2024 IL App (1st) 231209

First District
Third Division
September 30, 2024

No. 1-23-1209

DENIS BREMEL, Plaintiff-Appellant, v. QUEDAS, INC.; BRONISLAW CHMIEL; and THADDEUS GAUZA, Defendants (Quedas, Inc., Defendant-Appellee).	)	Appeal from the Circuit Court of Cook County. No. 2014 CH 4913 The Honorable Allen Walker, Judge Presiding.

JUSTICE REYES delivered the judgment of the court, with opinion.
Presiding Justice Van Tine and Justice D.B. Walker concurred in the judgment and opinion.
Presiding Justice Van Tine also specially concurred, with opinion, joined by Justice D.B. Walker.

OPINION

¶ 1 After a bench trial, defendants Quedas, Inc. (Quedas), Bronislaw Chmiel, and attorney Thaddeus Gauza[1] were found liable for breach of contract and violation of the Uniform Fraudulent Transfer Act (UFTA) (740 ILCS 160/1 *et seq.* (West 2012)), in connection with a failed real estate sales contract between Quedas and plaintiff Denis Bremel. As damages, the trial court awarded only the $10,000 in earnest money that plaintiff had paid pursuant to the

[1] We note that Quedas is the only party properly involved in the instant appeal. Gauza, who was Quedas's attorney during the relevant time period, is also representing Quedas on appeal, but is not a party to the appeal in his individual capacity. Additionally, while the appellee brief indicates that Gauza is "Counsel for the Defendants/Appellees Quedas, Inc. and Bronislaw Chmiel," his appearance indicates that he is only counsel for Quedas. Accordingly, as no appearance has been filed on behalf of Chmiel, we treat Quedas as the only party to the instant appeal.

contract and denied plaintiff's requests for damages due to lost profits, punitive damages, and specific performance. Plaintiff appeals, claiming that the trial court erred in failing to award such damages. For the reasons set forth below, we affirm in part, reverse in part, and remand the matter for a new damages calculation in light of our decision.

¶ 2 BACKGROUND

¶ 3 *Real Estate Transaction*

¶ 4 As noted, the instant litigation proceeded to a bench trial, and the trial court's findings are not at issue on appeal. We accordingly set forth the relevant facts concerning the underlying real estate transaction as established at trial.

¶ 5 In April 2012, Chmiel formed Quedas and was its sole shareholder and owner throughout its existence; Gauza served as the incorporator in filing the articles of incorporation and was an authorized agent of the corporation. According to Chmiel, the sole purpose of forming Quedas was for it to serve as the title holder for a parcel of real property located on Augusta Boulevard in Chicago (the subject property), which was previously held in Chmiel's name. Chmiel conveyed the subject property via quitclaim deed to Quedas on April 20, 2012.

¶ 6 On October 7, 2013, Gauza, as authorized representative of Quedas, entered into an agreement with plaintiff to sell the subject property for $199,000. Under the terms of the agreement, the transaction was scheduled to close on November 4, 2013, a date which was later extended to November 20, 2013. Plaintiff, his real estate broker, and his real estate attorney all testified that, although it was a cash offer, plaintiff was never asked to provide proof of funds prior to the purchase, nor was there any documentation containing such a request. A $10,000 earnest money deposit was paid by cashier's check on November 14, 2013, with the remitter listed as "AZ Funding." Plaintiff testified that AZ Funding was owned in part

by Alex Loyfman, a friend, and that plaintiff was a signatory on the bank account; according to plaintiff, the account contained $200,000 in October 2013. Plaintiff further testified that he and Loyfman were planning on becoming "50/50 partners on this venture," which included building a six-unit residential building on the subject property.

¶ 7 On November 19, 2013, plaintiff's counsel and Gauza had a telephone conversation in which Gauza indicated that Quedas "needs additional time to remove the vehicles from the Property."[2] Plaintiff's counsel also expressed concern about clearing exceptions from the title commitment but indicated that "[t]he buyer remains ready, willing and able to close."

¶ 8 On December 2, 2013, Chmiel, on behalf of Quedas, executed a warranty deed transferring the subject property to himself for $10 in consideration; the deed, however, was not recorded until March 31, 2014. Also on December 2, 2013, Chmiel voluntarily dissolved the corporation. Chmiel testified that, prior to its dissolution, Quedas had no business, no employees, no office, no bank account, and no assets other than the subject property. Chmiel further testified that he did not enter into a contract with Quedas for the sale of the subject property, nor did he pay Quedas any money for the subject property.

¶ 9 On December 6, 2013, Gauza informed plaintiff's counsel via e-mail that "[w]e regret to inform you that the seller isn't able to proceed with this transaction due to an inability to clear the vehicles and other issues. The earnest money has already been sent back to your client." In response, plaintiff's counsel indicated that plaintiff did not agree to accept the refund of the earnest money and "considers the Seller's unilateral termination a breach of contract." Gauza responded on January 15, 2014, that "as of December 2, 2013, I do not represent Quedas, Inc.,

[2] The record indicates that the subject property was a lot which contained a fire-damaged building on the premises, as well as several vehicles. The property had also apparently been used as a gas station at one point, and there were underground tanks located beneath the property.

or Bronislaw Chmiel in any capacity. The proposed contract was properly and legally cancelled."

¶ 10 *Complaints*

¶ 11 Plaintiff filed a two-count complaint for specific performance and breach of contract against Quedas in March 2014; the breach of contract count sought damages in excess of $100,000, which plaintiff alleged represented the difference between the fair market value of the property at the time of the scheduled closing and the $199,000 purchase price under the agreement.

¶ 12 In June 2015, plaintiff amended his complaint to add Chmiel and Gauza as defendants,[3] alleging that Chmiel was a shareholder of Quedas and that Gauza was its president. Plaintiff further alleged that Chmiel, not Quedas, was the actual owner of the subject property.[4] Plaintiff's amended complaint alleged five counts: (1) fraud against Gauza, (2) breach of contract against Quedas, (3) specific performance against Quedas, (4) breach of contract against Chmiel, and (5) specific performance against Chmiel.

¶ 13 Defendants filed a motion to dismiss the amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)), alleging that plaintiff had failed to state a cause of action, in part, where he never alleged proof of funds, which was "a prerequisite for any cash proposal to proceed." On July 10, 2015, the trial court granted in part and denied in part defendants' motion. The trial court found that defendants had failed to cite any authority suggesting that proof of funds is a necessary element to state a claim for

[3] Gauza was dismissed as a party defendant by agreed order entered on March 17, 2017. He continued, however, to represent Chmiel and Quedas as an attorney but was not permitted to serve as trial counsel, as he was a witness in the matter.

[4] As noted, it was ultimately determined that Quedas, not Chmiel, was the owner of the subject property at the time of the contract.

fraud, breach of contract, or specific performance and accordingly denied the motion to dismiss on that basis. The trial court, however, dismissed the specific performance count against Quedas with prejudice, as the amended complaint alleged that Chmiel, not Quedas, was the actual owner of the subject property. The trial court also dismissed the counts against Chmiel without prejudice, as the amended complaint alleged that he was not a signatory to the sales contract.

¶ 14 Before plaintiff filed a second amended complaint, defendants moved for summary judgment on the breach of contract count against Quedas and the fraud count against Gauza, which was later converted to a motion for judgment on the pleadings. Defendants claimed that Quedas was the owner of the subject property at the time of the contract and that Gauza had the authority to act on behalf of Quedas in selling the subject property. Defendants also contended that plaintiff did not have the funds to purchase the subject property and, accordingly, there was no binding contract. The trial court denied defendants' motion on February 10, 2016.

¶ 15 In June 2016, represented by new counsel, plaintiff received leave to file a second amended complaint. Although the second amended complaint alleged that Quedas, not Chmiel, was the owner of the subject property, plaintiff was denied leave to replead a count for specific performance against Quedas. Plaintiff's second amended complaint consisted of two counts: count I alleged a violation of the UFTA, *i.e.*, the transfer of the subject property from Quedas to Chmiel constituted a fraudulent conveyance; while count II alleged breach of contract against Quedas.

¶ 16 *Trial*

¶ 17 A two-day trial was held on October 14 and 15, 2021, which established the facts of the real estate transaction as set forth above. As the issues on appeal concern the trial court's damages award, however, we set forth the limited evidence concerning that matter, as well.

¶ 18 In his testimony, plaintiff testified that he and Loyfman intended to remove any environmental hazards from the subject property and build a six-unit residential building. Loyfman, in turn, testified that based on his preliminary "sketches" at the time, he estimated that, in addition to the purchase price, there would be approximately $1.3 million in construction costs and approximately 10% in "soft costs." Loyfman estimated a 20% profit margin, meaning somewhere between $170,000 and $200,000 in profit.

¶ 19 On June 3, 2022, the trial court issued a memorandum and opinion, finding in favor of plaintiff on both counts. With respect to the UFTA count, the trial court found that (1) Quedas was a debtor liable to plaintiff, a creditor; (2) the transfer of the subject property from Quedas to Chmiel was fraudulent in law; and (3) the transfer was fraudulent in fact. Accordingly, the trial court found "that the transfer of the Property from Quedas to Chmiel violated the [UFTA] and is therefore void." With respect to the breach of contract count, the trial court found that (1) there existed a valid and enforceable contract between Quedas and plaintiff; (2) plaintiff performed his obligations under the contract, namely, to tender $10,000 in earnest money prior to the closing; and (3) Quedas failed to comply with its obligation to sell the subject property to plaintiff without legal justification. The trial court, however, found that Loyfman's testimony about potential profits was insufficient to establish plaintiff's damages, as "the numbers are speculative," but found that there was sufficient evidence to prove damages in the amount of plaintiff's $10,000 earnest money payment. Accordingly, the trial court found that

"Defendant Quedas breached its contract with Plaintiff and orders the return of the $10,000 in earnest money." The trial court reserved its ruling on other damages for further proceedings.

¶ 20 On July 7, 2022, plaintiff filed a petition for damages, requesting both specific performance and the imposition of punitive damages. In support of his punitive damages claim, plaintiff contended that defendants' fraudulent conduct led him to expend over $121,000 in attorney fees to secure his rights and suggested that an award in that amount would be appropriate.

¶ 21 On December 22, 2022, the trial court entered an order denying plaintiff's requests for specific performance and punitive damages. With respect to specific performance, the trial court observed that the court[5] had initially dismissed plaintiff's specific performance count against Quedas in 2015, as Quedas was not alleged to be the owner of the subject property, and had dismissed the specific performance count against Chmiel, as he was not a party to the contract between Quedas and plaintiff. The trial court found that "[a]lthough much has happened in the case since July 10, 2015, these issues remain. Because Chmiel, not Quedas[,] holds title to the Property and Plaintiff's contract was with Quedas, not Chmiel, the valid and enforceable contract element is not met" and, therefore, declined to order specific performance. The trial court also declined to impose punitive damages, noting that "[t]here are very few Illinois cases that discuss punitive damages and the UFTA" and that punitive damages were unavailable for a breach of contract claim.

¶ 22 Plaintiff filed a motion for reconsideration, which was denied by the trial court. The trial court agreed with plaintiff that it had made an error in stating that specific performance was unavailable where Chmiel, not Quedas, held title to the subject property, but explained that

[5] We note that a different judge presided over the trial than presided over most of the parties' motion practice.

this did not form the basis for its denial of specific performance. Instead, the basis for the trial court's denial was the fact that the specific performance count had previously been dismissed in 2015. The trial court found that the requirements for specific performance were satisfied, but that "[t]he final issue is whether 'equity and good conscience' require specific performance" (quoting *Espert v. Wilson*, 190 Ill. 629, 634 (1901)). Here, the trial court found that "[t]his Court does not believe that granting specific performance in 2023 where the original contract took place in 2013 subserves the ends of justice." The trial court found that especially to be the case where plaintiff "could have asked the Court to reconsider the specific performance issue in 2016 when Plaintiff added a fraudulent transfer count to his complaint," but did not do so. The trial court noted that plaintiff had preserved the specific performance issue in his proposed second amended complaint, but that the version of the complaint that was actually filed did not contain such a count, nor did plaintiff "offer that the new fraudulent transfer count could have had an impact on the ownership issue." Accordingly, the trial court found that "[t]his Court does not find that equity and good conscience require specific performance where more than seven years have passed since the July 10, 2015 Order, and Plaintiff had several opportunities to request the July 10, 2015 order be vacated and did not."

¶ 23 This appeal follows.

¶ 24 ANALYSIS

¶ 25 On appeal, plaintiff contends that the trial court erred when it (1) declined to impose punitive damages or order specific performance with respect to the UFTA count and (2) failed to award damages for lost profits with respect to the breach of contract count. Prior to discussing the merits of the appeal, however, we must discuss serious issues with both parties' briefs on appeal.

¶ 26 First, as noted, the only issues on appeal concern the imposition of damages; Quedas did not file a cross-appeal challenging the trial court's findings as to liability. Despite this fact, Quedas's brief on appeal extensively relates details as to the factual underpinnings of the real estate transaction. A party, of course, may include even nonessential facts in its brief where they are useful in providing context. See Ill. S. Ct. R. 341(h)(6) (eff. Oct. 1, 2020) (a statement of facts shall contain "the facts necessary to an understanding of the case"). A party, however, is required to state the facts "accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." *Id.* Quedas's statement of facts falls woefully short of this standard, containing irrelevant facts—including proposed testimony which was not admitted at trial—with limited citation to the record on appeal. More problematically, however, the statement of facts is replete with characterization (arguably *mis*characterization) of facts, insults, argument, and even suggestions of malfeasance perpetrated by plaintiff, including multiple accusations of fraud on the court. While we appreciate the need for zealous advocacy on behalf of one's client, this type of language and incivility is wholly inappropriate and unacceptable, especially in a court filing. As there is little in Quedas's statement of facts that does *not* violate our supreme court rules, we strike the entirety of Quedas's statement of facts. See *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 18 (a reviewing court is within its rights to strike a party's brief and dismiss the appeal where there are numerous Rule 341 violations, especially where they hinder the court's review). While the argument section of Quedas's brief also includes inappropriate language, it is not as egregious as in the statement of facts, so we choose not to strike that portion of the brief.

¶ 27 With respect to plaintiff, we are deeply troubled by the fact that the trial court's June 5, 2023, order denying his motion for reconsideration was not included in the record on appeal and, more importantly, was not addressed by plaintiff in his brief on appeal. Illinois Supreme Court Rule 321 (eff. Oct. 1, 2021) requires "the judgment appealed from" to be included in the record on appeal, and plaintiff is clearly aware of the entry of this order, as it is included in his notice of appeal and referenced in his brief. He did not, however, ensure that the order was included in the record on appeal until this court ordered him to supplement the record upon discovering its absence. More problematically, despite the fact that the June 5, 2023, order was a substantive order that contained the trial court's reasoning as to its denial of specific performance, plaintiff did not address the trial court's order in his brief on appeal. The only reference to the trial court's order comes in his reply brief—after Quedas pointed out the absence of the order—and consists of a reference to a case cited by the trial court, which plaintiff distinguishes on its facts. The trial court's denial of specific performance was based on its finding that equity did not support such an award, largely predicated on its determination that plaintiff had not adequately preserved his request for specific performance after it was initially dismissed in 2015. Plaintiff fails to engage with this analysis or explain why the trial court abused its discretion in making such a determination. See *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 477 (2004) (specific performance is a matter of judicial discretion). Plaintiff accordingly has forfeited the matter on appeal, and we affirm the trial court's denial of specific performance. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020); *Sexton v. City of Chicago*, 2012 IL App (1st) 100010, ¶ 79 (failure to develop an argument results in its forfeiture).

¶ 28 *UFTA—Punitive Damages*

¶ 29 In addition to his argument concerning specific performance, addressed above, plaintiff also contends that the trial court erred in declining to award punitive damages for Quedas's violation of the UFTA. Under the UFTA, a creditor may obtain a number of remedies for a violation, including:

> "(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
>
> (2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by the Code of Civil Procedure;
>
> (3) subject to applicable principles of equity and in accordance with the applicable rules of civil procedure,
>
> (A) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
>
> (B) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
>
> (C) any other relief the circumstances may require." 740 ILCS 160/8(a) (West 2014).

¶ 30 In this case, plaintiff contends that the trial court should have awarded him punitive damages pursuant to the "catch-all" provision of section 8(a)(3)(C). The trial court, however, declined to impose such damages, finding that "[t]here are very few Illinois cases that discuss punitive damages and the UFTA" and declining to rely on cases from foreign jurisdictions.

¶ 31 As an initial matter, we note that plaintiff represents that "no Illinois decision discusses" section 8(a)(3)(C). This, however, is not accurate, as there is at least one reported decision which does discuss the section, which was relied on by the trial court in reaching its decision here.[6] In *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶¶ 117-123, a different panel of this court reviewed an award of attorney fees, in part, to determine whether there was a legal basis for such an award. As relevant to the instant appeal, the plaintiff in that case argued that attorney fees were recoverable as punitive damages under section 8(a)(3)(C) of the UFTA. *Id.* ¶ 121. The appellate court, however, noted that plaintiff had cited no Illinois cases in which attorney fees were granted under the UFTA and observed that several cases predating the UFTA had declined to award such fees absent statutory authority or a specific request in the complaint. *Id.* While the appellate court recognized that in the case before it, the plaintiff had requested punitive damages, it found that "the circumstance remains that the current version of the [UFTA] does not specify that attorney fees are recoverable and Illinois courts generally refuse to allow recovery for attorney fees unless the statute specifically states that 'attorney fees' are recoverable." *Id.* It further indicated that it found the plaintiff's reliance on foreign cases to be unpersuasive, stating that "[w]e decline to follow plaintiff's cited cases from other states that provide for attorney fees or punitive damages for a fraudulent transfer claim. Though out-of-state cases should be examined when relevant, decisions of the reviewing courts of foreign jurisdictions are not binding on Illinois courts." *Id.*

[6]Indeed, plaintiff cites the case in his brief when quoting the trial court's finding, so it is curious that plaintiff would later suggest that no such case exists. We also note that we have discovered at least one unpublished case that awards such damages; as that case was filed in 2011, however, it may not be relied on in any manner in this case. See Ill. S. Ct. R. 23(e)(1) (eff. Feb. 1, 2023) (appellate court orders issued pursuant to Rule 23(b) are not precedential and may be cited for persuasive purposes only where they are filed after January 1, 2021).

¶ 32 While plaintiff should have included *WS Management* in his brief—at a minimum, acknowledging its existence—we find that the case is of limited use in the case at bar. The *WS Management* court focused on the availability of attorney fees, not punitive damages generally, and plaintiff acknowledges that there is no authority for an attorney fee award in this case. To the extent that plaintiff's argument may be interpreted as a standalone request for attorney fees, as opposed to a request for punitive damages, we wholly agree with the *WS Management* court that such an award is not available under the UFTA. Here, however, plaintiff contends that the *amount* of any punitive damages award should, at a minimum, equal his attorney fees. In other words, plaintiff is arguing (1) that punitive damages are available in UFTA cases and (2) that, in his case, the proper award of punitive damages should equal his attorney fees. This represents a slightly different question than that considered by the *WS Management* court.

¶ 33 We also slightly diverge from the *WS Management* court in the appropriateness of considering foreign authority in this case. That court correctly observed that decisions of foreign jurisdictions are generally not binding on Illinois courts. *WS Management*, 2015 IL App (1st) 132551, ¶ 121. The UFTA, however, is a uniform act and, in fact, expressly provides that "[t]his Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it." 740 ILCS 160/12 (West 2014). As such, "[o]pinions of the courts of other jurisdictions are *** shown greater than usual deference." *Garver v. Ferguson*, 76 Ill. 2d 1, 8 (1979); *In re Marriage of Turano Solano*, 2019 IL App (2d) 180011, ¶ 52; *Mikrut v. First Bank of Oak Park*, 359 Ill. App. 3d 37, 56 (2005). See also *Pluciennik v. Vandenberg*, 2018 IL App (3d) 160726, ¶ 21 (applying foreign case law in interpreting the UFTA); *Levy v. Markal Sales Corp.*, 311 Ill. App. 3d 552, 555 (2000) (same); *Lindholm v. Holtz*, 221 Ill. App. 3d 330, 334 (1991) (same). In the absence

of directly applicable authority from Illinois courts, therefore, we look to cases from other jurisdictions that have considered the same issue.[7] We emphasize, however, that, while we find foreign authority instructive in our analysis, our decision is ultimately based on our independent interpretation of the Illinois statute.

¶ 34 In *Volk Construction Co. v. Wilmescherr Drusch Roofing Co.*, 58 S.W.3d 897, 900 (Mo. Ct. App. 2001), the Missouri Court of Appeals considered whether punitive damages were available under its version of the UFTA, which is identical in relevant part to the Illinois UFTA. The Missouri court observed that, while the UFTA did not expressly provide for punitive damages, "it by no means prohibits them" (*id.*) and, indeed, "expressly grants courts the authority to employ the full array of remedial measures insofar as they are warranted under the particular facts of the case" (*id.*). The Missouri court further noted that its version of the UFTA—as in Illinois's version—contained a section providing that " 'the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.' " *Id.* (quoting Mo. Rev. Stat. § 428.054 (2000)). As such, the Missouri court found that the UFTA specifically incorporated preexisting legal

[7] Our independent research indicates that a total of 45 jurisdictions, including the District of Columbia and the Virgin Islands, adopted versions of the UFTA. In 2014, the National Conference of Commissioners on Uniform State Laws amended the UFTA "to address a small number of narrowly-defined issues," which included changing the title of the statute to the Uniform Voidable Transactions Act (UVTA). Uniform Voidable Transactions Act, Prefatory Note (2014 Amendments), at 5 (Nat'l Conf. of Commissioners on Unif. State Laws 2014). The relevant portions of both acts, however, remain substantively identical. Compare, *e.g.*, Uniform Fraudulent Conveyance Act § 7 (1984) (remedies), with Uniform Voidable Transaction Act § 7 (2014) (same). Our research reveals that, thus far, 24 states (not including Illinois) have adopted the amendments, including two states that had not previously adopted the UFTA. Accordingly, there are 47 jurisdictions (including the District of Columbia and the Virgin Islands) that have adopted at least one of the statutes. Of those, we have discovered at least 29 in which state or federal courts have addressed the availability of punitive damages under the applicable statute, either explicitly or implicitly.

and equitable principles related to the law of fraudulent conveyances so long as they did not conflict with the provisions of the UFTA, and that the preexisting principles of Missouri law "provide that punitive damages are available where a debtor intentionally effectuates fraudulent transfers designed to shield assets from creditors." *Id.* Accordingly, the Missouri court found that the UFTA did not prohibit an award of punitive damages.[8] *Id.*

¶ 35 A number of other courts have applied similar reasoning, finding that punitive damages are available under the "catch-all" provision of the UFTA, at least where such damages would have been permitted prior to the enactment of the UFTA. See, *e.g.*, *Interfinancial Midtown, Inc. v. Choate Construction Co.*, 806 S.E.2d 255, 262 (Ga. Ct. App. 2017); *Klein v. Weidner*, 729 F.3d 280, 296 (3d Cir. 2013) (applying Pennsylvania law); *Macris & Associates, Inc. v. Neways, Inc.*, 2002 UT App 406, ¶ 17, 60 P.3d 1176 (finding "third-party litigation exception" allowing recovery of attorney fees to be applicable to UFTA claims); *Clary-Ghosh v. Ghosh*, No. 22A-PL-1411, 2023 WL 6054214, at *10 (Ind. Ct. App. Sept. 18, 2023). Other courts have found punitive damages available under the UFTA for a variety of other reasons.[9] See, *e.g.*,

[8] We note that the Missouri court also found an award of attorney fees appropriate in that case, despite the lack of statutory authority, under a " 'special circumstances' " exception. *Volk Construction*, 58 S.W.3d at 901 (quoting *Windsor Insurance Co. v. Lucas*, 24 S.W.3d 151, 156 (Mo. Ct. App. 2000)). The availability or applicability of such an exception is not at issue in the case at bar.

[9] We also note that several courts have considered the appropriateness of a punitive damages award based on the factual circumstances at issue therein, thereby implicitly finding that punitive damages are available under that state's version of the UFTA or UVTA. See, *e.g.*, *J.A. Morrissey, Inc. v. Smejkal*, 2010 VT 66, ¶¶ 33-36, 6 A.3d 701; *Chu v. Hong*, 185 S.W.3d 507, 513-14 (Tex. App. 2005), *rev'd on other grounds*, 249 S.W.3d 441 (Tex. 2008); *Chatman v. Lawlor*, 831 A.2d 395, 399-400 (D.C. 2003); *Tian v. Top Food Trading Inc.*, No. 22 Civ. 00345 (EK) (VMS), 2024 WL 1051172, at *8-12 (E.D.N.Y. Feb. 26, 2024) (applying New York law); *Estrada v. DJ Exteriors, LLC*, No. M2022-01052-COA-R3-CV, 2023 WL 2442494, at *6 (Tenn. Ct. App. Mar. 10, 2023); *Johnson v. Ventling*, No. 13-0157, 2014 WL 1714966, at *3 (Iowa Ct. App. Apr. 30, 2014); *Serbus v. Serbus*, No. C3-02-664, 2002 WL 31455442, at *4 (Minn. Ct. App. Nov. 5, 2002) . Similarly, a number of courts have addressed UFTA or UVTA claims that included requests for punitive damages without separately remarking on the damages aspect, suggesting that such a request is not problematic under that state's laws. See, *e.g.*, *Gibson v. Wikeley Inc.*, No. 5:23-CV-116-GFVT-MAS, 2023 WL 4934988, at *5 (E.D. Ky. Aug. 2, 2023) (applying Kentucky law).

Kekona v. Bornemann, 349 P.3d 361, 372 n.16 (Haw. 2015); *SuVicMon Development, Inc. v. Morrison*, 991 F.3d 1213, 1220 (11th Cir. 2021) (finding that "[i]t *** appears that punitive damages may be available, at least in instances of actual fraud," under Alabama law); *Aristocrat Lakewood Nursing Home v. Mayne*, 729 N.E.2d 768, 783 (Ohio Ct. App. 1999); *In re Stein*, No. 392-33885-S7, 1997 WL 30822, at *1 (D. Or. Jan. 17, 1997) (applying Oregon law).

¶ 36 On the other hand, some courts have concluded that punitive damages are not permitted for UFTA claims. For instance, in interpreting Florida law, the Eleventh Circuit Court of Appeals found that punitive damages were unavailable under Florida's version of the UFTA. *SE Property Holdings, LLC v. Welch*, 65 F.4th 1335, 1349 (11th Cir. 2023). The Eleventh Circuit observed that the UFTA contemplated only equitable remedies, and Florida law did not permit punitive damages in cases arising in equity unless specifically authorized by statute. *Id.* at 1347. While it recognized the existence of the "catch-all" provision, it found that "the 'general' words of the catch-all provision *** follow[ ] a list of specific equitable remedies, and we construe the catch-all provisions as applying only to equitable remedies," which did not include punitive damages. *Id.* The Eleventh Circuit further noted that the Florida Supreme Court had previously indicated that the UFTA should be interpreted narrowly, suggesting that it would not adopt an expansive reading of the statute. *Id.* at 1349. Accordingly, it found that punitive damages were not permitted under Florida's version of the UFTA. *Id.* See also *Morris v. Askeland Enterprises, Inc.*, 17 P.3d 830, 832-33 (Colo. App. 2000) (finding punitive damages unavailable on a fraudulent conveyance claim, as punitive damages are unavailable in equitable actions); *C&A Investments v. Kelly*, 2010 WI App 151, ¶ 10, 330 Wis. 2d 223, 792 N.W.2d 644; *In re Tronox Inc.*, 429 B.R. 73, 111-12 (Bankr. S.D.N.Y. 2010) (applying

Oklahoma law); *Northern Tankers (Cyprus) Ltd. v. Backstrom*, 968 F. Supp. 66, 67 (D. Conn. 1997) (applying Connecticut law).

¶ 37 After examining the language of the UFTA and the decisions of other jurisdictions, we believe that the better-reasoned approach is that which permits the imposition of punitive damages in appropriate circumstances. The "catch-all" provision of section 8(a)(3)(C) permitting the trial court to award "any other relief the circumstance may require" (740 ILCS 160/8(a)(3)(C) (West 2014)) is broad, allowing the court considerable discretion in fashioning an appropriate remedy based on the particular circumstances before it. Moreover, the UFTA is clear that it is intended to "supplement" the common-law except where it is "displaced" by the provisions of the statute, and our supreme court has interpreted this directive expansively. *Id.* § 11. See *Rush University Medical Center v. Sessions*, 2012 IL 112906, ¶ 18 (the UFTA does not abrogate the law of common-law fraud unless "there is a clear inconsistency between the two laws so that both cannot be carried into effect"). While punitive damages are not favored in the law, it is well-recognized that one of the areas in which they may be appropriate is where there has been fraud. See, *e.g.*, *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365, 387 (2004) (punitive damages "should be awarded only in aggravated circumstances involving *fraud*, willfulness, wantonness or malice" (emphasis added)); *Stump v. Swanson Development Co.*, 2014 IL App (3d) 110784, ¶ 67 ("A plaintiff has a common law right to punitive damages in a fraud case."); *Black v. Iovino*, 219 Ill. App. 3d 378, 393 (1991) ("Defendant does not, nor can he, dispute that punitive damages may properly be awarded in an action for fraud."). We also note that limiting the available remedies in a UFTA claim may have the undesirable result of leaving the plaintiff worse off than he had been before asserting his claim, especially in a case such as this one, where plaintiff is essentially left without a remedy despite a finding of

fraud. Accordingly, we find that, in appropriate circumstances, a violation of the UFTA may give rise to an award of punitive damages, as would be the case under the common law.

¶ 38 We caution, however, that the fact that punitive damages may be awarded in a case arising under the UFTA does not necessarily mean that such an award is appropriate in all circumstances. Punitive damages are intended "to punish the offender and to deter that party and others from committing similar acts of wrongdoing in the future." *Loitz v. Remington Arms Co.*, 138 Ill. 2d 404, 414 (1990). As such, punitive damages are disfavored in the law, so "courts should be careful never to award such damages improperly or unwisely." *Kirkpatrick v. Strosberg*, 385 Ill. App. 3d 119, 133 (2008). "An award of punitive damages is appropriate where the underlying tort is accompanied by aggravated circumstances such as wantonness, willfulness, malice, fraud, or oppression, or when the defendant acts with such gross negligence as to indicate a wanton disregard for the rights of others." *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 253 (2006).

¶ 39 In reviewing an award of punitive damages, we engage in a three-part analysis, considering " '(1) whether punitive damages are available for the particular cause of action, using a *de novo* standard, (2) whether, under a manifest weight of the evidence standard, the defendants acted fraudulently, maliciously or in a manner that warrants such damages, and (3) whether the trial court abused its discretion in imposing punitive damages.' " *Stump*, 2014 IL App (3d) 110784, ¶ 66 (quoting *Linhart v. Bridgeview Creek Development, Inc.*, 391 Ill. App. 3d 630, 641 (2009)). In this case, the trial court stopped at the first step—it found that punitive damages were not available for UFTA claims. As explained above, we find otherwise in our decision today. We therefore reverse the trial court's damages award with respect to the UFTA claim

and remand the cause to the trial court with instructions to consider whether punitive damages are appropriate under the circumstances of this case.

¶ 40 To be clear, the questions of whether punitive damages should be imposed and, if so, the amount of such award are fact-specific determinations best left to a trier of fact in the first instance. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 69 (2009). Here, the trial court never considered plaintiff's arguments concerning the issue, as it concluded that such damages were unavailable as a matter of law. The trial court therefore never had the opportunity to make findings of fact as to whether Quedas's conduct rose to a level warranting punitive damages and, if so, the proper amount of such an award. Accordingly, we express no opinion on the question of whether punitive damages are warranted or the proper amount of such damages, including plaintiff's arguments concerning attorney fees as a measure of damages.

¶ 41 *Breach of Contract—Lost Profits*

¶ 42 Plaintiff also argues that the trial court erred in failing to award him damages for lost profits with respect to his breach of contract claim. A plaintiff seeking damages for lost profits must establish those damages with reasonable certainty. *Ivey v. Transunion Rental Screening Solutions, Inc.*, 2022 IL 127903, ¶ 29. While this standard does not require absolute certainty, a plaintiff "must offer competent evidence that tends to establish the lost profits with a fair degree of probability." *Id.* (citing *Tri-G v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 248 (2006)). The determination of damages is a question of fact, and "a reviewing court will not lightly substitute its opinion for the judgment rendered in the trial court." *Richardson v. Chapman*, 175 Ill. 2d 98, 113 (1997).

¶ 43 In this case, evidence about plaintiff's damages came primarily through the testimonies of plaintiff and Loyfman, his intended business partner. Plaintiff testified that he and Loyfman planned to remove any environmental hazards from the subject property and build a six-unit residential building. Loyfman, in turn, testified that based on his preliminary "sketches" at the time, he estimated that, in addition to the purchase price, there would be approximately $1.3 million in construction costs and approximately 10% in "soft costs." Loyfman estimated a 20% profit margin, meaning somewhere between $170,000 and $200,000 in profit. The trial court found that, while Loyfman's testimony provided "some evidence" of damages, "it is not sufficient because the numbers are speculative." We agree.

¶ 44 Our supreme court has recognized that it may be challenging for a new business to prove lost profits, as the simplest way to establish a business's lost profits is through evidence of past profits. *Tri-G*, 222 Ill. 2d at 248-49. If a new business can provide evidence "to support an inference of definite profits grounded upon a reasonably sure basis of facts," however, it may recover such profits. (Internal quotation marks omitted.) *Ivey*, 2022 IL 127903, ¶ 31.

¶ 45 Here, we agree that the testimony provided by Loyfman fails to rise to such a level. Loyfman testified that he had been involved in a number of similar projects in the past, that a six-unit residential building was "in [his] wheelhouse," and that he was familiar with the area in which the property was located. He further testified that, as part of his due diligence at the time, he surveyed the subject property, specifically concerned about the environmental issues posed by the underground gas tanks. After doing so, he calculated "profit sketches," which he categorized as "[p]reliminary." This is a far cry from the type of testimony that has been found sufficient to establish lost profits in other cases, and we cannot find that the trial court erred in declining to award such damages.

¶ 46 The deficiencies in the evidence in this case can most easily be seen by comparing the evidence to that presented in a case relied on by plaintiff in his brief, *Shepherd Real Estate Subsidiary, LLC—1901 Halsted Series v. Commonwealth Edison Co.*, 2024 IL App (1st) 221766-U. In that case, the plaintiff established lost profits with respect to a delay in building an apartment building through the use of an expert witness, who explained his methods of estimating such profits in detail. *Id.* ¶ 38. Specifically, the expert used the Multiple Listing Service to locate 24 comparable, recently constructed, two- and three-bedroom apartments located in the same neighborhood as the subject property and visually confirmed that the apartments were similar. *Id.* He then calculated the average rental price per square foot per month during the time that the plaintiff could have rented the property had construction not been delayed, then multiplied it by the square footage of each apartment in the building to estimate lost rental income. *Id.* He added lost fee income to lost rental income, then subtracted operating expenses to obtain lost profits. *Id.* We found in that case that the plaintiff's evidence was sufficient to support the trial court's award for lost profits. *Id.* See also *Tri-G*, 222 Ill. 2d at 249-50 (finding value of comparable completed houses to provide adequate support for proving lost profits on 14 partially completed houses in the same development).

¶ 47 In this case, the evidence presented by plaintiff was not sufficient to establish lost profits with reasonable certainty. For instance, there was no evidence presented as to specific projects Loyfman had completed that may have been comparable to this one, the value of other multiunit properties in the same area, or any data which could have served as a basis for a reasonable calculation of profits. Accordingly, we affirm the trial court's decision not to award such damages.

¶ 48 CONCLUSION

¶ 49 The trial court's judgment is affirmed in part and reversed in part. First, the trial court erred in finding that punitive damages were not available for UFTA claims and, accordingly, that portion of its judgment is vacated and the cause is remanded for a determination as to whether punitive damages are warranted under the facts of this case. Second, the trial court properly denied plaintiff's request for damages based on lost profits, as plaintiff failed to establish such damages with reasonable certainty.

¶ 50 Affirmed in part and reversed in part; cause remanded with directions.

¶ 51 PRESIDING JUSTICE VAN TINE, specially concurring:

¶ 52 I agree with the majority's conclusion that punitive damages are, as a matter of law, available under section 8(a)(3)(C) of the UFTA, but attorney fees are not. I also agree that this case should be remanded to the trial court for its determination as to whether punitive damages are appropriate and, if so, in what amount. However, I write separately to add further analysis under Illinois law.

¶ 53 The UFTA allows a court to award a plaintiff "any other relief the circumstances may require." 740 ILCS 160/8(a)(3)(C) (West 2014). Illinois courts have explained that " '[t]he word "any" has broad and inclusive connotations.' " *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 349 (2000) (quoting *People ex rel. Scott v. Silverstein*, 94 Ill. App. 3d 431, 434 (1981)). " 'Any' is not a vague term"; it means "all-encompassing." *People v. Moeller*, 2024 IL App (2d) 230043, ¶ 127. Accordingly, Illinois courts have held that the legislature's use of "any" demonstrates a clear intent to include all things that "any" modifies—in this case, "other relief"—without restriction or exception. See *City Suburban Electric Motors, Inc. v. Wagner*, 278 Ill. App. 3d 564, 567 (1996); see also *People v. Fredericks*, 2014 IL App (1st)

122122, ¶ 22 (the legislature's use of "any" expresses a lack of limitation). By using "any" to modify "other relief," the legislature intended the UFTA to provide all available remedies for plaintiffs, including punitive damages. As the majority correctly notes (*supra* ¶ 37), the UFTA states that "the principles of law and equity, including the law [of] *** fraud *** supplement its provisions." 740 ILCS 160/11 (West 2014). In Illinois, punitive damages are available in cases involving fraud. See, *e.g.*, *Gomez v. The Finishing Co.*, 369 Ill. App. 3d 711, 721 (2006) (citing *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 186 (1978)). The UFTA, by name and substance, concerns fraud claims, so punitive damages are available.

¶ 54 I also agree with the majority that, under Illinois law, attorney fees are not available under the UFTA. Despite the broad connotations of "any other relief," section 8(a)(3)(C) does *not* allow a trial court to award attorney fees. In Illinois, "a statute or contract must allow for attorney fees by specific language," *i.e.*, "the provision at issue must specifically state that 'attorney fees' are recoverable." *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶ 120. That is because Illinois follows the American Rule of attorney fees, meaning that "[p]revailing parties are prohibited from recovering their attorney fees from the losing party absent express authorization by statute or by contract between the parties." *State ex rel. Schad, Diamond & Shedden, P.C. v. My Pillow, Inc.*, 2018 IL 122487, ¶ 17. Section 8(a)(3)(C) does not expressly authorize the recovery of attorney fees; therefore, attorney fees are not recoverable in a UFTA claim, absent express contractual agreement.

¶ 55 That rule extends to a scenario where, as in this case, a UFTA plaintiff seeks "punitive damages" that are actually attorney fees. A court may not award attorney fees "under the guise of a punitive damages award." *International Union of Operating Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill. 2d 456, 491 (2006). I acknowledge that, in assessing punitive damages,

a trial court may *consider* the amount of attorney fees. *Id*. at 490. But that does not mean that an award of punitive damages can simply be an award of attorney fees under a different label. *Lowe* specifically prohibits that practice. Yet that is precisely what plaintiff seeks in this case, as the majority points out: "In support of his punitive damages claim, plaintiff contended that defendants' fraudulent conduct led him to expend over $121,000 in attorney fees to secure his rights and suggested that an award in that amount would be appropriate" (*supra* ¶ 20); "plaintiff contends that the amount of any punitive damages award should, at a minimum, equal his attorney fees" and that "the proper award of punitive damages should equal his attorney fees" (emphasis omitted) (*supra* ¶ 32).

¶ 56 *WS Management* is directly on point. The plaintiff in that case argued that "attorney fees are recoverable as punitive damages under the [UFTA]." *WS Management, Inc.*, 2015 IL App (1st) 132551, ¶ 121. This court rejected that contention and held that attorney fees are not recoverable in UFTA cases.[10] *Id.* I agree with that conclusion. Following Illinois law, I concur with the majority that section 8(a)(3)(C) of the UFTA allows the trial court to award punitive damages but does not allow the trial court to award attorney fees regardless of the label those attorney fees are given.

¶ 57 This conclusion is supported by Illinois courts' interpretation of identical language in the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2014)). The Consumer Fraud Act allows the court to "award actual economic damages or *any other relief* which the court deems proper." (Emphasis added.) *Id.*

[10]I agree with *WS Management* that the UFTA does not allow recovery of attorney fees regardless of how they are characterized. However, I disagree with *WS Management*'s suggestion that the UFTA does not allow punitive damages at all. See *WS Management*, 2015 IL App (1st) 132551, ¶ 121 ("We decline to follow plaintiff's cited cases from other states that provide for attorney fees *or* punitive damages for a fraudulent transfer claim." (Emphasis added.))

§ 10a(a).[11] The phrase "any other relief" in the Consumer Fraud Act includes punitive damages. *Martin v. Heinold Commodities, Inc.*, 163 Ill. 2d 33, 68-69, 80-82 (1994); see *Linhart v. Bridgeview Creek Development, Inc.*, 391 Ill. App. 3d 630, 641 (2009) ("The Consumer Fraud Act explicitly allows for the recovery of punitive damages where the conduct of the defendant was willful or intentional or done with evil motive or reckless indifference to the rights of others."); *Flores v. Luxury Motors Credit, Inc.*, 2021 IL App (1st) 200974-U, ¶ 34 ("the Consumer Fraud Act specifically authorizes a circuit court to award a prevailing plaintiff not only economic damages, but also 'any other relief which the court deems proper,' including punitive damages" (quoting 815 ILCS 505/10a (West 2018))). I interpret the phrase "any other relief" in section 8(a)(C)(3) of the UFTA in the same way, *i.e.*, to allow an award of punitive damages.

¶ 58 Furthermore, the Consumer Fraud Act demonstrates why attorney fees are not recoverable under the UFTA. Section 10a(c) of the Consumer Fraud Act provides that "the Court may *** award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party." 815 ILCS 505/10a(c) (West 2014). That is, the Consumer Fraud Act expressly authorizes an award of attorney fees, superseding Illinois's default American Rule. By contrast, the UFTA does not mention attorney fees at all. 740 ILCS 160/1 *et seq.* (West 2014). Without an explicit provision allowing attorney fees, they are not available. See *Negro Nest, LLC v. Mid-Northern Management, Inc.*, 362 Ill. App. 3d 640, 641-42 (2005).

¶ 59 In sum, I agree with the majority that punitive damages are recoverable under section 8(a)(3)(C) of the UFTA, but attorney fees are not, and the trial court cannot award "punitive

[11]Our supreme court struck down as unconstitutional certain amendments to section 10a of the Consumer Fraud Act that gave favorable treatment to automobile dealers over other consumer fraud defendants. *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 22-23 (2003). Those amendments are not relevant to my analysis in this case.

damages" that are just attorney fees by another name. I also agree that this case should be remanded for the trial court to determine whether punitive damages are appropriate and, if so, in what amount.

¶ 60 There is one other potential issue regarding punitive damages in this case. Plaintiff's UFTA claim as pled in the second amended complaint did not seek punitive damages. Plaintiff did not seek punitive damages until after trial. He never amended his complaint to ask for punitive damages. To recover punitive damages in a fraud case, a plaintiff must plead facts that would support an award of punitive damages, such as actual malice, evil motive, or reckless indifference. *Smith v. Prime Cable of Chicago*, 276 Ill. App. 3d 843, 859 (1995) (citing *Parsons v. Winter*, 142 Ill. App. 3d 354, 361 (1986)). "Even where fraud is proved, punitive damages may be allowed only if aggravating circumstances are *specifically pleaded* and proved." (Emphasis added.) *Johnson v. George J. Ball, Inc.*, 248 Ill. App. 3d 859, 869 (1993). I express no opinion as to whether plaintiff's second amended complaint meets this pleading standard. However, I respectfully suggest that the parties and the trial court consider this issue on remand.

¶ 61 JUSTICE D.B. WALKER joins in this special concurrence.

***Bremel v. Quedas, Inc.*, 2024 IL App (1st) 231209**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 2014-CH-4913; the Hon. Allen Walker, Judge, presiding.
Attorneys for Appellant:	Berton N. Ring, of Berton N. Ring, P.C., of Chicago, for appellant.
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