

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**K. ASAMOAH-BOADU, d/b/a/ SAM'S JANITORIAL SERVICE,
RESPONDENT**

vs.

**STATE OF MISSOURI, OFFICE OF ADMINISTRATION, et al.,
APPELLANT**

DOCKET NUMBER WD71885

DATE: DECEMBER 28, 2010

Appeal from:

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

Appellate Judges:

Division Three: Alok Ahuja, P.J., Victor C. Howard, and Cynthia L. Martin, JJ.

Judge Martin concurs.

Judge Ahuja concurs in separate concurring opinion.

Attorneys:

David J. Moen, for Respondent

Mark E. Long, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

K. ASAMOAH-BOADU, d/b/a SAM'S JANITORIAL SERVICE, RESPONDENT

v.

STATE OF MISSOURI, OFFICE OF ADMINISTRATION, et al., APPELLANT

WD71885

Cole County, Missouri

Before Division Three Judges: Alok Ahuja, P.J., Victor C. Howard and Cynthia L. Martin, JJ.

The State of Missouri, Office of Administration, et al. (OA) appeals the judgment of the trial court following a bench trial finding that the OA breached its contracts with K. Asamoah-Boadu d/b/a Sam's Janitorial Service and awarding damages. It contends that its termination of the contracts with Sam's Janitorial was permissible under the contracts and, thus, did not constitute a breach of the contracts. It further contends that the trial court erred in calculating the damages award.

AFFIRMED IN PART, REVERSED IN PART, REMANDED.

Division Three holds:

(1) Where the evidence did not demonstrate that Sam's Janitorial knowingly hired or continued to employ an unauthorized alien or that it hired individuals without complying with the employment verification system of 8 U.S.C. § 1324a(b)(1)-(3), the OA failed to prove that Sam's Janitorial violated federal law justifying its termination of the contracts. Thus, the trial court did not err in finding that the OA breached its contracts with Sam's Janitorial when it terminated them.

(2) Where the contracts contained a termination provision permitting termination for any reason with thirty days notice, lost profits damages were limited to the contractual notice period of thirty days. Thus, the trial court erred in awarding Sam's Janitorial lost profits that would have accrued through the ending dates of the contracts.

Opinion by: Victor C. Howard, Judge

Date: December 28, 2010

Concurring Opinion by Judge Alok Ahuja:

The author concurs in the majority opinion, but writes separately to express his belief that, but for the prior Missouri decisions relied upon by the majority, a strong argument could be made that Asamoah-Boadu's damages should not be limited to the thirty-day notice period provided in the contracts' termination-for-convenience provision. The trial court made factual findings that the State had not invoked the termination-for-convenience provision, and that there was no evidence that it would have terminated the contracts but for its erroneous belief that Asamoah-Boadu had violated federal immigration law. In these circumstances, the author questions why

this issue is resolved in the State's favor as a matter of law, rather than being treated as a factual question on which deference is owed to the trial court's findings.

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