

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

GEORGE W. VEST, JR., AS TRUSTEE OF THE
GEORGE W. VEST JR. LIVING TRUST, ET AL.,

Respondents,

v.

KANSAS CITY HOMES, LLC, ET AL.,

Appellant.

DOCKET NUMBER WD69862

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 5, 2009

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Michael W. Manners, Judge

Appellate Judges:

Division One: James Edward Welsh, P.J., Victor C. Howard and Alok Ahuja, JJ.

Attorneys:

Kelly C. Tobin, Kansas City, MO

Counsel for Appellant

Attorneys:

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Counsel for Respondent
Counsel for Respondent

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

**GEORGE W. VEST, JR., AS TRUSTEE OF THE GEORGE W.
VEST JR. LIVING TRUST, ET AL., Respondents, v.
KANSAS CITY HOMES, LLC, ET AL., Appellant.**

WD69862

Jackson County

Before Division One Judges: Welsh, P.J., Howard and Ahuja, JJ.

Kansas City Homes, L.L.C., (KC Homes) appeals the circuit court's grant of summary judgment in favor of George W. Vest, as Trustee of the George W. Vest Jr. Living Trust; Ardeth A. Vest, as Trustee of the Ardeth A. Vest Living Trust; Genevieve V. Carroll; and John D. Carroll in an action for breach of contract and specific performance of two real estate contracts. KC Homes contends that the circuit court erred in issuing summary judgment in favor of the Vests and Carrolls on their breach of contract claims because the handwritten contract provisions prevail over the typeset provisions of the real estate contract. KC Homes also contends that the circuit court erred in the contempt portion of its specific performance judgment because no evidence supported the circuit court's finding that the Vests' and the Carrolls' property was worth \$1,000,000 or that the Vests and the Carrolls suffered losses of \$881,267.64.

REVERSED AND REMANDED.

Division One holds:

The circuit court erred as a matter of law in concluding that KC Homes waived its right to cancel the real estate contracts because it failed to perform due diligence in receiving approval from Grain Valley of its proposed sewer system within the ninety day "Inspection and Due Diligence" period provided for in paragraph 17 of the contracts. The terms of the contracts are susceptible to honest and fair differences and are, therefore, ambiguous. We are unable to ascertain the intent of the parties as to the apparent meaning of the contract terms from the four corners of the contracts. Thus, a question of fact arises as to the intent of the parties as to the meaning of the terms, and extrinsic evidence is necessary to determine the meanings. The circuit court, therefore, erred in entering summary judgment in favor of the Vests and Carrolls.

Opinion by: James Edward Welsh, P. J.

May 5, 2009

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