

**Summary of SC91639, *Bonnie Hargis v. JLB Corporation d/b/a Golden Oak Lending***

Appeal from the St. Louis County circuit court, Judge Robert S. Cohen

Argued and submitted Oct. 5, 2011; opinion issued Dec. 20, 2011

**Attorneys:** Hargis was represented by Christian G. Montroy of Montroy Law Offices LLC in St. Louis, (800) 333-5297, and Ronnie L. White and James P. Holloran of Holloran White Schwartz & Gaertner LLP in St. Louis, (314) 772-8989. JLB was represented by E. Robert Schulz and Ronald J. Eisenberg of Schultz & Associates LLP of Chesterfield, (636) 537-4645.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A woman appeals a trial court’s grant of summary judgment to a mortgage brokerage company on her claims that the company engaged in the unauthorized practice of law by preparing and procuring legal documents and was unjustly enriched by charging her for document preparation services it did not provide. In a decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the trial court’s judgment on the claims of unauthorized practice of law (by a 5-2 vote) but reverses its grant of summary judgment on the claim of unjust enrichment (by a 7-0 vote) and remands (sends back) the case.

Chief Justice Richard B. Teitelman concurs in part and dissents in part. He agrees that the grant of summary judgment on the claim of unjust enrichment should be reversed, but he would hold that summary judgment on the claims of unauthorized practice of law was not appropriate. On the facts developed so far in the record, viewed in the woman’s favor as required by the law, he contends the record supports a conclusion that the company actively participates in “procuring” legal documents for its customers and that the company charges its customers fees for procuring the documents necessary to close a mortgage loan.

Judge Michael M. Pritchett, presiding judge in the 36th Judicial Circuit (Butler and Ripley counties), sat in this case by special designation to fill a then-vacancy on the Court (from before the appointment of Judge George W. Draper III).

**Facts:** In January 2009, Bonnie Hargis entered into an agreement with JLB Corporation – which provides mortgage brokering services – to refinance her home. Pursuant to the agreement, JLB matched Hargis with a lender, prepared her loan application and financial disclosure forms, gathered information necessary for third parties to prepare her note and deed of trust, and transferred the note and deed from the third parties to her. JLB charged Hargis certain fees for its services including a \$208 administrative fee and an \$899 processing fee. In February 2009, Hargis filed a three-count lawsuit against JLB. Count I claimed that JLB engaged in the unauthorized practice of law in violation of section 484.010, RSMo 2000, charging her for procuring legal documents by gathering pre-existing legal and financial documents related to her suitability for a mortgage and transferring them to third parties; procuring legal documents by gathering financial information about her for use by third parties in preparing her note and deed of trust; and preparing her loan application and financial disclosures. Count II claimed that engaging in the unauthorized practice of law in this manner is a deceptive and unfair practice that

violates the state's merchandising practices act of chapter 407, RSMo. Count III alleged that JLB unjustly enriched itself by charging Hargis for document preparation services it did not provide. The trial court granted JLB summary judgment on all three counts. Hargis appeals.

**AFFIRMED IN PART; REVERSED IN PART; REMANDED.**

**Court en banc holds:** (1) The trial court properly granted JLB summary judgment as to Hargis' first two counts, related to the unauthorized practice of law.

(a) Section 484.010.2 defines the "law business" in part as "the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights." To procure legal documents, a party must do more than merely gather the documents. Based on the record here, JLB simply gathered legal and financial documents and transferred them to third parties for their use in determining Hargis' suitability for a loan and in preparing her note and deed of trust. The record did not show that the third parties preparing the legal documents were JLB's agents, that JLB received any fee for the the third parties' preparation of legal documents or that JLB played any role in determining the content of legal documents. As such, JLB did not "procure" any legal documents.

(b) The key factor in determining whether a document is legal in nature is whether preparing the document requires legal judgment or discretion. Although loan applications and financial disclosures require extensive disclosure of financial information – including employment history, monthly income and expenses, and a comprehensive list of assets and liabilities – they are standardized forms. The forms state what information is required to be filled in or provided; accuracy, rather than discretion – legal or otherwise – is what is required. As such, the loan application and financial disclosures in question are not legal documents, and, therefore, JLB did not engage in the practice of law by preparing these documents. Because the record does not show that JLB procured or prepared legal documents, it did not engage in the unauthorized practice of law.

(2) The trial court incorrectly granted JLB summary judgment as to Hargis' third count, unjust enrichment. JLB's motion for summary judgment did not contain a legal basis explaining why it was entitled to summary judgment on this claim, nor did it set out uncontroverted facts that negated this claim. Instead, JLB merely set out facts supporting its argument that it did not engage in the unauthorized practice of law. Although the factual basis for all three counts is the same, unjust enrichment is a separate legal theory that needed to be negated in JLB's motion for summary judgment but was not.

**Opinion concurring in part and dissenting in part by Judge Teitelman:** The author agrees that the grant of summary judgment on the claim of unjust enrichment should be reversed, but he would hold that summary judgment on the claims of unauthorized practice of law was not appropriate. Giving meaning to each word in section 484.010.2, RSMo – defining the "law business" – the term "procuring" must mean something different from the terms "drawing" and "assisting in the drawing." While merely gathering information for use in a legal document does not necessarily constitute the unauthorized practice of law, there could be circumstances in

which gathering legal information to produce legal documents for a fee amounts to “procuring” legal documents. The principal opinion’s characterization of JLB’s role as nothing more than passively gathering documents that Document Systems then used to prepare legal documents is not compelled by the record, particularly when Hargis is afforded the benefit of all reasonable inferences from the record as required by the standard of review. While JLB may not have been the party “drawing” the legal documents, the record does not establish conclusively that it did not participate in “procuring” those documents for Hargis. Further, viewed in the light most favorable to Hargis, the record at this stage of litigation supports her theory that JLB charges its customers a variety of fees for procuring the legal documents necessary to close a mortgage loan.