

APPENDIX

Deposition Testimony	Correction
<p>142:4-14.</p> <p>Q. And it's your understanding that after that one-year time the seller no longer has an obligation to indemnify the defendant and hold the buyer harmless for any damages caused by any breach—</p> <p>Ms. Smiley: Object to form.</p> <p>Q:—after that one year, correct?</p> <p>Ms. Smiley: Sorry. I thought you were finished. Object to the form.</p> <p>A. Yes</p>	<p>A. No, it's my understanding that the seller has an obligation indefinitely to indemnify and to hold the buyer harmless for any damages caused by any breach of the seller that may occur within the first twelve month period, starting from the date of contract. At this point I was following Mr. Fallucca and his partial and limited reading section 11.1. My answer is very different based upon the entire reading of section 11.1.</p>
<p>241:21-22.</p> <p>Q. Is this your residence at the lake?</p> <p>A. It's investment property.</p>	<p>A. Yes, my wife and I personally and jointly owned this property. It was our residence at the Lake of the Ozarks. Both our names appeared on the recorded deed and the mortgage. We both shared all expenses of this residence. Mr. Fallucca and I were discussing my investment properties for quite a while prior to this question about the 415 Regency Cove property and I inappropriately grouped this property in with the conversation.</p>
<p>241:23 to 242:3.</p> <p>Q. Investment property. Did you ever have a home at the Lake of the Ozarks?</p> <p>A. I've had the pleasure of staying at some of the properties I owned at the lake but they weren't considered residence. They've always been for sale.</p>	<p>A. Yes, my wife and I personally and jointly owned 415 Regency Cove. Prior to purchasing the house, we stayed at investment properties that I owned at the Lake of the Ozarks. My investment properties were always for sale. Our home at Regency was not "always" for sale and it was not our original intention to sell it. Once we realized that we needed to sell our home, we distanced ourselves from the ownership and considered it an investment property. I apologize I didn't go into detail, it was a painful situation for us, especially my wife. It was our first house that we ever bought together and we had long term plans that included the house.</p>

<p>242:4-6.</p> <p>Q. They've always been for sale. Okay. Did it sell?</p> <p>A. Yes.</p>	<p>A. Our home at the Lake was not always for sale. My investment properties were always for sale. It is painful and embarrassing to discuss it.</p>
<p>242:9-13.</p> <p>Q. And what was the estimated taxable – what was the taxable gain?</p> <p>A. I would say close to a hundred. I don't know. Those figures aren't -- they haven't been calculated by my accountant or I.</p>	<p>A. In thinking about it and figuring out how my wife and I came out financially on the sale of our home, we lost approximately sixty thousand dollars. At the time of Mr. Fallucca's question, I stated I hadn't calculated any figures.</p>
<p>247:3-7.</p> <p>Q. Did you have control of the inventory in 2007 with respect to Odessa Chrysler Jeep Dodge also?</p> <p>A. Yes</p> <p>Ms. Smiley: Object to the form.</p>	<p>A. Yes, in 2007 I had control of my 2007 year model inventory. However, I didn't have control of the approximately seventy 2006 year models that were left over and still had in Odessa's inventory. I didn't have time to finish my answer before my attorney objected to the question and the defendant's attorney moved forward with the next question.</p>
<p>260:3-13.</p> <p>Q. Did he work for you in any capacity prior to November 14th, 2005?</p> <p>A. Yes.</p> <p>Q. Okay. In what role?</p> <p>A. I would say approximately two to three weeks prior to that date I officially hired him. So his start date was not November 14th. It would have been two or three weeks prior.</p> <p>Q. So you officially hired him sometime the end of October?</p> <p>A. Yes.</p>	<p>A. Nathan Parker was not officially employed by Odessa Ford, LLC and/or me prior to the closing on November 14th, 2005. I only had a verbal commitment from him prior to closing and I considered him to be part of the future management of Odessa Ford and Odessa Chrysler once the sales closed. Clarify my answer.</p>

<p>290:23 to 291:8.</p> <p>Q. Do you know whether Odessa Ford, LLC since September 12, 2005 has any cross-collateralization or guarantying of any loans with any of your other entities?</p> <p>A. No.</p> <p>Q. You don't know?</p> <p>A. They do not.</p> <p>Q. Are you sure?</p> <p>A. No. The only loan they have is the floor plan and the only other guaranty on it is myself.</p>	<p>A. Yes. Odessa Ford, LLC has guaranteed other loans with other entities and/or myself. I personally have several vehicles I use to work from daily and those vehicle liens are guaranteed by Odessa Ford, LLC and myself. I didn't think about these smaller loans.</p>
<p>291:9-12.</p> <p>Q. Have you ever used Odessa Ford or any of its assets as collateral for any other loan for any of – any of your other entities?</p> <p>A. No.</p>	<p>A. Yes. I've used the assets of Odessa Ford, LLC as collateral. My bank, First National Bank of Missouri, has an Assignment of Rents of Odessa Ford, LLC attached to the Odessa dealership and Odessa parking lot that Monopoly Acquisitions, LLC leases to Odessa Ford, LLC.</p>
<p>303:2-9.</p> <p>Q. Well, the dealerships have long-term debt, don't they?</p> <p>A. Not unless the actual dealership isn't the tenant of the property and owns the property.</p> <p>Q. Do the Odessas have long-term debt?</p> <p>A. No.</p> <p>Q. None whatsoever?</p> <p>A. No.</p>	<p>A. No, the Odessa dealerships do not have any outside long term debt, other than the Odessa dealerships have a long term debt to Monopoly Acquisitions, LLC and myself. Clarify answer.</p>

<p>307:7-14.</p> <p>Q. Have any of your other entities ever borrowed money from the Odessa dealerships?</p> <p>A. I don't believe so.</p> <p>Q. Pardon me?</p> <p>A. I don't --- no, absolutely not.</p> <p>Q. So as you sit here today you're saying no?</p> <p>A. No.</p>	<p>A. Monopoly Acquisitions LLC and myself have loaned the Odessa dealerships several million dollars since 2005. I have on occasion had Odessa pay Monopoly and/or myself back for the loans to the Odessa dealerships. I do not consider this borrowing from Odessa, but consider it repayment. Clarify answer.</p>
<p>362:2 to 363:3.</p> <p>Q. Let me go back if I can, please, to Exhibit Number 42. Have you seen that document before?</p> <p>A. I don't recall seeing this document before.</p> <p>Q. What is it?</p> <p>A. It appears to be a spreadsheet.</p> <p>Q. You don't know what it is?</p> <p>A. It appears to be a spreadsheet. It looks like something that I would -- somebody has analyzed by historical numbers. So it was probably something that was produced by Donna Smith. I can't honestly tell you if I've seen it before.</p> <p>Q. It's not something you prepared?</p> <p>A. No.</p> <p>Q. And it's not something that you have any personal knowledge about?</p> <p>Ms. Smiley: Object to the form.</p> <p>A. Since the numbers are about me, I believe I would.</p>	<p>A. Yes, I have personal knowledge of this exhibit. I provided Donna Smith all the underlying facts and I worked with her as she created this document. Clarify Answer.</p>

<p>Q. You didn't prepare the document, did you?</p> <p>A. No.</p> <p>Q. Okay. And you don't recall seeing it before today's date, correct?</p> <p>A. I don't recall.</p>	
<p>366:16-24.</p> <p>Q. Did you speak to anyone from Chrysler after you received that document?</p> <p>A. No.</p> <p>Q. Did you do anything to verify the accuracy of that document?</p> <p>A. No.</p> <p>Q. So you don't know whether that document is accurate or not, do you?</p> <p>A. No.</p>	<p>A. Yes, I asked Angie Frye to verify the accuracy of the document. She said she checked the document against our records and everything matched. I misunderstood Mr. Fallucca's original question.</p> <p>A. Yes, I believe the document to be accurate. Again, I misunderstood Mr. Fallucca's original question.</p>
<p>387:13-22.</p> <p>Q. Did you ever represent to Ford Motor Company that the Heritage dealership was doing very little business?</p> <p>A. No.</p> <p>Q. Pardon me?</p> <p>A. No.</p> <p>Q. Did you ever represent to Ford Motor Company that the Heritage dealership was doing nothing to increase its business?</p> <p>A. No.</p>	<p>A. Yes. I did represent to Ford Motor Company that Heritage was doing to [sic] very little business. While reviewing documents during my deposition, I remembered I had made that statement.</p> <p>A. Yes. I did represent to Ford Motor Company that Heritage was doing nothing to increase its business. Again, while reviewing documents during my deposition, I remembered I had made that statement.</p>

<p>433:9 to 434:5.</p> <p>Q. Did Nathan Parker as you put it go after Ford?</p> <p>A. Yes, he said he did. He said he took calls. He didn't say who. He'd be happy to tell you in deposition.</p> <p>Q. I want you to tell me what he told you.</p> <p>A. He said he did inquire. One, we were unable to find out because it was privileged information to a separate company. Even though we had bought it Ford did not recognize us as having any – no more – no greater than asking information of another Ford dealer.</p> <p>Then I asked is there any other way to look through our records and he said no, we cannot. We do not have the dealer access codes for Heritage and they most likely have been dissolved or voided by them.</p> <p>Q. Did he tell you anything else about his contacts with Ford Motor Company?</p> <p>A. No.</p> <p>Q. That's all you can recall?</p> <p>A. Yes.</p>	<p>A. I remember Nathan Parker telling me that he had talked with both the Ford representative, Rachelle Kennedy and the Chrysler representative, Tim Eastland. He said that both representatives were aware of the excess inventory that Heritage had ordered, but neither knew as to why the excess inventory had been ordered. In an effort to answer the defendant's question completely, I remembered these details and volunteer the details to be added to my testimony.</p>
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<p>436:21 to 437:5.</p> <p>Q. Can you show me in the asset purchase agreement where it indicates that Odessa Ford or Odessa Chrysler is obligated to accept all open orders of Ford or Chrysler vehicles?</p> <p>Ms. Smiley: Object to form.</p> <p>Q. It's the next document. Here it is, Exhibit 16.</p> <p>A. I don't see anywhere in the document where it specifically points out that I would assume any open orders.</p>	<p>A. As stated in testimony, "I don't see anywhere in the document where it specially points out that I would assume any open orders." I believe it's important to mention that Mr. Fallucca's opening question about the documents, was that he was asking about "incoming order – orders of vehicles" and I answered his question by stating "yes" and then I answered again by stating that the incoming orders were referenced in the "the buy-sell." Mr. Fallucca asked me show me where in the document it indicates "all open orders." Mr. Fallucca changed the direction of the question by switching from "incoming orders – orders of vehicles" to "all open orders." There is a difference between the two terms. In an effort to answer Mr. Fallucca's original question, yes I believe that Odessa Ford and Odessa Chrysler were obligated to accept all incoming orders of Heritage's. Section 6.2 states that the Buyer shall not have a material breach with the franchise. Furthermore, in Section 8.3, it states that "Buyer agrees to perform Seller's preparation and delivery duties and obligations under and with respect to each unfilled New Motor Vehicle order assigned to Buyer by Seller" an "unfilled order" is a vehicle that was ordered by the dealer from the franchise and that has not been received yet by the dealer.</p> <p>Then Mr. Fallucca continued with the next question and asked if I was aware of any other documents that had any requirement of the buyer assuming and paying for "unfulfilled orders of vehicles." This being the third and different term used in his questions, I asked him did he mean open orders? He answered yes. At this point, I was very confused because he'd referenced at least three different terms.</p>
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<p>521:4-12.</p> <p>Q. (By Mr. Fallucca) Okay. When were all of these what you considered new surplus vehicles liquidated by Odessa Ford and Chrysler?</p> <p>Ms. Smiley: Object to the form.</p> <p>A. When?</p> <p>Q. Yes.</p> <p>A. When was the last one we sold?</p> <p>Q. Sure.</p> <p>A. I believe it was in July of '07.</p>	<p>A. Correction, the last new 2006 vehicle that was considered part of the surplus inventory was a 2006 Ford Ranger with the VIN 1FTYR44U46PA46766 and it was sold on October 12, 2007 for a loss of \$4,695.41. I was able to confirm this after reviewing Odessa's general ledger and/or my documents that I had brought with me to my Feb. 27, 2008 deposition.</p>
<p>521:13-16.</p> <p>Q. Okay. And how many new cars – new surplus vehicles as you call them were in your inventory in July of 2007?</p> <p>A. I believe one.</p>	<p>A. Correction, the Odessa dealerships still had three left over from the surplus vehicles. Again, I was able to confirm this after reviewing Odessa's general ledger and my document that I had brought with me to my Feb. 27, 2008 deposition.</p>
<p>521:17-21.</p> <p>Q. Do you know for a fact?</p> <p>A. Yes.</p> <p>Q. Which one?</p> <p>A. There was one left. It was a 2006 Ranger, Ford Ranger.</p>	<p>A. There were three surplus vehicles left in Odessa's inventory in July 2007. All three vehicles being 2006 year models. A Ford Explorer with the VIN of 1FMEU53K17UA01399, a Ford light truck with the VIN of 1FTRF145X6NA61840, and a Ford Ranger with a VIN of 1FTYR44U46PA46766. Likewise, I was able to confirm this after reviewing Odessa's general ledger and/or the documents previously presented to the defendants.</p>
<p>524:1-4.</p> <p>Q. Okay. How many new car what you consider surplus vehicles were in the inventory of Odessa on January 1st of 2007?</p> <p>A. 68</p>	<p>A. There were sixty eight 2006 year models in inventory on Jan. 1st, 2007. Of that total, thirty four were 2006 surplus vehicles. I want to clarify my answer after looking at the general ledger and/or the documents previously presented to the defendants.</p>

<p>593:9-14.</p> <p>Q. Okay. And then you state to Mr. Bath our intentions are to expand the existing new car and new truck inventory, the showroom, the parts department, and the service center for the Ford dealership. Did you represent that to Mr. Bath?</p> <p>A. Yes.</p>	<p>A. Yes, I stated to Mr. Baack our intentions of expanding. Our intentions of expanding had no definite time frame and would ONLY occur at some time after the closing of the buy/sell. Furthermore, our intentions were only to occur if Odessa had increased sales of new vehicles. We did not increase new vehicles sales, they actually were decreased. As it stands, the only expanding of new vehicle inventory was done, was prior to the closing the buy/sell and by Heritage Motors. Our original intensions (sic) still stand today as it is represented in our new vehicle levels. With the lower new vehicle sales, the Odessa dealerships have less than two million dollars in new vehicle inventory as of today. I don't believe Mr. Fallucca presented the entire document with its true content.</p>
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