

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION THREE

BRIAN AND JULIE SPARKS,	)	No. ED98945
	)	
Appellants,	)	Appeal from the Circuit Court
	)	of Franklin County
vs.	)	
	)	Honorable Gael Wood
PNC BANK, et al.,	)	
	)	
Respondents.	)	FILED: April 9, 2013

Brian Sparks and Julie Sparks ("Homeowners") appeal from the trial court's judgment sustaining Millsap & Singer, P.C. ("Millsap PC") and Millsap & Singer, LLC's ("Millsap LLC") (collectively, "Respondents") motion to dismiss all counts against them. Homeowners had filed a suit against Respondents as well as PNC Bank, N.A. ("PNC Bank"), arising out of an attempted foreclosure on their home, alleging the foreclosure was wrongful and the trustee's duties were breached.

AFFIRMED.

Division Three Holds: Homeowners failed to plead their mortgage modification agreement or deed of trust, or the legal effects of such agreements, in their Amended Petition, against the requirements set forth in Missouri Supreme Court Rule 55.22. Homeowners also failed to plead that the trustee had gained any knowledge of anything that should legally prevent the foreclosure of their home, and thus, the trustee could proceed with the foreclosure without making an affirmative investigation of the same. Spires v. Edgar, 513 S.W.2d 372, 378 (Mo. banc 1974). Moreover, in failing to plead that Respondents unjustly retained the benefits of the reinstatement payments, Homeowners failed to plead the ultimate facts of unjust enrichment showing they are entitled to relief, as required by Rule 55.05.

Opinion by: Roy L. Richter, P.J.  
Robert G. Dowd, Jr., J., and Angela T. Quigless, J., concur.

Attorneys for Appellant: Alicia Campbell  
Attorneys for Respondent: Charles S. Pullium III, Brandon S. Rothkopf

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