



## A. Procedural Background

This case has been in litigation since 2000. Peeled to its core, this is a dispute between the buyer, Feather River, and the sellers, Illinois Transit and its president, Leslie Kasten, over the purchase of a historic passenger railcar called the Silver Hostel. After the execution of the written sales agreement and after Feather River tendered full payment of the agreed purchase price and obtained legal title to the Silver Hostel, but before Feather River came into possession of the Silver Hostel, a crew from Illinois Transit, at the direction of Kasten and without the knowledge or consent of Feather River, removed the existing wheel assemblies (referred to as the "Amtrak trucks") from under the Silver Hostel car and substituted replacement trucks.

Feather River filed a complaint in the circuit court of Madison County against Kasten and Illinois Transit and alleged a breach of contract, conversion, fraudulent inducement, and fraud. Following a period for discovery, Feather River filed a motion for a summary judgment on all the theories of liability. The trial court granted the motion and entered a summary judgment in favor of Feather River. The summary judgment was based on the written sales agreement and certain facts that were deemed admitted because Kasten and Illinois Transit failed to file timely responses to a series of requests to admit. Following the entry of a summary judgment on liability on all the counts, Feather River elected to seek compensatory damages for conversion and exemplary damages for conversion, fraudulent inducement, and fraud. Feather River stated that it would not seek a specific award of damages for the contract breach where those damages would duplicate the damages for conversion. The trial court entered a judgment awarding \$75,284.31 in actual damages, including attorney fees, and \$750,000 in punitive damages.

In our decision in the initial appeal, we affirmed the entry of the summary judgment with respect to the defendants' liability, but we reversed the awards for compensatory and

punitive damages. *Feather River R. Society v. Kasten*, 359 Ill. App. 3d 1222, 904 N.E.2d 1252 (2005) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)). We determined that there were no genuine issues of fact with respect to the defendants' liability for conversion, fraudulent inducement, and fraud, that the plaintiff was entitled to a judgment as a matter of law on those counts, that there was no disputed question of fact regarding the existence of actual damages for conversion, and that the plaintiff, not the defendants, was entitled to a judgment as a matter of law on that issue. *Feather River R. Society*, 359 Ill. App. 3d 1222, 904 N.E.2d 1252. With respect to the damages, we determined that the defendants had not admitted to the actual value of the converted Amtrak trucks and that there remained a genuine issue of fact with respect to that issue. We also found that there were genuine issues regarding the propriety and amount of punitive damages. We reversed the damages awards and remanded the case to the circuit court for a determination of the fair value of the converted trucks and the propriety and amount of punitive damages. *Feather River R. Society*, 359 Ill. App. 3d 1222, 904 N.E.2d 1252.

What should have been a straightforward hearing on damages quickly morphed into another round of protracted litigation. Eventually, a bench trial was held. A summary of the pertinent testimony and evidence presented during that trial follows. But we begin by recounting some of the factual history to provide a context for the description of the evidence offered at the trial.

#### B. Factual History

Feather River is a not-for-profit corporation located in Portola, California, that acquires and restores historic railroad equipment and displays renovated equipment in its railroad museum. Illinois Transit is an Illinois corporation that deals in railroad rolling stock, including historic passenger cars. Leslie Kasten is the president of Illinois Transit.

Feather River initially contacted Leslie Kasten to express interest in acquiring a

passenger railcar, called the Silver Hostel, from Illinois Transit. In November 1998, Eugene Vicknair, Feather River's corporate secretary and a member of its board of directors, and Doug Morgan, a member of Feather River, traveled to Illinois Transit's facility in Madison, Illinois, to inspect the Silver Hostel.

On the day of the inspection, the Silver Hostel car was sitting on Amtrak trucks. Amtrak trucks are so named because they have been used in Amtrak rail service. A set of trucks contains two axles and four wheels, and there are two sets of trucks under a railroad car. The Amtrak trucks under the Silver Hostel were not original to that car.

At no time prior to, during, or upon the completion of the inspection did Kasten or anyone else from Illinois Transit inform Morgan and Vicknair that the Amtrak trucks had been damaged in a derailment. Prior to the execution of the agreement, Kasten and Illinois Transit had represented that the Amtrak trucks under the Silver Hostel were in suitable condition, or would be put in that condition, to permit the transportation of the car by rail to Portola, California.

The written sales agreement was signed by the president of Feather River on May 11, 1999, and by Kasten, the president of Illinois Transit, on May 12, 1999. According to the terms of the written agreement, Feather River agreed to purchase the Silver Hostel from Kasten for \$50,000, that the sale would proceed provided that the car "has been accepted for movement on its own wheels by the interchange carrier," and that legal title would pass upon the endorsement of the agreement and payment in full. The agreement also provided as follows:

- "7. Receipt in Good Order: The Car is sold F.O.B. Madison, IL where Buyer agrees that the Car has been inspected prior to the endorsement of this agreement. Buyer is therefore aware of the condition of the car and accepts its condition therein without exception. Seller verifies that the Car[']s condition

when accepted for movement by the Union Pacific will materially remain unchanged except for such other repairs or restoration authorized by Buyer and agreed to under separate work order and contract with Seller."

On May 12, 1999, Feather River tendered a \$50,000 cashier's check to Illinois Transit and at that time acquired the legal title to the Silver Hostel. The Silver Hostel remained at Illinois Transit's facility in Madison, Illinois, for several months after the sale.

In October 1999, Morgan contacted Kasten and indicated that he was going to take delivery of the Silver Hostel the next week. Acting without the knowledge or the consent of Feather River, Kasten assembled a crew to remove the Amtrak trucks from under the Silver Hostel and to substitute replacement trucks.

### C. The Bench Trial

Rod McClure, the current president of Feather River, testified in the plaintiff's case. McClure was not the president of Feather River when the sales agreement was executed in May 1999. McClure testified that in 1999, Feather River had an operating budget of \$175,000 and that the purchase of the Silver Hostel accounted for roughly one-quarter of its budget for that year. McClure stated that the Silver Hostel was purchased with the intent to create a rolling exhibit rather than a stationary display.

Eugene Vicknair, a member of the board and corporate secretary for Feather River, testified in the plaintiff's case. Vicknair testified that Feather River is a not-for-profit corporation which is dedicated to the preservation of the history of the Western Pacific Railroad. He stated that Feather River sought to acquire the Silver Hostel as a part of its California Zephyr project. The Silver Hostel is a vista-dome lounge car that had been a part of Western Pacific Railroad Company's California Zephyr passenger railway service. Vicknair testified that Feather River intended to restore the Silver Hostel and use it as a "rolling ambassador." Vicknair noted that the organization had a longer term plan to admit

passengers to ride in the Silver Hostel on the rails. Vicknair testified that even though the Amtrak trucks were not original to the Silver Hostel, they were a material part of the purchase because of Feather River's plan for a rolling exhibit.

Vicknair testified that he and Doug Morgan traveled to Illinois Transit's facility in Madison, Illinois, to inspect the Silver Hostel. Vicknair acknowledged that he had little experience with inspecting a historic car for structural defects. He stated that he inspects a car with an eye toward the restoration of the decor and that Doug Morgan had more experience in examining the components of a car for structural issues. Vicknair testified that at the time of the inspection, Ben Butterworth, the operations manager for Illinois Transit, affirmatively indicated that the trucks under the Silver Hostel appeared to be in good condition and that no employee of Illinois Transit indicated there would be any problem transporting the Silver Hostel on the Amtrak trucks. Vicknair did not learn that the Amtrak trucks had been involved in a derailment until well into the litigation. Vicknair stated that after the inspection he and Morgan prepared a report of findings for Feather River's board of directors and therein stated that the trucks under the Silver Hostel appeared to be in good condition.

The report prepared by Vicknair and Morgan was admitted into evidence. Vicknair and Morgan noted that the Silver Hostel passenger car was not in perfect condition, that certain hardware and fixtures were missing, and that it would require significant restoration but that the body of the car was sound, without corrosion or damage. They also noted that upon its arrival to the facility in Madison, Illinois, the Silver Hostel was put on the Amtrak trucks and that the Amtrak trucks were not rebuilt but appeared to be in good condition.

Feather River called Bruce Moore as its expert witness on the market value of the Amtrak trucks. Moore testified that he owns his own business, Standard Rail Services, and that his business includes contract repair work on passenger railcars and the purchase and

sale of rail parts. Moore stated that he has worked in the business since 1985. Moore opined that in 1999, the market value for a set of Amtrak trucks of sufficient quality to transport the Silver Hostel to Portola, California, was \$26,000, at a minimum. He testified that his estimate was conservative and that it was based on the costs of the component parts used in building Amtrak trucks. Moore noted that the Amtrak trucks are composed of four wheel sets and two side frames with disc brake equipment. He testified that in 1999, each wheel set was worth \$4,000 and each side frame was worth \$5,000. Moore stated that the trucks manufactured today differ from the converted Amtrak trucks and that the trucks of today would not fit under the Silver Hostel without substantial modifications. Moore testified that neither the Amtrak trucks nor the replacement trucks were certified as "Amtrak legal." He opined that in 1999, it would have cost a minimum of \$25,000 to recertify the converted trucks as Amtrak legal and a minimum of \$40,000 to recertify the replacement trucks as Amtrak legal. He also opined that the older model of Amtrak trucks is less expensive to maintain than the replacement trucks.

During cross-examination, Moore acknowledged that he is not a certified inspector of railroad equipment and that he had not inspected the converted Amtrak trucks. Moore testified he had no knowledge that the converted Amtrak trucks had been involved in a derailment. He stated that he would agree generally that the market value of the Silver Hostel would be less if it was sitting on a damaged set of trucks.

Feather River presented an affidavit of Leslie Kasten that was signed and filed in 2001. In the affidavit, Kasten stated that in 1999, the actual value of the Amtrak trucks, if they were in good working condition and were not damaged, was approximately \$30,000.

Feather River also presented evidence of the attorney fees and expenses that it incurred in the litigation. It offered the billing statements from its lawyers and deposition testimony from the attorney who represented it during the initial appeal.

Illinois Transit called Peter Messina as its expert on value. Messina testified that he worked in the business of repair, renovation, and sales of railroad equipment and that he was certified by Amtrak to inspect its railroad equipment. Messina stated that in 2006, he inspected the Amtrak trucks that had been under the Silver Hostel and that he found damage to the trucks during his inspection. Messina opined that it would cost approximately \$40,000 to repair the Amtrak trucks and that, assuming there were no additional cracks or damage to the components, it would cost an additional \$20,000 to recertify the trucks as Amtrak legal. He opined that the scrap value of the damaged Amtrak trucks was between \$8,000 and \$10,000. Messina did not offer an opinion regarding the value of a set of Amtrak trucks of sufficient quality to transport the Silver Hostel car to Portola, California. Messina opined that the fair value of the replacement trucks was \$35,000. He based his opinion on the values quoted by an individual seller and a museum and on the fact that there are few trucks available for sale. Messina stated that the maintenance expenses for the replacement trucks are significantly higher than those for the Amtrak trucks and that the cost to recertify the replacement trucks is \$10,000 more than the Amtrak trucks.

Leslie Kasten was called as a defense witness. Kasten testified that he acquired the Silver Hostel car from a private owner in Denver, Colorado, in exchange for another railway car and a cash payment of \$5,000. Kasten stated that his acquisition did not include trucks and that he transported the car from Denver to Edwardsville, Illinois, on a flatcar. Kasten noted that after the Silver Hostel was retired by the Western Pacific Railroad in 1969, it was sold a few times and its original wheel assembly was removed by one of the interim owners. Kasten moved the Silver Hostel to Illinois Transit's facility in Madison, Illinois, in 1997 or 1998.

Upon its arrival, the Silver Hostel was placed on a set of Amtrak trucks. The trucks had been removed from a passenger car identified as Amtrak 8713. Kasten testified that he



had purchased Amtrak 8713 from Amtrak. He noted that Amtrak 8713 and several other Amtrak passenger cars had been damaged during a train derailment that had occurred in 1994. He had purchased four damaged cars, including Amtrak 8713, from Amtrak. He then sold one car. That left three cars to be moved to Madison, Illinois. Kasten testified that the air brakes on the Amtrak 8713 and the other two cars did not function. Kasten stated that he applied for and obtained a waiver from the Federal Railroad Administration (FRA) to transport the damaged cars on idlers.

Kasten testified sometime in 1998, representatives of Feather River contacted him and expressed interest in two Western Pacific cars pictured on Illinois Transit's Web site. Kasten stated that the discussions progressed and that Doug Morgan and Eugene Vicknair came to Illinois Transit's facility in Madison to inspect the cars on November 17, 1998. Kasten testified that the Silver Hostel was sitting on the Amtrak trucks on the day of the inspection. When Morgan and Vicknair arrived at the facility, Kasten offered to accompany them or send one of his employees. Kasten stated that Morgan and Vicknair advised that they did not need help. Kasten unlocked the cars of interest and left Morgan and Vicknair alone.

Kasten testified that at the time of the inspection, the Amtrak trucks under the Silver Hostel were not adequate or suitable for transporting the Silver Hostel to California because of damage caused by the derailment. The trial court sustained Feather's River objection to this testimony as contrary to the facts deemed admitted, but it allowed the testimony to be treated as a part of the defendant's offer of proof on the propriety of an award of punitive damages.

Kasten testified that the Silver Hostel was originally listed for \$80,000 but that the parties ultimately agreed to a purchase price of \$50,000. Kasten stated that on April 1, 1999, he sent a fax to Morgan which stated that Illinois Transit would put the Silver Hostel car on the original trucks of a sister car, the Silver Dollar, prepped and installed, and that Illinois

Transit would warrant the car's acceptance in a freight move via Union Pacific Railroad Company. The trial court sustained Feather River's objection to this testimony on the ground that the statements constituted prior negotiations that did not end up as terms in the written agreement entered on May 11-12, 1999, but indicated that it would consider the testimony with regard to the evilness of the activity for purposes of assessing the extent of the punitive damages.

Kasten testified that once the contract was executed and payment tendered, he had no contact with anyone from Feather River for about five months. Kasten stated that Doug Morgan phoned him in October 1999 to advise that he was coming to get the Silver Hostel the next day. Kasten replied that Morgan could not get the car because the trucks had not been swapped. Kasten then asked Morgan what happened to the \$20,000 of restoration work that had been promised to Illinois Transit in exchange for the price reduction, and Morgan told him that he was "fucked" because it was not in writing. Kasten stated that he slammed the phone down. He said that Ben Butterworth was a witness to the conversation. Kasten testified that he then assembled a crew who worked for 24 hours to switch out the trucks under the Silver Hostel. The crew removed the Amtrak trucks from under the car, installed the replacement trucks, set the air brakes, and shoved the car onto the interchange track. Kasten testified that an inspector from Union Pacific approved the Silver Hostel for transport. Kasten noted that the replacement trucks were historically accurate and that the Silver Hostel was successfully transported to Portola, California. Kasten testified that he attempted to settle the case before the lawsuit. He stated that he offered to send the bent-up Amtrak trucks or to provide other parts that could be used to restore the Silver Hostel and that his offers were not accepted. Kasten presented an offer of proof regarding his personal financial situation and the assets and liabilities of Illinois Transit.

During cross-examination, Kasten admitted that his crew removed a blue tarp that had

been covering the dome of the Silver Hostel before the car was shoved onto the interchange track. Kasten stated that the tarp was removed because it was the property of Illinois Transit, it was expensive, and it had not been included in the sale of the car. Kasten testified that Illinois Transit had removed the trucks from Amtrak 8713 and placed them under the Silver Hostel and that the trucks from Amtrak 8713 were under the Silver Hostel when Morgan and Vicknair conducted their inspection in November 1998. In reference to three of the derailed cars that he purchased from Amtrak, Kasten testified that he sent a letter to the FRA, dated April 11, 1995, to obtain a waiver to move the three derailed cars to the facility in Madison, Illinois, and that the FRA granted the waiver. Kasten said that he had to separate the cars that lacked working brakes because the regulations generally require a car without brakes to be placed between cars with working brakes.

Kasten's letter to the FRA and the FRA's reply were offered into evidence by Feather River. In the letter to the FRA dated April 11, 1995, Kasten wrote that all three cars had safety appliances in place and that all but one had working air brakes. Kasten advised that the Amtrak 3117, a 1950s lounge car, had no air brake equipment. Kasten requested a one-time waiver for that car, indicating that he would use the other two cars as idlers. Kasten said that he would arrange the cars so that the Amtrak 8713 would be placed first, followed by the Amtrak 3117, and then the Amtrak 2454. In a letter dated April 17, 1995, the FRA stated that all three cars had been inspected by one of its inspectors and that all cars were in compliance with FRA safety appliance standards and air brake standards, except for the lack of air brakes on Amtrak 3117. The FRA granted the waiver, authorized the cars to be moved on a work train, and noted that Amtrak 3117 would be moved between Amtrak 8713 and Amtrak 2454.

Benjamin Butterworth, the operations manager at Illinois Transit, testified for the defense. Butterworth testified that Doug Morgan and Eugene Vicknair came to Illinois

Transit's facility in Madison to look at the Silver Hostel. Butterworth could not recall how long Vicknair and Morgan spent inspecting the Silver Hostel. He stated that he was roving between the shop and the yard during the inspection. Butterworth testified that after the inspection, Vicknair and Morgan asked a lot of questions about the interior of the Silver Hostel, inquiring about things such as the upholstery and the decor, but not about the wheel sets under the car. Butterworth stated that he overheard Morgan and Vicknair comment that the trucks appeared to be in good condition. Butterworth testified that he was aware that the trucks under the Silver Hostel had been involved a derailment but that he never informed Morgan or Vicknair of that fact. Butterworth testified that the trucks were not in good condition because they had been involved in a derailment.

Butterworth testified that in October 1999, he was in Kasten's office when Kasten received a call from Doug Morgan. Butterworth stated that he heard only Kasten's side of the conversation. Butterworth noted that Kasten had asked whether Feather River had decided to give Illinois Transit the restoration work on the Silver Hostel and that Kasten did not appear to be pleased with the response. Butterworth testified that after the conversation, Kasten directed a crew to remove the Amtrak trucks from the Silver Hostel and to install trucks that had been under another passenger car. Butterworth stated that the replacement trucks were in good operating condition and were historically accurate to the car.

#### D. Analysis of the Issues

Initially, the defendants challenge the propriety of the award of compensatory damages. They claim that Feather River was not damaged by the conversion of the Amtrak trucks because it had in its possession "perfectly operating" trucks which were used to successfully transport the Silver Hostel to Portola, California.

At the outset, we note that the defendants' claim is almost identical to that raised and rejected in the initial appeal. In that decision, we determined that the plaintiff had proved

the existence of actual damages as a result of the conversion and that there remained a question of fact regarding the fair market value of the converted trucks. We remanded this case for a determination of the proper amount of compensatory damages for the conversion. We therefore consider whether the amount of the compensatory award was proper.

Generally, the measure of damages for a conversion is the market value of the property at the time and place of the conversion plus legal interest. *Jensen v. Chicago & Western Indiana R.R. Co.*, 94 Ill. App. 3d 915, 933, 419 N.E.2d 578, 593 (1981). A property that is not an ordinary product of commerce or is otherwise unique may not be susceptible to the general measure of damages. *Jensen*, 94 Ill. App. 3d at 934, 419 N.E.2d at 594. The value of a personal property that has no market value may be ascertained in some other rational way and from elements that are attainable. *Jensen*, 94 Ill. App. 3d at 934, 419 N.E.2d at 594. Value may be established by the cost of producing or replacing the property. *Jensen*, 94 Ill. App. 3d at 934, 419 N.E.2d at 594.

Bruce Moore, Feather River's expert, testified that Amtrak trucks of the type converted were no longer manufactured and that there are few sets available for purchase. Moore opined that the market value of the converted trucks in 1999 was \$26,000 at a minimum, and his opinion was based upon the fair market value of the components of the truck assembly. Peter Messina, the defendant's expert, did not offer an opinion on the value of the Amtrak trucks in a condition that would permit transportation of the Silver Hostel by rail to Portola, California. Instead, he testified that the scrap value of damaged Amtrak trucks was between \$8,000 and \$10,000. Leslie Kasten filed an affidavit in 2001, in which he stated that the fair value of the Amtrak trucks, in good working condition, was \$30,000. In a 2007 deposition that was used for impeachment, Kasten changed his opinion and stated that Amtrak trucks in an undamaged condition would have had a fair market value from \$15,000 to \$20,000. The defendants also presented opinions about the fair value of the

substituted trucks and argued that the value was relevant to show that the substitute trucks constituted an offsetting benefit to the plaintiff.

The trial court rightly recognized that the measure of compensatory damages in this case was the fair market value of the Amtrak trucks as of October 1999 and that the value of any offsetting benefit could not be included in the calculation. In evaluating the value, the court considered the condition of the property and found that the Amtrak trucks at issue were neither in mint condition nor so deteriorated as to be unusable. The court also considered that the model of Amtrak trucks at issue could not be purchased new, that they are not currently used in ordinary commercial railroad operations, and that they are primarily sought by private collectors and museums. The court concluded that true comparable sales data was sparse. The court considered the cost of acquiring the parts and the additional cost to assemble and modify the assembly to the grade of the converted trucks. The court employed the best methods available, took all the relevant facts into consideration, and awarded \$35,000 in compensatory damages for the converted trucks. After reviewing the record, we have determined that the award is supported by adequate evidence and is not against the manifest weight of the evidence.

The defendants also challenge the award of punitive damages. The defendants claim that their conduct was not reprehensible so as to give rise to punitive damages and that they should not be charged with a wilful and wanton act where the evidence showed that Kasten notified Doug Morgan by fax in April 1999, before the sales agreement was executed, that he was going to replace the damaged Amtrak trucks with perfectly operating, historically accurate sets of trucks.

On our review of the trial court's decision to award punitive damages, we consider the following factors: (1) whether punitive damages are available for the particular cause of action, using a *de novo* standard of review, (2) whether, under a manifest-weight-of-the-

evidence standard, the defendant acted fraudulently, maliciously, or in a manner that warrants those damages, and (3) whether the trial court abused its discretion in imposing punitive damages. *Bell Leasing Brokerage, LLC v. Roger Auto Service, Inc.*, 372 Ill. App. 3d 461, 473, 865 N.E.2d 558, 569 (2007); *Caparos v. Morton*, 364 Ill. App. 3d 159, 178, 845 N.E.2d 773, 789 (2006).

As to the initial consideration, punitive damages are available for the tort of conversion. *Cirrinzione v. Johnson*, 184 Ill. 2d 109, 115-16, 703 N.E.2d 67, 70 (1998); *Bell Leasing Brokerage, LLC*, 372 Ill. App. 3d at 474, 865 N.E.2d at 569.

The next consideration is whether the defendants acted fraudulently, maliciously, or in a manner that warrants an award of punitive damages. The trial court concluded that the defendants acted willfully and without regard to the impact on Feather River when they converted the Amtrak trucks. The court found that Kasten was aware of the condition and make-up of the Silver Hostel and that it was "no coincidence" that upon finding out that Feather River would not contract with Illinois Transit to perform the restoration work on the Silver Hostel, Kasten "immediately jumped into action and substituted a replacement set of trucks for the removed trucks." The court found that the proposition that Kasten switched out the trucks to benefit Feather River was wholly incredible. The court determined that Kasten acted with full knowledge of the importance and value of his actions and that Kasten swapped out the trucks strictly to benefit himself, without regard to the impact on Feather River. The trial court's findings that the defendant's conduct was wilful and wanton and that the conversion warranted an award of punitive damages are supported by ample evidence and are not against the manifest weight of the evidence.

The final consideration is whether the trial court abused its discretion in imposing an award of \$5,000 in punitive damages. Punitive damages serve the dual purposes of retribution against the wrongdoer and deterrence of similar conduct by that party and others.

*Caparos*, 364 Ill. App. 3d at 180, 845 N.E.2d at 791. In this case, a punitive damages award of \$5,000 would serve both purposes.

The defendants have also claimed that the award of punitive damages is unconstitutionally excessive. Whether a punitive damages award is unconstitutionally excessive is reviewed *de novo*. *International Union of Operating Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill. 2d 456, 467, 870 N.E.2d 303, 313 (2006). Three guideposts have been used in considering whether an award is unconstitutionally excessive: (1) the degree of reprehensibility of the defendant's misconduct, (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award, and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized and imposed in comparable cases. *Lowe Excavating Co.*, 225 Ill. 2d at 470, 870 N.E.2d at 313.

In considering the first guidepost, the reprehensibility of the defendant's conduct, courts are instructed to evaluate whether the harm caused was physical; whether the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others, whether the target of the conduct was financially vulnerable, whether the conduct involved repeated actions or constituted an isolated incident, and whether the harm was the result of intentional malice, trickery, or deceit or mere accident. *Lowe Excavating Co.*, 225 Ill. 2d at 470, 870 N.E.2d at 313. In this case, the trial court determined that Kasten's conduct was wilful and wanton, solely for the benefit of himself and Illinois Transit, and without regard to the impact it would have on Feather River. The trial court also determined that Feather River survived on the dues and sweat equity of its membership. The court recognized that any substantial loss caused to the membership of Feather River as a consequence of the conversion was speculative from a legal standpoint because Feather River had a host of prospective uses for the Silver Hostel when restored that were speculative. After reviewing



the record, we agree that Kasten's conduct was wilful and wanton and intentional and that the target of the conduct was financially vulnerable. Therefore, there are sufficient factors to establish that the defendants' conduct was reprehensible.

The second guidepost is the ratio between the harm suffered and the punitive damages awarded. In this case, Feather River suffered \$35,000 in actual damages and it was awarded \$5,000 in punitive damages. The ratio is substantially less than 1 to 1, and it is neither unreasonable nor excessive. Because the parties have not presented any statutes or cases establishing comparable civil penalties, such as a fine, for a conversion, it is unnecessary to consider the final guidepost.

Upon considering the guideposts and remaining mindful of the goals of punishment and deterrence, we conclude that the trial court did not abuse its discretion in determining that an award of punitive damages was appropriate in this case and that the \$5,000 is appropriate and is not unconstitutionally excessive.

The defendants also contend that the trial court erred in awarding attorney fees to the plaintiff because Illinois law excludes recovery for attorney fees in the absence of a statute or a specific agreement between the parties.

Where the trial court is called upon to interpret the contract as a matter of law, our review is *de novo*. *Erlenbush v. Largent*, 353 Ill. App. 3d 949, 952, 819 N.E.2d 1186, 1189 (2004). Where the issue involves the reasonableness of the fees awarded, we review the trial court's decision for an abuse of discretion. *Erlenbush*, 353 Ill. App. 3d at 951, 819 N.E.2d at 1189.

Illinois follows the "American Rule," which provides that absent statutory authority or a contractual agreement, each party must bear its own attorney fees and costs. *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1038, 918 N.E.2d 1276, 1278 (2009). Contractual provisions for the award of attorney fees must be strictly

construed, and the court must determine the intention of the parties regarding the payment of fees. *Erlenbush*, 353 Ill. App. 3d at 951, 819 N.E.2d at 1189; *Ferrara v. Collins*, 119 Ill. App. 3d 819, 825, 457 N.E.2d 109, 113 (1983). Unless words are specifically defined in the contract, they are to be given their plain and generally accepted meanings. *Lyles*, 395 Ill. App. 3d at 1039, 918 N.E.2d at 1279; *Erlenbush*, 353 Ill. App. 3d at 952, 819 N.E.2d at 1190.

Paragraph 12 of the written sales agreement discusses attorney fees and states as follows:

"12. Attorneys fees: The parties under this agreement agree that in the event of any action taken (whether by way of suit or otherwise) to enforce this agreement, the prevailing party shall be entitled to recover such party's costs and expenses including reasonable attorneys fees."

The American Heritage Dictionary defines "enforce" as: "1. To compel observance of or obedience to. 2. To compel. 3. To give force to; reinforce." American Heritage Dictionary 454 (2d College Ed. 1982). Black's Law Dictionary defines "enforce" as "To put into execution; to cause to take effect; to make effective; as to enforce a particular law, a writ, a judgment, or the collection of a debt or fine; to compel obedience to." Black's Law Dictionary 474 (5th ed. 1979).

The attorney fees provision in the sales agreement is broad, but it is not ambiguous. The plain language provides that a party who takes any action to enforce the agreement shall be entitled to recover his attorney fees and expenses. The inclusion in the complaint of counts alleging conversion and fraud constitute actions by a contracting party to enforce the agreement by suit or otherwise. *Erlenbush*, 353 Ill. App. 3d at 952-53, 819 N.E.2d at 1190. Pursuant to the parties' agreement, Feather River was entitled to a reasonable amount of attorney fees and expenses.

As an alternative argument, the defendants contend that the trial court erred in including the attorney fees incurred in the original appeal in the award because the plaintiff did not prevail in the appeal. We do not agree.

In our decision in the initial appeal, we found that the trial court did not abuse its discretion in denying the defendants' motion for leave to file a late response to the plaintiff's requests to admit and in deeming admitted all the facts for which the plaintiff had made a request for admission and to which the defendants did not respond, and we affirmed the trial court's findings that the plaintiff had proven liability for conversion and fraud and that the plaintiff was entitled to an award of damages for the conversion. We set aside the awards for compensatory and punitive damages and remanded the cause to the trial court for a calculation of compensatory damages and the propriety and amount of punitive damages.

For purposes of awarding attorney fees, a prevailing party is one that is successful on a significant issue and achieves some benefit in bringing suit. *J.B. Esker & Sons, Inc. v. Cle-Pa's Partnership*, 325 Ill. App. 3d 276, 280, 757 N.E.2d 1271, 1275 (2001). Although a litigant does not have to succeed on all its claims to be considered a prevailing party, when the dispute involves multiple claims and each party has won and lost on different claims, it may be inappropriate to find that either is the prevailing party. *Peleton, Inc. v. McGivern's, Inc.*, 375 Ill. App. 3d 222, 227-28, 873 N.E.2d 989, 994-95 (2007).

In this case, the plaintiff preserved its summary judgment on liability, and the defendants won a right to a trial on damages. While each party won on a different claim, this court cannot find that the trial court abused its discretion in finding that the plaintiff was the prevailing party where the plaintiff prevailed on at least two significant issues and achieved a significant benefit from the litigation. Considering the state of the record and the fact that this case has been in litigation for a decade, the award of \$160,000 for attorney fees and expenses is reasonable and is not excessive. The trial court did not abuse its discretion in

awarding \$160,000 in attorney fees.

Finally, the defendants contend that the trial court should have revisited its rulings concerning the requests to admit. We disagree. In our decision in the initial appeal, we found that the trial court did not abuse its discretion in denying the defendants' motion for leave to file a late response to the plaintiff's requests to admit and in deeming admitted all the facts for which the plaintiff made a request for admission and to which the defendants did not respond. The defendants did not seek leave to appeal from our decision. The law of the case doctrine provides that once a question is litigated and fully decided, that decision settles the question for all subsequent stages of the lawsuit. *Coldwell Banker Havens, Inc. v. Renfro*, 288 Ill. App. 3d 442, 448, 679 N.E.2d 1299, 1303 (1997). This issue was decided in the prior appeal. The law of the case precludes additional review of the issue.

Accordingly, the judgment of the circuit court of Madison County is affirmed.

Affirmed.