

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JAS APARTMENTS, INC.**

**APPELLANT,**

**v.**

**MOHAMAD ALI NAJI, ET AL.**

**RESPONDENTS.**

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DOCKET NUMBER WD71403  
**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DATE: November 9, 2010

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Appeal From:  
JACKSON COUNTY CIRCUIT COURT  
THE HONORABLE ROBERT MICHAEL SCHIEBER, JUDGE

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Appellate Judges:  
Division One: Lisa White Hardwick, P.J., James M. Smart, Jr., and Alok Ahuja, JJ.

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Attorneys:  
Paul Davin Sinclair, Kansas City, MO, and Andrew Joseph Nazar, Kansas City, MO, **for appellant.**

Bernard Thomas Schmitt, Kansas City, MO, and Theresa Shean Hall, Kansas City, MO, **for respondents.**

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JAS APARTMENTS, INC.,  
APPELLANT,**

**v.**

**MOHAMAD ALI NAJI, ET AL.,  
RESPONDENTS.**

No. WD71403

Jackson County

Before Division One Judges: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr., and Alok Ahuja, Judges.

Mohamad Ali Naji, a married man, entered into a contract to sell real estate. His wife did not join the contract and did not agree with his plan to sell the property. The contract called for Mr. Naji to deliver marketable title and to insure marketable title, subject only to "permitted exceptions" (items listed as exceptions in the title commitment to which no objection was timely made by the buyer, JAS Apartments, Inc.). One of the items listed in the Chicago Title commitment in schedule B was a statement that "the spouse, if any, of [Mr.] Naji must join in the contract." Mrs. Naji refused to consent to the transaction. Because Naji could not deliver marketable title without Mrs. Naji's formal consent to the transaction, JAS regarded Naji as having breached the contract. JAS sued for specific performance and for a declaration nullifying any claim of marital interest by Mrs. Naji.

The trial court determined that the contract had terminated. The parties appealed. In *Naji I* (*JAS Apartments, Inc. v. Naji*, 230 S.W.3d 354, 358 (Mo. App. 2007)), this court reversed the determination of the trial court that the contract terminated, and remanded to the trial court for a determination as to which party had breached the contract, which in turn would be dependent on whether the statement in schedule B concerning Mrs. Naji was a "requirement" or an "exception."

On remand, the trial court held that it did not matter whether at the time the commitment was issued the specified item was a requirement or an exception, because the evidence was that regardless of whether it was intended to be an exception or requirement, it could become an exception and Chicago Title could have issued a policy to JAS showing Mrs. Naji's interest as an exception. The trial court concluded that JAS breached the contract when it failed to close the transaction as scheduled. JAS appeals.

**VACATED AND REMANDED.**

**Division One holds:**

1. The trial court erred in misinterpreting the remand, believing that all this court wanted it to determine was whether Chicago Title would have issued a title policy with an exception for Mrs. Naji's marital interest. The trial court's duty was to determine whether the item in question was a requirement or an exception at the time the title commitment was issued.

2. This court's review of the evidence on remand shows that the evidence demonstrates that the item was a requirement and not an exception at the time the commitment was issued and during the review period provided by the contract. Thus, we need not remand again on that issue. Because the item was a requirement, JAS was not required to object to it, and JAS did not waive its right to receive marketable title. Because Naji announced that his wife would not consent or join the transaction, he anticipatorily breached the contract. JAS was entitled to bring suit for specific performance and for a declaration nullifying any claim of marital interest.

3. Because the evidence in the earlier trial shows that there was no attempt by Naji to defeat Mrs. Naji's marital interest, we may rule that the claim of marital interest is nullified and need not remand for that determination.

4. We remand for a determination as to whether specific performance is appropriate. If specific performance is no longer appropriate, damages may be awarded to JAS for breach. The trial court will also determine the issue of attorneys' fees to be awarded to JAS for Naji's breach.

The judgment of the trial court is vacated, and the case is remanded to the trial court for further proceedings in accordance with this opinion.

**Opinion by: James M. Smart, Jr., Judge**

November 9, 2010

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