

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION ONE

CAPITAL ONE BANK USA,	)	No. ED96546
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	Honorable Mary Schroeder
KAMRAN R. KHAN,	)	
	)	
Appellant.	)	FILED: February 28, 2012

Kamran Khan ("Defendant") appeals the trial court's order denying his motion to set aside the default judgment entered against him in and in favor of Capital One Bank USA ("Plaintiff").

DISMISSED

Division One Holds: The trial court's judgment, although denominated a default judgment, was substantively a judgment on the merits due to Defendant's filing of a responsive pleading. As a result, the trial court's order denying Defendant's motion to set aside the default judgment under Rule 74.05(d) was a nullity. Furthermore, Defendant failed to timely file an appeal of the judgment pursuant to Rule 81.04(a), thus, the appeal is dismissed.

Opinion by: Roy L. Richter, P.J.  
Clifford H. Ahrens, J., and Gary M. Gaertner, Jr., J., concur

Attorney for Appellant: Kamran Khan, PRO SE

Attorneys for Respondent: Donald A. Horowitz

**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**