OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

PELOPIDAS, LLC, ET AL.,	)	No. ED109395
	)	
Respondents,	)	Appeal from the Circuit Court of
	)	St. Louis County
vs.	)	
	)	Honorable Dean P. Waldemer
RACHEL KELLER,	)	
	)	
Appellant.	)	Filed: August 10, 2021

Rachel Keller ("Keller") appeals from the judgment of the Circuit Court of St. Louis County, entered on November 30, 2020 ("Judgment"), which fully disposed of all the claims filed against her by Pelopidas, LLC ("Pelopidas") and Travis Brown ("Brown") (Pelopidas and Brown are hereinafter collectively the "Respondents"), as well as fully disposed of Keller's counterclaim against Respondents in this matter. This lawsuit involves numerous claims arising from the parties' written memorandum outlining the terms of the settlement of their prior lawsuit (the "Settlement Memorandum"), which the parties agree is an enforceable contract. Keller raises six points on appeal, arguing that the circuit court erred in various ways in granting summary judgment for Respondents on their claims and her own counterclaim, denying her cross-motion for summary judgment with respect to Respondents' claims, *sua sponte* dismissing her counterclaim, and awarding Respondents their attorneys' fees.

In her first point, Keller argues that the circuit court erred as a matter of law in *sua sponte* dismissing her counterclaim for failure to state a claim upon which relief can be granted because she pleaded the elements of a claim for breach of contract against Brown. In her second point, Keller argues that the circuit court erred as a matter of law in *sua sponte* granting summary judgment for Respondents with respect to her counterclaim because it did not have the authority to do so in that summary judgment is not available absent a proper motion filed pursuant to Rule 74.04 or Rule 55.27(a)(6) and Respondents filed no such motion. In her third point, Keller argues that the circuit court erred as a matter of law in denying her motion for summary judgment with respect to her counterclaim because the summary judgment record established that she was entitled to judgment as a matter of law and there was no genuine dispute regarding the facts supporting her breach of contract claim against Respondents. In her fourth point, Keller argues that the circuit court erred in granting summary judgment in favor of Respondents with respect to their claims against her because Respondents were not entitled to judgment as a matter of law in that the Settlement Memorandum contained a promise of future performance regarding the transfer of her fifty percent (50%) interest in Pelopidas to Brown. In her fifth point, Keller argues that the circuit court erred as a matter of law in denying her cross-motion for summary judgment with respect to Respondents' claims against her because she was entitled to judgment as a matter of law for the same reasons asserted in her fourth point. In her sixth point, Keller

argues that the circuit court erred in awarding attorneys' fees to Respondents because they were not the prevailing party in that Keller is entitled to summary judgment with respect to both her counterclaim and Respondents' claims against her.

REVERSED AND REMANDED.

DIVISION ONE HOLDS: Because the arguments raised in Keller's fourth and fifth points are dispositive of this appeal, they are addressed first, and then Keller's remaining points are addressed accordingly. With respect to Point IV, the circuit court erred as a matter of law in determining that the effective date of the transfer of Keller's fifty percent (50%) interest in Pelopidas was the same date the parties entered into the Settlement Memorandum; thus, because the circuit court's granting of summary judgment in favor of Respondents with respect to their claims was based on this erroneous determination, that decision is reversed. With respect to Point V, because the circuit court's denial of Keller's cross-motion for summary judgment with respect to Respondents' claims against her was based on the same erroneous determination regarding the effective date of the transfer, that decision is also reversed; furthermore, pursuant to Rule 84.14, summary judgment is entered in favor of Keller with respect to each of Respondents' claims, which are dismissed with prejudice.

With respect to Point I, the circuit court's *sua sponte* dismissal of Keller's Counterclaim against Respondents is reversed because she alleged the elements of a claim for breach of contract arising from the Settlement Memorandum and Respondents' performance thereunder was not excused by Keller's *purported* prior material breach, which Respondents incorrectly relied upon. With respect to Point II, this point is denied as moot due to our holdings with respect to Keller's first and third points on appeal. With respect to Point III, as an initial matter, we may review the circuit court's denial of Keller's motion for summary judgment with respect to her Counterclaim because the merits thereof are intertwined with the propriety of the circuit court's order granting Respondents' motion for summary judgment. In addressing the merits of Point III, the circuit court not only erred in denying Keller's motion because of our determination regarding the effective date of the transfer of Keller's fifty percent (50%) interest in Pelopidas, but also erred in not entering summary judgment in her favor. Accordingly, the circuit court's denial of Keller's motion for summary judgment is reversed and, pursuant to Rule 84.14, the circuit court is directed to enter summary judgment in favor of Keller and against Respondents, jointly and severally, in the amount of $7.5 million, plus appropriate interest.

With respect to Point VI, because the circuit court's award of attorneys' fees in favor of Respondents was premised on each of the aforementioned rulings in their favor, which we have reversed, Keller is now the prevailing party with respect to each claim in this action. Thus, the award of attorneys' fees in favor of Respondents is reversed and the case is remanded to the circuit court to permit Keller to submit her request for attorneys' fees, and the circuit court is directed to award Keller her reasonable attorneys' fees in connection with this action, which shall be entered against Respondents, jointly and severally.

Opinion by: Kelly C. Broniec, J.
Colleen Dolan, P.J. and Robert M. Clayton III, J. concur.

Attorney for Appellant: John S. Kingston and Shaun C. Broeker

Attorney for Respondents: Brian E. McGovern, Chad M. Deroode, Ted F. Frapolli, and Sara G. Neill

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.