

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES J. HASTINGS, III,

Plaintiff-Appellee,

v

JENNIFER SCELZO,

Defendant-Appellant.

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UNPUBLISHED  
October 23, 2012

No. 304303  
Gogebic Circuit Court  
LC No. 2010-000083-CZ

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

MEMORANDUM.

Defendant appeals by right from a judgment awarding plaintiff \$48,360. We affirm.

This case arises out of a property dispute between two former cohabitating, unmarried partners. Plaintiff sued defendant, alleging a breach of contract regarding the purchase of real property referred to as the “farm,” and conversion of a collection of firearms. An advisory jury was empanelled. Following trial, the jury awarded plaintiff \$191,535 for defendant’s breach of contract and \$96,655 for defendant’s conversion of plaintiff’s property. Subsequently, the circuit court ordered defendant to convey the farm property to plaintiff. The court concluded that plaintiff had “fully performed his part [of the agreement] and has paid to the Defendant the full amount of the purchase money (except the sum of \$48,465 which the plaintiff will satisfy from a separate judgment against the Defendant.”

Defendant argues that the advisory jury was improperly instructed because the term “gun collection” was not defined within the instructions given on the claim of conversion. Defendant admits that she did not raise a challenge to the court’s instructions when given. When reviewing a challenge to a portion of a court’s jury instructions, we look to the “instructions as a whole to determine whether they adequately present the theories of the parties and the applicable law.” *Alpha Capital Mgt, Inc v Rentenbach*, 287 Mich App 589, 626-627; 792 NW2d 344 (2010).

In the context of the evidence presented, the jury instructions adequately presented the issues. The Bureau of Alcohol, Tobacco, and Firearms (ATF) found defendant in Illinois with a substantial portion of plaintiff’s gun collection. The firearms were brought to the Ironwood Safety Department, and plaintiff and three ATF agents went through the serial numbers to determine what was missing from plaintiff’s inventory. Plaintiff introduced into evidence an itemized list of missing weapons and a “conservative” estimate of their values. Plaintiff’s

estimate of the allegedly converted firearms was \$96,655. These facts of record operationally define the term “gun collection.”

Further, as the ultimate decision maker in this case, the trial court could have disregarded the advisory jury’s recommendation. Defendant cannot show that she was denied substantial justice or that the trial court’s jury instructions constituted error, much less plain error affecting substantial rights.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Joel P. Hoekstra