

Summary of SC93756, *John M. Rolwing v. Nestle Holdings Inc.*

Appeal from the St. Louis circuit court, Judge Steven R. Ohmer
Argued and submitted January 7, 2014; opinion issued June 10, 2014

Attorneys: Rolwing was represented by Brian Ruschel, an attorney in Cleveland, Ohio, (216) 621-3370, and James J. Rosemergy of Carey, Danis & Lowe in St. Louis, (314) 725-7700; and Nestle was represented by Thomas E. Wack of Bryan Cave LLP in St. Louis, (314) 259-2000.

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 who filed suit against a company in 2011 over a breach of the company’s merger agreement that he alleges occurred in 2001 appeals the trial court’s judgment that his suit is barred by a five-year statute of limitations. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the judgment. The applicable statute of limitations is five years, not 10 years, and it was not tolled (stopped from running) by a class action lawsuit filed against the company in a different state.

Facts: In January 2001, Nestle Holdings Inc. and Ralston Purina Company entered into a merger agreement providing that, at the “effective time” of the merger, Ralston stock would be converted into a right for all Ralston shareholders to receive \$33.50 per share. John Rolwing, a Ralston shareholder, alleges he and other Ralston shareholders were not paid until December 18, 2001, four days after he alleges the stock was converted. In March 2011, Rolwing filed a class action petition alleging that Nestle breached the merger agreement by failing to make timely payment to shareholders of the \$33.50 per share. He alleged that he and other class members were entitled – as a matter of custom and practice – to interest, at the statutory rate, for the alleged late payment. The trial court sustained Nestle’s motion to dismiss the petition as barred by the five-year statute of limitations in section 516.120(1), RSMo. Rolwing appeals.

AFFIRMED.

Court en banc holds: Because Rolwing’s alleged damages consist of interest that was not promised in the merger agreement, the trial court did not err in concluding the general five-year statute of limitations in section 516.120(1) applies to Rolwing’s action. By its plain language, this statute of limitations applies generally to all breach of contract actions. The exception providing a 10-year statute of limitations in section 516.110(1), RSMo, applies only to actions in which the plaintiff sues to enforce a written promise to pay money. Rolwing, however, does not seek enforcement of the payment of money promised in the contract. Rather, he seeks payment of interest not promised in the contract, alleging he is entitled to such interest based on custom and practice rather than the language of the merger agreement. A class action suit pending against Nestle in Ohio provides no statutory or equitable basis for tolling (stopping the running of) the five-year statute of limitations in section 516.120(1). Rolwing alleges the merger agreement was breached in 2001, but he did not file suit until 2011. As such, as the trial court concluded, his action is barred by the five-year limitation period in section 516.120(1).