

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

JOHN M. ROWLING,) ED99401
)
Appellant/Cross-Respondent,) Appeal from the Circuit Court
) of the City of St. Louis
v.) 1122-CC01256-01
)
NESTLE HOLDINGS, INC.,) Honorable Steven R. Ohmer
)
Respondent/Cross-Appellant.) Filed: October 15, 2013

Appellant John M. Rowling (Rowling) appeals the judgment of the trial court dismissing his breach of contract petition with prejudice as time-barred under the five-year statute of limitations in Section 516.120(1), RSMo. (Supp. 2012). Rowling argues that the trial court erroneously failed to apply the ten-year statute of limitations found in Section 516.110(1), or alternatively, erroneously dismissed Rowling’s petition because the five-year statute of limitations was tolled.

TRANSFERRED TO MISSOURI SUPREME COURT.

Division Four Holds: Application of Section 516.110(1)’s ten-year statute of limitations in this Court’s precedent is proper where an action arising from a writing containing a promise to pay money seeks enforcement of one of the contract terms. Because Rowling’s petition instead seeks damages for Nestle’s alleged breach of the Merger Agreement’s timeliness provision, our precedent would lead us to apply the five-year statute of limitations contained in Section 516.120 to his claim, and under Missouri law, we would conclude the statute was not tolled. However, because of the inconsistent case law application of Section 516.110(1) regarding the types of claims that fall under Section 516.110(1) once the threshold requirement of a writing containing a promise to pay has been met, and the plain meaning of Section 516.110(1) itself, we transfer to the Missouri Supreme Court. Rule 83.02.

Opinion by: Gary M. Gaertner, Jr., J.
Lisa S. Van Amburg, P.J., and Patricia L. Cohen, J., concur.

Attorneys for Appellant: Brian Ruschel, James J. Rosemergy
Attorney for Respondent: Thomas E. Wack

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.