

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

G&J HOLDINGS, LLC, Appellant,)	No. ED98371
)	Appeal from the Circuit Court of
vs.)	St. Louis County
)	
SM PROPERTIES, LP, Respondent/Cross-Appellant.)	Honorable Michael T. Jamison
)	Filed: January 29, 2013

G & J Holdings, L.L.C. (Plaintiff) appeals the judgment entered by the Circuit Court of St. Louis County in favor of SM Properties, L.P. (Defendant) on three counts of Plaintiff's petition and in favor of Plaintiff on the remaining count. Plaintiff claims the trial court erred in: (1) granting Defendant's motion for summary judgment as to Plaintiff's claims for breach of lease and rescission; (2) denying Plaintiff's motion for summary judgment concerning its claims for breach of lease; and (3) awarding attorneys' fees to Defendant. In its cross-appeal, Defendant asserts that the trial court erred in awarding Defendant less than the full amount of attorneys' fees it incurred.

REVERSED AND REMANDED.

Division Four Holds: We reverse the judgment in Defendant's favor on Counts I, II, and III because of the existence of genuine issues of material fact regarding whether Defendant breached the lease. Because the trial court improperly granted summary judgment, there is no basis for an award of attorneys' fees to Defendant. We decline to address Defendant's cross-appeal and the trial court's denial of Plaintiff's motion for summary judgment. We deny both parties' motions for attorneys' fees on appeal. The case is remanded for further proceedings in accordance with this opinion.

Opinion by: Patricia L. Cohen, J.
Lawrence E. Mooney, P.J., and Kurt S. Odenwald, J., concur.

Attorney for Appellant: Gregory H. Wolk

Attorney for Respondent/Cross-Appellant: Daniel J. Welsh

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.