

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ROBERT ADAMS

APPELLANT,

**v.
ONE PARK PLACE INVESTORS, LLC, and,
WILLIAM FOOTE**

RESPONDENTS.

DOCKET NUMBER WD71652
DATE: June 29, 2010

Appeal From:

Jackson County Circuit Court
The Honorable Joel F. May, Judge

Appellate Judges:

Division Three: James M. Smart, Jr., Presiding Judge, Joseph M. Ellis and Gary D. Witt, Judges

Attorneys:

Joseph R. Colantuono and Katherine I. Tracy, Overland Park, KS, for appellant.

Curtis E. Woods and Jason R. Scheiderer, Kansas City, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

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RESPONDENTS.

No. WD71652

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Before Division Three Judges: James M. Smart, Jr., Presiding Judge, Joseph M. Ellis and Gary D. Witt, Judges

Robert Adams filed suit against One Park Place Investors, LLC and William Foote based on the termination Adams's employment as the Project Director for a construction and development project converting the BMA Tower from an office building into residential condominiums. Adams brought three counts, all of which sought monetary relief. Count One was a breach of contract claim against OPPI. Count Two was an unjust enrichment claim brought against OPPI. Count Three was a "misrepresentation" claim against OPPI and Foote pursuant to the California Labor Code, Section 970.

Based on a variety of motions filed by OPPI and Foote, the circuit court dismissed all of Adams's claims. Adams now appeals.

AFFIRMED IN PART, REVERSED IN PART.

Division Three holds:

In Point One, Adams argues that the trial court erred in granting summary judgment as it pertained to his contract claim. Adams asserts that California law applies to this cause rather than Missouri law. In resolving a conflict of laws question, Missouri courts rely on the Restatement (Second) of Conflict of Laws. In finding that Missouri law applied to resolve the contract claim, the trial court made detailed findings and conclusions that analyzed the governing principles as outlined by the Restatement. Adams failed to demonstrate that these findings and conclusions are somehow in error. Point denied.

Adams argues in Point Two that the trial court erred in granting summary judgment on Adams's breach of contract claim because, *under California law*, the statute of frauds is not a defense. Adams's argument is predicated on the assumption that California law should apply to this dispute. However, because we find the trial court did not err in concluding that Missouri law applied in granting summary judgment in Point One, Adams's argument that California law requires reversal under Point Two must fail. Point denied.

In Point Three, Adams argues that the trial court erred in granting summary judgment on Adams's breach of contract claim because under Missouri law, the Statute of Frauds does not apply if the contract was capable of performance within one year. Adams's position on appeal is inconsistent and untenable in light of the express admissions he made before the trial court that the contract could not be performed in one year. Pursuant to Rule 59.01(a), Adams admitted that the contract "could not be performed within one year from the time the alleged verbal agreement was made." Adams's previous admissions are dispositive of this Point Relied On. Point denied.

In Point Five, Adams argues that the trial court erred in granting summary judgment on his unjust enrichment claim because OPPI terminated Adams prior to completion of the project but retained the investment rights to the project. The gravamen of Adams's claim is that OPPI terminated Adams approximately 5 years prior to Adams realizing the full, reasonable value of the investment opportunity he provided to OPPI because OPPI's projected date for selling all of the condo units is approximately February 2012. Adams does not dispute that he was an employee at will. Had he wished to ensure his employment with OPPI through 2012, Adams should have sought to negotiate a written contract that expressly stated those terms. Point denied.

In Point Six, Adams argues that the trial court erred in granting OPPI's motion for summary judgment because the "motion was not fully briefed as required by Missouri Rule of Civil Procedure 74.04(c)(3) and (6), in that Adams's response to the [] motion included additional material facts that OPPI did not respond to prior to the trial court ruling on the renewed motion." While the terms of Rule 74.04(c) are mandatory, reversal is only required upon a showing of prejudice. Here, Adams fails to demonstrate any prejudice, even if we assume there was a procedural abnormality in the trial court's grant of summary judgment. Point denied.

Finally, in Point Four, Adams argues that the trial court erred in dismissing Count III pursuant to Section 970 of the California Labor Code based on OPPI's motion to dismiss because the Court improperly found that it was time barred as a matter of law. We agree. Here, OPPI does not dispute on appeal that Adams could not have maintained a suit under Section 970 until his termination. OPPI expressly concedes that Adams was terminated at a breakfast meeting in Kansas City, Missouri. Pursuant to these undisputed facts, Adams's Section 970 claim originated or accrued in Missouri, notwithstanding the fact that the claim is based on California substantive law. As such, Missouri's borrowing statute, Section 516.190, is inapplicable to the instant matter. Missouri law (the law of the forum state) would apply, meaning Missouri's three year statute of limitations period governs to determine whether Adams's Section 970 claim was timely filed.

When reviewing the facts in the light most favorable to Adams, it is apparent that Adams's cause of action was neither "sustained" nor "capable of ascertainment" until he was discharged on January 4, 2007. Because Adams filed his Section 970 claim on August 26, 2008, which was within the applicable three year period, the trial court erred in dismissing Adams's claim as time barred.

The judgment granting OPPI's summary judgment motion as it pertained to Adams's breach of contract and unjust enrichment claims is affirmed. However, as it pertains to Adams's Section 970 claim, the trial court's judgment is reversed and remanded.

Opinion by: Gary D. Witt, Judge

June 29, 2010

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