

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

CLEAN THE UNIFORM COMPANY)	No. ED92657
ST. LOUIS, Plaintiff/Respondent,)	Appeal from the Circuit Court
)	of the City of St. Louis
v.)	Honorable Elizabeth B. Hogan
)	Date: December 29, 2009
MAGIC TOUCH CLEANING, INC.,)	
Defendant/Appellant.)	

The defendant customer appeals from a judgment in the plaintiff supplier's lawsuit to recover damages for breach of contract.

AFFIRMED; REQUEST FOR ATTORNEY'S FEES ON APPEAL REMANDED.

Division One Holds:

1. That the customer's contract with a third party would not be renewed at the end of its one-year term was a reasonably foreseeable risk at the time the customer entered into a contract with the supplier. The occurrence of such a reasonably foreseeable event does not excuse performance or suspend a contract unless it is expressly stated in the contract. This requirement is not satisfied by language in the contract that provides for suspension of the contract for "causes beyond [the parties'] control." The catch-all phrase in the clause suspending performance in the event of "strikes, lockouts, and causes beyond Customer's or Supplier's control" does not cover the non-renewal of the customer's contract with a third party because the non-renewal was foreseeable and was not expressly listed. In this situation, the law presumes that the customer assumed the risk of non-renewal.
2. The customer did not plead facts in support of its affirmative defense that the supplier was first to breach, and the issue was not tried by consent.
3. The trial court did not clearly abuse its discretion in computing the amount of attorney's fees awarded to the supplier.

Opinion by: Kathianne Knaup Crane, P.J.
Clifford H. Ahrens, J. and Nannette A. Baker, J., concur.

Attorney for Respondent: Henry F. Luepke, III

Attorneys for Appellant: Mark D. Murphy, Jeffrey M. Cook

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.