

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

FIRST BANK,)	No. ED95297
)	
Plaintiff/Respondent,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Case Number: 08SL-CC04789
)	Honorable John F. Kintz
FISCHER & FRICHTEL, INC.,)	
)	
Defendant/Appellant.)	FILED: August 9, 2011

Before: Gary M. Gaertner, Jr., P.J., Mary K. Hoff, J., and Patricia L. Cohen, J.
PER CURIAM.

Plaintiff, First Bank, brought an action alleging that defendant, Fischer & Frichtel, Inc., defaulted on a promissory note secured by a deed of trust. Plaintiff purchased the subject property at a foreclosure sale and sought the amount still owed on the note. A jury found in favor of plaintiff and assessed damages and interest. Defendant filed a motion for judgment notwithstanding the verdict, new trial or remittitur. Plaintiff filed a motion for new trial and to amend the judgment. The trial court granted plaintiff's motion and denied defendant's motion. Defendant appeals.

AFFIRMED. CASE ORDERED TRANSFERRED TO THE MISSOURI SUPREME COURT PURSUANT TO RULE 83.02.

Division Five Holds: The trial court did not err in granting plaintiff's motion for new trial and to amend the judgment based on erroneous jury instructions regarding damages and a definition of fair market value, and in refusing to submit defendant's proffered jury instructions on the duty of good faith and fair dealing and commercial frustration. Because the case presents issues of general interest and importance and for reexamination of the law, the case is ordered transferred to the Missouri Supreme Court pursuant to Rule 83.02.

Attorneys for Appellant: Robert D. Blitz, R. Thomas Avery, and Jason K. Turk

Attorneys for Respondent: Thomas B. Weaver, Matthew J. Reh, and Sara F. Melly

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.