

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION THREE

RUSSELL CLARK AND BART MANTIA,	)	No. ED102874
	)	
Appellants,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	11SL-AC02801-01
	)	
GREGORY KINSEY,	)	Honorable Dale W. Hood
	)	
Respondent.	)	Filed: May 3, 2016

Russell Clark and Bart Mantia appeal the grant of summary judgment in favor of Gregory Kinsey on the six counts in their August 22, 2011 petition filed in circuit court (“August 2011 circuit court petition”) and the denial of their motion for leave to amend the petition. The six counts in the August 2011 circuit court petition related to Kinsey’s alleged failure to pay his share of monies owed pursuant to a shareholders’ agreement entered into by Clark, Mantia, and Kinsey.

This case has a lengthy procedural posture and involves two other lawsuits by Clark and/or Mantia against Kinsey. The first lawsuit was filed by Clark against Kinsey in the small claims division in July 2009 (“2009 small claims petition”), and the second lawsuit was filed by Clark and Mantia against Kinsey in the small claims division in June 2010 (“2010 small claims petition”).

**AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.**

Division Three holds:

- (1) Rule 67.02<sup>1</sup> applies to small claims cases including the ones at issue in this appeal.
- (2) All three lawsuits related to Kinsey’s alleged failure to pay his share of monies owed pursuant to a shareholders’ agreement entered into by Clark, Mantia, and Kinsey, and therefore, all three lawsuits were based upon the “same claim.” Because Clark does not dispute the other elements of Rule 67.02 are met, Clark’s counts against Kinsey in the August 2011 circuit court petition (Counts I, III, and V) are barred by Rule 67.02. Accordingly, the trial court did not err in granting Kinsey summary judgment based on Rule 67.02 with respect to those counts, and we affirm this portion of the trial court’s judgment. This holding is dispositive of Clark’s counts and his remaining points on appeal.

---

<sup>1</sup> All references to Rules are to the Missouri Supreme Court Rules of Civil Procedure (2015).

- (3) Because Mantia was not a party-plaintiff to the 2009 small claims petition, he had a right to voluntarily dismiss his 2010 small claims petition against Kinsey without prejudice, and Rule 67.02 did not bar Mantia from bringing the same claim against Kinsey in the counts in his August 2011 circuit court petition (Counts II, IV, and VI). In addition, the doctrine of accord and satisfaction does not bar those counts, and Kinsey is not entitled to judgment as a matter of law on that ground. Therefore, the trial court erred in granting Kinsey summary judgment with respect to Mantia's counts, and we reverse this portion of the trial court's judgment.
- (4) Under the circumstances of this case, we hold the trial court should have granted Mantia leave to amend his August 2011 circuit court petition, and the court's failure to do so was an abuse of discretion. Accordingly, the cause is remanded to the trial court with directions to grant Mantia leave to amend his August 2011 circuit court petition and for further proceedings consistent with our opinion.

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

Attorney for Appellant: John J. Pawloski

Attorney for Respondent: Michael A. Clithero

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**