

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

JUMBOSACK CORPORATION, Appellant, ) No. ED98134  
) Appeal from the Circuit Court of  
vs. ) St. Louis County  
) Honorable Tommy W. DePriest, Jr.  
BOB BUYCK, Respondent. ) Filed: May 21, 2013

Jumbo Sack Corporation (Employer) appeals the trial court's grant of summary judgment to Bob Buyck (Employee) on its claim for breach of a non-compete agreement. Employer claims the trial court erred in granting summary judgment because: (1) the non-compete agreement was supported by valid consideration; (2) the employment agreement provided that "[a]ny changes in Employee's compensation, position or job duties subsequent to the execution of this Agreement shall in no way void or otherwise affect the remaining provisions of this Agreement"; (3) whether Employer materially breached the employment agreement is an issue of fact; (4) the parol evidence rule precluded Employee from arguing that an oral contract modified the plain and unambiguous terms of the non-compete agreement; and (5) whether Employer waived its right to enforce the non-compete agreement against Employee is an issue of fact. We reverse and remand.

REVERSE AND REMAND.

Division Four Holds: The trial court erred in granting summary judgment in favor of Employee because continued employment by Employer, and resulting access to Employer's customers, may constitute sufficient consideration to support the non-compete agreement. Additionally, the question of whether Employer materially breached the Agreement and was therefore precluded from enforcing the non-competition clause is an issue of fact for the fact-finder and an improper ground upon which to base an entry of summary judgment.

Opinion by: Patricia L. Cohen, J.  
Lawrence E. Mooney, P.J., and Kurt S. Odenwald, J., concur.

Attorney for Appellant: Brian E. McGovern

Attorney for Respondent: David M. Slaby

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