OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT
DIVISION TWO

HILLIKER CORPORATION,	)	No. ED109549
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	Cause No. 19SL-CC05171
	)	
WATSON PROPERTY, LLC,	)	Honorable Thomas C. Albus
	)	
Respondent.	)	Filed: January 11, 2022

A real estate broker, Plaintiff Hilliker Corporation (Hilliker), claims it was a third-party beneficiary of a commercial real estate sales contract between Defendant Watson Property, LLC (Watson) and Star United, LLC (Star United). The sale was never completed because Watson had a pre-existing obligation to sell the property to another party. Hilliker argues it is entitled to receive its commission under the contract. Watson contends that its obligation to pay Hilliker's commission was eliminated by a termination agreement signed by Star United and Watson. The trial court granted summary judgment in favor of Watson, and Hilliker appeals.

REVERSED AND REMANDED.

Division Two Holds: We reverse the judgment. Based on the undisputed facts, Hilliker was identified by name as a recipient of a two percent commission in the contract between Watson and Star United. Under Missouri law, Hilliker is a third-party beneficiary of that contract. The rights of a third-party beneficiary can generally be modified by the original parties to a contract, but the power to do so is not unlimited. Here, the record does not establish as a matter of undisputed fact, whether the termination agreement annulled Hilliker's rights as a third-party beneficiary. Therefore, summary judgment is reversed.

Opinion by: Thomas C. Clark, II, J.
Robert M. Clayton III, P.J., and Gary M. Gaertner, Jr., J., concur.

Attorney for Appellant: Andrew W. Blackwell, Capes, Sokol, Goodman & Sarachan, P.C.

Attorney for Respondent: Steven M. Cohen, John C. Grellner, Berger, Cohen & Brandt, L.C.

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.