



**In the Missouri Court of Appeals
Eastern District
DIVISION ONE**

DANIEL B. NICKELL,)	No. ED99163
)	
Appellant,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	0822-CC09449-01
)	
MICHAEL F. SHANAHAN, SR., et al.,)	Honorable Joan L. Moriarty
)	
Respondents.)	Filed: June 4, 2013

OPINION SUMMARY

Daniel B. Nickell appeals the judgment dismissing Counts I-III of his second amended petition against Michael F. Shanahan, Sr., Michael F. Shanahan, Jr., David Mattern, Thomas J. Guilfoil, Kenneth E. Lewi, Crosbie E. Saint, Earl W. Wims, Gary C. Gerhardt, Gerald A. Pothoff, Steven L. Landmann, and Mark S. Newman ("Respondents") seeking to recover damages resulting from the merger between Engineered Support Systems, Inc. ("ESSI") and DRS Technologies, Inc.

REVERSED AND REMANDED

Division One holds:

- (1) Newman's motion to dismiss the appeal, taken with the case, is denied.
- (2) Because Nickell's second amended petition sets forth allegations asserting violations of rights individual to Nickell and the purported class that caused them direct injury, Nickell has standing to maintain his claims individually. Therefore, the trial court erred in dismissing Counts I-III of the second amended petition for failure to state a claim upon

which relief can be granted on the ground that Nickell's petition only set forth derivative claims.

(3) The second amended petition contains allegations that the ESSI Defendants owed Nickell and the purported class fiduciary duties. Therefore, the trial court erred in dismissing Count I for failure to state a claim upon which relief can be granted on the ground that Nickell failed to allege the element of duty.

(4) Count II of the second amended petition is not precluded under the Securities Litigation Uniform Standards Act, 15 U.S.C. section 78bb (1998), and sets forth a claim upon which relief can be granted for aiding and abetting breaches of fiduciary duties. Therefore, Newman's alternative arguments in support of affirming the trial court's dismissal of Count II of the second amended petition are without merit.

Opinion by: Glenn A. Norton, J. Clifford H. Ahrens, P.J., & Sherri B. Sullivan, J., concur

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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.