OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION THREE

AIG AGENCY, INC., d/b/a ASSOCIATED INSURANCE GROUP,	))	No. ED102096
	)	
Appellant,	))	Appeal from the Circuit Court of St. Louis County
vs.	))	12SL-CC01281
MISSOURI GENERAL INSURANCE AGENCY, INC., JIM BAXENDALE AND MITCH O'BRIEN,	)))	Honorable Michael T. Jamison
	)	
Respondents.	)	Filed: November 3, 2015

AIG Agency, Inc., d/b/a Associated Insurance Group ("AIG") appeals the trial court's grant of summary judgment in favor of Missouri General Insurance Agency, Inc. ("Missouri General"), Jim Baxendale, and Mitch O'Brien (collectively "Respondents") on AIG's claims arising from the transfer of insurance agent Martin Tessler's employment from Missouri General to AIG.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

Division Three holds:

(1) The trial court erred in granting summary judgment on AIG's breach of contract claim. Because the commissions forming the subject matter of the contract flowed from Tessler's ownership of the book of business, when he sold his book of business to AIG, AIG acquired the right to pursue Tessler's contract rights. There remain genuine issues of material fact as to whether the contract remained executory for Tessler, a question controlling whether the contract's non-assignment clause prohibited AIG from assuming Tessler's contract rights. Further, there remain genuine issues of material fact as to whether Missouri General breached its obligations under the contract. Finally, even if the cause of action for breach of contract had not yet accrued for Tessler at the time of the assignment, it was still transferable.

(2) The trial court erred in granting summary judgment on AIG's unjust enrichment and conversion claims because genuine issues of material fact remain as to which party

had the right to retain the commissions in light of the contract's silence on who is entitled to commissions payments post-separation and actions taken by both Missouri General and AIG which they contend rightfully establish themselves as the servicing agency for the commissions in question.

(3) The trial court did not err in granting summary judgment on AIG's tortious interference claim because undisputed testimony established it was not damaged by the alleged misrepresentation, negating an essential element of the cause of action.

Opinion by: Robert M. Clayton III, P.J.
Lawrence E. Mooney, J., and James M. Dowd, J., concur.

Attorney for Appellant: Christopher M. Garcia, Terese Adele Drew

Attorney for Respondent: Russel F. Watters, Timothy J. Wolf, Patrick A. Bousquet

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