In the Missouri Court of Appeals
Eastern District

DIVISION ONE

SUSAN BRANDS, Respondent, v. SAVVY SURROUNDING STYLE, LLC, Appellant.	)	No. ED112731 Filed: November 25, 2025

Appeal from the Circuit Court of St. Charles County
The Honorable W. Christopher McDonough, Judge

Savvy Surrounding Style, LLC (Designer) appeals from the trial court's judgment after a four-day jury trial finding in favor of Susan Brands (Client) on her breach of contract and Missouri Merchandising Practices Act (MMPA) claims. We reverse the MMPA claim, including the award of attorney fees, but affirm Client's breach of contract claim.

Background

This is a contract dispute between Client, a wealthy and admittedly difficult individual, and her fifth interior designer, who terminated their four-month business relationship in August 2018 resulting in years of litigation and this appeal after a four-day

jury trial in January 2024. Client was awarded $13,533.67 of the $20,888.51 she sought for MMPA violations pursuant to Section 407.005 et seq. RSMo (2017)[1] and breach of contract damages. Pursuant to Section 407.025.2 of the MMPA, the trial court subsequently exercised its discretion and awarded Client an additional $135,879.46 in attorney fees and costs.[2]

Client and Designer entered their first agreement for work in her living room in April 2018. The parties entered eight additional design and material contracts between May 2018 and July 2018. Designer charged a flat fee for each project to design a room and help Client select her furniture until the contract was completed. When she decided on furniture or other tangible items, Client paid a 50 percent deposit and the balance when the furniture was delivered.

According to the undisputed evidence, Designer performed the contracted work, to include meeting with Client in her home, taking measurements, creating drawings using computer aided design (CAD) software, and exploring furniture layouts. Client was happy and continued to expand the scope of Designer's work. Client worked with Designer's interior designer, Brett Clark (Clark), and a project manager, Therese Diedrich (Diedrich), who performed the scheduling and logistical work for the project.

On July 23, 2018, Client sent Designer an email and apologized for a miscommunication about room darkening drapes installed in the guest bedroom, which

[1] All further statutory references to are to RSMo (2017) unless otherwise indicated.
[2] Client's motion for attorney fees on appeal in the amount of $152,506.00 is denied.

were corrected at no cost to her. In her email, she added, "[A]side from the drapes needing a little tweaking, I'm happy with how the room turned out," and "I really appreciate all the progress you both have made so far." Client testified from April to July, Clark was doing a good job, Diedrich was "doing a great job," and she was grateful for all their work. Similarly, Designer's owner, Diane Mantovani (Owner), testified, "[I]t was a very typical project."

The project became anything but typical on August 6, 2018, when Client learned Diedrich was moving out of state and would be replaced by Ellen Lancia (Lancia) while "Mercury was in retrograde."[3] Client was very upset because she does not "start anything new" during this time, to include signing contracts, buying electronics, or scheduling doctor's appointments and she did not "want to start over with someone who was brought on board during a retrograde." Her demeanor changed "like a flip of a switch." Clark notified Owner because Client was so rude and hostile to Designer staff and vendors.

Owner called Client to try to salvage the relationship, but she could only listen to Client because "there was no way to get a word in edgewise." Client yelled at her, called her names, told her she was a thief and she "suck[s]" at her job. Finally, Owner told her "we were not going to work with her anymore." On August 15, Owner sent an email to Client apologizing she did not see the value in the work they produced, although Owner thought it was "on a great path and coming together very well." She ended the

[3] According to Client, this occurs when the planet Mercury is moving slowly and appears to be moving backwards.

relationship by stating, "With no confidence of successful completion, it is impossible to move forward."

In an effort to amicably end their relationship, Designer sent Client a binder of materials regarding the nine projects and offered to reduce the balance due on Client's $42,429.22 furniture contract of $21,214.61 by $3,805.74 for materials and services not completed. Client rejected the offer, paid the outstanding balance upon the receipt of the furniture, and then filed this lawsuit. She twice amended the petition to add claims of unjust enrichment, money had and received, and violation of the MMPA.[4]

In sum, Client paid Designer approximately $70,000 over their four-month relationship and numerous contracts. In her Third Amended Petition she sought to recoup damages on each contract claim as follows:

Date	Contract (Designs and Material)	Amount	Claim
April 24, 2018	Living Room Design Contract	$1,250.00	$1,250.00
May 11, 2018	Living Room Contracts: $4,500.00 Design $2,000.00 Construction Management Services	$6,500.00	$2,000.00
May 22, 2018	Dining Room and Guest Room Contract	$3,250.00	$3,250.00
May 31, 2018	Guest Room Materials	$3,856.34	$1,695.74
May 31, 2018	Drapery Panels	$5,736.35	$5,736.35
June 4, 2018	Furniture	$42,429.22	$3,309.00
June 7, 2018	Dog Bed and Rod Pocket	$330.32	$330.32
June 25, 2018	Office Design	$2,000.00	$2,000.00
June 25, 2018	Custom Pillows	$1,317.10	$1,317.10
July 20, 2018	Loft Sofa Contract	$2,637.71	$0.00
Total	Contracts and Claims	$69,307.04	$20,888.51

[4] Designer filed a counterclaim for defamation against Client based on reviews she posted on Designer's online business profiles. The jury found in favor of Designer for $1 on its counterclaim.

Designer moved for directed verdict at the close of Client's case, and renewed the motion at the close of all the evidence. The trial court denied the motions.

The jury found in favor of Client on the breach of contract and violation of the MMPA and awarded her $13,533.67 in undivided damages. Client filed a motion for costs and attorney fees and the trial court awarded her $135,879.46 pursuant to the MMPA. Designer filed a motion for judgment notwithstanding the verdict (JNOV), and, in the alternative, for new trial, which the trial court denied. This appeal follows.

Discussion

Designer raises four points on appeal. The first point alleges the trial court erred in denying its motion for judgment notwithstanding the verdict as to Client's MMPA claim because a "false promise" is not actionable absent evidence of a present intent not to perform contemporaneous to entering agreements and Client presented no such evidence to support a submissible case. We agree and because point one is dispositive as to points two and three, we decline to review them.

In the fourth point, Designer alleges the trial court erred in denying its motion for JNOV as to Client's breach of contract claim for the same reason – Client failed to present any evidence of damages regarding the actual value of the goods and services she admits she received to support a submissible breach of contract case. We disagree and affirm.

Standard of Review

In reviewing the denial of a motion for directed verdict or JNOV, we will affirm the trial court's denial so long as the plaintiff made a submissible case. *Cohen v. Express Fin. Srvs., Inc.*, 145 S.W.3d 857, 865 (Mo. App. W.D. 2004) (citing *Balke v. Cent. Mo. Elec. Coop.*, 966 S.W.2d 15, 20 (Mo. App. W.D. 1997)). "A submissible case is made if the plaintiff has presented substantial evidence for every fact essential to liability." *Kerr v. Vatterott Educ. Ctrs., Inc.*, 439 S.W.3d 802, 809 (Mo. App. W.D. 2014) (quoting *Kelly v. State Farm Mut. Auto Ins. Co.*, 218 S.W.3d 517, 520 (Mo. App. W.D. 2007)). We view the evidence in a light most favorable to the plaintiff, giving the plaintiff the benefit of all reasonable inferences that can be drawn from the evidence. *Sloan v. Bankers Life & Cas. Co.*, 1 S.W.3d 555, 564 (Mo. App. W.D. 1999). A directed verdict is appropriate if reasonable minds could only find in favor of the defendants and there was a "complete absence of probative fact to support the jury's conclusion." *Kerr*, 439 S.W.3d at 809 (internal quotation omitted).

Point I

Designer's first point alleges the trial court erred in denying its motion for JNOV as to Client's MMPA claim because Client did not present any evidence that Designer engaged in an unlawful act to support a submissible MMPA case. Designer alleges a "false promise" is not actionable absent evidence of a present intent not to perform at the time it was made, and Client presented no such evidence.[5]

[5] Client argues this issue is not preserved for appeal because Designer argued to the circuit court that Client did not make a submissible case because there was no evidence Designer engaged in

The MMPA permits a civil action to recover actual damages by "[a]ny person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of [an unlawful practice]." *Plubell v. Merck & Co., Inc.*, 289 S.W.3d 707, 711-12 (Mo. App. W.D. 2009) (quoting Section 407.025.1). The "unlawful practice" is defined as "[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce. . . ." *See* Section 407.020.1. To prevail, the plaintiff must show that she "(1) [purchas]ed merchandise from defendant; (2) for personal, family, or household purposes; and (3) suffered an ascertainable loss of money or property; (4) as a result of an act declared unlawful by section 407.020." *Chochorowski v. Home Depot U.S.A., Inc.*, 295 S.W.3d 194, 198 (Mo. App. E.D. 2009).

Client alleged the unlawful acts violating the MMPA were false promises made "in connection with" the various written contracts at issue in this case.[6] These terms are

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an unlawful act, and Client's MMPA claim "impermissibly overlapped with her breach of contract claim." She further argues Designer's primary authorities on appeal were not presented to the circuit court so it did not have the opportunity to consider them. We disagree. Simply adding authority, including 15 C.S.R. 60-9.060 and *Claxton v. Kum & Go, L.C.*, 2014 WL6685816, at *5 (W.D. Mo. Nov. 26, 2014) (App., p. 21), does not impermissibly expand the scope of Designer's theory such that the argument in point one is not preserved. *See Cent. Tr. Bank v. Graves*, 495 S.W.3d 797, 801 (Mo. App. W.D. 2016) (party may not advance a new theory on appeal or broaden the scope of their theory voiced at trial). We find Designer's argument throughout is based on the same theory presented at trial, and the issue is preserved for appeal.

[6] All Client's claims solely asserted false representation or promise other than the furniture contract, which included a claim Designer also **concealed**, **suppressed, and/or omitted the fact** Defendant failed to purchase new brand name genuine and authentic furniture as agreed upon by

not defined in the MMPA, and Client emphasizes the statute's broad drafting is to evade "overly meticulous definitions" and in order to supplement the definition of common law fraud by eliminating the need to prove intent to defraud or reliance. *See Schuchmann v. Air Servs. Heating & Air Conditioning, Inc.,* 199 S.W.3d 228, 233 (Mo. App. S.D. 2006) (internal citations omitted).

Courts generally recognize the MMPA "does not put forth a scienter requirement for civil liability: 'It is the defendant's conduct, not his intent, which determines whether a violation has occurred.'" *Plubell,* 289 S.W.3d at 713 (quoting *State ex rel. Webster v. Areaco Inv. Co.*, 756 S.W.2d 633, 635 (Mo App. E.D. 1988)). Equally important, we recognize the authority of the attorney general to promulgate "all rules necessary to the administration and enforcement" to define the scope and meaning of the MMPA. *Huch v. Charter Commc'ns, Inc.*, 290 S.W.3d 721, 724-25 (Mo. banc 2009); *Chochorowski v. Home Depot U.S.A.*, 404 S.W.3d 220, 226 (Mo. banc 2013) (citing Section 407.145). Critically, these rules define the "settled meanings of certain terms used in the enforcement of the Act and . . . notice to the public of their application." *See* 15 CSR 60-9.060 and note.[7] Specifically, 15 CSR 60-9.060 defines "false promise" as "any statement or representation which is false or misleading as to the maker's **intention or ability** to

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the parties." (emphasis added). The record does not reflect Client presented any evidence on this issue other than admitting she had no basis to make the allegation; thus, we only consider her false representation or promise claims.

[7] All administrative rule citations are to their current versions (2025) in the Missouri Code of State Regulations, which were also in effect in 2018.

perform a promise, or likelihood the promise will be performed." *See* 15 CSR 60-9.060 and note (emphasis added).

We deem this a case of first impression because neither party, nor our own research, discovered a Missouri state case interpreting this false promise regulation in a civil claim. For example, in *Plubell*, unlike this matter, scienter was not only undisputed because of "Merck's knowledge of Vioxx's risks" but it was not required for the unlawful acts at issue in the MMPA class action. The court compared the MMPA's "guiding regulations [which] specifically exclude the defendant's knowledge as an element" to other unlawful acts that do impose scienter such as false promises in 15 CSR 60-9.060. *Plubell*, 289 S.W.3d at 713 n.4; *see also Duncan v. Savannah, LLC*, 637 S.W.3d 633, 643 (Mo. App. E.D. 2021) (looking to the regulations to define and distinguish misrepresentation and omission of material fact).

We find *Claxton v. Kum & Go, L.C.*, helpful in deciding this case of first impression. 2014 WL6685816, at *5 (W.D. Mo. Nov. 26, 2014). There, the federal court in the Western District of Missouri expressly acknowledged that "[c]ertain . . . MMPA claims, such as . . . false promises, and omissions of material fact do involve the intent of the person making the false representation." *Id*. (internal citations omitted). This is not binding precedent on our state courts but it is certainly persuasive authority because, similar to *Plubell*, the court examined the clear difference between false promises and other enumerated unlawful acts, such as deception or misrepresentation, which "do[] not require the plaintiff to prove any type of culpable mental state such as intent to defraud, knowledge of falsity, recklessness, or negligence." *Claxton*, 2014 WL6685816, at *5.

Designer argues the element of intent in a false promises claim is required because the general assembly did not intend to *supplant* common law, but merely *supplement* it "in an attempt to preserve fundamental honesty, fair play and right dealings in public transactions." *Chochorowski*, 404 S.W.3d at 226 (emphasis added) (internal quotations omitted). Without the element of intent in a false promises claim, every breach in contract law would be transformed into an unlawful act under the MMPA.

We find *Lane House Construction, Inc. v. Triplett*, instructive on this issue. 533 S.W.3d 801 (Mo. App. E.D. 2017). There, our court reversed a directed verdict in favor of a construction company on an MMPA claim because there was sufficient evidence from which a reasonable juror could infer *deception*, as opposed to *false promises* in this matter. *Id.* at 806 (emphasis added). The definition for deception in the attorney general's regulations specifically excludes intent as an element. 15 CSR 60-9.020(1)-(2). This is contrary to the "false promises," definition which requires evidence the representation was false or misleading as to the maker's intent or ability to perform when making the promise. 15 CSR 60-9.060. The *Lane House Construction* court explained, "[o]ur decision here is not meant to suggest that every breach of contract or any deviation from any representation by a contractor is actionable under the MMPA." 533 S.W.3d at 806. Rather, it based its decision on the "unrestricted, all-encompassing and exceedingly broad" language of the MMPA allegations at issue on appeal and the court's presumption in favor of reversing the grant of a directed verdict, given the evidence before the jury upon which it could infer *deception* (as opposed to a *false promise*) under the facts of the case. *Id*. (emphasis added).

Client argues she was not obligated to establish intent, but even if she was, there was competent evidence in the record for the jury to find Designer's intention not to perform at the time the contracts were executed. She asserts Designer's mental state can be inferred from the circumstantial evidence and need not be directly proven, relying on *Doe 122 v. Marianist Province of the United States*, 620 S.W.3d 73, 82 (Mo. banc 2021) ("Direct proof of the required mental state is seldom available, and such intent is usually inferred from circumstantial evidence."). Client asserts Designer's interpretation that the unlawful act must have occurred at the time the parties executed the agreement is incorrect.

We disagree with Client, especially in light of the statute's plain language prohibiting the unlawful acts "committed before, during or after the sale[.]" Section 407.020.1; *see also Schuchmann*, 199 S.W.3d at 232 (intent is not an element of an MMPA case where plaintiff did not prove defendant intended from the beginning to default at some time on its promise of a lifetime warranty).[8] Accordingly, we hold the regulation for "false promise" requires evidence the representation was false or misleading as to the maker's intent or ability to perform before, during, or after entering the contracts. 15 CSR 60-9.060.

We find Client stretches an inference too far because there must be some evidence from which one can actually be drawn. She presented no evidence Designer made any

[8] Client mistakenly relies on *Ashcroft v. Marketing Unlimited of America, Inc.*, 613 S.W.2d 440 (Mo. App. E.D. 1981), as a similar "false promises" case. However, the CSR regulations requiring intent were not promulgated until 1994.

statements or representations to mislead her before or during the formation of all nine contracts or when Designer terminated their business relationship. Instead, Designer's representations reflect an intention to complete the work until the sudden change in the relationship occurred. Specifically, evidence was presented Designer and Client formed a working relationship and contracted for an initial design in April 2018. Designer produced concepts, found contractors and vendors, and met with and assisted Client in selecting furniture and other home décor such as pillows and curtains. Purchases for items were made through Designer at agreed-upon prices. Client seemed happy in the results and continued to expand Designer's scope of work until Designer replaced Diedrich when "Mercury was in retrograde," which changed her attitude toward Designer "like a flip of a switch."

Designer's representations of its intentions continued to ring true as Owner decided to breach the contracts and clearly communicated the decision to Client. Designer acknowledged the breach by compiling a binder of Client's project materials and offered a refund in an attempt to amicably resolve issues caused by the decision to breach which Client rejected. Instead Client opted to file suit against Designer.

Client's attempt to demonstrate Designer's intent not to fulfill its promises to Client is misguided. Her evidence supports a breach of contract, as Designer failed to complete the contracts. The fact Designer offered clients "concept to completion" for a flat fee "except with [Client]" does not raise an inference that Designer did not intend or have the ability to fulfill its contractual obligations at any point until termination of the relationship. In fact, the undisputed evidence demonstrated Designer's attempt to

complete the contracts to Client's satisfaction and was doing so until the incident when "Mercury was in retrograde," causing Designer to breach the contract and send the binder detailing all pending projects and seek partial reimbursement for services provided but not completed.

Even viewing the evidence in the light most favorable to Client and giving her the benefit of all reasonable inferences, we find no evidence to support Designer's intent not to perform or its inability to perform the promises or contracts when they were made, or during their relationship, sufficient to support an MMPA claim for false promises. Given this dearth of evidence regarding intent, the trial court should have directed a verdict in Designer's favor on Client's MMPA claim. Designer's first point is granted. The award of attorney fees in the amount of $135,879.46 for the MMPA claim is also reversed. We need not reach points two and three because point one is dispositive.

Point IV

In its fourth point, Designer alleges the trial court erred in denying its motion for JNOV as to Client's breach of contract claim because Client did not present evidence of the actual value of the goods and services she admits she received. We disagree because the jury heard days of testimony and evidence, to include Owner's own valuation of damages of $3,805.74 she submitted to Client in the project binder, sufficient to determine the actual value of the goods and services received.

The appropriate measure of damages is determined by the particular facts and circumstances of each case. *Wasson v. Schubert*, 964 S.W.2d 520, 525 (Mo. App. W.D. 1998) (internal citations omitted). Homeowners are qualified to testify about their

damages as their opinions are admissible and probative, even if it is to some degree based on indirect knowledge or hearsay. *Id*. A lack of expertise on behalf of the homeowner testifying to the value of her property (or item of personalty) goes to the weight of the valuation rather than the competency of her testimony. *Casada v. Hamby Excavating Co., Inc.*, 575 S.W.2d 851, 856 (Mo. App. 1978) (quoting *Keeton v. Sloan's Moving and Storage Company*, 282 S.W.2d 194, 199(11) (Mo. App. 1955)). The jury is the sole judge of the credibility of witnesses and the weight and value of their testimony and may believe or disbelieve all, some, or none of that testimony. *Keveney v. Missouri Military Acad.*, 304 S.W.3d 98, 105 (Mo. banc 2010).

As discussed in the standard of review *supra*, a submissible case is made to overcome a motion for directed verdict if the plaintiff presented "substantial evidence for every fact essential to liability." *Kelly v. State Farm Mut. Auto. Ins. Co.*, 218 S.W.3d 517, 520 (Mo. App. W.D. 2007) (quoting *Blue v. Harrah's N. Kansas City, L.L.C.*, 170 S.W.3d 466, 472 (Mo. App. W.D. 2005)). "The measure of damages in a breach of contract case is the benefit of the bargain[, and] [c]ompensation is the value of the performance of the contract." *Arcese v. Daniel Schmitt & Co.*, 504 S.W.3d 772, 782-83 (Mo. App. E.D. 2016) (quoting *Kincaid Enters., Inc. v. Porter*, 812 S.W.2d 892, 900 (Mo. App. W.D. 1991)).

We find the jury had a plethora of evidence to determine Client's damages following the admitted breach of the incomplete contracts starting with Designer's binder proposing Client's damages in the amount of $3,805.74. Client rejected Designer's valuation and filed suit claiming damages in excess of $20,000. After hearing all the

evidence, the jury did not agree with either party and valued damages in the amount of $13,567.33, which was well within its discretion to believe any, all or none of the evidence. *Keveney*, 304 S.W.3d at 105.

Therefore, the benefit-of-the-bargain method of determining damages allowed the jury to evaluate the evidence, both tangible and intangible, and base Client's damages on the sufficient evidence presented. The trial court did not err in denying Designer's motion for JNOV as to Client's breach of contract claim based on the evidence of damages supporting a submissible claim. Designer's fourth point is denied.

Conclusion

The judgment of the trial court is reversed regarding the MMPA claim, to include the award of attorney fees, but we affirm the damages award based on Client's breach of contract claim.



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Lisa P. Page, Judge

Robert M. Clayton III, Presiding Judge and
Michael E. Gardner, Judge concur.