MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SUZANNE STEINBACH

APPELLANT,

v.

MAXION WHEELS SEDALIA LLC

RESPONDENT.

DOCKET NUMBER WD84502

DATE: November 2, 2021

Appeal From:

Pettis County Circuit Court
The Honorable Robert L. Koffman, Judge

Appellate Judges:

Division Four: Cynthia L. Martin, Chief Judge, Presiding, Mark D. Pfeiffer, Judge and James E. Welsh, Senior Judge

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Attorneys:

Martin M. Meyers, Kansas City, MO, for appellant.

J. Randall Coffey, and James C. Sullivan Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SUZANNE STEINBACH, APPELLANT,
v.
MAXION WHEELS SEDALIA LLC, RESPONDENT.

WD84502 Pettis County

Before Division Four Judges: Cynthia L. Martin, Chief Judge, Presiding, Mark D. Pfeiffer, Judge, and James E. Welsh, Senior Judge

Suzanne Steinbach appeals from the trial court's entry of summary judgment in favor of Maxion Wheels Sedalia LLC on the basis of claim splitting. Steinbach asserts that the entry of summary judgment was inappropriate because, as a matter of law, Steinbach did not split a single claim of discrimination by filing two suits against Maxion Wheels as each suit concerned different time periods during which the alleged discrimination, harassment, and retaliation took place. Steinbach alternatively argues that Maxion Wheels acquiesced to the claims being split, and that the trial court abused its discretion in denying her motion for leave to file a reply to an amended answer out of time to assert the affirmative avoidance of acquiescence.

REVERSED AND REMANDED.

Division Four holds:

(1) Though the specific acts of retaliation identified in Steinbach's first and second charges of discrimination, and in her later filed lawsuits, occurred at different times, they all arose from the same employment relationship complained of by Steinbach as discriminatory and hostile, and from the same efforts by Steinbach to report her employer's discriminatory conduct, requiring Steinbach's claims to be asserted in the same action, instead of in simultaneously pending actions.

(2) A reply to an answer is required to assert any matter that constitutes an affirmative avoidance, and the reply is required to be filed within thirty days of the answer.

(3) Rule 44.01(b) governs motions to file a required pleading out of time, and that Rule requires a demonstration of excusable neglect.

(4) The trial court erred in concluding that no excusable neglect was shown to support a Rule 44.01(b) enlargement of time for Steinbach to file a reply to Maxion Wheels amended answer as to permit Steinbach to assert the affirmative avoidance of acquiescence to the affirmative defenses of claim splitting relied on by Maxion Wheels in its motion for summary judgment.

Opinion by: Cynthia L. Martin, Judge November 2, 2021

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