

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Respondent

v.

KATHERINE A. COX, ET AL.

Appellants

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DOCKET NUMBER WD77113

DATE: October 21, 2014

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Appeal From:

Circuit Court of Clay County, MO  
The Honorable Janet Lodwick Sutton, Judge

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Appellate Judges:

Division Three  
Gary D. Witt, P.J., Joseph M. Ellis, and Thomas H. Newton, JJ.

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Attorneys:

John Edmiston, Warrensburg, MO

Counsel for Appellant

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Attorneys:

Kim Summers, Kansas City, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, Respondent,  
v. KATHERINE A. COX, ET AL., Appellants

WD77113

Clay County

Before Division Three Judges: Gary D. Witt, P.J., Joseph M. Ellis and Thomas H. Newton, JJ.

Katherine Cox signed a promissory note to obtain a loan to refinance her and her husband's house. The promissory note was secured by a deed of trust. U.S. Bank became a holder of the note and the deed of trust. Cox defaulted on the note. U.S. Bank discovered that the deed of trust did not correctly describe the Coxes' property. U.S. Bank sued the Coxes, seeking a reformation of the deed and, in the alternative, a monetary award for the loan amount under an unjust enrichment theory. It failed to sue Cox for breaching the note.

At trial, the Coxes presented evidence that Mr. Cox's signature on the deed of trust was forged. The trial court believed the Coxes and ruled in their favor on both claims. U.S. Bank appealed. While the appeal was pending, U.S. Bank assigned the note and the voided deed to its title insurance company, Old Republic. Old Republic did not join in the appeal. We affirmed the trial court's judgment. Thereafter, Old Republic sued Cox for damages for having defaulted on the note. Ms. Cox raised affirmative defenses. Old Republic filed a motion for summary judgment, which the trial court granted. Ms. Cox appeals.

**REVERSED.**

**Division Three holds:**

In the first point, Cox argues that the trial court erred in granting the motion for summary judgment because Old Republic failed to establish entitlement to judgment as a matter of law. Specifically, she claims that her general denial of the allegation that Old Republic became a holder of the note through several assignments created a dispute as to whether Old Republic owned the note. Summary judgment is proper where the undisputed material facts show the movant is entitled to judgment as a matter of law. A general denial of an allegation is deemed an admission of that allegation under Rule 74.04. Cox relies on dated precedent to support her contention that a general denial of an endorsement places ownership of a note and an assignment's validity at issue. Under the current law, including the Uniform Commercial Code and Missouri Court Rules, Cox's general denial was insufficient to raise a genuine issue with Old Republic's status as the note holder. Additionally, Old Republic provided an affidavit stating that the note had been assigned to it from U.S. Bank, which constitutes evidence of the assignment under statutory law. Cox's first point is denied.

In the second point, Cox argues that the trial court erred in granting the motion for summary judgment because Old Republic failed to defeat her affirmative defenses. In addition to showing entitlement to judgment on its claim as a matter of law, a plaintiff moving for summary judgment must defeat each properly raised affirmative defense. A plaintiff defeats an affirmative defense by negating one of the necessary facts to establish the defense. The only defense that Cox properly pleaded was the improper splitting of a cause of action. The law bars a plaintiff from bringing a subsequent suit on a claim that has been previously litigated; this rule does not apply to different parties or to subsequent claims that are separate and distinct causes of action from the previously adjudicated claim. Old Republic failed to defeat one of the necessary facts of Cox's affirmative defense because the admitted allegations showed that U.S. Bank's previous lawsuit attempted to collect money for the default on the note, which is essentially Old Republic's claim. Although Old Republic is a different entity than U.S. Bank, the law treats them as the same party. Accordingly, Old Republic did not defeat the defense of splitting a cause of action as a matter of law. Cox's second point is granted.

Therefore, we reverse the summary judgment.

**Opinion by: Thomas H. Newton, Judge**

October 21, 2014

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