

MISSOURI COURT OF APPEALS
Western District

RESIDENTIAL & RESORT ASSOCIATES, INC., RESPONDENT,
v.
WILLIAM WOLFE & CHEVRON/SIERRA LAND CO. LLC, APPELLANT.

DOCKET NUMBER WD69064

DATE: January 6, 2009

Appeal From:

Morgan County Circuit Court
The Honorable Donald Lloyd Barnes, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, Presiding Judge, Ronald R. Holliger and Joseph P. Dandurand,
Judges

Attorneys:

James W. Gallagher III, Jefferson City, MO, for appellant.
Jerry Dean Rank, Overland Park, KS, for respondent.

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

RESIDENTIAL & RESORT ASSOCIATES, INC., RESPONDENT,

v.

WILLIAM WOLFE & CHEVRON/SIERRA LAND CO. LLC, APPELLANT.

No. WD69064

Morgan County

Before Division Three Judges: Joseph M. Ellis, Presiding Judge, Ronald R. Holliger and Joseph P. Dandurand, Judges

Residential Resort Associates, Inc. (R&R) contracted with William Wolfe and Chevron/Sierra Land Co., LLC (Wolfe) to develop, market, and sell real property in Missouri. After R&R had done some work for Wolfe, the contract was terminated and a “settlement agreement” was reached to pay R&R the money due for the work it had already completed. A dispute arose over the money due. R&R filed a petition. Wolfe filed a counterclaim, alleging that R&R had fraudulently obtained the contract because R&R did not have a Missouri real estate license. R&R voluntarily dismissed the suit, and attempted to file an amended petition, which was denied. One year later, R&R filed a motion to enforce the settlement agreement. After an evidentiary hearing, the trial court granted R&R’s motion and ordered a full accounting to be made. Wolfe filed a motion to set aside the motion. Wolfe dismissed its counterclaim without prejudice and claimed that the court lacked jurisdiction to rule on the motion to enforce settlement agreement. Wolfe and R&R stipulated to an accounting with Wolfe maintaining that R&R was not entitled to judgment. The court ordered Wolfe to pay the stipulated amount. Wolfe appeals, arguing that the trial court lacked jurisdiction to enter judgment because R&R had dismissed its claims; Wolfe also claims, in the alternative, that if the trial court had jurisdiction R&R lacked standing to bring the suit because it did not have a Missouri real estate license.

VACATED AND DISMISSED.

Division Three holds: The trial court lacked jurisdiction to hear this case. Relief granted in a judgment is limited to that sought in the pleadings, except when the issues are tried by express or implied consent, but then only if the evidence bears only on the unpleaded issue and not upon issues already in the case. The issues made in the motion to enforce settlement agreement were not present in Wolfe’s counterclaim. However, R&R’s reply to the counterclaim included the affirmative defense that Wolfe’s claims are barred because Wolfe breached the contract. This affirmative defense required proof that Wolfe breached the settlement agreement, which is the same proof required by the motion to enforce settlement agreement. Thus, the issue was presented in the pleadings, but only as an affirmative defense; there was no prayer for relief on this issue. Because there was no prayer for affirmative relief, the judgment of the trial court is void for lack of jurisdiction.

Opinion by: Ronald R. Holliger, Judge

Date: January 6, 2009

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