

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**OBERMILLER CONSTRUCTION SERVICES, INC.,
APPELLANT
vs.**

**PUBLIC WATER SUPPLY DISTRICT NO. 5 OF CASS COUNTY,
RESPONDENT**

DOCKET NUMBER WD70901

DATE: SEPTEMBER 14, 2010

Appeal from:

Cass County Circuit Court
The Honorable Jacqueline A. Cook, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Attorneys:

Charles E. Weedman, Jr., for Appellant

Gerard Eftink, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

OBERMILLER CONSTRUCTION SERVICES, INC., APPELLANT

v.

**PUBLIC WATER SUPPLY DISTRICT NO. 5 OF CASS COUNTY, MISSOURI,
RESPONDENT**

WD70901

Cass County, Missouri

Before Division Two Judges: Joseph M. Ellis, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Obermiller Construction Services, Inc. ("OCS") appeals from a judgment entered in the Circuit Court of Cass County awarding OCS \$61,095.98 on its petition for damages against Public Water Supply District No. 5 of Cass County ("PWSD #5") and awarding \$125,000.00 in liquidated damages and \$20,000.00 in attorney's fees to PWSD #5 on its counter-claim for liquidated damages. Prior to trial, the trial court determined that OCS's reformation and rescission claims should be tried to the court prior to the remaining claims being submitted to a jury.

AFFIRMED.

Division Two holds:

The trial court did not err in denying OCS's request that its reformation and rescission claims be tried to a jury. Both reformation and rescission are equitable claims properly tried to the court.

Opinion by: Joseph M. Ellis, Judge

Date: September 14, 2010

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