

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

SANGAMON ASSOCIATES LTD, ET AL., RESPONDENT,

v.

THE CARPENTER 1985 FAMILY PARTNERSHIP LTD, ET AL., APPELLANT.

DOCKET NUMBER WD69280

DATE: February 24, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE JOHN M. TORRENCE, JUDGE

Appellate Judges:
Division Three: Joseph M. Ellis, P.J., James Smart and Alok Ahuja, JJ.

Attorneys:
William Edward Reeves, Esq., Caruthersville, MO, **for appellant.**

Frederick Haase Riesmeyer, III, Esq., Kansas City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS – WESTERN DISTRICT

SANGAMON ASSOCIATES LTD., ET AL,

RESPONDENT,

V.

THE CARPENTER 1985 FAMILY PARTNERSHIP, LTD.,

APPELLANT.

WD69280

Jackson County

Before Division Three Judges: Joseph M. Ellis, P.J., James Smart and Alok Ahuja, JJ.

The late Allan R. Carpenter and Dale E. Fredericks formed Broadway-Washington Associates (“BWA”), a limited partnership, in 1985. BWA’s partners were The Carpenter 1985 Family Partnership, Ltd., a Missouri limited partnership formerly controlled by Carpenter, and Sangamon Associates, Ltd., a Missouri limited partnership controlled by Fredericks. The Carpenter 1985 Family Partnership, Ltd. is the managing general partner of BWA.

BWA owns a piece of property located at 1210 Broadway in downtown Kansas City, which the parties refer to as the “Mid-Broadway Property.” Carpenter (or his successor(s) in interest) and Fredericks also own directly, as tenants in common, an adjoining piece of property, located at 1200 Broadway, known as the “North Broadway Property.” Both properties are managed by BWA, and operated as surface parking lots.

Over the years, various disputes have arisen between the parties concerning the control and management of BWA, and the management and disposition of the North Broadway and Mid-Broadway Properties. Both this Court and the Missouri Supreme Court have previously addressed these issues.

In March 1996, Sangamon brought suit against Carpenter in Jackson County Circuit Court (“*Sangamon I*”). The Second Amended Petition in *Sangamon I* alleges twenty-two direct and derivative claims relating to both the North Broadway and Mid-Broadway Properties.

Following trial, the circuit court entered a Final Judgment in *Sangamon I* in January 2002, which rejected the bulk of Sangamon’s claims. In particular, the Court rejected claims seeking the appointment of a receiver both with respect to BWA, and with respect to the North Broadway Property.

Sangamon appealed the judgment in *Sangamon I*. The Missouri Supreme Court rejected the bulk of Sangamon’s arguments seeking reversal, including Sangamon’s

challenges to the denial of its breach of fiduciary duty, conversion, and constructive trust claims, as well as the circuit court's refusal to appoint a receiver.

On the same day the circuit court entered its Final Judgment in *Sangamon I*, Sangamon filed this lawsuit ("*Sangamon II*"). *Sangamon II* involves two counts: Count I, seeking a dissolution of BWA, and Count II, seeking a dissolution of the tenancy in common relationship with respect to the North Broadway Property. In both Counts, Sangamon prays for the appointment of a receiver pursuant to Rule 68.02.

On April 20, 2007, the circuit court granted Sangamon's Motion for Appointment of Receiver, and appointed Berry F. Laws III as receiver "to take charge of the Missouri limited partnership known as [BWA]," and "to take charge of certain real estate owned as tenancy-in-common by the parties herein."

Carpenter's Motion to Revoke Order Appointing Receiver was denied on January 17, 2008. This interlocutory appeal followed.

REVERSED AND REMANDED.

Division Three holds:

Whether viewed under principles of *res judicata* or collateral estoppel, the critical question is whether Sangamon is seeking relief based on events subsequent to *Sangamon I*, which have created a new legal situation or altered the legal rights or relations of the parties, or instead whether it seeks appointment of a receiver based on the same grounds considered – and rejected – in the earlier lawsuit. After carefully reviewing the record, we conclude that the trial court's judgment refusing to revoke the appointment of a receiver must be reversed based on the overlap between Sangamon's asserted justification for appointment of a receiver here, and the arguments it made, and lost, in *Sangamon I*. While Sangamon identified certain post-*Sangamon I* events which it claimed justified a receivership, the bulk of its arguments concerned earlier events, or a continuing course of conduct which had begun before the decision in *Sangamon I*. On this record, this Court cannot conclude that appointment of a receiver was justified based on considerations independent of those finally resolved in *Sangamon I*.

Opinion by: Alok Ahuja, Judge

February 24, 2009

**THIS SUMMARY IS UNOFFICIAL AND
SHOULD NOT BE QUOTED OR CITED.**