IN THE
SUPREME COURT OF MISSOURI

No. 87023

JOHN STEHNO,

Respondent,

v.

SPRINT SPECTRUM, L.P.,

Appellant.

Appeal from the Circuit Court of Jackson County, Missouri
Hon. Frank D. Connett, Jr., Senior Judge

SUBSTITUTE BRIEF FOR APPELLANT

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JURISDICTIONAL STATEMENT

After briefing, this appeal was argued to a three-judge panel in the Missouri Court of Appeals, Western District. After opinion by the Court of Appeals, and after a timely filing of Application for Transfer to this Court, this Court sustained Appellant's Application for Transfer to this Court on August 30, 2005.

STATEMENT OF FACTS

Introduction

Modis, Inc. hired plaintiff John Stehno ("Stehno") on September 17, 2001 as a database administrator ("DBA") to service Modis's clients (L.F. 548-556). Modis is an information technology consulting company that provides temporary technical consultants to its clients (Tr. 369-370). One Modis client was defendant Amdocs, Inc. ("Amdocs"), a company that develops and sells customer care and billing software for companies around the world (L.F. 418-425; Tr. 262). At the time, Amdocs was engaged in a project with defendant Sprint Spectrum L.P. d/b/a Sprint PCS (alternatively "Sprint" or "Sprint PCS") to jointly develop and install a new Sprint billing system (L.F. 449-528). Modis assigned Stehno to work at Amdocs, which in turn assigned Stehno to work on the Sprint billing system project, which was known at Sprint alternatively as "Rodeo" or "Renaissance" (Tr. 576, 593-594; L.F. 316). Stehno remained a Modis employee throughout (Tr. 576). Stehno had no contractual relationship with either Amdocs or Sprint.

On September 20, 2001, just three days after Modis hired Stehno, Sprint Senior Manager Jan Richert informed Amdocs that Sprint had four DBAs available to work on the Rodeo project (L.F. 531). In addition, Sprint's Richert informed Amdocs that Stehno previously worked as a contractor for Sprint and that Sprint "would not recommend John Stehno returning to work on [Sprint PCS] systems"

(Id.). The next day, after Stehno's having been assigned to Amdocs for just five days, Modis removed Stehno from the Amdocs assignment (Tr. 478-479).

Stehno brought suit against Amdocs and Sprint on March 19, 2002, alleging tortious interference with a valid business expectancy, breach of contract, prima facie tort, and intentional infliction of emotional distress (L.F. 4-10). On the sole count submitted to the jury, tortious interference with contract or valid business expectancy, the jury found in favor of Sprint and Amdocs (L.F. 105, 113). The trial court, however, held that the verdict in favor of Sprint was against the weight of the evidence and granted Stehno a new trial against Sprint (L.F. 209-210). This appeal followed (L.F. 212).

Stehno's Prior Work for Sprint

Stehno's prior work history at Sprint was as a temporary worker – a "contract" worker. His first assignment at Sprint was in the long distance division known as Sprint Long Distance in February 1999 (Tr. 523-524). At the time, he was employed by a different temporary agency, Solutions Point, and he worked at Sprint Long Distance for about 15 months as a contract DBA (Tr. 524-525). Pursuant to Sprint Long Distance policy, Stehno's assignment could not be extended beyond 15 months (Tr. 525). He "either would have to leave or become a full time employee" (Id.).

Sprint Long Distance offered to hire Stehno as a full time employee at that point, but Stehno refused (Id.). Although Stehno knew that "one of the downsides of contracting" is less job security, he preferred the temporary assignments because "there are more dollars in contracting" (Tr. 525, 529, 573-574). Instead, Stehno accepted another temporary assignment as a "contract" DBA with Sprint PCS in April 2000 (Tr. 525-527; L.F. 304). Solutions Point also placed Stehno in this assignment (Tr. 526; L.F. 306-307).

At Sprint PCS, Stehno was assigned to the data management department where Richert was the manager (L.F. 304). As a contract DBA at Sprint PCS, Stehno was expected to build computer databases from requirements, tune them for performance, and support them (L.F. 306-307). Richert rated Stehno as an "average DBA if . . . compared . . . to the entire team" (L.F. 309). Stehno "did the job that was asked of him," and Sprint renewed his initial three month contract twice (L.F. 309-310). In general, however, Stehno "had some difficulty following the policies and procedures" at Sprint (Tr. 721). Over time, Stehno had several negative interactions with external project teams at Sprint, *i.e.*, individuals from other departments with whom he was assigned to work on a project (L.F. 310). Richert referred to such interactions as "escalations" because they required management to resolve a dispute (L.F. 310-311). Stehno's escalations were with

project managers, application directors, and at one point an application Vice President (L.F. 310).

While at Sprint PCS, Stehno provided DBA support to multiple Sprint projects, but the two major projects he worked on were known as "RMS" and "Blue Martini" (L.F. 306, 311). RMS was a project to implement a retail management system (L.F. 311). Stehno did not have the consensus of his RMS teammates on certain technical issues (L.F. 311-312). Every time the RMS team "would try to get to a solution," Stehno "seemed to be the one person in the team that was holding everybody back" (Tr. 719). He "had a tendency to keep picking and picking and picking," and his teammates thought he was "arrogant" (Tr. 717). Stehno remained "too outspoken and not flexible enough" and at one point he "had unacceptable or unprofessional outbursts on conference calls," among other things (L.F. 312).

Blue Martini was a major project to design and build the Sprint PCS website (L.F. 316). Stehno had multiple issues on Blue Martini (L.F. 313). Kraig Riedel, an application developer for Sprint PCS.com and one of Stehno's internal "customers," had issues with Stehno's "professionalism and his lack of teamwork" (Tr. 702). Of all the people working under Richert's supervision on Blue Martini, only issues related to Stehno were escalated (L.F. 313). Riedel believed Stehno to be a "risk to the project" because he "wasn't getting his assignments done" and

"was being more argumentative than anything else" (Tr. 704-705). Stehno later was replaced as lead DBA on the Blue Martini project (Tr. 704). Stehno admitted that "he was involved in some conflicts related to [the] Blue Martini project" (Tr. 693).

Stehno then asked for a meeting with Richert (L.F. 315). He told Richert "that he felt that he was working too many hours" and "that he needed to get a position where it was more of a daytime DBA position" (Id.). He informed Richert that he had found another contract assignment at Sprint Long Distance and would be leaving Richert's data management group at Sprint PCS (Id.).

After working for several months at Sprint Long Distance, Stehno was notified in late August 2001 that his contract assignment would end on September 7, 2001 (L.F. 472-473). Stehno learned that Richert had an opening in her department and asked his employer, Solutions Point, to contact Richert to see whether she again would "be interested in him for any of [her] current needs" (L.F. 393; Tr. 592). Richert responded that:

> "John admitted to me when leaving SPCS that an environment like ours where you have several projects (multi-tasking) and . . . the overall fast pace of SPCS was not for him. It hasn't changed . . . " (L.F. 393).

Solutions Point comprehended and informed Stehno that "Richert said no to [the] offer to return to her department" (Tr. 592-593).

Stehno's Employment with Modis

Stehno posted information about himself on an online employment website called Dice.com (Tr. 597). On September 7, 2001, Stehno's last day of work at Sprint Long Distance, Amber Wright of Modis contacted Stehno about a possible placement on an Amdocs project at Sprint PCS (Tr. 593-594). Stehno knew right away that Richert's department was working on the project, but he did not tell Modis that he had previously worked with Richert (Tr. 594). And, although Stehno "knew that a week, week and a half earlier Jan Richert had rejected the idea of [his] returning to her department," he did not tell Modis that either (Tr. 594-595).

Stehno submitted a resume to Dice.com (L.F. 593; Tr. 598) which Modis reviewed (Tr. 421). It falsely stated that Stehno's education level was Bachelor's (Tr. 599). Stehno was, in fact, 9-12 hours short of obtaining his degree (Tr. 644). Stehno misstated his employment history, as well, in the resume he submitted directly to Modis (L.F. 595) "to make it look like [he] didn't move around between jobs as frequently as [he] really did" (Tr. 607-608). Modis's Wright later "testified that had she known that [Stehno] had misstated [his] credentials on this [resume], she wouldn't have even submitted [his] name to Amdocs" (Tr. 599-600).

On September 10, 2001, Stehno interviewed with Igor Ivensky, the Amdocs person in charge of the Rodeo project (Tr. 474, 783). The next day Stehno had a technical interview with Josh Reed and Haim Keren of Amdocs (Tr. 475-476). Keren asked whether Stehno would prefer to work as an application DBA or a physical DBA, and Stehno indicated that he was interested in the physical DBA role (Tr. 278). Keren contacted Sprint DBA Michael Whitmore, who informed Keren that Stehno was "a good deal" (Tr. 287-288). Ivensky spoke with Sprint's Derek Sherry, who had no objection to hiring former Sprint contractors as a general rule (L.F. 257). No one at Modis or Amdocs had the opportunity to discuss Stehno with Richert, his former manager at Sprint PCS, prior to the time he was hired.

At the end of the week, Modis contacted Stehno and asked him to start at Amdocs the following Monday (Tr. 477). Stehno signed a "Consultant Employment Agreement" with Modis on September 17, 2001 (L.F. 548-556). Stehno expressly acknowledged that Modis was operating as an independent contractor for Amdocs and that he was not considered an employee of Amdocs for any purpose (L.F. 549). Stehno agreed that his employment with Modis was at-will (L.F. 550).

The Contracts Between Modis, Amdocs, and Sprint

Modis and Amdocs had a Service Agreement. It required Modis "to provide qualified contractors to provide services to Amdocs" upon the receipt of a "Service Order" (L.F. 418). Paragraph 5.4 of the Service Agreement provides as follows:

> "Amdocs may terminate a Service Order upon the provision of seven (7) days' written notice to Company for any reason, in which event AMDOCS will only be obligated to pay for the services actually performed hereunder" (L.F. 420).

Paragraph 5.5 provided further:

> "If Amdocs is dissatisfied with a particular contractor performing Services under a Services Order for any reason, Company, upon Amdocs' request, will remove such contractor immediately and, if so requested by Amdocs, replace such contractor with another contractor with the required qualifications within seven (7) days. If the foregoing occurs within thirty (30) days of the commencement of the contractor's services, Company shall not charge AMDOCS for such contractor's services. Company will insure that a contractor who quits or is terminated for any reason receives any compensation required by law" (L.F. 420).

The Service Order for Stehno indicates that Modis assigned Stehno to Amdocs for "Oracle DBA Support" (L.F. 425). Stehno had no contract with Amdocs and no contract with Sprint.

Earlier, Sprint and Amdocs had entered into a Master License, Joint Development and Services Agreement ("Master Agreement") (L.F. 449). The Master Agreement was designed to encapsulate the entire relationship between Sprint and Amdocs, including the purchase of a license of Amdocs software and the joint customization of that software for the new Sprint billing system (Id.). The Master Agreement specifically envisioned that Amdocs would use subcontractors, which was defined to include persons working for a subcontractor, to assist Amdocs in the performance of its obligations for Sprint (L.F. 461, 478-480). Sprint, however, retained "the right at any time to reasonably require removal of a Subcontractor and/or any of a Subcontractor's personnel from Services on or within any part of the Software or other [Sprint] facility or location" (L.F. 479).

Stehno's Assignment to Amdocs and the Sprint Rodeo Project

Having been assigned to Amdocs, Stehno did not do "a whole lot" for his first four days (Tr. 478). He did not receive a computer until Thursday afternoon, so he went over some DBA books "to freshen up" (Id.). In the meantime, and while not yet aware of Stehno's placement, Sprint's Whitmore informed his managers that "he had heard Amdocs was looking to hire DBAs, and that he had

heard they were looking at John Stehno" (L.F. 322). When Sprint manager Robin Moore learned that Amdocs was looking to hire more DBAs, she was concerned because:

> "I thought we were making progress as far as Sprint DBAs being partners and doing more of the work and here they were hiring people from the outside, and I had people sitting there ready and willing to do the work" (Tr. 734).

Although Moore would have raised this issue for anyone that Amdocs considered hiring, she was particularly concerned about the possibility of Stehno's working on the project because she was familiar with the way Stehno "behaved on the Blue Martini project" and "didn't want to introduce more complexity" into the Rodeo project (Tr. 734-735, 741).

This was not the first time that Sprint and Amdocs had clashed over their respective roles on the Rodeo project. For data management on the Rodeo project, Sprint was to supply the database experts ("physical DBAs" or just "DBAs") for the Rodeo project, while Amdocs was to supply the application developers (occasionally called "application DBAs" or "ADBAs"), who were knowledgeable regarding the application – the Amdocs software – and how it should function with the Sprint database (Tr. 723-724; L.F. 324). An Amdocs developer, or application DBA, was in charge of developing and customizing the application software (L.F.

324). A physical DBA, or DBA, was in charge of building the Sprint database (Id.).

Despite the basic division of labor, Sprint and Amdocs "had disagreements about who was going to do what all through the project" (Tr. 725). Some of the disagreements related to the terminology. Richert believed the term "application DBA" to be the "source of a major confusion" because the position is "not a DBA, it's a developer" (L.F. 324). Amdocs, on the other hand, believed that its application DBAs were entitled to work on the database, including the manipulation and storing of data into the database (Tr. 278). The disagreement as to terminology was more than semantic; it went to the core of the division of labor in terms of "separating what the real DBAs do, as opposed to application DBAs" (Tr. 728). At one point in the Rodeo project, Sprint manager Robin Moore told Richert that "this continues to be a problem that we can't seem to get Amdocs to release [the] DBA function into [the Sprint] data management [department]" (Tr. 729). Richert testified that Sprint DBAs were working on the project (L.F. 323-324, 531) and that nearly her "entire team was affected by it" (L.F. 316-317). Richert was very concerned that DBAs working on the project must come from her group (L.F. 531), and she told Ivensky that Amdocs "would not be allowed to have DBAs work on the project" (L.F. 325).

After Moore heard that Amdocs was looking at Stehno for the Rodeo project, she mentioned her concerns to Richert (Tr. 734). Richert called Amdocs' Ivensky and reminded him of their "standard operating process," namely that:

> "We [Sprint PCS] provide the DBAs from data management, and that we had four DBAs already assigned to the Rodeo project. And if we needed more resources to do the work, we could do so. They didn't need to hire their own folks and then bill Sprint for that work. We had the resources on our team" (L.F. 323).

Ivensky responded, "No problem" (L.F. 324).

On September 20, 2001, Richert followed up on her conversation with Ivensky by sending the following e-mail to Amdocs' Keren:

> "It has come to my attention from my team members that Amdocs is hiring additional DBAs to work on the SPCS Renaissance project. I have four DBAs on my team assigned to the Renaissance project who are available to work. We have had multiple DBA resources assigned to this project from the beginning but we are consistently left out of the loop by Amdocs. I have also heard that you are looking at the resume of John Stehno to hire as an Amdocs DBA. John was a contractor who previously worked on my team. Without getting into

issues via e-mail, we would not recommend John Stehno returning to work on SPCS systems" (L.F. 531).

Ivensky responded to Richert that "in case you do not recommend this gentleman, I would like to talk to you and understand the concern" (L.F. 533).

Ivensky and Richert spoke that evening (Tr. 787-788). Richert documented the conversation in an e-mail the next morning:

> "The discussion that needs to take place is to split out the tasks that you have defined for an ADBA so that my team can assume the DBA responsibilities. . . . I spoke at length with Igor last evening regarding John Stehno. Enterprise Data Services management was not contacted for references on John Stehno. From a skill set perspective John would rank as average among my team of 40 DBAs, but John is high maintenance. He is a magnet for conflict. Considering the fact that he has already been hired by Amdocs and has been onsite for four days, I am not going to make the decision on John's fate. I think that should be Amdocs decision" (L.F. 532).

Although the issues of DBA work and Stehno are linked throughout their communications, Ivensky interpreted the communication to mean Richert had "more concern with personality, team player, and magnet for conflict and many

complaints" than the exact job title (Tr. 790). Ivensky then made the decision to terminate Stehno's assignment with Amdocs (Tr. 792).

At noon on Friday, September 21, 2001, Modis telephoned Stehno and informed him that his assignment with Amdocs had been terminated (Tr. 479). Following the termination of Stehno's assignment, Modis offered to find Stehno an assignment with Amdocs in St. Louis. Stehno was not interested (Tr. 391). Modis then terminated Stehno's employment because, according to Modis's managing director, "if we cannot take a consultant and remarket him in our marketplace with other clients, we terminate their position" (Id.). Amdocs did not find anyone new to replace Stehno (Tr. 741), and Sprint later canceled the Rodeo project in December 2003 (Tr. 775) at which time Amdocs released all consultants (Tr. 796).

Procedural History

Stehno filed suit against Amdocs and Sprint on March 19, 2002. Stehno's First Amended Petition contained four counts: (1) tortious interference with a valid business expectancy against Sprint and Amdocs; (2) breach of contract against Amdocs; (3) prima facie tort against Sprint; and (4) intentional infliction of emotional distress against Sprint (L.F. 1-11). Stehno's theory of the case was that "Jan Richert, plaintiff Stehno's former supervisor at Sprint, or another employee/agent/servant of Sprint called defendant Amdocs claiming that plaintiff

Stehno was a "Sprint resource" and had to be dismissed immediately" and that Sprint, in fact, had no such policy (L.F. 3-4).

On January 28, 2004, the trial court, the Honorable John R. O'Malley, granted summary judgment to Amdocs on the breach of contract count (L.F. 21). The court held that "Stehno was not a party to the contract between Amdocs and Modis nor a third party beneficiary" (L.F. 22). In addition, the court granted summary judgment to Sprint on the intentional infliction of emotional distress count because Richert's statements of opinion were "not extreme and outrageous conduct" and because Stehno had no medically diagnosed ailments (L.F. 22-23). The court denied summary judgment on the remaining counts (L.F. 21-23). The case then proceeded to trial before the Honorable Frank Connett, Jr., on February 23, 2004 (Tr. 1).

At the close of the evidence, the court noted that "there's no evidence Sprint ever said" anything "about this Sprint resource thing" (Tr. 829). Nevertheless, the court submitted Stehno's claim for tortious interference with contract or valid business expectancy to the jury (L.F. 105, 113). The jury found in favor of defendants Sprint and Amdocs (Id.).

Stehno then moved for a new trial (L.F. 117). On June 8, 2004, the trial court denied the motion as to Amdocs, but granted it as to Sprint "on the grounds the verdict of the jury is against the weight of the evidence" (L.F. 209). The trial

court stated that "there was not evidence of an economic interest Sprint had . . . in interfering with any relationship Mr. Stehno might have" (L.F. 183). The court denied Sprint's motion for reconsideration, and this appeal followed (L.F. 211-215).

POINTS RELIED ON

I. THE TRIAL COURT ERRED IN DENYING SPRINT'S MOTION FOR JUDGMENT AS A MATTER OF LAW ON STEHNO'S CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACT OR VALID BUSINESS EXPECTANCY WITH AMDOCS BECAUSE STEHNO'S PROOF OF A CONTRACT OR REASONABLE BUSINESS EXPECTANCY AND OF AN ABSENCE OF JUSTIFICATION FAILED IN THAT BOTH AMDOCS AND SPRINT RETAINED THE CONTRACTUAL RIGHT TO REMOVE STEHNO AND SPRINT HAD AN ECONOMIC INTEREST IN DETERMINING WHO WORKED ON ITS SYSTEMS AND PROJECTS.

Hartbarger v. Burdeau Real Estate Co., 741 S.W.2d 309 (Mo. App. 1987)

Rhodes Eng'g Co. v. Public Water Supply Dist. No. 1, 128 S.W.3d 550 (Mo. App. 2004)

Service Vending Co. v. Wal-Mart Stores, Inc., 93 S.W.3d 764 (Mo. App. 2002)

Eggleston v. Phillips, 838 S.W.2d 80 (Mo. App. 1992)

II. THE TRIAL COURT ABUSED ITS DISCRETION IN ORDERING A NEW TRIAL BECAUSE THE JURY'S VERDICT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE IN THAT STEHNO FAILED TO INTRODUCE SUFFICIENT SUBMISSIBLE EVIDENCE TO SUPPORT HIS CLAIM OF A VALID BUSINESS EXPECTANCY AND NONE TO

SUPPORT THE ELEMENT OF ABSENCE OF JUSTIFICATION, AND SPRINT ACTED IN GOOD FAITH TO PROTECT ITS ECONOMIC INTERESTS.

Bray v. St. Louis-San Francisco Ry. Co., 236 S.W.2d 758 (Mo. App. 1951)

Eggleston v. Phillips, 838 S.W.2d 80 (Mo. App. 1992)

I.

THE TRIAL COURT ERRED IN DENYING SPRINT'S MOTION FOR JUDGMENT AS A MATTER OF LAW ON STEHNO'S CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACT OR VALID BUSINESS EXPECTANCY WITH AMDOCS BECAUSE STEHNO'S PROOF OF A CONTRACT OR REASONABLE BUSINESS EXPECTANCY AND OF AN ABSENCE OF JUSTIFICATION FAILED IN THAT BOTH AMDOCS AND SPRINT RETAINED THE CONTRACTUAL RIGHT TO REMOVE STEHNO AND SPRINT HAD AN ECONOMIC INTEREST IN DETERMINING WHO WORKED ON ITS SYSTEMS AND PROJECTS.

A. Introduction and Standard of Review

To make a submissible case of tortious interference with contract or a valid business expectancy, Stehno was required to present substantial evidence of each of the five elements: (1) a contract or valid business expectancy; (2) Sprint's knowledge of the contract or expectancy; (3) a breach induced or caused by Sprint's intentional interference; (4) absence of justification; and (5) damages. Sloan v. Bankers Life & Cas. Co., 1 S.W.3d 555, 564-565 (Mo. App. 1999). Whether a plaintiff presented a submissible case is a question of law reviewed de novo. Brockman v. Regency Fin. Corp., 124 S.W.3d 43, 46 (Mo. App. 2004). "In order to make a submissible case, a plaintiff must present substantial evidence for

every fact essential to liability." Id. Stehno did not satisfy his burden of proof on at least two of the elements.

First, Stehno, who was an employee of Modis – not Amdocs or Sprint – had no contract with Amdocs and no valid business expectancy in continued work with Amdocs on the Sprint development project. That is the nature of temporary work – it is temporary. And here, as in most instances involving temporary assignments, both Amdocs and Sprint retained the contractual right to remove Stehno from the assignment (L.F. 420, 479). Even assuming Richert's evaluation of Stehno led to his removal from the assignment, Sprint cannot be held liable for doing indirectly what it had the legal right to do directly under its contract.

Second, Stehno failed to meet his burden to show absence of justification. Sprint has an economic interest in determining who works on its systems and projects. Sprint's Richert wanted the DBAs in her department to work on the project – not a contract DBA in whom she did not have confidence and for whom Sprint would be billed. Stehno utterly failed to demonstrate that Sprint was not justified in protecting its economic interests, which it had both the legal and contractual right to protect.

B. Stehno Had No Valid Business Expectancy.

It is undisputed that Stehno had no contract with Amdocs. As the circuit court held in granting summary judgment to Amdocs on Stehno's breach of

contract claim, "Stehno was not a party to the contract between Amdocs and Modis nor a third party beneficiary" (L.F. 22). This leaves only a claim for interference with a valid business expectancy. Stehno's claim fails at its most basic level because he had no valid business expectancy with Amdocs.[1/]

To have a valid business expectancy, "there must be reasonable expectations of economic advantage or commercial relations." Hartbarger v. Burdeau Real Estate Co., 741 S.W.2d 309, 310 (Mo. App. 1987). While "a regular course of prior dealings suggests a valid business expectancy," liability "'cannot be predicated upon speculation, conjecture or guesswork.'" Sloan, 1 S.W.3d at 565 (citation omitted). An alleged expectancy that is indefinite or remote cannot support a claim for tortious interference. Genovese v. DCA Food Indus., Inc., 911

[1/] Not at issue is the Consultant Employment Agreement between Stehno and Modis. Sprint had absolutely no knowledge of this agreement and was not even aware that Modis was in the picture at all. That is why the trial court correctly concluded that Modis should be left "out of it as far as Sprint's concerned" (Tr. 874) and instructed the jury solely on Stehno's claim of "a contract or valid business expectancy . . . between Plaintiff and Amdocs" (L.F. 100). Therefore, contrary to the court of appeals' holding (Op. 8), Sprint could not have tortiously interfered with Stehno's contract with Modis because Sprint was unaware of it.

F. Supp. 378, 380 (E.D. Mo. 1996). "[T]he existence of a valid business expectancy will not be found where the facts showed a mere hope of establishing a business relationship which was tenuous." Misischia v. St. John's Mercy Med. Ctr., 30 S.W.3d 848, 863 (Mo. App. 2000).

A temporary assignment or agreement does not constitute a reasonable business expectancy in continued work or a renewed agreement. In Rhodes Eng'g Co. v. Public Water Supply Dist. No. 1, 128 S.W.3d 550, 554-555 (Mo. App. 2004), plaintiff had an interim agreement to provide engineering services for the construction of a water supply system. After the district awarded the permanent contract to another firm, plaintiff claimed that certain defendants tortiously interfered with its business expectancy in the permanent contract. Id. at 553. This Court disagreed:

> "[A]fter completing the work under the Interim Agreement, Plaintiff could have no *reasonable* expectation it would also be awarded the permanent contract, at least not the type of expectation that could be *tortiously* interfered with. Plaintiff may have hoped its hard work paid off, but any interference with that hope simply would not be enough to impose liability against the Defendants here." Id. at 566.

Accordingly, the Court affirmed summary judgment for the defendants. Id.

Similarly, in Hartbarger, plaintiff leased property from defendants, then subleased it to a third party. 741 S.W.2d at 310. Four months before the lease was to expire, the sublessee indicated that it would like to renew the sublease for another five year term; plaintiff therefore asked defendants to renew the underlying lease. Id. After defendants obtained a copy of the sublease from plaintiff, under apparently false pretenses, they then approached the sublessee and leased the property directly. Id.

The court of appeals rejected plaintiff's claim that defendants tortiously interfered with plaintiff's business expectancy in the sublease. Id. at 310-311. Defendants "were not obligated to agree to anything plaintiff requested," and plaintiff had no enforceable right to renew his lease in the first place. Id. at 311. Therefore, plaintiff "had no basis to reasonably expect he could sublease the premises," and the court held that plaintiff had no valid business expectancy. Id.

Here, Stehno's unreasonable expectations were no different from those found lacking in Rhodes and Hartbarger. Stehno was an employee of Modis (Tr. 576). He had no contract or agreement with Amdocs. He merely was assigned as a contractor to work for Amdocs on a temporary basis. Stehno had no reasonable basis to expect that the assignment with Amdocs would continue, much less that it would be renewed or that he would be offered full time employment (something that, in any case, he previously had rejected).

In essence, Stehno is claiming that he had a reasonable business expectancy in prospective employment – a claim that has been rejected by courts across the country. As the Illinois Supreme Court stated in Anderson v. Vanden Dorpel, 667 N.E.2d 1296, 1301 (Ill. 1996):

> "Under the plaintiff's reasoning, the potential class of litigants could include all persons who interview for a particular job, and anyone supplying a negative reference to a prospective employer might conceivably find himself or herself subject to an action for intentional interference with prospective economic advantage. We do not believe that such an expansion of the cause of action is warranted."

See also Werblood v. Columbia College of Chicago, 536 N.E.2d 750, 756 (Ill. App. 1989) (college instructor denied tenure did not have reasonable expectancy in continued employment); Babbar v. Ebadi, 36 F. Supp. 2d 1269, 1276 (D. Kan. 1998) (same), aff'd mem. 216 F.3d 1086 (10th Cir. 2000); Hoffman v. Roberto, 578 N.E.2d 701, 709-710 (Ind. App. 1991) (rejecting claim of tortious interference with ability to secure employment in trucking industry because no reasonable business expectancy).

Stehno's "expectation" of an indefinite placement on the Rodeo project was all the more unreasonable because he knew that Richert had previously rejected his application to work as a contract DBA on the project (Tr. 594-595). Furthermore,

it was undisputed that Stehno applied for the assignment with a false resume and without notifying anyone that Richert already had said "no" once (Tr. 594-595, 599, 607-608). Stehno could have no reasonable business expectation in a temporary assignment in a business where the manager had less than a positive view of his appropriateness for the task and in which he obtained the assignment through false pretenses.

Finally, as a matter of law, Stehno's alleged reasonable basis for belief that his relationship with Amdocs would continue free of interference by Sprint was not reasonable at all. An expectancy that is contrary to the plain terms of a valid contract is not reasonable. In Service Vending Co. v. Wal-Mart Stores, Inc., 93 S.W.3d 764, 767 (Mo. App. 2002), plaintiff claimed Wal-Mart tortiously interfered with its business expectancy by refusing to let it "sell its vending machines in place to Wal-Mart approved vendors that would replace [it]." After a jury found in favor of plaintiff, Wal-Mart appealed and argued that "it had an absolute legal right to act as it did under the terms of its contract" with plaintiff. Id. at 769. The court of appeals agreed:

> "Any expectation by SVC that the property could be sold to another vendor without the requirement that the equipment be removed was contrary to the plain language of SVC's contract with Wal-Mart. . . . SVC had no valid business expectancy that it would be permitted to

> leave its equipment in place on Wal-Mart premises in conjunction with a sale of the equipment to a new vendor. Any hope that Wal-Mart would permit this to occur, contrary to the terms of the contract, was, at best, tenuous. SVC's claimed expectancy was, as a matter of law, neither reasonable nor valid in view of the terms of the contract." Id. at 770.

Accordingly, the court reversed the jury verdict and entered judgment as a matter of law in favor of Wal-Mart. Id.

Here, Stehno's claimed expectancy was contrary to the terms of both the Master Agreement between Sprint and Amdocs and the Service Agreement between Amdocs and Modis. Under the plain language of the Master Agreement, Sprint retained "the right at any time to reasonably require removal of a Subcontractor and/or any of a Subcontractor's personnel from Services on or within any part of the Software or other [Sprint] facility or location" (L.F. 479). This is a contractual right. In addition, Amdocs, under the Service Agreement with Modis, had the right to require the removal of a particular contractor "for any reason" (L.F. 420). Stehno's alleged expectancy in a long-term or permanent assignment with Amdocs was not reasonable because it was contrary to the plain language of both of the applicable contracts.

The court of appeals held that the Master Agreement between Sprint and Amdocs "did not provide for what Richert sought to do – renege on Sprint Spectrum's approval" (Op. 6). Sprint, however, retained the right to require removal of a subcontractor "at any time." The right applies irrespective of whether Amdocs or its personnel have been previously approved. (Stehno was not himself approved, as the court of appeals suggested (Op. 6). Rather, Sprint's Derek Sherry did not object generally to the hiring of former Sprint contractors (L.F. 257)). Since Sprint was unambiguously able to exercise its right at any time, it necessarily follows that Sprint may require removal of a subcontractor or its personnel, even after having previously approved the subcontractor. As a matter of law, the Master Agreement defeats Stehno's alleged reasonable basis for belief that his relationship with Amdocs would continue to exist free of interference by Sprint.

Stehno relies on Hensen v. Truman Medical Ctr., 62 S.W.3d 549 (Mo. App. 2001), but that case is materially distinguishable for at least three reasons. First, the defendant there interfered with an actual employment relationship – something that Stehno did not have with Amdocs[2/] . Second, the defendant knew that plaintiff

[2/] As discussed infra n.1, Sprint was not aware of Stehno's employment relationship with Modis; therefore, Sprint could not have tortiously interfered with it.

was promised a specific assignment as part of that employment relationship. Id. at 554. Here, Amdocs made no promises to Stehno. Third, the court in Hensen determined that the evidence was sufficient to establish that defendant acted with an improper purpose. Id. at 557-558. Here, as discussed below, Stehno failed to introduce any evidence whatsoever on his only allegation of improper purpose. Furthermore, to extend Hensen to apply to alleged interferences with temporary workers undercuts the central point of temporary work. That would be a detriment to individuals such as Stehno who prefer temporary contracting (Tr. 525, 529, 573-574) and to employers who rely significantly on the availability of temporary workers.

In sum, Stehno was a contractor on a temporary assignment. Temporary workers do not have a reasonable expectancy in long-term work where they are first assigned. By its very nature, a temporary assignment is temporary. That is why the companies that use temporary workers retain the right to require the removal of any particular contractor. Furthermore, as a matter of law, Stehno's alleged reasonable belief to the contrary is defeated by Sprint's and Amdocs' contractual rights to require Stehno's removal. Stehno did not meet his burden of proof on the essential element of a valid business expectancy. Stehno's claim for tortious interference thus fails as a matter of law.

C. Sprint's Actions Were Justified.

Stehno also failed to introduce any evidence to satisfy his burden to prove absence of justification. Even assuming that Sprint caused the termination of Stehno's assignment with Amdocs, Sprint was perfectly justified in its actions. Sprint contacted Amdocs to express its legitimate concerns about the use of a contract DBA when it had DBAs available to work on the Sprint Rodeo project and to inform Amdocs specifically about its past experience with Stehno. Sprint has an economic interest in determining who works on its systems and it had a contractual "right to require the removal of a Subcontractor's personnel" (L.F. 479). Stehno had the burden to prove the absence of justification, and he failed to make a submissible case.

"The plaintiff must prove absence of justification as an essential element in a claim for tortious interference." O'Connor v. Shelman, 769 S.W.2d 458, 461 (Mo. App. 1989). Stehno had the "burden of producing substantial evidence to establish the absence of justification." Taylor v. Zoltek Cos., 18 S.W.3d 541, 547 (Mo. App. 2000). "The absence of justification" is defined as "the absence of any legal right to take the actions complained of." Id. (quoting Eggleston v. Phillips, 838 S.W.2d 80, 83 (Mo. App. 1992)).

A defendant is justified "in interfering with another's business expectancy for the purpose of protecting his own economic interest, so long as he does not

employ improper means." Baldwin Props., Inc. v. Sharp, 949 S.W.2d 952, 956 (Mo. App. 1997). Improper means are those means that are "independently wrongful, such as threats, violence, trespass, defamation, misrepresentation of fact, restraint of trade, or any other wrongful act recognized by statute or the common law." Ozark Employment Specialists, Inc. v. Beeman, 80 S.W.3d 882, 896 (Mo. App. 2002) (citations omitted).

It is axiomatic that a company has an economic interest in determining who is working for it. For example, in the employment context, a plaintiff must support a cause of action for intentional interference with a contract or business expectancy with evidence "eliminating any business justification at all for the termination – a level of proof close to impossible to achieve." Eggleston v. Phillips, 838 S.W.2d 80, 83 (Mo. App. 1992). In such circumstances, "absence of justification requires that the [corporate] officer interfere with the contract for personal, as opposed to corporate, interest *plus* that the officer employed improper means." Id.; see also Murray v. Ray, 862 S.W.2d 931, 936 (Mo. App. 1993) ("A chief executive officer and shareholder of a corporation has an economic interest in the corporation to protect, and termination of an employee is privileged unless the evidence is substantial to establish that such official used improper means to protect that economic interest.").

Amdocs placed Stehno on a Sprint project on Sprint systems at a Sprint facility. All of the reasons why companies have an economic interest in determining whom to employ are applicable here. Sprint has an economic interest in determining who has access to its facilities and systems. Sprint also has an economic interest in determining who is working on a project to implement a new billing system. That is precisely why Sprint retained the right to require the removal of subcontractors' personnel from the project. Under the circumstances, Sprint had a right to comment on Stehno.

Sprint's economic interest was further heightened because Richert had four DBAs available to work on the Rodeo project (L.F. 323, 531). It simply did not make economic sense for Amdocs to charge Sprint for a contract DBA when Sprint's own DBAs were not being utilized. That Sprint has an economic interest in spending less money on a project cannot be disputed. Richert heard that Amdocs was looking to hire additional DBAs (L.F. 325). She believed that Stehno was retained as a DBA (L.F. 531). She acted on that information in good faith to protect Sprint's economic interest in putting its employees to work. That interest alone provides ample justification for her actions.

In addition, Stehno had proven himself to be a "high maintenance" headache for management (L.F. 532). The evidence regarding Stehno's history of conflicts and "escalations" during his earlier assignments at Sprint went almost entirely

unchallenged. In fact, Stehno himself admitted that he "was involved in some conflicts related to [the] Blue Martini project" (Tr. 693). Sprint certainly has an economic interest in working with individuals who do not require ongoing managerial oversight. As Sprint's Director of Labor Employee Relations testified, "[Richert] had a duty, a duty to the project and a duty to Sprint; if she saw something that was going to cause a problem she needed to report it" (Tr. 770).

Stehno has relied heavily upon a single bit of testimony from Derek Sherry, who was asked whether Sprint had "an economic interest in telling Amdocs who they could hire for his project" (Tr. 779). It is obvious from Sherry's response – "Not an economic, no." – that he interpreted the question very literally (i.e., Sprint would not have to pay more or less depending on the identity of the particular contractor) and that he believed Sprint had an interest in who worked on the project. Of course, the concept of economic interest is not so literal. See, e.g., Francisco v. Kansas City Star Co., 629 S.W.2d 524, 534-535 (Mo. App. 1982) (newspaper's "economic interests are obviously interrelated with the ability and competency of its carriers to deliver newspapers and service a route"). Sprint has an economic interest in anything linked to the ability of Sprint to perform its work – such as the performance of the individuals working on a new Sprint billing system as part of the Rodeo project. Furthermore, when asked whether Sprint had an economic interest in the project itself, Sherry answered, "Absolutely" (Tr. 776).

Stehno did not carry his burden to eliminate "any business justification at all for the termination – a level of proof close to impossible to achieve." Eggleston, 838 S.W.2d at 83. Ultimately, Stehno failed to adduce any evidence that Sprint and Richert acted for a reason other than the best interests of Sprint. As the court in Eggleston stated, "absence of justification requires that the [corporate] officer interfere with the contract for personal, as opposed to corporate, interest plus that the officer employed improper means." 838 S.W.2d at 83. Without such evidence – and Stehno points to none – his case must fail as a matter of law.

Finally, it serves to reiterate that Sprint had the legal right to act as it did; therefore, Sprint was justified in doing so. Even in the absence of an economic interest, one may be justified in interfering with a business expectancy when one has "an 'unqualified legal right to do the action of which the petition complains.'" Baldwin Props., 949 S.W.2d at 957 (quoting Macke Laundry Serv. Ltd. P'Ship v. Jetz Serv. Co., 931 S.W.2d 166, 181 (Mo. App. 1996)). One has the legal right to enforce one's rights under a contract. In Service Vending Co., for example, the court held that "Wal-Mart's insistence that there be compliance with contract terms regarding removal of equipment was justified." 93 S.W.3d at 770. Similarly, in Luketich v. Goedecke, Wood & Co., 835 S.W.2d 504, 508-509 (Mo. App. 1992), the court held that defendant "was justified in attempting to enforce its rights under

the non-compete agreement with [plaintiff] as long as [defendant] had a reasonable, good faith belief in the validity of the agreement."

Here, the Master Agreement between Sprint and Amdocs provided that Sprint retained "the right at any time to reasonably require removal of a Subcontractor and/or any of a Subcontractor's personnel from Services on or within any part of the Software or other [Sprint] facility or location" (L.F. 479). As described in further detail in Point II, Sprint's conduct was reasonable because Richert had a good faith belief that Amdocs retained Stehno for the Rodeo project to fill a position that DBAs within her department were able to fill. While Sprint ultimately left the decision to Amdocs, there was no question that Sprint's expression of its dissatisfaction with the use of Stehno as a contract DBA was consistent with the exercise of its rights under the Master Agreement with Amdocs. Sprint cannot be held liable for doing indirectly what it had the right to achieve directly under the contract.

Stehno has argued that Sprint's right was not absolute. The argument fails. First, Stehno cannot rely on a provision in a contract to which he was neither a party nor an intended beneficiary. See Aufenkamp v. Grabill, 112 S.W.3d 455, 458 (Mo. App. 2003) ("Generally, an individual must be a party to a contract or a third party beneficiary in order to have standing to enforce the agreement."). Second, the fact is that Amdocs did not invoke the notice and cure provision in the

contract to which Stehno points for support. Amdocs dismissed Stehno on its own initiative.

As for improper means, Stehno also failed to carry his burden. There is simply no evidence of improper means. Below, Stehno rested his assertion of improper means on alleged "inconsistencies between Richert's testimony and her written communications with Amdocs" about Stehno's performance as a contractor (Br. 55). Stehno's argument, however, is defeated by his own admission at trial that "he was involved in some conflicts related to [the] Blue Martini project" (Tr. 693). It is not disputed, in fact, that Sprint and Stehno had difficulty interacting during Stehno's prior work on Blue Martini.

Stehno has also contended that Richert's e-mail conveyed a thinly veiled threat regarding the Sprint contract to Amdocs. It stretches the imagination, however, to believe that the use of "we" in an email and the copying of relevant people involved in the Sprint project on that email (see id.) could somehow be construed as a threat, much less an improper one. Even if the inference is correct that Richert intended to put the Amdocs relationship with Sprint in play on this issue, there is nothing in the least improper about a customer's (Sprint) informing its vendor (Amdocs) about the customer's preferences. Richert had a right to reject a worker she had only weeks prior rejected when Solutions Point asked her about Stehno. There is no evidence of improper means here.

In sum, Stehno cannot meet his burden under Eggleston in any respect. To distinguish Eggleston as the court of appeals sought to do (Op. 7-8) on the basis of Stehno's status as a temporary worker disregards an essential economic interest and effectively eviscerates the absence of justification element in claims of tortious interference. The fact that Stehno was a temporary contractor rather than Sprint's employee does not render Eggleston inapposite. A business has an economic interest in determining who works on its facilities in either case. The business has an economic interest in accomplishing its work and in ensuring that those who do the work are appropriate for the assignment. If a business can fire an employee because it believes that person to be "high maintenance," then the business should have the right to refuse a temporary contractor access to its facilities on the same basis. That is, if the alleged interference with a temporary contractor consists of no more than what a business would have a right to do with its own employee, then the alleged interference should not be actionable. Otherwise, a company is powerless to determine what temporary contractor works on its premises, and the law of Eggleston is rendered meaningless, along with the absence of justification element in claims of tortious interference.

D. Conclusion

Because Stehno failed to introduce any evidence, much less the substantial evidence required, of a valid business expectancy and absence of justification, he

failed to make a submissible claim of tortious interference. The trial court erred in submitting the case to the jury. The order granting Stehno a new trial must therefore be reversed outright.

II.

THE TRIAL COURT ABUSED ITS DISCRETION IN ORDERING A NEW TRIAL BECAUSE THE JURY'S VERDICT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE IN THAT STEHNO FAILED TO INTRODUCE SUFFICIENT SUBMISSIBLE EVIDENCE TO SUPPORT HIS CLAIM OF A VALID BUSINESS EXPECTANCY AND NONE TO SUPPORT THE ELEMENT OF ABSENCE OF JUSTIFICATION, AND SPRINT ACTED IN GOOD FAITH TO PROTECT ITS ECONOMIC INTERESTS.

A. Introduction and Standard of Review

Sprint respectfully submits that Point Relied On I is dispositive. The case should never have been submitted to the jury in the first place. It was, however, and the jury was absolutely correct in finding in favor of Sprint because Stehno had no contract or valid business expectancy with Amdocs and because Sprint was entirely justified in its actions. The trial court's holding that "there was not evidence of an economic interest Sprint had . . . in interfering with any relationship Mr. Stehno might have" (L.F. 183) simply cannot be squared with the record. Sprint's Richert had a good faith belief that she was protecting Sprint's economic

interest in putting Sprint's own employees to work on the Rodeo project. As a result, the trial court's grant of a new trial constitutes a manifest abuse of discretion that must be reversed.

In determining whether the jury's verdict was against the weight of the evidence, "the trial court cannot substitute his judgment for the findings of the jury on the facts and, if there was substantial evidence to support the verdict, that is evidence upon which reasonable minds could differ, the trial court would not be justified in setting aside the findings of the jury as to the facts in the case." Bray v. St. Louis-San Francisco Ry. Co., 236 S.W.2d 758, 761 (Mo. App. 1951). Provided plaintiff made a submissible case, the grant of a new trial based on a trial court's ruling that the verdict was against the weight of the evidence will be reversed only in the event of a manifest abuse of discretion. Braddy v. Union Pacific R.R. Co., 116 S.W.3d 645, 649 (Mo. App. 2003); Christie v. Weber, 661 S.W.2d 840, 841 (Mo. App. 1983).

B. Stehno Did Not Produce Sufficient Substantial Evidence of a Valid Business Expectancy or Absence of Justification.

Here, the trial court ignored the evidence supporting the verdict and substituted its judgment for the jury's findings. There was, however, not sufficient substantial evidence to support Stehno's claims. As a consequence, the trial court was without authority to grant a new trial. The order granting a new trial must be

reversed because the trial court abused its discretion in holding that there was no evidence that Sprint had an economic interest.

At the heart of the trial court's grant of the new trial was its belief that Sprint had no economic interest in determining who works on its systems and projects (L.F. 183). As described above in detail, this determination is entirely inconsistent with both the evidence and the law that a company has an economic interest in determining who is working for it. In addition, the trial court ignored the fact that Sprint had a contractual right under the Master Agreement to reasonably require the removal of Stehno from Sprint facilities (L.F. 479). Sprint's economic interest in who is working on its systems and projects is manifest. No further appellate review is necessary. The order granting a new trial should be reversed. The jury's verdict should be reinstated.

C. The Trial Court Abused Its Discretion in Holding that the Verdict Was Against the Weight of the Evidence Because Sprint Had An Economic Interest in Disqualifying Any Contractors It Believed In Good Faith Were Unnecessary.

The trial court rested its view that Sprint had no economic interest upon a single "piece of testimony where Jan Richert was being asked whether it would be a problem if Mr. Stehno were coming in as an ADBA versus a DBA, and [the court's] understanding that Mr. Stehno was coming in as an ADBA" (L.F. 185).

The testimony upon which the court relied was Richert's statement that there would not have been a problem with "Stehno filling an ADBA position on the Rodeo project" (L.F. 324).

Even if the trial court was correct that Stehno "was coming in as an ADBA,"[3] the fact remains that Sprint's Richert believed that Stehno was assigned

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[3] In fact, the vast majority of the evidence indicates that Modis assigned Stehno to Amdocs as a DBA – not as an application DBA. The Contracting Service Order between Amdocs and Modis indicates that Stehno's services were to be "Oracle DBA Support" – not application development (L.F. 425). There is no evidence that Stehno had any experience with the Amdocs software. During the interview process, Amdocs' Keren was concerned primarily with Stehno's DBA skills and even asked Sprint DBA Michael Whitmore about those skills (Tr. 268-270, 288-290). Stehno indicated in his interview with Keren of Amdocs that his preference was for physical DBA work (Tr. 278). Keren and Reed indicated in their interview summary of Stehno that they felt he had "enough technical aptitude to fulfill Amdocs DBA tasks" and that he could "participate in physical database planning" (L.F. 448). While Ivensky testified that he "brought Mr. Stehno on as a contractor to work as an applications DBA" (Tr. 802-803), Gary Hood, the Amdocs project manager for the Rodeo project, contradicted Ivensky. Hood testified that he intended Stehno to serve as a DBA (L.F. 381).

to Amdocs as a DBA – an assignment that would have left four of Sprint's own DBAs idle. When Richert called Ivensky to complain that Sprint was supposed to "provide the DBAs from data management, Sprint data management, and that [Sprint] had four DBAs already assigned to the Rodeo project" (L.F. 323), Ivensky did not tell her that Stehno purportedly was hired as an application DBA instead (L.F. 324-325). Ivensky just said, "No problem" (L.F. 324). No one from Amdocs ever made any effort to inform Richert that Stehno supposedly was hired as an ADBA (Id.).

The trial court did not dispute that Richert acted in good faith, but was admittedly troubled by the possibility that Richert was mistaken:

> "Suppose she believed that [Stehno was coming in as a DBA] and was mistaken in her belief. Does that justify you in causing someone to lose their job because you're mistaken and you had a good faith intention? That's one of the things I thought about . . . . As I say, I'm bothered by the problem and it doesn't make any difference what the situation is" (L.F. 185, 205).

As described above in Point Relied On I, however, a plaintiff must support a cause of action for intentional interference with a contract or business expectancy with evidence "eliminating any business justification at all for the termination – a level of proof close to impossible to achieve." Eggleston, 838 S.W.2d at 83. In such

circumstances, "absence of justification requires that the [corporate] officer interfere with the contract for personal, as opposed to corporate, interest *plus* that the officer employed improper means." Id.

Thus, even if Richert was mistaken in her belief that Amdocs was bringing in Stehno as a DBA, Stehno nevertheless failed to meet his burden of proof on absence of justification. There was no evidence whatsoever that Richert took action for personal reasons. Rather, all of the evidence indicates that Richert attempted to protect her employer's economic interest in having its own employees – rather than a temporary contractor with a legacy of conflict – work on the Sprint database for this Sprint project.

In fact, all of the evidence indicated that Sprint and Amdocs were engaged in a turf war over the appropriate division of labor in the Rodeo project. To Sprint's Richert, an application DBA was not a DBA at all, but rather an application developer (L.F. 324). It was a fundamental "security issue" because DBAs have authority on the system "to do pretty much anything," including controlling the database environment, creating it, and even wiping it out (Id.). That is why Richert was adamant that "Amdocs should never need DBAs of its own" and that the DBAs were "provided by Sprint data management" (L.F. 319). Amdocs, on the other hand, was using its "application DBAs" for DBA functions, such as the manipulation and storage of data into the database (Tr. 278).

The "issues between Sprint and Amdocs over their roles and responsibilities on the Rodeo Project" went from "day one to day 99" (Tr. 725). They "constantly had disagreements about who was going to be doing what all through the project" (Id.). It became such a problem that Sprint could not "get Amdocs to release [the] DBA function into [the Sprint] data management [department]" (Tr. 729). As a result, Sprint had four DBAs assigned to Rodeo with nothing to do (L.F. 323, 531).

This larger disagreement came to a head with Stehno's assignment to Amdocs. Whether or not Stehno's job title was DBA or ADBA, the undisputed evidence was that Richert believed that Amdocs retained Stehno to work as a DBA on Sprint systems. Richert acted in good faith to protect Sprint's economic interests.

The jury listened to testimony and the arguments of counsel for six days. The trial court used the Missouri Approved Instructions, and there is no allegation that the jury was not properly instructed or did not understand the law. After roughly four hours of deliberation, the jury determined that Stehno did not meet his burden of proof and found in favor of Sprint. The verdict was supported by substantial evidence and should not be second-guessed.

D. Conclusion

Richert represented her employer to ensure that Amdocs did not bring in unnecessary contractors and then bill Sprint for them. Sprint undoubtedly has an

economic interest in disqualifying any subcontractors that it reasonably believed were unnecessary. That is why the Master Agreement included a provision retaining Sprint's right to disqualify subcontractors and subcontractors' personnel. The trial court's grant of a new trial in the face of such overwhelming evidence of economic interest was a manifest abuse of discretion and should be reversed.

CONCLUSION

For the foregoing reasons, this Court should reverse the grant of the new trial and remand with instructions for the trial court to enter judgment in conformity with the jury's verdict.

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CERTIFICATION

I certify that this brief complies with the limitations contained in Rule 84.06(b). This brief contains 10,508 words. I further certify that the floppy disk provided to the Court has been scanned for viruses and is virus-free pursuant to Rule 94.06(g).

Dated: September _____, 2005

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing brief, along with a floppy disk (scanned for viruses pursuant to Rule 86.06(g)) was sent by First Class U.S. Mail, postage pre-paid, on this _____ day of September 2005 upon counsel of record, as follows:

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APPENDIX

TABLE OF CONTENTS

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

JOHN STEHNO,	)	
	)	
Plaintiff,	)	
	)	Case No. 02 CV 208137
vs.	)	
	)	Division 13/SJ
SPRINT SPECTRUM, L.P., et al.	)	Frank D. Connett, Jr., Senior Judge
	)	
Defendants.	)	

ORDER ON POST-TRIAL MOTIONS

Cause comes on for consideration of the following post-trial motion and pleadings: plaintiff's Motion for New Trial, filed April 9, 2004, Bill of Costs of Defendant Sprint Spectrum, L.P., filed April 23, 2004 and Defendant Amdocs' Bill of Costs, filed May 13, 2004. Having considered the parties' written suggestions and oral arguments in support of and in opposition to the motions and otherwise being fully apprised in the premises, the Court finds as follows. Plaintiff's Motion for New Trial should be overruled as to defendant Amdocs, Inc. but sustained as to defendant Sprint Spectrum, L.P. on the grounds the verdict of the jury is against the weight of the evidence. Defendant Sprint Spectrum L.P.'s Bill of Costs should be denied. Defendant Amdocs, Inc.'s Bill of Costs should be sustained.

IT IS THEREFORE ORDERED that Plaintiff's Motion for New Trial is hereby OVERRULED as to defendant Amdocs, Inc. and SUSTAINED as to defendant Sprint Spectrum, L.P. Defendant Sprint Spectrum L.P.'s Bill of Costs is DENIED. Defendant Amdocs, Inc.'s Bill of Costs is SUSTAINED and Defendant Amdocs, Inc. is hereby awarded costs in the amount of

$4,157.01, let execution issue therefore.

IT IS SO ORDERED.

Dated: June 8, 2004

FRANK D. CONNETT, JR., Senior Judge

A copy of the foregoing was mailed
this _____ day of June 2004
to the following:

Aaron N. Woods, Esq.
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Carol S. Buchanan, Senior/Visiting Judges Law Clerk