

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**RICHARD McMAHON, CLIFFORD HALL and LINDA BURGESS, DERIVATIVELY
ON BEHALF OF SAVE-A-CONNIE, INC., A MISSOURI CORP. d/b/a THE AIRLINE
HISTORY MUSEUM,**

APPELLANTS

vs.

**FOE GELDERSMA, BOB LOVE, ADAM LANNON and MARCELLUS COLE,
RESPONDENTS**

DOCKET NUMBER WD71515

DATE: AUGUST 24, 2010

Appeal from:

The Circuit Court of Clay County, Missouri
The Honorable Anthony R. Gabbert, Judge

Appellate Judges:

Division Three: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

Attorneys:

Kenneth E. Barnes, for Appellant

James D. Boggs, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

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WD71515

Clay County, Missouri

Before Division Three Judges: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

Richard McMahon, Clifford Hall, and Linda Burgess (Plaintiffs) appeal the judgment of the trial court dismissing the derivative action filed by them on behalf Save-A-Connie, Inc. d/b/a Airline History Museum (Corporation) against four former officers and board members of the company, Foe Geldersma, Bob Love, Adam Lannon, and Marcellus Cole (Defendants). They claim that trial court erred in dismissing their action because they had already shown, and the trial court had already ruled, that their petition was brought by the requisite number of derivative members pursuant to section 355.221, RSMo 2000, and a motion to intervene filed by Corporation rendered the motion to dismiss moot.

AFFIRMED.

Division Three holds:

Where the denials of Defendants' motions to dismiss and for summary judgment were interlocutory and were not judgments on the merits, collateral estoppel did not apply to bar further action by the special master and trial court on the issue of whether the petition was brought by the requisite number of members after Defendants asserted new evidence on the issue.

Where Corporation did not allege, much less establish, how its ability to protect its interest would be impaired and where separate action by Corporation against Defendants is pending in Clay County, the trial court did not err or abuse its discretion in denying Corporation's motion to intervene, and such motion did not render Defendants' motion to dismiss moot.

Opinion by: Victor C. Howard, Judge

Date: August 24, 2010

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