

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**FILED**

May 7, 2018

Carla Bender

4<sup>th</sup> District Appellate Court, IL

2018 IL App (4th) 170436-U

NO. 4-17-0436

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

|                                       |   |                   |
|---------------------------------------|---|-------------------|
| WILLIAMS BROTHERS CONSTRUCTION, INC., | ) | Appeal from       |
| Plaintiff-Appellant,                  | ) | Circuit Court of  |
| v.                                    | ) | McLean County     |
| BOARD OF TRUSTEES OF HEARTLAND        | ) | No. 11L180        |
| COMMUNITY COLLEGE DISTRICT 540,       | ) |                   |
| Defendant-Appellee.                   | ) | Honorable         |
|                                       | ) | Paul G. Lawrence, |
|                                       | ) | Judge Presiding.  |

JUSTICE DeARMOND delivered the judgment of the court.  
Presiding Justice Harris and Justice Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, finding (1) the trial court did not abuse its discretion in refusing to treat as a judicial admission defendant’s adoption of plaintiff’s expert, (2) the court did not abuse its discretion in allowing the introduction of certain evidence, and (3) the jury’s verdicts were not legally inconsistent.

¶ 2 In September 2011, plaintiff, Williams Brothers Construction, Inc. (WBCI), filed a complaint against defendant, Board of Trustees of Heartland Community College District 540 (Heartland), alleging three counts of breach of contract and one count of *quantum meruit*. In February 2017, a jury found in favor of WBCI on two counts and in favor of Heartland on two counts. The jury awarded \$10,628 in damages to WBCI.

¶ 3 On appeal, WBCI argues (1) the trial court abused its discretion by refusing to treat Heartland’s adoption of the opinions of WBCI’s expert as a judicial admission, (2) the court

abused its discretion by allowing Heartland to introduce certain evidence, and (3) the jury's verdicts were legally inconsistent. We affirm.

¶ 4

## I. BACKGROUND

¶ 5

### A. The Parties

¶ 6 This case involves the construction of the fitness and recreation center (fitness center) on Heartland's campus. WBCI was the general contractor. WBCI had as its project manager, Rodney Justus; its on-site superintendent, John Carlson; and its vice president of operations overseeing the project, Joseph Williams. Heartland contracted with BLDD Architects, Inc. (BLDD), whose managing project architect was Bruce Maxey, to prepare construction documents consisting of the drawings and specifications for the construction of the fitness center and provide site observation services during the project. BLDD contracted with KJWW Engineering Consultants, P.C. (KJWW), as its structural steel consultant, and Kevin Gross acted as KJWW's structural design engineer for the project.

¶ 7

### B. The Construction Project

¶ 8 In February 2008, WBCI entered into a contract with Heartland in the amount of \$50,371,000 for site development and the construction of six buildings on Heartland's campus, including the fitness center. The fitness center was designed as a structural steel-framed building consisting of a high-roofed center area over the gymnasium floor surrounded on three sides by lower-roof areas. The structural steel frame for the fitness center was depicted in contract drawings with what are termed "grid lines," which are used to assist in locating various parts of the steel frame by acting like the latitude and longitude grid on a map. The design of the fitness center provided for a running track around the inside perimeter of the second level's center area of the building.

¶ 9 The high-roof structure of the fitness center was designed as a metal roof deck supported by four scissor trusses spanning in an east-west direction over the open center recreation area of the building. The design of the structural framing of the fitness center called for a long steel girder of a specified length oriented in the north-south direction. The girder truss consisted of a top section known as a top chord, a bottom section known as a bottom chord, and various steel members that connected the top chord to the bottom chord. The girder truss was designed to extend between structural members in the steel frame and to carry loads from other structural members. The scissor trusses were designed to be supported on their east ends by the top chord of the steel girder truss. Column L-10 was designed as an 8 x 8 5/8-inch steel tubular column, 35 feet and 2 inches tall, supported at the base by a concrete foundation at the first floor and connected to and braced in an east-west direction by the running-track framing at the second-floor elevation.

¶ 10 In August 2008, WBCI began construction of the fitness center, and the contract required the building to be substantially completed by October 21, 2009. WBCI subcontracted the steel fabrication work to Premier Fabrication, Inc. (Premier Fabrication), and the steel erection works to Tyjax Ironworks, Inc. That same month, and prior to commencing construction of the steel framing for the fitness center, WBCI submitted certain documents, known as “shop drawings” prepared by Premier Fabrication, to BLDD for review.

¶ 11 On or about June 4, 2009, WBCI, Heartland, BLDD, and KJWW observed the girder truss had deflected horizontally to the east and column L-10, which was connected to the truss, had deflected both to the south and to the east. These observations raised concerns to WBCI, Heartland, BLDD, and KJWW about the integrity of the steel framing along grid line 10, including the girder truss and column L-10. At the time of these observations, the steel structure

had been erected and the metal roof decking had been installed, but no exterior walls or roofing materials were in place. Also, the running track at the second level of the structure had been installed and the concrete base for the running track had been poured in May 2009.

¶ 12 As of June 4, 2009, the structural framing system of the fitness center was carrying only about 30% of the total gravity design load and “there was minimal gravity live load on the structural framing system.” Construction on the east side of the fitness center impacted by the girder truss and column deflections was stopped on June 4, 2009, both to ensure no further gravity or construction load would be added to the structure and so an investigation could be made regarding the cause of the observed deflections. WBCI and its subcontractors continued to work on the north and west sides of the fitness center.

¶ 13 Several days after the deflections were observed, Gross, KJWW’s design engineer, advised the slotted holes in the scissor trusses needed to be redone to the 1 7/8-inch length called for in the design in order to allow the scissor trusses to move 1.1 inch at the truss bearing. In a letter to WBCI, Darrell Stoller, Premier’s structural division manager, stated the slotted holes in the scissor truss east legs were fabricated five-eighths of an inch too short.

¶ 14 In July 2009, Justus of WBCI sent a letter to Maxey at BLDD with an estimate of the repair work for the fitness-center trusses. WBCI priced the work at \$176,187. In late July or early August 2009, Heartland hired the structural engineering firm of Maurer-Stutz, Inc. (Maurer-Stutz), to survey the steel framing. The survey indicated columns C-10 and L-10 were located three-fourths of an inch too close to each other and column C-10 was set nine-sixteenths of an inch too low.

¶ 15 Continuing through 2009, communications about the deflections took place between WBCI, Heartland, BLDD, and KJWW. WBCI believed the deflections were caused by

errors in design, not due to faulty construction. KJWW was of the opinion that the deflections were due to faulty construction and not design errors.

¶ 16 On February 17, 2010, BLDD issued a revised construction change directive (revised CCD4) that identified certain repair/remediation work to parts of the structural steel framing of the fitness center that WBCI was to perform and listed the costs for that work. The repair/remediation and shoring work identified in revised CCD4 pertained to column L-10 reinforcement, girder truss reinforcement, cross-bracing of the scissor trusses, and shoring. The actual costs incurred by WBCI for the repair/remediation work totaled \$158,977. WBCI began the shoring and steel repair/remediation work on February 16, 2010, and completed it on March 24, 2010. After completing this work, WBCI continued construction of the fitness center, which was substantially completed on November 15, 2010.

¶ 17 C. WBCI's Complaint

¶ 18 In September 2011, WBCI filed a complaint against Heartland, alleging three counts of breach of contract. In count I, WBCI alleged Heartland's failure to pay for the costs of the shoring and repair/remediation work directed and agreed to by revised CCD4 constituted a material breach of the contract. Count I sought \$158,977 in damages for the actual costs incurred to perform the directed shoring and repair/remediation work.

¶ 19 In count II, WBCI alleged Heartland failed to (1) provide plans and specifications for the construction of the fitness center which were accurate, adequate, and suitable for WBCI to construct the building without experiencing unintended yielding and deflection to a material degree of some or all of the building's structural steel system; (2) provide WBCI with a timely resolution of the structural issues observed on June 4, 2009, causing construction to stop and thus unduly hindering, interfering, delaying, and/or disrupting WBCI's construction of the building

and unnecessarily extending the time of performance; and (3) take reasonable steps to mitigate and minimize the impact of any delay and disruption to WBCI's ability to timely complete the building work by failing to timely give WBCI direction for resolving the structural issues.

WBCI alleged Heartland's breach of contract caused it to incur increased costs and expenses of construction, which would not have been incurred had the fitness center been constructed without the delay necessary to perform the shoring and repair/remediation work. Count II sought \$1,623,043 in damages.

¶ 20 Count III alleged WBCI was required to perform additional work to remedy other construction work directly and adversely impacted due to the fitness-center construction work stoppage and subsequent delay by Heartland in designing remedial and/or repair work to address the structural conditions observed on June 4, 2009. WBCI alleged it was required to replace and repair felt paper on the upper roof, replace window frames, replace hangers previously installed, and relocate roof supports. WBCI alleged an implied contract existed between it and Heartland regarding this extra work, Heartland benefitted from the work, and Heartland promised to pay WBCI for the reasonable value of the extra work. Count III sought \$16,516 in damages.

¶ 21 WBCI also filed count IV (*quantum meruit*) as an alternative to recover the value of the benefit which Heartland received by reason of WBCI performing the extra work identified in count III. WBCI alleged the extra work had not been gratuitously performed but was useful and beneficial to Heartland. WBCI claimed the extra work totaled \$16,516.

¶ 22 In March 2012, Heartland filed an answer to WBCI's complaint denying all substantive allegations and raising an affirmative defense to count II. In the affirmative defense, Heartland claimed it did not unreasonably delay or unduly hinder, interfere with, or disrupt WBCI's construction of the fitness center.

¶ 23

#### D. Pretrial Proceedings

¶ 24 In March 2012, Heartland filed an indemnity action against BLDD, and BLDD filed an indemnity action against its structural steel consultant, KJWW. In September 2016, the trial court granted summary judgment in favor of BLDD and KJWW on the indemnity claims, finding neither Heartland nor BLDD had produced the necessary expert testimony required to properly allege a breach of the standard of care.

¶ 25 Prior to trial, WBCI and KJWW disclosed opinion witnesses under Illinois Supreme Court Rule 213(f) (eff. Jan. 1, 2007) on the issue of causation of the steel deflections. WBCI disclosed structural engineer William Bast. KJWW disclosed structural engineer Dr. Jeffrey Garrett. Heartland reserved the right to adopt and call as a witness any individual disclosed by another party. In its response to BLDD's motion for summary judgment, Heartland indicated it "adopted all of the [Rule] 213(f) witnesses disclosed by the parties." In seeking reconsideration of summary judgment in favor of BLDD, Heartland again stated it had "adopted all of the parties' [Rule] 213 witnesses."

¶ 26 WBCI and Heartland each filed several motions *in limine*. WBCI's motion *in limine* No. 3 asked the trial court to bar any opinion evidence by Dr. Garrett on the grounds that Heartland failed to properly disclose him as an opinion witness. In the alternative, should the court not bar Dr. Garrett from testifying, WBCI asked the court to inform the jury that Heartland had adopted the opinions of WBCI expert Bast. The court denied the motion.

¶ 27 WBCI's motion *in limine* No. 4 asked the trial court to bar certain witnesses, including KJWW engineer Daniel Huntington, from offering testimony on the grounds that they were only disclosed as lay witnesses under Illinois Supreme Court Rule 213(f)(1). WBCI claimed Heartland never disclosed any opinions or the subject matter of any opinions held by

Huntington. The court granted the motion and barred the witnesses from giving opinion testimony.

¶ 28 E. The Jury Trial

¶ 29 Prior to opening statements, WBCI filed its notice of intent to offer and use at trial Heartland's judicial admission that it adopted the opinions of Bast, WBCI's expert witness.

WBCI contended Heartland's prior statements indicating it had adopted all of the Rule 213(f) witnesses disclosed by the parties constituted a judicial admission. The trial court reiterated its denial of motion *in limine* No. 3 and refused to permit the use of the evidence as an admission.

¶ 30 In February 2017, the jury trial commenced. William Bast, a licensed structural engineer and a principal engineer at Thorton Tomasetti, testified WBCI asked him to investigate the design and construction of the fitness center. He looked at the drawings and specifications of the fitness center as well as the construction, fabrication, and erection of the steel. Bast was asked whether he had an opinion, based on a reasonable degree of engineering certainty, as to what caused the deflections in the girder truss and column L-10. He opined "there were certain design errors in the structural design of the steel that contributed to that observed deflection." He found design defects in the connection of the scissor trusses to the girder truss, the girder truss members, and column L-10. He also opined "the steel structure generally conformed to industry standards regarding fabrication and erection."

¶ 31 Robert Widmer, Heartland's president, testified he was informed of a concern with the structural elements of the fitness center in June 2009. For several months thereafter, the parties engaged in "dueling accusations," with the contractor claiming it was a design issue and designers blaming the contractor. Heartland engaged the services of an independent engineering firm to look at the problem, identify a fix, and then move forward with the objective of having a



safe, secure building. Repairs were made by WBCI, but Heartland did not pay for the cost of those repairs. Widmer stated completion of the project was approximately 40 to 42 weeks late.

¶ 32 Daniel Huntington, a structural engineer for KJWW, testified he became aware of the deflections in early June 2009. Thereafter, KJWW's role "was to design modifications to the structure to bring it back into compliance." In July 2009, KJWW received communications from WBCI indicating the problem was a design issue, to which KJWW disagreed. At trial, Huntington testified to various letters and e-mails he wrote to individuals, including Bruce Maxey at BLDD and internal staff at KJWW. At WBCI's request and in light of its motion *in limine* No. 4, the trial court issued a limiting instruction to the jury, stating the correspondence was being admitted only to show the information was being conveyed and WBCI was looking at various possible causes for the deflection, but it was not being admitted for the truth of the information contained therein.

¶ 33 A July 13, 2009, letter from Huntington to Maxey (defense exhibit No. 44) listed "the contract violations regarding the roof truss performed" by WBCI and the results of those violations. Huntington stated the purpose of the letter was "to go on record through written documentation indicating [KJWW] did not accept [WBCI's] assessment this was a design error."

¶ 34 In defense exhibit No. 50, Huntington emailed Gross at KJWW on July 27, 2009, asking him to review certain calculations. Also, Huntington noted his calculations "indicate why long slotted holes (had they been provided) would have ensured that the bolts would not have been bound up under their current loading."

¶ 35 An August 26, 2009, e-mail from Huntington to Maxey (defense exhibit No. 55) included a subject line that stated the girder truss column locations were out of tolerance. Huntington testified the e-mail was in response to BLDD's request that KJWW review the

results of a survey of the fitness center conducted by Maurer-Stutz. When asked about his conclusion regarding tolerances mentioned in the e-mail, the trial court sustained an objection by WBCI's counsel.

¶ 36           Huntington wrote another letter to Maxey on August 31, 2009 (defense exhibit No. 57), and noted the survey data showed substantial errors where the columns supporting the girder truss were located. Huntington also attached the survey data (defense exhibit No. 58) to the letter. Huntington testified the purpose of the letter was to summarize KJWW's analysis of the survey data and list the deficiencies found therein.

¶ 37           In defense exhibit No. 61, Huntington wrote a letter to Maxey on September 2, 2009, noting the Maurer-Stutz report indicated "there are items that appear to be constructed beyond allowable tolerances, even after accounting for the tolerances of the survey." Huntington testified KJWW was "drawing conclusions based on the survey data about what we believe has caused bowing of that column." Over WBCI's objection, Huntington was allowed to state the conclusion "there were construction deviations that occurred that were the primary cause of the column bowing out."

¶ 38           Dr. Jeffrey Garrett testified as Heartland's expert in structural engineering. He reviewed the drawings and specifications for the project and found they met the standard of care. He also opined the design of the scissor and girder trusses were within the standard of care and did not cause the misalignment of the steel frame. He was, however, of the opinion the construction, erection, and fabrication of the framing and trusses were the causes of the deflection. Garrett opined WBCI failed to adhere to the erection, fabrication, and tolerance requirements in the construction drawings. Specifically, Garrett opined the deflection was

caused by “the footings being in the wrong place, the girder truss member that was fabricated too long[,] and then the elastic behavior of a scissors truss under the construction loads.”

¶ 39 In rebuttal, Bast, WBCI’s expert, testified he disagreed with Garrett’s opinion, stating it did not “properly consider the construction tolerances” or “the actual behavior of the structure as it was detailed.”

¶ 40 Following closing arguments, the jury returned a verdict in favor of Heartland and against WBCI on counts I and II and a verdict in favor of WBCI and against Heartland on counts III and IV. On count III, the jury awarded \$10,628 in damages to WBCI. On count IV, the jury awarded \$0 in damages to WBCI.

¶ 41 F. Posttrial Motion

¶ 42 In March 2017, WBCI filed a motion for a new trial, alleging (1) the trial court abused its discretion by not allowing WBCI to use as a judicial admission Heartland’s statement that it adopted Bast’s opinions; (2) the court abused its discretion in allowing Heartland to introduce into evidence certain exhibits as part of Huntington’s testimony, even though the documents were admitted for the limited purpose of notice and not for the truth of the matters therein; and (3) the jury’s verdicts on counts III and IV were legally inconsistent with the verdicts on counts I and II. Heartland filed a response, and the court denied WBCI’s motion in May 2017. This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 A. Judicial Admission

¶ 45 WBCI argues the trial court abused its discretion by refusing to treat as a judicial admission Heartland’s adoption of the opinions of Bast, WBCI’s expert witness, that Heartland’s faulty building design was the sole cause of the steel deflections. We disagree.

¶ 46 Heartland contends on appeal WBCI has “waived” any objection to both the cross-examination of Bast as well as the calling of Dr. Garrett. Heartland also contends WBCI has “waived” any error in the trial court’s refusal to instruct the jury as requested by failing to object at trial. WBCI raised each of these issues in motions *in limine*. Motion *in limine* No. 3 asked the court to bar any opinion evidence by Dr. Garrett due to Heartland’s failure to properly disclose him as an expert witness. WBCI also requested, in the alternative, the court to inform the jury Heartland had adopted the opinions of WBCI’s disclosed expert Bast. The court denied the motion.

¶ 47 Motion *in limine* No. 4 asked the trial court to bar KJWW engineer Huntington from offering opinion testimony due to the failure to disclose him as anything other than a Rule 213(f)(1) lay witness. The court granted this motion. Immediately preceding the start of trial, WBCI made another attempt to introduce evidence of Heartland “adopting” the opinions of WBCI’s structural engineering expert Bast through a notice of intent seeking to offer Heartland’s adoption of Bast’s opinions as a judicial admission. The court also denied this request.

¶ 48 “A trial court’s ruling on a pretrial motion is subject to reconsideration throughout the trial. [Citation.] Accordingly, a party who, prior to trial, unsuccessfully moves to bar the introduction of certain evidence must then object to the evidence when it is offered at trial.” *Scassifero v. Glaser*, 333 Ill. App. 3d 846, 855-56, 776 N.E.2d 859, 867-68 (2002) (citing *Ford v. Herman*, 316 Ill. App. 3d 726, 736, 737 N.E.2d 332, 340 (2000)). As Heartland noted in its brief, failing to object at trial will not preserve a negative ruling on a motion *in limine*, even if later raised by way of a posttrial motion. See *Career Concepts, Inc. v. Synergy, Inc.*, 372 Ill. App. 3d 395, 402-03, 865 N.E.2d 385, 392 (2007). Even though WBCI may have objected to the evidence or moved to bar its admission pretrial, it was still obligated to renew its objection at the

time the evidence was offered. *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 71, 30 N.E.3d 631 (noting the “[f]ailure to renew [an] objection when the evidence is offered at trial results in forfeiture of the ability to challenge the trial court’s consideration of that evidence”). Recognizing this court has addressed the substantive difference between “forfeiture” and “waiver,” for purposes of this case, the result is the same. See *People v. Corrie*, 294 Ill. App. 3d 496, 506, 690 N.E.2d 128, 134-35 (1998). Regardless, we recognize the principle of waiver is an admonition on the parties and not a limitation on this court’s jurisdiction should we choose to address the issue. *Gee v. Treece*, 365 Ill. App. 3d 1029, 1035, 851 N.E.2d 605, 611 (2006).

¶ 49 “Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within that party’s knowledge.” *In re Estate of Rennick*, 181 Ill. 2d 395, 406, 692 N.E.2d 1150, 1156 (1998); see also *Serrano v. Rotman*, 406 Ill. App. 3d 900, 907, 943 N.E.2d 1179, 1187 (2011) (stating “[j]udicial admissions are formal admissions in the pleadings that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact”). “In order to constitute a judicial admission, a statement must not be a matter of opinion, estimate, appearance, inference, or uncertain summary.” *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468, 914 N.E.2d 1258, 1267 (2009). “A party is not bound by admissions regarding conclusions of law because the courts determine the legal effect of the facts adduced.” *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 475, 939 N.E.2d 487, 499 (2010). Moreover, “a court should not apply the doctrine to an attorney’s statement of legal opinion in a summary judgment proceeding, especially if the opinion was manifestly incorrect within the context of the statement itself.” *Herman v. Power Maintenance & Constructors, LLC*, 388 Ill. App. 3d 352, 361, 903 N.E.2d 852, 860 (2009).

¶ 50 “What constitutes a judicial admission must be decided under the circumstances in each case, and before a statement can be held to be such an admission, it must be given a meaning consistent with the context in which it was found.” *Smith*, 394 Ill. App. 3d at 468, 914 N.E.2d at 1268.

“Courts have used both the *de novo* and abuse of discretion standards in deciding whether a statement is a judicial admission. [Citation.] The *de novo* standard of review comes from the requirement that a judicial admission must be a ‘deliberate, clear, unequivocal statement of a part [*sic*] about a concrete fact within that party’s knowledge’ and is based on the determination that the question of whether the statement is equivocal is a question of law and not fact. [Citation.] The abuse of discretion standard focuses on the context of the judicial admission, finding that ‘[w]hat constitutes a judicial admission must be decided under the circumstances in each case, and before a statement can be held to be such an admission, it must be given a meaning consistent with the context in which it was found.’ (Internal quotation marks omitted.) [Citations.]” *Pepper Construction Co. v. Palmolive Tower Condominiums, LLC*, 2016 IL App (1st) 142754, ¶ 90, 59 N.E.3d 41.

As the First District noted in *Pepper*, 2016 IL App (1st) 142754, ¶ 91, 59 N.E.3d 41, regardless of which standard a court may use, the same analysis applies; courts applying the “abuse of discretion” standard will still require the statement sought to be found a judicial admission to be

“clear, unequivocal, and uniquely within the party’s personal knowledge” while those applying a *de novo* review examine the context of the statement. Here, under either standard of review, we find the trial court did not err in refusing to treat Heartland’s references to Bast as a judicial admission.

¶ 51 WBCI argues Heartland “expressly and unequivocally admitted” not only Bast as an expert, but also “all of the opinions” disclosed by him. WBCI points to Heartland’s Rule 213(f)(3) disclosures, in which it reserved “the right to adopt and call as a witness any individual disclosed by another party in this case pursuant to Supreme Court Rule 213(f)(1), (2), or (3) in its case or in rebuttal.” WBCI also relies on Heartland’s response in opposition to BLDD’s motion for summary judgment, wherein it stated it “adopted all of the [Rule] 213(f) witnesses disclosed by the parties,” and its motion to reconsider, wherein it “adopted all of the parties’ [Rule] 213 witnesses.”

¶ 52 We find WBCI’s arguments without merit. Heartland’s statements cannot be said to be “deliberate, clear, unequivocal statements by a party about a concrete fact within that party’s knowledge.” *Estate of Rennick*, 181 Ill. 2d at 406, 692 N.E.2d at 1156. WBCI has cited no authority in support of its position the adoption of an opponent’s witness in a Rule 213(f) disclosure or other court filing results in that party adopting the substance or facts underlying those opinions. Moreover, statements of opinions do not constitute judicial admissions. *Smith*, 394 Ill. App. 3d at 468, 914 N.E.2d at 1267; see also *Serrano*, 406 Ill. App. 3d at 907, 943 N.E.2d at 1187 (stating a judicial admission must “be an intentional statement which relates to concrete facts and not an inference or unclear summary”).

¶ 53 The context in which Heartland adopted the Rule 213(f) witnesses is relevant to the analysis. As Heartland notes in its brief, the statements adopting all Rule 213(f)(1), (f)(2), or

(f)(3) witnesses were under two circumstances. The first was the general Rule 213(f)(3) disclosures during the pretrial discovery process. This merely put the parties on notice Heartland was reserving the right to call any Rule 213(f)(1), (f)(2), or (f)(3) witness as its own. Nothing prevented one party from choosing to adopt the expert witnesses of another party at any time and having done so, each party would have to comply with the other requirements of Rule 213(f) disclosures. Nothing in this record indicates Heartland adopted the expert opinions expressed by Bast for any reason other than to show a genuine issue of material fact existed, which Heartland contended was sufficient to defeat a motion for summary judgment. Heartland's statements in its opposition to summary judgment were in relation to arguments that KJWW and BLDD failed to demonstrate no genuine issue of material fact existed as to the standard of care of a reasonable engineer. Heartland did not concede as correct Bast's opinions or the facts underlying them. While WBCI does not contend Heartland admitted liability, it argues the trial court should have informed the jury Heartland adopted Bast's opinions. However, such an admonition—where a party adopted another parties' expert witness for one purpose but did not claim to adopt his or her opinions for trial—would prove unworkable and only result in jury confusion. Accordingly, the court did not err in refusing to treat Heartland's responses as judicial admissions of Bast's opinions.

¶ 54

#### B. The Huntington Exhibits

¶ 55

WBCI argues the trial court abused its discretion in allowing Heartland to introduce into evidence communications by Huntington, KJWW's structural engineer, whom the court had barred from giving opinion testimony, when those communications included Huntington's opinions. We disagree.



¶ 56 “[E]videntiary rulings are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion.” *Clayton v. Planet Travel Holdings, Inc.*, 2013 IL App (4th) 120717, ¶ 48, 988 N.E.2d 1110. “ ‘The threshold for finding an abuse of discretion is high. A trial court will not be found to have abused its discretion with respect to an evidentiary ruling unless it can be said that no reasonable [person] would take the view adopted by the court.’ ” *Enbridge Pipeline (Illinois), LLC v. Hoke*, 2017 IL App (4th) 150544, ¶ 97, 80 N.E.3d 807 (quoting *In re Leona W.*, 228 Ill. 2d 439, 460, 888 N.E.2d 72, 83 (2008)).

¶ 57 In the case *sub judice*, WBCI succeeded in its motion *in limine* No. 4, which sought to bar Huntington from giving opinion testimony because Heartland had not disclosed him as an expert witness. At trial, Heartland sought to call Huntington and introduce letters or e-mails he authored to show what KJWW did in response to the claimed design error and the reasons for doing so. The trial court indicated it would admit the exhibits for that limited purpose.

¶ 58 After Heartland’s counsel moved to admit defense exhibit No. 44 (the July 13, 2009, letter from Huntington to Maxey), the trial court instructed the jury the exhibit was “being admitted for what we call a limited purpose, which means that this correspondence is being admitted only to show that this kind of information was conveyed in the correspondence, but it is not being admitted for the truth of the information contained within the correspondence.” Huntington stated the purpose of the letter was “to go on record through written documentation indicating [KJWW] did not accept [WBCI’s] assessment this was a design error.”

¶ 59 Prior to the introduction of defense exhibit No. 50 (Huntington’s July 27, 2009, e-mail to Gross at KJWW), the trial court instructed the jury the exhibit was being admitted for a limited purpose and “not being admitted for the truth of the information within the

correspondence.” Huntington testified he “wanted to double and triple check our calculations before we restated back to the owner our opinion about a specific condition on the project.” The e-mail noted his calculations “indicate why long slotted holes (had they been provided) would have ensured that the bolts would not have been bound up under their current loading.”

¶ 60 The trial court admitted defense exhibit No. 55 (Huntington’s August 26, 2009, e-mail to Maxey) and provided the same limiting instruction to the jury. Huntington testified the purpose of the e-mail was to provide KJWW’s initial findings based on the Maurer-Stutz survey. When asked about his conclusion about tolerances mentioned in the e-mail, the court sustained an objection by WBCI’s counsel.

¶ 61 Prior to the admission of defense exhibit No. 57 (Huntington’s August 31, 2009, letter to Maxey) and defense exhibit No 58 (an attachment to the letter), the trial court provided the same limiting instruction to the jury. Huntington testified the letter summarized the “deficiencies or deviations that the contractor did” based on the survey data.

¶ 62 After counsel moved to admit defense exhibit No. 61 (Huntington’s September 2, 2009, letter to Maxey), the trial court admitted it “for only a limited purpose.” When asked the purpose of the letter, Huntington testified KJWW was “drawing conclusions based on the survey data what we believe has caused bowing of that column.” When asked about his conclusion, WBCI’s counsel objected. The court stated Huntington could “suggest what was said in the letter,” but “it’s only for a limited purpose” and “the jury [was] to consider it for that limited purpose.” Huntington testified KJWW’s “conclusion was that there were construction deviations that occurred that were the primary cause of the column bowing out.”

¶ 63 Although it is arguable the trial court permitted too much inquiry regarding various conclusions reached by experts as expressed in Huntington’s correspondence, the court

repeatedly advised the jury of the limited nature of the testimony and repeated the limiting instruction at the close of all the evidence, stating evidence “received for a limited purpose should not be considered for any other purpose.”

¶ 64 WBCI argues the trial court permitted “extensive opinions by Huntington based on his engineering experience before the jury” and “opened the door to allow Huntington to emphasize the opinions that he was communicating to BLDD and Heartland.”

¶ 65 Heartland sought to offer the Huntington exhibits for a limited purpose and, in such situations, the best procedure is for the trial court to advise the jury of the limited purpose of the evidence at the time the evidence is admitted and then again when the jury instructions are read at the end of the case. *Fakes v. Eloy*, 2014 IL App (4th) 121100, ¶ 130, 8 N.E.3d 93; see also *Atwood v. Chicago Transit Authority*, 253 Ill. App. 3d 1, 11, 624 N.E.2d 1180, 1187 (1993) (stating “if prejudicial evidence that would tend to mislead the jury is admitted, the court should concisely advise the jury to consider it only for its limited purpose”). While not only sustaining counsel’s objection to the offending testimony, the trial court also issued the limiting instruction when the exhibits were admitted and at the close of the case.

¶ 66 We note the “jury is presumed to have followed the court’s instruction to disregard testimony.” *Buckholtz v. MacNeal Hospital*, 337 Ill. App. 3d 163, 170, 785 N.E.2d 162, 169 (2003). While WBCI takes issue with this presumption, it has offered “no proof that the jury failed to follow the trial judge’s instruction.” *City of Chicago v. Eychaner*, 2015 IL App (1st) 131833, ¶ 105, 26 N.E.3d 501; see also *Kamp v. Preis*, 332 Ill. App. 3d 1115, 1127, 774 N.E.2d 865, 876 (2002). We find the trial court did not abuse its discretion in admitting the exhibits.

¶ 67 C. The Jury’s Verdicts

¶ 68 Heartland argues the jury’s verdicts in favor of Heartland on counts I and II were legally inconsistent with the verdicts on counts III and IV. We disagree.

¶ 69 Courts “exercise all reasonable presumptions in favor of the verdict or verdicts, which will not be found legally inconsistent unless absolutely irreconcilable; further, the verdict or verdicts will not be considered irreconcilably inconsistent if supported by any reasonable hypothesis.” *Redmond v. Socha*, 216 Ill. 2d 622, 643-44, 837 N.E.2d 883, 896 (2005).

¶ 70 Whether a jury’s verdicts are legally inconsistent is a question of law, and a trial court’s decision to grant or deny a motion for a new trial based on a claim of legally inconsistent verdicts is reviewed *de novo*. *Rodriguez v. Northeast Illinois Regional Commuter R.R. Corp.*, 2012 IL App (1st) 102953, ¶ 48, 964 N.E.2d 731 (citing *Redmond*, 216 Ill. 2d at 642, 837 N.E.2d at 895).

¶ 71 Here, count I (breach of contract) dealt with the remediation and repair work to the structural steel framing of the fitness center set forth in revised CCD4. Count II (breach of contract) dealt with the costs of the delay following the deflection of the steel framing. Count III (breach of implied contract) dealt with the replacement of hangers supporting the fitness-center running track damaged because of the delay. Count IV (*quantum meruit*) also dealt with the placement of the track hangers. The jury found in favor of WBCI on counts III and IV but against it on counts I and II.

¶ 72 The elements of counts I and II are different from those in counts III and IV. Moreover, counts III and IV do not require a finding on counts I and II for the jury to find in WBCI’s favor. Counts III and IV dealt with the replacement of the track hangers but did not require a finding as to which party caused the delay in the fitness-center construction. Thus, either Heartland or WBCI could have been responsible for the delay, and the jury could have

found a contract existed to repair the track hangers and obligated Heartland to pay. Thus, we find the jury's verdicts were not legally inconsistent.

¶ 73

### III. CONCLUSION

¶ 74

For the reasons stated, we affirm the trial court's judgment.

¶ 75

Affirmed.