

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

WALLY & CO., L.C.,

Appellant,

v.

BRIARCLIFF DEVELOPMENT CO., et al.,

Respondents.

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**DOCKET NUMBER WD74267**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** May 22, 2012

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**APPEAL FROM**

The Circuit Court of Clay County, Missouri  
The Honorable Anthony Rex Gabbert, Judge

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**JUDGES**

Division Two: Howard, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

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**ATTORNEYS**

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

WALLY & CO., L.C., )  
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 ) **Appellant,** )  
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 v. ) **OPINION FILED:**  
 ) **May 22, 2012**  
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 **BRIARCLIFF DEVELOPMENT CO., et** )  
 **al.,** )  
 )  
 )  
 **Respondents.** )

WD74267

Clay County

**Before Division Two Judges:** Victor C. Howard, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

Wally & Co., L.C., a broker, sued Briarcliff Development Company for a commission earned from representing DeBruce Grain, Inc., a tenant, in its lease renewal negotiations with Briarcliff, the landlord. With the broker's help, the landlord and tenant entered into an agreement to amend and renew the tenant's lease for ten additional years on December 1, 2008, but the lease amendment did not specify the rental rate—only the formula required to be used to calculate the rental rate. Per the broker's commission agreement with Landlord, its commission would be calculated based upon the renewal rental rate, but was earned once landlord and tenant entered into a written lease amendment. Through the formula specified by the 12/1/08 lease amendment, the rental rate was determined and the parties entered into the required written agreement to specify the rental rate on July 31, 2009. Landlord refused to pay the broker its commission, claiming that the commission had not been earned within the time frame delineated by the commission agreement (i.e., June 3, 2009). The landlord and broker both moved for summary judgment. The trial court granted summary judgment for the landlord, finding that the broker's commission agreement with Landlord expired before the commission was earned and, therefore, the broker had no right to a commission. Broker timely appeals to this court.

**REVERSED AND REMANDED.**

**Division Two holds:**

- (1) A broker earns a commission when he produces a tenant and the tenant enters into a lease (or lease extension as in this case) with the landlord. A broker is entitled to his commission even though a contingency, such as completing a mandatory rental rate calculation process or physically signing the closing paperwork required by the lease agreement, occurs after the broker's commission agreement with the Landlord expires.
- (2) The broker in this case was entitled to its commission because, while broker's commission agreement with the landlord was in effect, landlord and tenant entered into a written lease amendment extending the term of the lease. That the rental rate was set—using the mandatory formula of the written lease amendment—after broker's commission agreement with landlord expired does not change the fact that landlord and tenant entered into a binding written lease amendment extending the term of the original lease during the efficacy period of the broker's commission agreement—an agreement that specified the rental rate calculation process that the parties were required to use to set the rental rate for the lease term extension. The trial court erred in granting summary judgment to landlord, and was instructed to enter judgment in favor of broker on remand.

**Opinion by: Mark D. Pfeiffer, Judge**

May 22, 2012

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