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**Appeal No. SC94152**

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**IN THE  
SUPREME COURT OF MISSOURI**

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**THOMAS BINKLEY, HARLENE H. BINKLEY, ROLAND E. STURHAHN, and  
SUSAN J. STURHAHN,**

**Plaintiffs-Appellants,**

**v.**

**AMERICAN EQUITY MORTGAGE,**

**Defendant-Appellee.**

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**APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY  
DIVISION 8, CASE NO. 12SL-CC01661  
THE HONORABLE TOM W. DEPRIEST**

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**APPELLANTS' SUBSTITUTE BRIEF**

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- A. Someone Can Do Law Business in Missouri without Listing a Document-Preparation Fee on a Hud-1;
- B. The Requirement of Charging a Document-Preparation Fee Is Only a Defense for Filling in the Blanks on Legal Documents;
- C. When a Lender Procures or Buys Legal Documents for a Missouri Residential Loan, not from a Missouri-Licensed Attorney, the Lender Does Law Business in Violation of Missouri Revised Statutes §§ 484.010.2 and 484.020.1.

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Hulse v. Criger, 247 S.W.2d 855 (Mo. banc 1952).

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II. The Circuit Court erred in Entering Summary Judgment to Defendant American Equity because American Equity Procured Legal Documents for Valuable Consideration in That:

- A. Binkleys and Sturhahns Each Paid Thousands in Fees to American Equity Which Constitutes Valuable Consideration;
- B. American Equity Paid Valuable Consideration to a Third-Party in Buying and Wrongfully Procuring the Legal Documents for the Binkleys and Sturhahns; and,
- C. American Equity received valuable consideration by the Binkleys and Sturhahns Obtaining Mortgage Loans Through Defendant American Equity

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## JURISDICTIONAL STATEMENT

In 2012, Appellants Thomas Binkley, Harlene H. Binkley, Roland E. Sturhahn, and Susan J. Sturhahn (Homeowners) filed a Class Action Petition (Petition) against Appellee American Equity Mortgage (American Equity) in the Circuit Court of St. Louis County with various counts stemming from their residential mortgage loan transactions with American Equity, in part because American Equity procured and purchased legal documents from an out-of-state corporation without the review or supervision of a Missouri-licensed attorney. (L.F. 134-155.) The circuit court issued its Order and Judgment on May 17, 2013, entering summary judgment against the Homeowners. (L.F. 13.) The Homeowners filed their Notice of Appeal on May 21. (L.F. 7-8.)

On May 21, 2013, Plaintiffs filed their notice of appeal to the Missouri Court of Appeals Eastern District. On February 18, 2014, the Missouri Court of Appeals affirmed the summary judgment by the St. Louis County Circuit Court. The Missouri Court of Appeals denied Plaintiffs' Motion to Transfer the Appeal to the Missouri Supreme Court.

On April 28, 2014, Plaintiffs filed their Motion to Transfer with the Missouri Supreme Court.

On May 27, 2014, the Missouri Supreme Court granted Plaintiffs' Motion to Transfer the Appeal to the Missouri Supreme Court.

## STATEMENT OF FACTS

Plaintiffs-Appellants Thomas Binkley, Harlene H. Binkley, Roland E. Sturhahn, and Susan J. Sturhahn refinanced mortgages with Defendant-Respondent American Equity Mortgage, Inc. (American Equity). (L.F. 115, 117.)

The HUD-1 forms American Equity prepared for the Binkleys and the Sturhahns did not list any document-preparation fee. (L.F. 28, 30.) But American Equity charged, and the Binkleys paid American Equity, \$2,320.93 in loan fees. (L.F. 29, 152.) Similarly, American Equity charged, and the Sturhahns paid American Equity \$2,328.00 in loan fees. (L.F. 27-29.)

American Equity bought and procured the legal documents (note and deed of trust) used for the Binkley and Sturhahn loans. (L.F. 34, 40.) The person from whom American Equity bought the legal documents was not a Missouri attorney nor did a Missouri attorney review the legal documents. (L.F. 34, 36, 40.)

The Binkleys and the Sturhahns sued American Equity, based on the recent decision of Hargis v. JLB Corp., 357 S.W.3d 574 (Mo. banc 2011), because American Equity had procured legal documents for Missouri residential mortgages from someone other than a Missouri-licensed attorney. Both the Sturhahns and the Binkleys had paid American Equity thousands of dollars in fees and American Equity paid a third party for the completed legal documents.

American Equity moved for summary judgment, arguing that, because the HUD-1 Settlement Statements (HUD-1s) for the Binkley and Sturhahn loans did not list a “Document Preparation Fee,” American Equity could not have done law business. (L.F.

89-91.) The Binkleys and the Sturhahns argued that a person can practice law without charging a “Document Preparation Fee” and that according to the Missouri Supreme Court buying or “procuring” completed legal documents for a Missouri residential loan from someone other than a Missouri-licensed attorney violates Missouri Revised Statutes §484.010.2. (L.F. 77-79.) See Hargis, 357 S.W.3d at 580.

Because American Equity left blank the “Document Preparation Fee” line of the HUD-1s for the Sturhahns and because no “Document Preparation Fee” is listed on the Binkleys’ HUD-1, the Circuit Court was led into error and mistakenly awarded American Equity summary judgment. (L.F. 13.)

## ARGUMENT

The Missouri Supreme Court reviews grants of summary judgment using de novo review. Hargis v. JLB Corp., 357 S.W.3d 574, 577 (Mo. Banc 2011).

- I. The Circuit Court erred in Entering Summary Judgment for Defendant American Equity because Defendant Procured Legal Documents for a Missouri Loan and Mortgage Non-Lawyer and thereby Illegally Practiced Law According to §484.010.2 R.S.Mo. and There Was No Requirement for Liability for Defendant to have Charged a Document Preparation Fee in that Defendant’s Only Basis for Summary Judgment was Defendant’s Failure to Charge a Document Preparation Fee and Such was Not an Element or Defense to Defendant’s Practicing Law by Procuring Legal Documents.**
  - A. Someone Can Do Law Business in Missouri without Listing a Document-Preparation Fee on a Hud-1;**
  - B. The Requirement of Charging a Document-Preparation Fee Is Only a Defense for Filling in the Blanks on Legal Documents;**
  - C. When a Lender Procures or Buys Legal Documents for a Missouri Residential Loan, not from a Missouri-Licensed Attorney, the Lender Does Law Business in Violation of Missouri Revised Statutes §§ 484.010.2 and 484.020.1.**

American Equity’s argument, which is the basis for the incorrect summary judgment, is that so long as American Equity leaves the “Document Preparation Fee” line (#1105) blank on HUD-1s, it can never do law business. American Equity believes it can

advise borrowers on the law or counsel borrowers on their legal rights, and that so long as it leaves line 1105 blank on the HUD-1s, it cannot be held liable for doing law business.

The undersigned attorney has done law business and practiced law in the State of Missouri for more than 25 years and has never charged a “Document Preparation Fee” or filled out a HUD-1, but this does not mean that he has never done law business or practiced law in Missouri. A person or business can do law business in Missouri without charging a “Document Preparation Fee.”

Section 484.010.2 defines “law business” in Missouri as:

the advising or counseling for a valuable consideration of any person, firm, association, or corporation as to any secular law or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to any secular rights . . .

Mo. Rev. Stat. § 484.010.2. This statutory definition is a “reference point” for Missouri courts as to what constitutes doing law business in Missouri. Hargis, 357 S.W.3d at 578.

Procuring legal documents constitutes the “law business” and a non-attorney is not allowed to conduct “law business.” *Id.* at 578; Mo. Rev. Stat. §484.010.2. “No person shall engage in the practice of law or do law business as defined in section 484.010, or both, unless he shall have been duly licensed therefor . . .” Mo. Rev. Stat. §484.020.1. Nothing in Chapter 484 makes charging a document-preparation fee a prerequisite for a law-business claim. No statute or case allows a mortgage broker to do law business simply because it leaves blank line 1105 on HUD-1s.

For convenience purposes, the Missouri Supreme Court has allowed real estate brokers and escrow companies to fill in blanks of standard legal forms created by Missouri attorneys so long as no separate document-preparation fee is charged. *See, e.g., In re First Escrow*, 840 S.W.2d 839, 841 (Mo. banc 1992); *Hulse v. Criger*, 247 S.W.2d 855, 862 (Mo. banc 1952); *accord Hargis*, 357 S.W.3d at 578-79.

American Equity is not alleged, and does not claim, to have filled in the blanks on standard forms. Nor has American Equity claimed that the legal documents at issue were prepared by a Missouri-licensed attorney. Thus, the exception created by the Missouri Supreme Court in *Hulse* and *In re First Escrow* is inapplicable to American Equity.

In *Hargis*, the Missouri Supreme Court expressly held that the defense or exception asserted by American Equity did not apply to procuring legal documents. *Hargis*, 357 S.W.3d at 583-84. The defendant mortgage broker JLB Corporation (JLB) was alleged to have done law business by “procuring” legal documents (promissory note and deed of trust). *Id.* at 580.

JLB argued it could not have conducted the unauthorized practice of law by procuring legal document because it did not charge a “document preparation fee.” *Hargis*, 357 S.W.3d at 577. The Missouri Supreme Court, however, disregarded JLB’s asserted defense and stated that a mortgage broker would be doing law business, without charging a “document preparation fee,” if it purchased/procured the legal documents from someone not a Missouri-licensed attorney. *Id.* at 583-84. Because Hargis’s motion for summary judgment did not properly establish that JLB purchased legal documents from third parties, the Missouri Supreme Court ruled for JLB, declaring::

Ms. Hargis raises the specter that a finding by this Court that JLB did not procure these documents on these facts will encourage banks, lenders, brokers and others to “outsource” the drawing of legal documents to third parties who will act as their agents in having non-lawyers draw legal documents for consideration and send them back without review by Missouri lawyers.

The problem with Ms. Hargis’ argument is that is not what the record shows happened here. She is correct that, under the facts she hypothesizes, a mortgage broker such as JLB would fall within the definition of “procuring” or “assisting” in drawing legal documents, for it would be undertaking an active role or contrivance in the drawing of the documents and, further, because it would be doing so for consideration.

Hargis, 357 S.W.3d at 583-84.

The Missouri Supreme Court repeated the “procuring” rule:

Similarly, this Court agrees with the dissent that one can be found to have procured a document even if one did not draft or assist in drafting the document and that, if JLB paid a third party to draft or assist in drafting documents, that that party would be acting as JLB’s agent and JLB would be responsible either for directly assisting in drafting or for procuring the documents.

*Id.* at 584 n.9.

Just as the Missouri Supreme Court repeatedly stated in Hargis, if a mortgage broker, like American Equity, buys completed legal documents from a third party who is not a Missouri-licensed attorney, then the mortgage broker is liable for doing law business by procuring legal documents. When a mortgage broker buys or procures legal documents, there is no additional requirement that it charge a separate “document preparation fee.” See Hargis, 357 S.W.3d at 584.

American Equity’s summary judgment motion was based on the mistaken argument that a mortgage broker can procure legal documents with impunity so long as it does not charge a “Document Preparation Fee.” Because a mortgage broker who procures legal documents other than from a Missouri-licensed attorney is liable regardless whether it charges a “Document Preparation Fee,” the circuit court erroneously awarded summary judgment to American Equity.

**II. The Circuit Court erred in Entering Summary Judgment to Defendant American Equity because American Equity Procured Legal Documents for Valuable Consideration in That:**

- A. Binkleys and Sturhahns Each Paid Thousands in Fees to American Equity Which Constitutes Valuable Consideration;**
- B. American Equity Paid Valuable Consideration to a Third-Party in Buying and Wrongfully Procuring the Legal Documents for the Binkleys and Sturhahns; and,**

**C. American Equity received valuable consideration by the Binkleys and Sturhahns Obtaining Mortgage Loans Through Defendant American Equity.**

American Equity asserts that it did not procure legal documents for a valuable consideration; however, it received valuable consideration for carrying out the Binkley and Sturhahn loans and procuring and receiving the legal documents. American Equity admits the Sturhahns paid it \$2,238.00 in charges and fees and the Binkleys paid it \$2,320.93. (Respondent's Court of Appeals Br. at 3.) The thousands paid to American Equity by the Binkleys and the Sturhahns constitutes valuable consideration.

Second, the Missouri Supreme Court in Hargis declared that those who wrongfully procure legal documents are responsible for the sums paid for the legal documents:

Ms. Hargis raises the specter that a finding by this Court that JLB did not procure these documents on these facts will encourage banks, lenders, brokers and others to "outsource" the drawing of legal documents to third parties who will act as their agents in having non-lawyers draw legal documents for consideration and send them back without review by Missouri lawyers.

The problem with Ms. Hargis' argument is that is not what the record shows happened here. She is correct that, under the facts she hypothesizes, a mortgage broker such as JLB would fall within the definition of "procuring" or "assisting" in drawing legal documents, for it would be undertaking an active role or contrivance

in the drawing of the documents and, further, because it would be doing so for consideration.

Hargis, 357 S.W.3d at 583-84.

Similarly, this Court agrees with the dissent that one can be found to have procured a document even if one did not draft or assist in drafting the document and that, **if JLB paid a third party to draft or assist in drafting documents, that that party would be acting as JLB's agent and JLB would be responsible either for directly assisting in drafting or for procuring the documents.**"

Hargis, 357 S.W.3d at 584 n.9 (emphasis added).

American Equity—by procuring legal documents by paying a third party (not a Missouri attorney) for the documents—did just what the Missouri Supreme Court warned mortgage brokers not to do. According to the Missouri Supreme Court, the legal document provider is the agent for American Equity, and American Equity is charged with the valuable consideration paid to the third party. The person American Equity paid for the legal documents is deemed to be American Equity's agent and American Equity is responsible for what it paid. Hargis, 357 S.W.3d at 584 n.9. Therefore, the money American Equity paid for the legal documents constitutes valuable consideration.

According to Missouri statutes, Defendant illegally practiced law without a license in violation of §484.010.2 R.S.Mo., by procuring or buying finished legal documents, without a Missouri attorney being involved. Defendant received consideration from the completion of the loan and mortgage transactions, from the reception of loan repayments

from Plaintiffs, and from the approximately \$2300.00 in fees charged and paid by both the Binkleys and Sturhahns.

According to law, Defendant received thousands of dollars of consideration from each of these two transactions.

Defendant misstates the law and misstates history, when Defendant ties the defense of not charging a document preparation fee to the consideration elements of §484.010.2 R.S.Mo.

First, §484.010.2 requires “valuable consideration”. But section 484.010.2 does not require the violator or illegal practitioner of law to specifically charge a separate fee for the illegal practice of law activities.

The Missouri Supreme Court has repeatedly held that valuable consideration, for the practicing law statute, is not merely money but may also be some other benefit or detriment. State v. St. Louis Union Trust Co., 74 S.W.2d 348, 355 (Mo. banc 1934).

Furthermore, we have approved a more comprehensive definition than the one here proposed by respondent. In the early case of Mullanphy v. Riley, we said: A valuable consideration is one, that is either a benefit to the party promising , or some trouble or prejudice to the party to whom the promise is made. . . .

State v. St. Louis Union Trust Co., 74 S.W.2d at 355 (quotation marks and citations omitted).

Accepting Defendant’s argument and defense would allow anyone to effectively practice law as long as they did not specifically charge a separate and distinct fee for the

legal work. According to Defendant, anyone can draw legal documents, procure legal documents, and give legal advice according to §484.010.2, even in transactions in which the unlicensed practitioner receives thousands of dollars in consideration, as long as the unlicensed practitioner writes up a bill which says he was paid thousands of dollars but not for legal advice. Such a general defense, is both nonsensical and destructive. Everyone may practice law without training but carefully write up a bill which says no charges merely made for “document preparation.”

Second, the “Document Preparation Fee Defense” does not arise from the consideration requirement of §484.010.2. The Document Preparation Fee Defense is a defense created in 1952 by the Missouri Supreme Court for the fill in the blank cases. In 1952, the Missouri Supreme Court ruled that, solely for commercial convenience that licensed real estate brokers may fill in the blanks of standardized forms, prepared by a Missouri attorney, as long as the broker does not charge a document preparation fee. Hulse v. Criger, 247 S.W.2d 855, 861 (Mo. banc 1952). The Missouri Supreme Court did not announce, and never has announced, that anyone may give legal advice or procure legal documents as long as that unlicensed practitioner of law carefully prepares a bill stating fees of thousands of dollars but disclaiming any fee for legal work.

In Hulse, the Document Preparation Fee Defense is not from the valuable consideration requirement of §484.010.2 R.S.Mo., but is a bow to commercial efficiency by the Missouri Supreme Court and does not arise from statute. Hulse, 247 S.W.2d at 861.

Such a general defense, as asserted by Defendant in the instant case, would allow anyone who carefully prepares a bill to practice law.

There is no reason why a mortgage broker or anyone else for that matter, which needs to buy or procure legal documents cannot do so through a Missouri attorney. The legal forms may be used for many transactions and the costs of Missouri attorneys are generally considered small compared the costs of attorneys on the East and West coasts.

Third, contrary to Defendant's argument that the Document Preparation Fee Defense is a defense to all liability under §484.010.2, the Missouri Supreme Court expressly stated in Hulse that whatever the form of their charges, real estate brokers cannot give legal advice. Hulse, 247 S.W.2d at 861.

Thus, as well as lack of legal training, is an important reason why real estate brokers cannot be permitted to give legal advice to their customers.

Hulse, 247 S.W.2d at 861.

Fourth, principles of statutory construction contradict the broad assertions made by Defendant. Section 484.010.2 requires "valuable consideration" but there is no mention in §484.010 of any requirement of a specific express bill for legal services. Statutes should be given their plain meaning. See e.g. Landman v. Ice Cream Specialties, Inc., 107 S.W.3d 240, 252 (Mo. banc 2003). Important provisions should not be added to statutes when the legislature did not include them in the words. See e.g. Emery v. Wal-Mart Stores, Inc., 976 S.W.2d 439, 449 (Mo. banc 1998).

In addition, when the Missouri legislature in §484.025 R.S.Mo. specifically legislated on the Document Preparation Fee Defense the Missouri Legislature did not amend §484.010. The Missouri Legislature only spoke of and authorized, in only a limited narrow fashion, the Document Preparation Fee Defense. In §484.025, the Missouri Legislature recognized the Document Preparation Fee Defense only for filling in the blanks and not for some wide ranging defense as asserted by Defendant.

Finally, in 1934, the Missouri Supreme Court issued an opinion which is directly adverse to the assertions and defenses made by Defendant in the instant case. State v. St. Louis Union Trust Co., 74 S.W.2d 348, 351 (Mo. banc 1934). In the St. Louis Union Trust case, the Defendant Trust Company was charged with illegally practicing law by drawing up wills and trust documents. There was no document preparation fee charged. In fact, the only consideration to the Trust Company was the Trust Company being named as trustee or executor. St. Louis Union Trust Co., 74 S.W.2d at 351, 353. In spite of no document preparation fee being charged, the Missouri Supreme Court found and declared that the Trust Company had illegally practiced law by drafting legal documents for a valuable consideration. St. Louis Union Trust Co., 74 S.W.2d at 355, 361. The valuable consideration being future service and consideration as trustee or executor. Of course, if the Document Preparation Fee Defense applied as Defendant contends, then the St. Louis Union Trust case is wrongly decided since no document preparation fee was charged by the Trust Company. Defendant's argument and assertion that a "document preparation fee" must be charged to provide "valuable consideration" under the statute was ruled against Defendant in 1934.

Because Defendant American Equity (1) was paid thousands of dollars by the Binkleys and the Sturhahns for their loans, (2) paid valuable consideration for the legal documents, and (3) received valuable consideration when the Binkleys and Sturhahns obtained loans through Defendant, summary judgment was awarded to American Equity in error.

**III. The Trial Court Erred in Granting Defendant Summary Judgment Order Because American Equity's Doing Law Business Constitutes Unjust Enrichment and Violates the Merchandising Practices Act in that Illegally Practicing Law also Constitutes Unjust Enrichment and a Violation of the Missouri Merchandising Practices Act.**

In 2011, the Missouri Supreme Court declared that a mortgage broker who for Missouri real estate loans buys deeds of trust or promissory notes from non-Missouri attorneys is guilty of doing law business by procuring legal documents. *Hargis*, 357 S.W.3d at 584 n.9. Here, American Equity did just what the Missouri Supreme Court stated a mortgage broker could not do legally.

Defendants who do law business are unjustly enriched and violate the Missouri Merchandising Practices Act (MPA), Mo. Rev. Stat. §§ 407.010-407.130. *Carpenter v. Countrywide Home Loans, Inc.*, 250 S.W.3d 697, 703 (Mo. banc 2008) (“Any person engaged in the unauthorized practice of law has no right to collect fees, and those who have been improperly charged these fees have the right to their return at common law under the theory of money had and received.”); *Zmuda v. Chesterfield Valley Powers*

*Sports, Inc.*, 267 S.W.3d 712, 716 (Mo. Ct. App. E.D. 2008) (doing law business constitutes MPA violation).

American Equity was paid thousands of dollars in fees by both the Binkleys and the Sturhahns. As part of its loan work, it illegally procured legal documents. Thus, the Binkleys and the Sturhahns are entitled to the return of what they paid, thousands of dollars in fees.

In the alternative, because the Missouri Supreme Court announced that mortgage brokers, like American Equity, are responsible for the sums paid to a third party for the legal documents, the Binkleys and the Sturhahns may also recover the amount paid by American Equity to the third party. *See Hargis*, 357 S.W.3d at 584 n.9.

Because American Equity engaged in the law business by procuring legal documents not from a Missouri-licensed attorney, American Equity has also been unjustly enriched and violated the MPA. Therefore, this Court of Appeals should reverse the summary judgment awarded American Equity.

**CONCLUSION**

For the foregoing reasons, and to protect Missouri homeowners from the unlawful and dangerous practice of outsourcing the legal-document component of the mortgage banking business, the circuit court's judgment should be reversed and the case remanded so that this action and class action may proceed.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief includes the information required by Missouri Supreme Court Rule 55.03, complies with limitations contained in Missouri Supreme Court Rule 84.06(b) and Local Rule 360, contains 3,688 words, and was prepared in Microsoft Word 2010.

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing filed electronically with the Clerk of the Court this 16<sup>th</sup> day of June, 2014, to be served by operation of the Court's eFiling system upon the following:

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