OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

SHAYNA VEAZIE-GALLANT	)	No. ED109037
	)	
Respondent,	)	
	)	
vs.	)	Appeal from the Circuit Court of
	)	the City of St. Louis
DERYL BROWN, JR.,	)	
	)	Honorable Joan L. Moriarty
Defendant,	)	
and	)	
	)	
AMANI INVESTMENTS, LLC,	)	
	)	
Appellant.	)	Filed: March 23, 2021

Appellant Amani Investments ("Appellant") appeals the entry of judgment and award of $56,987.48 for Shayna Veazie-Gallant ("Respondent") following a bench trial. Appellant raises three points on appeal. In Point I, Appellant argues the trial court erred by finding Appellant liable for negligent misrepresentation. In Point II, Appellant argues the trial court misapplied the law in calculating damages. In Point III, Appellant argues the trial court erred by finding Respondent's communications with the SLDC did not constitute tortious interference.

AFFIRMED.

DIVISION IV HOLDS:

Appellant's Point I is denied. In negligent misrepresentation cases, the Missouri Supreme Court has stated, "[w]here a party makes his own investigation, he will be presumed to have been guided by what he learned and the conclusions he reached and will not be permitted to say that he relied on misrepresentations of another and that he was deceived thereby," subject to three exceptions: (1) the party making an independent inspection makes a partial inspection and relies on the inspection *and* the misrepresentation; (2) the buyer lacks equal footing for learning the truth where the facts are peculiarly within the knowledge of the representing party and are difficult to ascertain; or (3) if the seller makes a "distinct and specific representation," the buyer may rely on the representation. *Craycroft v. Carlton*, 322 S.W.3d 587, 589-90 (Mo. App. S.D. 2010). All three exceptions applied, so Respondent's negligent representation cause of action is affirmed.

Point II is denied. "A party on appeal generally must 'stand or fall' by the theory on which he tried and submitted his case in the court below." *Kleim v. Sansone*, 248 S.W.3d 599, 602 (Mo. banc 2008). To the extent Point II relies on a patent defect argument, "this Court will not evaluate the issue." *Id*. In cases of negligent misrepresentation, damages compensate the

plaintiff for pecuniary loss: the difference in value between the purchase price and the value of the transaction or loss suffered because of the plaintiff's reliance on the misrepresentation. *B.L. Jet Sales, Inc. v. Alton Packaging Corp.*, 724 S.W.23d 669, 673 (Mo. App. E.D. 1987). We will not reweigh the evidence and credibility of the witnesses in calculating damages. *Brasher v. Craig*, 483 S.W.3d 446, 450 (Mo. App. W.D. 2016).

Point III is denied. The elements of tortious interference are "(1) a contract or valid business expectancy; (2) defendant's knowledge of the contract or relationship; (3) a breach induced or caused by defendant's intentional interference; (4) absence of justification; and (5) damages." *Bishop & Assoc., LLC v. Ameren Corp.*, 520 S.W.3d 463, 472 (Mo. banc 2017). We find no error in the trial court's conclusion Appellant failed to prove causation or absence of justification.

We remand for the trial court to determine whether Respondent's motion for attorneys' fees on appeal should be granted. Section 407.025 provides courts have discretion to award "reasonable attorney's fees" in MMPA actions. If the trial court determines Respondent is entitled to attorneys' fees on appeal, we instruct the court to calculate and impose reasonable fees proportional to the time spent addressing issues involving Respondent's MMPA claim on appeal. Accordingly, we affirm the trial court's judgment.

Opinion by: Philip M. Hess, J.
Gary M. Gaertner, Jr., P.J. and Michael E. Gardner, J. concur.

Attorney for Appellant: Ted D. Disabato, and Erik C. Zorumski

Attorney for Respondent: Theodore D. Dearing and Daniel T. Batten

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.