

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ENERGY CREATES ENERGY, LLC AND GENESYS INDUSTRIAL CORP.,  
APPELLANT-RESPONDENTS**

**vs.**

**THE HERITAGE GROUP, ET AL.,  
RESPONDENT-APPELLANTS**

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DOCKET NUMBER WD79326 (Consolidated with WD79374)

DATE: NOVEMBER 15, 2016

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Appeal from:

The Circuit Court of Jackson County, Missouri  
The Honorable Bryan Round, Judge

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Appellate Judges:

Division One: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Jason R. Scheiderer, for Appellant-Respondent

Brianna Clark, for Respondent-Appellants

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**ENERGY CREATES ENERGY, LLC AND GENESYS INDUSTRIAL CORP.,  
APPELLANT-RESPONDENTS**

**v.**

**THE HERITAGE GROUP, ET AL., RESPONDENT-APPELLANTS,**

WD79326 (Consolidated with WD79374)

Jackson County, Missouri

Before Division One: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Edward R. Ardini, Jr., Judge

Plaintiffs appeal the summary judgment and partial summary judgment entered in favor of Heritage Defendants on multiple counts based on matters of claim and issue preclusion raised in a motion to dismiss which was converted to a motion for summary judgment pursuant to Missouri Supreme Court Rule 55.27(a) without adhering to the requirements for summary judgment set forth in Missouri Supreme Court Rule 74.04. The Heritage Defendants cross-appeal the denial of full and partial summary judgment on other counts. The Heritage Defendants' cross-appeal is dismissed. The Judgment granting full and partial summary judgment in favor of the Heritage Defendants is reversed and remanded.

**REVERSED AND REMANDED**

**Division One holds:**

A motion to dismiss converted to a motion for summary judgment under Missouri Supreme Court Rule 55.27(a) which does not adhere to requirements for summary judgment set forth in Missouri Supreme Court Rule 74.04 is legally defective and cannot serve as the basis for a grant of summary judgment.

**Opinion by: Edward D. Ardini, Jr.**

Date: November 15, 2016

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