

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE:**

THE EXECUTIVE BOARD OF THE  
MISSOURI BAPTIST CONVENTION, ET AL.,

Appellant,

v.

WINDERMERE BAPTIST CONFERENCE CENTER.

Respondent.

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DOCKET NUMBER WD69546

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DATE: February 3, 2009

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**Appeal From:**

Circuit Court of Cole County, MO  
The Honorable Richard G. Callahan, Judge

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**Appellate Judges:**

Division Four: Thomas H. Newton, C.J., James Edward Welsh and Joseph P. Dandurand, JJ.

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

**THE EXECUTIVE BOARD OF THE MISSOURI BAPTIST  
CONVENTION, ET AL., Appellant, v. WINDERMERE BAPTIST  
CONFERENCE CENTER, Respondent**

**WD69546**

**Cole County**

Before Division Four Judges: Newton, C.J., Welsh and Dandurand, JJ.

The Missouri Baptist Convention (the Convention) through its Executive Board and messengers of churches affiliated with the Convention sued Windermere Baptist Conference Center (Windermere) asking the circuit court for declaratory and injunctive relief and seeking relief on its claims for rescission and restitution, and conspiracy. The circuit court dismissed the Convention's claim for conspiracy and granted summary judgment for Windermere on the Convention's remaining claims against Windermere. The Board and the messengers contend that the circuit court erred in determining: (1) that the Convention was not a member of Windermere, (2) that section 355.586, RSMo 2000, does not protect rights of non-members that arise from a corporation's articles of incorporation and that they lacked standing to pursue a claim for violation of section 355.586, (3) that they were not entitled to pursue a third-party beneficiary claim, (4) that no underlying contractual relationship existed that could serve as a basis for their claim of rescission, (5) that they failed to state a claim for restitution based upon unjust enrichment, and (6) that they failed to state a claim for conspiracy.

**AFFIRMED.**

**Division Four holds:**

(1) The circuit court did not err as a matter of law in concluding that the Convention is not a member of Windermere under the definition of "member" provided by section 355.066(21), RSMo Cum. Supp. 2007. Windermere's articles of incorporation clearly and unambiguously state that the corporation shall have no members. The Convention was not a member of Windermere and, therefore, was not entitled to vote on the adoption of Windermere's amended articles of incorporation.

(2) The circuit court did not err as a matter of law in concluding: (1) that section 355.586, RSMo 2000, does not protect rights of non-members that arise from a corporation's articles of incorporation and (2) that the Convention lacked standing to pursue a claim for violation of section 355.586. The Convention did not have any "existing rights" because Windermere's articles of incorporation were subject to unilateral amendment at any time. Any rights given to the Convention under Windermere's original articles were rights subject to amendment by Windermere. Moreover, under section 355.141, RSMo 2000, the Convention lacked standing to pursue claims against Windermere not based upon an alleged contractual relationship. The Convention's non-contract claims, including its claim for violation of section 355.586, were barred by section 355.141.

(3) The circuit court did not err in granting summary judgment in favor of Windermere on the Convention's claim that it acquired rights as a third-party beneficiary of Windermere's original articles of incorporation. Windermere's original articles of incorporation contained no express declaration that the Convention was a party for whose primary benefit the other parties contracted. At the most, the original articles, which conferred voting privileges upon the Convention and which instructed that the assets of the corporation should be distributed to organizations affiliated with the Convention upon the corporation's dissolution, establish that Convention was merely an incidental beneficiary.

(4) The circuit court did not err in granting summary judgment in favor of Windermere on the Convention's claim for rescission. Because we have concluded that the Convention is not a member of Windermere, no contract existed between Windermere and the Convention. Rescission, therefore, rescission is not an available remedy for the Convention.

(5) The circuit court did not err as a matter of law in concluding that the Convention failed to state a claim based upon unjust enrichment. The Convention's fifth amended petition contains no express allegation that it would be unjust or inequitable for Windermere to retain and continue operating the campground. The allegations in the petition sufficiently established that Windermere received benefits, but they did not allege that it would be unjust for Windermere to retain the benefits.

(6) The circuit court did not err in dismissing the Convention's claim for conspiracy for failure to state a claim. If the petition contains only conclusions and does not contain the ultimate facts or any allegations from which to infer those facts, the petition may be dismissed for failure to state a claim. The Convention's allegations of so-called actions, agreements, and conspiracy are vague and insufficient. Such allegations must be supported by facts.

**Opinion by James Edward Welsh, J.**

February 3, 2009

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