

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**MARY LOWE,**

**Respondent,**

**v.**

**SUSAN HILL,**

**Appellant.**

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DOCKET NUMBER WD76272

**Date: May 20, 2014**

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Appeal from:  
Johnson County Circuit Court  
The Honorable Sue Dodson, Judge

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Appellate Judges:  
Division Two: Gary D. Witt, Presiding Judge, Lisa White Hardwick and Alok Ahuja,  
Judges

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Attorneys:  
Jeremiah Kidwell, Kansas City, MO, for respondent.  
Abbie E. Rothermich, Warrensburg, MO, for appellant.

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

**MARY LOWE**

**Respondent,**

**v.**

**SUSAN HILL,**

**Appellant.**

WD76272

Johnson County

Before Division Two: Gary D. Witt, Presiding Judge,  
Lisa White Hardwick and Alok Ahuja, Judges

This is an appeal from the circuit court's judgment against Susan Hill and in favor of Mary Lowe on her claims for money had and received and unjust enrichment. Hill contends that the circuit court erred in entering judgment in Lowe's favor on her implied contract claims because an express contract covered the subject matter of the parties' dispute.

**REVERSED AND REMANDED.**

Division Two holds:

A plaintiff cannot recover under the equitable theories of money had and received and unjust enrichment when she has entered into an express contract for the very subject matter for which she seeks to recover. Here, Lowe's claims were based on an express oral loan agreement between the parties, the undisputed evidence could only support a breach of contract claim, and the circuit court found that a contract did in

fact exist. Accordingly, the court erred in allowing Lowe to recover on the theories of money had and received and unjust enrichment. We reverse the circuit court's ruling in favor of Lowe, and enter judgment in favor of Hill.

Opinion by: Lisa White Hardwick, Judge

**May 20, 2014**

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**