



In the Missouri Court of Appeals
Eastern District

DIVISION TWO

ST. LOUIS REGIONAL CONVENTION) No. ED106282
AND SPORTS COMPLEX AUTHORITY,)
ET AL.,)
)
)
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.

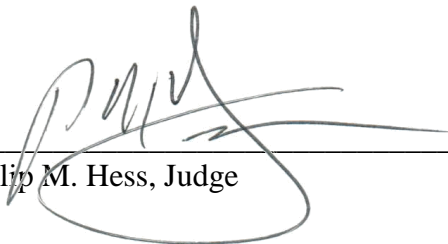
Appellants want us to ignore what this lawsuit is about, *i.e.*, the NFL Policy, presume their 1995 Lease applies to this lawsuit, and then send it blindly to arbitration because the parties entered into the 1995 Lease that contains an arbitration delegation provision. But to do so we would have to ignore 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 *Pinkerton* 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.