

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION
NO. 814,**

APPELLANT-RESPONDENT

vs.

**ANTHONY MONSEES,
RESPONDENT-APPELLANT**

DOCKET NUMBER WD72269 CONSOLIDATED WITH WD72298

DATE: MARCH 15, 2011

Appeal from:

The Circuit Court of Pettis County, Missouri
The Honorable Robert L. Koffman, Judge

Appellate Judges:

Division Two: Karen King Mitchell, P.J., Joseph M. Ellis and Victor C. Howard, JJ.

Attorneys:

Robert W. Russell, for Appellant-Respondent

Daniel Baker, for Respondent-Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

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**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION
NO. 814, APPELLANT-RESPONDENT**

v.

ANTHONY MONSEES, RESPONDENT-APPELLANT

WD72269 CONSOLIDATED WITH WD72298

Pettis County, Missouri

Before Division Two Judges: Karen King Mitchell, P.J., Joseph M. Ellis and Victor C. Howard, JJ.

The International Brotherhood of Electrical Workers Local Union No. 814 ("the Union") appeals from a judgment entered against Anthony Monsees for the tortious removal of a sign maintained by the Union. The jury awarded the Union \$15,000.00 in actual damages but the Union contends that it was entitled to statutorily enhanced damages or to submit the issue of punitive damages to the jury. Monsees cross-appeals, contending that the trial court erred in failing to enter a directed verdict against the Union because the evidence was not sufficient to establish trespass.

REVERSED AND REMANDED IN PART AND AFFIRMED IN PART.

Division Two holds:

(1) Monsees did not preserve his claim of submissibility, which was raised in his motion for directed verdict at the close of the evidence, when he failed to file a motion to set aside the verdict or for a new trial. Nonetheless, the trial court did not err in failing to grant Monsees motion for directed verdict on the basis that the evidence did not support the Union's claim of trespass. Evidence presented before the trial court allowed for a reasonable inference that the third party had ceded possession of the sign to the owner/occupant of the building now owned by the Union.

(2) The trial court erred in failing to submit the issue of punitive damages to the jury when there was an abundance of evidence from which a jury could conclude, by clear and convincing evidence, that Monsees intentionally removed the sign, that at the time he did so, he knew he did not own the sign, and that it was not on his property.

(3) The trial court did not err in refusing to award treble damages for statutory trespass under § 537.340.

Opinion by Joseph M. Ellis, Judge

Date: MARCH 15, 2011

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