2025 IL App (2d) 230238
No. 2-23-0238
Opinion filed May 23, 2025

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

K-STONES, INC., Plaintiff-Appellant, v. JOONG GUL KO; MI JIN CHANG; IN HEE MOON; MASTER WIRELESS-SUBURBAN MALLS, INC.; and JOHN DOES 1 THROUGH 5, Defendants (Joong Gul Ko and Mi Jin Chang, Defendants-Appellees).	)	Appeal from the Circuit Court of Lake County. No. 20-CH-615 Honorable Janelle K. Christensen, Judge, Presiding.

PRESIDING JUSTICE KENNEDY delivered the judgment of the court, with opinion. Justices Schostok and Mullen concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, K-Stones, Inc., filed a four-count amended complaint against various defendants. Only the two counts naming defendants Joong Gul Ko and Mi Jin Chang are relevant to this appeal; the remaining counts were dismissed before trial. Count I, against Ko, plaintiff's former employee, was for conversion. Count II, against Ko and his wife, Chang, was for unjust enrichment. A jury found for plaintiff on both counts, but the trial court granted Ko and Chang a judgment notwithstanding the verdict (judgment *n.o.v.*) on count II. Plaintiff appeals the grant of the

judgment *n.o.v.* We reverse the judgment *n.o.v.* on count II as to Chang only. In all other respects, we affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Defendants' Motion to Strike

¶ 4 At the outset, we address defendants' motion to strike portions of (1) the record on appeal, (2) the body of plaintiff's opening brief, and (3) the appendix to plaintiff's brief. First, defendants object that the appendix is not in the form specified by Illinois Supreme Court Rule 342 (eff. Oct. 1, 2019) in that its table of contents is placed with the brief's table of contents rather than immediately before the appendix materials, the appendix's pagination is not separate but continuous with the brief's pagination, and the appendix's pages lack an "A" before each page number. We decline to strike the appendix, as these formal deficiencies do not hinder our review. See *Litwin v. County of La Salle*, 2021 IL App (3d) 200410, ¶ 11. However, we caution counsel to comply in the future with all Illinois Supreme Court rules and Second District Appellate Court local rules.

¶ 5 Second, defendants object that the appendix contains improper material. However, the appendix contains no material that is not part of the record on appeal, which we note was supplemented on February 29, 2024. Defendants' objection to the appendix's content depends ultimately on their objection that the record on appeal contains documents and orders filed in the trial court after plaintiff filed its July 14, 2023, notice of appeal from the court's order granting Ko and Chang a judgment *n.o.v.* on count II. We reject this as a basis for striking any portion of the record or appendix. Defendants cite the principle that "[o]rders entered after the filing of the notice of appeal are valid if the substantive issues on appeal are not altered so as to present a new case to the appellate court." *Jill Knowles Enterprises, Inc. v. Dunkin*, 2017 IL App (2d) 160811, ¶ 25. In

Dunkin, one of the parties questioned a witness about certain documents but failed to mark the documents as trial exhibits or move to admit them into evidence. *Id.* ¶ 9. Two months after the notice of appeal was filed, the trial court "entered an order purporting to admit 'all exhibits into evidence for purpose of appeal.' " *Id.* We held that the order was "ineffective" for several reasons, one of which was that the trial court "sought to alter the issues on appeal by designating documents that were not admitted at trial as evidence." *Id.* ¶¶ 23, 25.

¶ 6 Defendants identify two orders that they allege violated the principle in *Dunkin* because they were entered after the July 14, 2023, notice of appeal was filed. Defendants note that, on November 1, 2023, the trial court granted in part plaintiff's "Motion to Resubmit Trial Exhibits and Complete the Record on Appeal." However, defendants do not explain how the trial court's order granting this motion altered "the substantive issues on appeal." *Id.* ¶ 25. Therefore, we reject their challenge.

¶ 7 Defendants also note that, on December 5, 2023, plaintiff filed a "Motion for Correction," asking the trial court to "correct" the date of plaintiff's November 22, 2023, amended notice of appeal by deeming it filed on November 14, 2023. On February 16, 2024, the trial court granted the motion. Defendants do not dispute the motion's factual allegations as to plaintiff's successive notices of appeal in this case. However, defendants argue that the court lacked jurisdiction to grant the motion. We decline to address whether the court had jurisdiction to enter the February 16, 2024, order, because, as we explain, that order has no consequence for our analysis of the jurisdictional (*infra* ¶¶ 50-54) or substantive (*infra* ¶¶ 57-72) issues in this case.

¶ 8 Defendants also object to the inclusion in the record of filings and orders related to Chang's bankruptcy proceeding. These materials were attached to the "Motion for Correction." Defendants do not object to the authenticity of the materials but challenge their inclusion because they "were

not part of the circuit court's decision" granting a judgment *n.o.v.* Nonetheless, the bankruptcy materials bear upon whether we have jurisdiction over this appeal (*infra* ¶¶ 50-54). Therefore, we decline to strike those materials. Finally, for the same reason, we also deny defendants' request that we strike portions of plaintiff's opening brief that cite the bankruptcy materials.

¶ 9 For the reasons given, we deny defendants' motion to strike.

¶ 10 B. Pertinent Facts

¶ 11 On April 2, 2021, plaintiff filed its amended complaint against, *inter alia*, Ko and Chang. As pertinent here, the general allegations were as follows. Plaintiff owns and operates K-Stone Beauty, a beauty supply store (store). Ko started working there in 2010. While employed at the store, Ko had access to the store's merchandise, cash registers, and point of sale system (POS system). He earned approximately $600 per week. Ko and Chang resided in a house in Buffalo Grove with their two children. At all pertinent times, Chang did not work outside the home.

¶ 12 Count I, for conversion, named Ko and alleged as follows. From sometime before 2015 to the termination of his employment in 2018, Ko repeatedly took cash from the registers and converted it to his own use. He did this by "fraudulently creating false return/refund transactions, [and] taking the money for such fabricated 'returns.' " In July 2018, an assistant manager told Ann Seok (Ann)—co-owner of the store, along with her husband, Kyun Seok (Kyun)—that he thought he saw Ko take money from a cash register and keep it. Ann watched a security video that corroborated the manager's report. A check of the POS system showed that Ko recorded the conversion of funds as a cash refund to a customer. Ann confronted defendant. He admitted wrongdoing and was terminated. Sometime later, Ko promised to return $48,000 but paid only $1000. Ko retained more than $1 million in all.

¶ 13 Count II, for unjust enrichment, named Ko and Chang and alleged as follows. "By unjustly retaining the property of the [p]laintiff, *** Ko unjustly retained the benefit of the property." Ko also "transferred[ ]the benefit of the retained property, in part, to *** Chang." "On information and belief," the money that Ko retained was put into an account held by Ko, Chang, or both and was "used to pay joint expenses, including but not limited to rent, purchase of real estate, household repairs, children's expenses, vacations, automobiles, and rental of a bus for a group outing to a restaurant." In May 2017, Ko and Chang used the retained funds to purchase, without financing, a Buffalo Grove home valued at over $620,000. Title was placed in Chang's name only. Ko also transferred part of "the benefit of the retained property" to other named defendants and used retained funds to start several businesses. "As a proximate result of unjust enrichment ***, [p]laintiff has been damaged in excess of $1 million, as [p]laintiff has been deprived of same."

¶ 14 We turn to the trial evidence. As neither party has appealed the ruling on count I, for conversion, we forgo a full exposition of the technical evidence related primarily to that count.

¶ 15 Ann testified as follows. She and Kyun own the store. In 2012, plaintiff hired Ko at a starting salary of $500 to $600 weekly. While Ko worked there, the store had two cash registers. Ko, Hui Chui Yi, and Seung Woo Park worked the registers. Each man had a unique password to access the registers. In July 2018, Park told Ann of an occasion when, after Ko counted the money in a cash register, "the money was not there below the register." Ann looked at a security video, called Ko into her office, and confronted him. Ko begged Ann for mercy. A few days later, she fired him.

¶ 16 Ann testified that, at the end of each business day, she used a machine to count the cash receipts and compared the total to a printout generated by the POS system. She ensured that the two matched and then recorded the result in a ledger.

¶ 17 Park testified that he had been a cashier at the store since about 1995. He had his own password for the cash registers, and he never shared the password with anyone. In July 2018, he was arranging stock in one of the aisles when he saw Ko remove cash from one of the registers and place it in his pants pocket. After Ko left, Park went to the register and checked if Ko had left the cash on the counter. Park did not see any cash there. Park told Ann what he had seen Ko do.

¶ 18 Park explained that his responsibilities at the end of a business day included closing out any of the store's two cash registers that had been opened that day. He would "[c]ount the cash and put the exact number on the POS system." He would then generate a printout from the POS system and bring "the cash and printout to [Ann]."

¶ 19 Yi testified that he had been the store's manager for 25 years. Yi had a password for the cash register, and he never shared it with anyone. To close out a cash register at the end of the day, Yi counted the coins in the register and entered the total into the POS system. He then generated a printout from the POS system showing the remaining coins in the register. Yi did not count the bills in the register but simply placed them in the office safe. Only he, Park, and Ann were authorized to take cash to the office. Also, Ko had no access to the safe.

¶ 20 Kyun testified that, on February 18, 2019, he visited Ko at Ko's cell phone store in Lincolnwood. Ko signed a note promising to deposit $1,000 monthly into Kyun's bank for 48 months. Kyun received only a single $1000 payment from Ko.

¶ 21 Called as an adverse witness, Chang testified as follows. In 2010, she and Ko moved to the United States. She had since raised two children. She did not work outside the home until 2022. In June 2017, she and Ko purchased their Buffalo Grove home for $659,000 in cash, which Ko had provided. The home was titled in her name only. Chang could not say where Ko obtained the purchase money or the money he used to pay the 2017 to 2018 property taxes on the home. Chang

currently drives a Mercedes Benz. Previously, she drove a Range Rover. Ko purchased both vehicles, and Chang did not know where he obtained the money.

¶ 22 Called as an adverse witness, Ko testified as follows. His weekly salary at the store had been $500 to $600. He earned either $2000 or $3000 monthly in his previous jobs. After being fired from the store, Ko paid $50,000 in earnest money toward purchasing three cell phone stores. Specifically, he acquired a cell phone store in Lincolnwood in October 2018, Bloomingdale in February 2019, and Aurora in November 2019. Ko also acquired a chicken restaurant in Lincolnwood. All four businesses were incorporated under the name of In Hee Moon, Ko's next-door neighbor. In operating the businesses, Ko signed Moon's name on business documents.

¶ 23 Ko testified that, in 2017, he paid $659,000 for the Buffalo Grove residence, using (1) $400,000 from his retirement fund in Korea, (2) money he received from his parents, (3) the return of a "security deposit," (4) his wages, and (5) an inheritance from Chang's father. He produced no documentation for these transfers.

¶ 24 Fred Kruse, a forensic accountant whom the trial court qualified as an expert witness, testified as follows. In preparing for this case, he reviewed various court documents, several depositions, and data from the store's POS system covering more than four years, from January 1, 2015, through March 2019. The POS system tracked sales (cash and credit), returns/refunds (cash and credit), and aggregate amounts for each type of transaction. The data from the POS system enabled the store's employees to determine the amount of cash that should have been in the cash drawer on a given day based on transaction history. If a refund was not logged in but cash was taken from the drawer, or vice versa, the data would not match what was left in the cash drawer. The POS system could identify how much cash should have been in the drawer on a given day but could not track what later happened to the cash.

¶ 25 Kruse testified that, while preparing for his testimony, he reviewed spreadsheets that Joe Seok (Joe), Ann and Kyun's son, generated from the POS system data. Based on those spreadsheets, Kruse generated his own spreadsheet showing the store's total cash returns from January 1, 2015, through March 2018 and Ko's share of the cash returns from January 1, 2015, through July 28, 2018 (presumably, the date of Ko's termination). For the latter time frame, according to Kruse, "[t]he volume both in dollars returned and in number of transactions was significantly higher for [Ko] than it was for any of the other employees." Specifically, Ko's fellow employees accounted for approximately 10% of all cash returns and Ko accounted for the remainder. Thus, Ko generated nine times more cash returns than his fellow employees. When Kruse was asked if he had an opinion to a reasonable degree of accounting certainty as to why that disparity existed, he answered:

> "So it's my opinion that in order to make the daily cash tie-outs balance, what's happening in the POS system has to also be reflected in the cash register drawer. So the money for the returns was actually being removed *** and wasn't in the drawer at the end of the day."

Defendants moved to strike the answer as nonresponsive, but the trial court denied the motion. Kruse then opined, to a reasonable degree of accounting certainty, that Ko's cash returns "for the period of January 2015 through July 28th of 2018" totaled approximately $1,003,000. The POS system could not show whether a given return was fraudulent or legitimate. Therefore, Kruse reduced the total by $159,000 "to account for what, in [his] opinion, could have been normal returns during that period." The adjusted total, representing converted funds, was $845,739.24.

¶ 26 Kruse testified that a family of four would require $102,000 in after-tax annual income to reside in Buffalo Grove during the period at issue.

¶ 27 Joe testified that he began reviewing the POS system data about a month after Ko executed the promissory note for $48,000. Data from 2013 and 2014 was corrupted and only partially accessible, so Joe examined the data from January 1, 2015, through July 28, 2018, which was not corrupted. He compared Ko's cash refunds to those of the other employees who operated the cash registers. On days when Ko worked the registers, his cash refunds were "out of this world."

¶ 28 In its closing argument, plaintiff noted that Ko's yearly compensation from the three jobs he held before he and Chang bought their home did not total $200,000. Yet, Ko paid for the home with $659,000 in cash, provided $50,000 in earnest money toward the purchase of cell phone businesses, and had money for other expenses such as luxury cars for Chang. Plaintiff also noted that while Ko testified that he had outside resources—including a retirement fund, gifts, and an inheritance—he did not document any of these. Further, the POS system data showed that cash refunds recorded by Ko from January 1, 2015, through July 28, 2018, vastly exceeded all other cash refunds combined.

¶ 29 Plaintiff explained that conversion is "what we normally call stealing or theft," while unjust enrichment means "[y]ou didn't do the stealing, but you benefited from the stealing and it's not yours." Plaintiff contended that the evidence, most centrally Kruse's expert testimony, proved that Ko converted $845,739.24 by taking "cash out of a till."

¶ 30 Defendants argued in closing that the POS system data presented to support the conversion claim was technically flawed and that the other evidence was inconclusive. For instance, they contended that the conversion claim failed because, even had plaintiff proved that Ko exercised unauthorized and wrongful control over plaintiff's property, there was no evidence of control over "a specific and identifiable sum of money belonging to *** plaintiff[.]" As to unjust enrichment, defendants noted that a finding for plaintiff on this count first required proof that Ko had converted

funds from the store. Next, plaintiff had to prove that defendants unjustly retained the benefit of the converted funds to plaintiff's detriment and that doing so violated the fundamental principles of justice, equity, and good conscience. Defendants argued that there was no evidence that defendants used converted funds to buy their home or anything else.

¶ 31 In rebuttal, plaintiff argued that it had proved conversion. On unjust enrichment, plaintiff argued in total:

> "Unjust enrichment. This is the American law. We know—We never said [Chang]—I don't know whether she knew about it, didn't know. I don't know. It doesn't matter. Was she in on it? She didn't know how much he made. She didn't—She doesn't know—I'm telling you, if my spouse came and said, 'I'm buying you a house, $660,000 worth, with cash,' I would say, 'Where did you get the money from?' That's what I would say. But she didn't care. Forget the house. If somebody bought me a car, a Mercedes-Benz, and then said, 'Here it is,' I would want to know where you got the money from. But it doesn't matter. Did she benefit from it? Absolutely. Apparently she is now working, which is a good thing. We all need to work.
>
> This last line of the law of, unjust enrichment, defendants' retention of the benefit—them keeping the money is the retention of the benefit—violates the fundamental principles of justice, equity, and good conscience. That is the American law. Thank you."

¶ 32 The jury instruction on the elements of conversion stated that plaintiff had to prove, *inter alia*, "[t]hat [Ko] assumed an authorized and wrongful control, dominion or ownership over a specific, identifiable sum of money belonging to the plaintiff." The instruction on the elements of unjust enrichment began: "If you find in favor of [plaintiff] against [Ko] on the conversion claim, then you will have an occasion to consider the unjust enrichment claim against [Ko and

Chang].” The instruction on unjust enrichment further stated that plaintiff had to prove, *inter alia*, “[t]hat [Ko or Chang] has unjustly retained a benefit to the plaintiff’s detriment.” The instruction on compensatory damages read:

> “If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate the plaintiff for any of the following elements of damages proved by the evidence to have resulted from the wrongful conduct of the defendants:
>
> For the conversion claim, the value of the specific, identifiable sum of money belonging to the plaintiff at the time it was converted plus interest.
>
> For the unjust enrichment claim, the amount of money that would fairly compensate the plaintiff as determined by the sum of money that reflects defendants’ gains derived from the conversion.
>
> Whether any of these elements of damages has been proven by the evidence is for you to determine.”

¶ 33 On February 3, 2023, the jury found in favor of plaintiff on both counts. On count I (conversion), the jury awarded against Ko $660,000 in compensatory damages, $208,000 in interest, and $47,000 in punitive damages. On count II (unjust enrichment), the jury awarded $434,000 against Ko and $434,000 against Chang.

¶ 34 On February 28, 2023, defendants moved for a judgment *n.o.v.*, a new trial, or remittitur on counts I and II. As pertinent here, defendants argued that the verdicts on count II could not stand because “[n]one of plaintiff’s witnesses testified [that] defendants used any of the allegedly stolen money for their benefit to the plaintiff’s detriment.”

¶ 35 On April 28, 2023, plaintiff filed its response. Plaintiff defended the verdicts on count II by pointing to Ko's modest income, the cost of living for a family of four in Buffalo Grove during the relevant period, and Ko's various outlays. Plaintiff argued that, "[b]ased on the evidence presented ***[,] the jury easily could have, and apparently did, determine that [d]efendants used the cash stolen from [p]laintiff to make these various purchases and otherwise support their lifestyle."

¶ 36 Also, on April 28, 2023, Chang petitioned for bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois.

¶ 37 On June 16, 2023, while Chang's bankruptcy petition was pending, the trial court held a hearing on defendants' posttrial motion. As pertinent here, defendants contended that the verdicts on count II could not stand. Defendants contended specifically that there was "absolutely no evidence as to [Chang] taking possession of the so-called converted money and using it to buy certain items [as] the plaintiff alleged happened."[1]

¶ 38 In response, plaintiff noted that, by filing the bankruptcy petition, Chang had triggered the automatic stay of all further proceedings as to her. See 11 U.S.C. § 362(a) (2018). Therefore, plaintiff would not address the motion as it applied to Chang. As to Ko, plaintiff contended that defendants essentially were asking the trial court to reweigh the evidence and usurp the jury's role.

¶ 39 The trial court denied the motion as to count I (conversion) but granted defendants a judgment *n.o.v.* on count II (unjust enrichment). As to count I, the court found sufficient evidence that Ko stole money. The court remarked, however, that calculating the loss was less straightforward. The court noted that Kruse gave an expert opinion "as to a specific sum of money taken by Ko," $845,739.24. Apparently, "the jury did not accept the number proffered by Mr.

[1]For reasons unclear, defendants' argument on unjust enrichment was restricted to Chang.

Kruse" but found instead that Ko converted $660,000. Nonetheless, the jury's award was supported by the evidence, particularly defendants' modest income throughout the relevant period, the cost of living in Buffalo Grove, and Ko's various outlays, such as purchasing the home for $659,000 cash. The court noted in particular: "The fact that the jury's verdict was $660,000 compels the Court to conclude that the jury found that the specific sum taken by Ko was the amount he paid for cash in his home [*sic*]." Thus, the court upheld the verdict on count I.

¶ 40 The trial court turned to the twin verdicts on count II. The court noted that plaintiff was required to prove that (1) either or both defendants unjustly retained a benefit to plaintiff's detriment and (2) the retention of the benefit violated fundamental principles of justice, equity, and good conscience. The court also noted that, to find for plaintiff on count II, the jury had to find for plaintiff on conversion, as otherwise "there would be no basis for an unjust enrichment finding." The court noted that the jury indeed found that Ko converted (*i.e.*, stole) $660,000 from plaintiff. The court continued:

> "To the extent the defendants purchased *** items with stolen money, the plaintiffs [*sic*] are made whole for the stolen funds by the damage awarded [on] the conversion count. The unjust enrichment count would address the benefit the defendants received by using the stolen funds. Thus, by way of example, if defendants had used the stolen funds to purchase their house, if their house had appreciated in value, then the defendants may have been unjustly enriched because the stolen funds allowed them to purchase a home that subsequently appreciated in value. That is a quantifiable gain with that example.
>
> There was no testimony at trial regarding the current value of the defendants' home. So the Court can't make that analysis. ***.

> *** Through the verdict on conversion, the plaintiffs [*sic*] have been compensated for the stolen funds, including interest. Thus if the defendants used the stolen money to buy their home and their cars and to invest money in their business, the plaintiff is made whole for that loss through the verdict on conversion."

¶ 41 The trial court concluded that no evidence supported the jury's finding that either defendant was unjustly enriched, and thus it granted both defendants a judgment *n.o.v.* on count II.

¶ 42 On July 14, 2023, plaintiff filed a notice of appeal from the June 16, 2023, order granting in part the motion for a judgment *n.o.v.* The notice of appeal named both Ko and Chang and asked this court to "change the trial court's judgment to say: Motion for Judgment Notwithstanding the Verdict is denied."

¶ 43 On October 16, 2023, the bankruptcy court issued an order annulling the automatic stay and stating, "Because the stay is annulled, no actions taken or orders entered in [this state action] violated the stay, and no actions taken or orders entered in the action since the petition date are void as having violated the stay."

¶ 44 On November 22, 2023, plaintiff filed an amended notice of appeal. Like the original, this notice named Ko and Chang and asked this court to "change the trial court's judgment to say: Motion for Judgment Notwithstanding the Verdict is denied." The only difference between the notices was in the service lists.

¶ 45 Plaintiff's "Motion for Correction," filed on December 5, 2023, made representations that pertain to our jurisdiction over this appeal, and defendants do not question their veracity. Plaintiff alleged as follows. In its July 14, 2023, notice of appeal, plaintiff "did not proceed *** [against] [d]efendant Chang because she was in bankruptcy and to proceed on [a]ppeal as to her would have violated the [f]ederal statute on automatic stay." Once the bankruptcy court annulled the stay,

plaintiff, "[i]n [an] exercise of extra caution," attempted on November 14, 2023, to electronically file a notice of appeal. The notice was rejected as duplicative. "Thinking, perhaps, there was some technical glitch," plaintiff attempted on November 22, 2023, to file a notice of appeal "as to Chang." That notice also was rejected as duplicative. On November 27, 2023, a staff member of this court informed plaintiff's counsel that "the second [n]otice of [a]ppeal will be treated as an [a]mended [n]otice of [a]ppeal and will be deemed filed on November 22, 2023."

¶ 46 In its motion, plaintiff objected to how our court treated its November 22, 2023, notice of appeal. Plaintiff argued: "The [a]mended [n]otice of [a]ppeal was first filed on November 14, 2023, not November 22, 2023. [Citation.] Therefore, the [a]mended [n]otice of [a]ppeal should bear the filing date of November 14, 2023, not November 22, 2023."

¶ 47 On February 16, 2024, the trial court granted the motion, ruling that "[p]laintiff's [a]mended [n]otice of [a]ppeal bearing the file-stamp date of 11/22/23 shall be corrected to bear the file-stamp date of 11/14/23."

¶ 48 II. ANALYSIS

¶ 49 A. Appellate Jurisdiction as to Chang

¶ 50 Initially, defendants contend that we lack jurisdiction to hear this appeal as it relates to Chang. Defendants argue as follows. The judgment challenged on appeal—the judgment *n.o.v.*—was entered on June 16, 2023. On July 14, 2023, within the 30-day limit (see Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017)), plaintiff filed a notice of appeal. However, plaintiff concedes that the July 14, 2023, notice of appeal "was filed against *** Ko only." Plaintiff did not file a notice of appeal as to Chang until November 14, 2023—more than 30 days after June 16, 2023.

¶ 51 Plaintiff contends that we have jurisdiction based on the November 14, 2023, notice of appeal, which plaintiff claims was timely. Plaintiff reasons that, because the automatic stay was in

effect on June 16, 2023, the grant of the judgment *n.o.v.* was void as to Chang. Plaintiff reasons further that, after the bankruptcy court annulled the stay on October 16, 2023, plaintiff could then pursue its appeal as to Chang. Thus, plaintiff concludes that the November 14, 2023, notice of appeal was timely because it was filed within 30 days of October 16, 2023.

¶ 52 We conclude that we have jurisdiction over the June 16, 2023, judgment as to both defendants. The matter is more straightforward than either side presents: our jurisdiction rests on the July 14, 2023, notice of appeal, which was timely. That notice of appeal named both defendants and requested that this court "change the trial court's judgment to say: Motion for Judgment Notwithstanding the Verdict is denied." We recognize that plaintiff concedes that the July 14, 2023, notice of appeal "was filed against *** Ko only." However, we are not bound by a party's concession. *Beacham v. Walker*, 231 Ill. 2d 51, 60 (2008). Nothing in the July 14, 2023, notice of appeal stated or implied that it was limited to Ko. It plainly applied to both defendants.

¶ 53 Plaintiff is correct that, on July 14, 2023, the automatic stay was in effect. Thus, at the time, the notice of appeal was ineffective as to Chang. However, the bankruptcy court's order of October 16, 2023, "*annulled*" the stay so that "no actions taken or orders entered in [this state action] violated the stay, and *no actions taken or orders entered in the action since the petition date [were] void as having violated the stay*." (Emphasis added.)

¶ 54 Bankruptcy courts may retroactively validate orders entered or actions taken during a stay. See, *e.g.*, *In re Cruz*, 516 B.R. 594, 603 (B.A.P. 9th Cir. 2014); *Williams Awning Co. v. Illinois Workers' Compensation Comm'n*, 2011 IL App (1st) 102810WC, ¶ 12. When the stay was annulled, the timely July 14, 2023, notice of appeal became valid. Because it named both defendants, we have jurisdiction over the appeal from the judgment *n.o.v.* as to both Ko and Chang. With our jurisdiction established by the July 14, 2023, notice of appeal, we do not comment on

whether the trial court had jurisdiction to enter the February 16, 2024, order granting defendants' "Motion for Correction" of the date of the November 22, 2023, amended notice of appeal and deeming it filed on November 14, 2023. But we note that plaintiff's November 22, 2023, amended notice of appeal did not purport to change the appeal's scope. Like the original, this notice named both Ko and Chang and asked this court to "change the trial court's judgment to say: Motion for Judgment Notwithstanding the Verdict is denied."

¶ 55 B. Propriety of the Judgment *N.O.V.* on Count II

¶ 56 Defendants argue that, even if we have jurisdiction, plaintiff has forfeited its contentions of error. In addressing this forfeiture claim, we clarify what this appeal is *not* about. It is *not* about count I (conversion). Neither side has appealed from the judgment on count I. Thus, we have no power to disturb that judgment. See *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 22 (appellate jurisdiction extends only to judgments that are identified in the notice of appeal as liberally construed). We focus, then, on whether plaintiff has forfeited a challenge to the judgment *n.o.v.* on count II (unjust enrichment). Defendants argue that plaintiff forfeited that challenge by failing to raise it in response to defendants' posttrial motion. See *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 695 (2010) ("Generally, a party who does not raise an issue in the trial court forfeits the issue and may not raise it for the first time on appeal."). We disagree; plaintiff's response to the motion did defend the verdicts on count II, albeit cursorily. At the hearing on the motion, plaintiff specified that, because of the automatic stay, it would not address the motion as it pertained to Chang. Plaintiff reasonably concluded that the court could not grant Chang any relief. Only later did the bankruptcy court revive the judgment *n.o.v.* as to Chang. Under these unique circumstances, we choose to disregard any forfeiture.

¶ 57 Moving to the substance of plaintiff's challenge to the judgment *n.o.v.* on count II, we reemphasize that our jurisdiction does not extend to count I, despite both parties' attacks on the judgment thereon. Specifically, in contending that the judgment *n.o.v.* on count II was proper, defendants challenge the evidence of conversion because, as the jury instructions conveyed, a conversion finding was a predicate for a finding of unjust enrichment. On the other hand, in urging us to reverse the judgment *n.o.v.* on count II, plaintiff's arguments presuppose that Ko converted funds *in excess of* the $660,000 that the jury found. However, given the scope of this appeal, neither side may be heard to argue that Ko converted more or less than $660,000. We disregard any attempt to reargue the merits of count I to defend or challenge the judgment on count II.

¶ 58 We set out our basic principles of review. A judgment *n.o.v.* should be granted only when "all of the evidence, when viewed in its aspect most favorable to the [nonmovant], so overwhelmingly favors [the] movant that no contrary verdict based on that evidence could ever stand." *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). "In ruling on a motion for a judgment *n.o.v.*, a court does not weigh the evidence, nor is it concerned with the credibility of the witnesses; rather it may only consider the evidence, and any inferences therefrom, in the light most favorable to the party resisting the motion." *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992). Our review is *de novo*. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 132 (1999).

¶ 59 "To state a cause of action based on a theory of unjust enrichment, a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that [the] defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989).

¶ 60 In granting Chang a judgment *n.o.v.* on count II, the trial court concluded that there was no evidence that she unjustly retained any benefit to plaintiff's detriment, other than what flowed from the money that Ko converted, which plaintiff already recovered under count I. The court reasoned that plaintiff would have proved unjust enrichment only if, in addition to establishing that Ko purloined the $660,000 and gave it to Chang, it established that Chang also used the funds to generate a further monetary benefit. The court saw no evidence of any such secondary benefit, as the judgment on count I was essentially the home's purchase price ($659,000) and there was no evidence presented at trial that the home had increased in value.

¶ 61 We disagree with the trial court's reasoning. Plaintiff may recover against Chang on count II because she unjustly obtained a benefit from Ko's fraud, regardless of whether any secondary financial gain (*e.g.*, appreciation of the home's value) accrued from that fraud.

¶ 62 Unjust enrichment is an independent basis of liability in situations where "the receipt of a benefit whose retention without payment would result in the unjust enrichment of the defendant at the expense of the claimant." Restatement (Third) of Restitution and Unjust Enrichment, § 1 cmt. a (2011). "Usually, unjust enrichment results from wrongdoing, such as actual fraud or the breach of a fiduciary duty [citation], but it is possible to be unjustly enriched without having done anything wrong [citation]." *Tummelson v. White*, 2015 IL App (4th) 150151, ¶ 27; see also *Appelman v. Appelman*, 87 Ill. App. 3d 749, 755 (1980) ("Unjust enrichment does not require any wrongdoing on the part of the enriched party, but only that property is held by him under such circumstances that in equity and good conscience he ought not to retain it [citations]." (Internal quotation marks omitted.)).

¶ 63 "A person who obtains a benefit by misappropriating financial assets, *or in consequence of their misappropriation by another*, is liable in restitution to the victim of the wrong." (Emphasis added.) Restatement (Third) of Restitution and Unjust Enrichment § 41 (2011).[2]

¶ 64 The trial court's theory that recovery against Chang would require a secondary benefit from Ko's misappropriation of funds confused the liability concept of unjust enrichment with the separate remedy of disgorgement of profits by a conscious wrongdoer. "[T]he unjust enrichment of a conscious wrongdoer, *** is the net profit attributable to the underlying wrong." Restatement (Third) of Restitution and Unjust Enrichment § 51(4) (2011). This remedy exists "to eliminate profit from wrongdoing." *Id.* Because no further profit was proved here, the specific remedy of disgorgement is inapplicable. But that does not mean that no remedy for unjust enrichment was available. An innocent recipient remains liable in "the amount of the [plaintiff's] outlay," consequential gains aside. Restatement (Third) of Restitution and Unjust Enrichment § 50 cmt. b (2011). If Chang received a benefit due to Ko's wrongful appropriation of plaintiff's assets, she is liable under count II regardless of whether she was a conscious participant in Ko's wrongdoing, but only up to the amount Chang received. See *id.*; *cf. L.E. Zannini & Co. v. Jenkins & Boller Co.*, 159 Ill. App. 3d 227, 229 (1987) ("[W]here [the] plaintiff's property was wrongfully or mistakenly conveyed to the defendant by a third party, [the] plaintiff's recovery is limited to the property conveyed and does not extend to the profits earned as a result of the innocent defendant's use of it.").

[2]See *Tilschner v. Spangler*, 409 Ill. App. 3d 988, 994 (2011) (restatement sections are persuasive authority).

¶ 65 Illustrative and persuasive is a case cited by the Restatement (Third) of Restitution and Unjust Enrichment § 41 (2011). In *Ammons v. Coffee County*, 716 So. 2d 1227, 1228 (Ala. Civ. App. 1998), Coffee County, Alabama, sued Marilynn Ammons for conversion, seeking recovery of $334,529.53 in public funds she allegedly misappropriated when employed as the county's bookkeeper. While the civil suit was pending, Marilynn pleaded guilty in a parallel criminal prosecution to theft and forgery. She was ordered to pay restitution of $334,529.53, which she began doing in monthly installments. *Id.* at 1228-29, 1231. Afterward, the county added Marilynn's husband, Buddy, as a defendant and added a claim of unjust enrichment. *Id.* at 1229. After the county voluntarily dismissed Marilynn as a defendant, the case went to trial against Buddy. *Id.* The evidence disclosed that Marilynn controlled the Ammonses' bank account and did not keep the stolen funds separate from her and Buddy's respective earnings. *Id.* at 1230. Marilynn never told Buddy that she was stealing from the county. *Id.* Over the six years Marilynn stole from the county, Buddy used funds from the Ammonses' bank account to purchase two trailers and a boat; he later sold the boat and one trailer for a combined $15,000. *Id.* The county sought recovery against him based on his purchases and sales, and the trial court awarded the county $15,000 as the sales proceeds. *Id.* at 1231.

¶ 66 On appeal, Buddy argued in part that the judgment could not stand, because the restitution order already gave the county full satisfaction for the conversion of the funds and therefore "left nothing for the County to claim against Buddy." *Id.* The appellate court disagreed, explaining that, because Marilynn had not yet paid the full restitution required, "the County ha[d] not obtained satisfaction of its claim and [was] entitled to proceed against Buddy." *Id.*

¶ 67 Buddy also argued that the evidence did not support the verdict. In rejecting that challenge, the court applied the following principle:

> "The essence of the theories of unjust enrichment or money had and received is that a plaintiff can prove facts showing that [the] defendant *holds* money which, in equity and good conscience, belongs to [the] plaintiff or *holds* money which was improperly paid to [the] defendant because of mistake or fraud." (Emphasis in original and internal quotation marks omitted.) *Id.*

¶ 68 The court held that the judgment of $15,000 was proper because Buddy had used funds stolen from the county to buy the boat and trailers and had received $15,000 as proceeds from selling two of these items. *Id.*

¶ 69 Also pertinent here is *Bank of America Corp. v. Gibbons*, 918 A.2d 565 (Md. Ct. Spec. App. 2007). There, the defendant's husband, who worked for the plaintiff bank, made unauthorized sales of securities held by the plaintiff's customers and kept the proceeds. *Id.* at 567. He deposited those funds into an account and regularly transferred money into a joint account with the defendant. *Id.* The money was commingled with the husband's salary and bonus earnings. *Id.* The defendant wrote most checks drawn on the account, primarily for family expenses. *Id.* at 567-68. The plaintiff filed suit against the defendant for conversion and unjust enrichment, seeking to recover some of the ill-gotten funds. *Id.* at 568. During the trial, it became clear that the defendant did not know of the husband's theft and believed all his deposits into the joint account were legitimate earnings. *Id.* The trial court granted summary judgment for the defendant. *Id.* The plaintiff appealed. *Id.*

¶ 70 The appellate court vacated the judgment and remanded the cause. *Id.* at 578. The court concluded that the trial court's judgment was based on the following misconceptions about the nature of an unjust enrichment claim: (1) the plaintiff had to prove the existence of a contract implied in fact, *i.e.*, some mutual agreement between the plaintiff and the defendant (*id.* at 570-71); (2) the plaintiff had to prove some direct dealings between the plaintiff and the defendant (*id.*

at 571-72); (3) the benefit had to be conferred directly from the plaintiff and not through a third party (*id.* at 573-74); and (4) the defendant had to be aware of the source of the benefit, *i.e.*, that it was improperly obtained (*id.* at 575-76). Citing the Restatement (First) of Restitution § 123 (1937), the court explained that even a defendant who acquires property of another nontortiously, through an intermediary, and without notice that it rightfully belongs to another is liable for unjust enrichment if, in equity and good conscience, she is not entitled to hold it against the true owner. *Bank of America*, 918 A.2d. at 572. The court cited *Ammons* in support of its holding. See *id.* at 577.

¶ 71 Applying the foregoing authority, we hold that the judgment *n.o.v.* for Chang was erroneous. We agree with the trial court that, in essence, the jury found that Ko converted the same money from plaintiff that Ko and Chang used to purchase the family home—which was then titled only in Chang's name. The court erred, however, when it determined that plaintiff could not recover for the benefit conferred on Chang by the purchase with converted funds; rather, the jury could properly find all the elements of unjust enrichment as to Chang and award an amount equal to (as it did) or less than the purchase price of the family home.

¶ 72 The consequence of our analysis is that Ko and Chang are jointly and severally liable for the deprivation to plaintiff that flowed from Ko's misappropriation of plaintiff's funds. However, "a plaintiff can have but one satisfaction for his injury." *Koltz v. Jahaaske*, 312 Ill. App. 623, 628 (1942). Thus, the satisfaction of the judgment on count I against Ko can be raised as a bar to the judgment on count II against Chang. See *Ammons*, 716 So. 2d at 1231; Restatement (First) of Restitution, § 147 cmt. d (1937) ("Where a claim against two persons is founded upon a single deprivation as it is where a tort resulting in a single harm has been committed by two persons concurrently or acting in co-operation, the injured person, while having a cause of action against

each of the parties for the entire amount of injury, is entitled only to one satisfaction. If he obtains judgment against one and it is satisfied, he thereby loses his claim against the other."). As for the judgment *n.o.v.* on count II against Ko, we decline to reverse it, as the verdict against him on count II is effectively subsumed by the verdict against him on count I; Ko cannot be held liable for an amount that exceeds the judgment on count I. See *Ogallala Livestock Auction Market, Inc. v. Leonard*, 968 N.W.2d 633, 644 (Neb. Ct. App. 2021) ("A party may not have double recovery for a single injury, or be made more than whole by compensation which exceeds the actual damages sustained.").

¶ 73 III. CONCLUSION

¶ 74 For the reasons stated, we reverse the judgment *n.o.v.* against Chang on count II, but in all other respects we affirm the judgment of the circuit court of Lake County.

¶ 75 Affirmed in part and reversed in part.

***K-Stones, Inc. v. Joong Gul Ko*, 2025 IL App (2d) 230238**

Decision Under Review:	Appeal from the Circuit Court of Lake County, No. 20-CH-615; the Hon. Janelle K. Christensen, Judge, presiding.
Attorneys for Appellant:	John Y. Lee, of Lee & Breen, of Morton Grove, for appellant.
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