National Football League, et al.,
Defendants,
and
The Rams Football Company, LLC
and E. Stanley Kroenke,
Appellants.

Now at this day, on consideration of the Appellants' application to transfer the above-entitled cause from the Missouri Court of Appeals, Eastern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Betsy AuBuchon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session, 2019, and on the 3rd day of September, 2019, in the above-entitled cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court, at my office in the City of Jefferson, this 3rd day of September, 2019.

Betsy AuBuchon, Clerk

Christina Stuen, Deputy Clerk

EXHIBIT C

In the Missouri Court of Appeals
Eastern District

ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, THE CITY OF ST. LOUIS AND THE COUNTY OF ST. LOUIS, RESPONDENTS,	)	
	)	No. ED106282-01
vs.	)	
NATIONAL FOOTBALL LEAGUE, ET AL, DEFENDANTS AND THE RAMS FOOTBALL COMPANY, LLC AND E. STANLEY KROENKE, APPELLANTS.	)	

ORDER

Appellant's Application for Transfer to Missouri Supreme Court is denied.

SO ORDERED.

DATED: 5/20/2019

Chief Judge
Missouri Court of Appeals Eastern District

EXHIBIT D

In the Missouri Court of Appeals
Eastern District

DIVISION TWO

ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, ET AL.,	)	No. ED106282-01
Respondents,	)	Appeal from the Circuit Court of the City of St. Louis
vs.	)	Honorable Christopher E. McGraugh
NATIONAL FOOTBALL LEAGUE, ET AL., and THE RAMS FOOTBALL COMPANY, LLC and E. STANLEY KROENKE,	)	
Appellants.	)	Filed: April 16, 2019

Introduction

The St. Louis Regional Convention and Sports Complex Authority (the "RSA"), the City of St. Louis (the "City"), and St. Louis County (the "County") (collectively "Plaintiffs") sued The Rams Football Company, LLC ("Rams"), the National Football League ("NFL"), through its thirty-two member clubs, and the clubs' owners, including E. Stanley Kroenke ("Kroenke"), the Rams' owner (collectively "Defendants"), alleging five counts arising out of the Rams' 2016 relocation from St. Louis to Los Angeles. Plaintiffs sued based on their alleged status as third-party beneficiaries of the NFL's "Policy and Procedures for Proposed Franchise Relocations" (the "NFL Policy"). The Rams and Kroenke moved to compel arbitration, arguing the "NFL Franchise Relocation Agreement" (the "1995 Relocation Agreement") and the "Amended and

Restated St. Louis NFL Lease" (the "1995 Lease") entered in 1995 when the Rams relocated from the Los Angeles market to St. Louis compelled arbitration because those contracts contain mandatory arbitration provisions and Plaintiffs' claims "touch matters" covered by those contracts. The trial court denied the Rams and Kroenke's motion to compel.

The Rams and Kroenke ("Appellants") appeal that decision. On Point I, Appellants argue the American Arbitration Association Rule 7(a) had been incorporated by reference into the contract's arbitration clause by "the most applicable then existing rules of the American Arbitration Association," provided "clear and unmistakable" evidence of the parties' contractual intent in 1995 to delegate exclusive jurisdiction to an arbitrator to determine arbitrability of this dispute. On Point II, Appellants contend Plaintiffs and Appellants' dispute touches matters covered by the 1995 Lease and 1995 Relocation Agreement containing mandatory broad arbitration clauses and therefore Plaintiffs' claims must be arbitrated. On Point III, Appellants contend Kroenke, an agent of the Rams, may invoke the arbitration provisions in the 1995 Lease and 1995 Relocation Agreement because an agent of a signatory to an arbitration clause may invoke arbitration against another signatory.

Because we conclude an AAA arbitration rule first appearing in 2003 could not provide "clear and unmistakable" evidence of the parties' affirmative contractual intent in 1995 for an arbitrator to have exclusive jurisdiction to decide arbitrability as required under *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 42 (Mo. banc 2017), and because we find there is no arbitration agreement applicable to Plaintiffs' claims, we affirm.

Factual and Procedural Background

A. The NFL Constitution and Bylaws

Article 4.3 of the NFL Constitution and Bylaws requires an affirmative vote of three-fourths of its member clubs before a club may transfer its franchise or playing site to a different city. Article 4.3 confirms that each club's primary obligation to the NFL and to all other member clubs is to advance the interests of the NFL in its home city. Article 4.3 also confirms that no club has an "entitlement" to relocate simply because it perceives an opportunity for enhanced club revenues in another location. Relocation under Article 4.3 may be available, however, if a club's viability in its home city is threatened by circumstances that cannot be remedied by diligent efforts of the club working with the NFL, or if compelling NFL interests warrant a franchise relocation.

B. The NFL's Relocation Policy

In 1984, under the NFL Constitution and Bylaws, the NFL adopted the NFL Policy. The NFL Policy sets forth the policies and procedures that apply to any proposed transfer of a club's home territory. The NFL Policy states that because the NFL favors stable team-community relations, clubs are obligated to work diligently and in good faith to obtain and to maintain suitable stadium facilities in their home city, and to operate in a manner that maximizes fan support in their current home community.

The NFL Policy requires a club to submit a proposal for transfer to the NFL before it may transfer its franchise or playing site outside its current home city. The club must give the Commissioner of the NFL written notice of its proposed transfer and a "statement of reasons" to support the proposed transfer. The NFL Policy provides that the Commissioner will evaluate the proposed transfer and report to the members. Following the Commissioner's report, the proposal

is presented to the members for a vote. In considering a proposed relocation, the clubs may consider several factors, but must address the degree to which the club has engaged in good faith negotiations, and enlisted the NFL to assist in such negotiations, with persons about terms and conditions under which the club would remain in its current home city and afforded that community a reasonable amount of time to address proposals.

The NFL Policy states that if a club's proposal to relocate to a new home territory is approved, the relocating club will ordinarily be expected to pay a transfer fee to the NFL. The transfer fee will compensate other member clubs of the NFL for losing the opportunity appropriated by the relocating club and the enhancement in the value of the franchise resulting from the move. The NFL Policy has no arbitration provision.

C. The Rams' 1995 Relocation From the Los Angeles Market to St. Louis

In 1995, the Rams submitted a proposal to relocate their home playing site from Anaheim to St. Louis. Upon NFL approval, the Rams relocated to St. Louis effective with the 1995 NFL season. As a part of that relocation, the Rams, the Regional Convention and Visitors Commission ("CVC"), and the St. Louis NFL Corporation ("SLNFL") entered into the 1995 Lease. Section 25 of the 1995 Lease contained an arbitration provision stating:

> Any controversy, dispute or claim between or among any of the parties hereto (and/or any of those consenting hereto pursuant to the Consents to Assignment (other than the City, County or SLMFC, which may only bring an action or against which an action may only be brought in United States Federal District Court for the Eastern District of Missouri, with the right to jury waived)) to this Amended Lease, related to this Amended Lease, including, without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Amended Lease (including any determination of whether the "First Tier" or "First Class" standard provided in Section 1.3 of Annex 1 to this Amended Lease has been met) shall be settled by arbitration conducted before three arbitrators in St. Louis, Missouri, in accordance with the most applicable then existing rules of the American Arbitration Association (or its successor or in the absence of a successor, an institution or organization offering similar services), and judgment upon any award rendered by the arbitrator may be

> entered by any federal or state court having jurisdiction thereof. Such arbitration shall be the exclusive dispute resolution mechanism. . . .

The Rams, the CVC, the RSA, Fans, Inc., and the SLNFL also entered into the 1995 Relocation Agreement.[1] The 1995 Relocation Agreement contained an arbitration provision stating:

> Any controversy, dispute or claim between or among any of the parties hereto related to this Relocation Agreement, including without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Relocation Agreement shall be settled by arbitration as set forth or as otherwise provided in Section 25 or the Amended Lease.

D. The Rams' 2016 Relocation From St. Louis to Los Angeles

In January 2016, the Rams submitted a proposed relocation application to relocate from St. Louis to Los Angeles and a statement of reasons in support to the NFL. On January 12, 2016, the club owners voted to allow the relocation of the Rams from St. Louis to Los Angeles.[2] The Rams terminated the 1995 Lease and relocated to Los Angeles effective with the 2017 NFL season.

E. Plaintiffs' Suit

Plaintiffs filed this suit as result of the Rams' 2016 relocation. Plaintiffs alleged Defendants violated the obligations and standards governing team relocations by seeking and approving the relocation of the Rams from St. Louis to Los Angeles, despite Defendants' failure to satisfy the obligations imposed by the NFL Policy. Plaintiffs alleged that in reliance on Defendants' obligations imposed by the NFL Policy they took action to develop and finance a new stadium complex to keep the Rams in St. Louis. The suit alleges five counts: (1) breach of

[1] The City and County are listed as "Sponsors" of the 1995 Lease and the 1995 Relocation Agreement. The parties have not raised any issue about whether the City and County's status as "Sponsors" made them parties to those contracts.

[2] Counsel for Appellants conceded at oral argument the Rams needed an affirmative vote from three-fourths of the members clubs pursuant to the NFL Policy before it could relocate from St. Louis to Los Angeles.

contract, specifically breaches of the NFL Policy's obligation of diligence and good faith against all Defendants, based on Plaintiffs status as third-party beneficiaries of the NFL Policy; (2) unjust enrichment against all Defendants for violating the NFL Policy and relocating to Los Angeles, resulting in the Rams alleged $550 million relocation fee payment to the other Defendants and the Rams' alleged increased franchise value; (3) fraudulent misrepresentation against Appellants based upon alleged false and misleading statements made by Appellants that induced Plaintiffs to spend considerable time and money financing and working on a new stadium complex; (4) fraudulent misrepresentation against all Defendants based upon Defendants' alleged fraudulent misrepresentations that induced Plaintiffs to spend considerable time and money financing and working on a new stadium complex plan; and (5) tortious inference with business expectancy against all Defendants, except the Rams, based upon the Defendants' intentional interference with Plaintiffs' reasonable business expectancy by approving the Rams' relocation. The only exhibit attached to Plaintiffs' petition was the NFL Policy.

The Rams and Kroenke moved to compel arbitration which was denied. None of the other Defendants besides the Rams and Kroenke were parties to the motion to compel arbitration and are not parties to this appeal.[3] The Rams and Kroenke ("Appellants") appeal that decision.[4]

[3] The denial of a motion to compel arbitration is appealable under section 435.440 RSMo (2016). "Although normally an order that does not dispose of all the parties and claims is not appealable, an order overruling a motion to compel arbitration is immediately appealable under section 435.440.1(1), RSMo 2000." *Eaton v. CMH Homes, Inc.*, 461 S.W.3d 426, 431 n.2 (Mo. banc 2015).

[4] Following oral argument, Plaintiffs filed a letter and an exhibit with the clerk purportedly pursuant to Local Rule 370. Local Rule 370 provides that "[c]ounsel may call the court's attention to intervening decisions or new developments by filing a short letter providing the supplemental citations with the clerk in accordance with Rule 84.20 and Rule 30.08." Plaintiffs did not provide the clerk with supplemental citations but attempted to supplement the record on appeal. Local Rule 370 is not the proper procedure for supplementing the record on appeal. We have not considered the letter or the exhibit in deciding this appeal.

Standard of Review

We review do novo the legal issue of whether an arbitration agreement exists between the parties. *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 42 (Mo. banc 2017). Whether a motion to compel arbitration should have been granted is a question of law subject to de novo review. *Triarch Indus., Inc. v. Crabtree*, 158 S.W.3d 772, 774 (Mo. banc 2005).

Discussion

Appellants raise three points on appeal. Appellants contend the trial court erred by denying their motion to compel arbitration because: (1) Plaintiffs and Appellants "clearly and unmistakably" agreed as a matter of law to delegate to the arbitrators the power to decide whether Plaintiffs' claims must be arbitrated by incorporating the rules of the American Arbitration Association ("AAA") in the arbitration clauses into the 1995 Lease and 1995 Relocation Agreement; (2) Plaintiffs and Appellants' dispute touches matters covered by the 1995 Lease and 1995 Relocation Agreement containing mandatory broad arbitration clauses and therefore Plaintiffs' claims must be arbitrated; and (3) Kroenke, an agent of the Rams, may invoke the arbitration provisions in the 1995 Lease and 1995 Relocation Agreement because an agent of a signatory to an arbitration clause may invoke arbitration against another signatory. Each of Appellants' points is premised on the arbitration provisions in the 1995 Lease and 1995 Relocation Agreement being applicable to Plaintiffs' claims related to the NFL Policy, and in support, Appellants primarily rely on the Missouri Supreme Court's *Pinkerton* decision.

Point I

For Point I, Appellants argue the circuit court erred in determining the parties did not "clearly and unmistakably" agree to exclusively delegate arbitrability determinations to an arbitrator solely by reference to the 1993 rules of the American Arbitration Association (AAA).

Appellants contend the appropriate analysis, under *State ex rel. Pinkerton v. Fahnestock,* is we find "clear and unmistakable" evidence of the parties' contractual intent by incorporating an AAA jurisdictional competence rule which did not exist until 2003, through the contract's reference to "then-existent" arbitration rules of the AAA or some "similar services." Respondents note no "clear and unmistakable" evidence of the parties' intent can be traced back to the 1995 agreement, because such rules did not exist and could not have been specifically referenced to delegate such authority.

In *Pinkerton*, a student entered into an enrollment agreement with an aviation school that contained an arbitration agreement incorporating by reference the AAA commercial rules. After graduating from the school, the student could not find employment in the aviation field so he sued the school alleging various claims. The school moved to compel arbitration, and the circuit court granted the school's motion to compel arbitration. The student appealed, arguing the school's incorporation of the AAA rules into the arbitration agreement did not "clearly and unmistakably" express the parties' intent to delegate threshold issues of arbitrability to an arbitrator.

Applying Missouri's general contract principles, the Missouri Supreme Court held that by incorporating the commercial AAA rules into their arbitration agreement, which included a delegation provision at the time of formation, "the parties expressed their intent to arbitrate any dispute under these rules, including the AAA's 'jurisdiction' rule providing that the 'arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement.'" 531 S.W.3d at 48. The Court found the delegation provision clearly and unmistakably evidenced the parties' intent to delegate threshold issues of arbitrability to the arbitrator. *Id.*

Pinkerton directs us to look for "a clear reference to an identifiable, ascertainable set of rules," measured "**at the time the parties signed the underlying agreement**." *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 45 n.2 (Mo. banc 2017) (noting different versions of the rules contain the same jurisdiction clause)(emphasis added). When considering whether parties have intended to delegate threshold questions of arbitrability to an arbitrator, "[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is clea[r] and unmistakabl[e] evidence that they **did** so." *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 43 (Mo. banc 2017) (citing *Rent–A–Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 69 n.1, 130 S.Ct. 2772, 177 L.Ed.2d 403 (2010)) (emphasis added). [5] The language chosen must unambiguously establish the "parties' manifestation of intent" to withdraw from courts the authority to resolve issues of arbitrability. *Rent-A-Center, West Inc. v. Jackson,* 561 U.S. 63, 69 n.1 (2010). This language can be found, for example, where parties have "expressly agreed" to grant "exclusive authority" to an arbitrator. *Soars v. Easter Seals Midwest*, 563 S.W.3d 111, 114 (Mo. banc 2018). In *Soars*, a delegation provision "is simply an additional ***antecedent*** agreement the party seeking arbitration asks the court to enforce." *Soars*, 563 S.W.3d at 114. We look to the agreement to see if the parties ***affirmatively*** addressed the question of who decides arbitrability. *Dotson*, 472 S.W. 3d at 602; *accord Soars*, 563 S.W.3d at 114.

Appellants argue we can and should look to Federal court analysis undertaken by the Federal District Court for the Eastern District of Missouri in *McAllister v. The St. Louis Rams,*

[5] The recent United States Supreme Court decision in *Henry Schein, Incorporated, et al., v. Archer and White Sales, Incorporated*, 586 U.S. ——, 139 S.Ct. 524, 202 L.Ed.2d 480 (2019) does not impact our analysis. In *Henry Schein*, the Supreme Court addressed the "wholly groundless" exception applied by some federal courts to avoid sending a claim to arbitration when the **"argument for arbitration is wholly groundless."** *Id.* at 528. The Supreme Court held the "wholly groundless" exception to be inconsistent with the FAA and reiterated that when a contract delegates arbitrability to an arbitrator, the court may not override that contractual agreement. *Id.* at 528. However, the Court also reaffirmed that such delegation to an arbitrator must do so by "clear and unmistakable" evidence. *Id.* at 530. (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943–46, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995)).

LLC, No. 4:16–CV–172 SNLJ (E.D. Mo. Nov. 17, 2017). Appellants assert the *McAllister* Court reviewed identical language from the same contract which constrained it to find mere incorporation of the AAA rules to be "clear and unmistakable" evidence, adhering to Eighth Circuit precedent. *Id.* (citing *Fallo v. High-Tech Inst.*, 559 F.3d 874, 878 (8th Cir. 2009)). In *Fallo,* the Eighth Circuit reasoned AAA Rule 7(a) mandated "the arbitrator shall have the power to rule on his or her own jurisdiction," when incorporated through explicit and exclusive reference to the AAA Rules in the delegation clause, providing "clear and unmistakable" evidence of exclusive jurisdiction to the arbitrator. *Fallo*, 559 F.3d at 877 (citing R-7. Jurisdiction, AAA-ARBRLCML 03 s R-7(a))

Fallo and *McAllister* are distinguishable and unpersuasive because, here, the AAA Rule 7(a) did not exist at the time the delegation clause was drafted. Unlike the *McAllister* Court, we are not similarly constrained to follow the Eighth Circuit. *A.H. by & through D'Avis v. Indep. Sch. Dist*., 466 S.W.3d 17, 23 (Mo. App. W.D. 2015) ("While federal court decisions are not binding on this court, they are persuasive authority"). More importantly, rather than simplifying the analysis as the *McAllister* Court did, *Fallo*'s reference to *Express Scripts, Inc. v. Aegon Direct Mktg. Services, Inc.*, 516 F.3d 695, 701 (8th Cir. 2008) highlights an absence of Eighth Circuit guidance on the question before us today: how to resolve this "incorporation" argument when the arbitration jurisdictional rule supposedly referenced did not exist at the time of contract formation. *See Express Scripts, Inc.*, 516 F.3d at 701 (declining to address whether AAA Rules in effect at the time of dispute incorporates Rule 7(a)'s jurisdictional delegation of arbitrability where the AAA did not contain jurisdictional delegation at contract formation). Given the unique facts of this case, we are unpersuaded this line of federal cases informs our analysis.

Applying Missouri law, Appellants argue their case is similar to *Pinkerton* simply because they have an arbitration clause that incorporates the AAA Rules "in accordance with the most applicable then existing rules . . . ." However, Appellants misrepresent the plain language of the purported delegation clause from 1995, which reads: "in accordance with the most applicable then existing rules of the American Arbitration Association (or its successor or in the absence of a successor, an institution or organization offering similar services)." On the face of this contract, it does not clearly and unmistakably incorporate AAA rules on exclusive jurisdiction by reference, merely whatever rules are in use by AAA or some similar service at the time of a dispute. The jurisdictional delegation language necessary to "clearly and unmistakably" evidence a delegation of arbitrability to an arbitrator would not be present in the AAA commercial rules for nearly a decade. At the time of formation of the contract, the 1993 AAA rules in effect to which the parties referred did not affirmatively incorporate jurisdictional challenges, and did not do so until 2003.[6] When the AAA rules were revised in 1996, even one year after the formation, this jurisdictional delegation was still not present.

Simply stated, the change in the AAA rules in 2003 cannot and does not alter the parties' contractual intent in 1995, such that they "clearly and unmistakably" intended to affirmatively grant arbitrators the exclusive power to decide arbitrability when the contract was formed. The AAA Rules are not a time machine. Because AAA Rule 7(a) did not exist at the time, we conclude the Plaintiffs, the Rams, and Kroenke did not "clearly and unmistakably" enter into an antecedent agreement in 1995 to delegate to arbitrators the power to decide whether Plaintiffs'

[6] *See generally* AAA-ARBRLCML 96 (July 1, 1996) (lacking any mention of self-determination of arbitrability); *but see* R-7. Jurisdiction, AAA-ARBRLCML 03 s R-7(a) (July 1, 2003) ("the arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.")

claims must be arbitrated. The trial court did not err denying the arbitrator the power to decide arbitrability, given the unique factual history of this case.

Point I is denied.

Point II

In Point II, Appellants contend that because Plaintiffs' claims touch matters covered by the 1995 Lease and 1995 Relocation Agreement containing broad arbitration clauses, Plaintiffs' claims must be arbitrated. Appellants assert that resolving Plaintiffs' claims will require reference to the 1995 Lease and 1995 Relocation Agreement. Specifically, Appellants argue "the NFL relocation policy bars a club from relocating if doing so 'would result in a breach of the club's current stadium lease,' a provision that on its face mandates 'reference to or construction of' the lease and accordingly requires arbitration." Plaintiffs counter that none of their claims relate to the 1995 Lease or 1995 Relocation Agreement and therefore arbitration is not required.

Arbitration is solely a matter of contract. *Id*. Parties cannot be required to arbitrate a dispute they have not agreed to submit to arbitration. *Id*. The party asserting the existence of a valid and enforceable contract to arbitrate must prove that proposition. *Kohner Props., Inc. v. SPCP Group IV, LLC*, 408 S.W.3d 336, 342 (Mo. App. E.D. 2013).

"A court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate *that dispute*." *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 297 (2010) (emphasis in original). "To satisfy itself that such agreement exists, the court must resolve any issue that calls into question the formation or applicability of the specific arbitration clause that a party seeks to have the court enforce." *Id*.

In determining whether the parties have contracted to arbitrate, the usual rules of state contract law and canons of contract interpretation apply. *Triarch Indus., Inc.*, 158 S.W.3d at 776. The guiding principles of contract interpretation under Missouri law is that a court will seek to ascertain the intention of the parties and to give effect to that intent. *Id*. The intent of the parties' contract is presumed to be expressed by the ordinary meaning of the contract's terms. *Id*. If the contract is unambiguous, it will be enforced according to its terms. *Id*. If ambiguous, it will be construed against the drafter. *Id*.

The trial court should order arbitration of any dispute that touches matters covered by the parties' contract. *Ruhl v. Lee's Summit Honda*, 322 S.W.3d 136, 138 (Mo. banc 2010) (quoting *Kansas City Urology, P.A. v. United Healthcare Servs.*, 261 S.W.3d 7, 12 (Mo. App. W.D. 2008)). As part of the scope analysis, the court must look to any exclusions or exceptions in the arbitration agreement. *Manfredi v. Blue Cross & Blue Shield of Kansas City*, 340 S.W.3d 126, 131 (Mo. App. W.D. 2011) (En banc). Express provisions excluding particular grievances from arbitration are enforceable. *Id*.

For a tort claim to be subject to arbitration, it must raise some issue the resolution of which requires reference to or construction of some portion of the parties' contract. *Riley v. Lucas Lofts Investors, LLC*, 412 S.W.3d 285, 291 (Mo. App. E.D. 2013). Where a tort claim is independent of the contract terms and does not require reference to the underlying contract, arbitration is not required. *Id.* The relationship between the tort claim and the contract is not satisfied simply because the dispute would not have arisen absent the existence of the contract between the parties. *Id.*

Here, Plaintiffs' claims are based on their alleged status as third-party beneficiaries to the NFL Policy and Defendants' purported noncompliance with that policy as it relates to the Rams

move from St. Louis to Los Angeles in 2016. The NFL Policy contains no arbitration provision, but Appellants seek to invoke arbitration provisions from the Rams' 1995 Lease and 1995 Relocation Agreement entered into when the Rams moved from the Los Angeles market to St. Louis in 1995. Appellants contend that because Plaintiffs' claims "touch matters" covered by the 1995 Lease and 1995 Relocation Agreement, arbitration is required. We disagree.

At issue is whether Plaintiffs and Appellants agreed to arbitrate the disputes raised in Plaintiffs' petition—not whether they agreed to arbitrate disputes arising out of the 1995 Lease or 1995 Relocation Agreement. We conclude that Plaintiffs and Appellants have not agreed to arbitrate the specific disputes related to the NFL Policy. In reaching this conclusion, we consider each claim.

Plaintiffs' claims concern whether Defendants complied with their obligations under the NFL Policy in relocating the Rams from St. Louis in 2016. Count I alleges breach of contract against all Defendants, specifically breach of the NFL Policy's obligation of diligence and good faith. Count II alleges unjust enrichment against all Defendants based on Defendants' alleged noncompliance with the NFL Policy. Count III alleges fraudulent misrepresentation against Appellants and count IV alleges fraudulent misrepresentation against all Defendants based on the respective parties' alleged fraudulent statements to Plaintiffs intending to induce Plaintiffs into continuing to keep the Rams in St. Louis. Count V alleges tortious interference with business expectancy against all Defendants, except the Rams, based upon the clubs' vote allowing the Rams to move from St. Louis to Los Angeles. These counts are based on the respective Defendants' alleged failure to comply with their obligations under the NFL Policy, not the 1995 Lease or 1995 Relocation Agreement. Plaintiffs' claims are independent of the 1995 Lease and 1995 Relocation Agreement evidenced by Plaintiffs maintaining the same claims against the

other eighty-eight Defendants. Those Defendants are not parties to the 1995 Lease and 1995 Relocation Agreement. Plaintiffs' claims against the other Defendants exist independently based on the NFL Policy, as do Plaintiffs' claims against the Appellants.

The Rams' 1995 Lease and 1995 Relocation Agreement concerned the Rams relocation in 1995. Plaintiffs have alleged no violation of the 1995 Lease or 1995 Relocation Agreement, and Plaintiffs' claims do not require reference to or construction of those contracts. The NFL Policy's prohibition on relocation if it would cause a breach of a current club's lease does not require us to interpret the 1995 Lease because the 1995 Lease was terminated and there is no issue on whether it was breached. Thus, we are not satisfied the parties agreed to arbitrate the specific disputes here. See *NutraPet Sys., LLC v. Proviera Biotech, LLC*, 542 S.W.3d 410, 415 n.9 (Mo. App. W.D. 2017) (distinguishing *Pinkerton* because there was no arbitration provision agreed to by the parties applicable to the claims arising from the promissory note at issue); *Hopwood v. CitiFinancial, Inc.*, 429 S.W.3d 425, 427-28 (Mo. App. S.D. 2014) (affirming the trial court's denial of the motion to compel arbitration because the earlier-executed arbitration agreements executed between 2003 and 2005 did not apply to respondents' claims arising from the 2006 Note). While unnecessary, a review of the arbitration provisions in the 1995 Lease and 1995 Relocation Agreement further support our conclusion.

The arbitration provision in the 1995 Lease states that "any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of *this Amended Lease* (including any determination of whether the 'First Tier' or 'First Class' standard provided in Section 1.3 of Annex 1 to this Amended Lease has been met) shall be settled by arbitration . . . ." (Emphasis added). Similarly, the arbitration provision in the 1995 Relocation Agreement states that "any controversy, dispute or claim . . . related to *this Relocation Agreement*, including

without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of *this Relocation Agreement* shall be settled by arbitration . . . ." (Emphasis added). We find the parties' intent behind these provisions was to arbitrate any claims related "to the *interpretation, performance, or breach*" of the *1995 Lease and 1995 Relocation Agreement*. Plaintiffs' claims, however, are not related to the interpretation, performance, or breach of the 1995 Lease or 1995 Relocation Agreement. The Rams terminated the 1995 Lease before relocating to Los Angeles. Plaintiffs do not claim the Rams breached the 1995 Lease or the 1995 Relocation Agreement and do not dispute the Rams had the right to relocate under those agreements.

Plaintiffs allege that in reliance on Defendants' obligations imposed by the NFL Policy they took action to develop and finance a new stadium complex. Plaintiffs' claims relate to the interpretation, performance, and alleged breach by Defendants—not just Appellants—of the NFL Policy. There is no need to interpret the 1995 Lease and 1995 Relocation Agreement to resolve Plaintiffs' claims.

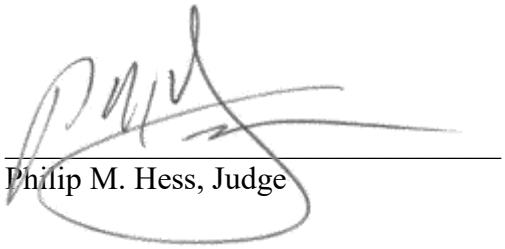
Further, the 1995 Lease explicitly excludes the City and the County from the arbitration clause. While the exclusion states that the City and the County may only sue or be sued in Federal District for the Eastern District of Missouri, this supports that the parties to the 1995 Lease did not intend for the City and County to arbitrate their claims related to the interpretation, performance, or breach of the 1995 Lease, let alone Plaintiffs' claims under the NFL Policy.

Appellants' point two is denied. Because there is no arbitration agreement applicable to Plaintiffs' claims, Appellants' points three is also denied. See *Hopwood*, 429 S.W.3d at 427 (denying appellants claim that the arbitrator must decide whether arbitration is appropriate

because it was wrongfully premised on a valid arbitration agreement applicable to respondents' underlying claims).

Conclusion

For the reasons stated above, the trial court's denial of Appellants' motion to compel arbitration is affirmed.



Philip M. Hess, Judge

Lisa P. Page, C.J. and
Roy L. Richter, J. concur.

EXHIBIT E

Supreme Court of Missouri
en banc

SC97488
ED106282

January Session, 2019

St. Louis Regional Convention and
Sports Complex Authority, et al.,
Respondents,
vs. (TRANSFER)

National Football League, et al.,
Defendants,
and
The Rams Football Company, LLC and
E. Stanley Kroenke,
Appellants.

Now at this day, on consideration of Appellants' application to transfer the above-entitled cause from the Missouri Court of Appeals, Eastern District, it is ordered that the said application be, and the same is hereby sustained and cause ordered transferred.

It is further ordered that the cause be, and it is hereby retransferred to the Missouri Court of Appeals, Eastern District, for reconsideration in light of Henry Schein, Inc. v. Archer and White Sales, Inc., 586 U.S. __ (2019) and Soars v. Easter Seals Midwest, No. SC97018 (decided December 18, 2018).

STATE OF MISSOURI-Sct.

I, Betsy AuBuchon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session, 2019, and on the 29th day of January, 2019, in the above-entitled cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court, at my office in the City of Jefferson, this 29th day of January, 2019.

SEAL OF THE SUPREME COURT OF MISSOURI

_____, Clerk

_____, Deputy Clerk

Appendix F

In the Missouri Court of Appeals
Eastern District

DIVISION TWO

ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, ET AL.,	)	No. ED106282
Respondents,	)	Appeal from the Circuit Court of St. Louis City
vs.	)	Honorable Christopher E. McGraugh
NATIONAL FOOTBALL LEAGUE, ET AL., and THE RAMS FOOTBALL COMPANY, LLC and E. STANLEY KROENKE,	)	
Appellants.	)	**Filed:** October 2, 2018

OPINION ON APPLICATION FOR TRANSFER

Appellants argue that we failed to address the antecedent question of whether the parties delegated to arbitrators, not courts, the power to decide arbitrability, contravening *Pinkerton*. Appellants are incorrect. In our opinion, we specifically distinguished *Pinkerton* on the ground that *Pinkerton* had an applicable arbitration agreement; whereas, this case does not. We fail to see how parties can delegate the power to decide arbitrability if there is no applicable arbitration provision in the first place.

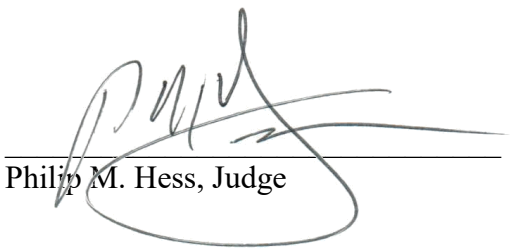
Appellants want us to ignore what this lawsuit is about, *i.e.*, the NFL Policy, presume their 1995 Lease applies to this lawsuit, and then send it blindly to arbitration because the parties entered into the 1995 Lease that contains an arbitration delegation provision. But to do so we would have to ignore the basic principles that arbitration is solely a matter of contract, and that a party is not

required to arbitrate matters it has not agreed to arbitrate. The parties to the NFL Policy – what this case is about – did not agree to arbitration. As *Pinkterton* set forth:

> Parties cannot be required to submit to arbitration any dispute which he [or she] has not agreed so to submit. Therefore, because arbitration is a matter of consent, not coercion, a court must be satisfied that the parties have concluded or formed an arbitration agreement before the court may order arbitration to proceed according to the terms of the agreement. Questions concerning whether an arbitration agreement was ever concluded are, therefore, generally nonarbitral question[s].

531 S.W.3d at 49 (internal questions and citations omitted). Our decision is in accord with *Pinkerton*.

Appellants also contend we ignored their defenses to Plaintiffs' claims in evaluating whether the arbitration clauses from the 1995 Lease or 1995 Relocation Agreement covered the disputes at issue in this case. This is not true. We considered Appellants "artfully pleaded" defenses and did not find they required arbitration. The application for transfer is denied.



Philip M. Hess, Judge

Lisa P. Page, C.J. and
Roy L. Richter, J. concur.

Appendix G

In the Missouri Court of Appeals
Eastern District

DIVISION TWO

ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, ET AL.,	)	No. ED106282
Respondents,	)	Appeal from the Circuit Court of St. Louis City
vs.	)	Honorable Christopher E. McGraugh
NATIONAL FOOTBALL LEAGUE, ET AL., and THE RAMS FOOTBALL COMPANY, LLC and E. STANLEY KROENKE,	)	
Appellants.	)	Filed: August 21, 2018

Introduction

The St. Louis Regional Convention and Sports Complex Authority (the "RSA"), the City of St. Louis (the "City"), and St. Louis County (the "County") (collectively "Plaintiffs") sued The Rams Football Company, LLC ("Rams"), the National Football League ("NFL"), through its thirty-two member clubs, and the clubs' owners, including E. Stanley Kroenke, the Rams' owner (collectively "Defendants"), alleging five counts arising out of the Rams' 2016 relocation from St. Louis to Los Angeles. Plaintiffs sued based on their alleged status as third-party beneficiaries of the NFL's "Policy and Procedures for Proposed Franchise Relocations" (the "NFL Policy"). The Rams and Kroenke moved to compel arbitration, arguing the "NFL Franchise Relocation Agreement" (the "1995 Relocation Agreement") and the "Amended and Restated St. Louis NFL

Lease" (the "1995 Lease") entered in 1995 when the Rams relocated from the Los Angeles market to St. Louis compelled arbitration because those contracts contain mandatory arbitration provisions and Plaintiffs' claims "touch matters" covered by those contracts. The trial court denied the Rams and Kroenke's motion to compel. The Rams and Kroenke ("Appellants") appeal that decision. Because we conclude the parties did not enter into an arbitration agreement which applies to Plaintiffs' claims, we affirm.

Factual and Procedural Background

A. The NFL Constitution and Bylaws

Article 4.3 of the NFL Constitution and Bylaws requires an affirmative vote of three-fourths of its member clubs before a club may transfer its franchise or playing site to a different city. Article 4.3 confirms that each club's primary obligation to the NFL and to all other member clubs is to advance the interests of the NFL in its home city. Article 4.3 also confirms that no club has an "entitlement" to relocate simply because it perceives an opportunity for enhanced club revenues in another location. Relocation pursuant to Article 4.3 may be available, however, if a club's viability in its home city is threatened by circumstances that cannot be remedied by diligent efforts of the club working, as appropriate, in conjunction with the NFL, or if compelling NFL interests warrant a franchise relocation.

B. The NFL's Relocation Policy

In 1984, pursuant to the NFL Constitution and Bylaws, the NFL adopted the NFL Policy. The NFL Policy sets forth the policies and procedures that apply to any proposed transfer of a club's home territory. The NFL Policy states that because the NFL favors stable team-community relations, clubs are obligated to work diligently and in good faith to obtain and to

maintain suitable stadium facilities in their home city, and to operate in a manner that maximizes fan support in their current home community.

The NFL Policy requires a club to submit a proposal for transfer to the NFL before it may transfer its franchise or playing site outside its current home city. The club must give the Commissioner of the NFL written notice of its proposed transfer and a "statement of reasons" in support of the proposed transfer. The NFL Policy provides that the Commissioner will evaluate the proposed transfer and report to the members. Following the Commissioner's report, the proposal is presented to the members for a vote. In considering a proposed relocation, the clubs are allowed to consider a number of factors, but must address the degree to which the club has engaged in good faith negotiations, and enlisted the NFL to assist in such negotiations, with appropriate persons concerning terms and conditions under which the club would remain in its current home city and afforded that community a reasonable amount of time to address pertinent proposals.

The NFL Policy states that if a club's proposal to relocate to a new home territory is approved, the relocating club will ordinarily be expected to pay a transfer fee to the NFL. The transfer fee will compensate other member clubs of the NFL for the loss of the opportunity appropriated by the relocating club and the enhancement in the value of the franchise resulting from the move. The NFL Policy does not have an arbitration provision.

C. The Rams' 1995 Relocation From the Los Angeles Market to St. Louis

In 1995, the Rams submitted a proposal to relocate their home playing site from Anaheim to St. Louis. Upon NFL approval, the Rams relocated to St. Louis effective with the 1995 NFL season. As a part of that relocation, the Rams, the Regional Convention and Visitors

Commission ("CVC"), and the St. Louis NFL Corporation ("SLNFL") entered into the 1995 Lease. Section 25 of the 1995 Lease contained an arbitration provision stating:

> Any controversy, dispute or claim between or among any of the parties hereto (and/or any of those consenting hereto pursuant to the Consents to Assignment (other than the City, County or SLMFC, which may only bring an action or against which an action may only be brought in United States Federal District Court for the Eastern District of Missouri, with the right to jury waived)) to this Amended Lease, related to this Amended Lease, including, without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Amended Lease (including any determination of whether the "First Tier" or "First Class" standard provided in Section 1.3 of Annex 1 to this Amended Lease has been met) shall be settled by arbitration conducted before three arbitrators in St. Louis, Missouri, in accordance with the most applicable then existing rules of the American Arbitration Association (or its successor or in the absence of a successor, an institution or organization offering similar services), and judgment upon any award rendered by the arbitrator may be entered by any federal or state court having jurisdiction thereof. Such arbitration shall be the exclusive dispute resolution mechanism. . . .

The Rams, the CVC, the RSA, Fans, Inc., and the SLNFL also entered into the 1995 Relocation Agreement.[1] The 1995 Relocation Agreement contained an arbitration provision stating:

> Any controversy, dispute or claim between or among any of the parties hereto related to this Relocation Agreement, including without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Relocation Agreement shall be settled by arbitration as set forth or as otherwise provided in Section 25 or the Amended Lease.

D. The Rams' 2016 Relocation From St. Louis to Los Angeles

In January 2016, the Rams submitted a proposed relocation application to relocate from St. Louis to Los Angeles and a statement of reasons in support to the NFL. On January 12, 2016,

[1] The City and County are listed as "Sponsors" of the 1995 Lease and the 1995 Relocation Agreement. The parties have not raised any issue about whether the City and County's status as "Sponsors" made them parties to those contracts.

the club owners voted to allow the relocation of the Rams from St. Louis to Los Angeles.[2] The Rams terminated the 1995 Lease and relocated to Los Angeles effective with the 2017 NFL season.

E. Plaintiffs' Suit

Plaintiffs filed this suit as result of the Rams' 2016 relocation. Plaintiffs alleged Defendants violated the obligations and standards governing team relocations by seeking and approving the relocation of the Rams from St. Louis to Los Angeles, despite Defendants' failure to satisfy the obligations imposed by the NFL Policy. Plaintiffs alleged that in reliance on Defendants' obligations imposed by the NFL Policy they took action to develop and finance a new stadium complex to try and keep the Rams in St. Louis. The suit alleges five counts: (1) breach of contract, specifically breaches of the NFL Policy's obligation of diligence and good faith against all Defendants, based on Plaintiffs status as third-party beneficiaries of the NFL Policy; (2) unjust enrichment against all Defendants for violating the NFL Policy and relocating to Los Angeles, resulting in the Rams alleged $550 million relocation fee payment to the other Defendants and the Rams' alleged increased franchise value; (3) fraudulent misrepresentation against Appellants based upon alleged false and misleading statements made by Appellants that induced Plaintiffs to spend considerable time and money financing and working on a new stadium complex; (4) fraudulent misrepresentation against all Defendants based upon Defendants' alleged fraudulent misrepresentations that induced Plaintiffs to spend considerable time and money financing and working on a new stadium complex plan; and (5) tortious inference with business expectancy against all Defendants, except the Rams, based upon the

[2] Counsel for Appellants conceded at oral argument the Rams needed an affirmative vote from three-fourths of the members clubs pursuant to the NFL Policy before it could relocate from St. Louis to Los Angeles.

Defendants' intentional interference with Plaintiffs' reasonable business expectancy by approving the Rams' relocation. The only exhibit attached to Plaintiffs' petition was the NFL Policy.

The Rams and Kroenke moved to compel arbitration which was denied. None of the other Defendants besides the Rams and Kroenke were parties to the motion to compel arbitration and are not parties to this appeal.[3] The Rams and Kroenke ("Appellants") appeal that decision.[4]

Standard of Review

We review do novo the legal issue of whether an arbitration agreement exists between the parties. *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 42 (Mo. banc 2017). The question of whether a motion to compel arbitration should have been granted is one of law subject to de novo review. *Triarch Indus., Inc. v. Crabtree*, 158 S.W.3d 772, 774 (Mo. banc 2005).

Discussion

Appellants raise three points on appeal. Appellants contend the trial court erred by denying their motion to compel arbitration because: (1) Plaintiffs and Appellants "clearly and unmistakably" agreed as a matter of law to delegate to the arbitrators the power to decide whether Plaintiffs' claims must be arbitrated by incorporating the rules of the American

[3] The denial of a motion to compel arbitration is appealable under section 435.440 RSMo (2016). "Although normally an order that does not dispose of all the parties and claims is not appealable, an order overruling a motion to compel arbitration is immediately appealable under section 435.440.1(1), RSMo 2000." *Eaton v. CMH Homes, Inc.*, 461 S.W.3d 426, 431 n.2 (Mo. banc 2015).

[4] Following oral argument, Plaintiffs filed a letter and an exhibit with the clerk purportedly pursuant to Local Rule 370. Local Rule 370 provides that "[c]ounsel may call the court's attention to intervening decisions or new developments by filing a short letter providing the supplemental citations with the clerk in accordance with Rule 84.20 and Rule 30.08." Plaintiffs did not provide the clerk with supplemental citations but attempted to supplement the record on appeal. Local Rule 370 is not the proper procedure for supplementing the record on appeal. We have not considered the letter or the exhibit in deciding this appeal.

Arbitration Association ("AAA") in the arbitration clauses contained in the 1995 Lease and 1995 Relocation Agreement; (2) Plaintiffs and Appellants' dispute touches matters covered by the 1995 Lease and 1995 Relocation Agreement containing mandatory broad arbitration clauses and therefore Plaintiffs' claims must be arbitrated; and (3) Kroenke, an agent of the Rams, is entitled to invoke the arbitration provisions contained in the 1995 Lease and 1995 Relocation Agreement because an agent of a signatory to an arbitration clause is entitled to invoke arbitration against another signatory. Each of Appellants' points is premised on the arbitration provisions contained in the 1995 Lease and 1995 Relocation Agreement being applicable to Plaintiffs' claims related to the NFL Policy, and in support, Appellants primarily rely on the Missouri Supreme Court's *Pinkerton* decision.

In *Pinkerton*, a student entered into an enrollment agreement with an aviation school that contained an arbitration agreement incorporating by reference the AAA commercial rules. After graduating from the school, the student could not find employment in the aviation field so he sued the school alleging various claims. The school moved to compel arbitration, and the circuit court granted the school's motion to compel arbitration. The student appealed, arguing the school's incorporation of the AAA rules into the arbitration agreement did not "clearly and unmistakably" express the parties' intent to delegate threshold issues of arbitrability to an arbitrator.

Applying Missouri's general contract principles, the Missouri Supreme Court held that by incorporating the commercial AAA rules into their arbitration agreement, which included a delegation provision, "the parties expressed their intent to arbitrate any dispute under these rules, including the AAA's 'jurisdiction' rule providing that the 'arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or

validity of the arbitration agreement.'" 531 S.W.3d at 48. Accordingly, the Court found the delegation provision clearly and unmistakably evidenced the parties' intent to delegate threshold issues of arbitrability to the arbitrator. *Id.*

Appellants argue that their case is similar to *Pinkerton* because they have an arbitration clause that incorporates the AAA Rules "in accordance with the most applicable then existing rules . . . ." The problem with Appellants' argument is that they presume the arbitration agreement from the 1995 Lease and/or the 1995 Relocation Agreement applies to Plaintiffs' claims. Plaintiffs allege their claims arise out of the NFL Policy, which does not have an arbitration provision. *Pinkerton* does not mandate that an arbitrator decide whether the parties have formed an arbitration agreement applicable to Plaintiffs' claims. See *Pinkerton*, 531 S.W.3d at 49 ("[A] court must be satisfied that the parties have 'concluded' or formed an arbitration agreement before the court may order arbitration to proceed according to the terms of the agreement."). Those questions are generally nonarbitral questions. *Id.* Thus, before we interpret an arbitration provision, we have to determine whether one is applicable in the first place. Because Appellant's point two is dispositive of this issue, we consider it first.

In point two, Appellants contend that because Plaintiffs' claims touch matters covered by the 1995 Lease and 1995 Relocation Agreement containing broad arbitration clauses, Plaintiffs' claims must be arbitrated. Appellants assert that resolving Plaintiffs' claims will require reference to the 1995 Lease and 1995 Relocation Agreement. Specifically, Appellants argue "the NFL relocation policy bars a club from relocating if doing so 'would result in a breach of the club's current stadium lease,' a provision that on its face mandates 'reference to or construction of' the lease and accordingly requires arbitration." Plaintiffs counter that none of

their claims relate to the 1995 Lease or 1995 Relocation Agreement and therefore arbitration is not required.

Arbitration is solely a matter of contract. *Id*. Parties cannot be required to arbitrate a dispute they have not agreed to submit to arbitration. *Id*. The party asserting the existence of a valid and enforceable contract to arbitrate bears the burden of proving that proposition. *Kohner Props., Inc. v. SPCP Group IV, LLC*, 408 S.W.3d 336, 342 (Mo. App. E.D. 2013).

"A court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate *that dispute*." *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 297 (2010) (emphasis in original). "To satisfy itself that such agreement exists, the court must resolve any issue that calls into question the formation or applicability of the specific arbitration clause that a party seeks to have the court enforce." *Id*.

In determining whether the parties have entered into a valid agreement to arbitrate, the usual rules of state contract law and canons of contract interpretation apply. *Triarch Indus., Inc.*, 158 S.W.3d at 776. The guiding principles of contract interpretation under Missouri law is that a court will seek to ascertain the intention of the parties and to give effect to that intent. *Id*. The intent of the parties' contract is presumed to be expressed by the ordinary meaning of the contract's terms. *Id*. If the contract is unambiguous, it will be enforced according to its terms. *Id*. If ambiguous, it will be construed against the drafter. *Id*.

The trial court should order arbitration of any dispute that touches matters covered by the parties' contract. *Ruhl v. Lee's Summit Honda*, 322 S.W.3d 136, 138 (Mo. banc 2010) (quoting *Kansas City Urology, P.A. v. United Healthcare Servs.*, 261 S.W.3d 7, 12 (Mo. App. W.D. 2008)). As part of the scope analysis, the court must look to any exclusions or exceptions contained in the arbitration agreement. *Manfredi v. Blue Cross & Blue Shield of Kansas City*,

340 S.W.3d 126, 131 (Mo. App. W.D. 2011) (En banc). Express provisions excluding particular grievances from arbitration are enforceable. *Id*.

For a tort claim to be subject to arbitration, it must raise some issue the resolution of which requires reference to or construction of some portion of the parties' contract. *Riley v. Lucas Lofts Investors, LLC*, 412 S.W.3d 285, 291 (Mo. App. E.D. 2013). Where a tort claim is independent of the contract terms and does not require reference to the underlying contract, arbitration is not required. *Id.* The relationship between the tort claim and the contract is not satisfied simply because the dispute would not have arisen absent the existence of the contract between the parties. *Id.*

Here, Plaintiffs' claims are based on their alleged status as third-party beneficiaries to the NFL Policy and Defendants' purported noncompliance with that policy as it relates to the Rams move from St. Louis to Los Angeles in 2016. The NFL Policy does not contain an arbitration provision, but Appellants seek to invoke arbitration provisions from the Rams' 1995 Lease and 1995 Relocation Agreement entered into when the Rams moved from the Los Angeles market to St. Louis in 1995. Appellants contend that because Plaintiffs' claims "touch matters" covered by the 1995 Lease and 1995 Relocation Agreement, arbitration is required. We disagree.

At issue is whether Plaintiffs and Appellants agreed to arbitrate the disputes raised in Plaintiffs' petition—not whether they agreed to arbitrate disputes arising out of the 1995 Lease or 1995 Relocation Agreement. We conclude that Plaintiffs and Appellants have not agreed to arbitrate the specific disputes at issue here related to the NFL Policy. In reaching this conclusion, we consider each claim.

Plaintiffs' claims concern whether Defendants complied with their obligations under the NFL Policy in relocating the Rams from St. Louis in 2016. Count I alleges breach of contract

against all Defendants, specifically breach of the NFL Policy's obligation of diligence and good faith. Count II alleges unjust enrichment against all Defendants based on Defendants' alleged noncompliance with the NFL Policy. Count III alleges fraudulent misrepresentation against Appellants and count IV alleges fraudulent misrepresentation against all Defendants based on the respective parties' alleged fraudulent statements to Plaintiffs intending to induce Plaintiffs into continuing to try and keep the Rams in St. Louis. Count V alleges tortious interference with business expectancy against all Defendants, except the Rams, based upon the clubs' vote allowing the Rams to move from St. Louis to Los Angeles. All of these counts are based on the respective Defendants' alleged failure to comply with their obligations under the NFL Policy, not the 1995 Lease or 1995 Relocation Agreement. Plaintiffs' claims are independent of the 1995 Lease and 1995 Relocation Agreement which is evidenced by Plaintiffs maintaining the same claims against the other eighty-eight Defendants. Those Defendants are not parties the 1995 Lease and 1995 Relocation Agreement, and like Plaintiffs' claims against Appellants, Plaintiffs' claims against the other Defendants exist independently based on the NFL Policy.

The Rams' 1995 Lease and 1995 Relocation Agreement concerned the Rams relocation in 1995. Plaintiffs have not alleged any violation of the 1995 Lease or 1995 Relocation Agreement, and Plaintiffs' claims do not require reference to or construction of those contracts. The NFL Policy's prohibition on relocation if it would result in a breach of a current club's lease does not require us to interpret the 1995 Lease because the 1995 Lease was terminated and there is no issue as to whether it was breached. Thus, we are not satisfied the parties agreed to arbitrate the specific disputes at issue here. See *NutraPet Sys., LLC v. Proviera Biotech, LLC*, 542 S.W.3d 410, 415 n.9 (Mo. App. W.D. 2017) (distinguishing *Pinkerton* because there was no arbitration provision agreed to by the parties applicable to the claims arising from the promissory

note at issue); *Hopwood v. CitiFinancial, Inc.*, 429 S.W.3d 425, 427-28 (Mo. App. S.D. 2014) (affirming the trial court's denial of the motion to compel arbitration because the earlier-executed arbitration agreements executed between 2003 and 2005 did not apply to respondents' claims arising from the 2006 Note). While not necessary, a review of the arbitration provisions in the 1995 Lease and 1995 Relocation Agreement further support our conclusion.

The arbitration provision in the 1995 Lease states that "any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of *this Amended Lease* (including any determination of whether the 'First Tier' or 'First Class' standard provided in Section 1.3 of Annex 1 to this Amended Lease has been met) shall be settled by arbitration . . . ." (Emphasis added). Similarly, the arbitration provision in the 1995 Relocation Agreement states that "any controversy, dispute or claim . . . related to *this Relocation Agreement*, including without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of *this Relocation Agreement* shall be settled by arbitration . . . ." (Emphasis added). We find the parties intent behind these provisions was to agree to arbitrate any claims related "to the *interpretation, performance, or breach*" of the *1995 Lease and 1995 Relocation Agreement*. Plaintiffs' claims, however, are not related to the interpretation, performance, or breach of the 1995 Lease or 1995 Relocation Agreement. The Rams terminated the 1995 Lease before relocating to Los Angeles. Plaintiffs do not claim the Rams breached the 1995 Lease or the 1995 Relocation Agreement in any manner and do not dispute the Rams had the right to relocate under those agreements.

Plaintiffs allege that in reliance on Defendants' obligations imposed by the NFL Policy they took action to develop and finance a new stadium complex. Plaintiffs' claims relate to the interpretation, performance, and alleged breach by Defendants—not just Appellants—of the NFL

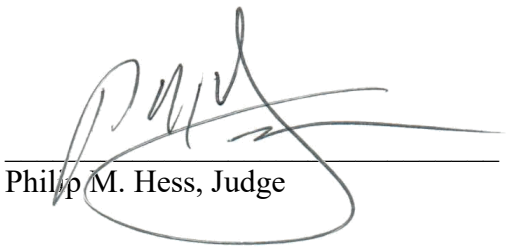
Policy. There is no need to interpret the 1995 Lease and 1995 Relocation Agreement to resolve Plaintiffs' claims.

Further, the 1995 Lease explicitly excludes the City and the County from the arbitration clause. While the exclusion states that the City and the County may only sue or be sued in Federal District for the Eastern District of Missouri, this supports that the parties to the 1995 Lease did not intend for the City and County to arbitrate their claims related to the interpretation, performance, or breach of the 1995 Lease, let alone Plaintiffs' claims under the NFL Policy.

Appellants' point two is denied. Because there is no arbitration agreement applicable to Plaintiffs' claims, Appellants' points one and three are denied. See *Hopwood*, 429 S.W.3d at 427 (denying appellants claim that the arbitrator must decide whether arbitration is appropriate because it was wrongfully premised on a valid arbitration agreement applicable to respondents' underlying claims).

Conclusion

For the reasons stated above, the trial court's denial of Appellants' motion to compel arbitration is affirmed.



Philip M. Hess, Judge

Lisa P. Page, C.J. and
Roy L. Richter, J. concur.

Appendix H

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, et al.,	)	
Plaintiffs,	)	No. 1722-CC00976
vs.	)	Division No. 21
NATIONAL FOOTBALL LEAGUE, et al.,	)	
Defendants.	)	

ORDER

The Court has before it Defendants Rams and E. Stanley Kroenke's Application to Compel Arbitration of All Counts. The Court now rules as follows.

Plaintiffs in this matter are the City and County of St. Louis and the St. Louis Regional Convention and Sports Complex Authority, a public entity. Defendants are the National Football League, an unincorporated association; all 32 of its member clubs; and 57 individual owners and managers of the clubs. In 1995, the Rams left Los Angeles and moved to St. Louis. The Rams and St. Louis officials entered into a detailed relocation agreement, which promised in part that the Rams would receive a "first-tier stadium" in St. Louis, or they would be allowed to relocate. Importantly for purposes of this motion, the relocation agreement, and the

related stadium lease, contained a mandatory arbitration provision.

The arbitration provision states that "any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of" the relocation agreement or lease, "shall be settled by arbitration." Although this matter does not concern the interpretation, performance or breach of the 1995 relocation agreement or the lease, Defendants argue that it is sufficiently related to one or the other to require arbitration.

It is a firmly established principle that parties can be compelled to arbitrate against their will only pursuant to an agreement whereby they have *agreed* to arbitrate claims. Greene v. Alliance Auto., Inc., 435 S.W.3d 646, 650 (Mo.App. W.D. 2014). The elements required to form a valid agreement to arbitrate in Missouri are offer, acceptance, and bargained for consideration. Id. Whether a particular dispute is covered by an arbitration provision is a question of law to be decided by the Court. Rhodes v. Amega Mobile Home Sales, Inc., 186 S.W.3d 793, 797 (Mo.App. W.D. 2006).

The parties are not bound to arbitrate every dispute that ever arises between them because they entered into an agreement containing an arbitration clause two decades ago. When construing

an arbitration clause, courts must ascertain the intent of the parties and give effect to that intent. State ex rel. Greitens v. Am. Tobacco Co., 509 S.W.3d 726, 741 (Mo. banc 2017). The parties' intent is presumably manifested in the plain, ordinary, and usual meaning of the contract's terms. Id.

Even a "broad" arbitration provision only covers disputes "arising out of" the contract to arbitrate. Dunn Indus. Grp., Inc. v. City of Sugar Creek, 112 S.W.3d 421, 428 (Mo. banc 2003). The arbitration clause as stated in the relocation agreement states as follows:

> 8.10 Arbitration. Any controversy, dispute or claim between or among any of the parties hereto related to this Relocation Agreement, including without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Relocation Agreement shall be settled by arbitration as set forth or as otherwise provided in Section 25 of the Amended Lease.

The arbitration clause found in the Lease states as follows:

> 25. Arbitration. Any controversy, dispute or claim between or among any of the parties hereto (and/or any of those consenting hereto pursuant to the Consents to Assignment (other than City, County or SLMFC, which may only bring an action or against which an action may only be brought in United States Federal District Court for the Eastern District of Missouri, with the right to jury waived)) to this Amended Lease, related to this Amended Lease, including, without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Amended Lease (including any determination of whether the "First Tier" or "First Class" standard provided in Section 1.3

of Annex 1 to this Amended Lease has been met) shall be settled by arbitration conducted before three arbitrators in St. Louis, Missouri, in accordance with the most applicable then existing rules of the American Arbitration Association (or its successor or in the absence of a successor, an institution or organization offering similar services), and judgment upon any award rendered by the arbitrator may be entered by any federal or state court having jurisdiction thereof. Such arbitration shall be the exclusive dispute resolution mechanism. In the event the parties (and/or those consenting hereto) are unable to agree on the three arbitrators, the parties (and/or those consenting hereto) shall select the three arbitrators be striking alternatively (the first to strike being chosen by a lot) from a list of thirteen arbitrators designated by the American Arbitration Association (or its successor or in the absence of a successor, an institution or organization offering similar services); seven shall be retired judges of trial or appellate courts resident in states other than Missouri or California, selected from the "Independent List" of retired judges (or its then equivalent) and six shall be members of the National Academy of Arbitrators (or its successor or in the absence of a successor, an institution or organization having a similar purpose) resident in states other than Missouri or California. In the event of any such arbitration, the prevailing party shall be awarded its costs and reasonable attorney's fees as part of the award. Each of the parties to the arbitration shall bear the costs of the arbitration on such equitable basis as the arbitrator of the matter shall determine. Notwithstanding the foregoing, where a dispute presents issues which are within the exclusive jurisdiction of the National Labor Relations Board, the decision of the National Labor Relations Board (or any Court of Appeals or Supreme Court enforcing or otherwise reviewing the decision of the National Labor Relations Board) shall be final and binding. Provided, however, that this shall not interfere with respect to dispute resolution procedures identified in Section 33, which shall be initially exhausted with respect to the work assignment or jurisdictional dispute procedures identified therein.

Plainly, the arbitration provision in the Relocation Agreement mandates arbitration only as to disputes "related to [the] Relocation Agreement," and the arbitration provision in the Lease mandates arbitration only as to disputes "related to [the] Amended Lease." Defendants argue that their defenses to Plaintiffs' claims require reference to the Relocation Agreement and Lease, and therefore this action is "related to" both. However, the terms of neither the Relocation Agreement nor the Lease are in dispute in this action, and the Court does not believe that arbitration is mandated.

Defendants next argue that the recent case State ex rel. Pinkerton v. Fahnestock, No. SC94822, 2017 Mo. LEXIS 487 (Mo. banc Oct. 31, 2017), requires that the arbitrator, not the Court, decide whether a dispute is arbitratable. However, Pinkerton is of no assistance to Defendants. Pinkerton explained that "when considering whether parties have intended to delegate threshold questions of arbitrability to an arbitrator, '[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is clea[r] and unmistakabl[e] evidence that they did so.'" Here, there is no clear and unmistakable evidence in either arbitration clause that the parties agreed to arbitrate arbitrability.

THEREFORE, it is Ordered and Decreed that Defendants Rams and E. Stanley Kroenke's Application to Compel Arbitration of All Counts is DENIED.

SO ORDERED:

CHRISTOPHER MCGRAUGH, Judge

Dated: December 27, 2017

FILED
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