MISSOURI COURT OF APPEALS
WESTERN DISTRICT

THOMAS R. HAMMACK, AS AN INDIVIDUALAND AS CO-TRUSTEE, BY AND ON BEHALF OF THE BENEFICIARIES OF THE HAMMACK FAMILY FARM TRUST,
APPELLANT-RESPONDENT

vs.

COFFELT LAND TITLE, INC.
RESPONDENT-APPELLANT

WD69133 and WD69134

DATE: MARCH 17, 2009

Appeal from:
CASS COUNTY CIRCUIT COURT
THE HONORABLE JACQUELINE A. COOK, JUDGE

Appellate Judges:
Division Three: Victor C. Howard, P.J., Joseph M. Ellis and Alok Ahuja, JJ

Attorneys:
Elvin S. Douglas, Jr., Esq., Harrisonville, MO., for **Appellant-Respondent**

Wendell E. Koerner, Jr., Esq., Kansas City, MO, for **Respondent-Appellant**

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS, WESTERN DISTRICT

THOMAS R. HAMMACK, AS AN INDIVIDUAL AND AS CO-TRUSTEE, BY AND ON BEHALF OF THE BENEFICIARIES OF THE HAMMACK FAMILY FARM TRUST, **APPELLANT-RESPONDENT**

v.

COFFELT LAND TITLE, INC., **RESPONDENT-APPELLANT**

WD69133 (Consolidated with WD69134) Cass County, Missouri

Before Appellate Judges: Howard, P.J., Ellis and Ahuja, JJ.

Coffelt Land Title, Inc. appeals from a summary judgment entered in favor of Thomas R. Hammack ("Plaintiff"), individually and on behalf of himself and the other beneficiaries of the Hammack Family Trust, in and action filed by Plaintiff asserting that Coffelt Land Title had breached the terms of an escrow contract and/or had negligently breached a duty of care owed to Plaintiff as an escrow agent. Coffelt Land Title contends that the trial court erred because genuine issues as to material facts remained in the case and that Plaintiffs were not entitled to judgment as a matter of law.

REVERSED AND REMANDED.

Division Three holds:

(1) Under the case law, an escrow agent is strictly bound by the terms of the escrow agreement and breaches its contractual and fiduciary duties only when the agent fails to comply with the terms of that agreement. Accordingly, in order to establish either breach of contract or negligence on the part of Coffelt Land Title, Plaintiff was required to prove that Coffelt Land Title failed to comply with the terms of the escrow agreement.

(2) Neither Plaintiff's motion for summary judgment nor his statement of uncontroverted facts references the escrow agreement or the terms thereof in any way, and Coffelt Land Title specifically claimed that the terms of the escrow agreement were a disputed fact in its response thereto. Having failed to establish through uncontroverted facts what duties Coffelt Land Title assumed under the escrow agreement or that Coffelt Land Title breached any of those duties, Plaintiff was not entitled to judgment as a matter of law on either his breach of contract or negligence claims. The trial court's grant of summary judgment must therefore be reversed.

Opinion by: Joseph M. Ellis, J. March 17, 2009

Concurring opinion by Judge Alok Ahuja: The author concurs in the majority opinion, but writes separately to emphasize his view that the grant of summary judgment must be reversed for an additional reason: a genuine issue exists whether Stanley and Jeannette Hammack transferred their interest in the real property at issue, effective prior to Stanley Hammack's death, which would have the effect of terminating the Trust's rights to the real property under a previously executed beneficiary deed.

This summary is UNOFFICIAL and should not be quoted or cited.