No. 123046

In the

Supreme Court of Illinois

1550 MP ROAD, LLC,

Plaintiff-Appellee,

v.

TEAMSTERS LOCAL UNION NO. 700,

Defendant-Appellant,

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, JOINT COUNCIL 25 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, RANDY CAMMACK, JOHN COLI, PATRICK W. FLYNN, FRED GEGARE, JAMES T. GLIMCO, MICHAEL HAFFNER, KEN HALL, TERRENCE J. HANCOCK, CARROLL E. HAYNES, JAMES P. HOFFA, C. THOMAS KEEGEL, BRIAN MEIDEL, FREDERICK P. POTTER, JR., BRIAN RAINVILLE, FRED SIMPSON, THOMAS STIEDE and GEORGE TEDESKCHI,

Defendants.

On Petition for Leave to Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-15-3300.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division, No. 10 L 5979.
The Honorable **Raymond W. Mitchell**, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

This is an action to impose successor liability against a successor local union for a clear breach of a commercial office lease by its predecessor. As it did for decades before the lease at issue – indeed, with every single lease into which it entered as far back as all the former executives of the predecessor, Teamsters Local Union No. 726 ("Local 726"), who testified at trial could recall – for the lease at issue, Local 726 wholly disregarded the provisions both of its own bylaws and of the Illinois Property of Unincorporated Associations Act, 765 ILCS 115/0.01 *et seq.* ("PUAA"), which required a formal, advance approval vote by the membership and the signatures of two (2) Executive Board members on the lease. And, on every previous lease for which Local 726 ignored the provisions of the law governing unincorporated associations and its own governing documents, Local 726 fully performed, paying monthly rent and remaining in the leased premises for the full term with no suggestion that Local 726 lacked the capacity to have entered into the leases because of its own non-compliance with the bylaws and the PUAA.

In this case, Local 726's Secretary-Treasurer and principal officer, Thomas Clair, both negotiated the lease with the manager of 1550 MP Road, LLC ("1550") and executed the lease on behalf of Local 726, repeatedly affirming to 1550 that he had authority to perform these acts. Substantiating this notion that Clair was not acting in some rogue fashion through which he was secretly putting all the members of Local 726 at risk, while Clair was negotiating the lease, all of the other members of Local 726's Executive Board visited the premises and approved of the construction and development that Local 726 had requested that 1550 perform before Local 726 was to move into the premises. Furthermore, after Clair executed the lease, but before Local 726 moved out of its then-current office and into the premises,

Local 726's membership was advised that Local 726 would be moving offices, and there was virtual unanimous approval for the move at this December 2008 meeting.

Consistent with both the Executive Board's and the membership's knowledge and approval of the lease, Local 726 timely paid rent for the first eight months of the lease term. During that time, no one associated with Local 726, including members of Joint Council 25 ("JC25"), which oversaw Local 726 along with other local unions in the Chicagoland area, claimed the lease was invalid or raised either Local 726's bylaws or the PUAA.

However, for reasons entirely unrelated to the lease, the International Brotherhood of Teamsters ("IBT") imposed an emergency trusteeship over Local 726 in August 2009, eight months into the 15-year term of the lease. On September 17, 2009, at a hearing about whether the trusteeship should be continued, Becky Strzechowski, the trustee that the IBT had appointed to take over Local 726's operations, testified that the lease "imposes a multi-million dollar liability upon Local 726 that will inevitably bankrupt this Local unless another means is found to avoid this crushing financial burden." Even then, Strzechowski did not raise the PUAA, or any claimed violation thereof. Three months later, in early December 2009, the IBT's General Executive Board ("GEB") voted to dissolve Local 726 effective December 31, 2009 and combine Local 726's membership with a portion of the membership of another dissolved Chicago Teamsters local union, Local 714, thereby creating a new local union, called Local 700, as of January 1, 2010.

Beginning in October 2009 and continuing through Local 726's dissolution on December 31, 2009, Strzechowski and her counsel, Robert Bloch (who also represented Local 700 at trial), negotiated with 1550. But, at no time during those negotiations did Strzechowski or Bloch ever assert that the lease violated the PUAA; to the contrary, Strzechowski and Bloch affirmed the lease by negotiating to modify it to have Local 726 remain in the premises into

2011. Amazingly, even after Bloch learned that Local 726 would be dissolved at the end of December 2009, he sent a draft Lease Modification Agreement for Local 726 to 1550's counsel, again affirming the validity of the lease.

No written modification agreement was ever executed between Local 726 and 1550. But, in its verified pleadings in this case, Local 700 claimed that 1550 and Local 726 reached an oral agreement to modify the lease, thus judicially admitting that the lease was valid, for only a valid lease is capable of being modified. Local 700 withdrew this claim during the litigation but, having admitted in a verified pleading that the lease had been modified, Local 700 judicially admitted the validity of the lease and was bound by this admission throughout the litigation, through the present.

As of January 1, 2010, Local 726, which no longer existed as a result of the GEB's vote to dissolve it as of December 31, 2009, stopped paying rent under the lease, thus breaching it.

Local 700 occupied the premises as of January 1, 2010. John Coli, the President of JC25, was appointed to be the initial trustee of Local 700. In April 2010, Local 700 vacated the premises, leaving 1550 with no tenant in the built-to-suit premises. 1550's attempts to re-let or sell the premises were unsuccessful. Local 700 moved into a building in Park Ridge, Illinois owned by the pension plan for Teamsters Local No. 727, of which Coli was President. Coli and his son also were two of the trustees of the Local 727 pension plan.

In addition to Local 726's membership, all of Local 726's assets were transferred to Local 700. Thus, Local 726's bank accounts, office furniture and cars for its officers were transferred. Local 700 also stepped into all of the collective bargaining agreements into which Local 726 had entered on behalf of its members, without even amending those agreements. Local 726's liabilities, including long-term leases for photocopy machines that Local 726 had

used in the 1550 premises, scholarship funds for children of injured union members and loans on officers' cars, were also transferred to Local 700. The only Local 726 liability that was not transferred to Local 700 was the lease, the very same lease that Strzechowski – without raising any violation of the PUAA – had implored the hearing panel in September 2009 to find "another means . . . to avoid."

Internal IBT correspondence called Local 700 as a "consolidation" of Local 726 and Local 714. And, both Local 726's and Local 700's financial reports, as well as their tax returns (which were signed by the assistant trustees of the respective locals under penalty of perjury) stated that the assets and liabilities of Local 726 were transferred to Local 700 "in the merger." Local 726's financial report even referred to Local 700 as Local 726's "successor."

1550 filed this lawsuit against Local 700, alleging precisely what Local 700 and Local 726 admitted Local 700 was, Local 726's legal successor. It sued Local 700 for Local 726's breach of the lease, seeking damages as provided in the lease, that is, the present value of the remaining rent due under the lease, plus attorneys' fees and costs per the lease.

Following a nearly two-week bench trial, the trial court issued a 15-page Order entering judgment in 1550's favor and against Local 700 on the successor liability claim for Local 726's breach of the lease.[1] The trial court awarded 1550 damages calculated in accordance with the lease, that is, the present value of the remaining rent due under the lease from the time Local 726 breached the lease, plus attorneys' fees, for a total judgment of $2,318,620.67, plus post-judgment interest.

[1] 1550 asserted other claims against Local 700, the IBT, JC25 and the individual members of the IBT's GEB in an Amended Complaint. Although the trial court entered judgment in 1550's favor on certain of those claims against certain of those defendants, the Appellate Court reversed those aspects of the trial court's judgment. Those claims are therefore not before this Court and 1550 will forego a discussion of them in this Brief.

Local 700 filed post-trial motions to reconsider and, after full briefing, the trial court issued an 18-page Order that, by its terms, replaced the original judgment Order. In this new Order, the trial court rejected Local 700's arguments and reaffirmed its judgment in favor of 1550 in the same amount as in his previous, withdrawn Order.

Local 700 appealed and, after full briefing and oral argument before the First District, the Appellate Court affirmed the judgment against Local 700 in a unanimous, published opinion, 2017 IL App (1st) 153300. This Court granted Local 700's Petition for Leave to Appeal.

ISSUES PRESENTED FOR REVIEW

1. Whether the Appellate Court correctly affirmed the trial court's determination that the lease was valid and enforceable?

2. Whether the Appellate Court correctly affirmed the trial court's determination that Local 700 was the successor to Local 726?

3. Whether the Appellate Court correctly affirmed the trial court's determination 1550 was entitled to recover liquidated damages in the amount of the present value of the remaining rent due under the lease?

STATEMENT OF FACTS

1. Teamsters Local Union Number 726.

It was and is undisputed that, as labor organizations, Local 726 and Local 700, as well as the IBT itself, are voluntary unincorporated associations. (Stipulation No. 1 – R.V16, C3797[2]). Local 726 represented public employees in the State of Illinois, including employees

[2] 1550 will use the same system of citation to the record on appeal as did Local 700 in its Brief. *See* Brief, p. 5 n.1. Where references are made to exhibits, 1550 will designate Plaintiff's Exhibits as "PX," Joint Exhibits as "JX," Local 700's Exhibits as "LUX" and the IBT Defendants' Exhibits as "DX," followed by the record citations to such exhibits.

of the City of Chicago (the "City"), the Chicago Transit Authority (the "CTA") and the Departments of Central Management Services, Transportation, Human Services and Employment Security (collectively, "CMS"). (R.V4, C9 - R.V5, C1041 (Amended Complaint, Exhibits F, G and H)).

Local 726's Secretary-Treasurer was its principal officer. (Stipulation No. 3 – R.V16, C3797; R.V20, 184; R.V22, 35, 76-77). At all relevant times, Local 726's Secretary-Treasurer was Thomas Clair. (R.V16, C3797). Between 2003 and July 2009, Local 726's seven elected officers who comprised its Executive Board were Secretary-Treasurer Clair, President John Falzone, Vice President Kenneth Brantley, Recording Secretary John Hurley, Business Agent/Trustee Michael Marcatante and Trustees Linda Cruz and Anthony Fiori. (*Id.*).

2. None of Local 726's Leases Prior to the Lease at Issue, Including the Lease Immediately Prior to the Subject Lease, Which Clair Signed By Himself and Which Local 726 Fully Performed, Complied with the Requirements of the PUAA or Local 726's Own Bylaws.

Despite the fact that, as Local 700 points out in its Brief, at all relevant times, both the PUAA and Local 726's bylaws required two executive board signatures on a lease and an advance vote of the general membership approving such lease, it is undisputed that Local 726 never complied with these requirements on any lease during the 30 years preceding the lease at issue. Indeed, Marcatante, a Local 726 member for 30 years and a member of Local 726's Executive Board from 1995 through his retirement in 2009, testified unequivocally that "the President never signed any leases." (R.V22, 33-34, 60-61). Hurley, who served on Local 726's Executive Board from 1997 through his retirement in 2009, did not believe a second signature by the President was necessary to render valid the solitary signature of the Secretary-Treasurer on a Local 726 lease. (R.V22, 76-78).

Clair, who had served in the governance of Local 726 since 1995 and had been an officer and on the Executive Board of Local 726 since 1996 (R.V20, 183, 185-186), signed

both the lease at issue and the lease immediately preceding this lease. On December 30, 2003, he signed a five-year Office Lease on behalf of Local 726 at 1645 West Jackson Blvd. in Chicago, known as "Teamsters City" (the "Teamsters City Lease"). (JX21 – S.R.V2, 365-394). No other officer or member of Local 726 signed the Teamsters City Lease. (*Id.*). Clair did not believe a second signature by the President of Local 726 was necessary to render the Teamsters City Lease valid on behalf of Local 726. (R.V20, 190).

During the entire five-year period Local 726 occupied the office in Teamsters City and paid monthly rent pursuant to the Teamsters City Lease (R.V20, 192), no one from Local 726 questioned Clair's authority to have signed the Teamsters City Lease by himself or told Clair the President of Local 726 also had to have signed the Teamsters City Lease. (R.V20, 191; *see also* R.V22, 77-78). Indeed, during his tenure in the governance of Local 726, but before he signed the Teamsters City Lease, Clair saw prior office leases that had been signed only by the principal officer without any co-signatures. (R.V20, 193). Hurley and Marcatante both saw this as well. (R.V22, 77-78; R.V22, 33-34, 60-61).[3] Clair also did not believe that the Executive Board of Local 726 had to have approved or ratified his solitary signature on the Teamsters City Lease (R.V20, 191), and there was no evidence that the Executive Board did so. Critically, Clair was not even aware that there was any requirement that the general membership of Local 726 had to have voted to approve the Teamsters City Lease or authorize Clair to have signed it by himself. (*Id.*, 191-192).

[3] There was no evidence at trial that any of the prior leases were ever objected to or sought to be invalidated for failure to follow the PUAA or Local 726's bylaws, or any other basis.

3. With the Knowledge and Approval of Local 726's Executive Board, Local 726, Through Clair, Selects the Premises and Negotiates the Subject Lease, and Clair Signs the Lease by Himself.

Prior to even meeting Matt Friedman ("Mr. Friedman"), 1550's sole member and one of 1550's managers (Stipulation No. 6 – R.V16, C3798), Local 726 learned that its rent would be was increasing at the end of the Teamsters City Lease; thus, Clair suggested to the Executive Board that Local 726 should look for its own building that would have all the space and free parking it needed rather than sharing one floor in a building in Teamsters City. (R.V22, 79-80). In addition, Clair and the Executive Board discussed leasing a new building with an option to buy, because although Local 726 could not afford to buy a building in 2009, it believed it would be in a position to do so in the future. (R.V22, 40). It was also thought that if it could find a building that had space for a meeting hall, Local 726 could rent out the meeting hall. (R.V20, 203). Hurley felt a "lease to purchase" property was a good idea (R.V22, 99-100) and the Executive Board concurred. (*Id.*, 101). So, Local 726 began searching for a "lease to purchase" property. (*Id.*, 40).

When Clair first met Mr. Friedman, Clair advised him that he was the Secretary-Treasurer of Local 726, that he "called the shots" and ran the local. (R.V19, 158). In his conversations with Mr. Friedman, Clair held himself out as the person who was authorized on behalf of Local 726 to negotiate the potential for a lease and to sign a lease if a lease were satisfactory. (R.V20, 201-202). And, having signed the Teamsters City Lease by himself for Local 726, Clair himself believed that he had this authority. (*Id.*, 202).

During the process of choosing the premises at issue, Local 726's officers, trustees and business agents also visited the premises. (R.V20, 199). Thus, Fiore (trustee/ Executive Board member), Michael Malone (business agent), William McTigh (business agent), and Gina DiBalsana (office manager) all visited the premises (*Id.*, 199-201), as did Falzone (President),

and Brantley (Vice President). (R.V19, 173-174; R.V20, 243; R.V22, 83-84). In addition, Clair had conversations with Mr. Friedman about the renovations Local 726 wanted to have performed on the premises, and Clair saw architectural plans for this work. (R.V19, 167-168; R.V20, 205-206). In addition to the plans themselves, Mr. Friedman shared with the Local 726 representatives and executives what the proposed cost of the renovations would be, and Local 726 approved of this as well. (R.V19, 168).

In approximately April 2008, in the month before Clair signed the lease, a number of the members of the Executive Board again visited the premises. (R.V19, 173-174). Clair introduced them to Mr. Friedman, who was also present. (*Id.*, 174). The comments they made to Mr. Friedman about the premises were overwhelmingly positive. (*Id.*, 174-175). In total, Mr. Friedman estimated that he met 15-20 times with various representatives of Local 726 before the lease was executed. (*Id.*, 179). No one disputed this at trial.

Thus, throughout the process of selecting the subject premises and during the development of the premises once selected, the Local 726 Executive Board was aware, involved and knowledgeable. In fact, at a meeting between Local 726's Executive Board, John Coli, President of JC25[4] and a Vice President of the IBT (and a member of the GEB of the IBT) (R.V20, 206; R.V23, 81-82), Brian Rainville, JC25's Executive Director (R.V24, 5), and Terry Hancock, a Trustee of Local 714 (PX17 – S.R.V3, 523), one of the agenda items was

[4] JC25 oversees the operations of a number of local unions in a given geographical area (R.V20, 206) (here, Chicagoland) and helps those locals – including Local 726 (R.V22, 64) – with organizing, communications, politics, legislative and education services. (R.V23, 81-82).

that Local 726 would be moving to Des Plaines at the end of 2008 once the premises was fully developed. (R.V22, 94).[5]

Mr. Friedman hired an attorney, Jeffrey Rochman, to draft the lease. (R.V19, 181-182). Rochman did not attend any of Mr. Friedman's meetings with Clair, and did not engage in any negotiations with Clair with respect to the terms of the lease. (*Id.*, 182; R.V20, 222). The only person who negotiated the terms of the lease with Clair was Mr. Friedman. (R.V19, 182). And, although Mr. Friedman understood Local 726 had attorneys as well (Messrs. Green and O'Driscoll – Clair confirmed this (R.V21, 3-4)), he never met with them to negotiate the lease. (R.V19, 180-181). According to Clair, O'Driscoll reviewed the draft lease (which no doubt contained only one signature line for Local 726) and said it looked fine. (R.V20, 216; R.V21, 5). During the negotiations, Clair reiterated that he had authority to negotiate the terms of this lease. (R.V19, 182). John Diaz, a Local 726 member who was involved in the discussions with Clair and Mr. Friedman, also told Mr. Friedman this. (*Id.*, 183). No one ever told Mr. Friedman that it was necessary for Clair to obtain Executive Board approval before executing the lease. (*Id.*, 184). Likewise, no one ever told Mr. Friedman that it was necessary for Clair to obtain approval or vote of the general membership of Local 726 before executing the lease. (*Id.*). Thus, there was no question in Mr. Friedman's mind, based upon what he had been told, that Clair had the singular authority to negotiate and sign the lease on behalf of Local 726. (*Id.*, 183).

The evidence was undisputed at trial that as of the time Clair signed the lease on behalf of Local 726, Local 726's Executive Board, which had already seen the premises and approved

[5] Indeed, at trial, no one from the former Local 726 testified at trial that they did ***not*** know about Clair selecting the premises or negotiating either the renovation work to be done at the premises or the terms of the lease.

of the choice of the premises for Local 726's new home, approved of Clair signing the lease on behalf of Local 726. (R.V21, 21-22; R.V22, 44-45). When Clair signed the lease for Local 726, it contained a provision – Section 9 – entitled "Purchase Obligation." (R.V19, 175; PX1 – S.R.V2, 419-431). That Section provided, in pertinent part:

> Tenant shall purchase the Premises from Landlord on the last day of the Fifth Lease Year (the "Closing Date") for an amount equal to the Annual Base Rent for the Sixth Lease Year divided by seven and seventy-five hundredths percent (7.75%).
>
> If Tenant fails to comply with its obligations as contained in this Section, in addition to Landlord's remedies contained herein, the Annual Base Rent shall immediately double and Landlord shall have the right to sell the Premises to any third party without the consent of Tenant and upon said sale Tenant shall have no right to purchase the Premises pursuant to this Section.

(PX1 – S.R.V2, at 423). After he signed the lease, at no time did Clair come back to Mr. Friedman to object to the terms of Section 9. (R.V19, 175-176). Moreover, at no time did Clair tell Mr. Friedman that he did not know that the obligations of Section 9, including the doubling of Base Rent if Local 726 did not purchase the building, were present. (*Id.*, 176). In fact, Clair confirmed that he was aware that this provision was in the lease when he signed it. (R.V20, 216). And, Clair never objected to the double rent term. (R.V19, 176). In fact, Clair confirmed that it was his intention that Local 726 would purchase the premises well within the five-year period set forth in Section 9. (R.V29, 216-217). Clair thought purchasing the premises was a very good idea for Local 726, because they no longer would have had to pay for parking for their members, they could rent out the meeting hall and make money and there was an undeveloped area in the premises they could have developed and made money on as well. (*Id.*, 218). In signing the lease, Clair was unequivocal that he was exercising his business judgment in the best interest of Local 726. (*Id.*).

4. After Clair Signed the Lease and During the Time Local 726 Moved into and Occupied the Premises and Paid Rent Under the Lease, No One Associated with Local 726 Objected to the Lease or Any of Its Terms, Or Claimed that the Local 726 Lacked Capacity to Have Entered into the Lease Because Local 726 Did Not Comply With its Own Bylaws or the PUAA.

Critically, during the period between May 2, 2008, when the lease was executed, and August 2009, when Local 726 was placed in trusteeship by the IBT (fully 8 months after Local 726 took possession of the premises), no one from Local 726 ever objected to Section 9 of the lease. (R.V19, 176). During this period, no one from Local 726 ever told Mr. Friedman that they did not know there was a purchase obligation and that they did not want to do that, or that they did not know there was going to be double rent if they did not a purchase the premises after 5 years and that they did not want to do that. (*Id.*, 176-177). And, during this period, no one from Local 726 ever told Mr. Friedman they objected to the lease on the basis that Clair did not have authority to sign it. (*Id.*, 177).

Mr. Friedman did not recall ever asking for, or seeing, a copy of Local 726's bylaws, or the IBT Constitution, as of the time the lease was executed. (*Id.*, 183, 185). Clair had no specific recollection of Mr. Friedman ever asking him for a copy of the bylaws (R.V20, 221), or of him giving the bylaws to Mr. Friedman (*id.*, 222), or to Mick Bess (*id.*), 1550's other manager (R.V19, 171) or to Rochman (R.V20, 223). In his 20+ years of experience in real estate development, Mr. Friedman could not recall even one instance in which he asked for the governing documents of any entity that was on the other side of a transaction with him. (R.V19, 184).[6]

[6] Although Local 700 disputed this at trial and on appeal, the trial court made a factual finding that comported with 1550's version of the facts. (A.4). The Appellate Court, correctly applying the manifest weight standard of review to this finding of fact, expressly found that there was sufficient evidence in the record to support the trial court's conclusion in this regard. (A.24-25, ¶¶29, 30).

Before Clair signed the lease on behalf of Local 726, he and/or Diaz provided Mr. Friedman with financial documents pertaining to Local 726. (PX2 – S.R.2, 433-437; R.V19, 188; R.V20, 219). Upon his receipt and review of these documents and the discussions he had with Local 726, Mr. Friedman was satisfied that Local 726 would be able to perform under the lease, even taking into account the purchase obligation. (R.V19, 190). Mr. Friedman also obtained copies of Local 726's prior tax returns, which showed dues revenues in excess of $3,000,000 for each of the years he saw. (*Id.*). Prior to Clair signing the lease, Mr. Friedman never got any information from Local 726 that it was in financial difficulty. (*Id.*, 194). Clair portrayed Local 726's financial prospects as very positive. (*Id.*, 194-195). In fact, even at trial, years later, under cross-examination from Local 700's counsel, Clair emphatically testified that he was unconcerned with the amount Local 726 would have had to have paid had it failed to purchase the Premises pursuant to the lease, because "I was sure it wasn't going to fail." (R.V21, 67-68).

5. Confirming That It Never Believed the Lease Violated the Bylaws or The PUAA, Within Days After Clair Signed the Lease, Local 726's Executive Board Executed a Unanimous Consent Resolution That Approved and Ratified Clair's Solitary Execution of the Lease.

Memorializing the oral approval its members had already given to Clair before he executed the lease, on May 8, 2008, six days after the lease was signed, a majority of Local 726's Executive Board signed a document called a "Unanimous Consent Resolution" ("UCR"). (LUX6 – S.R.V3, 715-716). In the UCR, the Executive Board resolved, *inter alia*, that the Secretary-Treasurer, President and the Secretary, acting together ***or any one of them acting alone***, were authorized to lease the premises from 1550. The UCR referred to Local 726 leasing the premises as the "Lease." (*Id.*).

Rochman prepared the UCR, though Mr. Friedman did not instruct Rochman to do so. (R.V19, 228-229). Nonetheless, Mr. Friedman was aware that the UCR was given to Clair

for the Executive Board to sign. (R.V20, 52). No one ever told Mr. Friedman that the UCR was required by Local 726 rules, regulations or bylaws. (R.V19, 228-229). And, Clair did not believe he needed any sort of resolution by Local 726's Executive Board to authorize, or ratify, his signing of the lease. (R.V20, 223-224). After the UCR was executed, it was provided to Mr. Friedman, and he saw that it was signed by only five of the seven members of Local 726's Executive Board. (R.V19, 230). But, no one from Local 726 ever told Mr. Friedman that the signature of five of the seven members of the Executive Board was not sufficient to constitute a valid resolution by the Executive Board. (*Id.*).

Although the UCR did not specifically mention the purchase obligation within the lease, no member of the Executive Board ever objected to Clair having signed the lease with the purchase terms contained therein. (R.V22, 70 (Marcatante), 89 (Hurley)). Irrespective of the UCR, Hurley believed Clair was authorized to sign a lease purchase agreement, and no one on the Executive Board ever told Clair he was exceeding his authority in signing such a lease in this case. (*Id.*, 90).

In January 2009, after 1550 developed the premises in reliance on Clair's statements that he had authority to enter into the lease and the Executive Board's approval, authorization and/or ratification of Clair's actions in the UCR, Local 726 moved into the premises and paid rent each month between January 2009 and August 2009. (R.V19, 179).

6. Neither JC25 nor the IRB, Both of Whom Investigated Local 726 Between February 2008 and August 2009 and Saw Both the Lease At Issue and the Teamsters City Lease, Raised the PUAA.

In February 2008, C. Thomas Keegel, the IBT's General Secretary-Treasurer, wrote Coli (as President of JC25) requesting that JC25 conduct an investigation into Local 726's operations. (DX31 – S.R.V6, 1275). During the course of that investigation, Clair turned over copies of both the lease at issue and the Teamsters City Lease (both of which, as noted, had

been executed only by Clair) to Rainville. (R.V20, 226). No one from JC25 ever suggested during the investigation that the lease was not authorized. (*Id.*, 227).

On May 14, 2008, Coli wrote Keegel, advising about the results of JC25's investigation. (DX33 – S.R.V6, 1280-1281). Coli made no mention in his letter that Clair lacked authority to have entered into the leases for Local 726, much less that the leases were legally deficient in any manner.

Following Clair's letter to Keegel, the IBT's Independent Review Board ("IRB"), which had the authority to, among other things, recommend to the IBT General President that local unions be placed into trusteeship (Stipulation No. 18 - R.V16, C3799), began its own investigation into Local 726's operations. That investigation proceeded through July 20, 2009, when the IRB issued a Trusteeship Recommendation Concerning Local 726 (the "Recommendation") to IBT General President James Hoffa that Local 726 be placed into trusteeship. (Stipulation No. 19 - R.V16, C3799; *see also* DX34 – S.R.V6, 1284-1345).

During the course of its investigation, the IRB reviewed hundreds, if not thousands, of pages of documents pertaining to Local 726's operations from 2004 through mid-2009. (*see* DX34 – S.R.V6, at 1339-1345).

7. Hoffa Imposes an Emergency Trusteeship Over Local 726.

On August 3, 2009, Hoffa, acting on the IRB's July 20, 2009 Recommendation, imposed an emergency trusteeship over Local 726. (Stipulation No. 16 - R.V16, C3798; LUX7 – S.R.V3, 718-720). Hoffa appointed Becky Strzechowski to serve as Local 726's trustee during the trusteeship. (Stipulation No. 20 – R.V16, C3798; *see also* LUX7 – S.R.V3, 718-720).

8. Strzechowski Met with Mr. Friedman About Lease and Did Not Raise Any Issue About Its Compliance with Local 726's Bylaws or the PUAA.

The day after the trusteeship was imposed, Mr. Friedman met with Strzechowski and Robert Bloch (Strzechowski's counsel (R.V22, 139), who also represented Local 700 at trial)

at the premises. (R.V19, 201; R.V23, 189[7]). At that meeting, Bloch and/or Strzechowski advised Mr. Friedman that the lease did not fit into Local 726's long-term plans. (R.V19, 203). At no point in the meeting did Bloch or Strzechowski mention anything about there being any issue with Clair's authorization to have signed the lease, or about the validity of the lease. (R.V19, 204; R.V20, 90).

Strzechowski met with Mr. Friedman again on September 30, with Bloch and Rochman also in attendance. (R.V23, 192-193). No resolution as to Local 726's plans with respect to the lease or the premises was reached at that meeting.

9. At a Hearing Before an IBT Panel to Determine Whether to Continue Local 726's Trusteeship, Strzechowski Testifies That the Lease Should Be Avoided, But Does Not Claim That It Violated the PUAA.

Because the Local 726 trusteeship was imposed on an emergency basis, a hearing was required to determine whether to continue the trusteeship. (Stipulation No. 21 – R.V16, C3798). That hearing was conducted on September 17, 2009. (*Id.*)

Strzechowski testified at the hearing and, although she was not sworn to tell the truth, she did in fact tell the truth. (R.V23, 205). According the transcript of the hearing, Strzechowski told the panel, *inter alia*: "The lease [which was provided to the panel] imposes a multi-million dollar liability upon Local 726 that will inevitably bankrupt this Local unless another means is found to avoid this crushing financial burden." (JX3 – S.R.V1, at 240-241). Strzechowski made no mention that the lease (or the manner in which Clair executed it) violated any statute.

[7] Strzechowski denied that Bloch was present, though she conceded that she had retained his firm as of the time of this meeting. (R.V23, 192). She testified that there were two other individuals present at the meeting, Paul Degrazia and Russ Ryan. (*Id.*, 191-192).

10. In the Meantime, Strzechowski's Counsel Impliedly Admitted That the Lease Was Valid by Negotiating With 1550's Counsel to "Modify" the Lease.

On October 27, 2009, in response to Bloch's prior request for a written proposal to modify the lease, Rochman wrote Bloch, offering to remove the purchase obligation and reduce the term of the lease to 24 months from the date a modification was fully executed. (LUX11 – S.R.V3, 726). Bloch responded by letter dated November 4, 2009, rejecting Rochman's offer and proposing that the lease be amended to expire on July 1, 2010. (PX25 – Second Supplemental Record ("S.S.R.")V1, C10**)**. In his letter, Bloch wrote that he understood that Local 726 "must vacate the premises in less than two years" (*Id.*) but, at trial, he claimed not to know why he wrote that. (R.V22, 149). Rochman did not accept Bloch's counter-proposal to modify the lease.

11. The IBT Hearing Panel Recommends that the Trusteeship Be Continued.

On November 23, 2009, the hearing panel issued its Report and Recommendation (the "Report") to IBT General President Hoffa. (JX5 – S.R.V2, 306-315). In this Report, among its many other findings unrelated to the lease, the panel essentially repeated Strzechowski's testimony with respect to the lease, calling the lease "an unconscionable and unauthorized lease-purchase agreement for a building which imposes a multi million dollar liability that the Local cannot afford and which exceeds the fair market value of the building." (JX5 – *Id.*, at 310). It recommended that the trusteeship be continued. And, like Strzechowski when she testified before the panel, the panel made no mention of the PUAA.

12. One Week After the Hearing Panel Recommended to Continue Local 726's Trusteeship, the IBT's General Executive Board Revokes Local 726's Charter and Dissolves Local 726 on Coli's Recommendation.

On December 1, 2009, the IBT's GEB met in Florida. (Stipulation No. 22 – R.V16, C3799; JX6 – S.R.V2, 317-319). Coli recommended that Local 726's and Local 714's charters be revoked and that the public employee members of Local 714 be combined with the

members of Local 726 to form a new public union, called Local 700. (JX6 – S.R.V2, at 319). The GEB unanimously adopted Coli's recommendation. (Stipulation No. 23 – R.V16, C3799). All of those actions were to become effective on December 31, 2009. (Stipulation Nos. 24, 25 – R.V16, C3799). Coli was to become the trustee for Local 700, with Strzechowski as one of its assistant trustees. (Stipulation No. 26 – R.V16, C3799).

13. Following the GEB's Vote, Keegel Refers to Local 700 as a "Consolidation" of Locals 726 and 714.

On December 14, 2009, Keegel wrote Coli to advise as to "those matters that are applicable to newly chartered Local Unions." (JX13 – S.R.V2, 337-339). In this letter, Keegel wrote: "[I]t is acknowledged that initially Local Union No. 700 will be structured as a consolidation of former Local Union No. 714 and Local Union No. 726. . ." (*Id.*). Neither Coli nor Strzechowski spoke with Keegel as to what he meant by the word "consolidation." (R.V23, 86-88, 210-211).

14. Even After Bloch Learned that Local 726's Charter Would Be Revoked Effective December 31, 2009, Bloch Continued to Negotiate a Modification of the Lease, and Even Proposed That Local 726 Remain in the Premises Through March 31, 2011.

Bloch learned before December 17, 2009 that the GEB had voted to revoke Local 726's charter effective December 31, 2009. (R.V22, 154). Yet he wrote Rochman on December 17 enclosing a draft Lease Modification Agreement that provided that Local 726 would remain in the Premises – and pay rent – through ***March 2011***. (PX 4 – S.R.V2, 439-443). In his cover letter, Bloch wrote that "it is imperative that this matter be concluded by the end of the year," but he did not mention that Local 726 would be dissolved as of the end of the year. (*Id.*). At trial, Bloch conceded that there was no way Local 726 could have remained in the Premises through March 2011 when it would have been dissolved within two weeks of his letter. (R.V22,

155). And, he had no idea how Local 726 could have paid rent after December 31 when it was being dissolved as of that date. (*Id.*, 155-156).

Bloch wrote Rochman another letter on December 22, purporting to accept Rochman's earlier oral offer to modify the term of the lease to May 2011 (PX5 – S.R.V2, 445-447) and then sent a follow-up email the next day attaching a draft Lease Modification Agreement with the May 2011 lease termination date. (PX6 – S.R.V2, 449-451). Rochman did not sign it.

15. Local 726 is Dissolved and Local 700 Chartered as of December 31, 2009, and Bloch Represents Coli on January 5, 2010 in a Meeting with 1550 About the Lease.

In accordance with the GEB's vote, on December 31, 2009, Local 726 was dissolved, and Local 700 chartered. (Stipulation Nos. 24, 25 – R.V16, C3799). On January 5, 2010, Bloch, Rainville and Coli met with Rochman and Mr. Friedman in Rochman's office. (R.V19, 233-234; R.V22, 163-165). Because Local 726 was dissolved at that time, Bloch no longer represented Local 726. (R.V22, 164). Instead, though Bloch could not recall when or by whom he was engaged, Bloch was purportedly representing Coli at this meeting. (*Id.*, 163-165). As of this meeting, Local 700 had virtually all of the members of the former Local 726 as members (*Id.*, 163-164) and was occupying the Local 726 premises. (R.V19, 240). According to Bloch, although Coli had had no involvement in the 2009 negotiations with Local 726, Coli told Rochman on January 5, on behalf of Local 700 (R.V23, 105), that "he would do nothing for them." (R.V22, 166). Similarly, Mr. Friedman testified that he offered that Local 700 could buy the building for Mr. Friedman's actual cost, and that the response he received was "that will never happen." (R.V19, 243).

16. Local 700's New Counsel Wrote Mr. Friedman in Late January 2010 Offering a Month-To-Month Tenancy in the Premises.

On January 27, 2010, Michael Goldstein, Local 700's new counsel, wrote Mr. Friedman. (JX13 – S.R.V2, 341-342). He stated that Local 726, which had been dissolved effective December 31, 2009, "has vacated the Premises" and that "by consent granted by the Trustee of Local 726, Local 700 has taken possession of, and has occupied the Premises, as of January 1, 2010." (*Id.*, 341). But, Strzechowski, Local 726's trustee, admitted that she never executed any written consent for Local 700 to occupy the premises and knew no details at all about any oral consent. (R.V23, 218-219). And, Coli testified that he did not recall being at any meeting where Strzechowski gave any oral consent for Local 700 to take possession of the premises.[8] (R.V23, 93-94). On top of all this, Strzechowski never sought 1550's written consent to allow an entity other than Local 726 to occupy the premises, as the lease required. (R.V23, 220; PX1, Sec. 6.A. – S.R.V2, 422).

Goldstein also enclosed a check for one month's rent under the lease, offering a month-to-month tenancy for Local 700 to remain on the premises and implying that Local 700 was not subject to the Local 726 lease. (S.R.V2, 341). 1550 did not agree to a month-to-month tenancy for Local 700. (R.V19, 217). Mr. Friedman did not cash or deposit any checks Local 700 tendered between January and April 2010. (*Id.*).

17. Local 700 Moves Out of the Premises and Into a Building Owned By Local 727's Pension Fund, of Which Coli and His Son Were Trustees.

On April 30, 2010, Local 700, led by Coli, its trustee, moved out of the premises. (R.V19, 219-220). It moved into an office owned by the pension fund of Local 727 (R.V23,

[8] Because Local 726 and Local 700 never coexisted, it would have been impossible for Strzechowski, as trustee of Local 726, to have given anything to Local 700.

156-157), the union of which Coli was the principal officer. (*Id.*, 81). Coli and his son were two of the trustees of that pension fund. (*Id.*, 157).

18. 1550 Issues a Default Notice to Local 700 Under the Lease.

On May 12, 2010, 1550 issued a formal Notice of Default letter to Local 700, through its counsel, Goldstein and Bloch. (JX20 – S.R.V2, 363). Local 700 did not cure the default identified in the letter, so 1550 terminated the lease per its terms. (R.V19, 227).

19. As of January 1, 2010, Local 700 Assumed Local 726's Collective Bargaining Agreements and All of Local 726's Assets and Liabilities, Except for the Lease.

Although Local 726's members were transferred to Local 700 as of January 1, 2010 (*see* PX18, S.R.V3, 525 and JX18,19 – S.R.V2, 356-361, at 357, 361), Local 700 did not file any Petition before the Illinois Labor Relations Board to change the identity of the certified bargaining representative with the CTA under the CBA until March 30, 2010. (JX18 – S.R.V2, 356-358). Kevin Camden, Local 700's general counsel (R.V21, 177), admitted that had any issues arisen under Local 726's CBA with the CTA prior to March 30, 2010, Local 700 would have acted as the bargaining representative *viz.* the CTA. (*Id.*, 189-190). Likewise, although Local 700 did not file a Petition to change the representative with CMS until February 2011, over ***13 months*** after Local 726 was dissolved (JX19 – S.R.V2, 360-361), Camden admitted that Local 700 would have acted as the bargaining representative for any issues that arose in those 13 months. (*Id.*, 190-191). Camden did not know whether Local 700 paid Local 726 for the right to act as the certified bargaining representative for Local 726's former members under the Local 726 CBAs. (*Id.*, 200).

In addition to the CBAs that were transferred along with Local 726's members to Local 700 upon Local 726's dissolution, Local 726's Financial Report for December 31, 2009 reflected in numerous places that the other assets and liabilities of Local 726 were also

transferred to Local 700. (PX8 – S.R.V2, 455-467). Thus, on page 4 of the Financial Report, Bansley & Kiener, LLP ("B&K"), the preparer of the Financial Report, wrote:

> As of the end of the business day on December 31, 2009, the Local no longer exists and its membership, books, documents, property and funds have been transferred to a Local Union having jurisdiction exclusively within the public sector. The records of the Local will be retained ***by the successor organization Teamsters Local Union 700***.

(S.R.V2, 460 (emphasis added)). B&K went on to identify all the assets and liabilities that were transferred, including (as assets) cash, automobiles, office equipment and furniture and (as liabilities) payroll liabilities, loans due to former Local 726 officers, Local 726 scholarships payable and automobile loans. (*Id.*). In yet other places in the Report, B&K noted that the assets and liabilities were "transferred in the merger" (*See* Note 3, *Id.*, 462; Note 4, *Id.*, 463), and also wrote about the lease that "***the successor organization*** is currently in dispute with the Landlord." (Note 4, *Id.*, 463 (emphasis added)).

Local 726's 2009 Federal tax return Form 990, signed under oath by Assistant Trustee William Logan (PX16 – S.R.V2, 486 - S.R.V3, 521), repeated these same characterization and admissions. Thus, Local 726 swore that there was a "transfer of net assets ***due to merger***" in the amount of $75,416 (S.R.V3, 507 (emphasis added)) and that officers, directors, trustees or key employees of Local 726 had or would become a director or trustee of a "successor or transferee organization." (*Id.*, 512-513). Elsewhere, Local 726 again admitted that its liabilities "were transferred to Teamsters Local Union No. 700 ***during the merger***." (*Id.*, 515 (emphasis added)).[9]

[9] Interestingly, although Local 726 stated under oath in the Form 990 that "[d]ue to the trusteeship, the trustee appointed to the Local by the International Union, will review the Form 990 before it is filed" (S.R.V3, 517), Strzechowski did not know from where B&K got its information for the Form 990 (R.V23, 221-226), and admitted she did not know whether she even saw the Form 990 prior to its filing (*Id.*, 223).

Local 700's own 2010 Financial Report, also prepared by B&K, echoed this. Indeed, it is noted in three separate sections that the liabilities of Local 726 were "transferred in the merger." (PX19 – S.R.V3, 527-540, at 534, 536). And, in Local 700's Form 990 for 2010 (PX26 – S.R.V3, 566-598), Local 700 certified that net assets of almost $1,600,000 were transferred "due to merger" and that certain "merger assets" were then transferred to a PAC Fund. (*Id.*, 592).[10]

20. 1550 Sues Local 700, Alleging That Local 700 Was the Legal Successor To Local 726 and Was Thus Liable for Local 726's Breach of the Lease.

It is against this backdrop that 1550 filed this lawsuit against Local 700. In the Verified Complaint (R.V1, C3-118), 1550 asserted that Local 700 was the legal successor of Local 726 and was therefore liable for Local 726's breach of the lease. 1550 filed a Verified Amended Complaint on July 23, 2012. (R.V4, C889 - R.V5, C1077).

21. Local 700 Does Not Raise the PUAA in Its Pleadings, or Even at Trial, But Instead, Judicially Admits that the Lease Was Valid by Alleging in its Seventh Affirmative Defense That 1550 and Local 726 Orally Agreed to Modify the Existing Lease.

Local 700 filed its Verified Answer and Affirmative Defenses to the Verified Amended Complaint on September 20, 2012. (R.V5, C1146-1188). Nowhere in its Answer or Affirmative Defenses did Local 700 raise the PUAA. And, at no point in the four years the case was

[10] Furthermore, Local 700 identified the law firm of Asher Gittler as an independent contractor to whom Local 700 paid $134,184 for legal services during 2010. (S.R.V3, 573). In a letter from Asher Gittler to B&K dated May 3, 2010 with the subject line "Local 726 IBT," Asher Gittler advised that "[t]he organization is obligated to this office in the amount of $136,418.04 but has expressed its commitment to full and complete payment." (PX9 – S.R.V2, 469-470). Apart from the fact that the amount Local 700 paid to Asher Gittler in 2010 was almost identical to the amount Asher Gittler advised B&K it was owed ***by Local 726***, as of May 3, 2010, Local 726 did not exist, so the only entity that could possibly have made this "commitment to full and complete payment" of the Local 726 debt was Local 700.

litigated before trial did Local 700 even mention the PUAA. And, at trial, Local 700 did not even mention the PUAA.

Far from raising a statute that Local 700 would later contend invalidated (indeed, stripped Local 726 of the capacity to even legally execute) the lease, in its Verified Seventh Affirmative Defense to the Verified Amended Complaint (the "7th AD"), Local 700 alleged, *inter alia*, that "Plaintiff was advised that Local 726 could not afford to comply with the provisions of the Lease," that "Plaintiff and Local 726 then entered into negotiations to modify the Lease" and that the negotiations "resulted in a meeting of the minds relating to a modification of the Lease." (R.V5, C1146-1188, at C1181). Nowhere in the 7th AD did Local 700 allege that it believed the lease was invalid, be it due to a failure to comply with Local 726's bylaws or a violation of the PUAA. Local 700 ultimately withdrew the 7th AD (R.V15, C3537-3539, C3671-3675, at C3675) and made no claim at trial that there had in fact been an oral agreement to modify the lease but, because its allegations about the modification of the existing lease were contained in a verified pleading, they were judicial admissions by which Local 700 remained bound.

Because Local 700 did not raise the PUAA during the litigation or at trial, 1550 had no occasion to take the position during the litigation or at trial that Local 726 had waived the protections of that statute.

22. Prior to Trial, 1550 Moved *In Limine* to Bar Local 700 from Arguing at Trial That the Lease Was Invalid, Because of its Judicial Admission in the 7th AD That There Was an Existing Lease Between 1550 and Local 726 That Had Been Modified.

1550 moved *in limine* for an order that Local 700 was foreclosed from any argument that the lease was invalid (Local 700 had raised the statute of frauds in its pleadings, only to abandon that on appeal) by its judicial admission contained in the 7th AD. (R.V16, C3817-3822). While the trial court entertained oral argument on that (R.V19, 37-51) and several other

motions *in limine*, it reserved ruling (R.V19, 51) and never formally ruled on that motion, either during trial or in its Judgment Orders.

23. Following Trial, the Trial Court Enters Judgment in Favor of 1550 On the Successor Liability Count, and the Appellate Court Affirms.

The trial court tried the case as a bench trial over two weeks. Following oral and written closing arguments, the trial court found that the lease was valid and enforceable and that Local 700 was liable as Local 726's successor for Local 726's breach of the lease. (A.1-18). The trial court refused to enforce the "double rent" provision of the lease in the event Local 726 did not purchase the building, holding that enforcement of that provision would amount to an unenforceable penalty. (A.13). But, it enforced the clear terms of the lease which provided that upon default, the lessee would be liable for the present value of the rent due for the remainder of the lease term, $1,996,853. (A.14-15). The trial court also enforced the provision of the lease that permitted 1550 to recover its attorneys' fees and costs incurred in enforcing the terms and provisions of the lease, $321,767.67. (A.16-17).

Local 700 appealed, and the Appellate Court for the First District affirmed the judgment on the successor liability count. (A.19-28). Like the trial court, the Appellate Court found that the lease was enforceable. (A.21-26). While it did consider the PUAA, it found (as did the trial court) that Local 700's failure to have complied with the requirements of the PUAA did not render the lease void *ab initio*. (A.21-23). Like the trial court, it analyzed the public policies involved in enforcing the lease under the circumstances of this case, determining that those policies weighed strongly in favor of enforcement of commercial contracts. (*Id.*). It also held (as did the trial court) that Clair had apparent authority to have negotiated and entered into the lease on behalf of Local 726. (A.24-25). The Appellate Court also agreed with the trial court that Local 700 was Local 726's successor, adopting the trial court's new test ("substantial continuity," which had been utilized in other cases in other states

involving labor unions) applicable to unincorporated associations, whose ownership structure does not lend itself to the traditional test. (A.26-28). Finally, it found that the damage provision in the lease was valid and enforceable. (A.33-36).

This Court accepted Local 700's Petition for Leave to Appeal.

STANDARD OF REVIEW

It is well-settled that "[g]enerally, the standard of review in a bench trial is whether the order or judgment is against the manifest weight of the evidence." *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶12. "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence." *Lawlor v. North American Corporation of Illinois*, 2012 IL 112530, ¶70; *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002) (same). In such circumstances, "it is not enough to show that there is sufficient evidence to support a contrary judgment. To be successful, the evidence in behalf of the [appellant] must be so strong and convincing as to completely overcome the evidence and presumptions, if any, existing in favor of the opposite party." *People ex rel. Lauth v. Wilmington Coal Co.*, 402 Ill. 161, 167 (1949).

In addition, "[i]n a bench trial, it is the function of the trial judge, as the trier of fact, to weigh the evidence and make factual determinations." *Kay v. Prolix Packaging, Inc.*, 2013 IL App (1st) 112455, ¶55. Thus, "[f]actual determinations made by a trial court sitting without a jury are entitled to great deference and will be disturbed on review only when they are against the manifest weight of the evidence." *Gastroenterology Consultants of the North Shore, S.C. v. Meiselman*, 2013 IL App (1st) 123672, ¶13. Also subject to a manifest weight standard of review is a trial court's findings regarding the existence of an agency relationship. *Eychaner*, 202 Ill. 2d at 251-252.

1550 does concede that statutory construction is a question of law that is subject to *de novo* review. *People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73, 79 (2009). Likewise, "[w]hether a contractual provision for damages is a valid liquidated damages provision or is an unenforceable penalty clause is a question of law reviewed *de novo*." *GK Development, Inc. v. Iowa Malls Financing Corp.,* 2013 IL App (1st) 112802, ¶ 44.

However, 1550 disagrees that *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144 (2005), cited by Local 700, is applicable to this case, for *Corral* presented only "the proper standard of review for the grant or denial of a motion to transfer based on improper venue." 217 Ill. 2d at 149.

Finally, it is well-settled that a reviewing court "can sustain the decision of a lower court on any grounds which are called for by the record, regardless of whether the lower court relied on those grounds and regardless of whether the lower court's reasoning was correct." *Leonardi v. Loyola University*, 168 Ill. 2d 83, 97 (1995). This principle applies to this Court's review of an appellate court's ruling as well: "[T]his court, in determining the correctness of the result reached by the appellate court, is in no way constrained by the appellate court's reasoning and may affirm on any basis supported by the record." *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010).

ARGUMENT

I. THE APPELLATE COURT CORRECTLY AFFIRMED THE TRIAL COURT'S RULING THAT THE LEASE WAS VALID.

It is apparent from the record in this case that there were and are myriad bases – some mentioned by the trial court and/or the Appellate Court, and some not – for the conclusion reached by both of those courts that the lease is valid and enforceable. As noted, this Court may affirm the Appellate Court on any of these bases and is not constrained by the reasoning, sound though it was here, of the lower courts.

A. Local 726 Admitted in the Lease Modification Negotiations, and Local 700 Judicially Admitted in the Lawsuit, That the Lease Was Valid.

For all of its complaints on appeal and now before this Court that the lease was void *ab initio*, Local 726's conduct after it was placed in trusteeship plainly admitted to the contrary. Were the lease truly "void *ab initio*," as it now claims, how could Bloch – its lawyer – have written Rochman over a period of months seeking an agreement to ***modify*** the lease? Not only did Bloch negotiate lease modifications, he even claimed, in mid-December, that an oral modification agreement ***had been reached***. As it is well-settled that "parties ***to an existing contract*** may, by mutual assent, modify the contract" (*Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶ 37 (emphasis added)), the fact that Local 726 spent months negotiating a "modification" of the lease (and, later, claiming a modification was agreed!) reflects an admission that the lease was indeed valid.

In addition to Local 726's admission by conduct, in the lawsuit, Local 700 ***judicially admitted*** this as well. As noted, in its Verified 7th AD, Local 700 unequivocally alleged, *inter alia*, that after Clair signed the lease, Local 726 later advised 1550 that it could not afford to comply with the provisions of the lease (tellingly, ***not*** that the lease was invalid or void), that the parties then entered into negotiations to modify the lease ***and that those negotiations resulted in an agreement to modify the lease***. (R.V5, C1181 (emphasis added)). Importantly, Local 700 did not assert its 7th AD in the alternative to the other Affirmative Defenses it interposed. Local 700 was thus bound by its judicial admission of these various facts, which barred it from taking any contrary position at trial, or here.

It is well-settled that "[j]udicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge. Where made, a judicial admission may not be contradicted . . . at trial." *Freedberg v. Ohio National Insurance Company*, 2012 IL App (1st) 110938, ¶31 (citations and internal quotations omitted); *see also In*

re Estate of Rennick, 181 Ill. 2d 395, 406 (1998). Here, Local 700's allegations in its Verified 7th AD are strikingly similar to those of the defendant in *Daehler v. Oggoian*, 72 Ill. App. 3d 360 (1st Dist. 1979). In *Daehler*, like this case, a suit about a lease, defendant claimed that he was a holdover tenant who had no valid lease after his initial lease term expired, and so alleged in his first affirmative defense. However, in his second affirmative defense, he alleged that he had engaged in negotiations with the landlord for a new lease before the end of his tenancy (which, under the law, negated the possibility of a holdover tenancy). The court held:

> The verified allegations of the second affirmative defense of negotiations for a new lease are binding judicial admissions which render insufficient the allegations of the first affirmative defense of a holdover tenancy. The trial court properly granted plaintiffs' motion *in limine* so far as it relates to the first affirmative defense and properly struck that defense.

72 Ill. App. 3d at 365. Like the defendant in *Daehler*, Local 700 made a judicial admission in its verified 7th AD (by asserting that the lease had been modified, it admitted that the lease was valid because only a valid lease is capable of being modified). It became bound by this judicial admission. This alone supports the lower courts' finding on this issue.[11]

B. Local 726/700 Waived the PUAA by Consistently Failing to Follow the Requirements of the Act Prior to the Lease at Issue and Failing to Raise the PUAA in the Years After the Lease at Issue Was Executed.

Even if this Court does not determine that Local 700 judicially admitted the validity of the lease by its verified admission in the 7th AD that the lease was modified in late 2009, there is abundant, compelling evidence in the record supporting the conclusion that Local 726 waived the protections of the PUAA in any event. Indeed, it is nothing short of astounding that Local 726 – having turned its back on the requirements of the PUAA for ***every lease***

[11] Although, as noted *supra*, the trial court did not ultimately rule on 1550's motion *in limine* on this issue either during trial or in its Judgment Order, this Court may affirm based on any basis supported by the record. *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010).

over the ***30 years*** preceding the lease at issue – now comes before this Court (albeit in the skin of Local 700) seeking enforcement of the statute to relieve it of its obligations under a lease into which it willingly entered and had willingly performed.[12] On top of its complete disregard of the statute for decades ***before*** the execution of the lease, it then ignored the statute at the time it executed the lease. Then, at no point ***after*** Strzechowski took over as trustee of Local 726 (and proceeded – with her counsel – to negotiate a modification of the lease) did anyone, either within Local 726 or within the entire Teamsters organization, even mention the PUAA. And, at no point after Local 726 became Local 700 and Local 700 (unsuccessfully) tried to distance itself from Local 726 (despite receiving all of Local 726's assets and assuming all but one of Local 726's liabilities) did Local 700 ever mention the PUAA. Nor was the PUAA raised in Local 700's pleadings in this case (which included not only multiple affirmative defenses (R.V1, C239 - R.V2, 271; R.V5, C1146-1186), but a motion for summary judgment as well (R.V9, C2127-2179)) or at any time through the trial.[13]

It is a "fundamental maxim that a party may by his conduct waive certain protections afforded by statute." *Louise v. Department of Labor*, 90 Ill. App. 3d 410, 413 (1st Dist. 1980).

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[12] As will be demonstrated *infra*., even if this Court were to determine that Local 726 did not waive the PUAA, the language of the PUAA does not provide that leases entered into in violation of the terms of the PUAA are void *ab initio*, so the PUAA does not relieve Local 726/700 of the lease obligations in any event.

[13] So the Court is clear, 1550 is not arguing that Local 700 waived the PUAA argument merely by failing to have pleaded it. 1550 mentions Local 700's failure to plead and otherwise raise the PUAA through trial not as a basis for claiming a "litigation waiver," but to demonstrate the extent to which Local 700 continued to ignore the PUAA here. And, while 1550 acknowledges the validity of the authority cited by the Appellate Court in this case that "forfeiture is a limitation on the parties, not on the courts" (A.22, ¶15), 1550 submits that here, Local 726/700's utter disregard of the PUAA for so many years before and after this lease was executed, and continuing through the entire time this case was tried, does indeed support the conclusion that, even though this Court is not ***bound*** to hold that there was a forfeiture by Local 700 here, principles of fair play and equity dictate that it should. In other words, enough is enough.

Indeed, this principle was recognized by this Court over 80 years ago in *Maton Bros. v. Central Illinois Public Service Co.*, 356 Ill. 584 (1934), where the Court held:

> [A] party may waive a rule of law or a statute, or even a constitutional provision, enacted for his benefit or protection, where it is exclusively a matter of private right, and no considerations of public policy or morals are involved; and, having once done so, he cannot subsequently invoke its protection.

356 Ill. at 589-590. *See also Solinger v. Board of Fire and Police Commissioners*, 37 Ill. App. 3d 1044, 1047 (1st Dist. 1976). Here, every action by Local 726 clearly evinced an intent not to avoid the lease (much less on the basis that it violated the PUAA), but to ***comply*** with it as it had with all its prior leases (thus demonstrating its disregard and waiver of the PUAA). Accordingly, Local 700 – which, for its own selfish purposes, wanted to avoid the lease – cannot now be permitted (especially in the face of its own failure to have raised the PUAA) to fall back onto the PUAA, its predecessor (Local 726) having clearly acted inconsistent with any protection the PUAA might otherwise have afforded it.

Despite the fact that the trial court and the Appellate Court did not formally find that Local 726/700 had waived the PUAA by conduct, as noted above, this Court "is in no way constrained by the appellate court's reasoning." *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010). Because waiver of the PUAA is abundantly supported by the record, this Court may – and should – affirm on this issue on this basis alone. *Id.*

C. Even if Local 726/700 Had Not Waived the PUAA, the Appellate Court Correctly Affirmed the Trial Court's Ruling That a Violation of the PUAA Did Not Render the Lease Void *Ab Initio*.

1. The *Schnackenberg* Rule, Cited by the Trial Court, Guts Local 700's Argument.

Even if this Court were to decide that Local 700 did not judicially admit the validity of the lease ***and*** that Local 726/700 did not waive the PUAA by their long-standing conduct inconsistent with the PUAA, the PUAA simply does not render void *ab initio* a lease executed

in violation of its terms. Although the Appellate Court did not mention this aspect of the trial court's Order in its opinion, the trial court cited a principle of law that thoroughly undermines Local 700's position that the lease should be set aside. To understand the application of this principle to this case, repetition of a few basic facts from the record is in order. First, it is undisputed that the PUAA applied only to Local 726, and not 1550. In other words, as the trial court observed, "Local 726 was in the position to comply with any union procedural requirements, not [1550]." (A.5). Second, it is further undisputed that the purported "illegality" of the lease of which Local 700 now complains arose ***only*** as a result of Local 726 having failed to have complied with the PUAA's requirements. From these two premises, Local 700 concludes that because the lease is "illegal," it is void *ab initio*. In correctly rejecting this argument, the trial court cited *City of Chicago v. Chicago Fiber Optic Corp.*, 287 Ill. App. 3d 566, 573 (1st Dist. 1997), which held: "***[W]here a contract is illegal or against public policy, a court will not, at the urging of one of the parties, set it aside after it has been executed,*** because to give such relief would injure and counteract the public good" (emphasis added). (A.5). This principle is known as the "*Schnackenberg* rule," for it comes from this Court's seminal decision of *Schnackenberg v. Towle*, 4 Ill. 2d 561 (1954).[14] In the face of this clear rule of law, Local 700's argument that the lease must be set aside as illegal and void *ab initio* utterly fails.

[14] *Schnackenberg*'s recitation of this principle is even more prescient here, for as the Court explained there, after a contract has been executed, a court will not set it aside "***at the insistence of one of the parties who participates in the illegal . . . intent***." 4 Ill. 2d at 565 (emphasis added). Here, there can be no question that the only party who "participate[d] in the illegal intent" was Local 726, whose disregard of the requirements of the PUAA that applied only to it is the only reason the lease did not comply with the statute.

2. As Both the Trial Court and the Appellate Court Found, the PUAA Does Not Provide That Leases Entered into in Violation of Its Terms Are Void *Ab Initio* and Unenforceable; On the Contrary, Public Policy Favors Enforcement of Private Commercial Contracts.

Even if this Court were to choose not to follow the *Schnackenberg* rule here, there is still abundant basis in the record to affirm the holding below. First, and foremost, as both the trial court (A.5) and the Appellate Court (A.22, ¶18) correctly observed, the PUAA does not provide on its face that contracts entered into by unincorporated associations in violation of its provisions are unenforceable. As the trial court further found:

> Nothing in the language of the statute evidences an intent to give an unincorporated association a means of avoiding written leases that were knowingly entered into by its principal officer with the knowledge and approval of the association's executive board, and where there was no objection by its membership.

(A.5). To the contrary, as the trial court also noted, citing settled case law, there is a strong public policy in Illinois in favor of the freedom to contract and in enforcing contracts. (*Id.*). And, in perhaps its most compelling observation, the trial court found: "Local 726 was in the position to comply with any union procedural requirements, not Plaintiff, yet Plaintiff would bear all of the cost here if the lease was not enforced." (*Id.*). The trial court echoed this conclusion in rejecting the now-abandoned statute of frauds argument that Local 700 made at trial:

> Local 726 failed to follow the specifics of its own bylaws, and now it is attempting to use its failure to take advantage of the statute of frauds, despite clearly accepting and performing under the contract for several months. Plaintiff should not be punished for Local 726's failure to obtain proper written authorization for Clair's actions.

(A.6). So, apart from the fact that the PUAA is silent as to the consequences of a failure to comply with its requirements, the equities here could not favor 1550 more strongly.

Second, as it has done throughout its briefs from the trial court to the Appellate Court to the Petition for Leave to Appeal in this Court, Local 700 consistently reads words into the

PUAA that are simply not present. The Appellate Court noted this in its opinion: "[D]efendants' argument reads into the statute the term 'enforceable,' a term the legislature did not use. The statutory language, as written, *is* silent as to the consequences for noncompliance." (A.22, ¶18 (emphasis in original)). Astonishingly, even in the face of this admonitional observation by the Appellate Court, Local 700 doubles down on this practice in its Brief to this Court, continuing to insert the word "only" into its description of the language of the PUAA (see, *e.g.*, Brief, pp, 21 ("an unincorporated association may lease . . . real property 'only' if . . .") and 29) notwithstanding that the word "only" is ***nowhere found in the statute***. It therefore rings hollow for Local 700 to crow about how courts are bound to interpret statutes to give meaning to each of the words that appear, while it is busy adding words that do not appear in the PUAA and seeking enforcement of those very words.[15]

There being no dispute that the PUAA does not contain any language that addresses the effect of a failure to comply with its terms, the trial court and the Appellate Court appropriately engaged in a balancing test to weigh the policy considerations of enforcing vs. invalidating this lease, correctly – and emphatically – concluding that the strong public policy

[15] There is one other aspect of the PUAA, tellingly omitted by Local 700 in its Brief, that further shows Local 700 wanting to have it both ways. Section 3 of the PUAA, 765 ILCS 115/3 (West 2010), provides, in pertinent part: "Such lodge . . . in and under its own name and number has the power to sue and be sued, complain and defend in all actions ***concerning its real estate***" (emphasis added). If, as Local 700 argues, a lease entered into in violation of the PUAA is void *ab initio*, then an unincorporated association that does not follow the PUAA to the letter can never obtain a valid interest in real estate. But Section 3 specifically authorizes suits (by or) against an association "concerning its real estate." If Local 700's position is accepted here, there would be no way for an association's violation of the PUAA to ever result in a suit (by or) against the association "concerning its real estate," because "it" could have no real estate in the first instance. In other words, Section 3 will have been interpreted out of the statute. A more absurd result would be hard to imagine. And, of course, as this Court held only last year, "when undertaking the interpretation of a statute, we must presume that when the legislature enacted a law, it did not intend to produce absurd . . . or unjust results." *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶25.

in favor of making and enforcing private commercial contracts was paramount here. This was especially true given that Local 726 clearly intended to perform under the lease irrespective of any technical violation of the PUAA. This finding should not be disturbed.

3. Local 700's Purported Distinction of *K. Miller Construction Co.* is Unavailing and Ignores the Other Compelling Authorities Cited Therein That Compel Affirmance Here.

Next taking aim at *K. Miller Construction Co., Inc. v. McGinnis*, 238 Ill. 2d 284 (2010), Local 700 suggests that because what was at issue there was a claim that a contractual ***term***, as opposed to an entire contract, violated a statute, all of the Court's citations to other cases and authorities therein are rendered meaningless. This, of course, is folly. When one looks at the authority on which this Court relied in *K. Miller*, though, it is no wonder Local 700 would prefer to avoid that case. The Court cited to the bedrock treatises of *Williston on Contracts* and *Corbin on Contracts*, *to wit*:

> 'To assert, however, as some courts have, that all unlawful agreements are *ipso facto* void is opposed to many decisions and unfortunate in its consequences, ***for it may protect a guilty defendant from paying damages to an innocent plaintiff***;' [Williston]
>
> 'The decision of ***whether*** . . . to enforce a contract involving a prohibited performance is and must be based on policy choices and a balancing of relevant factors.' [Corbin]

238 Ill. 2d at 294-295 (emphasis added) (citations omitted). The Court also cited its own decision in *Pascal P. Paddock, Inc. v. Glennon,* 32 Ill. 2d 51 (1964), a case involving not a contractual term that violated a statute but contractual performance that violated a statute (there, a licensure statute for plumbers). As the *K. Miller* court described (and cited from) its decision in *Pascal P. Paddock*, "We noted that a statutory violation does not automatically render a contract unenforceable: 'the mere fact that [a contract] was performed in violation of law will not invalidate the resulting lien if not seriously injurious to the public order.'" 238 Ill. 2d at 295 *citing Paddock,* 32 Ill. 2d at 53–54. These principles are directly applicable to the issues

here, and compel the conclusion that the trial court and Appellate Court rulings on the lease and the PUAA should be affirmed.

4. The Appellate Court Thoroughly, and Correctly, Distinguished the *Alliance Property Management* Case Cited by Local 700.

Ignoring the Appellate Court's thoughtful analysis of, and distinction of, *Alliance Property Management, Ltd. v. Forest Villa of Countryside Condominium Association*, 2015 IL App (1st) 150169 (A.23, ¶22), Local 700 reargues the applicability of that case (and the others it cites for the same proposition, that where a party lacks authority to enter into a contract, any contract into which it enters is void *ab initio*) here. 1550 submits that, for the reasons set out in the Appellate Court's opinion, *Alliance* remains wholly inapposite here. But assuming this Court does consider *Alliance*, 1550 submits that there is one important distinction between *Alliance* and this case that the Appellate Court did not mention: Unlike here, in *Alliance*, the party seeking the enforcement of the agreement did not make a claim of apparent authority, because the issue there was not ***who*** executed the contract but only the duration of the contract. Here, the principal issue is most decidedly who executed the lease on behalf of Local 726 and the circumstances under which it was executed. As to that issue, the parties fully argued 1550's claim that Clair indeed had apparent authority to execute the lease and the trial court specifically analyzed this issue and found for myriad reasons that Clair indeed had apparent authority to have entered into this lease. The Appellate Court also addressed this at length in its opinion, agreeing with 1550 and the trial court that the trial court's finding was not against the manifest weight of the evidence. (A.24-25, ¶¶28-32). So, *Alliance* is wholly unavailing to Defendants here.

D. The Appellate Court Correctly Affirmed the Trial Court's Finding that Clair Had Apparent Authority to Have Entered into the Lease.

As noted, both the trial court and the Appellate Court undertook a painstaking analysis of the record and pointed to the abundant testimony that demonstrated that Local 726 and Clair himself held Clair out as having the authority to negotiate and execute the lease. As noted, this factual finding is reviewed (and was reviewed and affirmed by the Appellate Court) under a manifest weight standard. Moreover, the Appellate Court specifically rejected Local 700's mischaracterization of the trial court's Order, in which Local 700 claimed that the trial court "found that Plaintiff may have possessed the Local's bylaws . . . [but] nevertheless relieved Plaintiff of any obligation to read them," noting that "defendants do not fully acknowledge the circuit court's factual findings regarding the plaintiff's knowledge of Clair's authority to enter into the [lease]." (A.24, ¶29). In fact, the trial court specifically found: "The testimony did not convincingly establish that plaintiff received a copy of the bylaws. . ." (A.4 (trial court's Order); *see also* A.24-25, ¶29 (Appellate Court's opinion, in which it italicized this passage from the trial court's Order)).

But, continuing to turn the equities of this case on their ear, in their Brief before this Court, Local 700 once again accepts no responsibility for the fact that Local 726 utterly disregarded and failed to follow its bylaws and instead tries to shift the focus to 1550, arguing that 1550 failed to do enough to determine the extent of Clair's ***actual*** authority. This, of course, has nothing to do with apparent authority, which "is rooted in the doctrine of equitable estoppel." *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶35. Local 700 conveniently and completely ignores the myriad affirmative statements that Clair and Diaz made to Mr. Friedman that Clair had authority to negotiate and sign the lease and the 15-20 visits that the executive board members made to the premises ***while Clair was engaged in these negotiations***. Had they not approved of Clair representing Local 726 in connection

with this lease, they most certainly would not have approved development plans for the Premises, requested that 1550 spend almost $1,000,000 to develop the Premises and then moved into the developed Premises months later. Thus, any claim that it was unreasonable for Mr. Friedman to have believed that Clair had authority to sign the lease is wholly belied by the conduct of Clair, the Local 726 Executive Board and Local 726 itself.

As this Court held in *Patrick Engineering*, "where a principal has created the appearance of authority in an agent, and another party has reasonably and detrimentally relied upon the agent's authority, the principal cannot deny it." 2012 IL 113148, ¶35. In the face of the mountain of evidence in this record about how Clair was held out to 1550, it cannot possibly be credibly asserted that the trial court's finding of apparent authority, affirmed by the Appellate Court, was against the manifest weight. It must be affirmed.

II. THE APPELLATE COURT CORRECTLY AFFIRMED THE TRIAL COURT'S RULING THAT LOCAL 700 WAS LOCAL 726'S SUCCESSOR.

A. The Admissions by the IBT, Local 726 and Local 700 That Local 700 Was a "Consolidation" and That Local 700 Was Local 726's "Successor" Who Obtained Local 726's Assets and Liabilities in the "Merger" Are Sufficient to Render Local 700 Liable as Local 726's Successor.

What makes this case exceedingly rare among successor liability cases is that here, both the predecessor entity (Local 726) and the successor entity (Local 700) – as well as their parent organization, the IBT, who organized the transactions that dissolved Local 726 and created Local 700 – have ***admitted*** that the relationship between Local 700 and Local 726 was that of "consolidation," "merger" and "successor."[16] Without more, this should end the successor liability inquiry, for one of the four recognized exceptions that give rise to successor liability under the traditional framework is "where there has been an express ***or implied agreement***

[16] Lest the Court forget, both Local 700 and Local 726 made many of these admissions ***under oath*** in their respective tax returns.

of assumption of liability." (A.26, ¶39 (citing *Workforce Solutions v. Urban Services of America, Inc.*, 2012 IL App (1st) 111410, ¶86)). And, as Local 700 itself admits in its Brief to this Court (at p. 34), the "implied assumption of liability" exception does not require continuity of ownership. In the face of these admissions alone, it cannot be said that there is no evidence in the record to support the trial court's ruling that Local 700 is liable as Local 726's successor for Local 726's breach of the lease such that the Appellate Court erred in affirming the trial court's finding on this issue.

B. Even Apart from the Teamsters' Repeated Admissions of Merger, Consolidation and Successorship, the Policy Underlying the Successor Liability Doctrine Supports the Finding That Local 700 Succeeded to Local 726's Liability Under the Lease.

The policy behind the exception to the general rule of successor non-liability reflects equity and good conscience. "To offset the potentially harsh impact of the traditional rule of successor corporate nonliability . . . the law also developed methods to protect the rights of corporate creditors after dissolution." *DiGiulio v. Goss International Corp.*, 389 Ill. App. 3d 1052, 1060 (1st Dist. 2009) *citing Vernon v. Schuster*, 179 Ill. 2d 338 (1997). The *DiGiulio* court continued, describing the general circumstance in which fairness and equity have led the courts to create the exceptions to the general rule and hold the successor entities liable for the debts of their predecessors:

> To prevent a situation whereby the specific purpose of acquiring assets is to place those assets out of the reach of the predecessor's creditors. * * * To allow the predecessor to escape liability by merely changing hats would amount to fraud. ***Thus, the underlying theory of the exception is that, if a corporation goes through a mere change in form without a significant change in substance, it should not be allowed to escape liability***.

389 Ill. App. 3d at 1061 *citing Vernon*, 179 Ill. 2d at 346 (emphasis added).

It would be hard to imagine a case that more squarely fits within the analytical framework that gives rise to the successor liability than this one. After the trusteeship and the dissolution of Local 726 and the creation of Local 700, virtually every one of Local 726's dues-paying members became dues-paying members of Local 700 and Local 700 occupied the very premises that Local 726 had been leasing from 1550. And, as if this were not enough, Local 700 immediately stepped into the CBAs that Local 726 had executed with its members' employers without even amending the agreements or otherwise obtaining any orders recognizing it as the certified bargaining representative under the CBAs. For lack of a better word, Local 726 ***became*** Local 700 for all intents and purposes, except that Local 700 used the transaction to try to escape Local 726's clear liability under the lease. Which is precisely what the successor liability doctrine was created to avoid. And the trial court recognized this. (A.8-9).

Although as noted, the trial court could well have completed its analysis and reached the conclusion that Local 700 was Local 726's successor simply by determining that the admissions of the IBT, Local 726 and Local 700 reflected an implied assumption of liability by Local 700, it did not stop there. Rather, on these egregious facts, it also found that the dissolution of Local 726 and the creation of Local 700 perpetrated a fraud as to 1550, one of Local 726's creditors, another of the successor liability exceptions that does not require continuity of ownership. (A.9). This, of course, was rooted in Strzechowski's plea to the hearing panel that they needed to find "another means" to avoid the "crushing financial burden" of the lease and Coli answering that call, proposing dissolution to the GEB only to then promptly disclaim the lease liability as trustee of the "new" Local and then move the "new" Local into a building owned by the pension fund of the Local Coli ran, and of which Coli was a trustee. And all this, after Local 726 considered – and rejected – bankruptcy to

address its debts! (R.V24, 190-191). A fraudulent purpose for escaping liability to 1550 was thus resoundingly proven at trial, as the trial court found.

However, the trial court also recognized, as Local 700 argued, that the unorthodox ownership structure of unincorporated associations such as labor unions does not lend itself to easy application of the other successor liability exceptions, which require continuity of ownership between the predecessor and successor organizations. To address this, the trial court looked to other jurisdictions, for no court in Illinois had been presented with this issue, and adopted the already extant "substantial continuity" test. (A.9). Under this test, espoused by the U.S. District Court for the Southern District of New York in 1988 (*Equal Employment Opportunity Commission v. Local 638*, 700 F. Supp. 739, 743 (S.D.N.Y. 1988)) and reaffirmed in 2000 (*Parker v. Metropolitan Transportation Authority*, 97 F. Supp. 2d 437 (S.D.N.Y. 2000)), so long as there is "substantial continuity" between the two organizations and the successor had notice of the liability in question, the same principles of equity out of which the successor liability exceptions as to other types of organizations were born support the imposition of successor liability on unincorporated associations. (A.9). And, applying this test, the trial court had no difficulty finding that Local 700 met the criteria and thus was Local 726's successor. (*Id.*).

In affirming, the Appellate Court analyzed at length the New York U.S. District Court decisions cited by the trial court and found that this test "provides an appropriate framework for determining whether an unincorporated association, such as a labor union, may be liable under a theory of successor liability for the liabilities of a dissolved association." (A.27, ¶42). The Appellate Court also fleshed out this test, holding that courts should consider four factors in making this decision:

> (1) the relationship between the dissolved and successor associations, (2) whether there was substantial continuity of the dissolved association after a

> merger or consolidation, (3) whether the successor association had notice of the dissolved association's liabilities, and (4) whether there are important state policies that would be affected by declining to impose successor liability.[17]

(*Id.*). While Local 700 points out that Local 726's "management" and employees (as opposed to it members) did not move to Local 700 (Brief, p. 41 n.14), it cannot be denied (as the trial court noted (A.9)) that both Local 726 and Local 700 were subject to the same IBT Constitution and both were under the ultimate control of the IBT. And, Local 700's claim that it had no notice of Local 726's liability (which, unbelievably, Local 700 continues to assert in its Brief before this Court) is simply laughable, with Coli admitting to having knowledge of the lease and the dispute over the lease during Local 726's trusteeship and Strzechowski going from trustee of Local 726 to assistant trustee of Local 700.

In its Brief, Local 700 merely claims that this new, "less stringent test" is inappropriate, without explaining how this test is any less "stringent" than the other exceptions in the traditional framework, or why it is inappropriate. Then, it audaciously tries to cast the members of Local 700 – who would have enjoyed the benefits of the 1550 premises had they not unceremoniously abandoned the property after four months, leaving 1550 to contend with finding a new tenant so it could continue to be able to pay the mortgage on the property – as the victims here. Then, burying its head in the proverbial sand, it emptily pronounces that the Appellate Court's sensible, eloquent observation that failing to adopt this test to find Local 700 liable "would eviscerate the integrity and purpose of contracting, would provide unincorporated associations an escape valve unknown to established contract law, and would serve no legitimate commercial purpose" (A.28, ¶46) "is plainly wrong." But that is precisely

[17] The Appellate Court also noted in a footnote following its recitation of the four factors that these factors "were consistent with a number of factors used by the NLRB when considering an employer's duty to bargain with a post-merger union," citing a 1990 7th Circuit case on this topic. (A.27, ¶42 n.3).

what allowing Local 700[18] to escape liability would do here. Yet Local 700 steadfastly, selfishly refuses to acknowledge this.

In its desperation to find some support for its argument that the "substantial continuity" test is improper in the context of this case, Local 700 cites *New York v. National Services Industries, Inc.*, 352 F.3d 682 (2nd Cir. 2003) for its statement that the substantial continuity test "is well established in the area of labor law . . . and cannot easily be extended to other areas of federal common law." 352 F.3d at 686. However, *New York* was a CERCLA case, which itself presents a highly specific federal statutory framework wholly unsuitable for application to the facts at bar. The holding in *New York* confirms this: "We thus find that the substantial continuity doctrine ***is not part of the general federal common law*** and . . . should not be used to determine ***whether a corporation takes on CERCLA liability as a result of an asset purchase***." *Id.* at 687 (emphasis added). It scarcely requires argument to conclude that this holding is irrelevant here, where there is no CERCLA claim, no federal common law issues and no asset purchase between the local unions.[19]

In short, as with the issue of the validity of the lease, there were multiple grounds in the record – some of which the trial court and Appellate Court relied upon for their judgments, some of which they did not – to support their respective judgments. But to affirm those

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[18] For all its talk about the horrors that will befall the members of Local 700, the fact is, 1550 did not sue the members of Local 726 or Local 700 but, pursuant to Section 2-209.1 of the Code of Civil Procedure, sued Local 700 in its own name.

[19] There is one aspect of *New York* that does bear mention here though. Whereas Local 700 emphatically claims that the substantial continuity test has only been applied in labor law contexts (Brief, p. 39 ("no court in Illinois or elsewhere has applied the substantial continuity test outside the federal labor law context")), the *New York* court noted that "[t]he substantial continuity doctrine ***has also been applied in a few product liability cases***." 352 F.3d at 686 (emphasis added). So, the premise of Local 700's argument, centered around its quote from the *New York* case, is undermined by other language in that very case.

judgments, all this Court must do is determine there was some basis in the record for the courts' conclusion that Local 700 was the successor of Local 726. 1550 submits that on this record, this task should be relatively simple. The finding that Local 700 was the successor to Local 726, liable for Local 726's breach of the lease, should be affirmed.

III. THE TRIAL COURT AND THE APPELLATE COURT CORRECTLY RULED THAT THE LIQUIDATED DAMAGES PROVISION IN THE LEASE WAS ENFORCEABLE.

It is well-settled that "the purposes of damages [in a breach of contract case] is to put the nonbreaching party into the position he or she would have been in had the contract been performed, but not in a better position." *Walker v. Ridgeview Construction Co., Inc.*, 316 Ill. App. 3d 592, 596 (1st Dist. 2000). This black-letter principle has been applied to breach of lease cases. *See Wanderer v. Plainfield Carton Corp.*, 40 Ill. App. 3d 552, 556 (3d Dist. 1976) (the "measure of actual loss" rule indicates that damages for breach of lease should place the injured party "in the position he would have been had the contract been performed."). In *Inland Property Management, Inc. v. McLallen*, 1990 WL 43510 (N.D. Ill. April 5, 1990), the U.S. District Court, citing *Wanderer*, held clearly and directly that "[u]nder Illinois law, 'the measure of damages when a lease is breached is the total unpaid rent for the remaining term of the lease, less what the landlord can obtain from reletting the premises for all or part of that term.'" 1990 WL 43510, *8.

Here, as in all lease cases, there are two possible types of damage 1550, the landlord, could have suffered. Damage due to nonpayment of rent (in other words, a payment default by the lessee) and damage the lessee may have done to the property itself (that is, breach(es) of the other provisions of the lease wherein the lessee agreed to keep and return the property in good repair). Quite obviously, these are entirely different types of damage, occasioned by entirely different conduct by the lessee. But, in either of those instances, the law entitles the

lessor to recover for all damage it sustains as a result of lessee's breaches of its covenants. The damage provision in the lease here provides 1550 with the ability to recover both types of damages, if sustained. But, importantly, it provides 1500 with no ability to recover anything more than its actual damage in each context. For this reason, the damage provision is not an unenforceable penalty provision.

With respect to leasehold damages, Section 14.B.(i) (R,V4, C948) could not be clearer. It did not set forth any specific amount as liquidated damages for a payment default, for there would be no way for the parties to know, at the time of contracting (which of course is the time at which a liquidated damage provision is to be judged – *see Jameson Realty Group v. Kostiner*, 351 Ill. App. 3d 416, 423-424 (1st Dist. 2004)), how much the present value of the rent due for remaining term of the lease would be at some unknown time in the future that a default might occur.[20] It therefore does not run afoul of the rule espoused in *GK Development, Inc. v. Iowa Malls Financing Corp.*, 2013 IL App (1st) 112802, ¶74 that

> [w]hen a contract specifies a single sum in damages for any and all breaches even though it is apparent that all are not of the same gravity, . . . and when in addition the fixed sum greatly exceeds the actual damages likely to be inflicted by a minor breach, its character as a penalty becomes unmistakable."

Here, there was no fixed sum, period. The lease merely gave 1550 right to recover the present value of the remaining rents due it under the lease, which could only be calculated at the time of a payment default, not at the time of contracting. As the Appellate Court noted, "[t]his is

[20] Local 700's citation to *Hickox v. Bell*, 195 Ill. App. 3d 976, 987-988 (5th Dist. 1990) for the general proposition that "in the real estate context, damages are often readily ascertainable" is therefore curious. Is Local 700's argument that there can never be liquidated damages in real estate contracts, because damages are never uncertain? Certainly, the legion cases on this topic strongly suggest to the contrary. But in any event, *Hickox* was a ***real estate sales contract*** which involved earnest money and other payments that would be forfeited in the event of a default. Clearly, this case could not be more different, so *Hickox* is inapplicable to the consideration of the damage provision here.

not unreasonable since, ***in the event of a breach, this is exactly what plaintiff would be entitled to***." (A.36, ¶88 (emphasis added)).

With respect to the "any other sums or damages for which Tenant may be liable to Landlord" clause, as the Appellate Court pointed out, this clause does ***not*** state or refer to other damages "occasioned by the payment default;" rather, read in context, the term "other" ***distinguishes*** those damages from payment default damages. According to the clear terms of the lease, if Local 726 left the premises in a state of disrepair, such conduct would be a breach of several "other" (that is, non-rent payment) provisions of the lease (*e.g.*, Sections 5.(B) and 7 – R.V4, C945, 946). And, if Local 726 had breached these provisions, 1550 would certainly have been entitled to recover from Local 726 whatever damages it sustained as a consequence of those "other" breaches, which damages are wholly unrelated to a payment default. This provision did not, as Local 700 wrongly characterizes it, give 1550 the right to recover "rent payments for the full term of the lease *in addition to* actual damages." (Brief, p. 42 (emphasis in original)). By describing the provision in this inaccurate manner, Local 700 is no doubt trying to make the provision seem like the provision that was struck down in *Grossinger Motorcorp, Inc. v. American National Bank and Trust Co.*, 240 Ill. App. 3d 737 (1st Dist. 1992). There, a liquidated damages clause in a real estate purchase contract gave the seller the option to either accept the liquidated damages amount specified in the contract (retention of the earnest money) or seek actual damages ***attributable to the breach***. 240 Ill. App. 3d at 749-752. Such "optional liquidated damages provisions" are, as a matter of law, unenforceable as a penalty. *See*, *e.g.*, *Karimi v. 401 North Wabash Venture, LLC*, 2011 IL App (1st) 102670, ¶21. Here, of course, taking the two remedy clauses within Section 14.B.(i) together, the lease provides only – and nothing more than – that 1550 was entitled to be made whole in the event Local 726 breached

the lease. This is in accordance with the settled law and was not any sort of "optional liquidated damages" provision.

Although Local 700 cites several real estate purchase contract cases in support of its liquidated damage argument, the fact is, unlike almost all of those cases, there were never any sums (such as earnest money) paid to 1550 at the beginning of the lease term that 1550 would have been permitted to keep in the event of a payment default; rather, what was involved was always, and was never understood by the parties to be anything but, monthly rent that was due on a going-forward basis. There was thus no possibility of a windfall to 1550 in the event of a payment breach, it could only recover what the law permitted in such circumstances, the present value (thus a single, "liquidated" amount) of the rents it would have received had Local 726 performed under the lease. Thus, cases involving real estate sales contracts do not provide an apt comparison to the issues presented here. And, in any event, it is well-settled that courts must evaluate each liquidated damage provision on its own facts and circumstances. *Karimi*, at ¶16.

Reduced to its core, Local 700's Brief on the issue of liquidated damages is nothing other than a rehash of all the arguments that it made before the Appellate Court, which the Appellate Court serially rejected based on sensible and legally correct reasoning. While this Court does indeed review this finding on this issue on a *de novo* basis, 1550 submits that the new cases Local 700 cites in its Brief here add nothing to the discussion.

There is one final point on damages that is noteworthy. The Teamsters City Lease – which at the risk of repetition, but in the hope of clarity, Local 726 fully performed without any claim of invalidity – contained a damage provision that entitled the landlord to "a sum of money equal to the value of the Rent provided to be paid by Tenant for the balance of the original Term, . . . plus any other sum of money and damages owed by Tenant to Landlord."

(JX21 – S.R.V2, 384). ***This provision is almost identical to the damage provision in this lease***. (PX1 – S.R.V2, 425). Thus, like virtually everything else in this case, what was fine for Local 726, is now unacceptable to Local 700. This Court should not countenance such a blatant, utterly baseless and inequitable double-standard. The damage award, like all the other aspects of the judgment here, must be affirmed.

CONCLUSION

For each and all of the foregoing reasons, 1550 MP Road, LLC, respectfully prays that this Honorable Court affirm the Appellate Court's decision affirming the trial court's October 21, 2015 Order, remand this case to the trial court for submission by 1550 of a Supplemental Fee Petition pursuant to the provision of the lease that permits recovery of attorneys' fees (Section 17 – R.V4, C950), and enter any other or further orders the Court deems necessary, just and proper.

Respectfully submitted,

1550 MP ROAD, LLC

By: /s/ Richard K. Hellerman
One of Its Attorneys

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 48 pages.

/s/ Richard K. Hellerman
Richard K. Hellerman

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

1550 MP ROAD, LLC, *Plaintiff-Appellee,* v. TEAMSTERS LOCAL UNION NO. 700, *Defendant-Appellant,* and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al., *Defendants.*	)	No. 123046

The undersigned, being first duly sworn, deposes and states that on September 13, 2018, there was electronically filed and served upon the Clerk of the above court the Brief of Plaintiff-Appellee, and that on the same day, a pdf of same was e-mailed to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Brief of Appellee will be sent to the Court bearing the Court's file-stamp.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Richard K. Hellerman
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