

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STEPHEN A. OLIVER, ET AL.,

Appellant-Respondents

v.

FORD MOTOR CREDIT COMPANY, LLC, ET AL.,

Respondent-Appellants

SHERI GERSTNER,

Respondent

DOCKET NUMBER WD75585 Consolidated with WD75619

DATE: April 29, 2014

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Jack Richard Grate, Judge

Appellate Judges:

Division Three
Anthony Rex Gabbert, P.J., Victor C. Howard, Thomas H. Newton, JJ.

Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STEPHEN A. OLIVER, ET AL.,

Appellant-Respondents,

v.

**FORD MOTOR CREDIT COMPANY,
LLC, ET AL.,**

Respondent-Appellants,

SHERI GERSTNER,

Respondent.

WD75585 Consolidated with WD75619

Jackson County

Before Division Three Judges: Anthony Rex Gabbert, P.J., Victor C. Howard, Thomas H. Newton, JJ.

Stephen A. Oliver, Steve Oliver Imports, LLC, and Oliver Family Partnership (“Oliver”) appeals the circuit court’s judgment that Oliver breached his contract with Ford Motor Credit Company (“FMCC”). Oliver argues that the trial court erred in: (1) granting FMCC’s motion for directed verdict on his fraud by silence claim; (2) rejecting his proposed verdict directors and refusing to submit any instruction on fraud by silence and negligent misrepresentation by silence; (3) granting FMCC’s motion for directed verdict on his tortious interference with business expectancy claim; (4) overruling his objections and submitting FMCC’s counterclaims in a single MAI 26.02 verdict directing instruction; (5) entering a directed verdict in favor of FMCC on the issue of his expectancy damages and giving a withdrawal instruction that the jury must disregard such evidence; (6) overruling his objections to FMCC’s introduction of extensive evidence of his hunting experiences, taxidermy hobby, and game farm operation; and (7) denying his request that the jury be advised of his hospitalization with a serious ailment during the course of the trial. Additionally, FMCC filed a cross-appeal arguing that the circuit court erred in denying its motion to alter or amend the judgment for entry of FMCC’s attorneys’ fees, costs and expenses, and interest.

AFFIRMED

Division Three holds:

The circuit court did not err in (1) granting FMCC’s motion for directed verdict on Oliver’s fraud by silence claim because under the facts of this case and following *Hess*, Oliver’s fraudulent misrepresentation and fraud by silence claims are not separate torts; (2) rejecting

Oliver's proposed verdict directors and refusing to submit any instruction on his fraudulent and negligent misrepresentation by silence claims because it would have been inappropriate to give verdict directors after properly granting directed verdicts on those claims; (3) granting FMCC's motion for directed verdict on Oliver's tortious interference with business expectancy claim because he failed to bring the claim against a third party; (4) overruling his objections and submitting FMCC's breach of contract counterclaims in a single MAI 26.02 verdict director because the parties had an agreement that if any of the agreements were in breach than all of the agreements were in breach and the terms of the contract were not in dispute; (5) entering a directed verdict on the issue of Oliver's expectancy damages and giving a withdrawal instruction because Oliver failed to elect between inconsistent damages and any evidence regarding such expectancy damages may have mislead the jury in deciding the amount of damages; (6) overruling Oliver's objections to FMCC's introduction of evidence regarding his hunting experiences, taxidermy hobby, and game farm operation because such evidence went to impeach Oliver's claim that he was broke; and (7) denying Oliver's request that the jury be advised that he was hospitalized during a part of the trial because the court previously explained to the jury that Oliver was absent in order to address his medical issues and his testimony on the matter may have elicited sympathy for Oliver. Furthermore, the circuit court did not err in denying FMCC's motion to alter or amend the judgment for entry of attorneys' fees, costs and expenses, and interest because FMCC failed to argue and present evidence that FMCC was entitled to such an award under the terms of its contract with Oliver.

Opinion by Anthony Rex Gabbert, Judge

Date: April 29, 2014

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