

Summary of SC93652, *State ex rel. Patrick O’Basuyi v. The Honorable David Lee Vincent, III*

Proceeding in prohibition originating in the St Louis circuit court, Judge David Lee Vincent III
Argued and submitted March 11, 2014; opinion issued June 24, 2014

Attorneys: O’Basuyi was represented by Steven W. Koslovsky of Steve Koslovsky LLC in St. Louis, (314) 296-6120, and the TriStar defendants were represented by R. Thomas Avery, Robert D. Blitz and Jason K. Turk of Blitz, Bardgett & Deutsch LC in St. Louis, (314) 863-1500.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man seeks to make permanent this Court’s preliminary writ of prohibition preventing the trial court from allowing the simultaneous trial of his breach of contract and related claims along with the defendants’ counterclaim for malicious prosecution. In a unanimous opinion written by Judge Laura Denvir Stith, the Supreme Court of Missouri makes its writ permanent. The trial court abused its discretion in allowing the malicious prosecution counterclaim to be filed and in directing that it be tried with the plaintiff’s claims because neither Missouri’s rules of civil procedure nor its judicial precedents properly can be read to allow such a claim to be brought before the original claims are resolved.

Facts: Patrick O’Basuyi sued TriStar Property Associates and other related defendants for claims including breach of contract. TriStar then filed a malicious prosecution counterclaim against O’Basuyi, who moved for a separate trial of TriStar’s counterclaims to avoid confusing the jury and causing him prejudice. The trial court denied his motion for a separate trial of TriStar’s counterclaim. Following O’Basuyi’s petition, this Court issued its preliminary writ of prohibition requiring separate trials. O’Basuyi now seeks to make that writ permanent.

The plaintiff argues that because the defendants could not prove an essential element of their malicious prosecution claim—that the underlying claim terminated in their favor—until the jury decided the plaintiff’s claims, it would be premature and prejudicial to try the two parties’ claims together in one trial. The defendants contend that Rule 55.06, governing the joinder of claims, and this Court’s application of Rule 55.06 in *State ex rel. General Motors Acceptance Corporation v. Standridge* allow them to try their malicious prosecution claim at the same time and in the same action with the plaintiff’s original claims.

PRELIMINARY WRIT MADE PERMANENT.

Court en banc holds: (1) Contrary to TriStar’s assertions, neither Rule 55.06, which governs the joinder of claims, nor this Court’s 2006 application of that rule in *State ex rel. General Motors Acceptance Corporation v. Standridge* authorizes the TriStar counterclaims to be tried at the same time and in the same action as O’Basuyi’s original claims. An essential element of a malicious prosecution claim is that the underlying claim terminated in favor of the party raising the malicious prosecution claim. The facts in *Standridge* are distinguishable. There, the plaintiff’s collection action already had terminated in favor of the defendant before the defendant

raised a malicious prosecution counterclaim. The Court, therefore, was not presented with an attempt to try both claims together, unlike here.

(2) When read as a whole, Rule 55.06 does not permit either the filing or the trial of a malicious prosecution claim as a counterclaim in a party's original action. By its terms, subdivision (a) of Rule 55.06 only permits "a party" to join all the claims that it has "against an opposing party." It does not authorize the opposing party to also join other contingent claims not otherwise authorized by the rules. A malicious prosecution claim necessarily is a contingent claim because it requires a finding that a suit was filed in malice and caused damage – facts that cannot be ascertained until after the suit has been terminated in favor of the party making the malicious prosecution claim. Subdivision (b) of Rule 55.06 clarifies the remedies available to the single party joining its claims under Rule 55.06(a), but it does not expand subdivision (a) to allow joinder of an opposing party's contingent claims. This understanding of the rule is consistent with its language, with the long history of Missouri cases barring malicious prosecution actions before the termination of the original action, and with the majority of federal and other state cases interpreting nearly identical joinder rules. In *Standridge*, this Court was not presented directly with the question whether these claims properly could be joined in the same action; rather, it was asked to determine only whether the trial court retained "jurisdiction" over the malicious prosecution counterclaim after the underlying claim was dismissed. To the extent that *Standridge* suggests that a malicious prosecution counterclaim can be filed in the plaintiff's suit, however, it incorrectly interprets Rule 55.06 and no longer should be followed.