STATE OF MISSOURI)
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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

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