

Nos. 1-10-3672, 1-11-0338 and 1-11-0648 Consolidated

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

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

K2 DEVELOPMENT, LLC II,)	Appeal from the Circuit Court
)	of Cook County
Plaintiff-Appellee,)	
)	
v.)	
)	06 CH 21885
KIM BRAUNSTEIN,)	
)	
Defendant-Appellant.)	Honorable
)	Mary Anne Mason,
)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

ORDER

- ¶ 1 HELD: In light of a partial dismissal order, the only issue properly raised on appeal is a challenge of the monetary damages. On that issue, the trial court did not err in calculating the compensatory damages or in assessing punitive damages based on Braunstein's fraudulent conduct.
- ¶ 2 Following a bench trial, the trial court found in favor of plaintiff K2 Development, LLC II (K2), and against defendant Kim Braunstein, on K2's claims of fraudulent misrepresentation in connection with the purchase of a parcel of land on LaGrange Road in Orland Park, Illinois. The trial court awarded \$382,575.90, in compensatory damages and \$750,000, in punitive damages.

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The court also ordered that K2 was entitled to reformation of the deed and title of the subject parcel to vest in K2.

¶ 3 Braunstein raises several issues on appeal, including whether K2 proved reasonable reliance necessary for fraud, the denial of motions for counsel to withdraw and substitution of judge, and whether the calculation of damages was correct and the entry of punitive damages was warranted. However, this court granted K2's motion to dismiss in part, which dismissed all issues from the appeal except for a challenge to the monetary damage award. The motion to dismiss was based on a prior ruling in Braunstein's bankruptcy case which held that Braunstein no longer has an interest in the subject parcel and was to dismiss his state court appeals, with a single exception for an appeal of the monetary damages. Accordingly, the only proper issues raised by Braunstein is whether the calculation of the compensatory damages was proper and whether punitive damages were warranted.

¶ 4 This case involves the purchase of a parcel of land located at 16600 South LaGrange Road in Orland Park. In October 2006, K2 filed a complaint against Braunstein, Kim Braunstein, Inc., Paul Weatherhead, and Harris Bankcorp, Inc.¹ K2 filed an amended complaint in February 2008 against the same defendants. K2 sought the reformation of a deed to reflect title of the subject parcel in K2 based on mutual mistake of fact or fraud. K2 also sought damages for common law fraud and injunctive relief against Braunstein. A bench trial was conducted in July and November 2010.

¹ The other defendants are no longer parties to this case and are not part of this appeal.

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¶ 5 K2 is an Illinois limited liability company. It was formed in 2004 when Braunstein approached Kenneth Finkelstein, a physician with limited real estate experience, and asked if Finkelstein was interested in participating in some real estate transactions. Finkelstein agreed and they formed K2. Braunstein is a real estate investor and developer. He had previously done some remodeling work on Finkelstein's home. Pursuant to the operating agreement, Finkelstein and Braunstein were both member-managers with a 50% interest. At this time, Finkelstein is the sole member of K2.

¶ 6 K2's first real estate transaction was the purchase of a vacant lot located at 21422 Plank Trail in Frankfort, Illinois, for \$140,000. The purchase was financed with a loan from First National Bank of Illinois (First National). Braunstein had previously done business with First National for smaller real estate transactions. David Rock, a loan officer for First National, testified at the trial that Braunstein would not have been able to receive financing from First National for this transaction without a partner to guarantee the loan. Both Finkelstein and Braunstein guaranteed the loan for \$120,000 to K2. Paul Weatherhead, Braunstein's attorney, represented K2 for this real estate transaction.

¶ 7 Originally, K2 planned to construct a new home on the vacant lot with Braunstein acting as developer and contractor. Shortly after the purchase, K2 received an offer from a third party to purchase the Plank Trail property for \$180,000. K2 agreed to sell the property for the profit. On Weatherhead's advice, K2 decided to defer the capital gains tax on the profit by treating the transaction as a Section 1031 exchange under the Internal Revenue Code. See 26 U.S.C. § 1031

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(West 2004). Section 1031 allows a taxpayer to defer capital gains tax on the sale proceeds of a real estate transaction if the taxpayer purchases another property with the proceeds within six months. 26 U.S.C. § 1031 (West 2004).

¶ 8 Braunstein proposed the idea of purchasing the vacant lot located at 16600 South LaGrange Road. Braunstein and Finkelstein discussed building a professional office building which would include Finkelstein's medical practice. The LaGrange Road property consisted of two contiguous parcels of land. The south parcel's Property Identification Number (PIN) is 27-21-403-008-000 (008 Parcel) and the north parcel's PIN is 27-21-403-010-000 (010 Parcel). The 010 Parcel contains significant areas of wetlands that are unsuitable for development. Both parcels are located at the 16600 South LaGrange address. Braunstein was aware that the property consisted of two separate parcels, but did not mention this to Finkelstein. The parties planned to purchase the LaGrange property as the exchange property under section 1031.

¶ 9 Braunstein also presented the plan to purchase the LaGrange property to Rock at First National. Braunstein told Rock that development would occur on the south parcel and the north parcel would be used for storm water storage.

¶ 10 Since K2 was the purchaser of the Plank Trail property, K2 needed to be the purchaser of the LaGrange property in order to benefit from the tax benefits. Braunstein indicated that he did not want to guarantee the loan necessary to purchase the LaGrange property, but he wanted to remain an owner of the property. Finkelstein and Braunstein entered into an option agreement to address these concerns. Under the option agreement, Finkelstein would be the sole owner of the

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LaGrange property, but Braunstein would have the right to become an equal owner of the LaGrange property if he met certain conditions precedent: (1) contribute 50% of the amounts paid at closing for the LaGrange property; and (2) for a period of 24 months, pay 50% of the monthly mortgage payments, taxes, insurance, and maintenance costs associated with the property. If Braunstein failed to make any of the required payments within 60 days of written demand, then the option would terminate. The parties agreed that Braunstein would dissociate from K2 and Finkelstein would remain the sole member of K2 upon the purchase of the LaGrange property. The option agreement was signed by the parties on May 3, 2004. Braunstein admitted that the option agreement referred to the LaGrange property and not just the 010 Parcel.

¶ 11 The parties decided to have Braunstein initially purchase the LaGrange property in his name for \$485,000, and then immediately sell the property to K2 for \$525,000. Braunstein would keep the \$40,000 profit as a finder's fee. Although Braunstein informed Finkelstein that he was purchasing the property for \$485,000, Braunstein actually agreed to purchase the property for \$420,000, and he kept \$105,000 as a profit on the resale to K2.

¶ 12 Braunstein discussed his plan to conceal the purchase price from Finkelstein with Rock at First National. Rock advised him that the appraiser would have to be told the price, which would be used in the appraisal. However, Braunstein told the appraiser the purchase price was \$475,000, and the appraiser relied on Braunstein's information. The appraisal valued the property at \$600,000 and did not differentiate between the 008 and 010 parcels. Finkelstein guaranteed a loan for K2 in the amount of \$450,000 to purchase the entire LaGrange property.

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First National would not have made the loan to Braunstein alone nor would First National have approved a loan of \$450,000 for only the 010 Parcel.

¶ 13 On May 27, 2004, Braunstein and Finkelstein met at a Chicago Title & Trust Company (Chicago Title) office in Orland Park. Finkelstein made a \$20,000 escrow deposit. Braunstein and Finkelstein also prepared and executed revised real estate contract, indicating that K2 would take title of the LaGrange property. This contract did not differentiate the two parcels. The parties argued at this meeting.

¶ 14 According to Braunstein, he was giving up his share of profits from Plank Trail and had lost additional monies from the development of the property. He privately calculated that he lost a profit of \$400,000 to \$600,000 on the sale of residence, plus a commission as developer. He also privately thought the LaGrange property was worth \$1,000,000, despite the \$600,000 appraisal. He concluded that he would sell one parcel to K2 for \$525,000 and keep the other parcel as consideration for his lost profits. After Finkelstein assured Braunstein that he would be the developer, Braunstein agreed to sell a parcel, referring to the 010 Parcel. Finkelstein denied this conversation took place. In contrast, Finkelstein testified that nothing in the agreement changed at the May 27 meeting. He did not agree to purchase the undevelopable 010 parcel for \$525,000, which was more than Braunstein paid to purchase the entire LaGrange property.

¶ 15 The closings were set for June 16, 2004. In the interim, Braunstein spoke frequently with Rock about the purchase, but he never informed Rock that the transaction had changed to convey only the 010 Parcel for \$525,000. On June 8, 2004, Rock asked Braunstein to fax a copy of the

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title commitment for the LaGrange property. Braunstein faxed a copy of the title for only the 010 Parcel, but did not inform Rock of this information. Rock did not check the PIN or legal description because he believed it was for the entire parcel. Rock reviewed the document to check for any exceptions to title and because of his longstanding history with Braunstein, he expected Braunstein to advise him of any changes. As a result of this fax, Rock prepared the mortgage note and loan documents to reflect only the PIN and legal description for the 010 Parcel.

¶ 16 On June 11, 2004, Braunstein directed Weatherhead to prepare three sets of closing documents: one for the entire parcel for \$525,000, one for only 008 Parcel for an unspecified price, and one for only 010 Parcel for an unspecified price. Copies of these documents were not provided to Finkelstein. Weatherhead also sent a waiver of conflict of interest to Finkelstein's attorney, which stated that K2 would be purchasing the LaGrange property.

¶ 17 On June 16, 2004, the closings were scheduled right after each other. In the first closing, Braunstein presented the closing documents for the 010 Parcel only and inserted the purchase price of \$525,000. Braunstein did not inform Finkelstein or Rock that the documents only conveyed the 010 Parcel to K2. Finkelstein executed the \$450,000 loan documents prepared by First National. In the afternoon closing, Braunstein used the proceedings from the morning sale to fund his purchase of the entire LaGrange property for \$420,000. He retained the 008 Parcel for himself.

¶ 18 Following the purchase, Braunstein initially complied with the conditions precedent in

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the option agreement. He contributed half of the money paid at closing and began paying half of the mortgage payment and other costs with the LaGrange property. Braunstein never informed Finkelstein that he had divided the property and K2 only owned the 010 Parcel. Braunstein stopped making mortgage payments in May 2005. In November 2005, Finkelstein sent Braunstein a letter notifying him that under the option agreement, his failure to make the required payments within 30 days would result in forfeiture of the option.

¶ 19 At the same time he stopped making payments under the option agreement, Braunstein obtained a \$250,000 loan using the 008 Parcel as collateral. Braunstein did not obtain the loan from First National, but from Harris Bank. Braunstein later defaulted on the loan and Harris Bank obtained a judgment and lien on the 008 Parcel in the amount of \$246,518.43. Also in 2005, Braunstein obtained an additional loan from First National. When he provided a net worth statement in connection with the loan, Braunstein failed to list the 008 Parcel as a property in which he had an ownership interest. Rock testified that if Braunstein had listed the 008 Parcel, he would have noticed the discrepancy because Rock believed that K2 owned the 008 Parcel.

¶ 20 After Braunstein's option to acquire an interest in the LaGrange property was forfeited, Finkelstein decided to list the property for sale. In preparing to list the property, his realtor informed Finkelstein that he did not own the entire parcel, but only the 010 parcel. Finkelstein then commenced this litigation.

¶ 21 The bench trial began on July 6, 2010. On July 7, 2010, Braunstein recorded a previously undisclosed easement on the 008 Parcel granted in 2009 to his brother-in-law. Later, during trial

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on July 9, 2010, Braunstein left the courtroom during his attorney's cross-examination of Finkelstein. When he returned, Braunstein informed the court that he had filed a voluntary petition for bankruptcy. The trial court adjourned the trial. During the adjournment, Braunstein's attorney filed a motion to withdraw, which the trial court denied. The bankruptcy court lifted the automatic stay on August 18, 2010. The trial was rescheduled to begin on Monday, November 1, 2010, to accommodate Braunstein's attorney's schedule. On October 29, 2010, Braunstein filed a *pro se* emergency motion stating that he had discharged his attorney and was requesting additional time to obtain new counsel. Braunstein's attorney also filed a motion to withdraw.

¶ 22 On November 1, 2010, Braunstein's brother appeared in court and informed the trial court that Braunstein had been taken to the hospital with either a heart attack or a stroke. The court denied the motion to withdraw and Braunstein's motion to delay trial to obtain new counsel. The trial court continued the case until the afternoon to get a report on Braunstein's medical condition. That afternoon, the trial court received a fax from St. James Hospital indicating that Braunstein had presented at the hospital with chest pains and would be admitted. The court then weighed the interests of the parties in continuing the trial, noting that Braunstein's testimony had concluded and he had previously been absent during trial, the court found the factors weighed in favor of resuming trial. Trial was to resume the following day.

¶ 23 On November 2, 2010, Braunstein's brother appeared in court and presented an emergency motion for substitution of judge for cause. Braunstein's counsel denied any assistance in preparing the motion. The trial court determined that the motion was prepared and verified by

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Braunstein despite his medical condition. The parties resumed the trial and it concluded that day.

¶ 24 The trial court entered its initial memorandum opinion and order on December 21, 2010. On January 6, 2011, the trial court entered a corrected memorandum opinion and order. The court found that based on testimony and evidence presented at trial, "this is a clear case of unilateral mistake coupled with fraud." The court held that "[t]here is no question that Braunstein failed to disclose a material fact which, if known to Finkelstein, as sole member of K2, would have led him to act differently." The court found Braunstein's explanation "illogical" and his rationale for the conveyance of only the 010 Parcel was "highly suspect." "The record is replete with misleading statements and material omissions by Braunstein sufficient to support K2's claims for fraud and reformation." The court also noted that "Braunstein's misleading conduct is further evidenced by his communications with First National." The court further observed that Braunstein had a fiduciary relationship with Finkelstein and "Braunstein had a duty to correct Finkelstein's misapprehension as to what property Braunstein was conveying to K2." The court concluded that "K2 is entitled to reformation of the deed, vesting title to the 008 Parcel in K2 based on Finkelstein's mistake coupled with Braunstein's fraud." The court also found that issuance of the judicial deed extinguished any rights of Braunstein or a third party, including the easement. The court also denied K2's request for an injunction.

¶ 25 The trial court also concluded that K2 was entitled to damages. The court awarded compensatory damages of \$382,575.90, which includes the \$105,000 in proceeds from the Braunstein conveyance of the property and the \$277,575.90 from the Harris Bank judgment

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against Braunstein. The court found that the circumstances were appropriate for punitive damages based on Braunstein's "egregious pattern of conduct." The court entered an award of \$750,000 in punitive damages.

¶ 26 After Braunstein filed his appeal, proceedings in this court were stayed during the pendency of Braunstein's bankruptcy case. In July 2011, the bankruptcy court approved the sale to a third party of any rights Braunstein had in K2 and the LaGrange property. In May 2012, the bankruptcy court ordered Braunstein to dismiss this consolidated appeal except to the extent that Braunstein is appealing the award of monetary damages to him individually. In August 2012, this court granted K2's motion to dismiss the appeal with prejudice "except solely to the extent that Defendant-Appellant Kim Braunstein seeks to appeal the monetary damage award entered against him." The Illinois Supreme Court denied Braunstein's petition for leave to appeal the partial dismissal. Thus, the only issue remaining on appeal is Braunstein's challenge to the award of compensatory and punitive damages. In light of the dismissal order, the remaining issues raised in Braunstein's brief on appeal are not properly before this court and will not be considered on appeal.

¶ 27 On appeal, Braunstein argues that the trial court improperly calculated the amount of compensatory damages and that the punitive damages were excessive and violative of due process. We will consider Braunstein's argument regarding compensatory damages first.

¶ 28 "Compensatory damages are those which are awarded to a person as compensation, indemnity or restitution for a wrong or injury sustained by him." *Gambino v. Boulevard Mortg.*

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Corp., 398 Ill. App. 3d 21, 61 (2009). "The purpose of awarding compensatory damages is to make the injured party whole and restore him to the position he was in before the loss, but not to enable him to make a profit or windfall on the transaction." *Gambino*, 398 Ill. App. 3d at 61.

"The issue of damages is a question of fact and, accordingly, a trial court's finding of damages will not be disturbed on appeal unless it is against the manifest weight of the evidence."

Doornbos Heating and Air Conditioning, Inc. v. James D. Schlenker, M.D., S.C., 403 Ill. App. 3d 468, 485 (2010). A damage award is against the manifest weight of the evidence only if the trial court ignored evidence or the computation of damages was erroneous as a matter of law.

Doornbos, 403 Ill. App. 3d at 485.

¶ 29 Here, Braunstein contends that his share of the Plank Trail proceeds and the agreed \$40,000 finder's fee should have been deducted from the trial court's calculation of compensatory damages. We disagree. The sale of the Plank Trail property by K2 netted \$68,310.47 in profit which K2 reinvested in the LaGrange property. While Braunstein dissociated himself from K2, he had the option to rejoin and share in half of the profits from the LaGrange property. Braunstein's subsequent fraudulent actions deprived him of that option and the benefit of the Plank Trail profits. The decision not to deduct a share of the Plank Trail profits was not against the manifest weight of the evidence.

¶ 30 Braunstein also asserts that the agreed-to \$40,000 fee should be deducted from the compensatory damages because Finkelstein was not entitled to more than what was originally bargained for between the parties. K2 maintains that the \$40,000 should not be deducted because

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the finder's fee was the product of Braunstein's fraud and breach of fiduciary duty.

¶ 31 The trial court's computation of the compensatory damages was not against the manifest weight of the evidence. The court determined that Braunstein "wrongfully obtained" \$105,000 in the flip transaction when Braunstein bought the property for \$420,000 and sold it to K2 for \$525,000. The court's finding put K2 in the position it would have been in if it bought the property for \$420,000, which made K2 whole. Contrary to Braunstein's suggestion, K2 did not receive a windfall, but was made whole, as intended by compensatory damages. The trial court did not err in calculating the compensatory damages.

¶ 32 Next, we consider whether the award of punitive damages was excessive or violative of due process. "The purpose of punitive damages is: ' (1) to act as retribution against the defendant; (2) to deter the defendant from committing similar wrongs in the future; and (3) to deter others from similar conduct.' " *Gambino*, 398 Ill. App. 3d at 68 (quoting *Gomez v. The Finishing Co.*, 369 Ill. App. 3d 711, 721 (2006), quoting *Hazelwood v. Illinois Central Gulf Railroad*, 114 Ill. App. 3d 703, 712 (1983)). "Such damages will be awarded only where the defendant's conduct is willful or outrageous due to evil motive or a reckless indifference to the rights of others." *Gambino*, 398 Ill. App. 3d at 68.

¶ 33 "In reviewing a trial court's decision to award punitive damages, we take a three-step approach, 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

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(3) whether the trial court abused its discretion in imposing punitive damages." *Linhart v. Bridgeview Creek Development, Inc.*, 391 Ill. App. 3d 630, 641 (2009).

¶ 34 First, we recognize that punitive damages are available for cause of action for fraud. "Punitive damages are proper in a fraud action where the false representations are wantonly and designedly made." *Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162, 179 (2008). Next, we find that the manifest weight of the evidence demonstrated that Braunstein acted fraudulently in his multiple misrepresentations in his business dealings with Finkelstein. Finally, the trial court did not abuse its discretion in awarding punitive damages. The trial court specifically found that punitive damages were justified based on "Braunstein's egregious pattern of conduct." The court detailed this pattern of conduct as follows.

"Braunstein, as co-investor of K2, breached his fiduciary duty to Finkelstein by: (1) engaging in a fraudulent scheme, concealing that he was not conveying the entire La Grange Road property to Finkelstein as agreed upon between the parties; (2) perpetuating his fraud after the transaction by obtaining a mortgage on the 008 Parcel from a separate lending company and failing to disclose his ownership in the property to First National when requesting an additional loan; (3) and granting an easement in the 008 Parcel to his brother-in-law, after the filing of a *lis pendens* in this case. This court finds that Braunstein's conduct was intentional, wholly

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lacking in good faith, and undertaken with full knowledge that he was improperly benefitting himself at K2's expense."

¶ 35 The trial court made specific findings regarding Braunstein's fraudulent conduct and found that this intentional fraud warranted an award of \$750,000, which the court noted was slightly less than twice the amount of compensatory damages. The record supports the trial court's conclusion and we decline to find an abuse of discretion.

¶ 36 We observe that while Braunstein asserts that the trial court erred in imposing punitive damages, he does not assert the proper standard for a common law challenge of punitive damages until his reply brief. Rather, in his opening brief, he cites the standard for reviewing whether a punitive damages award is excessive in violation of due process. "A constitutional challenge to an award of punitive damages is separate from the common-law challenge addressed above."

Gambino, 398 Ill. App. 3d at 71.

¶ 37 In considering a constitutional challenge of punitive damages, we are to consider three factors: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded *** and the civil penalties authorized or imposed in comparable cases.'" *International Union of Operating Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill. 2d 456, 470 (2006) (quoting *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 418 (2003), citing *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996)).

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¶ 38 Braunstein argues that the award of punitive damages violated due process because his conduct was not reprehensible and the trial court did not consider his financial condition.

Braunstein cites *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991), for this position.

However, more recent authority from the United States Supreme Court does not include a defendant's financial condition as a guidepost in considering a constitutional challenge to a punitive damages award. See *State Farm*, 538 U.S. at 418; *Gore*, 517 U.S. at 575. This court will follow the test as set forth in these recent cases. We note that the trial court was aware of Braunstein's financial condition because he filed his bankruptcy petition in the middle of the trial which resulted in a stay of the proceedings. The trial court clearly explained its reasoning in awarding the punitive damages and we find no error.

¶ 39 "Perhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *Gambino*, 398 Ill. App. 3d at 71 (quoting *Gore*, 517 U.S. at 575). "Courts are instructed to consider the following factors when determining reprehensibility: (1) whether the harm caused was physical as opposed to economic; (2) whether the tortious conduct evinced an indifference to or a reckless disregard for the health and safety of others; (3) whether the target of the conduct was financially vulnerable; (4) whether the conduct involved repeated actions or was an isolated incident; and (5) whether the harm was the result of intentional malice, trickery, or deceit, or mere accident." *Gambino*, 398 Ill. App. 3d at 71. "The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award." *Lowe*, 225 Ill. 2d at 483 (quoting

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State Farm, 538 U.S. at 419). "However, a finding of reprehensibility does not require that all five factors be met." *Tully v. McLean*, 409 Ill. App. 3d 659, 676 (2011) (citing *Lowe*, 225 Ill. 2d at 483 (finding reprehensibility based on intentional malice alone)).

¶ 40 It is clear from the facts of this case that the first two factors are not present because no physical harm or threats to health and safety occurred. As to the third factor, the evidence established that Braunstein sought Finkelstein for the real estate partnership for his financial status and there was no evidence that Finkelstein was financially vulnerable.

¶ 41 For the fourth factor, contrary to Braunstein's assertion, the conduct at issue was not an isolated incident. Braunstein views the conduct as one real estate transaction with one victim, but his fraud was several repeated actions within this real estate transaction and subsequent litigation. Further, there is no requirement that his pattern of misconduct involve multiple victims. Braunstein intentionally withheld the purchase price of the LaGrange property and told Finkelstein an inflated price so as to secure \$105,000 for himself, instead of the agreed upon \$40,000. Braunstein then failed to convey the entire property to K2. Instead, he conveyed only the undevelopable parcel at the price intended for both parcels and kept the developable parcel for himself, unencumbered by any mortgage. Later, he obtained a mortgage on the 008 Parcel through a different lender than First National, with whom he had a history. When he sought a loan from First National, he failed to list his ownership of 008 Parcel. Braunstein also engaged in actions to cloud the title for the 008 Parcel. He granted an easement on the 008 Parcel after a *lis pendens* had been filed in this case and then waited to record the easement until the day of

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trial. Braunstein's conduct was not a single isolated incident, but a series of intentional acts meant to defraud Finkelstein. Braunstein's pattern of intentional misconduct as outlined above also satisfies the fifth factor because the evidence showed that the fraud was the result of his intentional trickery and deceitful misconduct. Braunstein's repeated acts of intentional deceit are sufficient to support a finding of reprehensibility.

¶ 42 Next, we review the disparity between the actual harm and the punitive damages. K2 was awarded compensatory damages of \$382,575.90 and punitive damages of \$750,000. This amounts to less than a 2:1 ratio. "There is no 'bright-line ratio which a punitive damages award cannot exceed,' but rarely will an award greater than a single-digit ratio between punitive and compensatory damages satisfy due process, with an award greater than four times the amount of compensatory damages being 'close to the line.'" *Tully*, 409 Ill. App. 3d at 678 (quoting *Lowe*, 225 Ill. 2d at 484). "In considering whether a punitive damages award is constitutional, courts are instructed to consider whether there is a reasonable relationship between the punitive damages award and the potential and actual damages resulting from the defendant's conduct." *Lowe*, 225 Ill. 2d at 484.

¶ 43 "The last guidepost to consider is the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases in order that substantial deference be accorded to legislative judgments concerning appropriate sanctions for the conduct at issue." *Tully*, 409 Ill. App. 3d at 679. "It being undisputed that there is no comparable Illinois law imposing a civil penalty for breach of fiduciary duty, we need not consider this guidepost any

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further." *Tully*, 409 Ill. App. 3d at 679.

¶ 44 Braunstein offers no argument on appeal for either the second or third factors in a constitutional challenge to punitive damages. Thus, Braunstein has forfeited any challenge to these factors. "Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Nevertheless, we note that the less than 2:1 ratio between the compensatory and punitive damages to be reasonable, given Braunstein's egregious conduct and pattern of fraud in his actions with the LaGrange property. As in *Tully*, we need not consider the third guidepost because there is no civil penalty for fraud or breach of a fiduciary duty.

¶ 45 Based on our consideration of the relevant guideposts and the evidence presented, we conclude that the award of \$750,000 in punitive damages did not violate due process. The record supports a finding that Braunstein engaged in an intentional scheme to defraud K2 and Finkelstein. This conduct was reprehensible. Further, at less than twice the compensatory damages, the punitive damages award was not disproportionate. Accordingly, we affirm the award of punitive damages.

¶ 46 For the foregoing reasons, we affirm the decision of the circuit court of Cook County.